

VOLUME II OF III

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Clifton Newman, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

HORACE ELIJAH WATTS,

APPELLANT

APPELLATE CASE NO. 2017-000255

RECORD ON APPEAL

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1 MR. KRZYSTON: Certainly.

2 MR. POTTS: And, Your Honor, the one last thing we
3 have is we have the outstanding jail phone call issue. I
4 have sent proposed redactions to Mr. Ruffin. Mr. Ruffin
5 disagrees with my redactions.

6 THE COURT: Well, what's on the jail house calls?

7 MR. POTTS: Your Honor, basically, this Defendant's
8 -- we do have a transcript of one of the phone calls, Your
9 Honor.

10 MS. NICKLES: Your Honor, it is a transcript that I
11 myself provided, but --

12 THE COURT: All right.

13 MR. POTTS: We don't --

14 THE COURT: You don't plan to be a witness?

15 MS. NICKLES: No, I just -- for our purposes for
16 answering your questions, I typed it up.

17 MR. POTTS: I will get a copy to Mr. Ruffin. I'll
18 give you a copy now.

19 THE COURT: Sure. But what's on it, he denies
20 shooting, admits to shooting, doesn't know anything about
21 it?

22 MS. NICKES: Your Honor, on the jail phone call, he's
23 speaking with his aunt. He says specifically --

24 THE COURT: I just want to know generally. I'm not
25 --

1 MS. NICKLES: He generally says, My brother and I
2 were there. We did the shooting, that's all the cops
3 know. They don't have a gun. And then at the end, he
4 says, I'm sure it's known all around the world Horace
5 Watts is a killer. Nobody -- essentially, nobody's going
6 to fight with me now. I'm not afraid of being --

7 THE COURT: All right. I did it and I'm proud I did
8 it.

9 MS. NICKLES: Yes. He does say everybody knows that
10 Horace Watts is a killer and blames it on his little
11 brother.

12 THE COURT: So why are y'all disagreeing over
13 whatever you disagreeing on?

14 MR. RUFFIN: Some of that, I don't disagree with.
15 Which I think we've worked out a lot.

16 MR. POTTS: We worked out a lot of redactions, but
17 there are some redactions that they have specific
18 objections to that I don't feel need to be redacted.

19 MR. RUFFIN: I think the substance of what
20 Ms. Nickles just said, we weren't objecting to.

21 THE COURT: Okay. Well, what --

22 MR. RUFFIN: Let me see if I have this in front of
23 me, Judge. You know, I just -- Mr. Potts just e-mailed me
24 their redacted version of the calls. I got to listen to
25 one. I sent him back an e-mail saying what I was okay

1 with and what I was not okay with. And there's really
2 only a couple of things. I'm sorry, I don't have that
3 e-mail in front of me, so I don't actually remember
4 exactly what I wrote down.

5 MR. POTTS: I actually do have the e-mail from my
6 phone. And, Your Honor, I think the main thing he's
7 objecting to is there is -- his aunt on the call, he
8 believes, is speculating to certain things and Horace
9 responds.

10 MR. RUFFIN: There are parts of the calls --

11 MR. POTTS: 350 to 445 and 520 --

12 THE COURT: How many hours of phone calls do y'all
13 want us to hear?

14 MR. RUFFIN: Only a few minutes. There are two phone
15 calls, each one about 10 minutes.

16 THE COURT: Okay.

17 MR. KRZYSTON: Judge, last thing, I'm just going to
18 let the record reflect I'm passing over to Mr. Arant
19 copies of the studies that the examiner adopted,
20 comprehensive validity studies.

21 THE COURT: They may agree with you tomorrow.

22 MR. KRZYSTON: We would ask for reciprocal discovery
23 on any studies they intend to rely upon.

24 THE COURT: What year are your studies?

25 MR. KRZYSTON: What year?

1 THE COURT: Yeah.

2 MR. KRZYSTON: Mine are 1998 and 2003.

3 THE COURT: So --

4 MR. KRZYSTON: Quite honestly, the science hasn't
5 changed since the 70's, so.

6 THE COURT: Well, but people's opinions of the
7 science may change. But if you get any since in the
8 2000's, then you need to share with them as well.

9 MR. POTTS: Yes, Your Honor. We'll talk to Mr. Smith
10 today and see what we can get from him.

11 THE COURT: All right. Y'all still talking about the
12 phone calls or are we through with that for the moment?

13 MR. POTTS: I think we're through with that for the
14 moment, Your Honor.

15 MR. RUFFIN: Yes, sir.

16 THE COURT: Regarding these pictures of gunshot
17 wounds, of course, the task the Court has to evaluate is,
18 you know, what's probative versus prejudicial and what
19 evidentiary value the photos might have. As opposed to
20 just showing the jury a bullet hole, it must be -- have
21 some probative value on some contested issue. So that's
22 the test on which I will rule on these. You know, the
23 closer up the photograph, unless there's some dispute
24 where someone was shot and all that, I don't see the point
25 in why you would use them, but, you know, it all has to be

1 evaluated in connection with the evidence and the
2 evidentiary disputes if there exist any.

3 MR. POTTS: Okay.

4 THE COURT: We know he's dead, that we know.

5 MR. POTTS: Yes, Your Honor. We'll establish that --

6 THE COURT: We don't have to establish that.

7 MR. POTTS: -- through testimony --

8 THE COURT: Okay. All right. Very good. We're done
9 for the day.

10 MR. KRZYSTON: Thank you, Judge.

11 MR. RUFFIN: Thank you, Your Honor.

12 MR. POTTS: Thank you, Your Honor.

13 (WHEREUPON, the proceedings were adjourned for the
14 day.)

15 WEDNESDAY, FEBRUARY 8, 2017

16 THE COURT: Anything before the jury comes?

17 MR. KRZYSTON: I believe just the firearms.

18 THE COURT: Is he the first guy?

19 MR. POTTS: No, Your Honor.

20 THE COURT: All right. So we'll defer that.

21 MR. POTTS: Only other thing, Your Honor, is the jail
22 phone calls.

23 THE COURT: All right.

24 MR. POTTS: That is -- we plan on not introducing
25 them real early this morning -- mentioning it early this

1 morning, Your Honor, so I'm just not publishing -- I
2 guess, authenticating them early this morning.

3 THE COURT: Okay. Well, let's get rolling with live
4 witnesses otherwise.

5 MR. POTTS: I am ready to go with witnesses
6 otherwise.

7 THE COURT: We'll take a break if need be.

8 MR. POTTS: Sounds good.

9 THE COURT: All right. Anything else before they
10 come?

11 MR. ARANT: Your Honor, I believe we intend to call
12 Dr. Marcus, the forensic pathologist, as our first expert.
13 Do you want to settle the record now on those photos or
14 wait until we get into testimony?

15 THE COURT: Settle on what?

16 MR. ARANT: Settle the record on which photos will be
17 admissible.

18 THE COURT: Okay. I'll be happy to hear what anyone
19 has to say?

20 MR. RUFFIN: Well, Your Honor, I guess I'll start.
21 I've seen the photos. Mr. Arant showed me the photos that
22 they intend to introduce. We don't have a problem with
23 the diagram that Dr. Marcus drew out. I think we did have
24 a problem with the x-ray, although I don't think that
25 they're going to use that. Mr. Arant showed me some other

1 pictures that are pictures of Isaac Lewis's hand. It
2 looks like there's a laceration on his finger.

3 And there are other photos that show the bullet hole
4 wounds within his body. I don't see that that really --
5 we're not obviously challenging the cause of death. It
6 was a gunshot wound, went through both lungs, his aorta.
7 I think that Dr. Marcus will be able to testify to that
8 fully without use of the pictures. I don't think that the
9 pictures add anything. They're just, essentially,
10 close-up pictures of a bullet hole to someone's body. I
11 think they're prejudicial. There's no reason for the jury
12 to see that. It only will -- in any opinion, the only
13 thing it will serve is to inflame the emotions of the
14 jury, inflame their passion so they might decide the case
15 on an improper basis. And it has no probative value in my
16 opinion.

17 THE COURT: All right. From the State?

18 MR. ARANT: Your Honor, the reason we're -- there are
19 really two reasons we're seeking to introduce the photos.
20 There were six photos. Two of them are of the alleged
21 entrance wound, two are of the exit wound. Why two?
22 Because one is without the measurement, the other has the
23 measurement in it. And then there's two of a laceration
24 or injury sustained on his -- on one of his fingers. That
25 was one without the measurement, the other one is with the

1 measurement.

2 The two bases that we have for that, Your Honor,
3 yesterday, when Lieutenant Ogden was on the stand, I
4 believe Defense crossed him about whether it was an
5 entrance or exit wound and thereby putting in contention
6 and opening the door to us having the ability to prove to
7 the jury of why it was an entrance and exit wound. Also,
8 it will aid Dr. Marcus's testimony about explaining to the
9 jury the difference between an entrance and an exit wound
10 and how he can tell that. Certainly, I can't -- I don't
11 know how to tell with the naked eye with an explanation
12 from him on how these bullets -- how you tell if it's an
13 entrance or exit wound. We're not seeking these to invoke
14 any emotion. These pictures are just specifically of the
15 entrance itself. Dr. Marcus tells me that these are clean
16 -- after the blood is cleaned away.

17 Further, Your Honor, the one of the finger, he would
18 opine that that is an injury sustained as a result or in
19 the course of this happening due to the fresh blood and
20 sand that was on the finger. He cannot rule out that it
21 was a graze wound. I think that's important. It could
22 have been also an injury sustained in the fall.

23 Your Honor, we would ask that under State V. Ward,
24 which is South Carolina case 376 S.C. 606 that these be
25 admitted for those purposes. Like I said, Your Honor,

1 we're not trying to show this to invoke any type of
2 emotion. I believe these pictures are zoomed in so there
3 are no surgical procedures or life-saving measures visible
4 to the jury. I do not think they are gross pictures -- or
5 grotesque pictures. And that would be our basis for that.
6 We certainly would adhere to any ruling you make on that.

7 And, Your Honor, I can approach with the ones that
8 we're talking about.

9 THE COURT: Okay. I think I saw all of them
10 yesterday unless you have different ones?

11 MR. ARANT: Did you see the one of the finger?

12 THE COURT: Yes, sir.

13 MR. ARANT: Okay.

14 THE COURT: Let me see.

15 MR. ARANT: Those are the two of the finger.

16 THE COURT: All right. What else? State V. Ward,
17 that's Court of Appeals?

18 MR. ARANT: Yes, sir, I believe so. I believe that
19 case was about where several witnesses were questioned
20 where he was shot.

21 THE COURT: All right. What's your response?

22 MR. RUFFIN: Your Honor, I believe that -- I could be
23 wrong, but I believe that Dr. Marcus's opinion is that the
24 entrance wound was to the left side of Mr. Lewis's back
25 and that the entrance wound -- or excuse me, the entrance

1 wound was the left side of his back and the exit wound was
2 the right side of his chest. We're not contesting that.

3 THE COURT: All right. What do you mean y'all are
4 not, you're contesting everything in the case.

5 MR. RUFFIN: We're not contesting the entrance and
6 exit wounds. Mr. Arant is saying that the probative value
7 of the picture is that they can explain which one's the
8 entrance wound and which one's the exit wound. Dr. Marcus
9 will testify and tell the jury which one is the entrance
10 wound and which one is the exit wound without them having
11 to see a picture of it. They can know. They can see on
12 his diagram, which we're not even objecting to. His
13 diagram shows --

14 THE COURT: Well, I understand that you're kind of --
15 the whole thing about photographs, generally speaking, is
16 that if it shows something gruesome, like the body, couple
17 pictures of the body, that can inflame a jury. A picture
18 of a gunshot wound in and of itself that doesn't show the
19 body in some kind of way that reviles a person is
20 generally not going to be considered to be inflammatory.
21 This is a murder case. The State has the right to prove
22 its case.

23 Now, there are issues -- I mean, the State contends
24 that these guys came and just started randomly shooting,
25 shooting people in the back, in the front, as they ran

1 away, you know, just bullets flying all over the place.
2 And you may say well, we're not contesting whether the
3 people were shot. But in a plea of not guilty, you are,
4 in effect, contesting every issue in the trial. And it's
5 not you personally, the State solely has the burden. You
6 have no burden. It doesn't matter whether you agree or
7 disagree on certain things in many incidences if the
8 evidence has some probative value and then the Court
9 balances it, but a photograph alone is not evidence of
10 prejudice. So I'll listen to the testimony and I'll rule
11 as we go.

12 MR. ARANT: Yes, Your Honor. Thank you.

13 THE COURT: And so we're going to take just a moment
14 and let me screen this Ward case. This is a supreme court
15 case. Let's see, permitting autopsy photos. This guy was
16 shot when a gun fight broke out in a parking lot of a
17 club, Diamonte, in Charleston. The defendant stepped
18 outside on his way home, hadn't been involved in an
19 altercation, but some feud existed between other people.
20 These guys jumped out of a truck and started shooting.
21 And regarding the autopsy photographs, it says, The
22 relevance, materiality and admissibility of photographs
23 are within the sound discretion of the trial court and a
24 ruling will not be disturbed absent an abuse of
25 discretion. To create undue prejudice, the photographs

1 must create an undue tendency to suggest the decision on
2 improper basis, commonly, though not necessarily, an
3 emotional one. Photographs which are calculated to arouse
4 the sympathies or prejudice of the jury should be excluded
5 from the guilt phase of the trial if they are irrelevant
6 or not substantially necessary to show facts or
7 conditions.

8 Here the judge allowed two photographs which
9 illustrate graze wounds to the victim's back. The
10 defendant objected saying that the probative value was
11 outweighed by the prejudicial effect. The Court overruled
12 that finding jury's knowledge of a graze wound was
13 necessary to rebut the defense's argument about the angle
14 of the shot. And therefore, the photographs probative
15 value outweighed the prejudicial, and so forth. And
16 there's no error in the judge allowing autopsy photographs
17 of graze wounds in that case.

18 So you go back and forth, we'll just see how the
19 evidence plays out and I will rule.

20 Bring them on.

21 (WHEREUPON, the jury returned to the courtroom at
22 9:47 a.m.)

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

24 THE COURT: Good morning.

25 THE JURY: Morning.

1 THE COURT: Madam Forelady, how is the jury doing?

2 MADAM FORELADY: Fine, sir.

3 THE COURT: Very good.

4 Well, the plan this morning is for us to go until
5 about 11:45 or so, then we'll break until about 1:45. So
6 we're not ordering you lunch, we'll let y'all go for that
7 span of 11:45 to 1:45. That's the plan, at least, at this
8 point.

9 Day number three, the State case, you may proceed.

10 MR. ARANT: Thank you, Your Honor. The State calls
11 Dr. Marcus.

12 Thereupon;

13 BRADLEY MARCUS, M.D.,

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: Bradley J. Marcus, M-A-R-C-U-S.

18 DIRECT EXAMINATION

19 BY MR. ARANT:

20 Q Morning, Dr. Marcus.

21 A Morning.

22 Q Can you tell the jury where you're currently
23 employed?

24 A Currently, I'm employed at the Professional Pathology
25 Services. It's a private practice pathology lab here in

1 Columbia, South Carolina.

2 Q How long have you been employed there?

3 A Approximately eight years.

4 Q And what's your current capacity -- what current
5 capacity are you employed there as?

6 A As of right now, I'm a managing partner of our group.
7 I also work as a pathologist there.

8 Q Before you were the managing partner, were you still
9 a pathologist there for that time, the eight years?

10 A Yes, I have always been a pathologist, either an
11 employee or a partner.

12 Q Tell the jury a little bit about your educational
13 background.

14 A So I went to college of the University of North
15 Carolina at Chapel Hill. After that, I went to medical
16 school. I got my M.D. degree in 2001 from the American
17 University of the Caribbean. After that, I spent six
18 years in Charleston, South Carolina doing a residency in
19 pathology and forensic pathology and fellowships in
20 cytopathology, forensic pathology. And then in 2008, I
21 came here to Columbia, South Carolina for my formal
22 employment.

23 Q Do you possess any licenses or board certifications?

24 A Yes.

25 Q Can you tell the jury about those, please?

1 A I have my unrestricted medical license in North
2 Carolina, South Carolina, and Georgia. I also am board in
3 anatomic pathology, clinical pathology, forensic pathology
4 and cytopathology.

5 Q And currently, you're located here in Columbia,
6 correct?

7 A Yes.

8 Q Are there any other trainings or anything that you've
9 recently attended or gone to over the years?

10 A I go to continuing medical education meetings and do
11 online work.

12 Q Have you testified in court before?

13 A Yes.

14 Q As an expert?

15 A Yes.

16 Q Approximately how many times have you testified as an
17 expert?

18 A Approximately 25 to 35 times.

19 Q Some in this courtroom?

20 A Yes.

21 MR. ARANT: Your Honor, at this time, the State would
22 ask that Dr. Marcus be admitted as an expert in the field
23 of forensic pathology.

24 THE COURT: Any questions or voir dire?

25 MR. RUFFIN: Yes, Your Honor, just briefly.

VOIR DIRE

BY MR. RUFFIN:

Q Dr. Marcus, you're an independent witness, right?

You don't work for the State?

A Correct.

Q You remember that you gave a 60 Minutes interview before?

THE COURT: All right.

MR. ARANT: Objection, Your Honor.

THE COURT: Sustained. The question is do you have any questions on his qualifications as an expert witness?

MR. RUFFIN: Our opinion is that he doesn't --

THE COURT: Any voir dire? I don't want to know your opinion. Do you have any questions on his competency as an expert witness?

MR. RUFFIN: That was my question.

THE COURT: Okay. Then I sustain that objection.

The witness is qualified in the field that he's being offered.

You may proceed.

MR. ARANT: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. ARANT:

Q Doctor, you're familiar with an autopsy?

A Yes.

1 Q Can you explain to the jury a little bit about what
2 an autopsy is and what it does?

3 A Yes. So an autopsy is performed -- there's two
4 different types of autopsies. There's a medial autopsy
5 and a forensic autopsy. A medical autopsy is someone that
6 dies in the hospital and the family then request an
7 autopsy to determine the cause and manner of death. A
8 cause of death is the disease or injury which brings about
9 a death, okay? That's a medical autopsy.

10 And then there's a forensic autopsy, which generally
11 falls under legal jurisdiction where either a coroner or a
12 medical examiner orders an autopsy on someone that dies
13 suddenly and unexpectedly, whether it be from natural
14 causes due to disease or from accidental deaths or from a
15 homicide, death at the hands of another person. And the
16 coroner orders them or the medical examiner orders them.
17 And depending on what jurisdiction you're in, they have an
18 arrangement with a forensic pathologist to do the
19 autopsies.

20 Q And you can ballpark, how many autopsies have you
21 performed would you say?

22 A I've performed approximately 2200 autopsies.

23 Q Did you have occasion -- I'm going to bring you back
24 to why we're here today. Did you have an occasion to do
25 an autopsy in the case of Isaac Lewis?

1 A Yes, sir.

2 Q Did you -- explain a little bit about what you did in
3 this process of Mr. Lewis.

4 A So, basically, I was notified by deputy coroner of
5 Richland County that there was a victim that sustained a
6 gunshot wound and died at Palmetto Health Richland
7 Hospital. And based on those circumstances, the deputy
8 ordered an autopsy. And I said I would perform the
9 autopsy the next day.

10 Q And how do you go about performing an autopsy?

11 A Well, the first thing that I do is that I get some
12 basic information about what the history is and how the
13 person ended up in this situation. And then from there, I
14 then go and I examine the body.

15 Q Tell the jury a little bit about what you found when
16 you examined this particular body?

17 A What I found was it was a well-developed
18 African-American male, who appeared to have a gunshot
19 wound to his back and he also had some injuries to his
20 upper extremities.

21 Q What was the location of those -- when you say upper
22 extremities, could you just tell the jury more
23 specifically about where you're talking about?

24 A I saw two injuries on the hands, one on the left
25 middle ring finger and one injury on the posterior right

1 hand.

2 Q And as you're doing this -- after you're done with
3 this physical exam, do you examine any further? Do you
4 examine his organs or anything like that?

5 A Yes, we do a full dissection of the entire body,
6 including toxicology testing.

7 Q And do you have -- you have a copy of your report?

8 A Yes.

9 Q Okay. Just tell the jury, was this a healthy
10 individual? Were his organs intact? Or what was --

11 A He had -- Mr. Isaac Lewis probably had some high
12 blood pressure and that was untreated because his heart
13 was rather big at 640 grams. A heart shouldn't weigh more
14 than about 450 grams. And his left ventricle of his heart
15 was large, so that tells me that he had -- his heart was
16 pumping against high blood pressure over many years.

17 Q And did you determine a manner of death in this case
18 and evidence of injury in this case?

19 A Yes. In this case, the cause of death, I put as a
20 gunshot to the left back.

21 Q He died from that?

22 A Yes.

23 Q Okay. And is that your expert opinion in this case?

24 A Yes.

25 Q Were there multiple wounds or -- and when you talk

1 about gunshot wounds, how many were there? How many did
2 you note in your records?

3 A So I, basically -- the first thing I did was I
4 examined the external body and I noted two holes on him.
5 One appeared to look like an entrance wound and one
6 appeared to look as an exit wound. So the second thing I
7 do is I x-ray the body looking for any metal projectiles
8 that may be still in his body because, otherwise, then I
9 have one gunshot wound, an entrance and an exit. So I did
10 that.

11 And from there, then I went and dissected the body
12 and determined the wound tract of what organs were hit and
13 then the exit and what injuries he sustained. And then I
14 did a complete autopsy on the remainder of his organs.

15 Q What the wound track in this case?

16 A So Mr. Lewis, he had an entrance gunshot wound to the
17 left back, 16 inches from the top of the head and seven
18 inches to the left of the midline. Around that wound,
19 there was a small abrasion around the wound, which told me
20 that it was an entrance wound. That was up to zero point
21 two inch at the 8:00 o'clock position. There was no soot
22 visualized in the wound and stippling was not visualized.

23 You get soot in a wound when a gun is in a very close
24 proximity to the body. Soot comes out of the barrel, but
25 that goes away about eight to -- you know, eight inches or

1 so. Stippling is when a gun is fired and particles of
2 unburned gun powder come out of the barrel and what they
3 do is they cause these little, little specks, abrasions,
4 little scratches on the skin. And that occurs at -- could
5 occur up to 18 inches, again, all depending on the type of
6 weapon that's used and so forth.

7 I didn't see any of that, so I put the cause -- the
8 range of this gunshot wound as indeterminant range because
9 the bullet went through clothing. So clothing will block
10 soot and block stippling. I believe it was a distant
11 range gunshot wound, which defines any range over 18
12 inches.

13 The bullet pathway then went through the skin and
14 subcutaneous tissue of the left back. It went through the
15 posterior left fifth intercostal space, which is the space
16 between the ribs. And then it entered through -- then it
17 went through the posterior left sixth rib, the left lower
18 lung lobe. It went through the aorta, which is the main
19 blood vessel in the chest. It went through the superior
20 vena cava and then it went through the right upper lung
21 lobe and then went -- hit the anterior third right
22 intercostal space and then exited the skin and
23 subcutaneous tissue of the right chest 13 inches from the
24 top of the head and 4.25 inches to the right of the
25 midline.

1 Resulting injuries were the following: Bilateral
2 lung perforation with contusions; the aorta, which is like
3 a garden hose blood vessel in the chest, was torn open;
4 the superior vena cava, which brings blood -- deoxygenated
5 blood back to the heart, was torn open, also, damaged,
6 perforated. Both chest cavities that hold the lungs were
7 full of blood, which makes sense because you have blood
8 pouring out of these vessels.

9 But we had -- most of the blood was removed because
10 he was brought to the emergency department and one of the
11 things they do when you -- when you have blood in there,
12 they put chest tubes in the blood to drain the blood from
13 around the lungs so the lungs can expand again and get
14 oxygen. Posterior left sixth rib fracture, soft tissues
15 disruption with associated hemorrhage. That was the wound
16 track and that's the organs and the injuries that Mr.
17 Lewis sustained from this gunshot wound.

18 Q In your expert opinion, would that have been a quick
19 death or how would you describe the manner of death?

20 A It would have been about a minute or so. About a
21 minutes, he bleeds out.

22 Q Okay. Explain this process to the jury -- would
23 pictures help explain to the jury about the entrance and
24 exit wound and the travel of the bullet?

25 A Yes, I can explain exactly how I determined it was an

1 entrance and how it was exit wound from the photos.

2 Q I'm going to show you what's been marked as State's
3 Exhibits 114, 115, 116 and 117. Can you just look at
4 these, please?

5 A Yes.

6 Q What are those?

7 A These are two photos of an entrance wound and two
8 photos of the exit wound on Mr. Lewis's body.

9 Q Do you recognize those?

10 A Yes.

11 Q Are those photos from the autopsy that was performed
12 on Mr. Lewis?

13 A Yes.

14 Q And you're familiar with those?

15 A Yes.

16 MR. ARANT: Your Honor, at this time, the State would
17 seek to admit Exhibits 114, 115, 116, and 117 into.

18 MR. RUFFIN: Objection under 403, Judge.

19 THE COURT: Let's see them. We'll leave them marked
20 for identification purposes only at this time.

21 MR. ARANT: Okay. Thank you, Your Honor.

22 BY MR. ARANT:

23 Q I'm going to hand you back what's been marked for
24 identification purposes, the same exhibits I just gave to
25 you. If you can kind of just look at these and tell the

1 jury --

2 MR. RUFFIN: Your Honor, I'd ask that the photos not
3 be published to the jury unless Your Honor rules that
4 they're admissible.

5 THE COURT: They're not being published to the jury.

6 MR. ARANT: Okay.

7 BY MR. ARANT:

8 Q Can you explain, I guess, what you see in those
9 photos and relay that to the jury, if you could, the
10 different between the two wounds?

11 A Right. So in my report, I said that -- I explained
12 that the entrance gunshot wound had a circumferential
13 abrasion around it, which an abrasion is a scratch. You
14 fall down and scrape your skin, that's a scratch. The
15 medical term is abrasion. So when a bullet comes out of a
16 weapon, it's spinning at a very high rate. And when it
17 hits the skin, it makes this abrasion that occurs on the
18 skin. And it vertically -- you know, that's an entrance
19 wound. The bullet came in, hit the skin, made an
20 abrasion.

21 So once the bullet that enters the skin, the bullet
22 actually -- it loses it's ballistic abilities because then
23 you have a bullet that is still probably spinning a little
24 bit, but at a lower rate. And the bullet could be wobbly,
25 could be tumbling. So when the exit wound comes out,

1 because you hit all those organs and so forth, the
2 ballistics are messed up, so the exit wound is not as
3 clean as an entrance wound.

4 So in my report, I wrote here exit wound is 0.8 by
5 0.3 inches, which is significantly larger than the
6 entrance wound is. So this bullet could have come out on
7 its side instead of coming straight out. And that's why
8 -- and no abrasion was seen and no soot and no skin splits
9 were seen. So it's basically the way the bullet comes out
10 of the gun. It makes a nice clean entrance and makes an
11 exit wound that's a little irregular. And it just takes
12 years of experience of seeing various gunshot wounds to
13 determine this.

14 Q And so did you also measure those?

15 A Yes, I did.

16 Q Does that help you determine where is an entrance and
17 exit wound as well?

18 A Yes.

19 Q Is -- would the exit wound be larger than the
20 entrance wound?

21 A It can.

22 Q Okay.

23 A It can, yeah, absolutely.

24 Q I'm going to show you also what's marked as State's
25 Exhibit 121 and 122. Can you just identify what those

1 are?

2 A Yes, this is a -- this is an injury to Mr. Lewis's
3 left middle ring -- left middle finger.

4 Q And is that something you examined or saw when you
5 were examining him for his autopsy?

6 A Yes, I examined the whole body and I noticed this
7 injury on him, also.

8 Q And those are the pictures from that autopsy?

9 A Yes, sir.

10 Q You're familiar with those?

11 A Yes, sir.

12 Q And that's -- does that fair and accurately depict
13 the hand as it was back then?

14 A Yes.

15 MR. ARANT: Your Honor, we'd seek to move these two
16 exhibits, Exhibit 122 and 121, into evidence?

17 MR. RUFFIN: Objection under 403, Judge.

18 THE COURT: Let me see them. They're admitted over
19 objection.

20 MR. ARANT: Thank you, Your Honor.

21 (WHEREUPON, State's Exhibit Nos. 121 and 122 were
22 admitted into evidence.)

23 BY MR. ARANT:

24 Q I'll hand these back to you in a minute. Doctor, did
25 you also happen to do a written report in this case?

1 A I did.

2 Q As a part of that written report, do you make
3 diagrams or anything like that?

4 A Yeah. All the photos that we take, we always back
5 them up making the diagrams of the body.

6 Q And did you -- did you do a diagram in this case?

7 A Yes, sir.

8 Q How many pages do you do for those?

9 A I do two pages when it's dealing with gunshot wound
10 cases.

11 Q I'm going to hand you what's marked as State's
12 Exhibit 123 and 124. Do you recognize those?

13 A Yes, I do.

14 Q Are those your markings?

15 A Yes. This is my handwriting. I made these diagrams.

16 Q That are the ones that were done with this autopsy?

17 A Yes.

18 Q And those fairly depict the injuries of Mr. Lewis?

19 A Yes.

20 MR. ARANT: Your Honor, we'd seek to admit State's
21 Exhibits 123 and 124 into evidence.

22 MR. RUFFIN: No objection, Your Honor.

23 THE COURT: They're admitted.

24 (WHEREUPON, State's Exhibit Nos. 123 and 124 were
25 admitted into evidence.)

1 MR. ARANT: Your Honor, may we publish the ones that
2 have been admitted?

3 THE COURT: Yes, sir.

4 BY MR. ARANT:

5 Q Dr. Marcus, if you could for me, step down from the
6 stand?

7 A (The witness complied.)

8 Q Dr. Marcus, can you explain to the jury what this
9 picture depicts?

10 A Yeah, okay. So, basically, like I said, on cases
11 where I have gunshot wounds, I try to do a separate
12 diagram for that because sometime these diagrams can get
13 real busy looking. So this is the initial diagram I did
14 on Mr. Lewis, his name, assign a case number to it and
15 various things, weight, length, temperature, scalp hair,
16 facial hair, eye color.

17 Then I basically -- this right here is looking at any
18 type of medical -- so here is tracheal tube. He's got a
19 neck immobilization collar, chest tube. Remember I said
20 he had bilateral pneumo pleurisy, so they put a chest tube
21 in in the ER. IV band, these here are called
22 defibrillator pads. This right here, EKDB pads. This
23 right here is a needle they stick in the tibia to give him
24 fluids. And then over here, he's got a needle
25 decompression, which he had a pneumothorax, too, so they

1 try to decompress the chest cavity to get the air out of
2 it. The hands have been bagged from the police
3 department. And then over here (indicating) is -- this is
4 the left middle finger, I wrote fracture with laceration.
5 Laceration is like a tearing of the skin that occurs. And
6 over here on his right hand, you've got a little
7 laceration, also, small laceration. That's the first
8 diagram I did.

9 So for the ease of examination and for when law
10 enforcement and anyone gets the autopsy report, I label
11 all of the holes in the body in ABC-type of arrangement.
12 So when you're reading my autopsy report, I wanted
13 everyone to be very, very clear on where these gunshots
14 were so they have a visual when they're reading instead of
15 just reading words.

16 So in this case, gunshot wound labeled as A was to
17 the left back here (indicating), and I wrote it as an
18 entrance. And gunshot wound labeled as B was on the right
19 chest here (indicating), as an exit wound. So I then make
20 a key, I call this a key, A to B, one single gunshot wound
21 on this case.

22 Q Thank you, Doctor. Can you tell the jury what this
23 picture depicts? I know it's sideways, but.

24 A This was a picture of that left middle finger that I
25 described and said there was an abrasion. And, actually,

1 in my report, I wrote that the finger is actually
2 fractured. Laceration, very irregular. You have this
3 fresh blood on here, but then you also see like there's
4 some sand and so forth, so that means he was bleeding.
5 And where his hand hit the ground, you had some, you know,
6 blood -- again, sand and stuff to the blood when dried.
7 So that injury occurred while he was in this incident.

8 Q And there was some testimony of his falling after the
9 shot, would that be consistent with the fall?

10 A It certainly could be. Again, it could be
11 consistent, you know, putting your hand down to break the
12 fall, you know, you could certainly get an injury like
13 that and fracture your finger.

14 Q Your expert opinion, could you rule out a gunshot
15 wound or a graze wound?

16 A No, in this case, I can't because it hit an irregular
17 portion of the finger and, you know, you have a fracture
18 there. An injury that just grazes that could make a very,
19 very similar type of injury. So I cannot rule out that's
20 not a graze wound either.

21 Q So is it fair to say that it's consistent with a
22 possible graze wound?

23 A It's possible.

24 Q You can have a seat back. I think that's all.

25 A (The witness complied.)

1 Q There's also an exhibit I entered it with a
2 measurement. Did you also measure the wound in this case
3 with respect to the finger?

4 A That was on the posterior aspect of the right hand,
5 the one-inch laceration.

6 Q Is that depicted in that picture there?

7 A No, that's -- no.

8 Q Okay. That's the other hand?

9 A Yes.

10 Q Okay. And so when you're going about this, are you
11 documenting this as you go or do you come back after the
12 autopsy and prepare this report?

13 A No, I document this as I go through the autopsy, my
14 autopsy protocol.

15 Q And if you could just tell the jury again, in your
16 expert opinion, what is your conclusion in this case?

17 A In this case, Mr. Isaac Lewis died of a gunshot wound
18 to his left back.

19 Q And is the graze wound injury that was suffered -- or
20 the injuries general with gunshot wounds, would that be
21 consistent with ducking away in your opinion?

22 A It very well could be.

23 Q Okay.

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

25 BY MR. ARANT:

1 Q Just one last question. I just ask about ducking
2 away, could it also have been from turning away or
3 turning or moving?

4 A Absolutely.

5 Q Okay.

6 MR. ARANT: No further questions, Your Honor.

7 THE COURT: Cross-examination?

8 MR. RUFFIN: May it please the Court?

9 CROSS-EXAMINATION

10 BY MR. RUFFIN:

11 Q Dr. Marcus, could you tell us what the findings of
12 the toxicology screen was?

13 A Yes, sir. So we always run -- take tox to see if
14 there's any drugs, alcohol in the system. In this case,
15 he had a blood ethanol level of 0.107 percent, which is
16 above the legal limit here in South Carolina. He also had
17 some byproducts from recent marijuana use.

18 Q And when you that, you're talking about alcohol and
19 marijuana?

20 A Yeah, alcohol and marijuana, yes. Yes, sir.

21 MR. RUFFIN: No further questions.

22 MR. ARANT: Briefly, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. ARANT:

25 Q The toxicology report the Defense just asked you

1 about, do you include that in your report?

2 A Yes, sir.

3 Q Did that change your findings at all in the report?

4 A No, sir.

5 Q That would not have affected your finding of cause of
6 death, manner of death in this report?

7 A No, sir.

8 Q Okay. And what was that manner of death again?

9 A The manner of death is a homicide.

10 Q And how did he die?

11 A Okay. So manner of death is homicide, the cause of
12 death is a gunshot wound to the left back.

13 MR. ARANT: Thank you.

14 THE COURT: Anything further?

15 MR. RUFFIN: No, Your Honor.

16 THE COURT: You may step down.

17 Next witness.

18 MS. NICKLES: The State calls Tyrone Johnson.

19 Thereupon;

20 TYRONE JOHNSON,

21 After having been duly sworn, testified as follows:

22 THE CLERK: Thank you. Please after a seat in the
23 witness stand and state your full name for the record.

24 THE WITNESS: Tyrone Johnson.

25 DIRECT EXAMINATION

1 BY MS. NICKLES:

2 Q Good morning, Mr. Johnson.

3 A Good morning.

4 Q How are you?

5 A All right.

6 Q And if you could, just so the jury and this lady next
7 to you is taking down everything, they all need to hear
8 what you're saying, so if you wouldn't mind just speaking
9 up into that microphone so everybody can hear you, okay?

10 A Okay.

11 Q Mr. Johnson, where are you from?

12 A Columbia, South Carolina.

13 Q And how long have you been in Columbia?

14 A Years.

15 Q Okay. How old are you?

16 A Forty-six.

17 Q Okay. Do you know the Cleckley family?

18 A Yes.

19 Q How do you know them?

20 A I dated one of the nieces for 10 years.

21 Q Okay. I want to turn your attention back to
22 July 12th of 2014. Do you remember that day?

23 A I remember that day up until that point.

24 Q Okay. And when you say up until that point, what do
25 you mean?

1 A Well, we were just going down there and I didn't know
2 something had done transpired that day or whatever, so.

3 Q Okay. Let's clarify that just a little bit. When
4 you say you were going down there that day, where were you
5 going?

6 A Right to my Uncle Jerry house, that's where I always
7 go at, play basketball and have fun.

8 Q What was the scene like usually there?

9 A Just everybody being in a good mood and having fun.
10 You know, we were cooking out just as family.

11 Q Play any sports there?

12 A Yes, basketball.

13 Q Okay. On this day, why were you going -- and when
14 you said your Uncle Jerry's house, where was that house?

15 A It's on Magnolia Street.

16 Q Okay. And that's where you were going on July 12th?

17 A Yes.

18 Q What were you going there for?

19 A We usually just go and sit, you know. And my fiance
20 at the time, she wanted to go down there, so we was going
21 to sit down there for a while. But I didn't never get to
22 get out the truck.

23 Q When was -- when did you first arrive at the house on
24 Magnolia Street?

25 A I can't exactly say the time, but it was dark. I

1 couldn't really say what time.

2 Q Did you go there more than one time that day?

3 A No, that was my first time going down there to
4 Pinehurst.

5 Q Okay. Did you drop anyone off?

6 A Yeah, I dropped my family off.

7 Q Okay. Then where did you go?

8 A To the store right up the street.

9 Q And that's when you came back?

10 A That's when I came back and didn't know what
11 happened. All I know is I got shot. It just -- it was
12 very vague that night. All I know is I remember some
13 stuff like somebody saying he's been shot, too. And I'm
14 like who. So I didn't know until I got in the ambulance.
15 And I just started screaming for my boo, I want my boo.

16 Q Who is your -- you were screaming for what?

17 A That's Julie. That's a nickname we call her.

18 Q Let's back up just a little bit. So you said you had
19 dropped off Julie?

20 A Yes.

21 Q Did you drop off anybody else?

22 A Yeah, my daughter, Jasmine.

23 Q Jasmine?

24 A The kids, yes.

25 Q And then you went to the store?

1 A Yes.

2 Q And then you came back to the Magnolia Street house?

3 A Yes.

4 Q And what -- what kind of car were you in?

5 A It was a truck.

6 Q What kind of truck?

7 A I was an Explorer.

8 Q Okay. A Ford Explorer?

9 A Yeah.

10 Q Okay. And when you pulled back up to the Magnolia
11 Street house, what happened?

12 A I just vaguely, like I said, you know, some of he
13 stuff, I heard noise and everything. And at that point, I
14 still didn't know, you know, what had went down till I see
15 them up in the hospital and vaguely seeing my family up
16 there. And I just -- I don't know. It's like I blocked
17 that out.

18 Q When you went to the hospital to get treated for the
19 gunshot wound, did they give you some medication?

20 A Yes, they gave me some medication.

21 Q What kind of affect on you did that have?

22 A Just out of it and wasn't really -- like stuff I
23 might have said, I couldn't remember exactly. Like I
24 said, it's been two years, so I can look at it today and
25 still wouldn't know what I said back then basically said.

1 Because like them two years just blocked everything out.

2 Q Mr. Johnson, do you have any idea why you got shot?

3 A No. And that's the thing that I do not understand.

4 First of all, I don't understand why my uncle got killed
5 either. Second of all, I don't even know y'all, so how am
6 I going to get shot?

7 Q And when you say I don't know y'all, who are you
8 talking about?

9 A When I learned about Horace --

10 MR. RUFFIN: Objection, Your Honor, lack of personal
11 knowledge --

12 THE COURT: Objection is overruled.

13 BY MS. NICKLES:

14 Q You can go ahead.

15 A So all I just did was heard the name and everything,
16 you know, and I was like, I still don't know them, you
17 know. And they said you played basketball with them a
18 long time ago. And I still -- so many people be in that
19 yard.

20 Q Okay. So you don't remember ever meeting Horace
21 Watts?

22 A No, I don't remember meeting him.

23 Q Do you remember ever meeting Malik Davis?

24 A No. Because, like I said, so many people be in that
25 yard. And we all played basketball, so.

1 Q Were there a lot of people in and out of the Cleckley
2 house?

3 A Not in and out, like I said, it's family, you know.
4 So it's 65, 70 percent family that be down there, kids and
5 everybody..

6 Q Mr. Johnson, do you remember at all police coming to
7 talk to you in the hospital?

8 A Not -- not offhand, but then when I read the
9 statements and everything, you know, looking at them, I
10 couldn't remember because the medication they had me on
11 and everything for the pain. So that's why I said
12 everything is vague.

13 Q So you have reviewed a statement that you gave to
14 police, correct?

15 A Yes. Yes.

16 Q But you still don't really remember giving it?

17 A Not a hundred percent sure.

18 Q Okay.

19 A You know.

20 Q Mr. Johnson, where you were shot?

21 A From my understanding, two inches more, I was dead.

22 Q Okay. And where exactly -- would you mind just
23 pointing to the jury where you were shot?

24 A They said it was through and through, so I think it
25 came in here and just went out right there (indicating).

1 Q So the upper chest area?

2 A Yeah.

3 Q And Mr. Johnson, you said you were treated at the
4 hospital?

5 A Yes.

6 Q And then you were -- how long did you stay in the
7 hospital?

8 A I think it was a couple days. I'm not sure about
9 that. All I know is I woke up at my sister's house and
10 everyday, she had to bandage me up, change my bandage.

11 MS. NICKLES: Beg the Court's indulgence.

12 (Pause.)

13 MS. NICKLES: Mr. Johnson, we appreciate you being
14 here. I don't have any further questions for you.

15 THE WITNESS: Okay.

16 THE COURT: Cross-examination?

17 MR. RUFFIN: No questions, Your Honor.

18 THE COURT: Thank you, Mr. Johnson.

19 Next witness.

20 MR. ARANT: The State calls Doris Yarbrough.

21 Thereupon;

22 DORIS YARBROUGH,

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, and

1 please spell your first name.

2 THE WITNESS: My name is Doris Yarbrough,
3 Y-A-R-B-R-O-U-G-H.

4 DIRECT EXAMINATION

5 BY MR. ARANT:

6 Q Good morning, Ms. Yarbrough. How are you?

7 A I'm fine, thank you.

8 Q Can you tell the jury where you're currently employed
9 at?

10 A I'm employed with the South Carolina Law Enforcement
11 Agency, also known as SLED.

12 Q And how long have you been employed there?

13 A Eight and a half years.

14 Q And in your eight and a half years, what kind of
15 duties or tasks have you been assigned?

16 A I'm an evidence technician in the evidence control
17 department.

18 Q Have you been there for that entire eight and a half
19 years?

20 A I certainly have.

21 Q Okay. And what's your current position at SLED?

22 A I'm still a forensics technician.

23 Q Okay. Can you tell me a little bit about what your
24 job duties are?

25 A Our job duties include accepting, packaging and

1 transferring evidence within the laboratory for forensic
2 analysis.

3 Q Okay. So when somebody comes and hands you evidence
4 from an agency, what do you do with it?

5 A We match up the paperwork with the evidence they're
6 submitting. Sometimes, it's repackaged or it's sealed and
7 they initial and date that it's been -- they are
8 submitting it. Then we enter it into our computer system.
9 It receives a unique bar code label for that item or
10 package that they're submitting, and then that package is
11 placed in our secure evidence room for storage until it's
12 requested.

13 Q Does that kind of create a paper trail of evidence?

14 A It does. It's electronically submitted.

15 Q Okay. Back in 2014, back in July of 2014, were you
16 still employed with SLED?

17 A I was.

18 Q In the same capacity that you are today?

19 A Yes, sir.

20 Q Did you have occasion to log in some evidence related
21 to L14-08788 in this case?

22 A I did.

23 Q Can you tell the jury what your role was in those and
24 what you logged in? Do you have your report?

25 A Yes, sir. My role was a forensic technician in the

1 evidence control department. And I received from George
2 Smith from the Columbia PD a package that contained
3 multiple shell casings and projectiles.

4 Q Do you mind -- I know it's tedious, but do you mind
5 running through the list of the things you accepted?

6 A Item number one was a 9mm Luger empty shell casing.
7 Number two as a 45-caliber auto Federal empty shell
8 casing. Number three was 45-caliber auto Federal shell
9 casing as well as item four and item five. Item number
10 six was a 9mm Luger Tulammo spent shell casing. Item
11 number seven was a 45-caliber auto Federal empty shell
12 casing. Item number eight, nine and ten are 9mm Luger FC
13 empty shell casings. Item 11 was also the same thing.
14 12, 13, 14, 15, 16 were 45-caliber auto Federal empty
15 shell casings. Item number 17 was a 9mm Luger Tulammo
16 unfired cartridge. Item 18 was a 45-caliber auto Federal
17 empty shell casing. 19 was the same. 20 was a
18 projectile. 21 was a GSR kit. Item 22 and 23 were
19 projectiles. 24 and 25 were bullet fragment from a Ford
20 Explorer and a bullet fragment from a Hyundai.

21 Q And once you received those, where did you place
22 those?

23 A They're placed -- they went to our firearms evidence
24 intake storage.

25 Q Does anyone have access to that stuff?

1 A No, sir. We have four forensic technicians as well
2 as our captains and our major over the lab who has access
3 to the evidence room. Our evidence room is very secure in
4 that it has a security system. We also have bar coded
5 entry and keys and scanning devices that allow us in.

6 Q All these that were submitted, these were in sealed
7 envelopes?

8 A Correct.

9 Q Did you tamper with these in type of way?

10 A I did not.

11 Q You just, basically, took them, logged them, locked
12 them away so no one else could have them?

13 A That's correct.

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

15 THE COURT: By the Defense?

16 MR. KRZYSTON: Very briefly, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. KRZYSTON:

19 Q Do you actually open and inspect the packages or do
20 you just read the labels?

21 A I read the labels and try to match them up with the
22 paperwork as best I can if they're available to look at.

23 MR. KRZYSTON: Okay. Thank you. No further
24 questions.

25 THE COURT: You may step down.

1 THE WITNESS: Thank you.

2 THE COURT: Next witness.

3 MR. ARANT: State calls Emmitt Gilliam.

4 Thereupon;

5 EMMITT GILLIAM,

6 After having been duly sworn, testified as follows:

7 THE CLERK: Thank you. Please have a seat in the
8 witness and seat your full name for the record.

9 THE WITNESS: Investigator Gilliam.

10 DIRECT EXAMINATION

11 BY MR. ARANT:

12 Q Investigator Gilliam, where are you employed at?

13 A Columbia Police Department.

14 Q And how long have you been employed there?

15 A Going on 10 years.

16 Q Ten years?

17 A Yes, sir.

18 Q Can you tell this jury what kind of positions you
19 have held in those 10 years at the Columbia Police
20 Department?

21 A I started off working patrol and went into a --
22 couple years into CRT, which is Community Response Team,
23 and transferred to the PAC unit, Proactive Community
24 Development. From there, I got promoted to investigator,
25 which I started off in property crimes and within year or

1 so, I transferred to VCAP, which is Violent Crimes Against
2 Persons.

3 Q And what year was that when you went to VCAP?

4 A I believe it was 2011.

5 Q 2011. Is that your current capacity now?

6 A Yes, sir.

7 Q You're an investigator in the VCAP unit?

8 A That's correct.

9 Q Okay. Back in 2014, would you still have been an
10 investigator in the VCAP unit?

11 A Yes, sir.

12 Q Okay. And can you just tell the jury again, I know
13 we just said it real quick, what does VCAP mean again?

14 A Violent Crimes Against Persons.

15 Q Can you explain to the jury what kind of crimes
16 you're talking about when you say violent crimes against
17 persons.

18 A Well, we're talking about from the simple assault up
19 to a homicide. We work everything between a lot of cases
20 with shoplifting where they pull knives out as well which
21 turns into an armed robbery or, you know, some other
22 charge, assault and battery first degree. We work all
23 types of cases.

24 Q So in addition to those task, even when you were a
25 patrolman on or the road, as they say, you were responding

1 to calls as well?

2 A Yes.

3 Q You've responded to several crime scenes?

4 A Yes.

5 Q What kind of crime scenes have you responded to over
6 the years?

7 A Little bit of everything, up to a homicide.

8 Q Now, back in July of 2014, were you working that
9 night?

10 A Yes, I was.

11 Q Can you tell the jury a little bit about your
12 involvement with this case and how you became involved?

13 A Actually, we was working a -- we started working an
14 armed robbery detail in the Harbison/Bush River Road area
15 when the call came out that an individual had been shot on
16 Magnolia Street. We quickly expand from doing the armed
17 robbery detail and headed toward Magnolia Street.

18 Once we arrived on scene, I talked to one of the
19 supervisors out there, stated that the young man that was
20 deceased in the yard had got shot, one at the hospital. I
21 believe he was dead at the time. I asked if there was any
22 witnesses available and he stated yes. And he -- one of
23 the sergeants took me over to one of the witnesses.

24 Q And what did you do at that point?

25 A At that point, I talked briefly talked to the witness

1 out there and I advised him I would like to take him to
2 police headquarters to get a further statement out of him
3 -- from him.

4 Q Do you recall, when you were saying sergeant or
5 investigator, who was telling you what to do, who was
6 giving you your assignments?

7 A That is correct.

8 Q Who was that?

9 A That was Sergeant McCracken over -- I'm going to say
10 the lead sergeant out there at the time.

11 Q And he was on the scene as well?

12 A Yes, sir.

13 Q When you responded, tell this jury what you found,
14 the makeup of who was there and that type of thing. Were
15 there agencies there? Were there a lot of people there?

16 A Yes, a lot of folks there, officers as well. What we
17 -- the victims' family that witnessed this incident was
18 there and what we tried to do was separate them and try to
19 get statements from them as well.

20 Q Okay. And as you're there on scene -- how long were
21 you on scene?

22 A I'd roughly say about -- I'd roughly say an hour.

23 Q And then you said I think you went to headquarters?

24 A Yes, sir.

25 Q Did you transport those -- you mentioned some guys'

1 names, did you transport those witnesses to headquarters
2 or did you meet them --

3 A I met them at headquarters.

4 Q And tell the jury a little bit about what you did in
5 your role at headquarters once you got there.

6 A Once we got to headquarters, we had a quick briefing
7 of what we got and who we needed to talk to. And what we
8 did -- because I initially talked to a couple people out
9 there at the scene, I initially started grabbing them one
10 at a time to interview them as well. And I also remember
11 the name they gave me and sent off a request to SLED for a
12 photo array of suspects.

13 Q Okay. So you sent the request out to SLED?

14 A Yes.

15 Q Can you explain to the jury what you mean by sent the
16 request for a photo lineup out to SLED?

17 A Basically, what I did when I got the information, I
18 looked at two things, either his driver's license picture
19 or if he had been incarcerated, like, in Richland County
20 and see which picture is more newer than what -- other
21 than, say, for instance, when he went and took the picture
22 at the DMV and he had long hair and they described him as
23 short hair, I go out and look to see if he has been in
24 jail, does he have long or short hair.

25 At the time, I will usually tell SLED, hey, I request

1 photo lineup by e-mail, called him as well, I need a photo
2 lineup of this person and I give them the reason we need a
3 photo lineup real quick because we're dealing with a
4 homicide. And what they'll do is -- and I'll tell them
5 use -- can you use this picture here, especially like
6 Alvin S. Glenn picture of this person.

7 MR. RUFFIN: Objection, Your Honor, can we approach?

8 THE COURT: Ladies and gentlemen, I'll have you go to
9 the jury room for a few minutes. Please do not discuss
10 the case.

11 (WHEREUPON, the jury left the courtroom at 10:35
12 a.m.)

13 COURT: And we'll take a couple minutes while
14 they're exiting. We'll be about three minutes.

15 (WHEREUPON, a short recess was held.)

16 THE COURT: Yes, sir.

17 MR. RUFFIN: Thank you, Your Honor. Investigator
18 Gilliam, I think when I objected, he was talking about how
19 they get the pictures for the lineups --

20 THE COURT: Right.

21 MR. RUFFIN: -- saying that they get pictures from
22 Alvin S. Glenn, which is obviously a jail. And he's
23 saying that they get the pictures from a jail, it's a
24 mugshot, that clearly insinuates to the jury that there's
25 a prior arrest because it's not --

1 THE COURT: So what you want me to do? You don't
2 want him to say how they compile the lineup?

3 MR. RUFFIN: I mean, they can just say we get the
4 pictures from SLED, which he's already said. They request
5 a lineup. They say this is the person, this is the
6 suspect, they give them the name and SLED gives them the
7 photos.

8 THE COURT: That's what you want them to say?

9 MR. RUFFIN: Yes.

10 MR. ARANT: I have no problem with that, Your Honor.
11 I'm not trying to introduce that he's been incarcerated
12 before.

13 THE COURT: Okay.

14 MR. ARANT: I will withdraw the question and move on.

15 THE COURT: Okay.

16 MS. NICKLES: Your Honor, if I may, before we bring
17 the jury back in, the next witnesses I plan on calling,
18 his unit that he was employed with at the time with
19 Columbia Police Department was the gang task force.

20 THE COURT: Right.

21 MS. NICKLES: I know that Your Honor ruled pretrial
22 that there should be no mention of gangs. I just wanted
23 to seek the Court's advice on how to handle that.

24 THE COURT: What do you want them to say or not say?

25 MR. RUFFIN: I mean, I don't want them to say -- if

1 he takes the stand, that's sort of saying he's a gang task
2 force or he investigates gang-related issues.

3 THE COURT: I understand. What do you want them to
4 say is my question?

5 MR. RUFFIN: I don't want them to say anything about
6 gangs.

7 THE COURT: I know what you don't want them to say.
8 I've already ruled they can't say that.

9 MR. RUFFIN: That he's an investigator with the
10 Columbia Police Department.

11 THE COURT: All right.

12 MS. NICKLES: Your Honor, I had spoken with him and
13 he also said he was a member of a specialized unit if that
14 would be.

15 THE COURT: All right. You can do that.

16 MR. POTTS: While we're on -- Your Honor, after that,
17 we have the medical doctor who saw Tyrone Johnson. We
18 would need to have the issue of the phone call resolved
19 because we have those witnesses, and we have Mr. Chad
20 Smith.

21 THE COURT: All right. Well, with regard to these
22 phone calls, what is it that you think is admissible?

23 MR. RUFFIN: Your Honor, I think I sent your law
24 clerk an e-mail.

25 THE COURT: Yeah, I know, but the e-mail is not on

1 the record.

2 MR. RUFFIN: Let me see if I can find it. The phone
3 that's labeled HW1.

4 THE COURT: Uh-huh, what does that mean, HW1?

5 MR. POTTS: Horace Watts. That's just -- I just
6 named it that.

7 THE COURT: Okay.

8 MR. RUFFIN: So we would object to -- from 1:45, a
9 minute and 45 seconds to two minutes and five seconds.

10 MR. POTTS: And just to cut this process forward,
11 we're not going to introduce that phone call at all.

12 MR. RUFFIN: Okay. They're not going to introduce
13 HW1. So HW2, then?

14 THE COURT: Right.

15 MR. RUFFIN: My objection to that would be from three
16 minutes and 50 seconds --

17 THE COURT: What's being said there?

18 MR. RUFFIN: -- to four minutes and 45 seconds. It's
19 speculation.

20 THE COURT: Three minutes and 50 seconds?

21 MR. RUFFIN: Three minutes and 50 seconds.

22 THE COURT: They got a tip from Ashley Apartments?

23 MR. RUFFIN: Correct.

24 THE COURT: All right.

25 MR. RUFFIN: Right.

1 THE COURT: And --

2 MR. RUFFIN: Because it's my client's -- basically,
3 he's talking about information that he's heard about from
4 other people. He has no personal knowledge of it. So
5 it's essentially my client speculating on what people are
6 saying what the evidence might be. Obviously --

7 THE COURT: So you start back at what time? I should
8 have let my little brother handle this, his own business?

9 MR. RUFFIN: At 4:45, I think.

10 THE COURT: Start back at 4:45?

11 MR. RUFFIN: Right. Do you have Ms. Nickles'
12 transcript?

13 THE COURT: Yes, that's what I'm looking at.

14 MR. RUFFIN: Let me see.

15 THE COURT: All right.

16 MR. RUFFIN: Correct, starting at 4:45, we don't have
17 an objection. We would have no objection to that.

18 THE COURT: What do you say, Solicitor?

19 MR. POTTS: Your Honor, I mean, obviously --
20 obviously, Your Honor, I think these are statements by the
21 party opponent about him being found, about how he was
22 hiding. I think that's all inculpatory statements that
23 he's making when he's talking about they got the tip about
24 Ashley Apartments, all of that, Your Honor. I think the
25 mechanism of how he was found is -- but I think the

1 probative value is the fact that he's talking about how he
2 was hiding.

3 THE COURT: All right. Well, we don't need to know
4 too much about meme and all of that, so I'll agree with
5 the Defense.

6 MR. POTTS: Okay. Your Honor, I will take it from
7 3:44 to, I guess, right at 4:45 out.

8 MR. RUFFIN: Okay.

9 THE COURT: All right. What else?

10 MR. RUFFIN: The next one, Your Honor, the next
11 objection that we have is from 5:50 all the way to 8:20.
12 It might be really --

13 MR. POTTS: It's right approximately at, Every time I
14 go to sleep and wake up, I think it's just messing with my
15 mind.

16 MR. RUFFIN: Right. Right.

17 THE COURT: All right.

18 MR. RUFFIN: Do you see that, Your Honor?

19 THE COURT: Yes, sir.

20 MR. RUFFIN: Okay. So, you know, I think actually
21 our objection will start immediately after that when the
22 person he's talking to starts saying, you know, my mother
23 was there during the shooting. They're talking about his
24 mom is there. He -- again, this is all speculation on the
25 part. It doesn't matter if his mom was there. He doesn't

1 even know whether his mom was there or not. Again, he's
2 saying what he's hearing from people on the streets. And
3 then, further, they get into talking about drug use of the
4 mother, saying that she's back on the streets again.

5 THE COURT: He wants her to rot in hell and all that?

6 MR. RUFFIN: Yes, and I don't want that to come in,
7 Your Honor. It doesn't have anything to do with the case.

8 THE COURT: What you say about that, Solicitor?

9 MR. POTTS: Your Honor, I think it's incredibly
10 probative and important when she goes, Horace, you know
11 your mother was there when you were doing the shooting.
12 He doesn't go what are you talking about. He goes, She
13 was there? Right. I mean, that's like one of the most
14 probative things he could say. I think it's extremely
15 important in the phone call, Your Honor. If he wants me
16 to take out the part about her doing crack, I'm okay with
17 that. But when it comes to, you know, it's crazy how you
18 can put both your sons in jail in a situation like this.
19 I think all that is --

20 THE COURT: Under Rule 801, admission by a party
21 opponent when a statement is offered against the party and
22 either the party's own statement or a statement of which
23 the party has manifested an adoption or belief it is true.
24 So, you know, somebody ask the question did you know your
25 momma was there when you did the shooting and he says oh,

1 she was there when I was shooting. Does that fall
2 within --

3 MR. RUFFIN: I don't believe that that's adopting the
4 truth of the statement.

5 THE COURT: Oh, you don't think so?

6 MR. RUFFIN: No. No, I don't.

7 THE COURT: All right. Is that your only basis --
8 that's your sole basis for objecting because you don't
9 believe that that's an inference that can clearly be drawn
10 from that?

11 MR. RUFFIN: Well, my objection, again -- you know,
12 my objection is not to hearsay anyway, that's not the
13 basis for my objection. My objection is that it's
14 speculation. There's no personal knowledge. These people
15 are talking about things that they have no personal
16 knowledge of.

17 THE COURT: No, we're not talking about these people,
18 we're talking about this Defendant (indicating) on the
19 phone.

20 MR. RUFFIN: His --

21 THE COURT: Horace, that's the first word, you know
22 your mother was there when you was doing the shooting.

23 MR. RUFFIN: That's a statement --

24 THE COURT: She was there?

25 MR. RUFFIN: That's a statement made by the aunt, not

1 my client.

2 THE COURT: Well --

3 MR. RUFFIN: So it's not --

4 THE COURT: -- the response was by your client.

5 We're dealing with your client.

6 MR. RUFFIN: A response --

7 THE COURT: Manifesting an adoption -- well, I'm
8 going to overrule that objection as to that one sentence.
9 My momma was there? Your momma was there. I ain't know
10 that.

11 MR. RUFFIN: So --

12 THE COURT: So we'll start right there and ending, I
13 ain't know that. That's where we stop.

14 MR. POTTS: Okay.

15 THE COURT: I agree with you on the rest of it.

16 MR. POTTS: We'll cut that down to, I guess your mom.

17 MR. RUFFIN: Okay. So that would continue all the
18 way -- my objection continues all the way to eight minutes
19 and 20 seconds.

20 THE COURT: We're going to take all of his momma on
21 drugs and he wants his mother to die and rot in hell and
22 all that, wherever that is.

23 MR. RUFFIN: Yeah, I want to take all of that out.

24 MR. POTTS: Your Honor, we have eight minutes and 19
25 seconds just talking -- he says eight minutes and 20

1 seconds --

2 MR. RUFFIN: Yeah, that's right.

3 THE COURT: So what we'll do is start back --

4 MR. POTTS: All of that out.

5 THE COURT: All right.

6 MR. RUFFIN: So they'll start back at 8:19.

7 THE COURT: 8:19. All right.

8 MR. RUFFIN: Okay. Let me see, the next objection
9 that I would have is I have in my notes is it was around
10 nine minutes and 30 seconds. Sounds like -- if you would
11 look on the paper where it says 9:57 at the bottom, Judge.

12 THE COURT: Yes, sir.

13 MR. RUFFIN: About four seconds up there, it's
14 alleged, basically, that Horace is saying he took a gun
15 from the dude, that's why they jumped on him.

16 THE COURT: You say it's alleged that Horace said
17 that.

18 MR. RUFFIN: Right.

19 THE COURT: These are --

20 MR. RUFFIN: The jail -- on the jail call, it's
21 Horace.

22 THE COURT: Well, that's not an allegation, is it? I
23 mean, it's Horace on the phone, correct?

24 MR. RUFFIN: Well, if they can establish that it's
25 him, yeah.

1 THE COURT: Oh, I didn't know that was an issue.

2 MR. RUFFIN: Well, it's going to depend on how they
3 introduce it, Judge. This is just an objection to the --

4 THE COURT: Okay. All right. I got you. All right.
5 So what's the first line?

6 MR. RUFFIN: He took a gun -- he took a gun from the
7 dude, that's why they jumped on him. That was really --
8 just that one line is what my objection was. Again, I
9 understand that it's my client's words, okay, so it's not
10 hearsay, but just because it's not hearsay doesn't mean
11 that it's admissible.

12 THE COURT: It's -- the question is an admission --
13 801, the statements which are not hearsay, so hearsay is
14 irrelevant to this --

15 MR. RUFFIN: Right.

16 THE COURT: -- discussion.

17 MR. RUFFIN: I agree with that, Judge.

18 THE COURT: Well, thank you.

19 MR. RUFFIN: And my objection is that it's
20 speculative. He's talking about things of which he has no
21 personal knowledge. It's things that --

22 MR. POTTS: Your Honor, it's not his, it's other
23 people's hearsay. Other people are saying this.

24 THE COURT: He didn't say somebody told me that he
25 took a gun --

1 MR. POTTS: He said --

2 THE COURT: Go ahead. I'll let you handle your own
3 case, go ahead.

4 MR. POTTS: He clearly said that he took a gun from
5 the dude, not I heard he took a gun from the dude. He
6 took a gun from the dude, that's why they jumped on him.
7 Bro, people not just going to let you take stuff from
8 them. And I think that's all stuff he is indicating from
9 his personal knowledge and not speculation.

10 THE COURT: Well, it kind of kicks in motive to -- I
11 mean, why -- everyone else -- you know, a big party on the
12 streets over there and off Two Notch and Benedict Stadium,
13 everybody's having a great time, playing basketball,
14 having fun. One guy walks by and he says, keep walking,
15 you're not invited to the party. A little altercation and
16 he leaves. Next thing we know is a big shootout.

17 So the question would be in the minds of most
18 reasonable people is why. What's the motive? Why did
19 this happen? Why did they beat up his brother? Why was
20 there a fight? And this could provide the answer. He
21 took the gun from the dude, because he says -- and they
22 jumped on him. Now, if I was with him, they wouldn't have
23 bothered him because they know I'm tough. They wouldn't
24 bother him if I was there. But he's a little 17-year-old
25 kid, he's by himself. He goes down there, I wasn't with

1 him, so they got back at him. You can't take someone's
2 gun and don't think they're not going to get you back. I
3 mean, isn't that the gist of this whole situation?

4 MR. RUFFIN: That part of it, yes, Judge.

5 THE COURT: So I mean, it provides context for why
6 this whole thing happened. Because I'm sitting here
7 wondering, everybody's having a good time at the place,
8 everyone plays basketball and this is the place it's like
9 a magnet that draws everybody, including the police from
10 time to time, and all of a sudden, they've got this big
11 shootout. Why? This is relevant to that issue. It's a
12 statement by the Defendant. He's not talking about what
13 he heard.

14 You know, of course, when you're talking about a
15 witness, you know -- or statements by a witness, we can go
16 through opinion testimony on witnesses, not expert
17 opinion, but just opinion testimony, the testimony in the
18 form of opinion or inferences under Rule 701, rationally
19 based on the perception of the witness, helpful to
20 understand witness's testimony, and does not require
21 special knowledge, skill or training.

22 I mean, people -- everything that someone says, it
23 has to be based on their own understanding or perception.
24 You know, when they start talking, we have to assume that
25 they know what they're talking about unless they say

1 somebody told me or I heard or something of that nature
2 that makes it hearsay. But, of course, the whole issue
3 here is maybe not even the truth of whether somebody stole
4 his brother's -- his brother stole a gun or not, but --
5 not the truth of it, but to explain the actions and
6 reaction on that given day. So I'm disagreeing on that
7 one, counselor.

8 MR. RUFFIN: I understand, Your Honor. The next
9 objection that we would have would be starting -- and as
10 I'm looking at the transcript, it looks like 10 minutes
11 and 53 seconds.

12 THE COURT: Ten minutes and 53 seconds. What are we
13 talking about here?

14 MR. RUFFIN: As I remember -- let me just look at it
15 here for a second. Again, you know, they say he came and
16 got me -- she starts by saying it was told that you wasn't
17 there. Again, they're talking about what other people are
18 saying. In my opinion, this clearly -- they're talking
19 about things --

20 THE COURT: Yeah, the question is not the problem
21 because that's clearly somebody else talking. The answer
22 is the problem. He said, I wasn't there. He came and got
23 me. I wasn't there. I had been there earlier. I got
24 drunk and went home and passed out and, you know, I wasn't
25 -- I had no idea. I wasn't going back up there. In fact,

1 I called these girls and one of my girlfriends were --
2 they were getting ready to come pick me up. We were going
3 to go some place else, but he came and got me. That's why
4 I went back up there.

5 MR. RUFFIN: Most of what you're talking about, I
6 think we actually didn't object to.

7 THE COURT: Okay. Well, that's what he says right
8 here, he says that his brother came and got him.

9 MR. RUFFIN: Right -- well, the aunt is saying it was
10 told that you wasn't there.

11 THE COURT: Right.

12 MR. RUFFIN: So he is responding -- I mean, I
13 understand what you're saying, he's responding to her
14 speculation. But in my opinion, that's just further
15 speculation. You know, they're not --

16 THE COURT: What if it was like I heard that you
17 killed those people, and he says yeah, I killed them. So
18 the speculation would have been what she heard, so not the
19 speculation in the question, it's his response. He came
20 and got me. I wasn't even up there, but he came and got
21 me. That -- then I went there, that's the inference. I
22 was there. You got to be there to commit the crime.

23 And, maybe, if you're saying he acknowledges that
24 later on, he didn't say he was there once, he repeated it
25 on multiple occasions. I was there. My brother came and

1 got me. I didn't plan to go there. I had these girls
2 that were coming to get me and we were going to go out on
3 Fairfield, some place. But they came and got me and said
4 I just got beat up, so, you know, yeah, then I went up
5 there. Yeah, I wasn't even there until my brother came
6 and got me, told me what had happened to him. He came and
7 got me. Yeah, I'm hoping -- I'm hoping that look good on
8 my behalf or whatnot. Well, maybe it does, maybe it's --
9 you know, maybe it does that this was -- you know, maybe
10 it does. You don't want that part either, that maybe it
11 will look good because I wasn't there until my brother
12 came and got me.

13 MR. RUFFIN: No, Your Honor, I don't want that part.

14 THE COURT: All right.

15 MR. RUFFIN: We don't want that coming in.

16 THE COURT: I'm disagreeing with you on that one.

17 MR. RUFFIN: Then, Your Honor, that's the extent of
18 our objections.

19 THE COURT: Oh, good. We're all straight then. That
20 gives you a chance to fix it up by the time you get to
21 that witness.

22 Bring them on.

23 (WHEREUPON, the jury returned to the courtroom at
24 10:58 a.m.)

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

1 THE COURT: Very good.

2 You may proceed.

3 CONTINUED DIRECT EXAMINATION

4 BY MR. ARANT:

5 Q Investigator, you told us that you spoke with a
6 couple witnesses?

7 A Yes.

8 Q Who were those witnesses that you spoke to?

9 A I spoke to a Dominique Tucker and Jamichael Lewis.

10 Q And did you interview them?

11 A Yes, I did.

12 Q And I'm going to show you what's marked as State's
13 Exhibit No. 5. Do you recall that?

14 A Yes.

15 Q And did you show them -- tell the jury what that is?

16 A It is a photo array of six people -- six different
17 persons to show the witnesses, seeing if they can identify
18 if the person that might have committed the crime is in
19 the photo lineup.

20 Q And did you do that in this case?

21 A Yes, I did.

22 Q Now, which one is that I handed you?

23 A This is Dominique Tucker.

24 Q And when you're handing this to Dominique, was there
25 anyone else in the room with you?

1 A No.

2 Q How did you tell him to go about looking at these
3 photos?

4 A When I did this, because there's six different
5 pictures in here, I came out with picture one, picture
6 two, picture three, picture four and so on through six and
7 lay them out, then he will pick which person. Then I ask
8 him when they pick, why they picked them and get them to
9 initial -- sign it, date the picture he picked and ask him
10 why he picked that picture.

11 Q Did you tell him who he had to pick out?

12 A No. No, sir.

13 Q And did he pick out someone?

14 A Yes, he did.

15 Q Can you tell the jury who he picked out?

16 A He picked out picture number three.

17 Q And did he do anything with that picture, write on it
18 or anything?

19 A Yes, he did. He printed his name, signed his name
20 and dated it.

21 Q Do you remember how quickly he pointed it out?

22 A Pretty quick.

23 Q Did you also have occasion to -- you said you had
24 occasion to interview Jamichael Lewis?

25 A Yes.

1 Q Did you also show him some photos?

2 A That's correct.

3 Q I'm going to show you what's been marked as State's
4 Exhibit No. 4. Do you recall handing him those pictures?

5 A Yes.

6 Q Same process?

7 A Same process, different lineup.

8 Q Was he alone?

9 A Excuse me?

10 Q Was it just you and him in the room when he was doing
11 this?

12 A Yes, sir.

13 Q And those pictures were numbered?

14 A Yes.

15 Q And you did the same process, showed him those
16 photos. Did you tell him he was in there?

17 A No.

18 Q Did you tell either of those two guys who to pick
19 out?

20 A No.

21 Q And who did he pick out?

22 A He picked out picture number five.

23 Q Who is picture number five?

24 A Picture number five is Horace Watts.

25 Q And did he sign or date or initial those pictures?

1 A Yes, he printed his name, signed his name and that
2 date, July 12th, 2014.

3 Q Do you mind if I have those two back?

4 A Yes, sir.

5 Q Thank you. And so after that, did you do anything
6 else in regards to this case?

7 A I did get a written statement from him as well.

8 Q Okay. What, if anything, can you tell me about your
9 involvement with the search warrants?

10 A We issued a search warrant at, I think it's [REDACTED]
11 [REDACTED], within the City of Columbia.
12 During that search, us investigators were searching, found
13 several items.

14 Q Do you recall what items you found?

15 A Not off the top of my head.

16 Q Okay. Do you recall whose house that was y'all were
17 searching?

18 A I think it's the mother's house.

19 Q Okay. The mother of?

20 A Mr. Horace Watts.

21 Q Okay. And did you have an occasion to search any
22 vehicles or anything of that nature?

23 A Not to my knowledge.

24 Q Do you have your report with you?

25 A The report, no, I do not.

1 Q Okay. Would a copy of your report refresh your
2 memory?

3 A Yes.

4 Q Just disregard my note on the first page. I'll
5 direct you to the second page, I believe.

6 A Sure. Oh, yes, we searched -- the vehicle that
7 Mr. Johnson was shot in, we did a search warrant on that,
8 yes.

9 Q You were present for that search warrant?

10 A That is correct.

11 Q Okay. Did you have occasion to speak to anyone else
12 in this case?

13 A A Jamichael Lewis.

14 Q Anyone in addition to Jamichael and Dominique?

15 A Mr., I think, Tyrone Johnson, the other victim.

16 Q Okay. And was he presented with a photo lineup?

17 A No, he already told me that he saw the pictures on TV
18 and it would have tainted the whole case if I showed him a
19 photo lineup.

20 Q So you didn't present him with a photo lineup?

21 A No, I did not.

22 Q Okay. Can I see my summary back? Thank you.

23 A Yes.

24 Q And I think you've already told the jury this is your
25 report you typed up?

1 A Yes.

2 Q And you type this as soon as you have a chance to?

3 A That is correct.

4 Q And you try to put as much information as you can?

5 A Yes.

6 Q So on days like today, we know what happened back
7 there?

8 A Yes, sir.

9 Q As silly as that sounds, but it's very useful.
10 Investigator, was there another -- could there have been
11 another search warrant you executed as well?

12 A 911 call, we executed --

13 Q Okay.

14 A -- and the Defendant was located inside of the
15 apartment.

16 Q Okay. And you were present for that search warrant?

17 A Yes, sir.

18 Q Okay.

19 MR. ARANT: Beg the Court's indulgence.

20 THE COURT: Yes, sir.

21 MR. ARANT: No further questions, Investigator.

22 Please answer any questions they have.

23 THE COURT: Cross-examination?

24 MR. RUFFIN: May it please the Court?

25 THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. RUFFIN:

Q Investigator Gilliam, you went to the scene, correct, on Magnolia Street?

A Yes.

Q It was very chaotic, right?

A Yes.

Q And is it pretty much standard procedure for y'all once you identify witnesses, you kind of separate them and take them back to headquarters, that kind of thing?

A Yes.

Q Now, let me ask you this, when you showed the photo lineups, did you know which picture was Horace Watts?

A No, I didn't. I had never known him prior to this.

Q So when you got the pictures, you didn't know who he was in the lineup?

A No. Actually, when I did it -- what I did was, when I send off a request, they send it back printed. And what I do, I shuffle them around and the first one I number -- and I number there during the interview.

Q You number the pictures, right?

A Yes.

Q And then you just lay them all out?

A I lay them out one, two, three, four, five, six.

Q Is that y'all's policy to --

1 A No, sir, we don't have a certain policy for that,
2 sir.

3 Q About doing the lineups?

4 A No, sir. We can show a photo array, but even in this
5 case, witness knew and -- witnesses knew who the Defendant
6 was.

7 Q They already told you the name and everything?

8 A Yes.

9 Q But there's no standard instructions that you read to
10 the witness?

11 A No.

12 MR. RUFFIN: No further questions.

13 THE COURT: Anything else?

14 MR. ARANT: No redirect.

15 THE COURT: Thank you, sir.

16 Next witness.

17 MS. NICKLES: State calls Dr. Troy Privette.

18 Thereupon;

19 TROY PRIVETTE, M.D.,

20 After having been duly sworn, testified as follows:

21 THE CLERK: Please have a seat in the witness stand
22 and state your full name for the record.

23 THE WITNESS: Troy, T-R-O-Y, Privette,
24 P-R-I-V-E-T-T-E.

25 DIRECT EXAMINATION

1 BY MS. NICKLES:

2 Q Good morning, Dr. Privette.

3 A Good morning.

4 Q How are you?

5 A Good.

6 Q Would you please tell the jury -- first of all, where
7 are you from?

8 A Originally?

9 Q Yes.

10 A Hartsville.

11 Q And where do you work?

12 A Palmetto Health Richland.

13 Q What is your job there?

14 A Emergency physician.

15 Q How long have you been an emergency physician?

16 A Since 1997.

17 Q Where did you go to school?

18 A University of South Carolina.

19 Q Where did you go to medical school?

20 A University of South Carolina.

21 Q And have you ever testified before?

22 A Yes.

23 Q Have you ever been qualified as an expert before?

24 A Yes.

25 Q Approximately how many times?

1 A I can't even remember.

2 Q Okay. More than 10?

3 A Yes.

4 Q More than 20?

5 A Probably.

6 MS. NICKLES: Your Honor, at this point, the state
7 would like to introduce Dr. Privette as an expert in
8 emergency medical treatment?

9 MR. RUFFIN: No objection.

10 THE COURT: All right. He is so qualified.

11 MS. NICKLES: Okay.

12 THE COURT: Ladies and gentlemen, I didn't mention it
13 before, but expert witnesses can offer opinions,
14 typically, in the field of their expertise, whereas other
15 witnesses cannot.

16 You may proceed.

17 MS. NICKLES: Thank you, Your Honor.

18 BY MS. NICKLES:

19 Q Dr. Privette, were you working as an emergency
20 physician back in July of 2014?

21 A Yes.

22 Q And specifically, on July 12th of 2014, on into July
23 -- the late hours -- early hours of July 13th, were you
24 working as an emergency physician?

25 A I was there until approximately midnight. Someone

1 else took over from there.

2 Q And where was that?

3 A Palmetto Health Richland.

4 Q Did you have the occasion to treat a gunshot wound
5 victim that night?

6 A Yes.

7 Q And in what capacity were you working that night?

8 A Emergency physician.

9 Q Were you the attending physician?

10 A Yes.

11 Q And, specifically, what does an attending physician
12 do?

13 A I was the head ER physician. I had a resident
14 working with me as well.

15 Q What types of calls do you respond to?

16 A We see everything, chest pain, gunshot, anything.

17 Q On this night, you said you had the occasion to treat
18 a Tyrone Johnson?

19 A Correct.

20 Q Could you tell the jury a little bit about how you
21 were called to that and your involvement in that?

22 A Mr. Johnson came in as a trauma alert as reported
23 gunshot wound. So he came in -- in our trauma alerts, we
24 have -- the emergency physicians are there. The trauma
25 surgeons are there. Other ancillary staff, radiology,

1 lab, et cetera. So he came in for a reported gunshot
2 wound and came in as a trauma alert.

3 Q Okay. And did you respond and actually see
4 Mr. Johnson?

5 A Yes.

6 Q Approximately how many gunshot wounds have you
7 treated?

8 A Hundreds.

9 Q Okay. And when you responded to Mr. Johnson, did you
10 -- what did you do when you responded to see him?

11 A We evaluated Mr. Johnson to see how critical the
12 wounds were and provided the initial stabilizing care when
13 he first arrived.

14 Q Okay. And in your opinion, did the wound that
15 Mr. Johnson presented with, was that consistent with a
16 gunshot wound?

17 A Yes.

18 Q Okay. Where was that gunshot wound?

19 A On the left side of the chest, near the armpit area.

20 Q Okay. And what are the risks involved with gunshot
21 wounds to the chest?

22 A Well, his, luckily, was to the side, but it could be
23 -- I mean, further to the center, lungs or heart, major
24 vessels. So fortunately for him, it was further to the
25 side.

1 Q Okay. So if it had been more to one side --

2 A Been more to the center, could have been
3 significantly worse.

4 MS. NICKLES: Okay. I don't have any other questions
5 for you. Thank you.

6 MR. RUFFIN: No questions, Your Honor.

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

8 Next witness.

9 MS. NICKLES: State calls Brian Zwolak.
10 Thereupon;

11 BRIAN ZWOLAK,

12 After having been duly sworn, testified as follows:

13 THE CLERK: Thank you. Please have a seat in the
14 witness stand and state your full name for the record and
15 please spell your last name.

16 THE WITNESS: My name is Brian Zwolak, last name is
17 spelled Z-W-O-L-A-K.

18 DIRECT EXAMINATION

19 BY MS. NICKLES:

20 Q Investigator Zwolak, where are you employed?

21 A I'm currently employed with the Lexington County
22 Sheriff's Department as an investigator.

23 Q How long have you been there?

24 A Just a couple months. I came from the State Criminal
25 Justice Academy.

1 Q At the State Criminal Justice Academy, what was your
2 --

3 A I was advanced training instructor.

4 Q Prior to that, where were you?

5 A Columbia Police Department as an investigator in the
6 specialized unit.

7 Q And how long were you in the specialized at the
8 Columbia Police Department?

9 A I was at the police department for eight years. Six
10 of those years, I was in the specialized unit.

11 Q Back in 2012, were you at the Columbia Police
12 Department?

13 A Yes.

14 Q And what role were you during 2012?

15 A I was investigator with the specialized unit.

16 Q Okay. As a part of the specialized unit, what types
17 of duties did you have?

18 A We pretty much assist any major crime and Intel.

19 Q By Intel, what do you mean?

20 A Gather intelligence for a police department based on
21 cases, assisting fugitive unit. We pretty much did
22 whatever we needed to do based on trends that were going
23 on in the city.

24 Q When you say fugitive unit, can you describe that for
25 the jury, what they do?

1 A Individuals who are wanted in major crime cases, we
2 would assist in apprehending them.

3 Q I want to turn your attention specifically to
4 July 12th of 2014. Did you have the occasion to become
5 involved in a homicide investigation?

6 A Yes.

7 Q And what was your first involvement with that case?

8 A The unit I was involved with responded to the scene
9 being it was a shooting incident. And myself, personally,
10 was on standby in the area in case we developed any leads
11 to be able to assist investigations with dealing with
12 those leads.

13 Q So specifically when you responded, you're not
14 investigating at the scene, right?

15 A That's correct.

16 Q Where are you?

17 A I was outside the perimeter, like I said, assisting
18 with anything, any new information, if we needed to
19 respond to any different locations or anything else in
20 relation to the case, that's what I was there to do.

21 Q Okay. So you were, essentially, just waiting for
22 information?

23 A Correct.

24 Q Okay. After -- did you receive any information on
25 July 12th?

1 A While I was out there and investigations was working
2 the case, we got leads on there, but as far as actually
3 following up on anything, I don't recall exactly what
4 information we got. I knew they developed leads in the
5 following days that we were more actively involved in the
6 case.

7 Q Did you have a second occasion to become involved in
8 this case?

9 A Yes, two days later.

10 Q Okay. That's July 14th?

11 A Yes.

12 Q 2014?

13 A Yes.

14 Q What was your involvement that day?

15 A Well, working with the fugitive team, we received
16 information -- after the Defendant, Mr. Watts, had
17 warrants for the shooting case I responded to initially on
18 the 12th, we received information on the possible location
19 of the Defendant.

20 Q Were you alone or were you with anyone else?

21 A I was with other officers in the fugitive team as
22 well as SLED.

23 Q And why were you with other officers and SLED?

24 A Since this was a murder case and the violent nature
25 of the case, we took as many officers as we possibly could

1 when we followed up on these leads for officer safety
2 purposes.

3 Q And when you say you're following up on leads,
4 specifically, what are you looking for?

5 A At this point in time, we got information that the
6 Defendant and codefendant were located at [REDACTED],
7 which is an apartment complex on north side of Columbia,
8 that they were located at one of the apartments there.

9 Q As a result of receiving that information, what did
10 you do?

11 A We responded to the area and while on scene, we
12 received information that they were in [REDACTED] and,
13 particularly, once we got there, [REDACTED] Once we got
14 that information, we had officers posted up around the
15 building and myself and a SLED agent, Keith Thrower,
16 knocked on the door to make contact with the occupants
17 inside that apartment.

18 Q What was the address of this apartment that you
19 responded to?

20 A It was [REDACTED].

21 Q And once you responded to that apartment, where did
22 you go?

23 A When we responded to the apartment, it was an
24 upstairs apartment, we went and knocked on the door.
25 While knocking on the door, the door was not shut all the

1 way, it was ajar. While knocking, the door opened and a
2 female was inside, right actually inside the door, almost
3 like she was listening to when we were knocking and
4 announcing we were law enforcement.

5 Once that opened, we made contact with two females,
6 one that was at the door and one that was in the living
7 room. And we spoke with them, told them who we were and
8 asked if we could come inside and talk with them.

9 Q Who were those females that you encountered inside?

10 A The two females that we made contact with was a
11 Kadeisha Gosier and a Quiera Durham.

12 Q And based on -- you can't say what they said, but
13 based on your contact with them, did you investigate any
14 further?

15 A Yes. While we were in there talking with them, we
16 heard a back bedroom door shut. The apartments aren't
17 very large. We could tell it was the rear bedroom. While
18 we were in there, we did ask if there was anybody else in
19 there and we continued to check the apartment. While
20 checking it, we came into another individual that came out
21 of the kitchen, that was a Deangelo Gibson. He did not
22 come out from where the door was shut, so we continued to
23 check the apartment. And that shut door -- the door that
24 we heard shut, when we made entry into that bedroom, we
25 observed the Defendant and the other codefendant inside

1 that room.

2 Q Do you remember the names of the people you
3 encountered in that room?

4 A Yes, Horace Watts and Malik Davis.

5 Q Okay. Once you encountered them, what happened next?

6 A At that point in time, we advised them that they were
7 under arrest and took them into custody without any
8 further incident. Put them in handcuffs and they were
9 taken down to the patrol car where they were transported.

10 Q As part of the specialized unit you were a part of,
11 did you -- did your involvement end with the arrest,
12 essentially?

13 A Yeah, after that, we did some followup with the
14 individuals on the scene and we cleared them from there.

15 Q So you followed up with the people you had initially
16 made contact with?

17 A Correct, inside the apartment as well as the
18 apartment owner.

19 Q Okay. After doing that, did you have the occasion to
20 become involved in this case any more?

21 A No.

22 MS. NICKLES: I don't have any other questions for
23 you. Please answer any questions they may have.

24 THE COURT: From the Defense?

25 MR. COMISH: No questions, Your Honor.

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

2 THE WITNESS: Thank you.

3 THE COURT: Next witness.

4 MS. NICKLES: State calls Investigator Wayne
5 Montgomery.

6 Thereupon;

7 WAYNE MONTGOMERY,

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 THE WITNESS: Investigator Wayne Hugh Montgomery.

12 DIRECT EXAMINATION

13 BY MS. NICKLES:

14 Q Good morning, Investigator Montgomery.

15 A Good morning.

16 Q Where are you employed?

17 A Currently employed at the City of Columbia Police
18 Department.

19 Q And what is your position there?

20 A I'm an investigator.

21 Q What types of cases do you investigate?

22 A Currently, violent crimes, which would consist of
23 assaults, shootings, attempt murders and murders.

24 Q And how long have you been with the police
25 department?

1 A Been in it 20 years total and 15 at the Columbia
2 Police Department.

3 Q Okay. So you were employed there in 2012 [sic]?

4 A Yes, ma'am.

5 Q And what was your position then?

6 A At that time, I was an investigator.

7 Q Okay. And at that time, were you investigating the
8 same types of crimes?

9 A Yes, ma'am.

10 Q Did you have the occasion to become involved in a
11 homicide investigation back in July of 2014?

12 A Yes, ma'am.

13 Q And what was your first involvement in that case?

14 A I was requested to assist in some interviews of some
15 persons that were witnesses or other persons of interest,
16 so I met with each person that I spoke with at the police
17 department.

18 Q Who was the first person you met with?

19 A Mr. Tarus Threatt or Threatt, sorry.

20 Q And when you met with Mr. Threatt, who was present?

21 A His parents. The young man at the time was 15 years
22 of age. His biological father, Todd Threatt, and I
23 believe his -- Mr. Threatt's current wife at the time, Ms.
24 Yolanda Threatt, I believe.

25 Q Okay. And when you were meeting with Mr. Threatt,

1 they were present?

2 A Yes, ma'am.

3 Q And why is that?

4 A Well, several things. As I indicated earlier, he was
5 15, he's a minor. He's a witness, not a suspect, so to
6 make the young man feel comfortable, his parents would be
7 supportive. Also, being transparent, he wasn't hiding
8 anything. So, essentially, to have his parents with him
9 seemed appropriate at the time.

10 Q Okay. And you can't say anything that he said, but
11 did -- was he able to provide you with information?

12 A Yes, ma'am.

13 Q And did you eventually pass that information along to
14 Investigator McCoy?

15 A Yes, ma'am. It's customary that we provide any
16 information that we discover as an assistant investigator
17 to the lead investigator in the case, which was
18 Investigator McCoy.

19 Q So he was able to give you information regarding the
20 homicide that occurred on July 12th?

21 A Yes, ma'am.

22 Q Okay. Did you have the occasion to interview any
23 other witnesses?

24 A Yes, ma'am. I also spoke with an additional witness,
25 Terrell Threatt.

1 Q And when did you interview him?

2 A This was shortly after. Got some information from
3 the first interview, which lead to speaking with
4 Mr. Terrell Threatt.

5 Q Okay. And again, you can't say what he said, but was
6 he able to provide you with information regarding the
7 homicide investigation?

8 A Yes, ma'am. He was able to provide intimate details.

9 Q What did you do with that information?

10 A Also, provided that information to the lead
11 investigator.

12 Q Okay. Did you speak with anyone else?

13 A A Ms. Kadeisha Gosier.

14 Q And when was that?

15 A This was, I believe on the same day, later on as we
16 continued -- after this person was identified as a person
17 of interest related to this homicide.

18 Q Okay. And that was on July 14th, 2014?

19 A Yes, ma'am.

20 Q Okay. And, specifically, why were you interviewing
21 Ms. Gosier?

22 A It's my understanding she was at the apartment which
23 the said Defendant was found.

24 Q Okay. Who requested you to interview her?

25 A Specifically, I would say this is a task done during

1 the investigation. For me to say specifically who said or
2 requested it, I can't say, but it was part of the
3 investigation.

4 Q Okay. So you were helping out with the
5 investigation?

6 A Yes, ma'am.

7 Q Okay. Was she able to give you -- was she
8 cooperative?

9 A I spoke with her. She initially omitted and also
10 provided some fictitious accounts of what occurred.
11 Ultimately, during multiple interviews, not just with her,
12 but what else was going on, we were able to confirm that
13 either she was omitting or fabricating. And later on, she
14 provided a more accurate statement that was consistent
15 with the evidence that was found.

16 Q So, initially, is it fair to say she was a little
17 uncooperative?

18 A Yes, ma'am.

19 Q Okay. Did you interview anyone else?

20 A I also assisted with the interview of Ms. Quiera
21 Durham.

22 Q Why were you interviewing her?

23 A Similar as with Ms. Gosier, she was at the apartment
24 that the said Defendant was found, Mr. Watts, and she
25 provided information regarding that.

1 Q Okay. Was she cooperative?

2 A She was immediately forthcoming with what I spoke to
3 her about when I talked to her.

4 Q Okay.

5 A She was also talking with another investigator, but
6 by the time I spoke with her, she was very cooperative.

7 Q So you were the second person to speak with her?

8 A Yes, ma'am.

9 Q And at that time, she was cooperating?

10 A When I spoke to her, yes, ma'am.

11 Q Okay. And again, with that information, what did you
12 do?

13 A I provided that information to the lead investigator
14 on the case.

15 Q Okay. Did you have any other involvement in this
16 case?

17 A I typed up the information that I provided. We may
18 have had some discussions, but I believe that's primarily
19 -- those interviews were, from my recollection, my major
20 involvement.

21 Q Okay. Specifically, with Ms. Durham and Ms. Gosier,
22 what were your observations about --

23 MR. COMISH: Objection, Your Honor, this is
24 irrelevant.

25 THE COURT: I haven't heard the question.

1 BY MS. NICKLES:

2 Q What were your observations about their demeanor?

3 THE COURT: Yes, sir.

4 MR. COMISH: I don't believe this has any probative
5 value to anything in this particular case. I don't even
6 understand the relationship of his testimony towards
7 proving any of the facts at issue in the present
8 controversy.

9 THE COURT: All right. Response?

10 MS. NICKLES: Your Honor, I believe it is probative
11 of evidence of flight.

12 THE COURT: I overrule the objection.

13 You may answer the question.

14 THE WITNESS: I'm sorry, ma'am, could you repeat?

15 BY MS. NICKLES:

16 Q Did you have any observations about their demeanor
17 during the time that you were speaking with them?

18 A Ms. Gosier, as best I can recall, seemed to minimize
19 it, not be very cooperative initially. Ultimately, as I
20 said, as I confronted her with some other information, her
21 story did change.

22 Q And through the course of your investigation, were
23 you able to determine their relationship, if any, with Mr.
24 Watts and Mr. Davis?

25 A At this time, I can't recall any specific

1 relationship between them.

2 Q Did they know them?

3 A Yes. Yes, they did know them.

4 MS. NICKLES: Beg the Court's indulgence.

5 (Pause.)

6 MS. NICKLES: I don't have any other questions.

7 THE COURT: Cross-examination?

8 MR. COMISH: No questions, Your Honor.

9 THE COURT: Thank you, sir.

10 Next witness.

11 MR. ARANT: Your Honor, our next witness is going to
12 be quite lengthy and one of them is actually -- we're
13 redacting.

14 THE COURT: All right. Well, we will break from this
15 moment until 1:45. So y'all can leave. Please don't mill
16 around where anyone connected with the case is and we'll
17 see you all at 1:45. All right.

18 (WHEREUPON, the jury left the courtroom at 11:28
19 a.m.)

20 THE COURT: We will be in recess until 1:45.

21 (WHEREUPON, a short recess was held.)

22 THE COURT: Okay. I want to talk about the tool
23 mark expert before we start.

24 Yes, sir, Mr. Krzyston.

25 MR. KRZYSTON: Your Honor, I believe where we left

1 off is kind of -- I'm not going to say in the middle, but
2 at some point in my cross-examination after the State's
3 direct when I was attempting to establish the foundation
4 or validity of the science itself. So we can pick up
5 there. I would prefer to do that. If Your Honor is
6 inclined to do something else, certainly, at your
7 pleasure.

8 THE COURT: All right. What else does the State have
9 on the issue?

10 MR. POTTS: Your Honor, for purposes of the State, I
11 believe that our position is that you have preliminarily
12 pretrial qualified him as an expert. That qualification
13 of an expert itself pursuant to Rule 72, which is our rule
14 and also pursuant to the case law, the Jones factor, that
15 encompasses the reliability scientifically of the firearms
16 identification and him being able to testify and opine
17 what he finds in his expert opinion. So we would -- our
18 contention is that the reliability factor has already been
19 addressed by pronouncing him as an expert.

20 We would also -- we don't have a problem with the
21 Defense or Mr. Krzyston being able to ask him about these
22 articles, asking him how they would change his opinion,
23 but I believe there's already a threshold been made
24 finding he's an expert, which addresses his reliability.
25 Certainly, I agree that he can ask him these questions.

1 And that's where we stand on that preliminary.

2 THE COURT: Well, if you can summarize the opinions
3 that he's desiring to offer -- can you summarize that for
4 me?

5 MR. ARANT: I believe -- and he's in the courtroom,
6 too. But I believe his opinion would be that the casings
7 found at the scene and at the other house would -- are
8 fired -- he would say they were fired by the same weapon.
9 In essence, they are a match.

10 THE COURT: And he can tell that based on what?

11 MR. ARANT: Based on his training, based on the
12 markings, based on his experience, based on how he is
13 taught and how it is accepted around the country to
14 determine the reliability factor.

15 THE COURT: And that's the -- and that word accepted
16 is where the crux of the whole issue is now before us.

17 MR. KRZYSTON: I would also say that he has not begun
18 to even establish any foundation to support what he just
19 said. I mean he has gone into very little, if anything,
20 about the actual scientific basis for these claims. He's
21 talked to the examiner about a loose set of protocols that
22 SLED suggested they follow, but that's the extent of what
23 he's discussed.

24 THE COURT: Well --

25 MR. KRZYSTON: And just to clarify my position, I

1 would still be objecting to his qualification. I
2 understand that's a settled matter. Your Honor did not
3 accept argument on that, but that qualification was,
4 obviously, over our objection.

5 THE COURT: So what's the point in mentioning that?

6 MR. KRZYSTON: Just wish to clarify.

7 THE COURT: Seems like you're totally clarified on
8 that. The record speaks for itself.

9 MR. KRZYSTON: Certainly.

10 THE COURT: Well, I am in the category of one who
11 agrees with the Defense as to the certainty of this type
12 of science. I don't believe that -- you know, I
13 referenced Dan DeFreese, for example, when he testified,
14 he would always talk about this is consistent with being
15 fired from this weapon, that type of thing, based on these
16 characteristics and all. And that's typically after you
17 have the weapon.

18 In this instance, there is no weapon, so if the
19 expert is saying I can look at some bullets found and
20 based on certain tests I conducted, I can conclusively
21 determine that all of these bullets came from the same --
22 not bullets, but spent --

23 MR. KRZYSTON: Casings.

24 THE COURT: Spent casings came from the same weapon
25 or were fired by the same weapon, then that's when I think

1 you're on shaky ground in seeking to even offer that as an
2 opinion when the Court places the sort of a second-part
3 test -- one is the -- he's an expert. Number two is
4 meeting the test of reliability to offer that opinion.
5 And I don't know how much time you want to spend with that
6 in this case.

7 I agree he's an expert. I agree he can talk about --
8 you know, it's almost common sense, you know, if we found
9 some bullets there and I found a similar bullet there in
10 the house, but to try to nail it down to a level of
11 certainty, we certainly haven't heard -- I haven't heard
12 enough for me to draw a conclusion to allow that testimony
13 considering all of the criticisms inherent in the science
14 over this issue and the questioning of this type of
15 testimony by courts recently and by the literature.

16 So let me hear your response.

17 MR. ARANT: My response is, Your Honor, we have not
18 been presented to this date with anything any court, any
19 ruling, any recent ruling from any court --

20 THE COURT: Yeah.

21 MR. ARANT: -- that says that it is not a science, it
22 is unreliable. The only thing the Court has been
23 presented with is Mr. Krzyston's words.

24 THE COURT: Well, I'm basing it on that and many
25 other things that I have studied over a period of time.

1 MR. ARANT: Right.

2 THE COURT: Now, I haven't heard any testimony.

3 MR. ARANT: Right.

4 THE COURT: My issue is do we want -- is it worth --
5 is this the case you want to have as the lynchpin on the
6 certainty of ballistics testimony as the means of getting
7 a conviction in this case when faced with all the
8 eyewitness testimony and everything else? So we can spend
9 some time on that if you want to go there. I'm not ruling
10 it in or ruling it out. I'm telling you that I say I'm
11 trending toward the Defense.

12 And he can testify, but to say I'm positive that all
13 of these casings came from the same gun, then, you know,
14 you'll have to give me something and you'll have to give
15 me more -- well, I haven't heard anything that, you know,
16 that would help draw -- lead me to that conclusion. And I
17 don't know whether it's necessary in this case.

18 MR. KRZYSTON: Your Honor, to clarify the Defense's
19 position, not only --

20 THE COURT: I don't need your position clarified.

21 MR. KRZYSTON: Okay. Well, there's an additional
22 contention beyond that --

23 THE COURT: What is that?

24 MR. KRZYSTON: Again, not only -- and I think you've
25 addressed the scope of what he can say and I think we're

1 about to get to that, but we would also say that not only
2 is the science questionable which underlies his ability to
3 claim that, but his use and his execution of the
4 methodology that the science requires is lacking.

5 THE COURT: Well, I don't know about that.

6 MR. KRZYSTON: Okay.

7 THE COURT: Maybe we haven't heard that testimony
8 yet.

9 MR. KRZYSTON: Yes, sir.

10 MR. ARANT: Your Honor, my only response to that is
11 we have the burden of proving him guilty beyond a
12 reasonable doubt. Yes, I agree that the issue in this
13 case may be a minimal one, but for future cases, we
14 believe that he should be allowed to testify. If there's
15 something we can clarify --

16 THE COURT: Well, we haven't heard anything. I've
17 just heard him talk about the various stuff he -- whatever
18 it is he did and how positive he is on that issue. I
19 mean, we'll hear it all and I'll rule. But, you know,
20 sometimes when you come in trying to kill a gnat with a
21 sledgehammer, you end up hitting your own toe with a
22 sledgehammer.

23 MR. ARANT: I understand. And not to mislead the
24 Court, Your Honor, I've also called his supervisor, Mr.
25 Tracy Thrower, who has worked with SLED for about 20

1 years, that is his supervisor. I anticipate calling him
2 if the Defense is to attack the reliability and results of
3 our expert witness.

4 THE COURT: All right. Well, that can be --

5 MR. KRZYSTON: Your Honor, we absolutely object to
6 that. They have not provided any statement --

7 THE COURT: He is listed as a witness. Mr. Thrower
8 was listed as a witness and they don't need to provide you
9 anything. He said he reviewed his work.

10 All right. Well, we're not going to worry about that
11 right now. We're going to press on with this case.

12 MR. ARANT: Thank you, Your Honor.

13 THE COURT: Bring the jury.

14 MR. KRZYSTON: So are we going to do a ruling on the
15 reliability or -- that threshold question or are we
16 waiting until --

17 THE COURT: We're going to press on with the case.

18 He's not the next witness, is he?

19 MR. POTTS: No, Your Honor.

20 THE COURT: Okay.

21 (WHEREUPON, the jury returned to the courtroom at
22 1:50 p.m.)

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

24 THE COURT: All right. Welcome back.

25 Your next witness.

1 MR. POTTS: State calls Daquan Cleckley.

2 Thereupon;

3 DAQUAN CLECKLEY,

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: Daquan Cleckley.

8 DIRECT EXAMINATION

9 BY MR. POTTS:

10 Q Good afternoon, Mr. Cleckley. How are you doing?

11 A Good.

12 Q Mr. Cleckley, who is April to you?

13 A My mom.

14 Q Now, where did you live back in July of 2014?

15 A [REDACTED].

16 Q What was the address?

17 A [REDACTED].

18 Q How well do you know Malik Davis?

19 A I knew Malik Davis for the while. We was -- we was
20 cool.

21 Q Okay. What about his brother, Horace Watts?

22 A Me and Horace was cool, too. We was real close
23 before this incident happened.

24 Q Y'all were close? Would you call him your best
25 friend?

1 A I won't call him my best friend, he was like my
2 brother, but.

3 Q How often did y'all hang out?

4 A Daily.

5 Q Daily?

6 A Yeah.

7 Q What would y'all do when you would hang out?

8 A We used to chill, play ball, have fun, I mean, do
9 what normally teens do.

10 Q Would you hang out at your house?

11 A Yeah.

12 Q And that's on Magnolia Street?

13 A Yes, sir.

14 Q Now, I want to bring your attention back to your
15 mom's birthday, [REDACTED], 2014?

16 A Uh-huh.

17 Q You remember that day?

18 A Yeah.

19 Q What were y'all doing that day?

20 A Well, before it lead up to that incident, we were
21 just out partying, having a cookout for my momma.

22 Q And who was there?

23 A A lot of people.

24 Q A lot of people?

25 A Yeah.

1 Q Would you say -- is 10 a lot of people?

2 A I would say 30 to 40 people.

3 Q Thirty to 40 people. And they were all there for
4 your mom's birthday?

5 A Uh-huh, correct.

6 Q Okay. Now, there was a fight that happened that day,
7 wasn't there?

8 A Yes, between some females.

9 Q Were you there for that?

10 A I didn't see that.

11 Q Where were you at that time?

12 A I was home, but I didn't see that.

13 Q Were you in the house?

14 A Yeah.

15 Q All right. What happened next?

16 A Well, as that was going on outside, I walked out to
17 see what was going on because there was a lot of arguing
18 and stuff like that. Then it turned into us seeing --
19 well, not me, my cousin and them seeing Malik walking up
20 Magnolia. And he questioned Malik -- well, he basically
21 told him like, Bro, go home, you feel me. And Malik kind
22 of felt violated, like, I guess he felt like my cousin was
23 trying to handle him. So him and my cousin got to going
24 at it. So I guess my cousin got the best of him, then
25 Malik left, came back.

1 Q Let's talk about him coming back. What do you recall
2 when he came back?

3 A I mean, when I seen him, him and his brother hopped
4 out the car.

5 Q You saw them pull up in the car?

6 A Yeah.

7 Q Where were you?

8 A I was like on the side of -- I was like in the front
9 of my house on the side of Magnolia Street and I seen them
10 come from Center Street.

11 Q What did you notice about them?

12 A I noticed when they both got out the car, they both
13 had guns.

14 Q What did they do with those guns?

15 A They started shooting. After they started shooting,
16 I ran and everybody else ran. I went in the house.

17 Q Now, when you say Malik and the brother, who's the
18 brother you're talking about?

19 A Horace.

20 Q Describe to me what you remember hearing and seeing
21 as you ran.

22 A What I remember seeing, I seen them two got out the
23 car. I turned around and looked at my family. Then as I
24 was looking back, only thing I heard was shots.

25 Q And did you hear multiple shots?

1 A Yeah.

2 Q Okay. What, if anything, did you see about the blue
3 Explorer?

4 A I mean --

5 Q If you don't remember, that's fine.

6 A Yeah.

7 Q Okay. So you heard the shots, then you turned and
8 started running. What do you remember at that point?

9 A I ran in the house. I tried to see if everybody else
10 was okay. While I was in the house, the window blind was
11 open so I could see like whatever else was going on
12 outside. I seen Malik kept running down the street and I
13 seen Horace come in the yard.

14 Q So Malik stayed outside the yard in the street and
15 Horace came into the yard?

16 A Yeah, Malik didn't stay, Malik ran.

17 Q Okay. And what did Horace do?

18 A Horace came in the yard while shooting and killed my
19 Uncle Ike.

20 Q Did you see him shoot your Uncle Ike?

21 A Yes.

22 Q What was Uncle Ike doing?

23 A Uncle Ike was really trying to rush to the front yard
24 to get whoever else was up there family-wise, to get them
25 in the backyard and in the house. And by the time he

1 tried to make it to the front, he didn't get too far.

2 Q Okay. What happened after that?

3 A Uncle Ike, I guess he seen Horace and he tried to,
4 basically, cover behind the tree. So after he stop
5 hearing the shots, he came out. And I guess when he came
6 out, he realized that Horace was in front of him, so he
7 tried to like turn around and run, but it was too late.

8 Q And that's when Horace shot him?

9 A Yes.

10 Q And you saw all of that happen?

11 A Yes.

12 Q Okay. And tell me about what happened after that.

13 What did Horace do?

14 A It was just a lot of commotion going on. Horace
15 left. It was just a lot of arguing and fussing and
16 crying.

17 Q People were upset?

18 A Yeah.

19 Q Okay. Do you remember later that evening going down
20 to the City of Columbia talking to people at headquarters?

21 A Yeah.

22 Q Okay. They show you any pictures?

23 A A couple.

24 Q All right. I'm going to show you what is marked as
25 State's Exhibit No. 10, already in evidence. Tell me if

1 you recognize that.

2 A Yes.

3 Q What is that?

4 A You said what is it?

5 Q Yeah, what is it?

6 A Pictures.

7 Q Are those the pictures they showed you that night?

8 A Yes, sir.

9 Q Okay. I'm going to show you what's marked as State's
10 Exhibit No. 6. Tell the jury what that is.

11 A Photo lineup.

12 Q Is that where you signed picking out somebody?

13 A Yes, sir.

14 Q Who did you identify as the shooter that day?

15 A Horace Watts.

16 MR. POTTS: At this time, Your Honor, I'd like to
17 offer into evidence State's Exhibit No. 6.

18 MR. COMISH: Renew our previous objection, Your
19 Honor.

20 THE COURT: It's admitted.

21 MR. POTTS: Thank you, Your Honor.

22 (WHEREUPON, State's Exhibit No. 6 was admitted
23 into evidence.)

24 BY MR. POTTS:

25 Q Quan, I'm going to show you what's marked as State's

1 Exhibit 174. Have you seen that before?

2 A Yes.

3 Q Have you listened to what's on that?

4 A Yes.

5 Q Did you recognize any voices on that?

6 A Yes.

7 Q And whose voice was that?

8 A Horace.

9 Q Horace Watts's voice?

10 A Uh-huh.

11 Q Okay. Now, how did you denote that?

12 A I mean, I was used to being around him. I know his
13 voice.

14 Q But is that your signature?

15 A Yes.

16 Q Right there?

17 A (The witness nodded head.)

18 Q So this is the same disk you listened to?

19 A Yes, sir.

20 MR. POTTS: Thank you, sir. No further questions.

21 THE COURT: Cross-examination?

22 MR. COMISH: Thank you, Your Honor, may it please the
23 Court.

24 CROSS-EXAMINATION

25 BY MR. COMISH:

- 1 Q Good afternoon, Mr. Cleckley.
- 2 A Afternoon.
- 3 Q How are you today?
- 4 A Good.
- 5 Q I know this is a little difficult, so we're going to
6 try to just keep it as brief as we can, okay?
- 7 A Okay.
- 8 Q What time did the party get started that day?
- 9 A Approximately 3:00 or 4:00.
- 10 Q About 3:00 or 4:00?
- 11 A (The witness nodded head.)
- 12 Q Did you have any responsibilities with the party?
13 Were you helping out in any way?
- 14 A No.
- 15 Q So you just were there to have fun?
- 16 A Yeah.
- 17 Q So there was people cooking out?
- 18 A Uh-huh.
- 19 Q People eating?
- 20 A Uh-huh.
- 21 Q Playing basketball?
- 22 A Uh-huh.
- 23 Q Drinking?
- 24 A Yep.
- 25 Q Playing dominoes, I think?

1 A Yeah.

2 Q So y'all just generally having a good time?

3 A Basically.

4 Q At some point, you took a nap in the afternoon?

5 A No, I did not.

6 Q You were never sleeping?

7 A No.

8 Q You were just inside the house around 8:00 when the
9 first fight happened?

10 A Yes.

11 Q When you walked out, were any fights happening or was
12 it just a crowd?

13 A I was just a crowd.

14 Q Just a crowd. So you walked out before Malik came
15 walking down the street?

16 A Yes.

17 Q Okay. Where were you when Malik came walking down
18 the street?

19 A In the house.

20 Q You were in the house?

21 A Yes. You said before?

22 Q When Malik was walking down the street, where exactly
23 were you?

24 A In the house.

25 Q You were in the house?

1 A Yes.

2 Q At what point did you walk out?

3 A After I seen Malik leaving.

4 Q Oh, okay. So were you able to observe any of the
5 altercation between --

6 A No, I didn't see the fight or anything.

7 Q Okay. All right. So what did you do after Malik
8 walked away?

9 A I went and asked what happened.

10 Q Okay. So you were just hanging out at that point?

11 A Yeah. I was just asking what was going on, what
12 happened.

13 Q I understand. When you walked out to ask what was
14 going on, did you then hang out sort of in that general
15 area for the next few minutes?

16 A Yeah, for approximately five to ten minutes.

17 Q Then what did you do?

18 A I went back in the house.

19 Q You went back in the house. Where were you when the
20 blue car pulled up?

21 A Outside.

22 Q So you were -- and I'm -- stop me if I putting words
23 in your mouth, but were you just kind of wandering around,
24 hanging out at the party?

25 A Not necessarily -- yeah, you can say that.

1 Q Right, okay. Where exactly were you when the blue
2 car pulled up?

3 A Outside.

4 Q Right. But were you in the yard?

5 A In the yard, on the side.

6 Q On the side?

7 A Uh-huh.

8 Q So does that mean --

9 A On the side of the road.

10 Q Oh, okay, so you were just kind of hanging out by the
11 curb, I guess, is that fair?

12 A In front of the house.

13 Q The front of the house. I got you. Did you see
14 Tarus out there?

15 A Who.

16 Q Tarus. Was he in the street?

17 A Uh-huh.

18 Q Okay. Did you see, and I believe his name was
19 Dominique with Tarus?

20 A Yes.

21 Q Okay. And they were in the street actually?

22 A Yes.

23 Q Okay. And when the car pulled up, did you
24 immediately turn to run in the house?

25 A After I heard the shots.

1 Q After you heard the shots?

2 A Then I ran.

3 Q Okay. Did you see Tarus and Dominique run up on the
4 car?

5 A On what car?

6 Q On the blue car?

7 A No.

8 Q No. What did you observe them doing?

9 A Running, like I was.

10 Q Running away?

11 A Yes.

12 Q Okay. Now, you ran straight into the house when you
13 heard the gunshots?

14 A Yes.

15 Q Through the front door or through the back door?

16 A Front door.

17 Q Through the front door?

18 A Uh-huh.

19 Q Are then what did you do?

20 A I was looking out the window.

21 Q Looking out the window?

22 A Uh-huh.

23 Q Which window?

24 A The front.

25 Q The front window?

1 A Uh-huh.

2 Q All right. And it's there that you testified that
3 you saw Horace shoot your Uncle Ike?

4 A Yes.

5 Q And do you remember being in this courtroom and
6 giving testimony about this same matter earlier?

7 A Yes.

8 Q Okay. And at that testimony, you testified that
9 Isaac Lewis was face to face with Horace Watts when he got
10 shot?

11 A Uh-huh.

12 Q You remember saying that?

13 A Yes.

14 Q But you testified just now that they weren't face to
15 face?

16 A What's the difference?

17 Q Well, the difference is --

18 A He was face to face when he thought -- when he seen
19 Horace, he was getting ready to turn around and run and it
20 was too late.

21 Q Okay. But my point that I'm trying to bring out is
22 that at one point, you said they were face the face the
23 moment that your Uncle Ike got shot?

24 THE COURT: Is that question?

25 MR. COMISH: That is a question.

1 THE COURT: Sounds like a statement.

2 MR. COMISH: I'll rephrase, Your Honor.

3 BY MR. COMISH:

4 Q Did you testify -- did you give sworn testimony that
5 Horace Watts and your Uncle Ike were face to face the
6 moment that your Uncle Ike was shot?

7 A So you're trying to say that I said that?

8 Q I'm asking you if you said that?

9 A No.

10 Q I'm going to ask you to look at this real quick. Do
11 you recognize this?

12 A Uh-huh.

13 Q What is that?

14 A What is what?

15 Q Is this your name right here?

16 A Yes.

17 Q Is this a recording or a transcript of your testimony
18 at the Neal V. Biggers hearing?

19 A Uh-huh.

20 Q Could you please read from Line 17 to Line 25 for me?

21 A I see it.

22 Q Could you please read that for me?

23 THE COURT: You want him to read it to himself.

24 MR. COMISH: He can do that, too, Your Honor.

25 BY MR. COMISH:

1 Q Could you read that for me, just to yourself?

2 A Okay.

3 Q Thank you. So when you were asked when the shot
4 happened, it was face to face, your response was yes, was
5 it not?

6 A Yes.

7 Q Thank you. We'll move on from there. Did you stay
8 at the house after this incident happened?

9 A Yes.

10 Q Okay. Do you remember about what time -- did they
11 take you to the station that night?

12 A No, I do not.

13 Q I mean, do you remember going to the station at all?

14 A Yes, it was dark.

15 Q It was dark? It was real late?

16 A It wasn't too late.

17 Q Okay. Do you remember how long it took the police to
18 get there after the incident? You can estimate for me.

19 I'm not trying to lock you on that one.

20 A About eight to ten minutes.

21 Q Were there still a bunch of people there?

22 A Yes..

23 Q And then when the police got there, how long did it
24 take them, if you remember, to get all of the people out
25 of there? Was it immediate or did it take a little while?

1 A What you mean by get all the people out of there?

2 Q To clear the scene, to get the folks from milling
3 about in your front area?

4 A It was still a lot people there.

5 Q So it took them a while --

6 MR. POTTS: Objection, Your Honor, he's talking over
7 the witness.

8 MR. COMISH: I thought he had completed answering the
9 question, Your Honor.

10 THE COURT: Let's try it again.

11 BY MR. COMISH:

12 Q It wasn't -- were the police able to immediately
13 clear the scene?

14 A I mean, this happened two years ago. I mean, kind
15 of, sort of. It was still people there, though.

16 Q Do you recall when the people started leaving?

17 A People was there all night.

18 Q All night long. Do you remember -- and I know this
19 is a little detail and you may not remember, okay. Do you
20 recall how long it took the police to put down the little
21 traffic cones? Do you remember that at all?

22 A No, I wasn't paying attention to none of that.

23 Q Okay.

24 MR. COMISH: Beg the Court's indulgence just one
25 second.

1 (Pause.)

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

3 THE COURT: Anything further?

4 MR. POTTS: Just briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. POTTS:

7 Q Daquan, Horace and Isaac -- before Isaac went behind
8 the tree, they were face to face, correct?

9 A Correct.

10 Q And then what happened?

11 A Horace shot him.

12 Q Okay. What was Isaac doing as Horace shot him?

13 A He, basically, was coming to the front, like I said
14 the first time, to make sure everybody was nowhere to be
15 around or in the front.

16 MR. POTTS: Thank you. No further questions.

17 THE COURT: Anything further?

18 MR. COMISH: Yes, Your Honor.

19 RE CROSS-EXAMINATION

20 BY MR. COMISH:

21 Q You testified at the previous hearing that they were
22 face to face --

23 MR. POTTS: Objection, Your Honor. This is --

24 MR. COMISH: I'm simply responding to what he is
25 poising in redirect.

1 THE COURT: It's been asked and answered.

2 MR. POTTS: Thank you, Your Honor.

3 BY MR. COMISH:

4 Q You spoken with the solicitor's office since your
5 testimony at the Neal V. Biggers hearing, haven't you?

6 A Say that one more time.

7 MR. POTTS: Objection, Your Honor.

8 THE COURT: Overruled.

9 BY MR. COMISH:

10 Q You've spoken with the solicitor's office, meaning
11 the folks at that table right there (indicating) since
12 the Neal V. Biggers hearing, haven't you?

13 A Yes.

14 MR. COMISH: Thank you.

15 THE COURT: Thank you, sir. You may step down.

16 Next witness.

17 MR. POTTS: State calls Robert Waters.

18 Thereupon;

19 ROBERT WATERS,

20 After having been duly sworn, testified as follows:

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

23 THE WITNESS: Robert Waters.

24 DIRECT EXAMINATION

25 BY MR. POTTS:

1 Q Thank you, Sergeant Waters. Where are you currently
2 employed?

3 A At the Alvin S. Glenn Detention Center.

4 Q What do you do at the Alvin S. Glenn Detention
5 Center?

6 A I work in professional standards where we monitor
7 video, telephone calls, investigate incidents that may
8 happen at the detention center.

9 Q How long you been there?

10 A Seventeen years.

11 Q And let's talk about telephone calls. Tell me, I
12 guess, the apparatus or system y'all have at the detention
13 center?

14 A Okay. We have a -- our system is Intel and it's more
15 or less set up like an ATM machine. When an individual
16 gets an inmate number, they also have to set up a pin
17 number. And the way they use that, every time they make a
18 call, they put their inmate number in as well as their pin
19 number. And that's the only way they can make calls.

20 And my job is to -- you know, I monitor the system.
21 And say someone is in violation, I can cut their
22 privileges off. And then what they may do, they may try
23 to use somebody else's.

24 Q Sergeant Waters, let's just restrict it to my
25 question, okay?

1 A Okay. Uh-huh.

2 Q But I appreciate it. We'll get there in a little
3 bit.

4 A All right.

5 Q So what do y'all do -- how are the phone calls --
6 when they're made, can they come in the detention center
7 or are they made out?

8 A They're made out.

9 Q Is each inmate given their own individual pin number?

10 A They make their own pin numbers up, yes.

11 Q So that one is, I guess, with their inmate number
12 unique to them?

13 A Say that again.

14 Q Is it combined with their inmate number or their
15 account?

16 A Right, right, it is.

17 Q Okay. Now, what happens if -- what are the rules
18 regarding pin numbers?

19 A Okay. We tell them once you set up your pin number,
20 it's your responsibility. Do not give your pin number out
21 to anyone because it could harm you or it could cause you
22 to lose your privileges.

23 Q Okay. Is it against the rules to use another
24 inmate's pin number?

25 A It is.

1 Q Okay. Now, when the phone calls go out, are they
2 recorded?

3 A They are.

4 Q Every single one?

5 A Yes.

6 Q Is there any -- you have any say in which ones you
7 record and which ones you don't?

8 A No.

9 Q What happens with the recordings?

10 A They stay on file, I think it's five years.

11 Q Okay.

12 A Or sometimes longer.

13 Q And the recording is automatic?

14 A Yes.

15 Q You're not sitting there flipping them on and off?

16 A No.

17 Q Okay. Have you had a chance to review any recordings
18 in this case?

19 A No, not too many.

20 Q Okay. Let me show you what's marked as State's No.
21 174, okay?

22 A Yes.

23 Q Do you recognize that?

24 A I do.

25 Q What is this?

1 A Jail phone call.

2 Q Okay. So a jail phone call?

3 A Yes.

4 Q Now, how do you -- how do you know just looking at
5 this disk that this is what we're talking about? Have you
6 listened to it?

7 A Yes, I listened to it.

8 Q Is that your set of initials right there?

9 A It is.

10 Q Does this jail phone call originate from the pin
11 number and ID of Horace Watts?

12 A Yes.

13 MR. POTTS: At this time, Your Honor, we'd offer into
14 evidence State's Exhibit No. 174.

15 THE COURT: What says the Defense?

16 MR. COMISH: Without objection, Your Honor.

17 THE COURT: So admitted.

18 (WHEREUPON, State's Exhibit No. 174 was admitted
19 into evidence.)

20 MR. POTTS: At this time, Your Honor, I'd like to
21 publish the phone call.

22 THE COURT: Yes, it's in evidence.

23 MR. POTTS: Your Honor, I will take that back. No
24 further questions. I'm sorry, Your Honor.

25 THE COURT: Any cross-examination?

1 MR. COMISH: Briefly, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. COMISH:

4 Q Sergeant Waters, it's fairly common for inmates to
5 use each other's pins, is it not?

6 A They do.

7 MR. COMISH: Thank you.

8 No further questions, Your Honor.

9 THE COURT: Anything further?

10 MR. POTTS: No, Your Honor.

11 THE COURT: Thank you, sir.. You may step down.

12 Next witness.

13 MS. NICKLES: State calls Investigator Val Moorers.

14 Thereupon;

15 VALERIE MOORER,

16 After having been duly sworn, testified as follows:

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

19 THE WITNESS: Valerie Moorers.

20 DIRECT EXAMINATION

21 BY MS. NICKLES:

22 Q Investigator Moorers, where are you employed?

23 A Columbia Police Department.

24 Q And what is your job there?

25 A I was recently promoted to sergeant from investigator

1 in violent crimes. At the time of this incident, I was an
2 investigator.

3 Q Okay. What do you do as sergeant?

4 A I'm in charge of overseeing five to ten investigators
5 on a daily basis, to assign cases, respond to anything
6 criminal of that matter.

7 Q How long have you been with the Columbia Police
8 Department?

9 A Fifteen years.

10 Q And back in 2012 [sic], what was your position?

11 A Investigator.

12 Q Okay. What kind of cases did you investigate?

13 A Violent crimes against persons.

14 Q I would like to turn your attention back specifically
15 to July 14th of 2014. Did you become involved in a
16 homicide investigation?

17 A Yes, ma'am.

18 Q Specifically, did you interview some people in
19 connection with that?

20 A Yes.

21 Q And who did you interview?

22 A I assisted with interviewing Destiny Gibson.

23 Q What was the purpose of that interview?

24 A At that time, I was advised by Lead Investigator
25 McCoy that Destiny had knowledge of Malik and Horace's

1 whereabouts after the incident occurred.

2 Q Okay. And, specifically, do you remember what that
3 involvement was?

4 A That she was possibly hiding them out in apartments
5 at [REDACTED] in Columbia, South
6 Carolina, Richland County.

7 Q And that's where the Defendants in this case were
8 arrested?

9 A Yes.

10 Q Okay. During that interview, was anyone else
11 interviewing with you?

12 A Yes. Investigator Montgomery, he was interviewing a
13 friend, Kadeisha Gosier at the time, and then he entered
14 the interview room to continue the interview with me with
15 Ms. Gibson.

16 Q And when Investigator Montgomery came into the room
17 with you and Ms. Gibson, what the purpose of his coming to
18 your investigative room?

19 A By him interviewing Ms. Gosier, he got her account of
20 the events that took place that they have knowledge of
21 Malik and Horace being at the residence. When he entered
22 the room with me, he asked me what Ms. Gibson tell me
23 about the events of her having knowledge of them being in
24 her apartment. And she stated that --

25 MR. COMISH: Objection, Your Honor.

1 MR. RUFFIN: Hearsay.

2 THE COURT: Who's objecting?

3 MR. COMISH: I am, Your Honor.

4 THE COURT: You're doing the cross-examination?

5 MR. COMISH: I am, Your Honor.

6 THE COURT: All right. Get one objector only. The
7 objection is sustained.

8 BY MS. NICKLES:

9 Q And without saying what she said, were you and
10 Investigator Montgomery able to compare the statements
11 that you had gotten from each girl?

12 A Yes, comparing the statement, we realized that she
13 was being evasive and trying to minimize her account to
14 the incident?

15 Q What was Ms. Gibson's demeanor like during your
16 interview?

17 A She began to start -- she started crying. She was
18 kind of nervous. And at that time, you know, she was
19 advised she was being untruthful.

20 Q After you determined that you weren't getting the
21 same story from each one and you said you believed that
22 she was not being truthful, what, if anything, did you do
23 next?

24 A Stopped the interview and immediately Mirandized her.

25 Q And why did you do that?

1 A Because at that time, I believed she had more
2 involvement with the incident. Stop and Mirandize her
3 because at this time, she would be a possible suspect as
4 well.

5 Q And you -- the -- you believed her to possibly be a
6 suspect, you said, for hiding?

7 A Harboring a fugitive.

8 Q Okay. Did her demeanor change after you Mirandized
9 her?

10 A Yes, she continued to cry and she stated that --

11 MR. COMISH: Objection, Your Honor.

12 THE COURT: Sustained as to what she said.

13 THE WITNESS: She immediately started to cry and then
14 she began telling her side of the story.

15 BY MS. NICKLES:

16 Q Did you have any other have involvement in this case?

17 A No.

18 MS. NICKLES: Beg the Court's indulgence.

19 (Pause.)

20 MS. NICKLES: Please answer any questions that the
21 Defense may have. Thank you.

22 THE WITNESS: Yes.

23 MR. COMISH: We have no questions, Your Honor.

24 THE COURT: You may step down.

25 THE WITNESS: Thank you.

1 THE COURT: Next witness.

2 MR. ARANT: State calls Chad Smith.

3 MR. KRZYSTON: Objection.

4 THE COURT: Did someone say something?

5 MR. KRZYSTON: We have a matter of law.

6 THE COURT: Ladies and gentlemen, we'll have you go
7 to the jury room for a break.

8 (WHEREUPON, the jury left the courtroom at 2:23
9 p.m.)

10 THE COURT: All right. You may proceed.

11 MR. KRZYSTON: Judge, the Court has yet to make a
12 finding of the threshold reliability.

13 THE COURT: You may proceed, Solicitor.

14 MR. KRZYSTON: Oh, I'm sorry.

15 Thereupon;

16 CHAD SMITH,

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: My name is Chad Smith, S-M-I-T-H.

21 MR. POTTS: Your Honor, I know we had the pretrial
22 hearing about him as an expert. Would you like me to
23 elicit any testimony about his expert qualifications?

24 THE COURT: The scope of his testimony.

25 MR. ARANT: Just to the scope of his testimony?

1 THE COURT: Yes.

2 DIRECT EXAMINATION

3 BY MR. ARANT:

4 Q Investigator Smith, you administered some tests on
5 some items in this particular case we're here on today?

6 A Yes, sir.

7 Q Okay. Can you again refresh the Court of what items
8 you tested in this case?

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

15 Q And you tested all of those?

16 A Yes, sir.

17 Q We'll get to your findings in a minute, but did you
18 make some findings in this case?

19 A Yes, sir.

20 Q And briefly, again, refresh the Court on how you
21 tested these items.

22 A When the evidence comes into my custody, what I do
23 when I'm ready to examine the evidence is go ahead and
24 take photographs of the packaging, photographs of the
25 evidence itself and then start going into the examination

1 process itself.

2 With respect to the cartridge cases, what I would do
3 is just physically examine them, make sure there's no sign
4 of trace material that could possibly be important, such
5 as blood, note any sort of damage that's on these
6 cartridge cases. Then go into the comparisons using what
7 we call a comparison microscope, which is basically two
8 microscopes connected by an optical bridge system, which
9 is designed to compare two samples simultaneously.

10 What I'm looking for when I'm comparing these
11 cartridge cases are marks that are reproduced into the
12 various cartridge cases and looking for marks that are
13 what I believe to be individual in nature to try to
14 determine, if possible, how many different firearms were
15 used. So I did that with the 9mms and also with the 45
16 auto caliber cartridge cases and came up with conclusions
17 for both of those.

18 And with respect to the bullets, I would do the same
19 sort of thing as with the cartridge cases. I would
20 examine them and then start going into trying to determine
21 what sort of caliber they could possibly be by weighing
22 them, measuring their diameter, just looking at their
23 overall observable physical characteristics to try to
24 determine the caliber.

25 Then I would go into the examination process

1 microscopically with those as well.

2 Q And did you do that in this case on these particular
3 items?

4 A Yes, sir.

5 Q Did you also have some fragments as well from some
6 vehicles?

7 A Yes, sir.

8 Q Okay. And tell us a little bit about the cartridge
9 casings, not this particular case, but overall. Are there
10 differences in markings of cartridge casings?

11 A Yes, depending on possibly what type of firearm fired
12 those cartridge cases, you would get different types of
13 firing pin impressions on the primer itself, different
14 breech face marks caused by the firearm. You could get
15 ejector marks and striker marks, basically, just marks
16 that are caused through the operation of the firearm.
17 They're imprinted onto the cartridge cases.

18 Q What can you tell us about striations?

19 A Striations are caused by a tool, in this case, which
20 would be the firearm itself, which is basically moving
21 across the surface of a cartridge case. So it leaves
22 imprints. Striations are basically scratches of varying
23 degrees. And that's what we're looking for when we try to
24 make a comparison.

25 Q What can you tell this Court about class

1 characteristics of ammunition?

2 A Class characteristics are what the manufacturer
3 determines prior to the manufacturing process. So that
4 would be stuff like caliber and with respect to actual
5 bullets, it would be caliber as well, the rifling
6 impressions. Rifling is what's produced by manufacturers,
7 it's called a spin onto the bullet. So the number of
8 lands and twist -- the number of lands and grooves of the
9 rifling and the direction of the twists and, actually, the
10 measurements of the lands and grooves are all determined
11 prior to manufacturing. So those are class
12 characteristics.

13 Q How many twists could a gun have?

14 A I've seen as small as three, up to 12. It just all
15 depends on the different manufacturing.

16 Q Can you tell us a little bit about the grooves?

17 A The grooves into a barrel is -- you've got the lands
18 and grooves. The lands is the raised portion and the
19 groove is the actual cut or the press portion of the
20 barrel, so that is what engages the bullet and imparts the
21 spin onto it as it's traveling down the barrel. So that
22 spin actually stabilizes the bullet.

23 Q Does every weapon have the same twist and/or groove?

24 A No, that depends on the manufacturer.

25 Q So it depends on the manufacturer?

1 A Correct. If it's a rifle barrel, it would have lands
2 and grooves. And all that depends on what the
3 manufacturer determines.

4 Q Is that something unique to the manufacturer?

5 A Not necessarily. Many manufacturers share the same
6 characteristics as far as lands and grooves.

7 Q And are those lands and grooves transmitted to
8 casings or bullet projectiles?

9 A The bullets, yes. The cartridge cases, no.

10 Q What is transferred from the weapon to the casing,
11 the shell casings?

12 A On a semi-automatic pistol, you would have the breech
13 face. So I think on Monday I described the breech face as
14 being the rear portion that actually supports the
15 cartridge case during firing. And during firing, the
16 cartridge case butts up against the cartridge case, imparts
17 markings onto it as well.

18 Q Do guns make unique breeches on the casings?

19 A Depending on the manufacturer as well. Some of them
20 sand the breech face. So those characteristics would be
21 definitely individual in nature. It just basically
22 depends on the level of finishing that the manufacturer
23 does.

24 Q Tell us about when you examined the items that you
25 have, specifically, items one through 19. When you

1 examined these, what are you looking for?

2 A One through 19 are the fired cartridge cases. And
3 depending on the item number, it's either a 9mm Luger
4 caliber or a 45 auto caliber cartridge case.

5 So what I would do is compare the 9mms together and
6 the 45s together. Sometimes, depending on what caliber
7 you have, you may compare two different calibers with each
8 other. Some firearms can fire multiple calibers, so you
9 actually do a comparison to determine if they were fired
10 by the same firearm.

11 In this case, I would just compare the 9mms with the
12 45s. Due to the differences in their characteristics,
13 they were not fired by the same gun. But I was able to
14 conclude based on my observations --

15 Q And I don't mean to cut you off, but I just want to
16 get a conclusion in a minute. Do you measure these cases?

17 A I don't do -- we don't do any sort of measuring of
18 the cartridge cases themselves.

19 Q You note on there -- there are different brands, the
20 FC, Tulammo and federal, there's different brands?

21 A Right. That's the manufacturer of that particular
22 cartridge.

23 Q And those are noted -- are those noted in your report
24 anywhere?

25 A Yes, sir.

1 Q Okay. Now, when you're testing and analyzing these
2 ammunitions, are you writing down notes or anything about
3 these particular casings?

4 A Yes, sir. We have worksheets that we put our notes
5 on.

6 Q And what kind of things do you describe on these
7 worksheets?

8 A With regards to the cartridge case, we do, obviously,
9 caliber, the makeup, what type of material it's made out
10 of, whether it's brass or nickel plated, whether it had
11 brass or a nickel primer, what type of firing pin
12 impression is on it, what type of breech face markings are
13 on it, condition is another category.

14 Q Now, after you've done all that -- you said, I think
15 earlier, you testified earlier on Monday that you micro
16 verify these things?

17 A Right, we have a quality control measure where after
18 I do my examinations and record my results on a worksheet,
19 another court-qualified examiner comes in and does what's
20 called a micro-verification process, in which they look at
21 the evidence through my microscope and reach their own
22 conclusion. And if they agree with my finding, they
23 actually sign off on the worksheet.

24 Q And did someone do that in this case?

25 A Yes, sir.

1 Q Did they concur or disagree with your results?

2 A They agreed with my results.

3 Q And these protocols or standards, who sets these for
4 you to analyze these guns?

5 A Well, we have our own departmental manual that was
6 put together by our lieutenant. And he, basically, just
7 bound our accreditation organization, they set forth
8 standards. Standards are also put -- compiled by AFTE,
9 which is an organization in our field. So, basically,
10 standard practice for firearm tool mark identification is
11 put in this manual.

12 Q Are you a member of AFTE?

13 A Yes, sir.

14 Q Who is your -- you mentioned your lieutenant, who is
15 your lieutenant?

16 A Lieutenant Tracy Thrower.

17 Q And these protocols that SLED has, are they in align
18 with the national standards of AFTE, what they recommend?

19 A With AFTE and with our accreditation organization,
20 ASCLD, recommended as well.

21 Q And ASCLD, what is that?

22 A That's American Society of Crime Laboratory
23 Directors.

24 Q And what do you mean by ASCLD, are y'all accredited?

25 A Yes, sir.

1 Q Through ASCLD?

2 A Through ASCLD lab, which is the laboratory
3 accreditation board part of ASCLD, and we are ISO
4 accredited and that's an international --

5 THE COURT: Didn't we hear some of this the other
6 day?

7 MR. ARANT: Yes, sir, Your Honor, I just wanted to
8 make sure it's clear. I'm getting to where we're going.

9 THE COURT: Make sure it's clear by repeating it?

10 Mr. Bailiff, would you tell the jurors they can leave
11 for half an hour and be back in the jury room in half an
12 hour?

13 BAILIFF: Yes, sir.

14 MR. ARANT: I'll move on from these questions, Your
15 Honor.

16 THE COURT: All right.

17 BY MR. ARANT:

18 Q Agent Smith, have you ever taken any consecutive
19 manufactured firearm tests?

20 A Yes, I have.

21 Q And what is the significance of that type of test?

22 A That, basically, represents a worst case scenario
23 where you have manufactured -- consecutively manufactured
24 firearms. So that would mean like the breech face would
25 be consecutive manufacturer or firing pin could be

1 manufactured consecutively or the barrel could be
2 manufactured consecutively. All the basic parts of the
3 firearm are manufactured. So those sorts of tests show
4 what sort of agreement or disagreement there would be
5 between cartridge cases and bullets fired from
6 consecutively manufactured firearm parts.

7 Q And you took that test?

8 A I took -- I've taken several. The one that sticks
9 out is when I was in training, there was a test which
10 consisted of 10 consecutively made pistol barrels
11 comparing bullets from those barrels.

12 Q Did you pass those tests?

13 A As far as I know, yes, sir.

14 Q Have you ever had another examiner disagree with any
15 findings you've had?

16 A No, sir.

17 Q With your conclusions specifically?

18 A No, sir.

19 Q What is a known nonmatch?

20 A A known nonmatch would be something that in a
21 comparison, such as a bullet or cartridge case, that we
22 would know that is not fired by the same gun. So you've
23 got two different guns and you compare those just to see
24 what sort of agreement there would be between the two.

25 Q How many known nonmatches have you seen?

1 A Probably in the thousands.

2 Q And why do you examine those nonmatches?

3 A Just to get an idea of, like I said, the sort of
4 agreement, quantity and quality of agreement there is
5 between known nonmatches compared to known matches just to
6 see the agreement where we can base opinions.

7 Q So it's safe to say you've compared several matches
8 and made nonmatches and looked at nonmatches in your
9 career at SLED?

10 A Yes, sir.

11 Q Now, what is a proficiency test?

12 A A proficiency test is given -- we give it every year
13 in the category of -- there's several different categories
14 that the firearms department is accredited in. One of
15 them being firearms identification. Those are given
16 yearly, basically, to make sure that all the technical
17 procedures, your results are in mind with other people
18 taking the test.

19 Now, the accreditation company -- organization,
20 ASCLD, recommends we do proficiency testing, at least,
21 once every accreditation cycle, so that's every four
22 years. SLED goes a step further and does it yearly.

23 Q Have you ever failed a proficiency test?

24 A No, sir, not to my knowledge.

25 Q What would happen if you did?

1 A You would be taken off of case work. You would have
2 to go through remedial training and prove that you're
3 proficient in the area that you failed before you're
4 reassigned cases.

5 Q Are you familiar with any different tests for
6 reliability?

7 A Yes, sir. There's a whole wealth of knowledge and
8 tests and studies that have been done for well over a
9 hundred years in the category of firearm and tool mark
10 identification that, basically, validate the science.

11 Q And you're familiar with those?

12 A Some of them. Like I said, there's a lot of them.
13 I've got a list of them here.

14 Q Now, I want to get back to what we're here about
15 today, these particular results. What are SLED's
16 protocols in terms of finding a match, nonmatch? What's
17 y'all's terminology in regards to that? What options do
18 you have?

19 A Well, we can render four different conclusions in our
20 reports. One would be identification, which would,
21 basically, mean a match. You know, the bullets were fired
22 by the same gun, cartridge cases were all fired by the
23 same gun. In an instance if you had a firearm, compare
24 test fires from that gun to your evidence to make the same
25 conclusions.

1 Then you would have an elimination or negative
2 conclusion, which means that they were not fired by a
3 particular firearm or not fired by the same firearm.

4 Then you could go into inclusive, which basically
5 means you can't tell based on either the lack of markings
6 on the particular test and/or the evidence themselves. A
7 lot of times, it could be due to damage. So inconclusive
8 means we can't tell if it was fired by a particular
9 firearm or not.

10 And then our fourth conclusion would be unsuitable,
11 which means that there are no marks of value on the
12 evidence suitable for identification.

13 Q And so you don't just have a yes or a no, you have
14 some other degrees of uncertainty that you can put on your
15 findings?

16 A Right. We have four different conclusions that we
17 can enter baseline interpretations.

18 Q In this particular case, you just received casings
19 and/or bullets?

20 A Yes, sir.

21 Q Did you receive a firearm?

22 A No, sir.

23 Q While you were testing these, were you ever aware
24 that the casings you compared were found from two
25 different scenes?

1 A I did not know that.

2 Q You did not know that?

3 A Right.

4 Q Okay. And these results were -- were they peer
5 reviewed by somebody in your department?

6 A Yes, sir, they were micro-verified by another
7 qualified examiner.

8 Q Did he agree with your findings?

9 A Yes, sir.

10 Q Never disagreed with your findings -- I mean, in this
11 particular instance, he didn't disagree in this particular
12 instance?

13 A No, sir..

14 Q Please tell the Court -- or in your opinion, how many
15 -- in your expert opinion, how many weapons were used in
16 respect to cartridge cases?

17 A In my opinion, there were two firearms used. One
18 fired the 9mm Luger caliber cartridge cases and one used
19 to fire the 45 auto caliber cartridge cases..

20 Q And so do you have an expert opinion on the 45
21 cartridge casings specifically?

22 A Yes, sir.

23 Q What is that?

24 A They were all fired by the same firearm.

25 Q And is that the same opinion you have with respect to

1 the 9mm Lugers?

2 A Yes, sir.

3 MR. ARANT: Your Honor, I just beg the Court's
4 indulgence for one moment. I'm about done.

5 (Pause.)

6 BY MR. ARANT:

7 Q Just to briefly summarize these, I want to draw the
8 Court's attention to this matter. What are the
9 individual characteristics?

10 A The individual characteristics is basically what
11 we're looking for to try to determine if it's a match or
12 not. And that would be caused by the manufacturing
13 process of the firearm or it could be caused by damage or
14 any kind of corrosion or wear. But, basically, those are
15 unique characteristics for a particular firearm.

16 Q And how do you tell the difference between subclass
17 and individual characteristics?

18 A Subclass characteristics is what's carried over from
19 one firearm to the next, basically, during the
20 manufacturing process. It's not something that
21 manufactures the size, it's just happens usually. It's
22 due to a tool wearing over time. You would get mostly
23 gross or larger marks is what we're looking at for
24 subclass. And during our training and experience in
25 general, you know, we look at nonmatches, matches and try

1 to determine or exclude subclass characteristics through
2 our analysis.

3 Q Have you employed these techniques when you
4 administer tests on these items?

5 A Exactly, yes, sir.

6 Q Before you -- last few questions. Before you make an
7 opinion and make a finding, are you also determining
8 whether these items are suitable for testing?

9 A Yes, sir.

10 Q Is it possible a shell casing cannot be tested due to
11 a whole host of reasons?

12 A It could be for cartridge cases, they were so damaged
13 or possibly weathered, been outside for a long time and
14 those individual markings, basically, were covered up and
15 we can't see them. Typically, we see in bullets where
16 like if they've been damaged beyond or put in -- or
17 removed from a body or something like that, with
18 corrosion. We see more of that in bullets than cartridge
19 cases.

20 Q With respect to your notes, you're also looking at
21 the condition and looks like y'all found most of them --
22 or most, if not all, in good condition except for one 9mm
23 Luger was in poor condition, would that be correct?

24 A Which items specifically?

25 Q I'm looking at Page 7. It's one fired cartridge

1 case?

2 A Right. It appears that the case mouth or the open
3 portion of the cartridge case was misshaped and the body
4 was tarnished to some degree as well.

5 Q And one last question, you didn't deviate in any
6 manner from the typical standards that are utilized by
7 your department and utilized around the nation and peer
8 review journals in this case, did you?

9 A No, sir.

10 MR. ARANT: No further questions.

11 MR. KRZYSTON: May it please the Court, Your Honor?

12 THE COURT: No, sir.

13 (Pause.)

14 THE COURT: You may proceed.

15 MR. KRZYSTON: Thank you, Judge.

16 CROSS-EXAMINATION

17 BY MR. KRZYSTON:

18 Q Is it investigator? What is your rank?

19 A I'm an agent.

20 Q Okay, cool. Agent Smith, when we left off, I asked
21 you about the AFTE theory of identification --

22 THE COURT: Everyone who works with SLED are agents,
23 SLED agents, except the director.

24 MR. KRZYSTON: Okay, cool. I didn't know if they
25 were like lieutenants. I didn't want to be addressing him

1 incorrectly.

2 THE COURT: Yeah, he said the other day who he was.

3 BY MR. KRZYSTON:

4 Q One of the fundamental assumptions of your science,
5 as you call it, is that the marks imparted on the
6 cartridge casings in this instance are, in fact, unique,
7 correct?

8 A Correct.

9 Q And there has been a vast amount of scientific
10 literature that has addressed that subject, has there not?

11 A Correct.

12 Q Okay. Some of those things that have addressed these
13 contentions are the 2008 National Academy of Sciences
14 report on ballistic identity, correct?

15 A Correct. Now, that's a report, not a study.

16 Q Correct. But the people that put that report
17 together are comprised of a number of different
18 individuals, correct?

19 A Correct.

20 Q Okay. Some of those individuals work for Harvard?

21 A Yes.

22 Q For MIT, that's Massachusetts Institute of
23 Technology?

24 A Right.

25 Q U-Cal Berkley. Some of the other people that are

1 involved in authoring that work, senior judges on the
2 United States District Court?

3 A Correct.

4 Q So relatively well-respected professionals, correct?

5 A Correct.

6 Q And in response to those reports, AFTE has
7 promulgated information, correct?

8 A Yes.

9 Q What they contend to be a rebuttable to the
10 contentions of in the 2008 NAS report instance a
11 questioning of the fundamental assumption of your science?

12 A Now, the 2008 or 2009 specifically?

13 Q Well, I believe the 2008 was designed to look at the
14 feasibility of a national research database for
15 projectiles, correct?

16 A Ballistic imaging.

17 Q Okay, I'm sorry. So database for ballistic images
18 for all the various local law enforcement agencies to kind
19 of upload pictures to, correct?

20 A Right.

21 Q As part of that study, though, the authors did feel
22 it important to address some of the baseline fundamental
23 assumptions of the science, correct?

24 A Right, but the main chairman of that committee of the
25 NAS who wrote that report went back later and did an

1 affidavit saying that, basically, they went beyond their
2 scope for that particular study and said, basically,
3 they're not attacking firearm and tool mark in general,
4 that they went beyond what their purpose for that was.

5 Q Correct. They did render some opinion as to the
6 validity of your assumption, though, correct?

7 A Yes.

8 Q Okay. And that assumption, again, is an assumption
9 of uniqueness, correct?

10 A Correct.

11 Q Okay. Subsequent reports, specifically, the 2009
12 National Research Council report on strengthening forensic
13 science also addressed, again, the fundamental assumption
14 of uniqueness?

15 A They addressed, actually, all forensic science in
16 general with just recommendations for different areas.

17 Q Correct. And they made 13 assumptions -- excuse me,
18 13 recommendations on how people can strengthen forensic
19 science and the presentation of that science in courts?

20 A Yes.

21 Q And as one of the subjects they addressed -- excuse
22 me, one of the subjects that they addressed is, in fact,
23 ballistics, a/k/a firearm and/or tool mark identification
24 evidence, correct?

25 A Correct.

1 Q Another report that was authored and released in
2 October of 2016 comes from the President's Council of
3 Advisors on Science and Technology, correct?

4 A Right.

5 Q That report was authored in 2016, correct?

6 A Yes.

7 Q That report also drew into question the fundamental
8 assumption of your science, correct?

9 A Well, I don't know if it actually addresses -- puts
10 into question the fundamentals of the science. They also
11 put recommendations for basically making it better. But
12 my take is that none of these were actually forensic
13 scientist on these committees. Basically, they're
14 ignoring the wealth of studies, validity studies for
15 firearms and tool mark identification. And that's a lot
16 of responses from those organizations for rebuttal.

17 Q And what you're talking to when you refer to a wealth
18 of information is the antidotal studies over about a
19 hundred years of what AFTE and you say support, again,
20 that fundamental assumption?

21 A Right, just done by individuals and laboratories in
22 general, firearms identification as we know it has been
23 around for about a hundred years. And there's, again, a
24 wealth of studies that, basically, support it.

25 Q And as part of the charge, the PCAST, if you will,

1 the President's Council Advisors of Science and Technology
2 review, the studies that SWGGUN, Scientific Working Group
3 on firearm and tool mark analysis cite in claiming
4 foundational validity, do they not?

5 A Repeat the question, please.

6 Q Okay. As part of their charge, what they were
7 supposed to do, the President's Council Advisors looked
8 and took in information that SWGGUN claims and cites as
9 supporting the foundational validity of your assumption,
10 uniqueness?

11 A Specifically --

12 Q In general, do they look at those studies?

13 A They looked at some of the studies.

14 Q Correct. Okay. Let's go to what AFTE says is your
15 theory of identification. Do you have a copy? I've got a
16 printed one here if you'd like?

17 A I've got a copy.

18 Q Okay. Would you read the area of identification,
19 please?

20 A The theory of identification as it pertains to the
21 comparison of tool marks enables opinions of prominent
22 origin to be made when a unique surface contours of two
23 tool marks are in sufficient agreement. This sufficient
24 agreement is related to the significant duplication of
25 random tool marks as evidenced by a pattern or combination

1 of patterns of surface contours.

2 Significance is determined by the comparative
3 examination of two or more sets of surface contour
4 patterns comprised of individual peaks, ridges and
5 furrows. Specifically, the relative height or depth,
6 width, curvature and spacial relationship of the
7 individual peaks, ridges, and furrows within one set of
8 surface contours are defined and compared to the
9 corresponding features in the second set of surface
10 contours.

11 Agreement is significant when it exceeds the best
12 agreement demonstrated between tool marks known to have
13 been produced by different tools and is consistent with
14 agreement demonstrating by tool marks known to have been
15 produced by the same tool. The statement that sufficient
16 agreement exist between two tool marks means that the
17 agreement is of quantity and quality that the likelihood
18 another tool could have made the mark is so remote as to
19 be considered a practical impossibility. Currently, the
20 interpretation of individualization identification is
21 subjective in nature founded on scientific principles and
22 based on examiner's training and experience.

23 Q So then by virtue of definition, the science, if you
24 will, is a subjective one?

25 A It's an applied science that is -- the observations

1 are objective, the interpretations are subjective.

2 Q The actual interpretations, the decision of whether
3 it is or is not a match are inherently subjective by
4 virtue of the definition?

5 A Correct.

6 Q Okay. I want to talk about the syntax of the actual
7 definition. The definition essentially states that the
8 examiner may conclude that two items have a common origin
9 when the marks are extremely unlikely to have a different
10 origin, correct?

11 A Correct.

12 Q With regard to your testing in the incident case,
13 you're aware of ASCLD, ISO 17025 specific standards, are
14 you not?

15 A In general, yes.

16 Q Okay. And as part of those standards and as part of
17 SLED's technical specifications, you're required to take
18 notes during the course of your examination that document
19 your specific observations?

20 A Yes.

21 Q Going back to AFTE's theory of identification, you
22 are to, again, quote, look at specifically the relative
23 height or depth, width, curvature and spacial relationship
24 of the individual peaks, ridges and furrows within one set
25 of surface contours are defined and compare it to the

1 corresponding features in the second set of surface
2 contours, correct?

3 A Yes.

4 Q Okay. So then, in the course of your observation and
5 analysis of the evidence in question, you are required to
6 note differences and similarities in, let's say, item A
7 and item B, if those were the two items you are comparing,
8 correct?

9 A Correct.

10 Q In addition to that, ASCLD and SLED's technical
11 protocols require you to maintain the equipment upon
12 which you observe the evidence in question?

13 A Correct.

14 Q You're required as part of those technical
15 specifications to keep maintenance logs, correct?

16 A Right, we do that monthly.

17 Q Okay. You testified earlier that you are currently
18 and your lab as a whole is currently enrolled in the
19 proficiency testing program, correct?

20 A Yes.

21 Q Is it your testimony here that you have never failed
22 a proficiency test, correct?

23 A Not to my knowledge.

24 Q Okay. You wouldn't know?

25 A My supervisor would inform me and he has not done

1 that, so.

2 Q Would your supervisor inform you if you were to
3 answer a question incorrectly on a proficiency test?

4 A Yes.

5 Q With respect to micro-verification, that is the
6 process by which you claim peer review is conducted,
7 correct?

8 A Correct.

9 Q That is one observer looking after the other
10 observer's conclusions and observations?

11 A Correct, looking at the evidence themselves, render
12 an independent conclusion. And if they agree with my
13 conclusion that I've written on my worksheet, then they go
14 ahead and sign off that they agree.

15 Q So then they look at the information we were
16 discussing at the earlier hearing date on the actual
17 projectile and/or cartridge casing worksheets, correct?

18 A Yes.

19 Q The documents that you testified were actual
20 micro-verification documents, correct?

21 A Yes.

22 Q Have you done any calculation of error rates as it
23 regards your specific error rate?

24 A I have not done any sort of error rate calculations.
25 There are studies where they try to do an error rate

1 calculation. One of the things that they use to error
2 rate calculation would be proficiency testing, CTS,
3 Collaborative Testing Services, a company with which we do
4 our proficiency testing. They have compiled error rates;
5 however, take into consideration that CTS basically
6 provides proficiency testing for anyone willing to buy the
7 test.

8 Q I could buy one?

9 A You could buy one. So that's --

10 Q So the argument is null?

11 A The results could be skewed based on who's taking the
12 test; however -- or in addition to that, validity studies
13 -- there's a list of validity studies which include an
14 error rate. But also, with proficiency testing, those
15 aren't peer reviewed by another examiner. So the actual
16 case work, you would have peer review so the error rate
17 would be much lower than what has been published.

18 Q Getting back to that peer review, again, your peer
19 reviewer is privy to information that you notated in your
20 worksheets, correct?

21 A Right. After looking at -- after agreeing with -- or
22 after looking through the microscope to render their own
23 conclusions.

24 Q So that review is then not a quote, unquote blind
25 review?

1 A Well, they have to read the conclusion to be able to
2 agree with it.

3 Q Correct. But it, again, is not -- they don't come up
4 with their own individual conclusion? They look at the
5 results of your conclusion, the observations that you
6 notated and then administer an opinion on whether they
7 think you're correct?

8 A Well, they would look through the microscope to
9 render their own conclusion.

10 Q I want to talk about the proficiency testing. The
11 criticism -- or one of the criticisms with the proficiency
12 testing is that it is not representative of the actual
13 case work, is that not correct?

14 A That is true. Again, we know it's a proficiency test
15 as well as there's no peer review process as in the actual
16 case work.

17 Q One of the main criticisms is that, again, the
18 samples are too pristine, that they afford you too much
19 latitude in assessing the evidence?

20 A Not necessarily. Depending on what test you have and
21 samples they provide, they can still have inconclusive
22 results. So that really depends on what they send you.

23 Q You mentioned that CTS is currently the premier or
24 largest provided for proficiency tests in the United
25 States?

1 A I believe they are. It's one of the ones that we do
2 in our department.

3 Q And you're aware of the study that has examined the
4 results of CTS efficiency testing over a period of about
5 20 years, aren't you?

6 A I'm not aware of any sort of independent study.

7 Q So you're not aware that error rates have determined
8 to be between one and 26 percent?

9 A Not the information that I have.

10 Q Okay.

11 A The information that I have from CTS goes from 1992
12 to 2005.

13 Q The fundamental -- what you fundamentally do when you
14 examine a cartridge case or a tool mark has not changed
15 since this science came about; is that correct? The tools
16 may have changed, but not the actual methodology of what
17 you do?

18 A Well, the tools that we use to do the measuring, the
19 comparisons -- the technology has gotten better for us to
20 see, basically, the comparison microscope, perhaps, the
21 optics have been better so we can actually see marks. We
22 also have high definition cameras to take nice pictures.

23 Q But what you're doing hasn't changed? It's just that
24 some of the scientific tools have allowed you to better do
25 it?

1 A Right, the overall procedures have not changed.

2 Q I want to talk about the actual marks themselves.

3 You would agree that different metals have different
4 strengths because they're made of different components,
5 correct?

6 A Correct.

7 Q You would agree that the charge or the amount of
8 gunpowder in a cartridge, unfired cartridge would directly
9 correlate with the ability of the breech face to make
10 marks on the actual cartridge, would you not?

11 A That could. Depending on what sort of pressure that
12 cartridge was loaded to could influence the markings.

13 Q You would agree that the caliber of the weapon would
14 also be a potential variable?

15 A Absolutely.

16 Q Okay. You would agree that the type of rifle would
17 also be a potential variable?

18 A Not so much with cartridge cases. It would make a
19 difference on the bullets themselves.

20 Q Correct. Are you familiar with the methodology of
21 consecutively matching striations?

22 A Yes.

23 Q And is that methodology primarily used for the
24 analysis of actual projectiles?

25 A That methodology is basically a continuation of the

1 methodology that we employ called pattern matching.
2 Basically, within the comparison microscope, we're looking
3 for the patterns caused by the striations or impressions
4 to determine, you know, a conclusion. To see a
5 consecutive matching striation basically employs a method
6 of giving -- assign a number of matching striations, if
7 you will, to a particular set of tool marks. It's
8 basically pattern matching, but it's more -- it's a little
9 different method which we do not employ at this time.

10 Q And the reason you don't employ it is because the
11 common consensus of AFTE and tool mark examiners as a
12 whole is that it is too conservative?

13 A Well, I don't know about that. Some laboratories do
14 use consecutive matching striations in their analysis;
15 however, we just do not at this time. It's an ongoing
16 study.

17 MR. KRZYSTON: One moment, Your Honor.

18 (Pause.)

19 BY MR. KRZYSTON:

20 Q Do you have the technical protocols in front of you?

21 A Somewhere.

22 Q Your agency?

23 THE COURT: We'll be in recess for a few minutes.

24 (WHEREUPON, a short recess was held.)

25 THE COURT: Yes, sir.

1 MR. KRZYSTON: Thank you, Your Honor, may it please
2 the Court.

3 MR. RUFFIN: Horace isn't back yet.

4 MR. KRZYSTON: Oh, I'm sorry. I'll wait on the
5 Defendant.

6 THE COURT: It's up to you. You think he understands
7 what you're reading and asking this man? It's up to you.

8 MR. RUFFIN: That's fine. I just wanted to make sure
9 everyone knew that he's not here yet.

10 MR. KRZYSTON: I'm about to conclude. I ask that a
11 couple of these things be made a Court exhibit. Here he
12 comes.

13 THE COURT: Make everything a Court exhibit you want
14 to make a Court exhibit.

15 MR. KRZYSTON: I'm going to pass up the 2009 NAS
16 report as well as the 2008 NRC report titled Strengthening
17 Forensic Science as well as Ballistics Imaging.

18 (WHEREUPON, Court's Exhibit Nos. 2 and 3 were
19 marked for identification only.)

20 THE COURT: He's back. You may proceed.

21 MR. KRZYSTON: Thank you, Judge.

22 BY MR. KRZYSTON:

23 Q Agent Smith, part of the criticisms, again, of those
24 reports are that, along with a number of other things,
25 there are no really well-established error rates,

1 correct?

2 A Well-established as far as, are you referring to case
3 work?

4 Q Of the studies and information reviewed by the
5 various groups, they did not find evidence of sufficient
6 error reporting, correct?

7 A Well, the error rates calculated from validity
8 studies as well as through proficiency testing that I
9 already talked about.

10 Q None of actual case work, though?

11 A No, that's difficult to do. Again, you have peer
12 review with that, with the actual case work, so you would
13 factor that in, the error rate review would be much lower
14 than any kind of study that's already been published.

15 Q One study did attempt to calculate an error rate that
16 could be prescribed to case work, though, did it not?

17 A What study, please?

18 Q The 2011 study from the Aimes Laboratory. In that,
19 they sent off information to approximately 218 examiners.
20 I believe there are approximately 2,000, you aware of that
21 one? I handed a copy to you earlier this morning.

22 A Yes, which apparently is -- it's an unpublished
23 study, but, yes.

24 Q Correct. That means that AFTE, the owner and
25 publisher of the -- journal hasn't published it, correct?

1 A I assume so.

2 Q And again, AFTE is comprised of the firearm and tool
3 mark examiners, all tradesmen of that subset?

4 A Yes. And looking at that study, however, I did
5 notice that the rates that they reported were actually
6 quite low, and then the rates -- or the errors were
7 actually reported by a small number of examiners. So
8 that's not actually a wide --

9 Q Your contention or problem then with that study is
10 that the sample size of the examiners is too small?

11 A Well, the examiners making the errors reported in
12 this study was a small number.

13 Q Two hundred and eighteen?

14 A Well, no, it doesn't give -- not 218 people making
15 errors, but the false negatives and false positives are
16 actually made by a small number of examiners in that
17 study. And again, without having quality assurance in
18 place, such as peer review, that would be an extra level
19 of quality control.

20 Q But you agree -- I'm sorry, I didn't mean to
21 interrupt. I just want to make sure you get your answer
22 out.

23 A But again, those numbers are relatively low.

24 Q And again, when you talk low, the error rates that
25 they reported in that study are approximately one in 66 to

1 one in 46?

2 A Depending on what -- false positive reported it,
3 approximately 1.01 percent and false negative is 0.367
4 percent. But there are probably a dozen or so validity
5 studies that determine error rate done throughout various
6 years, some as low as zero percent and as high as 1.2
7 percent.

8 Q Okay. And you're aware that in regards to that
9 report, the PCAST report said specifically, The closed set
10 studies show a dramatically lower rate of inconclusive
11 examinations and false positives. With this unusual
12 design, examiners succeed in answering all questions and
13 achieve, essentially, perfect scores. In the more
14 realistic open designs, these rates are much higher. Are
15 you aware of that?

16 A Well, I don't see any studies of open designs, so.

17 Q And again, you are aware, you are well versed and you
18 are -- you currently practice with the breath of technical
19 protocols that SLED puts out with regard to firearm --

20 A Correct.

21 MR. KRZYSTON: With that, Your Honor, I would have no
22 further questions at this time. I do have argument as it
23 relates to the testimony.

24 THE COURT: Any redirect?

25 MR. ARANT: None, Your Honor.

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

2 Any additional witnesses by the State?

3 MR. ARANT: Not in regards to this particular matter,
4 Your Honor.

5 THE COURT: All right. Argument by the State or by
6 the Defense?

7 MR. KRZYSTON: Your Honor, I'm going to move this as
8 a Court exhibit. This is the 2016 PCAST report.

9 (WHEREUPON, Court's Exhibit No. 4 was marked for
10 identification only.)

11 MR. ARANT: Your Honor, you wish to hear from the
12 State first?

13 THE COURT: Yes, sir.

14 MR. ARANT: Your Honor, we stand on our earlier
15 argument that we have satisfied the requirement as set
16 forth in the State of South Carolina -- expert under 702
17 under the Jones factor that he is an expert. He's allowed
18 to -- he's entitled to his opinion to the reliability --
19 encompassing the reliability of his findings, Your Honor.

20 That would be our argument, Your Honor. I have no
21 case law. But in lieu of that, Your Honor, if you're not
22 inclined to allow him to testify to the match or whatever
23 the Defense would like to call it, if we, perhaps, word it
24 in a different alternative, I'm open to that, something
25 that says it's consistent with or consistent.

1 THE COURT: Yes, sir.

2 MR. KRZYSTON: Your Honor, I'm obviously willing to
3 accept the consistent with if Your Honor finds it is
4 sufficiently reliable under the Jones factors. My concern
5 rest with the execution of methodology.

6 On Monday, Mr. Smith or Agent Smith indicated that he
7 passed the micro-verification documents to the peer
8 reviewer. He reviewed them. He verified them.
9 Specifically, Your Honor, in regards to the method, the
10 appendix page of the SLED protocols indicates specifically
11 -- I'm sorry, I don't believe it's the appendix page.
12 It's the micro-verification section. That the
13 verification documentation is in addition to and cannot be
14 used in lieu of the examination notes required for the
15 documentation of the identification. The government to
16 date has disclosed no additional notation, which SLED
17 protocol says by mandate exist.

18 In addition to that, Your Honor, the scientific
19 method supports claims that are repeatable, reproducible
20 and robust. What we have here is a serious conflict in
21 commentators as to the appropriateness of the statement
22 and whether or not some actual validity exist to claim
23 that there is even a match.

24 I think from the commentators, I'm sure Your Honor
25 has been reading up on this, the basis of our objection --

1 our opposition to this evidence being admissible, again,
2 lies in the lack of demonstrated validity through and
3 through. Every time that the independent commentators
4 assess the state of foundational validity with regard to
5 this science, AFTE comes back and says no, we've done
6 sufficient studies. They have not addressed the issue.
7 They have not addressed the issue since 2008. They did
8 not address the issue in 2009. And again, the President's
9 Council of Advisors in October of 2016 indicated they have
10 still not addressed the foundational validity question.
11 Based on that, Your Honor, we'd ask that the evidence be
12 excluded and suppressed.

13 THE COURT: Anything further?

14 MR. ARANT: Nothing, Your Honor.

15 THE COURT: The whole notion of firearm and tool mark
16 analysis testimony has been subject to quite a bit of
17 debate. There's many convictions that have been
18 overturned based on the courts allowing testimony,
19 conclusionary testimony regarding the identification of a
20 bullet, bullet identification, particularly, where no gun
21 has been recovered. There are some who question whether
22 this is science at all because of the lack of ability to
23 determine error rate and the lack of foundational
24 information.

25 And I think it's -- in this particular case, as I

1 understand what was recovered from the various locations,
2 the witness, who is an expert can give his opinion to a
3 reasonable degree of scientific certainty. He can say
4 that the bullets -- saying bullets could have come from
5 the same weapon, but he cannot say that he -- that they
6 came from the same weapon with absolute certainty.

7 Studies have shown that jurors have placed heightened
8 reliability on scientific testimony, so the Court has to
9 safeguard and place some limitations on that testimony. I
10 do not believe this witness can testify as to an absolute
11 certainty that based on having bullets from various scenes
12 that they came from the same -- they were fired by the
13 same gun.

14 As I understand it, there are a certain percentage of
15 guns of the same make and model that have the same
16 markings. I'm not as up on the science as counsel might
17 be and certainly not up on it as the witness is. But I
18 think the limits of the reliability is that the witness
19 can say that it could have come from the same gun, it's
20 his opinion that he could have come from the same gun
21 based on a reasonable degree of certainty, based on his
22 education, training and experience.

23 I think that's the limit to which he can go in this
24 case, including testimony that is consistent with --
25 consistent with based on his study that is all consistent

1 with the possibility of having come from the same weapon.
2 That's about the limits.

3 MR. ARANT: All right. Just to be clear, what we'd
4 would be asking in two separate cases, they're consistent
5 with being fired from the same weapon. Is that --

6 THE COURT: Yes, sir. Yes, sir, he can say that.

7 MR. ARANT: Okay. That's fine. That's fair.

8 THE COURT: Okay. His testimony the other day was
9 that he's certain and he can't say that.

10 MR. POTTS: Thank you, Your Honor.

11 THE COURT: Even though he may be personally certain,
12 he can't say it as for as the courtroom test..

13 MR. ARANT: Yes, sir.

14 THE COURT: All right. Bring them on.

15 (WHEREUPON, the jury returned to the courtroom at
16 3:28 p.m.)

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

18 THE COURT: Thank you. You all have had a good long
19 break, we've had about a two-minute break because we have
20 to take up matters of law outside of your presence.

21 We're ready to proceed now with your next witness.

22 MR. ARANT: Yes, Your Honor. Thank you. State would
23 call Chad Smith to the stand.

24 Thereupon;

25 CHAD SMITH,

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: My name is Chad Smith, S-M-I-T-H.

5 DIRECT EXAMINATION

6 BY MR. ARANT:

7 Q Agent Smith, where are you currently employed at?

8 A Employed with the South Carolina Law Enforcement
9 Division. Specifically, I work at SLED's forensic
10 services laboratory in Columbia.

11 Q And how long have you been employed with SLED?

12 A Little over eight years and three months.

13 Q And what type of -- what kind of and what different
14 capacities have you been employed with at SLED?

15 A Firearm and tool mark examiner in the firearms
16 department at the forensics laboratory.

17 Q Just so the jury is aware, what does SLED stand for?

18 A South Carolina Law Enforcement Division.

19 Q And what is that?

20 A That's an agency, a state agency that assist smaller
21 agencies, police agencies if they need help with
22 investigations, crime scene, anything like that.

23 Basically, we're out there to offer any sort of assistance
24 that he or she deems necessary.

25 Q And so before you were employed there, were you

1 employed anywhere else?

2 A I was employed at Clemson University.

3 Q And what were you -- in what capacity were you
4 employed with Clemson University?

5 A Several different capacities. I was first research
6 assistant at Clemson's Coastal Research and Education
7 Center in Charleston, South Carolina. And then I also
8 worked at Clemson University's chemistry department for a
9 year before I started at SLED.

10 Q So after that all that research, you then went and
11 joined SLED?

12 A Yes, sir.

13 Q Now, did you graduate from anywhere?

14 A Graduated from Clemson University with a Bachelor of
15 Science degree in biology sciences.

16 Q What year was that?

17 A That was in 2000.

18 Q Once you became involved with SLED, what kind of --
19 did you have any training or anything of that nature?

20 A Yes. There's an extensive training period to become
21 a firearm and tool mark examiner at SLED. When I was a
22 trainee, it lasted from three to five years, supervised by
23 court-qualified examiners of the firearms department. It
24 was extensive reading and studying, multiple examinations,
25 practical testing. Also, did various seminars and classes

1 taught by various organizations, such as the ATF.

2 Later in my training, I was able to help assist other
3 examiners with case work, help prepare the case work. At
4 the end of the training period, I was given a
5 comprehensive multi-part examination, which I successfully
6 passed, and then I began to receive my own case work.

7 Q And what capacity are you currently in at SLED?

8 A Firearm and tool mark examiner.

9 Q When did you become a firearm and tool mark examiner?

10 A I was signed off to receive my case work in July of
11 2012.

12 Q So, roughly, four and a half years?

13 A Yes, sir.

14 Q And explain to the jury a little bit about -- are you
15 a member of any organizations?

16 A Yes. Professional organization, Association of
17 Firearm and Tool Mark Examiners, commonly known as AFTE.
18 It's the premier organizations for firearm and tool mark
19 examiners. It's international. It was founded in 1969.
20 They do peer reviews of different articles. They issue a
21 quarterly publication, the AFTE Journal, which has
22 different articles regarding tool mark and firearm
23 identification. They host an annual training seminar,
24 which I've attended twice since I've gone on with SLED.

25 Q And as a result of being a member of AFTE, do you

1 apply the same techniques and professional duties when
2 you're testing certain items?

3 A Yes, sir.

4 Q Have you testified in court before?

5 A Yes, sir.

6 Q As an expert?

7 A Yes.

8 Q How many times -- approximately how many times have
9 you testified in court as an expert?

10 A Thirty-one times, one time being a coroner's request.

11 Q And is all that since 2010, 2011 when you became an
12 analyst?

13 A Yes.

14 MR. ARANT: Your Honor, at this time, we would seek
15 to have Agent Smith in regard -- hold him in regard as a
16 firearm expert and expert in firearms identification.

17 THE COURT: Any objection?

18 MR. KRZYSTON: Over prior objection, Your Honor.

19 THE COURT: He's admitted over objection.

20 MR. ARANT: Thank you, Your Honor.

21 BY MR. ARANT:

22 Q So can you tell the jury a little more about not
23 just what you did in this case, but what you do on a
24 daily basis at SLED in your capacity? What are you
25 looking at, things that you're doing.

1 A The majority of what we do on a day-to-day basis is
2 try to determine if a particular ammunition component,
3 such as bullet or cartridge case, was fired by a specific
4 firearm.

5 How we're able to do that is during the manufacturing
6 process of the firearm, there are microscopic marks that
7 are placed on various parts of the firearm. The
8 manufacturer doesn't purposely put these marks in there,
9 but sometimes through just the process of the tools making
10 the firearm parts. Also, too, there could be marks placed
11 on the firearm through just wear, abuse or corrosion, any
12 sort of damage. So those markings are actually imparted
13 onto bullets or cartridge cases that are fired by the
14 particular firearm. We can use those markings to help
15 possibly identify other cartridge cases that the bullets
16 have been fired by a specific gun.

17 Q So are you saying when a gun fires a bullet, you can
18 maybe trace that back?

19 A Correct.

20 Q Okay. Did you become involved with some items in
21 this particular case that we're here about today?

22 A Yes, sir.

23 Q Can you tell the jury a little bit about what you
24 received and where you received it from?

25 A In this particular case, I received six fired 9mm

1 Luger caliber cartridge cases, 12 fired 45 auto caliber
2 cartridge cases, one unfired 9mm Luger caliber cartridge,
3 three fired bullets, one fired bullet jacket fragment and
4 one miscellaneous metal fragment.

5 Q Now, you mentioned bullets, casings, can you just
6 tell the jury what the difference is between a cartridge
7 case and a bullet, fragments and that sort of thing?

8 A Right. You have a unit of ammunition which is known
9 as a cartridge. Sometimes people refer to them as
10 bullets, but, technically, it's a cartridge with various
11 components. So you have a container of the cartridge,
12 which is the cartridge case. The actual projectile that's
13 inserted into the top portion of the cartridge case is the
14 bullet itself. Underneath that, inside the cartridge
15 case, you have gunpowder. Then at the end or bottom of
16 the cartridge case, you have primer, which is used to
17 ignite the cartridge that's in the barrel from the actual
18 barrel of the firearm.

19 So when we're talking about bullets, we're actually
20 talking about the actual projectile from the barrel of a
21 firearm. Then the cartridge case would be the spent unit
22 or some people call it casing from the firearm.

23 Q I'm going to hand you what's marked State's Exhibits
24 132 to, I believe, 146. Do these items look familiar?
25 You can take them out of the bag if you'd like.

1 A Yes, these are the cartridge cases, both 9mm and 45
2 auto that I received for testing. And they are in my
3 sealed packaging with my initials and date seal, so they
4 haven't been tampered with since I sealed them up.

5 Q Okay. And I hand you State's Exhibit 131, do you
6 recognize that?

7 A Yes. This is one of the fired bullets that I
8 received.

9 Q Okay. I hand you what's marked State's 125, do you
10 recognize that?

11 A Yes, this is more fired bullets and there's a
12 fragment as well here.

13 Q I'm going to hand you what's marked State's Exhibits
14 128, 129 and 130. Do you recognize those?

15 A Yes. One of the packaging has been cut below my
16 seal.

17 Q But that was after you put your seal on it?

18 A It would have gone out as returned intact.

19 Q Okay. We opened those during testimony. Now, those
20 -- all have items are ones that you had in your possession
21 and you were testing them at the lab?

22 A Yes. And also, how we know they're the items is we
23 engrave the evidence with an electric engraver, which
24 would have the SLED laboratory number on it, the SLED lab
25 item number and my initials. So each piece of evidence

1 has that put on it.

2 Q Okay. And what's the first thing you do when you
3 receive these items out of evidence?

4 A When I'm ready to actually do the examination, I get
5 the evidence. I take pictures of the packaging as it was
6 submitted to me. I open up the packaging of the actual
7 evidence itself making any notes that could be helpful or
8 useful in the future as far as possible damage or any sort
9 of material, such as blood or something that could be
10 needed later on. Then I would determine -- with cartridge
11 cases that I examine, I determine what caliber.

12 Typically, that's easy to do because it has
13 manufacturer's information on the bottom of the cartridge
14 case, such as the actual brand, also, caliber is listed.
15 With bullets, with respect to the bullets, I would weigh
16 them and then measure the diameter. If I can, I try to
17 determine what caliber it could be.

18 Then I go into microscopic examinations using what's
19 called a comparison microscope, which is basically the
20 tool of our trade. It's two microscopes that connected by
21 an optical bridge system that allows us to compare two
22 samples simultaneously.

23 So what we're looking for on bullets or cartridge
24 cases are markings created by that firearm that could be
25 individual in nature going into that particular firearm

1 that's reproduced in the cartridge cases or bullets. And
2 that's how we try to determine if it's possibly fired by
3 the same firearm or different firearms.

4 Q And is that the processes that you're going through
5 -- once you've put everything you've found and your
6 results, is that ever looked at by anybody else?

7 A Yes, we have a peer review process, which is a
8 measure of quality control and quality assurance. So we
9 get another qualified examiner, court qualified examiner
10 -- there's five of us in the department. What we do is
11 after we make our conclusions, we note it down on our
12 worksheets, then we get another examiner to come in and
13 look at through the microscope, that's the
14 micro-verification process. So they render their own
15 conclusion. If they agree after looking through --
16 comparing the evidence, then they would sign off on the
17 worksheet that they agreed with what my findings were.

18 Q Now, with respect to a report, do you prepare a
19 report, a written report after you're done with all of
20 this?

21 A Yes, sir.

22 Q The photos and notes that you're talking about, do
23 you write those out as well?

24 A Right, that goes into our case file. That would be
25 worksheets, as well as cartridge cases or bullets or

1 whatever evidence we have. There is submission documents
2 when it comes to the lab and photos as well would be
3 attached to that case file. So the case file, along with
4 the report goes to another examiner. Usually, it's the
5 same examiner that -- it doesn't have to be. They
6 technically review everything in the case file and report
7 as well administratively review just for basic grammar and
8 everything like that. If they agree with everything, then
9 they approve the report.

10 Q Okay. I'm looking at your report. Can you tell the
11 jury what item 25 -- kind of a little bit about that item?

12 A Item 25, which is included in State's Exhibit, I
13 think that's 125 -- or it's this piece right here. It was
14 listed as being from a particular vehicle, from a Hyundai
15 is what's listed on here. I believe I physically examined
16 it as well as microscopically examined it to try to
17 determine if it was even an ammunition component, such as
18 a bullet or what have you. And my conclusion was that it
19 was not consistent with being an ammunition component. So
20 I would guess that it's possibly part of the car itself.

21 Q Can you tell the jury a little bit about item 24?

22 A These aren't opened, but I think item 24 is included
23 in here, too. Item 24 is actually a fired bullet jacket
24 fragment, that's also listed as being from a vehicle.
25 This one is particularly from Ford Explorer.

1 Now, when we talk about jacket fragment, you've got
2 jacketed bullets, which means there's usually some sort of
3 jacket material, harder metal material, some sort of brass
4 or copper alloy over a lead core. So there's a core on
5 the inside of softer material and you have harder material
6 on top. So that would just be a fragment of that actual
7 outer material.

8 Q And so with respect -- I'm looking at Page 2 of your
9 report, 20, 22, and 23 were three fired bullets. Were you
10 able to match the bullets and the casings or is that not
11 something you're able to do.

12 A No, we don't have a test or analysis that we try to
13 determine if a particular bullet or projectile comes from
14 a particular cartridge case, that's just not something we
15 do. But I did compare the actual bullets with each other
16 to see what I could find.

17 And I determined that items 20, 22, and 23 in my
18 report are most consistent with being 45 auto caliber.
19 And that's based on their observable physical
20 characteristics, such as the weight and possible diameters
21 that I can get.

22 Now, item 24, the bullet jacket fragment, I wasn't
23 able to determine any sort of caliber because based on the
24 size, small size and the damage of it. Now, item 24,
25 again, had some marks on it, but I couldn't tell if it was

1 from damage or from the barrel of the gun itself. So I
2 did compare that item with the other bullets and with each
3 other to try to determine possibly if they could be fired
4 by the same gun and those results were inconclusive. So I
5 was basically unable to tell if they were fired by one gun
6 or multiple guns on those particular projectiles.

7 Q And with respect to the cartridge casings,
8 particularly the 9mm casings, how many of those did you
9 examine?

10 A There were six 9mm Luger caliber cartridge cases.

11 Q Were they all the same brand?

12 A No, they weren't. Again, the head stamp information
13 on the bottom cartridge casing, usually it tells you what
14 brand makes it. So I had a makeup of several different
15 manufacturers. FC was one of the brands, that stands for
16 Federal cartridge company. There was another brand of
17 Tulammo.

18 Q So the fact that they're FC and Tulammo and they're
19 also 9mms, does that make a big difference?

20 A No, you could fire any of those in the same firearm.
21 That's just the brand, particular manufacturer of those
22 cartridges.

23 Q So like a Nike and Adidas shirt?

24 A Correct.

25 Q What did you find -- now, with respect to the 9mms,

1 can you just tell the jury, are you physically looking at
2 the cartridge casings and it says 9mm --

3 A Yes.

4 Q -- or how do you determine it's 9mm?

5 A No, we go by the information on the gun -- or on the
6 bottom of the cartridge case, the head stamp information,
7 as well as just basically being familiar with what
8 different calibers are. Sometimes you come across damaged
9 cartridge cases, so you have to take everything in
10 consideration. So we just look over the basic cartridge
11 case itself in addition to what information is on it.

12 Q And do you compare the 9mm cases, cartridge cases?

13 A With each other, yes.

14 Q Did you conclude anything about those in your expert
15 opinion?

16 A Yes.

17 Q What did you conclude?

18 A They were consistent with being fired from the same
19 firearm.

20 Q Okay. Now, did you also look at some other cartridge
21 cases?

22 A Yes, the 45 autos, which there were a number of
23 those. There were twelve 45 auto caliber cartridge cases.
24 And I go through the same examination as with the 9mms. I
25 would look under the comparison microscope, look at the

1 cartridge cases with each other. Look for those markings
2 that would be individual in nature, unique marking to try
3 to determine a possible conclusion.

4 Q Now, those -- were those the same brand or different
5 brand?

6 A The 45 autos were all the same brands. Federal was
7 listed on the head stamp information.

8 Q Again, that's notated on the cartridge casing itself?

9 A Yes, sir.

10 Q Okay. Now, did you make any conclusions about the 45
11 caliber cartridge cases in your expert opinion?

12 A Yes, sir.

13 Q What were those conclusion?

14 A That they were also consistent with being fired by
15 the same firearm. Of course, not fired from the same
16 firearm as the 9mm Lugers.

17 Q So in respect to just the cartridge casings that you
18 had seen and that you could examine, what is your
19 conclusion about any type of weapons between a 9mm and 45?

20 A Specifically?

21 Q What if -- how many weapons could have been used to
22 fire these cartridge cases in your opinion?

23 A My opinion, two different firearms.

24 Q And I noticed there was one more item that we haven't
25 discussed and that was item number 17. Can you just tell

1 the jury a little bit about that item?

2 A Yes, item 17 was an unfired 9mm Luger caliber
3 cartridge, Tulammo was the head stamp manufacturer for
4 that one. So it was unfired, so it was a complete
5 cartridge. And, basically, all we could really say about
6 it is it could be the correct caliber for use in the
7 firearms chamber for 9mm Luger caliber ammunition.

8 Q Okay. And so you -- here you are comparing all these
9 cartridge casings, once you're done, is that when you
10 write your report or is it then verified? How does that
11 go?

12 A No, it would be verified -- after I reach my
13 conclusions, then it's verified and then a report is
14 actually written. Then once everything has gotten
15 together, the case file and report is finished putting it
16 all together, then it goes back to a reviewer to be
17 reviewed.

18 Q Did you -- and you said -- I think you already
19 mentioned you compared the cartridge casings together.
20 For instance, you would have compared maybe item number
21 two, which is a 45 auto caliber cartridge case with item
22 18, which is a fired 45 auto caliber case, you would
23 compare those two items?

24 A Correct.

25 Q Under a microscope or physically?

1 A That -- the comparison is done with a microscope.

2 Q And it's your opinion, your expert opinion that those
3 two cartridge casings are consistent with being fired by
4 the same weapon, is that your --

5 A Correct.

6 MR. KRZYSTON: Objection, leading.

7 THE COURT: It's overruled.

8 BY MR. ARANT:

9 Q You answered it?

10 A Correct.

11 Q So in any part of the process, were you ever aware
12 when you're doing this testing of where the cartridge
13 casings that you were testing were from?

14 A There was information on the packaging indicating
15 possibly where it could have come from, but I didn't
16 notice it at the time. It wouldn't have made any sort of
17 difference in our comparison. So I did not know at the
18 time where the cartridge cases came from.

19 Q Did you ever find out where those cartridge casings
20 came from?

21 A Later on.

22 Q After you made your opinions?

23 A Yes, much later.

24 Q So later on after you made your opinions, you
25 determined -- you found out through some means --

1 MR. KRZYSTON: Objection, relevance. It has nothing
2 to do with his opinion.

3 THE COURT: The objection is overruled.
4 Restate the question.

5 MR. ARANT: Thank you, Your Honor.

6 BY MR. ARANT:

7 Q Is there some way you found out that they were from
8 different scenes?

9 MR. KRZYSTON: Objection, leading.

10 THE COURT: Don't lead the witness.

11 BY MR. ARANT:

12 Q What did you find out about those, item number two
13 and 18?

14 A They were from different locations.

15 Q But you didn't know that before you did the testing?

16 MR. KRZYSTON: Objection, leading.

17 THE WITNESS: Correct, I didn't know.

18 BY MR. ARANT:

19 Q Is there anything else significant about your report?
20 Did you -- were you -- I guess describe for the jury what
21 IBIS is?

22 A IBIS stands for Integrated Ballistics Identification
23 System. It's a computer system that's owned by the ATF,
24 it's operated through the ATF. Different law enforcement
25 agencies have this machine and it's connected to a

1 network. What IBIS does is take pictures of cartridge
2 cases and stores those images and then it correlates or,
3 basically, looks at other images that are placed into it
4 by other law enforcement agencies.

5 So it's basically a search tool, an investigative
6 tool to see if possibly difference cases are related to
7 each other.

8 Q And did you do anything with respect to some of the
9 evidence with IBIS?

10 A Yes. I put two specimens into the IBIS system, one
11 from the 9mm Luger set and one from the 45 auto caliber
12 set.

13 Q And did those come back with anything to your
14 knowledge?

15 A No, there was no hit.

16 Q Okay. And so it's your opinion that all the
17 cartridge cases were fired by two weapons as consistent?

18 A Yes.

19 MR. KRZYSTON: Objection, leading.

20 THE COURT: Sustained.

21 BY MR. ARANT:

22 Q What is --

23 MR. KRZYSTON: Move to strike.

24 THE COURT: Proceed.

25 MR. ARANT: Thank you, Your Honor.

1 BY MR. ARANT:

2 Q What is your opinion with respect to the cartridge
3 casings and how many weapons there were?

4 A Two different firearms.

5 Q Okay. And lastly, with respect to the 9mm, what is
6 your opinion as to that?

7 A The 9mm cartridge cases is what you're referring to?

8 Q Yes.

9 A They were fired by -- or consistent with being fired
10 by the same firearm.

11 MR. ARANT: I've got no further questions.

12 THE COURT: Cross-examination.

13 CROSS-EXAMINATION

14 BY MR. KRZYSTON:

15 Q Agent Smith, you graduated from Clemson, correct?

16 A Yes, sir.

17 Q And do you shoot guns in your private life?

18 A I do.

19 Q So you're relatively aware that 9mm ammo, 45 caliber
20 ammo is common ammunition?

21 A That is correct.

22 Q Okay. There's a lot of science that -- or a lot of
23 literature that you rely on in saying that you can match
24 things, right, as well as your experience and training?

25 A Right. Through my training and experience, also,

1 relying on scientific foundations, through different
2 studies throughout the years.

3 Q And there's actually kind of a split as it concerns
4 whether or not this is a science, right?

5 A It's what I refer to as applied science, such as
6 engineering.

7 Q Okay. But again, there are some people that don't
8 think this is a science?

9 A I believe so, yes.

10 Q Okay. And those people have put out reports,
11 correct?

12 A Right. There have been various reports criticizing
13 firearms identification. To my knowledge, none of these
14 are actually experts in the field.

15 Q And actually getting ready for this trial a couple of
16 weeks ago, we had a phone call, right?

17 A Yes.

18 Q And in that phone call, I asked you about, in
19 particular, one report called a 2009 National Academy of
20 Science report, correct?

21 THE COURT: Counsel, you can't make yourself a
22 witness in a case.

23 MR. KRZYSTON: I'll withdraw that.

24 THE COURT: You can't be a witness and a lawyer.

25 All right.

1 BY MR. KRZYSTON:

2 Q You're aware of a report from the National Academy
3 of Science that was authored in 2009, correct?

4 A Yes.

5 Q And you're aware that part of the purpose of that
6 report is to strengthen the forensic science that comes
7 with the reports?

8 A Right. They offered a list of recommendations for
9 laboratories, possibly the title of the report as to
10 strengthen the forensics science.

11 Q And -- I'm sorry.

12 A In those recommendations, a lot of those are already
13 put in practice by our laboratory for being accredited
14 outside of our organization. So a lot of practices are
15 already -- are procedures we already follow is what the
16 recommendations were.

17 Q And you're also aware of another report in 2016 that
18 was given to President Obama by his advisors, correct?

19 A Correct.

20 Q In that report, they said that only about half of
21 those 13 recommendations AFTE had followed up on, six of
22 the 13?

23 A I believe that's correct.

24 Q And that's from AFTE itself, the group that accredits
25 you as an examiner?

1 A No, the group that accredits us is ASCLD. AFTE
2 doesn't accredit --

3 Q But you're a member of AFTE, American Firearm and
4 Tool Mark Examiners?

5 A Association of Firearm and Tool Mark Examiners.

6 Q You're not a certified member of that group?

7 A I'm a provisional member at the moment..

8 Q And you've been eligible for membership since 2008?

9 A Yes.

10 Q But you only sought membership in 2014?

11 A Right. I'm up for regular membership this year. But
12 it's not -- it's not something that we have to do. It's
13 just an organization that examiners belong to to further
14 the science.

15 Q And SLED recommends that you become a member of that
16 as soon as possible?

17 A I believe that's what the new manual says, that's
18 correct.

19 Q Okay. The group of people that have authored the
20 reports, they come from Harvard and MIT, correct?

21 A Right, not forensic scientists.

22 Q Judges?

23 A I assume so.

24 Q And they hold hearings that ask people to come in and
25 testify?

1 A Yes.

2 Q Okay. And then they offer their comments based on
3 those hearings and that evidence that they take in?

4 A Yes, those would be reports, not actual validity
5 studies.

6 Q Right. They read validity studies, have people come
7 in and talk to them?

8 A Yes.

9 Q And it's their opinion that this is subjective
10 science?

11 A Totally their opinion, correct.

12 Q And when you make a determination, you're looking at
13 let's say item A and item B, and you look at the mark that
14 was made, correct?

15 A Right.

16 Q And as part of AFTE's definition of identifying
17 something, they say it's subjective, right?

18 A It's subjective based on your objective observations.

19 Q Right, what you see?

20 A Yes.

21 Q Along with the training that SLED's given you?

22 A Right.

23 Q And your experience?

24 A Right.

25 Q So you basically look at A and you look at B and you

1 say, okay, all right, these marks are better than the best
2 nonmatch I have, right?

3 A That would be correct. We also look at the totality
4 of the cartridge case or bullet. So we put them in phase
5 if we have a match, we take them out of phase to see what
6 we can see what the agreement would be. So we go back and
7 forth. It's not just that we look at one set of matches
8 and make a conclusion. We look at the whole piece of
9 evidence and compare to other evidence and tests.

10 Q Right. And when you look at this, you're looking at
11 what is quote, unquote the relative depth of the marks,
12 how wide the marks are, what -- you know, the relative
13 measurement of those marks?

14 A Right. The agreements, yes.

15 Q And when we say the word relative measurement, that's
16 an important word, right, because you don't actually
17 measure anything, right?

18 A Right, we don't measure any sort of marks.

19 Q So again, based on your science and your training --
20 or excuse me, your experience and your training, you're
21 going okay, that looks it's the same size mark?

22 A Right, it's called pattern matching.

23 Q Right. Okay. And again, the standard for
24 identification, okay, where you're saying it's consistent
25 with this -- in this instance item 18 and 19, consistent,

1 you say with items two through five, seven and 12 through
2 16?

3 A Two through five, seven, 12 through 16, 18 and 19,
4 correct.

5 Q And again, the basis for your identification is that
6 you have decided that they can possibly be from the same
7 gun?

8 A Right, the agreement is such a level of quantity and
9 quality that it exceeds the best known nonmatch agreement.
10 So, basically, it would be the likelihood of it being
11 fired by another gun would be practically impossible.

12 MR. KRZYSTON: Objection, Your Honor. I have a
13 matter of law.

14 THE COURT: It's overruled.

15 MR. KRZYSTON: I would have a matter of law, Your
16 Honor.

17 THE COURT: Proceed. It will be out of the presence
18 of the jury at a later time.

19 MR. KRZYSTON: Okay. Thank you, Your Honor.

20 BY MR. KRZYSTON:

21 Q Would you read this document? This is the AFTE --
22 for the record, AFTE theory of identification.

23 A The theory of identification as it pertains to the
24 comparison of tool marks enables opinions, common origin
25 to be made where the unique surface contours of two tool

1 marks are in sufficient agreement. This sufficient
2 agreement as related to the significant duplication of
3 random tool marks as evidenced by correspondence of a
4 pattern or combination of patterns of surface contours.

5 Significance is determined by a comparative
6 examination of two or more sets of surface contour
7 patterns comprised of individual peaks, ridges and
8 furrows. Specifically, the relative height or depth,
9 width, curvature and spacial relationship of the
10 individual peaks, ridges and furrows within one set of
11 surface contours are defined and compared to the first
12 features in the second set of surface contours.

13 Agreement is significant when agreement and
14 individual characteristics exceeds the best agreement
15 demonstrated between tool marks known to have been
16 produced by different tools and is consistent with
17 agreement demonstrated by tool marks known to have been
18 produced by the same tool.

19 The statement that sufficient agreement exist between
20 two tool marks means that the agreement of individual
21 characteristics is of a quantity and quality that the
22 likelihood another tool could have made the mark is so
23 remote as to be considered a practical impossibility.

24 Currently, the interpretation of individualization
25 identification is subjective in nature founded on

1 scientific principles and based on examiner's training and
2 experience.

3 Q And again, those reports that we have have a serious
4 problem with the scientific foundation, correct?

5 A I believe that they ignored a lot of the research.

6 THE COURT: Ladies and gentlemen, I'll have you go to
7 the jury room for a few minutes. Please do not discuss
8 the case.

9 (WHEREUPON, the jury left the courtroom at 4:06
10 p.m.)

11 THE COURT: Yes, sir, I'll hear you now.

12 MR. KRZYSTON: Judge, I would just have --
13 initially, I asked a question, he proceeded to then say
14 that he could match them beyond any practical certainty.
15 The witness was instructed not to do that, he did it.
16 That would be my matter of law. I object to the
17 testimony as a whole and ask for a mistrial.

18 THE COURT: Invariably, we've spent hours and hours
19 and hours, the lawyers asked me to not allow witnesses to
20 give testimony. And they undo all that time by asking
21 questions that elicits that exact testimony. So if you
22 will go back to whatever question counsel asked to get
23 that answer from the witness. You asked him his opinion.

24 THE WITNESS: Your Honor, if I may say something?

25 THE COURT: Sir?

1 THE WITNESS: If may say something, please? I was
2 just basically going along with the AFTE theory of
3 identification.

4 THE COURT: No, I understand, but you're not part of
5 this scenario right now.

6 THE WITNESS: Yes, sir.

7 THE COURT: Yeah.

8 Go ahead.

9 MR. KRZYSTON: I'm done. I've made my objection.

10 THE COURT: Okay. As I say, you know, lawyers, they
11 ask me all the time, Judge, please grant this motion in
12 limine and I say, okay, well, granted. Then the lawyer
13 ask the same question that they ask me not to allow the
14 witness.

15 We spent all those hours trying to limit and preclude
16 him giving -- limit his opinion, then you ask the question
17 that ask him his opinion and he gave his opinion based --
18 for whatever reason, based on studies or his opinion in
19 general. So, you know, if you're trying to limit
20 testimony, you've got to limit the manner in which you ask
21 questions. So the motion is denied.

22 MR. KRZYSTON: Thank you, Your Honor.

23 THE COURT: We'll take about three minutes. Then
24 we'll press on.

25 (WHEREUPON, a short recess was held.)

1 THE COURT: All right. Let's bring them on one more
2 time.

3 (WHEREUPON, the jury returned to the courtroom at
4 4:15 p.m.)

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

6 THE COURT: Very good.

7 You may proceed.

8 MR. KRZYSTON: No further questions, Your Honor.

9 THE COURT: Any redirect?

10 MR. ARANT: None, Your Honor.

11 THE COURT: All right. Thank you, sir. You may step
12 down.

13 Next witness.

14 MR. POTTS: The State calls Matthew McCoy.

15 Thereupon;

16 MATTHEW MCCOY,

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: Matthew David McCoy, M-C-C-O-Y.

21 DIRECT EXAMINATION

22 BY MR. POTTS:

23 Q Investigator McCoy, where do you currently work?

24 A I currently work at the Columbia Police Department.

25 Q What's your job there?

1 A I'm currently a criminal investigator assigned to
2 criminal investigations division, violent crimes against
3 persons.

4 Q What does that mean? What's your actual job? I'm
5 not talking about your title, what do you actually do?

6 A My actual job is I investigate crimes and calls for
7 service, primarily homicides, kidnappings, suicides and
8 death scenes, aggravated assaults, anything along the
9 lines, any violent crimes against a person is involved
10 under my purview.

11 Q How long have you been with the City of Columbia?

12 A I've been with the City of Columbia for about nine
13 years now.

14 Q Now, let's talk about July of 2014. What was your
15 role back then?

16 A I was assigned to the criminal investigations
17 division as an investigator in the violent crimes against
18 persons unit.

19 Q So, basically, the same sort of thing?

20 A That's correct. I started there the end of 2012.

21 Q Now, let's fast forward to July 12th, this incident.
22 How did you originally become involved?

23 A On the day in question, it was on a Saturday, I
24 believe, we were out working an operation for another
25 armed robbery unrelated to this case. We were working an

1 operation there. And I was on a task force along with the
2 SWAT element and a few other investigators. We heard it
3 go out on the radio. Dispatch put it out as a tone call,
4 which as you heard before, it's just a loud tone that goes
5 out on the radio on all channels advising you there's a
6 major incident that took place. They put it out as a
7 shooting that just occurred with an individual that was
8 struck at [REDACTED].

9 Q And so what did you do when you got there?

10 A Well, initially, I was actually on a surveillance
11 post, so I didn't leave right away, waiting to see if they
12 were going to need some of us. However, as units began to
13 arrive, you could hear them on the radio pretty
14 frantically calling for additional help and more units.
15 So the decision was made to go ahead and break off from
16 our current post and ran lights and sirens to the scene.

17 Q And how long did it take you to get to the scene?

18 A I'd have to look at my notes to tell you an exact
19 time. It was roughly 20 minutes it took me. I was coming
20 from Harbison Boulevard in Columbia in a drive area. I
21 ran lights and sirens all the way down to Two Notch Road.
22 It took some time. There was a lot of traffic.

23 Q A rough estimate is fine.

24 A About 20 minutes would be a rough estimate.

25 Q So what was it like when you got there? What did you

1 see?

2 A Well, when I arrived, it was chaotic. There were
3 officers, they were holding people back. I observed one
4 young lady actually pass out, that was off to the side. A
5 lot of commotion, a lot of yelling and screaming.
6 Officers had cordoned off the area pretty well. Crime
7 scene tape was starting to go up. There were some cones
8 in the road. I believe those were over the top of shell
9 casing, I later learned.

10 When I arrived, I pulled into the intersection of
11 Center Street and Magnolia Street. There was a parole car
12 there that was parked blocking any vehicles from heading
13 down toward Magnolia, toward the crime scene.

14 Q Okay. What was the visibility like?

15 A Well, when I left Columbiana, it was still, I'd say
16 daylight. It was dusk. It was starting to get darker.
17 When I arrived, it wasn't pitch black dark, night, but it
18 was dark enough that I would need a flashlight to really
19 see any details.

20 Q Okay. So when you walk up, what's your initial role
21 at the scene?

22 A Well, when you get there, they hadn't assigned out
23 who was going to work the case, who was doing -- we were
24 initially there just to stop the pandemonium and the
25 chaos and try to get things under control.

1 When I initially arrived and began to walk up to the
2 scene, I saw my lieutenant, Lieutenant J.P. Williams, he
3 was there, along with Sergeant McCracken. They had also
4 been working on the detail we were on. They were just
5 further into the city than I was. When I made contact,
6 Lieutenant Williams and Sergeant McCracken made contact
7 with me and advised that I would be the lead investigator
8 on the case. There was another investigator, Investigator
9 Gilliam was there. The SWAT element also arrived and were
10 assisting patrol officers in creating the crime scene,
11 cordoning it off.

12 Q So when you get named lead investigator, how does
13 your role change? What does it become?

14 A Well, when you're lead investigator, you're kind of
15 tasked with kind of coordinating the whole thing. You try
16 not to get bogged down with taking everybody's written
17 statement. You're going to task that out to other
18 officers and other investigators. You're pretty much the
19 central hub for information. They come to you, this is
20 what's going on. It's my job to report it to the
21 lieutenant and let him know where we're at, what kind of
22 resources we may need brought to the scene. And then I
23 usually handle most of the major, like the search
24 warrants, that type of thing.

25 Q I guess just tell the jury a little bit about what

1 happened, what you saw at the beginning of your role as
2 lead investigator.

3 A While I'm there, I'm going to stay at the crime
4 scene, especially initially while crime scene
5 investigators are working. A lot of it has to do with
6 we're checking the crime scene, we're walking around. I
7 looked in some trash cans, just to see if there is any
8 evidence that isn't plainly visible that's sitting there
9 on the road that we already see. I'm having officers help
10 me with that. I'm pretty much in charge of the crime
11 scene in general.

12 As the crime scene investigators are doing their
13 work, taking their photographs and anything they need to
14 do. They'll come to me and ask hey, do you need us to do
15 anything or what about this, you see this. And I'll kind
16 of dictate to them how I want them to proceed.

17 Q Okay. Now, as you're doing this, do you make contact
18 with any individuals?

19 A We did, yes. First, I made contact with Officer
20 Birochak and he advised me there were some individuals who
21 were possible witnesses in the case. I ended up making
22 contact with four individuals separately. They were
23 actually brought over to me one at a time. Their names
24 are Jamichael Lewis, Paris Young, Avery Dickson, Jr. And
25 Daquan Cleckley.

1 I gave a short interview, just kind of what happened.
2 They were pretty eager to give me information. In talking
3 with them, a name became apparent -- you know, we asked
4 who did this? A name came up and they gave me more
5 information. At that time, I advised patrol officers and
6 investigators, whoever was available, I need you to take
7 this guy to headquarters. He needs to be interviewed more
8 thoroughly regarding what he saw that night.

9 Q Did they come to you as a group or I think you said
10 one by one?

11 A They were brought to me one by one, yes, sir.

12 Q Okay. And as they come in, you just divvy them out
13 to other investigators?

14 A That's correct. After I spoke to them, they wanted
15 speak with -- I believe an officer brought them over and
16 said -- or I was advised that they wanted to speak with
17 me. So I talked with each one individually and then
18 advised, as I got that information they were telling me,
19 hey, get these guys to headquarters and let's get a more
20 formal statement regarding what they saw because they had
21 detailed information.

22 Q Okay. And so as that's going on, I guess, what do
23 you do next?

24 A Well, Paris Young and Avery Dickson and Daquan
25 Cleckley were transported to headquarters. I spoke with

1 Jamichael Lewis. We were trying to ascertain the suspect
2 that they identified, where they lived or where they might
3 have gone. It's a public safety concern at that point.
4 You've got a birthday party that was just shot up by two
5 individuals according to the witnesses. So we need to
6 find this person who's out here shooting people. You
7 know, it's fresh, it just happened. So I spoke with
8 Jamichael Lewis. He offered to show us where the suspect
9 resided.

10 Q Okay. So how did that process work?

11 A Well, we spoke with Jamichael. He agreed to show us
12 where the suspect lived. Myself and, at the time, he was
13 Investigator Reeves, now, Sergeant Reeves. We placed
14 Jamichael into the front seat of Sergeant Reeves' patrol
15 car or police vehicle. It wasn't a marked patrol car, it
16 was an unmarked truck. We placed Jamichael in the front
17 seat. I sat in the back seat directly behind Jamichael
18 and Sergeant Reeves drove.

19 That's pretty standard procedure with anyone inside
20 the police vehicle. We have two investigators or officers
21 inside the vehicle and the individual who is not in law
22 enforcement will sit in the front and one will sit
23 directly behind him.

24 Q Okay.

25 A He took us to, I believe it [REDACTED] and

1 pointed out apartment [REDACTED] as the address for the suspect.

2 Q Okay. And now, is he saying suspect or what is --

3 A Horace Watts had been identified along with Malik
4 Davis as potential individuals.

5 Q So they're actually giving names?

6 A You're correct, the name Horace Watts.

7 Q So they took you to [REDACTED]. Were you able
8 to go to any databases and verify that information?

9 A Yes, I looked at several databases that we maintain
10 and other people maintain and we look at as well as
11 information given by family and this individual to
12 determine that Horace Watts and Malik Davis reside at [REDACTED]
13 [REDACTED] along with his mother and sister
14 also stayed there.

15 Q Tell the jury about what you did with that
16 information.

17 A Okay. Well, after -- after Jamichael showed us the
18 location, he was taken by a parole officer to headquarters
19 to be further interviewed. I remained at the scene
20 longer. While crime scene was doing their thing, I walked
21 about the back of the house. We were just kind of, again,
22 looking around seeing if we saw anything out of place or
23 out of the ordinary. We didn't do much of anything.

24 Q And when you say out of place or out of the ordinary,
25 what kind of things are you looking for?

1 A Well, we're looking for any other evidence. You
2 know, I'm trying see if there's other projectiles or
3 bullets obstructing anything else. I'm looking for shell
4 casings, either of different caliber or the same caliber
5 as what we've found so far that crime scene is in the
6 process of picking up. We're also looking across the
7 street.

8 You know, we know the rounds -- just from looking at
9 the vehicle and where the victim, Mr. Isaac Lewis was hit
10 and Tyrone Johnson was hit inside the vehicle, we know the
11 shots were coming from the roadway toward the house.
12 We're looking on the other side of the road away from the
13 house at trees and signs and other buildings trying to see
14 if there's any other projectile strikes, which would
15 indicate gunfire coming from the opposite side of the
16 road.

17 Q So you're looking for evidence that supports what
18 witnesses have been telling you and evidence that might
19 contradict it?

20 A That's correct. You've got witness statements and
21 you've got physical evidence. And what you're trying to
22 do is you're trying to see if they corroborate each other.
23 You're trying to see if the physical evidence makes sense
24 with what the witnesses are telling us and vice versa,
25 what the witnesses are telling us making sense with the

1 physical evidence.

2 Q So you do this walking around. What did you say you
3 found?

4 A I found nothing. We found the shell casings on the
5 road, but they had already been marked off. There were
6 cones on top of those. I didn't find anything else
7 besides what crime scene had located. I didn't find any
8 other projectile strikes, shell casings, firearms, nothing
9 along those lines to indicate there was a third shooter.

10 Q So what else did you do?

11 A Well, after Jamichael was sent off, I remained at the
12 scene for a while. About 11:00 p.m. on the 12th, I
13 responded to headquarters just to check on the
14 investigation and see how it was going. I had contacted
15 Investigator Gilliam. He had been at the scene briefly
16 and had gone back to interview some individuals. I
17 contacted him and asked him to develop a lineup of both
18 Malik Davis and Horace Watts to show to the potential
19 witnesses or the witnesses that were at headquarters.

20 Q Okay. And he did do that, correct?

21 A He did that. My understanding is he went through
22 SLED. I have the paperwork from SLED that he submitted
23 requesting a lineup. We were not able to do a lineup for
24 Malik Davis. We did get one for Horace Watts.

25 Q And then once that lineup was completed and shown to

1 witnesses, what did you do?

2 A Well, it was shown to witnesses. And once that was
3 completed, I prepared a search warrant for [REDACTED]
4 [REDACTED]. I also prepared arrest warrants and got arrest
5 warrants signed charging Horace Watts with murder,
6 attempted murder, possession of a weapon during a violent
7 crime and unlawful carrying of a pistol. Also, charging
8 Malik Davis, the codefendant with murder, attempted
9 murder, unlawful carrying of a pistol and possession of a
10 weapon during the commission of a violent crime. This was
11 based upon the evidence at the scene as well as the
12 witness statements.

13 Q Okay. So what do you do with those search warrant
14 and arrest warrants? What's the natural next step for
15 you?

16 A The arrest warrants immediately go into what we call
17 the NCIC. It's a database that law enforcement uses to
18 identify individuals, track wanted suspects. Those are
19 placed at the front desk.

20 There's an NCIC terminal officer who's sitting at the
21 terminal and she will actually physically enter in the
22 suspects, in this case, Horace Watts and Malik Davis's
23 information, as well the warrant numbers. And I placed
24 the warrants at the front desk so if any law enforcement
25 officer happens to approach the individual or get out with

1 either individual and run them through the system, the
2 NCIC system, nationwide, we'll get a hit and we'll send a
3 confirmation back notifying them that yes, that is the
4 individual we're looking for. If they're close enough,
5 we'll just send an officer to go pick them up. If they're
6 two states away, hold them in your jail while we prepare
7 the extradition.

8 The search warrant is taken to the scene to be
9 searched, which in this case would be [REDACTED].
10 And it was served at that location at approximately 3:30
11 in the a.m. This would have been on the 13th at this
12 point. We had worked through the night.

13 Q So this is, I guess, five or six, six and a half
14 hours after the incident?

15 A Sure, sounds right.

16 Q My math might be wrong, but somewhere in that area?

17 A Yes, the incident, I guess, was around 8:40. We're
18 talking about 3:30 in the morning the following day. We
19 just worked through the night interviewing individuals.
20 It was a long process.

21 Q So were you there for the search warrant?

22 A I was there for the service of the search warrant,
23 yes, sir.

24 Q Besides the items we talked about, the other
25 witnesses, was Malik Davis and Horace Watts there?

1 A No, they were not there.

2 Q Was anyone else there at the time?

3 A The SWAT team had secured the home. When I got
4 there, no one else was at the house besides patrol
5 officers that were going to assist us, crime scene just
6 pulled up and SWAT officers that had secured the home. So
7 we've got the search warrant for them to make entry and
8 secure it to make sure no one else was inside.

9 Q So what's going on with the investigation? I guess,
10 does anything else happen with the investigation that day
11 or that morning?

12 A Besides searching the home. We searched the home.
13 You want me to go over what was located inside the home
14 or?

15 Q Yes, please.

16 A Okay. So we serve the search warrant, we get there
17 about 3:30 in the a.m. Investigator Gilliam and myself,
18 Sergeant McCracken, Investigator Pugh was another officer,
19 he was in the property crimes burglary unit at the time,
20 Sergeant Rose, who was a supervisor at the crime scene as
21 well as Investigator Brian VanHoutten, he's the ATF task
22 force officer. He's also an investigator who was able to
23 assist that night. He was working the robbery suppression
24 with us as well as CSI George Smith.

25 We served the warrant, left it on the kitchen table.

1 If no one is home, we just put the warrant out somewhere
2 visible. We located several items inside a rear bedroom,
3 as you walk through the door, the very back of the home.
4 There was white fake leather pants on the floor, located a
5 gold mouth grill collected from the floor, a gold mouth
6 grill collected from the top of the bedroom desk, located
7 a live cartridge 9mm that was collected from the left side
8 of the bedroom desk that was in the room.

9 Q That's that same bedroom?

10 A In the same bedroom, same rear bedroom. The live
11 cartridge that was a 9mm was on some shelving. We also
12 located a box of Federal 45 ACP ammunition. There was 10
13 live cartridges inside that box. So the box was not full,
14 it was partially empty. We collected that from the same
15 desk shelving as the 9mm. That was interesting, the brand
16 or manufacturer and the caliber is the same brand and
17 manufacturer of the caliber that we also found at the
18 shooting scene.

19 Q I'm showing you State's Exhibit No. 126. If you
20 would take a look at that.

21 A Yes, these would be the 45 caliber box of Federal
22 ammunition that we located on the shelving in the bedroom.

23 Q Okay. That's 20, not 10, correct?

24 A That's correct, looks like 20.

25 Q Okay. And please continue.

1 A The -- that was all we found in that bedroom of any
2 note as far as the items we were looking for in the
3 search. We then went to a center bedroom, so it was
4 further up the hallway in the center of the home. We
5 located -- we ended up locating two spent cartridge
6 casings, 45 caliber, Federal. Same brand caliber should
7 have been in the box as we located out at the scene. They
8 were collected from the side of the bed. They were on the
9 floor by a window. The bed was kind of -- as we were
10 searching, we pulled the bed out and the cartridge casings
11 were just laying there on the floor.

12 Q And that's separate from the first bedroom you
13 searched?

14 A I'm talking the center bedroom this time, yes, sir.

15 Q So after you finished serving the search warrant,
16 what was your next job?

17 A From there, we pulled some more Intel. Again, we
18 were actively looking for two gentlemen, Malik Davis and
19 Horace Watts. The warrants were NCIC. And we did end up
20 breaking for the morning. We had to get some sleep. We
21 had all been out all day working.

22 Q You do eventually have to sleep, right?

23 A That's correct. Yeah, you don't want to make
24 mistakes, so you try to get some measure of sleep. About
25 2:00 p.m. on the same day, the 13th, we all met again. So

1 we got a few hours and we came back in. At 2:00 p.m., we
2 met with all the assisting investigators. Sergeant
3 McCracken, Lieutenant Williams and Investigator Bailey had
4 sent some preservation letters off to the cell companies
5 that we believed belonged to Horace Watts and Malik Davis
6 used, the carriers. I signed some additional search
7 warrants for vehicles that had been towed from the scene.
8 There were several cars that had been struck by gunfire.

9 And, typically, in these types of cases,
10 particularly, homicides, we try to tow the cars away from
11 the scene to police headquarters. One, to secure them and
12 two, we had one crime scene investigator working on them.
13 And to ask him to stay out into the morning hours trying
14 to collect projectiles out of a vehicle would have been a
15 monumental task. It's better one, to do it in the
16 daylight, but two, to kind of give him a break and get
17 someone else in there. Plus, we had to have time to get
18 the search warrants signed in order to go into the
19 vehicles to try to retrieve any projectiles or search for
20 any guns or anything else that might have been inside the
21 cars.

22 Q I guess towing them yourselves and putting them
23 somewhere safe so they can't be messed with?

24 A Yes, so how it works is we request line units or an
25 officer, patrol officer, we tell them we need the car

1 towed. I believe in this the case, and it's typical in
2 these types of cases, they'll put some evidence tape on
3 the doors to seal them telling me that nothing has been
4 tampered with. They will go with a tow truck, load the
5 car up without actually going inside and let the car roll
6 back.

7 And they take that to Columbia Police headquarters
8 where we have a gated and locked area where we would drop
9 the vehicles in. And they would be secured there until
10 search warrants were obtained and searched.

11 Q So what was your next step after the search warrants?
12 Are you still looking for Horace and Malik?

13 A We're still actively looking. Now, we have a
14 fugitive team. We have a fugitive task force that is
15 responsible for locating the individuals. They were
16 basically assisting us so we could concentrate on other
17 aspects, like locating additional witnesses or talking to
18 witnesses or anything else we needed to handle as far as
19 the case goes. The fugitive team was out actually looking
20 for the two gentlemen. We also had a task force officer
21 with the U. S. Marshal Service. He was also on the team
22 looking for them as well. He's an investigator with the
23 City, but he's assigned to the U. S. Marshall Service.

24 Q Okay. Did anything else really happen on the 13th?

25 A Not on the 13th, no, sir.

1 Q Tell me about what happened on the 14th.

2 A On the 14th, we came in normal business hours that
3 day. We got some rest that night. And we came in. My
4 understanding is the fugitive team was working throughout
5 the evening trying to locate these individuals. We came
6 back in, most of the day was spent trying to find Malik
7 and Horace. We had some tips that came in that we
8 followed up on and whatnot trying to figure out where they
9 might be. They had not returned home as of yet to [REDACTED]
10 [REDACTED]. They were still in hiding. We spent most of
11 the day doing that.

12 There were some search warrants served on some cell
13 carriers. I believe a vehicle was also searched on the
14 14th. It was, some vehicles were searched on the 14th as
15 well. There was just some resources to clear up that we
16 waited that long. We collected the evidence. I believe
17 some evidence was also taken to SLED by Crime Scene
18 Investigator George Smith. He had, at our request, taken
19 some ballistic evidence to SLED to begin the analysis. It
20 takes a long time to get that back.

21 Around 5:40 in the p.m. on the 14th, Investigator
22 Montgomery and myself, we interviewed Tarus Threatt, a
23 15-year-old, at the time, black male.

24 Q Were you able to complete that interview?

25 A I did not complete the interview. Investigator

1 Montgomery did. I had stepped in -- I was actually the
2 one that began the interview. We had gotten a call from
3 his mother indicating there was some information he wanted
4 to share with us. I don't recall him being talked to the
5 night of the shooting. I could be wrong about that, there
6 were so many witnesses.

7 But he did come in for a formal interview on the
8 14th. And I was beginning to speak with him with
9 Montgomery when I received a phone call from Investigator
10 Brian Zwolak, who was out with the fugitive team trying to
11 locate Horace and Malik. He called me and stated that
12 they had made the arrest on both individuals at an
13 apartment at [REDACTED].

14 Q Okay.

15 A Apartment 5F.

16 Q Now, did you have an opportunity to talk with anyone
17 associated with that?

18 A Yes. So there were a few individuals that
19 Investigator Zwolak had made contact with at the apartment
20 that had been transported to headquarters, Kadeisha Gosier
21 and Quiera Durham. They were brought to headquarters as
22 well as a third individual, Destiny Gibson. She was also
23 brought to headquarters for an interview. Other
24 investigators initiated those interviews. I was busy with
25 other things. As both suspects had been arrested, I was

1 doing some other paperwork and getting some things
2 prepared for that aspect of it. I did direct other
3 investigators to interview the three females about what
4 was -- what had been doing on for the last few days since
5 the shooting.

6 Q Okay. What happened to Gosier, Durham and Gibson?

7 A They were all three arrested for harboring a
8 fugitive. That was based upon information we got from
9 them and evidence at the scene.

10 Q Okay. Did you do a search warrant for the 911 call?

11 A I prepared a search warrant. I don't believe I was
12 actually physically there, but you have to give a moment
13 to look.

14 Q I think I -- no, you didn't?

15 A I believe I wrote it, yes, and had it signed, yes.

16 Q And then on the 15th, did you have an opportunity to
17 interview anybody else?

18 A Yes, there was one individual -- Investigator Wade,
19 who was with the U. S. Marshal's task force I spoke of
20 earlier, he was going doing a parallel investigation
21 trying to determine anyone else that may have assisted.
22 He had spoken to a lot of people trying to find these two
23 guys. He was running a parallel investigation into anyone
24 else who might have been harboring, or aiding and abetting
25 in addition to the three females that were arrested at the

1 apartment they were hiding in. And that was Taniqua
2 Goodwin-Weeks, she was interviewed. I assisted because I
3 knew a lot about this part of the case, but Investigator
4 Wade conducted that interview. She was later arrested, I
5 believe the same day, for accessory -- or harboring a
6 fugitive.

7 Q Now, let's talk a little bit about your role as the
8 lead investigator.

9 A Uh-huh.

10 Q When it comes to deciding what evidence to send to
11 SLED, what is your role with that?

12 A Well, as far as the evidence that gets sent to SLED,
13 we discuss it. We discuss it with SLED. We'll discuss it
14 with the sergeant and lieutenant and we'll kind of look at
15 the time evidence that we have. We're always going to
16 balance what was said at the scene, what the physical
17 evidence was that was taken from the scene and if there's
18 any inconsistencies, any physical evidence that may be in
19 evidence to help clear up or answer.

20 Q So did you request that the shell casings and the
21 bullet fragments that George Smith took to SLED?

22 A That's correct. We, of course, wanted to have the
23 shell casings found inside [REDACTED] in the
24 center bedroom, the two 45 Federal shell casings, we
25 wanted them compared onto the shells casings -- or

1 cartridge casings found at the scene that were 45 Federal.
2 We also wanted any other shell casings compared to see how
3 many potential firearms may have discharged -- weapons may
4 have discharged at the scene as well as any projectiles
5 that were recovered from vehicles. I don't believe we
6 recovered a projectile from the body. Any projectile we
7 happen to find, we try to send off, again, just to
8 determine how many weapons were actually fired if we can.

9 Q Okay. Now, we've heard some talk about GSR, gunshot
10 residue. Now, what did you decide to do with that?

11 A I believe it was taken from the two victims. If my
12 memory serves me right, GSR from both victims. That was a
13 policy or that was a practice we were doing in 2014. We
14 actually don't typically take it from the victims anymore.

15 And there's a whole host of reasons why, but SLED has
16 come and actually held classes at our department talking
17 about their different capabilities and how they don't like
18 to run -- they won't run under certain circumstances
19 victim GSR. Reason being, you would expect to find GSR on
20 a victim who was just shot. Of course, it would depend on
21 the distance and whatnot.

22 So we determined not to send the GSR off to SLED
23 analysis just because we weren't going to be able to draw
24 any conclusions, we didn't believe, based upon the GSR
25 analysis. Again, recommendation from SLED as well.

1 Q Now, when you arrested Horace and Malik, that was on
2 the 14th, correct?

3 A Correct.

4 Q And believe there were photographs taken?

5 A Yes. CSI Potash, I believe I requested him. That's
6 pretty standard. We'll typically photograph, fingerprint,
7 DNA swab. Anyone from a major violent incident that we
8 arrest, that's just standard procedure.

9 Q I'm going to show you what's marked State's Exhibit
10 No. 177. Look at that, please.

11 A Yes.

12 Q Do you recognize that?

13 A I do. It's a photograph of Malik Davis.

14 Q And that was the one you took that night?

15 A Not I took. That's one Potash -- once he took them,
16 he turned the photographs over to me and this is one of
17 the photographs.

18 MR. POTTS: At this time, Your Honor, the State would
19 offer into evidence Exhibit No. 177.

20 MR. RUFFIN: Objection, relevance.

21 THE COURT: All right. Let me see it.

22 What was your last question to him?

23 MR. POTTS: If he recognize the photograph, Your
24 Honor and when it was taken.

25 THE COURT: All right. I overrule the objection.

1 MR. POTTS: Thank you, Your Honor.

2 (WHEREUPON, State's Exhibit No. 177 was admitted
3 into evidence.)

4 BY MR. POTTS:

5 Q This is the photograph of Malik Davis two days after
6 the incident, correct?

7 A That's Malik Davis as he appeared on the 14th when he
8 was brought into police headquarters, yes, sir.

9 Q Okay.

10 MR. POTTS: Beg the Court's indulgence, one second.

11 BY MR. POTTS:

12 Q Investigator, earlier, I was talking about a jail
13 phone call, State's Exhibit No. 174. You're familiar
14 with that, right?

15 A That's correct.

16 Q Have you listened to it?

17 A I have.

18 Q Is it your practice when you arrest someone, you
19 often listen to their jail phone calls?

20 A Right, especially when -- in this situation, sure.

21 In this situation, I did. I listened to several jail
22 phone calls after the arrest, yes.

23 Q Okay. And you've had a chance to listen to that jail
24 phone call, correct?

25 A Yes.

1 Q Do you recognize the voice on it?

2 A I believe it to be Horace Watts.

3 Q Okay.

4 MR. POTTS: At this time, Your Honor, we'd like to
5 publish State's Exhibit 174.

6 THE COURT: All right. It's in evidence, isn't it?

7 Let's just stand up for a minute to get a good
8 stretch.

9 (Pause.)

10 THE COURT: All right.

11 (WHEREUPON, the jail call was played for the
12 jury.)

13 MR. POTTS: Thank you, Investigator McCoy. No
14 further questions.

15 THE COURT: Cross-examination?

16 MR. RUFFIN: No questions, Your Honor.

17 THE COURT: All right. Thank you, sir. You may step
18 down.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: Next witness.

21 MR. POTTS: At this time, Your Honor, the State rest.

22 THE COURT: All right. Ladies and gentlemen, that is
23 the State's case. I'm going to have you go to the jury
24 room and let me talk to the lawyers for a few minutes.

25 (WHEREUPON, the jury left the courtroom at 4:59

1 p.m.)

2 THE COURT: All right. Any matters of law?

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

4 MR. RUFFIN: Your Honor, we just renew all of our
5 prior objections at this point.

6 THE COURT: All right. And move for a directed
7 verdict?

8 MR. RUFFIN: Since you suggested it, Your Honor, I
9 will.

10 THE COURT: All right. I think to protect the
11 Defendant's right, you have to move for directed verdict.
12 And the evidence is clear that the Court should deny that
13 motion for a directed verdict based on the evidence if
14 believed by the jury. In addition, I renew my ruling as
15 to the previous objections.

16 Now, with regard to the Defense and the Defendant
17 testifying and presenting a defense, are you ready to
18 proceed?

19 MR. RUFFIN: Your Honor, we are not going to call
20 anyone. Horace is not going to testify.

21 THE COURT: All right. Well, let me examine him and
22 make sure he doesn't want to testify.

23 Swear him in.

24 THE CLERK: Yes, Your Honor. Please raise your right
25 hand.

1 Thereupon;

2 HORACE WATTS,

3 After having been duly sworn, testified as follows:

4 THE CLERK: Thank you.

5 THE COURT: All right. Mr. Watts, at this time, I'm
6 going to explain to you some of your -- certain of your
7 rights. If you don't understand anything I say, please
8 let me know and I'll be happy to explain it, you
9 understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Now, we've reached the stage of the trial
12 where the State has rested and where you may present your
13 defense. Now, you have the right to claim the protections
14 given to you by the Fifth amendment to the Constitution of
15 the United States. And this amendment states in part that
16 no person can be compelled in any criminal case to be a
17 witness against themselves. This means that you cannot be
18 required to testify in your case. You do have the right
19 to testify on your own behalf if you would like to, but no
20 one can make you testify. Whether or not you testify is a
21 personal right and no one can waive this right except you.
22 It's not up to your lawyer, it's up to you. You
23 understand?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, if you decide to testify, you will

1 be subject to the same rules that govern all other
2 witnesses and you be examined or cross-examined on any
3 relevant issue in this case. In addition, if you have any
4 conviction involving dishonestly or false statements or
5 convictions for crimes punishable by more than one year
6 and I determine that the probative value of admitting this
7 evidence outweigh its prejudicial effect to you, then the
8 solicitor will be able to introduce your criminal to
9 attack your credibility. You follow me?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Now, if you decide to testify, this
12 decision, as I just stated, must be a free, voluntary, and
13 intelligent decision made by you with knowledge of the
14 protections given to you by the Fifth amendment and the
15 consequences of your decision to testify.

16 Now, if you decide not to testify -- your lawyer said
17 they don't think you want to testify. If you decide not
18 to testify, I will instruct the jurors that they cannot
19 give the fact that you did not testify any consideration
20 whatsoever. There is to be absolutely no prejudice to you
21 because you did not testify. But it's left entirely up to
22 you whether or not you testify. You may talk with your
23 lawyers some more. You can talk to your family, your
24 friends, anyone else you want to testify -- talk to, but
25 the final decision will be left entirely up to you. You

1 understand what I've explained?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You want to talk to anyone about it?

4 THE DEFENDANT: (The witness shakes head.)

5 THE COURT: You want to talk to your lawyers anymore?

6 THE DEFENDANT: No, sir.

7 THE COURT: Have you made up your mind about whether
8 or not you're going to testify?

9 THE DEFENDANT: I'm not.

10 THE COURT: You're not going to testify?

11 THE DEFENDANT: No, sir.

12 THE COURT: All right. And the lawyers say they're
13 not going to call any witnesses; is that right?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you know of any witnesses they need to
16 call or any of those people behind you or anyone else?

17 THE DEFENDANT: No, sir.

18 THE COURT: No one to testify?

19 THE DEFENDANT: No, sir.

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

21 All right. Well, I find he's been apprised and he's
22 decided not to testify.

23 Well, all right. So we have made it up to 5:04.

24 Did you rest exactly at 5:00? 4:58?

25 MR. POTTS: I was very close, Your Honor.

1 THE COURT: Okay. Well, good. We made a full day.
2 So the plan I think is to recess and let the jurors --
3 have them come back for closing arguments at 10:00
4 tomorrow morning. We'll come back at 9:30 and have the
5 jury come in at 10:00 for closing arguments. And we will
6 order lunch for them tomorrow while they're deliberating.

7 So let's bring them in so we can cut them loose.

8 BAILIFF: Yes, sir..

9 MR. RUFFIN: Your Honor?

10 THE COURT: Yes, sir?

11 MR. RUFFIN: Should I just go ahead and rest on the
12 record.

13 THE COURT: Yes, sir, you must rest on the record.

14 MR. RUFFIN: Thank you, Judge.

15 (WHEREUPON, the jury returned to the courtroom
16 at 5:05 p.m.)

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

18 THE COURT: Ladies and gentlemen, you've heard the
19 State's case. It's now the Defense turn.

20 Mr. Ruffin.

21 MR. RUFFIN: Your Honor, the Defense rest.

22 THE COURT: All right. Well, ladies and gentlemen,
23 the Defense has rested. That means you have heard all of
24 the evidence -- you've heard all of the testimony and you
25 have received all of the evidence in the case. What's

1 next is closing arguments and then jury deliberations.
2 But we've made a full day today, it's now 5:06. So we're
3 going to leave today and come back at 10:00 tomorrow
4 morning.

5 So please remember not to discuss the case with
6 anyone. You can only discuss the case with your fellow
7 jurors, not anyone else who's not on the jury. And we'll
8 see you all again tomorrow morning at 10:00. All right.
9 You cannot discuss the case with each other until you've
10 heard closing arguments and my instructions on the law.
11 All right. See you tomorrow morning at 10:00.

12 (WHEREUPON, the jury left the courtroom at 5:07
13 p.m.)

14 THE COURT: All right. Yes, sir?

15 MR. POTTS: Your Honor, just one final matter before
16 closing. Under State V. Beatty with the return to common
17 law rule, I believe the State would have second closing.
18 At this point, we'd ask that the party of the first
19 closing be required to close in full on the facts and the
20 law in the first close.

21 THE COURT: What you say about that?

22 MR. RUFFIN: Your Honor, I disagree completely with
23 Mr. Potts reading of State V. Beatty. I also noticed when
24 I looked at Beatty, in the conclusion, it says that the
25 rule, whatever the rule is is not to go into effect anyway

1 until the opinion becomes final. I think there's a
2 rehearing pending before the Supreme Court now, both State
3 and Defense.

4 THE COURT: I didn't get what Mr. Potts was
5 explaining. What was he talking about?

6 MR. RUFFIN: He wants me to be required to close
7 first such that he can then respond to my closing and then
8 I would have a second closing.

9 THE COURT: That's not State V. Beatty.

10 MR. RUFFIN: I agree with that.

11 THE COURT: State V. Beatty preserves whatever
12 existed before, that is if you offer no evidence, the
13 State presents their closing and then you come after the
14 State.

15 MR. RUFFIN: Correct, Judge, and that's what we're
16 asking. I think that's the way it's been done for a very
17 long time.

18 THE COURT: Mr. Potts, you figured something else out
19 in State V. Beatty?

20 MR. POTTS: Your Honor, the way I read State V.
21 Beatty is that the party with the first and last close,
22 Your Honor, is only limited to strictly replying in that
23 last closing argument, Your Honor.

24 THE COURT: That's where the defense has presented
25 evidence. That's when this whole issue becomes an issue.

1 MR. POTTS: Certainly, Your Honor.

2 THE COURT: It's not something that helps the State
3 get a last argument.

4 MR. POTTS: Your Honor, I was not intending to get a
5 last argument --

6 THE COURT: Under this scenario.

7 MR. POTTS: No, Your Honor, and that was not my
8 intention.

9 THE COURT: Okay.

10 MR. POTTS: I did not intend to say that.

11 THE COURT: Well, you go first and they go after you.
12 If you're not saying that you should get the last
13 argument, what are you saying?

14 MR. POTTS: I was saying, Your Honor, that I believe
15 under State V. Beatty, they are limited only to reply to
16 what I say in my closing.

17 THE COURT: No, no, they've got -- you have to fire
18 all the bullets you got and they have to fire all the
19 bullets they've got, all the way. You only get one shot.
20 You've got to give it all at that time.

21 State V. Beatty speaks to the issue that where a
22 defense has been presented, the defense can require the
23 State to open in full, not just hold back something to
24 spring on them to -- you know, like -- you know, you can't
25 save your best argument till last. You can only -- you

1 have to open in full and then when they respond, you can
2 only reply. You can't hold your smoking gun until after
3 they respond and say well, they didn't tell you about
4 this.

5 MR. POTTS: And Your Honor, I completely agree with
6 you. I just think that the language in Beatty is generic
7 to the party -- it's the party with the first closing and
8 the party with the second closing. I think that should
9 apply both ways.

10 THE COURT: Yeah, they should have had me write that
11 opinion, I agree with you. But, you know, it is what it
12 is. It's not as earth shattering as some may think. I
13 mean, actually, back when, the practice was that the
14 defense could require the State to open in full. All of
15 that kind of drifted by the way side and the State has
16 started opening on the law and then reply as if they never
17 opened on the law. They replied with everything.

18 State V. Beatty, in order to prevent the State from
19 coming in with this last minute blast of information says
20 the State has to open in full, then the defense goes in
21 full, but the State then only reply. So they'll clarify
22 that so you all won't have to debate on what it says so
23 much because it's not as complicated as some may think.

24 MR. POTTS: I agree, Your Honor. Thank you.

25 THE COURT: Now, regarding the jury charge. Request

1 to charges, any requests by anybody?

2 MR. POTTS: Your Honor, we have submitted some
3 charges before. We have one additional charge I would
4 like to submit.

5 THE COURT: How did you submit them, through what
6 means?

7 MR. POTTS: I handed them to your law clerk in
8 pretrial, Your Honor. I have another copy, though.

9 THE COURT: All right. We can't find anything.

10 MR. POTTS: I have another copy.

11 THE COURT: Okay. Good.

12 MR. RUFFIN: Your Honor --

13 MR. POTTS: And I have a copy of Mr. Ruffin's because
14 we gave them to each other.

15 THE COURT: All right.

16 MR. RUFFIN: I really apologize for that, Judge,
17 because one of mine is a little bit long.

18 THE COURT: All right.

19 MR. POTTS: I'll resign another copy.

20 THE COURT: All right. Which one are you sending up
21 that's long?

22 MR. RUFFIN: There's two. The first one is just a
23 typical expert witness charge. The second one is a more
24 expansive eyewitness identification charge. And if I
25 could -- well, I'll just let you look at it.

1 THE COURT: All right. Typically, when we have a
2 standard charge, we stick with the standard charge, but
3 I'm certainly willing to consider some additional, but
4 sounds like you want me to read one, two, three, four,
5 four and a half pages to discuss with them how they should
6 access the ability of someone to identify someone.

7 MR. RUFFIN: Correct, Your Honor. I understand
8 that's not the standard practice here, Judge.

9 THE COURT: Identify assessing eyewitness
10 identification.

11 MR. RUFFIN: I do have copy of that.

12 THE COURT: Yeah, I think I'd modify my eyewitness
13 identification some in light of some of what you've
14 mentioned here. And I'll take a look at it. I just don't
15 know how far we'll go with adding all of this other stuff
16 in there.

17 MR. RUFFIN: Okay. Thank you, Judge. And if we
18 could just make my request as Court's Exhibit.

19 THE COURT: How about the State?

20 MR. POTTS: Your Honor, I think ours are pretty
21 normal. We submitted a charge on all of the offenses.
22 Actually, I don't believe there's one for unlawful
23 carrying of a pistol, but all the rest of the offenses,
24 Your Honor. Having submitted one on malice aforethought
25 and voluntary intoxication.

1 THE COURT: Let me know if you have any objection to
2 any of the State's.

3 MR. RUFFIN: I don't have any objections to the
4 State's, Judge.

5 THE COURT: All right.

6 MR. RUFFIN: I've seen them all.

7 THE COURT: All right. Okay. Well, good. I
8 typically give the jury a copy of the jury charge. Is
9 there any objection to that?

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

11 MR. RUFFIN: I'm sorry, say that again.

12 THE COURT: I usually give the jury a written copy of
13 the charge. Any objection to that?

14 MR. RUFFIN: No, no objection.

15 THE COURT: All right. Very good. So we'll be here
16 before 10:00 and be ready for the jury at 10:00. We need
17 to be here early enough to make sure that you're all
18 straight with the court reporter with all the exhibits.

19 Or you want to do it today?

20 THE COURT REPORTER: We can do it now, that's fine.

21 THE COURT: Otherwise, we're out and see you at 9:30
22 tomorrow morning.

23 (WHEREUPON, the proceedings were adjourned for the
24 day.)

25 THURSDAY, FEBRUARY 9, 2017

1 THE COURT: Do y'all have anything regarding the jury
2 charges, questions, comments?

3 MR. POTTS: I guess we're a little curious about how
4 Your Honor is adapting the eyewitness charge.

5 THE COURT: We'll e-mail you what we have.

6 MR. POTTS: That would be great, Your Honor. Thank
7 you. And, Your Honor, I would like to pass up the State's
8 witness order that we did.

9 THE COURT: I don't know that they want it at this
10 point. I think they wanted it during the trial for some
11 reason. I don't know, though. That was just a random
12 question. It's not part of the evidence -- the witness
13 order is not part of the evidence, so I'm not -- unless
14 you'll want to stipulate for me to give it to them.

15 MR. RUFFIN: I mean, we don't have a problem with it.

16 THE COURT: I think it's just a bunch of other papers
17 to give the jury.

18 MR. POTTS: I'm inclined to agree. If they ask for
19 it, then I think we should definitely give it to them.

20 THE COURT: Okay. Let's just hold off on this and
21 see if they want it.

22 Who's going to argue for the State?

23 MR. POTTS: I will, Your Honor.

24 THE COURT: All right. I'll give y'all a couple
25 minutes to digest this. I'm open to any suggestions and

1 comments about this identification charge. It's sort of a
2 pared-down version of what Mr. Comish gave me. It's not
3 pared down by much. I deleted about two or three
4 sentences and left it basically intact. I'll consider
5 comments or read the whole thing. It's not a big deal.

6 (Pause.)

7 THE COURT: Concerning eyewitness identification, any
8 comments by the State or the Defense?

9 MR. POTTS: Your Honor, it is the State's position
10 that the normal charge would be totally sufficient in this
11 case. This long charge places an out of proportion -- I
12 mean, certainly, this is an important issue, but I think
13 it places it out of proportion to the rest of the charge.
14 But, Your Honor, I understand making the charge.

15 The main objection that I have to it is on top of
16 Page 2. The first complete sentence there starts off a
17 little differently from all the others, Your Honor --

18 THE COURT: What did you say?

19 MR. POTTS: The first complete sentence, Your Honor,
20 starting with therefore.

21 THE COURT: Starting with?

22 MR. POTTS: Therefore, when analyzing such testimony.
23 Your Honor, that sentence stands out, the phrase is kind
24 of different from the rest of the charge, Your Honor. The
25 State just ask that it began with rather than therefore,

1 with a witness's level of confidence. I don't think it
2 changes the meaning of the sentence, Your Honor, but I
3 think that language previous to it puts -- because it's so
4 different than the rest of the charge puts undue emphasis
5 on it.

6 THE COURT: I don't think this type charge is going
7 to become the standard here. You know, it's sort of New
8 Jersey type charge from a mistaken identity case that
9 prompted them to revamp their charge.

10 What does the Defense say?

11 MR. RUFFIN: Your Honor, I'd ask that you read it the
12 way that you presented it to us.

13 THE COURT: Reading it in broken sentences and
14 everything?

15 MR. RUFFIN: Correct.

16 THE COURT: We butchered some of yours and it may
17 have resulted in a sentence not making sense like the one
18 he mentioned.

19 MR. RUFFIN: The sentence makes sense to me. You
20 know, if you want to cut off the therefore in analyzing
21 such testimony and just start with the witness's level of
22 confidence.

23 Is that what you're saying?

24 MR. POTTS: Yes.

25 MR. RUFFIN: We really don't have any problem with

1 that.

2 THE COURT: All right. Well, good. You don't have a
3 problem with it.

4 MR. RUFFIN: Obviously, the eyewitness testimony is a
5 significant part of the State's case. I think that
6 there's been testimony elicited all of these things that
7 are listed, stress, duration, weapon focus, lighting.
8 We've heard testimony about all those things.

9 THE COURT: All right. We'll give the charge.

10 MR. RUFFIN: Thank you, Judge.

11 MR. POTTS: Thank you, Judge.

12 THE COURT: That's why we give an eyewitness charge
13 because it's an important part of every case. They can't
14 find anyone guilty unless they find that the person
15 identified is the one who committed the crime. That's
16 what the standard charge is all about. But even in this
17 case, to scrutinize well, did you know him? Yes, we knew
18 him. Did you see him? Yes, we saw him. You know, all of
19 the factors that I am reemphasizing in this charge, it
20 really -- it reemphasizes the State's case more so than
21 helps the Defense. It cuts both ways. You say I
22 shouldn't give it because it emphasizes it. But the fact
23 that it emphasizes it can be interpreted to help the
24 State. So we'll give it. You know, small victories are
25 important and big ones.

1 We'll get our printed charge and then we'll bring the
2 jury in.

3 (WHEREUPON, a short recess was held.)

4 THE COURT: All right. Let's bring the jury.

5 (WHEREUPON, the jury returned to the courtroom at
6 10:13 a.m.)

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

8 THE COURT: Welcome back, ladies and gentlemen. You
9 have heard all the testimony, received all the evidence.
10 Now is the time to hear the lawyers' closing arguments.
11 First from the State.

12 Mr. Potts.

13 CLOSING ARGUMENT BY MR. POTTS

14 MR. POTTS: Thank you, Your Honor.

15 July 12th, 2014, in Columbia, a hot muggy day, like
16 most days are, the Cleckley and the Lewis families were
17 out celebrating April Cleckley's birthday. Things were
18 starting to die down, we're reaching 8:30. There had been
19 some altercations earlier. People got all excited and the
20 party was starting to get back together. People were out
21 roaming the streets, sitting around chatting, having a
22 good time. A blue car came down Center Street. Horace
23 Watts (indicating) and Malik Davis got out.

24 Tarus Threatt, one of the first to see it. He was 15
25 years old. He started walking a little bit closer, still

1 too young to realize fighting doesn't really solve
2 anything. Dominique, though, standing with him, he saw
3 what was in their hands. He saw the guns. And when they
4 raised them and started shooting them, Tarus and Dominique
5 started running. Paris, who was also standing on the
6 street, ran into the church yard. Daquan ran back to the
7 house. April ran back to the house. Benjamin Walker saw
8 Daquan's child, picked her up and took her in the house.
9 All the while, Horace Watts and Malik Davis are running
10 down the street, bang, bang, bang, bang, firing at a
11 crowd of 30 to 50 people. Men, women and children were
12 all there just to have a good time.

13 Now, when they got to the house, Malik stopped in the
14 street. He started clutching his firearm and Horace
15 advanced into the yard. The first thing Jasmine saw --
16 she had her head down when the gunshots first rang out --
17 was a red beam coming through the bushes. Horace pointed
18 the gun at Avery, then pointed at Jamichael and he said,
19 Why did y'all jump my brother?

20 Jasmine ran, she hid behind the Hyundai. He fired a
21 couple shots at her. Then Diamond Corbett, pointed the
22 gun at her, fired (indicating). The bullet whizzed by her
23 arm. Then Isaac Lewis, standing there. As he went to
24 hide behind the tree, he pointed the gun and shot again,
25 striking him in the right back, coming out through his

1 left chest as if he was turning around to go behind the
2 tree (indicating). Isaac Lewis fell to the ground and
3 died within minutes. Two punctured lungs, bullet through
4 his aorta. He never stood a chance.

5 Now, I'm going talk to you about the charges Horace
6 Watts faces from that day for what he did to Isaac Lewis
7 and Tyrone Johnson. First, we have murder. Murder being
8 one of the most serious crimes -- the most serious crime
9 is very simple. Murder is the killing of any person with
10 malice aforethought either expressed or implied. Now,
11 attempted murder is very simple. It's a person who
12 attempts to kill a person with malice aforethought either
13 expressed or implied.

14 Now, what is malice? That's kind of a funny word
15 sitting out there. Malice is an element of murder. It
16 does not necessarily mean you have ill will in particular
17 to the individual. It signifies a general malignant
18 recklessness of the lives and safety of others, a
19 condition of mind that shows a heart regardless of social
20 duty and fatally bent on mischief.

21 Ladies and gentlemen, there was nothing more
22 malicious or reckless to the lives of others than to run
23 and to start firing into a party of people, to start
24 firing into a group of men, women, and children, pointing
25 a gun at Isaac Lewis and shooting him in the back, that is

1 malice. Striking Tyrone Johnson, whether intentional or
2 just in a hail of bullets, that is malice.

3 He's also charged with possession of a weapon during
4 the commission of a violent crime. And that's a much
5 longer charge as you can see than murder and attempted
6 murder, but at the same time, it's pretty easy, too.
7 Possession of a weapon, the firearm, during the commission
8 of a violent crime. Firearm is any gun, including
9 pistols. What's a violent crime? Well, in this case,
10 murder is a violent crime. Attempted murder is a violent
11 crime. Using a weapon during those two crimes is
12 possession of a weapon during the commission of a violent
13 crime.

14 Finally, unlawful carrying of a pistol. Carrying a
15 pistol about his person whether concealed or not. Very
16 simple.

17 Now, those are the charges. Now, there are some
18 additional law we need to talk about, too. The first is
19 credibility of a witness. That's y'all's role. Y'all get
20 to listen to the testimony and you get to determine
21 whether you think a witness is credible or not. And
22 there's several factors you can take into consideration.
23 And the Judge is going to spend a good amount of time
24 telling you about these things. But here's some things
25 you can consider.

1 Was he or she straightforward or hesitant when
2 answering questions? Think about Paris Young. Think
3 about Avery Dickson. Think about Jamichael Lewis. Think
4 about Diamond Corbett. Think about Dominique Tucker.
5 They were all straightforward. Were they consistent or
6 were they inconsistent? Benjamin Walker, everybody,
7 straightforward, consistent on the stand. How does the
8 witness know the facts he's testifying to? They were
9 there. They saw it. There was no one better who knows
10 the facts. Was the testimony of the witness strengthened
11 or weakened by other testimony and evidence? And we'll
12 get into the forensic evidence that we have in a bit, but
13 that forensic evidence, all it did was support what they
14 said happened. All it did was make their testimony more
15 believable and more credible. And is there a reason a
16 witness would want to give testimony which would help or
17 hurt one side or the other? Those are all factors you
18 should consider. It's what your duty is.

19 Let's go to the hand of one. So when a crime is
20 committed, two or more people who were acting together,
21 the act of one is the act of both of them. They both do
22 the crime. They both do it together, acting together,
23 assisting each other. The act of one is the act of all.
24 And here in South Carolina, we call that the hand of one
25 is the hand of all.

1 And there's a very classic demonstration of this.
2 When two people decide to rob a bank and one stays in the
3 car and the other one goes inside, if a person is hurt,
4 killed in the robbing of the bank, the get-away driver is
5 just as responsible as the person who actually went inside
6 because they both intended to commit the crime together.
7 They are both equally responsible.

8 And in this case, Horace Watts is just as responsible
9 as Malik Davis and Malik Davis is just as responsible as
10 Horace Watts. What they intended to do is a crime.
11 Whether it was attempted murder, whether it was murder or
12 whether it was just firing shots that could have resulted
13 in murder, it's a crime. And when they acted together,
14 they are guilty. That is what the hand of one is the hand
15 of all means.

16 I'm not sure I can tell you who shot Tyrone Johnson.
17 I can't tell you whether it was Horace or Malik, but
18 they're both just as guilty. I can tell you who shot
19 Isaac Lewis, that was Horace Watts, but they are both just
20 as guilty.

21 My role as the solicitor's office, my role as the
22 State is that we have to prove all of these things to you
23 beyond a reasonable doubt. You heard about that in
24 opening. It's the highest standard in the law. And we
25 accept that burden. It's a burden that we have to

1 overcome in this case.

2 But what is beyond a reasonable doubt? What does
3 that mean? Proof beyond a reasonable doubt is proof that
4 leaves you firmly convinced of the Defendant's guilt.
5 There are very few things that we know in this life with
6 absolute certainty. Ladies and gentlemen, if you knew
7 with absolutely certainty what happened that day, I would
8 be placing you on the witness stand. The people who were
9 there are the ones who know with absolute certainty. You
10 do not have to know with absolute certainty. That is not
11 what I have to convince you of. You have to be firmly
12 convinced.

13 In criminal cases, the law does not require proof
14 that overcomes every possible doubt. You were not there.
15 You've heard the testimony of people who were there, but
16 you were not there yourself. If you are firmly convinced
17 that the Defendant is guilty of the crime charged, you
18 must find him guilty. If, however, you are not firmly
19 convinced that he is guilty, you must find him not guilty.

20 All right. Y'all have heard a lot of testimony.
21 Y'all have been taking good notes, I've been watching
22 y'all. I'm not going to spend a whole bunch of time
23 telling you, going through every witness, telling you what
24 happened, okay, but I do want to touch some of the basics,
25 some of the eyewitnesses and some of the things they saw.

1 Because Mr. Krzyston was right when he said in opening,
2 they're to have differences. They were in different
3 places, they saw different things. Paris was across the
4 street. April and Daquan and Benjamin were inside. Avery
5 and Jamichael were on the porch. People see different
6 things. They have their own perspective. So yes, they
7 said different things, but those details further make
8 their stories believable. Those details are additional
9 things that they saw that no one else saw. That's how we
10 know they saw it.

11 Let's talk about Diamond Corbett. She was telling
12 you she was standing in the driveway. Uncle Ike was
13 getting the kids inside the house. Malik stayed in the
14 front yard while Horace Watts advanced. He pointed the
15 gun at her and he fired. It whizzed right by her arm,
16 apparently, missing her. So at that time, he turned the
17 gun onto Isaac Lewis. Diamond knows Horace Watts.
18 Diamond saw exactly what happened.

19 Jasmine Sims. Poor Jasmine was 13 years old at the
20 time. She had her head down when it was beginning, when
21 the gunshots started ringing out. When she picked up her
22 head, the first thing she saw was that red laser beam
23 coming through the bushes, and she ran. She hid behind
24 the car. And you heard her say the gunshots came at the
25 car, striking the car that she was hiding behind. And

1 then she saw Horace Watts shoot Uncle Ike when he was
2 going to hide behind the tree. He didn't get the cover
3 she had. He didn't have the chance.

4 Avery Dickson. Avery Dickson saw it from the
5 beginning. He saw the blue car pull up on Center Street.
6 He saw Horace and Malik come running towards them firing
7 gunshots. He, too, said Malik stopped in the yard and
8 Horace pointed the gun both at him and Jamichael. Y'all
9 remember that when Mr. Krzyston had that green gun in his
10 hand and was standing here pointing at Mr. Avery Dickson.
11 The man already had one gun pointed in his face, tried to
12 do it over again.

13 Jamichael Lewis. Jamichael Lewis was standing right
14 next to Avery. They both were on the porch. And he and
15 Uncle Ike picks up lawn mowers. Uncle Ike would take him
16 around, go find yards to cut. That's they would do. He
17 saw Horace and Malik running towards them and shooting.
18 And he also said Malik stayed it the street while Horace
19 came into the yard. Horace pointed the red beam at his
20 chest no further than I am from that witness stand. He
21 asked him, Why did y'all jump my brother?

22 Benjamin Walker, he heard the gunshots, tried to get
23 the children out of the way. When he got inside the home,
24 he saw the red laser fall on Uncle Ike. They tried to
25 talk about falling on his own back. He was able to

1 clarify for you. He can't see his own back. He saw it on
2 Uncle Ike.

3 April Cleckley. Her birthday every year from now on
4 for the rest of her life is this memory. This is her
5 birthday. Isaac Lewis's death will forever, will forever
6 be the cloud on the top of that. There's no celebration
7 she can have without this. And she testified, too, that
8 she was inside the house and was able to see out the
9 window Horace shooting Isaac Lewis.

10 Tarus Threatt. Now, Tarus, he saw Malik and Horace
11 get out of the car. And he thought Malik might be coming
12 back for a fight. As I said, Tarus, 17 years old now, 15
13 years old then, yet, he's still too young to realize
14 fights don't solve anything and so he took a few steps
15 forward. But then when the gunshots started, he ran.

16 Standing next to him was Dominique. Dominique saw
17 the boys get out of the car, but he saw the guns and he
18 knew this was not going to be a fight. He knew there was
19 nothing he needed to be here, so that's when he got
20 Tarus's attention and they started running. These guys
21 all played basketball and they knew him. They were
22 friends. And they knew this was trouble.

23 Daquan. Daquan Cleckley and Horace, he told you they
24 were like brothers. They hung out every day. They played
25 basketball. They were -- he wouldn't say best friends,

1 but they were very, very good friends. And when he saw --
2 when he heard the shooting and he saw them running towards
3 him, he, too, ran in the house to get away and he stood by
4 that window looking out on the driveway. He saw Horace
5 walk in the yard and shoot his Uncle Ike as he was trying
6 to get behind the tree. His brother, the man he
7 considered his brother, shot his uncle.

8 Paris Young. Paris Young, just finish talking with
9 Uncle Ike, was getting his beer, he ran across the street
10 when the shooting started. He had a good view, good
11 vantage point of everything that happened. And he heard
12 Uncle Ike say, Are you going to shoot me? And after that,
13 he saw Horace shoot at Isaac Lewis as he ducked behind the
14 tree. Uncle Ike never got to finish that beer. Paris
15 also saw the lineup and he wrote, This is the shooter and
16 he circled everything. Paris saw what happened. Paris
17 knew the man.

18 So let's talk about the crime scene. So at 2327
19 Magnolia, there were 16 shell casings recovered. Six of
20 those came from a 9mm, 10 came from a 45. Now, this is
21 just a different version, it's in evidence for you. I
22 colored it a little bit so you can see it. The blue dots
23 are where they found 45 casings. The red dots are where
24 they found 9mm casings. So when the witnesses say Horace
25 and Malik got out on Center Street and started running

1 towards us firing their guns, you see a scatter of 9mm and
2 45 caliber shells all together. But by the time they
3 reach the yard, the 9mm casings stop and there's nothing
4 but 45s. As you advance on the house, there's nothing but
5 45 caliber ammunition or shell casings.

6 That directly corroborates everything the witnesses
7 told you. And here, you can see these cones, those are
8 the 45 shell casings. Those are the five that are right
9 by the house. And that cone down there (indicating) is
10 where Isaac Lewis was (indicating). That's the car
11 Jasmine Sims was hiding behind. That's the window Daquan
12 was looking out. That's the porch where Avery and
13 Jamichael were.

14 So then officers served a search warrant on 2227 B
15 Waites. And what do they find there? Well, in one
16 bedroom, they found a box of 45 ammunition and the pieces
17 of a gold grill, which Jamichael told you he saw Malik
18 with a gold grill. In bedroom number two, they found two
19 more 45 caliber shell casings.

20 Ladies and gentlemen, if you look at the shell
21 casings found on Waites Street, and you look at the
22 ammunition found in the box, and you look at what was
23 found on Magnolia Street, it's all the same. They all
24 have the same stamps.

25 You heard Chad Smith tell you he didn't know these

1 were found somewhere else. He had no idea these were not
2 found in the crime scene. When he tested these, they,
3 too, were consistent with being fired from the gun that
4 fired all of these. In the Defendant's home, shell
5 casings, fired bullets that were consistent with the ones
6 found at the crime scene. A box of ammunition from the
7 same manufacturer.

8 I don't need to tell y'all what that means. I don't
9 need to tell you what it means. I'm going to let Horace's
10 own words tell you what it means. I have a selection of
11 jail phone calls right where I've written down what I hear
12 when I play them. I've also written down times on the
13 jail phone call, on this disk, State's 174, which y'all
14 will have back in the jury room. If you want to listen,
15 they will be right here.

16 (WHEREUPON, the jail phone call was played for the
17 jury.)

18 MR. POTTS: I should have let him handle it by
19 himself.

20 (WHEREUPON, the jail phone call was continued for
21 the jury.)

22 MR. POTTS: This is State's 177 (indicating). This
23 is a picture of Malik Davis on the 14th, two days after
24 the shooting. It's been a lot of talk about a fight
25 between Terrell Threatt and Malik Davis. A lot of talk

1 from the Defense about did y'all jump him. This is his
2 face two days later (indicating). Now, I'll grant you,
3 there's a little mark under his left eye. And Terrell
4 will tell you, he punched him back. This is not a picture
5 of some man that's been beat up by 10 or more people
6 (indicating). This is not a picture of a long drawn out
7 fight. This is a picture of a man whose pride got hurt
8 and it's definitely not a picture of a man who's eye was
9 closed.

10 (WHEREUPON, jail phone call was continued for the
11 jury.)

12 MR. POTTS: Ladies and gentlemen, Dr. Marcus told you
13 that based on the wound, no bullet -- he can't say whether
14 it was a 9mm or 45. I think the evidence is pretty strong
15 it was a 45. But Daquan Cleckley, April Cleckley,
16 Jamichael Lewis, Avery Dickson, Jasmine Sims and so forth
17 all told you who shot. They told you who shot Isaac
18 Lewis. It doesn't matter if I can't tell you for certain
19 it was a 45 or a 9mm, Horace Watts was the shooter.

20 (WHEREUPON, jail phone call was continued for the
21 jury.)

22 MR. POTTS: Ladies and gentlemen, it is all around
23 the world now Horace is a killer. I ask you when you go
24 back and deliberate to give a verdict that fits the facts,
25 that fits what you've heard over these past three days,

1 that fits the physical evidence. I ask you to come back
2 with a verdict of guilty on murder, guilty on attempted
3 murder, guilty of possession of a weapon during the
4 commission of a violent crime, and guilty on unlawful
5 carrying of a pistol. That is the verdict that justice
6 demands and that is the verdict you should give him.

7 Thank you, ladies and gentlemen.

8 THE COURT: By the Defense..

9 MR. POTTS: Please the Court?

10 THE COURT: Yes, sir.

11 CLOSING ARGUMENT BY MR. RUFFIN

12 MR. RUFFIN: Good morning, y'all. You know, there
13 are a few areas of the legal profession that are as
14 popular in American entertainment as criminal law. You
15 know, I may be wrong, but I don't see a lot of TV shows
16 and movies about real estate lawyers or tax attorneys.
17 There's nothing wrong with that, but my point is that most
18 everyone has heard the phrases of presumption of innocence
19 and beyond a reasonable doubt. Probably all heard that.
20 Most people don't really -- have never had any reason to
21 really think about what those things mean.

22 What the presumption of innocence means -- because
23 these aren't just phrases that we throw around in court,
24 okay? What the presumption of innocence means is that
25 you're required by law under the oath that you took to

1 presume that Horace Watts is innocent, that the State is
2 wrong. They have the wrong guy, they screwed the case and
3 in the process, they brought before you an innocent man.
4 And you're required to uphold this presumption not just in
5 theory, but in practice. So when you go back to the jury
6 room, every witness that you talk about, every piece of
7 evidence that you consider, any piece of evidence that's
8 missing, when you talk about it, you do it with the
9 backdrop that Horace Watts is innocent and what the State
10 has presented to you is wrong.

11 Now, that's coupled with what's called beyond a
12 reasonable doubt, proof beyond a reasonable doubt.
13 Reasonable doubt is very simple. It's a doubt that would
14 cause a reasonable person to hesitate to act. That's it.
15 So anything in this case that would cause you to hesitate,
16 anything at all that would cause you to hesitate to act.
17 Think about this. Let's say you're standing on the street
18 corner over at Gervais and Assembly. You're standing on
19 the street and you need to walk across the street. And
20 the light for you turns green and you get the little green
21 walking man on the thing. You know what I'm talking
22 about. And you're getting ready to walk across the
23 street. Do you stop for a second and look both ways
24 before you step out into the road? For your sake, I hope
25 that you do.

1 Now, that pause, that hesitation right there, that's
2 what a reasonable doubt is. You know that probably 99
3 times out of a hundred, the coast is clear, there's no
4 cars coming and you probably would be perfectly safe to
5 step out on the road without looking, but you look anyway
6 because there's a chance that the coast is not clear.
7 That chance that causes you that hesitation, that's what
8 reasonable doubt is. And if you have a reasonable doubt
9 in a criminal case, you must find Horace Watts not guilty.
10 That's what the law requires of you if you have that
11 hesitation in your mind.

12 Now, in a criminal case, reasonable doubt can come in
13 many different forms. It could be unanswered questions
14 that you have. It could be a piece of evidence that
15 doesn't make sense. It could be a witness that you don't
16 believe. So I'll talk to you about some of the doubts
17 that I have about the case and you may have others that I
18 haven't thought about. And, certainly, I'm not the last
19 person that talks, okay. After I get done talking, Judge
20 Newman is going to speak to you for a while and y'all get
21 to go back there and talk amongst yourselves. You get the
22 last word.

23 Some of the doubts that I have, one, is the total
24 lack of physical evidence that connects Horace Watts to
25 this actual shooting, the scene of the shooting. They

1 have shell casings. They never tested the shell casings
2 for any DNA or any fingerprints, okay. Why not? Why
3 wouldn't they test for that. Some of you who might own
4 handguns, you might know how to load a semi-automatic
5 pistol. You have a magazine, some people call it a clip,
6 and you have bullets, cartridge cases. You pick the
7 cartridge up and you stick it in the magazine one at a
8 time. That's how you load a gun (indicating).

9 Whoever loaded these guns would have touched every
10 single one of those shell casings. They would have
11 touched every single one of those shell casings, but the
12 State didn't even bother to test that to see whose
13 fingerprints, whose DNA might be on the shell casings.
14 Ask yourselves this, if someone else's fingerprints were
15 on those shell casings, those 45s or the 9mms, would that
16 change the way that you think about this case at all? It
17 would change the way I think about it.

18 So there's no -- we don't know whose fingerprints
19 were on them because the State didn't bother to test it.
20 But, remember, they have the burden of proof and the
21 presumption is that Horace Watts didn't do it. The
22 presumption is that they're wrong. They don't test for
23 fingerprints on there. So if you think in your head what
24 if somebody else's fingerprints were on there, that's what
25 a reasonable doubt is. That should cause you to hesitate.

1 The other thing that we don't have in this pile of
2 stuff over here is a gun. There's no firearm. No gun was
3 every presented to you in evidence. They don't have the
4 gun. Well, two of the crimes that they have Horace
5 charged with are, basically, possessing a gun. And they
6 have no physical proof of that, period, that he possessed
7 a gun. That's reasonable doubt. That should cause you to
8 hesitate.

9 I want to talk about the eyewitnesses. We heard from
10 a bunch of eyewitness, probably 10 or so. Certainly, we
11 didn't hear from all the eyewitnesses that were out there.
12 By some accounts, as many as a hundred people there.
13 There may be as many as 90 people walking around Columbia
14 somewhere that were out there and saw what happened and we
15 have no idea what they have to say about this. They may
16 have a completely different version of events. But we
17 didn't hear from them.

18 The people that we did hear from, though, they all
19 pretty much said that Horace Watts is the guy that came
20 over there and shot the house up. He shot at the crowd.
21 That's what they told us. And you're probably thinking
22 how or why would you doubt that? I mean, how can you have
23 a reasonable doubt about all these witnesses, one after
24 another?

25 The problem with eyewitnesses is that they get stuff

1 wrong all the time. We have a flawed way of perceiving
2 the world. Think about this, you -- this probably has
3 happened in some of your personal lives. You may go over
4 to the grocery store or the mall or something like that
5 and you see a friend of yours and you wave to your friend,
6 hey, friend (indicating), and your friend kind of looks at
7 you like you're crazy. Why? Because it's not your
8 friend, you're wrong. You thought you saw somebody that
9 you didn't see.

10 MR. POTTS: Your Honor, we have an objection. May we
11 approach real quick?

12 THE COURT: Sir?

13 MR. POTTS: I object to this, I guess I'll call it
14 the gullible argument.

15 THE COURT: Overruled.

16 MR. POTTS: Thank you, Your Honor.

17 MR. RUFFIN: That's one of the problems with
18 eyewitness testimony, people make mistakes. That's
19 complicated when you talk about a group setting. If I
20 believe something is true and you agree with me and you
21 believe it's true, too, I'm now even more convinced that
22 I'm right.

23 THE COURT: Your objection is sustained as to any
24 reference to any personal beliefs of counsel.

25 MR. RUFFIN: If you're in a group, you feed off of

1 each other's statements about what they see. There's sort
2 of a feedback loop kind of thing that goes on. We sort of
3 confirm each other's beliefs about what we see. That also
4 is complicated by stress when you talk about what
5 eyewitnesses perceive and if they get it right or not.
6 You know, I know that the subject matter in this case has
7 been very difficult for y'all to listen to probably. But
8 I hope that the setting has been relatively low stress. I
9 hope that, you know, it's relatively quiet in here and
10 orderly so that you can pay close attention. But if
11 somebody walked through those doors back there and started
12 firing a pistol towards you, that would change the way
13 that you're able to perceive me. That would change your
14 ability to pay attention to what's going on around you
15 because that is a high stress situation.

16 And when we heard about this case, we heard that
17 there's people everywhere. There's groups of people in
18 the street. There's groups of people in the front yard,
19 the driveway, the porch, the backyard, in the house.
20 There's people everywhere. And shots start going off in
21 the yard. Everyone is running and ducking for cover.
22 They're trying to get away from that. That kind of stress
23 makes people make mistakes and get things wrong. People
24 misperceive what's going on because there's a weapon and
25 it's being fired at them. That's why actual physical

1 evidence is so important. And that's why I say that's the
2 problem with them not even testing those shell casings for
3 fingerprints or DNA to see whose DNA was on them.

4 I want to talk about a couple of the eyewitnesses in
5 particular, but I'm not going to go through every single
6 one. April Cleckley was the first person -- the first
7 eyewitness really that we heard from. And she got on the
8 witness stand and she said that she stood in her living
9 room, she looked out the window and she watched Horace
10 Watts shoot Isaac Lewis in the chest. Two and a half
11 years ago when she talked to the police, she told them she
12 never saw anybody with a gun. She said that she never saw
13 anybody shoot a gun. That's a pretty significant change
14 in her story. So can you trust a witness like that? I
15 don't think you can.

16 There's another thing that quite a few of the
17 eyewitnesses said, was that they saw Isaac Lewis and
18 Horace Watts face to face when Horace Watts shot him.
19 Diamond Corbett. She was, basically, in very close
20 proximity to Isaac Lewis, right next to him. And she said
21 she saw him get shot in the chest.

22 Paris Young, amazingly, he is laying down on the
23 ground across the street, ducking for cover, but he can
24 see everything clearly. Now, you can see the pictures.
25 You can look in the pictures, where the bushes are, where

1 the cars are, but he says not only does he have a full
2 clear picture of everything and he sees Horace Watts face
3 to face with Isaac Lewis is what he told us. He also said
4 that he heard -- even though there's gunshots going off
5 and people screaming and running everywhere, he hears
6 Isaac Lewis say, Are you really going to shoot me? And
7 Horace shot him while they were standing face to face.

8 Isaac Lewis was shot in his back, he was shot in his
9 back. Now, we know that because of the actual physical
10 evidence in the case because of the autopsy that was done.
11 We heard from Dr. Marcus. So we know that for a fact. So
12 all the witnesses who said they saw Isaac Lewis get shot
13 in the chest, they're wrong. The State knows that they're
14 wrong. They tried to clean it up.

15 We heard from Daquan Cleckley yesterday who got up
16 here and said that he saw Horace Watts shoot Isaac Lewis
17 while he was turning around to run. Exactly what Ms.
18 Nickles said in her opening statement. Now, that was the
19 first time that Daquan Cleckley ever said that. A couple
20 months ago, we had a hearing in a courtroom like this and
21 he was asked about what he said there. He was sworn under
22 oath and he said that he saw Horace and Isaac face to face
23 when the shot went off. He met with the prosecutors, he
24 took the stand yesterday and he changed his story to match
25 up with Ms. Nickles and Mr. Potts' closing argument.

1 This is one picture I just wanted to show you real
2 quick (indicating). This is a picture of April Cleckley's
3 backyard. The cone that you see there is where Isaac was
4 found laying on his back with his head towards the
5 backyard and his feet towards the street. And you can see
6 that there's crime scene tape back there in the backyard
7 and there was people on the other side of that crime scene
8 tape. And we heard a lot about the crime scene tape and
9 what it's for, why -- why law enforcement put up crime
10 scene tape. It's to put up a perimeter, a fence around
11 the scene so they know where to look for evidence. They
12 look for evidence inside the crime scene tape, not
13 outside.

14 If Isaac Lewis was shot in his back, the shots would
15 have been coming from back in the backyard on the other
16 side of that crime scene tape, but they didn't look over
17 there. They didn't look over there. And it makes sense
18 why they didn't look over there because when they got to
19 the scene, Isaac was on his back and the witnesses, the
20 people who were there, were saying that he had been shot
21 in the chest. And that's what the EMS people thought,
22 too, that he was shot in the chest. So they didn't look
23 behind him. They looked in front of him and they looked
24 inside of the crime scene tape. It wasn't until later
25 that they found out that all of the witnesses that said

1 that were wrong, that he wasn't shot in the chest, he was
2 shot in his back. That's why they didn't look over there.

3 The last thing I'll talk about is the photo lineups.
4 Almost all of the witnesses, the eyewitnesses who say that
5 they were there, picked Horace out of the photo lineup.
6 And, of course, they picked him out. They already told
7 the police that it was Horace and Malik before they saw
8 the lineup. They know Horace and Malik. So when they're
9 shown a lineup -- and I think I asked -- asked most of
10 them, they said that Horace is the only person in the
11 lineup that they knew. He's the only person that they
12 recognized and that's who they picked. They already were
13 telling them that that's who it was.

14 I asked some of the eyewitnesses a simple question
15 about the lineup. I didn't know what they were going to
16 say, but I just wanted to see what they would say. This
17 is a picture of Horace. This is a picture of somebody
18 else, I don't know who it is. What I asked, is this
19 picture blurrier than this picture? And they denied it.
20 They said no.

21 Now, why does that matter? Why is that important? I
22 mean, they know Horace. They say that it was Horace. Who
23 cares if his picture is blurry? These witnesses, they got
24 up on this witness stand, swore to tell the truth and they
25 denied -- they wouldn't even be straight up and honest

1 with you about something that you can see with your own
2 eyes that's right in front of you. They deny the
3 blurriness of that picture even when you can see it.
4 You're looking at it. You know that they're wrong.

5 So why would you take their word for it about
6 something that you can't see? I wasn't at Magnolia Street
7 the night that the shooting happened and neither were any
8 of y'all. So the State brings who were there, who say
9 they were there, and says take their word for it, believe
10 these people. They can't be wrong. And those same people
11 sit here and tell you straight to your face, you can see
12 those pictures, they deny that one is blurrier than the
13 other ones. Why would you believe them when they're
14 talking about something that you can't even see?

15 You're only here today to answer one question, okay?
16 The State has told you what they believe happened. They
17 presented their case to you and they say this is what we
18 think happened. The only question for you to answer is
19 has the State proven to you that what they believed
20 happened is absolutely true? What they believe happen,
21 have they proven that that is actually what did happen?
22 It's the only question you have to answer.

23 And why is the burden on the State? You know, this
24 case is State of South Carolina v. Horace Watts, okay.
25 When I say the State of South Carolina, these lawyers

1 right here, they don't represent me. They don't represent
2 you as citizens of South Carolina or citizens of Richland
3 County. They represent the executive branch of our
4 government. You think that Horace Watts and the executive
5 branch of our government are on an even playing field? Of
6 course, not. They have virtually unlimited resources.
7 They have all of the Columbia Police Department, Richland
8 County Sheriff's Department, South Carolina Law
9 Enforcement Division. What does Horace have? He has me.
10 It's unfortunate, I know. He has me and just these two
11 other lawyers (indicating), that's all he has. That's why
12 the burden is on them. That's why they have to prove it.
13 Horace doesn't have to prove to you that he wasn't there
14 or that he's innocent. He's already presumed to be
15 innocent. They have to prove that what they believe
16 happened is the truth.

17 When you go back to the jury room and start
18 deliberating -- I'm going to wrap it up. Lawyers, we get
19 up here and act like we get paid by the word or something.
20 You know, when you go back there, you, basically, vote
21 guilty, not guilty. And if any single one of you has a
22 reasonable doubt, has hesitation in your mind, you must
23 find Horace Watts not guilty. That's the oath that you
24 took. You swore that you would uphold the law even if you
25 disagree with it, even if in your gut you think that

1 Horace did it (indicating), because if you have a
2 hesitation, you must find him not guilty. Remember, the
3 light for you is green. The man -- the walking man is
4 green. You're getting ready to step out on the road. If
5 you stop and look both ways, that hesitation right there,
6 that is a reasonable doubt and you must find Horace not
7 guilty.

8 You have a serious responsibility today and I want to
9 thank you for taking it seriously. And I thank you on
10 behalf of Horace for listening to everything. I
11 appreciate it.

12 THE COURT: Ladies and gentlemen, let's take a few
13 minute break before we proceed. Please do not discuss the
14 case.

15 (WHEREUPON, the jury left the courtroom at 11:05
16 a.m.)

17 THE COURT: We'll take five minutes.

18 (WHEREUPON, a short recess was held.)

19 THE COURT: Bring them on.

20 MR. POTTS: Your Honor, before you bring them in, I
21 just want to make sure you're charging -- Mr. Ruffin
22 stated in his closing that if one of them finds him not
23 guilty, they must find him not guilty. I just want to
24 make sure your charge emphasizes unanimity is required
25 for a verdict.

1 THE COURT: All right. Apparently, you agree with
2 what he was saying?

3 MR. POTTS: I did not.

4 THE COURT: I didn't hear any objection.

5 (WHEREUPON, the jury returned to the courtroom at
6 11:20 a.m.)

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

8 THE COURT: Thank you, sir.

9 CHARGE ON THE LAW

10 THE COURT: Madame Forelady, members of the jury,
11 you've heard the testimony, received the evidence and
12 heard the arguments of the State and the Defendant. I
13 will now explain to you the law that applies to this case.

14 Under the Constitution and laws of South Carolina,
15 you are the finders of the facts in this case. I do not
16 have the right to pass upon the facts or to express any
17 opinion that I might have as to them because this is a
18 matter solely for you, the jury, to determine. As jurors
19 then, it is your duty to determine the effect, the value,
20 the weight, and the truth of the evidence presented during
21 this trial.

22 Now, as the trial judge, it's my responsibility to
23 preside over the trial of the case and to rule upon the
24 admissibility of the evidence offered during the trial.
25 You are to consider only the testimony which has been

1 presented from this witness stand together with any
2 exhibits and stipulations that have been made a part of
3 the record.

4 Additionally, I have the duty to charge you the law
5 applicable to this case. And as the presiding judge, I am
6 the sole judge of the law in this case. It is your duty
7 as jurors to accept as correct and apply the law as I now
8 state it to you and then deliberate and reach your
9 verdict.

10 Finally, I charge you in this regard that you should
11 not be concerned with what you think the law ought to be,
12 but rather what I charge you that the law is.

13 You are also the judges, the sole judges of the
14 credibility, that is the believability of the witnesses
15 who have testified and the evidence which has been
16 presented during this trial. In evaluating credibility,
17 you may take into consideration many things, such as the
18 demeanor or manner of testifying, whether the witness had
19 reason to be biased or prejudiced, or whether the
20 testimony of a witness was contradicted on the one hand or
21 supported and corroborated on the other hand. It becomes
22 your duty as jurors to analyze and to evaluate the
23 evidence and determine that evidence which convinces you
24 of its truth.

25 You should consider any expert opinion received as

1 evidence in this case, and like any other evidence, give
2 it the weight that you think it should -- that it
3 deserves. If you decide the opinion of an expert is not
4 based on sufficient education and experience, or if you
5 conclude that the reasons given in support of the opinion
6 are not sound or that the opinion is outweighed by other
7 evidence, you may disregard the opinion entirely. An
8 expert witness's testimony is to be given no greater
9 weight than that of other witnesses simply because the
10 witness is an expert. Further, you are not required to
11 accept an expert's opinion even though it is not
12 contradicted.

13 Now, the fact that the Defendant was arrested,
14 charged and indicted in this case is not evidence and
15 cannot be considered by you as evidence of guilt. Nor
16 does it create any presumption or inference of guilt. An
17 indictment is simply the formal written instrument which
18 contains the charges made against the Defendant. An
19 indictment is a formal document by which a case is brought
20 into court.

21 The Defendant has pled not guilty to the charges
22 alleged against him. The burden is on the State to prove
23 the Defendant guilty as to each charge. A person charged
24 with committing a criminal offense in South Carolina is
25 never required to prove himself innocent. I charge you

1 that it is an important rule of the law, that the
2 defendant in a criminal trial, no matter what the
3 seriousness of the charges may be will always be presumed
4 to be not guilty of the crimes for which the indictments
5 were issued unless guilt has been proven by evidence
6 satisfying you of that guilt beyond a reasonable doubt.

7 The presumption of innocence does not end when you
8 begin your deliberations, but it accompanies the Defendant
9 throughout the trial until you reach a verdict of guilt
10 based on evidence satisfying you of that guilt beyond a
11 reasonable doubt. The presumption of innocence is like a
12 robe of righteousness placed about the shoulders of the
13 Defendant which remains with the Defendant until it has
14 been stripped from the Defendant by evidence satisfying
15 you of the Defendant's guilt beyond a reasonable doubt.

16 Now, the presumption of innocence is not a mere legal
17 theory, it's not just a legal phrase. It is a substantial
18 right to which every defendant is entitled unless you, the
19 jury, are satisfied from the evidence of the Defendant's
20 guilt beyond a reasonable doubt.

21 The State must prove the Defendant guilty beyond a
22 reasonable doubt. So what is a reasonable doubt in the
23 law? A reasonable doubt is a doubt which makes an honest,
24 sincere, conscientious juror in search of the truth to
25 hesitate to act. Proof beyond a reasonable doubt must

1 therefore be proof of such a convincing character that a
2 reasonable person would not hesitate to rely and act upon
3 it in the most important of his or her own affairs. Proof
4 beyond a reasonable doubt can also be described as proof
5 that leaves you firmly convinced of the Defendant's guilt.

6 There are very few things in this world that we know
7 with absolute certainty. And in criminal cases, the law
8 does not require proof that overcomes every possible
9 doubt. If based on your consideration of the evidence,
10 you are firmly convinced that the Defendant is guilty,
11 then you must find him guilty. If on the other hand, you
12 think there's a real possibility that he is not guilty,
13 you must then give him the benefit of the doubt and find
14 him not guilty.

15 I instruct you and emphasize that the fact that the
16 Defendant did not testify is not a factor to be considered
17 by you in any way in your deliberations and your
18 consideration on the question of the guilt or the
19 innocence of the Defendant. It must not be considered by
20 you in anyway whatsoever. A defendant has the
21 Constitutional right to remain silent. And the assertion
22 of this right must not be considered by you in your
23 deliberations. I repeat, under your oath, you are to draw
24 no conclusions whatsoever from the fact that the Defendant
25 in this case did not testify. The fact that the Defendant

1 did not testify should not even be discussed in the jury
2 room. The burden of proof, as I have stated to you, is on
3 the State. The Defendant is not required to prove his
4 innocence. The burden of proof remains on the State to
5 prove guilt beyond a reasonable doubt.

6 Now, the indictments in this case allege four
7 different charges against the Defendant. The Defendant is
8 charged with murder, attempted murder, unlawful carrying
9 of a pistol and possession of a weapon during the
10 commission of a violent crime. Each charge is a separate
11 and distinct offense. You must decide each charge
12 separately on the evidence and the law applicable to it,
13 uninfluenced by your decision as to the other charges.
14 The Defendant may be convicted or acquitted on each
15 charge. You will be asked to write a separate verdict for
16 each crime charged.

17 The Defendant is charged with murder. The State must
18 prove beyond a reasonable doubt that the Defendant killed
19 Isaac Lewis with malice aforethought. Malice is hatred,
20 ill will or hostility toward another person. It is the
21 intentional doing of a wrongful act without just cause or
22 excuse and with an intent to inflict an injury or under
23 circumstances that the law will infer an evil intent.

24 Malice aforethought does not require that malice
25 exist for any particular time before the act is committed,

1 but malice must exist in the mind of the defendant just
2 before and at the time the act is committed. Therefore,
3 there must be a combination of a previous evil intent and
4 the act.

5 Malice aforethought may be expressed or inferred.
6 These terms, expressed and inferred, do not mean different
7 kinds of malice, but merely the manner in which malice may
8 be shown to exist. That is either by direct evidence or
9 by inference from the facts and circumstances which are
10 proved.

11 Expressed malice is shown when a person speaks words
12 which express hatred or ill will toward another or when a
13 person prepared beforehand to do the act which was later
14 accomplished. For example, lying in wait or any other
15 acts of preparation going to show that the deed was within
16 the Defendant's mind would be expressed malice. Malice
17 may be inferred from conduct showing a total disregard for
18 human life. Inferred malice may also arise when the deed
19 is done with a deadly weapon. A deadly weapon is any
20 instrument which is likely to cause death or great bodily
21 harm.

22 The Defendant is charged with attempted murder. In
23 order to prove this crime, the State must prove beyond a
24 reasonable doubt that the Defendant attempted to kill
25 Tyrone Johnson with malice aforethought, either expressed

1 or implied. A person who with the intent to kill attempts
2 to kill another person with malice aforethought, either
3 expressed or implied, commits the offense of attempted
4 murder.

5 The Defendant is charged with unlawful carrying of a
6 pistol. The State must prove beyond a reasonable doubt
7 that the Defendant carried a pistol about his person,
8 whether concealed or not. A weapon is about the
9 Defendant's person if it is readily accessible and
10 convenient for immediate use.

11 The Defendant is charged with possession of a weapon
12 during the commission of a violent crime. The State must
13 prove beyond a reasonable doubt that the Defendant was in
14 possession of a firearm or weapon during the commission of
15 a violent crime. In order to find the Defendant guilty of
16 possession of a weapon during the commission of a violent
17 crime, you must first find the Defendant guilty of either
18 committing a violent crime or attempting to commit a
19 violent crime. Murder and/or attempted murder are violent
20 crimes.

21 The burden of proving the identity of the person who
22 committed the crime is upon the State. For you to find
23 the Defendant guilty, the State must prove beyond a
24 reasonable doubt that this Defendant is the person who
25 committed the alleged offenses. You must determine,

1 therefore, not only whether the State has proven each and
2 every element of the offense charged beyond a reasonable
3 doubt -- or offenses charged beyond a reasonable doubt,
4 but also whether the State has proven beyond a reasonable
5 doubt that this Defendant is the person who committed it.

6 It is your function to determine whether the
7 witnesses' identification of the Defendant is reliable and
8 believable or whether it was based on mistake or for any
9 reason which is not worthy of belief. You must decide
10 whether it is sufficiently reliable evidence that this
11 Defendant is the person who committed the offenses
12 charged.

13 In evaluating this identification, you should
14 consider the observations and perceptions on which the
15 identification was based, the witness's ability to make
16 those observations and perceive events and the
17 circumstances under which the identification was made.
18 Although nothing may appear more convincing than a
19 witness's categorical identification of a perpetrator, you
20 must critically analyze such testimony. Such
21 identification, even if made in good faith may be
22 mistaken. A witness's level of confidence standing alone
23 may not be an indication of the reliability of the
24 identification.

25 To decide whether the identification testimony is

1 sufficiently reliable evidence to conclude that this
2 Defendant is the person who committed the offenses
3 charged, you should evaluate the testimony of the witness
4 in light of the factors for considering credibility that
5 I've already explained to you.

6 In addition, you could consider the following
7 factors, the witness's opportunity to view and degree of
8 attention. In evaluating the reliability of the
9 identification, you should assess the witness's
10 opportunity to view the person who committed the offense
11 at the time of the offense and the witness's degree of
12 attention to the perpetrator at the time of the offense.

13 In making this assessment, you should consider the
14 following: Stress, the amount of the best viewing
15 conditions. High levels of stress can reduce an
16 eyewitness's ability to recall and make an accurate
17 identification. Duration. The amount of time an
18 eyewitness has to observe an event may affect the
19 reliability of identification. Weapon focus. You should
20 consider whether the witness saw a weapon during the
21 incident and the duration of the crime. Presence of a
22 weapon can distract the witness from and take the
23 witness's attention away from the perpetrator's face. As
24 a result, the presence of a visible weapon may reduce the
25 reliability of a subsequent identification. Lighting.

1 Inadequate lighting can reduce the reliability of
2 identification. You should consider the lighting
3 condition present at the time of the alleged crime.

4 Confidence and accuracy. You heard testimony that
5 several eyewitnesses in this case made statements at the
6 time they identified the Defendant from a photo lineup
7 concerning their level of certainty that the person they
8 selected is, in fact, the person who committed the crime.

9 As I explained earlier, the witness's level of
10 confidence standing alone may not be an indication of
11 reliability of the identification. Although some research
12 has found that highly confident witnesses are more likely
13 to make accurate identification, eyewitness confidence is
14 generally an unreliable indication of accuracy. In
15 evaluating the reliability of a witness's identification,
16 you should consider the circumstances under which any out
17 of court identification was made and whether it was a
18 result of a suggestive procedure.

19 In that regard, you may consider everything that was
20 done or said by law enforcement to the witness during the
21 identification process. You should consider the following
22 factors: The lineup composition. A suspect should not
23 stand out from other members in the lineup. The reason is
24 simple. An array of look-alikes forces a witness to
25 examine their memory. In addition, a biased lineup may

1 inflate a witness's confidence in identification because
2 the selection process seems so easy to a witness. It is,
3 of course, for you to determine whether the composition of
4 the lineup had any affect on the reliability of the
5 identification.

6 In determining the reliability of identification, you
7 should also consider whether the identification procedure
8 was properly conducted. Instructions. You should
9 consider what was or what was not said to the witness
10 prior to viewing a photo array. Identification procedure
11 should began with instructions to the witness that the
12 perpetrator may or may not be in the array and that the
13 witness should not feel compelled to make an
14 identification. The failure to give this instruction can
15 increase the risk of misidentification. If you find that
16 the police did not give the instruction, you may take this
17 factor into account when evaluating the identification
18 evidence.

19 You're also free to consider any other factors based
20 on the evidence or lack of evidence in this case that you
21 consider relevant for your determination of whether the
22 identifications were reliable. Keep in mind that the
23 presence of any single factor or combination of factors,
24 however, is not an indication that a particular witness is
25 incorrect. Instead, you may consider the factors that I

1 discussed as you assess all of the circumstances of this
2 case, including all of the testimony and documentary
3 evidence in determining whether a particular
4 identification made by a witness is accurate and thus
5 worthy of your consideration as you decide whether the
6 State has met its burden of proof -- the burden of proof
7 identification beyond a reasonable doubt.

8 If you determine that the in-court or out-of-court
9 identification resulted from the witness's observations or
10 perceptions of the perpetrator during the commission of
11 the offense, you may consider that evidence and decide how
12 much weight to give it. If you instead decide that the
13 identifications are the product of an impression gained at
14 the in-court or out-of-court identification procedures,
15 the identifications should be afforded no weight.

16 The ultimate issue of trustworthiness of an
17 identification is for you to decide. If after considering
18 all of the evidence, you determine that the State has not
19 proven beyond a reasonable doubt that Horace Watts was the
20 person who committed these alleged offenses, then you must
21 find him not guilty.

22 If a crime is committed by two or more people who are
23 acting together in committing a crime, the act of one is
24 act of all. A person who joins with another to commit an
25 unlawful act is criminally responsible for everything done

1 by the other person which happens as a probable or natural
2 consequence of the acts done in carrying out the common
3 plan and purpose. For example, two people can be guilty
4 of killing another person when only one of the two had a
5 gun and there is only one bullet and only one of the two
6 fired the shot that caused the death. If two or more
7 people are acting together -- are together, acting
8 together, assisting each other in committing the offense
9 or offenses, the act of one is the act of all, or as it is
10 sometimes said, the hand of one is the hand of all.

11 A person who voluntarily ingest alcohol or drugs and
12 thereby becomes intoxicated, he is no less responsible for
13 his acts while in such condition. If one voluntarily
14 drinks intoxicating liquors, wine or beer or ingest drugs
15 and becomes intoxicated to whatever degree and while in
16 that condition commits an act which would be a crime if it
17 had been committed by a sober person, that fact of
18 intoxication would not relieve the intoxicated person from
19 responsibility.

20 Now, while the arguments of counsel is a beneficial
21 part of every trial, you should remember that the
22 statements made by counsel are not evidence. In
23 presenting argument, counsel will often refer to the
24 evidence. However, you should base your verdict on the
25 evidence as you remember it. Therefore, if there are any

1 conflicts between the recollection of counsel about the
2 evidence and your own recollection, you should rely on
3 your own understanding of the evidence.

4 Madame Forelady, members of the jury, I am required
5 to charge you the law as I've done through these
6 instructions in order to help guide you to a just and
7 lawful verdict. Whether some of these instructions will
8 apply will depend upon what you find to be the facts. The
9 fact that I've instructed you on various subjects on this
10 case must not be taken as indicating an opinion of the
11 Court as to what you should find to be the facts or what
12 your verdict should be.

13 In conclusion, you have been selected by both the
14 State and the Defendant to be fair and impartial jurors.
15 It is your duty then, in joint deliberations, to determine
16 whether the Defendant is guilty or not guilty of the
17 crimes charged giving the Defendant the benefit of every
18 reasonable doubt on each charge.

19 I've told you the standards you have to apply to the
20 charges of murder, attempted murder, unlawful carrying of
21 a pistol and possession of a weapon during the commission
22 of a violent crime. I will give you a copy of these
23 instructions in written form. During your deliberations,
24 you may refer to the instructions to guide your decision
25 making. You must consider the instructions as a whole and

1 not follow some and ignore others.

2 And, Madame Forelady, it will be your duty to preside
3 over the deliberations of the jury.

4 If during your deliberations, it is your desire to
5 communicate with the Court, such as these notes I've been
6 getting, please reduce your message or questions to
7 writing signed by your foreperson and the foreperson only
8 and pass the note to the bailiff, who will bring it to my
9 attention. I will then respond as promptly as possible
10 either in writing or by having you return to the
11 courtroom. I caution you, however, with regard to any
12 message or question you might send that you should never
13 state or specify your numerical division at that time.

14 You've heard the evidence now. You have heard the
15 law. Whatever your verdict as to each charge, guilty or
16 not guilty, ladies and gentlemen, you will indicate it on
17 the indictments, which I will send back to you. For
18 example, the indictment for murder, there's a spot on here
19 that says verdict (indicating), you will write not guilty
20 or guilty, sign and date it. Same thing for each charge.
21 Remember that although the foreperson is the only juror
22 who writes the verdict, it is not her's alone. The
23 verdict has to be a unanimous verdict.

24 And Madam Forelady, you're not authorized to write
25 the verdict until you all -- all of you have agreed to

1 what the verdict should be.

2 Now, ladies and gentlemen, I'm going to send you back
3 to your jury room. Before I do so, we have two alternates
4 back there. We picked 14, but we can only use 12. So if
5 for some reason something might happen to either one or
6 two of the first 12, then we plug in the alternates. So
7 if for any reason any of you, the first 12, cannot
8 participate in the deliberations, let me know before we
9 cut the alternates loose. Let me know by raising your
10 hands if you can't participate in deliberating.

11 (There was on response.)

12 THE COURT: All right. All 12 jurors seem to be
13 good to go, so therefore, when they go back, the two of
14 you on the back row will stay with us.

15 So I'm going to send you back to your jury room.

16 Of course, the bailiff will get your things from the
17 jury room if you have anything back there.

18 I'll send you back to the jury room, but do not begin
19 to discuss the case until you have received a copy of this
20 jury charge, the indictments and the exhibits. Once you
21 receive these things, that will be your signal to begin
22 your deliberations. Once you begin your deliberations,
23 you will deliberate until you have reached a verdict, at
24 which time, you will knock on the door, advise the bailiff
25 and we will bring you out to receive your verdict.

1 Now, I heard mention -- and I know that there is in
2 evidence a disk. There are no computers, disk players or
3 anything of that sort in the jury room. The parties have
4 not indicated to the Court any kind of procedure they've
5 agreed on to submit any thing of that sort in the jury
6 room. It's my view that jurors should deliberate with all
7 the evidence in the jury room and not be forced to come
8 into the courtroom to view or listen to evidence. So if
9 for some reason you decide you need access to something
10 that's not in evidence to assist you with viewing the
11 evidence, then let me know.

12 But we'll have you go to the jury room, all of you,
13 except for the alternates, and wait until the bailiff
14 tells you it's time to deliberate.

15 (WHEREUPON, the jury left the courtroom at 11:49
16 a.m.)

17 THE COURT: Any additions or exceptions to the
18 charge?

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

20 MR. RUFFIN: None from the Defense.

21 THE COURT: All right. Well, you all can check out
22 those exhibits.

23 MR. POTTS: And, Your Honor, we have a computer, I
24 think, in our office we can send back there.

25 THE COURT: Well, that's another story another time.

1 MR. POTTS: Okay.

2 THE COURT: That's part of -- I purposely injected
3 that into my charge because when you put stuff in
4 evidence, it's kind of incumbent upon you during the
5 course of the trial to make preparation as to how the jury
6 is going to view this during the course of it. So,
7 generally, the best way is to get a stipulation or
8 something or raise it as an issue prior to deliberations
9 so that deliberations won't be delayed by going to find
10 this, find that, look at a computer, see what else is on
11 it, et cetera, et cetera, et cetera. We'll see if they
12 want to listen to it and y'all can prepare that in the
13 event they request it.

14 MR. POTTS: Certainly, Your Honor.

15 THE COURT: All right.

16 So y'all look at these exhibits and make sure we've
17 got them straight.

18 We're glad you all were here ready, willing and able.
19 We thought we were going to lose two, but after I fussed
20 at them, they made it through.

21 (Laughter.)

22 THE COURT: So we didn't lose anyone. So you can't
23 participate in the deliberations. Do y'all have some
24 things in the jury room?

25 ALTERNATES: Yes.

1 THE COURT: All right. The bailiff will get your
2 things from the jury room. We had lunch to come at 12:00.

3 BAILIFF: It's here.

4 THE COURT: It's here. So you can get that and leave
5 with -- take it with you. And I want to thank you.

6 ALTERNATES: Thank you.

7 THE COURT: You are welcome to stay if you would like
8 or you can go if you want to go.

9 ALTERNATES: All right. Have a good day.

10 THE COURT: You can watch it on the news maybe.

11 (WHEREUPON, a short recess was held.)

12 THE COURT: I have a note. We would like to have
13 the audio disk, the call to the aunt from jail..

14 MR. POTTS: Your Honor, Mr. Ruffin and I went through
15 the computer together, found there was nothing on it and
16 then we submitted that back there with the speakers.

17 THE COURT: All right. They have it already?

18 MR. POTTS: They have it.

19 THE COURT: All right. Good.

20 MR. RUFFIN: That's right, Judge.

21 (WHEREUPON, Court's Exhibit Nos. 5, 6 and 7 were
22 marked for identification only.)

23 (WHEREUPON, a short recess was held.)

24 THE COURT: All right. I understand there's a
25 verdict. We can have the jury.

1 Bring them on.

2 BAILIFF: Okay.

3 (WHEREUPON, the jury returned to the courtroom at
4 2:15 p.m.)

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

6 THE COURT: All right. Madam Forelady, if you will
7 stand for me. Have you reached a verdict?

8 MADAM FORELADY: Yes, Your Honor, we have.

9 THE COURT: Is it unanimous?

10 MADAM FORELADY: Yes, it is.

11 THE COURT: If you will pass it up, please. You may
12 be seated.

13 If the Defendant will stand.

14 (The Defendant stands.)

15 THE COURT: If will you publish them in this order
16 from the back.

17 VERDICT

18 THE CLERK: Indictment number 2015-GS-40-0024, the
19 State of South Carolina v. Horace Elijah Watts, indictment
20 for possession of weapon during --

21 THE COURT: Just the opposite. From the back, that's
22 why I said the opposite.

23 THE CLERK: Oh, okay. Indictment number
24 2015-GS-40-0083, the State of South Carolina v. Horace
25 Elijah Watts, indictment for murder, we, the jury, find

1 the Defendant guilty. Indictment number 2015-GS-40-0084,
2 the State of South of South Carolina v. Horace Elijah
3 Watts, indictment for attempted murder, we, the jury, find
4 the Defendant guilty. Indictment number 2015-GS-40-0085,
5 the State of South Carolina v. Horace Elijah Watts,
6 indictment for unlawful carrying of a pistol, we, the
7 jury, find the Defendant guilty. Indictment number
8 2015-GS-40-0024, the State of South Carolina v. Horace
9 Elijah Watts, indictment for possession of a weapon during
10 the commission of a violent crime, we, the jury, find the
11 Defendant guilty.

12 Madam Forelady, are these your verdicts and the
13 verdicts of the entire jury?

14 MADAM FORELADY: Yes.

15 THE CLERK: Thank you.

16 THE COURT: All right. Any additional polling
17 requested by the Defense?

18 MR. RUFFIN: Yes, Your Honor.

19 THE COURT: If you will pole the jurors individually,
20 please.

21 THE CLERK: Yes, sir, Your Honor.

22 Ladies and gentlemen of the jury, I'm going to ask
23 you two questions relating to your verdict, please answer
24 yes or no to each question.

25 Juror No. 43, were these your verdicts?

1 JUROR: Yes.

2 THE CLERK: Are they still your verdict?

3 JUROR: Yes.

4 THE CLERK: Juror No. 258, were these your verdicts?

5 JUROR: Yes.

6 THE CLERK: Are they still your verdicts?

7 JUROR: Yes.

8 THE CLERK: Juror No. 255, were these your verdicts?

9 JUROR: Yes.

10 THE CLERK: Are they still your verdicts?

11 JUROR: Yes.

12 THE CLERK: Juror No. 108, were these your verdicts?

13 JUROR: Yes.

14 THE CLERK: Are they still your verdicts?

15 JUROR: Yes.

16 THE CLERK: Juror No. 197, were these your verdicts?

17 JUROR: Yes.

18 THE CLERK: Are they still your verdicts?

19 JUROR: Yes.

20 THE CLERK: Juror No. 288, were these your verdicts?

21 JUROR: Yes.

22 THE CLERK: Are they still your verdicts?

23 JUROR: Yes.

24 THE CLERK: Juror No. 273, were these your verdicts?

25 JUROR: Yes.

1 THE CLERK: Are they still your verdicts?

2 JUROR: Yes.

3 THE CLERK: Juror No. 15, were these your verdicts?

4 JUROR: Yes.

5 THE CLERK: Are they still your verdicts?

6 JUROR: Yes.

7 THE CLERK: Juror No. 4, were these your verdicts?

8 JUROR: Yes..

9 THE CLERK: Are they still your verdicts?

10 JUROR: Yes.

11 THE CLERK: Juror No. 265, were these your verdicts?

12 JUROR: Yes.

13 THE CLERK: Are they still your verdicts?

14 JUROR: Yes.

15 THE CLERK: Jury No. 172, were these your verdicts?

16 JUROR: Yes.

17 THE CLERK: Are they still your verdicts?

18 JUROR: Yes.

19 THE CLERK: Juror No. 136, were these your verdicts?

20 JUROR: Yes.

21 THE CLERK: Are they still your verdicts?

22 JUROR: Yes.

23 THE CLERK: The jury has been polled, Your Honor.

24 THE COURT: All right. The jury's verdict is

25 unanimous. Any posttrial motions?

1 MR. RUFFIN: Your Honor, we just renew all of our
2 previous motions and objections.

3 THE COURT: All right. Thank you.

4 The evidence in this case is clear that the Defendant
5 is guilty of all of these things that the jury found him
6 guilty of. They took a good bit of time reviewing the
7 evidence, doing their job. The evidence is overwhelming
8 that he's guilty of all charges and I deny all post-trial
9 motions.

10 Ladies and gentlemen, once you've found a person
11 guilty, then it becomes my responsibility to sentence that
12 person. You have no role in the sentencing, but most
13 jurors wish to stay and see the case all the way through,
14 so we'll move toward that at this time.

15 If the State would give me what other information I
16 need to know, including the Defendant's criminal history.

17 MR. POTTS: Certainly, Your Honor. The Defendant's
18 criminal history is a 2013 simple possession of marijuana,
19 two counts of assault and battery in the first-degree,
20 throwing bodily fluids on an employee by a prisoner, a
21 2013 transporting alcohol in a motor vehicle with the seal
22 broken, a 2013 miscellaneous traffic offense, Your Honor.
23 And that is the full extent of his prior record.

24 THE COURT: At the time of the offense, was he on
25 probation or parole?

1 MR. POTTS: I do not believe so, Your Honor.

2 THE COURT: Do you know?

3 Was he?

4 MR. RUFFIN: No.

5 THE COURT: All right. All right. For the Defense,
6 Mr. Ruffin.

7 MR. RUFFIN: Thank you, Your Honor. I would just
8 like to say that Mr. Watts was 22 when this happened.
9 He's 24 now. Obviously, I don't need to tell you what the
10 charges carry. I would ask that you consider that
11 sentence for murder will be day for day. He does have his
12 family that have been present with him as much as
13 possible. They've been in and out through the trial. I
14 know that some of them would like to speak. And I'd just
15 like Your Honor to hear from them.

16 THE COURT: Okay. Will be happy to hear from anyone
17 who has something to say. Just tell me your name first.

18 MS. HENDERSON: I'm Janelle Henderson.

19 THE COURT: Yes, ma'am, Ms. Henderson.

20 MS. HENDERSON: Well, first, I'm the mother of his
21 child. I was five months pregnant when this happened.
22 He's never held his child. He's never kissed his child.
23 He's not a monster like people try to make him seem. He's
24 a good guy. Maybe made bad decisions; but everybody do.
25 But we love him, I just want him to know that we love him

1 and I just want everyone to look at it as he's a human
2 being.

3 THE COURT: That's why we're in here going through
4 this process because he's a human being.

5 MS. HENDERSON: Right, I understand.

6 THE COURT: A jury trial and go through a process and
7 make a determination and all of that. So yes, ma'am, go
8 ahead.

9 MS. HENDERSON: But I just wanted to just ask for
10 mercy for him. Not only for me, but for his mother and
11 our child.

12 THE COURT: How can I do that? He's convicted of
13 murder. The minimum sentence is 30 years, the maximum
14 sentence is life on murder. As his lawyer says, it's day
15 for day. So what decision can I make that will have any
16 impact on you having a child for him and his ability to
17 help you in that regard?

18 MS. HENDERSON: Well, it's not asking for help. It's
19 just the fact of just he hasn't -- I'm not looking for
20 help, I'm looking for a father for my child. I don't want
21 her to be grown --

22 THE COURT: Like I say, his minimum would be -- the
23 minimum sentence is 30 years.

24 MS. HENDERSON: I understand that.

25 THE COURT: So at a minimum, she'll be 30 years old,

1 so.

2 MS. HENDERSON: Will 30 years be day for day?

3 THE COURT: That's the minimum sentence on the first
4 sentence. The maximum sentence is life on that charge.

5 What is it for attempted murder?

6 MR. POTTS: Zero to 30, Your Honor.

7 THE COURT: Zero to 30 on attempted murder, five
8 years for possession of a weapon during the commission of
9 a violent crime, which can be consecutive, and one year
10 for the pistol, so.

11 MS. HENDERSON: That's all I have to say.

12 THE COURT: I understand everything you said. Thank
13 you very much.

14 MR. RUFFIN: Your Honor, this is his mother.

15 THE COURT: All right.

16 MR. RUFFIN: I think she would like to speak.

17 THE COURT: All right. Yes, ma'am.

18 What's his mother's name?

19 MR. RUFFIN: Beverly Wilburn.

20 THE COURT: All right, Mr. Wilburn, yes, ma'am.

21 MS. WILBURN: My son is not a monster. My son is a
22 good person, not a murderer. He didn't look for trouble.
23 Yes, he's had his problems, but he had finally got his
24 life together. He was working, trying to do the right
25 thing.

1 THE COURT: Where was he working?

2 MS. WILBURN: He was working at Columbia Farms.

3 THE COURT: Okay. Chicken place.

4 MS. WILBURN: I love my son. My son is guilty of
5 being a loyal friend, loving his friends and loving his
6 family. I know about the court system. I had to go
7 through it myself. I'm not a perfect person, but I do
8 know one thing, that it cost me -- my mistake and my
9 decisions cost me a relationship with two of my daughters
10 that I can never get back. My case is over 40 years old
11 and it still haunts me today. I don't want that for me
12 child.

13 I don't have -- I'm not promised tomorrow. I'm not
14 even promised tonight, but my prayer has been throughout
15 this whole thing from -- since it started that I can live
16 long enough to see my child stand back on solid ground. I
17 know what the prison system do to you and I know how hard
18 it is when you get in there. It's easy to get in, but
19 it's so hard to get out. And I'm still paying for my
20 mistake even after all of these years.

21 THE COURT: How old are you now?

22 MS. WILBURN: I'm 57.

23 THE COURT: All right.

24 MS. WILBURN: My son has a two-year-old daughter that
25 every day I have to look in her face and see my son. And

1 I got to answer when she says where is my daddy. And the
2 only thing I can say is he's somewhere thinking about you.
3 She loves her father even though she's only been able to
4 see him through glass. I want him to have a relationship
5 with her. I don't want him to be 50 years old and his
6 daughter is 30 and he never once got to hold her.

7 I ask that -- you say the minimum is 30, I ask that
8 you would take some kind of pity on him and run them
9 concurrent, at least, give him a chance to have some kind
10 of life. I didn't get a chance. I didn't have nobody. I
11 did it all by myself because what I did, I did by myself.
12 I don't want that for him. I don't. I know what it does.
13 I know how it destroys people.

14 For two and a half years, I have felt nothing but
15 guilt because my kids never ever got into any trouble
16 until we moved in that area. And now I feel responsible
17 because if I hadn't moved them over there, maybe none of
18 this would have happened. I love him. And I don't want
19 to close my eyes knowing he's behind bars.

20 THE COURT: All right.

21 MS. WILBURN: I'm sorry. When I get upset, I can't
22 breathe good.

23 THE COURT: All right. Thank you.

24 All right. Mr. Watts, what would you like to say?

25 THE DEFENDANT: I just want to say, Your Honor, I

1 know this is terrible situation, but it's not me. And
2 these people that judge me today don't know me from this
3 can of paint, but they found me guilty of all charges.
4 And like you said, the minimum is 30 years and I'm just
5 asking the Lord -- I'm asking that you have forgiveness on
6 me and please just give me the minimum. I'm only 24 years
7 old. I haven't even seen life yet. And I don't want to
8 spend the rest of my life in prison behind bars. And I
9 just ask that today you have some type of mercy on me.

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

11 Anything else from the Defense?

12 MR. RUFFIN: No, Your Honor.

13 THE COURT: From the State?

14 MR. POTTS: Your Honor, we do have impact.

15 THE COURT: All right.

16 MS. LEWIS: Good afternoon.

17 THE COURT: Good afternoon.

18 MS. LEWIS: I'm Mr. Lewis's widow. And I sit here
19 and I've listened to all of what's gone on. And I've
20 heard them say, both sides, that this man walked up and
21 just shot into a crowd of people. He just shot into a
22 crowd of people. This young man did not just shoot up
23 into a crowd of people. This man walked up and shot into
24 my family. Everybody that was in that yard that night is
25 family, everybody. Their last names may not have all been

1 the same, but they were our family and still are to this
2 day.

3 And this young man, he may get 30 years, I don't
4 know, but he's still going to get a chance to walk around
5 and do what he wants to do. His family can still come and
6 look at him and talk to him. I have three sons, that was
7 the only daddy they ever knew. They were not his kids,
8 they were his stepkids. They don't have a daddy to talk
9 to now. They can't go and say nothing to him. They got a
10 problem, they stuck with me or his brother. They can't go
11 talk to him anymore. And that's not fair, but life's not
12 fair.

13 But I just want him to know what he took from us. He
14 took a husband. He took a father. He took a brother. He
15 took an uncle to too many to count. He took somebody that
16 was loved by a whole lot of people over something that
17 didn't -- shouldn't even matter at any time. You know, I
18 don't understand it. Some things, we never will. But I
19 want him to know what he took from us. And that's all I
20 have to say.

21 THE COURT: All right. Thank you.

22 MS. LEWIS: Thank you.

23 THE COURT: Yes, sir.

24 MR. POTTS: Your Honor, obviously, you know all the
25 facts in this case, Your Honor. You heard the victim

1 impact. So we're done, Your Honor. Thank you.

2 THE COURT: Tell me his record again.

3 MR. POTTS: Certainly, Your Honor, he has a 2013
4 simple possession of marijuana, two counts of assault and
5 battery, first degree, which he received 26 months.

6 THE COURT: What was that about?

7 MR. POTTS: Your Honor, he was originally charged
8 with assault and battery with intent to kill. I am
9 unfamiliar with the facts of that particular case, but he
10 received 26 months sentence.

11 THE COURT: What was that about?

12 MR. RUFFIN: I have no idea. I don't know the facts.

13 THE COURT: Well, let's find out what it's about.
14 Goodness gracious, you're in the Richland County
15 courthouse and he pled guilty in 2013 in Richland County
16 and nobody knows anything about what's it about.

17 MR. RUFFIN: Your Honor, my client could address you.
18 All right. Yes, sir.

19 THE DEFENDANT: Well, I was in the car in 2013 when
20 somebody fired shots at another car and they locked me up
21 because I wouldn't tell them who did it. Then, you know,
22 I sat down there 26 months and I went to court. And they
23 said they would drop my charge if I told who did it. I
24 ended up telling them who did it and they dropped it to a
25 first degree and let me go home.

1 THE COURT: All right.

2 What else you got over there?

3 MR. POTTS: He had throwing bodily fluids on a
4 corrections employee, Your Honor.

5 THE COURT: Throwing bodily fluids on who?

6 MR. POTTS: Corrections employee, Your Honor.

7 THE COURT: Well, what's that about?

8 MR. RUFFIN: Your Honor, I imagine it was spitting.

9 I don't know. I'll pull the indictment.

10 THE COURT: We don't want your imagination.

11 MR. POTTS: No, sir, my imagination is terrible.

12 THE DEFENDANT: I had -- when I was in Alvin S. Glenn
13 the last time, the police jumped me and when they jumped
14 me, I spit on one of them.

15 THE COURT: They jumped on you?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: In the jail?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Why did they do that?

20 THE DEFENDANT: Because I refused to go in my room.

21 THE COURT: How old were you when you first went to
22 jail?

23 THE DEFENDANT: Just about to turn 18.

24 THE COURT: And how many times have you been in jail
25 since then?

1 THE DEFENDANT: After I did 26 months, I came home
2 and I never been back to jail.

3 THE COURT: When did you come home?

4 THE DEFENDANT: In May of 2013, May 8th to be exact.

5 THE COURT: And this happened July 2014?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: So what was the sentence on throwing
8 bodily fluids?

9 MR. POTTS: It was a concurrent sentence, Your Honor.
10 It does have the actual sentence.

11 THE COURT: Have you ever been on probation?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: For what?

14 THE DEFENDANT: A misdemeanor weed charge. They gave
15 me six months probation.

16 THE COURT: And when was that?

17 THE DEFENDANT: It happened in July of 2013, but they
18 put me on probation until April 1 of 2014.

19 THE COURT: Say it again.

20 THE DEFENDANT: I said the charge happened in July of
21 2013, but I didn't go to court and receive probation until
22 April the 1st of 2014.

23 THE COURT: April 1st, 2014?

24 THE DEFENDANT: Yes, sir.

25 MR. RUFFIN: I'm sorry, Your Honor, I need to correct

1 myself. He was on probation at the time of this incident.
2 I apologize.

3 THE COURT: That's why I'm asking questions.

4 MR. RUFFIN: Right. His probation was -- he had a
5 probation violation hearing and his probation was revoked
6 and he went to the Department of Corrections for a couple
7 of months, I think, then he came back to Alvin S. Glenn.
8 I'm sorry, Judge.

9 THE COURT: So you came to court in April of 2014 and
10 received a six-month sentence?

11 THE DEFENDANT: No, sir, six months probation.

12 THE COURT: Well, you got a sentence of some kind.

13 THE DEFENDANT: Yeah, they gave me six months
14 suspended to six months probation.

15 THE COURT: All right. And at the time this occurred
16 in July, you were on probation for possession of
17 marijuana?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And the probation was revoked?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And you went to the Department of
22 Corrections?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: When was that?

25 THE DEFENDANT: I went to Department of Corrections

1 August 28th, 2014.

2 THE COURT: And how long did you stay there?

3 THE DEFENDANT: Approximately 30, 40 days. Because
4 my probation, they only wanted me to finish my probation
5 time in the Department of Corrections. And my probation
6 was up October 1st, so they sent me back when my probation
7 was up.

8 THE COURT: Have I ever handled any of your cases?

9 THE DEFENDANT: No, sir.

10 THE COURT: Still waiting on that solicitor. Where
11 did she go?

12 MR. POTTS: The clerk's office, Your Honor.

13 MR. ARANT: Your Honor, I also ask that we get
14 probation here if they want to verify that as well.

15 THE COURT: Okay. They're next door.

16 Well, ladies and gentlemen, these are tough
17 situations. I know that you can see the importance of it
18 because, you know, there are a lot of things that just
19 happen. And many times, you can't figure out why they
20 happened.

21 And this is one especially true if someone is just
22 having an event at their house and all of a sudden,
23 someone comes there shooting in the crowd, I say why. Of
24 course, on the video -- not video, audio where he says his
25 brother stole a gun from the boy and the boy beat him up,

1 but he wouldn't have touched him if he had been with him
2 because they know him. So, apparently, he's saying they
3 know his reputation. And so it provides, at least, some
4 motive or some reason in his own mind for what he did, for
5 going back and shooting up the place, shooting in the
6 crowd.

7 Of course, there are many, many other crimes that
8 could have been charged, firing into a dwelling, some
9 bullet holes in the house, firing into a dwelling,
10 shooting into a car.

11 What else?

12 MR. POTTS: I think we certainly could have charged
13 attempted murder on Jasmine Sims, on Diamond Corbett.

14 THE COURT: One bullet went by the person. And
15 that's Jasmine?

16 MR. POTTS: Yes, Your Honor -- I'm sorry, Diamond
17 Corbett was the one who had the bullet go by her arm.
18 Jasmine was the child who hid behind the car as he fired
19 at the car.

20 THE COURT: Yeah. So it's really the worse type of
21 crime you could image. Someone just -- and they weren't
22 strangers, to shoot into a crowd of people who you know.
23 Those are the kinds of situation that we deal with down
24 here and in courthouses throughout the State of South
25 Carolina.

1 And then after the person is convicted, then we get
2 the families crying and wishing the best for the person
3 going off to prison and want you to have mercy on them,
4 pity on them. Want them to have the opportunity to be
5 with their family, hug their loved ones, hug the babies.
6 You wonder where were these people trying to -- I'm sure
7 they were there trying to inspire him to go in a different
8 direction before he opted to be drunk on that day and to
9 let his 17-year-old brother convince him to go and shoot
10 up into a crowd of people. You can't turn back the hands
11 of time, we can only deal with what we have.

12 There's Mr. Troy. He's the man that knows everything
13 down here in this courthouse.

14 MR. ARANT: He handed me his notes.

15 THE COURT: There's always someone who knows and
16 there he is right there, Troy Smith.

17 MR. SMITH: Yes, sir.

18 THE COURT: I'm trying to figure out this guy, the
19 Defendant here. The first lawyer said he wasn't on
20 probation or anything at the time. Then as the Defendant
21 started talking and explaining to me some of his
22 situations and defenses, the lawyer corrected himself and
23 says he was on probation at the time. So if I can find
24 out from the probation department what you know about this
25 guy.

1 MR. SMITH: May it please the Court, Your Honor. He
2 was sentenced to probation on April the 1st, 2014, for a
3 simple possession charge. He received a six-month
4 suspended one year probation. On April 25th, 2014, he got
5 a 60 day rev probation violation hearing where he was
6 revoked 60 days and continued on probation.

7 THE COURT: Wait a minute, he was sentenced on April
8 the --

9 MR. SMITH: April the 1st, 2014.

10 THE COURT: Then brought back April?

11 MR. SMITH: Twenty-fifth, 2015.

12 THE COURT: That's sounds like a historic return.

13 MR. SMITH: He came into the office, I guess he was
14 having a bad day and got into it with a couple of the
15 agents and got arrested and they brought him back to court
16 for a probation hearing violation.

17 THE COURT: He got 60 days on April --

18 MR. SMITH: April 25th.

19 THE COURT: All right. So that will take us -- we're
20 trying to get to July when this happened.

21 MR. SMITH: He got released on the revocation,
22 reported once, then picked up the new charge in July.

23 THE COURT: When were you released?

24 THE DEFENDANT: June the 4th.

25 THE COURT: June 4th. All right. About a month

1 before or so and you reported once?

2 MR. SMITH: He reported once he was released and --

3 THE COURT: One time?

4 MR. SMITH: One time, and he got the new charge.

5 Then he got revoked the remaining four months in August of
6 2014.

7 THE COURT: All right. Thank you.

8 MS. NICKLES: Your Honor,, if I may approach?

9 THE COURT: Just tell me about it.

10 MS. NICKLES: Your Honor, there were two indictments
11 from -- originally from 2011 that he plead to in 2014.
12 Those were --

13 THE COURT: 2011?

14 MS. NICKLES: Yes, sir.

15 THE COURT: How old were you then?

16 THE DEFENDANT: I was about to be 19. She talking
17 about the two simple assaults.

18 THE COURT: She hasn't started explaining it yet. I
19 don't know what she's talking about.

20 Go ahead, tell me about it.

21 MS. NICKLES: Yes, Your Honor, they were originally
22 charged and indicted as attempted murder. He pled to two
23 counts of assault and battery in the first degree.

24 THE COURT: What was he accused of doing? Or what
25 did he do?

1 MS. NICKLES: To the warrant, Your Honor?

2 THE COURT: Yes.

3 MS. NICKLES: This incident occurred on January 6th,
4 2011.

5 THE COURT: Where?

6 MS. NICKLES: [REDACTED] in Richland County.

7 THE COURT: Where is that, Mr. Watts?

8 THE DEFENDANT: I think that's the -- that's over
9 there by the mall area.

10 THE COURT: Which mall?

11 THE DEFENDANT: Decker Boulevard.

12 THE COURT: Go ahead.

13 MS. NICKLES: Your Honor, from the warrant, it
14 appears that he used a firearm to shoot at the victim, a
15 Terrance Adams, and fired several rounds towards the
16 victim as the victim sat inside a vehicle that was parked
17 at the incident location. He -- that victim identified
18 the Defendant through a photo lineup. And there were
19 multiple witnesses saying that he was the person
20 responsible for the shooting. The victim and the
21 Defendant both attended middle school together. And the
22 incident occurred as a result of a previous altercation.
23 Your Honor, the victim in that case provided a written
24 statement. And that's -- those are the extent of the
25 facts that are contained in the warrant.

1 THE COURT: He shot at someone in a car?

2 MS. NICKLES: Yes, Your Honor.

3 THE COURT: Did he hit them or didn't hit them?

4 MS. NICKLES: Your Honor, from the warrant, it's not
5 clear whether or not he hit them, although it does say
6 thus placing the victim's life in danger, so I would
7 assume he did not hit him in this case.

8 THE COURT: And who prosecuted that case?

9 MS. NICKLES: Joanna McDuffie. Your Honor, there was
10 a second victim.

11 THE COURT: Okay. What was that about?

12 MS. NICKLES: It was the same incident, Your Honor,
13 however, it appears that an Alvin Owens was also with
14 Terrance Adams when the Defendant fired shots at their
15 car.

16 THE COURT: And the sentence was what?

17 MS. NICKLES: Your Honor, the sentence, I have the
18 sentencing sheet --

19 MR. ARANT: Twenty-six months, Your Honor.

20 MS. NICKLES: Yes, Your Honor, 26 months. And that
21 was in front of Judge Hood in 2014.

22 THE COURT: All right. Sounds like you've had a lot
23 of activity down here. How old are you now?

24 THE DEFENDANT: Twenty-four.

25 THE COURT: Twenty-four. Sounds like you've had a

1 lot of activity down in this building.

2 THE DEFENDANT: Sir, they just reading the warrants
3 to you, but the victims came to court and said it wasn't
4 me. I was just at the scene at the time of the crime.
5 And that's why they didn't prosecute.

6 THE COURT: You're not guilty?

7 THE DEFENDANT: No.. I pleaded because I had a lawyer
8 from Greenville. And like I said, I was young, I didn't
9 know. I was just ready to go home. I sat in the county
10 jail. I never been locked up before. So he told me if I
11 take the plea that they would let me go home today, so I
12 took it. But the victims clearly came on my behalf to
13 court and told the judge --

14 THE COURT: It says you went to middle school with
15 him.

16 THE DEFENDANT: Yeah, he came and told the judge that
17 I didn't -- I wasn't the person with the gun, I was just
18 there at the time of the crime.

19 THE COURT: Hand of one, hand of all.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You got that all over again.

22 Well, all right. What else, Mr. Ruffin?

23 MR. RUFFIN: Nothing else from the Defense.

24 THE COURT: Wise words from the State?

25 MR. POTTS: No, Your Honor.

1 THE COURT: What was the age of Mr. Lewis?

2 MS. NICKLES: He was 47, Your Honor.

3 THE COURT: Forty-seven. And Mr. Johnson, what
4 happened to him? He didn't want to come back today?

5 MR. POTTS: He wanted to stay home, Your Honor. He
6 wanted us to let him know what happened. His mother is
7 ill.

8 THE COURT: His mother is ill?

9 MR. POTTS: His mother is ill.

10 THE COURT: And the lady there, who are you with?

11 MS. LEWIS: I've Beverly Lewis. I'm his sister.

12 THE COURT: You're the sister to Mr. -- to Uncle
13 Isaac?

14 MS. LEWIS: Yes, sir, that's my baby brother.

15 THE COURT: All right. Thank you.

16 SENTENCE OF THE COURT

17 THE COURT: All right. Mr. Watts, for murder, the
18 sentence is 30 years; for attempted murder, the sentence
19 is 10 years, consecutive; for unlawful carrying of a
20 pistol, the sentence is one year; for possession of a
21 weapon during the commission of a violent crime, the
22 sentence is five years. You get credit for time served.

23 MR. RUFFIN: All those consecutive, Judge?

24 THE COURT: The sentences are concurrent by law,
25 unless specified as being consecutive. The sentence is 30

1 years for killing Mr. Lewis, 10 years consecutive for
2 shooting Mr. Johnson, one year for having a pistol, five
3 years for possession during the commission of a violent
4 crime. He gets credit for time served.

5 MR. RUFFIN: Thank you, Judge.

6 MR. POTTS: Thank you.

7 THE COURT: Thank you.

8 Now, ladies and gentlemen, I want to thank you for
9 your service. I know it's a sacrifice. It is important
10 for citizens to participate in the judicial process and to
11 have people who will take the time that you all took to
12 review the evidence and to be convinced as to the proper
13 verdict they're signing off on. And you certainly came to
14 the proper verdict in this case based on what was pretty
15 clear -- you know, some of the audio was redacted based on
16 just discussions with the lawyers. You know, obviously, a
17 lot of family discord going on between his mother and him
18 and his aunt. And those other girls got charged with
19 lying to the police trying to conceal where he was and
20 helping to conceal him until he was arrested. It's just a
21 tragic situation.

22 Thank you for your work, particularly, those of you
23 who were here, for the tremendous sacrifice, including
24 Juror No. 4, whose job tried to get him to go to Virginia,
25 but he opted to stay and perform his civic duty. We

1 appreciate it. And the juror whose mother was in serious
2 condition -- I mean, in the hospital in New Jersey, but
3 she stayed focused on the case and stayed with us this
4 week, and all the rest of you. Thank you very much. We
5 certainly appreciate it.

6 And with that, that's it for this case.

7 MR. KRZYSTON: Thank you, Judge.

8 MR. RUFFIN: Thank you, Judge.

9 MR. POTTS: Thank you, Your Honor.

10 MR. ARRANT: Thank you, Your Honor.

11 *****END OF PROCEEDINGS*****
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, PENNY M. JOHNSON, Official Court Reporter for the
Second Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate, and
complete Transcript of Record of the proceedings had and the
evidence introduced in the trial of the captioned case,
relative to appeal, in Family Court for COUNTY County, South
Carolina, on the DAY ^ day ^ days of MONTH, ^ 2002 ^ 2003.

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

DATE, 2017

Penny M. Johnson

Penny M. Johnson Court Reporter

My Commission Expires: 06/16/2018

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND	)	2015-GS-40-0085
	)	
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
HORACE WATTS,	)	
DEFENDANT.	)	
	)	

October 3, 2016
Columbia, South Carolina

B E F O R E:

THE HONORABLE ROBERT E. HOOD, JUDGE.

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

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KAREN AMBROZIAK
Circuit Court Reporter

I N D E X

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

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
(State's Exhibits)			
1	Photo lineup	4	93
2	Photo lineup ID sheet	4	42
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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

(WHEREUPON, State's Exhibit Nos. 1 through 8 were marked for identification only.)

THE COURT: All right. We're here on the record in the State of South Carolina v. Horace Watts. Mr. Watts is present and dressed out and represented by Anastasia Walker and Adam Ruffin. The State is present and represented by Dolly Garfield, Jessica Godwin and Carter Potts. We're here today for the purposes of a pretrial hearing.

Is that right, Ms. Garfield?

MS. GARFIELD: That's correct, Judge.

THE COURT: Is that right, Mr. Ruffin?

MR. RUFFIN: Yes, Your Honor.

THE COURT: All right. All right. I don't know anything about this case, so if somebody can get me up to speed on what we're doing.

MR. RUFFIN: Your Honor, if I could just ask real quick, I see there's a lot of people that just filed in. I don't know if any of them are witnesses are not. This is a Neil vs. Biggers hearing that we're going to. I'd ask if any of them are testifying witnesses they be sequestered during testimony.

THE COURT: Okay. We'll circle back around to that. That motion is granted, but let me figure out what's going

1 on first and circle back.

2 MS. GARFIELD: Thank you, Your Honor. Just to give
3 you some background information and a synopsis of the
4 facts. This incident occurred back in July of 2014. This
5 was a family cookout, birthday dinner for an April
6 Cleckley, who has a very large extended family, to include
7 friends that are considered family members, as well. A
8 cookout was being held at her home on Magnolia Street,
9 which is in the City of Columbia.

10 At this particular party, one of her family members
11 by the name of Terrell Threat was there and Malik Davis,
12 who lived in the neighborhood and he is the brother of
13 Horace Watts, came to the party. Malik Davis was formerly
14 friends with many of the individuals at this party, went
15 to high school together, played basketball together in the
16 neighborhood, as well as Mr. Watts in some form or
17 capacity in recent time.

18 Mr. Davis came over and got into somewhat of a -- I
19 don't want to say altercation because I think that's a
20 little bit too drastic of a word, but got into a fuss with
21 Mr. Terrell Threat over a family argument. Malik Davis,
22 at that point, decided to assault Mr. Terrell Threat,
23 which at that point, Terrell Threat defended himself,
24 assaulted Malik Davis and Malik Davis then left promising
25 to return.

1 Law enforcement did arrive. Family members told law
2 enforcement at that time that everything was under control
3 and everything was fine. CPD at that time left.

4 Shortly thereafter, within about 30 minutes or so,
5 Malik Davis and Horace Watts are seen coming back to the
6 incident location. They are seen arriving in a blue car.
7 One exits out of the front seat passenger side. The other
8 exits out of the back seat driver's side. Witnesses
9 testified that they see both individuals armed with
10 handguns and see them both begin shooting. By all
11 accounts, it's the testimony that Horace Watts was the
12 first one to begin shooting. He began to yell obscenities
13 about what everybody had done to his brother.

14 Meanwhile, Judge, Terrell Threat, who was the one
15 that had assaulted his brother had already left the
16 incident location to go calm himself down. At that time,
17 Horace Watts began to point the gun at several
18 individuals, firing multiple rounds at all the family
19 members. And I say family members, we're talking a crowd
20 of 40 to 50 people with numerous children involved.

21 One Tyrone Johnson, who had just come back from the
22 store and was exiting his car, he was shot by Mr. Watts.
23 He then went -- Mr. Watts then went into a backyard where
24 people are actually running. It's complete chaos, hiding
25 behind trees, hiding behind cars. And he points the gun

1 at one Isaac Lewis. Isaac Lewis would be the
2 brother-in-law of Ms. April. It was her birthday party.
3 He pointed the gun at him and did fire. Mr. Lewis had
4 turned to take off running and was shot in the back and
5 falling forward. Several witnesses did see Horace Watts
6 aim the gun not only at themselves, but at him, as well.
7 At that point, they did run away.

8 All of these individuals that were interviewed for
9 purposes of today's hearing knew Mr. Watts from the
10 neighborhood, from playing basketball at that very house.
11 They were shown photographic lineups, were able to pick
12 the Defendant out of the lineups that they were shown.

13 We are here today, Judge, because Mr. Watts did move
14 for bond on, I believe, the very last day Judge Gee held
15 General Sessions court. Judge Gee did deny the motion for
16 a bond, but ordered that she would reconsider or he could
17 have his bond motion reconsidered if the case was not
18 disposed of within 45 days, which would have been this
19 week. I began to prepare this case for trial. The
20 Defense counsel came to me a couple, few weeks ago
21 indicating they would like more time. At that time, I
22 agreed to that if Mr. Watts was not to ask for bond.

23 That's where we are today, Judge. However, I already
24 have, as you can see, numerous witnesses already under
25 subpoena for this week. In an effort to try to go ahead

1 and expedite this whole matter, I thought it would be wise
2 to go ahead, at least, with the pretrial of the Biggers
3 hearings, that way we can, at least, relieve multiple
4 enforcement officers from the date of trial.

5 With that being said, Judge, and I have not said
6 anything to Defense counsel this morning about this. It's
7 something I just realized this morning. Their motion is
8 signed that they agree not to ask for bond if the case is
9 not tried by the end of 2016. In order to have this set
10 up where pretrial can be held, we went to our chief
11 administrative judge, Knox McMahon, and ask for a judge to
12 be assigned to this matter, at which point, he did assign
13 Your Honor.

14 I was looking at the court schedule this morning and
15 it appears to me that you are only scheduled for General
16 Sessions the week of October 17th of this year and then
17 you are not back again until January 4th. So I wanted to
18 bring that up at this time so we can go ahead and have a
19 date certain and that way, my witnesses, once they leave
20 here, will know when to return for a trial date. An offer
21 has been extended to Mr. Watts, which it's my
22 understanding he has rejected.

23 MS. WALKER: And Your Honor, I believe I'm the reason
24 for the conflict. Unfortunately, in October, the week of
25 the 17th, I'm protected Monday, Thursday and Friday for a

1 scheduled vacation and, also, my sister's wedding. So,
2 unfortunately, most of October, I'm protected at random
3 dates for weddings and numerous family events. So I
4 believe I'm the cause for the conflict.

5 THE COURT: So no one is providing a solution for a
6 trial date?

7 MS. GARFIELD: We would ask for this trial to proceed
8 January 4th, but that is outside the order, consent order
9 that was signed and filed last week or the week before. I
10 just want to be able to give these people who have taken
11 time out of their day and to know when to come back and
12 make arrangements so my officer doesn't have to reserve
13 them.

14 MS. WALKER: Your Honor, Mr. Watts has indicated that
15 January 4th is amenable to him.

16 THE COURT: You understand I'm not here -- yeah, I
17 am. Can we try this case in three days?

18 MS. WALKER: I would believe not, Your Honor.

19 MS. GARFIELD: I don't think so. I mean, it's
20 certainly helping doing these hearings now, but I can't
21 anticipate.

22 THE COURT: Can you try it in four days?

23 MS. WALKER: I think --

24 MS. GARFIELD: Judge, every time I tell you that we
25 can try a case in a certain amount of time, it always goes

1 over, so I'm kind of hesitate to react. The State's
2 position, I think four days would probably be enough.

3 THE COURT: Well, I've got a death penalty hearing
4 that week any way, so. The first time I have General
5 Sessions court beyond that in Richland County is
6 February 20th.

7 I mean, I'm happy to do it the week of January the
8 23rd where I have Common Pleas nonjury, but I don't know.
9 This week, they told me I couldn't take off because I had
10 criminal court in Richland County and I had to get the
11 approval of the solicitor. So if y'all want to e-mail
12 Court Administration and tell them we need Judge Hood the
13 week of January 23rd on a two-and-a-half-year-old trial,
14 that's fine with me, but short of them approving that,
15 which who knows if that's going to happen.

16 The first week, I have criminal -- I have criminal
17 court the first week of the year, but it's only four days.
18 But the first week I have beyond that is -- I have civil
19 court the week of February the 6th, February the 13th in
20 February, so I'm fine with any of those days. But the
21 only first week I really have General Sessions court is
22 February 20th. I mean, I'd be more than happy to give up
23 that week of Common Pleas nonjury.

24 MR. RUFFIN: I think we'll try to do that, Your
25 Honor. That's January 23rd, you said?

1 THE COURT: Yes, January 23rd, I'm happy to take a
2 criminal week that week and do it.

3 MS. WALKER: But, Your Honor, should that be denied,
4 I think our client would also go along with the February
5 date if it was denied for some strange reason.

6 THE COURT: So let's say this, worst case scenario --
7 hold on. Let me pull up a different calender.

8 MR. RUFFIN: That may be a holiday, Judge.

9 THE COURT: Monday, February 20th is a holiday. You
10 are correct. I mean, certainly, between -- if we give
11 them three weeks to switch out, certainly, they can switch
12 out one of three weeks. If not, we'll just start it on
13 February 20th and whenever it finishes, it finishes.

14 The only other week that there is would be
15 March 13th, so. All right. Right now, we're going to set
16 it for the week of February 20th, keeping in mind Monday
17 is a State holiday. And we're going to try to get it
18 moved to the week of January the -- January the 23rd of
19 2017. We'll try to get it moved to either January 23rd,
20 January 30th, one of those weeks, and then the 20th.

21 MS. WALKER: Would Your Honor like us to do an
22 amended consent order?

23 THE COURT: Yes. Y'all can do that later this week.

24 MS. WALKER: Certainly.

25 THE COURT: But I think an e-mail needs to come from

1 the solicitor's office to Court Administration saying this
2 case is two-and-a-half years old. It's been permanently
3 assigned to Judge Hood by the chief administrative judge.
4 The Defendant has a right to a speedy trial. And it's
5 going to take an entire week, and it needs to go to the
6 week of January 23rd. We need Judge Hood to have General
7 Sessions jurisdiction for that week.

8 MS. GARFIELD: Yes, sir, thank you.

9 THE COURT: Okay. All right. So who are all the
10 witnesses, help me with that, for this hearing?

11 MS. GARFIELD: Judge, the lay witnesses, we have
12 Paris Young, Avery Dickson, Benjamin Walker, Jamichael
13 Lewis, Dominique Tucker, Daquan Cleckley, Jasmine Sims,
14 April Cleckley and Diane Corbett. We have five law
15 enforcement officers who will be testifying, Investigator
16 Chauncey Duckett, Investigator Chris Eunice, Investigator
17 Emmitt Gilliam, Investigator Beatrice Fields, all with the
18 Columbia Police Department, and Sergeant Shannon McKellar,
19 now of the USC Police Department.

20 THE COURT: All right. Who's the lead investigator?

21 MS. GARFIELD: Investigator Matt McCoy, who is
22 present in the courtroom, Judge, but he does not show any
23 other lineups.

24 THE COURT: Everybody else whose name was just
25 mentioned needs to wait outside. So if your last name is

1 -- the lay witnesses, too.

2 MS. GARFIELD: Judge, just because I don't want to
3 deceive the Court in any way, there are some people that
4 are in the courtroom who will be witnesses for trial
5 purposes, but for not today's purposes.

6 THE COURT: Okay.

7 Do you want those people out?

8 MR. RUFFIN: I think so, Judge.

9 THE COURT: Okay. Yeah, get them out, too, then.

10 Do you have any witnesses in here, Mr. Ruffin?

11 MR. RUFFIN: No, Your Honor.

12 MS. GARFIELD: Beg the Court's indulgence.

13 (Pause.)

14 THE COURT: All right. Let's go.

15 MS. GARFIELD: I think the first matter, other than
16 the Biggers hearing, Judge, the Defense wanted to bring up
17 a motion for the State to reveal Crime Stoppers
18 information.

19 THE COURT: Okay.

20 MS. GARFIELD: At this time, Judge, I'll hand you the
21 Crime Stoppers tip that was received, as well as a
22 synopsis our office has advised, as we do in the past,
23 which we believe is sufficient to turn over, obviously,
24 without violating the statute.

25 THE COURT: What does the statute say?

1 MS. WALKER: Your Honor, I have it right here.

2 THE COURT: Okay.

3 MS. WALKER: It's section 23-50-45. May I approach?

4 THE COURT: Yes, ma'am.

5 MS. WALKER: Section B.

6 THE COURT: Okay. Ms. Walker, do you want to be
7 heard?

8 MS. WALKER: Yes, Your Honor. I would argue that
9 pursuant to Rule 5 and discovery that that information
10 should be turned over. I understand that we don't get the
11 offer of that information, but as to the substance of the
12 tip, I would ask the solicitor and the Court grant us
13 that.

14 THE COURT: All right. The only thing I'm going to
15 add to their summary is that it said he had a gang
16 affiliation of the Bloods. Other than that, this is --

17 MS. WALKER: Thank you, Judge.

18 MS. GARFIELD: And I have copies.

19 THE COURT: Yeah, that is a fair and accurate
20 summary. The only thing I saw that was left out that
21 could potentially prove informational was that he was a
22 member of the Bloods.

23 Okay. Next?

24 (There was no response.)

25 THE COURT: All right. What's next?

1 MS. GARFIELD: We'll begin our hearings. First call
2 Paris Young to the stand.

3 THE COURT: Mr. Young, Paris Young, come on down.

4 PARIS YOUNG, after being duly
5 sworn, testified as follows:

6 THE CLERK: Please have a seat. State your full name
7 for the record.

8 THE BAILIFF: Right here in the box.

9 THE WITNESS: My name is Paris Young. I'm 22 years
10 old. I'm from Pinehurst. According to the day, what
11 happened on --

12 DIRECT EXAMINATION

13 BY MS. GARFIELD:

14 Q Mr. Young, I get to ask you questions and then you
15 just answer, okay?

16 A Okay.

17 Q Mr. Young, I'm going to take you back to that. You
18 lived in the Pinehurst area?

19 A Yes, ma'am.

20 Q Do you know the deceased in this case, Isaac Lewis?

21 A Yes, ma'am, I do.

22 Q All right. And just share with the Judge a little
23 bit of your background of your relationship with Isaac
24 Lewis's family?

25 A Me and Mr. Lewis, we was real close. Might as well

1 say family members. Same thing with the rest of the
2 family. I became a friend and it evolved more into me
3 becoming a friend to a family member. So we've been
4 knowing each other over the years and being in good
5 connection with each other. So that's my second family,
6 basically.

7 Q And how did they become your second family?

8 A Me and Ms. April's son, Daquan, we went to school
9 together, played football together, real good friends and
10 it went from there.

11 Q And you said Daquan?

12 A Yes, ma'am.

13 Q And you just referenced Ms. April. I know the answer
14 to these, but the Judge doesn't, okay. How is Ms. April
15 related to the deceased, Isaac Lewis?

16 A That's her brother-in-law, her husband's brother.

17 Q Do you also know the Defendant that is in court
18 today, Horace Watts?

19 A Yes, ma'am, I do.

20 Q Can you explain to the Judge your relationship with
21 Mr. Watts?

22 A. Me and Mr. Watts, like I say, we met through Daquan.
23 We became friends and all of us, you know, when we would
24 get up together, we would link up, play basketball, chill
25 in the house or the backyard, you know, have a good time,

1 socialize and all of that.

2 Q All right. Did you ever go to school with Mr. Watts?

3 A I did. I did go to school, but I stopped going to
4 the school he was going to at the time.

5 Q What school was that?

6 A I was at Johnson at the time I started.

7 Q Are you familiar with Mr. Watts's family members, as
8 well?

9 A His brother, that's it.

10 Q What is his brother's name?

11 A Malik.

12 Q Did you go to school with Malik, as well?

13 A No, ma'am.

14 Q Now, particularly back -- taking you to July 2014,
15 did you and the Lewis family gather for a birthday
16 celebration?

17 A Yes, ma'am, we did.

18 Q And just tell the Judge a little bit about what that
19 celebration was going to be about.

20 A It was really supposed to be a surprise birthday
21 party for Ms. April. So the whole plan was for her to get
22 off work, we'd have everything started, the cooking, and
23 we would surprise her for her birthday party.

24 Q About how many people were there?

25 A Honestly, I'd say it was over -- at least, over 50

1 people there. She had a lot of family to come.

2 Q What age groups were there?

3 A Every age, from toddlers to adults.

4 Q All right. And I was -- sorry, Mr. Young. About
5 what time of day did this event take place?

6 A I can't really be precise on the time, but it was
7 around afternoon time. It was around afternoon.

8 Q And, specifically, the date was July 12th, 2014?

9 A Yes, ma'am.

10 Q Now, did the Defendants, specifically, Malik Davis,
11 did he ever come over to the cookout?

12 A He didn't actually come to the cookout. During the
13 process of the whole ordeal beginning to begin, he was
14 walking around the corner. So it was like he was -- you
15 could say he was coming to it, but he wasn't. He was
16 walking around the time that everything was getting
17 started.

18 Q Did anything of particular interest happen with Malik
19 Davis on that afternoon?

20 A During the time, there was -- there was a little
21 situation going on, but everything happened that's all
22 from that situation to a calming point. And the calming
23 point was right when Malik was coming around the corner.

24 Q I'm going to stop you there. I want you to tell the
25 Judge a little about what happened with Malik.

1 A So a family member was -- they was having a little
2 fuss about something with another family member and we
3 took -- we took the one family member to the street to
4 calm him down and let him know, you know, we got better
5 things to do today. Everybody is supposed to enjoy
6 themselves and have fun.

7 Q And what was that family member's name?

8 A Terrell.

9 Q Terrell.

10 A So as we're calming Terrell down, we had met up the
11 street, everything is dying down, Malik walks around the
12 corner and he's like -- you know, excuse my language.
13 He's like, Damn, what y'all got going on? Y'all trying to
14 turn the neighborhood up? We was like, No, it's just
15 Auntie's birthday.

16 So it started getting out of hand. Malik started
17 getting mad and cussing. Terrell was like, Go on ahead,
18 man. I'm mad right now. Just go on ahead, I'll talk to
19 you later. So Malik was like, you know, bump that. I
20 ain't trying to hear none of that and all that. You're
21 feeling some type of way, you do something about it. And
22 he walked up on Terrell and pushed Terrell and they got in
23 a fight. They fighting. We're trying to break it up.

24 As we're trying break it up, they fell -- they
25 tripped over the sewage. They tripped over the sewage

1 drain.. We picking Malik up and Terrell up and telling
2 them, Y'all this ain't called for. Malik gets mad, holds
3 his pants, says, All right. I'll be back. And 20, 30
4 minutes later, he comes back with his brother.

5 Q Okay. Tell us about that. Where did you first see
6 them come back?

7 A Me and Uncle Ike, we was walking down the driveway --

8 Q I'm going to stop you. Can you explain to the Judge
9 who Uncle Ike is?

10 A Uncle Ike is Isaac Lewis. I call him Uncle Ike
11 because that's Uncle Ike. He's the man to talk to when
12 there's a problem or -- he's there. That's -- that's
13 Uncle Ike. That's him.

14 Q And he's the one that's ultimately killed?

15 A Yes, ma'am.

16 Q And you and Uncle Ike were -- go ahead and resume
17 what you were going to tell the Judge.

18 A Yeah, me and Uncle Ike, we were walking to the edge
19 -- we were walking down the driveway because the plan was
20 to go to the store. I was going to buy him beer, some
21 cigarettes. We were going to get something to snack on
22 until the food was done. He had got the grill prepared,
23 cranked the grill up.

24 As we walked down to the driveway, we get to the edge
25 of the driveway, I tell him, I say, I'll be right back.

1 I'm about to go to Thomas's house. Thomas is their nephew
2 that stays across the street.

3 By the time I entered the street, I seen the car pull
4 up at the street, up to Auntie April's house. And the
5 first door I seen open was the back door on the passenger
6 side. Then the driver's door popped open and I looked and
7 I see Horace and Malik. All I hear is, Oh, y'all want to
8 jump my mother fucking brother. And after I hear that,
9 boom, boom, boom. I seen -- I seen the first shot go
10 through the back of the window and hit Ty in the side. He
11 jump out the truck, running in the yard, said, Oh, I done
12 got shot. Go back, jump in the truck. I dropped down on
13 the ground, duck. I'm still by the road.

14 They're still running, running and gunning. Get
15 closer to the house, stop at the edge of the driveway,
16 continue shooting. We got kids, adults, everybody just
17 gathering over the yard trying to get to cover. They
18 still shooting. Pointing at any and everybody shooting.
19 Then they come deeper in the yard, hit the house, still
20 shooting at people. And in the middle of the driveway is
21 Uncle Ike. Horace runs up on them. Uncle Ike says, You
22 going to shoot me? And he shot him.

23 Q Now, let's back up to when the car first arrived.
24 Did you recall what color the car was?

25 A Blue. If I'm not mistaken, it was a blue Avenger.

1 Q And the first individual got out of which seat?

2 A The first door that opened was the back seat of the
3 driver's side.

4 Q So behind the driver?

5 A Yes, ma'am.

6 Q And the second door opened?

7 A Was the front seat of the passenger side.

8 Q Were you able to see the driver?

9 A No, I couldn't see the driver. All I seen was a
10 female figure. That's all it was. I couldn't see no
11 face. It was tint on the windows.

12 Q And the two individuals that got out of these --

13 A Was Malik and Horace.

14 Q Malik and Horace. And you know both of them?

15 A I do.

16 Q Did you see Malik with a gun?

17 A Both of them had a gun.

18 Q Did you see both of them shoot?

19 A I seen both of them shoot. Once his brother started
20 shooting, he started shooting.

21 Q Then after you saw Horace shoot Uncle Ike, what
22 happened next?

23 A They fled the scene.

24 Q All right. What did you do?

25 A I was in the yard with everybody else crying and

1 upset.

2 Q And what happened to Uncle Ike?

3 A He died right there in the yard.

4 Q Now, you were eventually asked to give this
5 information to law enforcement?

6 A Yes, ma'am.

7 Q And do you remember an investigator showing you
8 several photographs?

9 A I really do.

10 Q I'm going to show you what's been marked as State's
11 Exhibit No. 2 for identification purposes. Do you
12 recognize this sheet?

13 A Yes, ma'am, I do.

14 Q All right. And what is that sheet? Just explain to
15 the Judge.

16 A It's stating that I identified the person in the
17 lineup.

18 Q And were you shown several photographs?

19 A Yes, ma'am, I was.

20 Q And those photographs were all of -- describe the
21 kind of people in them?

22 A People who committed crimes, such as murders and
23 whatever.

24 Q I meant more like characteristics.

25 A Oh, gang members.

1 Q Okay. Were they men?

2 A Yeah, it was all men, no females, just men.

3 Q Were they black males?

4 THE COURT: Let's be clear right now. If you're ever
5 in here and a jury is in here, you can't say any of that
6 information, like gang members, people who commit crimes.
7 You got me?

8 THE WITNESS: Yes, sir. I understand.

9 THE COURT: What she was saying is are they black or
10 white, male or female.

11 THE WITNESS: Black males.

12 THE COURT: All right. There you go. Okay.

13 BY MS. GARFIELD:

14 Q Were they similar or different?

15 A Different.

16 Q Were they similar in complexion?

17 A No.

18 Q All right. Like were they all black?

19 A Oh, yes, ma'am.

20 Q All right. Were they all males?

21 A Yes, ma'am.

22 Q Did they all have similar hair cuts?

23 A Yes, ma'am.

24 Q Similar ages?

25 A I don't know about that.

1 Q Were you asked to look at the photographs?

2 A I was.

3 Q All right. Were you asked to pick out anyone that
4 you were familiar with?

5 A Yes, ma'am.

6 Q Did you pick out someone?

7 A I did.

8 Q And that was -- I believe you said there were five?

9 A Yes, ma'am.

10 Q And who was number five in that picture?

11 A Horace.

12 Q Are these the pictures that you were seeing? You can
13 look through them if you need to.

14 A Yeah, these are the same exact ones.

15 Q Did you make a notation on the picture you identified
16 as Horace Watts?

17 A Yes, ma'am, put a big circle around it.

18 Q Did you initial it?

19 A I did.

20 Q Is that your handwriting?

21 A It is.

22 Q And that's the date you did it?

23 A Yes, ma'am.

24 Q What is that date?

25 A 7/12/14.

1 Q All right. Thank you.

2 MS. GARFIELD: Beg the Court's indulgence.

3 (Pause.)

4 BY MS. GARFIELD:

5 Q All right. Mr. Young, do you see the person that you
6 saw get out of the car and shoot at that family cookout in
7 the courtroom today?

8 A Yes, ma'am, I do.

9 Q Do you see the person that shot at the person you
10 knew and affectionally cared for as Uncle Ike that day?

11 A Yes, ma'am.

12 Q Can you point him out for the record?

13 A Right there.

14 Q And can you just describe for the Court the color
15 shirt he is wearing?

16 A A pink shirt, pink button-up shirt.

17 Q Thank you.

18 MS. GARFIELD: Your Honor, may the record reflect
19 Mr. Young has identified the Defendant.

20 THE COURT: All right. All right. Any more
21 questions?

22 MS. GARFIELD: Not at this time.

23 THE COURT: Cross-examination?

24 MR. RUFFIN: Thank you, Your Honor. May it please
25 the Court?

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. RUFFIN:

4 Q Hey, Mr. Young. You said a minute ago this happened
5 during the afternoon. Was it light outside?

6 A It was still daytime.

7 Q It was still daytime?

8 A Yes, sir.

9 Q All right. So the sun was out?

10 A Yeah, it was out.

11 Q Okay. And you said when people got out of the car,
12 you were in the street?

13 A Yeah, I was walking across the street.

14 Q Okay. To go to Tommy's house?

15 A Yes, sir.

16 Q All right. So you're standing in the street and how
17 far is the car away from you would you say?

18 A It's really not that far from where I was standing.
19 Like, I could walk probably about 30 steps to where they
20 -- from where I was at to where they was at.

21 Q Could you judge, like, further away than this table
22 here, from where the prosecutors are sitting?

23 A From this wall to that little separation behind them.

24 Q The bar?

25 A Yes, sir.

1 Q Okay.

2 A To right there.

3 Q And you said that you saw which door open? Which
4 door did you say?

5 A The first door to open was the back driver's door.
6 The second door to open was the front passenger.

7 Q And which side of the car was facing you?

8 A The driver's side was facing me.

9 Q Okay. I know that you said that there were a lot of
10 other people around, right?

11 A There were.

12 Q Were other people in the street with you?

13 A No, it was lot of people in the yard.

14 Q Were you the only person in the street?

15 A I wasn't.

16 Q Do you remember who else was in the street?

17 A Yeah, the gentleman that got shot on the side. He
18 was actually sitting in a truck and he seen me come out.

19 Q Was anyone else in the street?

20 A No. It was just me and him.

21 Q You and Tyrone were the only people?

22 A Yeah, we were the only two.

23 Q All right.

24 A Like I said, Ike was there when I walked at the edge
25 of the driveway when he turned around, so yeah, it was

1 just me and Tyrone.

2 Q When you saw these two individuals approaching,
3 immediately you saw that there were guns in their hands?

4 A Yeah, when they got out, they pulled the guns out and
5 screamed.

6 Q All right. Pointing them at you?

7 A They weren't pointing it. They just pulled it and,
8 Oh, y'all going to jump on my mother fucking brother?
9 Like running and gunning.

10 Q So you saw the shooters actually fire?

11 A I seen from when they pulled up, to when they hopped
12 out, to when they shot the first shot and when they left
13 the scene.

14 Q Were they shooting towards you?

15 A They were shooting towards everybody. Not just me,
16 everybody.

17 Q And I know that you said you laid down on the ground,
18 I guess?

19 A I did.

20 Q Was that in the street?

21 A Yeah, that was in the street.

22 Q Where was that? Was it by Tyrone's car?

23 A It was across from Tyrone's car. Tyrone was parked
24 in front of, like, in the middle of Auntie April's
25 driveway and her house.

1 Q Right.

2 A So he was right there. I was literally across the
3 street from him. I could look directly at him.

4 Q Okay. Do you remember if -- Tyrone's car would be
5 parked perpendicular to the driveway; is that right?

6 A Yeah.

7 Q And the passenger's side -- or the driver's side of
8 Tyrone's car was facing the house?

9 A No, the driver's side was facing towards the house
10 and the passenger was towards the street.

11 Q All right. And you would have been on the --

12 A The passenger side.

13 Q On the street side?

14 A Yes, sir.

15 Q And you laid down right next to the car?

16 A No, not next to his car, next to someone else's car,
17 another one of their family members.

18 Q Do you remember where that car was located?

19 A It was right across the street from Auntie April's
20 house. It was parked in the grass -- it's actually a
21 church that's right there and they allow us to park on it.
22 So it's parked right there on the dirt.

23 Q And I'm sorry, I'm just trying clear up --

24 A It's all good.

25 Q You mean, like, across Magnolia Street?

1 A It's still on Magnolia Street, it's just on the
2 opposite side.

3 Q On the opposite side of Magnolia Street, that's where
4 you were?

5 A Yeah.

6 Q And you laid down?

7 A I dropped straight down.

8 Q All right.

9 A Like, I dropped down. I still got a vision to where
10 I could see them shooting, running in the yard shooting
11 and leaving out the yard shooting, you know what I'm
12 saying. I see everything from the beginning to the end.

13 Q So while you're on the ground, you're saying that you
14 had your head up watching?

15 A I'm watching the whole thing. I'm watching the whole
16 thing.

17 Q And you say that you saw both of them shooting?

18 A I saw both of them. Horace start shooting first,
19 then his brother started shooting.

20 Q Both of them went into the driveway?

21 A Both of them ran into the driveway pointing and
22 shooting at everybody.

23 Q All right. Do you remember what -- go ahead.

24 A Oh, go ahead. Ask your question.

25 Q I was going to ask do you remember what they were

1 wearing?

2 A Both of them had on white the t-shirts. I'll tell
3 you that. I don't know if one of them had on pants or
4 not, but I do remember Malik having on shorts. I can't
5 recall what color they was, but I know he had on some
6 shorts.

7 Q But they were both wearing white t-shirts?

8 A Yes, sir.

9 Q Did anybody approach them while they were in the
10 street? Did anyone approach the shooters before the
11 shooting started happening?

12 A Ain't nobody about to approach nobody who's shooting
13 a gun.

14 Q I'm asking before the shooting?

15 A It wasn't anybody -- like I said, Malik was the only
16 person that was walking around during the time the little
17 fuss was going on. And him and Terrell got into it.
18 Terrell was telling him to go on ahead. I'm mad right
19 now. And then that's when they got into it with each
20 other and we had to break them up.

21 When the shooting started, nobody confronted them.
22 They hopped out of a vehicle yelling and shooting, you
23 know what I'm saying. Running down the street shooting
24 and yelling.

25 Q And nobody confronted them?

1 A Nobody. How could we confront them? Run into a
2 bullet? No.

3 Q You said -- let me ask you. Do you remember what the
4 guns looked?

5 A A 45 and a nine millimeter.

6 Q What color?

7 A Black.

8 Q Both of them were black?

9 A Both of them was black. One had a little green,
10 little -- you know, the little angle sight, it had a green
11 pin in it.

12 Q Had a green pin?

13 A I think that was the nine millimeter.

14 Q Okay. You said that you saw Horace, I guess is what
15 you say, face-to-face with Isaac Lewis?

16 A Yeah, both of them was in the yard, but he was in
17 front of him. He was the one that was pointing and
18 presenting.

19 Q You're talking about Horace and Malik were both in
20 the yard?

21 A Both of them was in the driveway.

22 Q Right.

23 A Horace was the one who -- the point and present at
24 Isaac.

25 Q And they were face-to-face with each?

1 A Face-to-face. Like how we're looking at each other
2 right now, that's how it was.

3 Q About this far away from each other?

4 A Probably a little closer. I ain't going to say if
5 it's farther away or closer. But the way the shot was, he
6 was close up to have a big ass hole in him like that. He
7 was close up on him. He confronted him. He confronted
8 him and said, You going to shoot me? And he still shot
9 him.

10 Q So you heard him say that?

11 A Yeah, he said it loud and clear.

12 Q All right. Isaac?

13 A Isaac, yeah. He said it loud and clear.

14 Q And you got all this while you were laying across the
15 street on the ground?

16 A I can look straight and see everything. I seen all
17 the kids running. I seen him pushing kids out the way,
18 pushing kids to go in the house, behind a tree and all of
19 that. He tried running behind a tree himself and couldn't
20 even make it.

21 Q Who did?

22 A Isaac.

23 Q After he said that?

24 A No, before. Like, while they running and shooting,
25 he's trying to make it behind a tree.

1 Q Well, I'm just asking because you said that they were
2 face to face with each other. Isaac Lewis said, Are you
3 about to shoot --

4 A He said, You going to shoot me? And he still pulled
5 the trigger and shot him. He grabbed himself and spun
6 around and fell to the ground.

7 Q All right. And after that?

8 A He died right then. Ambulance didn't even get a
9 chance to come. He died right then and there. He said
10 what he said to us and he was gone.

11 Q And the people who were shooting?

12 A They was gone.

13 Q They ran away?

14 A They was gone.

15 Q Did they run -- do you remember what -- did they go
16 back to where they came?

17 A No, they went a different way around the corner to
18 somebody else's house.

19 Q And you were still laying on the ground at that time?

20 A I was in the driveway with everybody else. We was
21 all around Ike trying to get him to hold on.

22 Q Is that after -- I'm asking after Isaac is shot?

23 A Uh-huh.

24 Q The shooters, they ran past you and then you went
25 into the driveway?

1 A As soon as the bullet hit Ike, they was gone. They
2 had already been running around the corner when I was
3 running back into the driveway.

4 Q And the investigator showed you this lineup?

5 A Uh-huh.

6 Q You said a minute ago that they were gang members,
7 right? Do you recognize these other people?

8 A I recognize one other person in there.

9 Q Let me ask you this -- why don't you flip through
10 those pictures for me real quick. Does picture number
11 five, does it look blurry to you?

12 A Yeah, it's blurry.

13 Q All right. What about the other ones?

14 A They're clear, except for one other one. It's a
15 little blurry, but it's not the same as five.

16 Q And when those pictures were first shown to you, you
17 were thinking in your head they're all criminals, they're
18 all gangsters; is that right?

19 A Not exactly. I'm not such a judger.

20 Q I'm just asking because that's what you said.

21 A Yeah, it's understandable.

22 Q All right. Here, I'll put them back in the folder.

23 MR. RUFFIN: Beg the Court's indulgence.

24 (Pause.)

25 MR. RUFFIN: No further questions.

1 THE COURT: Redirect?

2 MS. GARFIELD: Just briefly, Judge.

3 REDIRECT EXAMINATION

4 BY MS. GARFIELD:

5 Q Mr. Young, you just testified that when you were
6 shown those photographs, you recognized one other?

7 A Yeah.

8 Q Did the one other you recognized have anything to do
9 with the incident?

10 A No, ma'am, he didn't.

11 Q All right.

12 MS. GARFIELD: Thank you. Nothing further.

13 THE COURT: Recross?

14 MR. RUFFIN: No, Your Honor.

15 THE COURT: Thank you. You can step down.

16 THE WITNESS: Okay.

17 MS. GARFIELD: The State calls Investigator Chauncey
18 Duckett.

19 CHAUNCEY DUCKETT, after being
20 duly sworn, testified as follows:

21 THE CLERK: Have a seat and state your full name for
22 the record.

23 THE WITNESS: Investigator Chauncey Duckett.

24 DIRECT EXAMINATION

25 BY MS. GARFIELD:

1 Q All right. Investigator Duckett, where are you
2 employed?

3 A City of Columbia Police Department.

4 Q How long have you been with the Columbia Police
5 Department?

6 A Going on 10 years now.

7 Q All right. And where are you assigned with the
8 Columbia Police Department?

9 A Criminal investigations division.

10 Q Were you assigned with the criminal investigations
11 unit back in July 2014?

12 A Yes, ma'am.

13 Q All right. And, specifically, on July 12th, 2014,
14 were you asked to assist in a homicide investigation?

15 A Yes, ma'am, I was.

16 Q And do you know why you were asked to assist?

17 A Apparently, we had a homicide that occurred and we
18 had multiple witnesses that needed to be interviewed and I
19 was called upon to help with the interviews.

20 Q All right. Several law enforcement officers were
21 called?

22 A Yes, ma'am.

23 Q All right. And, specifically, were you asked to
24 interview an individual by name of Paris Young?

25 A Yes, ma'am, I was.

1 Q All right. And did he provide information to you
2 regarding the shooting?

3 A Yes, ma'am, he provided a written statement and he
4 also verbally told me what he observed.

5 Q All right. Sorry, I didn't mean to cut you off. I
6 apologize. Was he able to provide you the names of the
7 shooters?

8 A Yes, ma'am, he was.

9 Q And, specifically, for the purposes of our court
10 hearing today, did he provide you the name of Horace
11 Watts?

12 A Yes, ma'am, he did.

13 Q Was a photographic lineup generated?

14 A There was.

15 Q All right. To be able to show Mr. Young?

16 A Yes, ma'am.

17 Q All right. Can you just share with the Judge how
18 that lineup is made?

19 A It's made from -- I believe Investigator Gilliam is
20 the one who had requested the lineup.

21 Q All right. And who did he request the lineup from?

22 A From SLED. I believe it was done from SLED. I got
23 the lineup and I numbered them for Mr. Young to look at,
24 at which time he identified Horace Watts.

25 Q All right. Okay. Before we specifically get to

1 that, the photographs that you are provided are provided
2 to you out of our State Law Enforcement Division?

3 A Yes, ma'am.

4 Q All right. And are they large photographs, small
5 photographs?

6 A I would consider them to be fairly large.

7 Q Are they in a six-pack array?

8 A Yes, ma'am.

9 Q Is that how you showed them to Mr. Young?

10 A Yes, ma'am.

11 Q I'm going to show you what's been marked as State's
12 Exhibit No. 2.

13 MS. GARFIELD: Beg the Court's indulgence because
14 this has gotten out of order.

15 BY MS. GARFIELD:

16 Q Take a minute to flip through State's Exhibit No. 2
17 and can you share with the Judge what State's Exhibit
18 No. 2 is?

19 A Yes, ma'am, that is six individual photographs that
20 were generated from the SLED lineup that was requested.

21 Q And I believe -- are there numbers on those
22 photographs?

23 A Yes, ma'am, it's numbered one through six.

24 Q And who placed those numbers on them?

25 A I placed these numbers on these photographs.

1 Q And then you showed those photographs to Mr. Young?

2 A I did, yes, ma'am.

3 Q Did you give him any hints as to who to pick out?

4 A No, ma'am.

5 Q Did you suggest in any way who to pick out?

6 A No, ma'am. To be honest with you, I didn't quite
7 make it to the scene, so I wasn't aware of who the suspect
8 was at that time or what he looked like.

9 Q Did you tell Mr. Young that the suspect was in the
10 lineup?

11 A No, ma'am.

12 Q And did Mr. Young make an identification?

13 A Yes, ma'am, he did.

14 Q And can you just indicate for the court record what
15 number out of those six pictures he picked?

16 A Yes, ma'am, he identified photo number five and he
17 also wrote on the photo, dated it, as well as circled it.

18 Q Did he hesitate in his identification?

19 A No, ma'am. I believe that he knows Mr. Horace well.

20 Q And then he made his positive identification noted on
21 the picture; is that correct?

22 A Yes, ma'am.

23 MS. GARFIELD: Your Honor, at this time, I'd like to
24 introduce State's Exhibit No. 2 for purposes of this
25 hearing into evidence.

1 THE COURT: Any objection?

2 MR. RUFFIN: Not for purposes of this hearing.

3 THE COURT: Okay.

4 (WHEREUPON, State's Exhibit No. 2 was admitted
5 into evidence.)

6 MS. GARFIELD: Thank you, Investigator Duckett.
7 Please answer any questions Defense counsel may have.

8 THE WITNESS: Yes, ma'am.

9 THE COURT: Cross?

10 MR. RUFFIN: Thank you, Your Honor. May it please
11 the Court.

12 CROSS-EXAMINATION

13 BY MR. RUFFIN:

14 Q So SLED put the pictures together. You don't have
15 anything to do with that?

16 A No, sir, I do not.

17 Q You said that you didn't know -- you didn't know who
18 the suspect was?

19 A I didn't know what he looked like.

20 Q You knew -- you had a name?

21 A I had a name.

22 Q But you didn't know which picture was his?

23 A No.

24 Q All right.

25 MR. RUFFIN: Your Honor, may I approach?

1 THE COURT: You may.

2 BY MR. RUFFIN:

3 Q And Mr. Young, he circled picture number five, right?

4 A Yes, sir.

5 Q Could you look through those and tell me if you think
6 picture number five is blurrier or blurry as compared to
7 all the other photos?

8 A I can see what you're referencing. It's a little
9 more blurry than the rest of them.

10 Q It is more blurry than the rest of them?

11 A It's a couple. I think number four looks to be a
12 little blurry, as well.

13 Q All right. When you show -- do you have a typical
14 procedure that you sort of walk through any time you show
15 someone a lineup?

16 A Typically, I make sure that I advise them that the
17 person may or may not be contained within this photo array
18 and I give them an opportunity to look at all the photos.

19 Q Do you do one at a time, like, show them one picture,
20 pull it back or do you just lay them out on the table?

21 How do you do it?

22 A Typically, I lay all six of the photos out.

23 Q All right. Okay. Do you remember what time you
24 showed the lineup?

25 A No, sir, I couldn't tell you what time the lineup

1 was.

2 MR. RUFFIN: No further questions.

3 THE COURT: Redirect?

4 MS. GARFIELD: No, sir.

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

6 MS. GARFIELD: Your Honor, that's all the testimony
7 we'll have about the identification of Mr. Young.

8 THE COURT: All right.

9 Mr. Ruffin?

10 MR. RUFFIN: Thank you, Your Honor. May it please
11 the Court. I understand that Neil V. Biggers is sort of a
12 two-prong analysis here. The first being that there's got
13 to be some suggestion on the part of law enforcement. You
14 know, I believe that suggestion can be outright and just
15 blatant, hey, don't you think it's picture number five.
16 It can also be subconscious in some ways.

17 This picture, in my opinion -- and, Judge, the
18 pictures are right there if you want to look at them
19 again. Picture five is clearly significantly blurrier
20 than the other photos. You know, we believe that this
21 does suggest that that is the only way it's distinct from
22 all the other photos in that way. None of the other
23 photos are like that. Because of that, we do believe that
24 there is some level of suggestion that this is the person
25 who we want you to pick because his picture is different

1 from all the rest.

2 So for that reason, we do think that there was
3 suggestion on the part of law enforcement to meet the
4 first prong.

5 As for the second prong, you know --

6 THE COURT: Go ahead.

7 MR. RUFFIN: As to the second prong, Judge, I know
8 you're aware of the factors, the opportunity of the
9 witness to view the criminal at the time of the crime, the
10 degree of attention --

11 THE COURT: Yeah.

12 MR. RUFFIN: -- the prior description of the
13 criminal. You know, I understand that Mr. Young said that
14 he got a clear view, but he is laying on the ground while
15 there's two individuals firing guns towards him, towards
16 his family. He's laying on the ground across the street
17 from where the house was. And because of that, we don't
18 think that he had really a great opportunity to view the
19 people shooting.

20 Because of that, Your Honor, we'd ask that his
21 in-court -- that Mr. Young not be permitted to identify my
22 client in court in front of the jury because of this prior
23 lineup, which we believe was unduly suggestive.

24 THE COURT: Ms. Garfield.

25 MS. GARFIELD: Judge, I just disagree. I don't think

1 that the picture is inherently blurry as opposed to the
2 others. I don't think it's at all suggestive. Mr. Young
3 established that he had a prior relationship with
4 Mr. Watts. He made it very clear and was very confident
5 in his testimony that he saw Mr. Watts from the beginning
6 of this horrible incident to the very end, watching him
7 throughout the whole ordeal. He testified absolutely
8 without hesitation, he picked him out. He said he
9 recognized someone else from a totally different incident,
10 had nothing to do with this. He had no hesitation as to
11 who the person was that murdered Isaac Lewis and also shot
12 Tyrone Johnson. We'd ask you to admit the lineup.

13 THE COURT: I find that the photographic lineup and
14 the in-court identification are both admissible.
15 Mr. Watts clearly knows the Defendant in this case, has a
16 prior relationship with him and has testified to that. He
17 had no hesitation, no doubt in who got out of the car and
18 that the person was armed.

19 As to the photographic lineup, picture number four,
20 which is not of the Defendant is blurry, also. Picture
21 number five is also blurry, the picture that Mr. Young
22 picked out. However, these are all pictures of black
23 males with almost identical hair cuts and features. And
24 Mr. Watts -- I mean, excuse me, Mr. Young has prior
25 knowledge of Mr. Watts. I do not find it to be unduly

1 suggestive. He had an opportunity to view the criminal at
2 the time of the crime. He was very certain about that in
3 giving the information. There was information that it was
4 in the middle -- or was in the afternoon and that the
5 daylight was fine. He was an eyewitness to the incident.

6 He testified that he paid attention to the incident,
7 was following what was happening even though he was on the
8 ground. He was approximately 30 steps away and was able
9 to see what was going on and his level of certainty was
10 very high. And the time between the crime and the
11 confrontation was appropriate in nature given the
12 circumstances of the case. And the photo lineup and the
13 in-court identification are both admissible.

14 Next?

15 MR. POTTS: The State calls Avery Dickson.

16 THE BAILIFF: Place your left hand on the Bible,
17 raise your right hand.

18 EVERY DICKSON, after being duly
19 sworn, testified as follows:

20 THE CLERK: Please have a seat. State your name for
21 the record.

22 THE WITNESS: Say my name?

23 MR. POTTS: Yes, sir, state your name.

24 THE WITNESS: My name is Avery Dickson.

25 THE COURT: Spell your last name.

1 THE WITNESS: D-I-C-K-S-O-N.

2 THE COURT: Great.

3 DIRECT EXAMINATION

4 BY MR. POTTS:

5 Q All right. Thank you, Mr. Dickson. You doing all
6 right?

7 A Yeah.

8 Q All right. Just tell me a little about yourself.
9 Where are you currently working?

10 A I formally work in Kentucky. I'm welding up there.
11 And I'm looking forward to finishing up. I'll be back
12 home around February.

13 Q I need you to -- you're kind of mushing your words
14 together and the microphone doesn't make it any better. I
15 apologize. It's going to be -- just try to space them out
16 a little better, if that's all right. So you're working
17 in Kentucky trying to become a welder, right?

18 A Yeah.

19 Q I think you were telling me earlier, you've got four
20 out of five certifications done?

21 A (Witness nods head.)

22 Q And you've got to speak verbally. The court reporter
23 can't hear you when you nod your head.

24 A All right.

25 Q And she'll chew me out later if I let you get away

1 with that, so please bear with me. Okay. So right now,
2 you're living in Kentucky, but you're going to come back
3 to South Carolina?

4 A Yeah.

5 Q Were you living here back in July of 2012?

6 A Yeah.

7 Q Now, on the incident date July 12th, 2014 -- 2014,
8 not 2012, 2014, I apologize for that. You were around
9 here then, right?

10 A Yeah.

11 Q What were you doing that day?

12 A Just chilling, you know, with the family and stuff.
13 You know, we had a cookout. Basically, just chilling.

14 Q Okay. Now, who was the cookout for?

15 A Ms. April.

16 Q Who is April?

17 A Cleckley.

18 Q April Cleckley?

19 A Yeah.

20 Q All right. What's your relationship with her?

21 A She is like a mom to me.

22 Q You're -- while you're not blood related, you are
23 considered part of the family?

24 A Yeah.

25 Q What can you tell me about what happened, I guess,

1 before this incident? What can you tell me about what
2 happened earlier that day?

3 A It was just like a little family altercation. You
4 know, it wasn't that big, you know, before Malik came up.
5 He ain't had nothing do with it, so I guess he approached
6 my brother, Terrell.

7 Q All right. It's getting hard to understand you
8 again. So Malik came up and what happened then?

9 A He was talking to my brother.

10 Q And who's your brother?

11 A Terrell.

12 Q Terrell is your brother?

13 A Yeah.

14 Q All right. Okay.

15 A So he was like -- Terrell told him go on ahead
16 because this a family altercation, it ain't had nothing to
17 do with you. So he is still talking junk, so he swung at
18 my brother. So Terrell defended himself, so he hit him
19 back. And that's how, you know, it escalated to...

20 Q So did Malik leave at that point?

21 A No, he still stayed around.

22 Q Okay. So then what happened?

23 A He was like, I'll be back. You know, I'll be back.
24 He was like, Don't worry about it. I'm going to get
25 y'all. So that's when he took off after that.

1 Q Okay. Now, tell me about Malik. How do you know
2 Malik?

3 A He used to come around and play basketball, hang out
4 with us and stuff.

5 Q Do you know his brother?

6 A Yeah, I know his brother.

7 Q What's his brother's name?

8 A Horace Watts.

9 Q Now, would Horace play basketball with you, too?

10 A Yeah.

11 Q How often would you see them?

12 A Almost every day.

13 Q And y'all all would play basketball together?

14 A Yeah.

15 Q So Malik left, said he was going to come back later?

16 A Yeah.

17 Q What did you think about? What did you do?

18 A I really ain't do nothing. You know, I didn't think
19 he was going to come back, you know.

20 Q Yeah, so tell me what happened.

21 A Me and Jamichael Lewis was just -- we was just
22 chilling in the front yard. I was, like, standing in the
23 driveway. Jamichael was on the porch. Paris and Taurus,
24 they was in the street --

25 THE COURT REPORTER: I'm sorry, who and who? I

1 didn't understand the names.

2 BY MR. POTTS:

3 Q Sorry. So --

4 A I was standing in the driveway.

5 Q Okay.

6 A Jamichael was on the porch.

7 Q Who?

8 A Jamichael.

9 Q Jamichael, I believe is what --

10 A Yeah, he was on the porch. Taurus and Paris, they
11 was in the street.

12 Q So that was Paris and Taurus?

13 A They was in the street.

14 Q They were in the street?

15 A Yeah. I had my back turned, so, you know, that's
16 when -- when I turned around, I seen a blue Avenger come
17 off Center Street.

18 Q Seen who?

19 A A blue Avenger.

20 Q A blue Avenger?

21 A Yeah.

22 Q Is that a car?

23 A Yeah, that's a Dodge.

24 Q Okay. You saw the blue Avenger come down the street?

25 A Yeah.

1 Q All right. Go on. I'm sorry.

2 A After I seen that, they hopped out.

3 Q You said they hopped out?

4 A Yeah.

5 Q Who hopped out?

6 A Horace and his brother.

7 Q That brother being Malik?

8 A Yeah.

9 Q All right. What, if anything, did you notice about
10 them?

11 A They had guns and they were shooting.

12 Q So they hopped out and just started shooting?

13 A Yeah.

14 Q What did you see next?

15 A I seen everybody run. Taurus and Paris, they took
16 off.

17 Q You said Taurus went past you and took off, is that
18 what you said?

19 A No, he went the other way. Like, where I was
20 standing from and where he was in the street, like, he ran
21 across the field. There's a field right there. Paris ran
22 off, too. So let me finish.

23 Q Yeah, hold on just one second. I'm going to show you
24 what's marked as State's Exhibit No. 8. Can you tell me
25 what that is?

1 A Right here?

2 Q No, tell me what this is first.

3 A That's Magnolia Street.

4 Q This is the street?

5 A Yeah.

6 Q Would this help you describe kind of where you were
7 and where everyone was standing?

8 A Yes.

9 MR. POTTS: Your Honor, do you mind if I ask him to
10 step down?

11 THE COURT: Yes.

12 BY MR. POTTS:

13 Q Step down and show everybody what you're talking
14 about.

15 A This is the house right here.

16 Q Okay.

17 A I was standing right here. Paris and Taurus, they
18 was in the street right there.

19 Q But they were across the street?

20 A Yeah, they was like right here. And when they came,
21 they pulled up right here.

22 Q And they being the blue Avenger?

23 A Yeah. They pulled up and hopped out and was running
24 and started shooting. So that's when Taurus ran that way
25 and Paris ran that way. I was still standing right there

1 because I wasn't going to run. So I stood right there.

2 Q So even when they were coming and running and
3 shooting, you just stood where you were?

4 A Yeah, Mike was on the porch, so I ran towards the
5 porch. Me and Mike was on the porch.

6 Q So when you say Mike, you mean Jamichael?

7 A Yeah.

8 Q Okay.

9 A I ran to the porch. Me and him was on the porch all
10 the time. They was still shooting.

11 Q So while you and Jamichael were on the porch, what
12 did you see Horace and Malik do?

13 A I seen Horace come up, pointed a gun at me and
14 Jamichael, put the beam, like, right in my face.

15 Q How close did he get to you?

16 A He was close.

17 Q Can you give me an estimate?

18 A Like --

19 Q About twice this distance?

20 A Like, if you step back a little bit.

21 Q I'll step back a little.

22 A About right there.

23 Q All right. Okay. So he pointed the gun at you.
24 What happened next?

25 A After he pointed the gun, he fired. So Uncle Ike was

1 standing by tree. I guess he was trying to dodge it. Me
2 and Jamichael seen him when he shot.

3 Q Okay. You can step back down. Now, did Horace get
4 on the porch with you?

5 A No.

6 Q Okay. So he was still in the yard the whole time?

7 A Yeah.

8 Q Okay. Now, what happened after he shot Uncle Ike?
9 And by Uncle Ike, you mean -- who was Uncle Ike?

10 A Like an uncle to me.

11 Q What's his name? Is his name Ike?

12 A Isaac Lewis.

13 Q Now, what happened after he shot your Uncle Ike?

14 A He took off.

15 Q Okay. What did you do afterwards?

16 A Went to go see about Uncle Ike.

17 Q Can you tell me -- what was it like outside at this
18 time? Was it a clear day? Was it raining?

19 A It was clear.

20 Q Was there still some sunlight left?

21 A Yeah.

22 Q Were you able to see the person who shot Uncle Ike
23 clearly?

24 A Yeah.

25 Q Now, did you go down to the station and talk to law

1 enforcement?

2 A Yeah.

3 Q Did they show you a photo lineup?

4 A Yeah.

5 Q I'm going to show you what's been marked as State's
6 Exhibit No. 1 for ID purposes. I want you to look through
7 that. Look through it right now. We'll talk about it in
8 a second. Now, can you tell me what that first page is?

9 A It's the photo lineup.

10 Q Okay. So the whole thing is the photo lineup.
11 What's that first page saying.

12 A I identified.

13 Q So you identified somebody?

14 A Yeah.

15 Q Is that your signature right there?

16 A Yep.

17 Q Did you sign this?

18 A Yeah.

19 Q Did you identify someone out of this photo lineup?

20 A Yeah.

21 Q All right. What photo did you identify?

22 A Horace.

23 Q All right. Okay. Can you go through these and tell
24 me which photo that was?

25 A Three.

1 Q All right. Okay. Did you mark it in some way to
2 show it was yours?

3 A Right there.

4 Q All right. Is that your signature?

5 A Yeah.

6 Q Is that your initials?

7 A Yeah.

8 Q All right. Is that Mr. Watts?

9 A Yeah.

10 Q Is that the man who was shooting that night?

11 A Yeah.

12 Q When law enforcement showed you the photo lineup, did
13 they tell you Mr. Watts would be in there?

14 A No.

15 Q Did they tell you the shooter would be in there?

16 A No.

17 Q Did they in any way indicate to you who you should
18 identify?

19 A No, they just asked me who did you see involved in
20 the shooting and I pointed him out.

21 Q Okay. Now, is the man you identified in the photo
22 lineup, is he here in the courtroom today?

23 A Yeah.

24 Q Can you please describe what he's wearing and
25 identify him, please?

1 A Pink shirt.

2 Q Pink shirt where?

3 A Right over there.

4 MR. POTTS: Let the record show he has identified the
5 Defendant.

6 THE COURT: Yes, sir.

7 MR. POTTS: Thank you. No further questions. Please
8 answer any questions they have for you.

9 MS. WALKER: May it please the Court, Your Honor?

10 THE COURT: Yes, ma'am.

11 CROSS-EXAMINATION

12 BY MS. WALKER:

13 Q Good afternoon, Mr. Dickson. Do you remember giving
14 a statement to Investigator Eunice?

15 A Yeah.

16 Q Have you been over that statement prior to today?

17 A No.

18 Q You haven't? Do you remember telling the
19 investigator that you were on the porch when the shooters
20 approached?

21 A Yeah.

22 Q Okay. So just to go back to this picture the State
23 showed you, this is the house right here. Is this the
24 house where your Uncle Ike lives?

25 A No.

1 Q Is it this house?

2 A It's that one right there.

3 Q Show me, I'm sorry.

4 A Right there.

5 Q That house right there, the one on the end?

6 A Yeah.

7 Q That's the house that your Uncle Ike lived in?

8 A Yeah.

9 Q All right. The one that's marked here with this
10 orange kind of bullet, right?

11 A Yeah.

12 Q All right. So you were sitting on the front porch of
13 that house when you said that the shooters approached from
14 here?

15 A Yeah.

16 Q All right. Did you see where the shooters approached
17 from?

18 A Yeah.

19 Q Where was that?

20 A Center Street.

21 Q Right over here?

22 A Yeah.

23 Q And you were able to tell that it was a blue Avenger
24 from over here?

25 A Yeah.

1 Q And you said you were sitting on the porch. Who else
2 was on the porch with you?

3 A Mike.

4 Q Just Mike?

5 A Yeah.

6 Q Now, when the shooting happened, did a lot of other
7 people come onto the porch?

8 A No.

9 Q No one else came to the porch?

10 A No.

11 Q How many people were at the party?

12 A It was a lot of people.

13 Q What is a lot of people?

14 A More than 30.

15 Q And, originally, you said that there was kind of a
16 family tussle at the beginning, some kind of verbal
17 altercation. And I believe Terrell was one of them; is
18 that right?

19 A Yeah.

20 Q Who was the other one?

21 A Malik.

22 Q But I thought you said Malik walked up to the fight
23 after it had already happened?

24 A He did.

25 Q So who was the other person that Terrell was fighting

1 with before Malik ever walked up?

2 A He wasn't fighting nobody. It was just a family
3 altercation.

4 Q What does that mean?

5 A You know what a family altercation is.

6 Q All right. They were fussing?

7 A Yeah.

8 Q So who was he fussing with?

9 A Family, it was a family altercation.

10 Q Just the whole family was fussing?

11 A No, it was certain people.

12 Q Certain people?

13 A Yeah.

14 Q But you don't know who those people were?

15 A No.

16 Q But you're a family member, correct?

17 A I'm part of their family.

18 Q You're part of their family?

19 A Yeah.

20 Q So you're standing on the porch and you said that you
21 see them approaching, coming down Magnolia Street from
22 Center, right?

23 A Yeah.

24 Q And you said that across the street, I believe -- is
25 this the field you're talking about right here?

1 A Yeah.

2 Q That's a field that you can run through?

3 A Yeah.

4 Q There's no fence or anything right here?

5 A No.

6 Q And you said that across the street was Taurus and

7 Paris?

8 A Yeah.

9 Q Is that right? And that once the shooting started,
10 they took off running?

11 A Yeah.

12 Q All right. And they took off running through this
13 field?

14 A Yeah.

15 Q And that's immediately when the shooting started?

16 A Yeah.

17 Q Got it. While you were on the porch, you told the
18 investigator that you were standing in front of the door;
19 is that correct?

20 A Yeah.

21 Q You were standing in front of the door -- and I
22 apologize for turning my back to you. So we are looking
23 out towards the street?

24 A Yeah.

25 Q You're standing in front of the door looking out; is

1 that correct?

2 A Yeah.

3 Q All right. And you said it was still light outside?

4 A Yeah.

5 Q All right. Do you know about what time this was?

6 A Around, like, 4:00 or 5:00.

7 Q What if I told you it was around 8:40?

8 A No.

9 Q At night?

10 A No.

11 Q It wasn't around 8:40 at night?

12 A No.

13 Q Was it at 8:00 o'clock at night?

14 A No.

15 Q Seven o'clock at night?

16 A No.

17 Q It was late afternoon?

18 A Yeah.

19 Q All right. You're positive about that?

20 A Positive, for sure.

21 Q Okay. And when they -- do you have any sort of
22 vision issues? Do you wear contacts, glasses, anything
23 like that?

24 A No.

25 Q All right. And when they showed you this lineup, I

1 believe it was Investigator Eunice showed you the lineup;
2 is that correct?

3 A Yeah.

4 Q All right. Did they show you the pictures, like, one
5 at a time, like, once and then take it away, or did they
6 spread out all six of them?

7 A They spread them out.

8 Q They spread out all six of them. They spread them
9 out all in front of you. Have you had time to look
10 through these photos?

11 A Yeah.

12 Q All right. One, two, and here's three, here's the
13 photo that you picked?

14 A Yeah.

15 Q Four, five, and six. Now, in looking at these
16 pictures, number three is more blurry than the rest of
17 them; is that correct?

18 A No.

19 Q You would disagree and say that it's not blurry in
20 comparison to, let's say, number six? You say that photo
21 is not blurry?

22 A None of them are blurry.

23 Q None of them are blurry at all is what your testimony
24 is?

25 A Yeah.

1 Q Okay. And you said you never ran from the scene,
2 right?

3 A No.

4 Q And then you were able -- you said you're standing on
5 the porch?

6 A Yeah.

7 Q All right. And then the driveway runs up -- if
8 you're facing towards Magnolia Street, the driveway runs
9 up to your right; is that correct?

10 A Yeah.

11 Q Okay. So your uncle was up the driveway?

12 A Yeah.

13 Q And he was past the house up the driveway?

14 A Yeah.

15 Q And your testimony is you were able to see the
16 shooting?

17 A Yeah.

18 Q All right. And your testimony is that Mr. Watts is
19 the one that shot him?

20 A Yeah.

21 Q All right. And you were able to see all of it?

22 A Yeah.

23 Q All right. Because you're indicating that it was
24 still light out. When the shooting happened, were they
25 face-to-face?

1 A Who?

2 Q Your uncle and Mr. Watts?

3 A Yeah, he looked him in the face and shot him.

4 Q He shot him right in the face? Like right in the
5 front, he shot him in the front front?

6 A He was trying to turn and he shot him.

7 Q Okay. Was it one or two shots?

8 A It was multiple. He was shooting multiple times.

9 MS. WALKER: Beg the Court's indulgence.

10 (Pause.)

11 MS. WALKER: Thank you, Your Honor. I have no
12 further questions at this time.

13 THE COURT: Redirect?

14 MR. POTTS: No, Your Honor. Thank you.

15 THE COURT: Have a good one.

16 THE BAILIFF: Watch your step.

17 THE COURT: Go ahead.

18 MS. GARFIELD: The State calls Benjamin Walker.

19 THE COURT: I thought we were doing Eunice next.

20 MS. WALKER: Eunice does both of these witnesses.

21 THE COURT: Let's take a break. We'll start back at

22 2:30.

23 MS. WALKER: Thank you.

24 (WHEREUPON, a lunch break was taken.)

25 (WHEREUPON, State's Exhibit No. 9 was marked for

1 identification only.)

2 THE COURT: Is the State ready?

3 MS. GARFIELD: Yes, Your Honor.

4 THE COURT: Who's next?

5 MS. GARFIELD: The State calls Benjamin walker.

6 BENJAMIN WALKER, after being duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. GARFIELD:

10 Q Mr. Walker, state your name for the record.

11 A My name is Benjamin Walker.

12 Q Mr. Walker, where are you from?

13 A I'm from Columbia, South Carolina.

14 Q Do you live here now?

15 A Yes, ma'am.

16 Q What do you do?

17 A I take care of my child. That's it.

18 Q Take care of your child. Did you know the victim,
19 the deceased victim in this case, Mr. Isaac Lewis?

20 A Yes, ma'am.

21 Q And can you just tell the Judge a little bit how you
22 knew Mr. Lewis?

23 A I knew him from playing basketball with his nephew.

24 I went to school with his nephew. Me and him close
25 friends.

1 Q Who is his nephew?

2 A Daquan.

3 Q And what's Daquan's last name?

4 A I think Daquan Cleckley.

5 Q All right. Cleckley. Mr. Walker, did you also know
6 the Defendant and his brother in this case, Horace Watts
7 and Malik Davis?

8 A Yeah, I know them.

9 Q Just explain to the Judge how you knew them.

10 A I knew them -- I knew Malik from going to school with
11 Malik and knew Horace from around the neighborhood.

12 Q And Horace from around the neighborhood?

13 A Yes, ma'am.

14 Q And you were actually in school with Malik?

15 A Yeah.

16 Q What school was that?

17 A C.A. Johnson.

18 Q Did you play any sports at C.A. Johnson?

19 A I played basketball.

20 Q Who was also on the basketball team with you?

21 A Daquan.

22 Q Daquan Cleckley. Okay. I'm going to take you back
23 to July 12th, 2014. Were you in attendance to any sort of
24 family cookout that day?

25 A Yeah, it was a surprise birthday party.

1 Q It was a birthday party. Where was this birthday
2 party being held?

3 A Magnolia Street.

4 Q If you'll bring the microphone a little bit closer to
5 you. You're hard to hear. I know you were loud earlier.

6 A It's on Magnolia Street in Pinehurst.

7 Q Is Magnolia Street in the City of Columbia?

8 A Yes, ma'am.

9 Q That's in Richland County?

10 A Yes, ma'am.

11 Q How many people would you say was at this birthday
12 party, cookout that you refer to?

13 A It had to be 50 or more.

14 Q What age groups were there?

15 A All.

16 Q All?

17 A All ages.

18 Q Okay. And, specifically, were you there when there
19 was any sort of disagreement between Malik Davis and
20 another individual that was in attendance?

21 A Yeah.

22 Q Who was the other individual?

23 A The other one was Terrell.

24 Q Terrell. What was Terrell's last name?

25 A Terrell Walker.

1 Q Is it Terrell Threat?

2 A I'm saying my name, I'm sorry. Terrell Threat.

3 Q Mr. Walker, are you nervous today?

4 A Yeah, I am, I am.

5 Q Have you testified before in court?

6 A No. It's my first time.

7 Q Tell the Judge a little about that disagreement
8 between Mr. Threat and Malik Davis.

9 A Well, it started -- it was a family disagreement.
10 The parties came, everything was all right. And he came
11 from around the corner --

12 Q Hold on. You're going way too fast. Start back when
13 Terrell Threat and Malik Davis got into an argument. Just
14 tell the Judge about how that happened.

15 A It happened because Malik came around there, he
16 wanted to see Daquan, but, obviously, he was asleep. And
17 Terrell told him to leave, but he didn't want to leave.
18 He put his cup down, went towards Terrell and pushed him.
19 And they got in a fight and we broke it up.

20 Q He pushed Terrell?

21 A Yes, that's what started the fight.

22 Q And then Terrell defended himself?

23 A Yes, ma'am.

24 Q Who all broke up the fight?

25 A Everybody that was out there, that was out on the

1 street.

2 Q Did Malik Davis eventually leave?

3 A He left and came back.

4 Q About how long was it between the time Malik Davis
5 left and the time he came back?

6 A Probably 30, 35 minutes at the most.

7 Q And did you see Malik Davis arrive back to the party?

8 A Yeah.

9 Q How did you see him come back?

10 A Because once the gunshots went off, they came -- I
11 was sitting in the cut. I was on the side of the porch
12 and nobody could have seen me. But when everybody came
13 back, they were saying come on in. I went to the back --
14 went through the back door, came back out the front door
15 and I seen him right there. He pointed the gun at me, but
16 he didn't shoot it.

17 Q Okay. I'm going to back up to make sure I understood
18 you because you're talking really fast. Okay, Mr. Walker,
19 you're on the porch?

20 A Yeah. I came in through the back door and went back
21 to the front porch.

22 Q I'm going to make sure I understood you correctly.
23 Did you see the individuals with the guns?

24 A I seen Malik with a gun.

25 Q You saw Malik Davis with a gun?

1 A Yeah.

2 Q Did you hear gunshots?

3 A Yeah, we heard multiple gunshots.

4 Q And you're on the front porch. And where do you run
5 to at that time?

6 A When I was on the front porch, I got up and went
7 towards the backyard.

8 Q Toward the backyard around the house?

9 A Yeah, came in through the back door and out the front
10 door.

11 Q So once you got in the backyard, did you come inside
12 the back door?

13 A Yes, ma'am.

14 Q All right. And then you came back outside through
15 the front door --

16 A Yes, ma'am.

17 Q -- of the house?

18 A Yes, ma'am.

19 Q All right. When you were back on the front porch of
20 the house at that time, what did you see?

21 A From the back or when I got to the front?

22 Q When you got back to the front porch?

23 A When I got back to the front porch, I just seen Malik
24 in the front yard standing there.

25 Q Okay.

1 MS. GARFIELD: Beg the Court's indulgence. I can't
2 read my writing.

3 (Pause.)

4 BY MS. GARFIELD:

5 Q Okay. At any time, did you run to go help anyone?

6 A After everybody -- after they had left, we went back
7 outside.

8 Q I'm jumping ahead a little. I'm sorry if I was
9 misleading you. At any time, did you go get a child?

10 A Yeah, I got Daquan's son.

11 Q Where was Daquan's son?

12 A He was standing in the entrance when you come in the
13 yard.

14 Q All right. The entrance to what?

15 A The driveway.

16 Q The driveway, okay. Did you get the child out of the
17 way?

18 A Yeah, I got him.

19 Q And then you went back outside?

20 A No, no, that's when I came back out from coming in
21 the back door and went back out the front.

22 Q At any time, did you see the Defendant before you,
23 Horace Watts?

24 A You said did I see him?

25 Q Uh-huh.

1 A Yeah, he had a beam, like, when I was on the front
2 porch.

3 Q Now, when you say he had a beam, explain to the Judge
4 what you mean.

5 A A laser beam, a red laser beam.

6 Q And the red laser beam was coming from what?

7 A His gun.

8 Q You saw his gun and a red laser beam?

9 A Yeah, it was on my back. And then when I got pulled
10 back in, that's when I heard more shots.

11 Q Did you ever see Horace Watts shooting?

12 A I couldn't see him, but I seen him with the beam on.

13 Q You saw him with the beam and the light?

14 A Yeah.

15 Q You never saw him fire it?

16 A No. I heard it when I got back in.

17 Q Right, you heard gunshots?

18 A Yeah.

19 Q Then did you see him leaving?

20 A Yeah, I seen his back when they were leaving.

21 Q And what happened after they left?

22 A After they left, we went out to check everybody,
23 whether they got shot, and called the police.

24 Q And who did you find had been shot once you went back
25 outside?

- 1 A It was Ty, his cousin's fiance at the time, and Ike.
- 2 Q All right. So Ty had been shot and where was he?
- 3 A He was in a truck.
- 4 Q In a truck. And where was the truck parked?
- 5 A In the front of their cousin's house right next door.
- 6 Q And then you also saw Uncle Ike, is that what you
- 7 said?
- 8 A Yeah, I call him Uncle Ike because he's like an uncle
- 9 to everybody.
- 10 Q And that's his nickname?
- 11 A Yeah.
- 12 Q And you also went to him, as well?
- 13 A Yeah.
- 14 Q Had he already passed?
- 15 A Yeah, he was dead when we got there.
- 16 Q And what time of day -- what was the lighting like on
- 17 that particular day?
- 18 A From -- it was getting ready to be night. It was
- 19 coming towards night, so I'd say about 5:00, 6:00. When
- 20 the police got there, it was nighttime.
- 21 Q It was still light outside when the shooting began?
- 22 A Yeah.
- 23 Q Now, you were asked to go to the police station and
- 24 you were interviewed by law enforcement?
- 25 A Yeah, I went.

1 Q Was that at the police station?

2 A Yeah.

3 Q Right downtown?

4 A No, it wasn't downtown. It was on Two Notch.

5 Q On Two Notch, okay.

6 A Yeah.

7 Q Were you asked to look at any photographs?

8 A Yeah, when we got there. That's when they took us
9 down.

10 Q I'm going to show you what's been marked as State's
11 Exhibit No. 9.

12 MS. GARFIELD: Madam Court Reporter, do you have this
13 one.

14 THE COURT REPORTER: Yes.

15 BY MS. GARFIELD:

16 Q Do you recognize these documents? Do you recognize
17 what's been labeled as State's Exhibit No. 9?

18 A No. 9?

19 Q Do you recognize these papers?

20 A Yes, ma'am.

21 Q All right. What are these papers?

22 A They are a printout of different people.

23 Q All right. Were these pictures the same pictures
24 that were shown to you by the police that day?

25 A Yes, ma'am.

1 Q And this was the same day as the shooting?

2 A Yes, ma'am.

3 Q And were you asked to pick anybody out that was
4 familiar to you?

5 A Yes, ma'am.

6 Q All right. Did law enforcement show you each of
7 these pictures?

8 A Yes, ma'am.

9 Q Did they do them one by one or did they put them all
10 out at once?

11 A It was one by one, one by one.

12 Q One by one?

13 A Yeah.

14 Q Did you pick out anybody that you saw was involved in
15 the shooting?

16 A Yeah.

17 Q And I'm going to show you the document again. What
18 number did you pick out?

19 A My picture was two.

20 Q And I'm going to show you picture number two. Do you
21 recognize that photograph?

22 A Yeah.

23 Q And who is that photograph of?

24 A Horace.

25 Q And did you document on that sheet your name?

1 A Yeah.

2 Q Is that your handwriting?

3 A Yeah.

4 Q And you wrote that?

5 A I wrote that.

6 Q All right. Thank you. And is that your signature on
7 the document?

8 A Yeah.

9 Q That's indicating you picked out number two?

10 A Yes, ma'am.

11 MS. GARFIELD: Beg the Court's indulgence.

12 (Pause.)

13 BY MS. GARFIELD:

14 Q Mr. Walker, do you see the individual that pointed a
15 gun at you with a red laser beam on July 12th, 2014, in
16 this courtroom today?

17 A Yes, ma'am.

18 Q Can you please point him out to the Judge?

19 A Right there.

20 Q Can you just indicate where he is sitting?

21 A To the left of me.

22 Q And what color is he wearing?

23 A Pink, I'm pretty sure.

24 MS. GARFIELD: Your Honor, let the record reflect the
25 Defendant has been picked out by the witness.

1 THE COURT: Yes, ma'am.

2 MS. GARFIELD: Thank you, Mr. Walker. Please answer
3 any questions.

4 THE COURT: Cross?

5 MS. WALKER: May it please the Court, Your Honor.

6 THE COURT: Yes, ma'am.

7 CROSS-EXAMINATION

8 BY MS. WALKER:

9 Q Good afternoon, Mr. Walker.

10 A How are you doing?

11 Q Good. So, initially, at this family gathering, there
12 was an argument where the police showed up; is that
13 correct?

14 A Yes, ma'am.

15 Q Was that before or after Malik showed up?

16 A That was before.

17 Q So the altercation that Malik and Terrell had was
18 after another argument that had happened earlier?

19 A Yeah.

20 Q Okay. And you said -- where were you when you heard
21 the gunshots? And I can help you out if you don't
22 recognize this picture. I think this would be Ike's house
23 right here?

24 A Yeah.

25 Q Where were you when you heard the gunshots?

1 A I was laying on the side porch on the step.

2 Q There was a side porch with a step?

3 A Yeah.

4 Q Is that what you're talking about when you say the
5 cut?

6 A Yeah.

7 Q You mean the cut between the houses, is that kind of
8 what you mean?

9 A Well, I'm saying the cut as in nobody else would have
10 seen me. Like if he would have came in, he wouldn't have
11 seen me.

12 Q At -- I'm sorry.

13 A I say that because you got bushes right there. I'm
14 sitting on the steps.

15 Q All right. And when you say he wouldn't have seen
16 me, who do you mean?

17 A I mean --

18 Q Anybody?

19 A Anybody, yeah.

20 Q So you were just sitting there by yourself?

21 A Yeah.

22 Q And that's when you heard the gunshots. And so --
23 and if I've got this confused, correct me. So once you
24 hear those gunshots, you go to the back of the house?

25 A No. I waited until everybody came in the yard.

1 Somebody told me to come to the back. I was still sitting
2 there.

3 Q Okay. So people are running?

4 A Yeah.

5 Q All right. And when those people run, you hear
6 somebody call your name?

7 A Yeah, they said come on.

8 Q Okay.

9 A So I ran in the back.

10 Q And you go in the back door?

11 A I went in the back door.

12 Q Does the back door just go directly through the back
13 of the house or is it on the side?

14 A Directly in the back.

15 Q So you go through the house to the front porch?

16 A Yeah.

17 Q At that point when you get to the porch, how many
18 people are on the porch?

19 A Probably about four or five at the time.

20 Q And that was after gunshots had stopped?

21 A No.

22 Q And at this point, you said that you saw Malik; is
23 that right?

24 A Yeah, he was standing there.

25 Q Malik was standing in the front yard?

1 A Yeah.

2 Q So you didn't see them arrive -- you didn't see Malik
3 and Horace arrive; is that right?

4 A No.

5 Q You just heard the gunshots from where you were?

6 A Yeah.

7 Q Okay.

8 A Coming close to the house.

9 Q And then when you came out of the front door, did you
10 go back to the backyard again, is that what happened?

11 A No. When I came back out, I stood in the doorway and
12 me and Malik made eye contact and he pointed his gun at
13 me. After that, he didn't shoot at us. You just heard
14 the shooting, multiple shots on the side of the house
15 after that. And I got pulled back in the house.

16 Q So Malik is the one that pointed the gun at you, but
17 did not shoot?

18 A Yeah.

19 Q And somebody pulled you from behind?

20 A Yeah.

21 Q So you were back in the house?

22 A Yeah.

23 Q So you never saw anybody get shot actually?

24 A I just seen a gun.

25 Q And you just heard the gunshots?

1 A Yeah.

2 Q And tell me about this, what happened with Daquan's
3 son? Was that after Malik pointed the gun?

4 A What you mean what happened to him?

5 Q You said you went and got Daquan's son; is that
6 correct?

7 A Yeah, I got him while there was shooting coming
8 towards the house.

9 Q Where was Daquan's son?

10 A He was standing in the entrance of the driveway.

11 Q And you put him back in the house?

12 A Yes, ma'am.

13 Q Do you know what kind of guns they were?

14 A From the shells, it was nine millimeter and a 40.

15 Q But you didn't know that at the time?

16 A By the shells, it was nine millimeter and a 40.

17 Q You're saying that you personally by looking at the
18 shells --

19 A Looking at the shells.

20 Q -- you were able to identify that yourself?

21 A Yes.

22 Q And do you have any vision issues, wear contacts,
23 glass, anything like that?

24 A No.

25 Q Do you remember what they were wearing?

1 A No, I just remember white shirts.

2 Q And when did you see Horace with a gun?

3 A When I came back to the front door, he had pointed it
4 with a beam on it.

5 Q Say that one more time.

6 A He had his gun pointed with the laser beam on it at
7 Uncle Ike when I came back to the front door.

8 Q And Ms. Garfield showed you this lineup, correct?

9 A Yes, ma'am.

10 Q And that was shown to you later that night?

11 A Yes, ma'am.

12 Q And they showed you a number of pictures. Do you
13 recall if they laid them out in front of you or if they
14 showed them to you one by one?

15 A One by one.

16 Q All right. So they showed you each photo one by one?

17 A Yeah.

18 Q And then took it back and showed you the next one?

19 A They showed me one at a time. He asked me was that
20 him and I was shaking my head.

21 Q And then he would take it back?

22 A Yeah.

23 Q And then do the same thing?

24 A Yeah.

25 Q So you never looked at all these pictures together?

1 A At the end.

2 Q And at the end, you did look at them all together?

3 A Yeah.

4 Q Okay.

5 A But I knew who my picture was.

6 Q All right. And in looking at these pictures -- and
7 you've seen them before, right?

8 A Yeah.

9 Q Picture number two is blurrier than the rest of these
10 pictures?

11 A But just by being blurry, if you know your person,
12 you know that person.

13 Q Right, but I'm asking you is the picture physically
14 blurry?

15 A No. I mean, it's little blurry, but it's not blurry
16 to where I can't recognize it. I can recognize it.

17 Q But you would agree that just compared to these
18 pictures, it is blurry. You're saying it's Mr. Watts, but
19 in comparison to these pictures, it's blurry?

20 A See, I'm not blind at all. I can see. It's not
21 blurry. It's not so blurry that I can't recognize the
22 person.

23 Q That's not what I'm asking you. I'm asking you if
24 it's blurry. I'm not asking if you can recognize --

25 A I just said it's blurry a little bit.

1 Q That's all the answer I was trying to get. What time
2 of day did you say the shooting occurred?

3 A Had to have been around 5:00, 6:00.

4 Q Five, 6:00 o'clock. And that was in July, right,
5 July 12th; is that correct?

6 A Yes, ma'am.

7 Q So you said the shooting was 5:00 or 6:00 o'clock,
8 right?

9 A Yes, ma'am.

10 Q And then I think earlier, you said that after the
11 gunshots and you saw Ike that y'all went out to check on
12 Ike?

13 A Yeah.

14 Q All right. And that he had already passed?

15 A Yeah.

16 Q And the police were called immediately?

17 A Yeah.

18 Q But the police didn't show up until it was dark?

19 A It was getting dark while they were shooting. It was
20 getting dark. When the police pulled up, it was already
21 dark.

22 MS. WALKER: All right. Beg the Court's indulgence.

23 (Pause.)

24 MR. WALKER: Thank you, Your Honor. No further
25 questions.

1 THE COURT: All right.

2 Redirect?

3 MS. GARFIELD: Just two questions.

4 REDIRECT EXAMINATION

5 BY MS. GARFIELD:

6 Q Mr. Walker, Daquan's son that you went to get out of
7 the driveway to avoid being shot, how old was he?

8 A Daquan's son probably been like one.

9 Q After the shooting, did you take a second and look at
10 a clock?

11 A No, ma'am.

12 MS. GARFIELD: All right. Thank you. Nothing
13 further.

14 THE COURT: Any recross?

15 MS. WALKER: No, Your Honor.

16 THE COURT: Have a good one. Thank you.

17 Call your next witness.

18 MR. POTTS: State calls Investigator Chris Eunice.

19 CHRIS EUNICE, after being duly
20 sworn, testified as follows:

21 THE WITNESS: My name Christopher Eunice with the
22 Columbia Police Department.

23 DIRECT EXAMINATION

24 BY MR. POTTS:

25 Q All right. Investigator, what are your duties

1 currently at the Columbia Police Department?

2 A Currently, I'm assigned to the Midlands gang task
3 force. We investigate crimes ranging from petit larceny
4 to homicide. We validate gang members, keep concise case
5 jackets to prove gang status, state and federal guidelines
6 are met. We make sure the department is in regulation of
7 that stuff.

8 Q What were you doing -- what was your role back in
9 July 2014?

10 A I was also assigned to the gang unit at that time, as
11 well.

12 Q Now, how did you come to be involved in this case?

13 A We were out working a totally separate operation when
14 the shots fired call came out over the radio. We heard
15 the call dispatched, so we went to give our assistance.

16 Q What did you end up doing?

17 A I arrived on the scene on Magnolia Street out of the
18 crime scene. I saw Investigator McCoy was in front of the
19 house. I got out of my car and made contact with
20 Investigator McCoy, asked him what he needed me to do. He
21 said he had witnesses at headquarters that needed to be
22 interviewed and asked me could I assist with that. No
23 problem. I got in my vehicle and I responded to Columbia
24 Police headquarters to interview witnesses.

25 Q You ended up coming in contact with two different

1 witness that night, correct?

2 A Yes, sir.

3 Q That was --

4 A Avery Dickson and Mr. Walker, Benjamin Walker.

5 Q Now, let's take -- did you have the opportunity to
6 show either one a photo lineup?

7 A Yes, I actually showed both of them photo arrays.

8 Q All right. Now, let's talk about Mr. Dickson's
9 first, okay?

10 A Okay.

11 Q When did you end up showing it to him?

12 A Well, with Mr. Dickson, I actually interviewed him
13 and took a written statement from him prior to showing him
14 any sort of photo array. We went through everything that
15 happened throughout the night. And then after the
16 interview was done and we had completed a written
17 statement, I went out, got a copy of the photo array and
18 showed it to him at that point in time.

19 Q All right. Who provided it to you?

20 A Investigator Gilliam.

21 Q Now, so this happened at your headquarters?

22 A Yes.

23 Q How long -- what time of night was this, the same
24 day?

25 A It was within the same day.

1 Q Now, what, if anything, were the witnesses told
2 before you showed them the photo array?

3 A I told them all the same thing. The way the photo
4 array works is there's six separate photos. They're
5 numbered by the officer giving the array, so at no point
6 in time are they seeing the same set of photos. I
7 numbered them myself. It's six individual photos. I
8 carried them in with a photo lineup confirmation form. I
9 tell every person I sit down with, hey, listen let me show
10 you all these photos before you make a pick. I'm going to
11 pull them all out one at a time. I take all six photos
12 and place them onto a table in a large rectangle in the
13 shape of a giant photo lineup. At that point in time, I
14 let them pick whoever they like. I let them know the
15 person that you're looking for may or may not be in the
16 array.

17 Q Now, did you show the photos to the two witnesses
18 together or separately?

19 A Separately.

20 Q Who else is there -- were any witnesses there when
21 you show the witness the lineup -- the photo array, I
22 apologize?

23 A No.

24 Q So lead me -- I guess, help me understand better the
25 process by which you lay out these photos.

1 A I come in. I take -- I have all six photos. I
2 number them outside of the room. I believe that Mr. Watts
3 was numb -- I won't tell you exactly what number he was.

4 Q Would it help if you looked at it?

5 A It would. Each photo array that I gave between
6 Mr. Watts and Mr. Dickson were numbered differently.

7 Q Here is Exhibit No. 1 for the State of Mr. Dickson's
8 photo lineup or photo array.

9 A Mr. Watts was number three in this photo array.
10 During the photos, I numbered them each individually in
11 the center of the photo. They're all in the order, one
12 through six. I place all six photos facing the individual
13 that I'm showing them to, as such, three on the bottom,
14 three on the top. Tell them that they may or may not be
15 in the photo lineup. If you see them, please let me know.

16 If they do make a selection out of the photo array, I
17 give them my pen and I have them initial next to the
18 number they've provided and then the photo lineup
19 confirmation is given directly after that.

20 Q Did Mr. Dickson do that?

21 A Yes.

22 Q Which photo did he identify?

23 A Photo number three.

24 Q Who did he say that was?

25 A Horace Watts.

1 Q Did he say Mr. Watts took a role in this case?

2 A Yes, he explained to me during the time of the
3 interview that he was the shooter.

4 Q Did you have him sign anything?

5 A Yes, sir, he signed a written statement saying that,
6 as well as the confirmation for the photo array.

7 MR. POTTS: Your Honor, at this time, I'd like to
8 offer into evidence Exhibit No. 1 for the purposes of this
9 hearing.

10 MS. WALKER: No objection for this hearing.

11 THE COURT: State's 1 without objection.

12 (WHEREUPON, State's Exhibit No. 1 was admitted
13 into evidence.)

14 BY MR. POTTS:

15 Q Did he tell you how confident he was with that
16 choice?

17 A In my case notes, I remember writing that he readily
18 identified him. By saying readily identified, I had no
19 question he didn't question who it was. He immediately
20 picked him out.

21 MR. POTTS: Beg the Court's indulgence.

22 (Pause.)

23 BY MR. POTTS:

24 Q All right. I'd like you to take a look at State's
25 Exhibit No. 9. Can you tell me what that is?

1 A The photo array that was shown to Mr. Walker.

2 Q Did you present to Mr. Walker the same way you
3 presented to Mr. Dickson?

4 A Yes.

5 Q Okay. That's -- did anyone suggest to him what he
6 should choose?

7 A No, sir. They're placed in the same manner, directly
8 in front of him. They may or may not be in there. If you
9 do see him, let me know.

10 Q Did he end up choosing anyone of the photo array?

11 A Yes, sir. He chose number two, which was also Mr.
12 Horace Watts.

13 Q Did he identify what role Mr. Watts may have had that
14 evening?

15 A As the murderer in the shooting incident. I did not
16 actually interview him, take his written statement. I
17 just showed him the photo array.

18 Q But he indicated to you that he was one of the people
19 with the firearm?

20 A Yes, sir. On the photo confirmation, it actually
21 says for the charge of murder.

22 Q Did he tell you how confident he was in his answer?

23 A Yes. He readily picked him out as well.

24 Q Was there any hesitation?

25 A No, sir.

1 Q Did anyone suggest what photo he might want to pick?

2 A No, sir.

3 Q And how long did this process take on both cases?

4 A The interview with the photo array is a little longer
5 than just the photo array. The photo array takes a
6 minute-and-a-half, two minutes tops.

7 MR. POTTS: At this time, Your Honor, for the
8 purposes of this hearing, the State would like to offer
9 into evidence State's Exhibit No. 9.

10 MS. WALKER: Without objection for this hearing, Your
11 Honor.

12 THE COURT: All right.

13 (WHEREUPON, State's Exhibit No. 9 was admitted
14 into evidence.)

15 MR. POTTS: Beg the Court's indulgence.

16 (Pause.)

17 MR. POTTS: Thank you, Your Honor. No further
18 questions.

19 You need to stay there.

20 THE COURT: Cross-examination?

21 MS. WALKER: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. WALKER:

24 Q Good afternoon.

25 A How are you, ma'am?

1 Q You said you're with the gang task force, correct?

2 A Yes.

3 Q And you all were called for assistance or just heard
4 on the radio?

5 A We heard it on the radio and we went to give
6 assistance. It was -- during a shooting incident, a lot
7 of things are going on. We just offered assistance.

8 Q Do you recall what time you arrived there?

9 A I do not remember off the top of my head, no, ma'am.

10 Q Did you write a report?

11 A I did not, no, ma'am. I did case notes.

12 Q You did case notes, but you didn't put the time?

13 A I'm sure it's on my case notes.

14 Q But you just don't recall?

15 A I don't recall.

16 Q That's fine. So you arrive on scene. Do you recall
17 if it was dark?

18 A I don't believe it was. I believe it was, like,
19 early afternoonish.

20 Q And you said that Investigator McCoy asked if you
21 could assist with some interviews?

22 A Yes, ma'am. I asked Investigator McCoy what he
23 needed assistance with and he told me interviews.

24 Q And who gave you the photo arrays?

25 A Investigator Gilliam.

1 Q I'm sorry, I didn't mean to interrupt you.

2 A No, you're fine.

3 Q And you said that those lineups, they were numbered
4 by you?

5 A Yes, ma'am.

6 Q And you said in both of these lineups, you actually
7 numbered them differently?

8 A Yes, ma'am.

9 Q Is that the best practice to number them differently?

10 A I've always done it, just numbered them differently,
11 just in case -- because they possibly are the same photos
12 and they're being shown for the same case, I number them
13 differently. Most investigators number them themselves
14 anyway so they will not be in the same order, so it's not
15 if you're showing one lineup to seven people they all pick
16 the same number.

17 Q Is that the best practices you're taught?

18 A Yes, ma'am.

19 Q So you've numbered them differently in the two
20 lineups you showed?

21 A Yes, ma'am.

22 Q First, you show a lineup to Mr. Dickson; is that
23 correct?

24 A Yes, ma'am.

25 Q And that's Exhibit No. 1. And you said that you also

1 took a statement from Mr. Dickson, correct?

2 A Yes, ma'am, I did.

3 Q If I told you that you took that statement at 10:40,
4 would you agree?

5 A Yes, ma'am.

6 Q All right. So that would be 10:40 p.m.?

7 A Yes, ma'am.

8 Q Not in the a.m. And then Mr. Walker, if I told you
9 that you did his lineup after that -- well, let me ask you
10 this. Do you know if you showed Mr. Walker the lineup
11 prior to his statement or after his statement?

12 A I would believe it would be after, but I couldn't
13 tell you that 100 percent confirmation. I'd have to look
14 at Investigator Bailey's statement. The times would be on
15 there.

16 Q Okay. Because you said that you didn't interview
17 Walker, but you did interview Dickson?

18 A Yes, ma'am.

19 Q And you said -- and then here in State's Exhibit
20 No. 9, you have this photo lineup form; is that correct?

21 A Yes, ma'am.

22 Q And is the only part that the witness fills out just
23 this part right here?

24 A Yes, ma'am, and the number.

25 Q Okay. So the word murder has already been written

1 here?

2 A Yes, ma'am. This is not actually filled out until
3 after -- if a selection has been made from the photo
4 array, then that form is filled out.

5 Q But then the witness fills that out before that's put
6 on there or after?

7 A After he has made this selection from the photo
8 array.

9 Q I'm sorry. I may not be clear.

10 A Yes, ma'am.

11 Q So if he makes a selection, let's just say it was
12 number one, he would be given this form. Would anything
13 be written on here before --

14 A After he made the selection -- what did you say
15 number one?

16 Q Right.

17 A After he's made a selection, I fill this form out and
18 I hand him the form.

19 Q I understand. Okay. And you said that -- in the
20 environment where you were showing these lineups, this was
21 at headquarters?

22 A Yes, ma'am.

23 Q Is that in separate rooms? Are they cubicles?

24 A They're in separate rooms.

25 Q And do you know if Mr. Dickson and Mr. Walker arrived

1 at headquarters together?

2 A I do not know that, no, ma'am.

3 Q Do you know if prior to showing them a lineup they
4 had been seated together or anything like that?

5 A I do not know that, no, ma'am.

6 MS. WALKER: Beg the Court's indulgence.

7 (Pause.)

8 MS. WALKER: No further questions, Your Honor.

9 THE COURT: Redirect?

10 MR. POTTS: No, Your Honor.

11 THE COURT: Thank you.

12 THE WITNESS: Thank you.

13 THE COURT: Next? Or is that it on those two?

14 MS. GARFIELD: That's all the testimony for Avery
15 Dickson and Benjamin Walker.

16 THE COURT: All right. Tell me about it, Ms. Walker.

17 MS. WALKER: Thank you, Your Honor. May it please
18 the Court.

19 Your Honor, as you heard me ask of both Mr. Dickson
20 and Mr. Walker, they both admitted that one of the photos
21 is, indeed, blurrier than the other. We would argue that
22 that's unduly suggestive in this case, that it does point
23 to one photo rather than all of them.

24 Your Honor, you further heard there have been some
25 discrepancies regarding times and the lighting and things

1 of that nature. In order to be able to identify the
2 person, I would say the fact that they knew the person
3 ahead of time makes it even more likely that they would
4 pick the person they knew rather than someone they didn't
5 know.

6 That being said, Your Honor, I think there are some
7 issues regarding accuracy. It was a shooting. It's very
8 quick, something that -- you know, people are focused on
9 their lives and things of that nature in order to be
10 identifying the witness. And, Your Honor, I would just
11 argue that those factors in addition to being unduly
12 suggestive would -- we would argue to suppress the
13 in-court identification based on the suggestive
14 out-of-court lineup.

15 THE COURT: All right.

16 MS. GARFIELD: Your Honor, both witnesses, Mr. Walker
17 and Mr. Dickson, both provided testimony they knew the
18 Defendant beforehand and did see him. They were confident
19 in picking their identifications. They did not hesitate.
20 Judge, there have been discrepancies as far as time is
21 concerned, but I don't think there has been any
22 discrepancy as far as lighting and how clear it was and
23 how they could see the person that they saw with the gun,
24 whether they were pointing, shooting, whatever their
25 testimony may be.

1 As far as the blurry factor, I'll refer back to my
2 prior argument, I do not think it's suggestive because I
3 don't find it blurry. If anything, if you want to go that
4 route, it almost makes sense to the opposite route, that
5 all the others be blurry and not his.

6 Judge, we would ask you to submit both lineups for
7 purposes of trial.

8 THE COURT: Okay. As to Avery Dickson, the
9 out-of-court identification and the in-court
10 identification are both going to be admissible during the
11 trial. Mr. Dickson testified that he knew Mr. Watts
12 personally, had played basketball with him and hung out
13 with him on a daily basis. While there has been some
14 discrepancy as to what time this incident allegedly
15 occurred, there has not been any discrepancy in any way,
16 shape, or form that Mr. Dickson or Mr. Walker could not
17 see what was going on or the light was not sufficient for
18 them to determine who it was.

19 Further, the photo array lineups given by
20 Investigator Eunice were done correctly and they were not
21 suggestive. To the extent that the picture is blurry,
22 it's the same exact pictures that were used in the other
23 cases with Mr. Young, which I assume it was, and there is
24 another picture in there that is also blurry. I don't
25 find that to be unduly suggestive. These witnesses had an

1 opportunity to view the criminal at the time of the crime.
2 They both paid attention, both were able to give very
3 descriptive remarks and testimony concerning exactly what
4 happened and where it happened and when it happened and
5 who they saw. They were able to give an accurate
6 description of the individual. And they were certain
7 about who they saw and the circumstances under which they
8 saw them. There was proper time between the crime and the
9 confrontation. Mr. Dickson and Mr. Walker's out-of-court
10 and in-court identifications are both admitted.

11 Next.

12 MS. GODWIN: The State calls Jamichael Lewis.

13 JAMICHAEL LEWIS, after being duly
14 sworn, testified as follows:

15 THE CLERK: Please have a seat. State your full name
16 for the record.

17 DIRECT EXAMINATION

18 BY MS. GODWIN:

19 Q Would you state your name and spell your last name so
20 the court reporter can get that down?

21 A Jamichael Lewis, L-E-W-I-S.

22 Q All right. And Mr. Lewis, how old are you?

23 A Twenty-five.

24 Q And where do you live?

25 A Right now, I live on Bloomwood, Bloomwood Apartments.

1 Q All right. That's here in Columbia?

2 A Yes, ma'am.

3 Q All right. And how long have you lived there?

4 A For about a year now.

5 Q Do you remember where you lived in 2014?

6 A Yeah, the Colony.

7 Q Do you know an Isaac Lewis or did you know?

8 A Yeah, that's my uncle.

9 Q He was your uncle?

10 A Yes, ma'am.

11 Q I want to take you back to a day, July 12th, 2014.

12 Do you remember that day?

13 A Yes, ma'am.

14 Q Can you kind of tell me what you were doing on that
15 day?

16 A At the time?

17 Q Did you go to your uncle's house?

18 A Yeah.

19 Q And what did you go there for?

20 A For the party.

21 Q And what party was that?

22 A My auntie's birthday party.

23 Q What time -- do you remember about what time you got
24 there?

25 A I would say I got there around 10:00, 10:00 in the

1 morning.

2 Q And what was going on then?

3 A We were setting up everything, getting food cooked
4 and stuff.

5 Q About how many people were there?

6 A I know it was a lot, like, almost the whole family.

7 Q At some point that day, did -- was there an
8 altercation?

9 A Yeah.

10 Q And what happened? Who was involved?

11 A Well, my cousin and his girl was arguing and stuff.

12 Q Okay. So who is your cousin?

13 A Terrell Threat.

14 Q And who is his girlfriend?

15 A Taquel. I don't know her last name.

16 Q So those were the two arguing?

17 A Yeah.

18 Q Go ahead.

19 A At the time, Malik came around there and everybody
20 was telling him, like, this is a family problem. Terrell
21 was, like, you probably need to go because it's a family
22 problem. He was like no, I want to get my rank off, too.
23 So after that, he punched Terrell in the face.

24 Q And Malik punched Terrell?

25 A Yeah.

1 Q Now, how did you know Malik?

2 A I knew him through my cousin.

3 Q Which cousin is that?

4 A Quan.

5 Q What's his name?

6 A Daquan.

7 Q Y'all have a big family, so I want to make sure we
8 keep everybody straight. So about how long had you known
9 Malik?

10 A Not that long.

11 Q But you recognized him when he came over? You knew
12 his name?

13 A Uh-huh.

14 Q So they got -- you said Malik and your cousin,
15 Terrell, got into an altercation. Where were you?

16 A I was right there in the front yard in the road and
17 we was trying to break it up.

18 Q So you were part of the people trying to break it up?

19 A Yeah, just pushing.

20 Q So you were right there in the center of it?

21 A Yeah.

22 Q Once that altercation was over, what happened to the
23 people involved? Where did they go?

24 A My cousin went home and Malik left.

25 Q Before he left, did he do or say anything?

1 A No, not that much.

2 Q Okay. So then what did you do?

3 A We just went back in the yard, sat down, started
4 talking and stuff. And then, like, a couple minutes after
5 that, they came back shooting.

6 Q Okay. So after he left, both your cousin and Malik
7 who were in a fight, they both left and you said everybody
8 was just hanging out?

9 A Yeah.

10 Q Did you see them -- and when you say them, who do you
11 mean them? They came back shooting?

12 A Horace and Malik, his brother.

13 Q And I want to back up. So where exactly were you
14 when they came back?

15 A I was coming from the back, from the backyard coming
16 to the driveway and I sat down on the porch beside Avery.

17 Q Okay.

18 A And they was coming, still shooting before they even
19 got in the yard.

20 Q All right. When was the first time you noticed them?

21 A When he came in the yard.

22 Q So did you see them or did you hear them?

23 A Yeah, I seen them and heard the gunshots and seen
24 them when they came in the yard.

25 Q All right. And where were you -- you were still on

1 the front porch?

2 A Uh-huh.

3 Q So what was the next thing you remember?

4 A The next thing I remember, my cousin called back
5 window shattered out.

6 Q Hold on. Which cousin is this?

7 A Judy.

8 Q Okay.

9 A And Ty got out the car -- well, he fell to the
10 ground. He was hit.

11 Q And who is Ty?

12 A My cousin's friend at that time.

13 Q Tyrone?

14 A Yeah.

15 Q So Ty is his nickname?

16 A Yeah.

17 Q So you see Ty get out of the car. So that car just
18 pulled up?

19 A Yeah, it just pulled up.

20 Q And you see Ty fall to the ground?

21 A Uh-huh.

22 Q Then what do you do?

23 A Then I was about to go over there and help him up.
24 That's when Horace came in the yard still shooting,
25 pointing a gun at me. Then he walked into the backyard

1 and steadily shooting.

2 Q So Horace comes in the front yard?

3 A Yeah, he went right past me.

4 Q How did you know Horace?

5 A Because I know who he is. I know how he looks and I
6 know that was him.

7 Q Do you know him from around the neighborhood?

8 A Yeah.

9 Q And through your family?

10 A Through my cousin.

11 Q Okay. So Horace comes up -- you're about to go help
12 Ty?

13 A Yeah.

14 Q And explain -- would it help you to kind of point
15 things out?

16 A Yeah.

17 MS. GODWIN: Your Honor, may he step down?

18 THE COURT: Yes.

19 BY MS. GODWIN:

20 Q And using State's Exhibit 8, I want you to kind of
21 show me where were you and where was Ty?

22 A This is the picture from that day?

23 Q Well, this is just the map of --

24 A Oh, right. I was right there.

25 THE COURT: Speak up.

1 BY MS. GODWIN:

2 Q Yeah, she still needs to hear what you're saying.

3 A I was right here, me and A. And he had already came
4 in. And he point the gun at us, then he went past us and
5 started shooting. So that's when I ran to get Ty off the
6 ground while he was in the yard shooting. I tried to pull
7 him to me. He came back out and he ran past me and was
8 running out the yard after he shot my uncle.

9 Q So Ty is closer to the road?

10 A Yeah, Ty was right here on the ground.

11 Q So tell me, when did you get the best look at Horace?
12 When did you realize that was him?

13 A When he came running past me, I looked -- when he
14 point the gun at me, I seen him.

15 Q Okay. All right. You can take a seat on the witness
16 stand.

17 A (The witness complies.)

18 Q So after Horace runs into the backyard, what do you
19 do?

20 A After he ran in the backyard, I went to help Ty and
21 put him back in the truck. And then I went back to sit
22 down because they were already -- he was already running
23 out the yard.

24 Q All right. Horace is already leaving at that point?

25 A Yeah.

1 Q Did you see anybody else with Horace?

2 A Yeah, his brother, Malik.

3 Q And they both had guns, you said?

4 A Both had guns.

5 Q Did you get a good look at the guns that they had?

6 A Yeah. He showed me the gun. He showed us the gun
7 before all of this even happened.

8 Q Who is he?

9 A Horace.

10 Q All right. Do you know what kind of gun that was?

11 A I think it was like 45 or a 40 caliber.

12 Q Now, I want to go back. So after you helped Ty up
13 and Horace was running out of the yard, what do you do
14 next?

15 A I went to the road looking at them, seeing them run
16 down the road. They ran on up Chestnut.

17 Q Okay. And so did you see how they left?

18 A They ran off to go to Chestnut.

19 Q So after you watched them run away, did you -- what
20 did you do?

21 A I just -- I went to see how my uncle was doing and he
22 wasn't doing nothing.

23 Q Where was he?

24 A Lying on the ground face first.

25 Q And that was your Uncle Ike?

1 A My Uncle Ike.

2 Q After all of this happened, do you remember meeting
3 with some police?

4 A Yeah.

5 Q And when was that?

6 A That was after. After that, they came and we went to
7 headquarters.

8 Q Okay. I'm going to hand you what's been marked
9 State's Exhibit 4. I want you to tell me if you recognize
10 these. Do you recognize these?

11 A Yes, ma'am.

12 Q All right. And what are these?

13 A A picture of Horace.

14 Q All right. What are all of these together? Is this
15 what the investigator showed you?

16 A Yeah.

17 Q Is this the paper you completed once you were done?

18 A Yes, ma'am.

19 Q And what number did you pick out?

20 A Number six.

21 Q Okay.

22 A I mean, number five.

23 Q Okay. So when you met with investigators and they
24 showed you that lineup, did they suggest anyone for you to
25 pick?

1 A No.

2 Q Did they tell you that the person would be in there?

3 A No.

4 Q Did they make any kind of suggestions or anything?

5 A No, ma'am.

6 Q When you saw picture number five, how long did it
7 take you to recognize him?

8 A It didn't take me long. I pointed right to him when
9 I seen him.

10 Q You recognized him immediately?

11 A Yes, ma'am.

12 Q Do you remember how they showed you the pictures, how
13 they laid them out?

14 A Yeah, I think they were all -- at the time, I know --
15 I think they was on one page or something like that and I
16 pointed right at him.

17 Q Did they maybe lay one down?

18 A Yeah.

19 Q At a time?

20 A Yeah.

21 Q So you saw them all together?

22 A Yeah.

23 Q And then you picked?

24 A Yeah.

25 Q Did you put any marks on that paper when you picked?

1 A Yeah, I wrote my name and then I circled it.

2 Q Okay. And about how long after everything happened
3 at your aunt's house was it that you picked?

4 A It was the same day.

5 Q Okay. And do you remember -- when all of this was
6 happening at your aunt's house, do you remember -- was it
7 dark outside or was it still light?

8 A It was daylight.

9 Q So you had a good opportunity to get a look at their
10 faces?

11 A Yes, ma'am.

12 Q That person who you saw that day who shot -- ran into
13 the yard shooting, do you recognize him today --

14 A Yeah.

15 Q -- here in the courtroom?

16 A Right there.

17 Q What's he wearing?

18 A A pink shirt, button-up shirt.

19 MS. GODWIN: May the record reflect the witness has
20 identified the Defendant?

21 THE COURT: Yes, ma'am.

22 MS. GODWIN: No further questions.

23 THE COURT: Cross?

24 MR. RUFFIN: Thank you, Your Honor. May it please
25 the Court.

CROSS-EXAMINATION

1
2 BY MR. RUFFIN:

3 Q Mr. Lewis, how are you?

4 A All right.

5 Q So you were on the porch when you first heard shots;
6 is that right?

7 A No, I was coming from around the backyard to the
8 driveway when I heard the shots because I heard -- I seen
9 everybody running, so I went to the front.

10 Q Do you remember who you saw running?

11 A Who I seen running from the front yard?

12 Q Right.

13 A Oh, my cousin, my little cousin, my mom.

14 Q Were they out in the street or were they in the front
15 yard?

16 A They was in the front yard.

17 Q So you're running from the back to the front?

18 A Yeah.

19 Q And you saw them running?

20 A Yeah.

21 Q Did you hear gunshots at that time?

22 A Yes, I heard gunshots.

23 Q So you weren't like chilling on the front porch? I
24 might have misunderstood you. I thought you said you were
25 sitting on the front porch?

1 A Yeah, I was sitting on the front porch. When I was
2 coming, I sat down because I thought the gunshots would
3 stop. I didn't know that it was getting shot in the yard.
4 I seen everybody running, so I sat right there behind the
5 brick wall, me and April, behind the little brick on the
6 front porch.

7 Q All right. Let me just clarify. I don't mean to
8 keep repeating myself, but you're sitting on the porch and
9 you're hearing gunshots, but you're not aware yet --

10 A Where it's coming --

11 Q -- that it's coming towards y'all?

12 A Yeah.

13 Q So you actually hear gunshots?

14 A Uh-huh.

15 Q Are you feeling not that concerned about it at that
16 point?

17 A Yeah.

18 Q Pesky neighbors or something like that?

19 A Yeah, not at that point because I didn't know where
20 it was coming from.

21 Q Is it common at your house for you to hear gunshots
22 going off around the neighborhood?

23 A No.

24 Q No?

25 A No.

1 Q So you -- I mean, it was out of the ordinary for you
2 to hear gunshots going off?

3 A Yeah.

4 Q But when you first heard them, you weren't feeling
5 startled or anything like that?

6 A No.

7 Q Okay. And you said it's just your cousin, other
8 people. I mean, how many people would you say were in the
9 front yard when you first heard gunshots going off?

10 A I'd say about five, six.

11 Q Was anybody out in the street?

12 A Yeah, I had cousins in -- yeah, they was out in the
13 street and they ran in the yard.

14 Q Was it several people in the street?

15 A Not in the street. They was in the front yard, but a
16 couple of them were standing by the side of the road.

17 Q Okay, so I see what you mean. They're like near the
18 street?

19 A Yeah.

20 Q Not in the street?

21 A Yeah.

22 Q That's what you're saying?

23 A Yeah.

24 Q All right. And when you first hear the gunshots, you
25 didn't see who it was?

1 A No.

2 Q You couldn't see?

3 A No, because the bushes coming up on the side of the
4 driveway, you can't see really in the road until you get
5 in the front and go to the road.

6 Q And there's also -- were there also some cars parked
7 out there?

8 A Yeah, it was one car that just had pulled up.

9 Q That was Tyrone Johnson?

10 A Yeah.

11 Q Did you see Tyrone Johnson get out of the car?

12 A Yeah, I see when he get out the car, but he just
13 dropped to the ground.

14 Q Do you know if he got out of the driver's side of the
15 car? Did he get out of the driver's side of the car, do
16 you remember?

17 A I think it was --

18 Q Just to clarify --

19 A I think he got out of the driver's side.

20 Q Just to clarify, right, Tyrone Johnson's car is
21 parked on the street and the driver's side is facing the
22 porch where you would have been, right?

23 A Yeah. Yeah.

24 Q Like, if you're on the porch, you're looking at the
25 driver's side of his car?

1 A Yeah, that's where he came from, the driver's side.

2 Q And then you saw him drop?

3 A Uh-huh.

4 Q And you're hearing gunshots while this is going on?

5 A Yeah.

6 Q Now, at that point, my guess is you're scared?

7 A Yeah, now, I'm scared.

8 Q All right. And what did you do, you ran to the back?

9 A No, I didn't run nowhere. I stayed right there on
10 the front. I was going to go help him up, but then --

11 Q Help him up --

12 A That's when I seen him coming, came around the car,
13 like, coming down, so I stayed right there. He looked me
14 in the face pointing the gun at me. Then he just went to
15 the side of the house, still shooting. So while he got
16 his back turned to me, while he shooting, I ran and helped
17 Ty get out of the way.

18 Q All right. So what you're saying is that Horace --
19 that's who you're talking about?

20 A Yeah, Horace.

21 Q Points a gun at you while you're up on the porch?

22 A Yeah.

23 Q All right. And Avery is with you?

24 A Yeah.

25 Q Runs past y'all up the driveway?

1 A Yeah.

2 Q Did he say anything to you?

3 A No.

4 Q All right. Once he gets past you, you run out to the
5 car toward where Ty is?

6 A Yeah.

7 Q Did you see Horace or Malik shooting guns after you
8 ran out to help Ty?

9 A Yeah. He was still in the yard when I was picking Ty
10 up like this. He was still shooting.

11 Q And you remember that -- it's your recollection that
12 you were on the driver's side of Ty's car, so if you
13 turned, right, you're just looking at the house and the
14 driveway?

15 A Yeah, if I turned back around.

16 Q And you were looking at Ty?

17 A Yeah, I had him like this with my back turned to him.

18 Q So your back was turned to the house and the
19 driveway?

20 A Yeah.

21 Q And you're hearing gunshots?

22 A Uh-huh.

23 Q Do you remember what -- I think you might have
24 already said this, what the guns looked like? I believe
25 you said one of them had a beam on it?

1 A Yeah.

2 Q Anything other than that, color?

3 A I think like chrome or black, silver, black,
4 something like that.

5 Q All right. Do you remember what the shooters were
6 wearing?

7 A I know that -- I think he had on a white shirt.

8 Q You think -- both of them?

9 A I think Malik had on a black shirt.

10 Q Are you positive? You don't sound sure. I'm just --
11 I mean, it's okay. Do you remember what they were wearing
12 or not?

13 A No, not really, but I know I seen a white shirt.

14 Q When you were sitting on the porch when you first
15 started hearing the shooting, you said that a couple of
16 people were kind of on the edge. Did anybody approach
17 these individuals who had the guns?

18 A No. Because they was already running to the
19 backyard.

20 Q All right. The people in your family, they were
21 already running to the backyard?

22 A Yeah.

23 Q No one ever approached?

24 A No. Nobody ever had a chance to say anything.

25 Q And after the shooters left --

1 A Uh-huh.

2 Q -- you're still there with Ty; is that right?

3 A No, after the shooters left, I went to the back to
4 check on my uncle.

5 Q All right. And what was he --

6 A He was laying on his face.

7 Q Which direction was he facing?

8 THE COURT: Okay. This is a Neil vs. Biggers
9 hearing. This is not a trial. Ask a question relevant to
10 Neil vs. Biers. What direction the alleged victim was
11 lying in has nothing to do with this person's out-of-court
12 identification of the Defendant.

13 MR. RUFFIN: I apologize, Your Honor.

14 THE COURT: I've let it go long enough. The next
15 nonrelevant question I hear in this hearing, I'm just
16 going to cut it off.

17 BY MR. RUFFIN:

18 Q One more question. If you look at those pictures
19 again, you said you picked out number five?

20 A Uh-huh.

21 Q Did you recognize that it's blurrier than the others?
22 Would you agree with me that it's blurrier?

23 A Yeah.

24 MR. RUFFIN: That's all, Judge.

25 THE COURT: Redirect.

REDIRECT EXAMINATION

BY MS. GODWIN:

Q All right. Jamichael, the time period that all of this happened, did it happen quickly? Did it happen really fast?

A Yeah.

MS. GODWIN: No further questions.

THE COURT: Recross?

MR. RUFFIN: No, Your Honor.

EXAMINATION

BY THE COURT:

Q How did you say you knew Mr. Watts? I missed that.

A I knew him through my cousin.

Q That doesn't tell me anything.

A My cousin, Quan.

Q How do you know who he is, that's my question?

A Oh --

Q No, no, hold on. Prior to this incident date, the date we're talking about at the birthday party, are you with me?

A Yes, sir.

Q Prior to that, tell me how you know who Mr. Watts is.

A Oh, because I -- he done been hanging around us for weeks and days and playing ball and all.

THE COURT: Okay. All right. Does anybody want to

1 ask any followup to that by the State?

2 FURTHER REDIRECT EXAMINATION

3 BY MS. GODWIN:

4 Q Mr. Lewis, so you said that y'all would play
5 basketball?

6 A Yes, ma'am.

7 Q Approximately how many times prior to this do you
8 think you saw Mr. Watts?

9 A How many times I seen him before all this?

10 Q Uh-huh.

11 A Well, they been coming around for a couple of months.

12 Q A couple of months.

13 A That's when I finally got to know him a little bit.

14 Q So would you say when he was coming around for those
15 few months, was he coming around every day, every other
16 day?

17 A Every other day.

18 Q So for a few months, you saw him consistently?

19 A Yeah.

20 Q Every day to every other day?

21 A Even when I didn't see him in the yard, I seen him at
22 the store and in the neighborhood.

23 Q So y'all just crossed paths?

24 A Yeah.

25 Q All right. And you said y'all played ball together?

1 A Yeah, we played ball right there in that same yard.

2 Q You and Horace?

3 A And the rest of my cousins that play ball.

4 MS. GODWIN: All right. No further questions.

5 THE COURT: You can follow up with that, Mr. Ruffin.

6 MR. RUFFIN: I don't have anything.

7 THE COURT: If you want to.

8 MR. RUFFIN: I don't have anything.

9 THE COURT: Thank you very much, Mr. Lewis, you may
10 step down.

11 All right. Next witness.

12 MR. POTTS: The State calls Dominique Tucker.

13 DOMINIQUE TUCKER, after being
14 duly sworn, testified as follows:

15 THE CLERK: Please have a seat. State your full name
16 for the record.

17 THE COURT: What's your name?

18 THE WITNESS: Dominique.

19 THE COURT: Dominique what?

20 THE WITNESS: Tucker.

21 THE COURT: Spell your last name for the court
22 reporter real quick.

23 THE WITNESS: T-U-C-K-E-R.

24 DIRECT EXAMINATION

25 BY MR. POTTS:

1 Q Mr. Tucker, how are you doing today?

2 A I'm fine.

3 Q All right. I'm just going to cut a little further to
4 the chase. Do you remember the events on July 12th, 2014?

5 A Yes.

6 Q All right. Can you tell me what you were doing that
7 day?

8 A Like the day of the murder?

9 Q All right. Yeah, the day of the murder, that's what
10 we're going to focus on today. What were you up to?

11 A I was at my auntie's house at first on Leesburg. So
12 I came to my uncle's house and there was a cookout over
13 there, so I went to the cookout.

14 Q All right. What was the cookout for?

15 A My Auntie April's birthday.

16 Q How many people were there?

17 A About 30 to 50.

18 Q Were you there for any altercation that happened
19 earlier in the day?

20 A No.

21 Q No, right?

22 A No.

23 Q All right. So when you showed up that had not --
24 that had already -- you don't know -- you don't know what
25 happened before you got there?

1 A No.

2 Q So tell me about what happened after you got to the
3 party.

4 A After I got to the party, I was coming down the
5 street. I was trying to calm everybody down. I was
6 trying to tell them what the little brother had done told
7 me.

8 Q Who was that?

9 A Malik.

10 Q So did you see Malik when you were coming in?

11 A Yeah, I seen Malik when I was coming down the street
12 by Brook Barbershop.

13 Q And what had Malik told you?

14 A He was like, Tell your family I got something for
15 them. I'll be right back. So I went down there to try to
16 tell them that, but none of them was listening, but they
17 was still kind of riled up, so.

18 Q Just tell me more about what happened. What happened
19 next?

20 A What happened next, we were just chilling, you know,
21 trying to enjoy the cookout. The next thing you know, I
22 was on the street, me and my cousin, Taurus. And someone
23 was just like, look. And when I looked, I seen Horace and
24 his brother, they got out of car.

25 Q All right. So who and his brother?

1 A Horace.

2 Q And who is Horace's brother?

3 A Malik.

4 Q How do you know the two of them?

5 A Because I seen them. I seen them when they got out
6 of the car.

7 Q So prior to this date, did you know Horace and Malik?

8 A No, I knew Malik from school.

9 Q Okay.

10 A But I don't really know Horace.

11 Q Had you seen him before?

12 A Yeah.

13 Q Okay.

14 A I had seen him.

15 Q How had you interacted with him before?

16 A I mean, he was cool. I mean, he seemed kind of cool.

17 Q Did you play ball in the yard?

18 A You talking about earlier that day?

19 Q No, in general, in the weeks and days prior to this?

20 A Did I play ball with him?

21 Q Yeah.

22 A Yeah, I think so.

23 Q Okay. So you saw Malik and Horace get out of the
24 car?

25 A Yeah, I saw them get out of the car.

1 Q Do you remember what kind of car it was?

2 A I want to say it was like a Chevy, a blue car with
3 tinted windows, like a Chevy Impala car.

4 Q All right. So it was a blue car, blue Chevy. What
5 did you see next?

6 A I seen them running down the street. And by the time
7 I heard, like, one gunshot, I was already in the yard or
8 whatever.

9 Q So did you see the gun in their hands before you saw
10 the gunshots?

11 A Yeah, like, when they got out the car and came around
12 the car, I already seen they had guns, so that's all I
13 needed to see.

14 Q All right. So just tell me more about what happened.

15 A All right. When they got out the car, like I told my
16 cousin to run because my cousin, Taurus, was right beside
17 me and we both seen them when they got out the car. So I
18 was like run. I was trying to tell everybody there they
19 go, you know, try to run or whatever. People went hiding
20 behind trees everywhere. I had run in the house -- trying
21 to grab kids and stuff and trying to go in the house. And
22 after that, I just heard gunshots.

23 Q Okay. How far away from you were they when they got
24 out of the car?

25 A Like from here?

1 Q Uh-huh.

2 A I'd say, like, from here to, like, where my people
3 are standing at out there. A good little distance.

4 Q A good little distance. Was it still light outside?

5 A Yeah.

6 Q So you ran inside and that's when you started hearing
7 the gunshots?

8 A Yeah.

9 Q Were there any gunshots when you were still outside?

10 A I heard one -- like, as soon as I got in the yard, I
11 heard one gunshot.

12 Q Okay. I guess continue on, tell me what happened
13 after you got inside.

14 A After I got inside, I heard the gunshots or whatever
15 and then all of a sudden, I stopped hearing it. And then
16 I went outside, like, trying to check on everybody and see
17 if they were straight. And I went out the back door
18 because I heard everybody like Uncle Ike, Uncle Ike. So I
19 tried to check on my uncle and he was dead.

20 Q All right. So at that point, you see Horace again
21 that evening?

22 A No, I ain't seen him none after that.

23 Q So I guess although the two of y'all aren't friends,
24 did you know him by name?

25 A Yeah.

1 Q I mean, you've run into him several times before,
2 correct?

3 A Yeah, I seen him on the streets before.

4 Q So that evening, did you go down to headquarters?

5 A Uh-huh. Yeah.

6 Q Talked to law enforcement?

7 A Yeah.

8 Q You have some kind of doubt about that?

9 A Yeah, they talked to me over there. They had me in a
10 little private room.

11 Q Okay. Did they show you any photos?

12 A Yeah, several.

13 Q Okay. I'm going to show you what's been marked as
14 State's Exhibit No. 5. Take a look at that.

15 A Yeah.

16 Q All right. Are these the photos they showed to you
17 that evening?

18 A Yeah, same photos.

19 Q Okay. Is there any particular photo that you
20 recognized?

21 A Yeah, him, Horace.

22 Q Okay. So you recognize Horace's photo?

23 A Uh-huh.

24 Q How did you denote that on the -- how did you note
25 that on the picture?

1 A I circled it at first.

2 Q Okay.

3 A And then I had to write my name beside it.

4 Q You wrote your name beside it?

5 A Uh-huh.

6 Q Now, I don't see a circle around this. You just
7 wrote your name beside it?

8 A Yeah, I wrote my name.

9 Q I'm going to show you this. The first page, did you
10 fill out that or did you sign your name to that?

11 A Yes, sir.

12 Q What picture did you say you picked out?

13 A Horace.

14 Q And what number is that?

15 A Number three.

16 Q Okay. When they were showing you the photos, how
17 were they laid out?

18 A It was laid out, like, it was just separated, like,
19 these at the top and these at the bottom.

20 Q Did anyone tell you which photo to pick out?

21 A No, sir.

22 Q Did they -- was there anyone else in there besides
23 you and the investigator when you picked out the photo?

24 A It was just us two.

25 Q Did they tell you the person who was -- the shooter

1 was going to be in the photos or did they say pick someone
2 out?

3 A Yeah, they said just pick the shooter out.

4 Q Okay. So you said you saw Horace in the photos.
5 That was number three?

6 A Uh-huh.

7 Q What was his role that evening?

8 A What do you mean?

9 Q What did Horace do that night?

10 A You know, he shot somebody.

11 Q He was the one you saw -- he was one of the ones you
12 saw with a gun?

13 A Yeah.

14 Q Him and Malik?

15 A Him and Malik, yeah.

16 Q Tell me what the light was like that night. Do you
17 remember the lighting?

18 A You're talking about, like, when the police came?

19 Q Yeah, so when you saw Horace, was it still a little
20 bit daylight?

21 A Yeah, it was getting dark a little bit. Yeah, it was
22 around like -- I want to say, like, 5:00, 6:00 or 7:00.

23 Q But there was still some daylight left?

24 A Yeah.

25 Q Now, is the person you saw in the photos and the

1 person you saw shooting that evening, is he here in the
2 courtroom?

3 A Yeah.

4 Q Could you point him out for me, please?

5 A Him right there.

6 Q Can you describe what he's wearing?

7 A A pink little shirt and khakis.

8 MR. POTTS: Let the record show he has identified the
9 Defendant.

10 THE COURT: So noted.

11 MR. POTTS: Beg the Court's indulgence.

12 (Pause.)

13 MR. POTTS: No further questions. Please answer any
14 questions they have.

15 THE COURT: Cross-examination?

16 MR. RUFFIN: Thank you, Your Honor. May it please
17 the Court?

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. RUFFIN:

21 Q Mr. Tucker, you said it was sort of getting dark --

22 A Yes.

23 Q -- when you were out there. You said it was 5:00,
24 6:00 or 7:00. You don't know what time it was really?

25 A No, it was in between.

1 Q And the people that you saw -- you said that they
2 were from about here to where the people are outside of
3 the room. Is that what you said?

4 A Yeah, a little farther.

5 Q All right. A little farther. So it was a pretty
6 good distance between you and the people that were
7 shooting?

8 A Kind of.

9 Q And you never actually saw anybody shoot a gun; is
10 that right?

11 A No.

12 Q So you never actually saw any guns then?

13 A Yeah, I saw a gun when they got out of the car.

14 Q Okay. Do you remember what it looked like? Could
15 you tell?

16 A No, I just know they had guns.

17 Q What about what clothes they were wearing?

18 A I don't remember that.

19 Q I think it was Investigator Gilliam who showed you
20 the lineup. Did you say that he told you to pick out the
21 shooter out of the lineup? What did he say to you?

22 A No, he was just like if you see who shot, just point
23 him out.

24 Q So that's all he really asked you is do you see who
25 shot?

1 A Yeah.

2 Q And you picked picture number three, right?

3 A Yeah.

4 Q Would you agree with me that picture number three is
5 blurrier than the other pictures?

6 A No. They looked all the same. They're clear.

7 Q They looked all the same to you?

8 A They're clear pictures.

9 Q You were looking at the pictures at the same time; is
10 that right?

11 A Yeah, because they was all just laid out.

12 MR. RUFFIN: No further questions.

13 THE COURT: Any redirect?

14 MR. POTTS: No, Your Honor.

15 THE COURT: Have a good one.

16 Next.

17 MS. GODWIN: State calls Emmitt Gilliam.

18 EMMITT GILLIAM, after being duly
19 sworn, testified as follows:

20 THE WITNESS: Emmitt Gilliam.

21 DIRECT EXAMINATION

22 BY MS. GODWIN:

23 Q How are you, Mr. Gilliam?

24 A Good.

25 Q Where are you employed?

1 A City of Columbia Police Department.

2 Q What's your position?

3 A Investigator.

4 Q Were you employed there in 2012?

5 A Yes, ma'am.

6 Q And in what capacity were you employed then?

7 A Investigation in VCAP, violent crimes against
8 persons.

9 Q And back in July of 2012, did you become involved in
10 a homicide investigation?

11 A Yes, ma'am.

12 Q How were you brought into that investigation?

13 A We responded to a call, a person was shot down on
14 Magnolia Street. Once we got there, found out that the
15 victim was deceased and we started working a homicide
16 case.

17 Q And while you were working that case, did you have
18 occasion to sit down with some of the witnesses and
19 present them with photo lineups?

20 A Yes, ma'am.

21 Q Do you remember the names of the people that you did
22 that with?

23 A Yes, ma'am. Jamichael Lewis and Dominique Tucker.

24 Q Where were you when you did those lineups?

25 A Police headquarters.

1 Q Okay. Were these individuals in the same room or in
2 separate rooms?

3 A Separate times.

4 Q And on what date were these done?

5 A July 12th, 2014.

6 Q All right. So the same day as the incident?

7 A Yes, ma'am.

8 Q Do you remember about how long afterwards?

9 A How long after I showed the photo lineups? I'm not
10 exactly sure, but it's -- I don't think I put a time on
11 the actual photo lineups.

12 Q I'm going to hand you what's been marked as State's
13 Exhibit 4 and 5.

14 Take a look at those and tell me if you recognize
15 those.

16 A Okay.

17 Q All right. And let's start with State's No. 4, what
18 is that?

19 A Photo lineup for -- photo lineup of six persons to
20 Jamichael Lewis -- or present to Jamichael Lewis.

21 Q Jamichael Lewis?

22 A Jamichael, I'm sorry.

23 Q All right. That's okay. Can you explain to me how
24 those photos were presented?

25 A Yes. What I did with him was I told him, I said,

1 I've got six people -- six persons I'm going to show you
2 lineups and see if they're part of this crime and I laid
3 all six out. And that's when he picked out picture number
4 five.

5 Q So these were individual pictures?

6 A Yes.

7 Q You laid them all out?

8 A That's correct.

9 Q Were there numbers on the pictures?

10 A Yeah, what I'd like to do before I get to it is
11 number each picture, so that way, they're automatically
12 numbered. So one, two, three, four five, go in order of
13 what I see.

14 Q And when you did this with Mr. Lewis, how many
15 pictures did you show to him?

16 A Six.

17 Q And what number, if any, did he select?

18 A Number five.

19 Q When he selected that, did you -- was anyone else in
20 the room?

21 A No, ma'am.

22 Q Prior to him selecting number five, did you suggest
23 to him in any way which one to pick?

24 A No, ma'am.

25 Q Did you tell him that the person would be in the

1 lineup?

2 A I don't think I said that. I might have said it's a
3 possibility he might be in the lineup. I'm not sure
4 exactly how I said it.

5 Q About how long did it take for him to pick out number
6 five?

7 A Almost instant.

8 Q Would you say he was pretty confident in that?

9 A Yes. Also, he knows the individual through a few
10 other family members, as well. He knows of him.

11 Q And the picture number five he selected, whose photo
12 was that?

13 A Say it again.

14 Q I said the picture that he selected, who was that?

15 A Horace Watts.

16 Q After he picked out number five, did he make any
17 markings or anything on that picture?

18 A Yes, ma'am, I asked him to circle, print his name,
19 sign his name, and put today's date.

20 Q And he did that?

21 A Yes, ma'am.

22 Q And then let's go to State's Exhibit No. 5?

23 A Okay.

24 Q All right. And what is that?

25 A Six picture photo array given to -- I'm showing to

1 Dominique Tucker.

2 Q When did you show that to him?

3 A I think this one happened after the initial
4 interview.

5 Q Is it still on the 12th?

6 A Yes, same day.

7 Q Is this also at police headquarters?

8 A That's correct.

9 Q Again, if you wouldn't mind, were you the only other
10 person in the room with him?

11 A Yes.

12 Q And nobody else -- y'all were in a room or a cubicle?

13 A We were in a room.

14 Q And, again, what procedure did you use for showing
15 these pictures to him?

16 A I laid the pictures out one at a time. Six picture
17 photo array laid out and he picked them out.

18 Q Were these pictures numbered?

19 A Yes, ma'am.

20 Q What number did he pick out?

21 A He picked out number three.

22 Q When you were showing these pictures to him, did you
23 at any point suggest to him who to pick?

24 A No, ma'am.

25 Q Tell him that he had to pick somebody?

1 A No, ma'am.

2 Q Tell him that the person who committed the crime was
3 definitely in the lineup?

4 A No, ma'am.

5 Q Do you remember about how long it took him to pick?

6 A Again, that's almost instant. Once I put the lineup
7 down, he said that's him right there.

8 Q How certain would you say?

9 A He was 100 percent. Like I said, again, he knows the
10 Defendant pretty good himself.

11 Q And when he selected number three, did he pick that
12 person as the person he saw at the incident location?

13 A Yes, ma'am. Yes.

14 Q And also, when you were doing it with Jamichael, he
15 picked that person as the person he saw at the incident
16 location?

17 A That's correct.

18 MS. GODWIN: Your Honor, at this point, the State
19 would move to admit State's 4 and 5 for purposes of this
20 hearing.

21 MR. RUFFIN: No objection to that.

22 THE COURT: 4 and 5 without objection.

23 (WHEREUPON, State's Exhibit Nos. 4 and 5 were
24 admitted into evidence.)

25 MS. GODWIN: Thank you.

1 No further questions.

2 THE COURT: Cross-examination?

3 MR. RUFFIN: Thank you, Your Honor. May it please
4 the Court?

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. RUFFIN:

8 Q Investigator Gilliam, did you know which person in
9 the lineup was a suspect?

10 A After I initially did the -- send it off to SLED to
11 request the lineup, yes.

12 Q So you knew which picture was the person you were
13 looking for?

14 A The person, yes.

15 Q And you said you numbered the pictures?

16 A That's correct.

17 Q And it sounds like you numbered them differently for
18 each one?

19 A That's correct.

20 Q And you didn't -- did you number them in front of the
21 witness?

22 A No.

23 Q Okay.

24 A I take that back. On Jamichael, I realized I didn't
25 and that's where I numbered those, down in front of him.

1 But it was laid out one, two, three, four, five, six
2 because I wanted to make sure -- you know, I don't like to
3 have a lineup without having the numbers on it without
4 knowing which number it is.

5 Q You don't remember what time the lineup was done?

6 A I do not, sir.

7 Q It was done at police headquarters, though?

8 A That is correct.

9 Q Would you agree with me that the picture that is
10 Horace Watts in these lineups, would you agree with me it
11 is blurrier than the other photos in the lineups?

12 A At the time, no, I wouldn't agree with you because I
13 really didn't pay too much attention to it at that time.

14 Q Would you agree with me now?

15 A It's a little more blurry, but the witnesses knew
16 Horace better than anybody.

17 MR. RUFFIN: That's all I have, Judge.

18 THE COURT: Redirect?

19 MS. GODWIN: No further questions.

20 THE COURT: Thank you very much.

21 THE WITNESS: All right.

22 THE COURT: All right. Mr. Ruffin.

23 MR. RUFFIN: Thank you, Your Honor. Again, I know
24 this is a recurring theme.

25 THE COURT: You need to create the record, so --

1 MR. RUFFIN: Yes.

2 THE COURT: I know where you're going. Go ahead and
3 make sure the record is clear.

4 MR. RUFFIN: Thank you, Your Honor. The same -- the
5 reasons will be basically the same. The picture is
6 blurry. My understanding is all these people were shown
7 the same photos.

8 THE COURT: Right. We're dealing with the same six
9 photos, is that right, Ms. Garfield?

10 MS. GARFIELD: Yes, sir.

11 THE COURT: I mean, I can take -- at this point, I'm
12 taking judicial notice that picture number five is
13 blurrier.

14 MR. RUFFIN: Thank you, Your Honor.

15 THE COURT: I don't want to say picture number five.
16 I'll say the picture of Mr. Watts is clearly blurrier than
17 any other picture. There was a second picture in there
18 that is blurry, but it is not as blurry as the picture of
19 Mr. Watts. I mean, I think -- I'm not going to say it. I
20 think it's obvious. I mean, I don't know how else to say
21 it other than when I look at it with my eyes sitting here
22 in a courtroom with normal light, it is clearly blurrier.
23 I understand that argument.

24 MR. RUFFIN: Thank you. For that reason, our
25 argument is that it unduly suggests -- especially

1 because --

2 THE COURT: Your argument is almost a reverse
3 suggestiveness. You know, there's suggestion as in where
4 they're laying them out and they're tapping on the photo
5 saying this is the one to pick. That's overly suggestive.
6 Yours is almost the reverse where it's not --

7 MR. RUFFIN: It's more subconscious.

8 THE COURT: It's more subconscious than trying to
9 draw attention -- and I'm not saying they did this. I'm
10 just saying the argument is that by it being blurry, it
11 sets it off and it draws your attention to it and it could
12 produce a false positive.

13 MR. RUFFIN: That's correct, Your Honor.

14 THE COURT: Okay.

15 MR. RUFFIN: That is our argument. Also, I would
16 just add, with Mr. Tucker, I think he said that he didn't
17 really know Mr. Watts that well. Really, he knew Malik
18 Davis. I think that combined with the blurry photo that
19 it's just going to kind of jump out. So for that reason,
20 we'd ask that you suppress lineups and in-court IDs for
21 Mr. Tucker and Mr. Jamichael Lewis.

22 THE COURT: All right. Ms. Garfield.

23 MS. GARFIELD: Your Honor, despite your judicial
24 notice that the picture is blurry, we disagree with
25 Mr. Ruffin's argument. As far as Mr. Lewis is concerned,

1 he clearly established that he knew the Defendant well and
2 had a history with him, and without hesitation picked his
3 picture out of the lineup.

4 As far as Mr. Tucker, he testified that although it
5 was getting dark, it was light outside. He knew him from
6 playing basketball, knew him from playing basketball at
7 the home where this incident took place, knew him from
8 around Columbia and he indicates that he knew him by name.
9 He indicates he did not know him personally or have a
10 personal relationship with him, but he knew him by name
11 just as we all know numerous people in this courthouse by
12 name, but not personally. So we do believe that meets the
13 protocol under Neil vs. Biggers and we ask you to allow
14 both lineups to be admitted to the jury when the time
15 comes.

16 THE COURT: Okay. Mr. Lewis's and Mr. Tucker's in-
17 court and out-of-court identification of Mr. Watts are
18 going to be deemed admissible under Neil vs. Biggers.
19 They both -- and we say know and I guess that's one of the
20 things in court, everybody's version of how you know
21 somebody is different. But, you know, they both clearly
22 have given information that they knew who Mr. Watts was.
23 They had seen him on multiple occasions. They had played
24 basketball with him and they had seen him around town,
25 knew who he was. They knew him by name, recognized him

1 that day. They had a clear opportunity to view him in
2 appropriate daylight. They were paying attention. Their
3 descriptions are accurate and they were certain of the
4 level of confrontation in the photographic lineup and the
5 time between the crime and the confrontation were
6 appropriate based upon the circumstances.

7 And I do not find that the blurry nature -- as I
8 previously ruled under the other witnesses, the blurry
9 nature of the picture of the Defendant is significant
10 enough to cause some form of undue suggestion on behalf of
11 law enforcement at that time. At this point, all five
12 witnesses know exactly who it is and there's nothing else
13 about the photo lineup that is improper. So those are
14 both admitted.

15 Let's take a 10-minute break and we'll start back up.

16 (WHEREUPON, a short break was taken.)

17 THE COURT: Call your next witness.

18 MR. POTTS: The State calls Daquan Cleckley.

19 THE COURT: What's his name?

20 MR. POTTS: Daquan Cleckley, Your Honor.

21 DAQUAN CLECKLEY, after being duly
22 sworn, testified as follows:

23 THE CLERK: Have a seat. State your full name for
24 the record.

25 THE WITNESS: Daquan Cleckley.

DIRECT EXAMINATION

BY MR. POTTS:

Q Spell your last name for the court reporter.

A C-L-E-C-K-L-E-Y.

Q Thank you, Mr. Cleckley. How are you doing today, Mr. Cleckley?

A Good.

(WHEREUPON, State's Exhibit No. 10 was marked for identification only.)

BY MR. POTTS:

Q All right. Can you tell me about where you were on July 12th, 2014?

A I was home.

Q And where is home for you?

A [REDACTED]

Q So how did your day go?

A Well, at first, it was going good. I mean, we was chilling, having fun, playing ball, me and Horace before it led to the incident. But later on that day, we had a birthday party. It was big function. Everybody was there.

Q Tell me how you know Horace.

A I know Horace through Malik.

Q Okay.

A Me and Malik was actually cool. You could say best

1 friends.

2 Q Okay.

3 A But that's how I met Horace.

4 Q How long had you known Horace?

5 A About two, three years.

6 Q Two or three years?

7 A Yeah.

8 Q Okay.

9 A Prior to that time.

10 Q Prior to that time?

11 A Yeah.

12 Q Did y'all play ball a lot?

13 A Yeah. Not every day, but when we did get together,
14 we played ball, yeah.

15 Q Now, Horace and Malik are brothers, right?

16 A Yeah.

17 Q And Malik was your best friend?

18 A Yeah.

19 Q Now, tell me about this party y'all were having.

20 A Well, we was all -- it was a lot going on before it
21 led to that incident. But what was going on wasn't
22 nothing leading to, like, dead, it was just a lot of
23 argument. But as all that was going on --

24 Q This is an argument at the basketball court?

25 A No, no, we actually had a basketball goal in my yard,

1 backyard.

2 Q Okay.

3 A But while we was at the house as we were having fun,
4 Malik was coming up Magnolia Street. I guess he went to
5 see what was going on. But before he had a chance to say
6 anything, we was just trying to tell him be quiet, just go
7 ahead, like, you already know the situation you're in. So
8 we left it like that. But Malik didn't want to go. He
9 felt like he was trying to be funny, so him and my cousin
10 got into it. And then my cousin beat him up.

11 Q You were there for all of this?

12 A Yeah.

13 Q Where did you and Malik go after the altercation?

14 A He went back the way he came, but he made a left and
15 went up Schoolhouse. I guess he went home.

16 Q Now, this gathering was a family gathering?

17 A Yeah. It was for my mom's birthday.

18 Q And who's your mom?

19 A April Cleckley.

20 Q It was a cookout?

21 A Basically.

22 Q After this altercation and Malik leaves, what happens
23 next?

24 A Him and his brother came back.

25 Q Okay. Was that five minutes later, ten minutes

1 later?

2 A I'd say it was approximately 10, 15 minutes later.

3 Q When did you first see them?

4 A I seen a car come from Center street. When I seen
5 the car, I seen two doors open.

6 Q Can you describe the car for me?

7 A Not really, but I can remember that I seen Horace and
8 Malik. They had on, like, white t-shirts. I can't
9 explain everything that they had on.

10 Q Right. But you remember they were white shirts?

11 A Yes. When I did see them get out the car, they did
12 get out the car with two guns. So after I seen that,
13 like, I just went ahead and ran in the house. And then
14 while I was running in the house, I heard gunshots.

15 Q Just kind of walk me through what happened, what you
16 remember seeing.

17 A So while we was on the side of the road, we seen the
18 car come from Center Street. It stopped literally right
19 on Magnolia. I seen Horace and Malik get out the car. I
20 didn't give them a chance to even -- approach them or
21 anything because that is not what they came there to do to
22 try to squash anything. Their mindset was to shoot
23 somebody.

24 Q And you could tell that by the guns they had in their
25 hands, you saw those?

1 A Uh-huh.

2 Q So you turn around, what do you hear when you go
3 away?

4 A As I'm running, I hear two or three shots. Then as
5 I'm going onto the porch, I hear multiple shots, like,
6 from two different guns.

7 Q Uh-huh. Did you see anyone shooting?

8 A Yes.

9 Q Who did you see shooting?

10 A Horace and Malik.

11 Q About how far were you from Horace?

12 A When I seen Horace shooting, this is when he came in
13 the yard before he shot and killed him.

14 Q I guess, just lead me through the whole event if you
15 don't mind.

16 A The whole event, when I seen the car, seen Horace and
17 Malik get out, heard gunshots. I go in the house, tried
18 to get everybody in. Some people stayed, some people came
19 in. Looked out the window, seen Malik continue running.
20 I guess his gun ran out. So Malik kind of, like, ran off.
21 Horace stayed. Horace actually walked into the yard --

22 Q Okay.

23 A -- and looked in the yard. And as my Uncle Ike was
24 coming from around the tree, Horace looked him in the eyes
25 and shot him.

1 Q So you saw Horace?

2 A Yeah, I seen Horace shoot my uncle.

3 Q Did he have a -- what's his real name?

4 A Isaac Lewis.

5 Q Isaac Lewis. Okay. So after he shot Isaac Lewis,
6 what happened? What did you do?

7 A He ran off. I went outside.

8 Q Now, did law enforcement respond that evening?

9 A Yes.

10 Q Did you have an opportunity to talk to law
11 enforcement that evening?

12 A Yes.

13 Q Okay. Did they take a statement?

14 A Yes.

15 Q Did they show you any photographs or anything?

16 A Yes.

17 Q Okay. I'm going to show you what's marked as State's
18 Exhibit No. 6. I'm also going to show you what is marked
19 as State's Exhibit No. 10. I want you to look at both
20 those things and tell me if you recognize them.

21 A Yes.

22 Q Okay. So tell me what the first one is, No. 6. Tell
23 me what that is.

24 A No. 6?

25 Q Yeah, that's the first one.

1 A This is a photo lineup.

2 Q Is that the sheet of paper you signed?

3 A Yes, sir.

4 Q Okay. Does it say whether he picked out a
5 photograph?

6 A Yes, sir, I picked out number four.

7 Q And No. 10, what is that? This thing right here,
8 sorry. State's Exhibit No. 10, what is this?

9 A Photo lineup.

10 Q The first -- No. 6 is just the sheet of paper you
11 signed?

12 A Yes, sir.

13 Q And you picked out number four?

14 A Uh-huh.

15 Q And did you do that by writing it down on this sheet?

16 A Yes, sir.

17 Q And who is number four on that?

18 A Horace.

19 Q How did they show you these photographs? Did they
20 lay them all out at once?

21 A Yes.

22 Q So they put all six photos in front of you?

23 A Yes.

24 Q Did they tell you to pick one out if you recognized
25 it? What did they tell you?

1 A They told me to pick out the person who shot my
2 uncle.

3 Q Was he in the photos?

4 A Yes.

5 Q Okay. That day when you first saw Horace at the
6 scene, was it light outside? What was the light like?

7 A I mean, like I say, I seen Horace before that
8 incident even got to that point. Me and Horace was
9 actually playing ball together later on -- earlier that
10 day.

11 Q So before all this happened that day, you had already
12 seen Horace?

13 A Yeah.

14 Q Did the officer tell you what picture to choose?

15 A No, sir.

16 Q Did he -- was there anyone else with you in the room
17 when you were picking out the photo?

18 A No, sir.

19 Q Is the person you picked out in the photo and the
20 person you saw shoot Isaac in the room today?

21 A Yes, sir.

22 Q Where is he?

23 A Right there.

24 Q Can you describe what he's wearing for me?

25 A Pink, khakis.

1 Q A pink shirt?

2 A Yes, sir.

3 MR. POTTS: Please let the record reflect he has
4 identified the Defendant.

5 THE COURT: All right.

6 MR. POTTS: Beg the Court's indulgence.

7 (Pause.)

8 MR. POTTS: Thank you. Please answer any questions
9 they have for you.

10 THE COURT: Cross?

11 MS. WALKER: May it please the Court?

12 THE COURT: Sure.

13 CROSS-EXAMINATION

14 BY MS. WALKER:

15 Q Good afternoon, Mr. Cleckley.

16 A How you doing?

17 Q Good. So you said that you had seen Horace earlier
18 that day. Do you recall about what time you saw him again
19 later that night?

20 A Can I recall the time?

21 Q Uh-huh.

22 A Specifically, not off the top, but I can give you a
23 reasonable time. It was probably like 6:00, 7:00ish.

24 Q 6:00 to 7:00. And you said to Mr. Potts that it was
25 daylight; is that right?

1 A Yes.

2 Q And the cops had already been at the location once;
3 is that correct?

4 A Yes.

5 Q And that was earlier on in the day?

6 A Uh-huh.

7 Q And let me just get this straight. How many people
8 do you think were at the party?

9 A A lot.

10 Q All right. What's a lot, an estimate?

11 A At least, 40, 50.

12 Q Okay. So how far -- or where were you exactly when
13 the car pulls up?

14 A In the front of my yard in the street.

15 Q And you live at the incident location, right?

16 A Yes.

17 Q So using State's Exhibit No. 8, this is your house,
18 right?

19 A Yes.

20 Q And you're right here out front?

21 A Uh-huh.

22 Q And you were able to see the car?

23 A Yes.

24 Q Okay. And you said that you're just not quite sure
25 what the description of the car was?

1 A Yes, ma'am.

2 Q And that you're not quite sure what they had on.
3 Maybe white shirts?

4 A Yes.

5 Q And you saw guns, but do you know what kind of guns
6 they were?

7 A It had to be a nine and a 45 caliber.

8 Q It had to be? Why do you say it had to be?

9 A Because like I told you before the incident happened,
10 Horace used to tell me about his gun, like we used to be
11 around each other.

12 Q Okay. You're saying you knew about it beforehand?

13 A Yes.

14 Q So that's what it had to be. And so now -- so you're
15 in the front yard and you hear shots and what do you do?

16 A I run on the porch. I tell my cousins, Let's go,
17 let's get in the house. Some of them came. Some of them
18 didn't. I went in the house.

19 Q You got in the house?

20 A Uh-huh.

21 Q So are you in the house, are you at the front door
22 looking?

23 A I'm in the house looking out the window.

24 Q Looking out the front of the house or towards the
25 driveway?

1 A The driveway.

2 Q Okay. So there's a window that looks out toward the
3 driveway?

4 A Uh-huh.

5 Q Did you see the shooting of Tyrone?

6 A Not technically.

7 Q What's not technically mean?

8 A I seen -- like I said, I seen Ty pull up, and I seen
9 Malik done pull up. When I seen Malik get out of car, I
10 ran, I heard shots. So guess the first couple of shots
11 was one of the bullets that struck Ty.

12 Q So you're putting one and one together, but you
13 didn't see the in between?

14 A Yeah.

15 Q Okay. And then you said Malik ran off?

16 A Uh-huh.

17 Q And then you said that -- I believe this was your
18 testimony. Correct me if I'm wrong, I don't want to put
19 words in your mouth. That Horace looked him in the eyes
20 and shot twice?

21 A Yes.

22 Q Is that correct?

23 A Yes.

24 Q So when the shot happened, it was face-to-face?

25 A Yes.

1 Q And you saw this from the window?

2 A Uh-huh.

3 Q And you said that it was still daylight outside?

4 A Uh-huh.

5 Q Do you remember if the lights in the house were on or
6 off?

7 A Off.

8 Q And when you're in the window looking out the window,
9 are there curtains, blinds anything you had to look
10 through?

11 A Blinds. They was already opened, though.

12 Q Was the window dirty at all?

13 A No.

14 Q How far do you think -- from the window and then
15 looking at the scene you're looking at outside, about how
16 far do you think that was?

17 A About eight to ten feet.

18 Q Eight to ten feet. Do you have any vision issues,
19 contacts, glasses, anything of that nature?

20 A No, ma'am.

21 Q Do you remember how many people were inside the house
22 with you?

23 A Like three.

24 MS. WALKER: Beg the Court's indulgence.

25 THE COURT: Yes, ma'am.

1 (Pause.)

2 BY MS. WALKER:

3 Q Let me just ask you about the lineup here. Okay. So
4 State's Exhibit No. 10 is the actual six photos that were
5 lined up; is that correct?

6 A Yes.

7 Q And they laid them out out in front of you?

8 A Uh-huh.

9 Q So you were able to look at them all at once; is that
10 right?

11 A Yes.

12 Q Looking at these photos and just looking at them as
13 people, as photograph, would you agree that number four is
14 blurrier than the rest of those photographs?

15 A I mean, yeah.

16 Q Okay. And that's all I'm asking.

17 A Uh-huh.

18 Q But you did pick out number four?

19 A Yeah.

20 Q And let me make sure that I put the right lineup and
21 the right thing in front of you. And then you told
22 Mr. Potts that when they had those photographs in front of
23 you, you were told to pick out the person who shot your
24 uncle; is that correct?

25 A Uh-huh.

1 MS. WALKER: Thank you, Your Honor. No further
2 questions.

3 THE COURT: Redirect?

4 MR. RUFFIN: No, Your Honor.

5 THE COURT: Have a good one.

6 THE WITNESS: Thank you.

7 THE COURT: Thank you.

8 Next.

9 MS. GARFIELD: The State calls Jasmine Sims.

10 JASMINE SIMS, after being duly
11 sworn, testified as follows:

12 THE CLERK: Please have a seat. State your name for
13 the record.

14 THE BAILIFF: Watch your step.

15 THE WITNESS: Jasmine Sims.

16 DIRECT EXAMINATION

17 BY MS. GARFIELD:

18 Q Ms. Sims, how do you spell your last name?

19 A S-I-M-S.

20 Q And do you live in Columbia?

21 A Saluda, South Carolina.

22 Q How long have you lived in Saluda?

23 A Almost seven months.

24 Q Before that, where did you live?

25 A Gonzales Gardens.

1 Q In Columbia?

2 A Yes, ma'am.

3 Q How old are you, Ms. Sims?

4 A Fifteen.

5 Q Where do you go to high school?

6 A Saluda High.

7 Q Where did you go to high school back in 2014 -- or
8 where did you go to school, rather, in 2014?

9 A I think I was at Creighton Middle School.

10 Q And you were 13 years old at the time?

11 A Twelve.

12 Q Twelve. Ms. Sims, you know the difference between
13 telling a lie and telling the truth?

14 A Yes, ma'am.

15 Q And you're here to tell the truth today?

16 A Yes, ma'am.

17 Q I want to ask you what your relationship is, first,
18 to the victim in this case, the deceased, Isaac Lewis?

19 A That's my uncle.

20 Q And how is he related to you, like, how is he your
21 uncle?

22 A That's my grandmother's brother.

23 Q Your grandmother's brother?

24 A Yes, ma'am.

25 Q What did you refer to him as?

1 A Uncle Ike.

2 Q And also I want to take you to the Defendant in this
3 case, Mr. Horace Watts. Did you know him?

4 A Throughout the neighborhood.

5 Q And throughout the neighborhood -- you weren't living
6 in the neighborhood at that time, were you?

7 A No, ma'am.

8 Q Did you visit often?

9 A Yes, ma'am.

10 Q Where particularly would you go when you visited?

11 A My Uncle Jamie's house.

12 Q And is that also where Uncle Ike lived?

13 A Yes, ma'am.

14 Q Is that where you would see Horace Taylor?

15 A Yes, ma'am.

16 Q Did you know him by name?

17 A Yes, ma'am.

18 Q And what would he do over at the house?

19 A Play basketball in the backyard.

20 Q You'd see him routinely?

21 A Yes, ma'am.

22 Q Were you friendly with him?

23 A No, ma'am.

24 Q You just knew who he was?

25 A Yes, ma'am.

1 Q I want to take you back to July 12th, 2014. Did you
2 attend a family cookout?

3 A Yes, ma'am.

4 Q And who was that cookout for?

5 A Auntie April.

6 Q About what time of day did you arrive?

7 A I don't know. It was daytime, though.

8 Q Daytime?

9 A Yes, ma'am.

10 Q Were you there when there was a previous family
11 argument involving Terrell Threat?

12 A Yes, ma'am.

13 Q Were you there when Malik Davis arrived?

14 A Yes, ma'am.

15 Q Did you know Malik Davis?

16 A Yes, ma'am.

17 Q How did you know him?

18 A Pinehurst.

19 Q And Pinehurst would be close by to where this
20 incident location is?

21 A Yes, ma'am.

22 Q And you knew him from the neighborhood as well?

23 A Yes, ma'am.

24 Q Did you know him by name?

25 A Yes, ma'am.

1 Q Did you know him personally?

2 A No, ma'am.

3 Q Did he also play basketball at the house?

4 A Yes, ma'am.

5 Q And you'd see him routinely?

6 A Yes, ma'am.

7 Q And you knew him by sight?

8 A Yes, ma'am.

9 Q Were you at the cookout when Malik came and got into
10 an argument with Terrell?

11 A Yes, ma'am.

12 Q All right. And what do you remember about that?

13 A I seen Malik walking up and he swung on my cousin and
14 they started fighting. And it broke up and he walked off.

15 Q And when you say my cousin, who are you referring to?

16 A Terrell.

17 Q Who broke up the fight between Malik and Terrell?

18 A My Uncle Ike.

19 Q Was it just your Uncle Ike?

20 A I can't remember.

21 Q Did Malik leave?

22 A Yes, ma'am.

23 Q And then did the party continue?

24 A A little bit, yes, ma'am.

25 Q Did Malik Davis come back to the party?

1 A With his brother.

2 Q Okay. He came back to the party with his brother?

3 A When they were shooting.

4 Q Okay. Let's take it step by step, okay, Ms. Sims?

5 He came back to the party?

6 A Not to the party.

7 Q To the location?

8 A Yes, ma'am.

9 Q About how long had passed? How much time had passed?

10 A Thirty minutes.

11 Q Okay. And when Malik got there, you said he was with
12 his brother?

13 A Yes, ma'am.

14 Q And what's his brother's name?

15 A Horace.

16 Q And what did you observe, Miss Sims?

17 A Well, I was sitting on the porch. I didn't hear the
18 gunshots because I had blacked out. I heard when they got
19 close. I had ducked in front of a car because I didn't
20 have time to run. I seen the red beam come through the
21 bushes and I seen Horace walking in the yard and he shot
22 my uncle in the back.

23 Q Take your time.

24 A And I -- and he grabbed his chest and fell to the
25 ground. And he -- and Horace shot again and ran out the

1 yard.

2 Q And where were you at this time, Jasmine?

3 A I was kneeling down in front of my cousin's
4 girlfriend's car.

5 Q Was that car on the driveway or on the street?

6 A In the driveway.

7 Q Is that the same vicinity where your uncle was?

8 A Yes.

9 Q Uncle Ike?

10 A Yes, ma'am.

11 Q Did you see the Defendant, Horace Watts, with a gun?

12 A Yes, ma'am.

13 Q And did he shoot at the car you were hiding behind?

14 A Yes, ma'am.

15 Q And did it penetrate the car?

16 A It had gunshots in the back of it.

17 Q Where you were hiding?

18 A Yes, ma'am.

19 Q Jasmine, you just said you were on the porch. You
20 didn't hear the gunshots because you blacked out. What do
21 you mean by that?

22 A I had my head down on the porch because -- I had just
23 had my head down on the porch. I didn't hear nothing
24 until he got very close and I seen everybody running to
25 the backyard. By the time I got a chance, I was about to

1 run, it was too late because he was already coming in the
2 yard.

3 Q Were you very hot that day?

4 A Yes, ma'am.

5 Q It was July?

6 A Yes, ma'am.

7 Q Is that why you had your head down?

8 A Yes, ma'am.

9 Q Now, when you saw the red beam come through the
10 bushes and you saw the Defendant point a gun at your
11 uncle, was it daylight outside?

12 A Yes, ma'am.

13 Q About how far away were you from Mr. Watts?

14 A It was about, like, five feet.

15 Q Five feet?

16 A Yes.

17 Q About the distance between you and me?

18 A Yes, ma'am.

19 Q Now, later were you interviewed by a police officer?

20 A Yes, ma'am.

21 Q And were you shown some photographs?

22 A Yes, ma'am.

23 Q Were you asked to pick anybody out of the photographs
24 that you recognized?

25 A Yes, sir.

1 Q Were you asked to pick out someone that may be in
2 connection to this incident?

3 A Yes, ma'am.

4 MS. GARFIELD: Beg the Court's indulgence.

5 (WHEREUPON, State's Exhibit Nos. 11 and 12 were
6 marked for identification only.)

7 BY MS. GARFIELD:

8 Q Now, this was done at the police department?

9 A Yes, ma'am.

10 Q I'm going to show you what's been marked as State's
11 Exhibit No. 10. Do you recognize these photographs?

12 A Yes, ma'am.

13 Q And I'm going to let you just kind of flip through
14 them.

15 A (The witness complies.)

16 Q Are these the photographs you were shown by the
17 police officer?

18 A Yes, ma'am.

19 Q I'm going to also show you what's been marked as
20 State's Exhibit No. 12. Do you recognize this document?

21 A Yes, ma'am.

22 Q Is this a document where you indicated the number you
23 picked out on the photos?

24 A Yes, ma'am.

25 Q And what number did you pick out?

1 A Number four.

2 Q Is that your signature?

3 A Yes, ma'am.

4 Q Is that your signature in print?

5 A Yes, ma'am.

6 Q And that at the time was your address and telephone
7 number?

8 A Yes, ma'am.

9 Q And number four would be the person you recognize as
10 who?

11 A Horace.

12 Q And you didn't initial this actual --

13 A No, ma'am.

14 Q -- photo, right? Just the one that's reflected in
15 Exhibit 12?

16 A Yes, ma'am.

17 Q Ms. Sims, the person that you saw point the gun and
18 shoot your Uncle Ike, do you see him in the courtroom
19 today?

20 A (Indicated.)

21 Q And can you just tell the Judge what he is wearing
22 for the record?

23 A A pink collared, button-up shirt.

24 MS. GARFIELD: Your Honor, may the record reflect
25 that the witness has identified the Defendant?

1 THE COURT: Yes, ma'am.

2 MS. GARFIELD: Thank you, Ms. Sims. Answer any
3 questions that the Defense counsel may have for you, okay?

4 THE WITNESS: Okay.

5 THE COURT: Cross?

6 MS. WALKER: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. WALKER:

9 Q All right. Hey, Ms. Sims, how are you?

10 A Hey.

11 Q I'm sorry to have to go over this again. I may have
12 missed a couple of words. You said that you blacked out.

13 Did you mean you actually physically passed out?

14 A No, ma'am.

15 Q Did you get weak from being so hot or am I
16 misunderstanding?

17 A I just didn't hear nothing.

18 Q Okay. So you just kind of weren't paying attention?

19 A Yes, ma'am.

20 Q Is that more like what it was?

21 A Yes, ma'am.

22 Q You kind of had your head down just relaxing, is that
23 accurate?

24 A Yes, ma'am.

25 Q Okay. And how many people do you think were at this

1 cookout?

2 A It was a family cookout. I don't really know.

3 Q I know you have a big family. Can you -- do you have
4 an estimate? Less than 50, more than 100?

5 A Less than 50.

6 Q And you said when you got there, it was daytime; is
7 that correct?

8 A Yes, ma'am.

9 Q About how many hours were you there do you think
10 before all of this happened?

11 A I don't really know.

12 Q A few?

13 A Yes, ma'am.

14 Q And you said when this incident actually happened
15 that it was still daylight?

16 A Yes, ma'am.

17 Q Do you remember when the police arrived?

18 A It was nighttime.

19 Q The police arrived at nighttime. And I'm going to
20 use this diagram over here to see if that can help me out
21 a little bit, State's Exhibit No. 8. So you were
22 sitting -- this is your uncle's house, right?

23 A Yes, ma'am.

24 Q And you were sitting on the front porch?

25 A I was sitting on the side over here.

1 Q You were sitting on the side? There's a side porch,
2 too?

3 A Uh-huh.

4 Q And that's where you were sitting?

5 A Uh-huh.

6 Q And where was the car that you were able to hide
7 behind?

8 A It was right here in the driveway right here.

9 Q So you didn't have to go far from the porch to the
10 driveway?

11 A No.

12 Q And then where -- was the car facing back or forward?

13 A Back in the yard.

14 Q Like it was backed up in the yard?

15 A Yeah.

16 Q So did you hide on the side or, like, towards the
17 trunk?

18 A In the front.

19 Q In the front of the car?

20 A Uh-huh.

21 Q So the shooter was back here?

22 A Yeah.

23 Q Like at the front of driveway?

24 A Yes, ma'am.

25 Q So you were on this side of the car. Here's the car.

1 Then the shooter would have been back over here?

2 A Yes, ma'am.

3 Q Okay. And you said that -- how did you know Malik?

4 A My uncle.

5 Q Did y'all go to school together or anything?

6 A No.

7 Q You just knew him from seeing him around the
8 neighborhood, right?

9 A Yes, ma'am.

10 Q You said you never really interacted with him. You
11 weren't friendly I think was the word you used?

12 A No.

13 Q I'm sorry that we have to bring this up again, but
14 you did see the shooting?

15 A Yes, ma'am.

16 Q You said that your uncle was shot in the back?

17 A Yes, ma'am.

18 Q And then do you remember if they were able to call
19 the police right away?

20 A Yes, ma'am.

21 Q Okay. And then they showed you a lineup. They took
22 you to headquarters; is that right?

23 A Yes, ma'am.

24 MS. WALKER: Beg the Court's indulgence.

25 BY MS. WALKER:

1 Q And State's Exhibit No. 10. And they showed you
2 these photos that you went over with Ms. Garfield; is that
3 right?

4 A Yes, ma'am.

5 Q Do you recall if they showed them to you, like, one
6 at a time and then took it back or laid them all out for
7 you?

8 A They laid them out.

9 Q They laid them all out. Okay. So you were able to
10 kind of look at them all at once; is that correct?

11 A Yes, ma'am.

12 Q And these look about like the photos that you saw,
13 right?

14 A Yes, ma'am.

15 Q And you picked number four?

16 A Yes, ma'am.

17 Q And looking at these photos, looks at just the
18 different photos, does number four look more blurry than
19 the rest of the photos do?

20 A No, ma'am.

21 Q It doesn't look blurry at all to you?

22 A A little bit.

23 Q All right. But that was photo you picked, correct?

24 A Yes, ma'am.

25 Q And when you picked this photo, did the officer tell

1 you anything when he showed you this lineup? What did he
2 say when he showed you these photos?

3 A Do any of these people look familiar?

4 Q Do any of these people look familiar?

5 A Yes, ma'am.

6 Q Did he tell you why they might look familiar?

7 A No, ma'am.

8 Q Okay.

9 MS. WALKER: Beg the Court's indulgence.

10 (Pause.)

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

12 THE COURT: Redirect?

13 MS. GARFIELD: Nothing further.

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

15 Next.

16 MR. GARFIELD: State calls Investigator Bea Fields.

17 BEATRICE FIELDS, after being duly
18 sworn, testified as follows:

19 THE CLERK: Please have a seat. State your name for
20 the record.

21 THE WITNESS: Beatrice Fields.

22 THE COURT: Fields?

23 THE WITNESS: Uh-huh.

24 DIRECT EXAMINATION

25 BY MS. GARFIELD:

1 Q All right. Investigator Fields, where are you
2 employed?

3 A City of Columbia Police Department.

4 Q What are your duties with the Columbia Police
5 Department?

6 A I'm an investigator.

7 Q Are you assigned to a particular unit?

8 A Right now, we're just assigned to the north region,
9 anything that comes through.

10 Q Is that the way the division of the department was in
11 July of 2014?

12 A No, it was not. I was assigned to special victim's
13 unit.

14 Q And what did special victim's unit entail?

15 A I handled any crimes regarding sexual assaults,
16 vulnerable adults, missing persons, anything dealing with
17 juvenile cases, such as that.

18 Q Were you called to assist in a homicide investigation
19 on July 12th, 2014?

20 A Yes.

21 Q Why were you called when that's not the division
22 you're assigned to?

23 A Because the incident occurred -- it was a party and
24 we had numerous witnesses and we needed to assist the lead
25 investigator.

1 Q Who was the lead investigator in the case?

2 A Investigator McCoy.

3 Q And Investigator McCoy is seated at the table, the
4 prosecution table?

5 A Yes.

6 Q Investigator Fields, did you go to the crime scene?

7 A Yes.

8 Q So you're familiar with Magnolia Street?

9 A Yes.

10 Q Where did you actually interview the witnesses you
11 were tasked to interview?

12 A I interviewed them at headquarters.

13 Q That would be downtown?

14 A Yes.

15 Q Specifically, who did you interview?

16 A Daquan Cleck --

17 Q Cleckley?

18 A Cleckley. Terry Lewis and I showed a photo lineup to
19 Jasmine.

20 Q To Jasmine Sims?

21 A Yes, Jasmine Sims.

22 Q I specifically want to direct you to the showing of
23 the photographic lineups. How did you go about doing
24 that?

25 A I had six photos and I flipped them so she could see

1 them individually.

2 Q And did you do that with all the witnesses?

3 A Yes.

4 Q And did you do these separately?

5 A Yes. Because we had so many, each were on the second
6 floor and I had to bring them down to the first floor
7 behind closed doors.

8 Q Because you were running out of space?

9 A We were running out of space.

10 Q How did you obtain the photographic lineup?

11 A Through SLED.

12 Q All right. Had that been obtained from another law
13 enforcement officer also helping?

14 A Yes.

15 Q And because you were on the first floor, did you use
16 the same lineup?

17 A I used the same photos that was -- yeah.

18 Q You used the same photos with each witness?

19 A Right.

20 Q Did you have them initial anything on the actual
21 photographic lineup?

22 A No.

23 Q I'm going to show you what's been marked as State's
24 Exhibit No. 10. Are you familiar with this exhibit? Take
25 your time to go through it.

1 A Yes.

2 Q Are those the photographs that you showed the
3 witnesses you were tasked to interview?

4 A Yes.

5 Q Specifically, Jasmine Sims?

6 A Yes.

7 Q Daquan Cleckley?

8 A Yes.

9 Q And, specifically, Terry Lewis?

10 A Yes.

11 Q And you showed those photographs before you?

12 A Yes.

13 Q I want to bring your attention to Jasmine Sims. I'm
14 going to show you what's been marked as State's Exhibit
15 No. 12. Do you recognize this document?

16 A Yes.

17 Q All right. Is that the document you used to
18 memorialize the picture that Jasmine Sims picked out of
19 the identification lineup?

20 A Yes.

21 Q Did you show her the pictures first?

22 A Yes.

23 Q And then how did -- then you filled that out?

24 A Yes.

25 Q All right. Did you have her sign that?

1 A Yes.

2 MS. GARFIELD: Your Honor, at this time, I'd like to
3 introduce State's Exhibit No. 12 for purposes of this
4 hearing?

5 MR. WALKER: No objection, Your Honor.

6 THE COURT: No objection.

7 (WHEREUPON, State's Exhibit No. 12 were admitted
8 into evidence.)

9 BY MS. GARFIELD:

10 Q And, also, to Mr. Daquan Cleckley, I'd like to show
11 you State's Exhibit No. 6. Do you recognize this
12 document?

13 A Yes.

14 Q And can you just identify what the document is?

15 A It's a photo lineup form.

16 Q And did you have Mr. Clerkly also memorialize the
17 photograph he picked out?

18 A Yes.

19 Q And these would all be picking out a person that they
20 identified as being the shooter?

21 A Yes.

22 Q What picture did they pick out?

23 A They picked out picture number four.

24 Q And picture number four corresponded to be a picture
25 of who?

1 A Ho -- is it --

2 Q Horace?

3 A Horace, I'm sorry.

4 Q The Defendant we're in court for today?

5 A Yes.

6 Q I know it's very late. And that would be the same
7 picture that was also picked out by Ms. Sims?

8 A Yes.

9 Q And documented in State's Exhibit No. 12?

10 A Yes.

11 MS. GARFIELD: Your Honor, at this time, I'd like to
12 introduce State's Exhibit No. 6 into evidence?

13 MS. WALKER: No objection, Your Honor.

14 MS. GARFIELD: For purposes of this hearing, Your
15 Honor.

16 THE COURT: No. 6 without objection.

17 (WHEREUPON, State's Exhibit No. 6 was admitted
18 into evidence.)

19 BY MS. GARFIELD:

20 Q And, lastly, for purposes of identification only, did
21 you also show the photographs that we have referred to to
22 a witness by the name of Terry Lewis?

23 A Yes.

24 Q And did you -- I'm sorry. I'm showing you State's
25 Exhibit No. 11. Did you have him also -- did you show him

1 the picture in the same manner you previously testified
2 to?

3 A Yes.

4 Q Did he also pick out the person he identified as the
5 shooter?

6 A Yes.

7 Q And what number did he pick out?

8 A Number four.

9 Q And that number four corresponded to the Defendant,
10 Mr. Watts?

11 A Yes.

12 MS. GARFIELD: Your Honor, I'll hold off on making
13 any further introduction until Mr. Lewis testifies at a
14 later time.

15 BY MS. GARFIELD:

16 Q And the same pictures that were reflected in State's
17 Exhibit No. 10, those would be the same pictures you also
18 showed Mr. Lewis?

19 A Yes.

20 MS. GARFIELD: Your Honor, at this time, I'd like to
21 introduce State's Exhibit No. 10 into evidence.

22 MS. WALKER: No objection.

23 MS. GARFIELD: For purposes of this hearing.

24 MS. WALKER: No objection.

25 THE COURT: No. 10 without objection.

1 (WHEREUPON, State's Exhibit No. 10 was admitted
2 into evidence.)

3 BY MS. GARFIELD:

4 Q Were those the only witnesses that you showed any
5 sort of photographic array to?

6 A Yes.

7 Q And with each witness, we'll go through them one by
8 one, Ms. Sims, did you suggest a picture for her to pick
9 out?

10 A No.

11 Q Did you hint at any specific picture?

12 A No.

13 Q Did she pick out her pick without any hesitation?

14 A She picked him out without any hesitation.

15 Q And, also, to Mr. Daquan Cleckley, did you make any
16 sort of suggestion to him?

17 A No.

18 Q Did he also pick out a picture without any
19 hesitation?

20 A Without any hesitation.

21 Q Lastly, Mr. Terry Lewis, did you show the pictures to
22 him and make any suggestions?

23 A No.

24 Q Give him any hints?

25 A No.