

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Eugene C. Griffith, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

GREGORY BROOKS,

APPELLANT

APPELLATE CASE NO 2016-002301

RECORD ON APPEAL

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

SAMUEL BAILEY
Assistant Attorney General
S.C. Bar No. 103131
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

SAMUEL HUBBARD, III.
Solicitor, 11th Judicial Circuit

ATTORNEYS FOR RESPONDENT

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

**STATE'S EXHIBITS #6-11, #21, #22 (PHOTOS); DEFENDANT'S EXHIBITS #1, #2,
#4-16, #18-19, #22 (PHOTOS); DEFENDANT'S EXHIBITS #30-31 (TEXT MESSAGES);
DEFENDANT'S EXHIBIT #41 & COURT'S EXHIBIT #6 (PHOTO);
DEFENDANT'S EXHIBIT #42 & COURT'S EXHIBIT #7 (PHOTO);
DEFENDANT'S EXHIBITS #43-44 (PHOTOS)**

1 State of South Carolina) In the Court
2 County of Lexington) Of General Sessions
3) Indictment No.: 2015-GS-32-1347
4 State of South Carolina,) 1348, 1349
5 Plaintiff,)
6 vs.) Transcript of Record
7 Gregory Lamont Brooks,)
8 Defendant.)

9
10 October 31 through November 3, 2016

11 Lexington, South Carolina

12 BEFORE:

13 The Honorable Eugene C. Griffith, Junior,
14 Judge, and Jury

15
16 APPEARANCES:

17 Rhonda Patterson, Assistant State Solicitor
18 Lester "Gill" Bell, Assistant State Solicitor
19 Attorneys for the State

20 Aimee Jendrzewski Zmroczek, Esquire
21 Attorney for the Defendant

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1 not contained in that statement?

2 A. I asked him why his mother would tell us that his
3 nickname is Dink and then he eventually told us that his
4 nickname was, in fact, Dink and I asked him why he would lie
5 to us about his nickname.

6 Q. Did he give you a response?

7 A. He didn't. He just -- Not that I recall.

8 Q. Okay. What other kind of statements did he provide
9 in that written document?

10 A. He said, "On the night I was chilling at Kelly's,
11 then went to the Cockpit and I don't remember what time. I
12 had two shots of Henny, a Corona, a Bud Light and a Tequila.
13 I was chilling for a little bit. I asked my ride Akeata
14 (phonetic) if she was ready to go. She said no so I called my
15 baby's mama, Denique Banks. She came around 2:30 to 3:00 a.m.
16 Went home and was chilling with my son and Denique. I saw
17 Dave Wright at the club and Akeata. Don't remember who else I
18 saw there. The only people that know me as Dink are my mom,
19 dad, brothers, sisters, aunts, uncles, grandparents, Denique
20 Banks, Dave Wright and Facebook. I cut my hair about two to
21 three weeks ago. My dreads came down to the bottom of my
22 ears. They would not grow. I cut my hair for my job because
23 I wanted people to look at me differently. I was tired of
24 being judged. I was a member of the Folks but I don't do that
25 anymore. I don't hang around them anymore."

1 And Detective Black wrote, "Detective S. Black wrote
2 this statement for Gregory Brooks exactly as he told it to me.
3 End of statement."

4 Q. Okay. Did you ask him any other questions or
5 anything?

6 A. We asked him about him cutting his hair; that we
7 were told that he had dreads, long hair on the night of the
8 incident and then not long after that he had cut his hair.

9 Q. When did he tell you in that statement that he cut
10 his hair?

11 A. Two to three weeks ago before, basing this off of
12 February 10th, 2014. Two to three weeks prior.

13 MS. PATTERSON: Please answer any questions Ms.
14 Zmroczek may have for you.

15 CROSS EXAMINATION

16 BY MS. ZMROCZEK:

17 Q. Detective Dykes, you said you went to Zaxby's. You
18 knew he worked there, right?

19 A. Yes.

20 Q. You went to go question him?

21 A. Yes.

22 Q. But you didn't read him his rights?

23 A. Did not.

24 Q. But you went to go interrogate him? You had
25 specific questions in mind that you wanted to ask him,

1 THE CLERK: Please have a seat. After you're
2 seated, please state your full name spelling you last
3 name for the record.

4 THE WITNESS: Rickena Knightner, K-n-i-g-h-t-n-e-r.

5 DIRECT EXAMINATION

6 BY MS. PATTERSON:

7 Q. Ms. Knightner, were you a witness to a shooting at
8 the Cockpit Bar and Grill on February 2nd, 2014?

9 A. Yes.

10 Q. Did you ever meet with an officer in order to view a
11 photo lineup?

12 A. I didn't hear you.

13 Q. Did you ever meet with an officer in order to view a
14 photo lineup?

15 A. Yes.

16 Q. Let me show you what's been marked as State's
17 exhibit 2. Do you recognize that?

18 A. Yes, ma'am.

19 Q. What is that document before you?

20 A. The photo lineup.

21 Q. Is that the one that you were shown by the
22 officer?

23 A. Yes, ma'am.

24 Q. What date is on that?

25 A. 4/15/14.

1 Q. Do you remember where you were when they came to
2 meet with you about that photo lineup?

3 A. Yes, ma'am.

4 Q. Where were you?

5 A. At work.

6 Q. Do you remember what, if anything, he told you
7 before showing you the lineup?

8 A. No, ma'am. He didn't say. He said they had a
9 lineup of a couple suspects and if I was shown a picture,
10 could I pick him out.

11 Q. Did you indicate that you could?

12 A. Yes, ma'am.

13 Q. Before the officer came to your job and showed you
14 the photo lineup, had you ever been shown a photo lineup by
15 any other officers?

16 A. No, ma'am.

17 Q. Had you seen any other photo lineups of anybody that
18 you may have seen that night?

19 A. No, ma'am.

20 Q. Let's just go back to February 2nd, 2014. You were
21 at the Cockpit Bar and Grill?

22 A. Yes.

23 Q. Did you see the person who you identified on that
24 photo lineup that night at the Cockpit?

25 A. Yes.

1 Q. Did you see that person shooting someone?

2 A. Yes, ma'am.

3 Q. Before you saw that person shooting someone, had you
4 seen that person that evening?

5 A. That same evening?

6 Q. Yes.

7 A. No, ma'am. I seen him at the club. During the time
8 of the shooting?

9 Q. During the time of the shooting had you seen him?

10 A. Inside the club. Yes, ma'am.

11 Q. Inside the club. Did you get a good look at him?

12 A. Yes.

13 Q. And during the actual shooting, did you get a good
14 look at the person?

15 A. Yes.

16 Q. How close were you to that person?

17 A. Probably from here to where he at now.

18 Q. And after the shooting, did you give information to
19 law enforcement about that person's physical description?

20 A. Yes.

21 Q. What kind of things did you tell them about the way
22 that person looked?

23 A. He was a black guy with dreads in his hair with
24 small eyes.

25 Q. Did you, in fact, give this information also to

1 someone who worked at SLED?

2 A. Yes. The SLED doing the sketch.

3 Q. They did a sketch on the person?

4 A. Yes, ma'am.

5 Q. And so when the officer came to you to view the
6 lineup, you had seen that person before?

7 A. Yes.

8 Q. Now, when the officer came to you, did you tell the
9 officer that you actually knew this person?

10 A. Not the first time. The second time. Yes. I
11 did.

12 Q. So the officer who showed you the pictures, did you
13 tell him that you actually knew the person?

14 A. Who showed me the picture of him? Yes.

15 Q. Who did you know that person to be?

16 A. Dink.

17 Q. Did you know that person's real name?

18 A. No.

19 Q. Had you seen that person prior to the night of the
20 shooting at the club?

21 A. Yes, ma'am.

22 Q. Where had you seen that person before?

23 A. At his baby mother grandmother house.

24 Q. How many times had you seen that person?

25 A. Maybe four or five times.

1 Q. And you never knew his real name?

2 A. No, ma'am.

3 Q. Now, during the shooting, was it light enough? I
4 know it was early in the morning. Was it light enough that
5 you had sufficient --

6 MS. ZMROCZEK: Objection, Your Honor. Leading.

7 THE COURT: I'm gonna allow the question. Go
8 ahead.

9 BY MS. PATTERSON:

10 Q. Did you have sufficient lighting to see this
11 person?

12 A. Yes, ma'am.

13 Q. Did you have any doubt that it was this person --

14 A. No.

15 Q. -- that you had seen before? Now, the person who
16 you selected, did he look like - did he look exactly like that
17 on the night of the shooting?

18 A. No, ma'am.

19 Q. What was different in that picture?

20 A. In this picture his hair is shorter.

21 Q. How were you able to make that selection?

22 A. Because I know how his face look. Like I said, I
23 had seen him several times.

24 Q. So what made you select that person in the
25 picture?

- 1 A. He the one that did the shooting.
- 2 Q. How did you note your selection on that document?
- 3 A. How did I note it?
- 4 Q. How did you mark it on the paper?
- 5 A. Oh, I circled and put my initials on it.
- 6 Q. Did you do any other thing to signify that that was
7 your selection?
- 8 A. No, ma'am.
- 9 Q. Is your name on the document?
- 10 A. Yes.
- 11 Q. Who wrote that on there?
- 12 A. I did.
- 13 Q. Did anyone suggest to you who you should select?
- 14 A. No, ma'am.
- 15 Q. Did anybody force you to make that particular
16 selection?
- 17 A. No, ma'am.
- 18 Q. How long did it take you to pick that person out?
- 19 A. One minute. Maybe two minutes. Not long.
- 20 Q. Not long. Now, during the shooting -- First of all,
21 you said you only knew him as Dink?
- 22 A. Yes.
- 23 Q. During the shooting, did you say anything to him?
- 24 A. I told him - I told him, no, Dink. No.
- 25 Q. You called him out by that name that you knew?

1 A. Yes, ma'am.

2 MS. PATTERSON: No further questions.

3 CROSS EXAMINATION

4 BY MS. ZMROCZEK:

5 Q. Ms. Knightner, you knew Gregory Brooks?

6 A. I know him as Dink. Yes, ma'am.

7 Q. You knew him as Dink. You knew him as Dink on
8 February 2nd?

9 A. Yes.

10 Q. You knew him as Dink on February 6th?

11 A. Yes.

12 Q. When you wrote your first statement?

13 A. Mm-hmm.

14 Q. And you didn't give him name then?

15 A. No.

16 Q. You knew him as Dink when you hung out with his
17 uncle Arnold Banks?

18 A. Yes.

19 Q. You knew him as Dink when you worked with his friend
20 Eric Brown?

21 A. I don't know who Eric Brown is.

22 Q. You never worked in a moving company?

23 A. Yes. I been working in a moving company.

24 Q. What moving company was that?

25 A. Paul Arpin. I worked there for two weeks.

1 car, correct?

2 A. Probably so. Probably an empty bottle of something.

3 Yeah.

4 Q. How much marijuana had you smoked that evening?

5 A. I don't smoke.

6 Q. How much cocaine had you done that evening?

7 A. I don't do cocaine either.

8 Q. Okay. You gave a description that evening to the
9 police, February 2nd?

10 A. Mm-hmm. Right.

11 Q. Right. You said you turned around and you saw a
12 light skinned guy with a skull cap attempting to approach you?

13 A. Well, they was holding him back. I don't know if he
14 was attempting to approach me or not, but they were looking my
15 way, but they did stand out to me though.

16 Q. Okay. And the person you described as being the
17 shooter you said was five six?

18 A. No. I said five eightish, five nine maybe.

19 Short.

20 Q. The person that you described as the shooter, what
21 kind of gun did you describe them having?

22 A. I know it was a black, it was a dark gun. It was
23 black maybe.

24 Q. Do you remember giving them a caliber?

25 A. I pointed out what looked familiar.

1 afternoon. Sorry for the longer lunch break than usual.
2 The pretrial matters took a little longer than I
3 anticipated and so we had a shorter lunch break and a
4 later lunch break than I'm used to so we'll get some work
5 down this afternoon and then we'll break shortly and come
6 back in the morning and finish up.

7 All right. If y'all will stand as a group and Ms.
8 Frick will place you under oath.

9 (Whereupon, the jury was duly sworn by the Clerk of
10 Court at 3:20 p.m.)

11 THE COURT: All right. Mr. Bell.

12 MR. BELL: Thank you, Your Honor. May it please the
13 Court.

14 THE COURT: Yes, sir.

15 MR. BELL: The air was cold, crisp. It chilled the
16 skin. Of course, that wouldn't have been unusual for the
17 wee hours of February 2nd, 2014 and to escape that brisk
18 air there were dozens of people crowded in and out of a
19 little club called the Cockpit Bar and Grill. For the
20 last two and a half years since February 2nd, 2014 the
21 parking lot of that bar has been Brandon Ratliff's tomb.
22 Because, ladies and gentlemen, the evidence in this case
23 will show that on that night outside of that bar Gregory
24 Brooks shot and murdered him in there. A murder that was
25 as cold as that February night.

1 But that night started out as many others. Brandon
2 and his good friends Fred Moss and Andre Bunch were out
3 at a club called Exclusives, partying, drinking, having a
4 good time. As the night grew old they weren't quite
5 weary yet and they wanted to keep the party going and so
6 they went to this Cockpit Bar and Grill that was known to
7 stay open most of the night.

8 When they arrived and throughout that morning the
9 Cockpit was bustling. The atmosphere. The crowd. It
10 would make you check your watch because you might think
11 it's 5:00 p.m. instead of 5:00 a.m. The night was going
12 normally and they were inside having a good time except
13 that's when Fred Moss found himself flirting with a
14 woman. Unbeknownst to Fred Moss the wrong woman. And in
15 the middle of that conversation suddenly she bolts away
16 and just as suddenly Fred Moss finds himself in a
17 confrontation with a group of men.

18 Fred is going to tell you straight that as he was
19 faced with those individuals, he was ready to fight, if
20 necessary, but fortunately his friend Brandon swooped in
21 and they left the bar heading outside and as they went to
22 their vehicle, that's when the problem started. You see,
23 enough just wasn't enough that night because that group
24 of friends that confronted Fred Moss in the bar included
25 Gregory Brooks and Gregory Brooks and his friends

1 followed Fred and Brandon out to their car and as they
2 tried to get in their car, Fred Moss turns around and
3 sees that group, sees Gregory Brooks standing there.

4 Fred is going to tell you again they were jawing
5 back and forth because the door was locked and he
6 couldn't get in the car and he's going to tell you again
7 straight up that he was ready to fight, if necessary,
8 however, on that night the ways of the old days just
9 weren't going to cut it. A simple bar fight wasn't going
10 to get the point across and that's when just as suddenly
11 as everything happened inside, Fred Moss sees Gregory
12 Brooks pull a pistol and fire in their direction ten
13 times. Pow, pow, pow, pow, pow, pow, pow, pow, pow, pow.

14 As the gun smoke settled Fred Moss is gonna tell you
15 that he looked around to look for Brandon and he sees
16 Brandon laying down on the ground thinking that he had
17 tried to run away, thinking he was only down because he
18 was taking cover from the gunfire. He runs over to
19 Brandon Ratliff and he's gonna tell you he tries to pull
20 him up. He realizes he's pulling at dead weight.

21 Fred Moss is going to tell you that that's when he
22 flipped Brandon over and saw the blood, the bullet hole
23 dead center in Brandon's chest. Andre and Fred scoop him
24 up, throw him in a vehicle and speed away to the
25 Lexington Medical Center emergency department and as they

1 wait in the lobby smeared in Brandon's blood shortly
2 thereafter Brandon is pronounced dead.

3 You're going to hear from law enforcement and the
4 investigation that ensued and law enforcement is going to
5 tell you that when they arrived at the bar shortly after
6 the shooting, it was chaos. People and cars fleeing, not
7 stopping and of all the people there no one was willing
8 to talk to law enforcement and tell them what happened.
9 But you will hear from two who were willing to speak up
10 where others were not. You're going to hear from Fred
11 Moss, Brandon's friend who was there when everything
12 happened.

13 Fred is going to tell you that he saw the shooter.
14 Fred is going to tell you that law enforcement ends up
15 showing him a photo lineup and he picks him out almost
16 instantly. That's the person who shot my friend. Fred
17 is going to tell you it stood out to him because of the
18 eyes, that they looked almost like a family member. They
19 stood out to him.

20 You're going to hear from a young lady named Rickena
21 Knightner. Rickena is going to tell you that she knew
22 Gregory Brooks before the shooting happened but not by
23 Gregory Brooks. She knew him by his street name Dink and
24 Rickena Knightner is going to tell you that as she was
25 outside of the club that night and she saw the shooting

1 go on, that Gregory Brooks, Dink, backed up while he was
2 firing and was within feet of her. She is even going to
3 tell you that she cries out to him, no, Dink. No. She
4 is also going to tell you that she too was shown a lineup
5 by law enforcement and quickly picked an individual out.
6 The individual she ID's as Gregory Brooks or Dink.

7 Law enforcement is going to tell you that when they
8 started to look into this individual known as Dink, that
9 a few things started popping up on their radar. They
10 found out that shortly after the incident he cut his
11 dreadlocks. Dreadlocks they say they found out that he
12 had been growing for two to three years. You're going to
13 hear when they went and spoke to Mr. Brooks, he told law
14 enforcement that he was at the Cockpit but he left at
15 2:00 to 3:30 that morning, a story backed up by his
16 girlfriend at the time, the mother of his children, who
17 two days later talks to law indictment again and recants
18 that alibi.

19 You're going to hear from a representative from
20 Sprint who's gonna talk to you about cell phone records
21 and they're gonna go through a lot of the entries from
22 Gregory Brooks' cell phone number that night and they are
23 going to tell you that his cell phone was pinging off of
24 two towers on either side of the Cockpit Bar and Grill at
25 6:00 a.m. long after law enforcement was told he left at

1 2:00 or 2:30. Sprint is also going to tell you that the
2 day after the incident Gregory Brooks cancelled his phone
3 number and changed to a new one.

4 Now, you're going to hear plenty about the law. I
5 won't waste much of your time with it now, but one thing
6 that I do want to talk to you about is reasonable doubt.
7 You're going to hear that it's the State's burden to
8 prove Gregory Brooks, Dink, guilty beyond a reasonable
9 doubt. That is a burden that we embrace. But I do want
10 you to know that the Judge is going to tell you at the
11 end of this trial that reasonable doubt does not mean
12 beyond all doubt. It simply means that by the end of
13 this trial you're firmly convinced of the defendant's
14 guilt and we are firmly convinced that we will carry that
15 burden in this courtroom.

16 Now, you have heard enough from me. I'm excited. I
17 am ready for you to see and hear the testimony yourselves
18 and at the end of this trial you're going to have nine
19 good reasons to find Gregory Brooks guilty of murdering
20 Brandon. And you're going to have one great reason that
21 the autopsy report will tell you tore a hole straight
22 threw Brandon's then beating heart. A heart that beats
23 no more.

24 I pray for your patience, your common sense and that
25 at the end of this trial you find Gregory Dink Brooks

1 guilty of stealing Brandon's life. Thank you.

2 MS. ZMROCZEK: My it please the Court, Your Honor.

3 THE COURT: Yes, ma'am.

4 MS. ZMROCZEK: Good afternoon. Mr. Bell paints a
5 crisp and cool picture of a glorious evening/morning at
6 the Cockpit and then he asks you to not leave your common
7 sense at the door and the Judge will tell you that you
8 don't leave your common sense at the door because what
9 this case is about, ladies and gentlemen, are three
10 things. Credibility, cash, and confusion.

11 Now, what the State is going to tell you is that you
12 will hear from Sprint, but what they are also going to
13 not tell you, or who knows, maybe they will put him up, I
14 don't know, but we will, we'll put up all the phone
15 records of all the people that they were investigating
16 that night. We'll put up the phone records and you will
17 hear about how a friend of a friend said my dog shot my
18 other dog. But they don't want to confuse you with the
19 facts, ladies and gentlemen, because they just want you
20 to focus on Gregory Dink Brooks. Because Brandon Ratliff
21 cannot come back and that is sad. And the Judge will
22 instruct you that you cannot consider emotions. And it
23 is sad for the family because they are not going to hear
24 about who actually killed Brandon Ratliff because the
25 State doesn't know.

1 But you will hear about 10,000 good reasons why they
2 want you to believe that it's Gregory Dink Brooks and
3 they're gonna try to call him Dink over and over and over
4 and over. Aimee Zmroczek is not an easy name. I grew up
5 with the worst one. Aimee Jendrzewski Zmroczek. 13
6 letters. Everybody calls me Ski. It's just a nickname
7 but they're gonna try to villanize it. It's a name that
8 his family, and you will hear, his family has been
9 calling him that his whole life. He's still Gregory
10 Brooks. 22 years old and charged with murder. And the
11 State says they welcome the burden. They welcome the
12 burden beyond a reasonable doubt.

13 Ladies and gentlemen, the last one I want to talk
14 about is credibility. And y'all did it this morning when
15 you got here and just again you raised your right hand,
16 everybody stood and raised their right hand. I'm not
17 sure if you know the story behind that but a long time
18 ago when people were convicted of and had committed
19 perjury, they would get a "P" branded into their right
20 hand and so when they raised their right hand, if it had
21 a "P" in it, you knew that they had committed perjury or
22 told lies in the past. You will see every witness come
23 right here and they'll raise their right hand and then
24 they're gonna sit right here in this chair and who knows
25 what story they're gonna tell you.

1 Ms. Rickena Knightner, the good samaritan, watch as
2 she raises her right hand. You may not be able to see
3 the "P", but you will certainly know it's there once she
4 leaves the stand. Same with Fred Moss. Same with every
5 other witness they try to put up here. Because, ladies
6 and gentlemen, one thing that as a defense attorney the
7 State likes to accuse me of is picking on the cops.
8 That's not my job. My job is to defend the constitution
9 and in this case my job is to defend Gregory Brooks
10 because he's being charged with the most heinous crime
11 that he did not commit.

12 So yes. I'm going to ask the investigators what
13 about this and what about this and it's not because I'm
14 trying to pick on them. It's because, ladies and
15 gentlemen, the facts that you are going to use to
16 determine the fate of Gregory Brooks is going to come
17 from that stand and sometimes I have to ask the hard
18 questions.

19 Y'all are going to be held captive hopefully not for
20 too many days. You don't get to ask questions and
21 hopefully we'll ask the right ones because after all the
22 testimony and all the evidence is in, you're going to be
23 asked, you and you alone will get to decide the facts.
24 You get to ask the questions and you get to determine the
25 credibility of the people that were paid cash and you get

1 to look and you get to ask the State about the confusion.
2 When you do that, ladies and gentlemen, you will find
3 that they cannot prove Gregory Brooks is guilty beyond a
4 reasonable doubt, but they also can't prove him guilty
5 beyond a reasonable doubt because he is not guilty of
6 murder. Thank you.

7 THE COURT: Call your first witness.

8 MR. BELL: Thank you, Your Honor. At this time the
9 State calls Alex Mountzouros to the stand.

10 Thereupon,

11 ALEX MOUNTZOUROS

12 after having been first duly sworn, testified as follows,

13 THE CLERK: Please have a seat. After you're
14 seated, please state your full name spelling your last
15 name for the record.

16 THE WITNESS: Detective Alex Mountzouros,
17 M-o-u-n-t-z-o-u-r-o-s.

18 DIRECT EXAMINATION

19 BY MR. BELL:

20 Q. Detective, who are you employed by?

21 A. Lexington County Sheriff's Department.

22 Q. How long have you been with the sheriff's
23 department?

24 A. Five and a half years.

25 Q. Back in February of 2014 were you still employed by

1 that agency?

2 A. Yes, sir.

3 Q. And in what capacity at that time?

4 A. I was a field training officer at the time.

5 Q. And what exactly were your duties as a field
6 training officer?

7 A. I would train new recruits and new employees for
8 fitness of the road, teach them our policies and laws and how
9 to become a deputy.

10 Q. Now, do you recall on February 2nd, 2014 having
11 reason to respond to the Cockpit Bar and Grill?

12 A. Yes. We were dispatched there for a shooting.

13 Q. When you say you were dispatched there, what exactly
14 does that mean?

15 A. Lexington County communications put a call out over
16 the radio, they dropped a tone which is a noise that they give
17 out saying a major incident has happened and they dispatched
18 us.

19 Q. Where were you when you got the tone or the
20 dispatch?

21 A. I was sitting in the Schwartzman's Warehouse parking
22 lot typing a report.

23 Q. How far away is that from the incident location of
24 the Cockpit Bar and Grill?

25 A. Very close. A mile. Mile and a half.

1 Q. Is the incident location, the Cockpit Bar and Grill,
2 what county is that located in?

3 A. Lexington County.

4 Q. Is that within the Sheriff Department's
5 jurisdiction?

6 A. Yes, sir.

7 Q. Now, did you ultimately arrive on scene?

8 A. I did.

9 Q. How long after the tone did you say that was?

10 A. Matter of minutes. Two, three minutes.

11 MR. BELL: Your Honor, permission to approach the
12 witness?

13 THE COURT: Sure.

14 MS. ZMROCZEK: No objection to that exhibit
15 either.

16 BY MR. BELL:

17 Q. Detective, I'm showing you what's marked as State's
18 5 for ID. Do you recognize this image?

19 A. Yes.

20 Q. What is this an image of?

21 A. It's Berryhill Road which is where the Cockpit Bar
22 and Grill is located and also Peachtree Apartments.

23 Q. What's the address of the bar?

24 A. 214 Berryhill Road.

25 Q. Does this image fairly and accurately reflect the

1 scene of the bar at the time this took place?

2 A. Absolutely. Yeah.

3 MR. BELL: Your Honor, at this time the State seeks
4 to move State's 5 into evidence.

5 MS. ZMROCZEK: Without objection.

6 THE COURT: State's 5 is in.

7 BY MR. BELL:

8 Q. Detective, if I could have you please step down and
9 I'll ask that you stand towards the court reporter so he can
10 hear you, okay?

11 A. Sure.

12 Q. Stand back just a little bit. Once again, referring
13 again to State's 5, tell the jury what we are looking at
14 here?

15 A. This is Berryhill Road. We have I-20 right here,
16 Peachtree Apartments and then the Cockpit Bar and Grill right
17 here.

18 Q. Is the Cockpit Bar and Grill where you responded
19 to?

20 A. Yes, sir.

21 Q. Are you able to see where you parked when you pulled
22 up in this image?

23 A. Yes. I parked my patrol car right around here
24 (indicating.)

25 Q. Was that parking lot empty when you arrived like it

1 is in this image?

2 A. No. It was packed full of cars.

3 Q. Please take your seat.

4 A. (Witness complies.)

5 Q. Tell us what the atmosphere was like when you
6 arrived there at the Cockpit?

7 A. Very chaotic. We got dispatched just before 6:00 in
8 the morning. Usually that road at that time of day there's
9 not a lot of people there. It's early in the morning. It's a
10 very narrow road. Responding there there's probably 20 cars
11 or so flying past me when I was going there. When I arrived
12 on scene, there was dozens of people running trying to get
13 away from the bar at that point. I did my best to try to
14 contain people, keep them there but too many people for one
15 deputy to get there, I guess.

16 Q. When you arrived, were any other law enforcement on
17 scene?

18 A. No. I was the first one there for a couple
19 minutes.

20 Q. You said you tried to contain people. What exactly
21 does that mean?

22 A. See if they would stay. Tell me what happened. Try
23 to figure things out. Try to talk to people. But everyone
24 just kept walking and running away.

25 Q. Did feel you were successful in containing the

1 situation?

2 A. Not until other people got there. No.

3 Q. Did anybody else arrive from law enforcement?

4 A. Yes. Deputy Hanko showed up next, I believe, and
5 Deputy Hyatt and then I believe the whole day shift that was
6 just coming on started showing up at that point.

7 Q. How did you go about surveying the incident location
8 when you arrived?

9 A. Uhm, the first thing I tried to do was -- Well, the
10 first thing I tried to do was go into the bar and try to get
11 some more information about what had happened. As I was
12 trying to go in, there was a bunch of people coming out. It
13 was just not a safe environment for one deputy to go in by
14 themselves so as I was coming back out to see where my backup
15 was, I was flagged down by another person. He said, uhm, he
16 was the one who called --

17 MS. ZMROCZEK: Object, Your Honor. Hearsay.

18 THE COURT: It's an exception. The objection is
19 noted for the record.

20 BY THE WITNESS:

21 A. He said he was the one who called and he said that a
22 man was shot over there. At that point I went up to the road.
23 Located a large pool of blood. Kind of locked down the scene
24 from there. That's when Deputy Hyatt arrived on scene and we
25 blocked off the road.

1 BY MR. BELL:

2 Q. So to clarify, did you locate any shooting victim on
3 scene?

4 A. No. I did not.

5 Q. Was there any evidence that would make you believe
6 that something violent did occur?

7 A. Yes. A large pool of blood on the road. Yeah.

8 Q. Now, after you determined that some sort of crime
9 may have occurred, what do you then begin doing at a scene
10 like that?

11 A. Do everything we can to preserve the scene. Put up
12 crime scene tape. Try and find witnesses.

13 Q. When you put up crime scene tape, do you just put it
14 around the pool of blood?

15 A. No. We blocked off the entire road on the south
16 side of the business as well as the north side of the business
17 on the road as well as all the woods around the backside of
18 the building, I believe.

19 Q. What's the purpose of putting tape up on that large
20 of an area?

21 A. To keep people from coming in to contaminate
22 things.

23 Q. Were civilians still on scene at that point?

24 A. Yes.

25 Q. While walking through the scene did anything else

1 catch your eye?

2 A. Uhm, there was a female that was on the phone. She
3 was yelling and trying to figure something out on the phone at
4 that time, but the pool of blood and that's about it.

5 Q. Did you collect anything on scene?

6 A. I did not. No.

7 Q. From that point on what was essentially your role
8 there at the Cockpit?

9 A. Uhm, once I made contact with the female Josie
10 Paxton, she was talking on the phone and saying things, you
11 know. Tell me what happened.

12 Q. We won't go into that right now.

13 A. Okay. Pretty much preserve the scene, try and get
14 witnesses. Things like that.

15 Q. Did you attempt to interview people?

16 A. Yeah.

17 Q. Now, how long were you on scene, detective?

18 A. A good while. It was several hours.

19 Q. When on a crime scene, do you keep any sort of
20 documentation as to who was going in and out of that scene?

21 A. Yes. Crime scene log.

22 Q. Would you have signed in on that date?

23 A. I did.

24 Q. Do you have a copy of that with you?

25 A. I do.

1 Q. If you refer to that log, would that refresh your
2 memory as to how long you were on scene?

3 A. Yes. Three and a half hours.

4 Q. When you said that you received dispatch and it was
5 toned out, did they indicate how many shooters there were?

6 A. Uhm, I don't believe they did. I think the only
7 thing that they could confirm was that one person was hit.

8 Q. Did they indicate whether it was one shot or
9 multiple shots?

10 A. I believe it was multiple shots.

11 MR. BELL: Please answer any questions Ms. Zmroczek
12 has.

13 CROSS EXAMINATION

14 BY MS. ZMROCZEK:

15 Q. Good afternoon.

16 A. How are you?

17 Q. Great. How are you?

18 A. Good.

19 Q. Mr. Bell cut you off when you were saying that you
20 were - you had a female -- Don't tell me what she said, but
21 you interviewed a female named Josie Paxton, right?

22 A. Mm-hmm.

23 Q. I'm sorry. You have to say yes or no.

24 A. Yes.

25 Q. And Josie Paxton lead you to investigate another

1 individual, right?

2 A. Uhm, she told me about her boyfriend. Yes.

3 Ex-boyfriend.

4 Q. Ex-boyfriend?

5 A. Yes, ma'am.

6 Q. So you had information that lead you to believe that
7 this person needed to be investigated as part of this crime
8 scene, correct?

9 A. That he might need to be talked to. Yes.

10 Q. I want to just go back briefly and talk about the
11 scene. Mr. Bell asked you about how - you say it was chaotic,
12 right?

13 A. Mm-hmm. It was.

14 Q. I'm showing you State's 5. You said that - this is
15 actually a little frontage road, right, Berryhill?

16 A. It is.

17 Q. So this is the interstate right here?

18 A. Yes, ma'am.

19 Q. And then this frontage road right here is
20 Berryhill?

21 A. Mm-hmm.

22 Q. If you go down Berryhill away from Peachtree
23 Apartments so towards the right --

24 A. South.

25 Q. South. I'm standing behind it. -- what's down that

1 way?

2 A. That's Bush River Road.

3 Q. That's Bush River Road that way?

4 A. Mm-hmm.

5 Q. If you go north to the left, where does that take
6 you?

7 A. St. Andrews Road.

8 Q. Okay. Which route is closest to the hospital?

9 A. Closest to the hospital would be Bush River to the
10 south.

11 Q. To the right, correct?

12 A. Correct.

13 Q. Now, when you pulled up, you parked --

14 A. Just north of the driveway.

15 Q. -- just north of the driveway here?

16 A. Right there. Yeah.

17 Q. Okay. Did you actually have your siren running?

18 A. I probably would have turned my siren off at that
19 point but my lights were still on.

20 Q. Did you have your dash cam running?

21 A. I did not have one.

22 Q. Okay. And so you said that cars were exiting?

23 A. Yes.

24 Q. You estimated about 20?

25 A. A bunch. Probably 20. Yes.

1 Q. Which way were they going?

2 A. I was coming from St. Andrews so I only saw the cars
3 coming heading north to St. Andrews because that's the
4 direction I was coming from.

5 Q. So there could have been more cars going the other
6 way, too, right?

7 A. Possibly. Yeah.

8 Q. In addition to that, there were tons of people
9 running around you said, right?

10 A. Yes. Absolutely.

11 Q. And it was very chaotic?

12 A. Mm-hmm.

13 Q. You said that you got the call over dispatch,
14 right?

15 A. Yes, ma'am.

16 Q. How does dispatch work?

17 A. Uhm, a citizen will call 911, dispatch will receive
18 the call and dispatch it out to a deputy.

19 Q. Sometimes do they have more than one person call?

20 A. Yeah.

21 Q. I think you actually said on direct that the person,
22 one of the persons who called walked up to you and said I
23 called you?

24 A. Correct.

25 Q. And you got that person's name, right?

1 A. Yes.

2 Q. And you took a statement from that person?

3 A. I took an oral statement from him. I did not take a
4 written statement.

5 Q. When you take oral statements, you put all your
6 important facts into a report, correct?

7 A. Right.

8 Q. Tell the jury why you do that.

9 A. To document my involvement in an incident and make
10 sure it's detailed.

11 Q. Do other officers, lead investigators rely on that
12 for furthering their investigation?

13 A. Sure.

14 Q. And you put information in your report that you
15 think is important?

16 A. Sure.

17 Q. People that you think could be involved?

18 A. Mm-hmm.

19 Q. People that you think have information?

20 A. Correct.

21 Q. Because you're the very first responder, correct?

22 A. Correct.

23 Q. I believe you said you're a field trainer,
24 correct?

25 A. Correct.

- 1 Q. This is how you teach people to do things, right?
- 2 A. Correct.
- 3 Q. Your report is very thorough, correct?
- 4 A. Yes.
- 5 Q. Who did you turn that report over to?
- 6 A. I turn it, I submit it to our computer. I believe
- 7 Sergeant Walters approved it.
- 8 Q. Based on that they continue to investigate based on
- 9 multiple things but the things that you learn as well,
- 10 right?
- 11 A. Correct. Yeah.
- 12 Q. When something happens typically as a field training
- 13 investigator and as an investigator in general are things
- 14 fresh in people's minds right when it happens?
- 15 A. Sure.
- 16 Q. And very clear about what's going on?
- 17 A. Yeah.
- 18 Q. Even when it's chaotic, right?
- 19 A. Right. For the most part.
- 20 Q. You said you spent three and a half hours there?
- 21 A. Mm-hmm.
- 22 Q. I want to talk about there were cars even pulling
- 23 out while you were trying to contain the scene, correct?
- 24 A. Right.
- 25 Q. You said you tried to contain the scene because

1 there are certain types of evidence that can be found,
2 right?

3 A. Sure.

4 Q. And just because if a scene is not contained and
5 cars are moving all over evidence, the evidence becomes
6 contaminated, right?

7 A. Can be.

8 Q. It doesn't mean that it's done purposely. It's just
9 that if cars are rolling over casings, they could be squished,
10 right?

11 A. Right.

12 Q. Could be moved?

13 A. Mm-hmm.

14 Q. And you were trying to prevent that?

15 A. Right. That's my job.

16 Q. Because when that happens, then we can't get a clear
17 picture of an undisturbed scene, right?

18 A. Correct.

19 Q. Okay. And that happened in this case. There were
20 cars everywhere, right?

21 A. There were a lot of cars there.

22 Q. A lot of them were leaving?

23 A. There was a lot of movement. Yes.

24 Q. People moving all over the scene?

25 A. Correct.

1 MS. ZMROCZEK: Thank you.

2 MR. BELL: Briefly, Your Honor.

3 THE COURT: Okay.

4 REDIRECT EXAMINATION

5 BY MR. BELL:

6 Q. Detective, is your testimony that you interviewed at
7 least one person?

8 A. Yes.

9 Q. Did you record the contents of that in your
10 report?

11 A. Yes.

12 Q. And ultimately was your report submitted to other
13 investigators working the case?

14 A. Yes.

15 Q. After this incident, did you have any further
16 involvement in this case?

17 A. No.

18 Q. Did you follow up on any of the leads that were
19 documented in your report from interviewing people?

20 A. No.

21 Q. Would you be in the best position to tell this jury
22 about the contents of those conversations at this point?

23 A. No.

24 Q. Would you be in the best position to talk about the
25 follow up investigation on any of those individuals at this

1 point?

2 A. No.

3 Q. Are there other investigators who worked this case
4 that would be in a better position to testify to those?

5 A. Yes.

6 MR. BELL: Thank you, Your Honor.

7 THE COURT: You may step down. Call your next
8 witness.

9 MR. BELL: Your Honor, at this time the State calls
10 James Hyatt to the stand.

11 Thereupon,

12 JAMES HYATT

13 after having been first duly sworn, testified as follows,

14 THE CLERK: Please have a seat. After you're
15 seated, please state your full name spelling your last
16 name for the record.

17 THE WITNESS: My name is James A. Hyatt,
18 H-y-a-t-t.

19 DIRECT EXAMINATION

20 BY MR. BELL:

21 Q. Who are you currently employed by?

22 A. Lexington County Sheriff's Department.

23 Q. And what's your rank and title there?

24 A. I'm a senior Deputy.

25 Q. Tell the jury a little bit about yourself. What's

1 your background?

2 A. Well, I spent a number of years in the military when
3 I was younger, much younger. I did four years of active duty.
4 I got out. I became a paramedic. It's a career that I had in
5 Massachusetts for over 20 years. I retired from that. Moved
6 down here. Attended seminary in Columbia. I graduated from
7 that and went to work for the Sheriff's Department for about
8 seven years as a chaplain. During that time I realized that
9 my ministry might be a little bit better if I actually became
10 a deputy so I did that approximately four years ago. I have
11 worked as a deputy for the Sheriff's Department in the traffic
12 division for about four years now.

13 Q. Back in February of 2014 were you employed by the
14 Sheriff's Department?

15 A. Yes, sir.

16 Q. In what capacity at that time?

17 A. I was a patrol deputy in the north region.

18 Q. Tell us a little about what exactly that job
19 entails?

20 A. Patrol deputy responds to calls typically. We
21 patrol the areas that we are responsible for and in this case
22 the north region is the Irmo, Cayce, West Columbia, Lexington
23 area.

24 Q. Back on February 2nd of 2014, did you have reason to
25 respond to the Cockpit Bar and Grill?

1 A. I did, sir.

2 Q. In what county is that located?

3 A. Lexington County.

4 Q. What was the reason that you were responding to that
5 location?

6 A. We were called - we were in our shift briefing and
7 got a call over the radio that there had been a shooting in
8 the area.

9 Q. Were you aware of whether or not there were any
10 victims?

11 A. There was a report, I believe, over the radio that
12 there was a person shot at the time.

13 Q. What time of day did the call come out?

14 A. Early in the morning about 5:30, 5:45. We were in
15 our shift briefing so that would be about the approximate
16 time.

17 Q. Did you respond to that call?

18 A. I did.

19 Q. How long did it take you to respond out to that
20 location?

21 A. I would - I'm guesstimating. Within four to five
22 minutes. Maybe a little bit longer.

23 Q. Can you tell us a little bit about the atmosphere as
24 you arrived on scene?

25 A. I can. As I remember, when I arrived on the scene,

1 I came down Berryhill Road into the area. There were maybe 15
2 or 20 people trying to run out of the area. People trying to
3 drive out of the area. There were pedestrians running and
4 cars trying to drive out of the area.

5 Q. At that time of morning is that a normal scene to
6 see?

7 A. No.

8 Q. What did that sort of activity potentially indicate
9 to you?

10 A. That there was some kind of chaos going on in that
11 particular area.

12 Q. When you arrived and you run into that sort of
13 situation, what's protocol? How do you proceed?

14 A. Well, in this particular instance it would be to
15 secure the scene is the initial concern. So first of all,
16 there's a report of shooting so determine if the shooter is
17 still there. Are they active? Where are they? Are there any
18 victims? Where are the victims? And to contain the potential
19 witnesses that may be there.

20 Q. Now, upon arrival were any other law enforcement on
21 scene?

22 A. There were one or two. I know Deputy Mountzouros
23 was there. I'm not -- I don't really remember how many other
24 deputies. I know that many of us arrived about the same time
25 I did.

1 Q. When you arrived, was the scene as you call it
2 contained?

3 A. Not yet. No.

4 Q. And why do you believe that the deputies already on
5 scene were unable to contain it?

6 A. There was too many people. There were one or two
7 deputies there and several people there trying to flee the
8 scene so one deputy in that massive area was not enough to
9 contain the scene as of yet.

10 Q. Do you recall who the officers were that would have
11 arrived around the same time or after you?

12 A. The people who are on my shift at the time, Sergeant
13 Walters, Master Deputy Booth. I know Deputy Mountzouros.

14 Q. Do you recall who you were taking instructions from
15 at that time?

16 A. Sergeant Walters. Well, Sergeant Walters and Master
17 Deputy Booth. Both of them are appointed over me at that
18 time. Sergeant Walters had control of the scene.

19 MR. BELL: Your Honor, may I ask the witness to step
20 down?

21 THE COURT: Sure.

22 BY MR. BELL:

23 Q. Sir, step down with me and talk back towards the
24 court reporter so he can hear you. Position yourself right
25 over here. I'm showing you what's been entered as State's 5.

1 Stand back so the jury can see. Do you recognize this image?

2 A. I do.

3 Q. What is that area?

4 A. That's Berryhill Road, the Cockpit Bar, the
5 Peachtree Apartments.

6 Q. Is that the location you responded to?

7 A. Yes, sir.

8 Q. Do you see on this image where it was that you
9 pulled up --

10 A. Yes, sir.

11 Q. -- and stopped your vehicle?

12 A. Yes, sir.

13 Q. Where would that be?

14 A. Right there at the entrance to the Cockpit Bar.

15 Q. You're referring to this general vicinity?

16 A. I am.

17 Q. Right at the mouth of the driveway?

18 A. Yes.

19 Q. Was that parking lot empty like that when you
20 arrived?

21 A. Absolutely not.

22 Q. Please take your seat.

23 A. (Witness complies.)

24 Q. You said you were taking instructions from a
25 Sergeant Walters; is that correct?

1 A. Yes, sir.

2 Q. What sort of instructions were you given that night,
3 that morning?

4 A. Yeah. Immediately the instructions would have been
5 to simply secure the scene at that particular point and myself
6 and the other deputies were there and were doing just that,
7 trying to coordinate off and stop whoever was there while we
8 were standing there at the time to see if the shooter is still
9 there. You don't know with so many people. So we were doing
10 that and we were stopping all the cars that were exiting from
11 that driveway that you showed me and the grassy areas as well.

12 Q. Did you see any shooters on scene?

13 A. Did not see any shooters on the scene.

14 Q. Did you see anybody that was injured on the scene?

15 A. I do not believe we saw anybody that was injured on
16 the scene.

17 Q. Do you recall seeing anything that would have
18 indicated an injury occurred there?

19 A. Yes, sir. During the course of the investigation
20 once things calmed down a little bit and we started getting
21 reports of that, people pointed out where the shooting had
22 occurred and where the shooter allegedly was standing and
23 where the victim had allegedly been shot at which is in the
24 roadway on Berryhill Road.

25 Q. Did you attempt to contain an area that would

1 surround that location?

2 A. Yes. It was actually my responsibility, if
3 I remember correctly, once it had been determined there had
4 been a large blood spot in the roadway with some trailing of
5 the blood, I was assigned, I think it was Deputy Mountzouros
6 asked me to tape that off, rope that off, that particular
7 area. We did that and then I went beyond that part of the
8 scene on Berryhill Road and secured that part to ensure that
9 nobody would leave or try to enter from that end of Berryhill
10 so the Bush River Road end of Berryhill.

11 Q. Now, what's the point of roping off the area around
12 the blood?

13 A. To keep anybody from contaminating that scene.

14 Q. Were you successful in attempting go block off the
15 area so no additional people could leave?

16 A. Yes, sir.

17 Q. Were there still civilians on scene at that point?

18 A. Yes, sir.

19 Q. Were you instructed or on your own accord attempt to
20 interview anybody?

21 A. Much later in the scene towards the very end of it
22 before everybody had left. Yes. There were four people that
23 Sergeant Walters, I believe it was Sergeant Walters, had
24 assigned me to get statements from those four people.

25 Q. Aside from the ones that you were specifically

1 assigned to interview, were others willing to speak with law
2 enforcement that morning?

3 A. I'm sure they were, however, when I first got there,
4 the questions that I was asking people is where the shooters
5 were, the victims and people were pointing in all different
6 ways. So my conversation with other people was fairly limited
7 until the very end of it and even then that was fairly
8 limited.

9 Q. To be clear, did the majority of the patrons of that
10 bar stay and talk to law enforcement?

11 A. They were running. Even after we had secured the
12 scene they were attempting to run.

13 Q. Did you ultimately interview several witnesses?

14 A. I interviewed four.

15 Q. And were all four cooperative?

16 A. Yes, sir.

17 Q. Did all four give you useful information?

18 A. Two of them gave me what I would describe as useful
19 information. The other two said they were sleeping in a car
20 and didn't have a whole lot of information pertaining to what
21 had happened.

22 Q. Did you follow up personally on the information that
23 was provided to you?

24 A. I did not. Sergeant Walters appointed these four
25 people out. I was oblivious to who they were initially

1 because I was at the distal end securing that area. Once we
2 had closed the scene off, once we closed the scene down just
3 to the Cockpit area itself Sergeant Walters asked me to take
4 statements from those four people. I gave him the statements
5 and they talked to me briefly, told me what they had heard,
6 told me what they knew and then I gave them the statement
7 forms. They began writing them. After the statement forms
8 were filled out, I don't even recall reading them. Another
9 detective had come and taken those up to further interview
10 those people.

11 Q. Did you record in your report those interviews?

12 A. Briefly. Yes, sir.

13 Q. Did you submit those interviews to another detective
14 working the case?

15 A. Yes, sir.

16 Q. So to clarify, you did not personally follow up on
17 those leads?

18 A. I did not.

19 Q. How long were you on scene?

20 A. I was on scene from the beginning of it until
21 approximately 12:30 in the afternoon.

22 Q. When you stay the beginning of it, what does that
23 men?

24 A. From the initial report. From my arrival I didn't
25 leave until - I was there from 6:00 a.m. until approximately

1 12:30.

2 Q. Are you familiar with a crime scene log?

3 A. I am.

4 Q. Are you aware of whether or not one was created in
5 this case?

6 A. I was assigned to create it at the beginning.

7 Q. What's the purpose of that log?

8 A. To document the deputies or anybody who came onto
9 the scene.

10 Q. Did you sign into that log?

11 A. I did.

12 Q. Do you have that log present in front of you?

13 A. I do.

14 Q. What time did you sign in?

15 A. 6:00 a.m.

16 Q. What time did you sign out?

17 A. I did not.

18 Q. Why did you not sign out?

19 A. As I recall I handled the crime scene log off to one
20 of the investigators and by the time I had left, they had
21 finished with what they were doing and left with it.

22 Q. Did you close-out the log?

23 A. I did not.

24 Q. How long in all do you believe you were on scene?

25 A. Approximately six hours.

1 Q. Did you have any additional involvement in this
2 case?

3 A. I did not.

4 Q. Did you interview any additional suspects or
5 witnesses?

6 A. I did not.

7 MR. BELL: Please answer any questions defense may
8 have for you.

9 CROSS EXAMINATION

10 BY MS. ZMROCZEK:

11 Q. Is it Deputy Hyatt?

12 A. Yes, ma'am.

13 Q. Deputy Hyatt, I just wanted to clarify. I want to
14 put this up so we are not holding the board.

15 MS. ZMROCZEK: Your Honor, may the witness step
16 down?

17 THE COURT: Yes.

18 BY THE WITNESS:

19 A. (Witness complies.)

20 BY MS. ZMROCZEK:

21 Q. Stand over here so the court reporter can hear you
22 and the jury can see. There are a few behind you. All right.
23 I want for you to show the jury where you roped off where the
24 blood was.

25 A. I don't believe I can. If it is, it's in this area

1 but it's further down here. The scene was secured from
2 approximately here to down here where the other business is.
3 There is an entrance to another business over in this sort of
4 business park down here. So it was from the entrance of the
5 business park down here to somewhere in this area. You would
6 have to talk to one of the officers who was there. I believe
7 Ben Booth.

8 Q. But my point is it wasn't in the parking lot?

9 A. The blood that I saw, the blood seen was further
10 down the road here.

11 Q. It was actually on Bush River Road or Berryhill
12 Road, right?

13 A. Yes.

14 Q. It was actually on the road?

15 A. It was on the road.

16 Q. That's the area that you protected, correct?

17 A. That's correct.

18 Q. Or roped off?

19 A. That's correct.

20 Q. And when you got there, I believe you said 6:00?

21 A. Yes, ma'am.

22 Q. There were still, you like blocked the entrance to
23 keep people from leaving; is that correct?

24 A. That is correct.

25 Q. And there were cars parked not just in the parking

1 spaces but also in the grass, right? Or in the grass here?

2 A. In the grass here. Over here there was a Jeep that
3 was stuck. There is a drop off over here. There was a Jeep
4 that was stuck over here. But yes. The parking lot was full
5 or relatively full.

6 Q. Relatively full?

7 A. Yes, ma'am.

8 Q. Did you patrol this -- You can have a seat.

9 A. (Witness complies.)

10 Q. Did you patrol this area normally?

11 A. Yes, ma'am.

12 Q. Did you have an occasion to respond to this area
13 often?

14 A. Yes, ma'am. Often is a relative term, but yes.

15 Q. Right..

16 A. I'm well acquainted with Berryhill Road.

17 Q. Thank you. You said it much better than I asked it.
18 So you were familiar with the area?

19 A. Yes, ma'am.

20 Q. Okay. And you also wrote a report?

21 A. Yes, ma'am.

22 Q. You went to the academy to do that, right? You
23 didn't go to the academy to write reports, but they trained
24 you at the academy, right?

25 A. Yes, ma'am.

1 Q. They trained you to put in all of the important
2 information that you got?

3 A. Yes, ma'am.

4 Q. So that way the investigators that Mr. Bell asked
5 you about can follow up on those reports, right?

6 A. Yes, ma'am.

7 Q. You took statements?

8 A. I took four. Yes, ma'am.

9 Q. And you put important facts in your report that you
10 wanted to relay to the investigators, right?

11 A. Yes, ma'am.

12 Q. And that included a description of the shooter,
13 correct?

14 A. Yes, ma'am.

15 Q. Tell the jury what that description of the shooter
16 was?

17 A. He was described to me as by Christian Frederick as
18 a black male with long dreadlocks, dark --

19 MR. BELL: Objection, Your Honor. Hearsay.

20 THE COURT: Sustained.

21 BY MS. ZMROCZEK:

22 Q. Let me ask it this way: Were you given a detailed
23 description of the shooter at the time?

24 A. Yes, ma'am.

25 Q. You put that in your report?

1 A. Yes, ma'am.

2 Q. And everything that you put in your report you want
3 to make sure is accurate?

4 MR. BELL: Asked and answered twice already.

5 BY MS. ZMROCZEK:

6 Q. Okay. You pass that on so somebody else can follow
7 up on that, correct?

8 A. Yes, ma'am.

9 MS. ZMROCZEK: Thank you, Deputy Hyatt.

10 MR. BELL: No further questions, Your Honor.

11 THE COURT: You may step down. Would this be an
12 appropriate time to take a few minutes break to see what,
13 how much we can get done today?

14 MR. BELL: May we approach for scheduling purposes?

15 THE COURT: Yes.

16 (Side bar off the record.)

17 THE COURT: We have got some officer witnesses,
18 different lengths. We have another short witness. The
19 witness after that is rather lengthy so we'll do the
20 short witness and then we'll stop for the day. That's
21 what the lawyers tell me. That's a good suggestion. So
22 let's go ahead and get this witness done and then I'll
23 send y'all home. Call your witness.

24 MR. BELL: The State calls Benjamin Booth to the
25 stand.

1 Thereupon,

2 BENJAMIN BOOTH

3 after having been first duly sworn, testified as follows,

4 THE CLERK: Please have a seat. After you're
5 seated, please state your full name spelling your last
6 name for the record.

7 THE WITNESS: Benjamin Booth, B-o-o-t-h.

8 DIRECT EXAMINATION

9 BY MR. BELL:

10 Q. Sir, who are you employed by?

11 A. Lexington County Sheriff's Department.

12 Q. What is your rank and title there?

13 A. Major crimes detective.

14 Q. Detective, how long have you been with law
15 enforcement?

16 A. Nine years, sir.

17 Q. And have you been a detective for the duration of
18 that nine years?

19 A. No, sir.

20 Q. What all have you done?

21 A. Road patrol for four years. After that time I was
22 promoted to master deputy, road supervisor for the rest of the
23 time and two years in investigations.

24 Q. February 2nd, 2014 did you have reason to respond to
25 the Cockpit Bar and Grill?

1 A. Yes, sir. I did.

2 Q. What was that reason?

3 A. We were the oncoming shift. There was a tone out
4 for a shooting incident that occurred at that address.

5 Q. What sort of work were you doing that night when the
6 call came out?

7 A. We were actually having roll call and training.

8 Q. Upon receiving the call that that had occurred, how
9 did you proceed?

10 A. Repeat the question.

11 Q. After getting the tone from dispatch that something
12 had occurred, did you respond to the call?

13 A. Yes, sir. With lights and siren.

14 Q. Where did you respond to?

15 A. The Cockpit.

16 Q. How long did it take you to get to that location?

17 A. Exact time I think it's --

18 Q. You can ballpark it.

19 A. Roughly eight minutes. Nine, ten minutes.

20 Q. Upon arrival what was the atmosphere like?

21 A. It was cars and people everywhere. There were cars
22 lining the street on both sides of Berryhill and there were
23 even cars parked in an adjacent parking lot through the
24 woods.

25 Q. When you arrived on scene, were any other law

1 enforcement present?

2 A. Yes, sir.

3 Q. Was the scene successfully contained at that time?

4 A. No, sir. We were trying to get it contained.

5 Q. When you first arrived, what did you do?

6 A. Tried to talk to the other deputies that were there
7 just prior to my arrival, gather any information we possibly
8 could and try to secure the scene.

9 Q. Were you successful in securing the scene?

10 A. Yes, sir.

11 Q. Was it an easy process?

12 A. Not at all.

13 Q. Why was it not easy?

14 A. Because there were people in cars everywhere trying
15 to leave.

16 Q. Did you have an opportunity to survey the area?

17 A. Eventually. Yes.

18 Q. Upon doing that, did anything stand out to you that
19 you thought might be connected to the reason you responded
20 there?

21 A. Uhm, yes. I was told by other deputies that there
22 was some blood in the roadway as well --

23 Q. Did you observe that blood personally?

24 A. I did.

25 Q. Was there a victim that could be associated with

1 that blood?

2 A. No, sir. Not present. We believe he had already
3 been escorted off scene.

4 Q. Other than the blood, what else did you see?

5 A. Uhm, several cars that were in the parking lot
6 stationary. There were still a lot of people standing around
7 the cars. Eventually we observed shell casings in the parking
8 lot.

9 Q. What kind of shell casings?

10 A. Spent shell casings.

11 Q. Are you familiar with what caliber those casings
12 were?

13 A. From what I - I don't specifically know. No. I did
14 know at the time.

15 Q. Did they appear to be small or large casings?

16 A. Small.

17 Q. What was the orientation of those casings? Do you
18 recall how they were presented?

19 A. I do. From the front, from the business of the
20 front doors on the front porch appeared to be in an angle from
21 the front door to where the blood was in the roadway kind of
22 on a diagonal.

23 Q. Did the casings appear to be of the same caliber
24 throughout?

25 A. I believe so. Yes, sir.

1 Q. Do you work with the crime scene unit?

2 A. I do not.

3 Q. Was it your job that evening to detail all of those
4 things?

5 A. No, sir. It was not.

6 Q. Are you aware if CSI came on the scene that
7 evening?

8 A. Yes, sir. It was.

9 Q. Do you recall who from the crime scene department
10 showed up?

11 A. Deputy Shearer.

12 Q. Did you assist them in any way?

13 A. I did.

14 Q. Tell us about that.

15 A. I assisted him - when the Saturn car toward the edge
16 of the parking lot near the roadway appeared to have several
17 bullet holes in the vehicle, I assisted him with beginning to
18 process the car.

19 Q. If you are not with the crime scene unit, why were
20 you assisting with that?

21 A. It's my vehicle knowledge.

22 Q. What do you mean by that?

23 A. Uhm, I went to school to be an automotive technician
24 and part of the job is knowing a lot about vehicles as far as
25 that and I have also worked as an automotive technician for

1 two years.

2 Q. Why would that have been useful to the crime scene
3 detective there?

4 A. Because if you had to take a door panel off, it
5 would be easier for me to do it than if he hadn't dealt with
6 this model before pulling the clips, less potential for
7 breaking stuff.

8 Q. Did you assist in some capacity with dismantling the
9 vehicle?

10 A. Yes, sir. I did.

11 Q. Tell us about that.

12 A. I assisted Deputy Shearer with taking the door panel
13 off of the Saturn that had the hole in it to attempt to locate
14 any fragmentations or any bullets whatsoever within the door.
15 I wouldn't have touched any bullet or any casing or any
16 fragmentation. I would attempt to pull the door panel off and
17 then we go one step at a time. I wouldn't have removed
18 anything.

19 Q. On scene were y'all successful in extracting or
20 collecting anything from the vehicle?

21 A. I believe so. Yes, sir.

22 Q. Did you extract everything at that time?

23 A. No, sir. Absolutely not.

24 Q. Why not?

25 A. It became too intrusive. It was gonna take too much

1 work to dismantle the car in the areas where it needed to be
2 to get the projectiles. At that time watch commander and my
3 sergeant and Deputy Shearer deemed it to be way too intrusive
4 so he then taped off the car, I called for a tow truck and I
5 escorted it to headquarters where he can later process it in
6 the building.

7 Q. You say you escorted it to the headquarters. What
8 are you referring to?

9 A. The tow truck and that vehicle, that Saturn.

10 Q. Did you assist in logging that same vehicle into the
11 tow lot?

12 A. Yes, sir. It was put into a building.

13 Q. Where is that building located?

14 A. Back parking lot of the Sheriff's Department.

15 Q. Is that a secured facility?

16 A. It is. It's key card access.

17 Q. Did you fill out the paperwork to log that vehicle
18 into that building?

19 A. Yes, sir.

20 Q. Did you have any further involvement with any sort
21 of forensics or collection of evidence that day?

22 A. No, sir. Not on scene.

23 Q. Now, you say not on scene. What else happened?

24 A. I spoke with two witnesses. I mean, it was on scene
25 but I didn't, no evidence that I was collecting on scene.

1 Q. Going back to that, were the majority of people on
2 scene when you arrived, were they cooperative?

3 A. No, sir.

4 Q. Why do you say that?

5 A. Because a lot of individuals didn't want to talk to
6 us.

7 Q. Were you able to successfully talk to anyone?

8 A. Yes, sir. I was.

9 Q. Did you put that into your report?

10 A. I did.

11 Q. Was that report passed along to the detectives
12 assigned to the case?

13 A. Yes, sir.

14 Q. Did you have any further involvement in the case
15 after leaving the scene?

16 A. No, sir. I cleared once I submitted it into,
17 submitted the vehicle into evidence.

18 Q. What do you mean you cleared?

19 A. I cleared the call and remained in service or became
20 available for service for other calls throughout the county.

21 Q. Did the CSI detective take care of the rest of the
22 evidence as far as you know --

23 A. Yes, sir.

24 Q. -- on scene?

25 A. To my knowledge.

1 Q. And do you recall the name again?

2 A. Deputy Shearer.

3 MR. BELL: Please answer any questions the defense
4 may have.

5 MS. ZMROCZEK: No questions, Your Honor.

6 THE COURT: You're done. All right. Y'all think
7 this is the best time to break?

8 MS. PATTERSON: Yes, sir.

9 THE COURT: All right. Folks, some witnesses are
10 longer, some are shorter. They give me a heads up we
11 have a long witness tomorrow. I like to do the witnesses
12 all in one run so a long witness altogether so it's a
13 good time to break.

14 Now, I have a matter that I scheduled several weeks
15 ago. I'm set to do it at about 9:15, 9:30. I should be
16 done by 10:00. Y'all be in the jury room by 10:00 and
17 we'll start then and run to lunch time and have
18 predictable lunch break for us, maybe a little further.
19 We'll break about 12:30 or 1:00, get started back at 2:00
20 and work tomorrow afternoon. Since I know y'all are
21 dressing up and trick or treating, I'll send you home
22 with the instruction don't begin discussing the case,
23 don't discuss it with anybody at home. Anybody asks you
24 what the trial is about, say Judge Griffith said don't
25 discuss it and just leave it there. Okay. All right.

1 NOVEMBER 1, 2016

2 BAILIFF: All rise. Court is now in session. The
3 Honorable Eugene C. Griffith, Junior presiding.

4 THE COURT: Be seated please. We ready?

5 MS. ZMROCZEK: Yes, Your Honor. Sorry. Judge Early
6 said he called you.

7 THE COURT: He called Newberry. Anyway.

8 MS. ZMROCZEK: Sorry.

9 THE COURT: All right. Bring the jury in please.

10 (Whereupon, the jury entered the courtroom at 10:55
11 a.m.)

12 THE COURT: All right. Folks, thank y'all for being
13 patient. We'll get started. Call your next witness.

14 MR. BELL: Thank you, Your Honor. The State calls
15 Daniel Shearer to the stand.

16 Thereupon,

17 KENNETH DANIEL SHEARER

18 after having been first duly sworn, testified as follows,

19 THE CLERK: Please have a seat. After you're
20 seated, please state your full name spelling your last
21 name for the record.

22 THE WITNESS: Kenneth Daniel Shearer, S-h-e-a-r-e-r.

23 DIRECT EXAMINATION

24 BY MR. BELL:

25 Q. Mr. Shearer, where are you currently employed?

1 A. South Carolina Criminal Justice Academy.

2 Q. What kind of work do you do there?

3 A. Teach basic law enforcement, advanced training for
4 crime scene investigation.

5 Q. Do you have any background in law enforcement?

6 A. Yes, sir. I worked with the Lexington County
7 Sheriff's Department.

8 Q. How long were you there?

9 A. 2008 to 2014.

10 Q. What were your job duties during that period of
11 time?

12 A. I worked road patrol, warrant division and crime
13 scene investigations.

14 Q. Tell us about crime scene investigation. What kind
15 of things did you do as part of that work?

16 A. Multitude of things really. Anywhere from taking
17 photographs of scenes. Analyzing for fingerprint examination
18 so they can be entered in and examined. Blood spatter
19 analysis on some cases. Also packaging, processing evidence
20 in that manner. Making sure chain of custody is followed in
21 all cases.

22 Q. Are you trained in collection of evidence?

23 A. Yes, sir.

24 Q. On February 2nd of 2014, what capacity were you
25 working with law enforcement?

1 A. I was with Lexington County Sheriff's Department and
2 crime scene investigator.

3 Q. Do you recall having reason to respond to the
4 Cockpit Bar and Grill on that day?

5 A. Yes, sir. I was requested.

6 Q. And why were you requested to that location?

7 A. To process the scene.

8 Q. When you say the scene, what was your understanding
9 of what had occurred?

10 A. I was told that there was a shooting.

11 Q. When you arrived on scene, were any other law
12 enforcement present?

13 A. Yes, sir.

14 Q. Do you recall how many?

15 A. A few. I know a supervisor and a few road deputies
16 that I remember.

17 Q. Were any civilians still on the scene?

18 A. Yes, sir.

19 Q. Did the scene appear to be contained when you
20 arrived?

21 A. It appeared to be.

22 Q. Talk to us about containment. Why is containment
23 important?

24 A. Containment is important because of, due to the
25 fragile nature of evidence and all of that. Anybody that's

1 moving around freely has a chance of destroying evidence or
2 altering or moving evidence in any manner. If the scene is
3 contained, the evidence should still be in place and less risk
4 of contamination.

5 Q. Is containment of a scene important for you as a
6 crime scene investigator?

7 A. Yes, sir.

8 Q. Are you familiar with a crime scene log?

9 A. Yes, sir.

10 Q. What exactly is that?

11 A. Crime scene log is a document that shows each
12 person, deputy, even paramedics, firefighters, whoever needs
13 to respond to that scene, when they showed up, what time they
14 showed up, what their capacity was there or what their job
15 was.

16 Q. As part of your job as a crime scene investigator do
17 you ensure that documents exists when you come on scene?

18 A. Yes, sir.

19 Q. Did you do that on this particular date?

20 A. Yes, sir.

21 Q. Did you sign into that crime scene log?

22 A. I did.

23 Q. Do you recall what time you signed in?

24 A. Signed in at 7:10 a.m.

25 Q. Does that log also indicate that other law

1 enforcement who were present or not present?

2 A. Yes, sir.

3 Q. After signing in on scene, what was the first thing
4 you did?

5 A. The first thing I do is speak with the supervisor,
6 the first responding officer to find out what they saw or what
7 they saw when they got there.

8 Q. Do you recall who you would have spoken to at that
9 time?

10 A. The first person I spoke with was Sergeant
11 Walters.

12 Q. As a result of that conversation, how did you
13 proceed?

14 A. At that point since I knew there was a shooting,
15 potential crime took place, I waited for a search warrant to
16 be obtained before I started anything else.

17 Q. Was a search warrant obtained?

18 A. Yes, sir.

19 Q. How long did it take for that search warrant to come
20 back?

21 A. Apparently the search warrant was in the process
22 prior to my arrival and I received it at 7:30 a.m.

23 Q. On what date?

24 A. On February 2nd, 2014.

25 Q. Did you assist in the execution of that search

1 warrant?

2 A. Yes, sir.

3 Q. What areas did that search warrant cover?

4 A. Covered the exterior or surrounding areas of the
5 establishment, the establishment itself, the bar or club if
6 you will and any surrounding curtilage as well as any and all
7 vehicles on scene that may be part of the actual crime that
8 took place.

9 Q. As you assisted executing that search warrant what
10 was the first thing that you did?

11 A. Took digital photographs with a camera.

12 Q. What did you take photographs of?

13 A. Took photographs of the entire exterior of the bar,
14 everything in the parking lot that I could see and all the
15 surrounding curtilage around the business.

16 Q. How many pictures did you take?

17 A. I lose track. I took many, many pictures.

18 Q. Does every picture necessarily indicate something
19 important?

20 A. There is a potential.

21 Q. And do you have any idea at that time whether
22 something is important or not?

23 A. Most of the time no. Sometimes yes.

24 Q. Do a lot of your photographs end up being put to the
25 side?

1 A. Yes, sir.

2 MR. BELL: Permission to approach the witness, Your
3 Honor.

4 THE COURT: Surely.

5 BY MR. BELL:

6 Q. Mr. Shearer, I'm showing you a number of
7 photographs. If you would, please, take a second and flip
8 through all of those.

9 A. (Witness complies.)

10 Q. Have you had a chance to review those photographs?

11 A. Yes, sir.

12 Q. In general what are those photographs depicting?

13 A. These are photographs depicting the scene and all
14 the areas covered by the search warrants.

15 Q. Who took those photographs?

16 A. I took those photographs.

17 Q. Do those photographs fairly and accurately depict
18 the scene as seen on that day?

19 A. Yes, sir.

20 MR. BELL: Your Honor, at this time the State seeks
21 to move in the following exhibits identified as the crime
22 scene photos taken by Daniel Shearer. State's exhibit
23 12, 20, 21, 11, 22, 17, 24, 18, 19, 15, 13, 14, 16, 23,
24 25, 10, 6, 7, 8, and 9, Your Honor.

25 THE COURT: See, if they were put in sequential

1 order, this will be number 6 through 25, I believe it is.

2 Am I right on that? Any objection to 6 through 25?

3 MS. ZMROCZEK: No objection.

4 THE COURT: All right. Identified as 6 through 25,
5 State's exhibits, photos of crime scene admitted without
6 objection.

7 MR. BELL: Thank you, Your Honor.

8 BY MR. BELL:

9 Q. Now, once again, what is the purpose of taking
10 multiple photographs?

11 A. Taking multiple photographs is to show different
12 angles and aspects from different points of view of the crime
13 scene.

14 Q. Now, you mentioned the scene was contained when you
15 arrived; is that correct?

16 A. Yes, sir.

17 MR. BELL: Permission to publish the prior entered
18 photos, Your Honor.

19 THE COURT: Sure. Go ahead.

20 BY MR. BELL:

21 Q. How does law enforcement exactly go about
22 establishing a perimeter?

23 A. It usually involves bringing in multiple, many
24 officers and using crime scene tape to rope off the boundaries
25 of where the crime scene took place.

1 Q. I'm showing you State's 12. What is State's 12 a
2 photograph of?

3 A. A photograph of the crime scene.

4 Q. The yellow tape, what does that yellow tape
5 indicate?

6 A. Barrier tape where the majority of evidence or
7 potential crime took place.

8 Q. Was that tape established when you arrived on
9 scene?

10 A. Yes, sir.

11 Q. After you took photographs or as you were in the
12 process of taking photographs, did anything stand out to you
13 on scene?

14 A. Yes, sir. I found 10 .22 caliber cartridge casings
15 in the parking lot leading up to the front door following a
16 fairly straight pattern.

17 Q. You say .22 caliber. In your experience with law
18 enforcement are you familiar with different caliber of
19 casings?

20 A. I have some familiarity. Yes, sir.

21 Q. Is that something you dealt with before as part of
22 your job as crime scene investigator?

23 A. Yes, sir.

24 Q. Are you confident that the caliber of those casings
25 was .22?

1 A. Yes, sir.

2 Q. How many casings again did you see?

3 A. I found, originally found 10 in the parking lot on
4 first glance.

5 Q. And were there any additional calibers located on
6 scene?

7 A. I did not locate any.

8 Q. when you found those casings, how do you go about
9 preserving or indicating that evidence?

10 A. I first preserve. I will take photographs of them
11 to show their position and relative position to other objects
12 in the actual scene. I will also use tent markers, bright
13 yellow markers to number or show, they're actually evidence
14 numbers and their position as they relate to one another and
15 other fixed objects and then after everything is done, I have
16 gotten all the information I need from them conclude make,
17 model, caliber, if it's there. I'll then collect them and
18 using latex gloves on my hands or Nitron gloves place them
19 into a brown paper bag and securing them in the back of my
20 car.

21 Q. Did you mark those items, those casings in this
22 particular case?

23 A. Yes, sir.

24 Q. Did you ultimately collect them?

25 A. I did.

1 Q. Sir, I'm handing you a laser pointer. I'm showing
2 you State's 11. What are we looking at here?

3 A. Looking at a cartridge casing on the, looks like
4 asphalt with a tent evidence marker showing the size of it.

5 Q. Using your laser pointer would you indicate the
6 casings in the picture?

7 A. (Witness complies.) Yes, sir.

8 Q. What does the yellow number mean, the placard in the
9 picture? What does that indicate?

10 A. That shows it's the sixth piece of potential
11 evidence that I found.

12 Q. Do you put up duplicates of the same number on crime
13 scene?

14 A. No, sir.

15 Q. Referring to State's 20, what are we looking at
16 here?

17 A. Looking at the same parking lot and you see the tent
18 markers showing where the cartridge casings were found.

19 Q. And how many yellow markers are we seeing in this
20 picture?

21 A. I can see eight currently.

22 Q. Is that the manner that you saw them on the scene?

23 A. Yes, sir.

24 Q. And what is by each one of those yellow placards?

25 A. A cartridge casing.

1 Q. And were each of those cartridge casings consistent
2 with the other?

3 A. Yes, sir.

4 Q. Did they appear to be of the same caliber?

5 A. Yes, sir.

6 Q. State's 21, is that simply another angle?

7 A. Yes, sir.

8 Q. What is this black streak we are seeing going by
9 placard 2?

10 A. It appears to be a tire mark.

11 Q. Using your laser pointer can you indicate the
12 direction the bar is in reference to that picture?

13 A. The bar is over in this direction.

14 Q. In what direction is the highway or the road?

15 A. The road is up here.

16 Q. In examining these casings, why did you feel that
17 those casings were relevant to this particular incident you
18 responded to?

19 A. These casings didn't appear to be weathered in any
20 way. There was no sign of rust. They appeared to be new.

21 Q. You mentioned the collection process. Did you
22 ultimately collect those items?

23 A. Yes, sir.

24 Q. And what did you do with them?

25 A. Collected them using, keeping Nitron gloves on my

1 hands, keeping contamination from myself, placing them in
2 brown paper bags which I then locked in the back of my crime
3 scene vehicle.

4 Q. I'm showing you two additional pictures marked as ID
5 26 and 27. Do you recognize those pictures?

6 A. Yes, sir.

7 Q. Do these fairly and accurately reflect the items as
8 you took them on that day?

9 A. They do.

10 MR. BELL: Your Honor, at this time the State seeks
11 to move 26 and 27 into evidence.

12 MS. ZMROCZEK: Without objection, Your Honor.

13 THE COURT: Without objection 26 and 27 are also
14 admitted.

15 BY MR. BELL:

16 Q. Referring to 26, what are we looking at?

17 A. Again, a cartridge casing next to an envelope.

18 Q. Now, is that concrete in the background?

19 A. I'm not a hundred percent sure on that one, sir.

20 Q. Where were these pictures taken?

21 A. These pictures would have been taken -- Can I see
22 the picture again up close?

23 Q. Certainly. (Proffering.) Where were those pictures
24 taken?

25 A. Those pictures were actually taken at the Lexington

1 County Sheriff's Department. That in the background would
2 kind of look like butchers paper.

3 Q. Is it correct these weren't taken on scene?

4 A. No, sir.

5 Q. Referring to State's 27, what are all these?

6 A. These are cartridge casings in small coin
7 envelopes.

8 Q. Is that how you collected those casings?

9 A. Yes, sir.

10 Q. Ultimately where did you take all these little
11 bags?

12 A. They were stored into the crime scene lab into
13 locker 4B.

14 Q. Who else has access to that locker?

15 A. Nobody.

16 Q. Did you ultimately transfer those casings anywhere
17 else?

18 A. I transferred them into evidence. Turned them over
19 to the evidence custodian.

20 Q. After working with the casings, what else did you
21 note on scene?

22 A. I also noted approximately eight patterns of blood
23 in the roadway right outside the bar.

24 Q. When you say patterns of blood, what does that
25 mean?

1 A. There is no discernible formation of it. It just
2 looked like pools or accumulation of blood.

3 Q. Was the blood dry?

4 A. It appeared to be drying but it was still wet.

5 Q. How did you indicate those blood spots?

6 A. Using similar evidence markers.

7 Q. I'm showing you State's 22. Are these the blood
8 spots?

9 A. Yes, sir.

10 Q. And did you use numbers as you did with the casings
11 for these spots?

12 A. No, sir. I used letters.

13 Q. Referring to State's 17, is this another angle of
14 the blood?

15 A. Yes, sir.

16 Q. What do we see in the background there?

17 A. We see the bar and two vehicles right there at the
18 roadway or near the roadway as well as looks like two skid
19 marks from a vehicle or maybe a burn out mark.

20 Q. State's 24, is this an additional angle?

21 A. Yes, sir.

22 Q. Would you please indicate where those placards are
23 located?

24 A. Located right here.

25 Q. Those placards indicate what?

1 A. Accumulation of blood that was found in the
2 roadway.

3 Q. How did you go about further processing of the
4 blood?

5 A. After photographing, I took separate DNA swabs and
6 took samples of that just to ensure that there was no other
7 victims. There was only one person involved and then I would
8 secure those in the back of my vehicle as well.

9 Q. Did you ultimately transport those anywhere?

10 A. I transported them to locker 4B as well.

11 Q. Did you find any indication of bullet impact on the
12 scene?

13 A. I did.

14 Q. Where was that?

15 A. Into a blue Saturn LS200 sedan.

16 Q. Where was the Saturn located?

17 A. In the parking lot near the roadway.

18 Q. Did you indicate what side the impacts were
19 located?

20 A. On the passenger's side.

21 Q. What side was the passenger side facing in reference
22 to -- Or let me rephrase that question. In reference to the
23 bar itself, how was the vehicle parked?

24 A. The vehicle was parked on the opposite side of the
25 parking lot but you could see from the bar the right and the

1 rear of the vehicle.

2 Q. So the right side of the vehicle was facing away
3 from or towards the bar?

4 A. Away from.

5 Q. Are you sure about that? Referencing State's 18,
6 what are we looking at here?

7 A. The Saturn LS200.

8 Q. Could you indicate what stands out on the vehicle?

9 A. Several entry points here from some kind of
10 projectile.

11 Q. What are those white markers?

12 A. Those are evidence markers as well.

13 Q. Are they indicating the spots that you just
14 testified to?

15 A. Yes, sir.

16 Q. Now, where is the bar in reference to this
17 picture?

18 A. The bar is in this direction here.

19 Q. So is the right side of that vehicle facing the
20 bar?

21 A. Yes, sir.

22 Q. State's 19, what is that vehicle?

23 A. That's the same vehicle being the Saturn LS200.

24 Q. Any bullet impact on that side of the vehicle?

25 A. Upon first glance I don't believe so.

1 Q. At any point in time did you find bullet impact on
2 that side of the vehicle? If you need to refer to your
3 report, please feel free.

4 A. Will do. The projectile I recovered came from the
5 right side of the vehicle.

6 Q. Were there bullet impacts on the right side - or
7 driver's side of the vehicle?

8 A. No, sir.

9 Q. State's 15, is that the same vehicle?

10 A. Yes, sir.

11 Q. Were there any bullet impacts on the rear of the
12 vehicle?

13 A. Not on the direct rear. No, sir.

14 Q. Did you attempt to extract anything out of the
15 vehicle itself?

16 A. I did. I attempted to find where the projectiles
17 were located after noticing the holes inside of the vehicle,
18 but decided to hold off on extracting projectiles until I
19 could do it in a controlled environment since I would have to
20 disassemble parts of the vehicle.

21 Q. How did you go about attempting to extract those
22 projectiles while you were on scene?

23 A. While I was on scene I attempted to take the door
24 panels off the vehicle where the entry wounds came through
25 just to see if a projectile was lodged between the door panel

1 and the actual metal of the door.

2 Q. Anybody assist you with that process?

3 A. I believe Deputy Mountzouros assisted me on that
4 one.

5 Q. Why did someone else assist you with that process?

6 A. It's very difficult and also I'm not a big fan of
7 executing a search on a vehicle by myself.

8 Q. Referring to State's 16, what are we looking at?

9 A. Looking at the rear passenger door of the blue
10 Saturn LS200 with the door panel removed.

11 Q. Was the door panel removed when you first opened the
12 door?

13 A. I don't recall. I don't believe so.

14 Q. Did you remove or somebody else remove the door
15 panel?

16 A. Yes, sir.

17 Q. Again, the purpose of doing that was what?

18 A. To locate a projectile.

19 Q. Why is locating the projectiles relevant?

20 A. The point of finding projectiles is to be able to
21 put the projectile with a weapon hopefully or actually put
22 them in contact with cartridge casings that were found using
23 function testing through firing testings to find a similar
24 pattern development from a certain firearm that will make a
25 consistent pattern on the actual projectile itself.

1 Q. At the time that you were attempting to extract
2 those projectiles, are you aware of whether or not any firearm
3 had been recovered?

4 A. No, sir.

5 Q. Do you still recover those projectiles anyway?

6 A. Yes, sir.

7 Q. Were you successful in extracting all of the
8 projectiles on scene?

9 A. No, sir.

10 Q. Why not?

11 A. Due to the conditions in the area, the damp, it was
12 damp out that morning and I wanted to be able to actually
13 execute the search of the vehicle in a controlled climate,
14 controlled environment where it would be a little bit more
15 beneficial, wouldn't have the possibility of more
16 contamination to the evidence.

17 Q. How did you go about putting the vehicle in that
18 sort of environment?

19 A. To do that I would have to have the vehicle towed.
20 The first thing I would do is notify the closest deputy to me
21 which was Deputy Hyatt to have someone if not himself to go to
22 get the next tow vehicle in rotation to come tow the vehicle
23 to our headquarters and put it in the evidence parking lot. I
24 then took tape and secured the doors and anything that can be
25 opened up on the vehicle and signed it, dated it, initialed

1 it, dated or signed it to show that it hasn't been tampered
2 with from when I was last with it until I see it again.

3 Q. How does putting tape on the doors ensure that
4 nothing has been tampered with?

5 A. It shows me that if somebody attempted to open the
6 door, the tape would have been broken.

7 Q. Was the vehicle ultimately towed to the Sheriff's
8 Department?

9 A. Yes, sir.

10 Q. Did you collect any other items from the scene?

11 A. I did. I collected several objects from the
12 roadway.

13 Q. What kind of items?

14 A. A black Brugge brand webbed high heel shoe. A open
15 Bud Light bottle. A closed Bud Light bottle. An empty pack
16 of Newport cigarettes. An empty can of Red Bull energy drink,
17 and a can of Ice House beer in a brown paper bag.

18 Q. What's the purpose of collecting those kind of
19 items?

20 A. These items should not normally be there on the side
21 of the road in such condition.

22 Q. What is your hope in collecting those kind of
23 items?

24 A. Potentially find a witness or somebody who saw
25 anything that may have happened there.

1 Q. Are you always successful in finding useful
2 information from those kinds of items?

3 A. No, sir.

4 Q. Do you still collect them?

5 A. I do.

6 Q. Showing you State's 23, what is that a picture of?

7 A. A picture of the black Brugge high heel shoe.

8 Q. Was that located on scene?

9 A. Yes, sir.

10 Q. State's 25, what is that?

11 A. That's the closed bottle of Bud Light beer.

12 Q. Was that also located on scene?

13 A. Yes, sir.

14 Q. What else did you do on scene?

15 A. I also entered into the actual establishment of the
16 bar itself, took digital photographs from different view
17 points from within the entire bar and did a search for
18 evidence.

19 Q. Did you locate anything inside of the bar?

20 A. I didn't find anything physical other than the
21 photographs that I took.

22 Q. Did you find any casings inside the bar?

23 A. No, sir.

24 Q. Any firearms?

25 A. No, sir.

- 1 Q. Any blood?
- 2 A. No, sir.
- 3 Q. Any sign of a struggle?
- 4 A. No, sir.
- 5 Q. Did you leave the scene that day?
- 6 A. I did.
- 7 Q. In logging out from a crime scene, what is that
- 8 process like?
- 9 A. Logging out we would notify our communications that
- 10 the crime scene has been broken down, if you will, and then we
- 11 note our times that we exit our scene.
- 12 Q. What happens to that crime scene log at that
- 13 point?
- 14 A. I take possession of it.
- 15 Q. Why do you take possession of it?
- 16 A. To attach it to my case file.
- 17 Q. Did you take possession of it in this case?
- 18 A. I did.
- 19 Q. What did you do with it?
- 20 A. I attached it to my case file.
- 21 Q. After leaving the scene, what did you do?
- 22 A. Took all the evidence that I collected and took them
- 23 to our crime scene lab at the Lexington County Sheriff's
- 24 Department headquarters and put them all into locker 4B in the
- 25 crime scene lab.

1 Q. Anybody else have access to that evidence during the
2 time you were transporting it?

3 A. No, sir.

4 Q. Did you ever leave it out of your control?

5 A. No, sir.

6 Q. Did you visit any local establishments?

7 A. I did about 2:00 that same day February 2nd.

8 Q. What was the purpose of that?

9 A. To try to find some kind of surveillance footage
10 from a nearby business to find maybe any vehicle that sped off
11 very quickly or any vehicle that could provide some kind of
12 witness to the actual incident.

13 Q. Were you able to recover any sort of video?

14 A. Not that day. No, sir.

15 Q. Did you ever revisit the vehicle that was found on
16 scene?

17 A. Yes, sir. That same day.

18 Q. Where did you locate it at?

19 A. The vehicle was at Lexington County Sheriff's
20 Department headquarters.

21 Q. What was the point of revisiting the vehicle?

22 A. To locate any other type of evidence and try to get
23 those projectiles out of there that were still inside.

24 Q. Referring to State's 10. I'll hand this up to you
25 to see it a little bit better. Take a look at State's 10 and

1 tell me if you see anything relevant to your investigation?

2 A. Besides the evidence marker and the bullet hole in
3 the window up on the - above it I see my tape that I used to
4 secure this door.

5 Q. And did those seals or tape show any sign of
6 tampering?

7 A. No, sir.

8 Q. How do you know that those are the seals that you
9 put on the vehicle?

10 A. It has the date of February 2nd, 2014 on there and
11 my signature.

12 Q. Will you please indicate with your laser pointer
13 where that seal is on State's 10?

14 A. Yes, sir. Right here.

15 Q. Referring to State's 6, what's that orange rod?

16 A. It's a trajectory rod.

17 Q. What's the point of the trajectory rod?

18 A. A trajectory rod is used so that we can show the
19 path of a projectile through some type of object.

20 Q. And based on your observation of those bullet
21 impacts, did those bullets penetrate into the vehicle?

22 A. Yes, sir.

23 Q. State's 7, what are we looking at?

24 A. We're looking at a trajectory rod going through the
25 front driver's seat of the same vehicle.

1 Q. After putting up your trajectory rods, what was your
2 next goal with that vehicle?

3 A. To take the digital photographs that you are seeing
4 now.

5 Q. What else did you do with the vehicle?

6 A. I then looked for those projectiles.

7 Q. Were you successful in locating any?

8 A. Yes, sir.

9 Q. How many did you locate?

10 A. Located and recovered three projectiles from the
11 vehicle.

12 Q. When you say projectile, what exactly do you mean by
13 projectile?

14 A. The, I guess the common term, the lead from the
15 front of a bullet after it's been fired and made contact with
16 something.

17 Q. I'm showing you State's 8 and 9. Do you see
18 anything of interest in State's 8?

19 A. Yes, sir. There is a projectile on the floorboard
20 here.

21 Q. Did you recover that projectile?

22 A. I did.

23 Q. And in State's 9 is there anything of interest?

24 A. That is a projectile.

25 Q. Is that a different angle?

1 A. Yes.

2 Q. Using your laser pointer would you please point out
3 the projectile, referring to State's 8?

4 A. The projectile is right here.

5 Q. And State's 9?

6 A. Right here.

7 Q. How did you go about collecting that projectile?

8 A. By making sure I had gloves on my hands to prevent
9 any contamination. After photographing it, I would collect it
10 and put it into a paper bag to seal it in the back of a
11 vehicle in a secure location.

12 Q. Aside from that projectile how many others did you
13 recover?

14 A. Aside from that there was two more.

15 Q. Did you also secure those?

16 A. Yes. The exact same way.

17 Q. And referring back to State's 9, was it a large
18 projectile?

19 A. No, sir.

20 Q. Is that projectile consistent with a .22 caliber?

21 A. Yes, sir.

22 Q. Were all three consistent with a .22 caliber?

23 A. Yes, sir.

24 Q. Did you ultimately submit those projectiles to
25 evidence?

1 A. I did.

2 Q. Did anybody have an opportunity to tamper with that
3 evidence?

4 A. No, sir.

5 Q. Was it in your sole care, custody and control?

6 A. Yes, sir.

7 Q. After finishing the process of the vehicle, what
8 else did you do in this case?

9 A. I filled out the return on the search warrant for
10 the vehicle and left a copy on the driver's seat and then I
11 made sure the vehicle was secured so nothing could happen to
12 it.

13 Q. Did you have reason to respond to Newberry
14 Hospital?

15 A. Yes, sir.

16 Q. When was that?

17 A. That was on February 3rd, 2014 at approximately 9:00
18 a.m.

19 Q. What was the reason that you were going to that
20 location?

21 A. I was attending the victim's autopsy.

22 Q. Why would you attend something like that?

23 A. Because there's still potential for different types
24 of evidence to be found at the autopsy and photographs would
25 be very beneficial to it and collection of that evidence.

- 1 Q. Do you recall who conducted the autopsy?
- 2 A. Yes, sir. It was Dr. Ross.
- 3 Q. Were you present for the autopsy itself?
- 4 A. Yes, sir.
- 5 Q. Did you take photographs of that autopsy?
- 6 A. I did.
- 7 Q. Did you have a chance to view the victim with your
- 8 own eyes?
- 9 A. I did.
- 10 Q. Did anything stand out to you on the victim?
- 11 A. There was a small entry wound into the center mass
- 12 area of his chest.
- 13 Q. At any point did you become aware of what caused
- 14 that entry point?
- 15 A. Yes, sir.
- 16 Q. What was it?
- 17 A. I was advised that it was a projectile from a fired
- 18 weapon.
- 19 Q. Were you able to collect that projectile?
- 20 A. I wasn't able to collect it, but Dr. Ross was able
- 21 to collect it for me.
- 22 Q. Did you collect it after she removed it?
- 23 A. Yes, sir.
- 24 Q. Did you secure it in the same manner as you
- 25 testified earlier?

1 A. Yes, sir.

2 Q. Did you ultimately log that into evidence as well?

3 A. I did.

4 Q. What other things do you collect from an autopsy?

5 A. Also collect different types of fluid, bodily
6 fluids. Would you like me to go through those?

7 Q. Yes, sir.

8 A. Collected two gray top test tubes from the iliac
9 vein. One red top test tube from the vitreous. A bottle of
10 urine. A bottle of blood. A bottle of gastric fluid. A
11 lavender top test tube of blood. I also collected from the
12 victim one black thermal long sleeve T-shirt. A piece of
13 black long sleeve thermal T-shirt. A black/gray I'll say
14 extra large shirt. A blue pair of gym boxer underwear. And
15 one gray and black pair of Puma ankle socks.

16 Q. Referring back to the fluids, have you attended
17 other autopsies?

18 A. Yes, sir.

19 Q. Are those items that you typically collect after an
20 autopsy?

21 A. Yes, sir.

22 Q. Did there appear to be anything special as far as
23 the bodily fluids being collected in this case?

24 A. No, sir.

25 Q. Did you transport those items to evidence?

1 A. I did.

2 Q. All of the items that you just testified to?

3 A. Yes, sir.

4 Q. Anybody have an opportunity to tamper with those
5 items?

6 A. No, sir.

7 Q. Do you recall what the projectile that was removed
8 from the autopsy looked like?

9 A. Yes, sir. It was small in nature and similar to the
10 other recovered projectiles that I located.

11 MR. BELL: Please answer any questions the defense
12 may have for you.

13 THE COURT: Let's take a couple minutes here and
14 then we'll keep moving so you can step into the jury
15 room. We won't be very long. All right.

16 (Whereupon, the jury entered the jury room.)

17 (Whereupon, Defendant's Exhibits #1 through #46
18 marked for identification)

19 (Short break.)

20 BAILIFF: All rise.

21 THE COURT: Please be seated. Ready? You ready,
22 Ms. Zmroczek?

23 MS. ZMROCZEK: Yes, Your Honor.

24 THE COURT: Let's bring our jury in.

25 (Whereupon, the jury entered the courtroom.)

1 THE COURT: Go ahead.

2 MS. ZMROCZEK: Thank you.

3 CROSS EXAMINATION

4 BY MS. ZMROCZEK:

5 Q. Is it now Instructor Shearer or what is your
6 title?

7 A. Officer. Instructor.

8 Q. I'm going to show you what's been marked defendant's
9 1 through 22 and ask you if you can just take a look at those.

10 A. (Witness complies.)

11 Q. Do you recognize those photos?

12 A. Yes, ma'am.

13 Q. Do those fairly and accurately represent the
14 pictures that were taken that day of the evidence?

15 A. Yes, ma'am.

16 MS. ZMROCZEK: Your Honor, at this time we would
17 move into evidence defendant's 1 through 22.

18 THE COURT: Were those taken by him also?

19 MS. ZMROCZEK: I believe they were, Your Honor.

20 THE WITNESS: Yes.

21 THE COURT: So these are additional?

22 MS. ZMROCZEK: They're just additional photos,
23 correct.

24 THE COURT: 1 through 22. Any objection?

25 MR. BELL: No objection.

1 THE COURT: These are just some more photographs
2 taken by the same investigator. They're in.

3 MS. ZMROCZEK: Thank you, Your Honor.

4 BY MS. ZMROCZEK:

5 Q. Mr. Bell asked you about typically when you take
6 photographs of the scene, you take a lot, right?

7 A. Yes, ma'am.

8 Q. And how you train people now to do it is you kind of
9 take an overall view of the scene?

10 A. Yes, ma'am.

11 Q. And then you moved a little bit closer and a little
12 bit closer?

13 A. Yes, ma'am.

14 Q. You do the same with the bullets and shell casings
15 or any evidence of value, right?

16 A. Yes, ma'am.

17 Q. So you want to give the jury like an overall layout
18 of where everything is and then take some closer and closer
19 until you kind of get right up on it, correct?

20 A. Yes, ma'am.

21 Q. Mr. Bell asked you about contamination. You talked
22 a little bit about contamination. Now, contamination doesn't
23 mean that somebody intentionally contaminated something, does
24 it?

25 A. Right.

1 Q. It just means that things get moved like you said or
2 kicked around or changed just because the scene is not
3 contained?

4 A. Yes, ma'am.

5 Q. In fact, you know that that happened in this case,
6 right?

7 A. No, ma'am.

8 Q. Okay. Let's talk about projectiles for a moment.
9 No. Let's talk about casings for a moment. When they come
10 out of a gun, how do they look?

11 A. They look like the ones in the pictures earlier.

12 Q. Are they - do they come out with any deformities?
13 Are they squished? Or do they come out straight?

14 A. They come out with a deformity.

15 Q. Can they also receive deformities when they get run
16 over?

17 A. Yes, ma'am.

18 Q. In this case could you tell how the deformities
19 happened to these different casings that you collected?

20 A. No, ma'am.

21 Q. So you are unable to say?

22 A. Right.

23 Q. But you know that prior to your arriving and
24 photographing and collecting evidence that there were cars and
25 people chaotically exiting and moving around?

1 A. I can't testify to that.

2 Q. So you are unaware of that?

3 A. Yes, ma'am.

4 Q. All right. I want to go through the pictures real
5 quick first. This is defendant's 1. Tell the jury what that
6 is?

7 A. That is the business.

8 Q. Do you still have your laser pointer?

9 A. Yes, ma'am.

10 Q. Can you show in this picture kind of where the
11 Saturn was parked?

12 A. It was parked in this direction down here.

13 Q. So actually the back end is what was facing the door
14 of the bar, the back end of the vehicle?

15 A. Not necessarily the back end in its entirety.

16 Q. Not in it's entirety?

17 A. No, ma'am.

18 Q. But pulled head on into a parking space?

19 A. Yes, ma'am.

20 Q. Okay. And defendant's 2, is that also the front
21 location of the bar?

22 A. Yes, ma'am. That's the parking lot side.

23 Q. Okay. Defendant's 3, that's the name of the bar or
24 club as you approach it?

25 A. Yes, ma'am.

1 Q. Defendant's 4, these are the casings that you had
2 marked, correct?

3 A. Yes, ma'am.

4 Q. All right. And you said that they had a pattern
5 like?

6 A. Yes, ma'am.

7 Q. Okay. You talked about trajectory and I believe
8 with regards to the car?

9 A. Yes, ma'am.

10 Q. Are you also able to continue that trajectory to
11 help understand where a gun, from where a gun was fired?

12 A. I'm not trained in that. No, ma'am.

13 Q. Is someone?

14 A. Yes, ma'am.

15 Q. Okay. All right. Let me ask you this: Mr. Bell
16 asked you about your knowledge of guns and shell casings in
17 particular, that you were able to recognize that shell
18 casings. These were .22's, right?

19 A. Yes, ma'am.

20 Q. .22 caliber, correct?

21 A. Yes, ma'am.

22 Q. Typically when a caliber is ejected from a gun, how
23 is it typically ejected?

24 A. Ejected through the barrel.

25 Q. And then the casing, which way does that go?

1 A. It depends on how -- The weapon has an extractor
2 port.

3 Q. Okay. When you mark these items as you did here
4 back on defendant's 4 and you started with 1, did you do them
5 just sequentially? You're not saying that this one was fired
6 first, second, third, fourth, are you?

7 A. No, ma'am.

8 Q. You're just doing them as you see them?

9 A. Yes, ma'am.

10 Q. Okay. Defendant's 5 shows a close-up of casing 1,
11 correct?

12 A. Yes, ma'am.

13 Q. All right. And we'll get back to that in a second.
14 Defendant's 6 is a close up of projectile 2?

15 A. Yes, ma'am.

16 Q. Defendant's 7 is a close-up of projectile 3?

17 A. Yes, ma'am.

18 Q. Now, defendant's 7 shows projectile 3 having a
19 little more damage to it?

20 A. Yes, ma'am.

21 Q. Can you tell the jury how that was received?

22 A. I don't follow your question.

23 Q. Is it possible that it was received from being
24 rolled over or stepped on?

25 A. I can't testify to that.

1 Q. Is it possible it came out of the barrel that way?

2 A. Not likely.

3 Q. Okay. Defendant's 4 which is, or excuse me,
4 defendant's number 8 which is projectile 4, is it possible
5 that that casing came out of the barrel that way?

6 A. No, ma'am.

7 Q. Okay. Defendant's 9 which is casing number 5, is it
8 possible that that casing came out of the barrel that way?

9 A. No, ma'am.

10 Q. Defendant's 10 which I believe is number 6 we have
11 already seen. You didn't alter these in any way. You just
12 marked them and photographed them, correct?

13 A. Yes, ma'am.

14 Q. Now, defendant's 7 and 8, you kind of, those were a
15 little bit closer together; is that correct?

16 A. Yes, ma'am.

17 Q. So you took a picture of both of them. Excuse me.
18 Not defendant's 7 and 8. It's defendant's 11, placard 7 and
19 8, you took a picture kind of them relative to where they were
20 found, right?

21 A. Yes, ma'am.

22 Q. Then you took another one close up of each,
23 correct?

24 A. Yes, ma'am.

25 Q. So I'll show you defendant's 12 which is a close up

1 of casing 7. Now, does casing 7 appear to have any flattening
2 or squishing of the casing?

3 A. I can't tell from this angle the entire side of
4 it.

5 Q. All right. Defendant's 13 is number 8. That was
6 just a close up, right?

7 A. Yes, ma'am.

8 Q. Defendant's 14 is a close up of projectile 9; is
9 that correct?

10 A. Yes, ma'am.

11 Q. Is it possible that it came out of the barrel that
12 way?

13 A. No, ma'am.

14 Q. Defendant's 15, projectile 10, is it possible it
15 came out of the barrel that way?

16 A. No, ma'am.

17 Q. And 10 was actually found, defendant's 16, where was
18 10 actually located?

19 A. In the parking lot.

20 Q. Was it closer towards the road?

21 A. How do you -- How -- I mean, can you rephrase that?

22 Q. I can. Where in the parking lot -- Let me pull up
23 the overall picture here for you. Defendant's 4. Where is
24 projectile 10, if you can point it out with the pointer?

25 A. 10 was located in this general direction right

1 here.

2 Q. Is it right behind that Saturn?

3 A. Behind the Saturn? No, ma'am.

4 Q. That's not 10 right here?

5 A. It's located in this direction here. Yes.

6 Q. Okay. You actually collected all of those casings,
7 correct?

8 A. Yes, ma'am.

9 Q. Let me show you what's been marked as defendant's 24
10 and 25 and ask if you can identify this. Are these the
11 casings that you collected?

12 A. Yes, ma'am.

13 MS. ZMROCZEK: Your Honor, at this time we would
14 move defendant's 24 and 25 into evidence.

15 THE COURT: What's the difference between the bag
16 and the plastic bag?

17 MS. ZMROCZEK: Those are two casings also.

18 BY MS. ZMROCZEK:

19 Q. Would you like to open it to inspect those to make
20 sure that it's the other two casings?

21 A. Yes, ma'am.

22 THE COURT: Any objection to those casings,
23 Solicitor?

24 MR. BELL: Assuming they are what's being testified
25 to, no objection.

1 THE COURT: Okay. They are admitted without
2 objection.

3 BY MS. ZMROCEK:

4 Q. You can go ahead and open defendant's, I think it's
5 25.

6 A. 24.

7 Q. 24. Thank you.

8 THE COURT: The Paper bag is 25.

9 MS. ZMROCEK: The paper bag is 25. Thank you, Your
10 Honor.

11 THE COURT: Does he have to open that plastic bag?

12 MS. ZMROCEK: I don't need him to, Your Honor, as
13 long as he can see through the bag. I think he can.

14 BY MS. ZMROCEK:

15 Q. Those are the other two casings that you collected,
16 correct?

17 A. Yes.

18 Q. I'm going to ask you to open defendant's 25 and pull
19 out the projectile, or excuse me, the casing marked number 6
20 and number 10, please.

21 A. (Witness complies.)

22 Q. Can you open up the little envelopes? And as you're
23 doing that, Mr. Bell asked you if anybody had any opportunity
24 to tamper or alter those, correct?

25 A. No, ma'am. I did not.

1 BAILIFF: Have you got any scissors, Ms. Hope?

2 THE COURT: You're asking him to complete a task we
3 are not able to do.

4 MS. ZMROCEK: Thank you.

5 BY MS. ZMROCEK:

6 Q. The reason we are having to use scissors is when
7 you turn evidence in, how is it made sure that it's not
8 tampered with?

9 A. With tamper evidence tape.

10 Q. Is that what's keeping it sealed right now?

11 A. That and another layer of tape on top.

12 MS. ZMROCEK: Your Honor, if I may ask him to step
13 down and publish those?

14 THE COURT: Let him get them out.

15 BY THE WITNESS:

16 A. You want me to take them out?

17 BY MS. ZMROCEK:

18 Q. Please.

19 A. (Witness complies.)

20 Q. Just make sure that you keep your voice up as you're
21 showing the jury. Come over here so everybody can see. So
22 are those the little caliber casings that you collected,
23 correct?

24 A. Yes, ma'am.

25 Q. Okay. When you collect them like you said that

1 they, for example, this is number 6, correct? In your left
2 hand?

3 A. Yes, ma'am.

4 Q. And were you saying that it came out of the
5 barrel?

6 A. Not looking like that. No.

7 Q. Not looking like this. So either somebody ran over
8 it or stepped on it? It somehow has been altered?

9 A. It's been altered in some way.

10 Q. But not by you?

11 A. No, ma'am.

12 Q. And this could have been before the scene was
13 collected?

14 A. I can't testify to that.

15 Q. But you can testify it did not come out of the gun
16 this way?

17 A. Yes, ma'am.

18 Q. When you turn number 6 over, what do you notice
19 about it?

20 A. Where the firing pin is?

21 Q. Where the firing pin is. What do you notice about
22 the firing pin on number 6?

23 A. Me?

24 Q. Yes.

25 THE COURT: He's not been qualified as a machine

1 mark expert, has he? I'm trying to get through this. I
2 don't understand what the point of it is if the
3 projectile is on the ground so lay some more foundation
4 maybe, but he's not a machine tool mark expert. It's
5 outside his expertise.

6 BY MS. ZMROCZEK:

7 Q. Are you familiar with shell casings? I believe
8 Mr. Bell, you testified that you were familiar enough to know
9 what caliber they were, correct?

10 A. Yes, ma'am.

11 Q. Are you familiar enough to know what a firing pin
12 is?

13 A. Yes.

14 Q. Are you familiar to know if there is a rim fire or a
15 center fire?

16 A. No.

17 Q. Okay. But these two items 6 and 10 at least are two
18 of the items that you collected at the scene?

19 A. Yes, ma'am.

20 Q. Okay. Great. Put those back in the envelope for
21 me.

22 A. I will. (Witness complies.)

23 Q. Now, once you collect them and put them into I
24 believe you said bin 4B, you preserve them and they can be
25 sent off to SLED or other experts who have more expertise to

1 identify those, correct?

2 A. They can be. Yes.

3 Q. Okay. And that's not a decision that you make; is
4 that correct?

5 A. No, ma'am.

6 Q. I'll take those scissors back from you. Thank you.
7 You indicated that you also collected some evidence around the
8 scene; is that correct?

9 A. Yes, ma'am.

10 Q. At that time you don't know whether or not they have
11 any importance; is that right?

12 A. No, ma'am.

13 Q. I'm showing you what's been admitted into evidence
14 as defendant's 17. I believe you listed Newport cigarettes
15 that you collected?

16 A. Yes, ma'am.

17 Q. That would be what you collected, number 12?

18 A. Yes, ma'am.

19 Q. Defendant's 18 indicates in the road, and I'm going
20 to use State's 5. Can you show with your laser pointer in the
21 road where that marker is?

22 A. Somewhere off here.

23 Q. Okay. Off the side of this map, correct?

24 A. Yes, ma'am. Not on that map.

25 Q. Okay. And those were the spatter of blood?

1 A. They were accumulations.

2 Q. Okay. And this is defendant's 19. What are these
3 marks here?

4 A. Appear to be tire marks.

5 Q. You also took pictures of the Saturn you said,
6 correct?

7 A. Yes, ma'am.

8 Q. Are these some additional pictures of the Saturn
9 that you collected? This is defendant's 20 that you took?

10 A. Yes, ma'am.

11 Q. You wouldn't put anything inside of a vehicle,
12 right? You just photograph it as it's found in the vehicle?

13 A. Yes, ma'am.

14 Q. Okay. Defendant's 21, that's how you located that
15 in the vehicle, right?

16 A. Yes, ma'am.

17 Q. This pack of Newport cigarettes is not the same pack
18 that we saw that you collected; is that correct?

19 A. That is correct.

20 Q. Different pack?

21 A. Yes, ma'am.

22 Q. Defendant's 22, what's remarkable about defendant's
23 22?

24 A. There is a holster on the floorboard.

25 Q. A holster?

1 A. Yes, ma'am.

2 Q. I'll show you what's been marked for identification
3 as defendant's 23 and ask you if you recognize that?

4 A. Yes, ma'am.

5 Q. Is that the holster that you collected that's
6 depicted in defendant's 22?

7 A. Yes, ma'am.

8 MS. ZMROCZEK: Your Honor, at this time we move
9 defendant's 23 into evidence.

10 MR. BELL: No objection, Your Honor.

11 THE COURT: No objection, defendant's 23.

12 BY MS. ZMROCZEK:

13 Q. And this was found on the driver's side or the
14 passenger side of the vehicle?

15 A. The passenger side.

16 Q. Same passenger side where the previously testified
17 impact marks were located?

18 A. Yes, ma'am.

19 Q. That's not all you did in this case. Did you also
20 collect or do any investigation of any phones?

21 A. Yes, ma'am. I did of one.

22 Q. Which phone was that?

23 A. Let me look in my notes real quick.

24 Q. Certainly.

25 A. It was an HTC cell phone.

1 Q. What kind of investigation did you do with that?

2 A. Did a physical extraction of the cell phone using a
3 Cellebrite UFED system which downloads all the information in
4 the phone to include potential call history, calls sent out,
5 text messages, e-mails, photographs, videos. Just about any
6 information that can be stored onto a phone.

7 Q. And after you downloaded that through Cellebrite,
8 did you also put that into evidence?

9 A. Yes, ma'am.

10 Q. Is all of the information, the holsters, the
11 casings, the phone downloads, all of that is provided to the
12 lead investigator?

13 A. Yes, ma'am.

14 MS. ZMROCZEK: Thank you. I have no further
15 questions.

16 THE COURT: Redirect?

17 MR. BELL: Thank you, Your Honor. Permission to ask
18 the witness to step down.

19 THE COURT: Sure.

20 REDIRECT EXAMINATION

21 BY MR. BELL:

22 Q. Stand over here and talk back towards the court
23 reporter nice and loud. I'm gonna show you State's 5. Do you
24 have your laser pointer on you, sir?

25 A. I left it right there.

1 Q. (Proffering.)

2 A. Thank you.

3 Q. Referring to State's 5, just to be clear, will you
4 please indicate with the laser pointer where the Saturn was
5 located?

6 A. Located approximately right here.

7 Q. And is that the vehicle with the bullet impacts?

8 A. Yes, sir.

9 Q. Where were the casings located?

10 A. They were located in this general area right here.

11 Q. And do you recall where the blood spots were
12 located?

13 A. They were located off the map approximately right
14 here.

15 Q. And just generally where was the containment area?

16 A. The scene was contained in this general area right
17 here.

18 Q. Does that roughly indicate where all of the
19 important items that you put markers down were?

20 A. Yes.

21 Q. Please take your seat.

22 A. (Witness complies.)

23 Q. Sir, have you ever driven on a highway?

24 A. I have.

25 Q. Have you ever been behind an 18 wheeler?

1 A. Many times.

2 Q. Have you ever had the unfortunate experience of
3 seeing a rock picked up from a tire?

4 A. Yes, sir.

5 Q. Did you notice tire tread marks in the parking lot
6 where those casings were located?

7 A. Yes, sir.

8 Q. And if a car ran over those casings, is it possible
9 that they were kicked to the side?

10 A. Yes, sir.

11 Q. Were the majority of those casings in the same
12 area?

13 A. Yes, sir.

14 Q. Just to clarify, you kept saying that the casing
15 came out of the barrel. Do you actually mean that the casings
16 were coming out the pointed end, the dangerous end?

17 A. No, sir.

18 Q. Okay. Where exactly are they coming out when you
19 say the barrel?

20 A. The projectile is coming out of the barrel. The
21 casing is coming out of the extractor port usually on the top
22 of the weapon on the right side.

23 Q. You said the right side?

24 A. Yes, sir. Most weapons are.

25 Q. And when a gun is fired, do those casings just

1 simply fall out the right side?

2 A. No, sir. They are projected with a small amount of
3 force.

4 Q. Do the casings fall right beside the shooter?

5 A. Not necessarily.

6 Q. Do they fall in a predictable pattern?

7 A. They can. They can ejected in a predictable
8 pattern. Where they bounce to is a completely different
9 mater.

10 Q. The holster that you located, I believe it was
11 referenced as defendant's 3, did you find a firearm in the
12 vehicle that you searched, that Saturn?

13 A. No, sir.

14 Q. Is it illegal to have a holster?

15 A. No, sir.

16 Q. Is it illegal to have a gun properly stored in a
17 vehicle?

18 A. No, sir.

19 Q. Whose phone did you extract?

20 A. The victim's cell phone.

21 MR. BELL: No further questions.

22 THE COURT: Okay. You may step down. Solicitor,
23 what's the estimated length of the next witness so the
24 jury and I can decide whether we want to go to lunch?

25 MS. PATTERSON: I think he's relatively short, Your

1 Honor.

2 THE COURT: All right. You want to try to do
3 another witness and then go to lunch closer to 1:00?

4 (Jury Confirms.)

5 THE COURT: Okay. Call your next witness.

6 MS. PATTERSON: The State calls Thomas Fine.

7 Thereupon,

8 THOMAS LAWSON FINE

9 after having been first duly sworn, testified as follows,

10 THE CLERK: Please have a seat. After you're
11 seated, please state your full name spelling your last
12 name for the record.

13 THE WITNESS: Thomas Lawson Fine, F-i-n-e.

14 DIRECT EXAMINATION

15 BY MS. PATTERSON:

16 Q. What's your title, Mr. Fine?

17 A. I am a deputy K-9 handler with the Lexington County
18 Sheriff's Department.

19 Q. How long have you been with the Lexington County
20 Sheriff's Department?

21 A. January will be six years.

22 Q. Have you always been in law enforcement?

23 A. No. I have -- Currently in January I will have 18
24 years in. I had 12 years with the Department of Probation,
25 Parol and Pardon Services, took a short break from law

1 enforcement, and rejoined law enforcement with the Sheriff's
2 Department in 2011.

3 Q. In February 2014 what was your position?

4 A. I was a field training officer assigned to patrol
5 division.

6 Q. Were you on duty on February 2nd, 2014?

7 A. Yes, ma'am. I was.

8 Q. Were you called out to the Lexington Medical
9 Center?

10 A. Yes, ma'am.

11 Q. What time did you get called out?

12 A. I was dispatched at 6:33 in the morning.

13 Q. How long did it take you to arrive?

14 A. Looks like 13 minutes. I arrived at 6:49.

15 Q. What was your understanding of your role when you got
16 to the hospital?

17 A. My understanding was that I was to secure a vehicle
18 that had been driven to the ER and possibly interview or speak
19 to anybody that may be there at the emergency room.

20 Q. So when you first got to the hospital, what did you
21 do?

22 A. When I first got to the hospital, I located the
23 vehicle which was parked in front of the emergency room doors
24 and then made contact with a deputy that had previously been
25 at the hospital that was, that had secured the vehicle prior

1 to my arrival. I met with him.

2 Q. Do you know who this vehicle belonged to?

3 A. I was advised that the vehicle belonged to an Andre
4 Bunch.

5 Q. Did you have anything to do with the search of that
6 vehicle?

7 A. The only thing that I did, ma'am, was meet with
8 Mr. Bunch in reference to a consent to search his vehicle and
9 I did that on the request of crime scene investigator Gilland
10 who arrived later that morning.

11 Q. Did he cooperate and give you consent to search?

12 A. Yes, ma'am. He signed a consent to search.

13 Q. Now, when you arrived at the hospital, had the
14 victim already been pronounced dead?

15 A. I don't recall being on scene when he had been
16 pronounced deceased. I don't - I don't - I don't recall if he
17 had already been and I don't recall if I was present for the
18 actual pronouncement.

19 Q. Were you able to make contact with any of the
20 victim's family and/or friends?

21 A. I was able to make contact with two of his friends
22 that were there at the hospital.

23 Q. Can you describe their demeanor?

24 A. It was a very emotional, very emotional scene. They
25 were - they were visibly upset and they had been there when

1 their friend got shot.

2 Q. Was Mr. Bunch identified as one of these friends?

3 A. Yes. He was.

4 Q. So what did you do next after you got the consent
5 from Mr. Bunch?

6 A. Well, I actually got the consent from Mr. Bunch
7 after CSI had arrived on scene. Uhm, prior to getting consent
8 to search of the vehicle, I did speak with Mr. Bunch, uhm,
9 shortly after arriving on scene and after speaking with Deputy
10 Murname.

11 Q. Was Mr. Bunch cooperative with you?

12 A. It was obvious that he was in a very emotional state
13 but he was cooperative and did agree to talk to me. Yes,
14 ma'am.

15 Q. Besides speaking with him, did you take a statement
16 from him?

17 A. I did. Yes, ma'am. He did provide a statement.

18 Q. And was he able to provide a lot of details in his
19 statement?

20 A. No, ma'am. Again, based on his emotional state, the
21 fact that he was willing to provide anything in writing at
22 that time was what I accepted. I advised him at the time that
23 there would probably be some follow up questions with him but
24 that if he was willing to write me a statement, I would take
25 that statement at that time.

1 Q. So you didn't push him to give you more
2 information?

3 A. No, ma'am. Not at all. In those highly stressful
4 emotional states we practice empathy because it is a very
5 serious matter. Again, based on the emotional state and the
6 stressful scene I certainly didn't encourage and prod anymore
7 than he could at that time.

8 Q. Were you responsible for securing a weapon at the
9 hospital?

10 A. Yes, ma'am. I was.

11 Q. Do you know who that weapon belonged to?

12 A. I was advised by Deputy Murname, the deputy that was
13 there prior to my arrival, that the weapon belonged to
14 Mr. Bunch.

15 Q. Do you know where that weapon had been located?

16 A. I was advised again by Deputy Murname that the gun
17 was in the glove box of the vehicle.

18 Q. Which vehicle was that?

19 A. It was the Chrysler 300 that was parked there at the
20 hospital.

21 Q. Okay. Did you secure that weapon?

22 A. I did. I secured it in the trunk of my vehicle
23 until CSI arrived.

24 Q. In addition to that weapon did you secure any other
25 potential evidence?

1 A. No, ma'am.

2 Q. Was there anything accompanying that handgun?

3 A. I was also provided a magazine and eight rounds.

4 Q. Could you tell if they were spent or unspent?

5 A. They were unspent. They were there with the
6 magazine of the weapon.

7 Q. Did you interview any other potential witnesses at
8 the hospital?

9 A. I did. I interviewed Mr. Frederick Moss as well as
10 a Julia Sawyer that was also there.

11 Q. Was Mr. Moss identified to be one of the friends of
12 the victim?

13 A. Yes, ma'am. He was.

14 Q. And can you describe again his demeanor or his
15 state?

16 A. Mr. Moss was again very emotional. He, uhm - he -
17 he was - Mr. Moss was so emotional that at the time of the
18 interview, uhm, he refused to provide a statement or a written
19 statement anyway.

20 Q. Again, did you push him to provide you with any
21 other information?

22 A. No, ma'am. Not at all.

23 Q. Again, why not?

24 A. Again, in these emotional and stressful scenes we
25 don't want to push somebody to the point where they either

1 provide information that they don't recall or leave out or
2 omit information based on their emotional state.

3 Q. About how long were you at the scene?

4 A. I was there approximately four hours.

5 Q. Did you have any other further involvement in this
6 case?

7 A. I did not. No, ma'am.

8 Q. What did you ultimately do with that weapon that you
9 secured?

10 A. Well, it was picked up by CSI Gilland, Investigator
11 Gilland.

12 Q. Do you know what kind of gun that was?

13 A. It was a Smith and Wesson nine millimeter handgun
14 semi automatic.

15 MS. PATTERSON: No further questions. Answer any
16 questions Ms. Zmroczek has.

17 MS. ZMROCZEK: May I approach the witness?

18 THE COURT: You may.

19 CROSS EXAMINATION

20 BY MS. ZMROCZEK:

21 Q. Deputy Fine?

22 A. Yes, it is.

23 Q. I'm showing you defendant's, what's been previously
24 marked as defendant's 26 and 27 and ask you if you recognize
25 those two, one photo and one item?

1 A. Yes, ma'am. I recognize the photo and recognize the
2 gun. Yes, ma'am.

3 Q. Is that because you took and/or collected that
4 item?

5 A. I took the picture of the cell phone and I did
6 receive this gun from Deputy Murname which was then turned
7 over to the investigator. The crime scene investigator.
8 Sorry.

9 Q. You secured that gun?

10 A. Yes.

11 MS. ZMROCZEK: Your Honor, at this time we move
12 defendant's 26 and 27 into evidence.

13 MR. BELL: Without objection, Your Honor.

14 THE COURT: We still know the gun is secured. It
15 has some sort of a locking device. It can't be loaded.
16 Okay. So they are admitted without objection.

17 BY MS. ZMROCZEK:

18 Q. I'm opening defendant's 26. There is a gun lock
19 protector on that?

20 A. There is a gun lock protector on that weapon. Yes,
21 ma'am.

22 Q. And a magazine; is that correct?

23 A. Yes, ma'am.

24 Q. No loaded bullets?

25 A. No loaded bullets.

1 Q. How many rounds did that magazine hold?

2 A. The capacity for this particular magazine is 15
3 rounds.

4 Q. How many rounds did you locate?

5 A. There were eight rounds.

6 Q. And this was the gun that you got out of the glove
7 compartment of the vehicle that drove Mr. Ratliff to the
8 hospital?

9 A. I did not get the gun but I did receive the gun from
10 Deputy Murname.

11 Q. Who took it out of the glove box?

12 A. Yes, ma'am.

13 Q. Then you took a photograph you said of the cell
14 phone?

15 A. Yes, ma'am.

16 Q. That was from Ms. Sawyer?

17 A. Julia Sawyer. Yes, ma'am.

18 Q. I'm showing you up here defendant's 27. That just
19 verifies that a call was made?

20 A. Yes, ma'am. It verifies that a call was made.

21 Q. You may not be able to see it on here. I'll hand
22 this to you. What time and date does it say that phone call
23 was made?

24 A. Appears to be 6:05 a.m., Sunday, February 2nd,
25 2014.

1 Q. Thank you.

2 A. Yes, ma'am.

3 Q. And you said that Mr. Moss was so emotional, I
4 wanted to make sure these were your words, so emotional that
5 he couldn't give a statement?

6 A. Yes, ma'am. Mr. Moss, the statement was that he was
7 unable to provide one at that time.

8 MS. ZMROCZEK: Thank you. I have no further
9 questions, Your Honor.

10 THE COURT: Anything else, Ms. Patterson?

11 REDIRECT EXAMINATION

12 BY MS. PATTERSON:

13 Q. Based on your law enforcement experience do you know
14 if a nine millimeter can shoot a .22?

15 A. No, ma'am. It cannot.

16 MS. PATTERSON: No further questions.

17 THE COURT: You may step down. Is this a good time
18 for a lunch break?

19 MR. BELL: Yes, sir, Your Honor.

20 THE COURT: It's 12:30. Is it long enough to be
21 back at 1:30?

22 MR. BELL: An hour is good with us.

23 THE COURT: Can y'all get back here at 1:30 and
24 we'll start back? We'll try to get started at 1:30.

25 That gives you a little more than an hour by that clock.

1 1:30. We'll start as quickly as we can. Don't discuss
2 the case. Keep your pads organized like you have been
3 doing.

4 (Whereupon, lunch break for the jury at 12:27.)

5 (Lunch Break.)

6 BAILIFF: All rise.

7 THE COURT: All ready?

8 MR. BELL: Judge, we have two quick motions in
9 limine.

10 THE COURT: Okay.

11 MR. BELL: Judge, the first one is for our next
12 witness Mr. Andre Bunch. We move to exclude any
13 reference to the two convictions on his record. It's not
14 qualifying under 608. He has a conviction for unlawful
15 carrying of a pistol. That does not carry in excess of
16 one year as the rule states is required. We also don't
17 believe that a 403 analysis would be probative for this
18 case. The second motion, Your Honor, is to exclude any
19 mention of Mr. Bunch's pending charge in Richland County.
20 It is a PWID MDMA also known as Molly.

21 THE COURT: Pending?

22 MR. BELL: Pending. Yes, sir. Now, typically we do
23 concede that pending charges can be crossed upon to show
24 bias under 608(c), however, in this case it's a Richland
25 County case, not not Lexington County. A recent case out

1 and make sure you're where you're supposed to be, chase
2 lawyers down, get them in the courtroom, that kind of
3 thing. So it's a really neat job to have. I was one
4 when I was coming up as a lawyer, but they're graduates,
5 law certificate, members of the Bar and they work for you
6 for a year. Anyway, she's a third year student. She's
7 here interviewing today. Anyway, with that explanation,
8 call your next witness.

9 MR. BELL: Thank you, Your Honor. The State calls
10 Andre Bunch to the stand.

11 Thereupon,

12 ANDRE BUNCH

13 after having been first duly sworn, testified as follows,

14 THE CLERK: Please have a seat. After you're
15 seated, please state your full name spelling your last
16 name for the record.

17 THE WITNESS: Andre Bunch, B-u-n-c-h.

18 DIRECT EXAMINATION

19 BY MR. BELL:

20 Q. How are you doing, Mr. Bunch?

21 A. I'm doing good. How about yourself?

22 Q. Good. Do you mind if I call you Andre?

23 A. That's all right.

24 Q. How old are you?

25 A. 34.

1 Q. Did you go to high school?

2 A. Yeah.

3 Q. Did you complete it?

4 A. Yes, sir.

5 Q. Where did you --

6 THE COURT: Don't back off that microphone. Can you
7 hear him okay or do you need him to come a little closer.
8 Okay. Keep going.

9 BY MR. BELL:

10 Q. Make sure you speak up for us.

11 A. Okay.

12 Q. Where did you graduate from high school?

13 A. Holly Hill-Roberts High.

14 Q. Where do you currently live?

15 A. I live on Broad River.

16 Q. Who do you live with?

17 A. My old lady. My girlfriend.

18 Q. Do you know a Brandon Ratliff?

19 A. Yes, sir.

20 Q. How did you know Brandon Ratliff?

21 A. A friend of mine. A very good friend of mine.

22 Q. Where did you meet him?

23 A. I met him through Moss, Fred Moss.

24 Q. How long had you known Mr. Ratliff back in 2014?

25 A. How long I know him?

- 1 Q. Yes, sir.
- 2 A. Probably like six, seven years, eight.
- 3 Q. Did you ever hang out with him?
- 4 A. Yeah.
- 5 Q. Did you ever hang out with Fred Moss?
- 6 A. Yes, sir.
- 7 Q. Did you ever hang out with both of them at the same
- 8 time?
- 9 A. Yes, sir.
- 10 Q. Did y'all have a good time together?
- 11 A. Yes, sir.
- 12 Q. Andre, I want to take you back to February 2nd of
- 13 2014. Does that date stand out in your mind?
- 14 A. Yes, sir.
- 15 Q. And on that night who were you hanging out with?
- 16 A. Uhm, Moss, Frederick Moss and Brandon Ratliff.
- 17 Q. Now, earlier in the night what were y'all up to?
- 18 A. Uhm, just partying.
- 19 Q. What do you mean?
- 20 A. Just going to clubs.
- 21 Q. Okay. What kind of clubs?
- 22 A. Bars and all that. Yeah.
- 23 Q. Did you ultimately go to a bar called the Cockpit?
- 24 A. Yes. I went to the Cockpit. We went to the Cockpit
- 25 later on.

1 Q. So where were you before the Cockpit?

2 A. Uhm, we was -- Well, I was at MoBays..

3 Q. Were you with Brandon and Fred at that time?

4 A. Yes, sir.

5 Q. Did you ever go to Club Exclusive that night?

6 A. Exclusive then we went to Cockpit.

7 Q. Why did y'all end up going to the Cockpit that
8 night?

9 A. What happened now?

10 Q. Why did you end up going to Cockpit?

11 A. Oh, just hanging out later.

12 Q. When you say hanging out later, what do you mean?

13 A. Like just hanging out like after the club we just
14 wanted something else to do so we just went to that club.

15 Q. Did you know at the time the Cockpit would still be
16 open?

17 A. Yes. Somebody told me that at Exclusive.

18 Q. Did you meet Brandon and Fred there?

19 A. Yes, sir.

20 Q. At the Cockpit?

21 A. Yes, sir.

22 Q. Do you recall what time it was when you met them
23 there?

24 A. Like I want to say about four.

25 Q. Did you drive with them?

1 A. No.

2 Q. How did you get there?

3 A. I drove my vehicle.

4 Q. What kind of vehicle is that?

5 A. Chrysler 300.

6 Q. After y'all got to the Cockpit, I want you to walk
7 us through what happened?

8 A. Okay. Well, we went in the Cockpit. I went to the
9 bar buying drinks and all that and, uhm, heard like a little
10 altercation going off.

11 Q. When you say a little altercation, what does that
12 mean?

13 A. Like a little fussing. Like this here, people
14 fussing back and forth.

15 Q. Did you turn your attention to that altercation?

16 A. Yeah. To talk to Moss real quick.

17 Q. Okay. Did Moss appear to be involved in that
18 altercation?

19 A. Yes, sir.

20 Q. How many people in all appeared to be involved in
21 that altercation?

22 A. It was a lot of people.

23 Q. Were there a lot of people on Moss' side?

24 A. No.

25 Q. When you saw that there was an altercation

1 occurring, what did you do?

2 A. Uhm, like I said, I talked to Moss, then I went back
3 to the bar to close my tab. The bouncer was walking them out.
4 I came out there and I guess two groups -- Well, Moss --

5 Q. Before that, do you remember talking to Brandon
6 while you knew the altercation was going on?

7 A. I think -- Yeah. I talk - I talked to Brandon.

8 Q. What did you talk to him about?

9 A. I asked him if he was okay. If everything was all
10 right.

11 Q. Did Brandon also exit the bar with Moss?

12 A. Yes, sir.

13 Q. Did you follow them outside?

14 A. After I closed my tab.

15 Q. So were you right behind them when they exited?

16 A. No, sir.

17 Q. How long after they exited the bar did you exit the
18 bar?

19 A. Probably about five minutes after they walked out.

20 Q. And you walked out of the bar and does anything
21 stand out to you?

22 A. Uhm, like what?

23 Q. What's going on outside when you walked out?

24 A. Well, when I went outside, there was a group of guys
25 fussing with Moss.

1 Q. And did it appear to be the same people from inside
2 that were fussing with Moss?

3 A. Yeah.. I guess. Yes, sir. Yes, sir.

4 Q. Where was Brandon at that time?

5 A. Outside?

6 Q. Yes, sir.

7 A. He was standing behind the car.

8 Q. Whose car?

9 A. Frederick Moss.

10 Q. Do you recall what kind of car that was?

11 A. A Saturn.

12 Q. Do you recall the color?

13 A. Blue.

14 Q. When you walked out and you saw the altercation
15 occurring, what did you do?

16 A. Uhm, I went to Moss. I told Moss, hey, man, let's
17 cut this out. You know, you guys out here serious and I told
18 Brandon to tell Moss let's go so I can meet him at his house
19 because we were about to leave to go to Frederick's house.

20 Q. Did Fred and Brandon, were they able to get in the
21 car?

22 A. I ain't saw that.

23 Q. So after you talked to Moss, did you confront the
24 other group of men?

25 A. No, sir.

1 Q. How did you position yourself near those two
2 groups?

3 A. Uhm, I faced towards Fred Moss and was telling him,
4 hey, calm down. We need to go so...

5 Q. So if you were facing Moss, then what was at your
6 back?

7 A. The other crowd guys.

8 Q. Why did you position yourself that way?

9 A. So he don't think that I was aggressive towards them
10 so they won't escalate the problem.

11 Q. Were you trying to escalate the problem?

12 A. No, sir.

13 Q. What were you trying to do?

14 A. I was trying to stop it.

15 Q. Given your positioning, were you able to clearly see
16 any of the men that were in the argument?

17 A. Clearly see? No, sir.

18 Q. After talking to Moss, did you start - did you go
19 anywhere else?

20 A. Towards my car.

21 Q. Where was your car?

22 A. My car was parked by Peachtree Apartments.

23 Q. How far away is that from the bar?

24 A. Probably 20 to 30 yards.

25 Q. As you were walking to your car what happened?

1 A. Uhm, when I walked to my car, when I was going to my
2 car, I heard some shots went off.

3 Q. When you say some shots, what do you mean?

4 A. Like gun shots; bullets, guns.

5 Q. Did they sound close?

6 A. Yeah.

7 Q. Were you concerned when you heard that?

8 A. Yes, sir.

9 Q. How did you react?

10 A. I jumped in the car because I knew that Brandon and
11 Moss was in an argument so I went back towards where they was
12 fighting at and all that. Well, not fighting, but where they
13 was arguing at and I saw Brandon in the middle of the road.

14 Q. Just to be clear, you said that you knew it was
15 Brandon and Fred Moss. Do you mean you knew they were the
16 ones with the gun?

17 A. No.

18 Q. What do you mean?

19 A. I mean, I know that they was like in a argument.
20 They was in a altercation.

21 Q. Were you putting two and two together?

22 A. Yes, sir.

23 Q. How long did it take you to drive your car back to
24 the Cockpit?

25 A. After the shots?

1 Q. Yes, sir.

2 A. Uhm, seconds.

3 Q. When you pulled up, what did you see?

4 A. I saw a bunch of people pumping on Brandon's chest
5 and I was telling they that, hey, no, y'all killing him. I
6 picked him up, put him in the back of my car and took him to
7 the hospital.

8 Q. So when you pull up, where is Brandon?

9 A. In the middle of the highway.

10 Q. How is he positioned?

11 A. Uhm, on his back.

12 Q. And you said he was on the highway. Was that in
13 front of the Cockpit?

14 A. Yeah. Right in front of the Cockpit. Yes, sir.

15 Q. And when you got there, were there already
16 individuals trying to help him?

17 A. Yes, sir.

18 Q. Who did you recognize near him?

19 A. Like what do you mean like?

20 Q. Did you recognize any of the people that were --

21 A. Oh, no, sir. No, sir. No, sir.

22 Q. Where was Fred Moss?

23 A. He was over Brandon.

24 Q. So was Moss attempting to help Brandon?

25 A. Well, I guess. I don't know because when I rolled

1 up, Moss already been there but there was other people like
2 pumping on him and stuff like that.

3 Q. The only person you knew was Moss?

4 A. Yes.. Yes, sir.

5 Q. Did you try to talk to Brandon?

6 A. Yes, sir. I tried to talk to him but he wasn't
7 responding. He was really fighting for air.

8 Q. You say fighting for air?

9 A. Yeah. He was trying to breathe.

10 Q. Did he seem alert?

11 A. Eyes was open but it was rolling back.

12 Q. Did you know something was wrong?

13 A. Yes, sir.

14 Q. What did you do?

15 A. What do you mean like what I do? If I knew
16 something was wrong?

17 Q. After you saw Brandon with his eyes rolling back,
18 how did you proceed?

19 A. Uhm, I just pick him up, lay him in my back seat,
20 Frederick stay in the back seat with him and we shot off to
21 Lexington Hospital.

22 Q. As you were trying to pick Brandon up, were any of
23 those men from the argument earlier still around?

24 A. I ain't saw nobody around. Everybody (indicating),
25 yeah, run.

1. Q. You made a hand gesture. What does that mean?

2. A. I guess everybody was gone because I only saw like -
3. it was just like the people who was around here was helping
4. Brandon but I ain't saw -- You know what I'm saying? -- the
5. other crowd. I really wasn't paying attention to the other
6. crowd.

7. Q. When you got to Brandon, did you see anybody with a
8. gun?

9. A. No, sir.

10. Q. Did you see Fred Moss with a gun?

11. A. No, sir.

12. Q. Did Brandon Ratliff have a gun on his clothing?

13. A. No, sir.

14. Q. Was there one on the ground near him?

15. A. No, sir.

16. Q. Did you have a gun?

17. A. Yes, sir.

18. Q. Where was your gun?

19. A. Glove compartment.

20. Q. What kind of gun is that?

21. A. A nine millimeter Smith and Wesson.

22. Q. Who all was in the vehicle with Brandon?

23. A. Just him and Moss.

24. Q. And who was driving?

25. A. Brandon.

1 Q. When you were going to the hospital, who was
2 driving?

3 A. Oh, you talking about -- Me. Me. Me. Me. Me.
4 Me.

5 Q. How long did it take you to get to Lexington
6 Medical?

7 A. Probably about five, five minutes.

8 Q. Were you going slow or fast?

9 A. I was going fast. Yes, sir.

10 Q. Was Brandon talking?

11 A. No, sir.

12 Q. When you got to the hospital, what did you do with
13 Brandon?

14 A. I got him out the back seat and when I looked at
15 him, I know he was gone already. Then I took him in the
16 hospital.

17 Q. What makes you say he was gone already?

18 A. Because he wasn't responding to us. We was talking
19 to him. He was doing nothing. At first he was fighting to
20 breathe and he was no more of that so...

21 Q. Could you find an injury on him?

22 A. I saw blood coming from his chest and out of his
23 mouth and nose.

24 Q. Did you carry him inside?

25 A. Yes, sir. I carried him inside screaming for help

1 and nurses came and put him on a table and took him to the
2 back.

3 Q. Did you get to go in the back with him?

4 A. No, sir.

5 Q. Where did you wait?

6 A. In front in a awaiting room or something like that
7 in the hospital.

8 Q. Who was with you?

9 A. Frederick Moss.

10 Q. Did you call anybody else to meet you there?

11 A. Oh, yeah. My girlfriend, Julia Sawyer.

12 Q. Why did you call her?

13 A. Well, just, I just called her to comfort me.

14 Q. Did she come out there?

15 A. Yes, sir.

16 Q. Did anybody else come with her?

17 A. No, sir.

18 MR. BELL: Permission to approach the witness.

19 THE COURT: Yes.

20 BY MR. BELL:

21 Q. Andre, I'm going to show you what's been marked as
22 State's 29. Do you recognize that?

23 A. Yes, sir.

24 Q. What is that?

25 A. This here? What you say now?

1 Q. What is in that picture?

2 A. Oh, my Chrysler 300. My vehicle.

3 Q. Is that where you were parked on this night back on
4 February 2nd, 2014?

5 A. Yes, sir.

6 Q. Does that fairly and accurately reflect your
7 vehicle?

8 A. Yes, sir.

9 Q. Showing you State's 30, do you recognize that?

10 A. Yes, sir.

11 Q. What is that?

12 A. Back seat where Brandon was laying.

13 Q. Is that your vehicle?

14 A. Yes, sir.

15 Q. Is that the vehicle from that night?

16 A. Yes, sir.

17 MR. BELL: The State seeks to move State's 29 and 30
18 into evidence.

19 MS. ZMROCZEK: Without objection, Your Honor.

20 THE COURT: 29 and 30 are in without objection.

21 MR. BELL: Permission to publish, Your Honor.

22 THE COURT: Certainly.

23 BY MR. BELL:

24 Q. Referring to State's 29, Andre, what are we looking
25 at?

1 A. My Chrysler 300. My vehicle.

2 Q. Where are you parked in that picture?

3 A. Lexington Hospital parking lot by the emergency
4 room, emergency exit.

5 Q. Is that where you pulled up when you dropped Brandon
6 off?

7 A. Yes, sir.

8 Q. Was it the same time of day as when this picture was
9 taken?

10 A. No, sir. It was dark. Yeah. I think it was
11 dark.

12 Q. Showing you State's 30, what are we looking at
13 here?

14 A. My vehicle back seat where Brandon was laying on.

15 Q. Is that Brandon's blood on the seat?

16 A. Yes, sir.

17 Q. Is that where you picked him up?

18 A. Yes, sir.

19 Q. As you sat in the waiting room did anybody show up
20 to talk to you?

21 A. Uhm, Detective Black.

22 Q. So law enforcement showed up?

23 A. Yes, sir.

24 Q. Did they interview you?

25 A. Yes, sir.

- 1 Q. Did you cooperate with them?
- 2 A. Yes, sir.
- 3 Q. Where did they put you?
- 4 A. Uhm, in the back seat of the police car.
- 5 Q. Did they handcuff you?
- 6 A. No, sir.
- 7 Q. Did you give them a statement?
- 8 A. Yes, sir.
- 9 Q. Do you recall what you told them?
- 10 A. Uhm, not line for line but...
- 11 Q. What did you tell them in general?
- 12 A. Just told them like what happened. How it went
- 13 down.
- 14 Q. After they interviewed you and you gave a statement,
- 15 what else did they do with you?
- 16 A. They, uhm, test my fingers for gun powder residue,
- 17 they took my shirt from me with Brandon's blood that was on
- 18 me. They took that shirt from me.
- 19 Q. Did you consent to being tested for gunshot
- 20 residue?
- 21 A. Yes, sir.
- 22 Q. Did you give them any lip about it?
- 23 A. No, sir.
- 24 Q. Did they swab you?
- 25 A. Yes, sir.

1 Q. Did you tell them that you had anything in the
2 vehicle?

3 A. Yes, sir.

4 Q. What did you have in the vehicle?

5 A. My nine. My gun.

6 Q. Was that the same gun that you referenced earlier?

7 A. Yes, sir.

8 Q. Referring to defense's 26, would you open that box
9 for me, Andre?

10 A. (Witness complies.)

11 Q. Do you recognize that?

12 A. Yes, sir.

13 Q. What is that?

14 A. My gun.

15 Q. Is that the gun that you had that night?

16 A. Yes, sir.

17 Q. Is that the gun that you told the police about?

18 A. Yes, sir.

19 Q. What caliber is that firearm?

20 A. Nine.

21 Q. Where was it stored that night?

22 A. Glove compartment.

23 Q. Did you have it on you at the bar?

24 A. No, sir.

25 Q. How long had you had that gun?

1 A. I think about a year.

2 Q. Andre --

3 A. Yes, sir.

4 Q. -- do you consider yourself a tough guy?

5 A. No, sir. No, sir.

6 Q. Did you consider yourself a protector of your
7 friends?

8 A. Yes, sir.

9 Q. Were you able to protect Brandon that night?

10 A. No, sir.

11 Q. I'm showing you State's 28. Is that you?

12 A. Yes, sir.

13 Q. Is that what you were wearing that night?

14 A. Yes, sir.

15 MR. BELL: The State seeks to move State's 28 in.

16 MS. ZMROCZEK: Without objection, Your Honor.

17 THE COURT: 28 is in without objection.

18 MR. BELL: Permission to publish, Your Honor.

19 THE COURT: Certainly.

20 BY MR. BELL:

21 Q. Were you able to protect Brandon that night?

22 A. No, sir.

23 Q. Referring to State's 28, is that why such a big guy
24 has such red eyes in this picture?

25 MS. ZMROCZEK: Objection, Your Honor.

1 BY MR. BELL:

2 Q. Were you upset?

3 A. Yes, sir. I was upset.

4 THE COURT: He rephrased the question so I'll allow
5 it.

6 MR. BELL: Thank you, Andre. Please answer any
7 questions the defense may have.

8 CROSS EXAMINATION

9 BY MS. ZMROCZEK:

10 Q. Mr. Bunch, how many bars did you go to that night?

11 A. Uh, three.

12 Q. How much did you have to drink?

13 A. I can't recall. Not too much.

14 Q. Not too much?

15 A. No. Not too much.

16 Q. But you were at three different bars?

17 A. Yeah.

18 Q. What time did you start to go out that night?

19 A. Around like 12.

20 Q. Went out around 12?

21 A. Yeah.

22 Q. You were at the Cockpit until at least 5:50?

23 A. Oh, no. No. I was out but I got to the Cockpit
24 around 4:00.

25 Q. Around 4:00. But between 12 and 4 you were out at

1 bars?

2 A. Yeah. I was out at bars.

3 Q. But you didn't have a lot to drink?

4 A. No.

5 Q. So that's not why your eyes were red?

6 A. No.

7 Q. Okay. And do you recall giving a statement at the
8 hospital?

9 A. Yes, ma'am.

10 Q. And you were upset, right?

11 A. Yes, ma'am.

12 Q. So you didn't give them a lot of details?

13 A. I gave them what I knew.

14 Q. Okay.

15 A. And what I saw.

16 Q. All right. And did they ever come back and ask you
17 to give another statement?

18 A. No.

19 Q. Okay. Did they ever ask you what the persons who
20 got into the fight with Brandon and Moss were wearing?

21 A. No.

22 Q. Did they ever ask you to pick out a gun?

23 A. No. The gun they asked me to pick out was asking me
24 what kind of gun that Brandon had.

25 Q. What kind of gun Brandon had?

1 A. Yeah.

2 Q. All right. So they did ask you to pick out a gun?

3 A. Yeah.

4 Q. And you picked out the kind of gun that Brandon had,
5 right?

6 A. Yeah.

7 Q. What kind of gun did you pick out that Brandon
8 had?

9 A. Uhm, that was a .40 caliber.

10 Q. That's what you picked out and that's what you
11 circled?

12 A. Yeah.

13 Q. A .40 caliber?

14 A. Yeah.

15 Q. And where did Brandon have that gun?

16 A. He usually have it in the glove compartment.

17 Q. He usually had it were?

18 A. In the glove compartment.

19 Q. He kept it in a holster?

20 A. Yes, ma'am.

21 Q. Did you see the holster that night?

22 A. I saw nothing that night.

23 Q. You started to say that when you were in the bar
24 paying for your drinks, uhm, that Moss and Brandon -- Who was
25 in the disagreement?

1 A. Uhm, I just saw Frederick talking like, you know, in
2 an altercation so I really ain't know who he was yelling at
3 and all that.

4 Q. And you didn't know who he was yelling at?

5 A. No.

6 Q. You didn't look at him?

7 A. If I did, I can't remember.

8 Q. How many people in that bar had dreads that night?

9 A. (Indicating.)

10 Q. A lot?

11 A. A lot of people. Yeah.

12 Q. A lot of people had dreads that night in the bar,
13 right?

14 A. (Witness nodding head.)

15 Q. And outside, right?

16 A. I don't know. I don't know. People have dreads.. I
17 don't know.

18 Q. Okay. What about -- I'm not asking you for a
19 number. I'm just saying that there were more than one
20 person?

21 MR. BELL: Objection. Asked and answered.

22 THE COURT: Sustained.

23 BY MS. ZMROCZEK:

24 Q. You said that the bouncer was escorting them out?

25 A. Yes, ma'am.

- 1 Q. Who was the bouncer escorting out?
- 2 A. Fred and Brandon.
- 3 Q. Fred and Brandon?
- 4 A. Mm-hmm.
- 5 Q. Escorting Fred and Brandon out of the bar, right?
- 6 A. Mm-hmm.
- 7 Q. What did the bouncer look like?
- 8 A. Big guy.
- 9 Q. Did he have dreads?
- 10 A. I don't know. Just a big guy.
- 11 Q. Just a big guy?
- 12 A. Yeah.
- 13 Q. How long were you friends with Brandon?
- 14 A. Uhm, like I said, like seven years.
- 15 Q. About seven years?
- 16 A. Mm-hmm.
- 17 Q. So you knew his friends?
- 18 A. Who, Brandon's friends?
- 19 Q. Right. Were you friends with Brandon's friends?
- 20 Did y'all have the same friends?
- 21 A. No. I was just cool with Brandon.
- 22 Q. Just with Brandon?
- 23 A. Mm-hmm.
- 24 Q. Okay. How many cell phones do you have?
- 25 A. I had - I got one.

1 Q. How many did you have that night?

2 A. I had two.

3 Q. You had two that night?

4 A. Mm-hmm.

5 Q. And the police took both of them?

6 A. No. They took them, but they gave them back to
7 me.

8 Q. They took them but they gave them back to you,
9 right?

10 A. Mm-hmm.

11 Q. Any reason that you had two cell phones that
12 night?

13 A. Just have two phones.

14 Q. Okay. So you remember -- I want to go back to
15 picking out the gun part, all right?

16 A. Mm-hmm.

17 Q. When you picked it out, you picked out which gun you
18 said real close that I saw. You were talking about real close
19 that you saw that Brandon's gun was?

20 A. Talking about like what kind of gun Brandon had.

21 MS. ZMROCZEK: Your Honor, may I approach?

22 THE COURT: Yes.

23 BY MS. ZMROCZEK:

24 Q. (Proffering.)

25 A. That's what I'm talking about.

1 Q. Okay. I'm sorry.

2 A. I mean, ask me the question again.

3 Q. So when you said that you circled the gun, you said
4 real close that I saw, meaning that was the closest to
5 Brandon's gun that you saw in these pictures?

6 A. Yeah.

7 Q. Is that what you're saying?

8 A. Yeah. Yeah.

9 Q. Okay. And you were parked -- I'm gonna put a map up
10 for you, okay? I'll ask you to step down, if you can. I need
11 you to stand on this side so the court reporter can hear you
12 and keep your voice up, okay?

13 A. Okay.

14 Q. Stand on this side for me and face the jury. Come
15 stand over here. Stand over here.

16 A. (Witness complies.)

17 Q. There you go. Now, show where your car was parked.

18 A. (Indicating.) Right here.

19 Q. Parked in the road or in the parking lot?

20 A. On the road.

21 Q. Why was it parked in the road?

22 A. Because there was no parking spots.

23 Q. There were no -- So it was packed that night?

24 A. Yeah. It was packed.

25 Q. And where was -- You said Fred and Brandon drove

1 separately or together but separately from you?

2 A. Yeah. Exactly.

3 Q. Where were they parked?

4 A. They was parked right here.

5 Q. Okay. And where - and you - they left out of the
6 bar. They were being escorted out while you were still
7 inside?

8 A. Mm-hmm.

9 Q. Is that a yes or no?

10 A. Yes.

11 Q. And then where did you next see them?

12 A. Uhm, right here.

13 Q. You saw them right here by the car, right?

14 A. Mm-hmm. Mm-hmm.

15 Q. Were they by the driver's side or by the passenger's
16 side?

17 A. Driver's side.

18 Q. Both of them were by the driver's side?

19 A. Brandon was more in the back.

20 Q. Brandon was more in the back?

21 A. Mm-hmm.

22 Q. Of the vehicle?

23 A. Mm-hmm.

24 Q. And then where is it that you found Brandon?

25 A. Right here.

1 Q. Okay. So in the road?

2 A. Mm-hmm.

3 Q. I'm sorry.

4 A. Yeah. In the road. Yes, ma'am.

5 Q. All right. Thank you. Have a seat.

6 A. All right. (Witness complies.)

7 Q. And Mr. Bell kept asking you about the group of, the
8 other group of people that were in the altercation, right?

9 A. Who?

10 Q. The other group.

11 A. Who? Who was asking me?

12 Q. Mr. Bell, the Solicitor.

13 A. Oh, yeah.

14 Q. About the other group of people that were in the
15 altercation, right?

16 A. Yeah.

17 Q. How many?

18 A. You asked -- He asked -- Hold on. Run that again.

19 Q. How many people were in the altercation that you saw
20 in the bar?

21 A. I saw just Brandon and Moss. Really Moss and a
22 group of people.

23 Q. How many in the group?

24 A. (Indicating.) I would say more than five, six.

25 Q. More than five or six?

- 1 A. Mm-hmm.
- 2 Q. Did you see what any of them had on?
- 3 A. (Witness shaking head.) No.
- 4 Q. No. Okay. Did you see any of their hair styles?
- 5 A. Like I saw, like I said, dreads and stuff.
- 6 Q. On more than one person?
- 7 A. I guess so.
- 8 Q. Okay. I want to ask you about this Smith & Wesson
- 9 nine millimeter that you say you own, right?
- 10 A. Mm-hmm.
- 11 Q. Where did you buy it?
- 12 A. Shooters' Choice.
- 13 Q. You bought this gun at Shooters' Choice?
- 14 A. Mm-hmm.
- 15 Q. It was your gun, right?
- 16 A. Yes, ma'am.
- 17 Q. You're familiar with it?
- 18 A. Yes, ma'am.
- 19 Q. Do you shoot it often?
- 20 A. No. I don't shoot it.
- 21 Q. How many bullets did you keep in it?
- 22 A. Not a whole clip.
- 23 Q. Not a whole clip?
- 24 A. (Witness shaking head.)
- 25 Q. A whole clip or not a whole clip?

1 A. Not a whole clip.

2 Q. So how many?

3 A. Probably six, seven, eight. Something like that.

4 Q. When was the last time you used it?

5 A. I have no idea.

6 Q. But you had it for a year?

7 A. Yeah. The last time I probably used it was at the
8 range.

9 Q. At the range?

10 A. Yes. That's probably it.

11 Q. Which range did you go to?

12 THE COURT: That is not relevant. I mean --

13 MS. ZMROCZEK: I'll ask a different question, Your
14 Honor.

15 THE COURT: Okay.

16 MS. ZMROCZEK: I'll move on.

17 BY MS. ZMROCZEK:

18 Q. After you shot it at the range, do you fill it
19 back up with bullets?

20 A. No.

21 Q. I'm sorry.

22 A. No, ma'am.

23 Q. And you use nine millimeter bullets?

24 A. Yes, ma'am.

25 MS. ZMROCZEK: No further questions.

1 THE COURT: Anything on redirect?

2 REDIRECT EXAMINATION

3 BY MR. BELL:

4 Q. You testified that you were asked to pick a gun out
5 of a lineup; is that true?

6 A. Yes, sir.

7 Q. And what was it that you said was written that you
8 wrote beside the gun that you selected?

9 A. It was close.

10 Q. And what gun were you referring to?

11 A. Brandon's gun.

12 Q. And were you referring to a gun that you saw Brandon
13 carrying that night?

14 A. I was referring to a gun that Brandon owned.

15 Q. How did you know that Brandon owned a gun?

16 A. He usually take it with him.

17 Q. And you had known Brandon for how long?

18 A. Seven years.

19 Q. To clarify, when you indicated that gun in the line
20 up, were you indicating that you saw that firearm at any point
21 that night?

22 A. No.

23 Q. Did you ride to the Cockpit with Brandon?

24 A. No.

25 Q. Do you have any idea what was inside of Fred Moss'

1 car?

2 A. No, sir.

3 Q. You said you saw Fred and Brandon being escorted
4 out; is that right?

5 A. Yes, sir.

6 Q. Were others being escorted out, too?

7 A. I just see people walking out the door because the
8 club was closing, too, so....

9 Q. And did you see a group of people follow Brandon and
10 Moss out?

11 A. Yeah. I saw -- Yeah. Everybody was leaving out the
12 door.

13 Q. So even though Fred and Brandon were exiting, were
14 there others exiting behind them?

15 A. Yes, sir.

16 Q. Were some of them the same people you had seen
17 inside of the club?

18 A. Yes, sir.

19 Q. Were some of them the same people that you saw in
20 argument with Fred Moss?

21 A. Yes, sir.

22 Q. At any point in time did you ever give a description
23 of the shooter to law enforcement?

24 A. No, sir.

25 Q. Have you ever indicated that you saw what they

1 looked like that night?

2 A. No, sir.

3 MR. BELL: No further questions.

4 THE COURT: Okay. You may step down.

5 MR. BELL: The State calls Fred Moss.

6 Thereupon,

7 FRED MOSS

8 after having been first duly sworn, testified as follows,

9 THE CLERK: Please have a seat. After you're
10 seated, please state your full name spelling your last
11 name for the record.

12 THE WITNESS: Fred Moss, M-o-s-s.

13 DIRECT EXAMINATION

14 BY MS. PATTERSON:

15 Q. Mr. Moss, how old are you?

16 A. 34.

17 Q. And where do you currently live?

18 A. Charlotte, North Carolina.

19 Q. How long have you lived in Charlotte?

20 A. I moved there six months ago.

21 Q. Do you know someone named Brandon Ratliff?

22 A. Yes.

23 Q. How do you know Brandon?

24 A. Brandon was a close friend, a brother. More like
25 family.

1 Q. How long had you known Brandon Ratliff?

2 A. Uhm, eight years.

3 Q. Do you remember how y'all met?

4 A. We met through a mutual friend, uhm, and then we
5 had, we liked the same things, you know. We just - Brandon
6 has that personality where anybody can get along with him but
7 we had the same ambition, if you want to say, in life,
8 period.

9 Q. On February 2nd, 2014, were you with Brandon?

10 A. Yes.

11 Q. Where had y'all been that evening?

12 A. Well, we went out. We had - we hit the town as you
13 say. We went to different spots. I don't know off the top
14 but we ended up at the Cockpit. That was our last stop.

15 Q. Do you remember where y'all were before you went to
16 the Cockpit?

17 A. I think it was a bar called Exclusive and that was
18 like down the road from there.

19 Q. Was anybody else with you and Brandon?

20 A. No. Just us in the car.

21 Q. Was anybody else hanging out with y'all at the
22 bar?

23 A. Andre was.

24 Q. You and Brandon were riding together?

25 A. Mm-hmm.

- 1 Q. Who was driving?
- 2 A. Brandon.
- 3 Q. Whose car was Brandon driving?
- 4 A. My car.
- 5 Q. And what kind of car did you have at this time?
- 6 A. It was a Saturn four seater. Little car they came
7 out with.
- 8 Q. Do you remember what color it was?
- 9 A. Teal. North Carolina blue. A little bit lighter
10 probably.
- 11 Q. Do you remember about approximately what time y'all
12 got to the Cockpit?
- 13 A. Around about I want to say 2:30, 3:00. It was
14 morning time.
- 15 Q. And do you remember, can you kind of describe the
16 club? Had you been there before?
- 17 A. Yes. We had gone there. It was my second time
18 going. It's like a, I say it's like, it looks like a big
19 trailer. I didn't like it.
- 20 Q. So since you didn't like it, why did you go there
21 that night?
- 22 A. Brandon wanted to stay out a little bit longer, uhm,
23 because we usually, we don't really hang out. He was busy
24 with school. I was busy with work, so we try to make the best
25 of our nights so we wasn't sleepy so we just wanted to stay

1 out a little bit longer.

2 Q. When you got to the club, what kind of things did
3 you and Brandon do inside?

4 A. Well, first I just walked around. He went the other.
5 way. Brandon knows a lot of people because he's a Columbian.
6 Well, he knew a lot of people in the club because he's been
7 here longer than me. Basically scope the scene. Looked
8 around. He went to get me a beer. He got me a beer and we
9 just watched people dance really. It was really just standing
10 around because it was packed but it was basically standing
11 around. I don't know what Brandon was doing but we separated.
12 I was by myself.

13 Q. Were you having a good time?

14 A. It was okay. I was really ready to go.

15 Q. Did anything about the atmosphere change?

16 A. Well, yeah. That's one of the reasons why -- It's a
17 place where a lot of gang members and everything hang out and
18 just people who don't have anything better to do.

19 MS. ZMROCZEK: Judge, may we approach?

20 THE COURT: Yeah.

21 (Side bar off the record.)

22 THE COURT: All right. I have to take up a matter
23 real quick. Step to the jury room and take a quick
24 break. Ten minutes. We'll have you back in here
25 shortly.

1 (Whereupon, the jury entered the jury room at 2:25.)

2 THE COURT: All right. Ms. Zmroczek.

3 MS. ZMROCZEK: Your Honor, we had to approach
4 because specifically we had pretrial motions about this.
5 I even filed a pretrial motion or we argued that the
6 State said that they weren't going to bring up gang
7 testimony. Your Honor, I assumed that they would have
8 instructed their witnesses not to bring that up but
9 apparently if they did, they just ignored them or --

10 THE COURT: No. No. No. That's not fair. That's
11 not fair. This was an in group comment. If they had
12 instructed him and you cross him, you could say the State
13 told you what to say. I don't think that is a fair
14 comment. Inadvertently I heard his tongue, his voice,
15 the whole thing. He wasn't part of the pretrial motions
16 but he should have been cautioned be careful and don't
17 mention anything about gangs. It was not intentional.

18 MS. ZMROCZEK: And I was not saying that it was
19 intentional, Your Honor.

20 THE COURT: It sounded like it.

21 MS. ZMROCZEK: Well, what I was trying to say was
22 either they told him and he ignored them or they just
23 forgot to caution him. I wasn't saying that they did
24 anything improper, Your Honor, at all. But I believe
25 that the comment is improper and it's prejudicial

1 especially saying it was full of gang members inside and
2 trying to implicate or I think he's going to say he saw
3 my client inside and at this time, Your Honor, we would
4 move for a mistrial based on the prejudicial nature of
5 that comment or ask for a curative instruction at the end
6 but --

7 THE COURT: I'll give a curative instruction but I
8 don't think that's a reason for a mistrial. I think he
9 was commenting about general people in the bar and he was
10 ready to go. It seemed to be casual talking about what
11 he observed. And as far as I understand what the
12 question is now is he's not described any conduct of a
13 altercation or anything. He's watching people dance and
14 he's about ready to go and his friend don't want to go.
15 That's about where he was. So I'll either not instruct
16 them a cautionary, a curative instruction to the jury and
17 leave it alone or if y'all want to suggest one, I'll do
18 that, too. Sometimes you don't want to say it twice. It
19 brings attention to it. So I'll leave that up to you.
20 Ms. Patterson, I think just from the conversation
21 Mr. Moss has heard now, he's been now cautioned to stay
22 away from comments about any gangs, gang membership, gang
23 colors, anything like that. Just stay clear of that.
24 THE WITNESS: I was going to say gang signs so don't
25 say that either?

1 THE COURT: No. All right. Now, you want to think
2 about a curative instruction?

3 MS. ZMROCZEK: I'll think about it, Your Honor.

4 THE COURT: Let's take a couple minutes break. You
5 can't talk about your testimony with anybody. You're
6 still under oath until your back on the witness stand.
7 You didn't do anything wrong.

8 (Short break.)

9 THE COURT: Back on the record. All right.

10 MS. ZMROCZEK: (Proffering.) Sorry, Judge. I have
11 terrible handwriting.

12 THE COURT: Is that what you want?

13 MS. ZMROCZEK: Well, Your Honor, what I did is I
14 drafted that on the fly, a curative motion asking you to
15 strike any testimony regarding any testimony about any
16 gang members being inside that bar. It has no relevance
17 to this. I still think, Your Honor, however, that the
18 jury has been unduly prejudiced and that a mistrial would
19 overcome that curative instruction, but I understand that
20 the Court asked me to develop that in lieu of and so I
21 would just ask you again to grant the mistrial because I
22 still don't think that curative instruction is going to
23 be adequate but it's better than nothing at all, if you
24 choose not to grant the mistrial.

25 THE COURT: The State got any objection to the

1 curative instruction?

2 MS. PATTERSON: Your Honor, I don't. And I just
3 want to put on the record the pretrial what we agreed to
4 was the defendant's own admission to be a part of the
5 Folk Gang Nation, and we certainly wasn't going to try to
6 get into that. We had no idea this was coming and it
7 wasn't identified directly to Mr. Brooks. It was just
8 talking about gang members in general but we have no
9 objection to that curative instruction being given to the
10 jury.

11 MS. ZMROCZEK: That's fine, Your Honor. And I would
12 just ask that they caution the rest of their witnesses
13 ahead of time.

14 THE COURT: Okay. We'll do that. That's not a
15 problem. All right. Bring the jury in.

16 BAILIFF: Yes, sir.

17 (Whereupon, the jury entered the courtroom at 2:40.)

18 THE COURT: And I'll respectfully not grant a
19 mistrial and give a curative instruction so the record is
20 clear.

21 MS. ZMROCZEK: Thank you, Your Honor.

22 (Whereupon, the jury entered the courtroom at 2:40
23 p.m.)

24 THE COURT: Folks, when we took a break, the Court
25 took up a matter and I'll just give you an instruction.

1 Some prior testimony of the witness included some of his
2 observations of some of the patrons in the club, whether
3 or not they were members of any type of clubs or gangs,
4 that type of thing. That's not relevant to the trial
5 here. He said it was only his second trip in here. That
6 testimony is stricken. I would request that you not
7 consider that testimony and we'll continue on with the
8 testimony from there. Is that sufficient, Ms. Zmroczek?

9 MS. ZMROCZEK: Yes, Your Honor. Thank you..

10 THE COURT: You may continue, Ms. Patterson.

11 MS. PATTERSON: Thank you, Your Honor.

12 BY MR. PATTERSON:

13 Q. So, Mr. Moss, you were ready to leave the club?

14 A. Yeah. I didn't say nothing though. I wanted
15 everybody to enjoy themselves.

16 Q. Okay. And did you proceed to talk to somebody at
17 the club?

18 A. In the latter part of the night I saw a female at
19 the bar so I indulged in conversation and, uhm, man, I didn't
20 talk to her about two or three minutes until I seen like the
21 whole floor just turn my way looking my way so I wanted to
22 make sure they looking at me and the people trying to edge
23 towards my way so I was assuming it was somebody girl. That's
24 just an assumption. I don't know.

25 Q. About how many people was it that looked your way?

1 A. It was more than five.

2 Q. Did they approach you?

3 A. Uhm, some people were getting held back. I was
4 still sort of confused but I was like standing there and, uhm,
5 the only person that actually approached me was like right
6 here (indicating) was a guy with dreads.

7 Q. What did that guy look like?

8 A. He was about five eight, long dreads past his
9 shoulders. He said - he said something slick. But he said,
10 what's up? So I was like, what's up? Like I mean, I wasn't
11 going to back down or anything but that's what happened.

12 Q. Was anybody with this guy?

13 A. Uhm, it looked like everybody was like together like
14 they knew each other so it was probably going to be not too
15 good for me but, uhm, if I was going to get one person, that
16 was going to be him.

17 Q. And this guy with the dreads, about how old did he
18 look?

19 A. How old?

20 Q. Mm-hmm.

21 A. Oh, man, some young boy. Probably like 20. Early
22 20's.

23 Q. When you say dreads, about how long were his
24 dreads?

25 A. Past his shoulders.

1 Q. Can you demonstrate to us about how long?

2 A. About right here to his, about to his arms, around
3 that area.

4 Q. Did you see anybody else with him?

5 A. Uhm, like I said, they was altogether but he had my
6 attention so it was other people with him but, uhm, inside the
7 club but my focus was just on him at that point in time.

8 Q. Where was Brandon at this time?

9 A. Uhm, during that period of time when that was going
10 on, I think Brandon saw more than me so Brandon came out of
11 nowhere. I didn't know where he was but I know he was on the
12 other side of the bar because I was by the door and he came
13 from this way and said, Fred, let's go. Let's go.

14 Q. Do you know where Andre was?

15 A. No.

16 Q. And then after Brandon came up to you and said let's
17 go, what happened?

18 A. Things started escalating because we was just going
19 back and forth and Brandon grabbed me and we ran out the door.
20 He snatched my arm and said let's go. He said come on, I
21 guess. Go ahead.

22 Q. No.

23 A. I'm sorry. Go ahead.

24 Q. At any time were you and Brandon asked to leave the
25 club by a bouncer or anybody?

1 A. Uh, I didn't pay attention if they did. They may
2 have told Brandon. I don't know. That's probably why he
3 grabbed me, too, because we got out of there.

4 Q. When you got out of there, where did you head?

5 A. Straight to the car.

6 Q. And when you got to the car, did you notice anyone
7 behind you?

8 A. Well, Brandon went on the driver's side. I went on
9 the passenger side and so the way the Saturn is set up you got
10 to unlock my door from the inside. So I went straight to the
11 car and tried to open the door to get in. It was still locked
12 but then when I realized that, I saw the guys, the same guys
13 was behind me so it was more the guys behind me. When I
14 turned around and looked, there was a guy with the dreads and
15 there was another guy with the dreads.

16 Q. Okay. So let's go back. So when y'all got outside
17 and get to your car, where does Brandon go?

18 A. To the driver's side.

19 Q. Who has the keys?

20 A. He do.

21 Q. Where do you go?

22 A. To the passenger side.

23 Q. How does your car unlock?

24 A. From the inside. We don't have no beeper or
25 anything. You got to unlock it from the inside.

1 Q. Did you attempt to try to get in the car?

2 A. Right. I tried to open the door.

3 Q. Had the door been unlocked?

4 A. No. He didn't unlock it yet.

5 Q. So where did you see the guys? How close were they
6 to you?

7 A. They were right behind where I was standing on my
8 side.

9 Q. And what, if anything, did you say to these guys?

10 A. Outside I didn't say anything. I didn't say
11 anything outside. When I turned around, I seen a weapon so I
12 automatically didn't have anything to say after that.

13 Q. Were they saying anything to you?

14 A. What's up now? What's up now? And the "N" word and
15 all that other stuff going pacing back and forth behind the
16 car.

17 Q. Which one of those guys was saying that?

18 A. The one, the guy with the dreads that was long, he
19 had, he was just flashing me. He wasn't pointing it. He was
20 just flashing his weapon and there was another, it was a dark
21 skinned guy I didn't even say anything to with dreads. It was
22 about shoulder length. He had a black nine on him.

23 Q. Let's talk about that guy. How does that guy
24 look?

25 A. About Five seven, five eight, dreads, shorter

1 length, dark skin.

2 Q. Did you notice anything else about his
3 description?

4 A. Uhm, did I notice anything else about the
5 description?

6 Q. Yes. About the way he looked?

7 A. Oh, uhm, he look like my cousin.

8 Q. What do you mean by that?

9 A. Just the way his eyes shaped. When I seen his eyes,
10 uhm, I thought about it at that point in time that he looked
11 like my cousin but they was just pacing back and forth but
12 that's how I could distinguish him.

13 Q. What about his eyes caught your attention?

14 A. My cousin's eyes are made the same way. They kind
15 of low. They're not wide.

16 Q. And so what did you see that particular guy doing?

17 A. Pacing back and forth, too. Both of them pacing
18 back and forth like, what's up now? What's up now? Just
19 going back and forth talking. I was standing there with my
20 hands like this (indicating.) I was like I don't know what
21 they about to do. I didn't have nothing to say. Like I say,
22 they had me. I ain't saying nothing no more.

23 Q. Okay. So what do you remember happening next?

24 A. So like after they going back and forth, it was just
25 like a pause and then all of a sudden the guy with the black

1 gun that he had out the whole time, he shot and started going
2 back. Like he shot that way. Like I'm right here. He like
3 shot like diagonal towards Brandon way and start going
4 backwards and the gun, the bullets started going over here. I
5 ducked by, there was a truck right there. I ducked by the
6 truck and just ducked down when they was shooting.

7 Q. I'm going to show you a couple of pictures. I'll
8 show you what's been entered as State's exhibit number 20. Do
9 you notice anything in particular in that picture?

10 A. My car.

11 Q. Where do you see your car?

12 A. Right here.

13 Q. Point it out.

14 A. (Witness complies.)

15 Q. Okay. I'm going to pass you up a pointer and ask
16 you a couple questions about this picture. If you could just
17 point up to the picture.

18 A. Just hold it down. Okay.

19 Q. So is that your car?

20 A. Right.

21 Q. Who parked it there?

22 A. Brandon.

23 Q. When you came out of the Cockpit, where did you
24 go?

25 A. Right there.

1 Q. Where did you see that group of people?

2 A. Right here going back and forth.

3 Q. So how close were you to them?

4 A. Like right now I'll show you. I was right there.

5 I'm standing right there and they were right there so about
6 that far.

7 Q. So you had a good vantage point? You could see
8 them?

9 A. Yeah.

10 Q. Where was Brandon?

11 A. He was on the other side of the car.

12 Q. So when they started shooting, where did you go?

13 A. So like I say, there was a big truck right here.

14 Like you can't see over the truck. It was like a trailer so I
15 ducked around right here.

16 Q. How many people did you see shooting a gun?

17 A. I saw one person shooting.

18 Q. How did you see him? How was he proceeding as he
19 was shooting?

20 A. So I was standing there. When the shots fired, it
21 went right here. That's the first shot. Like he shot that
22 way and I was standing right there when he shot so then he
23 started shooting some more and I ended up right here ducking
24 down.

25 Q. Do you know where Brandon was?

1 A. I didn't see Brandon that time because I was
2 ducking. Brandon was standing there though.

3 Q. And so which direction did the guy shooting the gun
4 go?

5 A. Which direction?

6 Q. Yes.

7 A. Like bullets was flying like this, pow. That was
8 the first shot. Then pow, pow, pow.

9 Q. In which direction did he head, away from you?
10 Towards you?

11 A. The first shot was away from me. The rest of the
12 shots was towards me because he was backing up the whole time.
13 Like I said, there was a truck. When he shot the first shot,
14 I said, oh, and I ducked and I heard the shots going towards
15 my way so I ducked.

16 MS. PATTERSON: Your Honor, permission for the
17 witness to step down.

18 THE COURT: Sure.

19 BY MS. PATTERSON:

20 Q. So as the guy is shooting, could you demonstrate for
21 the jury how he was moving as he was shooting?

22 A. All right. So when he was shooting, like the truck
23 right here, so when he was shooting, he was shooting like
24 this, pow, pow. For some reason he was going back and forth.
25 Then he went quick back like that. He shot, pow, that way.

1 And then while he was going back, he kept shooting like that
2 at the car and then he finally stopped when he was all the way
3 back.

4 Q. Okay.

5 A. That good?

6 Q. Thank you. Have a seat.

7 A. (Witness complies.)

8 Q. So after the shooting stopped, what did you do?

9 A. Uhm, so after it stopped, I was like -- B-Rat is
10 Brandon's nickname. Brandon Ratliff. So I said, B-Rat. You
11 know, I was still down when I said it but I just wanted to
12 have kind of ability to see where he was at and there was no
13 answer. So, uhm, I went around the front of the car. I went
14 around the front of the car. The door was open and I went all
15 the way to the door and there wasn't anything. Brandon wasn't
16 there. So then I kept yelling his name. So there was cars
17 right here so I was still ducking. I was duck crawling
18 towards the road and when I went to the road, that's when I
19 seen Brandon laying in the middle of the road right there.

20 Q. So you crawled over there to check on your friend?

21 A. (Witness nodding head.)

22 Q. And before the shooting started, you saw him on the
23 driver's side?

24 A. Mm-hmm.

25 Q. And the door was open. And then after the shooting

1 stopped, you saw him in the roadway and you were on the ground
2 crawling?

3 A. (Witness nodding head.)

4 Q. So when you got to Brandon, what did you notice?
5 What position was he in?

6 A. Brandon was laying down on the ground face down.

7 Q. What did you say or do?

8 A. So I kept saying, Brandon, what's wrong? Get up.
9 Because I'm thinking he was ducking from the bullets, too, and
10 I turned him around. I was looking to see if he was shot.
11 I'm like, Brandon, you're not even shot. He was snoring so
12 I'm thinking like he hit his head or something. I don't know.
13 So he was snoring. I'm like, Brandon, you not even shot, man.
14 What's going on? So after I was looking him up and down, he
15 had blood, a blood spot in his chest right here so there was
16 like a small little pool of blood in his chest.

17 Q. And what did you do next?

18 A. I started crying. I was telling him to wake up.

19 Q. Do you know where Andre was?

20 A. Uhm, he was at his car because it was other people
21 out there. I was just hysterical. I was crying and people
22 just trying to help, uhm, messing with Brandon, like come on.
23 We need to take him to the hospital, whatever. I was just
24 crying and just helping him. I don't know. I don't know what
25 I was thinking. I was like my man got hit. But I'm thinking

1 like -- I wasn't thinking. So anyway, they put Brandon down
2 because they was picking him up. I said, put him down. And I
3 was - I had his arm in my arm right here and then I saw a shot
4 - I mean, I saw Andre pull up and he got out of the car. He
5 start crying, too. He like come on. So he came and swooped
6 him up and we put him in the back of the seat and we got in
7 the car and rushed to the hospital.

8 Q. At any time did you know Brandon to carry a gun?

9 A. Yeah. Brandon owned a gun.

10 MS. ZMROCZEK: I'm sorry. I can't hear you.

11 BY THE WITNESS:

12 A. I said Brandon owned a gun.

13 BY MS. PATTERSON:

14 Q. Do you know what kind of gun Brandon owned?

15 A. I'm bad with guns. Uhm, it might have been, I call
16 it a nine, but it was like the next level like maybe a .40, I
17 think. I don't know.

18 Q. Did you ever see Brandon with a gun that night?

19 A. No.

20 Q. Do you know what happened to his gun?

21 A. No. I don't.

22 Q. How long does it take Andre to get you all to the
23 hospital?

24 A. We was flying. Uhm, I would say 10 to 15, I
25 think.

1 Q. When you got to the hospital, did law enforcement
2 show up?

3 A. Yeah.

4 Q. Did you talk to law enforcement?

5 A. Yeah.

6 Q. Were you cooperative as much as you could with law
7 enforcement?

8 A. I was cooperative. I was emotional but I was
9 cooperative.

10 Q. And, uhm, did you give them permission to take some
11 of your clothing?

12 A. Yeah. Anything. Yeah. Everything.

13 Q. Did you give them permission to swab your hands for
14 gunshot residue?

15 A. Yes.

16 Q. Did you have any problems doing that?

17 A. Not at all.

18 Q. Had you shot a gun that night?

19 A. No.

20 Q. And after being at the hospital, were you able to
21 give law enforcement a description of the shooter?

22 A. Yeah. Yeah. Yes. I was.

23 Q. What description did you give them?

24 A. Uhm, I was yelling dreads the whole time but, uhm, I
25 stopped being emotional because I knew I had to give something

1 so I gave his height, five seven, five eight. I said with
2 dreads and dark skinned.

3 Q. And did you follow up with law enforcement as
4 different things would come up during the course of the
5 investigation?

6 A. Yes.

7 Q. Did you try to be as helpful as you could with law
8 enforcement?

9 A. Yeah.

10 Q. Were you ever shown a photo lineup by law
11 enforcement?

12 A. Yes.

13 Q. Before I get to that, let's go back to your car for
14 a second. I'm going to show you State's exhibit number 18.
15 Do you recognize what's in this picture?

16 A. My vehicle.

17 Q. Do you notice any damage to your vehicle?

18 A. Uhm, I think a bullet hole right there, right there,
19 right there. I think that's it.

20 Q. Was your car like that before you got to the Cockpit
21 that night?

22 A. No.

23 Q. I'm going to show you a picture of the other side of
24 your vehicle. Do you notice any damage on that side of the
25 vehicle?

1 A. I don't see anything.

2 Q. Is that the side Brandon was standing on?

3 A. Yeah.

4 Q. I show you another picture. Do you recognize that
5 as the back passenger side?

6 A. Mm-hmm.

7 Q. Was your door like that the night you came to the
8 Cockpit?

9 A. No.

10 Q. Fred, I'm going to show you what's marked as State's
11 31 through 34 and ask you if you recognize what's in these
12 pictures?

13 A. Me.

14 Q. Just take a look at all of them.

15 A. Okay.

16 Q. Do those pictures fairly and accurately represent
17 the way you looked on the early morning hours of February 2nd,
18 2014?

19 A. Yes.

20 Q. Do they look like they have been changed in any
21 way?

22 A. Not at all.

23 MS. PATTERSON: Your Honor, at this time we move
24 State's exhibit 31 through 34 into evidence.

25 MS. ZMROCZEK: No objection, Your Honor.

1 THE COURT: 31, 32, 33, 34 without objection.

2 MS. PATTERSON: Thank you, Your Honor.

3 BY MS. PATTERSON:

4 Q. Fred, what does that show?

5 A. It shows me.

6 Q. I'll show you this close up because you might have a
7 problem seeing it. On State's exhibit number 32, what's that
8 on the side of your face?

9 A. Brandon's blood.

10 Q. Do you notice anything else on your face?

11 A. Brandon's blood. I don't know. I was about to say
12 beard.

13 Q. In 33 and 34 do you remember someone taking pictures
14 of your hands?

15 A. Yes.

16 Q. Had you washed your hands that night before they
17 took the pictures?

18 A. No. They took us straight to the room, the waiting
19 room.

20 Q. So you said as time passed on, a law enforcement
21 officer contacted you about a photo lineup?

22 A. Yes.

23 Q. I'm showing you what's been marked as State's
24 exhibit 3 and 4. Do you recognize those documents?

25 A. Yes.

1 Q. And were those the photo lineups that you were shown
2 by the officer?

3 A. Yes.

4 Q. Do they look like they have been changed or altered
5 in any way?

6 A. Not at all.

7 MR. BELL: Your Honor, at this time we move State's
8 exhibit 3 and 4 into evidence.

9 MS. ZMROCZEK: Subject to my previous objection,
10 Your Honor.

11 THE COURT: Admitted subject to the previous
12 objection.

13 BY MS. PATTERSON:

14 Q. What date was it that the officer came and showed
15 you those lineups?

16 A. April 14th.

17 Q. Of what year?

18 A. 2014.

19 Q. Were you still able to remember what the shooter
20 looked like?

21 A. Yes.

22 Q. Were you still able to remember what the other
23 person looked like that was with him?

24 A. Yes.

25 Q. Now, before this photo lineup was given to you, do

1 you remember the officer saying anything to suggest who you
2 should select?

3 A. No, ma'am.

4 Q. How many pictures was in that photo lineup?

5 A. 12.

6 Q. In each one by itself?

7 A. Six.

8 Q. And let's just go through the photo lineup. Let's
9 start with State's exhibit number 4. Now, the six people in
10 that picture, did they all have similar physical
11 characteristics?

12 A. Yes.

13 Q. Are they all the same gender?

14 A. Yes.

15 Q. All the same race?

16 A. Yes.

17 Q. Is there hair similar?

18 A. Yes.

19 Q. Before the officer showed you that, how did he
20 present that to you?

21 A. Uhm, both of these sheets were face down. He said
22 I'm going to show you a lineup. Uhm, this may not be the guy.
23 Uhm, will you look at these lineups. If anybody looks
24 familiar, let me know.

25 Q. In State's exhibit number 4 were you able to select

1 someone?

2 A. Yes. 3.

3 Q. Who did you remember number 3 to be?

4 A. The shooter.

5 Q. Did you note that on that paper?

6 A. Yes.

7 Q. How did you indicate that?

8 A. As far as what I wrote?

9 Q. Yes.

10 A. He was the guy with the gun.

11 Q. And what number was he?

12 A. 3.

13 Q. Did you do anything to the number 3?

14 A. I initialed it.

15 Q. Did you do anything else to that picture?

16 A. No.

17 Q. Did you sign it?

18 A. Yes. I initialed it.

19 Q. Did you date it?

20 A. Yes.

21 Q. Again, did the officer suggest in any way who you
22 should pick?

23 A. No.

24 Q. Was there something different about that picture
25 that you remember about the shooter that night?

1 A. I told the investigator about the eyes.

2 Q. Okay. Was there anything else you noticed that was
3 slightly different?

4 A. Yeah. I thought it was old but his dreads was
5 cut.

6 Q. On that picture?

7 A. Yes.

8 Q. So when you saw him the night of the shooting, his
9 dreads were longer?

10 A. Right. It was about shoulder length.

11 Q. In State's exhibit number 3 were you presented that
12 photo lineup in the same manner?

13 A. Yes.

14 Q. Were you able to identify someone in that photo
15 lineup?

16 A. Yes. 2.

17 Q. Number 2?

18 A. Yes.

19 Q. What did you note that that person was doing on
20 February 2nd, 2014?

21 A. He was around as well when the shots occurred.

22 Q. Okay. Did you note that for the officer?

23 A. Yes. I did that for the officer. I initialed and
24 dated it.

25 Q. How long did it take you to identify the person in

1 those lineups?

2 A. Oh, when he laid it down, I looked at all of them
3 but it took me around about 35 seconds.

4 Q. Did you have any problem making your selection?

5 A. No. No problems.

6 MS. PATTERSON: Your Honor permission to publish
7 these.

8 THE COURT: Sure.

9 BY MS. PATTERSON:

10 Q. In State's exhibit number 3, who did you indicate in
11 this photo lineup? Who did you select?

12 A. (Indicating.)

13 Q. And again, what did you say that he was doing the
14 night that you saw him?

15 A. He was around when the shots were fired.

16 Q. And did he have a weapon?

17 A. He's the one that flashed me.

18 Q. Okay. State's exhibit number 4, who did you
19 select?

20 A. He was the one that had the gun, too, the shooter.

21 Q. Which one is that?

22 A. Right here.

23 Q. Did you know him before this night?

24 A. No.

25 Q. And that's the person who you saw fire the shots

1 towards your friend?

2 A. Yes.

3 Q. What's different about him than on the night of the
4 shooting?

5 A. Dreads. His dreads were about right there
6 (indicating.)

7 MS. PATTERSON: Mr. Moss, please answer any
8 questions the defense may have.

9 THE WITNESS: Certainly.

10 CROSS EXAMINATION

11 BY MS. ZMROCEK:

12 Q. Mr. Moss --

13 A. Yes, ma'am.

14 Q. -- when you were at the hospital, you spoke with the
15 detective before you wrote a statement, right?

16 A. Yeah.

17 Q. You did?

18 A. Yeah.

19 Q. And that officer was taking notes, right?

20 A. Yeah. I guess. Yeah.

21 Q. And she was writing down what you were saying?

22 A. Okay.

23 Q. If you don't know, then don't say okay.

24 A. I guess she was. I don't - I don't remember.

25 Q. Okay. You don't know?

1 A. I said I guess she was.

2 Q. Okay. So she was writing down what you were saying.
3 You were telling her everything you could remember but you
4 were too upset to write a statement, right?

5 A. Yeah. I was upset.

6 Q. Okay. But she was asking you questions and you were
7 telling her things?

8 A. True.

9 Q. About that night?

10 A. True.

11 Q. Okay. And you told her that Brandon was driving
12 your car?

13 A. Right.

14 Q. And that you told her between 3:00 and 3:30 that
15 y'all went to the Cockpit from the Vista?

16 A. Okay.

17 Q. Yes?

18 A. Yes. I mean, you're reading it to me but I mean, if
19 that's what it says.

20 Q. Okay. Where were you at the Vista?

21 A. The Vista is big. I mean, you got Wet Willy's. You
22 had -- I mean, it's the Vista.

23 Q. I understand. But my question was where were you at
24 the Vista? Which bars? How many bars did you go to?

25 A. Wet Willy's probably. I forget what the other one

1 called. But yeah. Just two.

2 Q. So you went to Wet Willy's and the other one you
3 can't remember?

4 A. No. I don't know the name.

5 Q. Okay. Of either?

6 A. I said Wet Willy's.

7 Q. Okay. How many drinks did you have at any of those
8 bars?

9 A. Uhm, I had a slushy at Wet Willy's.

10 Q. What did you have at the other bar that you can't
11 remember?

12 A. Oh, yeah. It was Bailey's. That's what it was.
13 But go ahead.

14 Q. I'm sorry. I didn't hear you?

15 A. It was Bailey's. That's what it was.

16 Q. Bailey's is a bar?

17 A. Mm-hmm.

18 Q. What did you have to drink there?

19 A. No. I just shot pool there.

20 Q. Okay. Nothing to drink?

21 A. I had probably a Budweiser, I think. I think we had
22 enough time for me to get a beer.

23 Q. Earlier that night you had been with Mr. Moss and
24 Mr. Bunch?

25 A. Mr. Moss?

1 Q. I'm sorry. Mr. Ratliff and Mr. Bunch?

2 A. Yes, ma'am.

3 Q. You said you called Mr. Ratliff B-Rat. That's his
4 nickname, right?

5 A. Right.

6 Q. What's Mr. Bunch's nickname?

7 A. Shock.

8 Q. Shock. So you and B-Rat and Shock went out for the
9 night, right?

10 A. Okay. Yes.

11 Q. Thank you. What time did you all meet up that
12 night?

13 A. I don't remember. I don't remember when we all met
14 up but, uhm, B-Rat came to the house though.

15 Q. Okay. And then you go out to these bars and then
16 you go to the Cockpit but you didn't really want to go,
17 right?

18 A. True.

19 Q. But you went anyway?

20 A. Yeah.

21 Q. And you parked -- I think we saw the pictures where
22 Brandon parked your car, right?

23 A. Right.

24 Q. And then you go inside?

25 A. Mm-hmm.

1 Q. And you you see a girl?

2 A. Right,

3 Q. and you talk to her?

4 A. Right.

5 Q. And then you say a lot of people, the whole bar I
6 think you said turned around?

7 A. Not the whole bar. There was a lot of people on the
8 dance floor. I was at the bar.

9 Q. Okay. So lots of people on the dance floor?

10 A. Yeah.

11 Q. And they all just stopped dancing and turned around
12 to look at you?

13 A. No. I mean, I can't say what they were doing
14 because I can't -- You see what I'm saying? But they were on
15 the dance floor. Let's just say they were waving at me.

16 Q. Okay. So they were waving at you?

17 A. Yeah.

18 Q. All right. And how long did you talk to her?

19 A. About two or three minutes. It wasn't long at
20 all.

21 Q. And then they started waving at you?

22 A. Looking towards my direction.

23 Q. Okay. Then you see a light skinned --

24 A. There was a guy in the middle of the dance floor.
25 He looks like, he was looking like the aggressor, like he

1 really wanted to come over there where I was at but a few
2 people was holding him.

3 Q. Okay. So the aggressor, let's call him the
4 aggressor, he was light skinned?

5 A. Right.

6 Q. What other description can you give him?

7 A. He had on a skullie.

8 Q. Tell the jury what that is.

9 A. A skull cap.

10 Q. What color shirt was he wearing?

11 A. It might have been red.

12 Q. Okay. What kind of hair did he have?

13 A. He had on a skull cap.

14 Q. So he didn't have any hair or you just didn't see
15 it?

16 A. He didn't have dreads.

17 Q. Okay. No dreads?

18 A. Right.

19 Q. All right. So he said something to you but he was
20 being held back?

21 A. I don't know what he said to me. He was from me to
22 over there where the audience is.

23 Q. All the way back here?

24 A. He was about -- No. Not that far. It's not that
25 big. Probably from here to the table.

1 Q. From here to here?

2 A. Yeah. About that far.

3 Q. The aggressor was from here to here?

4 A. Because I was standing right here. The DJ booth is
5 right there, the bar is right here, the dance floor is out
6 there, so about right where you are. Might be a little bit
7 closer.

8 Q. (Lawyer moving closer.)

9 A. That's fine. Yeah.

10 Q. He's the other aggressor?

11 A. Yeah.

12 Q. From here, right?

13 A. Yeah.

14 Q. Okay. And you're saying that he was being held back
15 at that point?

16 A. It looked like it. I mean, it was a song that was
17 on and they was still going with the music, you know. But for
18 some reason I had their attention.

19 Q. Okay. And then you said that you believe security
20 got involved at that point?

21 A. I didn't say anything about security.

22 Q. You never said anything about security to
23 Investigator Black at the hospital?

24 A. Uhm, I don't remember.

25 Q. Okay. And then a second male came up to you and

1 asked you what you wanted to do?

2 A. Yeah.

3 Q. And that was inside the club?

4 A. Right.

5 Q. And then you said nothing?

6 A. Yeah. I did.

7 Q. Okay. And then that's when B-Rat came and grabbed
8 you?

9 A. Right.

10 Q. And you weren't escorted out by security?

11 A. No. Brandon grabbed me. We fled to the car.

12 Security didn't touch me.

13 Q. All right. And then that's when you said that you
14 were standing by the car and the male with dreads came up with
15 a gun and asked you what you wanted to do?

16 A. Right.

17 Q. And that's the guy with the long dreads or the one
18 you picked out with the short dreads?

19 A. The guy with the long dreads.

20 Q. So he comes up to you?

21 A. All of them was talking noise. They didn't come up.
22 They came up behind the car and since they had the weapons in
23 their hand, they were going back and forth.

24 Q. So how many weapons are in the hands now?

25 A. I saw two. One was tucked because he flashed me and

1 the other one, he had his out.

2 Q. I'm putting up defendant's 4. Can you see that from
3 there?

4 A. Yes.

5 Q. Can you see your vehicle?

6 A. Yes.

7 Q. Can you show with the pointer where they were
8 standing with the pointer?

9 A. Right here. Right here. Going back and forth.

10 Q. They were standing?

11 A. Yes.

12 Q. And there was just two of them or there were a lot
13 of them?

14 A. There was a lot of people. I won't say a lot. It
15 was more than three or four people out there.

16 Q. But you saw two guns?

17 A. Mm-hmm.

18 Q. One tucked in the pants?

19 A. Mm-hmm.

20 Q. Right?

21 A. Right.

22 Q. And then one being waved around?

23 A. Well, not waving it. It wasn't pointed at us at
24 first. They just wanted to let us know what they had going
25 on.

1 Q. How was the other person holding that?

2 A. Oh, he had it out now going back and forth, too. He
3 just had it out.

4 Q. He just had it out?

5 A. Right.

6 Q. And at the hospital you said that the male with
7 dreads walked away?

8 A. Huh? Let me see the statement. I don't know
9 anything about --

10 Q. I'm not asking about your written statement yet.

11 THE COURT: You just did. You just said at the
12 hospital you told them.

13 MS. ZMROCZEK: Your Honor, I can show him, but this
14 is Investigator Black's notes so...

15 THE COURT: All right. You leading him to believe
16 you're looking at a statement he gave to the female
17 officer. That's what he's asking about.

18 MS. ZMROCZEK: I mean, that's fine.

19 THE COURT: He hasn't seen it in a long time. Maybe
20 it's a little unfair for you to quiz him on it without
21 showing it to him.

22 MS. ZMROCZEK: Sure.

23 BY MS. ZMROCZEK:

24 Q. How about I'll let you review it. How about that?

25 A. Okay. What part did you say I said the guy walked

1 away?

2 MS. PATTERSON: Your Honor, that's the officer's
3 report. That's not his written statement.

4 MS. ZMROCZEK: That's right. That's why --

5 THE COURT: Y'all come over here real quick.

6 (Side bar off the record.)

7 BY MS. ZMROCZEK:

8 Q. All right. I'm going to be real clear about the
9 question that I'm asking, okay? If you don't understand about
10 what I'm asking, let me know, all right?

11 A. I will.

12 Q. Because I'm not trying to confuse you.

13 A. That's fine.

14 Q. What I'm asking about right this second right now
15 the only thing is about the statement at the hospital, not
16 that you wrote, but that you gave orally to the investigator.
17 Do you remember that statement?

18 A. No.

19 Q. Okay. So you don't remember anything you said in
20 that statement?

21 A. I know that the overall -- I don't know the -- I
22 know the overall statement that I gave. I don't remember
23 saying a person with dreads walked away.

24 Q. Okay. That's fair enough. I'm just talking about
25 the oral statement, okay?

1 A. Okay.

2 Q. Do you remember saying orally at the hospital that
3 B-Rat kept a .45 in the glove compartment?

4 A. Yeah. No. I said I assumed. I assumed he had it.
5 Yeah.

6 Q. You assumed that he had a .45 in your glove
7 compartment?

8 A. I assumed. Yes.

9 Q. Okay. And do you own a gun?

10 A. No.

11 Q. Okay. So the holster that was found in your vehicle
12 on the passenger side, that wasn't your holster?

13 A. No.

14 Q. I'm showing you defendant's 23. This wasn't yours?

15 A. Mmm-mmm.

16 Q. Whose was this?

17 A. Brandon's.

18 Q. This was Brandon's that was in your car?

19 A. Mm-hmm.

20 Q. Okay. All right. Now, I'm going to move away from
21 the hospital statement, okay? And I'm going to ask you --

22 A. Just talk to me. That's all. You act like I'm
23 slow, man. Come on.

24 Q. I'm trying to keep it less confusing for me.

25 A. Right. Just ask the question straight up. That's

1 all.

2 Q. That's all I'm trying to do. I want to move to the
3 statement that you actually wrote.

4 A. All right. Let's go.

5 Q. Okay. All right. So you had time to kind of
6 collect yourself and write a statement?

7 A. Okay.

8 Q. Right?

9 A. Right.

10 Q. And you signed it?

11 A. Right.

12 Q. After you got to read it over?

13 A. Okay.

14 Q. You said in that statement that you saw the guy with
15 the dreads had a nine millimeter. Now, I want to be clear
16 about which guy you are talking about that you saw with the
17 nine millimeter?

18 A. The guy who had it tucked.

19 Q. Who had it tucked?

20 A. Right.

21 Q. This guy right here?

22 A. Yep.

23 Q. You saw him with a nine millimeter?

24 A. It may not be accurate but...

25 THE COURT: Make sure. What exhibit is that?

1 BY MS. ZMROCZEK:

2 Q. I'm showing you State's 3, pointing to number 2 that
3 you picked out, correct?

4 A. Correct.

5 Q. And State's 3, pointing to number 2 that you picked
6 out, you're saying that's who you saw flash or had tucked the
7 nine millimeter?

8 A. He had it tucked. Yeah.

9 Q. Okay.

10 A. It looked like a nine.

11 Q. Okay. It looked like a nine. And then you wrote in
12 your statement that you actually adjusted your belt?

13 A. Right.

14 Q. Why did you adjust your belt?

15 A. Man, all them boys came up behind us like that. To
16 be honest, I acted like I wanted to scare them away. And may
17 I show what I did?

18 Q. Please. Stand up.

19 A. They didn't see me anyway, but when I seen them
20 behind me, I did like this (indicating) and then when I saw
21 they had the real thing, I kind of stopped and I didn't want
22 to, like I had nothing. So that's really why I had my hands
23 up because they had the real thing. I'm over here playing and
24 they had the real thing so I just held my hands up like that.
25 I just wanted to get in the car. I didn't know they was going

1 to come like that.

2 Q. Okay. Now explain to me, I'm a little confused
3 about how you say you have to unlock your car from the
4 inside?

5 A. Okay.

6 Q. Explain that.

7 A. You got to go inside and unlock it.

8 Q. So if it's locked, how do you get inside to unlock
9 it?

10 A. It's just a key. The only way you can unlock the
11 door is through the driver's side. Through the driver's
12 side.

13 Q. So B-Rat was on the driver's side?

14 A. Right.

15 Q. He had unlocked it?

16 A. He didn't unlock it for me yet but by that time I
17 didn't know if he unlocked it or not because I seen the guys
18 behind me.

19 Q. When did he open the door?

20 A. Uhm, the door was open. I don't know when he opened
21 the door but the door was open.

22 Q. And where was he standing when the door was open?

23 A. On the driver's side.

24 Q. Kind of in front of the door?

25 A. What do you mean by -- Like when you open the door,

- 1 he was standing there.
- 2 Q. Right. Like to get into the car?
- 3 A. He was standing there. Right..
- 4 Q. And when did your door become unlocked?
- 5 A. It never was.
- 6 Q. I'm sorry.
- 7 A. It never was.
- 8 Q. It never was unlocked?
- 9 A. Mmm-mmm.
- 10 Q. Okay.
- 11 A. I wouldn't know anyway. I didn't try to unlock it
- 12 after what happened. I didn't try to open it so I don't know
- 13 if it was unlocked or locked.
- 14 Q. You said that only one person was shooting?
- 15 A. Right. I saw one person shooting.
- 16 Q. Okay. I'm putting up State's 5. Can you see it
- 17 from there?
- 18 A. Yeah. A little. Yeah. I see it.
- 19 Q. I see your car was over here, right?
- 20 A. Mm-hmm.
- 21 Q. Yes?
- 22 A. Yes.
- 23 Q. Okay. And then -- Maybe I'll put it up on the
- 24 screen. You said that they started shooting. The first shot
- 25 where was the person -- I'm putting up defendant's 4. Where

1 was the person standing with the first shot?

2 A. All of them were right here. Right here.

3 Q. All of them were right there?

4 A. Yeah. Just the two in the front. The dreads and
5 the - both of them had dreads so both of them was right
6 here.

7 Q. Where did the other people go at that point?

8 A. After the shot?

9 Q. Right.

10 A. Everybody dispersed. I didn't look at everybody
11 else. I was ducking.

12 Q. Okay. What hand was the shooter holding his gun
13 in?

14 A. Uhm, the reason why I didn't see that and what got
15 my attention was the shot so I can't determine which hand he
16 had it in. I just know he went back, shot and then kept
17 shooting going back so I wasn't able to determine which hand
18 he had it in.

19 Q. Let me ask you this: When he's pacing and waving it
20 in front of you back and forth, which hand did he have it
21 in?

22 A. Uhm, I want to say his right hand.

23 Q. Okay. And what did he have on?

24 A. Dark colors.

25 Q. Dark?

1 A. I'm assuming dark. Yeah. Because it wasn't bright
2 like the guy, like I say, with the red shirt. I mean, I
3 didn't...

4 Q. So what color shirt did he have on?

5 A. It was dark. A dark color shirt.

6 Q. Okay.

7 A. I want to say a hoodie but it was a dark color
8 shirt.

9 Q. You want to say a hoodie?

10 A. I want to but it was a dark color shirt.

11 Q. And dark color pants?

12 A. Yeah.

13 Q. You said there was a light so you could see real
14 well, right?

15 A. There's a street light out there.

16 Q. Where is the street light?

17 MS. ZMROCZEK: Your Honor, if he can step down.

18 THE COURT: He has permission to do that.

19 BY MS. ZMROCZEK:

20 Q. Keep your voice up. Show us where the street light
21 was.

22 A. Uhm, there was light coming from I want to say --

23 Q. Keep your voice up so he can hear you.

24 A. I don't know where the street light was to be
25 honest. I don't know where it was at exactly. I'm sorry.

1 There was light from somewhere.

2 Q. Okay. So there was light from somewhere?

3 A. Right.

4 Q. And when did you tell the police about two people
5 having guns?

6 A. I think about -- I'm not sure, but I know - I know
7 that I said, uhm -- I was more concerned about the shooter so
8 I'm not sure when I told them the other guy had a gun.

9 Q. But when you did your handwritten statement, they
10 asked you to put all the important information in there,
11 right?

12 A. Yes. I make mistakes sometimes. I'm sorry.

13 Q. You say you made a mistake. You didn't put that one
14 in there?

15 A. If it's not in there.

16 Q. I'm not trying to trick you. Let me give you a copy
17 of it.

18 A. I know in one of the statements I said the other guy
19 had a nine millimeter.

20 Q. (Proffering.)

21 A. So you want me to look at the questions?

22 Q. Right. Well, do you say in there that there were
23 two people with a gun?

24 A. No.

25 Q. Okay. And then you had an opportunity I think on

1 April 14th when you picked out these two people on State's 2
2 and 3, or excuse me, 3 and 4, you had an opportunity to write
3 another statement, right?

4 A. Mm-hmm.

5 Q. (Proffering.) I'll give you a copy of that. That
6 was on April 14th, right?

7 A. Yes.

8 Q. Did you tell the police then that there was a second
9 gun?

10 A. No. Because they said which person had the gun and
11 I'm thinking about the shooter and then the guy, from what I
12 saw, the other guy didn't even pull it out. He was just
13 flashing it. Now, he may have. I don't know, but he was the
14 one - he's the one that shot though.

15 Q. Okay. And I'm showing you again State's number 3
16 where you circled the person, number 2. And tell the jury
17 what you wrote.

18 A. I said he was around. He was around when the shots
19 occurred.

20 Q. Okay. But you didn't tell them that he had a gun?

21 THE COURT: He's already testified to that several
22 times.

23 MS. ZMROCZEK: Okay.

24 THE COURT: Asked and answered three times at
25 least.

1 BY THE WITNESS:

2 A. I was more focused on the shooter.

3 BY MS. ZMROCZEK:

4 Q. And you said that it looked like a family member,
5 right?

6 A. No. Yes.

7 Q. It looked like your cousin?

8 A. Right.

9 Q. Now, was it just the eyes that looked like your
10 cousin?

11 A. Yeah.

12 Q. Yes?

13 A. Yes.

14 Q. Okay. And you had actually gone on social media
15 with some people to try to look up and figure out who these
16 people were, right?

17 A. Yeah, man. I was trying to do everything.

18 Q. I'm going to show you what's been marked for
19 identification as defendant's 27 and ask you if you recognize
20 that?

21 A. Yeah.

22 Q. Is that your handwriting?

23 A. It is.

24 Q. And your signature?

25 A. It is.

1 Q. And that was the date 2/3/14?

2 A. Yes.

3 Q. Nobody has changed your handwriting or anything?

4 A. No.

5 MS. ZMROCZEK: Your Honor, at this time we would
6 move in defendant's 27.

7 MS. PATTERSON: Without objection.

8 THE COURT: Without objection 27 admitted,
9 defendant's.

10 BY MS. ZMROCZEK:

11 Q. I'll put it up here so that we can all can see. So
12 who showed you this?

13 THE COURT: Wait a minute. Let's go back. Look
14 real close. 27 was a photograph of a cell phone,
15 defendant's. Let's make sure that shouldn't be
16 defendant's 28. Just out of an abundance of caution.

17 MS. ZMROCZEK: All right. That's correct, Your
18 Honor. It should be defendant's 28.

19 THE COURT: Okay.

20 BY MS. ZMROCZEK:

21 Q. Now, I'll put back up defendant's 28. You were
22 shown this picture on, I think that says February 3rd. It's
23 either February 3rd or February 5th, right?

24 A. I think it's the 3rd. That's not my handwriting.

25 Q. And you picked out gun number 7 and gun number 11?

1 A. Yes. I said that's the closest.

2 Q. That you saw to who?

3 A. The guy with the shorter dreads.

4 Q. The guy with the shorter dreads?

5 A. Correct.

6 Q. So it's one of these two guns you're saying?

7 A. I'm saying it may be similar to one of those two.

8 Q. And you were shown how many overall?

9 A. Weapons?

10 Q. Yeah.

11 A. I don't know.

12 Q. Like three pages?

13 A. No. I think this is the only one I saw if I'm not
14 mistaken.

15 MS. ZMROCZEK: No further questions. Thank you.

16 THE COURT: Ms. Patterson.

17 REDIRECT EXAMINATION

18 BY MS. PATTERSON:

19 Q. Mr. Moss, are you certain that the person that you
20 picked out was the person you saw shooting that night?

21 A. Yes.

22 MS. PATTERSON: No further questions.

23 THE COURT: All right. You may step down. All
24 right. Let's take about 15 minutes by that clock and
25 then call our next witness. Is that okay with y'all?

1 MS. PATTERSON: Yes, sir.

2 MS. ZMROCZEK: Yes, sir.

3 THE COURT: Don't discuss the case.

4 (Whereupon, the jury entered the jury room at 3:25
5 p.m.)

6 (Short break.)

7 BAILIFF: All rise.

8 THE COURT: All right. Be seated. Ready?

9 MS. ZMROCZEK: Your Honor, I have a matter before we
10 get started.

11 THE COURT: All right. Go ahead.

12 MS. ZMROCZEK: Thank you, Your Honor. Your Honor,
13 respectfully, and most respectfully, I have never tried a
14 case before this Court and so I know that it's different
15 with each judge but, Your Honor, my client, his family,
16 everyone has noticed that the chastising and maybe
17 objections from the bench about asked and answered are
18 having a chilling effect on the defense. I have not
19 asked for a mistrial. I'm not asking for a mistrial but
20 under State v. Wright, Your Honor, I understand that you
21 would like me to move it along, but I think that for the
22 record I need to put that on the record, that my client
23 feels like the comments in front of the jury from the
24 bench directly to me are having a chilling effect on his
25 defense.

1 THE COURT: All right. I disagree with you. I'm
2 not trying to do that but once you get to the third time
3 asking a question, I think it's incumbent on me to keep
4 the trial moving and I'm trying to do that but you seem
5 to have that habit of asking the same question
6 repetitively. For instance, that last witness, when did
7 you tell the police that the guy with the hair with the
8 longer dreads had a gun. He said numerous times and it's
9 -- I apologize if it was said with any type of tone. It
10 was not meant to. It was meant to mean move on. Would
11 you like me to move that better, say it very soft asked
12 and answered?

13 MS. ZMROCZEK: I will, Your Honor. And I'll do
14 better of being more cognizant as well.

15 THE COURT: Okay. Fair enough.

16 MS. PATTERSON: The State is ready, Your Honor.

17 THE COURT: All right. Bring them in.

18 BAILIFF: Yes, sir.

19 (Whereupon, the jury entered the courtroom at 3:40
20 p.m.)

21 THE COURT: All right. Call your next witness.

22 MR. BELL: The State calls Dr. Janice Ross.

23 Thereupon,

24 JANICE ROSS, M.D.

25 after having been first duly sworn, testified as follows,

1 THE CLERK: Please have a seat. After you're
2 seated, please state your full name spelling your last
3 name for the record.

4 THE WITNESS: Janice Edwards Ross, R-o-s-s.

5 DIRECT EXAMINATION

6 BY MS. PATTERSON:

7 Q. Dr. Ross, what profession are you in?

8 A. I'm a forensic pathologist.

9 Q. What is a forensic pathologist?

10 A. First of all, I am a doctor so I have been through,
11 I went to the University of South Carolina, received a
12 Bachelor's Degree, did four years of medical school, and
13 received my M.D. and then did four plus years in the field of
14 pathology. Pathology as opposed to surgery or pediatrics is a
15 discipline in medicine where we learn how to identify diseases
16 by looking at the tissue under the microscope. We learn how
17 to help diagnose diseases by using the laboratory, lab work
18 and we also learn how to do an autopsy to find a cause of
19 death. I did further training in and certified in forensic
20 pathology which uses the autopsy for legal matters such as
21 accidents, suicides and homicides to identify cause of death
22 and manner of death and to identify patterns of injury, take
23 tissues and blood for toxicology and document evidence for the
24 court of law.

25 Q. About how many autopsies have you performed?

1 A. Over 10,000.

2 MS. ZMROCZEK: Your Honor, we stipulate to her being
3 -- I understand that they would like to put her education
4 in, but we stipulate to her being an expert in forensic
5 pathology.

6 THE COURT: All right. Ms. Patterson, I'll let you
7 lay a little more foundation, if you would like,
8 regarding her expertise, but I'll tell the jury, Dr. Ross
9 has been qualified as an expert in past trials in the
10 field of forensic pathology. Because of that she can
11 offer opinions as opposed to eyewitness testimony. My
12 opinion is because of my expertise is this, this and
13 this. She is being offered for that purpose by the
14 State. Ms. Zmroczek is agreeing that she is well
15 qualified in the field of forensic pathology. Ms.
16 Patterson, if you want to lay any further foundation for
17 her filed of expertise and the jury understands, it's up
18 to you.

19 MS. ZMROCZEK: Your Honor, that's sufficient. Thank
20 you, Your Honor.

21 THE COURT: Okay.

22 BY MS. PATTERSON:

23 Q. Dr. Ross, did you perform an autopsy on Brandon
24 Ratliff?

25 A. Yes. I did.

1 Q. Do you know what date that autopsy was performed?

2 A. That was February 3rd of 2014.

3 Q. And when you first began, before you began to
4 perform the autopsy, do you do any type of external
5 examination on the body?

6 A. Yes. We do the autopsy in the morgue at Newberry
7 County Memorial Hospital. The body is brought to us in a body
8 bag. We open the body bag. Do photographs with and without
9 clothing and we identify any kind of external injury. In this
10 case we could see that there was a gunshot wound so we did
11 x-rays to see if there was any bullet left in him.

12 Q. Dr. Ross, I'll show you what's been previously
13 marked as State's 35, 36, 37 and ask you if you recognize
14 those photographs?

15 A. Yes.

16 Q. And did you take those photographs?

17 A. Yes.

18 Q. And do they fairly and accurately represent the
19 photographs that you took on the date that you performed the
20 autopsy on Mr. Brandon Ratliff?

21 A. Yes.

22 MS. PATTERSON: Your Honor, at this time we move
23 State's 35, 36 and 37 into evidence.

24 MS. ZMROCZEK: No objection, Your Honor.

25 THE COURT: Without objection, State's 35, 36, 37.

1 BY MS. PATTERSON:

2 Q. Dr. Ross, on State's exhibit number 35 you said you
3 performed the x-ray to determine if there was still a bullet
4 inside of Mr. Ratliff?

5 A. Yes.

6 Q. Are you able to see that on this exhibit?

7 A. Yes. It's right there.

8 Q. And where on his body is that positioned?

9 A. It's in -- It's hard to see. It's inside the
10 backbone and it's a vertebra called the 8th vertebra of the
11 thoracic cavity of the chest cavity.

12 Q. Where at on our bodies would that be?

13 A. It's - if you go nipple length, it's maybe slightly
14 below that but it's towards the back in the back, in the
15 backbone.

16 Q. On State's exhibit 37, what does that show?

17 A. That's the entrance wound of the bullet right here
18 and you can see one nipple there so the entrance wound went
19 into the chest at the level of the nipple and this is the
20 midline going through here so it's just to the right of
21 midline.

22 Q. What does State's exhibit 36 show?

23 A. The same thing, entrance wound.

24 Q. Why is there a ruler in this photograph?

25 A. Just to show, give an idea of the size of the

1 wound.

2 Q. About how large was this wound?

3 A. It measured .22 inches which is consistent with a
4 small caliber bullet, but skin is elastic so we don't judge
5 totally the caliber of the bullet just from the entrance
6 wound.

7 Q. But it's consistent with a small caliber?

8 A. Correct.

9 Q. After you were able to determine that it was a
10 bullet left inside, what did you do?

11 A. Then we do an internal examination to find out what
12 injury was in the different organs of the body. We found that
13 the bullet went through the heart, through the esophagus
14 before it ended up in the backbone. It caused a lot of
15 bleeding in the chest. There was more blood in the right
16 chest but there had been a chest tube placed in the left chest
17 so some of the blood from the left chest had been drained out
18 but there was a lot of blood internally in both chest cavities
19 and around the heart.

20 Q. Did you note on the body if there was any evidence
21 of any kind of medical intervention noted?

22 A. Yes. There was the evidence that that chest tube
23 had been put in there. There was an airway in his trachea and
24 a blood pressure cuff on the right upper arm.

25 Q. Were you able to determine a cause of death for Mr.

1 Ratliff?

2 A. Yes.

3 Q. What was the cause of death?

4 A. It's called exsanguination which means to bleed out
5 due to laceration of the heart due to the gunshot wound to the
6 chest.

7 MS. PATTERSON: Thank you, Dr. Ross. Answer any
8 questions the defense may have.

9 CROSS EXAMINATION

10 BY MS. ZMROCZEK:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. You do a lot of autopsies?

14 A. Yes.

15 Q. And so you know that bullets can travel in different
16 paths, right?

17 A. Yes.

18 Q. And that depends on the direction from which they
19 are shot, correct?

20 A. Correct.

21 Q. What path did this bullet travel?

22 A. It went from front to back, uhm, very slightly right
23 to left and very slightly downward.

24 Q. And when you say very slightly, that helps determine
25 the trajectory it takes through the body, right?

1 A. Yes.

2 Q. I believe that the pictures you were showed was like
3 just a little left of midline, right?

4 A. A little bit right of midline.

5 Q. I'm sorry. Right of midline. And then it ended up
6 in the vertebra?

7 A. Yes.

8 Q. What, if anything, did that have on the ability to
9 move after that point?

10 A. Well, the bullet hitting the spine, it didn't go
11 through the spinal cord. It hit the vertebra. That can cause
12 a concussion just like if you get hit in the head. You can
13 blackout. A concussion to a spinal cord can cause the nerves
14 to stop so that you become paralyzed immediately. That
15 doesn't always happen but it can.

16 Q. Okay. So that kind of helps give a determination of
17 how far a person can travel after they are struck?

18 A. Yes.

19 Q. When you say -- Well, you said paralyzed. Can't
20 move, right?

21 A. Correct. From that point down.

22 Q. From that point down?

23 A. Yes.

24 Q. So if it was in, I think you said vertebra 8?

25 A. Yes, of the chest so he would have lost - he could

1 have lost the ability to walk.

2 Q. To walk?

3 A. Yes.

4 Q. Thank you. You also said that you were trained to
5 look for any other injuries?

6 A. Yes.

7 Q. Sometimes do people have injuries that are older
8 injuries that have nothing to do with their death?

9 A. Yes. This gentleman had some abrasion on his face
10 which is probably from him falling on the ground. We look for
11 any scars or any evidence of any other injury past or
12 present.

13 Q. Past or present?

14 A. Yes.

15 Q. Are there injuries that can affect, say, your
16 ability to shoot a gun?

17 A. Yes.

18 Q. Can you get those if you have injuries to your
19 hands?

20 A. You can.

21 Q. Okay. You didn't see any remarkable significant
22 injuries on Mr. Ratliff, correct?

23 A. Just the recent abrasion on the face.

24 Q. Did you draw blood?

25 A. Yes.

1 Q. Is that common in this type of scenario?

2 A. We always draw blood and take urine and whatever
3 else we can for toxicology purposes.

4 Q. Do you amend your report when you get those results
5 back?

6 A. If it's pertinent.

7 Q. Did you get the results back in this case?

8 A. Yes.

9 Q. What was the toxicology in this case?

10 A. He had a blood alcohol level of .17 percent and he
11 had marijuana on board, cannabinoids.

12 Q. Cannabinoids?

13 A. Yes.

14 Q. That means marijuana?

15 A. Yes.

16 MS. ZMROCZEK: Thank you, doctor.

17 MS. PATTERSON: No further questions, Your Honor.

18 THE COURT: Thank you, Dr. Ross.

19 MS. PATTERSON: The State calls Roger Gilland.

20 Thereupon,

21 ROGER GILLAND

22 after having been first duly sworn, testified as follows,

23 THE CLERK: Please have a seat. After you're
24 seated, please state your full name spelling your last
25 name for the record.

1 THE WITNESS: Roger Gilland, G-i-l-l-a-n-d.

2 DIRECT EXAMINATION

3 BY MS. PATTERSON:

4 Q. Mr. Gilland, where are you currently employed?

5 A. Big G Express out of Tennessee.

6 Q. What kind of business is that?

7 A. Over the road trucking company.

8 Q. How long have you been a truck driver?

9 A. Since February of this year.

10 Q. What did you do before you became a truck driver?

11 A. I was in law enforcement.

12 Q. What agency did you work for?

13 A. Lexington County Sheriff's Department.

14 Q. How long were you with the Lexington County
15 Sheriff's Department?

16 A. Approximately six years, I believe.

17 Q. What was your job title?

18 A. I was a patrolmen as well as a crime scene
19 investigator and when I left, I was in the motor division.

20 Q. Do you have any kind of educational background in
21 crime scene investigation?

22 A. I do. I have, of course, graduated from the
23 academy. I have a Bachelor of Science Degree in forensic
24 crime scene investigation, an Associate's Degree in Criminal
25 Justice as well as several training classes and seminars

1 related to forensics.

2 Q. How long did you work with the forensic services
3 unit at the Lexington County Sheriff's Department?

4 A. I believe between three and four years.

5 Q. What is the role of the forensic services unit at
6 the Sheriff's Department?

7 A. To investigate the scene of a crime for evidence.
8 Once we recognize the evidence, we sometimes analyze,
9 preserve, document the evidence.

10 Q. Were you called out to the Lexington Medical Center
11 on February 2nd, 2014 in response to a homicide?

12 A. I was.

13 Q. What time did you get that call?

14 A. I believe, I would have to look at my notes, but I
15 believe I got the call around 7:30 and arrived about around
16 8:00. Let me double check my notes.

17 Q. Certainly.

18 A. I received the call at 7:30. I arrived on scene at
19 LMC at 8:00 in the morning.

20 Q. And once you got to Lexington Medical Center, what
21 did you do first?

22 A. I believe the first thing I did was proceeded to the
23 room I was directed to where the victim was laying. I
24 collected photographs of the victim and collected some
25 evidence, personal items that was with the victim.

1 Q. What kind of items were these?

2 A. The Nike shoes, a pair of jeans, a belt, a money
3 clip, some money, debit card and a little thing of Carmex lip
4 balm.

5 Q. Can you explain to the jury the collection
6 process?

7 A. Yes. The first thing I do is I photograph the
8 evidence before I ever touch it. Once I photographed it in
9 relation to where the evidence is, I take up close photos of
10 each piece of evidence, I assign it an evidence number. That
11 evidence is placed into a bag and I seal that evidence.

12 Q. What do you do with the bag?

13 A. Once it's sealed, I initial and date it. I place
14 the time and location that the evidence was collected and
15 assign an evidence item number to it.

16 Q. Then what do you do with the evidence?

17 A. Once I have completed the scene, the evidence goes
18 into my secured crime scene vehicle for transportation.

19 Q. And your crime scene vehicle, what kind of vehicle
20 is it?

21 A. It's a Ford F250 with like a work bed on it. It's
22 got cargo compartments that are locked. The locks are pretty
23 much tamper resistant. If anybody breaks into it, you're
24 going to know it's been broke into. There would be severe
25 damage done to the vehicle to get into it.

1 Q. How many keys is it to that locked box?

2 A. To the lock box there is only one key. I have that
3 key in my possession the whole time. To the vehicle itself
4 there is the key that I have as well as a spare key that's
5 kept in the maintenance shop in case the vehicle is locked
6 with the keys in it.

7 Q. Did you secure these items in that locked box?

8 A. Yes. I did.

9 Q. Did you obtain any other evidence from the victim
10 Mr. Ratliff?

11 A. Not at that time. Not at LMC. I didn't receive
12 anything else from the room that he was in.

13 Q. Did you receive any evidence off of the victim?

14 A. No. Not off of the victim. Not other than what I
15 have said I collected in the room at that time. I did collect
16 other evidence later on but not off of the victim.

17 Q. What did you do next?

18 A. Once I completed the photographing of the victim,
19 collecting the evidence that was on him, I locked that
20 evidence in my vehicle, uhm, I made contact with Detective
21 Black who was in a conference room like a family conference
22 room with several individuals. She had obtained a consent to
23 search form and asked me to collect some items of clothing,
24 photographs and a gunshot residue kit.

25 Q. Who were you supposed to collect the evidence

1 from?

2 A. Initially I collected it from Frederick Moss.

3 Q. So were you able to make contact with Mr. Moss?

4 A. Yes. I did make contact with Mr. Moss.

5 Q. Was Mr. Moss cooperative with you?

6 A. He was very cooperative.

7 Q. Did you note anything? Did you collect his
8 clothing?

9 A. I did. I collected a shirt from him.

10 Q. Did you note anything on his clothing?

11 A. Yes. It had some dirt debris as well as fresh
12 stains that appeared to be blood.

13 Q. Did you collect anything else from Mr. Moss?

14 A. I collected the gunshot residue kit from his
15 hands.

16 Q. Can you explain to the jury what a gun shot residue
17 kit is?

18 A. It's a kit that comes sealed. It's got several
19 little cannisters that has sticky tabs on it. Those
20 cannisters are used to touch the areas of the top of the hands
21 and palms of the hands to basically collect debris on the
22 hands such as gunshot residue or anything else that may be
23 present there. There are also several small swabs like Q-tips
24 with another hydrating agent that I used to wipe the swab
25 around the hands in the same areas. Once that's done you seal

1 it back up and initial it. It's got a worksheet in it with a
2 questionnaire that you ask of whoever you're collecting that
3 gunshot residue from.

4 Q. What kind of questions do you ask that person before
5 you collect it?

6 A. It's got basic questions such as their occupation,
7 that they were doing prior to being given the GSR kit.
8 Whether they are right-handed, left-handed. If they had
9 washed their hands. What activities they were doing prior to
10 the incident.

11 Q. Did you ask these questions to Mr. Moss?

12 A. I did.

13 Q. Did you note anything about whether or not he stated
14 he washed his hands or not?

15 A. If he did, I would have to look at the actual
16 worksheet to see what it says that I noted. I don't believe I
17 have that in here.

18 Q. (Proffering.) What I have passed you, is that part
19 of the information that you filled out?

20 A. Yes. This is the analysis information form and the
21 questionnaire.

22 Q. So that would be the information that you noted?

23 A. Correct.

24 Q. Did you note anything about whether or not Mr. Moss
25 stated he washed his hands or not?

1 A. It says that he did not wash his hands.

2 Q. Did you make any personal observations about the
3 condition of Mr. Moss' hands?

4 A. Yes. He had dirt and debris on his hands.

5 Q. And when you swab a person's hands or collect from
6 them, do you do one hand at a time?

7 A. Yes. One hand at a time and they are also labeled.
8 They are labeled right back hand or right palm.

9 Q. What do you do with each sample?

10 A. The cannisters have their own top that goes back on
11 them. They come pre-sealed. You break the seal, take the
12 cannister or sticky tab part out, dab it on their hands, put
13 the cannister back on. That's placed inside the kit. The
14 swabs are basically the same way. You swab the hand. It goes
15 into a little vial that has a cap that you seal on it. It
16 goes into the kit. The questionnaire goes into the kit and
17 the whole kit is sealed, initialed and dated.

18 Q. What did you do with each kit?

19 A. Precisely what I said, just explained the procedure
20 for and those kits were stored in my crime scene vehicle.

21 Q. Did you collect gunshot residue on anyone else?

22 A. Yes. I collected a gun shot residue kit from Andre
23 Bunch.

24 Q. Is the process the same as you have explained?

25 A. Exactly the same.

1 Q. Did you note anything about any physical observation
2 about Mr. Bunch's hands?

3 A. Yes. He had dirt and debris on his hands as well.

4 Q. Did you deliver their kits to someone or
5 somewhere?

6 A. It was placed in a secure locker in the crime scene
7 lab and at a later point was turned into evidence.

8 Q. Where was that, at the Sheriff's Department?

9 A. At the Sheriff's Department. Yes.

10 Q. Did you collect any other evidence, a gun shot
11 residue kit on anyone else?

12 A. I do not believe I did. I would have to look at my
13 notes just to make certain.

14 Q. Please look at your notes.

15 A. Yes. I did. I collected a gunshot residue kit from
16 the victim as well.

17 Q. Is the process the same?

18 A. It is with the exception of in this case the victim
19 was deceased, was not able to answer any of the questions for
20 the questionnaire.

21 Q. Did you note any personal observation about his
22 hands?

23 A. Yes. He had dirt debris and blood on his hands.

24 Q. Did you have any other involvement in collecting any
25 evidence at the hospital that day?

1 A. Yes. I was sent outside to process a vehicle that
2 was located in the parking lot that the victim was transported
3 to the hospital in.

4 Q. Okay. What did you collect?

5 A. From that scene I collected a black, gray and white
6 Nike shoe which matched the shoe that was with the victim
7 inside the hospital but this one was laying outside on the
8 ground by the passenger rear door of the vehicle. There were
9 two cell phones and some money that was collected which were
10 later returned to the owner. They were deemed not part of the
11 investigation that we needed to keep in evidence.

12 Q. Who was the owner of those items?

13 A. Andre Bunch, I believe. Let me double check my
14 property release forms. Yes. Andre Bunch. There was also a
15 handgun that was later collected as well.

16 Q. Who did you collect that handgun from?

17 A. Deputy Fine.

18 Q. What type of handgun was that?

19 A. Give me a second to find it in my notes here. A
20 Smith and Wesson nine millimeter semi automatic pistol.

21 Q. What did you do with that handgun?

22 A. That handgun was photographed, packaged, sealed and
23 placed with the evidence inside my crime scene vehicle which
24 was later transported to the crime scene lab, placed in a
25 locker and then ultimately turned into evidence with the

1 Lexington County Sheriff's Department.

2 Q. At what time did you finish processing at the
3 hospital?

4 A. I completed at the hospital at approximately 11:30 I
5 believe it was and responded to the original incident scene.

6 Q. Was that 11:30 a.m. or p.m.?

7 A. A.m.

8 Q. Then I'm sorry. Where did you go next?

9 A. To the original incident scene.

10 Q. Where was that?

11 A. It was a bar or parking lot of a bar called the
12 Cockpit.

13 Q. Did you assist in any type of evidence collection
14 there?

15 A. I assisted with Investigator Shearer with basically
16 the final walk through at the scene to make sure there was no
17 other evidence that had been missed. It's a way we check each
18 other just to make sure. We have a second set of eyes on the
19 scene just to make sure there is no evidence missed.

20 Q. Okay. Did you note that anything had been missed by
21 CSI Shearer?

22 A. No. It appeared that he had done a very thorough
23 job of processing the crime scene.

24 Q. Did you have any involvement with trying to extract
25 any cell phones?

1 A. Yes. I received two search warrants and a crime lab
2 request to attempt to extract information from two different
3 cell phones.

4 Q. Were you successful in retrieving any information
5 off those cell phones?

6 A. There was no information to be retrieved. It
7 appeared that the two cell phones had been erased or put back
8 to a factory reset.

9 Q. Just to make sure, the GSR kits that you collected,
10 did you turn them into evidence?

11 A. Yes.

12 Q. Where was the evidence located?

13 A. The Lexington County Sheriff's Department at
14 headquarters.

15 Q. How do you turn in the evidence when you get back to
16 headquarters?

17 A. Generally I take it, hand deliver it to an evidence
18 custodian.

19 Q. And is it signed in?

20 A. It is.

21 Q. I'll show you what's been marked as State's exhibit
22 38 and ask you to look at that.

23 A. All right.

24 Q. Do you recognize what I passed to you?

25 A. It appears to be the residue kits in sealed

1 envelopes or what used to be a sealed envelope.

2 Q. Is that the kit that you turned into evidence at
3 headquarters?

4 A. May I open this?

5 Q. Yes.

6 A. Yes. It is.

7 Q. And do you note your initials or any other
8 identifying information on that?

9 A. Yes. My handwriting is on the front of it as well
10 as on the back along the seal is my initials and the date.

11 MS. PATTERSON: Your Honor, at this time we move
12 State's exhibit 38 into evidence.

13 THE COURT: Any objection to 38?

14 MS. ZMROCZEK: No objection.

15 THE COURT: State's 38 is in.

16 MS. PATTERSON: Thank you, Mr. Gilland. Please
17 answer any questions the defense may have.

18 CROSS EXAMINATION

19 BY MS. ZMROCZEK:

20 Q. Mr. Gilland, where did you collect car keys from the
21 victim?

22 A. I'm not sure whether I did collect car keys. Can I
23 take a minute to look at my notes to be certain?

24 Q. Yes.

25 A. I have no notes about collecting car keys.

1 Q. No car keys. Okay. And you said the shoe that you
2 found in the car matched the shoe that you found on the
3 victim?

4 A. It wasn't in the car. It was laying outside the car
5 on the ground.

6 Q. Outside the car?

7 A. Correct.

8 Q. But those were the same shoes?

9 A. Yes.

10 Q. Same pair of shoes?

11 A. Yes. They appeared to be.

12 Q. Okay. And then she asked you about the cell phones,
13 the two cell phones that you had processed. You had a search
14 warrant for those phones, right?

15 A. Correct.

16 Q. They were collected because they were part of this
17 investigation?

18 A. Yes.

19 Q. And they were both completely devoid of any
20 information?

21 A. Correct.

22 Q. They had both been erased?

23 A. Correct. They had been erased or reset back to
24 factory settings. Either way they contained no information.
25 They had no contacts or call history, text messages or

1 anything else on them.

2 Q. Where did you get those phones from?

3 A. I got them from the evidence room.

4 Q. So somebody had collected them before you.

5 A. Correct.

6 MS. ZMROCZEK: Thank you.

7 THE COURT: Any redirect.

8 MS. PATTERSON: No, sir.

9 THE COURT: You may step down.

10 MS. PATTERSON: Your Honor, may we approach?

11 THE COURT: You may.

12 (Side bar off the record.)

13 MR. BELL: The State calls Whitney Berry to the
14 stand.

15 Thereupon,

16 WHITNEY BERRY

17 after having been first duly sworn, testified as follows,

18 THE CLERK: Please have a seat. After you're
19 seated, please state your full name spelling your last
20 name for the record.

21 THE WITNESS: My name is Whitney Berry, B-e-r-r-y.

22 DIRECT EXAMINATION

23 BY MR. BELL:

24 Q. Good afternoon, Ms. Berry.

25 A. Good afternoon.

1 Q. Who are you employed by?

2 A. I'm employed by the South Carolina Law Enforcement
3 Division also known as SLED.

4 Q. In what capacity do you work for SLED?

5 A. I'm a forensic scientist in the trace evidence
6 department.

7 Q. What is trace evidence?

8 A. Trace evidence refers to all kinds of evidence that
9 you can't see with the naked eye or analyze with the naked
10 eye. These are typically microscopic pieces of evidence such
11 as paint samples from hit and run incidences, gunshot residue,
12 fibers, bank die analysis, explosive analysis, glass analysis.
13 Different things like that.

14 Q. What exactly are your duties as it relates to trace
15 evidence?

16 A. I'm a gunshot residue analyst.

17 Q. What kind of training and education goes into being
18 a GSR analyst?

19 A. I have a Bachelor's of Science in chemistry from the
20 University of South Carolina. When I was hired on at SLED, I
21 completed our nine month in-house training program which
22 included several readings on the theory of scanning electron
23 microscopy and gunshot residue detection as well as many hands
24 on practical exams, written exams, courtroom testimony,
25 observation. When I completed all of that, I also went to the

1 College of Applied Sciences up in Illinois and took their
2 scanning electron microscopy class for gunshot residue
3 analysis and I have since taken their scanning electron
4 microscopy class.

5 MS. ZMROCZEK: Your Honor, we stipulate to her
6 qualifications.

7 THE COURT: All right. Members of the jury, similar
8 to Dr. Ross. Because of the training, expertise,
9 experience in a certain field of expertise a person can
10 be offered as an expert. Ms. Berry is trained in
11 chemistry as well as gunshot residue analytics and use of
12 instrumentation to analyze that sort of thing and she has
13 been offered by the State and Ms. Zmroczek is conceding
14 that her qualifications are very suitable for that type
15 of testimony. Mr. Bell, if you want to keep going
16 further so the jury understands, you can, but she has
17 been so qualified as an expert in that field.

18 MR. BELL: Thank you, Your Honor.

19 BY MR. BELL:

20 Q. Ms. Berry, can you explain what exactly gunshot
21 residue is?

22 A. Yes, sir. When we're looking for gunshot residue,
23 what we're looking for is the primer residue that's gonna come
24 out of the gun when it's discharged. So whenever you fire a
25 gun, there's a small explosion that happens in the primer

1 capsule of the cartridge and what happens when that takes
2 place is the metallic particles that are in that primer vaporize
3 and they become liquid and then as they hit the air they cool
4 down and they resolidify into round or molten particles.
5 These metallic particles that are in there are made of lead
6 and barium and antimony and they are unique to primer residue.
7 So that means they are unique to a cartridge or gunfire.

8 Q. What are some of the other components related to
9 gunshot residue?

10 A. Uhm, in general when one says gunshot residue, that
11 means everything that comes out of the muzzle of the gun so
12 that could include rust, grease, dirt, other debris.

13 Q. Are you familiar with something called a GSR kit?

14 A. Yes, sir.

15 Q. What's the purpose of that kit?

16 A. A gunshot residue collection kit, its purpose is to
17 collect the microscopic gunshot residue particles that may or
18 may not be present on somebody's hands. So basically it's
19 about a quarter inch diameter. Looks like a large roofing
20 nail. Has a sticky top on it and you would press it on the
21 hand of the person that you were collecting from. So the ones
22 that we issue at SLED we give to any agency free of charge if
23 they want to come pick them up. We have four particle lifts
24 on them. That's what those are called. So we have got one
25 for the right palm. So the right palm of the hand. The right

1 back of the hand. Then the left palm and left back. Because
2 those are the areas that we are most likely to find gunshot
3 residue on someone who has fired or been in the vicinity to
4 the discharge of a firearm.

5 Q. Just very briefly can you walk us through the
6 process of how you breakdown a GSR kit and analyze it?

7 A. Yes. So when the evidence comes into SLED, we make
8 sure that it's sealed and put tamper evident tape on it which
9 means if anybody tries to open the evidence, it's very
10 obvious. There's no way to not mess up the tape or peel it
11 off. It's extra sticky. So we would open the kit. We would
12 go ahead and we would write the SLED lab number, the item
13 number, our initials and the date on the back to indicate when
14 we opened it. We then go ahead and open it and inventory it.
15 Inside the kit what we are looking for are those four particle
16 lifts. We also want to make sure that the gunshot residue
17 information kit is present, or information kit worksheet is
18 present. That is a worksheet that has pertinent information
19 on it that we'll need to analyze the kit. That includes the
20 name of the person the kit was collected from, whether that
21 person was living or deceased at the time of collection, the
22 incident date and time and the collection date and time. We
23 have to make sure that the incident date and time and the
24 collection date and time are within six hours of each other
25 because if they were not within six hours of each other on a

1 living person, we can't analyze the kit. That's simply
2 because after six hours it's generally accepted that you are
3 not going to find gunshot residue on a living person.

4 Gunshot residue is incredibly fragile. You can
5 imagine being in your kitchen having flour on your hands.
6 Every time you clap your hands, touch something, wipe them, a
7 little bit of that flour comes off. That's very similar to
8 how gunshot residue can be removed. It doesn't take a whole
9 lot. It can also absorb into the skin because the particles
10 are microscopic. It just absorbs through the pores and it can
11 be sweated off or washed off. So we have to make sure that
12 that information is present.

13 And then we would take the particle lifts and we
14 would load them on the scanning electron microscope. It's
15 kind of like seeing in science fiction movies where you have a
16 radar sort of thing going across a landscape and any time it
17 sees a bump which in this case would be a particulate matter
18 such as dirt, dust debris, gunshot residue, what's going to
19 happen is that scanning electronic microscope is gonna stop
20 and it's gonna take a picture of that microscopic particle.

21 When it takes that picture, it's also going to go
22 ahead and take an x-ray of it, too, and that x-ray is gonna
23 tell us what's it made out of. That's how we confirm that
24 it's made of the metal elements we expect to find in gunshot
25 residue primer, lead, barium, antimony. So that's how our

1 analysis typically works. And then afterwards I would go
2 through and manually confirm all these things and make sure
3 that the instrument actually marks things correctly because
4 computers are only as good as the people who program them. So
5 we don't just rely on the computer. We go back and we look
6 and check it over and then from that data we would go ahead
7 and write a report.

8 Q. Now, do you use any sort of controlled samples on
9 that fancy microscope you were talking about?

10 A. Yes. We do.

11 Q. What's the purpose of those?

12 A. For every run of the instrument we have a positive
13 and a negative quality assurance sample. So our positive is a
14 sample that we have made in the lab. We have had someone go
15 down to the tunnel and shoot and then we sample their hands
16 for GSR so we know for sure it's positive. There is GSR on
17 it. And then we have a negative control which is a blank
18 gunshot residue sample that we prepare for each run. So the
19 point of this is we want our blank to stay blank or negative.
20 So we don't want there to be any particles of interest on it
21 so nothing with lead, barium or antimony should be on that
22 blank. And our positive needs to detect one hundred particles
23 that contain GSR. So if it doesn't detect one hundred
24 particles, then we know there is something wrong with the
25 instrument and we need to look into recalibrating it. If it

1 takes longer than that we would consider average to find it,
2 we would again want to go ahead and look into why it's doing
3 that. But the point is to make sure that it's actually
4 detecting GSR and that things aren't, particles aren't moving
5 during the analysis.

6 MR. BELL: Permission to approach the witness.

7 THE COURT: Sure.

8 BY MR. BELL:

9 Q. I'm handing you State's 38. Are you familiar with
10 that package?

11 A. Yes, sir.

12 Q. What is that package?

13 A. This is L14-0554 container B, the SLED number for it
14 and the SLED container number for it. It was submitted to
15 contain three gunshot residue kits.

16 Q. What is the purpose of that lab number you read
17 out?

18 A. The lab number that's assigned when the evidence is
19 logged in or the case is logged in., Every case that comes
20 into SLED is given a unique identifying lab number and they
21 all have a bar code associated with them. This is so that we
22 can track the evidence through an electronic chain of
23 custodian so we know that we have this lab number with this
24 container number and each item within this container has it's
25 own number too. Everything at SLED has a bar code, every

1 shelf, every person, we all have bar codes, and that's how we
2 transfer evidence electronically from one person to another or
3 one area to another.

4 Q. When did you receive that package?

5 A. I opened this package on August 17th of 2016.

6 Q. Did you check it for tampering at that time?

7 A. Yes, sir.

8 Q. Had there been any tampering that was evident?

9 A. No, sir.

10 Q. Would you have known if there was any tampering?

11 A. Yes, sir.

12 Q. How is that?

13 A. As you can see from where it was opened, you can't
14 really open one of these without destroying the seal
15 completely. Had the seal been broken, I would have been aware
16 of that. I also would have been aware if it was resealed
17 because I would have seen the extra band of tape around it and
18 had that been the case, I would have contacted our evidence
19 control department to find out what was going on with that.

20 Q. How many kits did you say were contained within that
21 package?

22 A. Three.

23 Q. Do you know who they belong to?

24 A. I would have to reference my notes on that.

25 Q. Do you have your notes with you?

1 A. Yes, sir.

2 Q. Would you please look that up?

3 A. One gunshot residue kit was from Brandon Ratliff.
4 One gunshot residue kit was from Frederick Moss, Junior. And
5 one gun shot residue kit was submitted from Andre Jeffery
6 Bunch.

7 Q. Did you ultimately analyze those kits?

8 A. Yes, sir.

9 Q. Did you put it through that process that you walked
10 us through earlier?

11 A. Yes, sir.

12 Q. Did you take notes like you mentioned you would have
13 earlier?

14 A. Yes, sir.

15 Q. Did you have any disqualifying factors as it relates
16 to these kits?

17 A. Disqualifying factors?

18 Q. Was there any reason you felt you could not test
19 them?

20 A. No, sir.

21 Q. Ultimately did you generate a report as a result of
22 your analysis?

23 A. Yes, sir.

24 Q. Is that report something that you keep in the
25 ordinary course of your business there at SLED?

1 A. Yes, sir.

2 Q. Is it something that you typically rely upon for
3 your testimony in court?

4 A. Yes, sir.

5 Q. Do you have a copy of that with you?

6 A. Yes.. I do.

7 Q. What were the results of your analysis on these
8 kits?

9 A. On the gunshot residue kit from Brandon Ratliff, no
10 gunshot or primer residue was found. so that would be a
11 negative. There was no gunshot residue found. On the gunshot
12 residue kit from Frederick Moss, Junior is again no primer or
13 gunshot residue was found. So that was also negative. On the
14 gunshot residue submitted from Andre Jeffery Bunch we have
15 again a negative result of no primer or gunshot residue was
16 found.

17 MR. BELL: Please answer any questions the defense
18 may have for you.

19 CROSS EXAMINATION

20 BY MS. ZMROCZEK:

21 Q. Briefly. Ms. Berry, you said that it was very
22 fragile. Does it take a whole lot to get rid of gunshot
23 residue?

24 A. That is correct. It does not.

25 Q. So if somebody hit the ground and it was wet outside

1 or even if it wasn't wet outside, could that knock off gunshot
2 residue?

3 A. It could potentially remove some. Yes.

4 Q. If someone picked up somebody and put them in a car,
5 could that remove gunshot residue off of their hands?

6 A. It could potentially remove it. Yes.

7 Q. If someone had dirt and blood on their hands, could
8 that potentially get rid of any gunshot residue?

9 A. Yes, ma'am.

10 Q. If somebody had their hands in their pockets, could
11 that get rid of any gunshot residue?

12 A. Potentially. Yes.

13 MS. ZMROCZEK: Thank you.

14 THE COURT: Anything else, Mr. Bell?

15 REDIRECT EXAMINATION

16 BY MR. BELL:

17 Q. To clarify, are those simply possibilities?

18 A. Those are all possibilities due to the fragile
19 nature of gunshot residue. Any of those could be just as
20 likely as the other.

21 MR. BELL: No further questions.

22 THE COURT: You may step down. Good stopping point?

23 MS. PATTERSON: Yes, sir.

24 THE COURT: All right. We are done for today.

25 We'll start back tomorrow morning at 9:30. All right.

1 NOVEMBER 2, 2016

2 BAILIFF: All rise. Court is now in session. The
3 Honorable Eugene C. Griffith, Junior, presiding.

4 THE COURT: Good morning. Please be seated. Y'all
5 ready to get going?

6 MS. PATTERSON: Yes, Your Honor.

7 MS. ZMROCZEK: Yes, Your Honor.

8 THE COURT: Let's get our jury.

9 (Whereupon, the jury entered the courtroom at 9:32
10 a.m.)

11 THE COURT: Good morning, everybody. I told you I
12 would try to get you in here on time this morning. We
13 did pretty good. Ms. Patterson, call your next
14 witness.

15 MS. PATTERSON: The State calls Sergeant Cathy
16 Etheredge.

17 Thereupon,

18 CATHY ETHEREDGE.

19 after having been first duly sworn, testified as follows,

20 THE CLERK: Please have a seat. After you're
21 seated, please state your full name spelling your last
22 name for the record.

23 THE WITNESS: My name is Cathy Shavon Etheredge,
24 E-t-h-e-r-e-d-g-e.

25 DIRECT EXAMINATION

1 BY MS. PATTERSON:

2 Q. Sergeant Etheredge, where are you employed?

3 A. Lexington County Sheriff's Department.

4 Q. What is your current job title?

5 A. I'm a sergeant in internal affairs.

6 Q. How long have you been in internal affairs?

7 A. Since 2014.

8 Q. What department did you work in prior to working in
9 internal affairs?

10 A. I worked in the major crimes unit for the Sheriff's
11 Department.

12 Q. How long did you work in major crimes?

13 A. From 2006 until 2014.

14 Q. What type of crimes are investigated by the major
15 crimes unit?

16 A. We handle any crimes that are against people which
17 would be your assaults, CDV's, murders, sexual assaults.

18 Q. Can the major crimes investigators be involved in
19 numerous investigations at one time?

20 A. Yes.

21 Q. And were you involved in the case of State of South
22 Carolina versus Gregory Brooks?

23 A. Yes.

24 Q. How did you come to be involved in this case?

25 A. On February the 2nd when this incident occurred, our

1 team was on-call and Sergeant Robby Lint was our supervisor at
2 that time and he called us to come to the scene.

3 Q. What time did you get the call.

4 A. He called sometime after about 6:30 in the
5 morning.

6 Q. And where was the incident location that you were
7 called out to?

8 A. On Berryhill Road at a club named the Cockpit.

9 Q. Do you know what time you arrived?

10 A. I arrived there probably around 7:20, 7:30,
11 somewhere along in there.

12 Q. When you got to the scene, what did you do?

13 A. Uhm, when we arrived on the scene, usually the
14 sergeant will instruct us what he wants for us to do and
15 shortly after getting there, I may have been there maybe 30
16 minutes, he sent me to a location just up the street to meet
17 with a potential witness.

18 Q. Who was that potential witness?

19 A. Her name was Josie Paxton.

20 Q. Where did you go to meet with Ms. Paxton?

21 A. About maybe a quarter of a mile if that far from the
22 Cockpit there on Berryhill Road. It was in a parking lot of
23 like and executive center. She was standing by with Deputy
24 Mountzouros.

25 Q. Did she state to you whether or not she witnessed

1 the incident?

2 A. She did not witness any of the incident.

3 Q. Okay. And did you do anything with respect to --

4 Were they getting 911 calls made about the incident?

5 A. Yes.

6 Q. Did you do anything related to these 911 calls?

7 A. Yes. I did.

8 Q. What did you do?

9 A. Uhm, after I got back to my desk, it was a few days
10 later, I'm going through the 911 calls that we had received
11 from CAD and I saw three numbers on there that had called in
12 this incident so I called those three numbers.

13 Q. Were you successful in getting in touch with any of
14 the three numbers, the callers of any of the three numbers?

15 A. The first number had already been disconnected. The
16 second number, uhm, the female did not want to get involved.
17 She said that she didn't see anything. She knew that
18 something had happened and she was just calling it in. The
19 third person that I called, her name was Shontay and she told
20 me that she was standing right by the shooter.

21 Q. Okay. And were you able to later on meet with
22 her?

23 A. I did.

24 Q. What did you think her name was?

25 A. Uhm, she told me that her name was Shontay Jones.

- 1 Q. When did you meet with this Ms. Jones?
- 2 A. I met with her on February the 6th.
- 3 Q. And where did you all meet?
- 4 A. She worked in Irmo and I asked her if she would meet
- 5 me at the Kroger, in that parking lot there in Irmo.
- 6 Q. Did she show up to meet with you?
- 7 A. She did.
- 8 Q. Did she come alone?
- 9 A. She came with her supervisor.
- 10 Q. Without saying what she may have told you, did she
- 11 give you any information about the incident at the Cockpit?
- 12 A. She did.
- 13 Q. Was she able to describe the person that she said
- 14 she saw shooting?
- 15 A. She did.
- 16 Q. What was the description that she gave?
- 17 A. She described the person as being a short, black
- 18 male that had small eyes and that had dreads.
- 19 Q. When you first met with her, did you still believe
- 20 her name was Shontay Jones?
- 21 A. I did.
- 22 Q. Did you ever learn that that wasn't her name?
- 23 A. I did.
- 24 Q. Did you question her about why she lied about her
- 25 name?

1 A. I did.

2 Q. Did that surprise you that someone lied to you about
3 their name?

4 A. No. Not at all.

5 Q. Why not?

6 A. The type crimes that we investigate, people tend to
7 give us fake names. It just goes with some of the cases that
8 we work. Some don't want to get involved.

9 Q. Did she agree to assist you any further in this
10 investigation?

11 A. She did.

12 Q. What did she agree to help you with?

13 A. Meeting with a SLED agent to give them the
14 description of a composite drawing.

15 Q. Where did y'all agree to meet?

16 A. At the Irmo Police Department.

17 Q. Did she show up that meeting?

18 A. She did.

19 Q. Was she able to assist the SLED agent to come up
20 with a composite?

21 A. Yes. She did.

22 MS. PATTERSON: Please answer any questions Ms.
23 Zmroczek may have.

24 THE WITNESS: Yes, ma'am.

25 CROSS EXAMINATION

1 BY MS. ZMROCZEK:

2 Q. Good morning.

3 A. Good morning.

4 Q. I wanted to follow up on a question that Ms.
5 Patterson just asked you. She said that the woman that you
6 spoke with, she told you her name was Shontay, right?

7 A. Correct.

8 Q. You said that oftentimes in your line of work or
9 when you were in your line of work, I know you're in a
10 different area now, but oftentimes when you're investigating
11 homicides, people give false names, right?

12 A. Not just homicides.

13 Q. Not just homicides?

14 A. That's correct.

15 Q. They don't tell the truth right at first?

16 A. Sometimes.

17 Q. Sometimes that just happens, right?

18 A. Right.

19 Q. Sometimes they're scared?

20 A. Some are.

21 Q. Sometimes they just didn't see anything?

22 A. Correct.

23 Q. Sometimes they're just being wrongly accused,
24 right?

25 A. The person that's giving the statement?

1 Q. Sometimes people can give false information because
2 they have been wrongly accused and they're scared?

3 A. Sometimes if we are talking -- You mean to the
4 suspect?

5 Q. A suspect or any witness?

6 A. Sometimes. Yes.

7 Q. That happens, right?

8 A. Correct.

9 Q. Now, you said that you met with a Josie Paxton,
10 right?

11 A. Right.

12 Q. She was in Detective Mountzouros' vehicle?

13 A. No. She was in the parking lot with Deputy
14 Mountzouros.

15 Q. She was actually in the parking lot?

16 A. Right.

17 Q. And you met with her, right?

18 A. Yes.

19 Q. And you had your camera at the scene?

20 A. Yes. My camera was in my car. Yes.

21 Q. And you actually took pictures at that scene?

22 A. I believe I did. Yes.

23 Q. Sergeant Etheredge, I'm going to show you what's
24 been previously marked as defendant's 29, 30 and 31 and ask
25 you if you recognize those pictures?

1 A. Yes.

2 Q. Are those the pictures that you took that night?

3 A. That morning.

4 Q. Excuse me. That morning?

5 A. Yes, ma'am.

6 Q. Do they fairly and accurately represent what you saw
7 and what you photographed that morning?

8 A. Right. From her phone.

9 Q. That was Josie's phone, correct?

10 A. Correct.

11 MS. ZMROCZEK: Your Honor, at this time we would
12 move defendant's 29, 30 and 31 into evidence.

13 MS. PATTERSON: No objection.

14 THE COURT: Moved in without objection.

15 BY MS. ZMROCZEK:

16 Q. Sergeant Etheredge, I'm going to put these up here.
17 I'm putting up defendant's 29. Explain to the jury what they
18 are looking at there.

19 A. Any time that we take a photograph of anything on
20 the scene or that's going with this case, this is the - it's a
21 card that is our county card that tells the location where
22 you're taking the photograph and the description of what type
23 case it is, the case number, the photographer's name and at
24 that time my county number was unit 323. It also has on there
25 the date that this photograph or this evidence is being taken,

1 photographed.

2 Q. That's what you did in this case, right?

3 A. Yes, ma'am.

4 Q. At 214 Berryhill Road it was at the Cockpit,
5 correct?

6 A. No. It was the incident where, the location where I
7 took it was just up Berryhill Road.

8 Q. Just up Berryhill Road?

9 A. Yes, ma'am.

10 Q. Okay. And the date was 2/2/14?

11 A. Correct.

12 Q. That was early in the morning as you recall,
13 right?

14 A. Yes.

15 Q. I'm showing you defendant's 30 which is sideways,
16 but I want to turn it a little but... So you can actually
17 take screen shots of a person's cell phone, right?

18 A. Yes.

19 Q. And that's just - it shows just a conversation back
20 and forth between two people, right?

21 A. Yes.

22 Q. And defendant's 31, that's just a continuation of
23 that conversation, right?

24 A. Right.

25 Q. What that does, Sergeant Etheredge, that helps you

1 get some information about who may know things about cases,
2 right?

3 A. Yes, ma'am.

4 Q. And who to investigate?

5 A. Yes.

6 Q. Just like the 911 calls?

7 A. Yes.

8 Q. You want to talk to people to see who called 911,
9 right?

10 A. Yes.

11 Q. Later on you take all that information and you pass
12 that onto the lead investigator, right?

13 A. It's passed on -- I believe -- These photographs
14 won't be passed on. We take our SIM card and go into evidence
15 and you will log this into evidence and it's there for the
16 case officer or anyone that's working that case.

17 Q. And do you recall Ms. Paxton's demeanor when you
18 were talking to her that evening?

19 A. That morning when I was talking to her?

20 Q. That morning. I'm sorry.

21 A. She was agitated with the guy that she was on the
22 phone with.

23 Q. So she was on the phone with someone. So you could
24 hear end, and don't tell me what she said, but you could hear
25 her end of the conversation?

1 A. When I got there, she was not on the phone with him
2 but she was upset because there had just been a murder at the
3 place that she was out at.

4 Q. So she was, and I believe the word you used was
5 agitated, right?

6 A. Right.

7 MS. ZMROCZEK: Thank you.

8 THE COURT: Any redirect?

9 REDIRECT EXAMINATION

10 BY MS. PATTERSON:

11 Q. Did you take a look at these messages?

12 A. That morning?

13 Q. Yes.

14 A. Yes.

15 Q. And did the information that Ms. Paxton provided
16 you, was there anything that she witnessed personally?

17 A. No.

18 Q. And did you receive a name of who she was speaking
19 with on the phone?

20 A. I did.

21 Q. What was his name?

22 A. Antonio Williams but his nickname is Bling.

23 Q. Is Bling. And did you find out the relationship, if
24 any, between he and Ms. Paxton?

25 A. I did.

1 Q. What was their relationship?

2 A. They had dated for some time but at that time they
3 were no longer dating and he showed up at the club where she
4 was.

5 Q. And did you have an opportunity to eventually meet
6 with Antonio "Bling" Williams?

7 A. I did.

8 Q. And based on the description that you had of the
9 shooter, did he fit that description?

10 A. No.

11 Q. And again, what description did you have of the
12 shooter?

13 A. A small - a black male, small stature, small eyes
14 and dreads.

15 Q. Okay. And what did Mr. Williams look like?

16 A. He was a taller black male, had long dreads and he
17 had a very visible tattoo in the center of his forehead.

18 Q. What was that a tattoo of?

19 A. An "L."

20 MS. PATTERSON: No further questions.

21 THE COURT: You may step down.

22 MS. PATTERSON: The State calls Marty Longshore.

23 Thereupon,

24 MARTY LONGSHORE

25 after having been first duly sworn, testified as follows,

1 THE CLERK: Please have a seat. After you're
2 seated, please state your full name spelling your last
3 name for the record.

4 THE WITNESS: Marty Longshore, L-o-n-g-s-h-o-r-e.

5 DIRECT EXAMINATION

6 BY MS. PATTERSON:

7 Q. Mr. Longshore, where are you employed?

8 A. Currently I'm with the sex offender registry
9 division at the Sheriff's Department.

10 Q. How long have you been with that division?

11 A. Just a couple of weeks.

12 Q. Prior to joining that division, what unit did you
13 work?

14 A. I was in investigations for about six years.

15 Q. How long have you been employed with the Sheriff's
16 Department in all?

17 A. 15 years total.

18 Q. And on April 14, 2014, did you speak to someone
19 about an incident at the Cockpit Bar and Grill?

20 A. Yes, ma'am.

21 Q. Who did you speak with?

22 A. I spoke with Brittainy Dilworth.

23 Q. How was contact made with Ms. Dilworth?

24 A. A received a voice mail from her and after returning
25 her phone call, my sergeant and I went to meet with her and it

1 was regarding this case.

2 Q. At this time when you got this message were you
3 actively involved in the investigation of this case?

4 A. I was not.

5 Q. And so why did you feel the need to follow up with
6 this information or this call?

7 A. Any time a case of this magnitude is going on if we
8 receive information, we like to jump on it and help out any
9 time we can and the original investigations team that was
10 working this was off duty so me and my team got it.

11 Q. Let me make sure that I understand this. So if
12 you're on duty and information comes in about a major crime,
13 why don't you just wait for that team to investigate when they
14 get back?

15 A. Because it's something that we need to jump on
16 pretty quickly. We go ahead and take the initiative and get
17 that done.

18 Q. And after - who was your sergeant that you responded
19 to or reported to?

20 A. Jesse Laintz.

21 Q. What did you and Sergeant Laintz do?

22 A. Sergeant Laintz and I went to the apartment that
23 Brittainy and her friend Shalana were at and followed up with
24 those girls that night.

25 Q. Do you remember what time of day it was?

1 A. It was later in the evening. I remember it was
2 light outside when we got there and dark when we left, but it
3 was later in the evening.

4 Q. And when you got there -- Where did you meet?

5 A. We met at the apartment complex that I believe
6 Brittainy and her mother were staying at at the time.

7 Q. How did this meeting proceed once you got there?

8 A. Sergeant Laintz and I got there and basically the
9 apartment was a smaller apartment so there was a large table
10 kind of like a kitchen table. We sat at the table and met and
11 discussed what was going on initially.

12 Q. Who was there with Brittainy?

13 A. Shalana Weise, a friend of hers.

14 Q. Was Brittainy, without saying what she may have told
15 you, was she able to give you some information that she had
16 heard pertaining to this case?

17 A. Yes.

18 Q. And was she able to name names?

19 A. A couple.

20 Q. Did it appear that she knew these people that she
21 was naming?

22 A. It appeared she was not familiar with them. No.

23 Q. What was her demeanor when she was passing this
24 information along to you?

25 A. Initially she was excited. She wanted to get it

1 out. Emotional. Kind of ran the gamut of emotions with this
2 whole case.

3 Q. What names were brought up during this meeting?

4 A. The names that were brought up, the first one was a
5 gentleman by the name of Dink whose real name was provided in
6 the statement here as a Gregory Brooks, and a Boss Pooh,
7 street name or a nickname. Real name Jermiel Gartrell. And a
8 street name by Little Kirk and a street name of Kato.

9 Q. And what did you and Sergeant Laintz do after this
10 meeting?

11 A. Immediately after I believe he went on a separate
12 follow up but I passed this information that I had along to
13 him and I believe he went on a separate follow up.

14 MS. PATTERSON: Please answer any questions Ms.
15 Zmroczek may have.

16 CROSS EXAMINATION

17 BY MS. ZMROCZEK:

18 Q. Is it Investigator Longshore?

19 A. Yes, ma'am.

20 Q. You said that you helped out the main team, right?

21 A. Yes, ma'am.

22 Q. Some of the things you did was collect evidence,
23 correct?

24 A. A statement.

25 Q. You collected a statement?

1 A. Yes.

2 Q. You also took in a phone from someone, correct?

3 A. Later in the investigation from looks like a Josie
4 Paxton.

5 Q. Josie Paxton. I'm going to show you what's been
6 marked as defendant's 32 and ask if you recognize this?

7 A. I do.

8 Q. Does that form fairly and accurately represent the
9 form that you put your name on, you had her sign and then you
10 collected her phone, correct?

11 A. Yes, ma'am.

12 MS. ZMROCZEK: Your Honor, at this time we move
13 defendant's 32 into evidence.

14 MS. PATTERSON: Without objection.

15 THE COURT: 32 is in without objection.

16 BY MS. ZMROCZEK:

17 Q. Detective or Investigator Longshore, or no,
18 Detective, when you take -- I'm showing you defendant's 32.
19 So when you take in someone's phone, you have a form that you
20 fill out, right?

21 A. That's right.

22 Q. Because you can get search warrants for telephones,
23 correct?

24 A. That's right.

25 Q. But you can also just have them give you their

1 phone; is that right?

2 A. That's right.

3 Q. And then you pass that onto maybe Investigator
4 Phipps or someone else who can download all that information,
5 right?

6 A. That's right.

7 Q. You did that on this case it looks like on February
8 4th at 3:00 p.m.; is that correct?

9 A. Yes.

10 Q. Okay. And you collected, I believe you put it right
11 there, an iPhone?

12 A. That's right.

13 Q. Okay. And not only did you collect an iPhone from
14 Ms. Paxton, but you and I think Investigator David Day went to
15 some businesses and collected some videos, right?

16 A. It was an Exxon maybe store.

17 Q. You went to the Exxon and you collected some
18 surveillance videos, correct?

19 A. I personally did not collect it. No. But I was
20 there.

21 Q. Who collected it?

22 A. I guess it had to have been Detective Day.

23 Q. Okay. So Detective Day went to collect that
24 video?

25 A. But I was there. We met there. He took over.

1 Q. But you were there with him so you know that he did
2 that?

3 A. Right.

4 Q. Okay. And you said that you received a phone call.
5 Did you receive a phone call from Ms. Brittainy Dilworth or
6 did you call her? How did you receive that information?

7 A. She left a message on my desk phone.

8 Q. What relationship did she have with Mr. Brandon
9 Ratliff?

10 A. I believe that was her boyfriend.

11 Q. That was her friend. And you met with her and
12 another woman named Shalana Weise or Weise?

13 A. That's right. Yes, ma'am.

14 Q. And they were giving you information or names?

15 A. That's right.

16 Q. But actually do you know where they got that
17 information from?

18 A. Maybe a co-worker.

19 Q. A co-worker. And where do these people work?

20 MS. PATTERSON: Objection, Your Honor. Relevance.

21 THE COURT: Lay a little more foundation. I'm not
22 sure I follow either but go ahead.

23 BY MS. ZMROCZEK:

24 Q. I believe I asked the question do you know where
25 Brittainy Dilworth got these names you read out on direct,

1 correct? You said from a co-worker?

2 A. I believe so. Yes, ma'am.

3 MS. ZMROCZEK: So, Your Honor, if he's getting the
4 information from a co-worker, the next question was where
5 did they work? Do you know where they worked?

6 THE COURT: How about who was the co-worker?

7 BY MS. ZMROCZEK:

8 Q. Okay. Do you know the co-worker's name?

9 A. No, ma'am.

10 Q. You weren't told who the co-worker was?

11 A. No, ma'am.

12 Q. Did you follow up with the co-worker?

13 A. No, ma'am.

14 Q. But did you go to their place of business?

15 A. No.

16 Q. Okay. Did you know where they worked?

17 A. According to the statement. Yes.

18 Q. Okay. Where was that?

19 MS. PATTERSON: Objection, Your Honor. Relevance.

20 Can we approach?

21 THE COURT: Yes.

22 (Side bar off the records.)

23 BY MS. ZMROCZEK:

24 Q. Let me ask the question this way, Investigator. You
25 knew where the business was where they worked, right?

1 A. Yes.

2 Q. And you did not go follow up there?

3 A. No, ma'am.

4 MS. ZMROCZEK: Thank you.

5 THE COURT: Anything on redirect?

6 MS. PATTERSON: Nothing from the State, Your Honor.

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

8 MR. BELL: The State calls Joe Trawicki to the
9 stand.

10 Thereupon,

11 JOSEPH TRAWICKI

12 after having been first duly sworn, testified as follows,

13 THE CLERK: Please have a seat. After you're
14 seated, please state your full name spelling your last
15 name for the record.

16 THE WITNESS: Joseph Trawicki, T-r-a-w-i-c-k-i.

17 DIRECT EXAMINATION

18 BY MR. BELL:

19 Q. What was that last name again?

20 A. Trawicki.

21 Q. Do you mind if I call you Joe?

22 A. That would be great.

23 Q. Joe, where are you employed?

24 A. Sprint.

25 Q. How long have you been with Sprint?

1 A. 13 years yesterday.

2 Q. What's your title with Sprint?

3 A. I'm one of the record custodians.

4 Q. What exactly are your duties as a records
5 custodian?

6 A. My primary responsibility is traveling all over the
7 country and testifying in court regarding records Sprint has
8 produced.

9 Q. Are you trained to understand the records that you
10 carry with you?

11 A. Yes, sir.

12 Q. And the records that are provided by Sprint?

13 A. Yes, sir.

14 Q. Do you have the documents from Sprint case
15 2014-094456 with you today?

16 A. 496. Yes, sir.

17 Q. I apologize. I can't read my own writing. Are
18 those documents kept in the ordinary course of Sprint's
19 business?

20 A. Yes. They are.

21 Q. Have you had a chance to review those documents
22 prior to taking the stand?

23 A. I have.

24 Q. Do they appear to fairly and accurately reflect the
25 contents of the documents that were transmitted by Sprint?

1 A. Yes. They do.

2 Q. Have any modifications been made to those
3 documents?

4 A. I do not believe so.

5 MR. BELL: Permission to approach the witness.

6 THE COURT: Sure...

7 BY MR. BELL:

8 Q. I'll hand you State's 40. Do you recognize that
9 document?

10 A. Yes, sir.

11 Q. What is that document?

12 A. This is the return from our subpoena compliance
13 department that includes subscriber information for the
14 telephone number 803-800-9911.

15 Q. And is there a name associated with that account?

16 A. The name Gregory Brooks.

17 Q. Is there an address associated with that account?

18 A. [REDACTED]

19 Q. Is that Fernandina?

20 A. Probably.

21 MR. BELL: Your Honor, at this time the State seeks
22 to move State's 40 into evidence.

23 MS. ZMROCZEK: Without objection.

24 THE COURT: State's 40 is in without objection.

25 MR. BELL: Permission to publish, Your Honor.

1 THE COURT: Sure.

2 BY MR. BELL:

3 Q. Joe, I'm handing you a laser pointer. Will you
4 please indicate on the document on the overhead where the
5 account information is located related to the owner.

6 A. This is the telephone number in question and then
7 this is the account name and billing address. That's where
8 the bill is sent.

9 Q. And when was that account established?

10 A. The account was established 1/16/2014.

11 Q. Referring to page 3 of State's 40, what is this
12 information that's blocked down at the bottom of this page
13 indicate?

14 A. This is about the specific handset or some of the
15 specific handset information.

16 Q. Related to the entry dated 1/16/2014, what is that
17 establishing?

18 A. This is the time the account and number was
19 established. "A" stands for active.

20 Q. And the entry dated 2/3/2014, what does that
21 indicate?

22 A. That this particular number was cancelled 2/3/2014
23 at 3:59:31 and then a new number was established 2/3/2014 at
24 the same time so the original number was cancelled and a new
25 number was established.

1 Q. Now, along with this subscriber information what
2 other sort of information is typically provided by Sprint when
3 records are requested?

4 A. In this case the legal demand asked for call detail
5 records with cell site information.

6 Q. How many files were transmitted?

7 A. There would be one for the call detail records and
8 another separate file that includes a listing of all the cell
9 sites for the switches involved.

10 Q. Do you have those documents with you?

11 A. Yes, sir.

12 Q. And have you had a chance to review them?

13 A. Yes, sir.

14 Q. Do they appear to fairly and accurately reflect the
15 contents as Sprint would have transmitted them?

16 A. They do.

17 Q. I'm handing you State's 41 for ID. What is that
18 stack of documents?

19 A. State's 41 is a call detail record or a listing of
20 incoming/outgoing calls, text messages to the telephone number
21 803-800-9911 for the dates of 2/1/2014 through 2/3/2014.

22 Q. And does the number indicated on that file match the
23 phone number that we referenced in State's 40 earlier?

24 A. Yes, sir.

25 Q. And referring to State's 42 for ID, what is that

1 stack of documents?

2 A. This is what we refer to as a repoll or cell site
3 list. This is a listing of all the cell towers associated
4 with a specific switch, in this case the Columbia switch.

5 MR. BELL: Your Honor, at this time the State seeks
6 to move --

7 MS. ZMROCZEK: Without objection.

8 THE COURT: So they both come in?

9 MS. ZMROCZEK: Sure.

10 THE COURT: This is the call record as well as the
11 tower records.

12 BY MR. BELL:

13 Q. Joe, I'm handing you back State's 41 that you
14 identified as the call detail records; is that accurate?

15 A. Yes, sir.

16 THE COURT: So 41 is the call detail record?

17 THE WITNESS: Yes, sir.

18 THE COURT: And 42 is the tower list?

19 MR. BELL: Yes, Your Honor.

20 THE COURT: I'm sorry. I missed that.

21 BY MR. BELL:

22 Q. Are you trained to understand what each column in
23 the call detail record indicates?

24 A. Yes, sir.

25 MR. BELL: Permission to publish, Your Honor.

1 THE COURT: Sure.

2 BY MR. BELL:

3 Q. Showing you State's 41, the call detail records.

4 The top left column, calling NBR, what does that indicate?

5 A. The first column is calling number. This is the
6 number or the phone that picked up and did the dialing. This
7 is who initiated the call.

8 Q. And called NBR?

9 A. The second column is called number. This is the
10 ultimate destination of that phone call after any forwarding
11 or routing. This is the number that actually rang.

12 Q. The fourth column over, MR number?

13 A. Mr stands for Mobile roll. It's incoming. That's
14 when this handset rang. Outgoing, that's when this handset
15 picked up and did the dialing. You might see routed which
16 means the network moved the call around for one reason or
17 another. A common example of this is a call goes to voice
18 mail, it is routed to the voice mail platform. Or you might
19 even see undetermined. If you see undetermined, it's the
20 system didn't automatically detect if it was inbound or
21 outbound. You just have to look at the data.

22 Q. Start date?

23 A. Start date, end date are the date and time that the
24 handset connected and disconnected from the network for all
25 the voice calls. This would be local time to where the phone

1 is so in this case eastern time. All the text messaging is
2 kept in central time so they will appear one hour earlier on
3 the record than they occurred in eastern time.

4 Q. And how do you tell if something is a text message
5 versus a voice call?

6 A. The easiest way is going farther along to the
7 calling that says repoll. Any repoll number 290 through 299
8 or 500 through 540 is going to flag it as a text message.

9 Q. What exactly does NEID mean?

10 A. NEID is network element identifier. At the time of
11 these records we were phasing out repoll and phasing in NEID.
12 For about a six month period they both appeared. They mean
13 the same thing. It's just a different numbering system.

14 Q. Tell us what first and last cell means?

15 A. First cell and last cell would be the tower, the
16 cell tower and the site of the tower or sector that was used
17 by the phone at the beginning of the call and again at the end
18 of the call. How you read that number is you look at the
19 appropriate repoll or cell site list and then you have a five
20 digit number here. The first digit tells you the side. The
21 last four digits give you a tower number. So I believe that's
22 - I can't even read it. It's 2-0 something. 20095. So that
23 would be sector 2, tower number 95. If you look at the cell
24 site list that was also provided for tower number 95 that will
25 give you the latitude and longitude of that tower, the

1 coordinates of that tower.

2 Q. Do any two towers in one particular region have the
3 same cell ID?

4 A. No. Each switch -- I mean, like some of the New
5 York switches will have a tower 95, but only one tower in the
6 Columbia switch will have tower number 95. But on the cell
7 site list itself there will be three entries for tower 95, one
8 for each side of the tower.

9 Q. Looking at State's 41, does the cell phone indicated
10 in that report appear to be active on the day and night of
11 February 1st, 2014?

12 A. Yes, sir.

13 Q. And does it also appear to be active on February 2nd
14 of 2014?

15 A. Yes, sir.

16 Q. Referencing page 6, February 2nd, 2014 at a time of
17 approximately 6:00 a.m., are there any calls made?

18 A. Yes, sir.

19 Q. And is that an incoming or outgoing call?

20 A. On 2/2/2014 at 6:00 a.m. and four seconds there's an
21 outbound call from this number ending in 9911 to
22 803-209-6994.

23 Q. And through the next hour up until 7:00 a.m. can you
24 count how many outgoing calls that number made, the number
25 ending in 9911?

1 A. 13, I believe.

2 Q. Showing you again State's 41 -- I apologize. I gave
3 you the wrong number earlier, page number earlier. If you are
4 able to see, can you indicate with your laser pointer the
5 portion that begins around 6:00 a.m.?

6 A. I believe that's going to be right here.

7 Q. And once again, what is the calling number for that
8 entry?

9 A. 803-800-9911.

10 Q. And I'll zoom in a little bit for you. Are you able
11 to see the first cell column, sir?

12 A. No. I'm sorry. The light.

13 Q. Joe, could I ask you to step down and keep your
14 voice up so the court reporter can hear you.

15 A. Yes, sir. (Witness complies.)

16 Q. You feel free to step right over here.

17 A. So the call at 6:00 a.m., 41 seconds, utilizing
18 tower number 128 sector 2 and ending on tower 136.

19 Q. Step over right here beside me. Through the next
20 hour up until 7:00 a.m. how many unique first cell ID's are
21 there?

22 A. There's just two.

23 Q. And what are those two?

24 A. Tower number 128 and tower number 134.

25 Q. Thank you. Take a seat, Joe.

1 A. (Witness complies.)

2 Q. Referring to State's 42, using the information that
3 you just testified to is it possible given the proper training
4 for someone to use that information to locate exactly where
5 those towers are located?

6 A. Yes, sir.

7 Q. And is it also possible to, based on the information
8 in those documents, to come up with a general direction a call
9 may have come from?

10 A. Yes, sir.

11 Q. And what information is needed for that?

12 A. What the cell site list has is the latitude and
13 longitude, the physical location of the tower, and then it has
14 for each side of the tower what's called an azimuth. That's
15 the direction that the center of each side of the tower is
16 pointing so it gives you a compass direction of where each
17 side of the tower is pointed.

18 Q. Now, to be clear, are you trained in particularly
19 mapping those type of things out?

20 A. I know how to do it. Yes, sir.

21 Q. Is that what you typically do for Sprint?

22 A. We do not do that specifically.

23 Q. Referring to State's 41, does that number remain
24 active throughout February 2nd, 2014?

25 A. Yes, sir.

1 Q. And is it also active through February 3rd, 2014?

2 A. The last outgoing traffic from the handset is at
3 16:50 or 4:50 p.m. on February 3rd.

4 Q. Are there any further entries after February 3rd?

5 A. After February 3rd? No.

6 Q. And referring to State's 40, once again, what was
7 the name of the owner of the number that we just talked
8 about?

9 A. Gregory Brooks.

10 MR. BELL: Please answer any questions the defense
11 may have.

12 CROSS EXAMINATION

13 BY MS. ZMROCZEK:

14 Q. How are you?

15 A. Good morning.

16 Q. You work for Sprint, right?

17 A. Yes, ma'am.

18 Q. You said after Mr. Brooks disconnected this phone,
19 he immediately activated another phone with Sprint, right?

20 A. Yes, ma'am.

21 Q. I mean immediately?

22 A. Uhm, that looks like one was cancelled and the other
23 one was active at the same time.

24 Q. At the same time with Sprint, right?

25 A. That appears to be the case. Yes, ma'am.

1 Q. Didn't change his name?

2 A. We only have the account information here for this
3 specific number. I don't have the additional number
4 information in front of me.

5 Q. You don't have it in front of you?

6 A. No, ma'am.

7 Q. Would it assist you to have it in front of you?

8 A. It would shed more light on the situation.

9 Q. (Proffering.)

10 A. This appears to be the exact same document.

11 Q. If you flip through to the end. Sorry.

12 A. I don't see any additional information. Oh, okay.
13 So it doesn't list the actual number that it was changed to.
14 though.

15 Q. Right. It doesn't list the number. It lists the
16 MD, the identifier for the phone, right?

17 A. Correct. Okay. I'm sorry. There it is. It's
18 201-923-0961.

19 Q. What name was that under?

20 A. Still the same billing information, Gregory
21 Brooks.

22 Q. Same address, right?

23 A. Yes, ma'am.

24 Q. Thank you. I'll take those back from you. Let me
25 ask you this: You work for Sprint, right?

1 A. Yes, ma'am.

2 Q. Do they have people who do your type of job for
3 Verizon?

4 A. I believe so.

5 Q. Okay. So are you familiar with Cellebrite
6 technology?

7 A. That's a tool law enforcement uses.

8 Q. Right. Law enforcement uses that tool. But if
9 somebody wipes their phone clean, if somebody like resets
10 their phone or empties their phone, can you at Sprint or
11 anywhere else still get the call and text information?

12 A. The data. Yes.

13 Q. The data, right?

14 A. Yes.

15 Q. So that can still be received even if somebody tries
16 to delete their phone and Cellebrite can't get any information
17 but the actual phone company can actually get that
18 information, right?

19 A. I don't know the capabilities of Cellebrite.

20 Q. Y'all just use the data, right?

21 A. That's correct.

22 Q. But even if I took like my phone right now and I hit
23 factory reset on it, is that going to dismiss any of the data
24 that the phone companies keep?

25 A. No, ma'am.

1 Q. Everything will be accessible, right?

2 A. That is correct.

3 MS. ZMROCZEK: Thank you.

4 THE COURT: Any redirect?

5 MR. BELL: No, Your Honor.

6 THE COURT: You may step down. You're on your way.

7 I think this is a good time for a break. We've been
8 going about an hour. Let's take a short break.

9 MR. BELL: Yes, sir.

10 THE COURT: All right. Don't discuss the case.

11 (Whereupon, the jury entered the jury room at 10:25
12 a.m.)

13 (Short break.)

14 BAILIFF: All rise.

15 THE COURT: Be seated. Everybody ready?

16 MS. PATTERSON: The State's ready.

17 MS. ZMROCZEK: Yes, Your Honor.

18 THE COURT: All right. Bring the jury in.

19 (Whereupon, the jury entered the courtroom at 10:40
20 a.m.)

21 THE COURT: All right. Ready. Call your next
22 witness.

23 MR. BELL: Thank you, Your Honor. The State calls
24 Brian Travis to the stand.

25 Thereupon,

1 BRIAN TRAVIS
2 after having been first duly sworn, testified as follows,
3 THE CLERK: Please have a seat. After you're
4 seated, please state your full name spelling your last
5 name for the record.

6 THE WITNESS: Brian Travis, T-r-a-v-i-s.

7 DIRECT EXAMINATION

8 BY MR. BELL:

9 Q. Who are you employed by?

10 A. Lexington County Sheriff's Department.

11 Q. How long have you been with the Sheriff's
12 Department?

13 A. Just under ten years.

14 Q. Tell us a little bit about your career with the
15 Sheriff's Department.

16 A. I started on the road patrol in 2007, moved to field
17 training officer position and then an investigator in property
18 crimes, investigator in major crimes and now I work in the
19 criminal intelligence unit.

20 Q. What's your role there with the criminal
21 intelligence unit?

22 A. I'm the investigator that's assigned to the unit. I
23 spend my time as investigation support doing a lot of cell
24 phone analysis and statistical analysis for command stat.

25 Q. Tell us about what kind of training and

1 certifications and what not that you have been through
2 regarding cell phone analysis?

3 A. I have been through certification for the two
4 software programs that we use, Pen-Link and GeoTime. I have
5 also been to two conferences by the International Association
6 of Crime Analysts that have focused on cell phone analysis and
7 call detail record analysis.

8 Q. Are you able to interpret call detail records from
9 various cell phone carriers?

10 A. Yes.

11 Q. Do you understand how cell sites work?

12 A. I do.

13 Q. What exactly is a cell site?

14 A. A cell site is what most people would commonly refer
15 to as a cell tower. It's where the equipment is set up to
16 receive signals from cell phones and transfer them.

17 Q. Are you able to use call detail records and other
18 information you indicated to plot those points and those cell
19 sites on maps?

20 A. Yes. I am.

21 MR. BELL: Your Honor, at this time we would seek to
22 move Detective Brian Travis in as an expert in cellular
23 mapping.

24 MS. ZMROCZEK: No objection.

25 TE COURT: No objection. He's qualified as an

1 expert in cell phone cellular mapping.

2 BY MR. BELL:

3 Q. Detective, do you recall receiving call detail
4 records in the case of State versus Gregory Brooks?

5 A. Yes. I do.

6 Q. Do you recall who you received those from?

7 A. I got them from Sergeant Jesse Laintz.

8 Q. Do you recall what carrier those were from?

9 A. Sprint.

10 Q. Did you also receive a tower list from Sprint?

11 A. I did.

12 Q. Are you also familiar with the contents of that
13 file?

14 A. I am.

15 Q. What did you do with those files upon receipt?

16 A. I processed them using one of the softwares, the
17 GeoTime Call Records Tool which combines the two files
18 together to make them easier to read.

19 Q. That software was called what?

20 A. It's made by GeoTime. It's Call Records Tool,
21 CRT.

22 Q. I'm handing you State's 41 and 42. Do you recognize
23 those two documents?

24 A. Yes. I do.

25 Q. Did you receive those two documents?

1 A. Yes. I did.

2 Q. Referring to State's 41, what is that?

3 A. That's the call records for the 803-800-9911.

4 Q. For State's 42, what is that?

5 A. That's the tower listings.

6 Q. When you received those two files, what was the
7 program called you ran them through?

8 A. GeoTime CRT.

9 Q. The purpose of running them through that program is
10 what?

11 A. That cell tower listing or the cell site listing has
12 every tower in this market ID whether or not it's used. It
13 also has each one of the sectors of the tower. So without
14 matching them up to the specific calls it would just be back
15 and forth. The program takes, it looks at the tower and
16 sector and matches it up to that list and puts it all in one
17 line in an Excel Spreadsheet.

18 Q. Does that document generated by GeoTime come out as
19 two files like State's 41 and 42?

20 A. It comes out as one file.

21 Q. Did you generate a report based on the two documents
22 you were handed earlier?

23 A. I did.

24 Q. Detective, I'm showing you State's 39. Do you
25 recognize that?

1 A. Yes. I do.

2 Q. What does that appear to be?

3 A. An abstract from the report put out by the CRT.

4 Q. When you say the CRT, what does that mean?

5 A. The GeoTime CRT file that got put out that combines
6 the call records and the tower into one line.

7 Q. Are you referring to the one that you generated in
8 this case?

9 A. Correct.

10 Q. Does this excerpt appear to be a fair and accurate
11 excerpt from your overall report?

12 A. Yes.

13 MR. BELL: Your Honor, at this time the State seeks
14 to move State's 39 into evidence.

15 MS. ZMROCZEK: Without objection.

16 THE COURT: Without objection. 39 is in without
17 objection.

18 MR. BELL: Permission to publish, Your Honor.

19 THE COURT: Sure.

20 BY MR. BELL:

21 Q. Detective, I'll ask you to step down please.

22 A. (Witness complies).

23 Q. I'm handing you a laser pointer, sir, and stand over
24 here and talk loud for the court reporter. What exactly are
25 we looking at in State's 39?

1 A. It's a printout part of an Excel file. The first
2 column tells you where the records came from. In this case
3 they all came from the call detail record provided by Sprint.
4 That's what the CDR stands for. Next is the target number.
5 The target number is going to be the number the records were
6 created for.

7 Q. For the record, what is that number?

8 A. 803-800-9911. The type tells whether it's a voice
9 or voice mail or a text message. Text messages are listed as
10 SMS which is simplified messaging. Then the direction whether
11 it's incoming or outgoing. The user term we don't use. It's
12 just something that's included. The party, other party and
13 other contact it's the number they dial and then the number it
14 connects to. So if you were to dial your voice mail, you
15 don't dial the same number as it connects to as an example or
16 if you are using different services, you will get these codes
17 like the 9343.

18 Q. Skipping ahead. The start date speaks for itself.
19 On the far right side, what do those four columns represent?

20 A. Carrier ID is how the cell phone company identifies
21 their cell site. It's broken up into three parts. The first
22 three digits are going to be the repoll number which is 631
23 which covers the Columbia area. The next is gonna be the
24 sector of the tower. Then the last four are going to be the
25 tower ID. Then the latitude and longitude of that said tower.

1 And the last column is the azimuth of that and 10N for the
2 sector.

3 Q. What period of time does this excerpt or abstract
4 reflect?

5 A. It covers from 6:00 a.m. until 6:54 a.m. on 2/2/2014
6 which is the night of the incident.

7 Q. Did the target number indicated in this left hand
8 column make any outgoing calls at that time?

9 A. Yes. There were several outgoing calls.

10 Q. And does this chart reflect the tower information
11 associated with those calls?

12 A. Yes. Each one of the outgoing calls has tower
13 information associated with it.

14 Q. How many unique tower ID's or carrier ID's are
15 located in this abstract?

16 A. Two.

17 Q. And for the record state those two ID's.

18 A. There is 63120128. Let me correct that. There's
19 two towers. Each tower has a sector and so 63120128 and
20 63130134 are the two that are used.

21 Q. Thank you. Have a seat. Take that with you.

22 A. (Witness complies.)

23 Q. After generating a report through GeoTime, what
24 other capabilities do you have with cell phone record
25 information?

1 A. Typically all of them use RTIS and put them on a
2 map.

3 Q. What is RTIS?

4 A. It's a mapping program created by ESRI. It's the
5 standard for any kind of GIS mapping.

6 Q. Did you ultimately take the information that you ran
7 through GeoTime in this case and plot those points on a map?

8 A. Yes. I did.

9 Q. And did you plot every single call made from that on
10 the map?

11 A. I have done multiple maps. I have done maps where
12 it did have every single call, and then I have done maps where
13 it narrowed it down to the relevant time window.

14 Q. What time window is that?

15 A. It started between a little before 5:00 to 7:00 in
16 the morning.

17 Q. I'm showing you State's 34 for ID. Do you recognize
18 this?

19 A. Yes. I do.

20 Q. What is this?

21 A. This is a map that I created for the calls between
22 2:00 a.m. and 7:00 a.m. for 803-800-9911. That also has the
23 azimuth for the sector as well as projected coverage area.

24 Q. And does this map fairly and accurately represent
25 the one you created for the number listed at the top?

1 A. Yes.

2 MS. ZMROCZEK: We have no objection to any maps that
3 they would like to put in, Your Honor.

4 MR. BELL: The State moves State's 43 and 44 into
5 evidence, Your Honor.

6 THE COURT: Those are the two maps showing the small
7 group of calls and the larger group of calls?

8 MR. BELL: Yes, Your Honor.

9 THE COURT: All right. Admitted without
10 objection.

11 BY MR. BELL:

12 Q. Detective, you mentioned azimuth. What exactly is
13 azimuth?

14 A. In terms of what we're talking about with cell
15 phones, the azimuth is the direction that the antenna faces so
16 it's the middle of the antenna.

17 Q. And why is that helpful?

18 A. Each cell site typically has three different
19 antennas on it to give 360 degree coverage so depending on
20 which side of the tower they're on depends on which sector
21 they're on. So using the azimuth you know which way that
22 antenna is pointing so you can get a better idea of their
23 location.

24 Q. When you say get a better idea of their location,
25 break that down for us.

1 A. We can tell from the azimuth plus or minus about 65
2 degrees that that's where the call is originating from.

3 Q. Detective, would you again step down with me.

4 MR. BELL: Permission to publish 43, Your Honor.

5 THE COURT: Sure.

6 BY MR. BELL:

7 Q. Once again, what are we looking at in State's 43,
8 detective?

9 A. This is a small area of the Lexington/Richland
10 County that shows the incident location and then the two
11 towers.

12 Q. I apologize for interrupting you. Use the laser
13 pointer so the jury can see.

14 A. That's the incident location and then that's one
15 cell site and that's the other. Those are the two that were
16 on the cell phone records for that time period.

17 Q. And what are these numbers in this little yellow
18 label here?

19 A. In those, those are the start times for the calls
20 that happened off that cell site.

21 Q. How many calls are listed off this cell tower?

22 A. Four.

23 Q. And what time period generally are those calls?

24 A. Between 6:00 and 7:00.

25 Q. And what are the numbers in this label on the

1 farther end of this poster?

2 A. The times for that cell site.

3 Q. Again, what time period were those?

4 A. 6:00 to 7:00.

5 Q. The little yellow label there in the middle,
6 indicate with the laser pointer, once again, what's that?

7 A. Based off of the Lexington County GIS, that's the
8 location of the Cockpit at 214 Berryhill Road.

9 Q. Talk to us about this formation that we see forming
10 through your lines. What does that indicate?

11 A. The red lines are for the tower up here. This line
12 going across is the azimuth. From the cell phone records that
13 Sprint provides we know that the azimuth is 95 degrees. So
14 just like on a clock you would start at the top and go down
15 until you get to 95 degrees which is just below 3:00 on the
16 clock. So that's the azimuth which means that's the direction
17 that the antenna points. This top line would be the 95 minus
18 65 and the bottom one would be 95 plus 65 to give a general
19 overview that this triangle or wedge is going to be the
20 coverage for that sector for the cell phone tower.

21 Q. Is there any reason that this blue line from this
22 tower at the bottom and the red line from this tower at the
23 top are intersecting at points?

24 A. Uhm, with Sprint towers the CDMA technology they can
25 overlap. Their goal as a cell phone provider they want to

1 give coverage everywhere so there's going to be overlapping
2 and it's made to handle different loads and call volume. So
3 any given area can be covered by multiple cell towers.

4 Q. After analyzing this information and mapping these
5 lines out using that information, within a reasonable degree
6 of scientific certainty what can you say about the cell phone
7 or the cell phone attached to that number between 6:00 and
8 7:00 a.m.?

9 A. That it's going to be directly in this area.

10 Q. And is the Cockpit Bar and Grill located in that
11 area?

12 A. Yes. It is.

13 Q. You can take a seat, sir.

14 A. (Witness complies.)

15 MR. BELL: Please answer any questions Ms. Zmroczek
16 may have for you.

17 CROSS EXAMINATION

18 BY MS. ZMROCZEK:

19 Q. It's Harris, right?

20 A. Travis.

21 Q. Travis. I'm sorry. I cannot read my handwriting.

22 You work in the criminal investigation unit?

23 A. Criminal intelligence unit.

24 Q. I mean criminal intelligence unit.

25 A. Yes, ma'am.

1 Q. And so you look at phones and do all this mapping,
2 right?

3 A. Yes, ma'am.

4 Q. You can do that for any phone involved in the case,
5 right?

6 A. Anything where I have been provided the records for
7 it.

8 Q. And where do you get those records from?

9 A. They come from the cell phone companies.

10 Q. Where do they -- The cell phone companies provide
11 them through a subpoena, right?

12 A. A search warrant.

13 Q. Or a search warrant?

14 A. Yes, ma'am.

15 Q. That's done by the lead investigator?

16 A. Not always the lead investigator. No.

17 Q. Sometimes just an assisting investigator?

18 A. Mm-hmm.

19 Q. But that would come from Lexington County, right?

20 A. Correct.

21 Q. And so you did this, these maps with Gregory's cell
22 phone number, right?

23 A. With the cell phone. Correct. With the cell phone
24 number I was provided.

25 Q. You weren't provided any other numbers?

1 A. There was a number had been changed on the account
2 so I was provided two sets of phone records. One for before
3 the phone number was changed and one for after so technically
4 it's two sets of records but it's for the same account.

5 Q. For the same account, right?

6 A. Mm-hmm.

7 Q. And those were all Sprint records, right?

8 A. Correct.

9 Q. And you never were provided records from Verizon?

10 A. Not to my recollection.

11 Q. Never provided records for Antonio "Bling"
12 Williams?

13 A. Not to my recollection.

14 Q. Not to your recollection. You focused in on what
15 they asked you to map, right?

16 A. Correct.

17 MS. ZMROCZEK: Thank you.

18 THE COURT: Any redirect?

19 MR. BELL: Briefly.

20 REDIRECT EXAMINATION

21 BY MR. BELL:

22 Q. At the time of running the other number that you
23 indicated, did you know the phone number had been changed at
24 that time?

25 A. Uhm, when we looked at the phone record return, you

1 could see that the account had been changed. That the phone
2 number tied to that account number had been changed.

3 Q. When you found out that information, how did you
4 proceed?

5 A. They contacted Sprint law enforcement compliance to
6 follow up because the original search warrant had asked for
7 that information if the number had been changed and Sprint
8 then provided the records for that.

9 Q. Then those records are what you used to map out the
10 information as you testified to?

11 A. Correct.

12 MR. BELL: No further questions.

13 THE COURT: You may step down.

14 MS. PATTERSON: The State calls Denique Banks.

15 Thereupon,

16 DENIQUE BANKS

17 after having been first duly sworn, testified as follows,

18 THE CLERK: Please have a seat. After you're
19 seated, please state your full name spelling your last
20 name for the record.

21 THE WITNESS: Denique Banks, B-a-n-k-s.

22 DIRECT EXAMINATION

23 BY MS. PATTERSON:

24 Q. Ms. Banks, how are you doing today?

25 A. I'm okay.

1 Q. Ms. Banks, do you know Gregory Brooks?

2 A. Yes.

3 Q. How do you know him?

4 A. Uhm, that's my kid's father.

5 Q. How many kids do you have with Gregory Brooks?

6 A. Three.

7 Q. How old are they?

8 A. My oldest will be four and my youngest twins are

9 two.

10 Q. Do you call him something else? What is his
11 nickname?

12 A. Dink.

13 Q. How long have you and Dink been in a relationship or
14 were in a relationship?

15 A. On and off five years.

16 Q. Back in February of 2014 were you pregnant by him?

17 A. Yeah.

18 Q. And that's --

19 A. That's with the twins.

20 Q. -- with the twins. Now, back in February, on
21 February 1st, 2014, where were you living?

22 A. Fairwood Drive.

23 Q. How long had you lived there?

24 A. We had just moved in that day.

25 Q. That day on the 1st?

- 1 A. Yeah. Between the 1st and the 2nd.
- 2 Q. And you say they. Who were you living with?
- 3 A. My mother and my sister.
- 4 Q. Do you know where Dink was living?
- 5 A. Uhm, he was back and forth. Mostly at my
- 6 grandmother's house.
- 7 Q. Where does your grandmother live?
- 8 A. Apple Valley Road.
- 9 Q. Now, on this day did you see, had you seen
- 10 Mr. Brooks that day?
- 11 A. Yes.
- 12 Q. Where had you seen him?
- 13 A. He helped us move in.
- 14 Q. How long did it take y'all to move that day?
- 15 A. We started that morning. By the time we finished it
- 16 was dark.
- 17 Q. Did he help you all day?
- 18 A. Yes.
- 19 Q. When was the last time you saw him that day?
- 20 A. Uhm, at the storage when we had got our last package
- 21 from there and he left from there.
- 22 Q. Do you remember what time it was?
- 23 A. Not sure. I just know it was dark.
- 24 Q. Do you know where he was going after he left the
- 25 storage building?

1 A. Yes. He stated that he was going to go out with a
2 friend.

3 Q. Do you know who that friend was?

4 A. Her name was Keeta (phonetic).

5 Q. Were you happy about him going out with Keeta?

6 A. No.

7 Q. Why not?

8 A. Uhm, insecurities. Just didn't want him to go.

9 Q. Do you know where they were going?

10 A. No.

11 Q. When you saw him on this day, how was his hair?

12 A. Uhm, he had dreads.

13 Q. Do you know if he had his cell phone with him?

14 A. I don't remember.

15 Q. Do you remember the next time you saw him after that
16 day he helped y'all move?

17 A. I can't specify the exact date but I have seen him
18 after.

19 Q. And when did you find out about something happening
20 at the Cockpit?

21 A. When the investigators came and spoke with him.

22 Q. How do you know investigators came and spoke with
23 him?

24 A. He told me.

25 Q. And did he tell you what happened at the Cockpit?

1 A. No. He just told me that something happened. The
2 investigators went to speak with him because something had
3 happened there and he stated that he told them what time he
4 left from there.

5 Q. What time did he tell you he told them?

6 A. Two. Between two and three.

7 Q. Did he mention telling the investigators how he left
8 the Cockpit?

9 A. By car.

10 Q. Who was driving that car?

11 A. I was.

12 Q. When he gave you this information, did you follow up
13 and ask him any questions?

14 A. No.

15 Q. Why not?

16 A. Didn't want to. Didn't - just really wasn't trying
17 to get into it.

18 Q. And then did a law enforcement officer call you?

19 A. Yeah. They contacted me days after.

20 Q. Were you surprised when they called you?

21 A. No. Because I figured because he put my name in
22 there they would be contacting me.

23 Q. So when they called you, what did you tell them?

24 A. I told them that I was his transportation home.

25 Q. From where?

- 1 A. From the club.
- 2 Q. Which club?
- 3 A. Cockpit.
- 4 Q. On which day?
- 5 A. The February, February 2nd, I guess.
- 6 Q. Was that the day they asked you about?
- 7 A. Yeah.
- 8 Q. Where did you tell them you took him after you
- 9 picked him up?
- 10 A. To my house.
- 11 Q. Did he tell you to say that?
- 12 A. No.
- 13 Q. How did you know to say that you took him to your
- 14 house?
- 15 A. From when he talked to the investigators.
- 16 Q. What time did you tell the investigator you picked
- 17 him up?
- 18 A. Uhm, 2:30. Between 2:30 and 3:30.
- 19 Q. Why did you pick that time?
- 20 A. I was trying to space it out.
- 21 Q. Space it out with what?
- 22 A. So it wouldn't look like we rehearsed it.
- 23 Q. Why did you feel the need to try to space it out to
- 24 look like you didn't rehearse it?
- 25 A. Uhm, just scared. I wanted to protect them.

1 Q. Why did you want to protect him?

2 A. Because he's the father of my kids.

3 Q. Now, at the time did you know it was wrong to lie to
4 law enforcement?

5 A. I know you're not supposed to lie but I didn't know
6 there was a charge behind that.

7 Q. Let's talk about it. You were ultimately charged,
8 weren't you?

9 A. Yes.

10 Q. What are you charged with?

11 A. Obstruction of justice.

12 Q. Are you represented by an attorney on that case?

13 A. Yes. Brad Kirkland.

14 Q. Do you know that it's a serious case now?

15 A... Yes.

16 Q. And as a matter of fact, you and your attorney came
17 and talked to me in my office along with Mr. Bell, didn't
18 you?

19 A. Yes.

20 Q. Did I promise you anything for you testifying
21 today?

22 A. No.

23 Q. Did I threaten you in any way for you to testify
24 today?

25 A. No.

1 Q. Are you testifying on your own accord?

2 A. Yes.

3 Q. So after you talked to law enforcement on the phone

4 -- Let me back up for a second. Did Dink ever cut his hair?

5 A. Yes. When he got a job at Zaxby's.

6 Q. Had he worked before?

7 A. Yes.

8 Q. What kind of work had he done?

9 A. Uhm, several different restaurants.

10 Q. Did he have dreads when he worked at those

11 restaurants?

12 A. A few of them.

13 Q. How long had he been growing those dreads?

14 A. I'll say maybe two years.

15 Q. And did you ask him about cutting his hair?

16 A. Yes.

17 Q. And what did he say to you?

18 A. It was for his job and he just decided people

19 judging him based off his dreads.

20 Q. And did you later write a statement to law

21 enforcement?

22 A. Yes. I did.

23 Q. Let me back up a minute. When you talked to law

24 enforcement, what month was that?

25 A. Uhm, February.

- 1 Q. When you wrote the statement, what month was that?
- 2 A. April.
- 3 Q. In your statement what did you write?
- 4 A. Uhm, the same thing that I told them over the
- 5 phone.
- 6 Q. So you kept that same story for two months?
- 7 A. Mm-hmm.
- 8 Q. During this time frame, did you and Dink ever have a
- 9 discussion about what happened at the Cockpit?
- 10 A. No, ma'am.
- 11 Q. Never talked about it?
- 12 A. No.
- 13 Q. You never asked him any questions?
- 14 A. No.
- 15 Q. So your story was the same when you wrote it down?
- 16 A. Pretty much.
- 17 Q. And did other law enforcement officers ever come to
- 18 your house to speak to you about your statement?
- 19 A. Yes.
- 20 Q. And did you call them and arrange that meeting?
- 21 A. Yes. For the second statement.
- 22 Q. And when you called them, did you let anybody in
- 23 your family know that you had called law enforcement?
- 24 A. Yes. They knew.
- 25 Q. Who did you let know?

1 A. Uhm, my mother and his family.

2 Q. When you say his, whose family?

3 A. Gregory's family.

4 Q. Why did you feel the need to let them know?

5 A. Because I knew I had lied and the investigator told
6 me that they had proof that I was lying.

7 Q. So did you let them know what time you were meeting
8 with law enforcement?

9 A. I believe so.

10 Q. Did you tell them where you were going to meet with
11 them?

12 A. My house. Me and my mother's house.

13 Q. Again, where were y'all living?

14 A. Fairwood.

15 Q. What side of town is that on?

16 A. It's off of Fairwood. It's Fairwoods Estates.
17 That's the name of the housing.

18 Q. And what did the family do? Did they show up at the
19 house?

20 A. Yes.

21 Q. About how many family members was it, do you
22 remember?

23 A. Uhm, I think maybe eight of us altogether.

24 Q. This was some of your family as well as his
25 family?

1 A. Yes.

2 Q. And so when law enforcement got there, did they let
3 you know why you were there?

4 A. Yes.

5 Q. And once they started talking to you, what did you
6 feel the need to do?

7 A. Tell the truth.

8 Q. And how were you acting?

9 A. I was crying, upset.

10 Q. Why were you crying and upset?

11 A. Because of the things that they said about him and
12 knowing that I had lied I realized how serious it was.

13 Q. And what did you tell law enforcement that day?

14 A. That I didn't pick Gregory up from the Cockpit.

15 Q. Ms. Banks, are you still close with Gregory's
16 family?

17 A. Yes.

18 Q. Who are you close with in the family?

19 A. Uhm, his mother and his sister.

20 Q. Do they help you out with your kids?

21 A. Yeah.

22 Q. In fact, on Monday I think you showed up with his
23 family, correct?

24 A. Yes.

25 Q. And how did you come to ride here with his family?

1 A. She asked - Jackie his sister asked was I going. I
2 told her yes. I was going to go.

3 Q. You rode here with them?

4 A. Yes.

5 Q. Ms. Banks, I'm going to show you a document and ask
6 you if you recognize it (proffering.) Do you recognize that
7 document?

8 A. Yes.

9 Q. What is it?

10 A. My statement.

11 Q. That's the statement, the second statement you gave
12 to law enforcement?

13 A. Yes.

14 Q. In your statement when you were asked what time you
15 saw him that morning, what did you respond?

16 A. 10:00 a.m.

17 Q. So that's when you remember seeing him after you saw
18 him the day he helped y'all move?

19 A. I guess. I don't remember what time it was.

20 Q. But that's what you put in your statement as seeing
21 him at 10:00 the next morning?

22 A. Yes.

23 Q. And the rest of the statement you did admit that you
24 didn't pick him up, correct?

25 A. Correct.

1 Q. When the investigators asked you did he tell you
2 anything about the shooting at the Cockpit, how did you
3 respond?

4 A. No.

5 Q. When they asked you has he ever told you anything
6 about it, what did you say?

7 A. No.

8 Q. What else did you say?

9 A. I have got to find it.

10 THE COURT: Didn't she already answer that question?

11 BY THE WITNESS:

12 A. He says, did Gregory tell --

13 MS. ZMROCZEK: Your Honor, I believe that question
14 has been asked and answered several times.

15 THE COURT: I do, too.

16 MS. PATTERSON: I'll move on, Your Honor.

17 THE COURT: Okay.

18 BY MS. PATTERSON:

19 Q. Ms. Banks, you stated that you have charges,
20 correct?

21 A. On me now?

22 Q. Yes.

23 A. Yes.

24 Q. When were you charged with obstruction of justice?

25 A. April the 20th -- I think I was arrested April 24th.

1 Q. Was that in relation to this case lying to law
2 enforcement?

3 A. Yes.

4 MS. PATTERSON: Please answer any questions Ms.
5 Zmroczek may have.

6 CROSS EXAMINATION

7 BY MS. ZMROCZEK:

8 Q. Ms. Banks, how are you?

9 A. Hey.

10 Q. Uhm, so Lexington County arrested you for telling a
11 lie?

12 A. Yes, ma'am.

13 Q. About this case?

14 A. Yes, ma'am.

15 Q. Now, you weren't at the Cockpit that night, were
16 you?

17 A. No, ma'am.

18 Q. And you weren't flashing a gun to anybody, were
19 you?

20 A. No, ma'am.

21 Q. Do you know Jermiel Gartrell?

22 A. Yes.

23 Q. Is he known as Boss Pooh?

24 A. Yes.

25 Q. I'm showing you State's 3. Do you know if Jermiel

- 1 Gartrell Boss Pooh is in that picture?
- 2 A. Yes.
- 3 Q. What number is he?
- 4 A. Number 2.
- 5 Q. That's number 2. But you have never been shown this
- 6 photo lineup, have you?
- 7 A. No.
- 8 Q. But you know who this is, right?
- 9 A. Yes.
- 10 Q. Okay. Number 2?
- 11 A. Yes.
- 12 Q. Was anybody else arrested with you or just you and
- 13 Gregory?
- 14 A. I was just me and Gregory.
- 15 Q. And let me ask you this: Do you know Eric Brown?
- 16 A. Yes.
- 17 Q. How do you know Eric? Tell the jury.
- 18 A. That's my cousin.
- 19 Q. He's your cousin?
- 20 A. Yes.
- 21 Q. Is he a friend of Gregory's, of Dink's?
- 22 A. Yes.
- 23 Q. And he's your cousin. How is he related to you?
- 24 A. That's my mom's sister son.
- 25 Q. Your mom's sister's son?

1 MS. PATTERSON: Objection, Your Honor. Excuse me.

2 I don't know who this person is she's talking about.

3 THE COURT: She said it was her first cousin. Tie
4 it together, I guess.

5 MS. PATTERSON: Improper evidence, Your Honor.

6 MS. ZMROCZEK: I'm getting to that in my next
7 question. Thank you.

8 BY MS. ZMROCZEK:

9 Q. And your mom's sister's cousin, they are related?

10 THE COURT: Wait a minute. Wait a minute. Mom's
11 sister's child, wasn't it?

12 MS ZMROCZEK: Or mom's sister's child. Sorry. Your
13 cousin.

14 THE COURT: Her first cousin.

15 BY MS. ZMROCZEK:

16 Q. Your first cousin?

17 A. Yes.

18 Q. And you were saying that Gregory was living at your
19 grandma's, right?

20 A. Yes.

21 Q. And so that's the same grandma of Eric Brown?

22 A. Yes. Eric was living there as well.

23 Q. Who else?

24 A. Eric was living there as well.

25 Q. Eric was living there as well?

- 1 A. Yes.
- 2 Q. Who else was living there?
- 3 A. My uncle.
- 4 Q. Your uncle. Who is that?
- 5 A. Arnold Banks. That's my mom's brother.
- 6 Q. Arnold Banks. And who did Arnold Banks used to date
- 7 back in 2014?
- 8 A. Jap. Her real name is Rickena.
- 9 Q. Rickena what?
- 10 A. Rickena Knightner.
- 11 Q. They used to date, right?
- 12 A. Yes.
- 13 Q. And she knows everybody in your family?
- 14 A. Yes.
- 15 Q. She knows Gregory?
- 16 A. Yes.
- 17 Q. She knows him as Dink?
- 18 A. Yes.
- 19 Q. She knows him as Gregory?
- 20 A. Right.
- 21 Q. Okay. And I think Ms. Patterson asked you did
- 22 Gregory ever tell you to lie to the police. He never told you
- 23 to lie, did he?
- 24 A. No. No, ma'am.
- 25 Q. Gregory's family just kept asking you if they

1 brought you up there. They ever need don't go up there, did
2 they?

3 A. No.

4 Q. They never tried to keep you from telling what you
5 knew, right?

6 A. No.

7 Q. Nobody has ever in his family ever tried to
8 influence you in any way whatsoever, have they?

9 A. No. They been behind him.

10 Q. Okay. And you said that they were asking about when
11 he cut his hair?

12 A. Mm-hmm.

13 Q. He got a job as Zaxby's, right?

14 A. Correct.

15 Q. And you said he was tired of people judging him,
16 right?

17 A. Right.

18 Q. And he had other friends with dreads, right?

19 A. Some with, some without.

20 Q. Dashun Curry?

21 A. Dashun Curry, he had dreads.

22 Q. He had dreads also?

23 A. Mm-hmm.

24 Q. I want to talk to you a little bit about Gregory's
25 physical, what you know about his physical attributes, okay?

1 We already talked about his hair.

2 A. Mm-hmm.

3 Q. You say that it was -- How long were his dreads, if
4 you can show?

5 A. To his shoulders.

6 Q. They were to his shoulders. How long were Dashun's
7 dreads?

8 A. About the same.

9 Q. About the same. Uhm, you have two, three children
10 with him, correct?

11 A. Correct.

12 Q. How long have you known Dink?

13 A. About five years.

14 Q. So you knew that he got shot, right?

15 A. Yes.

16 Q. When he was 16?

17 A. Yes.

18 Q. You knew that he got shot right through the right
19 hand, correct?

20 A. Right.

21 Q. Broke his hand?

22 A. Mm-hmm.

23 Q. You know that he can't grasp things in the right?

24 A. Correct.

25 Q. And he's right-handed?

1 A. Correct.

2 Q. You have to help him sometimes open things?

3 A. Correct.

4 Q. You know that his finger doesn't bend all the way?

5 A. His hand.

6 Q. I mean his hand, his whole right hand, right?

7 A. Yes.

8 Q. And you know he has a scar straight down his

9 belly?

10 A. Yes.

11 Q. And you know that he's afraid of guns?

12 A. Correct.

13 Q. You know that he does not own a gun?

14 A. Correct.

15 Q. You know that he doesn't have a gun?

16 A. Correct.

17 Q. Never had a gun at your house?

18 A. Correct.

19 MS. ZMROCZEK: No further questions. Thank you.

20 THE COURT: Any redirect?

21 REDIRECT EXAMINATION

22 BY MS. PATTERSON:

23 Q. Do you still have a copy of your statement up there
24 with you?

25 A. Yes, ma'am.

1 Q. Look on the second page down below law enforcement
2 asked you does he carry a gun.

3 A. Yes. I see it.

4 Q. What was your response?

5 A. Not around me. Never seen one.

6 Q. So you never told law enforcement he was afraid of
7 guns, did you?

8 A. No.

9 Q. And as a matter of fact, you said he never told you
10 anything what happened at the Cockpit that night, correct?

11 A. Correct.

12 Q. So he don't tell you everything, does he?

13 A. Correct.

14 MS. PATTERSON: Thank you. No further questions.

15 THE COURT: You may step down.

16 MR. BELL: The State calls Christy Ward to the
17 stand.

18 Thereupon,

19 CHRISTY WARD

20 after having been first duly sworn, testified as follows,

21 THE CLERK: Please have a seat. After you're
22 seated, please state your full name spelling your last
23 name for the record.

24 THE WITNESS: Christy Ward, C-h-r-i-s-t-y W-a-r-d.

25 DIRECT EXAMINATION

1 BY MR. BELL:

2 Q. Good afternoon, Ms. Ward.

3 A. Good afternoon.

4 Q. Who are you employed by?

5 A. Zaxby's.

6 Q. How long have you been with Zaxby's?

7 A. Two years.

8 Q. What's your job duties there?

9 A. Assistant manager.

10 Q. What sort of things does that entail?

11 A. Hiring, scheduling, running your shift. Having no
12 more than probably 12 people on the clock at a time. Daily
13 duties. Handling the safe.

14 Q. Do you interview potential hires for Zaxby's?

15 A. Yes.

16 Q. Are you familiar with the procedures involved in
17 interviewing someone?

18 A. I am.

19 Q. Are you familiar with records and documentation of
20 the hiring process?

21 A. Yes, sir.

22 Q. And could you walk us through generally how your
23 interviewing process goes?

24 A. Applicants basically apply on line. It is sent
25 through TalentReef which is our application process. We print

1 off applications, call them, set up interviews, bring them in,
2 do a face to face interview with an interview guide that is
3 provided by our corporate office and if we are interested in
4 employing them, we give them a call back and bring them in for
5 orientation. It's usually a 24 to 48 hour period.

6 Q. And do they fill out paperwork during that
7 process?

8 A. The initial application is done online. If we bring
9 them in for orientation, we have physical paperwork they have
10 to fill out as well on line information as well.

11 Q. What sort of things are contained in the physical
12 paperwork that they have to fill out?

13 A. There's an orientation check list. They read the
14 handbook. Sign off that they understand. We go over policies
15 and procedures, security, cash handling, what your job
16 description is.

17 Q. And are those records kept by Zaxby's?

18 A. They are.

19 Q. Are they kept for all employees?

20 A. Yes, sir.

21 Q. How long are they kept?

22 A. Seven years.

23 Q. How are they stored at Zaxby's?

24 A. They are stored in the manager's office in a locked
25 file cabinet.

1 Q. Who all has access to them?

2 A. Any store managers, district managers, regional
3 managers, or anyone from corporate who may come in and request
4 those files.

5 Q. Are those records something Zaxby's gives out
6 freely?

7 A. No, sir.

8 Q. Are you aware of whether or not employment records
9 were requested on a Gregory Brooks?

10 A. Yes, sir.

11 Q. And are you aware if Zaxby's complied with that
12 request?

13 A. Yes, sir.

14 Q. What was the process of retrieving those employment
15 records?

16 A. I spoke with my general manager and my district
17 manager and we retrieved those files that we have kept for
18 seven years. /I personally pulled them, kept them in my
19 possession. If they were not in my possession, they were
20 locked in that file cabinet as to where no one else could get
21 to them. I brought them to the Solicitor's Office and now I'm
22 here.

23 Q. Do you still have those employment records?

24 A. I do.

25 Q. Do you have them with you today?

1 A. I do.

2 Q. Have you had a chance to review those documents?

3 A. Yes, sir.

4 Q. Does everything appear to be in order as it would or
5 should be for the interviewing process?

6 A. Yes, sir.

7 Q. Does everything appear to have been preserved?

8 A. Yes, sir.

9 Q. Could you pull those documents out for me, Ms.
10 Ward?

11 A. I sure can. (Witness complies.)

12 Q. May I see them, Ms. Ward?

13 A. Yes, sir. (Proffering.)

14 Q. Ms. Ward, I'm handing you back what you just handed
15 to me. If you would open that up for me.

16 A. Okay. (Witness complies.)

17 Q. And what are we looking at?

18 A. This is the initial interview guide that we
19 receive.

20 Q. What sort of details are recorded on that sheet?

21 A. The applicant's name, date of interview, the manager
22 that interviewed with their title, position interviewed for,
23 phone number and availability.

24 Q. Who actually conducted that interview of
25 Mr. Brooks?

1 A. Victor Talbert.

2 Q. Who is he?

3 A. He was the general manager for Zaxby's.

4 Q. On what date was that interview conducted?

5 A. On February 5th, 2014.

6 Q. What phone number was provided by the applicant?

7 A. [REDACTED]

8 Q. What other sort of documents are contained in that
9 package you brought?

10 A. I have the job description for the cook as well as
11 the offer letter which states his rate of pay, his position
12 and his schedule for orientation. I also have his
13 application, a copy of his driver's license and social
14 security card, his W4 from 2014. I have his terms of
15 employment notice, his money network information which was his
16 pay card, his employee information which has name, address,
17 phone numbers.

18 Q. What address was supplied?

19 A. [REDACTED]

20 Q. Are there additional documents?

21 A. There are.

22 Q. Are there any documents related to policies and
23 procedures related to appearance that Zaxby's requires?

24 A. Yes, sir. There is the acknowledgment of reading
25 the handbook which has been signed by Gregory Brooks on

1 February 7th, 2014, and also initialed by Michelle Trapp who
2 was assistant manager at that time also dated February 7th,
3 2014.

4 Q. Are there any initials specifically indicating that
5 the appearance portion was read?

6 A. Yes, sir.

7 Q. Now, related to Zaxby's appearance policy, could you
8 briefly tell the jury what Zaxby's requires regarding
9 appearance?

10 A. Clean shaven, well groomed. If you have hair that
11 extends below the collar of your shirt, it must be tied back.
12 You're required to wear your hat which is provided and your
13 uniform which is your blue shirt, black pants and black non
14 slip shoes.

15 Q. Is hair to the collar or beyond allowed at
16 Zaxby's?

17 A. Yes, sir.

18 Q. And are dreadlocks allowed at Zaxby's?

19 A. Yes, sir.

20 Q. Would it be within Zaxby's policies and procedures
21 to ask someone with dreads to cut them?

22 A. No, sir.

23 Q. Are you aware of when Mr. Brooks ultimately started
24 at Zaxby's?

25 A. I personally was not there. According to his file

1 it would be on the day they do orientation is their official
2 date of employment which was February 7th, 2014.

3 Q. What position was he hired for there?

4 A. As a cook.

5 Q. One final question that I think everybody wants to
6 know, Ms. Ward.

7 A. Yes, sir.

8 Q. Did you bring any coupons with you?

9 A. No. I didn't.

10 MR. BELL: No further questions.

11 CROSS EXAMINATION

12 BY MS. ZMROCZEK:

13 Q. Just very briefly. You said that in the little
14 handbook thing, the area where it talks about appearance --

15 A. Yes, ma'am.

16 Q. -- is specifically pointed out, right?

17 A. Yes, ma'am.

18 Q. That wasn't done by the Solicitor's office. That
19 was done by Zaxby's, right?

20 A. Correct.

21 Q. And it says that if you have long hair below your
22 shoulders, it has to be back, right?

23 A. Yes, ma'am.

24 Q. Okay. So you don't make people cut their hair?

25 A. No, ma'am.

1 Q. But some people do cut their hair, right?

2 A. If by their choice.

3 Q. Right. It reflects that they have to have what
4 y'all's policy says is what kind of presentation?

5 A. A well groomed presentation.

6 MS. ZMROCZEK: A well-groomed presentation.

7 MR. BELL: Nothing further, Your Honor.

8 THE COURT: You may step down.

9 MS. PATTERSON: The State calls Jesse Laintz to the
10 stand.

11 Thereupon,

12 JESSE LAINTZ

13 after having been first duly sworn, testified as follows,

14 THE CLERK: Please have a seat. After you're
15 seated, please state your full name spelling your last
16 name for the record.

17 THE WITNESS: My name is Jesse Laintz, L-a-i-n-t-z.

18 DIRECT EXAMINATION

19 BY MR. BELL:

20 Q. Who are you employed by?

21 A. The Lexington County Sheriff's Department.

22 Q. How long have you been there at the department?

23 A. I have been there just about ten years.

24 Q. What capacity do you work for the Sheriff's
25 Department?

1 A. I'm a sergeant in the major crimes unit, a team
2 leader on the SWAT team and I'm a member of the explosive
3 ordinance disposal team.

4 Q. What capacity did you work for the department back
5 in February of 2014?

6 A. I was a major crimes sergeant.

7 Q. What sort of things do you do as part of that job?

8 A. I supervise a team of detectives and a team of
9 victim advocates really investigating anything from a homicide
10 all the way down to telephone harassment.

11 Q. Do you recall becoming involved in a case regarding
12 a Gregory Brooks?

13 A. Yes, sir.

14 Q. How did you initially become involved?

15 A. I got involved on the night of April 14th, 2014 when
16 one of my detectives received a phone call.

17 Q. As a result of that phone call, did you meet with
18 anybody?

19 A. Yes. We met with a Brittainy Dilworth and a
20 Shalana, I believe the girl's name was.

21 Q. Who accompanied you for that meeting?

22 A. Detective Longshore did.

23 Q. As a result of that meeting, did you have any
24 persons of interest?

25 A. We did. We were given street names. One was a Dink

1 and the other one was a Boss Pooh.

2 Q. Had you become aware of any other information
3 related to those two as potential persons of interest?

4 A. After talking to one of my other investigators about
5 the information that we got, he knew that Dink was the
6 defendant Gregory Brooks and that Boss Pooh was Jermiel
7 Gartrell and also that that detective had received several
8 voice mails --

9 MS. ZMROCZEK: Objection, Your Honor. Hearsay.

10 THE COURT: Sustain that.

11 BY MR. BELL:

12 Q. And moving on, detective, did you use the
13 information related to those two names to develop photo
14 lineups?

15 A. Yes, sir. We did.

16 Q. What's the purpose of developing photo lineups?

17 A. A photo lineup is used to show a witness or anybody
18 who could have seen the crime six different pictures of people
19 that look similar to try to see if they could pick that person
20 out.

21 Q. And what is the purpose of using six different
22 pictures?

23 A. You got one out of six chance. It would lead a
24 person to believe that out of six people they picked the right
25 person. That is the person.

1 Q. What other safeguards are built into a photo
2 lineup?

3 A. You want to make sure that everybody in that photo
4 lineup looks relatively similar. The way we do it is we'll
5 pick a race, a sex. We can put a range of age so, say, 20 to
6 30 years old. We put a range of height. We can put a range
7 of weight and we can also choose even skin tone and try to get
8 pictures that match or similar.

9 Q. Did you receive photo lineups that were created in
10 this case?

11 A. Yes, sir. Two.

12 Q. When did you receive those?

13 A. I received them that night on April 14th.

14 Q. Did you look them over?

15 A. I did.

16 Q. Did they appear to comply with the safeguards you
17 just referred to?

18 A. Yes, sir.

19 Q. I'm showing you State's 3 and 4. Do you recognize
20 those items?

21 A. Yes, sir. These are the two photo lineups.

22 Q. Are those the lineups you received on April 14th?

23 A. Yes, sir.

24 Q. Are those the lineups you reviewed?

25 A. Yes.

1 Q. In reviewing them today do you still believe that
2 they comply with the safeguards?

3 A. I do.

4 Q. After receiving those photo lineups, how did you
5 proceed with them?

6 A. After receiving the photo lineups, I went to [REDACTED]
7 [REDACTED] [REDACTED] [REDACTED] and met with a Fred Moss who was
8 a possible witness in the case.

9 Q. Did you speak to Mr. Moss?

10 A. I did.

11 Q. What was his demeanor?

12 A. Calm. Normal. Just like --

13 Q. Did he cooperate with you?

14 A. He did.

15 Q. Did you ask to show him a photo lineup?

16 A. I did.

17 Q. Did he agree?

18 A. He did.

19 Q. Did you show him that photo lineup?

20 A. I did.

21 Q. Now, in presenting a photo lineup to someone, how
22 exactly do you go about it?

23 A. I kind of have a generic speech that I give to
24 everyone I show a photo lineup to. It's along the lines of
25 I'm about to show you a photo lineup. I'm not saying the

1 person is or is not in this, but it's six people of similar
2 stature. They look very similar to each other. When I show
3 you the photo lineup, look at each picture. If you see
4 anything that sticks out, a person of interest or anything
5 like that, go ahead and point them out.

6 Q. Do you give any sort of indication or suggestion as
7 to the selection you hope someone picks out?

8 A. Absolutely not.

9 Q. Do you put your finger as you slide it over to them
10 and tell them to pick someone out?

11 A. Absolutely not.

12 Q. Do you do anything whatsoever to suggest the
13 selection?

14 A. No.

15 Q. Did you do any of those things when showing these
16 lineups to Mr. Moss?

17 A. No.

18 Q. Do you recall which lineup you showed Mr. Moss
19 first?

20 A. I showed him what is State's evidence number 4.

21 Q. In showing Mr. Moss that lineup, how did he react?

22 A. As soon as I showed him the photo lineup, I actually
23 hand it with the photos down and kind of slide it across the
24 table if you will, he flipped it over and without hesitation
25 he immediately pointed to photo number 3.

1 Q. Did he indicate his selection?

2 A. He did. At that point in time he actually pointed
3 at it. Later on he circled, initialed next to it and wrote
4 next to the picture.

5 Q. On what date is that lineup dated?

6 A. Uhm, April 14th, 2014.

7 Q. Did you -- The selection that he picked out, do you
8 know the identity of that particular person?

9 A. It is the defendant, Gregory Brooks.

10 Q. Did you show him any other photo lineups?

11 A. I did.

12 Q. Is that State's 3 you are referring to?

13 A. Yes, sir.

14 Q. When you presented that lineup to him, did you abide
15 by the same things you said you did with the other photo
16 lineup?

17 A. Yes. I did.

18 Q. Did you suggest anything at all?

19 A. Absolutely not.

20 Q. What was his reaction in looking at that lineup?

21 A. He once again without hesitation pointed at number
22 2. He said this person was there and was loud the entire time
23 and wrote something next to the picture as well and later
24 circled and initialed number 2.

25 Q. Is that also dated?

1 A. It is.

2 Q. What's the date of that?

3 A. Same date, April 14th, 2014.

4 Q. Is Mr. Moss' signature there?

5 A. It is.

6 Q. As a result of conducting those photo lineups, did
7 you have any information as to which one was the shooter?

8 A. Just the information that I got from Fred Moss
9 talking to him and the statement he gave to me from that
10 interview.

11 Q. And from that interview was either one of those
12 individuals indicated as the shooter?

13 A. Yes. The defendant was.

14 Q. The defendant going by what name?

15 A. Gregory Brooks.

16 Q. Did you personally show these lineups to anyone
17 else?

18 A. I did not.

19 Q. Did you assign anyone else to show those lineups?

20 A. These exact lineups? No.

21 Q. Did you assign anybody to show any lineups in this
22 case to anyone?

23 A. Yes. Detective Dykes.

24 Q. Do you recall who you assigned him to interview?

25 A. Rickena Knightner.

1 Q. Were you personally there for that showing?

2 A. I was not.

3 Q. After April 14th, what other involvement did you
4 have in this case?

5 A. April 14th we were working night shift. When we
6 would come in, we would have leads to follow up with. When we
7 have a hot lead like this, we start working everything we
8 could so kind of everything that came in we would get involved
9 and we continued into Tuesday.

10 Q. And do you recall conducting any other interviews
11 after April 14th?

12 A. I did conduct an interview on April 17th with a Ms.
13 Banks.

14 Q. Are you aware of the full name of Ms. Banks?

15 A. Denique Banks.

16 Q. Were you aware of the relationship of Ms. Banks to
17 Gregory Brooks?

18 A. Boyfriend and girlfriend.

19 Q. Were you aware if law enforcement had spoken to Ms.
20 Banks prior to you interviewing her?

21 A. Law enforcement had spoken to Ms. Banks once over
22 the phone and there was another statement that was
23 collected.

24 Q. If the statement was already collected, then why
25 were you interviewing her again?

1 A. There was new information that came forward
2 obviously from the photo lineups and we wanted to talk to her
3 again.

4 Q. Did you have any particular suspicions in talking to
5 her again?

6 A. I did. She originally gave an alibi, if you will,
7 of picking him up before the incident happened and knowing
8 what we knew now I did not believe that was true.

9 Q. Did you have other evidence that you believed would
10 show that or evidence that would be coming in that would show
11 that?

12 A. The biggest thing we were waiting on with the photo
13 lineups, two people picking him out, the biggest thing we were
14 waiting on was phone records to prove the location of people
15 or communication between two people.

16 Q. Were you in the process of retrieving those?

17 A. We were.

18 Q. And ultimately did you retrieve them?

19 A. We did.

20 Q. Who did you forward them to?

21 A. I forwarded them to Detective Travis.

22 Q. Now, where did this meeting with Ms. Denique Banks
23 take place?

24 A. ██████████ her residence.

25 Q. Did Ms. Banks know you were coming?

1 A. She did.

2 Q. Was it a scheduled meeting?

3 A. It was.

4 Q. Was she the only person present?

5 A. There was actually nine to 12 people there.

6 Q. Are you aware of what the relationship of those
7 individuals was?

8 A. I know her mother was there and I was also told that
9 the defendant's mother was there.

10 Q. When you first met with Ms. Banks that day, what was
11 the atmosphere there?

12 A. I want to say it was kind of tense. Everybody was
13 quiet and it was almost a weird situation. Something I wasn't
14 used to. When we go talk to a suspect, it's usually you don't
15 go into a family meeting, a lot of people waiting around like
16 you're the guest speaker. It seemed very weird to me.
17 Something I wasn't accustomed to or used to.

18 Q. Had you requested all of those additional
19 individuals to be there?

20 A. No, sir.

21 Q. Did you speak to Ms. Banks?

22 A. I did.

23 Q. What did you tell her?

24 A. That I believed she was lying and with time waiting
25 on the phone records I was going to prove it.

1 Q. Did you continue to interview her?

2 A. I did. I actually liked addressed the entire family
3 at first and told them what I could about the case. I was not
4 telling them everything and then afterwards I asked to talk to
5 her. Her mother asked if she could join us and we went in the
6 kitchen and talked.

7 Q. Did Ms. Banks give another written statement?

8 A. She did.

9 Q. And did the contents of that statement match the
10 original statement given to law enforcement?

11 A. No. Not at all.

12 THE COURT: Ms. Banks is not on trial.

13 MR. BELL: Yes, Your Honor.

14 THE COURT: All right.

15 BY MR. BELL:

16 Q. And what was Ms. Banks' demeanor while giving that
17 statement?

18 A. She was crying and very emotional throughout.

19 Q. Now, did the family become aware of that new
20 statement?

21 A. They did.

22 Q. And how were - what was the general demeanor of
23 those individuals?

24 A. It was a very emotional state. People were crying.
25 Once again, something I wasn't used to. Everyone there was

1 very emotional, hugging, crying. It was not what I'm used to
2 when I collect a statement from somebody.

3 MR. BELL: Please answer any questions the defense
4 may have for you.

5 THE WITNESS: Yes, sir.

6 CROSS EXAMINATION

7 BY MS. ZMROCZEK:

8 Q. Sergeant Laintz, you're in charge or were in charge
9 of the major crimes unit?

10 A. Not the entire major crimes unit. We're now made up
11 of four teams. Then it was three. I'm one of the three
12 sergeants at that time.

13 Q. Who was on your team?

14 A. At that point in time or now?

15 Q. At that point in time.

16 A. Detective Dykes, Detective Longshore, Detective
17 Moore were my investigators. I was also in charge of the
18 victim advocates at that time.

19 Q. Okay. And so you were, as leads would come in, you
20 would assign your investigators to go out an interview
21 people?

22 A. Yes.

23 Q. And, in fact, you assigned Investigator Dykes to go
24 interview Dashun Curry a/k/a DeDe, right?

25 A. Yes.

1 Q. Okay. And you had been following this
2 investigation?

3 A. My first involvement with this investigation was on
4 the 14th.

5 Q. So you weren't aware of anything before that?

6 A. I would say that I heard people talking about it
7 but...

8 Q. It was just whatever you were aware of?

9 A. Yes.

10 Q. Now, you have made arrests being in major crimes,
11 right?

12 A. Absolutely.

13 Q. And you would arrest people for having guns and
14 showing them and inciting an argument that lead to a murder,
15 right?

16 A. I guess, if the situation would dictate.

17 Q. And when were you provided the facts about
18 Mr. Jermiel Gartrell having a gun? I think you have it up
19 there.

20 A. The lineup?

21 Q. Yes.

22 A. The facts about him having a gun?

23 Q. Yes.

24 A. I don't know if I ever was.

25 Q. Never were. When you're investigating a murder

1 investigation, you want to make sure you get the right person,
2 right?

3 A. Absolutely.

4 Q. You want to follow up every lead?

5 A. Yeah.

6 Q. And you want to make sure that you look at all of
7 the evidence and not just focus in on what the easy one is,
8 right?

9 A. Correct.

10 MS. ZMROCZEK: Thank you.

11 THE COURT: All right. Any redirect?

12 MR. BELL: No, Your Honor.

13 THE COURT: All right. You may step down. All
14 right. What's the estimated length of the next witness?
15 Do we need a break and then go to lunch, or go to lunch
16 early and come back at 1:00. Someone tell me what your
17 schedule is so I can ask the jury. We have been going an
18 hour and ten minutes since the last break. We came back
19 in at 20 minutes to 11.

20 MS. PATTERSON: We can take an early lunch.

21 THE COURT: We'll do that. Come back at 1:00. How
22 does that sound, jury? All right. Comes back at 1:00.
23 Don't discuss the case. Enjoy your lunch. Be back here
24 at 1:00.

25 (Whereupon, the jury was released for lunch recess

1 at 11:50 a.m.)

2 (Lunch recess.)

3 BAILIFF: All rise.

4 THE COURT: Be seated. All right. Bring the jury
5 in.

6 (Whereupon, the jury returned to the courtroom at
7 1:00 p.m.)

8 THE COURT: All right. Call your next witness.

9 MS. PATTERSON: The State calls Shannon Dykes.

10 Thereupon,

11 SHANNON DYKES

12 after having been first duly sworn, testified as follows,

13 THE CLERK: Please have a seat. After you're
14 seated, please state your full name spelling your last
15 name for the record.

16 THE WITNESS: Shannon Dykes, D-y-k-e-s.

17 DIRECT EXAMINATION

18 BY MS. PATTERSON:

19 Q. Is it Investigator Dykes?

20 A. Yes, ma'am.

21 Q. Investigator Dykes, where are you employed?

22 A. Lexington County Sheriff's Department.

23 Q. What department are you currently employed in with
24 the Lexington County Sheriff's Department?

25 A. I'm with the fugitive unit sworn to the U.S.

1 Marshal's Task Force.

2 Q. How long have you been in that unit?

3 A. About a year and a half.

4 Q. Where did you work prior to becoming a member of the
5 fugitive task force?

6 A. Major crimes unit.

7 Q. How long did you work in major crimes?

8 A. A year and three months.

9 Q. And in 2014, the beginning of 2014 were you in major
10 crimes?

11 A. I was.

12 Q. Did you have an occasion to get involved in this
13 case, the State versus Gregory Brooks?

14 A. I did.

15 Q. How did you come to get involved?

16 A. I was followed up - I was given assignments by my
17 sergeant as needed to assist in the investigation.

18 Q. Who was your sergeant?

19 A. Sergeant Laintz.

20 Q. What was your first involvement in this case?

21 A. On the 10th of February I assisted Detective Black
22 with -- I'm sorry. Let me back up. On February 4th, 2014 I
23 assisted Detective Black, Detective Etheredge and Detective
24 Garrick on locating an Antonio Williams.

25 Q. Did you have any direct contact with Mr. Williams?

1 A. I did not.

2 Q. What was the next thing, if any, that you did in
3 this case?

4 A. On February 10th, 2014, I assisted Detective Black
5 with interviewing Sandra Kiete on information received in
6 reference to this incident.

7 Q. Without saying what she may have told you, did she
8 give you some information about this specific case?

9 A. She did.

10 Q. Was it a name associated with the case?

11 A. It was.

12 Q. What was the name?

13 A. The name Dink.

14 Q. At this point was you familiar with that name?

15 A. I was.

16 Q. How was you familiar with that name?

17 A. I had received a voice mail, a anonymous voice mail
18 two days prior saying that, all it said was a male voice said
19 that Dink was the shooter in this incident.

20 Q. How many voice mails did you receive?

21 A. Total two.

22 Q. Did they appear to be the same voice?

23 A. They did.

24 Q. Were you able to save those voice mails?

25 A. I was not.

1 Q. Were you able to follow up with them in any way?

2 A. I was not. They seemed to be transferred from the
3 front desk. Possibly transferred from dispatch as well. I'm
4 not sure of the origin. It wasn't able to be traced.

5 Q. So you never had a conversation with anybody about
6 those?

7 A. I did not.

8 Q. And what did you do once you received that name
9 Dink?

10 A. I notified Sergeant Laintz and passed the
11 information onto Detective Black.

12 Q. And did you ever meet with someone who was
13 identified as Dink?

14 A. I did.

15 Q. When did you meet with him?

16 A. On February 10th, 2014.

17 Q. Who was with you at that meeting?

18 A. Detective Black.

19 Q. Where did you meet?

20 A. At his place of work Zaxby's.

21 Q. Do you know if he was working that day?

22 A. He said he was.

23 Q. Where did you meet at the restaurant?

24 A. Uhm, we met him and he came from the back of the
25 restaurant and met us and we explained to him why we were

1 there and we sat down with him in the middle of the restaurant
2 toward the back, myself and Detective Black sat down with him
3 and talked with him.

4 Q. Did you force him to speak with you?

5 A. We did not.

6 Q. Did you threaten him to speak with you?

7 A. No.

8 Q. Did you make any promises for him to speak
9 with you?

10 A. We did not.

11 Q. Why did go there to meet to talk to him?

12 A. To follow up on the information that we had
13 received.

14 Q. Did you ask him any questions?

15 A. I did.

16 Q. And what did you ask him?

17 A. I specifically asked him what does he go by as far
18 as a nickname.

19 Q. What was his response to you?

20 A. Originally he told me that he didn't have one.

21 Q. Then did he later change that story?

22 A. He later changed it after I confronted him that we
23 had spoken with his mother and she confirmed that he goes by
24 the nickname of Dink and also further confirmed his name was
25 Gregory Brooks.

1. Q. Okay. Was he arrested on that day?

2. A. He was not.

3. Q. Did you have probable cause to arrest him that day?

4. A. We did not.

5. Q. Did you continue with any follow up information, any
6 follow up on this case?

7. A. I did.

8. Q. What was your next follow up?

9. A. On that same day -- I just wanted to back up. On
10 that same day we met with Sheila Graham his mother who lead us
11 to Zaxby's who told us where he worked. That's where we got
12 the information where he worked.

13 Q. Did you have any other involvement in the case?

14 A. I did.

15 Q. What was your next involvement?

16 A. On April 15th, 2014, I was assigned by my sergeant,
17 Sergeant Laintz to go and speak with Rickena Knightner and
18 myself and Detective Moore went to her place of work to speak
19 with her and show her a photo lineup.

20 Q. Let me back up. So you went the whole month of
21 March and you didn't have any involvement in the case?

22 A. Limited. Very limited. I would hear them talking
23 about it in the major crime suite in the area where we meet
24 sometimes in the area where they hand out assignments, I would
25 hear them speaking about it but direct involvement, no.

1 Q. So while you were working on one case, are you also
2 working on other cases?

3 A. Yes. I had another homicide case myself that I was
4 working and numerous others. A child molestation case during
5 that time and I remember several assault cases.

6 Q. So you weren't solely tied to this case?

7 A. No, ma'am.

8 Q. So when Sergeant Laintz contacted you, who did he
9 ask you to meet with?

10 A. Rickena Knightner.

11 Q. What was your purpose for meeting with Ms.
12 Knightner?

13 A. To show her a photo lineup in reference to this
14 case.

15 Q. Did you generate that lineup?

16 A. I did.

17 Q. How was that lineup presented to her?

18 A. I usually start off with a photo lineup, tell them
19 it's a six person lineup and I lay it face down and tell her
20 that the person could or may or may not be in there that you
21 know but if you recognize someone involved in this, she could
22 pick it out.

23 Q. Okay. And was she able to identify anybody in the
24 lineup?

25 A. She was.

1 Q. Did you suggest to her in any way who she should
2 choose?

3 A. No. I didn't.

4 Q. Did you promise her anything if she chose a certain
5 person?

6 A. I did not.

7 Q. Did all the people in the lineup have similar
8 physical characteristics?

9 A. They did.

10 Q. Did she have any problem picking out anybody?

11 A. She did not.

12 Q. Where did you meet with her to show her that
13 lineup?

14 A. At her place of work. I could get you the exact
15 address if you need it.

16 Q. I don't need it. She was at work?

17 A. That's correct.

18 Q. Did she provide you with a written statement during
19 that meeting?

20 A. She did.

21 Q. Did you do anything else involving this case?

22 A. I did. I assisted Sergeant Laintz with a follow-up
23 interview with Denique Banks.

24 Q. Why is it important to do follow up interviews?

25 A. To keep fresh information as we gather more

1 information to follow up on that particular information as it
2 pertains to certain statements that individuals have already
3 given. If there is a discrepancy, we'll follow up on that.

4 Q. Is it customary to follow up with people?

5 A. Yes.

6 Q. What was the date that you and Sergeant Laintz met
7 with Ms. Banks?

8 A. April 17th, 2014.

9 Q. Do you remember who was all present when you met
10 with her?

11 A. It was Ms. Banks' mother, I believe the defendant's
12 mother and some other family members.

13 Q. Who lead that meeting?

14 A. Sergeant Laintz.

15 Q. Were you present the whole time?

16 A. Yes, ma'am.

17 MS. ZMROCZEK: Your Honor, I believe we have heard
18 about this meeting three times. I just don't know that
19 he has any new information to add.

20 THE COURT: Get to that point.

21 MS. PATTERSON: I'm moving on, Your Honor. I just
22 wanted the jury to know he knew about the meeting
23 as well.

24 BY MS. PATTERSON:

25 Q. Did you, after that meeting, did you obtain arrest

1 warrants for the defendant?

2 A. Yes.

3 Q. And did you also obtain arrest warrants for anyone
4 else?

5 A. Yes. Ms. Banks. Ms. Denique Banks.

6 Q. At whose direction was this done?

7 A. Sergeant Laintz.

8 Q. What date was -- Did you actually make those
9 arrests?

10 A. I did not.

11 Q. Did you have any other - after - did you have any
12 other involvement in the case? Did you speak to any other
13 potential witnesses?

14 A. I did. On April 21st, 2014, myself and Sergeant
15 Spivey, then detective, he's now sergeant, we met with a
16 Dashun Curry. Goes by the nickname of DeDe.

17 Q. Did you meet with any other potential witnesses?

18 A. On May the 6th, 2014, I met with a Jermiel Gartrell
19 nickname Boss Pooh and possibly some other nicknames.

20 Q. Were you involved in including or excluding any
21 other potential witnesses or suspects in the shooting?

22 A. The only one I have listed is on February 10th,
23 2014, after we spoke with Ms. Sandra Kiete, Detective Black
24 and I spoke with James Kiete briefly at his residence.

25 Q. When you spoke with Dashun Curry and Jermiel

1 Gartrell, were you able to eliminate them as suspects as the
2 shooter?

3 A. Yes, ma'am.

4 Q. How were you able to rule them out?

5 A. Dashun Curry wasn't - didn't give us any information
6 as far as a statement. He was in custody at the time and we
7 were able to seize his cell phone or actually SLED seized his
8 cell phone. We obtained that cell phone through the chain of
9 custody form and my Sergeant Laintz directed me to seize the
10 cell phone and turn it into evidence for a search warrant
11 pending.

12 Q. Did he meet the description of the shooter that you
13 had?

14 A. He did not.

15 Q. What about Mr. Gartrell?

16 A. He did not.

17 Q. Did you use any other method to rule him out as the
18 shooter?

19 A. I did not.

20 Q. And when Ms. Knightner gave you the photo lineup,
21 did she make a selection?

22 A. She did.

23 MS. PATTERSON: Please answer any questions Ms.

24 Zmroczek may have.

25 CROSS EXAMINATION

1 BY MS. ZMROCZEK:

2 Q. Investigator Dykes, how are you?

3 A. How are you doing?

4 Q. You were not the lead investigator in this case,
5 were you?

6 A. No.

7 Q. Who was that?

8 A. Detective Black.

9 Q. So this was her case?

10 A. Yes, ma'am.

11 Q. So she was running it?

12 A. Yes, ma'am.

13 Q. But you're the one that's been sitting here in court
14 all week, right?

15 A. Yes.

16 Q. And I want to show you what's been previously marked
17 as defendant's 43 and ask you if you can identify this
18 person?

19 A. Doesn't look familiar.

20 Q. This person does not look familiar. But you went
21 and you interviewed and took Dashun Curry's phone?

22 A. Yes, ma'am.

23 Q. Okay. And did you look at that or did you just pass
24 that on for someone else to look at?

25 A. I passed it on to someone else in evidence.

1 Q. So it's in evidence?

2 A. Yes, ma'am.

3 Q. The phone was down loaded and turned into
4 evidence?

5 A. Once I turned it in, I'm not sure where it went from
6 there. I was just told a search warrant was pending for it.

7 Q. Okay. I'm going to show you what's been marked as
8 defendant's 33 and ask you if you can identify that person?

9 A. Kind of grainy.

10 Q. If you can't, that's fine.

11 A. Yeah.

12 Q. Okay. So you were also looking for Antonio
13 Williams, right?

14 A. Yes, ma'am.

15 Q. Why were you looking for Antonio Williams?

16 A. I assisted on that day just to speak to him about
17 the incident. I was asked to come along with Detective
18 Black.

19 Q. You had received information that he had information
20 about this case?

21 A. Yes, ma'am.

22 Q. You received information that he knew who the
23 shooter was?

24 A. I didn't receive the information but it was passed
25 along to me to assist.

- 1 Q. Okay. Were you able to find him?
- 2 A. They were. Yes, ma'am.
- 3 Q. And somebody else conducted that investigation?
- 4 A. Yes, ma'am.
- 5 Q. And Ms. Knightner, when you met with her and you
- 6 showed her the photo lineup, did you ask her questions?
- 7 A. I'm sorry.
- 8 Q. Did you ask her questions?
- 9 A. I did.
- 10 Q. Did you ask her if she knew any people in the
- 11 lineup?
- 12 A. I did.
- 13 Q. Did you ask her that prior to her seeing the
- 14 lineup?
- 15 A. I did.
- 16 Q. What did she tell you?
- 17 A. No.
- 18 Q. She told you no, right? She said she didn't know
- 19 anybody in that lineup?
- 20 A. I'm sorry.
- 21 Q. Prior to that evening?
- 22 A. Prior to that evening. That's correct. Yes.
- 23 Q. Okay. And she actually wrote a statement for you,
- 24 right?
- 25 A. Yes.

1 Q. And she signed it Rickena Knightner?

2 A. Yes.

3 Q. But you had known she had given an earlier statement
4 under a different name, right?

5 A. I was told that. Yes.

6 Q. You said you got two anonymous voice mails?

7 A. Yes, ma'am.

8 Q. But you weren't able to save them?

9 A. No, ma'am.

10 Q. But it was on your voice mail?

11 A. Yes, ma'am.

12 Q. So you couldn't just record them with a tape
13 recorder?

14 A. We could have.

15 Q. But you just -- Nobody else has heard those
16 anonymous voice mails but you, right?

17 A. Sergeant Laintz, I believe, heard one of them.

18 Q. Let me ask you this way. That wasn't provided to
19 the defense, was it?

20 A. No, ma'am.

21 Q. So we could try to find out who those people were?

22 A. No, ma'am.

23 Q. So two random people that we don't know said it was
24 Dink?

25 A. Yes, ma'am.

1 Q. All right. And you said you interviewed Jermiel
2 Gartrell?

3 A. Yes, ma'am.

4 Q. And at that time when you interviewed Jermiel
5 Gartrell, he was picked out by Fred Moss, right?

6 A. I didn't have that information at the time, but yes,
7 ma'am. I wasn't directly involved with that.

8 Q. You didn't know at the time that he had a weapon?

9 A. I didn't.

10 Q. Okay. And that he had flashed that weapon at Fred
11 Moss?

12 A. I did not.

13 Q. Okay. Were you aware that there was a reward
14 offered and actually given in this case?

15 A. I was told, but I was not aware at the time.

16 Q. Okay. You have become aware since your
17 involvement?

18 A. Yes, ma'am.

19 Q. That a \$10,000.00 reward was paid for a name,
20 correct?

21 A. That's what I have heard.

22 Q. And you have been involved in the investigation?

23 A. Somewhat. Yes, ma'am.

24 Q. Would that be a question for the lead
25 investigator?

1 A. Perhaps.

2 Q. Okay. When you - you said that you were involved in
3 another murder case and some other cases in major crimes,
4 right?

5 A. Yes, ma'am.

6 Q. And part of what you do in your investigation is you
7 want to follow up on every lead, right?

8 A. Yes, ma'am.

9 Q. You want to make sure that you track down all the
10 evidence?

11 A. Yes.

12 Q. You want to make sure that you arrest the right
13 people for these crimes, right?

14 A. Yes.

15 Q. When you went to Zaxby's to go talk with Mr. Brooks,
16 he talked with you, right?

17 A. Yes.

18 Q. He was working?

19 A. Yes.

20 Q. His family didn't try to hide him?

21 A. No.

22 Q. Told you exactly where to find him?

23 A. Yes, ma'am.

24 MS. ZMROCZEK: No further questions.

25 THE COURT: Any redirect?

1 MS. PATTERSON: Just a few.

2 REDIRECT EXAMINATION

3 BY MS. PATTERSON:

4 Q. Investigator Dykes, why are you sitting in here this
5 week?

6 A. Because I have information pertinent to the
7 investigation.

8 Q. And during the course of this investigation was the
9 lead investigator as Ms. Zmroczek liked to refer to, was she
10 out of town some?

11 A. She was.

12 Q. And when an investigator is out of town, does an
13 investigation stop?

14 A. No. It doesn't.

15 Q. Are other investigators allowed to assist in the
16 investigation such as a murder?

17 A. Yes.

18 Q. And those anonymous messages that you had that were
19 transferred to your phone would recording them have helped you
20 track down who left the messages?

21 A. None whatsoever.

22 MS. PATTERSON: No further questions.

23 THE COURT: You may step down.

24 MS. PATTERSON: The State calls Rickena Knightner.

25 Thereupon,

1 RICKENA KNIGHTNER

2 after having been first duly sworn, testified as follows,

3 THE CLERK: Please have a seat. After you're
4 seated, please state your full name spelling your last
5 name for the record.

6 THE WITNESS: Rickena Knightner,
7 K-n-i-g-h-t-n-e-r.

8 DIRECT EXAMINATION

9 BY MS. PATTERSON:

10 Q. How are you this afternoon?

11 A. Great.

12 Q. Where do you live?

13 A. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED].

14 Q. Is that in Columbia?

15 A. Columbia, South Carolina 29210.

16 Q. Are you employed?

17 A. Yes, ma'am.

18 Q. How long have you been employed?

19 A. Nine years.

20 Q. Do you remember the evening of February 1st, 2014?

21 A. Yes, ma'am.

22 Q. Who were you with that day?

23 A. Me and my friends Joy, Tiffany, Sherry and Sherry's
24 sister Melinda.

25 Q. Were you ladies out celebrating anything in

1 particular?

2 A. Joy's birthday.

3 Q. Where all had you went that night?

4 A. We went to Caparosa's on Two Notch Road and then
5 went to the Cockpit.

6 Q. Do you know what time you got to the Cockpit?

7 A. A little after one.

8 Q. Whose idea was it to go to the Cockpit?

9 A. It was Tiffany's idea.

10 Q. Had you ever been there before?

11 A. No, ma'am.

12 Q. Who did you ride with to the Cockpit?

13 A. Me and Joy.

14 Q. Who drove?

15 A. Joy drove.

16 Q. Whose car?

17 A. My car.

18 Q. Do you remember where Joy parked the car?

19 A. Yes.

20 Q. Where was it?

21 A. In front of the club.

22 Q. Was it pulled in forward or was it backed in?

23 A. Pulled in forward.

24 Q. Did you go inside the club?

25 A. Yes, ma'am.

1 Q. When you got inside the club, did you see anyone you
2 knew?

3 A. Yes.

4 Q. Who did you see you knew?

5 A. I seen Arnold, Tosha. Let me see. Dink and, oh,
6 Keemo (phonetic.)

7 Q. Did you talk to any of those people?

8 A. Yes.

9 Q. Who is this Arnold you're referring to?

10 A. That's Denique's uncle.

11 Q. Does he have a nickname?

12 A. Junior.

13 Q. Did you say anything to him? Did you have
14 conversation with him?

15 A. Yes.

16 Q. You mentioned Dink. Who is Dink?

17 A. That was - that's Junior's - that's Denique baby
18 daddy.

19 Q. How do you know Denique?

20 A. She pretty much grew up with my kids. I have been
21 friends with her family about 16 years.

22 Q. How did you know Dink?

23 A. I know he her - her baby father.

24 Q. Did you know his real name that night?

25 A. No, ma'am.

1 Q. Had you seen him before?

2 A. Yes.

3 Q. Where had you seen him?

4 A. At Denique's mother house and Denique's grandmother
5 house.

6 Q. When you - about how many times had you seen him
7 before?

8 A. Maybe like four or five times.

9 Q. When you saw him, how did he wear his hair?

10 A. He had dreads in his hair.

11 Q. Now, when you saw him this night, did you say
12 anything to him?

13 A. No. Not that night. We spoke just like, hey, and
14 kept going because he was in a crowd with Junior.

15 Q. So going back inside the Cockpit what were you and
16 your friends doing for the rest of the evening?

17 A. I was shooting pool, walking around talking. We had
18 a few drinks.

19 Q. At any time during the morning hours, do you
20 remember hearing an argument inside the club?

21 A. Yes.

22 Q. Where were you standing in relation to whoever was
23 arguing?

24 A. I was standing right next to them.

25 Q. Did you recognize anyone you knew involved in the

1 argument?

2 A. Yes.

3 Q. Who did you recognize?

4 A. Junior and Dink and Junior's nephew Eric.

5 Q. Did you do anything when you saw that you may know
6 some people involved in the argument?

7 A. Yeah. I pulled - I pulled - I pulled on Junior and
8 I asked him - I asked him what was going on. I told him he
9 didn't need to get involved because he had too much going on
10 for his self and he snatched away and told me to let him go so
11 I let him go.

12 Q. So after hearing this argument, did you see who they
13 are arguing with?

14 A. I seen the guys but I didn't know any of them.

15 Q. What did they look like?

16 A. Couple black guys. Short. I didn't know no anybody
17 else.

18 Q. After the argument, what did you do?

19 A. I told my friend Joy let's go.

20 Q. Did Joy agree to go?

21 A. Yes. She said she had to use the restroom so I told
22 her I would be waiting by the car.

23 Q. Did you go outside?

24 A. Yeah. I immediately went outside and she went to
25 the other side to the restroom.

1 Q. Let me just stop you for a second and catch up. I'm
2 going to show you what's marked as State's exhibit 45 and ask
3 you to take a look at that.

4 A. (Witness complies.)

5 Q. Do you recognize what's on that picture?

6 A. Yes.

7 Q. What is it?

8 A. That's behind the bar. We were standing there where
9 the argument took place at.

10 Q. And is that inside the Cockpit?

11 A. Yes. This is inside the Cockpit.

12 Q. That's the way it looked that night?

13 A. Yes.

14 MS. PATTERSON: Your Honor, at this time we move
15 State's 45 into evidence.

16 MS. ZMROCZEK: No objection, Your Honor.

17 THE COURT: Without object 45 is in.

18 BY MS. PATTERSON:

19 Q. Can you see this or do you need to step down?

20 A. I can see it.

21 Q. Okay. Can you point out to the jury where you were
22 standing when you heard the argument?

23 A. Right there.

24 Q. Where were the people that you saw involved in the
25 argument standing?

1 A. Right here.

2 Q. So when you go outside to wait for Joy, where do you
3 stand?

4 A. On the passenger side of my vehicle.

5 Q. Why don't you get inside the car?

6 A. Because she has the keys.

7 Q. What's the weather conditions that night?

8 A. Cold.

9 Q. So as you're standing outside, is the other people
10 outside?

11 A. Yes. There was some people on top of the hill that
12 was outside. There was no one standing next to me.

13 Q. Did you recognize the people standing at the top of
14 the hill?

15 A. No. I just notice a few of them. When I walked out
16 of the club, they walked out of the club and they walked up
17 the hill and the ones that, when they was arguing, they walked
18 out first and then I walked out behind them.

19 Q. So the people inside the club that you saw arguing
20 left out of the club?

21 A. Yes. They left before I left.

22 Q. You saw them on top of the hill?

23 A. Yes.

24 Q. Did you see or hear anything they were doing at the
25 top of the hill?

1 A. No. I just heard a bunch of commotion on top of the
2 hill.

3 Q. What do you remember happening next?

4 A. When I standing there, I started looking up and
5 that's when I heard all the commotion, then that's when I seen
6 - that's when I seen Dink going back like this right here
7 (indicating) with the gun. I said, no, Dink. No, Dink. Then
8 he put his arm back and he said like get down. And from that
9 point on I got down and did that (indicating) against my car
10 and then another car pulled behind my car and then he got in
11 the car and left.

12 Q. Let's just slow down a little bit. So where did you
13 see Dink coming from?

14 A. From on the sidewalk coming from the top of the
15 hill.

16 Q. How did you see him coming towards you?

17 A. He was like - like sideways. Like his back, his
18 back was turned like coming down like sideways down the
19 sidewalk. His body was facing up but he was coming like
20 sideways down the sidewalk.

21 Q. How close did he get to you?

22 A. Close. Probably close as me and him to each other
23 (indicating.)

24 Q. What were you saying?

25 A. I said, no, Dink. No, Dink.

1 Q. Did he respond to you?

2 A. He said get down.

3 Q. And did you get down?

4 A. Yes, ma'am.

5 Q. And what happened next?

6 A. And the car pulled up at the back of my car, a
7 little past my car a little bit and he ran, he ran that way
8 and got in the car.

9 Q. And how did you get down?

10 A. Like I just bent down like that right there
11 (indicating.)

12 Q. You still could see what was going on?

13 A. Yes, ma'am.

14 Q. What happened after you were positioned down?

15 A. That's when he got in the car and I positioned down
16 and a security guard ran out and grabbed me from the side of
17 the car and asked me who I was with and I told him that I was
18 with my friend Joy. And he said, where is she? I said she
19 was still inside the club. That's when he picked me up and
20 walked me to the steps and that's when Joy was standing at the
21 door calling my name and I told him that's the girl right
22 there.

23 Q. What was your emotional state at this point?

24 A. I was crying.

25 Q. Why were you crying?

1 A. Because I was scared.

2 Q. Why were you scared?

3 A. Because there was a shooting. I never been in no
4 situation like that.

5 Q. So once Joy came out, what happened?

6 A. Joy came out, we ran, we walking back to my car
7 because my car was like literally right in front of the club
8 in front of the door. We walked to my car. That's when she
9 said hold on. Hold on. Look like my student. And I'm like
10 what student? And she ran on up the hill. So I ran behind
11 her because she was working at Benedict at the time. So she
12 ran up the hill to see if that was her student that got shot
13 and I ran behind her and once we got up there she said, no.
14 That's not him. So we ran back to my car and that's when I
15 called 911.

16 Q. So you say the victim still lying there?

17 A. Yes, ma'am.

18 Q. Then you went back to your car?

19 A. We ran back down the hill to my car.

20 Q. And you called 911?

21 A. Yes.

22 Q. Why did you call 911?

23 A. Because someone had got shot.

24 Q. When you called 911, did you give them your real
25 name?

1 A. No, ma'am.

2 Q. Why not?

3 A. Because I was scared at the time and for two, I know
4 who had did the shooting. I just didn't want to be involved
5 in it.

6 Q. What name did you give them?

7 A. Shontay.

8 Q. Shontay what?

9 A. Shontay Jones.

10 Q. Did you later speak with Investigator Etheredge
11 about this?

12 A. Yes.

13 Q. Do you remember where you were when you met with
14 her?

15 A. Yes. I was in the Hemingway's parking lot in Irmo
16 across the street from my job.

17 Q. At that time did you tell her you knew who the
18 shooter was?

19 A. No.

20 Q. Why didn't you tell her this time?

21 A. Because I didn't want to get involved.

22 Q. Did you give her a description of the shooter?

23 A. Not at that time when I first met with her.

24 Q. Did you ever give her a description?

25 A. Yes, ma'am.

1 Q. What description did you give her?

2 A. I told her a short black mail with dreads in his
3 hair and small eyes.

4 Q. So if you knew he was the shooter, again, why didn't
5 you go through the trouble of describing him and not just
6 telling her who he was?

7 A. You said why didn't I go through the trouble?
8 Because I really wanted him to get caught but I just didn't
9 want to be involved. I was so close to the family. I wasn't
10 close to him at all but I knew the family for many years.

11 Q. Did you agree to meet with a SLED agent?

12 A. Yes, ma'am.

13 Q. Did you have her come up with a description?

14 A. Yes.

15 Q. And let's just step down one second before we go
16 further. Ms. Knightner, step down and stand on this side so
17 the court reporter can hear you. Keep your voice up. Step
18 over here. Keep your voice as loud as you can. So do you
19 remember, can you tell in this picture where Joy parked your
20 car?

21 A. We parked right here. Right there. Right here.

22 Q. And where did you see the people arguing at the top
23 of the hill?

24 A. They were standing up here. They were right here.

25 Q. Let me orient yourself to this. Where is the

1 Cockpit?

2 A. Right here.

3 Q. Okay. And you recognize the Peachtree Apartments?

4 A. Yes.

5 Q. How did you recognize them?

6 A. That's where I was staying at at the time.

7 Q. And so if you come out of the club and you go this
8 way, you go to --

9 A. Towards Bush River Road.

10 Q. So where did you see the people?

11 A. They were right here on top of the hill right here.
12 The entrance to the Cockpit is right here.

13 Q. That's where you saw them at?

14 A. Mm-hmm.

15 Q. Where did you see the victim lying?

16 A. He was at the top like right in here right up top of
17 the road.

18 Q. How did you see Dink come back?

19 A. He came back this way like towards the sidewalk down
20 towards the sidewalk that way towards me. People standing
21 like right here and I see him come from this way on down the
22 sidewalk. There is actually a sidewalk right here.

23 Q. That's where you saw him. And since you're already
24 down here, can you show to the jury how you saw him backing
25 up?

1 A. He was backing up like this (indicating.)

2 Q. Was there a lot of people outside when this was
3 going on?

4 A. Yeah. There was - it was - I wouldn't say the club
5 was outside, but a few people left out of the club after the
6 argument.

7 Q. Did you ever meet with Investigator Dykes?

8 A. Yes.

9 Q. And do you remember why he came and met with you?

10 A. Yes.

11 Q. And did he show you a photo lineup when he met
12 with you?

13 A. Yes.

14 Q. I'm going to show you State's exhibit number 2 and
15 ask you to take a look at that.

16 A. (Witness complies.)

17 Q. What is that document that I gave to you?

18 A. A photo lineup.

19 Q. Is that the photo lineup that was shown to you by
20 Investigator Dykes?

21 A. Yes.

22 Q. How do you recognize that? Is your name or anything
23 on it?

24 A. My name on it. Yes, ma'am.

25 Q. When he gave you that lineup, did he suggest to you

1 in any way who you should pick out?

2 A. No, ma'am.

3 Q. Did he tell you who to pick out?

4 A. No, ma'am.

5 Q. Did you have any problems picking out anybody in
6 that lineup?

7 A. No, ma'am.

8 Q. Who did you pick out?

9 A. Dink.

10 Q. Did you circle his picture?

11 A. Yes, ma'am.

12 Q. Did you initial it?

13 A. Yes.

14 Q. Was there anything about his appearance that was
15 different in that picture than when you saw him the night he
16 was shooting at the Cockpit?

17 A. Yes, ma'am. His dreads was - his dreads was shorter
18 in this picture and longer that night.

19 Q. How long were they that night?

20 A. Probably like shoulder length.

21 Q. At that time did you tell Investigator Dykes you
22 actually knew who the person was?

23 A. No.

24 Q. Why didn't you tell him at that time?

25 A. Just didn't. I just didn't want to be involved in

1 it. After - after I knew what had happened, I got in touch
2 with Denique's mother and tried to tell her that, you know,
3 what was going on and from that point I just -- He said, you
4 know, do I see anybody in here that was at the Cockpit
5 shooting. I told him yeah. When I picked the picture out, I
6 was feeling bad and I should have told him then but I didn't.
7 I just still didn't want to get involved.

8 Q. I'm going to show you a couple of pictures just to
9 make sure I'm clear about what you saw there. I'll show you
10 State's exhibit 17 first. Do you notice anything in that
11 picture that was familiar when you talked about seeing the
12 victim?

13 A. Yes. I see the street.

14 Q. Okay.

15 A. Yeah. This is the top of the hill.

16 Q. Okay. Where do you remember -- Do you remember
17 seeing the victim at the top of the hill?

18 A. Yes. That's where he was at the top of the hill.

19 Q. Let me show you 20. Do you recognize that side of
20 the parking lot?

21 A. Mm-hmm. I was parked on this side. This is going
22 to the right.

23 Q. Okay. Does that show where you saw the group?

24 A. Yes.

25 Q. Where did you see the group?

1 A. In this picture the group was on this side.

2 Q. And that's just what you remember that night?

3 A. Yes, ma'am.

4 MS. PATTERSON: Your Honor, we would move in State's
5 exhibit number 2 into evidence.

6 MS. ZMROCZEK: Subject to my previous objection.

7 THE COURT: Yes. I thought we did. Subject to your
8 objection I think that already came in. If not, it's in
9 now.

10 MS. PATTERSON: Yes, sir. Just wanted to make
11 sure.

12 THE COURT: Okay.

13 BY MS. PATTERSON:

14 Q. Let me do just one more thing. Ms. Knightner, I'm
15 handing you this back. And again, this is the photo lineup
16 that you picked out with Investigator Dykes. What was your
17 selection? Can you just point it out with the laser pointer?

18 A. Right there.

19 Q. Who is that?

20 A. That's Dink.

21 Q. Did you have any problems picking out your
22 selection?

23 A. No, ma'am.

24 Q. And are you sure that's who you saw shooting the gun
25 that night?

1 A. Yes, ma'am.

2 MS. PATTERSON: Please answer any questions Ms.
3 Zmroczek may have.

4 CROSS EXAMINATION

5 BY MS. ZMROCZEK:

6 Q. Ms. Knightner, I'm showing you what's marked as
7 defendant's 45. I'll ask you if you recognize that?

8 A. Yes.

9 Q. And do you recognize the second page of that?

10 A. Yes..

11 Q. You do recognize these things?

12 A. Yes.

13 Q. Is that your signature?

14 A. Yes.

15 Q. Is that the sketch that you had drawn?

16 A. Yes. It is.

17 MS. ZMROCZEK: Your Honor, at this time we would
18 move defendant's 45 into evidence.

19 MS. PATTERSON: Without objection.

20 THE COURT: Without objection 45 is entered. Two
21 pages, correct?

22 MS. ZMROCZEK: Yes. It is a two-page document.
23 Signature page and a sketch.

24 BY MS. ZMROCZEK:

25 Q. Now, Ms. Knightner, I want to talk to you about a

1 couple of things the first of which is you remember testifying
2 on Monday, right?

3 A. Yes.

4 Q. You sat in that very chair, right?

5 A. Yes.

6 Q. Put your hand on that very same Bible?

7 A. Yes.

8 Q. Raised it?

9 A. Yes.

10 Q. What did you tell me about Eric Brown at that
11 point?

12 A. I told you I know Eric Brown. Did not know his last
13 name was Brown. The only thing I ever knew is Eric.

14 Q. But today you know it's Eric Brown?

15 A. Yes.

16 Q. You didn't know that on Monday when you testified
17 under oath?

18 A. No. I didn't know who Eric Brown was. I knew
19 Eric.

20 Q. Okay. And where did Arnold "Junior" Banks live?

21 A. He stayed in Apple Valley.

22 Q. You actually dated him, didn't you?

23 A. No. I didn't.

24 Q. Never dated him?

25 A. Never dated him.

1 Q. Okay. You also knew that Gregory lived or Dink
2 lived in Apple Valley, right?

3 A. No. I never knew he lived there. When I met him,
4 he stayed with Tasha mama on Mountain Drive.

5 Q. So he stayed with Tasha's mama?

6 A. Well, Tasha, Denique's mama on Mountain Drive.

7 Q. So he lived with Denique --

8 A. That's when I first met him.

9 Q. Okay. But you only saw him five times?

10 A. Maybe five times. Yes.

11 Q. In your whole life?

12 A. Yes.

13 Q. Okay. And you said you didn't want to get involved,
14 right?

15 A. Yes.

16 Q. But you called 911?

17 A. Yes.

18 Q. You would agree with me that that's getting
19 involved, right?

20 A. Yes. Someone was dead on the street. That's why I
21 called 911.

22 Q. Someone was dead on the street so you called 911?

23 A. Yes.

24 Q. But you don't give them your real name?

25 A. No, ma'am.

1 Q. What name did you give them?

2 A. Shontay.

3 Q. Who is Shontay?

4 A. That's my alias.

5 Q. Your alias?

6 A. Mm-hmm.

7 Q. How often have you used that alias?

8 A. Since I was about 17 years old.

9 Q. Why do you have an alias?

10 A. When I go to the club, that's the name I use.

11 Q. Okay. So your alias Shontay Jones called 911 and
12 then you give a statement on February 6th, right?

13 A. Yes.

14 Q. Under that name? Under your alias?

15 A. Yes.

16 Q. All right. And on that February 6th, 2014
17 statement, when did you tell them that you knew Dink was the
18 shooter?

19 A. When did I tell them? When, uhm, Ms. Etheredge came
20 when I did the sketch.

21 Q. You told her at that point you knew that was Dink?

22 A. Yes.

23 Q. When she did the sketch?

24 A. No. Not when she did the sketch. After the sketch
25 was made, I spoke with her again about a couple weeks later.

1 Not at the time of the sketch. The sketch was the very next
2 day after I first met with her.

3 Q. The sketch that we are talking about, that's
4 defendant's 45. That's your signature, right?

5 A. Yes.

6 Q. Okay. But that's not your alias. That's your real
7 name?

8 A. Mm-hmm.

9 Q. Okay. And then this is the sketch, right?

10 A. Yes.

11 Q. And this was done on what day?

12 A. That was the very next day. On the first day when I
13 first met with Ms. Etheredge, I let her know that, when I
14 talked to her on the phone, I gave her another name. When we
15 got down to the police station in Irmo, that's when I gave her
16 my full name.

17 Q. Right. When did you give her the name of Dink?

18 A. You say when did I give her the name of Dink? Oh,
19 at the police station.

20 Q. That very same day?

21 A. Yes.

22 Q. Was that on the day that you wrote the statement,
23 February 6th, or was that after?

24 A. That was after.

25 Q. Okay. So on February 6th even though you don't want

1 to get involved you write a three page statement?

2 A. Yes.

3 Q. Okay. I'm going to hand that statement up to you so
4 you can refresh your recollection, okay? (Proffering.) Now,
5 the day on February 6th, 2014, did they ask you if you knew
6 the shooter?

7 A. I didn't hear you, ma'am.

8 Q. On February 6th, 2014 when you wrote that statement,
9 did they ask you if you knew the shooter?

10 A. Yes. They asked me then.

11 Q. What did you tell them?

12 A. I told them no.

13 Q. That was a lie, wasn't it?

14 A. Yes.

15 Q. You lied to the police?

16 A. Yes.

17 Q. Okay. They asked you if he said anything. If you
18 heard him say anything, right?

19 A. On that day? Yes.

20 Q. What did you tell them?

21 A. I told them no.

22 Q. That was a lie, right?

23 A. Yes.

24 Q. Okay. On that day?

25 A. Yes.

1 Q. Because today you say that you had a full out
2 conversation with him, right?

3 A. No. I never said I had a full out conversation with
4 him.

5 Q. You talked to him in the club?

6 A. I said I spoke to him in the club. I never talked
7 to him in the club.

8 Q. You spoke to him in the club?

9 A. I spoke to everybody else in the crowd as we walked
10 past.

11 Q. All right. So then April 15th you meet with
12 Investigator Dykes?

13 A. Yes.

14 Q. And you give a different statement?

15 A. Yes.

16 Q. And I'll give you a copy of that one just so you
17 have it, okay? (Proffering.) And at that point they asked
18 you how sure you were that that person was the shooter. What
19 did you tell them?

20 A. I told them 98 percent.

21 Q. You didn't say a hundred percent?

22 A. No. But at that point I still was not trying to be
23 involved because like I said, it was hard even coming forth.
24 I knew the family for a long time.

25 Q. Okay. So after calling 911, doing a sketch, giving

1 a statement and then giving another statement you don't want
2 to be involved?

3 A. No, ma'am.

4 Q. Okay. But you are involved?

5 A. Yes.

6 Q. And you're still not telling the police the truth?

7 A. I told them the truth.

8 Q. You told them that you were 98 percent sure,
9 right?

10 A. I told them the truth.

11 Q. You told them the truth?

12 A. Yes.

13 Q. On that day?

14 MS. PATTERSON: Asked and answered.

15 THE COURT: Agreed. Move on.

16 BY MS. ZMROCZEK:

17 Q. On that day did they ask you if you knew the
18 shooter, Investigator Dykes?

19 A. Yes.

20 Q. Did you tell them the truth on that day?

21 A. No.

22 Q. Okay. Because, in fact, when he showed you that
23 photo lineup, State's number 2, you knew exactly who Dink
24 was?

25 A. Yes. I did.

1 Q. You said you worked at the same place for nine
2 years?

3 A. Yes.

4 Q. Do you remember testifying on Monday again?

5 A. Yes.

6 Q. Under oath?

7 A. Yes.

8 Q. And what is it that you told me that you used that
9 name for?

10 A. What, Shontay?

11 Q. Yes.

12 A. The club.

13 Q. The club?

14 A. Yes.

15 Q. Not your dancing name?

16 A. Well, when I said dancing name, I was referring to
17 the club. I don't dance.

18 Q. Did you ever see anybody else with a gun that
19 night?

20 A. No.

21 Q. All right. She showed you 17, right? And she asked
22 where you saw the people?

23 A. Yes.

24 Q. Arguing at the top of the hill?

25 A. Yes.

1 Q. Do you have the laser pointer up there with you?

2 A. Yes.

3 Q. Point to where you showed her.

4 A. Right there.

5 Q. Right up there where that person is standing,
6 right?

7 A. Yes. A little bit, yeah, right around in that area.
8 Yeah.

9 Q. Right in that area. Then she showed you State's 20
10 and she asked you where the sidewalk was?

11 A. No. She never asked me where the sidewalk was.

12 Q. Where was the sidewalk?

13 A. The sidewalk is on the side in front of the club.

14 Q. Can you point to where it would be on this
15 picture?

16 A. It would be on the other side here. It's not in
17 that picture.

18 Q. I'll put 17 back.

19 A. It's - the sidewalk is right there on the side like
20 right in front of the sign of the Cockpit.

21 Q. That's where you saw these people fighting?

22 A. I never seen them fighting.

23 Q. Okay. That's where you saw Dink with the gun?

24 A. I seen him with the gun when he was backing down the
25 hill. I didn't see the actual gun until Dink was coming down

1 the hill where I was standing at.

2 Q. Did they ever show you a gun photo lineup?

3 A. No, ma'am.

4 Q. Okay. I'm showing you State's 5. I want to be real
5 clear that we are not misrepresenting this area. It's this
6 area right here, correct?

7 A. Yes.

8 Q. This area. Okay. That's where you saw everything
9 go down?

10 A. That's where the people was at when they started
11 arguing. I saw him next to my car.

12 Q. Okay. Did you ever tell the police he was standing
13 next to you?

14 A. I told them he was backing up. He was backing up
15 towards me and that's when he put his arm back and told me to
16 get down.

17 Q. I think when you demonstrated it, do you remember
18 which arm he was using?

19 A. No. I don't. He was coming -- Let's see. Left
20 side, so it had to be - had to be his left arm. Had to be his
21 left arm.

22 Q. Okay. And do you remember what he was wearing that
23 night?

24 A. Yeah. A white T-shirt and some jeans.

25 Q. And you remember seeing Eric there that night?

1 A. Yes.

2 Q. Okay. You remember Eric Brown and he's related to
3 Arnold and Denique and all of them?

4 A. Yeah. But you asked me on Monday you said Eric
5 Brown. I did not know him by Eric Brown. I just knew him by
6 Eric. I never knew him last name. Their last name is
7 Banks.

8 Q. But you have seen him before?

9 A. Yes.

10 Q. You saw him that night at the club?

11 A. Yes.

12 MS. PATTERSON: Asked and answered.

13 BY MS. ZMROCZEK:

14 Q. And your memory is extremely clear as to where all
15 those pictures and all those areas that you pointed out were,
16 right?

17 A. Yes.

18 MS. ZMROCZEK: Thank you, Your Honor. No further
19 questions.

20 THE COURT: Any redirect?

21 MS. PATTERSON: No further questions, Your Honor.

22 THE COURT: Please step down. While she's stepping
23 down I'll tell y'all. You're hearing and they're talking
24 about Monday they keep referring back to, that was this
25 Monday afternoon. When you have lineup evidence, the

1 MS. ZMROCZEK: Thank you.

2 THE COURT: All right. Let's take a few minutes.

3 You see about your witnesses and see if we can get them
4 here and get them done this afternoon and we'll get done
5 what we can, and what we can't we're gonna do it in the
6 morning and try to get this case to the jury tomorrow.

7 MS. ZMROCZEK: That would be my goal. And, Your
8 Honor, in that I know that even, I may not be able to
9 finish all my witnesses today. I still think that we
10 could probably have a charge conference this afternoon so
11 that we're not wasting the Court's time.

12 THE COURT: You can round your witnesses up. I
13 mean, I'm assuming it's going to be a standard murder
14 voluntary charge. So far I haven't seen self defense.
15 Maybe you'll put up some witnesses and I'll change my
16 mind. I'm not trying to suggest that it's not but I
17 don't know. I mean, I have only heard what I have heard
18 thus far and y'all know more about the case than I do.

19 MS. ZMROCZEK: The one you need to charge, Your
20 Honor, and I'll e-mail you, the same one that Judge
21 Hocker gave a few weeks ago about the third party guilt
22 which obviously I think we need more testimony as to that
23 but so that would be the one you need to charge that we
24 may need to discuss on the record.

25 THE COURT: Okay.

1 MS. ZMROCZEK: I'll e-mail, I'll send you the e-mail
2 of that that we used before.

3 THE COURT: Okay. I'm gonna make your suggestion on
4 the curative instruction Court's exhibit number 1.

5 MS. ZMROCZEK: Thank you.

6 THE COURT: We'll stand at east for a couple
7 minutes.

8 (Short break.)

9 BAILIFF: All rise.

10 THE COURT: Have a seat. Jacob said something about
11 something being proffered. Are we gonna do that now?
12 Because if we are, I'm gonna let the jury out of the jury
13 room and let them go downstairs. I don't like leaving
14 them back there and leaving them back there and leaving
15 them back there. I'm gonna let them go outside and enjoy
16 the pretty November weather.

17 MS. PATTERSON: Before she gets to her witnesses,
18 she is trying to get those videos in. They need to be
19 proffered.

20 THE COURT: Why?

21 MS. PATTERSON: We don't see the relevance in them,
22 Your Honor.

23 THE COURT: Give me a brief description of them
24 other than proffer them. What are they?

25 MS. ZMROCZEK: Your Honor, what they are, they are

1 five videos taken off of the phone that they collected.
2 The videos were taken between the hours of, on February
3 2nd, 2014 between the hours of 3:10 a.m. to 9:13 a.m.
4 What they show, Your Honor, is the scene. You can
5 actually see Mr. Moss in there and you can hear them
6 arguing. It shows the color - it shows the - not the
7 color. It shows the percep - it provides a perception of
8 the layout of the scene kind of how many people were
9 there, people coming in and out. You can see the
10 detectives. On three of the videos you can see the
11 police cars. You can see cars rolling in and out of the
12 driveway. Your Honor, they are less than 20 seconds each
13 but they were provided to me in discovery by the State.
14 I have Investigator Phipps here who downloaded them from
15 the phone and then there are four pictures, well, two
16 pictures and then the same two pictures with the
17 Metadata, and the Metadata, Your Honor, what the two
18 pictures are off the same phone, there are two pictures
19 of a .22 gun that holds nine bullets and the dates that
20 they were posted and on this phone the Metadata shows it
21 was February 3rd, 2014 which would be the day after this
22 incident. So we believe that all of this is relevant in
23 establishing third party guilt. These were all taken off
24 of Josie Paxton's phone. You heard Investigator
25 Mountzouros, the first investigator talk about how he had

1 her in the car. We already have pictures from her phone.

2 THE COURT: No. He had her in the parking lot.

3 MS. ZMROCZEK: I'm sorry.

4 THE COURT: You keep saying the car.

5 MS. ZMROCZEK: I'm sorry. Not the car. In the
6 parking lot. I keep saying the car and I don't know
7 why.

8 THE COURT: Yeah.

9 MS. ZMROCZEK: I don't why I keep saying the car but
10 he was with her.

11 THE COURT: Somewhere not far away in the parking
12 lot.

13 MS. ZMROCZEK: Right. Somewhere in the area. And
14 then Etheredge testified to some of the pictures that she
15 already took off of the phone but she took those pictures
16 that evening and then they actually collected the phone
17 which they did through Longshore and Phipps downloaded it
18 and this is the information that I intend to get in
19 through that and like I said, the videos are less than --

20 THE COURT: How is that not relevant? I agree
21 with you. It seems to be a little bit redundant but why
22 is it not necessary?

23 MS. PATTERSON: First of all, Your Honor, the first
24 video we saw is very chaotic. It's noisy. You can't
25 even identify who these people are. I mean, she's going

1 to have to have a witness to identify those people
2 because this video is sideways, upside down. It's just
3 so hard to --

4 THE COURT: Is it this chaotic? Is the video I saw
5 several weeks ago coming out of the gym? Was that
6 chaotic?

7 MS. PATTERSON: Very similar.

8 THE COURT: Okay. That's what I was seeing.

9 MS. PATTERSON: But you can't, I mean, you can't
10 identify anybody. It's a lot of cursing, slurred speech.
11 I mean, you don't even know who these people are.

12 THE COURT: That's what I'm imaging is the video of
13 the scene outside the steps of the gym.

14 MS. PATTERSON: Yeah.

15 THE COURT: Very similar. Okay. What else? I
16 mean, that may be - no one has said it was a calm scene
17 out there. It's chaotic. People leaving. Couldn't keep
18 people in the place. No one wants to talk to police when
19 something happens. They all run. That's every single
20 case that I hear like this. Nobody stays around.

21 MS. PATTERSON: Right. And we don't have anybody
22 authenticating not only who it is but the voices. I
23 mean, I just don't see the relevance in it.

24 THE COURT: Was Josie Paxton not there?

25 MS. ZMROCZEK: We have her under subpoena, Your

1 Honor, but I mean, but she, you know, the phone was - we
2 already have where she consented to the search warrant.
3 We got that in and then Mike Phipps executed the search
4 warrant.

5 THE COURT: I don't care about that. Doesn't she
6 have to say it's hers?

7 MS. ZMROCZEK: I think - I think she already has by
8 signing the consent and Phipps saying that he got it
9 because it was taken into evidence and he logged it into
10 evidence as her phone and Phipps --

11 THE COURT: But, you know, wait a minute now.

12 MS. ZMROCZEK: We are not asking who these people
13 are or, you know --

14 THE COURT: All right. Skip over the chaotic.
15 What's the next one. Because maybe chaotic -- Nobody is
16 disputing chaos. Chaos was rampant and continued for a
17 while out there. Not a single witness has testified that
18 there was not an altercation. Chaotic. People running
19 in different directions. Cars pulling out trying to get
20 away and there was a lot of cars and people out there.
21 Not a single person disputed that.

22 MS. ZMROCZEK: Right. But what it does, Your Honor,
23 it gives a visual representation of exactly -- I mean,
24 it's very rare that we actually get to see things as they
25 are and I think that in order to present a fair --

1 THE COURT: This is the third trial straight that I
2 have had this.

3 MS. ZMROCZEK: I'm sorry.

4 THE COURT: Third straight trial I have has this and
5 I don't think it helped.

6 MS. ZMROCZEK: I understand. I wasn't involved in
7 either of those two, Your Honor, but I think under the
8 constitution for him --

9 THE COURT: Skip over the chaotic and go to the next
10 one. I'm not saying no. I'm just saying tell me the
11 next 20 seconds excerpt what is it?

12 MS. ZMROCZEK: The first two I think are the same.
13 The second one actually you can see Mr. Moss in there
14 wearing the shirt that they have already put in and a
15 picture of him wearing that same shirt.

16 THE COURT: What does that do for you? What does it
17 show? What does it prove?

18 MS. ZMROCZEK: Nothing, Your Honor. I think, again,
19 what it does is it just adds another layer of visual of
20 what was going on that night. He testified that he was
21 followed out and that he was basically followed by this
22 group of people and you can see him right at the corner
23 of the bar. There are no issues. If the Court would
24 like to look at them, it would take less than three
25 minutes to watch all of them if it would help for you to

1 see them.

2 THE COURT: What else is there? What's the next
3 one?

4 MS. ZMROCZEK: Then in the next three are all the
5 police and the scene, people leaving, vehicles leaving
6 and people walking.

7 MS. PATTERSON: And again, Your Honor, all of this
8 has already been testified to. Rule 403 exclusion of
9 relevant evidence on grounds of prejudice, confusion or
10 waste of time. It's cumulative, Your Honor. It is
11 confusing and it's indeed a waste of time to show these
12 videos. All of this information has already been
13 testified to. It's been cross examined on over and over
14 again by Ms. Zmroczek. I just don't see the need to put
15 in these videos. We clearly do not even know who all of
16 these people are.

17 THE COURT: All right. What else you got? Just
18 that?

19 MS. ZMROCZEK: And then the pictures, Your Honor,
20 which I can hand up if you want to see them.

21 THE COURT: Yes.

22 MS. ZMROCZEK: (Proffering.)

23 THE COURT: All right. What's the purpose of those?

24 MS. ZMROCZEK: Your Honor, it's a .22 caliber gun
25 that holds nine .22 caliber shell casings or bullets.

1 Obviously that's what's been testified to as being used
2 in this case so we absolutely think --

3 THE COURT: That gun? I don't know that they
4 described the gun.

5 MS. ZMROCZEK: No. No.

6 THE COURT: It looked like the shape of a
7 semi-automatic, not a revolver.

8 MS. ZMROCZEK: Right. I'm not saying that this is
9 the gun, Your Honor. I don't know because it wasn't
10 collected but what was collected were nine shell casings
11 which are exactly the number of bullets that are held in
12 this .22. that was on Ms. Paxton's phone so I think that
13 that's absolutely relevant as to --

14 THE COURT: How?

15 MS. ZMROCZEK: How?

16 THE COURT: Yeah.

17 MS. ZMROCZEK: Well, because, Your Honor, it's
18 someone who is at the establishment that night who then
19 the next day gives a statement and we are not -- there is
20 no statement on there but who is obviously a person of
21 interest because they take her phone. This was, all of
22 these .22 caliber shell casings are now in evidence and
23 there are pictures of them and this is a .22 caliber
24 that's associated with Josie Paxton who is also
25 associated with Antonio Williams who they say that they

1 have excluded as a suspect, Your Honor, and I think that
2 we are allowed to put in evidence that there were other
3 possible suspects and other things to --

4 THE COURT: From a picture on a cell phone?

5 MS. ZMROCZEK: Absolutely.

6 MS. PATTERSON: Your Honor, we don't even know why
7 that's on her cell phone. We don't know whose gun is it.
8 I mean, all of a sudden everybody there who may know
9 somebody with a .22 we need to bring them in and bring in
10 evidence that they know somebody?

11 THE COURT: This is very similar to the other case.
12 The roles are reversed. If she was trying to get a
13 picture of a gun off the cell phone, you would be
14 standing there with a head of hair on fire. Absolutely
15 not. That's just a picture on someone's cell phone of a
16 gun that -- I don't know, you've got a picture and
17 suspicion and five steps away from an actual -- I mean, I
18 don't understand how that's not confusing to the jury, a
19 picture on a cell phone of a gun and we don't have a gun
20 here. There's a .22 caliber. There's testimony the gun
21 that was fired was a .22 caliber because the shell
22 casings were there and there's a .22 recovered from the
23 victim. Aside from that that's about all we got.

24 MS. ZMROCZEK: Well, that's the thing, Your Honor.
25 We don't have a gun but yet the next day someone who is

1 at the bar that night posts a picture of a .22 caliber
2 pistol so I don't think it's that far removed.

3 THE COURT: I do. I'm really concerned about that.
4 That's kind of --

5 MS. ZMROCZEK: Well, we have her served today, Your
6 Honor, so if you want me to -- I know she can't be here
7 until the morning. She was served this afternoon. If
8 you would allow us to at least get the information and
9 not introduce it yet but allow Investigator Phipps to say
10 that he received this information and that this fairly
11 and accurately reflects what he produced, and when I say
12 produced, got off the phone, and then I will not admit
13 them until she comes in tomorrow then and has an
14 opportunity to be cross examined on them. But she also
15 gave a statement, Your Honor, which we'll get into
16 tomorrow and the statement was Antonio Williams, Bling,
17 texted me. The reason they took her phone and, Your
18 Honor, I don't know if you know this or not, the reason
19 they took her phone is that she said that Antonio
20 Williams texted her and called her and told her that my
21 home dog just shot my other home dog. That's where the
22 relevance comes in. But obviously that statement doesn't
23 come in until she gets on the stand.

24 THE COURT: That statement is one thing. But a
25 picture on her cell phone?

1 MS. PATTERSON: And, Your Honor, to move things
2 along we will stipulate to the chain being contingent on
3 the relevance being established through the proper
4 witnesses.

5 THE COURT: As to the videos?

6 MS. PATTERSON: As to the extraction from
7 Investigator Phipps.

8 THE COURT: Well, I don't know of any cell phone
9 y'all got by search warrant. Most all of them were done
10 by consent, weren't they? Or at least that's what I've
11 been hearing.

12 MS. ZMROCZEK: This cell phone was done by consent,
13 Your Honor.

14 THE COURT: Oh, man. All right. Who are you
15 calling today? If she's not coming until tomorrow, I can
16 think about that one.

17 MS. ZMROCZEK: Well, I had Mike Phipps here and he's
18 outside and then I have Eric Brown who is going to
19 testify first. Eric Brown is, as you have heard, he's a
20 relative of the family. I know he's minor but he was at
21 the club that night and actually drove my client home and
22 so he will testify as to what he saw and observed that
23 evening.

24 THE COURT: All right. That's fine. That's got
25 nothing to do with that picture on the cell phone.

1 MS. ZMROCZEK: Right. Right.

2 THE COURT: Phipps is the one who just imaged the
3 cell phones.

4 MS. ZMROCZEK: He's the one who got this information
5 and that's how it was provided to me. I mean, he works
6 for the Sheriff's Department. He doesn't work for me.

7 THE COURT: I understand.

8 MS. PATTERSON: And that's what we'll stipulate to
9 that.

10 THE COURT: If y'all agree that Phipps got the cell
11 phones and the cell phones were handed over, subpoenaed,
12 search warrants or consented to, somehow he got what was
13 on their hard drive, all of it and here's some
14 photographs, you're not going to challenge where they
15 came from because it went through the computer.

16 MS. PATTERSON: Correct, Your Honor. We're just
17 arguing -- I mean, we're just saying it's irrelevant.

18 THE COURT: So we don't need Phipps to testify?

19 MS. PATTERSON: Correct.

20 THE COURT: I mean, there's testimony out there that
21 the detective, whichever one it was, different ones at
22 different times, retrieved cell phones, cell phones were
23 imaged, searched, whatever you want to call it, but
24 basically hard drives memorialized elsewhere and
25 everybody gets their cell phone back. I don't know if

1 they did that or not, but they just copied the whole
2 thing and you can read what's in it whether it be a
3 document, a photograph, cell number, text messages,
4 whatever is in the hard drive gets moved over to some
5 sort of data device.

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

7 THE COURT: I did take a computer forensic class.

8 All right. If y'all stipulate and you're not gonna
9 challenge what she's got in her hand other than to
10 relevance, Mr. Phipps is not needed. We can do that
11 stipulation on the record in front of the jury if we get
12 that far. All right. So we're gonna call Rick Brown?

13 MS. ZMROCZEK: Eric Brown. Yes.

14 THE COURT: And who else this afternoon?

15 MS. ZMROCZEK: Well, I had Phipps and I have
16 Mr. Richardson who owned the bar is on his way.

17 THE COURT: Let's do Brown first and then --

18 MS. ZMROCZEK: He is here, Your Honor.

19 THE COURT: Okay. So we'll do those two witnesses
20 and move it along. How about that?

21 MS. PATTERSON: I apologize, Your Honor. Sir?

22 THE COURT: Let's do Brown and Richardson and then
23 move it along and see how far we get and the other
24 witnesses we'll do in the morning.

25 MS. PATTERSON: Yes, sir.

1 THE COURT: That gives us time to think about it.

2 MS. PATTERSON: Yes, sir.

3 MS. ZMROCZEK: Thank you, Your Honor.

4 THE COURT: All right. Ready to bring the jury in?

5 MS. PATTERSON: Yes, sir.

6 THE COURT: Bring them in.

7 (Whereupon, the jury entered the courtroom at 3:00
8 p.m.)

9 THE COURT: Sorry for the delay. I don't know if we
10 told you or not when y'all left, the State rested. They
11 have called all the witnesses they're gonna call on their
12 case. They can call some rebuttal. But Mr. Brooks and
13 Ms. Zmroczek expect to go deeper in the afternoon, so
14 they got on the phone and rounded some witnesses that
15 they had expected calling later this afternoon and
16 tomorrow morning so... But that's why we've been
17 waiting. It's not anything more than -- Things just kind
18 of happened a little bit quicker than we anticipated.
19 So, Ms. Zmroczek, call your first witness.

20 MS. ZMROCZEK: Thank you, Your Honor. We call Eric
21 Brown.

22 Thereupon,

23 ERIC BROWN

24 after having been first duly sworn, testified as follows,

25 THE CLERK: Please have a seat. After you're

1 seated, please state your full name spelling your last
2 name for the record.

3 THE WITNESS: Eric Brown, B-r-o-w-n.

4 DIRECT EXAMINATION

5 BY MS. ZMROCZEK:

6 Q. Mr. Brown, introduce yourself to the jury. Tell
7 them how old you are.

8 A. 24.

9 Q. What do you do for a living?

10 A. I work at Amazon distribution center.

11 Q. Prior to working at Amazon, where did you work?

12 A. I work at Lange Moving Systems Company.

13 Q. How do you spell that.

14 A. L-a-n-g-e.

15 Q. Moving company?

16 A. Mm-hmm. Systems.

17 Q. Systems. Who worked at Lange Systems with -- When
18 did you work there?

19 A. From 2011 to 2015.

20 Q. Who worked there with you?

21 A. My uncle Arnold Banks and Rickena Knightner.

22 Q. Did you know Ms. Knightner?

23 A. Yes, ma'am.

24 Q. How long did she work with you?

25 A. Maybe about two or three months.

- 1 Q. Two or three months?
- 2 A. Mm-hmm.
- 3 Q. And y'all worked together?
- 4 A. Yes, ma'am.
- 5 Q. Everyday for two or three months or every work
- 6 day?
- 7 A. Not every work day.
- 8 Q. Did she also hang out at your house?
- 9 A. Yes, ma'am. My grandma house.
- 10 Q. Where is that?
- 11 A. [REDACTED] A.
- 12 Q. So you were familiar with Ms. Knightner?
- 13 A. Yes, ma'am.
- 14 Q. Do you know Gregory Brooks?
- 15 A. Yes, ma'am.
- 16 Q. Tell the jury how you know him. What is his
- 17 nickname?
- 18 A. Dink.
- 19 Q. How do you know him?
- 20 A. He's my cousin. He's the father of my cousin
- 21 kids.
- 22 Q. He's the father of your cousin's kids. Who is your
- 23 cousin?
- 24 A. Denique Banks.
- 25 Q. Okay. He also lived at the same place where Arnold

1 lived?

2 A. Yes, ma'am.

3 Q. Okay. I know I'm asking you about a lot of people
4 to see if you know them. I'm going to show you what's been
5 marked as defendant's 43 and ask do you recognize this picture
6 first at all?

7 A. Yes, ma'am.

8 Q. Do you recognize the person in that picture?

9 A. Yes, ma'am.

10 Q. How long have you had the opportunity to know this
11 person?

12 A. Since 2010.

13 Q. Does this fairly and accurately represent this
14 person? Who is this person?

15 A. DeDe.

16 Q. What's his real name?

17 A. Dashun Curry.

18 Q. Does this picture fairly and accurately represent
19 how he looked in February of 2014?

20 A. Yes.

21 MS. ZMROCZEK: Your Honor, at this time we would
22 move defendant's 43 into evidence.

23 THE COURT: Any objection?

24 MS. PATTERSON: Relevance, Your Honor.

25 THE COURT: That's the cousin?

1 MS. ZMROCZEK: No. He was another one of the
2 witnesses that they said that they excluded.

3 THE COURT: All right. I'll allow it.

4 BY MS. ZMROCZEK:

5 Q. Now, I'm publishing defendant's 43. Is that DeDe,
6 Dashun Curry?

7 A. Yes, ma'am.

8 Q. Mr. Curry, did you actually see him the night of
9 February 1st?

10 A. Yes, ma'am.

11 Q. Where did you see him?

12 A. My house.

13 Q. He was at your house?

14 A. Yes.

15 Q. Who else was at your house that evening?

16 A. My mother and my kid, my cousin Layee, Home Boy,
17 Dave G, and my cousin Davon.

18 Q. And then later on did you meet up with someone?

19 A. Yes.

20 Q. Who was that?

21 A. Dink.

22 Q. Gregory Brooks?

23 A. Gregory Brooks.

24 Q. Okay. And was he hanging out at your house?

25 A. No. I - we had a phone call to come pick him up.

1 Q. So you went to pick him up?

2 A. Mm-hmm.

3 Q. What did you do after that?

4 A. We went to the Cockpit.

5 Q. To the Cockpit?

6 A. Mm-hmm.

7 Q. Have you been there often?

8 A. Maybe two -- That was maybe my third or second time
9 going there.

10 Q. Okay. And about what time do you recall -- Did you
11 drive?

12 A. Yes, ma'am.

13 Q. Who was in the car?

14 A. Me, Dave G and Gregory Brooks.

15 Q. Okay. What car were you driving?

16 A. Eclipse.

17 Q. What color was it?

18 A. Like a dark grayish.

19 Q. A dark grayish Eclipse?

20 A. Mm-hmm.

21 Q. What time did you get there?

22 A. Uhm, I have --

23 Q. If you can guess. Let me ask you this way. Was it
24 before or after midnight?

25 A. Maybe right after midnight.

- 1 Q. Around midnight?
- 2 A. Mm-hmm.
- 3 Q. Or maybe a little after?
- 4 A. Yes.
- 5 Q. Okay. I'm going to ask you to step down but you
- 6 need to keep your voice up, okay?
- 7 A. Okay.
- 8 Q. I'm going to show you what's been entered into
- 9 evidence as State's 5. I want you to stand on this side. You
- 10 have a pretty good, loud voice. Stand over here. And how
- 11 this works the laser pointer just point. Can you, first of
- 12 all do you recognize this?
- 13 A. Yes.
- 14 Q. Speak up so they can hear you.
- 15 A. Yes. I do.
- 16 Q. Show the jury where you parked your car that
- 17 evening.
- 18 A. (Indicating.)
- 19 Q. So you were right in front of the club?
- 20 A. Yes.
- 21 Q. About a little to the left?
- 22 A. To the left.
- 23 Q. To the left of the steps?
- 24 A. Mm-hmm.
- 25 Q. And did you pull in head first or back in?

- 1 A. I pulled in head first.
- 2 Q. And were there a lot of people there at that time?
- 3 A. Yes, ma'am. There was a lot of people there.
- 4 Q. All right. Have a seat.
- 5 A. (Witness complies.)
- 6 Q. So you got to the club sometime after midnight?
- 7 A. Yes.
- 8 Q. And Dave G and Gregory rode with you?
- 9 A. Yes.
- 10 Q. Do you recall what you were wearing that night?
- 11 A. No, ma'am.
- 12 Q. Do you recall what anybody was wearing that night?
- 13 A. No, ma'am.
- 14 Q. All right. Were a lot of your friends there?
- 15 A. After a while a lot of people did meet up friend
- 16 wise.
- 17 Q. So you knew a lot of people there?
- 18 A. Yes, ma'am.
- 19 Q. Were you inside or outside?
- 20 A. I was inside the whole night.
- 21 Q. What were you doing inside?
- 22 A. Partying. Walking around.
- 23 Q. Do you recall any specific events that happened that
- 24 stand out in your mind that evening?
- 25 A. One right before the club announced that they were

1 about to close.

2 Q. So the club announced that it was about to close.
3 How do they do that?

4 A. The DJ, the height man.

5 Q. So there's a DJ booth inside the club?

6 A. Yes, ma'am.

7 Q. So the DJ says it's about to close?

8 A. The height man.

9 Q. The height man. Sorry. And then what happened?

10 A. Maybe like ten minutes before he announced that a
11 tall light skinned bald headed dude, a guy had got into it
12 with another guy and like it wasn't an altercation fighting
13 wise but arguing and like people trying to separate them.
14 Security separated them.

15 Q. Did security walk anybody out?

16 A. No, ma'am.

17 Q. I'm going to show you what's already in evidence as
18 State's 31. Can you see that from there?

19 A. Yes, ma'am.

20 Q. Who is that?

21 A. No. I can't see it.

22 Q. Let me get a little bit closer to you.

23 A. This is the tall light skinned bald headed dude I
24 seen.

25 Q. This is the man you saw get into a fight with

1 someone? Or a discussion, not a fight?

2 A. Yes.

3 Q. And then security got involved?

4 A. Mm-hmm.

5 Q. And then people left the club?

6 A. They separated them, then he was standing by the bar
7 maybe like he was standing at the bar for a little minute just
8 looking, then him and his whoever he came with, his crew, they
9 walked outside, then maybe around that time they walked
10 outside, the height man announced the club was about to close.
11 It was like the next 10, 15 minutes maybe when they announced
12 that, everybody started rushing outside.

13 Q. Okay. Once you got outside, what do you remember?

14 A. Uhm, well, right before I exit the building, I was
15 talking to the club owner about throwing a party there because
16 my birthday was coming up. Then after he got done telling me
17 the price, whatnot, I started to walk outside. As I'm walking
18 down the stairs, I hear gunshots. I hear more than one gun so
19 the first thing I do is run and get in my car.

20 Q. You say you hear more than one gun. How do you know
21 that you hear more than one gun?

22 A. 'Cause one was louder than the other.

23 Q. One was louder than the other?

24 A. Yes, ma'am.

25 Q. Do you recall how many shots you hear?

- 1 A. No, ma'am. I heard a lot.
- 2 Q. And you ran straight to your car?
- 3 A. Ran straight to my car.
- 4 Q. Then what did you do?
- 5 A. I put it in reverse, started backing up, then I
- 6 turned the wheel, hit drive. As I'm driving forward to the
- 7 exit to go straight out, Dink is on my passenger side knocking
- 8 on my window telling me don't leave me. Let me in.
- 9 Q. Okay. So Gregory Brooks, Dink is knocking on your
- 10 window saying don't leave. Let me in?
- 11 A. Yes.
- 12 Q. Were the shots still going on at this time?
- 13 A. Yes, ma'am.
- 14 Q. And did you let him in your vehicle?
- 15 A. Yes, ma'am.
- 16 Q. Did he have a gun in his hand?
- 17 A. No, ma'am.
- 18 Q. Where did you go?
- 19 A. I went straight to my house.
- 20 Q. Where did you live at that time?
- 21 A. Cross Roads.
- 22 Q. How long did it take you to get there?
- 23 A. Roughly two to five minutes.
- 24 Q. And you said you have known Gregory for several
- 25 years?

- 1 A. Yes, ma'am.
- 2 Q. How long was his hair that evening?
- 3 A. He had dreads.
- 4 Q. Do you know how long they were?
- 5 A. Not long.
- 6 Q. Were they as long as yours?
- 7 A. No, ma'am.
- 8 Q. Were they as long as Dashun's?
- 9 A. No.
- 10 Q. They weren't as long as these?
- 11 A. Dashun started his dreads before Dink. I mean
- 12 Gregory.
- 13 Q. That's fine. Either way. What else did you know
- 14 about his physical condition?
- 15 A. I know he has been shot before through his hand so
- 16 he has a hard time sometimes like opening stuff, squeezing
- 17 tight or anything.
- 18 Q. Have you ever seen him shoot a gun?
- 19 A. No, ma'am.
- 20 Q. How is he around guns?
- 21 A. He get pretty nervous.
- 22 Q. You said you have seen his scars?
- 23 A. Yes, ma'am.
- 24 Q. Not on his hands. Where else does he have scars?
- 25 A. His stomach.

1 Q. Straight down his stomach?

2 A. Right here.

3 Q. It goes all the way down?

4 A. Yes, ma'am.

5 Q. Okay. Obviously you heard gunshots. Did you know
6 anybody had been killed at that time?

7 A. No, ma'am.

8 Q. And when did you hear about that?

9 A. The next day when I went to my grandma's house.

10 Q. You can't tell me who told you, but at that point
11 you had learned somebody had been killed?

12 A. Yes.

13 Q. Later on did you learn that there was an
14 investigation?

15 A. Yes. I didn't learn that until after I got back in
16 town because I went out of town.

17 Q. What did you go out of town for?

18 A. For work.

19 Q. So you went out of town for work and you came back
20 into town. How did you become aware that there was an
21 investigation?

22 A. I seen signs.

23 Q. When you say signs?

24 A. On social media.

25 Q. I'm going to show you defendant's 44 and ask if you

1 recognize this?

2 A. Yes.

3 Q. Does this fairly and accurately represent what you
4 saw?

5 A. Yes, ma'am.

6 Q. And you saw it when you got back into town?

7 A. Yes, ma'am.

8 Q. And you said you saw it on your social media?

9 A. Yes, ma'am.

10 MS. ZMROCZEK: Your Honor, at this time we move
11 defendant's 44 into evidence.

12 THE COURT: Any objection?

13 MS. PATTERSON: No objection.

14 THE COURT: No objection. 44 is in.

15 MS. ZMROCZEK: Thank you.

16 BY MS. ZMROCZEK:

17 Q. And you saw that there was a reward for
18 information?

19 A. Yes.

20 Q. Did you provide any information?

21 A. No, ma'am.

22 Q. Did you have any information?

23 A. No, ma'am.

24 Q. You knew that you were there that night?

25 A. Yes.

1 Q. Did you have an opportunity to see any sketches that
2 were put out by the police?

3 A. Yes, ma'am.

4 Q. I'll show you what's already been put into evidence
5 as defendant's 45. Is that the sketch that was put out?

6 A. Yes, ma'am.

7 Q. Mr. Brown, why didn't you go to the police at that
8 point?

9 A. Because the picture didn't look like any black man
10 with dreads.

11 Q. When you got home that evening or that morning, what
12 did you do?

13 A. I went in the house. The phone was dead so I went
14 to sleep.

15 Q. And when you woke up the next morning, was Gregory
16 there?

17 A. No, ma'am.

18 Q. Do you know where he lived? I think you said he
19 lived in Apple Valley?

20 A. Yes. He stay with my grandma.

21 Q. Your grandmother and who else?

22 A. My uncle. I'm not sure who else was staying there
23 at the time.

24 Q. But Arnold Banks was staying there?

25 A. Yes, ma'am. He was.

1 Q. If I read you a phone number, would you know that to
2 be Arnold Banks' phone number?

3 A. Yes, ma'am.

4 Q. Would that be 803-2009?

5 MR. BELL: Objection. Leading, Your Honor.

6 BY MS. ZMROCZEK:

7 Q. Let me show you State's number 39.

8 THE COURT: Why don't you just ask him if he knows
9 it. He might tell you.

10 BY MS. ZMROCZEK:

11 Q. Do you know his number?

12 A. Yes.

13 Q. Okay. What's the number?

14 A. 803-466-5153.

15 Q. 5153. So 466-5153. That's Arnold Banks' number?

16 A. Yes, ma'am.

17 MS. ZMROCZEK: Okay. Please answer any questions
18 that the State may have.

19 CROSS EXAMINATION

20 BY MR. BELL:

21 Q. May I call you Eric?

22 A. Yes.

23 Q. Thank you. Are you friends with Dink?

24 A. Yes, sir.

25 Q. How long have you been friends with him?

- 1 A. Since he started dating my cousin.
- 2 Q. How long has that been?
- 3 A. Not sure.
- 4 Q. Can you estimate?
- 5 A. Uhm, maybe four, four years.
- 6 Q. Do you hang out with him?
- 7 A. Sometimes.
- 8 Q. You all go partying together?
- 9 A. Not often.
- 10 Q. Did you all party together on this night?
- 11 A. Yes.
- 12 Q. How did you link up with Dink?
- 13 A. He had called my friend Deju (phonetic).
- 14 Q. So he had a phone then?
- 15 A. Yes.
- 16 Q. He hadn't lost his phone as far as you know?
- 17 A. Not as far as I know.
- 18 Q. Did you see him with a phone that night?
- 19 A. Yes.
- 20 Q. What time did you hear those shots?
- 21 A. My phone was dead so I couldn't really tell you.
- 22 Q. Was it late morning, early morning?
- 23 A. It was still dark outside.
- 24 Q. What time does that bar usually close?
- 25 A. I would have to say, I would guess six. It was only

1 my second or third time going there.

2 Q. You said the DJ said the bar was closing, right?

3 A. Not the bar. The club.

4 Q. The club was closing?

5 A. Yes.

6 Q. So does that mean that it must have been around 6:00
7 a.m.; is that correct?

8 A. I guess. Yes.

9 Q. So then Dink was still at the club around 6:00 a.m.;
10 is that true?

11 A. I'm not sure where Dink was at 6:00 a.m. My phone
12 was dead.

13 Q. You ended up picking him up in the parking lot and
14 driving him off, didn't you?

15 A. As he was knocking on my window as I was leaving.

16 Q. So then he was at the Cockpit that night at 6:00
17 a.m.; is that true?

18 A. I'm not sure what time it was.

19 Q. Was it after the club closed that night, sir?

20 A. I'm not sure if the club was closing yet because
21 everybody started rushing outside.

22 Q. Did you not testify earlier that the DJ said the bar
23 was closing?

24 A. He said the club was fixing to close.

25 Q. Excuse me?

1 A. He said the club, not the bar.

2 Q. Can you differentiate those two for me?

3 A. Last call for alcohol is maybe - last call at the
4 bar, club is gonna close. It's time for everybody to leave.

5 Q. So how long does the club close before the bar?

6 A. I'm not sure. Different clubs have different
7 time.

8 Q. Would it surprise you if it was around 5:00 or 6:00
9 a.m. when y'all were leaving that night?

10 A. I'm not sure. I didn't have no phone to look at the
11 time. I just know it was time to go.

12 Q. Now, you testified earlier that you arrived at the
13 Cockpit around midnight; is that true?

14 A. Yes.

15 Q. How long do you think you were there that night?

16 A. I was there for a while.

17 Q. Longer than two hours?

18 A. Yes.

19 Q. Longer than three hours?

20 A. Yes.

21 Q. So you're saying that Dink was there longer than
22 three hours?

23 A. From my understanding Dink was there with me the
24 whole time.

25 Q. So then he wouldn't have left at 2:00 a.m. that

1 morning; is that true?

2 A. No.

3 Q. I'll hand you State's 4. Do you recognize anybody
4 in that lineup?

5 A. Yes.

6 Q. Who do you recognize?

7 A. Dink. Gregory Brooks.

8 Q. You testified that that sketch looked like any black
9 man with dreads; is that accurate?

10 A. Yes.

11 Q. In State's 4, number 3 in the top right, does that
12 look like any black man with dreads?

13 A. Yes.

14 Q. Do you know who that is?

15 A. It's Gregory Brooks.

16 Q. So it doesn't look like any man. It looks like
17 Gregory Brooks; is that true?

18 A. I don't get your question. What you trying to ask
19 me.

20 Q. Who is that person?

21 A. The top corner is Gregory Brooks.

22 MR. BELL: No further questions, Your Honor.

23 THE COURT: Anything on redirect?

24 MS. ZMROCZEK: Nothing further, Your Honor.

25 THE COURT: You may step down.

1 MS. ZMROCZEK: Your Honor, we call James Richardson.

2 I need to go get him.

3 THE COURT: Okay. That's fine.

4 Thereupon,

5 JAMES RICHARDSON

6 after having been first duly sworn, testified as follows,

7 THE CLERK: Please have a seat. After you're
8 seated, please state your full name spelling your last
9 name for the record.

10 THE WITNESS: James Elwood Richardson,
11 R-i-c-h-a-r-d-s-o-n.

12 DIRECT EXAMINATION

13 BY MS. ZMROCZEK:

14 Q. Mr. Richardson, how old are you?

15 A. I'm a total of 55 years old.

16 Q. What do you do for a living?

17 A. Right now I work on cars.

18 Q. What did you do in 2014?

19 A. 2014 I had a nightclub.

20 Q. You had a nightclub?

21 A. Yes.

22 Q. What's the name of that nightclub?

23 A. I've had two so according to what time in 2014 I had
24 Tropical Paradise and I had Cockpit Bar and Grill.

25 Q. In February of 2014 did you have Cockpit Bar and

1 Grill?

2 A. Yes, ma'am.

3 Q. And how late, what were the hours of operation
4 there?

5 A. About 4:00 or 5:00 in the morning.

6 Q. Did you do all the hiring?

7 A. Yes, ma'am. I did.

8 Q. Did you have security?

9 A. Yes, ma'am.

10 Q. I want to take you back to February, the evening of
11 February 1st slash the morning of February 2nd, 2014, okay?

12 A. Yes, ma'am.

13 Q. Do you recall that night?

14 A. Yes, ma'am.

15 Q. Did you have security working that night?

16 A. Yes, ma'am.

17 Q. What kind of security did you have?

18 A. I had nine bouncers.

19 Q. What were their jobs?

20 A. I got a security guard right at the front door. He
21 has like a security wand and all that wands people as they
22 coming in.

23 Q. I'm sorry. A wand?

24 A. A wand. You know like the police got a wand so we
25 check them to make sure they don't have no weapons or nothing

1 like this here.

2 Q. Okay.

3 A. That's at the front door. Once you walk into the
4 building it's got like a little box on the building, on the
5 front of the building they walks in before they come inside
6 the club and they check right there. Then I have one or two
7 guys every now and then walking the parking lot and the rest
8 of them inside the club with me.

9 Q. Okay. Is there any other way for someone to get
10 into the club other than coming in the front door?

11 A. The back door. The emergency door where you walk
12 out the emergency door back there by the pool tables.

13 Q. Was that open all the time?

14 A. No. Unless somebody -- There was an alarm. Unless
15 somebody push it and let somebody in and somebody didn't catch
16 it or whatever.

17 Q. Would you have seen that though? Is that something
18 that you have security to look for?

19 A. I have a guy back there and everybody by the pool
20 table should have caught it if somebody came in the back door.
21 Only that night I think it was, I think it was just one guy
22 came in. I think it was a guy with a wheelchair, I think.

23 Q. Is that an accessible entrance?

24 A. Yeah. That's for the wheelchair guys or females or
25 whatever. There's a ramp and back there on the walk up and

1 somebody has to open the door inside to get in.

2 Q. So otherwise they come in the front door?

3 A. Yes, ma'am.

4 Q. And they get wanded for weapons?

5 A. Yes, ma'am.

6 Q. And you do that with every patron?

7 A. Everybody that comes in gets security checked.

8 Women, a lot of times they don't do them with the wand like
9 the mens and all. They'll pat'em all the way down the whole
10 body.

11 Q. Okay. Do you recall -- What do you recall about
12 that night?

13 A. All I know I was inside. I think I was in the
14 kitchen cooking and, uhm, somebody came in and said somebody
15 got shot and, uhm, so I went to go find out exactly where they
16 got shot at and all this here and had a couple people
17 scattering getting out of there, you know, like getting out,
18 you know, just taking off with the cars and all this here. I
19 find out outside on the road a guy was shot laying out there
20 in the road, in the middle of the road, a young man.

21 Q. Do you have regulars that would come to the club?

22 A. I got a lot of regulars. There was like, like
23 history. They just came. They came following the DJ. The DJ
24 played their music and all, they just came like regulars like
25 every Friday and Saturday night.

1 Q. Did you have bartenders that worked?

2 A. Yes. I had bartenders. I had two bartenders.

3 Q. Do you know Josie Paxton?

4 A. I know a young lady named Josie. I don't know what
5 her last name is. I know her name Josie.

6 Q. What did she look like?

7 A. White female, black hair with glasses, probably
8 about five four, five three, somewhere around there. Probably
9 about 120, 130 pounds.

10 Q. Did she frequent the establishment?

11 A. She come in every now and then.

12 Q. Was she there that evening?

13 A. I can't remember that. I couldn't tell you that.

14 Q. Do you know Antonio Williams?

15 A. No, ma'am.

16 Q. Do you know anybody named Bling?

17 A. Name again?

18 Q. Bling.

19 A. No.

20 Q. Okay. Do you know anybody named Cory?

21 A. I know a Cory that was a bouncer of mine named
22 Cory.

23 Q. One of your bouncers is named Cory?

24 A. Yes, ma'am.

25 Q. Was he working that night?

1 A. Cory should have been working. I'm guessing he
2 should have been working. I'm not one hundred percent sure.

3 Q. Okay. Had there been shootings at the club in the
4 past?

5 A. Not before this happened. Every now and then you
6 might hear shooting around in that area like it might have
7 been in the apartments next door or sometimes the guys come up
8 and down the road you might hear shooting. You call Lexington
9 County and say you hear shooting and that's about it, you
10 know. There hadn't been no shooting inside the club or
11 nothing like that.

12 Q. This wasn't inside the club, right?

13 A. No.

14 Q. But it was at the club?

15 A. Yes.

16 Q. And that was the first time?

17 A. That was the first, the first time then.

18 MS. ZMROCZEK: Thank you. Please answer any
19 questions the State may have.

20 CROSS EXAMINATION

21 BY MS. PATTERSON:

22 Q. Mr. Richardson, isn't it true law enforcement came
23 to talk to you about this shooting at the club about this
24 night?

25 A. Yes, ma'am.

1 Q. And you told them you didn't see anything because
2 you were in the kitchen, correct?

3 A. Yes, ma'am.

4 Q. So you really didn't have any information to provide
5 about the actual shooting, correct?

6 A. Right.

7 Q. And now do you still own that bar?

8 A. No, ma'am.

9 Q. Is it open?

10 A. No, ma'am.

11 MS. PATTERSON: No further questions.

12 THE COURT: Okay. You may step down.

13 MS. ZMROCZEK: Your Honor, these were the two
14 witnesses prior to the one we discussed.

15 THE COURT: That one is tomorrow, right? Scheduled
16 for tomorrow?

17 MS. ZMROCZEK: Well, Mr. Phipps is here today.

18 THE COURT: Okay. We've got that resolved. Okay.

19 All right. Folks sit right there. I'll talk to the
20 lawyers and y'all sit there and enjoy the candy. I'm
21 just trying to get planned how to finish up tomorrow
22 because while y'all were out, we all discussed we want to
23 get everything to you tomorrow and do deliberations
24 tomorrow and you might be done tomorrow so I'm just
25 trying to make sure I've got all the pieces put together.

1 about those a little bit so we have a little bit more to
2 do this afternoon but we don't need y'all here. So go
3 ahead and go home for the evening. Be back here first
4 thing in the morning. Do not begin discussing the case
5 yet. We'll get it all to you in the morning.

6 (Whereupon, the jury was released for the evening at
7 3:40 p.m.)

8 THE COURT: All right. As far as that charge
9 conference, y'all think about it because we've already
10 had it outside. Y'all can kind of work on that this
11 afternoon. I don't but I'll be looking to hear from
12 y'all first thing in the morning. I'll try get here by
13 8:30. I was here this morning very early. Anything else
14 before we recess?

15 MS. ZMROCZEK: No, Your Honor. I can e-mail in the
16 things we talked about?

17 THE COURT: Yes, ma'am. Y'all are good. All right.
18 See you in the morning at 9:00.

19 (Whereupon, court was adjourned for the day at 3:41
20 p.m.)

21
22
23
24
25

1 November 3, 2011.

2 BAILIFF: All rise. Court is now in session. The
3 Honorable Eugene C. Griffith presiding.

4 THE COURT: Are we ready?

5 MS. ZMROCZEK: Your Honor, I just had a witness who
6 said her car broke down. She's been subpoenaed, but the
7 Sheriff's Department has graciously agreed to transport
8 her here but I do have a witness.

9 THE COURT: Okay. Let's get going then. Let's
10 bring the jury in.

11 BAILIFF: Yes, sir.

12 (Whereupon, the jury entered the courtroom at 9:03
13 a.m.)

14 MS. ZMROCZEK: Your Honor, while they are bringing
15 him in, I'll just bring him in because he's the first
16 one.

17 THE COURT: Okay. That's fine. All right. Good
18 morning. Ms. Zmroczek, call your witness.

19 MS. ZMROCZEK: Thank you, Your Honor. We call
20 Arnold Banks.

21 Thereupon,

22 ARNOLD BANKS
23 after having been first duly sworn, testified as follows,

24 THE CLERK: Please have a seat. After you're
25 seated, please state your full name spelling your last

1 name for the record.

2 THE WITNESS: My name is Arnold Banks, B-a-n-k-s,
3 Junior.

4 DIRECT EXAMINATION

5 BY MS. ZMROCZEK:

6 Q. Mr. Banks, do you have a nickname?

7 A. They call me Junior.

8 Q. They call you Junior. How old are you?

9 A. I'm 40.

10 Q. Where do you live?

11 A. [REDACTED]

12 Q. [REDACTED] How long have you lived there?

13 A. Eight, nine years. Not fully sure exactly how many
14 years. About eight or nine years.

15 Q. Let me ask you this: Do you know Gregory Brooks?

16 A. Yes. I know him.

17 Q. Tell the jury how you know him.

18 A. Well, a lot of the guys they call me Unc. That's
19 another nickname they gave me, Unc. He's my niece father,
20 father of her kids.

21 Q. Father of her children?

22 A. Yes.

23 Q. What's her name?

24 A. Her name is Denique Banks.

25 Q. What do you call him?

- 1 A. I call him Dink.
- 2 Q. You call him Dink?
- 3 A. Yes.
- 4 Q. How long have you known Dink?
- 5 A. Roughly what, four years. Somewhere up in there.
- 6 I'm not really sure exactly how many years, but roughly four
- 7 years. I know him through work.
- 8 Q. Okay. Would that be four years before February 1st
- 9 of 2014 you knew him?
- 10 A. Yes.
- 11 Q. Okay. So do you know Eric Brown?
- 12 A. Yes.
- 13 Q. Who is Eric?
- 14 A. Eric Brown is my nephew.
- 15 Q. Have y'all ever worked together?
- 16 A. Yes. I got him a job where I currently work at.
- 17 Q. What company is that?
- 18 A. Lange Moving Systems, Arpin Vanlines.
- 19 Q. Do you know Rickena Knightner?
- 20 A. Yeah. I know her very well also.
- 21 Q. You know her very well?
- 22 A. Yes.
- 23 Q. How do you know her very well?
- 24 A. I don't know if you want to say we was dating or
- 25 whatever but, I mean, I know her basically through the family

1 and plus we had, uhm, encounters together.

2 Q. Y'all had a special kind of relationship?

3 A. I mean, if you can say that.

4 Q. Did she have a nickname?

5 A. Jap.

6 Q. Did you ever know her to use any aliases?

7 A. Not to my - not to my awareness.

8 Q. Okay. And I want to go back to Eric for a moment.

9 What did you know about Eric and Gregory's relationship?

10 A. I mean, like I said, Eric is actually my blood
11 nephew so I have known Eric all his life. Dink, Gregory is a
12 nephew through my niece. You know what I'm saying? A lot of
13 the guys I call my nephews, and my family is close so Eric and
14 Dink know each other very well.

15 Q. Okay. Did you happen to know their friends?

16 A. Yeah.

17 Q. Did you know Dashun Curry?

18 A. Yes. I know Dashun Curry.

19 Q. Do you know if Dashun Curry had a girlfriend?

20 A. Yes. I know throughout the date they say he had a
21 girlfriend. Yes.

22 Q. What was her name?

23 A. Shakura Hopkins.

24 Q. Shakura Hopkins?

25 A. But I don't know her personally.

1 Q. You don't know her personally. But you knew that
2 was Dashun's girlfriend?

3 A. Yes, ma'am.

4 Q. Okay. I want to take you back to the evening of
5 February 1st, 2014. Do you remember that evening?

6 A. Yes.

7 Q. Tell the jury what you did that evening?

8 A. Well, we actually - I was actually hanging out and
9 the guys, they actually wanted me to go out to the club with
10 them. Uhm, I drive truck for a living so I come into town, in
11 and out of town so normally when I get in town, Greg, which is
12 Dink to me, he be, Unc, let's hang out. So we basically
13 agreed to hang out that night.

14 Q. Where did you all hang out?

15 A. The Cockpit.

16 Q. Do you know what time you got there?

17 A. Well, I got there a little bit later because I
18 actually was playing cards that night, I mean, so I got there
19 a little bit later. It was during the middle of the night.
20 It was pretty late. After 11:00.

21 Q. After midnight possibly?

22 A. Yeah.

23 Q. Who did you see there?

24 A. I seen Jap. I seen Eric. I seen Dink. And a
25 couple more guys that I know from the neighborhood but I don't

1 know their names. I know them facial.

2 Q. Okay. When you say Jap, you mean Rickena
3 Knightner?

4 A. Yes. Sorry.

5 Q. That's all right. Were y'all drinking that night?

6 A. Yeah. I mean, alcohol was involved. Yes.

7 Q. Okay. What was Ms. Knightner's state of mind?

8 A. Ms. Knightner, I mean, she was highly intoxicated.

9 She actually wanted me to leave that night, but I mean, like I
10 said, I drive trucks. I mean, I was borderline between
11 driving from club to club. I didn't want to leave so and she
12 was fairly intoxicated so I didn't want to leave her also so I
13 agreed to stay with the guys I call my nephews.

14 Q. And how was -- Was there any interaction -- Let me
15 ask you this: Did she know -- How did she know Dink?

16 MS. PATTERSON: Objection. Speculation.

17 THE COURT: I think that's speculation. Rephrase
18 your question.

19 BY MS. ZMROCZEK:

20 Q. Okay. Do you have knowledge personally if she knew
21 Gregory or not?

22 A. I know she knew Dink very well. Like I say, she
23 used to hang around the family and all. They actually used to
24 joke at Dink when his mom, Ms. Sheila, used to call him
25 Gregory. You know what I'm saying? Everybody used to joke,

1 oh, your name Gregory because nobody was used to him, hearing
2 people call him Gregory.

3 Q. When you say everybody, would that include Rickena
4 Knightner?

5 A. Yes, ma'am. She was actually joking that night.

6 Q. Okay. That night -- I want to go back to that night
7 at the bar and show you State's 43 and ask you if this was one
8 of the persons -- Not State's. Defendant's 43 -- was this
9 another one of the friends that were hanging out that night?

10 A. Yes.

11 Q. Okay. And I want to ask you, were you inside or
12 outside the club?

13 A. Depending on what you talking about. I was in the
14 club most of the night.

15 Q. We have seen pictures. So you were inside?

16 A. Yeah. I was in the club most of the night. After
17 the altercation had occurred, I left after the altercation had
18 occurred.

19 Q. I want to come back to that. Before that
20 altercation occurred, were there any words exchanged between
21 any other people that you know?

22 A. Uhm, between Gregory and Rickena because she wanted
23 - she wanted me to leave. You know what I mean? And like I
24 say, I only come into town once a week or whatever and she was
25 trying to get me to leave so it was some words said between

1 the two.

2 Q. Okay. And so after that -- Did you hear that
3 conversation?

4 A. Yeah.

5 Q. Okay. And then - so then you said there was another
6 altercation. That's not the altercation you're talking about,
7 is it?

8 A. No.

9 Q. Okay. Tell the jury about the other altercation
10 that you know about.

11 A. It was a group of guys. You know what I'm saying?
12 And there was basically a lot of pushing, shoving, cursing,
13 whatever. There was never no physical like as far as hard out
14 fighting. But there was like more of a, just having, you
15 know, calling curse words, whatever. The bouncers got in
16 between the group, the group that was closer to the door.
17 They just escorted them out the door.

18 Q. Did you know those people?

19 A. No. I never seen them up there in my life.

20 Q. So what happened after you said the bouncers
21 escorted them?

22 A. Yeah. Out the door. Out the front door.

23 Q. Then what happened?

24 A. They went up to the top of the hill. Like I say,
25 once I seen the altercation occur, I followed - I followed the

1 people who got kicked out and as I went to the top of the
2 hill, they was like arguing amongst each other.

3 Q. Why did you follow them at that point?

4 A. Because the Cockpit is a one way in, one way out.
5 Like I say, when they kicked them out, everybody was hostile.
6 So I was like, I was not getting caught down there in between
7 no foolishness so I left right behind them.

8 Q. Okay. I'm going to show you State's 5. I'm going
9 to ask you to step down, but when you do, can you keep your
10 voice up because the court reporter is taking down everything
11 that we say, okay?

12 A. Yes, ma'am.

13 Q. I want you to just come down off the stand for a
14 second or a minute or so and take a look at what is in
15 evidence already as State's 5. Come on down.

16 A. (Witness complies.)

17 Q. If you will stand to the side. Do you recognize
18 this?

19 A. Yes, ma'am.

20 Q. Make sure the people behind you can see. Where is
21 the Cockpit?

22 A. The Cockpit's right here.

23 Q. Where did you park your car that evening?

24 A. I was parked further up this way.

25 Q. Further up this way?

1 A. Yeah. It was like going towards some like
2 businesses because the hill that go into the Cockpit and
3 actually when you leave out, there is only one way out of the
4 building.

5 Q. So that parking lot is the only way in and out of
6 that club, right?

7 A. Yes.

8 Q. So you couldn't go this way, right?

9 A. No. You couldn't go that way.

10 Q. So you were going to your car?

11 A. Yes, ma'am.

12 Q. Now, were you following the group to get into a
13 fight?

14 A. No. No. Because the group didn't even know I was -
15 I was -- You know what I'm saying? -- even knew what was
16 going on. So once I saw them get kicked out, I was leaving to
17 go to my car.

18 Q. And where did -- So your car was over this way?

19 A. Yeah. My car was like -- I mean, it's not even in
20 this photo.

21 Q. Okay. Where did you see -- Did you see the group?
22 Did you have an opportunity to see them again?

23 A. Yeah. I saw the group.

24 Q. Where were they?

25 A. The group was standing right here. Like up in this

1 area here.

2 Q. Was Gregory with them?

3 A. No.

4 Q. All right. Was Eric with them?

5 A. No.

6 Q. Do you know if any of their other friends were with
7 them?

8 A. No. I was the only one that was out what we call
9 Apple Valley area, I was the only one that left out the
10 club.

11 Q. Okay. And can you see where they were on this
12 map?

13 A. Where the group was?

14 Q. Correct.

15 A. Oh, they, like I said, they was right up in this
16 area right here. I walked right past them. Like I say, they
17 wasn't even paying me no attention. I don't know what they
18 was talking about. Just a group of guys I had been into it
19 with my friends before so, I mean, they was just basically, I
20 don't know if they were saying come on, let's go, or let's do
21 whatever. They was just like arguing and holding each other
22 back or whatever.

23 Q. So the group up here amongst themselves was
24 arguing?

25 A. Yes, ma'am.

1 Q. Okay. Go ahead and have a seat.

2 A. (Witness complies.)

3 Q. Did you see any gunshots that evening?

4 A. No, ma'am. I didn't see any gunshots.

5 Q. Did you hear any gunshots?

6 A. Multiple.

7 Q. Multiple?

8 A. Multiple. Yes.

9 Q. When was that?

10 A. It's not even - not even five minutes after I left
11 out the club.

12 Q. Okay. Did you go back for any reason?

13 A. No. No. I didn't go back because I was actually to
14 my car by the time I heard the gunshot. You know what I'm
15 saying? It's a tree between where the club was. You know
16 what I mean? So I couldn't really see -- You know what I'm
17 saying? -- where the gunshot was coming from, so as the
18 gunshots stopped, I jumped in my truck and turned around going
19 towards St. Andrews Road.

20 Q. Did you hear one or two guns?

21 A. It had to be more - more than - more than one gun.

22 Q. More than one?

23 A. Yes, ma'am.

24 Q. How do you know it had to be?

25 A. Because the gunshots was occurring like almost at

1 the same time.

2 Q. Okay. Simultaneously?

3 A. Like you could hear the gunshot at the same time.

4 Q. Okay. And where did you go?

5 A. I went home to Apple Valley.

6 Q. All right. Did you ever see Gregory after that
7 day?

8 A. Yeah. I seen Greg after that.

9 Q. Did you know that he had cut his hair?

10 A. Yeah. I mean, like I said, I speak with Gregory a
11 lot. I mean, he used to watch my daughter for me while I was
12 at work and he used to always tell me, because I had long
13 dreads also, so he used to always tell me, man, you cut your
14 hair, I'll cut my hair. But he was pursuing a job and I think
15 he finally got that job. He said, Unc, I got the job because
16 I used to pay him, I mean, money throughout the week for
17 helping me out with my daughter. But he said, Unc, I got the
18 job and then that's when I noticed he cut his hair.

19 Q. Okay. Did you ever know him to change his phone
20 number?

21 A. Yes.

22 Q. Why to your knowledge did he change his phone
23 number?

24 MS. PATTERSON: Objection. Speculation.

25 MS. ZMROCZEK: Your Honor, if he has personal

1 knowledge, I think he can answer the question.

2 THE COURT: I'll let him answer it, but that's going
3 to be about it.

4 MS. ZMROCZEK: That's the only question.

5 THE COURT: All right.

6 BY MS. ZMROCZEK:

7 Q. Why to your knowledge did he change his phone
8 number?

9 A. Greg, like I said, I know Greg. He normally change
10 his number throughout the times or whatever, but he told me
11 personally he like hey, Unc, I want to try to make it work
12 with Denique and I got somebody I gave my number out to and I
13 was trying to just cut all ties. That's what he told me.

14 Q. Okay. Cut down the ties. Did you ever see Rickena
15 Knightner or Jap after this evening?

16 A. I seen her after the evening and she start acting
17 strange so we kind of lost contact really after that
18 evening.

19 Q. Okay. Do you have any personal knowledge as to why
20 she started acting strange?

21 MS. PATTERSON: Objection. Speculation.

22 THE COURT: I'm gonna sustain that.

23 BY MR. ZMROCZEK:

24 Q. Okay. Let me ask this: Did you ever see Gregory
25 with a gun?

1 A. No. Not to my knowledge I have never seen him with
2 a gun.

3 Q. Okay. Did you ever see him with a gun that
4 evening?

5 A. No. I didn't see Gregory with a gun that evening.

6 MS. ZMROCZEK: Please answer any questions the State
7 may have for you.

8 CROSS EXAMINATION

9 BY MS. PATTERSON:

10 Q. Mr. Banks, you consider yourself an uncle to all
11 these younger guys that live in Apple Valley with you?

12 A. I try to be an uncle figure to them. I don't
13 necessarily consider myself an uncle to them. I try to be a
14 uncle figure.

15 Q. So you will protect them at all costs, right?

16 A. I mean, all depends on what you talking about.

17 Q. As a matter of fact, yesterday on Facebook you
18 posted something about coming to court today, didn't you?

19 A. Yes, ma'am.

20 Q. And what did you post?

21 A. I post --

22 MS. ZMROCZEK: Your Honor, if she has a copy.

23 MS. PATTERSON: He knows what he posted, but I'll
24 show it to him (proffering.)

25 BY MS. PATTERSON:

1 Q. Does that look familiar to you?

2 A. Yeah. Yep.

3 Q. So on that post what did you say about coming to
4 court today to help your dog Dink?

5 A. I'm gonna ride for him. I mean, any of my nephews
6 I'll ride for them because I know him personally and I know --
7 You know what I'm saying? -- his heart and I know what he did
8 and didn't do that night. That's why I said that.

9 Q. But you just said that you didn't see who did the
10 shooting that night, didn't you?

11 A. I didn't.

12 Q. So you don't know if you saw him shoot a gun, if he
13 shot a gun?

14 A. I know I didn't see him shoot a gun. I didn't see
15 nobody shoot a gun that night.

16 Q. So you don't know what he did that night, do you?

17 A. Well, I got faith in him and he talk to me all the
18 time so I have faith in him. And like I say, if you could
19 read my other statement, if I mess with you, I mess with you.
20 I don't want to use the curse word but that's just how I am.

21 Q. What did you post? You can use the words. We've
22 heard it in court before.

23 A. If Banks fuck with you, he fuck with you. Be
24 careful who you say free because some of these "N" word ain't
25 solid. That's what I said.

1 Q. As a matter of fact, you were upset when you heard
2 that Rickena was going to testify and had given a photo lineup
3 about Dink, weren't you?

4 A. I would be upset if anybody I dealt with him saying
5 they was gonna testify if I felt it wasn't true.

6 Q. But you were upset with Rickena?

7 A. I was upset. Yeah. I felt like she was lying.
8 Yes. I was upset.

9 Q. And you threatened her, didn't you?

10 A. No. Never. Never.

11 Q. You never threatened her and then later
12 apologized?

13 A. Never. Never.

14 Q. Did you hear she testified yesterday?

15 A. I heard.

16 Q. So you have been discussing what's been going on in
17 this courtroom with people, haven't you?

18 A. No.

19 Q. So how did you know she testified yesterday?

20 A. Because I know.

21 Q. How do you know?

22 A. Because I know.

23 Q. And you said that night alcohol was involved,
24 correct?

25 A. Yes, ma'am.

1 Q. As a matter of fact, you were drinking, weren't
2 you?

3 A. Yes, ma'am.

4 Q. And that night you had long dreads, right?

5 A. Long. All the way, half way to my back.

6 Q. As a matter of fact, you were part of the
7 altercation, weren't you, inside the club?

8 A. No, ma'am.

9 Q. It's not true that Jap told you you have too much
10 going on for yourself?

11 A. No. Jap, I told you, Jap was trying to get me to
12 leave with her that night.

13 Q. Well, let's talk about that. Why would -- And you
14 said Jap and Dink got into it because she wanted you to leave
15 with her?

16 A. Yes, ma'am.

17 Q. Now, you never talked to law enforcement about this
18 before, have you?

19 A. Yes. I have.

20 Q. When did you talk to law enforcement?

21 A. It was a week, two weeks after.

22 Q. And you still live in Apple Valley?

23 A. Well, parts -- I don't stay there now. I just got
24 married.

25 Q. Okay. Where do you live?

1 A. Charlotte, North Carolina.

2 Q. When the defense attorney asked you where you lived,
3 you told her Apple Valley.

4 A. Based on when this occurred. She asked me how long
5 I lived in Apple Valley. I said nine years.

6 Q. And Denique is your niece?

7 A. Yes, ma'am.

8 Q. And you said Dink helped you out by keeping your
9 daughter?

10 A. Yes, ma'am.

11 Q. How old was your daughter when he kept her?

12 A. She was five.

13 Q. Was he working anywhere else?

14 A. No. He was in the process of finding a job. I used
15 to give him money for looking out for my daughter. Can I get
16 something to drink?

17 THE COURT: Sure.

18 BY MS. PATTERSON:

19 Q. When did you cut your dreads?

20 A. I cut my hair approximately a year to this day. A
21 little bit, a little bit just over a year to this day. Last
22 October.

23 Q. Where did you go after you left the Cockpit on
24 February 2nd, 2014?

25 A. I went to Apple Valley. What we call the valley.

1 Q. Now, you said during direct testimony that Dink told
2 you he would cut his dreads when you cut your dreads?

3 A. We used to always joke around because they knew I
4 wasn't cutting my hair. You know what I mean? We used to
5 always joke around. You cut yours, I'll cut my mine. That
6 was the conversation we used to have.

7 Q. But, in fact, Dink cut his off before you cut yours;
8 is that correct?

9 A. That's because he said he was trying to change,
10 trying to find a job. When he got the job at the fast food
11 restaurant, he cut his hair..

12 MS. PATTERSON: Thank you. No further questions.

13 THE COURT: Any redirect?

14 MS. ZMROCZEK: Yes. Thank you.

15 REDIRECT EXAMINATION

16 BY MS. ZMROCZEK:

17 Q. She asked you or she was going to ask you, Ms.
18 Patterson, why Rickena would get mad at Greg for you wanting
19 to leave with her that night. Who was actually --

20 MS. PATTERSON: Objection. That's speculation.
21 That's why I withdrew the question.

22 THE COURT: Sustain that.

23 MS. ZMROCZEK: Okay. I was about to ask a different
24 question.

25 THE COURT: Ask a different question. That would be

1 fine.

2 BY MS. ZMROCZEK:

3 Q. Okay. Who was trying to get you to stay at the club
4 that night?

5 A. Everybody that was there that was around from the
6 Valley.

7 Q. Would that include Greg?

8 A. Greg.

9 Q. Okay. And she asked you about Facebook and you said
10 that you are family. Would you commit perjury for your
11 family?

12 A. No. I wouldn't commit perjury for my family. I got
13 a family to feed.

14 Q. You said, she asked you about Jap and being upset
15 about her testifying. What was your answer to that? Why were
16 you upset about her testifying and picking him out of a
17 lineup?

18 A. Because I felt like it was a lie. You know what I'm
19 saying? I felt that it wasn't true and I was just mad at the
20 fact because I knew both of them and I just felt like she was
21 telling a lie. She didn't - she didn't say that that night.
22 She didn't call me or whatever to say that, uhm, if she felt
23 that Dink had did that or not.

24 MS. ZMROCZEK: Okay. Thank you.

25 THE COURT: Any further cross?

1 MS. PATTERSON: No, sir.

2 THE COURT: You may step down.

3 MS. ZMROCZEK: Your Honor, at this time I call David
4 Day.

5 Thereupon,

6 DAVID DAY

7 after having been first duly sworn, testified as follows,

8 THE CLERK: Please have a seat. After you're
9 seated, please state your full name spelling your last
10 name for the record.

11 THE WITNESS: My name is David Day, D-a-y.

12 DIRECT EXAMINATION

13 BY MS. ZMROCZEK:

14 Q. Mr. Day, where do you work?

15 A. Lexington County Sheriff's Department.

16 Q. Were you working there in 2014?

17 A. I was.

18 Q. What was your job in February of 2014?

19 A. I was a crime scene investigator.

20 Q. What did your duties as a crime scene investigator
21 entail?

22 A. Processing crime scenes. That could be
23 photographing, collecting evidence, processing evidence like
24 fingerprinting, using different kinds of chemicals to try to
25 receive any kind of evidentiary value from it.

1 Q. Were you asked to process or collect any evidence
2 regarding a case dealing with the Cockpit in February of
3 2014?

4 A. Yes, ma'am. On February 5th, 2014 Detective
5 Longshore asked me if I would go with him to the Exxon located
6 at 2220 Broad River Road to collect some surveillance video.

7 Q. And did you do that?

8 A. Yes, ma'am.

9 Q. You said that you downloaded it straight to a thumb
10 drive, right?

11 A. When I got there, the manager or somebody there had
12 already had the video at the certain point that Detective
13 Longshore needed, and she, I believe it was a female, I don't
14 remember, the person knew how to download it so I just gave
15 him my department thumb drive and they downloaded it onto my
16 thumb drive.

17 Q. Have you had an opportunity to ever review that?

18 A. No, ma'am. The only reason I was there for
19 Detective Longshore was in case they didn't know how to
20 download it. Sometimes they will let us do it because we are
21 kind of familiar with downloading surveillance video and
22 because they were able to do it, I just went back to the
23 office and put it on a disk, put it on two disks, gave Marty
24 Longshore one and turned the other into evidence.

25 Q. Do you know if anybody ever watched that

1 videotape?

2 A. No, ma'am. Once I turn the video over and submitted
3 the other one into evidence, that was all my part in that..

4 MR. ZMROCZEK: Please answer any questions the State
5 may have.

6 MS. PATTERSON: No questions.

7 THE COURT: Thank you, sir.

8 MS. ZMROCZEK: Your Honor, may we approach?

9 THE COURT: Yes.

10 (Side bar off the record.)

11 THE COURT: Let's take a couple minutes break. We
12 are waiting on a witness that had car trouble and we're
13 waiting for them to get here. Bear with me. Step to the
14 jury room for a couple minutes and we'll get you right
15 back in here. Don't discuss the case.

16 (Whereupon, the jury entered the jury room at 9:33
17 a.m.)

18 (Short break.)

19 BAILIFF: All rise.

20 THE COURT: Be seated. All right.

21 MS. ZMROCZEK: Your Honor, I have the witness here
22 for the phone video. She's actually here now. But there
23 seems to be another issue, Your Honor. So about the
24 reward, I have been continuously asking for the
25 information about who this reward was given to. They

1 provided me, they, the State provided me that information
2 in an e-mail last week and so I believe it was either
3 last week or the end of the week before, I can pull up
4 the e-mail, Your Honor, giving me the name of that person
5 to which I was going to have my investigator testify that
6 he knows that that's who, the information he received
7 that's who received the reward. But now they are saying
8 that they're going to object to any of that testimony.

9 Your Honor, that information came straight from
10 them. I said, okay. Well, on the e-mail was cc or
11 carbon copied one of their investigators and the two
12 lawyers. I said, okay. Well, I'll call y'all's
13 investigator and she said that she had no personal
14 knowledge. She was just cc'd on the e-mail. Obviously
15 we don't have that person here. We don't know who that
16 person is. Again, it's the name that we just got so we
17 just learned that it's somebody's girlfriend and that
18 somebody would be the person with dreads who looks just
19 like the person in the drawing, but now that they're - so
20 they're objecting to that testimony coming in.

21 THE COURT: I'm not sure what they're objecting to
22 again. Somebody got paid \$10,000.00?

23 MS. ZMROCZEK: Right.

24 THE COURT: Why not that person come in and say
25 weren't you the one who gave the hot tip?

1 MS. ZMROCZEK: Weren't you the one what?

2 THE COURT: You're \$10,000.00 richer, either one.

3 MS. ZMROCZEK: Right. Right. I understand, Your
4 Honor. So we can't find her. I mean, we just - we were
5 told last week who it was. We have been doing nothing
6 but tracking down witnesses since then.

7 THE COURT: Maybe the State would like to have her.

8 MS. ZMROCZEK: I'm sorry.

9 THE COURT: I imagine the State would like to have
10 her as a witness if they actually paid the money.

11 MS. ZMROCZEK: Right. The State didn't. Well, so

12 --

13 THE COURT: Whoever. Somebody did.

14 MR. ZMROCZEK: Right. Somebody. Yeah. So
15 apparently --

16 THE COURT: It's to the benefit of the State.

17 MS. ZMROCZEK: I'm sorry.

18 THE COURT: It's to the benefit of the State.

19 MS. ZMROCZEK: Right. I mean -- Wait. What do you
20 mean it's to the benefit of the State?

21 THE COURT: Seems like that would be a good witness
22 for the State to have. You're the one who provided that,
23 the information that lead to.

24 MS. ZMROCZEK: Right.

25 THE COURT: It seems to me that would be a valuable

1 witness to the State. Aren't you the one that told us
2 and gave us the hot tip that led to this, this and that?
3 Everything came together. That would be a really good
4 witness in my opinion.

5 MS. ZMROCZEK: Right. And I think the reason that
6 they didn't do that, Your Honor, is because of the
7 circumstances that we have been presenting about that she
8 was the boyfriend of somebody who was accused and things
9 like that. I don't know why the State says what they do.
10 I don't know. But they said that it was a family member
11 or private funds who paid out the money to Shakura
12 Hopkins. So if I can't find Shakura Hopkins, Your Honor,
13 then I would ask that they disclose who. We have several
14 family members here, that I be allowed to -- All of a
15 sudden like we have no clue who gave the money or
16 anything and so it's a bit frustrating.

17 THE COURT: Do we know who gave the money?

18 MS. PATTERSON: Yes, sir. Let me just say this,
19 Your Honor. Ms. Zmroczek is the one that alluded to me
20 that Shakura was paid the money this summer. It's not
21 like she didn't know that or that name just came up to
22 her. The issue is she can't find her. That's her issue.
23 But we were told information that she received the money.
24 I e-mailed that to Ms. Zmroczek on October 22nd. I cc'd
25 Mr. Bell. I cc'd our investigator. I cc'd my case

1 manager on it. They don't have any personal knowledge of
2 that. They just received a cc e-mail with me confirming
3 to her something that she alluded to this summer about
4 Ms. Hopkins receiving the money. It's hearsay, Your
5 Honor.

6 THE COURT: Can somebody other than some member or
7 group or someone within the Lexington County Solicitor's
8 Office or law enforcement put up the money? They never
9 do. It's always someone else. A victim's family or at
10 least that's my understanding. Somebody in the victim's
11 group, uhm, put up the money and makes the determination
12 who gets paid in that group.

13 MS. PATTERSON: And what she can do, she can call
14 Brittainy Dilworth. That's the victim's girlfriend. I
15 mean, she has knowledge about --

16 MR. ZMROCZEK: But she didn't receive that money. I
17 mean, I find it interesting that they will allow me to
18 call the victim's girlfriend who didn't receive the money
19 but has knowledge of it but --

20 MS. PATTERSON: She helped raise the money, Your
21 Honor.

22 THE COURT: I mean, I don't know how -- I don't know
23 what you want me to do. I mean, if they didn't put the
24 money up and they didn't pay the money out but they have
25 knowledge of it, that's just about as good as me having

1 knowledge of it. I mean, it's just there. If Ms.
2 Dilworth has firsthand knowledge of it because she helped
3 raise the money, then she would be the proper witness to
4 say we raised money, people made contributions, the money
5 was paid. I mean, why not her?

6 MS. ZMROCZEK: Okay. Well, one reason is I have no
7 problem calling her, Your Honor. The only issue is that
8 I have just learned about it two minutes ago. She won't
9 speak with my investigator. She hung up on our
10 investigator because we called her and she said you're
11 helping that no good and used a bunch of words which is
12 fine but, you know, that's a witness that is --

13 THE COURT: Wasn't she in here earlier? Didn't she
14 testify?

15 MS. PATTERSON: No, sir, Your Honor. She was on the
16 witness list but she's been sequestered so she hasn't
17 been here all week.

18 THE COURT: Is she here now?

19 MS. PATTERSON: No, sir, because we wasn't going to
20 call her.

21 THE COURT: I may be confusing somebody else.
22 Because there was some other Dilworth that was called,
23 wasn't there, maybe?

24 MS. ZMROCZEK: Not to my knowledge.

25 THE COURT: I don't know.

1 MS. ZMROCZEK: I know she was on the witness list.
2 But we would ask that since the State has access to her
3 and she won't speak to us, I mean, or at least provide us
4 her address so that we --

5 THE COURT: Can y'all get her up here? You had her
6 earlier and you didn't call her.

7 MS. PATTERSON: Can we approach?

8 THE COURT: Sure.

9 (Side bar off the record.)

10 THE COURT: All right. Articulate your --

11 MS. ZMROCZEK: Particular issue here, Your Honor?

12 THE COURT: -- your issue, if you can, Ms. Zmroczek.
13 We had a lengthy conversation so I'm gonna give you some
14 leniency here.

15 MS. ZMROCZEK: Thank you. And this is just my
16 understanding, you know, just to put on the record that
17 -- So there was a witness, uhm, or we received an e-mail,
18 we, the defense, received an e-mail from the State on
19 October 22nd saying that the family or a group of family
20 members had paid someone \$10,000.00 for information and
21 that person's name was given to us as Shakura Hopkins.
22 Shakura Hopkins we know is the girlfriend of Dashun Curry
23 who again one of the issues that we have in this case is
24 third party guilt. That's why we put the picture in of
25 Mr. Curry with the dreads that matches the sketch.

1 And then there's the issue of the anonymous phone
2 calls that weren't saved so I can't do any voice
3 comparison to say - to play this to somebody to find out
4 whose voice that is. So the only other issue that we had
5 to help tie that information coming from Mr. Curry or
6 someone connected to him was that Ms. Hopkins received
7 that \$10,000.00. Ms. Hopkins cannot be found. Mr. Curry
8 is in federal custody and the Department of Justice is
9 not allowing me any access or anyone any access to him.
10 Apparently he just pled and is giving, he is proffering
11 under private protection right now for a different case.

12 And then the State has suggested that we contact Ms.
13 Dilworth whose name has been brought up through this
14 trial and Ms. Dilworth was the victim's girlfriend. I
15 believe that they were very seriously dating for a while
16 from what I understand. When we did reach out and try to
17 talk to her, Your Honor, we were not allowed. She
18 refused to talk to us in addition to giving some colorful
19 language so we have not been back to bother her. She
20 said do not come back. This was a while ago. She said
21 do not come back. So the suggestion today that we
22 contact her, I already know what will happen with that.

23 So we are at the point, Your Honor, that we are not
24 allowed to get any testimony in about Ms. Hopkins
25 actually receiving the money.

1 THE COURT: Can we do this. The social media
2 exhibit that shows there was a reward paid in there, can
3 we allow each side to say that was done by the victim's
4 family without consultation of the State or law
5 enforcement and that the witnesses dealing with that are
6 just unavailable? Y'all want to say something like that?
7 That way nobody is --

8 MS. PATTERSON: Your Honor, we're fine with that
9 stipulation as long as she doesn't try to later argue
10 that that money was paid to someone who may have
11 committed this crime and try to sneak in third party
12 guilt that way without additional evidence.

13 THE COURT: I think we are confined to what we have
14 got. There was a reward raised by the victim's family
15 and it was paid to someone and those witnesses are not
16 available and that's where it stays. It's limited to
17 just that and I don't want it alluded to that the
18 witnesses were in the State's control and, therefore,
19 inference is negatively to the State and I don't want it
20 inferred that there was third party guilt from those
21 facts. You've got other facts that may be different but
22 just from the reward and unavailability of the witnesses
23 involved.

24 MS. PATTERSON: Yes, sir.

25 THE COURT: Okay. Would that be sufficient? I'll

1 write this down, the stipulation: Okay. Here's what
2 I'll tell the jury. The stipulation is, the reward was
3 paid as seen, the social media folks, it was raised by
4 the victim's friends and family, it was paid to someone
5 but none of the witnesses regarding the rewards payment
6 are available to either side, and that will be it.

7 MS. PATTERSON: Yes, sir.

8 MS. ZMROCZEK: Okay. Thank you, Your Honor.

9 THE COURT: I don't want any inferences from that,
10 just that's the fact. All right. We ready to get the
11 jury back in here?

12 MR. ZMROCZEK: We are, Your Honor. I have Ms.
13 Paxton here in the courtroom just because she was my next
14 witness.

15 THE COURT: All right. Bring them in please.

16 (Whereupon, the jury entered the courtroom at 10:10
17 a.m.)

18 THE COURT: All right. Folks, ready to continue.
19 Call your next witness.

20 MS. ZMROCZEK: Thank you, Your Honor. We call Josie
21 Paxton.

22 Thereupon,

23 JOSIE PAXTON

24 after having been first duly sworn, testified as follows,

25 THE CLERK: Please have a seat. After you're

1 seated, please state your full name spelling your last
2 name for the record.

3 THE WITNESS: Josie Paxton, P-a-x-t-o-n.

4 DIRECT EXAMINATION

5 BY MS. ZMROCEK:

6 Q. Good morning, Ms. Paxton. I'm just calling -- Do
7 you recall an incident back on February 2nd, 2014?

8 A. Yes.

9 Q. In the early morning hours?

10 A. Yes.

11 Q. Where were you that evening?

12 A. The Cockpit.

13 Q. At the Cockpit?

14 A. Yes.

15 Q. Do you recall the police coming?

16 A. Yes.

17 Q. Do you recall talking to them?

18 A. Yes.

19 Q. Do you recall the police taking pictures of your
20 phone that evening?

21 A. Yes.

22 Q. And I believe they were interested in some text
23 messages going back and forth between people?

24 A. Yes.

25 MR. BELL: Objection. Leading.

1 MS. ZMROCZEK: I'll rephrase.

2 THE COURT: Sustained.

3 BY MS. ZMROCZEK:

4 Q. What if anything -- Did you give them a statement?

5 A. I did.

6 Q. Without telling the jury what other people said, did
7 you give them a name of persons that may have information
8 about the shooting?

9 A. Yes.

10 Q. What name was that?

11 A. Antonio Williams.

12 Q. Does he go by a nickname?

13 A. Bling.

14 Q. All right. I want to show you defendant's 33 and
15 see if you recognize that (proffering.)

16 A. Yes.

17 Q. Do you know who that person is?

18 A. Looks like him, Antonio.

19 Q. Is that what that person was wearing that evening?

20 A. I have no idea. I don't remember that far back.

21 Q. So you don't remember that far back --

22 A. No.

23 Q. -- as to what people were wearing, right?

24 A. No.

25 Q. But you remember the police taking your phone?

1 A. Yes.

2 Q. And do you remember them downloading it?

3 A. Yes.

4 Q. And actually they signed a form for you, right?

5 A. Yes.

6 MR. BELL: Objection. Leading.

7 BY MS. ZMROCZEK:

8 Q. I'm sorry. Did they give you any paperwork?

9 A. To sign. Yes.

10 Q. Okay. So they could -- And, in fact, I'm showing
11 you defendant's 32 (proffering.) Do you recognize that
12 paperwork?

13 A. Yes.

14 Q. That's the paper that you signed for the police?

15 A. Yes.

16 Q. To take your phone, right?

17 A. Yes.

18 Q. Now, and you were aware that they downloaded all
19 your information, text messages, things like that?

20 A. Yes.

21 Q. And phone calls, right?

22 A. Yes.

23 Q. Tell the jury about how your phone works.

24 A. It's an iPhone so it's kind of like touch screen, I
25 guess you would say. The videos that I wasn't even aware of

1 that I guess took.

2 Q. You took some videos but you weren't taking them on
3 purpose?

4 A. Right.

5 MS. ZMROCZEK: The videos, Your Honor, we're
6 referring to defendant's 34 and 35.

7 THE COURT: All right. As I understand it, the
8 parties have all agreed that after her phone was provided
9 to the police, an investigator or someone extrapolated
10 the images and stuff off the phone. A video on that
11 phone was put on these disks so that chain of how that
12 happened everybody agrees that Lexington County Sheriff's
13 Department did that, provided these for the purpose of
14 this trial. Is that our stipulation, folks? Ms.
15 Zmroczek?

16 MS. ZMROCZEK: Yes, Your Honor.

17 MR. BELL: Yes, Your Honor.

18 THE COURT: That's how we ended up with it. She
19 provided the phone to somebody in IT and they put them on
20 a disk. All right.

21 MS. ZMROCZEK: Your Honor, at this point we would
22 move defendant's 34 and 35 into evidence.

23 THE COURT: Subject to that stipulation, the State
24 good with it?

25 MS. PATTERSON: Yes.

1 THE COURT: Okay. Fair enough.

2 MS. ZMROCZEK: And we would like to publish.

3 THE COURT: Sure. While she's cueing these up,
4 y'all will have all these pictures and stuff that are
5 coming in when y'all are in deliberations. Y'all will
6 have all that. You can look at them as long as you want
7 to. You don't have to memorize it, okay?

8 BY MS. ZMROCZEK:

9 Q. Now, Ms. Paxton, while this is loading I just want
10 to ask you a question. You did not see the shooting,
11 correct?

12 A. No.

13 Q. You were inside the bar?

14 A. Yes.

15 MR. BELL: Objection. Leading.

16 BY MS. ZMROCZEK:

17 Q. Where were you located?

18 A. I was inside the bar when it happened and the owner
19 told everybody that they needed to leave because there had
20 just been a shooting outside.

21 Q. Okay. Uhm, prior to that, prior to the shooting,
22 where were you?

23 A. Inside the whole time. I would go outside a few
24 times to smoke, but other than that just inside.

25 (Whereupon, Defendant's Exhibit #34, a cell phone

1 video played for the jury.)

2 BY MS. ZMROCZEK:

3 Q. Now, I know that's dark and hard to see, but that
4 first video obviously on your phone it was downloaded taken at
5 3:10 a.m. Where was that located?

6 A. Inside the Cockpit.

7 Q. Inside the Cockpit?

8 A. Yes.

9 Q. So what was atmosphere inside the Cockpit?

10 A. Loud. Everybody was highly intoxicated. Uhm, other
11 than that I don't know how to describe it.

12 Q. Were there a lot of people there that evening?

13 A. Yes. In the bar area there was.

14 MS. ZMROCZEK: Now I'll publish defense 35 for you.

15 (Whereupon, Defendant's Exhibit #35, a cell phone
16 video played for the jury.)

17 BY MS. ZMROCZEK:

18 Q. Now, you can actually see -- Can you be seen on that
19 video?

20 A. I don't think so. I don't know. That was obviously
21 outside. I don't even remember that video to be honest with
22 you.

23 Q. Okay. I saw you were laughing. Could you hear
24 yourself?

25 A. Yes. I did one time.

1 Q. So you were outside at that point?

2 A. Yeah. It looked like it. Yeah.

3 Q. And that was at 4:49 in the morning. Were there
4 conversations -- What do you remember about any altercations
5 inside or outside of the club?

6 A. Not much of them. I mean, people being drunk. I
7 guess people always get rowdy. Other than that I don't
8 remember any specific ones.

9 Q. Have you ever met or seen Gregory Brooks?

10 A. No.

11 Q. Do you know him at all?

12 A. No.

13 Q. Do you know or did you know Brandon Ratliff?

14 A. Because of Brittainy I knew of him. Yes.

15 Q. You knew him because of Brittainy?

16 A. Yes.

17 Q. You and Brittainy were friends?

18 A. Yeah.

19 Q. And what information -- What, if anything, did you
20 and Brittainy do after this happened to try to help figure
21 out?

22 A. Uhm, because of the statement that Antonio had made,
23 she just asked me to do all that I could to find out any
24 information for her and for the family.

25 Q. Were y'all looking on social media?

1 A. Yes.

2 Q. Were y'all asking friends?

3 A. Yes.

4 Q. What kind of things were you doing?

5 A. Social media, friends, trying to put two and two
6 together to remember who was there that night, any faces that
7 looked familiar.

8 Q. Did y'all - did you have any information to pass
9 onto her?

10 A. No meaningful information. No.

11 Q. But the information that you gave the police that
12 night was that Antonio Williams had information, correct?

13 A. That's what --

14 MR. BELL: Objection. Leading.

15 THE COURT: Already asked and answered but she said
16 that.

17 MS. ZMROCZEK: Okay. Please answer any questions
18 the State has.

19 CROSS EXAMINATION

20 BY MR. BELL:

21 Q. Good morning, Josie.

22 A. Good morning.

23 Q. Josie, how long had you known Antonio Williams?

24 A. A few years.

25 Q. His nickname is Bling, right?

1 A. Yes.

2 Q. What was your relationship with Bling?

3 A. That was my ex.

4 Q. Now, Bling has a pretty distinctive marking on his
5 body, doesn't he?

6 A. Yes. On his forehead.

7 Q. Where is it?

8 A. The middle of his forehead.

9 Q. What is it?

10 A. It's an "L".

11 Q. Can you see it when you look at it?

12 A. Yeah. Pretty clearly.

13 Q. So if somebody saw Bling and was trying to describe
14 him to police, they would be able to tell them about that
15 marking, wouldn't they?

16 A. Yes. Unless he had a hat on or a beanie I'm sure
17 they would be.

18 Q. And do you recall back in February 2014 if Antonio
19 Williams had dreads?

20 A. Yes. He did.

21 Q. They were long dreads, weren't they?

22 A. Yes.

23 Q. They came down below his shoulders?

24 A. Yes.

25 Q. How much further below his shoulders did those come

1 down?

2 A. A good bit below.

3 Q. Did they go down to his mid back?

4 A. Probably his shoulder blades.

5 Q. You testified that you didn't really know what was
6 going on in those videos, right?

7 A. No. I don't.

8 MR. BELL: Thank you.

9 MS. ZMROCZEK: Just very briefly.

10 REDIRECT EXAMINATION

11 BY MS. ZMROCZEK:

12 Q. He asked you if anybody, if the "L" on Antonio's or
13 Bling's forehead was pretty noticeable, right?

14 A. Yeah.

15 Q. So if somebody was trying to not identify him, they
16 would leave that information out, right?

17 A. Yes.

18 MR. BELL: Objection. Leading.

19 THE COURT: That's not a fair question. Rephrase
20 it.

21 MS. ZMROCZEK: I'll rephrase the question, Your
22 Honor.

23 BY MS. ZMROCZEK:

24 Q. If somebody - if you were describing Antonio, how
25 would you do so?

1 A. Dreads, tall, tattoo in the middle of his
2 forehead.

3 Q. Okay. And you said that you don't remember much
4 from those videos that night?

5 A. No.

6 Q. Were you intoxicated?

7 A. Very. Yes.

8 Q. What was the state of most people there that
9 night?

10 A. Same. I mean, it was after 3:00 in the morning so
11 most people still out are probably still drinking and have
12 been for a while.

13 MS. ZMROCZEK: Thank you.

14 THE COURT: You may step down.

15 MS. ZMROCZEK: Your Honor, I just have that last
16 witness I need to go and check on.

17 THE COURT: Okay.

18 MS. ZMROCZEK: Your Honor, may we approach again?

19 THE COURT: Yes.

20 (Side bar off the record.)

21 THE COURT: We are still waiting on one witness so
22 wait in the jury room for a few minutes. They were
23 supposed to be here 30 minutes ago so just step to the
24 jury room. Don't discuss the case. We will be right
25 back in here as soon as they get here.

1 (Whereupon, the jury entered the jury room at 10:25
2 a.m.)

3 THE COURT: I want you to say what you said at the
4 side bar on the record. I think we need that on the
5 record.

6 MS. ZMROCZEK: I think so, too, Your Honor. I did
7 not have 911 under subpoena. They were on the list of
8 the State's witnesses. So, Your Honor, I did not
9 duplicate those subpoenas. I was told that they will not
10 stipulate to the authenticity of the 911 call which they
11 provided, the State provided and that even though I spoke
12 with communications, Nikki this morning not literally
13 five minutes before I walked in the courtroom and she
14 said she would be right over, she now has somehow been
15 called away and now can't be here so we will not be
16 putting in the 911 call since the State won't stipulate
17 to its authenticity.

18 THE COURT: What you gonna put up?

19 MS. ZMROCZEK: We will rest, Your Honor. Thank you.

20 MR. BELL: Your Honor, just very briefly, I do want
21 to have on the record that there is some implication from
22 that that we had some nefarious objective and somehow
23 skirted her away. We had nothing to do with her
24 schedule.

25 MS. ZMROCZEK: That wasn't the implication. The

1 implication, Your Honor, is that they would not extend
2 the courtesy of just stipulating to a 911 call. It's not
3 that they sent someone away.

4 THE COURT: So the 911 call is not coming in thus --

5 MS. ZMROCZEK: We will rest.

6 THE COURT: Y'all are gonna rest. Let's talk about,
7 y'all got any rebuttal?

8 MS. ZMROCZEK: I think you need to ask my client --

9 THE COURT: Well, but we're gonna talk about where
10 we're going from here because I know when lunch will be
11 brought in here because Ms. Frick and I have been working
12 on that. We ordered the jury lunch about 12:30 so we can
13 work around that because it's coming to us.

14 MS. PATTERSON: Your Honor, we don't intend to put
15 up reply.

16 THE COURT: Okay. Coming back to testifying by
17 Mr. Brooks. Mr. Brooks, we talked yesterday at great
18 length about your right to testify or your right to
19 remain silent. Ms. Zmroczek just represented to me that
20 you have discussed that and you have made a decision; is
21 that correct?

22 MR. BROOKS: Yes, sir.

23 THE COURT: Have you had enough time to discuss your
24 decision with your lawyer?

25 MR. BROOKS: Yes, sir.

1 THE COURT: With your family?

2 MR. BROOKS: Yes, sir.

3 THE COURT: And what is your decision?

4 MR. BROOKS: I'm not going to testify.

5 THE COURT: All right. So you're going to exercise
6 your right to remain silent and as such I will put in my
7 instructions, that will be one of the last things I tell
8 the jury is that your right to remain silent is yours.
9 They can't discuss your not testifying at all in
10 deliberations and so I'll do that. All right. You can
11 be seated. Let's talk about closing summaries, all
12 right? May as well get that out right here. We can move
13 on. Y'all ready to go with that?

14 MS. ZMROCZEK: Your Honor, I need to know what the
15 decision the Court's made about third party guilt.
16 There's that extra person that had a gun. There's
17 testimony from Mr. Brown specifically that Mr. Brooks got
18 in the car while gunshots were still going off. I think
19 that we would -- Well, I think I sent the e-mail last
20 night, that we would ask that charge be given. I think
21 there is enough evidence to infer that and under the
22 Supreme Court case of --

23 THE COURT: Doesn't matter. Just Supreme Court
24 case.

25 MS. ZMROCZEK: Yeah. The only Supreme Court case

1 that dealt with this issue specifically with our state I
2 think that they said if there is an inference, that we
3 are allowed to request the charge.

4 THE COURT: All right. What do y'all think,
5 Mr. Bell and Ms. Patterson?

6 MS. PATTERSON: Sir, we would ask that that not be
7 charged, Your Honor. There has been nothing - there has
8 been nothing presented, Your Honor, that is, first of
9 all, inconsistent with Mr. Brooks' own guilt. And
10 secondly, the fact that these facts only raise a
11 reasonable inference as to his innocence. The Court does
12 require, Your Honor, that and those are two prongs that
13 the Court requires, Your Honor. Evidence which has no
14 other affect than to cast a bare suspicion upon another
15 is not admissible. The only thing that has been
16 testified to, Your Honor, with respect to this Antonio
17 Williams is that he had dreads and he had an "L" on his
18 forehead and that he was at the club. There was so many
19 people there with dreads, Your Honor. There has been
20 nothing testified to in the duration of this trial, Your
21 Honor, that would suggest that he committed this offense.
22 The only person that was identified as the shooter was
23 her client Mr. Brooks.

24 And with respect to Dashun Curry, Your Honor, the
25 only other thing testified to about him was that, yes, he

1 was at the club and that he had dreads. There has been
2 nothing testified to and nothing indicated that he had
3 anything to do with this shooting. As a matter of fact,
4 his dreads was longer. Two witnesses identified Mr.
5 Brooks as the shooter; that there has been nothing raised
6 but mere suspicion and we would ask that third party
7 guilt not be instructed to the jury, Your Honor.

8 THE COURT: All right. I don't believe that the
9 defense has produced enough evidence to get beyond a mere
10 suspicion that there is a second shooter and so I'm
11 reductant to charge third party guilt and I think I'm
12 inclined to do so because of that. The record is
13 protected as to the request by the defense to instruct
14 that but the Court is not going to do that. What about
15 the lesser included? I'm kind of inclined to hear y'all
16 on that. Y'all agree to it or not?

17 MS. PATTERSON: Your Honor, we would agree to it but
18 I would like to put something on the record just to cover
19 ourselves because I know that is an unsettled issue in
20 South Carolina per State v. Childers. In that case it
21 says that South Carolina has not recognized sufficient
22 legal provocation from third party that can be
23 transferred to the victim. However, Your Honor, in State
24 v. Warden the courts concluded that because that was not
25 a majority decision, that the issue still remains

1 unsettled in South Carolina. And in that case, Your
2 Honor, they wasn't even able to say that there was
3 sufficient legal provocation by anyone. We would like to
4 distinguish our case from Warden because we do think
5 there has been testimony that sufficient legal
6 provocation did exist between the defendant and his group
7 of friends and Fred Moss both inside the club and outside
8 the club. So it is our position that maybe that
9 provocation could have been transferred to the victim
10 since he was in close proximity to Mr. Moss throughout
11 the duration, Your Honor.

12 THE COURT: Where the incident happened according to
13 the testimony I heard was on opposite sides of the car, I
14 mean, very close, six, seven feet.

15 MS. PATTERSON: Yes, sir. So we would be fine with
16 the voluntary manslaughter charge. But I just wanted to
17 state on the record why our case is distinguishable from
18 State v. Warden.

19 THE COURT: Okay. All right. Ms. Zmroczek.

20 MS. ZMROCZEK: Your Honor, what I have been
21 discussing, what we have been trying to discuss is that
22 the State did make a plea offer of 20 years under
23 voluntary. Yesterday I had asked them if that was still
24 on the table. I never got a response. I think that
25 clearly the facts, you know, there's a gun. There's a

1 holster. There's a gun that's missing. There's
2 testimony from people that there were two different guns.
3 The shell casings, Your Honor. The casings, there's a
4 casing in here that doesn't match the other casings.
5 There's no expert that's needed. You can visually see
6 it, you know. So I think that what I was trying to
7 discuss with my client, they had never answered our
8 question about whether or not the plea offer was still
9 open. And I don't know that he wants to plea, Your
10 Honor, but I know there was that question still out there
11 and the offer was to voluntary. So I believe that the
12 State still believes there is probably sufficient
13 evidence to move forward on that charge. We would
14 probably ask for that charge.

15 THE COURT: My inclination is to charge voluntary.
16 She is inclined that way. Your comments seem to indicate
17 that you're indicating also consistent with my
18 inclination so I'm going to charge it. We'll include
19 that as a lesser included on the verdict form as well as
20 in the instructions. All right. Anything else?

21 MS. PATTERSON: Can I have one moment, Your Honor?
22 I need to check on a legal issue.

23 THE COURT: Sure. Okay. I'll bring the jury in and
24 tell them about the stipulation to the award. Any other
25 stipulations I forgot about?

1 MS. PATTERSON: No, sir.

2 THE COURT: All right. And then once I do that,
3 then Ms. Zmroczek is going first and which one of y'all?

4 MS. PATTERSON: I'm closing. Just one closing.

5 THE COURT: Okay. Fair enough. Bring in the
6 jury.

7 MS. ZMROCZEK: Your Honor, I just, before we do
8 that, I need to confirm that I told him they are not
9 answering our question about the plea. I assume that
10 they're not extending that plea. There's never been an
11 answer to that so...

12 THE COURT: Okay. I'm not going to bend anybody's
13 arm. That's between y'all.

14 MS. PATTERSON: Your Honor, our policy is once we
15 begin trial, we don't extend the original offer.

16 THE COURT: That's up to y'all. Normal policy with
17 everybody is to make discussions. We make discussions,
18 trial begins, all discussions are off unless y'all want
19 to resume discussions. Nobody is required to.

20 MS. ZMROCZEK: Right. Exactly. I'm not saying that
21 they are. It's just that I'm just telling my client we
22 don't have an answer and so I just don't want him to
23 think I haven't been continuously trying to ask for the
24 last 12 hours.

25 MS. PATTERSON: Can we talk for a second, Your

1 Regarding the reward that was presented in some
2 exhibit, it showed a social media screen shot about a
3 reward offered by some person. The parties have agreed,
4 the State and defense, that this reward was gathered up
5 or raised by friends and family of the victim. It was
6 paid to someone or some people. I don't know. Those
7 people aren't available as witnesses but there was a
8 reward raised by the family and friends. It was paid.
9 Whether to one person or multiple people we don't know.
10 But those witnesses are not available to either side so
11 you just know it was done, all right? Now, is that
12 sufficient as to our stipulation both sides?

13 MS. PATTERSON: Yes, sir.

14 MS. ZMROCZEK: Yes, Your Honor.

15 THE COURT: Fair enough. Now, Ms. Zmroczek.

16 MS. ZMROCZEK: Your Honor, the defense rests.

17 THE COURT: The defense has now rested on the
18 record. All your motions are renewed. You're protected
19 and the State has already told me they don't intend to
20 call any reply witnesses, correct?

21 MS. PATTERSON: Yes, sir.

22 THE COURT: Now, we're on the record. Y'all have
23 heard all the testimony you're gonna hear. We have
24 received all the evidence we're gonna receive. It's now
25 the opportunity for each side to summarize what they

1 believe has been shown in the trial over the last couple
2 of days. When they are done with that, we'll have a very
3 short restroom break and I'll get you back in here to
4 give you my instructions as to what the law in South
5 Carolina is. So give your attention to Ms. Zmroczek and
6 then to Ms. Patterson.

7 MS. ZMROCZEK: Thank you, Your Honor. May it please
8 the Court.

9 THE COURT: Yes, ma'am.

10 MS. ZMROCZEK: Good morning. When I first became an
11 attorney and I started getting appointed cases, I thought
12 what a great, great responsibility it is. It's nothing
13 compared to the responsibility that you 12, 14, soon to
14 be 12 are going to take back with you. They say it's the
15 closest job to being a creator to judge someone else and
16 that, ladies and gentlemen, is what you have been asked
17 to do, is to come here and judge Gregory Brooks based on
18 the facts and you have to decide those facts. And the
19 Judge is going to tell you that you can't rely on emotion
20 or sympathy or reward because, ladies and gentlemen, it
21 is true that Brandon Ratliff was killed. That fact is
22 not disputed. No conviction or acquittal will bring him
23 back. And the Judge will instruct you that no matter how
24 many times it's said to please remember the family or
25 please remember Brandon, that you must set that aside and

1 you all agreed to do that because it's a very, very
2 serious question of fact. And y'all have been brought
3 here from all different walks of life. You bring your
4 different experiences and your different understandings
5 and your different beliefs and your different common
6 sense.

7 So I hope to not take too much of your time standing
8 up here because you have been here all week and I thank
9 you, Gregory thanks you, and his family thanks you for
10 listening. I'm sure the State will thank you the same
11 and I'm sure Mr. Ratliff's family will thank you the
12 same. But that being said, we have a job to do and that
13 job is to decide what happened that night. And the State
14 is going to talk to you and the Judge is going to charge
15 you on the law so I'm not going to recite it for you
16 because that's the Judge's job.

17 The Judge is going to tell you what murder is and
18 what the elements are and how they have to meet that
19 proof beyond a reasonable doubt. He is also going to
20 give you what's called a lesser included charge of
21 voluntary manslaughter and read the elements and if you
22 can't decide on murder, then you can decide if it was
23 voluntary manslaughter and they have to meet those
24 elements beyond a reasonable doubt. And then he's gonna
25 also tell you that you can also find the defendant not

1 guilty.

2 One of the things that I struggle with as a defense
3 attorney is talking and discussing reasonable doubt and
4 how do I do that. Because, and I apologize for the
5 baseball preference, my dad wanted a boy. He had seven
6 girls and I was the oldest so I was up until 1:30
7 watching the World Series last night. But it made me
8 think of a way to describe reasonable doubt and kind of
9 what that is to you. So as I'm watching the game and
10 it's going back and forth and it kind of reminded me
11 about this trial. There were some questionable calls
12 depending on which side you were on. They have a little
13 replay box and the ball goes in and it looked like it was
14 in and they called it a ball, they sat the pitcher down
15 and the umpire has kind of been Judge Griffith in this
16 trial. That's what he's doing. But you guys are the
17 ultimate umpires of the facts of this case.

18 When I think about reasonable doubt and how to
19 explain it and the dangers of it, because when I ask to
20 make sure that you hold the State to their burden, that
21 burden is theirs and theirs alone. Even though we put up
22 a case, even though we put some witnesses up, even though
23 we cross examined witnesses, that burden never shifts to
24 the defense and the constitution is very clear about that
25 and very clear about the reason why that burden is so

1 high. And this week in particular I know we have all
2 been thinking about the constitution and what it means to
3 each and every one of us and I know that you all take
4 this seriously.

5 So back to my baseball story. Stepping out of the
6 law for a moment, I think about it this way. You go to a
7 playground. You have two kids and they're fighting over
8 a glove and the one kid says that's my glove. And he
9 says no, your glove is missing its laces. At that point
10 as a juror you would either decide whose glove it is or -
11 you would know whose glove it is or you would make this
12 snap decision on whose glove it is. But you have already
13 told the Judge you're not going to make a snap decision.
14 So in order to decide you need more information so that's
15 what this trial has been about.

16 We hope to provide all of the information.
17 Obviously not all of the witnesses were available and
18 some information wasn't presented. And the Judge will
19 tell you you can't speculate about those. You can ask
20 questions and I would encourage you to ask questions.
21 But a different scenario is two kids fighting over a
22 baseball glove and one says it's mine and the other one
23 says you can't prove it. Well, you're still going to
24 want to look for those facts. But it has a connotation
25 when you raise reasonable doubt that either a person is

1 guilty and you can have that clear in your mind or the
2 person is innocent and you can have that clear in your
3 mind or the person has not been proved guilty of these
4 crimes beyond a reasonable doubt. But for some reason
5 that carries some negative connotation. But that
6 standard is very high and it's set for a reason.

7 The evidence that the State presented to you really
8 boils down to two witnesses. We spent an awful lot of
9 time listening to these phone calls - or not listening,
10 looking at these phones calls and maps and you will get
11 these giant presentations back there to tell you
12 something that we already told you in opening and that
13 was that Gregory Brooks was there with his friend and
14 with his other friends. That's not being disputed.

15 What's in dispute is who pulled that trigger. Where
16 is that .22? Where is that gun? There are a lot of
17 questions that are unanswered. The Judge again will
18 order you not to speculate. But it really comes down to
19 these two witnesses, Rickena Knightner and Frederick Moss
20 because they are the ones that claim that they were both
21 in great view to see what happened even though their
22 stories are at odds as to where and when. Remember, you
23 will get to rely on and get to take this map back
24 with you. State's exhibit 5, it's been used so, so many
25 times, about which side of the road, all kinds of, you

1 know, was it here, was it here. Well, we know where the
2 victim was found. We know that he was found on the road
3 up here. You heard Dr. Ross' testimony that, uhm, that
4 bullet lodged right into his spine and would have caused
5 or could have caused paralysis and you have to match
6 those kinds of facts up with the facts that you were
7 presented from those witnesses that raised their hand.

8 And I want to come back to that in just a little
9 bit. But when they get up here and they testify, because
10 I imagine the State may say that Mr. Brown and Junior,
11 Mr. Banks, they are just trying to help Gregory because
12 they are friends and family so you can't believe what
13 they say. But I think that can be said about any
14 witness. In fact, I was shocked by the testimony of I
15 think it was detective or Investigator Etheredge. She
16 got up there and she said, you know, sometimes people
17 just don't tell what happened the first time. And, yes,
18 Gregory said he left at two because at that point he knew
19 he was a suspect and he lied. But then his girlfriend
20 comes and clears it back up and says we lied and the
21 family is there and nobody is trying to hide him. But
22 they want to jump on that. And the Judge is going to
23 tell you and he's going to charge you that once you
24 decide what the facts are, you have to apply the law and
25 the law is that if behavior is suspicious, that that

1 doesn't rise to the level.

2 We didn't hear from Bling. We didn't get to hear
3 from all these other people so we are at a loss. What we
4 did get to see and I want to play it for you because it's
5 not very long and I'll tell you why I want to play it for
6 you is that at 4:49 a.m. the atmosphere, the lighting,
7 you can see into the parking lot. The general demeanor
8 of people because that was a question that came across a
9 lot.

10 (Whereupon, the audio and video of cell phone
11 recording played for the jury.)

12 MS. ZMROCZEK: Ladies and gentlemen, you will get to
13 take this video back with you into the jury room and you
14 will get to see it and you will get to pause it and you
15 will get to look up close and I paused it right here for
16 a reason because you get to see inside of the door and
17 you get to see who is wearing a black and white checkered
18 shirt like the picture that they put in of Fred Moss and
19 you can hear what people are saying and what the words
20 are that are being said. You guys get to do that and you
21 guys get to decide that. The reason that's important,
22 ladies and gentlemen, is because I assume the State will
23 get up here and they will say, well, look at the pattern
24 of the bullets. And if you, I don't remember his name,
25 the witness that just refused to testify about these

1 shell casings and that they were run over and likely, and
2 I believe he was asked a question about the unfortunate
3 rock being kicked up from a truck, it's because shell
4 casings and bullets move so we don't know where this
5 happened so they are trying to line this up with the
6 story that Fred Moss tells and/or the story that Rickena
7 Knightner tells or Shontay Jones because it makes sense.
8 And I pulled out bullet - shell casing number 6 because
9 that was the only picture we put in - that the State put
10 in. We put them all in and I pulled out shell casing
11 number 10 and you will get to see where they are located
12 and you will get to look at them yourselves and you will
13 get to hold them and you will get to see, you know, where
14 the firing pins are and if they look like the same
15 bullets and if this is indicative of two different guns
16 being out there that night. You get to do that. Because
17 you don't leave your common sense at the door.

18 We don't know what happened that night. We have
19 testimony that there was some sort of argument. We don't
20 know who was involved. We do know that a person that had
21 a gun and flashed it was never even arrested. We do know
22 that Rickena Knightner, Shontay Jones who didn't want to
23 get involved yet called 911 and then gives a sketch, this
24 sketch right here, they want to say, well, this only
25 matches number 2 and 4 Gregory Brooks and only matches

1 him. But, ladies and gentlemen, that's what you get to
2 bring into the mix because you get to hold and look at
3 these pictures and you get to say could that be somebody
4 else.

5 And I want the jury to understand and be very clear
6 we are not saying it was Dashun. We were not saying it
7 was Bling. We don't know who it was because as Eric
8 Brown testified Gregory Brooks beat on his window and got
9 in his car and said don't leave me here. The State wants
10 you to believe that he pulls that trigger ten times. Ten
11 times. I believe they said in opening nine or ten
12 reasons. I'll say it and I said it in opening and I'll
13 say it again. There's not nine or ten reasons. There
14 are 10,000 reasons that Gregory's name got put in here
15 with two anonymous phone calls that we didn't get to
16 hear. We don't know whose voice that was. We don't know
17 if it was Dashun Curry or Antonio or one of their friends
18 or somebody else who had seen that sketch and said,
19 uh-oh, let's put somebody else's name in it.

20 But you heard from the State's witnesses, the mother
21 of his children who gets up and testifies that she lied
22 to the police. And I want to be very clear that she also
23 testified that Gregory didn't tell her to lie but that
24 she went back and fixed it and that she knew that he had
25 been shot through the hand and couldn't grip and that he

1 was scared of guns. He has a scar running down his
2 belly. And that he didn't own a .22. And I believe they
3 came back up and said, well, he didn't tell you
4 everything. They have three children together. He was
5 moving. He moved her that day. Lived with her family.
6 If there was a gun involved, we would have seen it. If
7 there was a gun connected to Gregory Brooks we would have
8 held it and seen it and matched it to all these shell
9 casings because I still don't believe that any testimony
10 came in about which kind of bullet was removed from the
11 spine.

12 The entry, the testimony was the entry point, I
13 think she measured it .22 but that doesn't say it was a
14 .22. That's the evidence that you have. That you have
15 10,000 reasons to question how only Gregory Brooks gets
16 arrested in this case. 10,000 reasons. We didn't get to
17 hear the 911 call that Shontay or Ms. Knightner made, but
18 we did get to hear from Fred Moss and he said without a
19 doubt he knows because he saw it in the eyes. And I
20 wasn't trying to demean him coming back on cross
21 examination and saying I'm gonna be real clear and I
22 believe he testified I'm not slow. I'm not saying you're
23 slow. But what the questions are intended to do is to
24 help explain the inconsistencies. Tell us where this gun
25 was. Why this holster was in the passenger seat of his

1 car. And he said he wasn't drunk. But we know the
2 testimony from Dr. Ross is that B-Rat, Mr. Brandon
3 Ratliff had a .173 blood alcohol and had marijuana in his
4 system. So either Mr. Moss didn't drink or smoke any
5 marijuana with his best friend, brother or he was driving
6 which would mean that Brandon was in the passenger seat
7 where his gun was.

8 Ladies and gentlemen, you're going to get to take
9 this gun back with you. Even though it's locked you will
10 get to do whatever -- and there are no bullets -- you
11 will get to do whatever you want with it. One of the
12 things that I suggest that you do with it is take this
13 gun and see if it fits in this holster because you get to
14 open this evidence and you get to decide who was telling
15 the truth on that stand.

16 I believe the Judge will instruct you you can
17 believe parts or all or none of the testimony. And Fred
18 Moss admitted that he was in the bar and started the
19 fight and if you look, you can see on the video. And
20 Andre, they talked about how they got escorted out and
21 their inconsistencies that he didn't get escorted out.
22 He doesn't know guns but he knows that there was a .45 in
23 his glove compartment that belonged to Brandon but we
24 don't know where that gun is. But there were no other
25 shell casings or bullets found other than this .22 to

1 which we don't have a gun. And not one witness besides
2 Ms. Knightner and Mr. Moss come up and said that that .22
3 was in Gregory's hands.

4 Since February 2nd of 2014 those are the two
5 witnesses that they put up. And Ms. Knightner, let me be
6 very clear about Ms. Knightner's testimony, the witnesses
7 that the defense put up because Ms. Knightner swore with
8 her hand on this Bible on Monday and then again today and
9 sat right there and she told you she was a liar. And I
10 don't call people liars lightly. I don't. But when they
11 lie about facts that jurors have to rely on to determine
12 someone's fate, I have a problem with that.

13 She told you right there that she lied. That she
14 knew who Gregory was or she knew - or she didn't know he
15 was Dink. She testified she doesn't know about Eric.
16 She was never shown a second lineup. And most
17 importantly, most importantly, and I asked her on one of
18 the State's, State's 20 on that picture, I asked her
19 specifically, now, you say this group was where this man
20 was standing? She's on the complete opposite side of the
21 road. There's a reason that we sequester the witnesses
22 and that's so they can't hear what other people testify
23 to and they can't change their testimony to fit what's
24 already been told to you. Each and every witness has to
25 remember independently and come and tell you truthfully

1 or not truthfully because that's the information that you
2 have to rely on.

3 And the big elephant in the room is why didn't
4 Mr. Brooks get up and testify himself? And the Judge is
5 going to tell you and he's going to order you that you
6 can't discuss that and you can't consider it. Because
7 being 22 years old and being subject to cross examination
8 unlike these professional police witnesses who will say I
9 have no knowledge of whether that shell casing was run
10 over or stepped on. But you can infer it, can't you? I
11 have no knowledge. But we know it didn't come out of the
12 gun looking like that.

13 When I think about these witnesses, it reminds me of
14 a story that I was told. And I'm finishing up so that
15 the State can get their facts to you and then you can
16 make your determination. But it reminds me of the story
17 about a one eyed frog who was this nasty creature and he
18 lived in the swamp and he was ornery and nobody liked
19 him, none of the other animals liked him but they
20 tolerated him because he had one eye and one day after
21 making a very particularly offensive comment he fell off
22 his lilly pad, came back up and his patch was gone and he
23 had two eyes. And the animals said, why have we put up
24 with this one eyed frog for so long when all he did was
25 just cover the other eye with a patch? And the frog

1 answered, I did that because without the patch I would
2 have to keep both eyes open and see the world and the
3 facts as they really are as opposed to how he would like
4 to see them. Because if he saw all the facts, he would
5 have to see the truth and the truth isn't always in his
6 best interest. And, ladies and gentlemen, the
7 prosecution witnesses, the prosecution witnesses that the
8 State put up for you remind me of the one eyed frog
9 because that's the truth that they want you to see.

10 In just a moment I'm gonna sit down and I tell you
11 in my eight years as being a defense attorney that's the
12 hardest, the hardest time is because I don't get to talk
13 to you again. And Ms. Patterson gets to come up and she
14 gets to argue the law and how all these facts apply and
15 why you should find him guilty because he's a murderer,
16 and I can't come back up and I can't say anything. I
17 can't jump and I can't say but what about this? But how
18 come you can't answer this question? How come this
19 person didn't testify? Why are there different shell
20 casings? Where is the .22? Why do we still have these
21 questions? I can't come back up and I can't rebut
22 anything that they say. But, ladies and gentlemen, I
23 would ask that you do it. That you ask the State to
24 answer those questions.

25 No case is easy and nobody wins in these cases. You

1 think back to the glove and how either somebody is guilty
2 or not guilty and when you get the verdict form and
3 you'll get to look at it and it's going to have murder,
4 guilty or not guilty, voluntary manslaughter, excuse me,
5 not guilty or guilty. Possession of a weapon during the
6 commission of a violent crime, not guilty or guilty. But
7 there should be a third line there for innocent. So
8 innocent falls under the not guilty. So either he's not
9 guilty because he's innocent or he's not guilty because
10 they haven't proved beyond a reasonable doubt that
11 element...

12 And I stood behind and next to Mr. Brooks since the
13 day I was appointed to him. Ladies and gentlemen, I give
14 this case to you.

15 MS. PATTERSON: Objection, Your Honor. She's
16 starting to cry.

17 THE COURT: Overruled on that.

18 MS. ZMROCZEK: Because you are the judges of the
19 facts and the credibility. Thank you.

20 THE COURT: Ms. Patterson.

21 MS. PATTERSON: May it please the Court, Your Honor..

22 THE COURT: Yes, ma'am.

23 MS. PATTERSON: Good morning. This case is about
24 choices. Bad choices. Deadly choices. Choices that
25 Gregory Brooks made on February 2nd, 2014. Choices that

1 will forever change the Ratliff's family's life. Choices
2 the defendant made because he couldn't settle an argument
3 with an ordinary fist fight but he chose to settle an
4 argument using a deadly weapon. He chose to pull the
5 trigger and shoot out in a crowded parking lot exposing
6 the risk to so many and hitting Brandon Ratliff in the
7 chest causing his vibrant heart to stop beating and
8 ending his young life on that cold February morning. And
9 for his choices he stood trial this week on the charges
10 of murder and possession of a weapon during the
11 commission of a violent crime.

12 Now, the Judge will instruct you on the law. Mr.
13 Brooks is charged with murder and in South Carolina
14 murder is defined as the killing of a person with malice
15 aforethought expressed or implied. We certainly have the
16 killing of a person, 31 year old Brandon Ratliff with
17 malice and malice means hatred, ill will or hostility.
18 Aforethought. This doesn't have to be a feeling of a
19 pronounced period of time. It just has to happen at the
20 time of the act. Expressed. Malice can be expressed.
21 Somebody can verbalize their malicious intent or it can
22 be implied. It can be implied by the use of a deadly
23 weapon. It can also be implied by shooting that deadly
24 weapon into somebody.

25 MS. ZMROCZEK: Your Honor, may we approach?

1 THE COURT: Yes.

2 (Side bar off the record.)

3 MS. PATTERSON: But it can be expressed or implied.

4 Now, the possession of a weapon during the commission of
5 a violent offense, it means that during the violent crime
6 which in this case is murder that someone used a deadly
7 weapon and in this case a .22 caliber gun.

8 Now, the Judge is also going to instruct you on a
9 lesser included offense and that offense being voluntary
10 manslaughter which is the unlawful killing of another
11 without malice -- So if you don't find that there was
12 malice -- in a sudden heat of passion based on sufficient
13 legal provocation. And the Judge will instruct you later
14 about each and every one of those elements. But it's the
15 State's position that this is nothing but a murder.

16 Now, he will also instruct you that it is our burden
17 of proof beyond a reasonable doubt that we must show all
18 of these elements and Mr. Bell told you at the beginning
19 we welcome that burden and we do. Now, beyond a
20 reasonable doubt is not beyond all doubt because there's
21 very few things that can be beyond all doubt. But it's
22 doubt that leaves you firmly convinced.

23 Now, I know you have listened very carefully and we
24 do appreciate your patience and your attentiveness all
25 week long but this is my opportunity because I do have

1 the burden of proof to review testimony and evidence that
2 you heard and you saw during this week so I just ask you
3 to bear with me just a little while longer while I go
4 through some of that testimony.

5 Now, I don't normally agree with Ms. Zmroczek but
6 she said at the beginning of this case that this case was
7 about confusion and credibility. However, the confusion
8 and credibility has to do with her witnesses. And by the
9 way, she should have had added one more thing and that's
10 cover up because that's what Gregory Brooks immediately
11 started to do after he fired the fatal shots that killed
12 Brandon Ratliff on February 2nd, 2014.

13 First of all, Eric Brown. The defendant's friend
14 who said he's related to Denique who is the mother of the
15 defendant's children and has known the defendant for
16 years. Let's just think about when he came up here and
17 what he testified about. He got a call from Dink. They
18 were gonna hang out. He says Dink was at the Cockpit.
19 He heard the shots before, right when the club was gonna
20 close. The height man was announcing the club was going
21 to close. He says Dink went to the club with him. But
22 he was leaving. And what did he say happened? Dink ran
23 up to the window knocking, don't leave me and jumped in
24 the car and left with him. If that was the case, why
25 didn't he tell law enforcement that?

1 He also testified about this DeDe. And he said,
2 yeah, that's DeDe but DeDe's dreads are longer. He's
3 been growing them out longer than Dink. DeDe didn't meet
4 the physical description of the shooter. And James
5 Richardson, owner of the nightclub, I don't really know
6 why he was called. He said he was in the kitchen during
7 the shooting but he also admitted this was a club that
8 had a lot of shooting around the area. Again, total
9 confusion.

10 Arnold Banks a/k/a Junior who yesterday on Facebook,
11 if Banks fuck with you, he fuck with you. Be careful
12 what you say, free because some of these ain't solid.
13 Free my dog Dink. I'm gonna ride for you.

14 And that's exactly what he did when he got up here
15 on this witness stand. He said things that he thought
16 would help his dog Dink. Yeah, he was at the club and he
17 talks about Ms. Knightner and Dink getting into an
18 argument, something about him. That just doesn't make
19 sense. He lives in Apple Valley. He's a uncle figure to
20 all these other guys that live in Apple Valley. As a
21 matter of fact, Dink don't want to cut his dreads until
22 Junior cuts his. Well, we all know that didn't happen,
23 right? Because it was part of that cover up.

24 I'm gonna ride with you. Free my dog.

25 He got up here to say anything that he thought would

1 help Dink. And I submit to you none of that is true. He
2 don't know what happened.

3 Josie Paxton. I'm not even sure she knew why she
4 was here. Those videos, they don't really show much. We
5 don't even know what they show. I mean, it shows people
6 talking and things like that. But you know what it also
7 shows? It also shows at least two street lights in that
8 parking lot like Fred Moss testified to explaining why he
9 was able to get a good look at the shooter. And she told
10 you how she would describe her ex-boyfriend Antonio
11 Williams, Bling. That visible "L" on his forehead.
12 Again, that wasn't given as a description of the shooter.
13 The first thing people would look at and long dreads.

14 Ms. Zmroczek wants to talk about the State's
15 witnesses and she wants to analogies this case to a one
16 eyed frog and a baseball game. This is serious business.
17 Somebody was killed. This case does not dictate those
18 types of analogies. And she also wants to say how our
19 witnesses, they want to lineup everything to go with
20 their story. No. At the time CSI got to the scene they
21 didn't know what these people were going to say what
22 happened. They didn't know what direction these people
23 was gonna say the shooter was backing up in as he was
24 firing off that gun. They didn't know any of that.

25 What they were able to note was that a pool of blood

1 was at the top of that hill because that's where the
2 victim lies as he was dying. They didn't know anybody
3 was going to say what happened. They were able to find
4 ten shell casings at the scene that lined up in a linear
5 pattern. They had no idea Fred or Ms. Knightner was
6 gonna say that the person shooting was backing up.
7 That's not what these law enforcement officers are about.

8 You heard what these law enforcement officers did.
9 They got together. They work major crimes. Whenever
10 tips came in, they didn't care which shift it was
11 originally assigned to. They didn't care who it was
12 originally assigned to. They knew this crime had to be
13 solved and they jumped on board. When tips came in, they
14 followed those fresh viable leads. They didn't have any
15 one person they wanted to arrest. He ain't on their
16 radar. They don't care about him. They just wanted to
17 get this solved and that they did.

18 Now, Investigator Dykes, two anonymous tips about
19 Dink may be involved. They went out. They tried to talk
20 to him. He immediately lied about his nickname. Again,
21 a cover up. He tells his baby's mama Denique Banks I met
22 with law enforcement officers and I told them that you
23 picked me up between two and three. Another cover up.
24 If he left with Eric Brown. Why didn't he say that? Why
25 did he have to bring Denique's name into it? She's the