

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CLARENDON COUNTY
William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUSTIN JERMAINE JOHNSON,

APPELLANT

APPELLATE CASE NO. 2014-001219

AMENDED RECORD ON APPEAL

LAURA R. BAER
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

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit
Sumter County Courthouse
141 N. Main Street
Sumter, SC 29150-4965
(803) 436-2185

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....	i
PRE-TRIAL HEARING TRANSCRIPT (March 6-7, 2014).....	1
<i>JACKSON V. DENNO</i> HEARING	
TESTIMONY	
MASON MOORE (IN CAMERA)	
Direct Examination by Mr. Durant	5
Cross Examination by Mr. Robinson	13
Redirect Examination by Mr. Durant	28
KIPPTON COKER (IN CAMERA)	
Direct Examination by Mr. Durant	32
Cross Examination by Mr. Robinson	44
Redirect Examination by Mr. Durant	58
RULING BY THE COURT	63
ARGUMENT BY MR. ROBINSON	64
ARGUMENT BY MR. FINNEY	67
RULING BY THE COURT	68
TRIAL TRANSCRIPT (March 10-14 and 18-20, 2014)	75
VOIR DIRE	77
<i>STATE V. BLAIR</i> HEARING (PORTION).....	88
MOTION FOR MISTRIAL	91
RULING BY THE COURT	95
MOTION FOR MISTRIAL	95
RULING BY THE COURT	98
MOTION <i>IN LIMINE</i> REGARDING PHOTOGRAPHS.....	100

OPENING STATEMENT BY MR. FINNEY	131
OPENING STATEMENT BY MR. ROBINSON	136
TESTIMONY	
DANNY FLOYD	
Direct Examination by Mr. DuRant.....	141
Cross Examination by Mr. Robinson	146
CHARLES EADDY	
Direct Examination by Mr. DuRant.....	147
Cross Examination by Mr. Robinson	156
Redirect Examination by Mr. DuRant.....	160
JOHN CARAWAY, JR.	
Direct Examination by Mr. DuRant.....	162
Cross Examination by Mr. Robinson	172
Redirect Examination by Mr. DuRant.....	177
KAISHA CARAWAY	
Direct Examination by Mr. Finney	179
Cross Examination by Mr. Robinson	249
Redirect Examination by Mr. Finney	318
RICKY RICHARDS	
Direct Examination by Mr. DuRant.....	325
Cross Examination by Mr. Robinson	354
Redirect Examination by Mr. DuRant.....	376
MASON MOORE	
Direct Examination by Mr. DuRant.....	381
Cross Examination by Mr. Robinson	390
MOTION TO STRIKE/FOR MISTRIAL	403
RULING BY THE COURT.....	404
KIPPTON W. COKER	
Direct Examination by Mr. DuRant.....	407
Cross Examination by Mr. Robinson	455
Redirect Examination by Mr. DuRant.....	501
Recross Examination by Mr. Robinson.....	507
THOMMY BURGESS	
Direct Examination by Mr. DuRant.....	512

Cross Examination by Mr. Robinson	520
Redirect Examination by Mr. DuRant	524
CYNTHIA SCHANDL	
Direct Examination by Mr. Finney	526
Cross Examination by Mr. Robinson	546
JEFF CROOKS	
Direct Examination by Mr. DuRant	557
KENNETH CLARK	
Direct Examination by Mr. DuRant	562
Cross Examination by Mr. Robinson	569
Redirect Examination by Mr. DuRant	583
Recross Examination by Mr. Robinson	589
SCOTT HARDEE	
Direct Examination by Mr. DuRant	592
Cross Examination by Mr. Robinson	640
Redirect Examination by Mr. DuRant	651
Recross Examination by Mr. Robinson	653
VICKI HALLMAN	
Direct Examination by Mr. DuRant	654
Cross Examination by Mr. Robinson	672
BARBARA PROCTOR	
Direct Examination by Mr. DuRant	679
VERONA GIBSON	
Direct Examination by Mr. DuRant	682
Cross Examination by Mr. Robinson	687
CATHERINE LEISY	
Direct Examination by Mr. DuRant	690
Cross Examination by Mr. Robinson	717
Redirect Examination by Mr. DuRant	729
DAN DEFREESE	
Direct Examination by Mr. Finney	734
Cross Examination by Mr. Robinson	754
Redirect Examination by Mr. Finney	759
CHARLES WEATHERSBEE	
Direct Examination by Mr. Finney	760

LATIVIA BROGDON	
Direct Examination by Mr. DuRant.....	767
Cross Examination by Mr. Robinson	771
Redirect Examination by Mr. DuRant.....	775
Recross Examination by Mr. Robinson.....	776
STIPILULATION RE: WITNESS JEFF CROOKS.....778	
LISA WAANANEN	
Direct Examination by Mr. DuRant.....	781
Cross Examination by Mr. Robinson	785
ILA SIMMONS	
Direct Examination by Mr. DuRant.....	793
Cross Examination by Mr. Robinson	804
Redirect Examination by Mr. DuRant.....	812
Recross Examination by Mr. Robinson.....	812
KORIANDA WALKER	
Direct Examination by Mr. DuRant.....	813
ILA SIMMONS	
Direct Examination by Mr. DuRant.....	817
TINA CARTER	
Direct Examination by Mr. DuRant.....	819
Cross Examination by Mr. Robinson	820
Redirect Examination by Mr. DuRant.....	822
JUSTIN JOHNSON	
Direct Examination by the Court.....	824
LUKE MCGOWAN	
Direct Examination by Mr. DuRant.....	828
Cross Examination by Mr. Robinson	831
MOTION FOR DIRECTED VERDICT 835	
RULING BY THE COURT.....839	
MOSES LEVY, JR.	
Direct Examination by Mr. Robinson.....	840
Cross Examination by Mr. Finney	844
KIMBERLY JOHNSON	
Direct Examination by Mr. Robinson.....	846
Cross Examination by Mr. Finney	848

JUSTIN JOHNSON	
Direct Examination by the Court.....	852
JOHNNY LEE LAWSON	
Direct Examination by Mr. Robinson.....	856
Cross Examination by Mr. Finney.....	859
HAROLD CONYERS	
Direct Examination by Mr. Robinson.....	862
Cross Examination by Mr. Finney.....	866
RENEWED MOTION FOR DIRECTED VERDICT	868
RULING BY THE COURT.....	869
CLOSING ARGUMENT BY MR. DURANT.....	871
CLOSING ARGUMENT BY MR. ROBINSON.....	877
CLOSING ARGUMENT BY MR. FINNEY.....	900
CHARGE ON THE LAW.....	913
VERDICT.....	932
SENTENCING HEARING.....	939
SENTENCE IMPOSED.....	947
POST-TRIAL HEARING TRANSCRIPT (April 17, 2014).....	951
POST-TRIAL MOTIONS.....	952
ORDER DENYING POST-TRIAL MOTIONS (June 5, 2014).....	969
INDICTMENTS	971
CERTIFICATE OF COUNSEL.....	973

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

State's Exhibit 13 (photograph), State's Exhibit 15 (photograph), State's Exhibits 23-24 (photographs), State's Exhibits 36-39 (photographs), State's Exhibit 54 (photograph), State's Exhibit 55 (Recording of 911 calls), State's Exhibit 56-65 (DVDs of Apr. 6, 2011 GSR test and Interrogation), State's Exhibit 66 (DVD of Apr. 7, 2011 Interrogation), and State's Exhibits 82-90 (Photographs of footwear impressions).¹

¹ Pursuant to Rule 210(f), SCACR, transportation is being requested for all of the designated exhibits, including photographs, because they could not be accurately reproduced by copying into the Record on Appeal.

1 Q. That's the only thing that in y'all's mind that
2 y'all had to say the Robert story wasn't true; correct?

3 A. I'm trying to think. I mean, there's a lot of
4 stuff.

5 Q. I understand. The physical evidence that we just
6 talked about?

7 A. Uh-huh (affirmative).

8 Q. And that you talked about, the broken door, the
9 shell casings, how many people were shot, different
10 things like that, there was nothing about Mr. Johnson's
11 account involving Robert that didn't add up with the
12 physical evidence? The physical evidence, not Kaisha's
13 statement. The evidence at the scene.

14 A. Just Kaisha's statement is all I can think of right
15 now.

16 MR. ROBINSON: The Court's indulgence for just
17 a moment, Your Honor.

18 THE COURT: Yes, sir.

19 MR. ROBINSON: No further questions, Your
20 Honor.

21 THE COURT: Any redirect?

22 MR. DURANT: Yes, sir, just briefly.

23 REDIRECT EXAMINATION

24 BY MR. DURANT:

25 Q. Captain Coker, there were several questions asked of

1 you a few minutes ago by Mr. Robinson about you and
2 Investigator Moore lying to the Defendant about evidence
3 that doesn't exist. But weren't there several pieces of
4 evidence that did and does exist that are contrary to the
5 Defendant's story?

6 A. There were the shell casings or the shells, the
7 door, yes. There were a lot of evidence.

8 Q. All right. And specifically Mr. Robinson asked if
9 you had any evidence that the Defendant was lying about
10 the bathroom door. Didn't the Defendant tell you in his
11 interview that after all the shooting was over, he had to
12 go and get Kaisha to open the door and to unlock the
13 door, to let him in to get her out and leave?

14 A. Yes.

15 Q. He told you that?

16 A. Yes.

17 Q. State's Exhibit 17. This is the bathroom door that
18 he said Kaisha had to open to let him in after all the
19 shooting was over?

20 A. Yes.

21 Q. In the Defendant's version of events, was Kaisha's
22 shirt ever ripped off of her? In his story, in his story
23 about Robert, did he ever tell you about an altercation
24 that led to Kaisha's shirt being ripped off?

25 A. Not in his story, no.

1 Q. And let's talk about the details that hadn't been
2 told to Robert at the time. You stated a little while
3 ago that you let him tell his story; is that right?

4 A. That is correct.

5 Q. And he told you about four shots?

6 A. (No verbal response)

7 Q. Did you tell him four shots or there were four
8 shells found at the scene, or did he tell you about four
9 shots?

10 A. I didn't tell him anything about the shells, I don't
11 believe.

12 Q. And as a matter of fact, Mr. Robinson asked if there
13 was any evidence or asked you didn't the story about
14 Robert account for all four shells?

15 A. (No verbal response)

16 Q. Do you remember the Robert story and where the four
17 shells were fired, where the four shots were fired?

18 A. In the locations?

19 Q. According to the Defendant's initial version of
20 events, where were the four shots fired?

21 MR. ROBINSON: And, Your Honor, I'm going to
22 object. That's speculation. I objected to that earlier.
23 He's already testified. He can't ---

24 THE COURT: Sustained. He said he doesn't know
25 where they were fired.

1 MR. DURANT: According to the Defendant's
2 story.

3 THE COURT: Okay.

4 Q. What did the Defendant tell you?

5 MR. ROBINSON: And, Your Honor, my objection to
6 that is that that is a link that those shells are
7 connected, and they have not been connected by anybody.

8 THE COURT: He can say what the Defendant told
9 him. Overruled.

10 Q. Where did the Defendant tell you those four shots
11 were fired?

12 A. He said one was shot at the door or towards the
13 suspect, Robert.

14 Q. And that's the one the Defendant fired himself?

15 A. And he actually said he heard two shots.

16 Q. He heard two shots when he was in the organ room?

17 A. That is correct.

18 Q. He heard two shots?

19 A. That's correct. And I think ---.

20 Q. And did he tell you that he saw Robert fire at the
21 bathroom door?

22 A. Not to my knowledge.

23 Q. There was a comment about, "I heard two and I saw
24 one."

25 A. That's right. One was his, he says. And when he

- 1 was in the organ room, he heard two. And then he opened
2 the door and saw his son, and then he looked down the
3 hall and saw Robert.
- 4 Q. And let me ask you this, according to the
5 Defendant's and the Robert story about four shots, only
6 three of them impacted something; is that right? Because
7 the fourth shot, according to the Defendant's story,
8 didn't hit anything. He said that he stood on the porch
9 and shot at Robert and that shot didn't hit anything?
- 10 A. That's correct.
- 11 Q. Well, what did he tell you?
- 12 A. That when Robert was leaving, he shot towards him.
- 13 Q. Did he say that he hit the car?
- 14 A. He said he couldn't remember if he hit the car.
- 15 Q. Okay. How many shells, according to the evidence in
16 the house, hit something?
- 17 A. All four hit something.
- 18 Q. Ms. Maxine?
- 19 A. Correct.
- 20 Q. J.C. ?
- 21 A. Correct.
- 22 Q. The wall in the hallway; that's State's Exhibit 21?
- 23 A. That's correct.
- 24 Q. And the bathroom door?
- 25 A. That's correct.

1 Q. So would you agree with me that according to the
2 Robert story or according to the Defendant's story, he's
3 missing a shot somewhere?

4 A. That's correct.

5 Q. The four shots that -- a question was asked of you
6 if there was any evidence that day or today that said the
7 shell on the porch didn't get shot at Robert? Would you
8 expect a wadding to be found in the yard if that shot was
9 fired out in the yard towards Robert?

10 A. Would I expect a wadding to be ---

11 Q. A wadding to be found in the yard?

12 A. Yes.

13 Q. Let me ask you about another detail, a question
14 about another detail the Defendant gave you. At some
15 point near the end of the interview, he told you that he
16 picked the gun up again when he went outside after
17 everything was over?

18 A. Correct.

19 Q. Had he told you that in the initial story about
20 Robert?

21 A. No. During several, whatever hour it was, he
22 disclosed that.

23 Q. And, of course, Mr. Robinson went over the fact that
24 you don't have any evidence to link the ring to any
25 injuries of Kaisha. But during the interview were you

1 aware of injuries to Kaisha's face?

2 A. Yes.

3 Q. And, again, the 9-1-1 call, you listened to that
4 during a break in the interview?

5 A. Yes.

6 Q. And in your opinion, is there another voice in that
7 background of that 9-1-1 call?

8 A. In my opinion, yes.

9 Q. You can't say it's the Defendant, but you hear
10 another voice in the background?

11 A. Yes.

12 Q. And let me ask you -- if you remember, is it during
13 the first 9-1-1 call or the second when 9-1-1 calls back
14 that the victim said, "Robert"?

15 A. Second, I think.

16 MR. DURANT: I beg the Court's indulgence.

17 THE COURT: Yes.

18 MR. DURANT: No further questions.

19 THE COURT: Any recross?

20 MR. ROBINSON: Just very briefly, Your Honor.

21 THE COURT: Based upon his redirect.

22 MR. ROBINSON: Yes, sir, Your Honor.

23 RE CROSS-EXAMINATION

24 BY MR. ROBINSON:

25 Q. Investigator Coker -- sorry. Major Coker.

1 A. I've been named so many things today..

2 Q. The information about the bathroom door, whether it
3 had to be opened or not opened, there was something up
4 against it, right, that Mr. DuRant asked you about that
5 was contrary to him saying that he ---

6 A. I don't understand.

7 Q. Mr. DuRant asked you about evidence that
8 contradicted Mr. Johnson's statement?

9 A. Such as?

10 Q. Specifically about the bathroom door.

11 A. He asked me if he saw -- did the Defendant say he
12 saw Robert shoot the door.

13 Q. Okay. Were you talking about the door being --
14 Kaisha having to open the door?

15 A. Okay. Yes. What's the question?

16 Q. And what did you remember Mr. Johnson's response to
17 that was, or what did he tell you about the door?

18 A. That he had to -- if I'm not mistaken, he had to
19 push the door to help Kaisha get out.

20 Q. That something was up against the door ---

21 A. Yes.

22 Q. --- and he had to push it in. So he could have
23 broken the door doing that, couldn't he?

24 A. Could have.

25 Q. Okay. No evidence to the contrary then or today, is

- 1 there?
- 2 A. (No verbal response)
- 3 Q. Other than statements?
- 4 A. I mean, what else -- I mean, that's evidence.
- 5 Statements are evidence.
- 6 Q. Other than statement evidence, physical evidence,
- 7 any evidence off of that door that indicates it wasn't
- 8 broken in trying to get Kaisha out of the bathroom or by
- 9 Robert?
- 10 A. No.
- 11 Q. Okay. Mr. DuRant spent some time talking to you
- 12 about four shots or five shots. Do you know how many
- 13 shots Kaisha reported hearing?
- 14 A. No, sir, I don't.
- 15 Q. No idea?
- 16 A. I don't recall.
- 17 Q. Okay. No idea?
- 18 A. No, sir.
- 19 Q. Would you expect for her to have heard four shots
- 20 based on the evidence that you know about?
- 21 A. I mean, I can't guess what she suspects.
- 22 Q. I mean, if she's ---
- 23 A. If she's in the house ---
- 24 Q. And a shotgun's being shot in the same house, you're
- 25 going to hear it, aren't you?

1 MR. DURANT: Your Honor, he's already said ---

2 THE COURT: Sustained.

3 Q. Okay. Well, how do you know about a wadding? If
4 you can't answer about the shotgun being fired, how do
5 you know about a wadding and what you should find with a
6 wadding?

7 A. Well, if he shoots in the yard or in the house
8 anywhere, a wadding comes with the shotgun shell. It
9 comes out of the shell.

10 Q. Are you sure?

11 A. I'm not an expert on it, if that's what you're
12 asking.

13 Q. Right. And there's a possibility it could have been
14 hand-loaded, any number of things? Typically, in your
15 experience ---

16 A. Yeah.

17 Q. --- but you can't say that with a reasonable degree
18 of any certainty?

19 A. That's correct. I'm not an expert in shotgun
20 shells.

21 Q. And he asked you about the ring and the injury to
22 Kaisha's face. You didn't lie about that, did you? I
23 mean, there was an injury to her face?

24 A. That's what I was told, yes.

25 Q. And you expected it to be that ring, right, based on

- 1 what you were told?
- 2 A. That was just another ---
- 3 Q. I mean, you thought that was what had happened? She
- 4 had a knot on her head, and he had a big ring. You
- 5 thought that was it, didn't you?
- 6 A. I'm not assuming ---
- 7 Q. What I'm saying is you ---
- 8 A. I'm not assuming. Yeah. I'm not a -- yeah. I
- 9 wasn't lying. If he hit her, hopefully there was an
- 10 imprint on it.
- 11 Q. You expected that to be true; right?
- 12 A. Did I expect it to be true?
- 13 Q. Yeah.
- 14 A. I wanted to get the evidence. If that imprint was
- 15 on her, I wanted to get the rings for evidence.
- 16 Q. Okay. But that was wrong, wasn't it?
- 17 A. What do you mean?
- 18 Q. That that ring -- there's no connection to that ring
- 19 and any injury on Kaisha, is there?
- 20 A. To my knowledge, no.
- 21 Q. And finally about the voice on the tape. You heard
- 22 a voice; right?
- 23 A. Yes, sir.
- 24 Q. You can't say who it was?
- 25 A. That's correct.

1 Q. Tell me what that voice said.

2 A. I can't recall without listening to it again.

3 Q. And you think you could hear him saying some stuff?

4 A. I don't know about here, but I heard it that night,
5 day or night, whatever.

6 Q. You heard them say, "Tell them it was Robert. Get
7 Kaisha," that kind of stuff?

8 A. No.

9 Q. Okay.

10 A. I think I've answered that before. No.

11 Q. Just nothing relevant? Just talking?

12 A. Just talking. Whatever it was saying. I couldn't
13 hear what.

14 Q. But nothing was said that you could clearly make out
15 that told Kaisha to, "Make up a lie. Say it's Robert.
16 I'm going to kill you," anything like that?

17 A. I could not hear that.

18 Q. Okay. Thank you.

19 MR. ROBINSON: No further questions.

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

22 MR. DURANT: The State calls Tommy Burgess.

23 **TOMMY BURGESS,**

24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

- 1 BY MR. DURANT:
- 2 Q. Mr. Burgess, where do you work?
- 3 A. I currently work for the Department of Corrections.
- 4 I'm an investigator with the special investigations unit.
- 5 Q. How long have you worked at the Department of
- 6 Corrections?
- 7 A. Coming up on two years.
- 8 Q. Before moving on to the Department of Corrections,
- 9 where did you work?
- 10 A. I worked at the Clarendon County Sheriff's Office as
- 11 captain over investigations.
- 12 Q. Captain of investigations?
- 13 A. Yes, sir.
- 14 Q. And how long did you work for the Sheriff's office?
- 15 A. Thirteen years.
- 16 Q. Were you in investigations the entire time?
- 17 A. Yes.
- 18 Q. Do you remember -- let's talk about April the 6th of
- 19 2011. Do you remember that day?
- 20 A. Yes.
- 21 Q. Do you remember what you were doing?
- 22 A. On this particular day, I was called to a scene out
- 23 in the area -- I can't remember the name of the road
- 24 exactly, but in Clarendon County.
- 25 Q. Carissa Lane?

1 A. Yes.

2 Q. Does that ring a bell?

3 A. That is.

4 Q. Off of June Burn Road?

5 A. It is off of June Burn.

6 Q. Okay. You responded to the scene. Do you remember
7 how many officers were there when you got to the scene?

8 A. Numerous.

9 Q. And when you got to the scene, what did you do?

10 A. I was told on the way that they had a suspect in
11 custody and there were two deceased individuals. When I
12 arrived, I think the first person I spoke with was -- and
13 forgive me if I can't pronounce her name -- Kaisha.

14 Q. Kaisha Caraway?

15 A. Yes.

16 Q. And do you remember what the substance of that
17 conversation was?

18 A. There was some question as to, you know, when I got
19 there anything what was going on, who was involved in
20 what. My understanding she was with the shooter when he
21 was taken into custody. So I did give her Miranda, and
22 then I spoke with her briefly.

23 Q. If you recall, what was Kaisha's version of events?

24 MR. ROBINSON: Your Honor, I have an objection.

25 THE COURT: What's your objection?

1 MR. ROBINSON: That's -- she's already
2 testified. That's hearsay. And I haven't been provided
3 any notice or summary that she ever spoke to Investigator
4 Burgess.

5 MR. DURANT: Your Honor, I believe he had a
6 conversation with her at the scene. Just because she's
7 already testified, he can say what she told him.

8 THE COURT: I don't think -- I don't think it's
9 ---

10 MR. ROBINSON: Can we approach real quickly?

11 THE COURT: You may.

12 (WHEREUPON, a bench conference was held off the
13 record.)

14 THE COURT: Overruled.

15 Q. Mr. Burgess, if you would, just limit it -- did
16 Kaisha tell you or did you ask her a question about who
17 had done it?

18 A. Yes.

19 Q. Did she tell you who?

20 A. Yes, she did.

21 Q. Who did she tell you?

22 A. The Defendant.

23 Q. When you spoke with the victim, Kaisha Caraway, did
24 you observe any injuries to her person?

25 A. I wasn't with her very long, but I did notice she

1 was fidgeting because her arm and shoulder seemed to be
2 hurting. I was worried about defensive injuries, you
3 know, that she may have had, any wounds she may have had.
4 So I had the victim's advocate called in to come take
5 pictures. And about that same time, I was asked to go do
6 something else.

7 Q. What's the other thing that you were asked to do?

8 A. To go get the search warrant.

9 Q. Search warrant for what?

10 A. For the property and the curtilage of the area.

11 Q. And you did that? You went to the Magistrate's
12 office?

13 A. Yes.

14 Q. After you obtained the search warrant, did you have
15 any further involvement in the case?

16 A. I had some evidence handling on -- and I hate to say
17 it. What I did is I escorted the bodies to the morgue.

18 Q. And the bodies being Maxine Caraway and the body of
19 J.C. ?

20 A. Yes, sir.

21 Q. Were you present on the scene when those bodies
22 were, for lack of a better phrase, bagged?

23 A. Yes, I was. I was there from when I arrived and Ms.
24 Maxine was in the yard and the child was in the house.

25 Q. Did you observed whether those bodies were tampered

1 with in any way?

2 A. They were not.

3 Q. And you say you escorted EMS with the bodies?

4 A. Yes.

5 Q. To where?

6 A. To the Clarendon County Morgue.

7 Q. And did you actually go inside the morgue with the
8 bodies?

9 A. Yes. First we escorted Ms. Maxine. She was outside
10 in the elements. So SLED worked the crime scene outside
11 first before going to the interior. So when they got
12 done with the outside, we took her body first. I
13 followed the ambulance, escorted in to the hospital and
14 the morgue where I sealed the vault where we placed the
15 body.

16 MR. ROBINSON: And Your Honor, if this question
17 is simply related to chain of custody for the bodies,
18 we'll stipulate to that.

19 THE COURT: Okay.

20 MR. DURANT: And that's where I'm going.

21 THE COURT: All right.

22 Q. Did you seal the bodies at the morgue?

23 A. Yes.

24 Q. With evidence tape?

25 A. Yes.

1 Q. Okay. After transporting and sealing the bodies in
2 the morgue, did you have any further involvement with
3 this case?

4 A. The next day I went to the EZ Shop and obtained a
5 video from their video system.

6 Q. The EZ Shop?

7 A. It used to be Lyle's Convenience Store beside Lyle's
8 Liquor Store? It's on 95, on 261, outside of Manning.

9 Q. Which side of 95?

10 A. The outside of Manning side towards Paxville.

11 Q. And there are two gas stations on that side, right?
12 Do you know which one that Lyle's is?

13 A. The second one beside the closed junk yard.

14 MADAM COURT REPORTER: I'm sorry?

15 A. The second store beside the closed junk yard.

16 Q. Is that the Horizon Gas Station?

17 A. It is now.

18 Q. And you went to that EZ Shop to obtain some video
19 from them?

20 A. Yes.

21 Q. What did you do with the video after you got it?

22 A. Well, when we took it off the -- we had it
23 digitized.

24 MR. ROBINSON: And Your Honor, we'll stipulate
25 to the chain of custody to the video as well if that's

1 what he's trying to do.

2 THE COURT: All right.

3 MR. DURANT: I beg the Court's indulgence.

4 (WHEREUPON, State's Exhibit Number 71 was marked for
5 identification.)

6 Q. I show you State's 71 and ask you what that is?

7 A. That's a disk with my handwriting, "EZ video of
8 Justin Johnson."

9 Q. Okay. And is that the video that you obtained from
10 Horizon Gas Station that day?

11 A. Yes.

12 MR. DURANT: Your Honor, I'd ask to move the
13 video into evidence.

14 THE COURT: Any objection? You've stipulated
15 to the chain of custody.

16 MR. ROBINSON: To the chain. I don't know that
17 he can authenticate that it represents what it says it
18 does. But if he says that's the video he handled, I
19 don't have any problem with that.

20 MR. DURANT: And that's fine. I don't think he
21 can authenticate it.

22 THE COURT: All right. Very well.

23 MR. DURANT: And I don't have any further
24 questions, Judge.

25 THE COURT: All right. Any cross-examination?

1 MR. ROBINSON: Yes, sir, Your Honor. Thank
2 you.

3 CROSS-EXAMINATION

4 BY MR. ROBINSON:

5 Q. Tell me your title now because I'm used to calling
6 you Investigator and Captain Burgess.

7 A. It's actually agent.

8 Q. Agent Burgess, okay. Agent Burgess, back on April
9 the 6th, 2011, you were the captain of investigations?

10 A. Yes, sir.

11 Q. Is that you were in charge? You were the head
12 officer?

13 A. Yes, sir.

14 Q. Okay. And do you remember who all was on the
15 investigative unit at that time under you?

16 A. Ricky Richards, Kipp Coker, Rick Helms, Lin Ham.
17 And I'm not sure if Kenneth Clark was there at that time
18 or not.

19 Q. Okay. And did you oversee this investigation?

20 A. My role was more of an administrative one.

21 Q. Right.

22 A. If they had questions, I would ask or try to make
23 sure we're going in the right direction.

24 Q. Did you assign this case to anybody in particular?

25 A. I believe it drew -- because it came up on -- the

- 1 way it was called out, the investigator responded.
- 2 Q. Y'all just have like a rotation more or less?
- 3 A. Yes.
- 4 Q. And do you remember who that officer was?
- 5 A. I'm not sure if it was directly Kipp's case or Ricky
- 6 Richards' case.
- 7 Q. Did Ricky ever come to you and request, "I'll handle
- 8 this one. I want to take care of this one," anything
- 9 like that that you recall?
- 10 A. He came and he asked me about getting the video when
- 11 he found out about a receipt from the gas station.
- 12 Q. That's the one you were just talking about EZ Go or
- 13 EZ Mart or whatever?
- 14 A. Yeah. So he said, you know, "Would you get the
- 15 video from there," which I did.
- 16 Q. All right. But he never came to you and said, "I
- 17 want to be in charge of this," or, "I'm heading this up,"
- 18 or anything of that nature?
- 19 A. I can't remember exactly how it transpired.
- 20 Q. Okay. Now, as the lead investigator or the captain
- 21 of investigations, do you see -- or at that time did you
- 22 see to training them, your investigators, or instructing
- 23 them in different interviewing techniques, evidence
- 24 collection techniques, things of that nature?
- 25 A. A lot of times we send our, you know, investigators

1 to different schools to cover that.

2 Q. Okay. And did you -- I guess since you were in
3 charge you would certainly have been to those schools
4 yourself, haven't you?

5 A. I've been to numerous, yes, sir.

6 Q. Okay. Have you ever been qualified as an expert in
7 court?

8 A. I've been qualified as an expert in identification
9 of fingerprints.

10 Q. Fingerprints, okay. And you have previously been
11 qualified as a fingerprint expert in a Court of General
12 Sessions; right?

13 A. Yes.

14 Q. I think it was a case I was the defense attorney in,
15 wasn't it?

16 A. Yes, sir.

17 Q. Did you have any involvement with taking the
18 fingerprints in this particular case?

19 A. No. SLED handled the crime scene.

20 Q. Okay. After the evidence was gathered at the scene
21 -- did you gather any evidence other than the video tape
22 that we're talking about?

23 A. No.

24 Q. After the evidence was gathered, have you had
25 occasion to review any evidence?

- 1 A. No, sir.
- 2 Q. None?
- 3 A. To review any evidence?
- 4 Q. Yes. I mean, you said you're kind of the
- 5 administrator, the captain over this. You don't kind of
- 6 look over stuff and say, "Well, you need to put this note
- 7 in here. Y'all need to go get this done or that done,"
- 8 just to make sure the file's ready for court?
- 9 A. We would talk about it at roundtables, but ...
- 10 Q. So my question is after you did the duties you
- 11 performed that day, talking with Kaisha briefly, getting
- 12 this video, escorting the bodies, you don't know anything
- 13 else about this case from reviewing the case file? Not
- 14 what you may have heard conversation-wise. But as far as
- 15 reviewing, of your own knowledge, you don't know anything
- 16 else?
- 17 A. Unless there's a specific question you have.
- 18 Q. Well, I'm just asking, have you seen any of the
- 19 evidence? Have you reviewed the evidence?
- 20 A. I have not reviewed the evidence. The evidence was
- 21 secured. We didn't contact the evidence.
- 22 Q. Okay. Have you reviewed a log of what evidence was
- 23 collected?
- 24 A. No.
- 25 Q. Do you know what items were tested and not tested?

1 A. I do not.

2 Q. Okay. And you said when you talked to Kaisha -- I
3 think Mr. DuRant asked if you'd noticed any injuries --
4 and you said something about her arm fidgeting?

5 A. Yeah, her arm was -- you know, she was moving her
6 arm, hurting.

7 Q. You didn't notice a knot on her head the size of a
8 watermelon or anything?

9 A. Actually, I did. She did have a bloody nose, and
10 she had some blood on her head.

11 Q. Okay. But I mean, it wasn't a startlingly large
12 knot?

13 A. Not at that time, I don't recall.

14 Q. I think that's all the questions I have. Thank you.

15 THE COURT: Any redirect?

16 MR. DURANT: Just two, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. DURANT:

19 Q. Agent Burgess, when you were qualified previously in
20 General Sessions Court as an expert in fingerprints, was
21 that in fingerprint collection or fingerprint
22 identification?

23 A. Fingerprint identification.

24 Q. And, again, how long have you been working at the
25 Department of Corrections?

1 A. Two years.

2 MR. DURANT: No further questions.

3 THE COURT: Any recross?

4 MR. ROBINSON: No, sir.

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

7 THE WITNESS: Thank you, sir. May I be
8 excused?

9 THE COURT: Any objection to this witness being
10 excused?

11 MR. ROBINSON: No objection.

12 THE COURT: Thank you. Have a good day.

13 MR. DURANT: The State calls Lin Ham.

14 **THOMAS HAM,**

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. DURANT:

18 Q. Mr. Ham, you formerly worked for the Sheriff's
19 office?

20 A. Yes, sir, I did.

21 Q. And in what capacity?

22 A. I was a criminal investigator with the Sheriff's
23 office.

24 Q. For how long?

25 A. For approximately ten years.

1 THE COURT: Yes, sir.

2 MR. FINNEY: Dr. Cynthia Schandl.

3 **CYNTHIA SCHANDL,**

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. FINNEY:

7 Q. Good morning, Dr. Schandl.

8 A. Good morning.

9 Q. Tell the ladies and gentlemen your name again,
10 please.

11 A. My name is Dr. Cynthia Anna Schandl.

12 Q. And where do you work?

13 A. I work at the Medical University of South Carolina
14 in Charleston, South Carolina.

15 Q. And what is your occupation?

16 A. I am employed there as a pathologist, and my sub-
17 speciality is forensic pathology.

18 Q. Would you give us the benefit of knowing a little
19 bit? How long have you been connected with MUSC?

20 A. Sure. I started my training in medical school and
21 in graduate school at the Medical University of South
22 Carolina in 1991. That training, which led me to
23 accomplish a Ph.D. and M.D. degree, completed in 1999.
24 Following my schooling, I continued training in what's
25 called a residency program in anatomic and clinical

1 pathology also at MUSC. And during that training, I
2 included one year of fellowship training specifically in
3 the field of forensic pathology. And completing that
4 residency and fellowship training in 2004, I was invited
5 to join the faculty at MUSC, and I've been there ever
6 since.

7 Q. Doctor, tell the ladies and gentlemen of the jury
8 the role of a forensic pathologist.

9 A. A forensic pathologist is a doctor who is
10 specializing in the interception between medicine or
11 death, in this case, and the law. So the main tool that
12 we use is the autopsy. And we're examining the body to
13 determine a cause of death as well as a manner of death.
14 And so that's where the intersection is with the law. So
15 the cause of death is more of a medical determination.
16 So a cause of death might be that you had a heart attack,
17 or it might be that you got shot. Whereas, the manner of
18 death is more of a legal terminology that we're provided
19 with five choices in this State to choose from:

20 homicide, suicide, accident, natural, or undetermined.

21 So one of the tasks of the forensic pathologist is to
22 assign both a cause and a manner of death.

23 Q. How many autopsies would you estimate you've either
24 assisted in or performed?

25 A. More than two thousand.

1 Q. And have you been qualified as an expert in courts
2 in South Carolina previously?

3 A. Yes, sir.

4 Q. Would you give us an estimate as to how many times?

5 A. Somewhere between fifty and a hundred.

6 MR. FINNEY: Your Honor, I would move to ask
7 that Dr. Schandl be admitted as an expert in the field of
8 forensic pathology.

9 THE COURT: Mr. Robinson, do you wish to voir
10 dire the witness?

11 MR. ROBINSON: I don't think so, Your Honor. I
12 just want to make sure I'm clear from her testimony that
13 her expertise is to the cause and manner of death?

14 THE COURT: You may ask her that if you want to
15 voir dire her.

16 MR. ROBINSON: Well, I'm just trying to make
17 sure before I stipulate. I don't have any problems
18 stipulating.

19 MR. FINNEY: I'm asking for him to accept Dr.
20 Schandl as an expert in the field of forensic pathology.

21 MR. ROBINSON: Pathology.

22 THE COURT: Any objection?

23 MR. ROBINSON: No objection.

24 THE COURT: Without objection.

25 All right. Ladies and gentlemen of the jury,

1 normally a witness can only testify as to what they saw,
2 heard, felt, tasted, or smelled. However, when somebody
3 has an extra level of education and experience, we refer
4 to them as expert witnesses. Now, they can testify as to
5 -- and give their opinions and based upon the evidence
6 that they have seen. Ladies and gentlemen, whether or
7 not you decide to accept her testimony is up to you. And
8 you shouldn't give it any greater weight or less weight
9 simply because she's an expert. What you'll do is you'll
10 take her testimony and you'll evaluate it as you deem fit
11 and put it along with all the other evidence in this
12 case. But I am going to deem her to be an expert in
13 forensic pathology.

14 Thank you. You may continue, Solicitor.

15 MR. FINNEY: Thank you, Your Honor.

16 Q. Dr. Schandl, did you have occasion to receive the
17 body of Maxine Caraway on April the 7th, 2011?

18 A. Yes, sir.

19 Q. And that was at the Medical University?

20 A. Yes, sir, it was.

21 Q. Who accompanied the body of Ms. Maxine?

22 A. Usually the body is delivered downstairs in the
23 morgue, so I don't have that information.

24 Q. All right. And could you tell us a little bit about
25 the process of examining the body and determining the

1 cause of death?

2 A. Yes. So my examination begins when the body comes
3 up to the autopsy room and is placed on an autopsy table.
4 And the examination begins as they come to me, whether
5 they're dressed or undressed. And I'll take a set of
6 photographs how they come to me and make any note of
7 anything that I see that's unusual. And then I'll remove
8 the clothing or have assistants to remove the clothing.
9 And frequently the clothing will be examined separately,
10 depending upon the type of case. So, for example, if
11 there is a gunshot wound and it affects the clothing,
12 those clothing pieces will be examined as well and
13 photographs taken separately. Then I would turn my
14 attention to the body. In this case the background
15 information that I received from the coroner was that
16 this was a shooting. And in shooting deaths, when I can
17 figure out where the entrance wound is, I will ask for a
18 set of x-rays in order to see any metal that's in the
19 body in association with that gunshot wound. So a series
20 of x-rays is taken in those sorts of cases in order to
21 localize the bullet or projectiles or anything metal
22 foreign in the body.

23 After that, I will look at the surface of the body.
24 And I'm going to look for things that will be identifying
25 features like tattoos, height, weight, eye color, hair

1 length, those sorts of things as far as -- and also look
2 for things that might indicate injury or might indicate
3 some disease process.

4 After concluding the external examination, then I
5 turn my attention to the inside organs and look at each
6 one individually to, again, to see if anything's affected
7 by injury, anything is affected by disease.

8 During the internal examination, I will take fluids
9 for testing for toxicology to look for drugs which may be
10 medicines that the person is taking or may be street
11 drugs. And that's routine in all cases as well. So by
12 body fluids, I'm speaking usually about blood. But other
13 fluids can be useful, as well.

14 Following the external examination, internal
15 examination, and the taking of fluids, I'm also going to
16 be looking microscopically at some of those organs and
17 tissues that I looked at with my eyes in order to see if
18 I can, again, look for any disease processes, if I can
19 confirm injuries that I thought I saw with my eyes but
20 perhaps wasn't sure or just to make sure that there's
21 evidence that everyone can agree upon. And after all of
22 that work is done and all the results are back, a report
23 is generated which is given to the coroner.

24 Q. Doctor, in the case of Maxine Caraway, what did your
25 external examination lead you to believe was the injury

1 that caused her death?

2 A. In the case of Maxine Caraway, she had two major
3 injuries. She had an injury to her left hand, and she
4 had an injury to her head. In both cases, once I
5 received the x-rays, it was clear that the injuries were
6 both due to shotgun wound with bird shot which is a
7 smaller pellet. There's two different kinds. There's
8 bird shot and buckshot. Bird shot are little, and
9 buckshot are big. So shotgun wound both to her hand and
10 to her head. And, again, the x-ray already showed me
11 that that injury resulted in fracture of her skull. And
12 you could see the dispersion of all of the different
13 small bird shot pellets into her brain.

14 Q. Could you determine from the review of the body or
15 the clothing on the body whether or not this was a close-
16 range or intermediate range gunshot wound?

17 MR. ROBINSON: Your Honor, before she testifies
18 to that, I would like to voir dire her on that. I think
19 the range of a gun goes beyond a forensic pathologist.

20 THE COURT: Let me see the attorneys for just a
21 second.

22 (WHEREUPON, a bench conference was held off the
23 record.)

24 Q. Doctor, let me rephrase my question, please.

25 A. Yes, sir.

1 Q. On your examination of the body or the clothing, did
2 you have any evidence of soot or gunshot powder?

3 A. No, not definitive.

4 Q. All right. Does that have anything to do with your
5 ability to tell us whether or not the gun was close or
6 not when it was fired?

7 A. It does. And there are other clues on the body that
8 you can go from to try to get to that information.

9 Q. All right. Would you tell us the area -- tell us
10 which hand it was that was injured with the gunshot?

11 A. It was the left hand.

12 Q. All right. Can you also tell us which side of her
13 head? I believe you said it was a head injury?

14 A. Yes. So the left hand. It went through the palm
15 and out the back, and there were only two little pellets
16 in that wound. So basically, everything else went out.
17 And then to the right side of the head, right about in
18 this area, was where the shotgun round entered.

19 Q. I want to show you what's been marked as State's
20 Exhibit Number 36 and ask if you would be able to tell
21 whether that picture reflects the injuries you saw on Ms.
22 Maxine?

23 A. It does. At autopsy, I make the injuries more
24 apparent by shaving those areas that have hair on them to
25 see that wound more clearly.

1 Q. Also, I want to show you what's been marked as
2 State's Exhibit Number 39 and ask if you can tell whether
3 that also is a picture of the injuries of the left hand
4 of Ms. Caraway?

5 A. It is. Again, at autopsy I clean up the wound and
6 document its size and dimensions and other aspects about
7 it.

8 Q. All right. Very good. When you say you document
9 the size, could you tell the ladies and gentlemen of the
10 jury about the measurement that you took on the area of
11 Ms. Maxine Caraway's head and the area of her left hand?

12 A. Yes, sir. I'm going to refer to that report that I
13 said that we generate after we have all of our
14 information back. The shotgun wound to the hand, to the
15 palm of the hand, was a little bit bigger than one inch.
16 And the one to her head on the right side of her head
17 was, again -- it was one point three inches. Not quite
18 one and a half inches, so ...

19 Q. Doctor, did you also determine, based on your
20 expertise, a path that the shot followed after coming
21 into contact with Ms. Caraway?

22 A. Yes, sir.

23 Q. Can you give that information to the ladies and
24 gentlemen of the jury?

25 A. Yes, sir. So essentially what he means by path is

1 what structures on her body did the shot -- everything
2 went into her head, including the wadding and the casing
3 and the pellets. So all of those things. And then they
4 disburse as they go in. And I'll simply read to you what
5 I have here as the pathway.

6 MR. ROBINSON: And, Your Honor, just so I can
7 follow, what page are you reading from?

8 THE WITNESS: This is page three of the autopsy
9 report.

10 THE COURT: All right.

11 A. Okay. So the pathway is about mid-way through the
12 paragraph, the first paragraph on the page. It's through
13 the right frontal parietal scalp. So that's -- well, you
14 know what a scalp is. And then through the skull
15 underneath, the right frontal parietal skull, same area.
16 The dura, which is the covering over the brain, and into
17 the brain.

18 Q. Was there an exit wound on that particular ---

19 A. No. There were no exit wounds that I could identify
20 for sure. Now, the entrance wound was very large. So
21 although I'm describing a hole of about not quite one and
22 a half inches, there's skin splits that radiate out in a
23 much larger area. And so keeping that in mind, it's
24 possible that there were some of those little pellets
25 that managed to come out that I couldn't tell an extra

1 hole from. It could just come back out where that defect
2 is on her scalp already, but nothing that I could point
3 to.

4 Q. I did want to ask again the projectile trajectory is
5 noted in your report?

6 A. Yes, sir.

7 Q. Could you tell the ladies and gentlemen what that
8 was in your findings?

9 A. Yes. So the trajectory is sort of the direction it
10 is going when it hits her head, so which way, like that.
11 And -- okay. I state that the majority of the pellets
12 and the casing had traveled back and slightly down.

13 Q. Backwards and slightly down?

14 A. Correct.

15 Q. All right. Doctor, did you also note another injury
16 to Ms. Maxine Caraway separate and apart from the gunshot
17 wound?

18 A. Yes, sir.

19 Q. Would you tell the ladies and gentlemen of the jury
20 what that was?

21 A. Yes. She had a scrape above her right eye, she had
22 a bruise over her collar bone on the right side, and her
23 nose was broken.

24 Q. And what is the medical term for a broken nose?

25 A. A broken nose.

1 Q. Is it fracture? That's what you ---

2 A. Sure. Sure. So a fracture of the bone. But broken
3 nose will work too. It's a nasal bone fracture.

4 Q. A nasal bone fracture? I want to show you what's
5 been marked as State's Exhibit Number 37 and ask if you
6 can tell from that picture whether you see evidence of a
7 nasal bone fracture?

8 A. Yes, you do. The way that I determined that it was
9 really there -- I suspected it by looking -- but was by
10 feeling. So you can tell it. It might be, but I wasn't
11 sure until I felt it.

12 Q. Is it possible to have a nasal bone fracture and not
13 be able to feel it?

14 A. You mean as somebody who is trying to find it or ---

15 Q. No, ma'am. As being -- would you characterize what
16 you found on Ms. Caraway as a displaced fracture or non-
17 displaced fracture?

18 A. Well, again, it felt displaced because it would move
19 around like this.

20 Q. All right. Would you tell the jury what the
21 difference between non-displaced and displaced fracture
22 means?

23 A. Well, if it was non-displaced, basically ---

24 MR. ROBINSON: Your Honor, I'm going to object
25 to the relevance of this unless it's tied to the cause of

1 death.

2 THE COURT: I'm going to allow her to testify.

3 Overruled.

4 MR. FINNEY: Thank you.

5 A. So a non-displaced fracture I may not be able to
6 feel because the edges of the bone are still sort of
7 right up next to each other. So I might not feel that.
8 And unless it wiggles funny, I might not know that it's
9 fractured there. Whereas, a displaced fracture, the two
10 parts of the bone are kind of like that. They're not
11 still lined up. So if you pretend the fracture is where
12 my two fingers are touching, a displaced fracture would
13 be like that, and the non-displaced fracture would be
14 like that (demonstrating).

15 Q. Can you give, to a medical degree of reasonable
16 certainty, whether or not it takes more force to displace
17 than to have a fracture that's not displaced?

18 A. Yes, to a degree of medical certainty, yes, sir.

19 Q. Doctor, you said you would check all of the systems,
20 body systems, of Ms. Caraway, the musculoskeletal system,
21 the endocrine system. You tested a lot of the
22 respiratory systems. You looked at these things during
23 your autopsy?

24 A. Yes, sir.

25 Q. Did you find anything out of the ordinary for a

1 fifty-nine-year-old female that you made a report of?

2 A. The things that I noted were she has gallstones.

3 She had had her uterus and ovaries out at some point.

4 She had bumps on her spine, which is very normal with

5 aging. And she had mild obesity, just borderline

6 obesity.

7 Q. All right. And would you say as part of your

8 report, your medical findings, what did you summarize the

9 cause of death for Ms. Maxine Caraway?

10 A. Her cause of death is maceration of brain due to

11 shotgun wound to the head.

12 Q. And could you give us a legal, street term for

13 maceration?

14 A. Yes. So maceration is, essentially in this case

15 when the pellets and the wad shredded that side of her

16 brain.

17 Q. All right. Would death be instantaneous?

18 A. It may well be. Again, it's going to depend on

19 which structures are damaged. In this case, I think it

20 likely would have been.

21 Q. All right. Would that be supported, that opinion

22 you just offered be supported by the position of her body

23 that's shown in State's Exhibit 36?

24 A. Well, to that I cannot comment because I don't know

25 if that's how she landed or if she'd been moved or such.

1 But it seems possible.

2 Q. All right. Very good. Doctor, I'd like to turn
3 your attention to the autopsy of J.C. Was
4 J.C. seen by you on April 7, 2011?

5 A. Yes, sir.

6 Q. All right. And did you perform the same examination
7 of his body in an effort to determine the cause of death?

8 A. Yes, sir.

9 Q. What were your findings as a result of this autopsy
10 at the MUSC?

11 A. So in Baby Caraway's autopsy, it was quite similar.
12 Again, it was a shotgun wound to the head. In his case
13 there was just one shotgun wound, not another one. And
14 in his case it went -- it was at the face. So it went
15 through the eye and then through the skull and then the
16 covering over the brain and into the brain. But it
17 essentially had the same effect by shredding the brain on
18 that side.

19 Q. And did you say that was the right side?

20 A. Yes, sir.

21 Q. All right. Could you give us the size and weight of
22 the body of J.C. ?

23 A. Yes, sir. He is eighty-four centimeters and thirty
24 pounds. So ten centimeters is like this, so he's about
25 this big. And thirty pounds.

- 1 Q. All right. And did you find evidence of the bird
2 shot you mentioned and the wadding in J.C. ?
- 3 A. Yes, very similar to Ms. Caraway. The shot and the
4 wadding and the ammunition hold -- plastic casing --
5 there I go -- all went into his head, into his brain.
- 6 Q. Was there an exit wound on J.C. 's injury?
- 7 A. He does have an exit wound.
- 8 Q. Can you describe where it is?
- 9 A. Yes. It's at the -- I describe it as being at the
10 right temporal skull, so that's down here (indicating).
- 11 Q. And the direction of the projectile, if you can tell
12 us from your report?
- 13 A. Yes, sir. I state that the majority of the pellets
14 and the casing and wadding to travel in a more straight
15 back direction. So, again, starting at the eye and going
16 back.
- 17 Q. And would you give us your examination measurements
18 on the entrance wound and the exit wound?
- 19 A. The entrance wound to his right eye is just a bit
20 over one inch, one point one inch. And the exit
21 essentially -- and this is often the case with exit
22 wounds. When the skin opens up, you can re-approximate
23 it right back to where it is. You don't have any lost
24 skin. So essentially it's a wound that will close
25 completely. So the way that I describe it is as just it

1 re-approximate. And then skin splits, four skin splits,
2 up to three and a half inches. So it split out like
3 this.

4 Q. In your opinion, would the death of J.C.
5 have been instantaneous?

6 A. Yes, that is most likely.

7 Q. All right. Would you also go back one minute and
8 let me ask you one question. On the first autopsy you
9 performed on Ms. Caraway, you described there being an
10 injury to her head and her left hand?

11 A. That's correct.

12 Q. Did you find any evidence that suggested that it was
13 one shot that caused both of her injuries?

14 A. I do not have any evidence to suggest that it's one
15 shot or two shots.

16 Q. All right. And with J.C. , do you have any
17 evidence that there was more than one shot that caused
18 his death?

19 A. No, sir.

20 Q. Did you find any evidence of any other injuries on
21 J.C. that were significant as far as your
22 report?

23 A. No, sir.

24 Q. Would you summarize the death, the cause of death,
25 of J.C. ?

1 A. Yes, sir. His cause of death is listed as
2 maceration of the brain due to shotgun wound to the head.

3 Q. All right. In your report on Ms. Maxine Caraway, I
4 believe I saw in your diagnosis, your final diagnosis, on
5 page seven -- how did you describe in item one the
6 shotgun wound?

7 A. The shotgun wound is described as a close-range
8 penetrating shotgun wound to the head.

9 MR. ROBINSON: Your Honor, I'm going to object
10 and move to strike that. I think she testified earlier
11 that she couldn't determine. There was no soot or other
12 powder that would aid her in that.

13 THE COURT: Rephrase your question.

14 MR. FINNEY: Well, may I -- if it please the
15 Court.

16 THE COURT: Yes, sir.

17 Q. If you wrote this report after the examination of
18 Ms. Caraway, did you -- what evidence or process did you
19 use to come to that conclusion?

20 A. I'll be happy to answer that. So when a shotgun
21 shell leaves the muzzle or the end of a shotgun ---

22 MR. ROBINSON: And, Your Honor, I think this --
23 we're talking about ballistic expert.

24 THE COURT: Well, I think she's -- she's a
25 pathologist, and this is something within her area of

1 expertise. I'm going to overrule your objection.

2 A. When the shell leaves the muzzle or the end of the

3 shotgun, simple physics would explain -- and you can

4 imagine -- that as soon as that happens you have a little

5 buck -- a bunch of shot coming out, and you have the

6 casing and the wadding come out. And then the further

7 you get from where -- from any target, the more of those

8 things, all those different items, start to separate. So

9 the way that we can determine range of fire with a

10 shotgun is actually a little bit different than what we

11 do with a gunshot because as the distance increases, the

12 likelihood of the shot not going all into one hole

13 increases, the likelihood that the wadding or the casing

14 falls out or hits the skin beside the wound and doesn't

15 go into the wound increases. And then the likelihood

16 that you're going to get satellite or different shot

17 hitting around that one central wound increases. And as

18 you start to go further and further back, then the shots

19 start to spread out even more, you're not going to see

20 the central hole. All you're going to see is a bunch of

21 tiny holes where the bird shot hits. So it's just a

22 matter of looking for is there -- are there satellite

23 holes? Did all of the wadding and everything go into the

24 one hole? Or those sorts of things. Not anything too

25 complicated for me.

1 So in this case, in both the child and the
2 grandmother, there was one hole, and there were no
3 satellites, and all the wadding and the casing went into
4 that one central hole. So that suggests a close-range
5 shotgun wound.

6 Q. Thank you, Doctor. The evidence that you've just
7 spoken of, the bird shot pellets, the wadding, the
8 casing, were all those items that were retrieved during
9 the autopsy put in plastic evidence bags or containers
10 and turned over to the law enforcement personnel?

11 A. Yes, sir.

12 Q. All right. And was that done by you?

13 A. I can make sure.

14 Q. Yes, ma'am.

15 A. It was done by my pathologist assistant directly
16 under my supervision.

17 Q. And can you tell us today what those items were?

18 A. Yes, sir.

19 Q. And tell us for Ms. Maxine, please, first.

20 A. Yes. For Ms. Maxine: two black clogs, a nightgown
21 in a cupcake pattern, white panties, right fingernail
22 clippings, left fingernail clippings, pulled scalp hair,
23 a blood spot, wadding and recovered pellets, personal
24 effects -- in parenthesis I have hair rollers -- and a CD
25 with the images from the autopsy.

1 Q. And how was the blood spot collected?

2 A. The blood spot is collected on a round piece of
3 filter paper and dried on there and then placed into a
4 small manilla envelope and sealed with one of our label
5 stickers for the case.

6 Q. And do you know why that type of blood spot evidence
7 is collected from the body?

8 A. The usual reason is in order to compare that
9 person's DNA to either their own DNA from a different
10 source or to other people's DNA.

11 Q. And would you tell us what was collected from
12 J.C. ?

13 A. Yes, sir. From J.C. : blue jeans, a gray and
14 yellow long sleeve tee shirt, a white tee shirt, a
15 diaper, wadding and recovered pellets, a blood spot and
16 CD with images from the autopsy.

17 Q. Thank you very much, Doctor.

18 A. Yes, sir.

19 Q. Answer any questions the Defense may have.

20 A. Yes, sir.

21 MR. ROBINSON: Thank you, Your Honor.

22 THE COURT: Yes, sir, Mr. Robinson.

23 CROSS-EXAMINATION

24 BY MR. ROBINSON:

25 Q. Dr. Schandl, let me ask you a few questions, if I

- 1 could. And I'm going to start with Ms. Maxine. You
2 testified that she actually had two shotgun wounds?
- 3 A. That is correct.
- 4 Q. One to her left hand; right?
- 5 A. Yes, sir.
- 6 Q. And one to the right side of her head?
- 7 A. Yes, sir.
- 8 Q. Was it in the back of her head?
- 9 A. It was the -- no, it wasn't the back of her head.
10 It was sort of the side.
- 11 Q. Okay. So she was shot in the side of the head?
- 12 A. Yeah. A little bit towards the back, but not the
13 back.
- 14 Q. And your testimony is the trajectory was at a
15 downward and backward angle; is that right?
- 16 A. That's correct.
- 17 Q. So based on your expertise, that would have to mean
18 that the shooter was not necessarily -- certainly wasn't
19 behind her, was it?
- 20 A. I have no idea.
- 21 Q. Well, what does the trajectory mean to you?
- 22 A. It means the direction that the projectiles travel
23 through what I see, which in this case is her head. She
24 can move her head, she can turn around. So I don't know
25 who was in front or who was in back or where the people

1 were in this case.

2 Q. And you don't know how the hand was shot, whether it
3 was over here, two shots, nothing like that?

4 A. That is correct.

5 Q. Now, the trajectory that you noted, you said that
6 means nothing really other than an observation by you?

7 A. Well, what it means is the direction that the
8 projectiles are traveling through her brain.

9 Q. Okay. But from that, you can't determine where she
10 was positioned, the shooter position, anything of that
11 nature?

12 A. Not unless they're just going to stand very still.

13 Q. Okay. And you talked about the range. You said
14 close range?

15 A. Yes, sir.

16 Q. What does that mean?

17 A. Well, the only way to know for sure is to have the
18 same weapon -- in this case a shotgun -- and the same
19 ammunition with the same wadding, everything the same,
20 and then test fire it. And then what you do is you start
21 at, you know, right next to the target and see what that
22 looks like. And you back up and back up and back up, and
23 you back up until you get the same sort of pattern that
24 you see what you're trying to compare it to. In this
25 case, you know, J.C. 's face or her head or her hand.

1 So in this case, close range is that observation that
2 there is a single hole and that all the pellets and all
3 the wadding are going into that hole. As far as averages
4 and guesses, we can do that certainly. And it's usually
5 ---

6 Q. Well, I don't want you to average or guess. You
7 answered my question. There's no way to determine from
8 what you did, but there's certainly a way to determine
9 it?

10 A. Correct.

11 Q. And I guess it's never an exact range, but certainly
12 to a position where an expert can testify to a reasonable
13 degree of certainty that it was a certain distance; is
14 that right?

15 A. That's correct.

16 Q. Have you ever participated in those, perhaps not as
17 an expert in that area, but as a consultant to use the
18 correct medium that would represent the body part that
19 was being fired into?

20 A. No, sir.

21 Q. Are you aware of that being done?

22 A. Oh, yes, sir.

23 Q. Okay. Now, as far as the spread of the pellets, the
24 wadding, things of that nature, are there other factors
25 other than proximity to the target that could affect that

1 as well?

2 A. Yeah. The length of the barrel of the gun can
3 affect that as well. These are things that I don't know.

4 Q. Okay. What about the constriction of the end of the
5 barrel, choke sizes?

6 A. Yeah. That's why you want to use the same weapon
7 and the same ammunition in order to get that data.

8 Q. Okay. But what I'm saying is there are -- the
9 constriction at the end of the barrel affects the pattern
10 of the shot as it leaves the barrel. Would you agree
11 with that?

12 A. Yes, sir.

13 Q. Okay. And a tighter constriction can make a shot
14 hole tighter a further distance?

15 A. Now you're getting into ballistics.

16 Q. Well, I mean, you testified that it was a close
17 range. I just want to ---

18 A. That's correct. And I also testified what that
19 means to me.

20 Q. Okay. But what I'm saying is there are variables
21 that affect that?

22 A. That's true.

23 Q. Barrel length, choke constriction, shot size?

24 A. Yes, sir.

25 Q. Would you agree with that?

- 1 A. Yes, sir.
- 2 Q. You told there were two kinds of shot, buckshot and
- 3 bird shot. That's not completely accurate either, is it?
- 4 A. Of course not.
- 5 Q. There are ---
- 6 A. All the way in between.
- 7 Q. --- a multitude, teeny little dot all the way up to
- 8 buckshot; right?
- 9 A. And slugs.
- 10 Q. Right.
- 11 A. And anything else you want to put in there.
- 12 Q. Okay. And the material that the shot is made out of
- 13 would affect that. Lead, steel, bismuth, other types of
- 14 material would affect the pattern, the spread, that kind
- 15 of thing?
- 16 A. And this is why it's a good idea to test fire if you
- 17 want to know the exact or very close the range of fire.
- 18 Q. And that would probably have eliminated some of my
- 19 questions to you. Would you agree?
- 20 A. I have no idea.
- 21 Q. Now, the -- and you've already talked about the
- 22 trajectory. Does the angle of the trajectory mean
- 23 anything to you?
- 24 A. Again, it's the same number or the same concept.
- 25 All I know is where did it go in and where did it end up?

1 Q. Does that indicate a point of origin or path of
2 travel? Not necessarily the position of the shooter, but
3 the angle that the projectile was traveling before it
4 impacts the body?

5 A. Yeah, it does.

6 Q. So a downward trajectory would indicate that the
7 shoot was fired at least somewhat on a downward angle?

8 A. No, sir.

9 Q. Okay. What does that indicate?

10 A. To me it doesn't indicate anything about where the
11 two people are in space. Because, again, if she bends
12 over, it's coming straight at her and it's going down.
13 So, I mean, again, all I can tell you is where it went in
14 and where I see the projectiles end up.

15 Q. Well, what I'm talking about not in the positioning
16 of the people. The trajectory. Is it indicative of the
17 projectile or the trajectory before impact? In other
18 words, if it's downward, was it traveling downward when
19 it impacted her?

20 A. If she's sitting in an anatomical position, lying on
21 my autopsy table, yes.

22 Q. Well, that's what I'm asking. You can't move fast
23 enough after a bullet or a shotgun shell is fired at
24 close range to change the trajectory from the barrel to
25 your body, can you?

- 1 A. It's not after you're shot; it's before you're shot
2 that you're probably moving.
- 3 Q. I understand. But the angle of the gun and the
4 trajectory as the shot comes out of the gun at a close
5 range, and if it's a downward trajectory, would that
6 indicate that the shot came out of the gun at a downward
7 angle in relation to where it impacted the body?
- 8 A. No.
- 9 Q. So what ---
- 10 A. Well, what if the two people were laying on the
11 ground? You could still get a downward angle.
- 12 Q. I'm not talking about the people. I'm talking about
13 the angle of the gun.
- 14 A. Yeah, but as soon as you put somebody in there
15 that's holding a shotgun and you're saying something's
16 coming out of the shotgun, you're putting two people in
17 space. And I can't do that with my information.
- 18 Q. Okay. If I aimed at this ceiling, if I got on my
19 knees and got close to you and held the gun like that,
20 would you expect to see a downward trajectory in the
21 shot?
- 22 A. No. It should go up.
- 23 Q. Okay. So if I shoot down like that, the trajectory
24 should go down?
- 25 A. That's correct.

1 Q. And if I shoot straight on, the trajectory should go
2 straight on?

3 A. That's correct.

4 Q. And you indicated that Ms. Maxine's trajectory of
5 the shot in her head was down and back?

6 A. That is what I said.

7 Q. And that J.C. 's was pretty much straight in.

8 A. Straight back, yes.

9 Q. And did you, in your information, your findings,
10 have information as to the position of J.C. 's body at
11 the time of death or at the time that he was shot?

12 A. The only information that I have, I believe that I
13 was told that he was in a highchair.

14 Q. Okay. Sitting in a highchair; right?

15 A. That's my understanding.

16 Q. And from your -- the evidence that you've collected,
17 you're not able to make a determination of what size shot
18 or what gauge shotgun or type of shotgun, anything like
19 that?

20 A. Well, I have measurements of all those parts of the
21 shell. I don't know what shotgun it's from. Certainly
22 -- and that's one of the reasons I transfer all of that
23 evidence to law enforcement so that they can do the
24 ballistics.

25 Q. So they can give it to somebody else. Okay. I got

1 you. And let me ask you one final question. You talked
2 about evidence that was collected, the clothing, the
3 scalp samples. What about the fingernail clippings? Why
4 do you do that?

5 A. The reason that we collect fingernail clippings in a
6 homicide -- again, it's a thing that we do routinely --
7 is in case that there was a point in time when the victim
8 and the person who hurt the victim were in close quarters
9 and may have struggled with each other. So during that
10 time, it is possible that the person who -- all right.
11 So you have the dead guy and the not dead guy.

12 Q. Why don't you call them assailant or the bad guy.

13 A. Okay. The bad guy. Whatever. So there may be a
14 point in time where the dead person and the bad guy are
15 in close quarters and the DNA from the bad guy's skin or
16 other parts, might get up underneath the dead person's
17 fingernails. And so we collect those fingernails, again,
18 to send to -- to send as evidence in case that's
19 important to the case that they need to look for other
20 people's DNA under the fingernails.

21 Q. Thank you.

22 MR. ROBINSON: No further questions.

23 THE COURT: Any redirect?

24 MR. FINNEY: Thank you. No, Your Honor. I
25 thank the witness for coming and ask that she be allowed

1 to return to work.

2 MR. ROBINSON: No objection.

3 THE COURT: All right. Thank you.

4 Ladies and gentlemen, now is a perfect time to break
5 for lunch. Why don't we be back here at one-thirty.

6 Thank you, ladies and gentlemen.

7 THE FOREMAN: One thirty?

8 THE COURT: One thirty. Well, let's make it
9 two o'clock. Give you a little -- it's Friday. But be
10 back at two o'clock. Please do not discuss anything
11 about the case while you're there.

12 (WHEREUPON, the jury exited the open court at
13 approximately 12:20 p.m.)

14 THE COURT: Please be seated.

15 Now the court is in recess until two o'clock.

16 (WHEREUPON, Court stood at recess for a lunch
17 break.)

18 THE COURT: Anything before we bring the jury
19 back in?

20 MR. DURANT: Not from the State, Your Honor.

21 MR. ROBINSON: Nothing from the Defense, Your
22 Honor.

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

25 THE BAILIFF: One minute, Your Honor.

1 THE COURT: Give them the two-minute warning.

2 (WHEREUPON, the jury entered the open court at
3 approximately 2:01 p.m.)

4 THE COURT: Well, ladies and gentlemen, I'm
5 glad y'all came back. On a nice day like this and a
6 Friday, I was worried I was going to lose a couple of
7 you, but I didn't.

8 Is the State ready to proceed?

9 MR. DURANT: Yes, sir.

10 THE COURT: Is the Defense ready to proceed?

11 MR. ROBINSON: We're ready, Your Honor.

12 THE COURT: Call your next witness.

13 MR. DURANT: The State calls Jeff Crooks.

14 **JEFF CROOKS,**

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. DURANT:

18 Q. Agent Brooks, where are you employed?

19 A. The South Carolina State Law Enforcement Division,
20 commonly referred to as SLED.

21 Q. And how long have you worked for SLED?

22 A. Approximately sixteen years.

23 Q. In what capacity?

24 A. I'm the lieutenant of the latent print crime scene
25 department.

1 Q. And have you been in the same department the entire
2 time?

3 A. No, sir. I also spent five years as an investigator
4 in the upstate region in investigative services.

5 Q. Were you working for SLED crime scene back on April
6 the 6th of 2011?

7 A. Yes, sir, I was.

8 Q. Were you assigned to investigate a homicide or a
9 shooting here in Clarendon County?

10 A. Yes, sir, I was.

11 Q. And who were you accompanied by?

12 A. Special Agent Scott Hardy.

13 Q. Who made the request to SLED -- or tell me just --
14 tell the jury, if you would, how that comes about. How
15 does SLED get involved in a matter like that?

16 A. We received the request from the Sheriff's office.
17 They requested crime scene investigation assistance,
18 which is part of our function in our department. We
19 provide crime scene assistance to cities, counties, state
20 and federal agencies throughout the state as requested.

21 Q. And do you remember about what time of day it was
22 that you were notified or that y'all arrived on the
23 scene, I guess is the best question?

24 THE COURT: Hold on.

25 A. We were ---

1 THE COURT: Hold on one minute. Mr. Bellamy,
2 you need to step out for a minute.

3 THE FOREMAN: (Nodded head up and down in the
4 affirmative.)

5 THE COURT: Please go ahead.

6 (WHEREUPON, the juror exited the courtroom.)

7 THE COURT: Get an ambulance. Call 9-1-1.

8 (WHEREUPON, the jury exited the open court at
9 approximately 2:08 p.m. after which court stood at
10 ease.)

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

12 (WHEREUPON, the jury entered the open court at
13 approximately 2:21 p.m.)

14 THE COURT: All right, ladies and gentlemen.

15 Kind of let me kind of let you know what's going on. I
16 think your foreman's going to be fine. He actually
17 wanted to try to stay here, but the EMS said, "Look,
18 you've passed out one time. You're coming with us," you
19 know. But I think he's going to be okay. I talked to
20 him in the hallway. But he's certainly not in a position
21 to carry on with the trial this afternoon. So what we're
22 going to go ahead and do is we're going to recess for the
23 day with instructions not to talk to anybody over the
24 weekend. Lord, don't look at newspapers over this
25 weekend. And be back nine thirty Monday morning. If any

1 of you need for me or anybody else to call your employers
2 or anything like that, I'll be glad to. I hope that's
3 not necessary, but just let me know. Let Ms. Beulah know
4 if that's a problem for anybody. And we will have a nice
5 weekend and see y'all Monday morning at nine-thirty

6 Thank you, ladies and gentlemen.

7 (WHEREUPON, the jury exited the open court at
8 approximately 2:22 p.m.)

9 THE COURT: Are you the last one out?

10 THE JUROR: Yes, sir.

11 THE COURT: Okay. Thank you. Have a nice
12 weekend.

13 THE JUROR: Sorry.

14 (WHEREUPON, the juror exited the courtroom.

15 THE COURT: All right. Obviously, we're not
16 going forward this afternoon, so court's adjourned until
17 9:30 Monday morning.

18 Sir, I understand you may have something to do on
19 Monday, but this is taking precedent over that so they
20 may can work something out. But otherwise, I'm going to
21 -- your subpoena runs out today except I just renewed it
22 until time for your testimony.

23 THE WITNESS: Yes, sir.

24 THE COURT: All right. Thank you.

25 Thank you, ladies and gentlemen.

1 MR. FINNEY: Thank you, Your Honor.

2 THE COURT: Keep our foreman in your prayers
3 over the weekend.

4 (WHEREUPON, court stood in recess for the day at
5 approximately 2:24 p.m.)

6 **March 18, 2014**

7 (WHEREUPON, court convened with all parties present
8 and the following proceedings were had commencing
9 at approximately 9:33 a.m.)

10 THE COURT: Is the jury ready?

11 Anything before we bring the jury in, from the
12 State?

13 MR. DURANT: Nothing from the State, Your
14 Honor.

15 MR. ROBINSON: Nothing, Your Honor.

16 THE COURT: All right. We've had a brief
17 delay, but we're ready to get back and start moving
18 again. Bring our jury in, find out who the new foreman
19 is.

20 (WHEREUPON, the jury entered the open court at
21 approximately 9:34 a.m.)

22 THE COURT: Good morning, ladies and
23 gentlemen. We had a longer break than we expected. And
24 we got the call from your previous foreman Mr. Bellamy's
25 doctor yesterday. Said he will not be able to return.

1 So please keep him in your prayers. Who has been
2 elected as your new foreperson?

3 THE JUROR: (Raised hand)

4 THE COURT: All right. And your name, sir?

5 THE JUROR: Mr. Letourneau.

6 THE COURT: Mr. Letourneau. Okay.

7 And, ma'am, you are now a primary juror.

8 THE JUROR: (Nodded head up and down in the
9 affirmative)

10 THE COURT: So you will be the jury that makes
11 the decision in this case. The parties are ready to
12 start presenting their evidence again, and we will be
13 ready to listen to it.

14 Is the State ready?

15 MR. DURANT: Yes, sir, Your Honor.

16 THE COURT: Is the Defense ready?

17 MR. ROBINSON: We're ready, Your Honor.

18 THE COURT: All right. You may call your next
19 witness.

20 MR. DURANT: Thank you, Your Honor. Good
21 morning.

22 THE COURT: Good morning.

23 MR. DURANT: The State calls Investigator
24 Kenny Clark.

25 **KENNETH CLARK,**

1 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MR. DURANT:

4 Q. Investigator Clark, tell the jury where you work.

5 A. Presently, I work with the Clarendon County
6 Sheriff's Office.

7 Q. How long have you worked for the Sheriff's office?

8 A. Approximately twenty-four years.

9 Q. And what is your current title at the Sheriff's
10 office?

11 A. Senior investigator.

12 Q. How long have you been an investigator?

13 A. I started in investigation about four years ago.

14 Q. Let me direct your attention now back to April the
15 6th of 2011. Do you remember that day?

16 A. Yes, I do.

17 Q. Anything stand out about it to you?

18 A. Well, yes.

19 Q. Tell me what -- did you become involved in an
20 investigation of a homicide that day?

21 A. Yes.

22 Q. What was your involvement?

23 A. What bring back to recollection on that day, we was
24 dispatched out to Carissa Lane or Drive. First we heard
25 the call came out that it was a fight in that area. And

1 then later we heard Corporal, Lance Corporal Charles
2 Eaddy, came over the radio and stated that he was out
3 with someone who had stated that someone was shot in the
4 area, the same area. We proceeded -- myself, I
5 proceeded out to that location along with other
6 Clarendon County law enforcement officers. My position,
7 I was probably about the fifth or sixth person who
8 arrived on Carissa Lane. I posted myself at the corner
9 of June Burn Road and Carissa Lane to divert traffic
10 from going -- any unwanted traffic from going up the
11 driveway.

12 Q. And did you later that morning have occasion to
13 accompany the victim, Kaisha Caraway, to the hospital?

14 A. Yes, later that afternoon.

15 Q. When you went to the hospital with Kaisha, do you
16 remember what time it was?

17 A. I don't remember right off. It was -- if I
18 remember correctly, it was before lunch hour, I think it
19 was. Not positive because we're looking back to 2011.

20 Q. Did you observe any injuries to Ms. Caraway's
21 person?

22 A. Yes. On her left shoulder, upper shoulder if I'm
23 correct, she had injuries there. Across her forehead
24 there was injuries. There was a bruise, if I remember
25 correctly, across her nose area and the neck area.

- 1 Q. Did you take any photographs of those injuries?
- 2 A. Yes, I did.
- 3 Q. And where were those photographs taken?
- 4 A. It was taken at the Clarendon Memorial Hospital at
- 5 the ER.
- 6 Q. Let me show you State's Exhibit 4 and ask if you
- 7 recognize that?
- 8 A. Yes. This is the victim, Kaisha Caraway.
- 9 Q. Did you take that photograph?
- 10 A. Yes, I did.
- 11 Q. Is that a fair representation of her condition on
- 12 the morning of April the 6th of 2011?
- 13 A. Yes, it is.
- 14 Q. Let me show you State's Exhibit 5 and 6 and ask if
- 15 you recognize those?
- 16 A. Yes.
- 17 Q. And what are they?
- 18 A. We have a flesh wound to the left shoulder, upper
- 19 shoulder, area. And also on the right breast area there
- 20 is a -- like a blood bruise wound there also.
- 21 Q. And did you take those photographs as well?
- 22 A. Yes, I did.
- 23 Q. Are those fair representations of Ms. Caraway's
- 24 condition on the morning of April 6th?
- 25 A. Yes, it is.

1 MR. DURANT: Your Honor, I'd ask to admit
2 State's Exhibit 4, 5, and 6 into evidence.

3 THE COURT: Any objection?

4 MR. ROBINSON: I just want to look at them
5 real quick, Your Honor.

6 THE COURT: Five is already in evidence. This
7 will just be 4 and 6.

8 MR. ROBINSON: No objection.

9 THE COURT: Without objection, exhibits 4 and
10 6 are admitted. Five is already in.

11 (WHEREUPON, State's Exhibit Numbers 4 and 6 were
12 admitted into evidence.)

13 MR. DURANT: Thank you. I beg the Court's
14 indulgence just one moment.

15 THE COURT: Yes.

16 Q. Investigator, if you would, if you'd point out on
17 State's Exhibit 4 the bruising or the injury that you
18 say you saw to Ms. Caraway's forehead?

19 A. Yes. That is the bruise we see in the picture here
20 on the forehead. Picture taken at the Clarendon
21 Memorial ER.

22 Q. And State's 5, is that the injury you saw of Ms.
23 Caraway's left shoulder at the hospital?

24 A. Yes, it is.

25 Q. State's 6, that's again -- that's the injury you

1 saw to Ms. Caraway's person at the hospital?

2 A. Yes, it is.

3 Q. Investigator, while you were at the hospital
4 speaking to Ms. Caraway, did you have occasion to
5 perform any other test of her person?

6 A. Yes, I did. I performed a gunshot residue test
7 along with a buccal swab.

8 Q. And that -- have you performed a gunshot residue
9 test before?

10 A. Yes.

11 Q. Have you collected that evidence before?

12 A. Yes.

13 Q. And you're familiar with the procedures involved in
14 collecting that evidence?

15 A. Yes. It's a step-by-step procedure, and the
16 instructions comes with the package.

17 Q. Okay. And did you follow the instructions on the
18 package?

19 A. Yes, I did.

20 Q. After you collected the gunshot residue, did you
21 seal the kit?

22 A. Yes, I did.

23 Q. And what did you do with the kit afterwards?

24 A. The kit was passed over to the evidence custodian.

25 (WHEREUPON, State's Exhibit Number 72 was marked

1 for identification only.)

2 Q. Let me show you what's been marked for purposes of
3 identification State's 72 and ask if you recognize that?

4 A. Yes.

5 Q. What is it?

6 A. This is the gunshot residue kit that was performed
7 on Kaisha Caraway.

8 Q. Okay. And you collected that kit?

9 A. Yes.

10 Q. Did you seal this package?

11 A. Yes, I did.

12 Q. Investigator Clark, you've testified that you're
13 familiar with the procedure in the collection of gunshot
14 residue. Do you allow an individual to wash their hands
15 before collecting that evidence?

16 A. No.

17 Q. And what's the reason for that?

18 A. Because if you allow them to wash their hands, then
19 possibly you can -- the residue can come off by washing
20 their hands. And that would definitely interfere with
21 the kit with collecting the proper residue.

22 Q. And you were with Ms. Caraway at the hospital the
23 entire time?

24 A. Yes. She was actually -- I followed her by EMS,
25 followed her to the hospital, retrieved a kit from my

1 vehicle and then walked in the ER.

2 Q. Did you allow her to wash her hands before you
3 collected the gunshot residue?

4 A. No, sir.

5 Q. And you testified that you took a buccal swab of
6 her as well?

7 A. Yes.

8 Q. What is that?

9 A. The buccal swab is actually collecting DNA. You
10 actually use a swab-type Q-tip. It's like a giant Q-
11 tip. And there is instruction that comes with the
12 package. And you swab the inside of the right and left
13 jaw, have them to close their mouth for a few seconds,
14 and you retrieve the DNA saliva from their body.

15 Q. And after you collected the buccal swab, what did
16 you do with it?

17 A. It was sealed, and it was passed on to evidence.

18 Q. At the Sheriff's office?

19 A. Yes.

20 Q. Investigator Clark, I don't have any further
21 questions for you at this time. Please answer any Mr.
22 Robinson might have.

23 THE COURT: Mr. Robinson?

24 MR. ROBINSON: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. ROBINSON:

2 Q. Investigator Clark, did you make any notes of your
3 time spent with Ms. Caraway at the hospital to document
4 important times?

5 A. I don't recall because I was performing the tests.
6 I was there along with SLED Agent Tina Carter. And I
7 think she was note-taker at the time because I had my
8 kit laid out to perform the tests, both tests.

9 Q. Okay. Let me ask you to look at what has been
10 marked State's Exhibit 72. You see under your name in
11 the chain of possession. Is there a date and a time
12 blank there?

13 A. Yes.

14 Q. Are those filled in?

15 A. No, it's not.

16 Q. What was the reason for those were not filled in?

17 A. Normally this test is accompanied by a chain of
18 evidence. Normally the chain of evidence form is filled
19 out, and it accompanies with this, attached with it.
20 That would have all the information on there with the
21 date and so forth.

22 Q. So that would be the most accurate method for you
23 to recall what date and time that this GSR kit was
24 taken?

25 A. Yes.

1 Q. Let me hand you this, if I could. Do you recognize
2 that?

3 A. Yes.

4 Q. Is that the chain of evidence sheet that you just
5 mentioned or a copy of it? I know it's not the
6 original. Is that a copy of the chain of evidence sheet
7 you just mentioned?

8 A. Yes, this is a copy.

9 Q. Okay. Does that appear to be an accurate copy?

10 A. Yes.

11 Q. And in the date and time section of that chain of
12 evidence sheet, what time does it say that you collected
13 this GSR kit?

14 A. Okay. The time is 12:06 a.m.

15 Q. And what date?

16 A. The date on here is the 7th.

17 Q. April the 7th. So it was actually after midnight
18 the next day? Or after midnight of the 6th. In other
19 words, it was twelve hours plus later, according to your
20 record?

21 A. According to this. But the gunshot residue kit was
22 taken at the ER.

23 Q. Okay. But you just told me that that would be the
24 most accurate record because you didn't write the time
25 and date on the kit itself, didn't you?

1 A. Yes. What I think we have here is the date, the
2 date is the 7th, 4/7/2011, 12:06. And actually the date
3 should have been the 6th. That's the date of the
4 incident.

5 Q. It couldn't have been 12:06 A.M. on the 6th, could
6 it? That was before the incident took place.

7 A. Well, the gunshot residue test was performed at the
8 ER. I have pictures actually would show the kit where I
9 had it spread out. So the picture would prove that the
10 test was done at the ER.

11 Q. So are you telling me that the inventory sheet is
12 incorrect?

13 A. I don't have an explanation right now to explain
14 the date on that, but I can testify to you that the test
15 was performed at the Clarendon Memorial Hospital.

16 Q. Okay. Now ---

17 A. And I do have a witness to prove that it was there.

18 Q. Okay. So if Ms. Caraway told this jury earlier
19 that the test was performed later that afternoon at the
20 Sheriff's department, her memory is incorrect?

21 MR. DURANT: Objection, Your Honor. Pitting
22 witnesses.

23 THE COURT: Sustained.

24 Q. You said Ms. Tina Carter was your note taker?

25 A. Yes. She was there. I remember the incident

1 because I asked the nurse staff to use a table where I
2 spread the gunshot residue kit out on the table.
3 Because when performing that test, you need to line
4 everything up. And I used a table from the emergency
5 room.

6 Q. Okay. Let me ask you if you've had an opportunity
7 to look at this before?

8 A. I can't say that I have.

9 Q. Can you identify it or tell me what it is based on
10 what's on it?

11 A. It is a report from SLED Agent Tina Carter.

12 Q. Okay. And does it reference an interview with you
13 and Ms. Caraway?

14 A. If you'll give me a second, I'll scan it, please.

15 Q. Okay. I'm sorry.

16 A. (Reviewed document)

17 MR. ROBINSON: And, Your Honor, while he's
18 reading that, I would move Defendant's Number 2 into
19 evidence along with what's been marked State's 72. They
20 marked it for identification, but didn't move it in. If
21 they need me to re-mark it, I'll be glad to.

22 THE COURT: Any objection?

23 MR. DURANT: No, sir.

24 THE COURT: Without objection, Defendant's
25 Exhibit Number 2 is admitted.

1 (WHEREUPON, Defendant's Exhibit Number 2 was marked
2 and admitted into evidence).

3 MR. ROBINSON: And, Your Honor, the same for
4 State's 72?

5 THE COURT: Any objection to 72 coming in?

6 MR. DURANT: No, Your Honor.

7 (WHEREUPON, State's Exhibit Number 72 was admitted
8 into evidence.)

9 A. Yes, sir.

10 Q. Okay. Does that appear to be an accurate
11 memorandum of an interview that you and Ms. Carter
12 conducted with Ms. Caraway?

13 A. Yes, it is.

14 Q. And you've already told us that Ms. Carter is the
15 SLED Agent; right?

16 A. Yes.

17 Q. Tina Carter?

18 A. Yes.

19 Q. That she was kind of the note taker and kept up
20 with the times and the dates?

21 A. Yes, at the time we was at the ER.

22 Q. Okay. Tell me where in that particular memorandum
23 it says that that interview took place and what time?

24 A. According to this memorandum, on April the 6th,
25 2011, at approximately five o'clock, interview with

1 myself and Agent Carter at the Clarendon County Sheriff
2 Office.

3 Q. Okay.. It doesn't mention anything about the
4 emergency room, does it?

5 A. No, it doesn't mention anything about the emergency
6 room.

7 Q. So is that another mistake much like the evidence
8 chain that you don't have information for or ---

9 A. It's not a mistake, sir. The gunshot residue,
10 buccal swab was performed at the Clarendon Memorial ER
11 without a doubt.

12 Q. Okay. But you don't have any documentation to that
13 effect?

14 A. No, sir. But I can swear to it as I am telling you
15 now, it was performed there. And if I'm not mistaken,
16 you can see part of the test in some pictures I have.

17 Q. Okay. Well, let me ask you this, Mr. Clark. You
18 said if you're not mistaken. Isn't it crucial as an
19 investigator to document these types of things so that
20 their accuracy can be preserved for times like today?

21 A. Yes. Yes, it is. We're human. Sometimes we do
22 make errors.

23 Q. Okay. So if the actual sheet that you've used to
24 document this is erroneous, how can you ask me or this
25 jury to accept as accurate any other information that

1 comes from this test?

2 A. It's accurate. And we can contest that with the
3 victim because she can testify and say that it was done
4 at the ER.

5 Q. Okay. And if she has a different recollection ---

6 A. And actually we can verify through Agent Carter
7 that it was done at the ER.

8 Q. Okay.

9 A. And we can verify through my pictures that it was
10 done at the ER.

11 Q. But you can't verify through the normal
12 documentation required of the GSR kit that it was done
13 at the ER, can you?

14 A. It may be a typo there on the sheet there.

15 Q. It may be a typo? Did you say ---

16 A. It possibly may be.

17 Q. How about the -- State's Exhibit 72? Wouldn't we
18 probably not be having this discussion if the date and
19 time were not left blank?

20 A. This area here is actually a chain once it goes to
21 SLED, as I testified earlier. We use our personal chain
22 of evidence sheet. We necessarily don't have to write
23 the chain down here when it goes to SLED. And that's
24 probably why it stopped here. After putting my name
25 here, you don't have to put any further document there.

1 Once it get to SLED, then they do their chain -- they
2 write their chain here. We normally use and we do use
3 our own chain that follows, not on the package on
4 itself.

5 Q. Okay. So even though the instructions ---

6 A. That's the reason why we do have that form.

7 Q. Even though the ---

8 A. And that is the form we use. I'm sorry.

9 Q. I'm sorry. Please finish.

10 A. And that is the form that we use.

11 Q. Okay. So even though the instructions that perhaps
12 come with this kit, that you tell me you followed, would
13 indicate that you need to fill out the form with the
14 date and time, that's not something y'all normally do?

15 A. It is on ---

16 Q. It's on that one?

17 A. Yes.

18 Q. It's on Defendant's Exhibit 2, the date and time?

19 A. Yes. On the chain.

20 Q. Okay. Okay. Investigator Clark, you said you
21 followed the ambulance to the hospital that Ms. Caraway
22 was transported in; is that correct?

23 A. Yes. I went after.

24 Q. Do you know whether or not they did anything to
25 clean or disinfect Ms. Caraway in the ambulance?

1 A. Not that I know of.

2 Q. Do you know exactly when at the hospital the GSR
3 kit was taken?

4 A. Time-wise?

5 Q. Yes, sir.

6 A. I don't remember exactly what time. When the
7 ambulance pulled up under the Sally port, I was in the
8 parking lot. And I retrieved a kit from my vehicle and
9 walked in along when they had her on the gurney pushing
10 her in.

11 Q. Did you call -- personally, did you call in the
12 transport? In other words, did you get on the radio and
13 say, "We've got a gunshot victim coming to the
14 hospital," or anything like that?

15 A. I can't swear to it, sir. 2011, I cannot swear to
16 it.

17 Q. Okay. Do you recall that the doctor said, "Go
18 ahead, Mr. Clark. Do what you need to do. We'll treat
19 Ms. Caraway later?" Or did they say, "We need to treat
20 her first, and then you can perform your tests"?

21 A. No. I did the tests first. And normally, we sign
22 out at location. So it would have been documented
23 through our CAD sheet that I sign out at the ER.

24 Q. Let me ask you this. Did you collect Ms. Caraway's
25 clothing from her at the emergency room?

1 A. It was collected. I can't remember whether I was
2 the one that collect it or not. It's in my photos. Her
3 bloody clothes is in the photos. But I can't say at
4 this moment that I collect them.

5 Q. Okay. That's what I was going to ask you about,
6 her bloody clothes. From your observation, there
7 appeared to be blood stains on her clothing?

8 A. Yes.

9 Q. Her shoes?

10 A. I remember on the baby shoes, definitely on the
11 pink, because that stick in my mind.

12 Q. Pink shoes?

13 A. The little girl had pink shoes, and was blood on
14 her shoes.

15 Q. Okay. And you're sure it was the little girl's
16 shoes that were pink or you're sure they were pink shoes
17 with blood on them?

18 A. They was pink shoes. I'm thinking it's the little
19 girl's shoes that stand out. If I remember correctly,
20 Ms. Kaisha had on blue jeans. And was blood spots on
21 the blue jeans.

22 Q. How about the little girl's sock? Do you remember
23 taking a photograph of her socks with blood on the
24 bottom of it? Of K.C.'s sock?

25 A. Yes.

1 Q. Investigator Clark, do you know who makes the
2 determination what evidence is tested by SLED? Is that
3 something that you were involved in in this particular
4 process?

5 A. No. Once it's submitted to SLED, then they make
6 the decision. Depends on the number because they have
7 their criteria. A lot of our cases such as this, we may
8 send up thirty items and maybe forty items. But they do
9 have like a limitation. So they make the decision what
10 is tested and what is not.

11 Q. So to your knowledge they never consulted the
12 investigative agency as to what gets tested?

13 A. Possible. I can't remember.

14 Q. Okay. But you didn't get consulted in this case?

15 A. No. I wasn't the lead investigator on this, so I
16 wouldn't have.

17 Q. And who was that?

18 A. Investigator Ricky Richards.

19 Q. Okay. Now, were you responsible for collecting any
20 other evidence, either at the scene or at the hospital,
21 anything of that nature?

22 A. No, sir. I was not on the inside of the scene.

23 Q. Okay. So basically what you did is you accompanied
24 Ms. Caraway or followed her to the hospital?

25 A. I did. And before that, I did some investigation

1 outside of the scene.

2 Q. Okay. Let me ask you this. When you got there,
3 you said there was a fair amount of people already
4 there?

5 A. No, sir. There was traffic up and down the
6 highway. Now, there was emergency vehicles in the
7 driveway.

8 Q. Right. And that's what I say. When I say a fair
9 amount of people, I don't mean strangers. I'm talking
10 about law enforcement, EMS, things of that nature.

11 A. Yes. Uh-huh (affirmative).

12 Q. Do you know Trooper Robert Falls?

13 A. Yes, I do.

14 Q. Was he there at that time? Do you remember?

15 A. I don't remember. Sorry.

16 Q. Okay. Do you know what kind of vehicle he drives
17 or drove back then?

18 A. Robert had so many. I think his last vehicle might
19 have been a Crown Victoria.

20 Q. Okay. And how about Charles Eaddy at that time?
21 Was Charles still driving a Crown Vic too?

22 A. Yes, sir, I think he was.

23 Q. Do you remember anybody doing any tire track
24 sampling or anything of that nature?

25 A. No, sir. I was not in the scene. I was posted at

1 the corner of June Burn and Carissa.

2 Q. Okay. Just trying to keep people from going up and
3 down and further ---

4 A. Yeah.

5 Q. --- polluting the scene?

6 A. Yes.

7 Q. Okay.

8 A. And pretty much also tried to interview. It was
9 one neighbor at the corner at Carissa and June Burn Road
10 that I got a chance to -- I spoke to a Mr. Henry
11 Abraham.

12 Q. Okay. Did you speak with him alone?

13 A. Pretty much. He was standing in the yard by
14 himself.

15 Q. What I meant, were you alone? Was there another --
16 was Mark Creech or anybody like that from SLED with you?

17 A. No, sir. And I documented the short conversation
18 with -- it's in my investigation notes.

19 Q. Okay.

20 MR. ROBINSON: The Court's indulgence for just
21 a moment, Your Honor.

22 THE COURT: Yes, sir.

23 Q. Investigator Clark, one last question just to make
24 sure I'm clear and not confused. On State's Exhibit --
25 and I believe it's 72, the GSR kit itself. Yeah,

1 State's Exhibit 72 -- you said the chain of possession
2 is usually filled out after SLED gets it? Is that what
3 I understood you to say?

4 A. No. What I was explaining that the bottom part is
5 for their use.

6 Q. For SLED's use?

7 A. For its use. We use our own sheet for chain of
8 evidence. We don't go down into the bottom.

9 Q. Okay. And just based on your knowledge and what
10 you just said, does the fact that that bottom sheet is
11 not filled out indicate that SLED never got that?

12 A. No, sir. No, sir. I said it's for their use. If
13 they choose to use that when they get -- we use the
14 chain of evidence sheet that we have here in ...

15 Q. Okay. Okay. I just wanted to make sure I was
16 clear. Thank you.

17 MR. ROBINSON: No further questions.

18 THE COURT: Any redirect?

19 MR. DURANT: Yes, sir.

20 REDIRECT EXAMINATION

21 BY MR. DURANT:

22 Q. Investigator Carter, Mr Robinson asked you about
23 collecting clothes from Ms. Caraway at the hospital. Do
24 you remember doing that?

25 A. I told him that I don't remember whether I

1 collected clothes or not.

2 Q. And let me show you a document and ask what that
3 is.

4 A. This is our chain of evidence sheet where clothing
5 -- where it shows that one pink-in-color sneaker, ladies
6 gray-in-color blouse, ladies blue jeans was collected
7 from the victim, Kaisha Caraway. It was collected by
8 myself. And it actually shows from myself to evidence.
9 And it also shows that date back where it was April the
10 7th, 2011. So actually what it was, the date the
11 incident occurred that Mr. Scott was talking about, it
12 actually -- the incident occurred on the 6th. And
13 actually I was dating everything on the 7th because this
14 is the date at the ER where clothes was taken. So
15 that's a mistake on my behalf. Instead of putting the
16 6th date, it was the 7th date.

17 (WHEREUPON State's Exhibit Number 73 was marked for
18 identification only.)

19 Q. Okay. Let me show you what's been marked for
20 purposes of identification as State's 73 and ask you
21 what -- if you recognize that?

22 A. Yes. That those pink sneakers that stand out in my
23 mind. I'll never forget those sneakers.

24 Q. These are the shoes you collected from Kaisha
25 Caraway at the hospital?

1 A. Yes, according to the evidence sheet.

2 Q. And when you collected those shoes, what did you do
3 with them?

4 A. They was documented on this sheet, and they were
5 passed on to evidence.

6 Q. Okay. Let me show you another document and ask you
7 what that is?

8 A. This also is an evidence inventory sheet. And it
9 shows item one being a pellet from a gunshot wound from
10 Kaisha Caraway.

11 Q. Okay. And look to the bottom of that document and
12 tell me if there's a time stated when that evidence
13 might have been collected?

14 A. Okay. The time is actually 15:22, which is 3:22
15 P.M.

16 Q. And who was it collected by?

17 A. We have a Joseph -- I'll spell his last name. D-E-

18 Q ---

19 MR. ROBINSON: Your Honor, I'm going to object
20 to that. That's hearsay. That's hearsay, Your Honor.

21 THE COURT: That's hearsay. Sustained.

22 MR. DURANT: Your Honor, may we approach?

23 THE COURT: You may.

24 MR. DURANT: Let me ask him a question before.

25 THE COURT: Okay.

1 Q. Investigator Clark, were you present when that
2 evidence was collected?

3 A. Yes. It has my signature.

4 Q. Did you witness the signature of the individual you
5 were just speaking of?

6 A. Yes.

7 MR. DURANT: Your Honor, may we approach?

8 THE COURT: You may.

9 (WHEREUPON, a bench conference was held off the
10 record.)

11 THE COURT: All right. The objection is over
12 -- or is actually withdrawn.

13 MR. ROBINSON: That's correct, Your Honor.

14 Q. So, Investigator Clark, if you're looking at that
15 document, and the first line of the transfer of the
16 chain of evidence is from a doctor to you, what's the
17 next line?

18 A. From myself to evidence custodian.

19 Q. And what time was that?

20 A. That's at 12:07 A.M.

21 Q. So does the -- the 12:07 A.M., is that the time
22 that you transferred this evidence into evidence at the
23 Sheriff's office and to an evidence custodian there and
24 not when you collected it?

25 A. Yeah. And that's correct. Normally if we -- when

1 we have a case such as we have here, if an evidence
2 custodian is not available and we have a large amount,
3 we secure the evidence. And then at the nearest
4 convenient time, it is passed over directly to evidence
5 custodian.

6 Q. So if we're looking at Defendant's Exhibit 2, this
7 time is 12:06 A.M., what does that time represent?

8 A. Well, that's the same time on this -- or close to
9 the time that's on this evidence sheet that where the
10 evidence was all passed over to evidence custodian.

11 Q. Okay. So that's the time you transferred it at the
12 Sheriff's office and not when it was collected?

13 A. Yes, that's correct. And that's why we see the 7th
14 date on there. That really clears it up. Sorry.

15 Q. And let me show you one more document and ask you
16 if you recognize that?

17 A. Yes. This is a supplemental report that I did.

18 Q. Who prepared that report?

19 A. I did.

20 Q. So is there any reference in that report, and does
21 it refresh your recollection as to when you may have
22 recovered or collected that gunshot residue kit from the
23 victim?

24 A. Yes. It has the date of April the 6th, 2011.

25 Q. Any reference in that report to you collecting a

1 gunshot residue kit from Kaisha Caraway?

2 A. Yes. Let me scan this right quick, please.

3 Q. Specifically looking at the second paragraph on the
4 report.

5 A. Yes. Second paragraph say, "However, the
6 investigation continued at the Clarendon County
7 Emergency Room with victim Kaisha Caraway. There at the
8 emergency room, as part of the investigation, I
9 performed a gunshot residue test and buccal swab of the
10 victim."

11 Q. And the clothes you testified that you collected
12 from Ms. Caraway, you didn't wait until midnight that
13 evening to collect them?

14 A. No.

15 Q. When she was in the hospital, did they give her a
16 gown to wear?

17 A. Yes, she did have a gown.

18 Q. So when the clothes were collected at the hospital,
19 was she wearing a gown ---

20 MR. ROBINSON: Your Honor, I'm going to object
21 to the leading. I understand this is recross [sic].

22 THE COURT: Rephrase your question.

23 Q. Taking a look again at State's Exhibit 6, what's
24 Ms. Caraway wearing in that picture?

25 A. She's wearing a hospital gown.

1 Q. What's she sitting on in that picture?

2 A. Hospital bed.

3 Q. Okay. So where was that picture taken?

4 A. At the Clarendon County Emergency Room.

5 Q. Okay. Did you collect that gunshot residue at the
6 same time that you collected Ms. Caraway's clothes?

7 A. Yes.

8 Q. And where was that done?

9 A. Inside the Clarendon County Emergency Room.

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

11 THE COURT: Any recross based on his redirect?

12 MR. ROBINSON: Just briefly, Your Honor.

13 RECCROSS EXAMINATION

14 BY MR. ROBINSON:

15 Q. Investigator Clark?

16 A. Uh-huh (affirmative).

17 Q. Help me, please, let me know about your memory. Is
18 this a typographical error, or is that the time that you
19 turned the stuff in to evidence -- which one is it -- on
20 Defendant's Exhibit 2? Because you've testified to
21 both. I just want to make sure that I'm clear.

22 A. Yes. Let me clarify that. That is the time --
23 because looking at the date, I wasn't sure that I made a
24 mistake on the date. If I made a mistake, then well, I
25 would have -- as I testified to, I would take the

1 responsibility for it. But after looking at my
2 statement here, it actually clarified that all evidence
3 was taken on April the 6th, 2011, passed on to evidence
4 custodian April the 7th, 2011.

5 Q. Okay. And if you would, I think you have those
6 three documents in front of you, State's Exhibit 72,
7 your supplemental report, and Defendant's Exhibit 2.
8 How about quickly review all three of those and tell
9 this jury exactly what time you collected that GSR
10 evidence, please, sir.

11 A. Okay. On this chain of evidence, the evidence was
12 collected -- it shows when I passed the evidence over to
13 custodian.

14 Q. I understand ---

15 A. And that was on the 7th.

16 Q. When did you collect it from Ms. Caraway at the
17 emergency room?

18 A. It do not have a date on the chain sheet, the date
19 or time, that it was collected.

20 Q. None of those documents that you just used to
21 refresh your memory and clarify things?

22 A. Not on this one here. Can I see the other ones?

23 Q. I think they're in front of you. What other. ---

24 A. No, no. I only have one chain sheet. It was the
25 one with the clothes on it also. Can I see the one with

1 the clothes?

2 Q. There's the one with the clothes.

3 A. Okay. Do you have another one there in your hand?

4 Q. I do. I have the other one that you looked at that
5 had the pellet that you logged what time you got that
6 from a doctor.

7 A. Yes.

8 Q. Okay.

9 A. And that was the same time I was at the ER on the
10 6th.

11 Q. Okay.

12 A. And this is at -- actually at 3:22 P.M.

13 Q. So did you get the pellet from the doctor before or
14 after you did the gunshot residue?

15 A. That was around the same time while Ms. Kaisha was
16 at the hospital. Everything was done while she was at
17 the ER. It's no mistake on that. Everything was done
18 while she was there.

19 Q. And how long was she there?

20 A. I can give you an approximate time. We're looking
21 back from 2011. I can give you approximate time.

22 Q. So in other words -- and let me make sure I'm
23 right. The best you can do at this point as far as what
24 time you collected this evidence is guess; is that
25 right?

1 A. No. I can go by my documents here that the time
2 was -- the evidence was collected around the same time
3 that the pellets was passed over from the doctor to
4 myself ...

5 Q. Okay.

6 A. ... that was retrieved form Kaisha's shoulder.

7 Q. So did you do the gunshot residue after the doctor
8 retrieved the pellet or while he was retrieving the
9 pellet?

10 A. I can tell you it was around the same time.
11 Everything was performed at the hospital.

12 Q. Okay. So was it before ---

13 A. I can't tell you whether it was before -- if your
14 question is was it before 15:22 or after 15:22, I cannot
15 attest to that.

16 Q. Okay.

17 MR. ROBINSON: No further questions, Your
18 Honor.

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

21 The State may call its next witness.

22 MR. DURANT: The State calls Scott Hardee.

23 **SCOTT HARDEE,**

24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MR. DURANT:

2 Q. Agent Hardee, tell the jury where you work.

3 A. I'm a special agent with the South Carolina Law
4 Enforcement Division, more commonly referred to as SLED.

5 Q. How long have you worked for SLED?

6 A. Since May 2nd of 2008.

7 Q. Are you assigned to a particular unit or department
8 at SLED?

9 A. Currently, I'm assigned to the arson
10 investigations.

11 Q. Prior to going to arson investigations, what did
12 you do?

13 A. I was a crime scene investigator.

14 Q. And generally, what does a SLED crime scene
15 investigator do?

16 A. We respond to crime scenes at the request of a
17 local agency. And once we respond, we investigate the
18 crime scene.

19 Q. And did you receive a request from the Sheriff's
20 office on April 6th, 2011, to assist with a crime scene
21 here in Clarendon County?

22 A. Yes, sir. On April 6th, 2011, at approximately
23 10:29, we received a request from Ricky Richards from
24 the Clarendon County Sheriff's Office.

25 Q. A.M. or P.M.?

1 A. This would be A.M.

2 Q. When did y'all -- well, tell me first of all, I
3 guess, was anybody with you? Anybody help you?

4 A. Yes. We drove separately. But Special Agent Jeff
5 Crooks, who's currently a lieutenant -- but back then he
6 was special agent -- he responded to assist with the
7 crime scene investigation.

8 Q. And is that what time y'all arrived on the scene?

9 A. Arrival on scene for me was at 11:54 A.M. I don't
10 have a time for Lieutenant Crooks' arrival.

11 Q. When y'all got to the crime scene, what did you
12 first do?

13 A. Generally, when we arrive to any crime scene, the
14 first thing we do is meet with the local agency.
15 They'll brief us, tell us what happened, what
16 information they've gotten so far. After that, we begin
17 documenting the crime scene before anything else is
18 touched. After we document the crime scene, we look for
19 items of evidence. After we find the items of evidence,
20 we'll mark it and re-photograph that scene with markers
21 to document it. After that, we begin collecting the
22 evidence, and we package it and then transport it back
23 to -- well, let me step back. Some agencies would like
24 us just to collect it and turn it over to them. You
25 have other agencies that would like us to collect it and

1 then transport it back to the SLED forensics building
2 for further analysis.

3 Q. You said that y'all document and re-photograph. So
4 when you initially document it, you're taking pictures?

5 A. Right. We take pictures before anything is -- once
6 we arrive we take pictures of the crime scene as it was
7 when we arrived before anything is reintroduced or
8 introduced into the scene. That could be -- in that
9 case, it would be markers. Markers is an introduction
10 of something added to the crime scene. So we photograph
11 it first, showing what the crime scene appeared as how
12 we saw it. And then we re-photograph with markers if
13 markers are necessary.

14 Q. Okay. I would like to show you a series of
15 photographs and have you tell us whether those
16 photographs are accurate representations and whether you
17 can identify any items you may have collected as
18 evidence.

19 A. Okay. I'll be glad to.

20 Q. I show you State's Exhibit 10, ask you what that
21 is?

22 A. All right. This is the residence that we responded
23 to, which is going to be in Manning.
24 And showing April 6th on that, but it wasn't taken by me
25 unless that was added to my photograph.

1 Q. No.

2 A. Okay.

3 Q. State's 11?

4 A. This is going to be another photograph from a
5 different angle of the same address that I responded to.

6 Q. All right. And kind of -- can you tell me whether
7 there are any items depicted in those photographs that
8 you may have collected as evidence?

9 A. Yes, sir. In the foreground of the photograph,
10 there is a shotgun. We collected that shotgun.

11 Q. Let me show you State's 30 and ask if you recognize
12 that?

13 A. All right. This is the shotgun that we collected.

14 Q. Did you take that photograph?

15 A. Yes.

16 Q. And is it a fair representation of the shotgun?

17 A. Yes, sir, it is.

18 MR. DURANT: Your Honor, I'd ask to move
19 State's 30 into evidence.

20 THE COURT: Any objection?

21 MR. ROBINSON: No objection.

22 THE COURT: Without objection, State's Exhibit
23 30 is admitted.

24 (WHEREUPON, State's Exhibit Number 30 was admitted
25 into evidence.)

1 Q. Agent, could you tell me whether there's a serial
2 number depicted on the shotgun in that photograph?

3 A. Yes, sir. Right above the trigger guard and the
4 trigger, you have the serial number right below a bolt.

5 Q. And that shotgun was collected as evidence in this
6 case?

7 A. Yes, sir, it was.

8 Q. What was done with it?

9 A. Once it was collected, it was packaged. And Jeff
10 Crooks transported it back to the SLED forensics
11 building.

12 MR. DURANT: With the Court's permission ---

13 Q. I'd like to have you identify the item in this box.

14 A. Okay..

15 Q. And ask you what it is?

16 A. Here you go.

17 Q. If you would, go ahead and open it up for us and
18 tell us what it is.

19 A. All right. All right. That is the shotgun that I
20 collected.

21 Q. Is the serial number depicted on the shotgun?

22 A. Yes, sir. Do you want me to read it out loud?

23 Q. If you would, please.

24 A. Okay. It's going to be MV40993P.

25 MADAM COURT REPORTER: MD --

1 THE WITNESS: M as in Mike, V as in Victor,
2 40993, P as in Papa.

3 (WHEREUPON, State's Exhibit Number 74 was marked
4 for identification only.)

5 MR. DURANT: Your Honor, at this time, I'd ask
6 to move State's Exhibit 74 into evidence.

7 THE COURT: Any objection?

8 MR. ROBINSON: No objection, Your Honor.

9 THE COURT: Without objection, State's Exhibit
10 74 is admitted.

11 (WHEREUPON, State's Exhibit Number 74 was admitted
12 into evidence.)

13 Q. And, again, once you collected that shotgun, what
14 was done with it?

15 A. Once it was collected, it was placed into Jeff
16 Crooks' vehicle to be transported back to SLED at the
17 end of our crime scene time.

18 Q. Were you present when the evidence was packaged to
19 be sent back to SLED?

20 A. Yes.

21 Q. You and Mr. Crooks, did y'all do things together
22 that day?

23 A. Yeah. Generally, on most occasions -- and I say on
24 most occasions because sometimes there is an instance
25 where one of us may have to respond to a hospital or to

1 a secondary scene depending on weather conditions. This
2 time the weather was clear. The temperature was
3 approximately sixty degrees Fahrenheit. A nice day. So
4 we were able to work that scene together. Photograph.
5 And then we always work the exterior and then try to go
6 in, into the residence. And so we were together for
7 just about everything.

8 Q. Including evidence collection?

9 A. Yes.

10 Q. And once the item, that shotgun, was taken back to
11 SLED, have you had any further contact with it?

12 A. Yes. We -- Agent Hallman and myself, we processed
13 the evidence for latent print evidence. And then after
14 that, it was -- DNA swabs were collected, and then it
15 was sent on to firearms.

16 Q. And did you collect those DNA swabs?

17 A. Yes. One of us did it together.

18 Q. And was the shotgun actually in the same condition
19 as you found it when you discovered it on the scene?

20 A. Correct.

21 Q. And what did you do with those DNA swabs and the
22 shotgun after you collected them?

23 A. DNA swabs would have been forwarded on to the DNA
24 lab for further analysis.

25 Q. Okay. Were they sealed?

1 A. Yes. The way we package our DNA swabs, we get two
2 swabs. If the item is dry, we'll use distilled water
3 that we get from the lab, and we'll swab the area. If
4 the items is wet, you just collect it right off the
5 swab. Then after that, we stick it into a small -- I
6 guess for comparison it would be like a small point
7 envelope, manilla in color. There's writing on the
8 front that we fill out. And then we seal the envelope
9 and use tamper tape and initial and date it.

10 Q. Do you remember when those swabs were collected?

11 A. Not right off the top of my head. That would be
12 something that would be in the evidence processing notes
13 which I don't have access to.

14 Q. Are you familiar with what those look like?

15 A. The?

16 Q. Evidence process notes.

17 A. It would just be worksheets that when we go and
18 work in the lab, we write down what we do. We call them
19 worksheets.

20 Q. Do you remember what areas of the shotgun you
21 swabbed for DNA evidence?

22 A. It would have been the trigger, the trigger guard,
23 probably the forearm. And this is just without, I mean,
24 without proof that I actually see them where we
25 collected from, which would been documented on those

1 envelopes. Probably around the barrel, in that area.

2 Q. You said a few minutes ago that y'all worked the
3 crime scene from the outside in, so that was taken
4 outside. Let me show you State's Exhibit 34 and 35 and
5 ask if you recognize those?

6 A. Okay. Yes. This is where one of the victims was
7 located outside the residence.

8 Q. And the yellow numbers in that picture, what are
9 those?

10 A. Those are our evidence markers.

11 Q. State's Exhibit 34 and 35, are those fair
12 representations of -- first of all, did you take those
13 pictures?

14 A. Yes, sir, I did.

15 Q. Are those a fair representation of the crime scene
16 that day?

17 A. Yes, sir, it is.

18 MR. DURANT: Your Honor, I'd ask to move
19 State's 34 and 35 into evidence.

20 THE COURT: Any objection?

21 MR. ROBINSON: Let me look at them real quick.

22 No objection.

23 THE COURT: Without objection, State's
24 Exhibits 34 and 35 are admitted into evidence.

25 (WHEREUPON, State's Exhibit Numbers 34 and 35 were

1 admitted into evidence.)

2 Q. Agent Hardy, if you would, tell the jurors what
3 particular items of evidence are marked by the numbers
4 four, five, and seven that we can see in State's 34?

5 A. Okay. Let's see. Okay. Evidence marker four will
6 be a battery cover. And that would have been a battery
7 cover to the -- not cell phone, cordless phone.

8 MADAM COURT REPORTER: I'm sorry. What kind
9 of phone?

10 THE WITNESS: Cordless. A cordless telephone.

11 A. Then item number five would have been a hair
12 curler, and item number seven would have been the
13 cordless phone.

14 Q. And you've already stated what four and five were.
15 What does marker number six represent?

16 A. Number six will be another hair curler.

17 Q. I show you State's 36 and ask if you recognize
18 that.

19 A. Yes, sir. That's going to be the victim lying on
20 the ground beside the sedan.

21 Q. Did you take that photograph?

22 A. Yes, sir, I did.

23 Q. Is it a fair representation of the location and the
24 manner in which you found the victim that day?

25 A. Yes, sir, it is.

1 MR. DURANT: And I'd ask to admit State's 36
2 into evidence.

3 MR. ROBINSON: May we approach, Your Honor?

4 THE COURT: You may.

5 (WHEREUPON, a bench conference was held off the
6 record.)

7 THE COURT: Any objection, Mr. Robinson?

8 MR. ROBINSON: Your Honor, I renew my earlier
9 objection.

10 THE COURT: All right. It was overruled.

11 (WHEREUPON, State's Exhibit Number 36 was admitted
12 into evidence.)

13 Q. Agent Hardee, if you would, tell me in this
14 photograph are there any items of evidence that you
15 collected visible?

16 A. The one that's most visible right now will be
17 beside the victim's left ear and shoulder. That's the
18 cordless phone that was marked as item number seven.
19 Over in the distance up from her left hand, kind of in
20 the shadow of the vehicle, that's a curler.

21 Q. And staying outside, Agent Hardee, I'm going to
22 show you State's 40 and 32. Okay. Tell me what those
23 are.

24 A. All right. State's Exhibit 40 is going to be a
25 photograph of the front porch area of the residence on

1 Carissa Lane with markers eleven and twelve in front of
2 the porch. Then State's Exhibit 32 is going to be
3 another photograph of a different angle of the front
4 porch showing evidence markers two and three.

5 MR. DURANT: State's 40 is already in
6 evidence. I'd ask to admit State's 32.

7 MR. ROBINSON: No objection to 32.

8 THE COURT: Without objection, State's Exhibit
9 32 is admitted.

10 (WHEREUPON, State's Exhibit Number 32 was admitted
11 into evidence.)

12 Q. Agent Hardee, if you would, tell the jury what the
13 markers depicted in State's 40 represent.

14 A. Okay. In State's Exhibit 40, the markers represent
15 a brick that was kind of out of place. Marker number
16 twelve depicts a shirt that was found actually kind of
17 in-between the rungs of the banister, post, whatever.
18 Then marker two is going to be a shot shell. And marker
19 number three, we located some suspected blood on the
20 concrete of that front porch.

21 (WHEREUPON, State's Exhibit 75 was marked for
22 identification only.)

23 Q. I hand you State's 75 and ask you what that is?

24 A. In this exhibit, State's Exhibit 75, this is going
25 to be the red shirt that is depicted in the photograph

1 with marker number twelve.

2 MR. DURANT: Your Honor, I'd ask to admit
3 State's 75 into evidence.

4 THE COURT: Any objection, Mr. Robinson?

5 MR. ROBINSON: No objection.

6 THE COURT: Without objection, State's Exhibit
7 75 is admitted.

8 (WHEREUPON, State's Exhibit Number 75 was admitted
9 into evidence.)

10 Q. State's 75, is this shirt in the same condition as
11 you found it that day?

12 A. Turn it around, please. I can't recall if it's in
13 the same exact condition. It looks like -- turn it
14 around one more time.

15 Q. Are you looking for any markings that SLED may have
16 on the shirt?

17 A. Yeah, because it looks like there's a cut right
18 here and a cut right there. And I can't recall on my
19 memory alone if that was the condition of the shirt
20 without my documentation. But it's the same color as
21 the shirt that I collected.

22 Q. Is it the policy of SLED to make markings on a
23 shirt if they were to make cuttings on it?

24 A. To be honest with you, I'm not familiar with the
25 policy for other labs within the SLED lab. So I don't

1 know what -- I wouldn't be able to testify to what DNA's
2 policy would be or what Trace's policies would be.

3 Q. So the hole in the shirt, you don't know how it got
4 there?

5 A. Right. These cuttings right here, I don't know how
6 they got there.

7 Q. Let me show you State's 32. Again, tell me what
8 items are depicted in markers two and three?

9 A. Okay. In marker two, that's going to be a shot
10 shell that was located on the front porch. And marker
11 number three was suspect blood that we located.

12 Q. Okay. State's Exhibit 33, is that the same shell
13 found on the front porch of the residence?

14 A. Yes, sir, it is. Just a closer-up photo of it.

15 Q. Is that the condition that you found the shotgun
16 shell?

17 A. Yes, sir.

18 Q. Can you tell from that picture whether that shell
19 is live or whether it's already been expended?

20 A. It's already been expended. At the top, the top
21 has already released the shot shells, the pellets.

22 Q. Moving into the residence, let me show you State's
23 23 and 24 and ask if you recognize those?

24 A. Okay. State's Exhibit 23, that's a photograph of
25 the front door to the porch. And State's Exhibit 24 is

1 another photograph of the front door of the porch
2 showing the lock.

3 Q. Okay. Is that the condition that you found the
4 front door on April the 6th?

5 A. Yes, sir, it is.

6 MR. DURANT: 23 and 24 are already in
7 evidence.

8 THE COURT: Already in evidence.

9 Q. I show you 12 and 13 and ask if you recognize
10 those?

11 A. All right. State's Exhibit 12 is going to be a
12 photograph of the front door and the porch area with a
13 child's car seat, a booster seat actually, at the front
14 door, at the threshold. Then State's Exhibit 13 shows
15 the first room when you walk into that front door, into
16 the -- a dining room area with a broken chair, another
17 car seat, and appears to be suspected blood on the chair
18 and on the floor.

19 Q. Is State's 12 and 13 how you found the dining room
20 area in the house on April 6th?

21 A. Yes, sir.

22 MR. DURANT: Already in evidence.

23 THE COURT: All right.

24 Q. After moving through the dining room, Agent Hardee,
25 what area of the house did you enter?

1 A. After walking through the dining room, we would
2 have entered into the kitchen area. From my memory, and
3 actually from a diagram, when you entered the front door
4 where the dining room area was, there's another door
5 that led to the kitchen. It was kind of a
6 kitchen/family room, open-floor plan concept of that
7 room.

8 Q. Let me show you State's 14 and ask you what that
9 is.

10 A. Okay. This is going to be -- this is going to be
11 the little -- excuse me. This is going to be the family
12 room area where the television was and a couple of
13 couches.

14 Q. Any items of evidence depicted in that picture you
15 may have collected?.

16 A. Yes, sir. You're going to have a shot shell at the
17 threshold of this family room that goes into another
18 room, and you're also going to have a shot shell over
19 near a waste basket going from this room to the hallway.

20 MR. DURANT: Your Honor, State's 14 is already
21 in evidence.

22 Q. I'm going to show you State's Exhibit 44 and ask
23 you if you recognize that?

24 A. Yes, sir, I do. This is another photograph that I
25 took. And this was taken in the family room near one of

1 the -- the kitchen counter. And that's a love seat.

2 And there's going to be photograph of a wig, a sock, and

3 -- I don't recall what that other item is. It looks

4 like a rag of some sort.

5 Q. Is that a fair representation of the scene in the

6 living room area as you found it on April 6, 2011?

7 A. Yes, sir, it is.

8 MR. DURANT: And I move to admit State's 44

9 into evidence.

10 THE COURT: Any objection?

11 MR. ROBINSON: No objection.

12 THE COURT: Without objection, State's Exhibit

13 44 is admitted.

14 (WHEREUPON, State's Exhibit Number 44 was admitted

15 into evidence.)

16 Q. Now, let me show you State's 49, 43, and 50 and ask

17 you if you recognize those?

18 A. Yes, sir. With State's Exhibit 49, which is

19 identified with my marker number thirteen, it's a shot

20 shell that was located in this family room area at the

21 threshold to a room, directly past it. State's Exhibit

22 43 is a photograph with marker fourteen next to the wig

23 in that same family room area. And then State's Exhibit

24 50 is a photograph of the family room at the threshold

25 to the hallway. And it's got marker number fifteen

1 indicating a shot shell and shot shell wadding.

2 MR. DURANT: And I'd ask to move State's 49
3 and 50 into evidence.

4 THE COURT: Any objection?

5 MR. ROBINSON: No objection.

6 THE COURT: Without objection State's 49 and
7 50 are admitted.

8 (WHEREUPON, State's Exhibit Numbers 49 and 50 were
9 admitted into evidence.)

10 MR. DURANT: And State's 43 is already in
11 evidence.

12 Q. And this is the same wig that you pointed out
13 earlier?

14 A. Yes, sir, it is.

15 Q. And, again, tell me where State's 49 was located?

16 A. That's going to be in the family room, right at the
17 threshold to a -- I guess it would be a family formal
18 living room. There was a couch and a piano and another
19 love seat in that room, and it was carpeted. So that
20 would at the threshold to those two rooms.

21 Q. Looking at State's 53, can you tell me where that
22 shotgun shell was located?

23 THE WITNESS: May I stand?

24 THE COURT: You may. Please speak loudly.

25 THE WITNESS: Yes, sir.

1 (WHEREUPON, the witness stepped down from the
2 witness stand.)

3 A. Okay. The shot shell -- here's going to be your
4 front porch. This is going to be the dining room, the
5 formal dining room. This is going to be the family room
6 right here with the kitchen, and then the family room
7 with the TV would have been right here. Marker thirteen
8 with the shot shell would have been right here at the
9 threshold to the family room and this formal living
10 room.

11 Q. I show you State's 50, which is marker number
12 fifteen. Tell the jury where that evidence was located.

13 A. Okay. This evidence, marker number fifteen, right
14 here you have a family room and the long hallway. It's
15 going to be right here at the threshold. You can see
16 where the floors change. And that's where that would
17 have been located.

18 Q. We see the shotgun shell to the right of the
19 marker. What's the item to the left of the marker
20 number fifteen?

21 A. That's the wadding to the shot shell.

22 Q. Was that wadding collected as evidence as well?

23 A. Yes, sir, it would have been.

24 Q. And after you move through the living room area,
25 Agent, tell me what area of the house you would have

1 gone to next?

2 A. During the general photographs, we would have gone
3 through every room. Actually, at the time -- we
4 actually entered -- when we started photographing the
5 inside of the house, Agent Crooks and myself entered
6 through the formal living room. It will be easier to
7 show y'all. We actually -- that was a little too close.
8 We actually entered through this room right here,
9 started photographing. Then came here and photographed.
10 And to give you the actual sequence of photographs I
11 took, we'd have to look at my photographs because they
12 are in the sequence that I actually took the
13 photographs.

14 Q. At some point did you move down the hallway
15 depicted in that dining room?

16 A. Yes, sir.

17 Q. Let me show you State's 16 and ask you if -- if you
18 would tell me if you recognize that photograph.

19 A. Yes, sir. This would have been a photograph taken
20 -- it would have been from the family room area, maybe a
21 little bit in the hallway, showing longways down the
22 hallway towards the back of that hall.

23 Q. Did you see any items of evidentiary value that you
24 would have documented?

25 A. Yes, sir. At the end of the hallway on the right-

1 hand side of the door on the wall, there was a shot
2 shell blast.

3 MR. ROBINSON: Your Honor, I'm going to object
4 to that. I think that calls for speculation. He hasn't
5 been qualified as an expert to identify that. It's just
6 a hole in the wall period.

7 THE COURT: I don't think you need to be an
8 expert to know what a blast is from a shotgun.
9 Overruled.

10 Q. I show you State's 48 and ask if you recognize that
11 photograph.

12 A. That's a close photograph of that area of the wall
13 that I just saw in the other photo showing shot shell
14 patterns and the actual -- a closer-up of the hole.

15 MR. DURANT: State's 48 is already in
16 evidence.

17 Q. If you would point out on the diagram what area of
18 the house that shotgun blast was found.

19 A. Okay. You have a hallway right here. This door,
20 it would have been right here along this door right here
21 that led to this last bedroom.

22 Q. And now I'd like to show you State's 17 and 20. If
23 you would, tell me what those are?

24 A. All right. State's Exhibit 17, that's going to be
25 a photograph of the entrance to the bathroom which would

1 have been right here towards the end of the hall from
2 the family room. And then State's Exhibit 20 is going
3 to be a photograph of the door to that bathroom taken
4 from -- this photograph was taken from inside the
5 bathroom.

6 Q. And State's 17 and 20, do they depict the condition
7 that you found the bathroom door in on April 6, 2011?

8 A. Yes, sir, they do.

9 MR. DURANT: 17 and 20 are already in
10 evidence, Your Honor.

11 THE COURT: All right.

12 Q. Agent Hardee, was there a handle on the inside of
13 that bathroom door when you arrived at the residence on
14 April 6th of 2011?

15 A. I believe there was. I would have to see the
16 photographs to jog my memory.

17 Q. Let me show you State's 46. If you would, tell me
18 what that is.

19 A. This is going to be a closeup of that door around
20 the doorknob.

21 Q. Did you take that photograph?

22 A. Yes, sir, I did.

23 MR. DURANT: And State's 46 is already in
24 evidence.

25 THE COURT: All right. You may publish.

1 Q. Agent Hardee, let me show you State's 51. And if
2 you would, tell the jury what's depicted in that
3 photograph.

4 A. This is a photograph taken from the bathroom right
5 above the sink and below the bathroom mirror. It shows
6 what appears to be where pellets have struck the wall
7 and the back splash to that sink and bathroom.

8 Q. The measuring tape in that photograph, is that
9 something that was there already, or did you ---

10 A. No. I placed that there.

11 MR. DURANT: State's 51 is already in
12 evidence, Your Honor.

13 THE COURT: All right.

14 Q. I'm going to show you State's 18. And if you would
15 tell the jury what's depicted in that photograph?

16 A. Okay. In this photograph, it's going to be the
17 bathroom floor right there by the threshold to the
18 hallway in the bathroom door where the mat was. And
19 it's -- in this photo is a shot shell, the wadding, a
20 tooth brush, and a pair of nail clippers.

21 MR. DURANT: Judge, 18 is already in evidence.

22 Q. Agent, if you would, point out to the jury where
23 the shotgun shell and the wadding you testified are in
24 State's 18.

25 A. Okay. The wadding is going to be right at the

1 threshold, towards the bottom of the picture right
2 before you get to the brown rug.

3 Q. Is this it?

4 A. That's it. And then the shot shell's going to be
5 just above the red and white toothbrush.

6 Q. Okay. All right. I'm going to show you State's
7 19. And if you would, tell the jury if you recognize
8 that photograph?

9 A. Yes, sir. This is going to be a closeup of the
10 shot shell, which is identified with my evidence marker
11 number sixteen.

12 Q. Did you take that picture?

13 A. Yes, sir, I did.

14 MR. DURANT: I'd ask to move State's 19 into
15 evidence, Your Honor.

16 THE COURT: Any objection?

17 MR. ROBINSON: No objection.

18 THE COURT: Without objection, State's Exhibit
19 19 is admitted into evidence.

20 (WHEREUPON, State's exhibit Number 19 was admitted
21 into evidence.)

22 Q. Agent Hardee, can you tell from State's 19 whether
23 or not that shotgun shell had already been fired?

24 A. It had been fired. Yes, sir.

25 Q. Agent Hardee, if you would have your seat back.

1 (WHEREUPON, the witness resumed the witness stand.)

2 Q. And let me show you a few items of evidence.

3 (WHEREUPON, State's Exhibit Number 76 was marked
4 for identification only.)

5 Q. Let me show you State's 76. If you would, tell me
6 what that is?

7 A. Okay. State's Exhibit 76 is going to be one red
8 Winchester shot shell, 12-gauge, identified with marker
9 number two in my photographs. It was collected on that
10 day at 4:50 P.M.

11 Q. Okay. And tell me again where that item was
12 located on the diagram?

13 A. On the diagram with marker number two. That's
14 going to be outside on the front porch.

15 Q. Okay. What was done with State's Exhibit 76.

16 THE COURT: Yes, sir.

17 MR. ROBINSON: Your Honor, I was just going to
18 stipulate. I imagine he'll go through all four of them,
19 and I'm just presuming that's what's in the bag. As
20 much as he needs to testify about the location, I'm
21 fine. But I'll stipulate that those four shells come
22 in.

23 THE COURT: All right. Very well.

24 MR. DURANT: Thank you, Your Honor.

25 THE COURT: So that would be 76, 77, 78, and

1 79?

2 MR. DURANT: Yes, sir, Your Honor.

3 THE COURT: Are admitted into evidence per
4 stipulation by Mr. Robinson.

5 (WHEREUPON, State's Exhibit Number 76 was admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit Numbers 77, 78, and 79
8 were marked and admitted into evidence.)

9 (WHEREUPON, State's Exhibit Number 80 was marked
10 for identification only.)

11 Q. I show you State's Exhibit 80 and ask you what that
12 is?

13 A. Okay. State's Exhibit 80 is going to be four shot
14 shells, Winchester red, from a glove box that was
15 locked. The glove box was from a vehicle with South
16 Carolina tag GRE 939. I collected it on April 6, 2011,
17 at 11:22 P.M.

18 Q. Okay. And you placed it in that evidence bag?

19 A. Yes, I did.

20 Q. And what was done with those shotgun shells after
21 you collected them?

22 A. After I collected them, they were -- well, I'll
23 tell you exactly. Hold on one second. They were sent
24 for latent prints and DNA analysis. So they would have
25 been processed in the latent print department. And then

1 after that, they would have been sent to DNA.

2 Q. Did you log them in to evidence at SLED?

3 A. Yes, sir, I did.

4 Q. When you logged them at SLED, were they in the same
5 condition as they were when you recovered them?

6 A. Yes, sir, they were.

7 Q. And you testified that those shotgun shells were
8 located in a vehicle. State's 25, is that the vehicle
9 you found those shells in?

10 A. Yes, sir, it is.

11 Q. And let me show you State's 26, 28 and 29 and ask
12 you if you could identify those photographs?

13 A. Yes, sir. These are photographs that I took of
14 that vehicle that was located in the front of that
15 property with the same tag number. That was photograph
16 -- that was exhibit 26. Exhibit 28 was a photograph I
17 took of the trunk area of that vehicle. And then
18 State's Exhibit 29 is another photograph that I took of
19 the inside of the glove box.

20 MR. DURANT: Your Honor, I'd ask to move
21 State's 26, 28, and 29 into evidence.

22 THE COURT: Any objection?

23 MR. ROBINSON: No objection, Your Honor.

24 THE COURT: Without objection, State's Exhibit
25 26, 27, and 29 are admitted.

1 MR. ROBINSON: Your Honor, I think it's 26,
2 28, and 29.

3 THE COURT: Okay. I'm sorry.

4 (WHEREUPON, State's Exhibit Numbers 26, 28, and 29
5 were admitted into evidence.

6 Q. State's 26, again, Agent Hardee, is that the
7 vehicle that you recovered shotgun shells from?

8 A. Yes, sir, it is.

9 Q. State's 29, are those the shotgun shells that you
10 testified you recovered from the glove box of the
11 vehicle?

12 A. Yes, sir.

13 Q. And State's 28, what is that?

14 A. That's a photograph of the interior of the trunk.

15 Q. Okay. Do you see any items in that photograph that
16 you may have collected as evidence?

17 A. No, sir.

18 Q. Can you tell me what the brown case or bag depicted
19 in that photograph is?

20 A. It appears to be a zippered soft rifle or shotgun
21 case.

22 Q. And, again, State's 28, is that the inside of this
23 trunk?

24 A. Yes, sir, it is.

25 Q. Agent Hardee, tell me, if you would, when y'all

1 were on the scene, did y'all fingerprint the trunk area
2 of the car?

3 A. No, sir.

4 Q. Is that something that y'all do at a crime scene?
5 Do y'all collect fingerprints?

6 A. Depending on the circumstances of the crime scene.
7 In this case, we were briefed by the investigators that
8 they had somebody in custody. The person that was in
9 custody at the time was the owner of that vehicle.
10 Therefore, that wouldn't have been something we would
11 have processed. And it's something that we would have
12 also discussed with the investigators.

13 Q. Okay. What other test or evidence collection
14 procedures, I guess, did y'all conduct on the scene?

15 A. We completed a crime scene diagram. We got a
16 gunshot residue of the victim from outside. We also got
17 her major case prints for elimination purposes. We
18 collected blood DNA. We collected firearms. We took
19 measurements. And we also did a Panoscan of that scene.

20 Q. You say you collected gunshot residue from the
21 victim?

22 A. Yes. That would have been a Ms. Caraway, Maxine
23 Caraway.

24 Q. You did that on the scene?

25 A. Yes, sir, we did, right before the paramedics took

1 her or the transport.

2 (WHEREUPON, State's Exhibit Number 81 was marked
3 for identification only.)

4 Q. I show you State's 81. Tell me if you recognize
5 that.

6 A. Yes, sir.

7 Q. What is it?

8 A. This is the GSR kit that I collected, that actually
9 Crooks and I collected. It would have been collected at
10 3:50 P.M. on April 6, 2011.

11 Q. What was done with that GSR kit after it was
12 collected?

13 A. Once it was collected, it was sealed by me, and
14 then it would have been logged in to evidence and sent
15 up to trace for analysis.

16 Q. So you did the diagram, you did the GSR kit of Ms.
17 Caraway. Any other evidence collection procedures
18 inside? Did y'all dust for fingerprints, footprints,
19 that kind of thing?

20 A. We did footprints. We did process the house for
21 fingerprint evidence based on the investigation. Like I
22 said, when we work an investigation, we normally work
23 hand-in-hand with the investigators while they're
24 running down leads. In this case, we decided it wasn't
25 necessary to process stuff at the scene for latent

1 prints. We could process stuff back in the lab. We did
2 use a chemical called LCV, leucocrystal violent. And
3 it's used to enhance footwear and blood. And Agent
4 Crooks is a footwear/tire examiner. He sprayed the area
5 with the LCV while I was there to see if we could
6 enhance any footprints in blood. And then it was
7 photographed to a one-to-one scale.

8 Q. Did you find any identifiable footprints?

9 A. I don't know if they were identifiable -- they were
10 photographed -- because to be identifiable they would
11 have to go through an examiner that's certified as tire
12 and footwear examiner. I'm not, so I wouldn't be able
13 to make that call.

14 Q. But you did photograph some areas that you --
15 you're positive they're pictures of footprints?

16 A. Yes, sir.

17 Q. If you would, open this envelope and tell me what
18 you see in there.

19 A. These are photographs taken of the footwear that
20 was enhanced by leucocrystal violent, LCV, at the scene.

21 Q. All right. Were you present when those photographs
22 were taken?

23 A. Yes, sir, I was.

24 Q. And they're fair representations?

25 A. Let me look through all of them, please. (Reviewed

1 photographs) Yes, sir, they are.

2 Q. Tell me, what was done with the photographs after
3 you took them?

4 A. The photographs would have been -- they would have
5 been logged in to evidence. They would have been copied
6 over to -- from our SD card, they would have been copied
7 over to a DVD. That DVD would have been logged in to
8 evidence in the photography department. Then after
9 that, if any photographs were needed, one of the
10 analysts in the photography department would have been
11 able to print those out, which is apparently what was
12 done there.

13 MR. DURANT: Your Honor, I beg the Court's
14 indulgence to mark the photographs.

15 THE COURT: All right.

16 (WHEREUPON, State's Exhibit Numbers 82, 83, 84, 85,
17 86, 87, 88, 89 and 90 were marked for
18 identification only.)

19 Q. And is State's 82 through 89 a fair representation
20 of the photographs that you took at the crime scene that
21 day?

22 A. Yes, sir, they are.

23 Q. Agent Hardee, do you know whether the Clarendon
24 County Sheriff's Office collected any items of evidence
25 in this case?

1 A. Yes, sir, they did. And a chain of custody was
2 completed releasing that evidence to Agent Crooks.

3 Q. Were you present with Agent Crooks when that
4 evidence was released to him?

5 A. Yes.

6 Q. Can you tell me, do you have notes that reflect
7 exactly what evidence was recovered from the Sheriff's
8 office in this case?

9 A. I can tell you what was turned over to us. We have
10 a pellet from a gunshot wound from Kaisha T. Caraway, a
11 GSR kit from Justin Jones, blood stain collection kit
12 marked one, number two.

13 Q. Justin Jones or Justin Johnson?

14 A. Justin Johnson. I'm sorry. I'm sorry. My -- I
15 misspoke. A blood stain collection kit marked number
16 three. One -- I'm trying to make out this handwriting.
17 It's wedding silver -- oh, it's a ring silver-in-color
18 taken from Justin Johnson's left hand and a class ring
19 silver-in-color taken from Justin Johnson's right hand,
20 a CD of photos taken at time of bloodstain collection.
21 Then we have child's blue jeans, a child's pink-and-
22 white-in-color socks. We have a black and white 2X
23 large shirt, black pants with a black belt and a cell
24 phone case black-in-color, blue Haynes underwear, black
25 Haynes tee shirt, a pair of Timberland brown-in-color

1 with a pair of blue and white socks, six-foot shoe --
2 wait. No, I'm sorry. I misread those. Left shoe has
3 jewelry stuck to the bottom. Then one buccal swab kit,
4 ladies pink-in-color sneaker, ladies gray-in-color
5 blouse, ladies blue jeans.

6 Q. A buccal swab kit from who? I'm sorry.

7 A. No. That's quite all right. It doesn't say from
8 who.

9 Q. Who was it collected by?

10 A. It was collected from a Kipp Coker at -- yeah.
11 Kipp Coker. And then ladies pink-in-color sneaker.
12 I've already read this. And then buccal swab kit from
13 Kaisha Caraway. And the last was a GSR kit from
14 Caraway, K. Caraway.

15 Q. Who was that collected by?

16 A. The GSR kit, it just shows it was released from a
17 K. Clark, and it was released to Jeff Crooks. I
18 recognize his signature. He used to be my lieutenant.

19 Q. I show you State's 69. If you would, tell the jury
20 what that is.

21 A. This is a GSR kit with the subject's name, Justin
22 Johnson. And the officer's name that collected it was
23 an M. Moore.

24 Q. All right. Is that the same GSR kit that you
25 testified it was collected from the Sheriff's office?

- 1 A. Yes, sir.
- 2 Q. Okay. Do you know when y'all collected that
- 3 evidence from the Sheriff's office?
- 4 A. It was going to be right before we left that night.
- 5 We had already finished processing the scene. We were
- 6 getting ready to leave, and we were told that -- it was
- 7 decided that we would transport the evidence that the
- 8 Clarendon County Sheriff's Office had collected in
- 9 reference to this investigation. They were going to
- 10 release it to our custody so that we could transport it
- 11 to SLED headquarters along with our evidence that we
- 12 collected.
- 13 Q. And do you know what time that was?
- 14 A. For this GSR kit from Justin Johnson ---
- 15 Q. Did you collect all of the evidence at about the
- 16 same time?
- 17 A. Yeah. It's -- let's see here. Okay. The GSR kit
- 18 for Justin Johnson, it was from -- released by M. Moore
- 19 to Jeff Crooks on April 7th, 2011 at 12:02 A.M.
- 20 Q. Okay. So that's midnight of the day that you went,
- 21 just after midnight?
- 22 A. Yes, sir.
- 23 Q. And how about the GSR kit of Kaisha Caraway? What
- 24 time was that collected?
- 25 A. The GSR kit from Kaisha Caraway, it was released

1 from K. Clark to Jeff Crooks on 4/7/2011 at 12:06 A.M.

2 Q. So that is when -- 12:06 A.M. is when y'all took
3 the GSR kit from Investigator Clark, not when he
4 collected it?

5 A. Yeah. I would have been -- this is releasing
6 custody of that evidence to our possession, to our
7 custody. And that would have been when the evidence was
8 switched hands.

9 Q. And you can't tell from your notes what time
10 Investigator Clark collected that kit?

11 A. No. The only way you could tell if it was
12 documented right would be with notes, or there's also a
13 form GSR kit that we're supposed to fill out that gives
14 you information about that case, about that collection
15 kit.

16 THE COURT: Let me see the attorneys for just
17 a minute.

18 (WHEREUPON, a bench conference was held off the
19 record.)

20 THE COURT: All right. Ladies and gentlemen,
21 we're going to go ahead and take a short break. So
22 please do not discuss anything about the case. We'll
23 take a fifteen-minute recess. Thank you.

24 (WHEREUPON, the jury exited the open court at
25 approximately 11:14 A.M.)

1 THE COURT: All right. Court is now in recess
2 until eleven thirty.

3 (WHEREUPON, court stood at recess for a short
4 break.)

5 THE COURT: Anything before we bring our jury
6 back?

7 MR. DURANT: No, sir, Your Honor.

8 THE COURT: Are they ready?

9 (WHEREUPON, the jury entered the open court at
10 approximately 11:31 A.M.)

11 THE COURT: All right. Ladies and gentlemen.
12 We'll continue. Our next break will be our lunch break.
13 Thank you.

14 You may proceed.

15 MR. DURANT: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 CONTINUED BY MR. DURANT:

18 Q. Agent Hardee, you testified a few minutes ago to
19 several items of clothing which were collected from the
20 Sheriff's office from the Defendant. Let me show you
21 State's Exhibit 68 and have you tell me what that is.

22 A. Yeah. Can I get some gloves, please?

23 Q. I don't know what size those are?

24 A. We'll make it work. Okay. This is going to be a
25 tee shirt, extra large. And it's going to be whitish

1 with black and gray designs on it.

2 Q. And you testified a minute ago that it was an
3 extra-extra-large white and black shirt collected from
4 the Defendant which SLED took possession of. Is that
5 the shirt?

6 MR. ROBINSON: Your Honor, we'll stipulate
7 that's the same shirt.

8 THE COURT: All right.

9 A. Yes, sir.

10 Q. Same question for State's 67 and 70?

11 MR. ROBINSON: Same stipulation.

12 THE COURT: All right. It's stipulated it's
13 the same and in evidence.

14 Q. 67, 70 ---

15 A. Would you like me to put this back in?

16 Q. If you would, please.

17 MADAM COURT REPORTER: 67 and 70?

18 MR. DURANT: Yes, ma'am.

19 THE COURT: Okay. It was stipulated, but it
20 was never moved into evidence. 68.

21 THE WITNESS: Yes, the tee shirt was 68.

22 THE COURT: Okay.

23 MR. DURANT: Your Honor, I'd ask to admit
24 those items into evidence.

25 MR. ROBINSON: No objection.

1 THE COURT: Without objection.

2 MR. DURANT: State's 67, 68, and 70 into
3 evidence, Your Honor.

4 THE COURT: They are.

5 (WHEREUPON, State's Exhibit 67, 68 and 70 were
6 admitted into evidence.)

7 Q. I show you State's 73. If you would, tell me what
8 that one is?

9 A. Okay. Exhibit 73 is Nike pink shoes that we were
10 told belonged to Kaisha Caraway. Looking inside the
11 box, a pair of Nike pink shoes, pink and white.

12 Q. Was that the evidence you collected from the
13 Sheriff's office?

14 A. Yes, sir, it is.

15 Q. What did you do with that evidence after you
16 collected it?

17 A. It was transported back to SLED for latent prints.
18 And -- hold on a second.

19 MR. ROBINSON: And, Your Honor, again, if it
20 helps, we will stipulate those were the shoes that were
21 tested.

22 THE COURT: And they're already in evidence, I
23 believe, aren't they?

24 MR. DURANT: Any objection to admitting them?

25 MR. ROBINSON: No objection.

1 THE COURT: All right. Very well. They're
2 not in. So without objection, State's Exhibit -- what?

3 MR. ROBINSON: 73.

4 THE COURT: 73 is admitted.

5 (WHEREUPON, State's Exhibit Number 73 was admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit Number 91 was marked
8 for identification only.)

9 Q. State's Exhibit 91, can you tell me what that is?

10 A. Let's see. State's Exhibit 91 is a pair of tan
11 leather Timberland boots told to us that they belong to
12 Justin Johnson.

13 Q. Okay. And the markings on the side of the box, is
14 that something that you all did?

15 A. Yes. These are the tamper tape that we seal our
16 evidence with.

17 MR. ROBINSON: And, Your Honor, we're prepared
18 to stipulate to the chain on those as well.

19 THE COURT: All right.

20 MR. DURANT: Okay.

21 THE COURT: This will be exhibit number what?

22 MR. DURANT: 91, Your Honor.

23 THE COURT: 91 has been stipulated to and is
24 admitted into evidence.

25 (WHEREUPON, State's Exhibit Number 91 was admitted

1 into evidence).

2 Q. All right, Agent Hardee. You testified a minute
3 ago about a Panoscan that you had done in the past.
4 Tell me what that is?

5 A. Panoscan is a camera soft -- well, it's a camera
6 and software that we'll take to the scene. And we sit
7 it on tripod anywhere on the scene that we want to
8 record. And the camera rotates four hundred degrees.
9 When it does that -- it only records one line at a time.
10 And it creates a panoramic photo of that scene. When we
11 take it back to the software, the software takes the
12 panoramic photo and blends it in and then makes a
13 complete circle. So you're actually -- it's almost like
14 you're in the crime scene looking around. You might be
15 familiar with some -- like Honda uses that when you do
16 their three sixty tours of the inside of their vehicles
17 and stuff like that. It's similar to that technology.

18 Q. Did you control that camera system at the scene?

19 A. Yes, sir, I did.

20 Q. And were you present, or did you have to direct the
21 system to kind of mend the photographs together, or tell
22 me how that works?

23 A. Yes, sir. At the time, I was the only one, between
24 me and Agent Crooks, that could operate the machine,
25 operate the software and the camera. You have to have a

1 computer. You have to have a battery source. And I'm
2 the one that directed the camera to rotate around the
3 rooms that I wanted to rotate around.

4 Q. Have you had a chance to view the photographs that
5 were taken with that camera?

6 A. Yes, sir, I have.

7 Q. And each photograph, each, I guess, panoramic view,
8 is a fair and accurate representation of the crime scene
9 that day?

10 A. Yes, sir, it is.

11 Q. Okay. Have any of the photographs or images that
12 went into the Panoscan been altered or edited in any
13 way?

14 A. The only editing that would have been, like I
15 stated, the camera only creates a two-dimensional scene,
16 just a panoramic photo. The software is then used to
17 bend that software to make a 360 degree tour. And when
18 I say 400 degrees, it has some overlap so that you can
19 seam it together and not have anything missing. So
20 actually it records a little bit -- well, about twenty
21 percent -- well, I'm sorry -- forty percent more of the
22 same footage so that you'll have some play room to blend
23 it together. But as far as it altering the scene
24 itself, the photograph itself, it doesn't alter that.

25 Q. And you set that camera system up in one room only,

1 or did you go to different areas?

2 A. Went to different areas. I also took a couple of
3 -- if I remember correctly, I took a couple of scenes
4 out on -- a couple of the panoramic photos outside and a
5 couple on the inside.

6 Q. Have you had a chance to view the final product?

7 A. I did, back in 2011 when I was seaming it together.

8 Q. And those panoramic views to which you have
9 testified, are they a fair and accurate representation
10 of the crime scene on April 6, 2011?

11 A. Yes, sir, I would.

12 THE COURT: Any objection?

13 MR. ROBINSON: Yes, sir, Your Honor.

14 THE COURT: All right. What's your objection?

15 MR. ROBINSON: Your Honor, I've looked at it.

16 I would quite frankly disagree with that
17 characterization that they fairly and accurately
18 represent. I'd ask for perhaps the Court to view it
19 before it makes a determination.

20 THE COURT: All right. I mean, I wasn't there
21 either. He's the one who's saying that he -- you can
22 cross-examine him on it.

23 MR. ROBINSON: Your Honor, the images are
24 altered. In other words, a flat wall is a round wall.
25 The images themselves do not accurately represent. That

1 wall would look like a rounded column instead of a flat
2 wall like we have. I don't think they lend anything to
3 the photographs, the numerous photographs that are
4 already in evidence. I don't think they accurately
5 depict the scene.

6 THE COURT: I'm going to overrule your
7 objection based on his testimony.

8 MR. DURANT: Thank you, Your Honor.

9 (WHEREUPON, State's Exhibit Number 92 was marked
10 for identification only.)

11 MR. ROBINSON: Is that exhibit 92?

12 THE COURT: 92.

13 Q. I'm going to show you State's Exhibit 92, and ask
14 if you recognize that?

15 A. It's a DVD. It says, "Crime scene Panoscan copy"
16 with the name "Justin Johnson" on the front. But it's
17 not in my handwriting. That's not a DVD that we use.

18 Q. Okay. Do you know whether that's a copy of the
19 Panoscan that you ---

20 A. I can't testify to -- oh, actually I can. It says,
21 "Panoscan copy," so it is a copy.

22 MR. DURANT: Your Honor, I'd ask to admit
23 State's 92 into evidence.

24 THE COURT: Any objection.

25 MR. ROBINSON: Other than what I've already

1 noted.

2 THE COURT: As noted.

3 (WHEREUPON, State's Exhibit Number 92 was admitted
4 into evidence.)

5 MR. DURANT: And I ask permission to publish
6 it to the jury.

7 THE COURT: You may.

8 (WHEREUPON, State's Exhibit Number 92 was published
9 to the jury.)

10 Q. All right. Agent Hardee, tell me what we're
11 looking at here?

12 A. That's the front of that residence that we
13 responded to over on Carissa Lane over in Manning.

14 Q. And if we were to turn the camera around, tell me
15 what we're looking at here.

16 A. That's going to be a field. In front of that
17 field, you have the vehicle that belonged to the
18 Defendant.

19 Q. Is that the same vehicle you testified earlier to
20 that you found the shotgun shells in?

21 A. Yes, sir, it is.

22 Q. And tell me what -- if there are any items of
23 evidence depicted in the front of this photograph?

24 A. Yes, sir. Marker number one is the photograph --
25 or the item shotgun that was collected.

1 Q. All right. Tell me what we're looking at here.

2 A. Okay. That's going to be the side of the house.

3 It's just another angle. Still in the background, you
4 can see the vehicle that you asked about earlier. You
5 also have one of the victims lying on the ground right
6 there between the sedan and the porch.

7 Q. Okay. And what are we looking at in this image?

8 A. This is the -- it's going to be the porch showing
9 out, outside the front door.

10 Q. Are there any items of evidence that you collected
11 visible in that photograph?

12 A. Yes, sir. You have -- at the bottom of the screen
13 you have marker number two, which is the unfired shot
14 shell. And then marker number one, which is going to be
15 your shotgun, and over to the left-hand side and a
16 marker that I cannot see the number to.

17 Q. And if we were to pan to the left side of the porch
18 as you're looking out, are there any other items of
19 evidence visible?

20 A. Just the ones that I've already mentioned. I can't
21 see the number because of the railing. But we had the
22 victim right there at the sedan.

23 Q. All right. Tell me what area of the home we're
24 looking at now.

25 A. Okay. This is going to be open kitchen/family room

1 area that I was -- that I testified about earlier.

2 You've got marker fourteen right there. That is the wig
3 that we collected. You have some chairs and stuff as
4 well.

5 Q. Item thirteen again, do you recall what that is?

6 A. Yes, sir. Marker thirteen is a shot shell and at
7 the bottom is the computer that we use to control the
8 camera.

9 Q. Okay. So that's your computer?

10 A. Yes, that's our computer. That goes with that
11 system.

12 Q. Again, the left side of this photograph, can you
13 tell me what it is?

14 A. The left side is the second victim that we located
15 inside of the residence.

16 Q. And what are we looking at here?

17 A. Okay. That's going to be the hallway taken from
18 around this area right here going back towards the
19 family room and the kitchen.

20 Q. Any other items of evidence visible in that
21 photograph?

22 A. No, sir. Well, actually, I lie. The marker at the
23 end of the hallway with the waste basket, that's going
24 to be where the fired shot shell and the wadding was.

25 Q. All right. What are we looking at here?

1 A. That's going to be the hole in the wall that was
2 suspected shotgun blast.

3 Q. And this angle?

4 A. That's going to be the bathroom that the door
5 appeared to be forced open with, marker number sixteen.
6 That indicates that shot shell and the wadding.

7 MR. DURANT: I beg the Court's indulgence,
8 Your Honor.

9 THE COURT: Yes, sir.

10 Q. Agent Hardee, that's all the questions I have for
11 you. Please answer any Mr. Robinson may have.

12 A. Yes, sir.

13 THE COURT: Mr. Robinson?

14 MR. ROBINSON: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. ROBINSON:

17 Q. Agent Hardee, tell me precisely who determined what
18 function that you and Special Agent Crooks performed
19 when you arrived at the scene on Carissa Lane?

20 A. You mean function as a crime scene investigator?

21 Q. Well, somebody requested that y'all come?

22 A. Yes, we ---

23 Q. Who determined what you did and did not do?

24 A. Well, generally, we make the determination to what
25 we do and do not do with counsel from the investigators.

1 In this case, Ricky Richards was the investigator and I
2 was told to call Agent Jeff Carter who had arrived on
3 scene. And got his phone number. I called him. He
4 told me what they had over here in Manning. And when we
5 arrived, that's when I met with Agent Creech, Jeff
6 Carter, a couple of others from the Clarendon County
7 Sheriff's Office.

8 Q. Okay. Now, do you know how many items of evidence
9 that you and Special Agent Crooks either collected or
10 photographed personally?

11 A. Items collected by us at the scene -- do you want
12 me want to read what we got on the searchable return?

13 Q. Just the number. I mean, if you know the number.
14 That's all I'm asking for.

15 A. Let's see. One, two, three -- we collected twenty-
16 eight. And two items were maintained by the -- now,
17 this is from the search warrant, execution of the search
18 warrant. Two items from the search warrant was
19 maintained by the Clarendon County Sheriff's Office.
20 Then the Clarendon County Sheriff's Office ---

21 Q. And let me stop you. What two items were
22 maintained by the Sheriff's office?

23 A. We have one MacBook Pro, serial number
24 CO2F532HDF8X, and a Hyundai Sedan, South Carolina tag
25 GRE 939.

1 Q. Okay. A computer and a vehicle?

2 A. Yes, sir.

3 Q. Okay. And you were about to tell me ---

4 A. Oh, the other items, which I'd already testified
5 to, that the Clarendon County Sheriff's Office brought
6 to us at the scene to turn over to our custody, we had
7 one, two -- it shows twenty-two items on this.

8 Q. That were given to y'all?

9 A. Yes, sir. That was released to us, yes.

10 Q. So forty minus two, I guess?

11 A. Probably around that much.

12 Q. Or fifty. I'm sorry. Fifty minus two. They kept
13 two?

14 A. Yeah.

15 Q. So y'all had about forty-eight items of evidence?

16 A. Around that much, yeah.

17 Q. Okay. And did y'all -- and I say, y'all, please
18 forgive me for that. You and Agent Crooks, did you and
19 Agent Crooks have any role to play in determining what
20 of that evidence was actually analyzed later by SLED
21 technicians?

22 A. Yes. All the evidence that we collect, we look for
23 anything of evidentiary value. If it's no evidentiary
24 value -- and when I say evidentiary value, it's more
25 probative. And so like, for example -- if you don't

1 mind me giving one?

2 Q. Sure.

3 A. The cordless telephone battery cover, we didn't
4 process that. Neither did we process the black hair
5 curlers or the cordless telephone. We didn't process
6 that either. They were sent back to the agency.

7 Q. And that's because they had no probative value?
8 That didn't tell you anything?

9 A. Right. They didn't tell us anything.

10 Q. Okay. So when you say "items of evidence," that
11 just means anything that y'all noticed that were there?

12 A. Right. Well, stuff that would show signs of a
13 struggle. Anything that -- at first we're like, okay,
14 that's kind of out of place, like a broken telephone on
15 the ground. Curlers that were in someone's hair, now on
16 the ground. That stuff we'll mark for evidence and
17 photograph it and we'll collect it. Then either by
18 discussing it between ourselves or discussing it with
19 the agency that called for our assistance, we'll decide
20 whether or not to process that. What about, let's say
21 the -- I think it was State's Exhibit 11, the brick?

22 A. Yes, sir.

23 Q. No. I'm sorry. That's State's Exhibit 40
24 identified by marker eleven.

25 A. Yes, sir.

1 Q. Do you recall that?

2 A. Yes, sir.

3 Q. Do you know whether or not that brick was analyzed?

4 A. Let's see. One red brick paver located in the
5 front yard near porch steps, identified with marker
6 eleven. It shows in here for the analysis requested,
7 DNA and latent prints.

8 Q. Okay. But I'm saying you don't know what happened
9 to it after that?

10 A. No.

11 Q. Okay. That's what I was trying to get to. Some of
12 the stuff you know was never analyzed. You didn't
13 personally analyze anything, did you?

14 A. I worked with Agent Hallman on some of the stuff.
15 She was the lead examiner on the evidence processing.
16 She could testify to that. I can't recall.

17 Q. Okay. And that's all I'm asking you.

18 A. Right.

19 Q. I'm not asking you to guess or speculate. So you
20 nor Agent Crooks actually -- you can't come in here and
21 say, "I analyzed piece of evidence A, and it says this"?

22 A. No, no. It would have gone to another department
23 depending on what the evidence was.

24 Q. But you can tell me, for instance, that the reason
25 you didn't dust the trunk of the Defendant's car is

1 basically y'all were told that wasn't necessary; is that
2 right?

3 A. Right.

4 Q. At what point in the day were you told that? Do
5 you remember?

6 A. No. It was probably just over a discussion. I
7 know from my briefing at the scene that they had already
8 picked up the Defendant and was questioning him, had
9 already taken him. We were told that -- and, again,
10 from what I was told, the female that was in the
11 vehicle, the older female, she said that he was the one
12 that did it. And so we photographed the vehicle and
13 looked for evidence inside the vehicle, but we didn't
14 process it for latent prints, no.

15 Q. Okay. Would you agree that an important part or
16 important reason for crime scene investigation is not
17 only to gather evidence against somebody, but to
18 eliminate other possible suspects?

19 A. Oh, yeah, of course.

20 Q. And so if you had been told that there was a claim
21 of a third party involvement, would it have been
22 important to dust the trunk then to at least eliminate
23 that possibility?

24 A. Yeah. If we'd been told that someone had forced
25 their way into the trunk or got into the trunk either

1 with a key or something like that, then -- and they
2 said, "Yeah, we want you to process this because there's
3 a possible suspect," oh, yeah, definitely we would have
4 processed.

5 Q. Okay. And what about the doorknobs going into the
6 front door? Did y'all process that for latent prints?

7 A. Let's see. No, sir, we did not.

8 Q. Any recollection as to why not?

9 A. Probably under the same premise that we were told
10 that the suspect was already apprehended.

11 Q. In other words, they felt pretty strongly. Whoever
12 told you not to process this already had their man?

13 A. Yes. You're making me make an assumption. They
14 didn't say, for example, "This is him. Y'all can stop.
15 We've got him." They didn't say that.

16 Q. But did they tell you not to dust the door for
17 prints, or did they say, "We don't need prints"? I
18 mean, what's your recollection?

19 A. I can't recall because, I mean, basically you're --
20 let's see. It was probably just a discussion over what
21 we needed to do because, as a general rule, right before
22 we depart the scene, we walk the investigators back and
23 tell them everything that we did and if there's anything
24 else they need us to do. And it was probably decided --
25 I can't say who, when or anything like that. But it

1 wasn't done. So there was a decision made by us or by
2 them.

3 Q. Were you calling and relaying information back to
4 anybody at the Sheriff's department that day?

5 A. No, no. There's usually -- in this case there was
6 officers on the scene to maintain the scene. And
7 anything that we would have to relay would have been
8 going to them. And it would have been relayed that way,
9 I'm sure.

10 Q. And you said that y'all took some photographs of
11 some enhanced footprint kind of things?

12 A. Yes.

13 Q. And help me out with that. I know you didn't say
14 footprint kind of things. That's what I said. What did
15 you do, take photographs?

16 A. Yeah. What we did, there was some blood on the
17 floor, suspected blood. And Agent Crooks is a tire and
18 footwear examiner. And so we got some leucocrystal
19 violent, which is a chemical that reacts with blood. So
20 that enhances footwear, hand prints, whatever, if it's
21 in blood. And we sprayed that on the floor and the
22 walls of the areas that we would suspect to find blood.
23 And then those areas were photographed.

24 Q. And you said he is a footprint and tire track ...

25 A. Footwear and tire examiner.

1 Q. ... examiner. So did anybody request that y'all
2 examine the yard for tire tracks or tire prints or
3 whatever you call them?

4 A. No.

5 Q. So let me make sure I'm certain on this. Y'all
6 never dusted the car for prints?

7 A. Right.

8 Q. Okay. You never dusted either of the doorknobs?

9 A. Right.

10 Q. And when I say either, the front door or the
11 bathroom door?

12 A. Right.

13 Q. And y'all never did any type of tire track or tire
14 print analysis?

15 A. No, sir, we didn't.

16 Q. Okay. Would anybody else have done that?

17 A. After we left the scene, I can't testify to. I
18 don't recall anybody else doing that. But the
19 photographs would have been -- of the footwear would
20 have been analyzed back in the lab. But as far as
21 somebody going behind us to do footwear, tire, or
22 anything on the outside, I can't testify to. I didn't
23 hear of it.

24 Q. Okay. Let me hand you what's been marked as
25 State's Exhibit 81 ...

1 A. Yes, sir.

2 Q. ... and ask if you recognize that?

3 A. I do. It's the GSR kit that was collected on April
4 6th, 2011, at 3:50 P.M. of Maxine Caraway.

5 Q. How do you know you collected it on April 6th,
6 2011, at 3:50 P.M.?

7 A. Whenever I get something, I initial and date it and
8 time when I complete it or do it.

9 Q. And why did you do that?

10 A. It's normally just a habit now. I try to do it
11 every time. I'm sure there's times when I haven't. But
12 general rule, I try to mark everything with my initials.

13 Q. Is that so you can remember three years later what
14 time you ---

15 A. It helps. It may not be perfect, but it helps.

16 Q. And that was collected by you personally; is that
17 correct?

18 A. Actually it was me and Crooks.

19 Q. You and Special Agent Crooks?

20 A. Yeah.

21 Q. Okay. I'm not trying to put words in your mouth.
22 I understand you and Special Agent Crooks worked closely
23 that day. Any of the evidence that you listed that you
24 collected from the Sheriff's department on that -- I
25 guess it would technically have been the next morning

1 before y'all left Clarendon County, you and Agent Crooks
2 that is -- did you observe or inspect any of it, or was
3 it already in sealed containers?

4 A. If I remember, it was already in sealed containers,
5 and they transferred it over to our custody.

6 Q. And, again, in reality you didn't analyze any of
7 these items of evidence that you collected at the scene;
8 correct?

9 A. No. Everything -- well, things would have been --
10 are you talking about at the scene or ...

11 Q. No, no. I know you didn't analyze anything at the
12 scene. Did you analyze later that day or at any time
13 since then up until today any of the items of evidence
14 that you collected other than you told me you assisted
15 some other personnel?

16 A. Right. No, I wouldn't have made any analysis of my
17 own.

18 Q. Okay. There are experts at SLED who will test
19 different things and state what they mean?

20 A. Right. They're experts in their discipline.

21 Q. Okay. And so basically what you did was you
22 documented the appearance of the crime scene as it
23 appeared that day?

24 A. Yes, sir.

25 Q. And anything that you thought might be important?

1 A. Yes, sir.

2 Q. Can you tell this jury what items of evidence
3 panned out or didn't pan out from your own personal
4 knowledge and testing?

5 A. No, not from my own personal knowledge. No.

6 Q. So you don't know what has evidentiary value and
7 what does not from your personal knowledge?

8 A. Right.

9 MR. ROBINSON: The Court's indulgence for a
10 moment, Your Honor.

11 THE COURT: Yes, sir.

12 MR. ROBINSON: I don't think I have any
13 further questions.

14 THE COURT: Any redirect?

15 MR. ROBINSON: Just a few.

16 REDIRECT EXAMINATION

17 BY MR. DURANT:

18 Q. Agent Hardee, there were some questions of you from
19 Mr. Robinson about the footprints or footwear
20 impressions that were photographed in this case. You
21 were present when those photographs were taken?

22 A. Yes, sir.

23 Q. And what area of the house were those photographs
24 taken in?

25 A. The photographs were taken in the family room that

1 was next to the kitchen and in the dining room at the
2 front of the house where the front door leads into.

3 Q. And y'all took pictures of what appeared could
4 possibly be a footwear impression?

5 A. Correct.

6 Q. Any other potential footwear impressions in the
7 house that you didn't photograph?

8 A. No, sir.

9 Q. And finally, Mr. Robinson asked you about the
10 number of items you collected. Did y'all do a thorough,
11 I guess, scanning or investigation of the yard and the
12 house?

13 A. Yeah. When we photograph, part of the
14 documentation of the scene, we walk around. When we're
15 photographing, we're walking around. We're taking
16 photographs of everything that we see, whether it
17 becomes probative or not, because we're trying to create
18 an accurate depiction of that scene that day at that
19 time. So while we're doing that, we do look around for
20 stuff because you don't know if something was left
21 twenty feet from the residence or something.

22 Q. If there would have been a wadding found in the
23 yard of the house, would you have photographed that?

24 A. I would have and collected it.

25 Q. And you didn't find a wadding in the yard of the

1 house?

2 A. No, sir, not to my -- I didn't see it, no.

3 MR. DURANT: No further questions.

4 THE COURT: Any recross based on his redirect?

5 MR. ROBINSON: Yes, sir, just one followup

6 question.

7 RECROSS-EXAMINATION

8 BY MR. ROBINSON:

9 Q. Agent Hardee, did y'all collect a footprint or a
10 suspected footprint off of the front door or photograph
11 one? I'm sorry. I shouldn't say collected.

12 A. Off of the front door?

13 Q. Uh-huh (affirmative).

14 A. Let's see. For that I'd look at the photographs.
15 I don't recall, but we didn't collect any, like, any
16 impression evidence from that. It would have been just
17 the photograph one to one. And I can't recall if I took
18 that photograph or not.

19 Q. Okay. But if you did and there was an analysis,
20 somebody else would be able to tell us, "I analyzing
21 it"?

22 A. Yeah, a footwear examiner would have been able to.

23 Q. Footwear examiner. Okay. Thank you.

24 MR. ROBINSON: No further questions.

25 THE COURT: All right. Thank you. You may

1 step down.

2 THE WITNESS: Thank you, sir.

3 THE COURT: Any objection to this witness
4 being released?

5 MR. DURANT: Not from the State, Your Honor.

6 MR. ROBINSON: Nothing from the Defense.

7 THE COURT: All right. Thank you.

8 You may call your next witness.

9 MR. DURANT: The State calls Vicki Hallman.

10 **VICKI HALLMAN,**

11 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION

13 MR. DURANT:

14 Q. Ms. Hallman, tell the jury where you work?

15 A. I am currently employed by the South Carolina Law
16 Enforcement Division, which is also known as SLED.

17 Q. How long have you worked for SLED?

18 A. I am a couple of days shy of a ten-year
19 anniversary.

20 Q. Are you assigned to a particular unit or department
21 at SLED?

22 A. Yes, sir. I'm a senior agent assigned to the
23 latent prints crime scene unit.

24 Q. Tell me what all is involved in the latent prints
25 crime scene unit.

1 A. Basically, the unit actually processes items for
2 evidence. Those items can be collected from a crime
3 scene that we are asked to assist in. Local agencies
4 also submit evidence to the laboratory itself for
5 processing. I do footwear and tire tread analysis,
6 blood stain pattern analysis, and crime scene
7 reconstruction.

8 Q. Fingerprint analysis, is that part of what you do?

9 A. I actually do processing. I don't do comparisons.

10 Q. And when you say you process them, does that mean
11 you collect fingerprints?

12 A. I actually would process evidence for fingerprints.
13 And if I locate any fingerprints, they're turned over to
14 a latent print examiner for comparison.

15 Q. Okay. Have you received any specialized education
16 and training in fingerprint collection?

17 A. I actually, when I started at SLED, completed a
18 two-year in-house training program that included the
19 disciplines that I previously mentioned. I've attended
20 numerous classes on such things as latent print
21 processing. I've completed footwear and tire tread
22 courses and blood stain pattern analysis courses.

23 Q. Tell me what type of equipment is available for you
24 to use in fingerprint processing?

25 A. Simple things. One of the biggest things that we

1 use for certain items is something called cyanoacrylate,
2 which is also known as super glue. We use that for
3 processing numerous items. Depending on what type of
4 item I'm processing, I have access to things such as
5 ninhydrin, which is a chemical that reacts to the amino
6 acids in fingerprints. It depends on what your surface
7 is as to what you're going to use to process that item
8 for evidence.

9 Q. Have you ever been qualified as an expert in the
10 area of fingerprint processing?

11 A. Yes, sir, I have.

12 Q. How many times?

13 A. Approximately five.

14 MR. DURANT: Your Honor, I'd move that Ms.
15 Hallman be qualified as an expert in fingerprint
16 processing.

17 THE COURT: Any requests to voir dire her, or
18 do you consent?

19 MR. ROBINSON: I consent, Your Honor.

20 THE COURT: All right.

21 Ladies and gentlemen, as I told you before,
22 normally witnesses can only testify as to what they saw,
23 heard, smelled, tasted, or felt. However, when somebody
24 has an elevated level of education and experience, they
25 can give opinions.

1 Now, ladies and gentlemen, whether or not you
2 choose to accept her opinion will be up to you. And you
3 should not give it any greater or lesser weight simply
4 because she is an expert in fingerprint processing. But
5 give it the weight that you believe is appropriate for
6 this witness. Thank you.

7 You may proceed.

8 Q. Ms. Hallman, how is it possible for a person to
9 leave fingerprints?

10 A. Fingerprints are actually mainly made up of
11 moisture. There are actually small sweat glands on your
12 fingers. And when you touch items, sometimes you leave
13 that moisture behind, or sometimes you might take that
14 moisture. And there's certain circumstances -- usually
15 people don't leave fingerprints as well in the
16 wintertime because their skin's not as moist and certain
17 other things that go along with that.

18 Q. What kind of surfaces can a person leave a
19 fingerprint on?

20 A. Fingerprints can be left on almost any type of
21 surface. Usually, the best surfaces are smooth and hard
22 surfaces. We're also able to lift fingerprints off of
23 items such as paper, cardboard boxes. My philosophy's
24 always been that I don't know for sure until I try to
25 get a fingerprint.

1 Q. Is the condition of the surface, whether it's wet,
2 dry, dusty, clean, does that effect the ability to pull
3 a fingerprint from something?

4 A. Yes, it does.

5 Q. Is it possible for a person to touch a surface and
6 not leave a fingerprint?

7 A. Yes.

8 Q. And tell me what kind of surfaces are not conducive
9 to leaving or I guess receiving fingerprints?

10 A. Usually, a surface that's not very smooth. A good
11 example would be a grip on a gun. Just because the grip
12 is made to help you hold it better and because it's a
13 textured surface, you don't usually leave fingerprints
14 on that grip.

15 Q. Let me show you State's Exhibit 74. Do you
16 recognize that?

17 A. Yes, sir, I do.

18 Q. What is it?

19 A. It is a Mossberg Model 88 12-gauge pump shotgun.

20 Q. Have you seen it before?

21 A. Yes, sir, I have.

22 Q. When and where did you first see it?

23 A. I was asked by Agent Hardee to help him process
24 that item for fingerprints and to collect swabs for DNA.

25 Q. And did you examine the shotgun for fingerprints?

1 A. Yes.

2 Q. In several different areas or just in one place or

3 ...

4 A. Normally, what we do with a shotgun is if I'm going
5 to collect DNA swabs, I do that first so I don't damage
6 my DNA evidence. In this case, we collected swabs from
7 the trigger and the trigger guard. We collected some
8 swabs from around the barrel opening, from the pump
9 action on the shotgun, and from the handgrip on the
10 stock.

11 Q. What was done with those swabs after collection?

12 A. They would have been sealed in envelopes and
13 packaged in a heat sealed pouch and sent to our DNA
14 department for analysis.

15 Q. And after collecting the DNA swabs, did you examine
16 the gun for fingerprints?

17 A. Yes, sir, we did.

18 Q. What was the result of your examination?

19 A. We do a multiple step process. First, we're
20 actually going to look at the gun as we receive it to
21 see if we see any type of ridge detail on the weapon.
22 In this case, we did not. So I used the super glue or
23 cyanoacrylate technique. And we actually fumed the gun.
24 We did another visual examination after the fuming, and
25 then we moved on to a black powder, which is a lot of

1 times what you see on TV if you see somebody processing
2 something for latent fingerprints. Once the black
3 powder was applied, we did not observed any ridge
4 details.

5 Q. Was that surprising to you?

6 A. No, not really.

7 Q. In your ten years experience, have you ever found
8 fingerprints on a shotgun?

9 A. A lot of times you'll find ridges, but a lot of
10 times there's not enough ridges to make an
11 identification. In my personal experience with ten
12 years, I've only had one identifiable latent on a
13 handgun.

14 Q. I show you State's Exhibit 76 through 79. Have you
15 seen these before?

16 A. Yes, sir, I have.

17 Q. What are they?

18 A. They're each marked as a red -- excuse me -- red
19 Winchester shot shell. And they've been collected from
20 different locations within the crime scene.

21 Q. Did you examine those shotgun shells for
22 fingerprints?

23 A. Yes, sir.

24 Q. And what was the result of your examination?

25 A. There were no latent prints located on the shot

1 shells either.

2 Q. Is that surprising to you?

3 A. No.

4 Q. Why not?

5 A. Usually when a shot shell or any type of firearm
6 evidence, like a cartridge case goes through the process
7 of coming from or being placed in the gun and coming out
8 of the gun, there's a heat cycle that the gun goes
9 through in order for the projectile to be fired from the
10 weapon. And heat is detrimental to latent prints.

11 Q. All right. Some of those shotgun shells have been
12 fired, haven't they?

13 A. I believe all of these are fired. All of these are
14 the fired shells from the scene. Is that sixteen?
15 That's fifteen, that's thirteen, and that's marker 2.

16 Q. I'm going to show you State's Exhibit 80. Have you
17 seen that before?

18 A. Yes, sir.

19 Q. What is that?

20 A. These would be the four shot shells that were taken
21 from the glove box of what I was told was the suspect's
22 vehicle.

23 Q. Did you examine those shotgun shells for
24 fingerprints?

25 A. Yes, sir.

1 Q. And what was the result of your examination?

2 A. They were also negative for fingerprints.

3 Q. And was that surprising to you?

4 A. No, sir.

5 Q. Why not?

6 A. Well, the other thing about shot shells is there's
7 a texture on the shell itself. There's only one small
8 metal area around the base that possibly would hold a
9 fingerprint.

10 Q. Ms. Hallman, you stated earlier that you also --
11 that part of your job is also footprint identification?

12 A. Yes, sir.

13 Q. I guess footwear impression identification?

14 A. Yes, sir.

15 Q. Do you have any specialized training or study in
16 that area?

17 A. Part of the two-year training program that I did
18 was specifically for footwear and tire tread. I've
19 completed a forty-hour course specifically for footwear,
20 and then another forty hour course specifically for tire
21 tread comparison.

22 Q. Have you previously been qualified as an expert in
23 footwear impression identification?

24 A. Yes, sir, I have.

25 Q. How many times?

1 A. Approximately five.

2 MR. DURANT: Your Honor, I'd ask or move that
3 Ms. Hallman is qualified as an expert in footwear
4 impression identification.

5 THE COURT: Any objection?

6 MR. ROBINSON: No objection, Your Honor.

7 THE COURT: All right. Ladies and gentlemen,
8 as before with the witnesses, please give it the weight
9 that you believe is most appropriate. Thank you.

10 Q. Let me clear some of those items out of your way.
11 I'm going to show you what's been marked as State's
12 Exhibits 82 through 90. Would you please tell the jury
13 if you recognize those?

14 A. Yes, sir, I do.

15 Q. What are they?

16 A. These would be photographs that were taken by
17 Special Agent Hardee and Crooks at the crime scene. And
18 they would be photographs that I selected to do a
19 footwear comparison with the known footwear that was
20 submitted in this case.

21 Q. All right. Can you tell what type of surface those
22 footwear, those impressions were on?

23 A. Let's see. State's Exhibit 82, 83, 84, 85, 86, 87,
24 and 88 appear to be some type of -- possibly like a
25 laminate floor. Either tiles or like a roll-out that

1 have -- the background itself is a wood texture, but it
2 does not to appear to be a wood floor. And then State's
3 Exhibit 89 and 90 also appear to be some type of
4 linoleum surface.

5 Q. Were you requested to compare these photographs
6 with any footwear?

7 A. Yes, sir, I was.

8 Q. I show you State's 73. Will you please tell the
9 jury if you recognize that?

10 A. Yes, sir, I do.

11 Q. What is it?

12 A. They are a pair of -- let me make sure I describe
13 them correctly -- pink Nike Air brand athletic shoes,
14 size eight and a half. And I was told that they belong
15 to Kaisha Caraway.

16 Q. All right. Let me show you State's 91.

17 A. According to my item description, those are a pair
18 of tan leather Timberland brand boots size ten and a
19 half from Justin Johnson.

20 Q. Let me open these up for you and see if you
21 recognize them.

22 A. Okay. Yes, sir, I do.

23 Q. What are they?

24 A. They're the Timberland boots that I was told belong
25 to Justin Johnson.

1 Q. Now, are these two sets of shoes the shoes that you
2 were asked to compare with the footwear impression in
3 the photograph?

4 A. Yes, sir.

5 Q. And did you make such a comparison?

6 A. Yes, sir, I did.

7 Q. How did you do that?

8 A. Basically, the shoes are sent to our photograph
9 department. They will actually take photographs of the
10 soles of the shoes. Once those come back from our
11 photography department, I actually use like a transport
12 film and I powder the bottom of the shoes and actually
13 make a test impression of the shoe. And then with the
14 photographs of the unknown impressions, I do like an
15 overlay and a side-by-side comparison to see if they
16 match.

17 Q. As a result of your comparison, do you have an
18 opinion as to whether the footwear impressions shown in
19 the photographs were made by either of these sets of
20 shoes or by possibly a third party?

21 A. There was -- let's see. State's Exhibit -- let's
22 see -- 82 through 86 are actually one impression. I
23 just had them print out multiple photographs. They're
24 not identified with the boots that Mr. Johnson wore, but
25 they share a similar tread pattern with the shoes that

1 Ms. Caraway wore. The item or State's Exhibits 87 and
2 88 did not correspond with either pair of shoes that I
3 had to examine. And State's 89 and 90 actually did not
4 correspond at all with Mr. Johnson's shoes, but appeared
5 to be the same tread pattern as the shoes worn by Ms.
6 Caraway.

7 Q. After comparing these footwear impressions did you
8 perform any further tests on the shoes?

9 A. Actually, before they were sent to our photography
10 department and before they were actually powdered, there
11 were some areas that appeared to be blood on the shoes,
12 and those were swabbed and sent to the DNA department,
13 also.

14 Q. On which set of shoes?

15 A. Two sets of swabs were collected from Mr. Johnson's
16 shoes. And two sets of swabs were collected from Ms.
17 Caraway's shoes.

18 Q. When you collected those swabs, did you seal them?

19 A. Yes. Same procedure as before. They were put in a
20 small, basically what Agent Hardee said, like a coin-
21 style envelope. Those envelopes would have been sealed,
22 and then it would have been placed in a heat-sealed
23 pouch and sent to the DNA department.

24 MR. DURANT: I beg the Court's indulgence,
25 Your Honor.

1 THE COURT: Yes, sir.

2 Q. Ms. Hallman, what type of substance on the floor
3 was the impression left in?

4 MR. ROBINSON: Your Honor, I'm going to object
5 to that. I think she is a footprint or tread analyst
6 expert, not a substance on the floor expert. If it's
7 not a footprint or a foot tread, I don't think she's
8 been qualified as an expert to say what the substance
9 is.

10 THE COURT: What would you say to that?

11 MR. DURANT: Your Honor, I think she's an
12 expert in the processing. And she would be familiar
13 with what procedures are done to collect the
14 impressions.

15 THE COURT: Overruled.

16 A. They are photographs of footwear impressions that
17 have been processed with leucocrystal violet, which is
18 an indicator and an enhancer of blood.

19 Q. Does that mean that the footprints are left in the
20 blood?

21 MR. ROBINSON: Your Honor, I'm going to object
22 to that because that's asking for the presence of blood,
23 which she has not been qualified to do. She can talk
24 about the chemical they're treated with, things around
25 that. But as far as to analyze that substance ---

1 THE COURT: You may need to rephrase your
2 questions.

3 Q. So are the footprints left in that chemical that
4 you testified?

5 A. It's actually -- it is probably left in blood ---

6 MR. ROBINSON: Your Honor.

7 THE COURT: Let her finish.

8 A. --- because leucocrystal violet is a presumptive
9 test for blood. The leucocrystal violet reacts with the
10 hemoglobin in the blood. And because sometimes there
11 are smaller amounts the LCV, or the leucocrystal violet,
12 will bring up more detail than what's actually visible
13 before a chemical is applied.

14 Q. So that LCV ---

15 MR. ROBINSON: And, Your Honor, just for the
16 record, I object to that and move to strike. I believe
17 that's beyond her area of expertise.

18 THE COURT: Let me see the attorneys for just
19 a second.

20 (WHEREUPON, a bench conference was held off the
21 record.)

22 THE COURT: All right. Objection sustained.
23 And the jury will disregard the last answer of the
24 witness.

25 Q. Ms. Hallman, are you familiar with the process of

1 applying that LCV chemical?

2 A. Yes, sir. I'm also a crime scene agent who
3 responds and processes crime scenes.

4 Q. Okay. And have you used that chemical before?

5 A. Yes, sir, I have.

6 Q. How many times?

7 A. I've been at SLED for ten years. I've used it
8 throughout those ten years. Probably between fifty and
9 a hundred times.

10 Q. Okay. Have you received any specialized testing or
11 been in any classes, I mean, in that area of crime
12 scene?

13 A. It's a basic part of what we're taught in crime
14 scene. And this is a presumptive test. In order for a
15 confirmation test to be performed, it has to go to our
16 DNA department. This is just an indicator to us that
17 there's a possibility that blood is there.

18 Q. And have you received specialized training in using
19 that chemical?

20 A. It's part of our basic training when it comes to
21 crime scene investigation.

22 Q. Are you familiar with the use of that chemical in
23 obtaining footwear impressions?

24 A. Yes, sir, I've used it numerous times to enhance
25 footwear impressions.

1 Q. Okay.

2 MR. DURANT: Your Honor, I'd ask that her area
3 of expertise be expanded to footwear impression
4 processing and that she be allowed to testify.

5 THE COURT: Mr. Robinson?

6 MR. ROBINSON: Judge, as long as she's not
7 going to analyze what was on the floor. I mean, that's
8 the only thing I'm hesitant of is to qualify her as a
9 blood analyst.

10 THE COURT: I'm going to allow her to be
11 qualified to expand that. Thank you.

12 Q. Ms. Hallman, the substance that's evident in the
13 photograph, what does that appear to be?

14 A. The photographs that I received are something that
15 reacted positively to leucocrystal violet, which can be
16 a presumptive test for blood.

17 MR. ROBINSON: Your Honor, again, I'm going to
18 object.

19 THE COURT: Overruled.

20 A. As I stated before, in order for that to be
21 confirmed, any time we have a presumptive test that is
22 positive, we collect samples, and those samples are sent
23 to our DNA department for official confirmation that it
24 is blood.

25 Q. Is that leucocrystal violet -- does that react with

1 any other substance besides blood?

2 A. I do believe there might be some false positives --
3 I'm not a hundred percent -- which is why we do a
4 confirmatory test also.

5 Q. So if the leucocrystal violet was applied to the
6 floor, it's your testimony that it would only show up
7 where blood is evident or blood is present?

8 MR. ROBINSON: Your Honor, I'm going to
9 object. That's not what she just testified to. And I
10 think that's beyond her expertise.

11 MR. ROBINSON: Overruled.

12 A. Usually it's blood. Like I said, we do a
13 presumptive test, and then those -- we also take swabs.
14 And those swabs are sent to our DNA department for
15 confirmation that it is blood.

16 Q. In your experience as a crime scene investigator,
17 would it be unusual to you to find the victim's
18 footprints in blood in the home?

19 A. No, sir.

20 Q. I mean, is that something you have found before?

21 A. Yes, sir.

22 Q. Many times?

23 A. Yes.

24 MR. DURANT: Your Honor, I don't have any
25 further questions of Ms. Hallman.

1 THE COURT: All right. Mr. Robinson?

2 MR. ROBINSON: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. ROBINSON:

5 Q. Have you ever found the perpetrator's footprints in
6 somebody else's blood in the home?

7 A. Yes, sir, occasionally.

8 Q. And I missed the part where you identified whose
9 blood that was. Did you identify whose blood that was?

10 A. No, sir. That's not part of what I do. I just do
11 a footwear -- in this case, I just did the footwear
12 analysis.

13 Q. And in reality, you can't even say for certain that
14 that was blood, can you?

15 A. No, sir, I cannot.

16 Q. Okay. So the question of finding a victim's
17 footprint in a victim's blood is misleading, isn't it?

18 A. I ---

19 Q. Mr. DuRant asked you if you ever found a victim's
20 footprint in their blood at a crime scene?

21 MR. DURANT: Objection, Your Honor. That's
22 not the question I asked.

23 THE COURT: Rephrase your question because
24 that's not what he asked.

25 Q. A victim's footprint in blood at a crime scene, I

- 1 guess is what we're ---
- 2 A. I'm sorry. I'm confused about what you're asking
- 3 me.
- 4 Q. Let me rephrase it and make it simple.
- 5 A. Okay.
- 6 Q. Did what you find in your examination of this
- 7 footprint have any evidentiary value as far as who
- 8 committed the crime on April 6th, 2011, at Carissa Lane
- 9 in Clarendon County, South Carolina?
- 10 A. No, sir.
- 11 Q. And you only examined the fingerprint evidence that
- 12 was submitted to you; is that correct?
- 13 A. That's correct.
- 14 Q. Which was the gun that was believed to be the
- 15 murder weapon?
- 16 A. Yes, sir.
- 17 Q. Shotgun shells?
- 18 A. Yes.
- 19 Q. Both fired and unfired?
- 20 A. Yes.
- 21 Q. That's it. That's all you dusted for prints?
- 22 A. Yes, sir.
- 23 Q. Okay. And in that analysis you found nobody's
- 24 fingerprints?
- 25 A. That's correct.

1 Q. In your footwear analysis, the only match you found
2 was to Ms. Kaisha Caraway; is that correct?

3 A. It wasn't technically a match. Her shoes could
4 have made those impressions because they have the same
5 tread design. But you're correct, that only her shoes
6 fell into that category.

7 Q. Nothing that would indicate Mr. Johnson's shoes?

8 A. No, sir.

9 Q. Now, you said there was also -- and I don't want to
10 put words in your mouth -- I believe with respect to
11 State's Exhibit 87 and/or 88 that were not a match to
12 either one?

13 A. Let me look and make sure.

14 Q. Okay.

15 A. You said 87 and 88?

16 Q. I believe so.

17 A. Yes, sir, that's correct.

18 Q. Did they indicate somebody else's footprint, or it
19 just wasn't enough detail to tell?

20 A. It's not a large amount that's in the photograph,
21 but the tread pattern for neither pair of those two
22 shoes that I had came close to matching that impression.

23 Q. So in your experience, would that indicated a
24 potential third-party footprint?

25 A. Yes, sir, it could.

1 Q. Okay. And would you agree that the trunk of a car
2 might be a good place to get latent fingerprints from?

3 A. Yes, sir, that's a possibility.

4 Q. Okay. And how about a doorknob or a door jamb or a
5 door fixture area?

6 A. The doorknob is a little bit different. It's a
7 curved surface, so it's not always as receptive. And a
8 lot of times door jambs are wood are painted wood, and
9 they're not usually as good of a surface to lift latents
10 on.

11 Q. But the trunk of the car would have been a good
12 place in your experience?

13 A. Yes, sir, it would have.

14 Q. Okay. Were you asked to or requested or submitted
15 any prints from the Clarendon County Sheriff's
16 Department for the trunk of a car?

17 A. No, sir.

18 Q. These are the only prints -- the gun and the shells
19 are the only things you were asked to test for prints in
20 this case?

21 A. Yes, sir.

22 Q. And based on your expert -- in your field of
23 expertise the testing you performed in this case, did
24 you find any evidence that links Justin Johnson to this
25 crime?

1 A. No, sir, I did not.

2 MR. ROBINSON: Thank you. No further
3 questions.

4 THE COURT: Any redirect?

5 MR. DURANT: No, sir, Your Honor.

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

8 THE WITNESS: Thank you.

9 THE COURT: Any objection to this witness
10 being excused?

11 MR. DURANT: None from the State.

12 THE COURT: All right. Let me see the
13 attorneys for just a second.

14 (WHEREUPON, a bench conference was held off the
15 record.)

16 THE COURT: All right. Ladies and gentlemen,
17 this is a good time to break for lunch. If you could be
18 back here at quarter 'till two. Please do not discuss
19 the case with anyone while you're out. Thank you.

20 (WHEREUPON, the jury exited the open court at
21 approximately 12:35 P.M.)

22 THE COURT: All right. Court's in recess
23 until one forty-five.

24 MR. DURANT: Thank you, Your Honor.

25 (WHEREUPON, court stood at recess for a lunch

1 break.)

2 THE COURT: Anything before we bring the jury
3 back in?

4 MR. ROBINSON: Nothing from the Defense, Your
5 Honor.

6 MR. DURANT: No, sir.

7 MR. FINNEY: Just for the record, Your Honor,
8 we have a witness, a Mr. Weathersbee, who worked at the
9 store where we have a video. Mr. Weathersbee allowed
10 the law enforcement officers to come in and download the
11 video so that they could bring it here, but he hasn't
12 actually seen the video. And if Mr. Robinson is going
13 to require that, then we're going to need -- when we
14 take the afternoon break maybe, we're going to need
15 about five minutes to show him the video.

16 THE COURT: Right. Is it just the video of
17 your client?

18 MR. ROBINSON: I'm not ---

19 MR. FINNEY: Mr. Robinson, I'm pretty sure has
20 seen it ---

21 THE COURT: This is the one that we ---

22 MR. ROBINSON: From the EZ Stop.

23 THE COURT: Yeah, I think we talked about that
24 the other day. And he was here. Y'all had subpoenaed
25 him last week?

1 MR. FINNEY: Right. Right. He should be back
2 this afternoon.

3 THE COURT: All right. In the future, be sure
4 we have the gun locks.

5 MR. FINNEY: Your Honor, if it please, we are
6 also waiting for the evidence custodian to come in from
7 the Sheriff's department. And if we could just have two
8 minutes, I believe she's on her way.

9 THE COURT: Okay.

10 (WHEREUPON, court stood at ease.)

11 THE COURT: Do y'all have another witness
12 y'all can call?

13 (WHEREUPON, court stood at ease.)

14 THE COURT: All right. Let's bring our jury
15 in. Let's inform everybody what time court starts from
16 here on out.

17 (WHEREUPON, the jury entered the open court at
18 approximately 1:57 P.M.)

19 THE COURT: All right. Ladies and gentlemen,
20 I hope you had a nice lunch. And we've got a long
21 afternoon of testimony.

22 Is the State ready to proceed?

23 MR. DURANT: Yes, sir, Your Honor.

24 THE COURT: Is the Defense ready to proceed?

25 MR. ROBINSON: We're ready, Your Honor.

1 THE COURT: All right. Call your next
2 witness.

3 MR. DURANT: Thank you, Your Honor. May it
4 please the Court. The State calls Barbara Proctor.

5 **BARBARA PROCTOR,**

6 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MR. DURANT:

9 Q. Ms. Proctor, tell the jury where you work?

10 A. I work at the Clarendon County Magistrate's Office.

11 Q. Before going to the Magistrate's Office, where did
12 you work?

13 A. At the Clarendon County Sheriff's Office.

14 Q. And what was your position as the Sheriff's office?

15 A. Evidence coordinator.

16 Q. Were you working as evidence coordinator in April
17 of 2011?

18 A. I was.

19 MR. DURANT: Well, let me mark these for
20 identification.

21 (WHEREUPON, State's Exhibit Numbers 93 and 94 were
22 marked for identification only.)

23 Q. I show you State's Exhibits 93 and 94. Will you
24 tell me if you recognize those?

25 A. I do.

1 Q. What are they?

2 A. This is evidence that was transported to SLED.

3 It's blood spatter, blood spots.

4 Q. Okay.

5 A. It's in a sealed package.

6 Q. And you transported it to SLED?

7 A. I did.

8 Q. And where did you receive that evidence from?

9 A. Investigator Lin Ham turned it in to me on April
10 7th at 4:53 in the afternoon.

11 Q. Do you know what that evidence is?

12 A. Only by looking on your sheets or the sheets that I
13 got from SLED.

14 Q. Do you have some evidence paperwork from the
15 Sheriff's office that indicates -- that had a
16 description of the evidence?

17 A. I think it's going to be item five and item eight
18 on the investigator's sheet, which is blood spot from
19 J.C. and blood spot from Maxine Caraway.

20 Q. Does that evidence paperwork indicated where they
21 were recovered?

22 A. This came from the autopsy at MUSC.

23 Q. What did you do with those exhibits?

24 A. After Investigator Ham turned them in to me, they
25 remained in the evidence room until I transported them

1 to SLED. And I carried them to SLED on April the 15th.

2 Q. And were they in sealed packages when they came to
3 you?

4 A. They were. Everything is all together and sealed
5 up, and then I carry it.

6 Q. All right. And when you turned it over to SLED on
7 April 15th, were they still in sealed containers?

8 A. Uh-huh (affirmative). They were.

9 Q. Who received those items from you at SLED?

10 A. Micky Perry.

11 Q. After turning them back in to SLED, did you have
12 any further contact with them?

13 A. I may have picked them up. I don't have that
14 paperwork in front of me. Once it's turned it in to
15 them, then it just stays there until it's picked up.

16 Q. Again, when you received them, they were sealed,
17 and when you turned them over, they were still sealed?

18 A. Yeah. They're in this paper that it's in inside
19 the bag.

20 MR. DURANT: I don't have any further
21 questions of Ms. Proctor.

22 THE COURT: Mr. Robinson?

23 MR. ROBINSON: I don't have any questions for
24 this witness.

25 THE COURT: All right. Thank you. You may

1 step down.

2 MR. DURANT: The State calls Verona Gibson.

3 THE COURT: Ms. Gibson?

4 And I'll just say throughout the trial, if a
5 witness testifies and somebody doesn't want them to be
6 released, I just assume they're released.

7 MR. DURANT: Thank you, Your Honor.

8 **VERONA GIBSON,**

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MR. DURANT:

12 Q. Ms. Gibson, where do you work?

13 A. I work at the South Carolina Law Enforcement
14 Division which we commonly refer to as SLED.

15 Q. And how long have you worked for SLED?

16 A. Approximately six years.

17 Q. What's your position there?

18 A. I'm a forensic technician in the DNA case work
19 department in the evidence processing section.

20 Q. Tell me what you do as a part of that job?

21 A. We get larger pieces of evidence and look for body
22 fluid such as blood, semen, saliva or process items for
23 touch DNA or ownership DNA.

24 Q. Did you receive some items in the State's case, the
25 State of South Carolina versus Justin Johnson?

- 1 A. We did, yes, sir.
- 2 Q. And tell me what items you received.
- 3 A. Into my custody, I received item twenty-five, our
- 4 item twenty-five, which is a shirt; a pair of pants with
- 5 a belt and a cell phone holder; a black tee shirt.
- 6 There's another pair of pants, a set of shoes, two
- 7 rings.
- 8 Q. Let me show you -- do you have any gloves with you?
- 9 A. I do, yes, sir.
- 10 Q. I'd ask you to take a look at State's Exhibit 68
- 11 and tell me if you can identify that?
- 12 A. Yes, sir, I can. Our item number, my initials, and
- 13 our lab number is written on the inside of the shirt.
- 14 Q. And what item number is that?
- 15 A. This is our item number twenty-five.
- 16 Q. And you wrote your initials on the shirt?
- 17 A. I did, yes, sir.
- 18 Q. And when did you do that?
- 19 A. At the time that I processed it.
- 20 Q. And when you processed it, what did you do?
- 21 A. The request was to process the item for blood.
- 22 It's a visual examination. We lay it out on a piece of
- 23 white paper, look to see if any areas look like they
- 24 could possibly be blood, and then we test areas to see
- 25 if they are possibly blood.

1 Q. How do you test those areas for blood?

2 A. We moisten -- it looks like a large Q-tip. Swab
3 the stain and then there's two chemicals we drop on the
4 stain. If there's a pink color change, then there's a
5 possibility that substance is blood.

6 Q. Did you test that shirt in one area or many areas?

7 A. There was many areas.

8 Q. Can you show the jury where you may have tested the
9 shirt for blood?

10 A. May I stand up?

11 Q. Please.

12 A. The areas where there's the blue writing is either
13 areas that I tested and then cut, or it is areas that I
14 tested and just left behind.

15 Q. And you cut those areas of blood out from the
16 shirt?

17 A. I did, yes, sir.

18 Q. And what did you do with them?

19 A. Those were packaged in a coin envelope and
20 forwarded to the DNA department.

21 MR. DURANT: The Court's indulgence, Your
22 Honor.

23 THE COURT: Yes, sir.

24 (WHEREUPON, State's Exhibit Numbers 95, 96, and 97
25 were marked for identification only.)

1 Q. I hand you State's Exhibit 95 and ask if you
2 recognize that?

3 A. Yes, sir, I do.

4 Q. What is it?

5 A. This is the heat-sealed package that I packaged the
6 cuttings from the items I received. It has my name
7 across the top where I sealed it and my name here as
8 well where I signed that I had made the container.

9 Q. And once you made those cuttings and sealed them,
10 what did you do with them?

11 A. They were given to Patricia Crooks in our evidence
12 control department.

13 Q. Any other item of clothing that you may have taken
14 cuttings from?

15 A. Yes, sir, there were several.

16 Q. Okay.

17 A. The pants, there were several cuttings taken from
18 it.

19 Q. I show you State's Exhibit 70. Could you tell me
20 if these appear to be the pants that you made the
21 cuttings from?

22 A. Yes, sir, these are the pants that I made the
23 cuttings from. Again, there is our item number, my
24 initials, and the lab number in the back of the item.

25 Q. I'm going to show you State's 67 and ask you if you

1 recognize that?

2 A. This is our number item twenty-seven. Again, my
3 initials, the item number, and the lab number in the
4 back of the item.

5 Q. Did you take a cutting from that shirt as well?

6 A. Yes, sir, I did.

7 Q. And all those cuttings are in that package, State's
8 95?

9 A. Yes, sir.

10 Q. What kind of -- when you performed the test to
11 determine whether or not there was blood, explain to me
12 that test again.

13 A. It's a simple Q-tip that's moistened with water.
14 Similar to a Q-tip. Excuse me. I swab the area that
15 the stain it could possibly be a blood stain. There's a
16 two-part chemical test. We drop one chemical and the
17 next chemical. If there's a bright pink color change,
18 there's an indication that that could possibly be blood.

19 Q. But you don't perform any tests to see whose blood
20 it may be or confirm it's blood; you just ---

21 A. No, sir, I do not.

22 Q. And if you found that there's potential for blood
23 on that evidence, then you package it and send it on?

24 A. Correct.

25 Q. Did you perform any other testing in this case?

1 A. I also swabbed the rings and tested those for the
2 possible presence of blood.

3 Q. Okay. And did you take -- what did you do with
4 those swabs?

5 A. Those swabs are in State's Exhibit 95 as well.

6 Q. Okay. And you submitted those to DNA analysis as
7 well?

8 A. Yes, sir.

9 Q. Any further examination in this case?

10 A. No, sir.

11 MR. DURANT: Your Honor, I don't have any
12 further questions for Ms. Gibson.

13 THE COURT: All right.

14 Mr. Robinson?

15 MR. ROBINSON: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. ROBINSON:

18 Q. Ms. Gibson, do your records indicate you also
19 received an item number thirty-two, pants from Kaisha
20 Caraway?

21 A. Yes, sir, I did.

22 Q. And what did you do with those?

23 A. There was no examination performed on that item.

24 Q. Why not?

25 A. We usually do not perform examinations on victims

1 of a gunshot wound's clothing because there is usually
2 profuse bleeding in that case, and it's hard to
3 distinguish those samples from any other samples.

4 Q. So y'all didn't test any clothing from Ms. Caraway?

5 A. I received two items from her, and neither of those
6 were tested.

7 Q. And that was a decision made by SLED?

8 A. It is our policy, yes, sir.

9 Q. Okay. Did you test anybody's clothing but Mr.
10 Johnson's clothing?

11 A. I don't think I was given the name the clothing
12 belonged to. If I do, they weren't listed in our
13 computer system, so I don't have down who the clothing
14 -- the other clothing was attributed to.

15 Q. Okay. But you would agree that item thirty-two,
16 for instance, was listed in y'all's inventory at some
17 point as pants from Kaisha Tiera Caraway.

18 A. Yes, sir. Those are the only ones that have anyone
19 attributed to them.

20 Q. Okay. Are there any other clothes other than items
21 twenty-five, twenty-six point one, point two, point
22 three, and twenty-seven and the clothing designated as
23 that of Kaisha Tiera Caraway that y'all analyzed?

24 A. I'm not aware of any other clothing. I did not
25 analyze any other clothing.

1 Q. Do y'all remember looking at a sock?

2 A. I did not.

3 Q. Okay. Were you the only person that did the test
4 to determine whether or not there was a potential for
5 the presence of blood as far as you know?

6 A. Sometimes other departments within our agency can
7 do the same testing, depending on what the request is.

8 Q. Okay. Do you know whether or not anyone else did
9 that?

10 A. I have no idea in this case. I'm sorry.

11 Q. Okay. And all you can say is that you cut certain
12 areas where the test indicated it was possibly blood and
13 collected those samples and sent them on for further
14 analysis?

15 A. That is correct.

16 Q. Okay. And what about item thirty-three, shoes from
17 Kaisha Tiera Caraway?

18 A. It falls into the same category as the pants. It
19 was clothing from a gunshot victim.

20 Q. Okay. And who -- what information -- where did you
21 receive the information that she was a gunshot victim?

22 A. We are provided the incident report from the agency
23 in case we need information like where something is
24 found or who was wearing the clothing.

25 Q. Do you know if those -- item thirty-three was ever

1 tested?

2 A. It was not by me.

3 Q. Okay.

4 MR. ROBINSON: No further questions, Your
5 Honor.

6 THE COURT: All right. Any redirect?

7 MR. DURANT: No, sir, Your Honor.

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

10 MR. DURANT: Your Honor, I ask to excuse her
11 as well.

12 THE COURT: Excuse me?

13 MR. DURANT: I'd ask that this witness be
14 excused.

15 THE COURT: Yeah. As I said, they're all
16 excused unless y'all ask for them to stay.

17 MR. DURANT: The State calls Catherine Leisy.

18 THE COURT: All right.

19 **CATHERINE LEISY,**

20 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. DURANT:

23 Q. Ms. Leisy, where do you work?

24 A. I work for the South Carolina Law Enforcement
25 Division.

1 Q. How long have you worked for SLED?

2 A. Approximately eight years.

3 Q. And what is your profession or your job at SLED?

4 A. I am a forensic scientist assigned to the DNA and
5 serology unit.

6 Q. How long have you -- and you may have said this.
7 How long have you been employed with SLED?

8 A. It's been approximately eight years now.

9 Q. What are your duties and responsibilities as a DNA
10 analyst?

11 A. My responsibilities include processing forensic
12 cases, generating reports based on the interpretations
13 and conclusions drawn on those cases, and testifying to
14 those reports as necessary. I'm also responsible for
15 helping with validation and quality control processes
16 within the laboratory and assisting in the training of
17 newly hired analysts.

18 Q. Would you briefly tell the jury about your
19 educational background?

20 A. I have a Bachelor of Science Degree in Genetic
21 Engineering from Cedar Crest College in Allentown,
22 Pennsylvania. I also have four prior years of
23 experience as a DNA analyst at a private forensic
24 facility where I ran the same types of tests that I do
25 here at SLED. I'm also required to undergo annual

1 continuing education which consists of attendance at
2 seminars or training meetings pertaining to forensic DNA
3 analysis.

4 Q. Did your formal education include the study of DNA?

5 A. It did.

6 Q. Did that education include hands-on work with DNA
7 testing techniques?

8 A. Yes, it did.

9 Q. Have you performed any research in the area of DNA
10 testing?

11 A. In the form of validation studies and testing
12 within the laboratory, yes, sir.

13 Q. Are you a member of any professional societies or
14 organizations, particularly with regard to DNA testing?

15 A. I belong to the American Academy of Forensic
16 Sciences.

17 Q. Do you attend their meetings?

18 A. We attend some form of meeting on a regular basis.
19 I have attended several of that organization's meetings
20 over the years, yes, sir.

21 Q. Tell me, what is peer review?

22 A. Peer review is a process that our case folders go
23 through once we complete our testing. We are required
24 to document all the tests that we perform, and we
25 generate a report that reflects those tests. And

1 another court-qualified analyst then performs what we
2 call a technical review, basically to check to make sure
3 that we've followed all of our protocols. The case
4 folder then undergoes an administrative review, which is
5 more crossing the T's, dotting the I's, making sure
6 everything's complete and appropriate and ready to be
7 sent out.

8 Q. Have you ever performed or been asked to peer
9 review any analyses or publications of another analyst?

10 A. As far as our case folders, I am responsible for
11 the technical administrative review of other analysts'
12 case folders.

13 Q. Do you regularly read scientific literature in the
14 area of DNA?

15 A. I do. We are required to maintain a current list
16 of readings in current forensic techniques.

17 Q. Have you testified before today as an expert in the
18 area of DNA testing?

19 A. Yes, sir.

20 Q. Approximately how many times?

21 A. On approximately fifty occasions in jurisdictions
22 throughout South Carolina as well as California,
23 Massachusetts, New Jersey, Florida, at the District of
24 Columbia, and the United States District Court.

25 Q. What is DNA?

1 A. DNA stands for deoxyribonucleic acid. It's the
2 genetic material found in all of our body cells with the
3 exception of our red blood cells. DNA is packaged into
4 structures called chromosomes which contain our genes.
5 And genes are simply strands of DNA that code for our
6 physical characteristics such as our height or our eye
7 color. We inherit one copy of DNA from our mother and
8 one copy from our father and, therefore, have two copies
9 of every gene. In approximately ninety-nine point nine
10 percent of an individual's DNA is identical to that of
11 everyone else's. It's the variation in that remaining
12 point one percent that allows us to tell different
13 people apart.

14 Q. Is DNA in all people the same?

15 A. No. Everyone has a unique overall DNA profile with
16 the exception of identical twins.

17 Q. So identical twins do have the same DNA?

18 A. That's correct.

19 Q. But everyone else has a different profile?

20 A. Correct.

21 Q. Are there methods to type DNA for different people?

22 A. There are.

23 Q. When were they developed?

24 A. The current technology that we use started, I
25 believe, back in the late '90s, became the current

1 technology. It has changed a little bit over the years,
2 but this is -- what we use is the most commonly accepted
3 form of forensic DNA testing.

4 Q. And what type of DNA testing do y'all use?

5 A. We use what's called PCR/STR testing. PCR stands
6 for polymerase chain reaction. That's a technique that
7 allows us to make copies of specific locations in the
8 DNA that we need to test. Those locations are called
9 STRs or short tandem repeats. And an STR is just a
10 location on DNA when a short core unit of DNA repeats a
11 certain number of times. And it's the number of times
12 this unit repeats that varies from person to person. So
13 using this technology, we can develop what we call a DNA
14 profile from an item of evidence and compare it to the
15 DNA profile of a known individual to try and determine
16 if they could have contributed DNA to that item.

17 Q. Is the PCR form of DNA typing used in fields other
18 than criminal cases?

19 A. It is. It's also very common in medical testing.
20 It's used in body identifications in mass casualties.
21 It's used in paternity testing.

22 Q. Are there certain controls used during this PCR
23 type testing?

24 A. There are. We use what are known as positive
25 controls or samples of DNA for which we already know the

1 DNA profile. We run those samples alongside the
2 evidence and known standard samples we run in the case
3 to make sure that we get the DNA profile we expect when
4 the test is completed, which let's us know the test
5 worked correctly. We also use what are called negative
6 controls which are basically blanks. So we, again,
7 carry those throughout the whole process. And when we
8 get to the end of the process, there should not be a DNA
9 profile. If there is, that indicates to us that we may
10 have introduced that DNA profile as a contaminant during
11 the test.

12 Q. Okay. These controls are used in your analysis?

13 A. Yes.

14 Q. What type of results are possible from a PCR test?

15 A: We can use PCR test to make what we consider to be
16 an identification. If we have a DNA profile that
17 perfectly matches the DNA profile of a known individual,
18 we can say that an individual cannot be excluded as a
19 possible contributor. We can exclude an individual, and
20 sometimes we do have to concluded that no conclusive
21 statement can be made because we have insufficient
22 information or we just can't make a strong determination
23 as to include or exclude.

24 Q. Will you briefly go thorough those possible results
25 and just tell us what they mean?

- 1 A. When we have a single-source profile at all fifteen
2 of the STR locations that we test and develop a full
3 profile from an item of evidence, if it is a perfect
4 match to the DNA profile of a known individual, we
5 consider that to be an identification. The strongest
6 statement we can make in that case is that that
7 particular individual, within a reasonable degree of
8 scientific certainty, is the contributor of that DNA.
9 If we have a mixture of DNA or DNA from more than one
10 person, when comparing a known DNA standard to that
11 mixture, we may only be able to say they cannot be
12 excluded as a possible contributor if there is
13 consistency between their profile and the mixture. When
14 we compare an individual to a profile and there is not
15 consistency, we can exclude that individual, meaning
16 based on that profile that individual is not a
17 contributor. And, again, there are times where we have
18 to say that there's no conclusive statement to be made
19 because we either had insufficient information or we're
20 just not comfortable making as strong a statement as
21 including or excluding an individual.
- 22 Q. And is there anything that can make DNA in a sample
23 change from one type to another?
- 24 A. Not within the testing process, no, sir.
- 25 Q. Now, tell me what are population frequencies?

1 A. We use population frequencies to determine how
2 common or rare a DNA profile may be. There is a
3 database that consists of approximately two hundred
4 individuals of different races that we use. And if we
5 make a matched statement indicating that one person
6 matches the DNA profile of an item of evidence, we use
7 those frequencies to give an estimate of how common or
8 rare that DNA profile is in the population.

9 Q. And you've used these frequencies in DNA testing
10 before?

11 A. Yes, sir.

12 Q. How are those estimates calculated?

13 A. The software that we use is maintained by the FBI.
14 It consists of information that was collected through
15 paternity studies that were done. It includes African-
16 American, Caucasian, Southeast Hispanic, and Southwest
17 Hispanic population databases. And it counts how
18 frequently we see particular DNA types at each of the
19 STR locations we use. By testing each of the individual
20 STR locations, we can then combine those numbers to give
21 us the overall profile of an entire or -- excuse me --
22 the overall population frequency of the entire profile.

23 Q. And, again, you've testified in South Carolina
24 courts several times in the area of DNA?

25 A. Yes, sir.

1 Q. Been qualified as an expert in those courts?

2 A. Yes, sir.

3 MR. DURANT: Your Honor, at this point I'd ask
4 or I would submit to you Ms. Leisy as an expert in the
5 field of DNA typing.

6 THE COURT: Any objection, Mr. Robinson?
7 Would you like to voir dire?

8 MR. ROBINSON: No objection.

9 THE COURT: All right. Then I will deem her
10 to be an expert in DNA typing. Is that correct?. Type
11 or analysis?

12 MR. DURANT: DNA analysis, yes, sir.

13 THE COURT: All right. And, ladies and
14 gentlemen, like all the other witnesses, give it the
15 weight that -- or the expert witnesses and witnesses,
16 give it the weight that you deem most appropriate.
17 Thank you.

18 You may proceed.

19 Q. Ms. Leisy, did you receive any evidence in the case
20 of State v. Justin Johnson?

21 A. Yes, sir, I did.

22 Q. When did you receive that evidence?

23 A. I took custody of the bulk of the evidence on
24 September the 15th of 2011 from Doris Yarborough who
25 works in our log-in control department. I also received

1 items on September the 28th of 2012 from Amy Stephens in
2 our log-in control department.

3 Q. What was included in that evidence?

4 A. I received swabs that were taken from a shotgun. I
5 received numerous cuttings from articles of clothing
6 including a shirt, a tee shirt, a pair of pants, a belt,
7 a cell phone holder, as well as swabs from two rings.
8 And I also took custody of swabs taken from a pair of
9 boots and a pair of shoes.

10 Q. You received swabs that were taken from a shotgun
11 in this case. Were those swabs in a sealed package when
12 they came to you?

13 A. Yes, sir, they were.

14 Q. Okay. And that package hadn't been opened yet?

15 A. It had not.

16 Q. Did you open it yourself?

17 A. Yes, I did.

18 Q. And you tested that swab. Did you test the entire
19 sample, or how does that process work?

20 A. Typically, we try not to test things on our sample
21 or what we consider to consume it. We try to leave
22 some, if possible, so that we can perform later testing
23 on it if necessary. In most of the items, I took a very
24 small cutting to perform an initial test to check for
25 the possible presence of blood and then cut between --

1 usually between half of the sample and three-quarters of
2 the sample to test to try and develop a DNA profile.

3 Q. Let's talk particularly about the swabs from the
4 gun in this case. How many swabs were submitted to you?

5 A. There were four separate swabs submitted.

6 Q. Do you know from what area of the gun the swabs
7 were taken?

8 A. The indication I received was that the first swab
9 was taken from the trigger guard area, the second from
10 the area around the barrel opening. There was also a
11 swab taken from the pump action of the gun, as well as a
12 swab from the grip of the gun.

13 Q. Were you able to identify or develop a DNA profile
14 from any of those swabs?

15 A. I was.

16 Q. Okay. And tell me what your results were.

17 A. From our item SLED one point one, which was the
18 swab taken from the trigger and trigger guard area, the
19 DNA profile developed is a mixture of at least two
20 individuals. No conclusive statement can be made
21 regarding the inclusion or exclusion of Maxine Caraway
22 as a possible contributor. And Justin Johnson, Kaisha
23 Caraway and J.C. are excluded as possible
24 contributors to this mixture.

25 The item -- SLED item one point two, which was a

1 swab from the barrel opening, a partial DNA profile was
2 developed from this item. No conclusive statement can
3 be made regarding the inclusion or exclusion of Kaisha
4 Caraway as a possible contributor. And Justin Johnson,
5 J.C. and Maxine Caraway are excluded as
6 possible contributors.

7 SLED item one point three, swab from the pump
8 action of the shotgun, the DNA profile developed is a
9 mixture of at least two individuals. No conclusive
10 statement can be made regarding the inclusion or
11 exclusion of Maxine Caraway as a possible contributor.
12 And Justin Johnson, Kaisha Caraway, and J.C.
13 are excluded as possible contributors.

14 And then from SLED item one point four, the swab
15 from the handgrip of the gun, the DNA profile developed
16 is a mixture of at least two individuals. The DNA
17 profile developed from the major contributor to this
18 mixture matches the DNA profile of Maxine Caraway, and
19 the partial DNA profile developed from the minor
20 contributor is insufficient for reliable interpretation.
21 Q. So the only match that you have in any of the swabs
22 from the gun was in item one point four; is that
23 correct?

24 A. Yes, sir.

25 Q. Was that -- was that a mix -- that profile, was

1 that a mixture of several individuals or just one
2 person?

3 A. Well, item one point four contains DNA from at
4 least two individuals. There is what we consider to be
5 a major contributor, which means that one individual
6 left significantly more DNA on the item than did the
7 others. That allows us to single out their profile and
8 treat it as single-source when we make our comparisons.

9 Q. And the partial DNA profile, was that able to be
10 identified in there?

11 A. The partial profile from the minor contributor is
12 too weak to reliably interpret, so I did not make any
13 comparisons between that profile and any of the known
14 individuals.

15 Q. Do you have any way of telling the jury what type
16 of evidence you're looking at when you say that DNA was
17 developed from that swab? I mean, is that a certain
18 type of bodily fluid, or what is it?

19 A. In this instance, there were no presumptive or
20 preliminary tests run looking for bodily fluids. The
21 request made on the shotgun, I believe, was just for
22 touch DNA. Basically, that just means that they're
23 going to swab the item and collect any DNA that may be
24 present. It may be DNA that transferred through skin
25 cells. It may be a bodily fluid present. I don't know

1 what transfer caused the DNA to be present.

2 Q. Okay. So you don't know what that was that
3 contained Maxine Caraway's DNA, but it was on the handle
4 grip of the shotgun?

5 A. That's correct.

6 Q. And the other swab of the shotgun, no matches on
7 those?

8 A. No, sir.

9 Q. But there were some exclusions, weren't they?

10 A. There were.

11 Q. And tell me about those again?

12 A. For the swab from the trigger and trigger guard,
13 Justin Johnson, Kaisha Caraway, and J.C. are
14 excluded as possible contributors to this particular
15 mixture. On SLED item one point two, the swab from the
16 barrel opening, Justin Johnson, J.C. and
17 Maxine Caraway are all excluded. And SLED item one
18 point three, the swab from the pump action, Justin
19 Johnson, Kaisha Caraway, and J.C. are all
20 excluded.

21 Q. Okay. The swab from the barrel opening of the
22 shotgun, is there any statement that you can make
23 regarding Kaisha Caraway as a possible contributor to
24 that sample?

25 A. That particular profile was very partial. It was

1 very weak. And I'm not comfortable making a conclusive
2 statement regarding the inclusion or exclusion of Kaisha
3 Caraway as a possible contributor.

4 Q. And, again, just so we're clear, you received DNA
5 samples from these individuals to compare to the DNA
6 found on these items?

7 A. That's correct. We received what we refer to as
8 known standards. Those are samples taken directly from
9 that individual that we use to develop a DNA profile so
10 that we can compare that individual to evidence samples.

11 Q. And when you received those known standards in this
12 case, were those in sealed packages?

13 A. Yes, they were.

14 Q. And did you break those seals?

15 A. I did.

16 Q. I show you State's 93 and 94. If you would just
17 tell the jury what those are.

18 A. State's Exhibit 93 contains the DNA standard used
19 for J.C. , and State's Exhibit 94 contains the
20 blood spot used as the DNA standard for Maxine Caraway.

21 Q. And, again, those items were in a sealed container
22 when they came to you?

23 A. That's correct.

24 Q. After you analyzed the swabs from the shotgun, what
25 further items did you compare DNA from?

1 A. I developed DNA profiles for several cuttings taken
2 from a shirt, cuttings from a tee shirt, cuttings from
3 pants, a swab from a ring. And at a later time
4 developed DNA profiles from swabs from boots and swabs
5 from a pair of shoes.

6 MR. DURANT: I beg the Court's indulgence.

7 Q. I'm going to show you what's been marked as State's
8 Exhibit 95. Could you tell me if you recognize that?

9 A. State's Exhibit 95 is the DNA pouch that contains
10 cuttings taken from the clothing from our evidence
11 processing department and transferred to my custody for
12 testing.

13 Q. Do you have any indication where those cuttings
14 were obtained?

15 A. I do.

16 Q. And where were they?

17 A. From SLED item twenty-five, which was identified as
18 a shirt, I received a cutting from the front neck area,
19 a cutting from the left sleeve, a cutting from the right
20 sleeve, a cutting from the right side, and a cutting
21 from the left side. Those were identified as SLED items
22 twenty-five point one through twenty-five point five.

23 Q. And is that the same black and white shirt that Ms.
24 Gibson testified to a minute ago?

25 A. Based on my documentation, that would match up with

1 the item number that she was demonstrating, yes, sir.

2 Q. And you tested several samples from that shirt?

3 A. Yes, sir.

4 Q. Tell me what your results were.

5 A. For SLED items twenty-five point two, the cutting
6 from the left sleeve, item twenty-five point four, the
7 cutting from the right side, and twenty-five point five,
8 the cutting from the left side, the DNA profile
9 developed matches the DNA profile of Maxine Caraway.

10 And the probability of randomly selecting an unrelated
11 individual having a DNA profile matching these items is
12 approximately one in six hundred and seventy trillion.

13 Q. And tell me, is there any way for you to determine,
14 and did you determine, what type of DNA or what type of
15 bodily fluid, if any, that DNA came from on the
16 Defendant's shirt?

17 A. I performed the same type of preliminary test that
18 Ms. Gibson performed. It did indicate the possible
19 presence of blood. There was not a confirmatory test
20 run, so I can say that there was an indication of the
21 possible presence of blood and that I do have a DNA
22 profile matching Ms. Maxine Caraway.

23 Q. Okay. And those cuttings were obtained from what
24 area of the shirt?

25 A. Item twenty-five point two was from the left

1 sleeve, item twenty-five point four from the right side,
2 and item twenty-five point five from the left side.

3 Q. Okay. Looking at SLED item number twenty-five
4 point one, cutting from the front neck area of the tee
5 shirt, did you analyze that as well?

6 A. Yes, sir.

7 Q. And were you able to develop a DNA profile from
8 that?

9 A. I was. The DNA profile developed from the front
10 neck area, identified as SLED item twenty-five point
11 one, is a mixture of at least two individuals. The DNA
12 profile developed from the major contributor to this
13 mixture also matches the DNA profile of Maxine Caraway.
14 Justin Johnson cannot be excluded as a possible
15 contributor to this mixture, and Kaisha Caraway and
16 J.C. are excluded as possible contributors to
17 the mixture.

18 Q. And item twenty-five point one, were you able to
19 determine what type of bodily fluid that may be?

20 A. Again, I ran the same type of preliminary test, and
21 it did indicate the possible presence of blood.

22 Q. Looking at SLED item number twenty-five point
23 three, cutting from the right sleeve area of the shirt
24 of Justin Johnson, were you able to determine or develop
25 a DNA profile from that?

1 A. I was. The DNA profile developed from the right
2 sleeve of the shirt matches the DNA profile of Kaisha
3 Caraway. The probability of randomly selecting an
4 unrelated individual having a DNA profile matching this
5 item is approximately one in four point two quintillion.

6 Q. And did you run the same type of test to determine
7 what type of fluid that may be?

8 A. Again, it was the same type of preliminary test
9 indicating the possible presence of blood.

10 Q. And what was the -- tell me what the estimate was
11 again.

12 A. The probability of randomly selecting an unrelated
13 individual having a profile matching this item is
14 approximately one in four point two quintillion.

15 Q. All right. Looking at SLED item number twenty-five
16 point -- okay. I think we've been through all of those.
17 SLED item twenty-six point one point one, what is that?

18 A. Twenty-six point one point one is a cutting that
19 was taken from a pair of pants. And the paperwork
20 indicates it was taken from the right rear near the seam
21 near the pocket.

22 Q. And SLED item twenty-six point one point two was a
23 cutting from the pants as well?

24 A. Correct. That cutting was indicted as being taken
25 from the rear left leg near the knee.

1 Q. Can you tell me what the results of your DNA
2 analysis of those samples were?

3 A. The DNA profiles developed from the cutting from
4 the right rear near the pocket and the rear near the
5 knee are mixtures of at least two individuals. The DNA
6 profile developed from the major contributor to these
7 mixtures also matches the DNA profile of Maxine Caraway.
8 And the partial DNA profiles developed from the minor
9 contributors are insufficient for reliable
10 interpretation.

11 Q. What is SLED item number twenty-seven point one?

12 A. Twenty-seven point one is a cutting taken from the
13 front neck area of a tee shirt.

14 Q. Do you know what type of tee shirt it was?

15 A. Not based on this information. I believe on the
16 submission paperwork it indicated a black tee shirt.

17 Q. Is that the same black tee shirt that Ms. Gibson
18 testified to a minute ago?

19 A. The SLED item and case numbers would match up to
20 that tee shirt, yes, sir.

21 Q. Were you able to develop a DNA profile from the
22 cutting from that black tee shirt as well?

23 A. I was.

24 Q. And what were your results?

25 A. The DNA profile developed from the neck area of the

1 tee shirt is a mixture of at least two individuals. The
2 DNA profile developed from the major contributor to this
3 mixture matches the DNA profile of Maxine Caraway. No
4 conclusive statement can be made regarding the inclusion
5 or exclusion of Justin Johnson as a possible
6 contributor, and Kaisha Caraway and J.C. are
7 excluded as possible contributors to this mixture.

8 Q. Did you perform any other DNA analysis on other
9 items in this case?

10 A. On this particular report, I also performed DNA
11 testing on a swab that was taken from a ring that was
12 identified as a high-school-type ring like a class ring.

13 Q. Were you able to develop a DNA profile from the
14 ring?

15 A. I was. The DNA profile developed from the ring is
16 a mixture of at least two individuals. Justin Johnson
17 cannot be excluded as a possible contributor to this
18 mixture. No conclusive statement can be made regarding
19 the inclusion or exclusion of Maxine Caraway as a
20 possible contributor, and Kaisha Caraway and J.C.

are excluded as possible contributors.

22 Q. And did you analyze any other items of evidence in
23 this case?

24 A. At a later time, there were swabs submitted from
25 the toe area of a pair of boots and the toe areas from a

1 pair of shoes.

2 Q. Those swabs came to you from where?

3 A. I took custody of those items on September the 28th
4 of 2012. They were passed on to me by Amy Stephens of
5 our log-in evidence control department.

6 Q. Were they sealed when they came to you?

7 A. They were.

8 Q. Were you able to develop a DNA profile from the
9 swab of those boots?

10 A. I was.

11 Q. And what were you able to -- what were your results
12 of that DNA profile?

13 A. In regards to SLED item twenty-eight point one,
14 which was a swab taken from a toe of the left boot, the
15 partial DNA profile developed matches the DNA profile of
16 Maxine Caraway. And the probability of randomly
17 selecting an unrelated individual having a DNA profile
18 matching this item is approximately one in five hundred
19 and seventy billion. SLED item twenty-eight point two,
20 which was the swab from the toe of the right boot, the
21 partial DNA profile developed also matches the DNA
22 profile of Maxine Caraway. There was SLED item thirty-
23 one point one, swab from the toe of the left shoe. The
24 DNA profile developed matches the DNA profile of Maxine
25 Caraway. And SLED item thirty-one point two, the swab

1 from the toe right shoe, the DNA profile developed from
2 this swab is a mixture of at least two individuals. The
3 DNA profile developed from the major contributor to this
4 mixture also matches the DNA profile of Maxine Caraway.
5 And no conclusive statement can be made regarding the
6 inclusion or exclusion of Justin Johnson, Kaisha Caraway
7 or J.C. .

8 Q. Did you run any preliminary tests to determine what
9 type of fluid you may be looking at?

10 A. I did. I ran preliminary tests and received
11 positive results indicating the possible presence of
12 blood.

13 Q. And let me show you State's Exhibit 91 and ask you
14 if you recognize that.

15 A. The actual boots did not come to me. They were
16 swabs taken from the boots by Vicki Hallman of the crime
17 scene department at SLED.

18 Q. And is there a SLED item associated with those
19 swabs?

20 A. There is. SLED item numbers twenty-eight point one
21 and twenty-eight point two were taken from the boots,
22 and SLED items thirty-one point one and thirty-one point
23 two were taken from the shoes.

24 Q. And you didn't analyze the other shoes in this case
25 either?

1 A. I did not. Those swabs were taken by another
2 individual.

3 Q. Do they have an item number associated with them?

4 A. They do.

5 Q. Is there an item number indicated on the box?

6 A. There is. SLED item number thirty-one is indicated
7 on the box. And, again, the swabs taken from the shoes
8 were thirty-one point one and thirty-one point two.

9 Q. Okay. And tell me how are those items created?

10 A. When we start with a larger item such as a boot, if
11 one swab is taken from a particular area on the boot to
12 collect DNA that may be present there, that swab is then
13 labeled as thirty-one point one. The next swab would be
14 thirty-one point two, and so on, so that each particular
15 swab has a unique item number.

16 Q. So you examined item number twenty-eight point one
17 and twenty-eight point two. And those item numbers
18 would have been created from swabs from item twenty-
19 eight. Is that ...

20 A. That's correct.

21 Q. Okay. Item twenty-eight, is that -- those are the
22 Defendant's boots?

23 A. I believe the submission paperwork did indicate
24 that the boots belonged to Justin Johnson.

25 Q. And item thirty-one, the victim's shoes, those

1 swabs would have been created from those shoes as well?

2 A. That's correct.

3 Q. And your results on both of those is that the blood
4 indicated match from Maxine Caraway?

5 A. That's correct.

6 MR. DURANT: I beg the Court's indulgence.

7 THE COURT: Yes, sir.

8 Q. Ms. Leisy, are you familiar with the term secondary
9 transfer?

10 A. Yes, sir.

11 Q. Tell me what that means.

12 A. When we refer to just regular transfer, we mean
13 when a source of DNA transfers from an individual to a
14 particular item. So if you rub your hand along a desk,
15 there will be some level of transfer from your hand in
16 the form of skin cells or sweat to the desk. Secondary
17 transfer is when there's been transferred DNA from an
18 individual to an item or to another individual, and then
19 that item transfers their DNA to a second item. So if I
20 ran my hand along the desk, left my DNA there, someone
21 else came along and put their hand on it, you may
22 actually find some of my skin cells on their hand. The
23 transferred DNA from the table to that individual's hand
24 would what we consider secondary transfer.

25 Q. In your experience, would it be common or uncommon,

1 if you can say, to find a victim's DNA on a weapon?

2 A. That seems to be fairly common. Just based on
3 cases I've seen, for there to be a victim's DNA on an
4 item, whether it be a gun, a knife, whatever's used, it
5 is fairly common.

6 MR. DURANT: Your Honor, just to be clear, I
7 would move State's 28 and 31 into evidence.

8 THE COURT: What are they specifically?

9 MR. DURANT: 28 is the Defendant's boots; 31
10 the victim's shoes.

11 THE COURT: Any objection?

12 MR. ROBINSON: No objection.

13 THE COURT: Without objection, State's Exhibit
14 28 and 31 are admitted into evidence.

15 MR. DURANT: And I'm sorry, Your Honor. Those
16 numbers are SLED's item numbers. Those are State's
17 Exhibit 91, the Defendant's boots, and State's 73 the
18 victim's shoes.

19 THE COURT: Yeah. I think those are already
20 in, aren't they?

21 MADAM COURT REPORTER: 91 is.

22 THE COURT: 91, okay. Any objection?

23 MADAM COURT REPORTER: And 73, they're both.

24 THE COURT: They are in already.

25 MR. DURANT: And, Your Honor, just to be clear

1 I believe State's 68, 70, 67, and 75 are already in
2 evidence?

3 THE COURT: 75 is not.

4 MADAM COURT REPORTER: 75? Yeah, it is. It
5 is, Your Honor.

6 THE COURT: It is?

7 MADAM COURT REPORTER: It is, Your Honor.

8 THE COURT: Okay.

9 MR. DURANT: And State's 70 is, I believe, is
10 in evidence as well?

11 THE COURT: 70 is in evidence.

12 MR. DURANT: Your Honor, I don't have any
13 further questions from Ms. Leisy.

14 THE COURT: Thank you.

15 Mr. Robinson?

16 MR. ROBINSON: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. ROBINSON:

19 Q. Ms. Leisey, let me kind of start where Mr. DuRant
20 left off and ask you about secondary transfer. In your
21 analysis that you performed on any of these standards,
22 were you able to determine whether anything was primary
23 transfer or secondary transfer or anything of that
24 nature?

25 A. That's not really something we can determine with

1 the nature of the testing that we perform. Really, all
2 it tells us is whether or not there's DNA present on the
3 item when it's submitted to us. I can't tell you
4 necessarily how or when it got there.

5 Q. Okay. And you tested several areas of the gun.
6 And just let me make sure I'm clear on this. You did
7 not -- let me rephrase that. You were able to exclude
8 Justin Johnson's DNA from being on that gun; is that
9 correct?

10 A. Mr. Johnson was excluded from the profiles
11 developed that were taken from the gun, yes, sir.

12 Q. You found some of Ms. Maxine Caraway's DNA on the
13 gun?

14 A. She did match as the major contributor from one of
15 the swabs.

16 Q. And you found another contributor that did not
17 match Justin Johnson, J.C. or Kaisha Caraway;
18 is that correct?

19 A. On, I believe, two of the swabs taken from the gun,
20 SLED one point one and one point three, there was a DNA
21 type at one STR location that could not have been
22 contributed by those four individuals. It's far from
23 being enough information to try to identify the other
24 individual, but there is a type present that was not
25 contributed by those four people.

1 Q. So clearly it was contributed by somebody other
2 than the four people named?

3 A. That type could not have been contributed those
4 four individuals, yes, sir.

5 Q. Okay. With reference to the ring, the class ring
6 or high-school-type of style ring that you referenced, I
7 believe -- I don't recall what item number that is,
8 quite frankly. |

9 A. It should be SLED forty point two point one, I
10 believe.

11 Q. Yes, ma'am. You found Mr. Johnson's DNA on that;
12 correct?

13 A. Correct.. He cannot be excluded as a possible
14 contributor.

15 Q. And that was his ring, right?

16 A. Correct, as far as the information I received.

17 Q. Okay. And as far as the other, was there any other
18 DNA on there?

19 A. It was a mixture of at least two individuals.
20 There was not any indication that it was necessarily any
21 of the individuals that I have standards for.

22 Q. Okay. So again, it could well have been a third
23 party?

24 A. It's possible. Again, there was no conclusive
25 statement regarding Maxine Caraway as a possible

1 contributor with Kaisha and J.C. both being
2 excluded.

3 Q. So Kaisha's DNA was ruled out? In other words,
4 you're certain to a reasonable degree of scientific
5 certainty that Kaisha Caraway's DNA was not on that
6 ring?

7 A. I can say that her DNA profile is not included in
8 the profile I developed. It doesn't necessarily rule
9 out her ever being in contact with it or her DNA being
10 present on it. I just can't detect enough to say that
11 she's included as a possible contributor.

12 Q. You didn't find it on there?

13 A. Not based on the DNA profile I developed, no, sir.

14 Q. Okay. And with regard to the shoes and the boots
15 -- and I'll say boots and shoes because I think that's
16 how y'all have them differentiated. Items twenty-eight
17 point one and twenty-eight point two were the boots
18 described as the boots from Mr. Johnson; is that
19 correct?

20 A. That's correct.

21 Q. And they did indicate some of Maxine Caraway's DNA
22 on them?

23 A. I developed partial profiles from both of those
24 items, and the partial profiles do match the DNA profile
25 of Maxine Caraway.

1 Q. Okay. Tell me what the difference is between a
2 partial profile and when you put a number in there, one
3 in six hundred and seventy trillion or four point two
4 quadrillion or something like that?

5 A. When we say that we have a full DNA profile, it
6 means that we were able to develop DNA types at all
7 fifteen of the STR locations that we test. In this
8 case, there were several partial profiles. That just
9 means that we didn't develop types at all fifteen
10 locations. It could be that there was not enough DNA.
11 It could be that the DNA had been broken down and didn't
12 allow us to fully test the item. It just means that we
13 don't have a full profile worth of information on that
14 item.

15 Q. And item thirty-one point one and thirty-one point
16 two were actually from the shoes that Ms. Kaisha Caraway
17 was wearing?

18 A. That's the information I was given, yes, sir.

19 Q. Okay. And were you given an indication whether
20 these swabs came from the sole of the shoe or the toe of
21 the shoe?

22 A. The indication I had was that the swabs were taken
23 from the toe of the shoe. I don't know if that means on
24 top of the shoe or on the bottom. It just indicated
25 from the toe area.

1 Q. Okay. And what would that indicate to you
2 typically, the toe area?

3 A. Just that it would be towards the front of the
4 shoe. I don't know specifically where the swabs were
5 taken.

6 Q. Okay. And who took those swabs?

7 A. Those swabs were taken, I believe, by Vicki
8 Hallman.

9 Q. Okay. And those also had Ms. Maxine's DNA on them?

10 A. They did.

11 Q. And based on your numbers here, was it actually a
12 stronger match on Ms. Caraway's shoes than on Mr.
13 Johnson's?

14 A. It was a full profile developed from Ms. Caraway's
15 shoes whereas there was only a partial DNA profile
16 developed from Mr. Johnson's shoes. Because I only had
17 a partial profile, I couldn't use all of the locations
18 to generate the statistic, which is why the number is
19 smaller in terms of the profile developed from Mr.
20 Johnson's shoes than Ms. Caraway's.

21 Q. Okay. And other than the analysis that you've
22 talked about here today as far as whether or not there
23 was a DNA match or a certainty or can't be excluded, you
24 have no way to determine how that DNA got there, do you?

25 A. I do not.

1 Q. Okay. And let me ask you another question. You
2 did not receive for testing any standards from pants of
3 Kaisha Caraway?

4 A. I did not receive any cuttings taken from pants
5 that were indicated to belong to Ms. Caraway, no.

6 Q. Okay. And do you know why that is?

7 A. My understanding is that there was no processing
8 performed on that item.

9 Q. And why would that be? Do you know?

10 A. Typically, my understanding is that we don't
11 process items of gunshot victims as we expect there to
12 be quite a bit of their own blood on the item. I know
13 that there was also a request for certain items for us
14 to start with. I can only process what's sent to me.

15 Q. I understand. And for instance, when you say, we
16 don't process items of gunshot victims because you
17 expect there to be a lot of blood, did you realize Ms.
18 Caraway only had one pellet in her shoulder?

19 A. I didn't have information quite that specific. The
20 incident report, I believe, did indicate she'd been
21 shot. But I didn't have information as far as how many
22 times or how severe.

23 Q. Did y'all receive a shirt from Ms. Caraway to test
24 that was allegedly ripped off of her before she was
25 shot?

1 A. I know there was a shirt that came in that was
2 indicated as belonging to Kaisha Caraway, yes, sir.

3 Q. Did you perform any analysis on that shirt?

4 A. I did not.

5 Q. Let me ask you about a couple of other items that I
6 note in here, SLED item nine, swab from the front porch
7 near the blue tarp and front door. Are you familiar
8 with that one?

9 A. Yes, sir.

10 Q. No analysis performed. Why was there no analysis
11 performed on that?

12 A. When we receive cases where there are numerous
13 items collected, we ask the submitting agency to try and
14 narrow it down to approximately five items for us to
15 start with, what they consider to be the most
16 probative or what is most likely to give us an
17 informative link between two individuals or an
18 individual at a crime scene. That was not items that
19 was asked to be started with. And there was no request
20 made after that for us to go back and do it.

21 Q. And that would be the same true with ten, eleven,
22 and twelve?

23 A. Yes, sir.

24 Q. And those were swabs of -- do you know what they
25 were swabs of?

1 A. All I have is that they were swabs taken from
2 inside the house.

3 Q. Okay. Whoever took them believed they contained
4 potential DNA material?

5 A. If it were sent in for DNA analysis, most likely,
6 yes, sir.

7 Q. Let me ask you this. If there was some allegation
8 of a third-party involvement, would it be helpful for
9 you to analyze these swabs taken from an area to perhaps
10 exclude another individual from being involved in this
11 matter?

12 A. It's possible. It depends on the case information
13 we receive, the scenario involved, exactly what they're
14 looking for, what we already have. Again, you know, we
15 try to limit it to five samples or so to start with. If
16 there are more requests made, we are as accommodating as
17 we can be. We started with the items we were requested
18 to start with.

19 Q. Let me ask you this. Typically you said y'all do
20 not analyze clothing of gunshot victims. What made you
21 analyze Ms. Kaisha Caraway's shoes in this particular
22 instance?

23 A. The swabs taken from the shoes came in through a
24 different department. Apparently, there was a request
25 made at a later time to have those done. Those swabs

1 were passed on to me and requested that I do DNA
2 analysis, so I did.

3 Q. So the only items that you tested were the gun that
4 was the alleged murder weapon; right?

5 A. I'm not sure what it was allegedly used for. It
6 was a shotgun.

7 Q. A gun. The swabs from a gun?

8 A. Correct.

9 Q. Okay. And Mr. Johnson was excluded from those
10 items; is that correct?

11 A. From those profiles, yes, sir.

12 Q. His clothes, Mr. Johnson's clothing?

13 A. Yes, sir.

14 Q. Mr. Johnson's shoes?

15 A. Yes, sir.

16 Q. And Ms. Caraway's shoes?

17 A. That's correct.

18 Q. And Mr. Johnson's high school ring?

19 A. A high school ring. I believe it was indicated to
20 belong to Mr. Johnson.

21 Q. Didn't analyze any other blood evidence or
22 potential blood evidence that was found at the scene
23 because you weren't requested; is that correct?

24 A. That's correct.

25 Q. Let me ask you this. Did you do an analysis on Ms.

1 Maxine Caraway's fingernail clippings?

2 A. I don't believe -- as far as I know, there were no
3 fingernail clippings submitted. They never made it to
4 me if they were.

5 Q. Okay. You ever analyze fingernail clippings
6 before?

7 A. I have, yes.

8 Q. And the reason for that -- and correct me if I'm
9 wrong -- typically perhaps during a struggle or a
10 violent struggle, a victim sometimes scratches or in
11 some defensive posture will get the perpetrator's DNA
12 under her fingernails; is that correct?

13 A. That's correct. We can sometimes detect a second
14 individual under someone's fingernails if they've been
15 in close physical contact.

16 Q. And nobody ever sent you Ms. Maxine Caraway's
17 fingernail clippings to analyze?

18 A. Not that I'm aware of.

19 Q. And several -- well, let me rephrase that. At
20 least two of the DNA samples from the weapon itself
21 would include the DNA of another party; correct?

22 A. Correct. There was, again, one type at one
23 particular STR location that could not have been
24 contributed by the four known individuals I have
25 standards for.

1 Q. Okay. And nobody ever asked you to analyze SLED
2 items nine, ten, eleven, and twelve even after that
3 information was given that there was possible third-
4 party DNA?

5 A. Again, there was not any additional request made
6 for those particular items.

7 Q. And no analysis of her fingernail clippings to
8 compare to a potential third party?

9 A. No, there was not.

10 Q. If there had been, in fact, a DNA analysis, could
11 you have matched it, potentially matched it, to the
12 sample you had from the weapon, the unknown second
13 party?

14 A. No, sir. One DNA type at one location is not
15 enough to do any type of comparison. I can tell by
16 looking at the other individuals that they did not
17 contribute it, but I wouldn't be able to necessarily
18 tell you that, yes, this, you know, additional person is
19 the one who contributed. I just know there's an
20 indication of someone other than the four.

21 Q. What I meant was in other words, if we had
22 fingernail clippings with some third-party DNA and a gun
23 with some DNA on it, could that DNA, even if you
24 couldn't identify it, say those two DNAs are a similar
25 match, identical? Could you develop a profile that way?

1 A. Based on what I have from the gun currently, I
2 don't believe I would be able to really make a
3 comparison. It's just such a limited amount of
4 information. At best, I could probably say not
5 conclusive, but I would never be able to make a match or
6 necessarily exclude someone.

7 Q. Okay.

8 MR. ROBINSON: I don't have any further
9 questions.

10 THE COURT: Any redirect?

11 MR. DURANT: Yes, sir.

12 REDIRECT EXAMINATION

13 BY MR. DURANT:

14 Q. Ms. Leisy, you spoke earlier about the swabs from
15 the shotgun and that when those swabs were taken, they
16 were looking for touch DNA. Tell me what touch DNA is?

17 A. Touch DNA is how we refer to DNA that is
18 transferred when you come in physical contact with an
19 item. So it's really just transfer of your skin cells
20 from your body to that item.

21 Q. All right. So if I'm touching this podium, is it
22 likely that I'm leaving touch DNA?

23 A. You will be leaving some amount of DNA. Whether or
24 not it's enough for us to detect depends on quite a few
25 different variables, but there will be some transfer

1 from your skin to the podium.

2 Q. If I would touch this podium and wipe it down,
3 would it be possible for me to wipe away the touch DNA?

4 A. It is possible, yes.

5 Q. And again, those items taken from the shotgun,
6 Kaisha Caraway was not a match of any of that DNA, was
7 she?

8 A. She was not match on SLED item one point two, the
9 swab from the barrel opening. She cannot be -- no. I'm
10 sorry. No conclusive statement can be made regarding
11 the inclusion or exclusion of Kaisha Caraway as a
12 contributor.

13 Q. The barrel opening of the shotgun?

14 A. That's correct.

15 Q. And Mr. Robinson asked you about the Defendant's
16 high school ring. That's item four eight point two
17 point one. Were you able to determine whose -- were you
18 able to develop a DNA profile from that?

19 A. I was. It was a mixture of at least two
20 individuals.

21 Q. Okay. And were you able to determine whose DNA
22 profile that was?

23 A. I can say that Justin Johnson cannot be excluded as
24 a possible contributor. I can't make a match statement
25 necessarily on that, but his DNA types are consistent

1 with those found in the mixture. No conclusive
2 statement can be made regarding Maxine Caraway as a
3 contributor. And Kaisha and J.C. are excluded
4 as contributors.

5 Q. So we don't know for certain that that's Justin
6 Johnson's DNA on his own high school class ring?

7 A. It's not what we would consider an identification.
8 I can say he's not excluded as a possible contributor,
9 which you would expect to see if the ring did belong to
10 him. But I can't make a stronger statement than that in
11 this case.

12 Q. And the Defense lawyer told you that Justin
13 Johnson's DNA was found on that item. That was a bit
14 misleading, wasn't it?

15 MR. ROBINSON: Your Honor, I'm going to object
16 to the characterization of that question.

17 THE COURT: Rephrase your question.

18 Q. Was that DNA a match, the DNA found on the
19 Defendant's class ring, a match for Justin Johnson?

20 A. It was not a match necessarily. It was not an
21 identification. I cannot exclude him as a possible
22 contributor. His types are consistent with types found.
23 It is possible he contributed DNA to that ring.

24 Q. If I were to take off my wedding ring and you took
25 it back to the lab now, can you say for certain whether

1 or not you'd be able to find my DNA on my wedding ring?

2 A. I would expect to. Different people shed cells
3 more readily than others. It could be that I might get
4 a partial. I might not get anything at all. Again, it
5 depends on quite a few variables. But it's not unusual
6 to find someone's DNA on a piece of jewelry or an
7 article of clothing that they're wearing.

8 Q. If you couldn't find my DNA on my own wedding ring
9 that I just took off my finger in your presence, would
10 that mean it's not my wedding ring?

11 A. No, sir.

12 Q. Okay.

13 MR. DURANT: No further questions, Your Honor.

14 THE COURT: Any recross?

15 MR. ROBINSON: No, sir.

16 THE COURT: Thank you.

17 THE WITNESS: Thank you.

18 THE COURT: All right. Ladies and gentlemen,
19 I'm looking at y'all, and I think y'all need a break.

20 And I think we all could use a break. So let's take a
21 fifteen-minute recess. Please do not discuss anything
22 about the trial while you're back there.

23 (WHEREUPON, the jury exited the open court at
24 approximately 3:02 P.M.)

25 THE COURT: All right. Court will be in

1 recess until three fifteen.

2 (WHEREUPON, court stood at recess for a short
3 break.)

4 THE COURT: Is the State ready to proceed?

5 MR. DURANT: Yes, sir.

6 THE COURT: You may call your next witness.

7 THE BAILIFF: You want me to get the jury,
8 Judge?

9 THE COURT: Oh, yeah, let's get the jury.
10 They are very helpful in these situations.

11 (WHEREUPON, the jury entered the open court at
12 approximately 3:18 P.M.)

13 THE COURT: All right. The State may call its
14 next witness.

15 THE BAILIFF: Wait. We've still got one.

16 THE COURT: Oh, we've still got one back
17 there?

18 (WHEREUPON, the juror entered the courtroom.)

19 THE COURT: Mr. Montgomery, you gave me a
20 thumbs up. We got them all now? Okay. All right.

21 MR. FINNEY: May it please the Court?

22 THE COURT: Yes, sir.

23 MR. FINNEY: We call Mr. Dan DeFreese.

24 (WHEREUPON, the witness was duly sworn.)

25 THE COURT: You may proceed.

1 MR. FINNEY: Thank you, Your Honor.

2 DAN DEFREESE,

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MR. FINNEY:

6 Q. Good afternoon, Mr. DeFreese.

7 A. Good afternoon.

8 Q. Could you tell the ladies and gentlemen of the jury
9 where you're employed?

10 A. I work for the South Carolina Law Enforcement
11 Division in the forensic services laboratory in
12 Columbia. And I work in a department within the
13 forensic services laboratory where we do the analysis of
14 firearm and tool mark evidence.

15 Q. And have you testified as an expert witness in
16 previous cases in the state of South Carolina?

17 A. I have.

18 Q. Would you estimate how many times for the Court?

19 A. Between six hundred and seven hundred times.

20 Q. All right, sir. And in order to become an expert,
21 you have to take specialized training and study?

22 A. I do.

23 Q. All right, sir. And have you -- would you give the
24 ladies and gentlemen a little bit of the benefit of your
25 educational background and your study?

1 A. Sure. Well, I'm a graduate of the University of
2 South Carolina in Columbia. And after my employment
3 with SLED, I was initially assigned to the firearm and
4 tool mark department. And I began a course of
5 instruction that lasted approximately two and a half
6 years. It was conducted by the senior examiner at that
7 time, a gentleman by the name of Millard Cate. Mr. Cate
8 established the SLED laboratory when SLED itself was
9 established in 1947. And there was another examiner
10 named Carl Stokes who was a senior of mine at the time.
11 And I received instruction from him. Those are the two
12 principle teachers. I also have received instructions
13 from the Criminal Justice Academy, the FBI Academy, and
14 I'm a member of the Association of Firearm and Tool Mark
15 Examiners, and I attend from time to time training
16 conferences that they conduct. I began accepting cases
17 on my own and testifying as to my results in 1969 and
18 have been doing so since.

19 Q. All right, sir. And in order to be certified as an
20 expert, do you have to attend updated training sessions
21 and classes to be -- to keep a certification?

22 A. We attempt to have regular training or training at
23 regular intervals.

24 Q. And over the last, let's say, ten or twelve years,
25 have you done those training sessions and kept

1 certification?

2 A. I have.

3 MR. FINNEY: Your Honor, I'd offer Mr.
4 DeFreese as an expert in the field of firearms
5 examination and tool marks.

6 THE COURT: Mr. Robinson, do you have any
7 objection, or would you like to voir dire him?

8 MR. ROBINSON: Your Honor, I don't have
9 either. I just have a clarification as to what -- I
10 understand the tool marks. I'm not sure about the
11 firearms identification, what that supposedly
12 encompasses.

13 THE COURT: Then you may ask him questions
14 about it.

15 MR. ROBINSON: Okay. Thank you.

16 VOIR DIRE

17 BY MR. ROBINSON:

18 Q. Mr. DeFreese, with regard to that firearms
19 identification portion of your expertise, exactly what
20 does that encompass?

21 A. In most cases, we're asked to determine whether a
22 particular bullet is fired by a specific firearm or a
23 particular cartridge case is fired by a specific
24 firearm. That's mainly what we do. But we also do the
25 analysis of firearms evidence for the determination of

1 distance or range determinations by shot spread. We do
2 the analysis of firearms for functioning and safety
3 issues related to potential malfunction of firearms. In
4 a sense, firearms identification, as we mainly practice
5 it, is sort of a subset of tool mark identification
6 because the principle thing we're looking to do is
7 associate tool marks that are left on ammunition
8 components by the firearm back to a specific firearm
9 when it's possible to do.

10 Q. Okay.

11 MR. ROBINSON: Based on that, Your Honor, I
12 have no further questions and no objection to his
13 qualification as an expert.

14 THE COURT: All right. Well, then I will deem
15 him to be an expert in firearm and tool mark
16 identification analysis. And ladies and gentlemen, like
17 all other experts who have testified in this case,
18 please give it the weight that you deem appropriate.
19 Thank you.

20 You may proceed.

21 MR. FINNEY: Thank you, Your Honor.

22 Q. Mr. DeFreese, did you have occasion back in June of
23 2011 to receive a Mossberg model 88 shotgun from
24 Clarendon County or from agents of SLED who had worked a
25 case in Clarendon County?

1 A. I did.

2 Q. I want to show you what's been marked as Court's
3 [sic] Exhibit 74 and ask if you can identify that item?

4 A. Yes, sir, I can.

5 Q. And is that gun unloaded?

6 A. It is.

7 Q. All right. Tell us what kind of gun that is.

8 A. This is a Mossberg model 88 12-gauge pump-action
9 shotgun.

10 Q. Could you take it out and let the jury see it from
11 where you're sitting, please, sir?

12 A. Sure.

13 Q. When you say it is a pump action, describe what
14 that means to the jury.

15 A. The bolt or the mechanism of this firearm are
16 actuated by the forearm. That in order to load or
17 unload, you either pull the forearm to you or push the
18 forearm away from you. Right now I'm holding the action
19 release that permits me to do that. If the firearm were
20 being prepared for firing, unfired shot shells could be
21 placed within this tubular magazine. The magazine is
22 what the forearm is reciprocating back and forth on. As
23 many as five rounds can be placed in this magazine and
24 an additional round placed in the chamber, so it's
25 capable of firing up to six times before reloading.

1 When the safety, which is this button in the front of
2 the trigger guard, is pushed to the left, it would fire
3 at this point in time. But after firing the first shot,
4 the action is released. If you pump it backward and
5 forward, on the back stroke the fired shot shell in the
6 chamber would be expelled, and a fresh cartridge from
7 the magazine would be lifted and inserted in the
8 chamber. And the gun's now ready to be fired again.
9 After it's fired the next time, to cycle the action, you
10 pull it to the rear, extracting and ejecting, push it
11 forward, loading the next round and so on until all the
12 cartridges or all the shot shells in the magazine are
13 expended.

14 Q. All right, sir. If you have a full-loaded
15 Mossberg, you said it would hold six shells?

16 A. You can fire this as many as six rounds without
17 reloading.

18 Q. All right. It doesn't necessarily have to have six
19 for it to operate; is that correct?

20 A. No. It can have just one.

21 Q. All right. Did you also receive -- besides the
22 shotgun, did you receive items marked as being spent
23 shells?

24 A. I did.

25 Q. All right. And did you have occasion to have a

1 report issued by your office regarding the shells that
2 were turned in to your office?

3 A. Yes, I did.

4 Q. And did you make an examination of the shells? We
5 have marked them State's Exhibit 77, 78, 79, and 80.
6 Also, exhibit 76. Would you examine those?

7 A. Yes, sir. I have examined all of these items
8 before.

9 Q. All right, sir. And did you put a mark of some
10 kind that allows you to identify those today?

11 A. I did. I marked them all with my case number, my
12 item number, and my initials.

13 Q. All right, sir. I want to refer to a report that
14 was prepared, I believe, by your office regarding the
15 test firing of that Mossberg shotgun. Did you actually
16 test fire the gun yourself?

17 A. I did.

18 Q. All right. What was the reason for doing that?

19 A. Well, I have to test fire the shotgun to create
20 test shot shells so that I can microscopically compare
21 them first with each other and then with the fired shot
22 shells to see if the same markings are on all of them.

23 Q. Did you find the gun to be in good working order?

24 A. It was.

25 Q. All right. No mechanical defects were noted by

1 you?

2 A. No.

3 Q. All right. As it pertains to the shot shells that
4 were sent to your lab, I want to refer you to the type
5 of shells that you have listed in front of you that were
6 taken out of what's been marked as State's Exhibit 76,
7 77, 78, and 79. Could you tell us a little bit about
8 those shot shells?

9 A. Yes, sir. All of these are Winchester 12-gauge
10 two-and-three-quarter-inch shot shells. The one that's
11 in State's Exhibit 76 has a large 'W' stamped on the
12 side with steel-7, which means that it's a number seven
13 steel shot that was originally loaded into that shell.
14 State's Exhibit 77 is also a Winchester shotgun shell,
15 but it has a large 'W' impressed on the side, but it's
16 marked extra light seven and a half. It does not have
17 the word steel on it. And this shot shell would have
18 originally been loaded with number seven and a half size
19 lead bird shot pellets. State's Exhibit 78 contained
20 another Winchester shot shell which is marked with the
21 large 'W' and extra light seven and a half. So this one
22 would have originally been loaded with number seven and
23 a half lead bird shot. It also contains a fired
24 combination wad and shot cup assembly.

25 Q. Tell the ladies and gentlemen a little bit about

1 what that wad shot cup assembly is and how it relates to
2 the spent shell.

3 A. Surely. Within the shell, the original loaded
4 shell, there is a primer located on the back which
5 initiates the firing of the shell when it's struck by
6 the firing pin of the shotgun. The bottom of this shell
7 would have a quantity of propellant powder in it. After
8 that, the wad assembly would be inserted over the powder
9 and the shot placed in the cup portion of the wad. At
10 that point, the crimp would be formed on it to hold it
11 all together, and that would constitute the original
12 unfired shot shell. When the shell is fired, the firing
13 pin of the shotgun strikes the primer causing the powder
14 within the shell to burn very, very quickly, raising the
15 pressure inside the shell. The pressure's looking to
16 find a way to escape. And it does so by driving the wad
17 and the shot down the barrel and out of the shotgun. A
18 short distance after the wad and shot emerge from the
19 end of the barrel, they start to diverge. And the wad
20 will eventually fall away from the shot and the shot
21 will continue.

22 Q. All right, sir. In your testing of the shells that
23 were sent to your lab, were you able to determine
24 whether or not a particular weapon fired those four
25 shells?

1 A. Yes, sir.

2 Q. All right. And would you give the ladies and
3 gentlemen the results of your examination?

4 A. I compared the four fired shot shells in State's
5 Exhibit 76, 77, 78, and 79 with test shot shells that I
6 had fired in the shotgun. I believe the shotgun is
7 State's Exhibit 74.

8 Q. That's correct.

9 A. I found matching breach base impressions and
10 matching irregularities around the firing pin aperture
11 on all of them, rather unique marks, from which I was
12 able to determine that these four fired shotgun shells
13 in State's Exhibit 76, 77, 78, and 79 were all fired by
14 that shotgun, by State's Exhibit 74.

15 Q. All right. And the shotgun that's in evidence
16 fired those four shot shells?

17 A. Correct.

18 Q. And they left on each one of those shot shells
19 microscopic marks?

20 A. They did.

21 Q. Did you call them breach face marks?

22 A. Well, they're a combination of both breach face
23 marks -- well, they're breach face marks. But the hole
24 in the breach face that surrounds -- from which the
25 firing pin extends had some irregularities about it

1 which were really extremely unique as well. So I have a
2 combination of both impressed breach face marks that
3 were left on the breach block itself and then the firing
4 pin aperture.

5 Q. All right. I want to take you back to -- for a
6 question about the gun. When you were showing the
7 ladies and gentlemen of the jury about the mechanical
8 operation of the gun, you showed them that it expends a
9 spent cartridge out of the right side?

10 A. Yes, sir. It's extracted and ejected generally
11 from the right-hand side of the shotgun.

12 Q. All right. When you say generally, is there any
13 other way for a spent shell to be ejected from that
14 Mossberg gun except through the right side?

15 A. Well, assuming the gun's held in a vertical
16 position. If the gun were held in some other position,
17 it could end up going in some other direction.

18 Q. I understand that. But the opening on the gun is
19 from the right side?

20 A. Correct.

21 Q. That's the way for the shell to get out?

22 A. Correct.

23 Q. All right, sir. Now, Mr. DeFreese, in terms of the
24 size of the shot, you testified that, I believe, number
25 76 was a size seven?

1 A. It was a number seven.

2 Q. And can you give us a little background about the
3 size of the shot? Is a seven a small shot as compared
4 to an eight?

5 A. A seven is. When it comes to bird shot sizes, the
6 larger the number the smaller the shot.

7 Q. All right.

8 A. So a number seven shot is actually very slightly
9 larger in diameter than a number seven and a half.

10 Q. All right.

11 A. A number eight is slightly smaller than a seven and
12 a half.

13 Q. All right. And we have heard the term in the
14 community of buckshot. Tell us how buckshot measures up
15 against bird shot in sizes. Is buckshot -- does it have
16 a number?

17 A. Buckshot also -- it has a number system going with
18 it. Buckshot is numbered generally from number triple
19 ought through number four in American buckshot pellets.
20 Like a triple ought buckshot is the largest. A double
21 ought is slightly smaller, all the way to a number four,
22 which is the smallest of the buckshot. And they're
23 referred to as like number four buckshot.

24 Q. All right.

25 A. The other shot, like number seven shot, when you

1 don't say buckshot with it, you can either say bird shot
2 or it's implied that it's a bird shot pellet. And
3 they're generally much, much smaller in diameter.

4 Q. All right. When the evidence in front of you was
5 analyzed at your laboratory, how many waddings did you
6 have turned in to you?

7 A. Two. We had wads associated with State's Exhibit
8 79 and 78.

9 Q. All right, sir. Could you tell us from your
10 information where 79 and 78 was found in the house at
11 the scene?

12 A. State's Exhibit 78, which is my item four, was
13 received in a container marked marker fifteen. So it
14 was recovered wherever photographic marker fifteen was
15 located.

16 Q. All right, sir. You didn't actually come to
17 Clarendon County to visit the scene of the crime?

18 A. I did not. I was going by the container markings.

19 Q. Are you familiar with the way SLED crime scene
20 investigators place markings at the scene to identify
21 evidence?

22 A. Yeah, I'm familiar with their use of photographic
23 ID markers.

24 Q. All right, sir. And State's Exhibit Number 50 I'm
25 going to show you has a marker in it that says item

1 fifteen. Does that picture, State's Exhibit 50, look
2 consistent with the items that you received in item
3 that's marked as evidence as 77, I believe you said?

4 A. 78.

5 Q. 78?

6 A. It does.

7 Q. And as far as the wadding and the red shell casing,
8 it matches what you see in your laboratory in your hand
9 there?

10 A. They appear to be the same.

11 Q. All right. And that item that's in your hand now,
12 item 77, it is consistent with having been fired from
13 that Mossberg shotgun?

14 A. It's item 78.

15 Q. 78, I'm sorry.

16 A. The shell was fired by the Mossberg shotgun. I
17 looked for markings on the wad because sometimes there
18 will be irregularities present in the barrel of a
19 shotgun that will uniquely mark a plastic wad such as
20 this. But they were just not present here. That gun
21 just doesn't leave sufficient markings on plastic wads
22 to identify it.

23 Q. All right, sir.

24 A. This wad could have been fired by that shotgun, but
25 I can't say for certain it was fired by that shotgun and

1 no other shotgun.

2 Q. Have you examined evidence previously from crime
3 scenes where shotgun shells that were spent were found
4 next to plastic waddings, in close proximity?

5 A. Yes.

6 Q. All right. That's not unusual?

7 A. No.

8 Q. All right.

9 A. And it wouldn't be unusual for them to be some
10 distance apart too because the shotgun wad generally
11 moves around more than the fired shot shell does.

12 Q. All right, sir. Did you receive an item number
13 five, which was a Winchester 12-gauge combination wad
14 and shot near marker sixteen?

15 A. I did. That's State's Exhibit 79 which contains
16 one fired shot shell and one fired combination wad.

17 Q. All right, sir. And I want to show you what's been
18 marked as State's Exhibit 19, a photograph from the
19 bathroom area of the crime scene. And do you see a
20 similar red Winchester shell near marker sixteen?

21 A. I do. In fact, you can read the seven and a half
22 both in the photograph, and it's still present on the
23 shot shell.

24 Q. All right, sir. And did that one also have a wad
25 nearby?

1 A. There was a wad included in a container marked as
2 being from marker sixteen.

3 Q. All right. Very good. Let me ask you, Mr.
4 DeFreese, as you analyzed these items in your
5 laboratory, were you able to come to some conclusion or
6 make a report about the wads having certain fibers
7 attached to them?

8 A. I noted wood fibers or wood fiber-like debris on
9 both wads.

10 Q. On both wads?

11 A. Yes.

12 Q. All right. What would you associate the wood
13 fibers on the wads with in terms of your analysis of ...

14 A. Generally, we find wood fibers on fired projectiles
15 when they're fired at a structure that has like some
16 wood present, and where they penetrate, either penetrate
17 a wall or a door or some other structure made of wood.

18 Q. All right. So if you were told hypothetically that
19 these two wads that you had in your lab were fired at
20 wooden surfaces, that would be consistent with the
21 findings you found in the wad?

22 A. They would.

23 Q. All right, sir. You also were given, sir, four
24 unfired shells in item marked State's Exhibit Number 80;
25 is that correct?

1 A. That's correct, sir.

2 Q. All right. And did you do an analysis on those
3 four items?

4 A. I did.

5 Q. All right. What were your conclusions?

6 A. Well, three of the four shells were the same in
7 markings as State's Exhibit 76. That is, they were
8 Winchester two and three quarter inch shot shells marked
9 as being loaded with steeled number seven bird shot
10 pellets. In fact, the reason the one in the bag is
11 different from the other two Winchester number seven
12 steels is that I cut this one open to examine the
13 components that were used to load it. And within this
14 you can see the powder and the relatively small bird
15 shot pellets that were loaded into this shell. One of
16 the shells in State's Exhibit 80 was a slug round. This
17 has a single projectile. And it's generally intended
18 for big game hunting. But it's a shotgun slug round.
19 And it's different from all the other fired and unfired
20 shotgun shells or shot shell components in this case.

21 Q. All right, sir. And the four spent shells that you
22 tested and saw would have looked just like the unfired
23 shell from exhibit 80?

24 A. No. Only item 76 is exactly the same in markings.
25 This is the one that was loaded with the steel number

1 seven shot. The fired shot shells in State's Exhibit
2 77, 78, and 79 were marked as being a extra light seven
3 and a halves that would have been loaded with number
4 seven and a half lead bird shot pellets.

5 Q. All right, sir. Mr. DeFreese, can you give us some
6 information about shot pattern and the type of injuries
7 this shotgun and those types of shells would produce on
8 a human body if they were fired into the human body?

9 A. I can give you some limited information based on
10 the fact that I did not fire this particular gun with
11 the same ammunition at known distances.

12 Q. All right, sir.

13 A. I can speak generally but not specifically.

14 Q. All right. Generally speaking, would the Mossberg
15 gun that you examined in this case have a particular
16 shot pattern or a particular injury-type pattern in the
17 range -- in a close-range shooting of, let's say, three
18 to four feet?

19 A. Any 12-gauge shotgun with -- approximately like
20 that, there's a distance that the shot and wad have to
21 travel away from the muzzle of the gun before they start
22 to diverge, before the shot actually starts to spread or
23 the wad drops away from the shot. At very, very close
24 ranges like ranges one, two, three feet, they generally
25 have not started to diverge to any great extent. With

1 some shot shell ammunition, not like that present here,
2 it can go much greater distances before there starts to
3 be any spread. But when you reach a range generally in
4 three to five feet or greater, you start to see the shot
5 expand slightly. And a slightly greater distance,
6 you'll start to -- if it were to penetrate an object,
7 you would see one central hole with some pellets, some
8 individual pellets outside of the central hole, what we
9 frequently refer to as a satellite pellet because they
10 look like a satellite orbiting the earth. Then when
11 they go farther than that, you start to see individual
12 pellets and not one central wound or one central hole
13 being put through something. And the farther away the
14 shot swarm gets from the gun until it hits its target,
15 the larger and more divergent it becomes.

16 Q. All right, sir.

17 A. Now, to do it specifically, you need to load the
18 shotgun with exactly the same kind of ammunition and
19 shoot it at known ranges. But that's a general rule of
20 thumb. When you see ranges in the three to five feet,
21 you start to expect to see some divergence unless you're
22 dealing with some really super premium kind of
23 ammunition that has a wad that holds together much
24 farther than that.

25 Q. Mr. DeFreese, in this particular case with this

1 particular Mossberg shotgun with those Winchester
2 shells, would it be unusual for the wad to stay with the
3 shot and actually enter the target if it was a close-
4 range gunshot?

5 A. No, it wouldn't be unusual.

6 Q. And the farther away the gun would be, is it more
7 likely that the wad would fall away from the shot and
8 not enter the target?

9 A. More likely it would be that the wad would either
10 fall away or the wad would strike the target somewhere
11 close and just fall off. You know, it might very well
12 impact it, but not actually follow the shot into the
13 hole.

14 MR. FINNEY: May I ask the Court's indulgence?

15 Q. Just for clarification, Mr. DeFreese, in your
16 report you noted that the manufacturer of the gun was
17 Mossberg?

18 A. It's a gun that's sold under the Maverick trade
19 name. It's actually called a Maverick model 88. And
20 it's a shotgun that's actually manufactured by Mossberg,
21 but it's not sold under the Mossberg brand name. It's
22 really a Maverick 88.

23 Q. All right. Very good. Answer any questions the
24 Defense may have.

25 THE COURT: Mr. Robinson?

1 MR. ROBINSON: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. DEFREESE:

4 Q. Mr. DeFreese, let me start with asking you some
5 questions about what Mr. Finney was asking you about
6 about the distances and the shot cup and the wadding and
7 things like that falling away. Those are -- as you
8 said, you're simply speaking in generality when you're
9 talking today, aren't you?

10 A. That's correct.

11 Q. You didn't do any of that type of testing so that
12 you could come in here and tell us with any specificity
13 how close or how far anything happened?

14 A. Well -- so I couldn't give you an exact range. No,
15 I can't do that.

16 Q. Okay. Now, did you have the weapon that you
17 believe or that you were indicated caused the harm in
18 this case?

19 A. I did.

20 Q. And did you have ammunition and expended shells
21 that would indicate the type of ammunition used?

22 A. I did.

23 Q. And so if somebody had requested you to do that,
24 you certainly could have fired the same type shells out
25 of the same gun at known distances and come in here and

1 told us within a reasonable degree of certainty the
2 distance, couldn't you?

3 A. Probably not. And the reason I say that is in the
4 unfired shot shell ammunition we received, we got three
5 rounds. They were all the Winchester number seven
6 steels. We got one Winchester number seven steel. If I
7 had had a particular range to try it, I could have tried
8 it versus what this shot shell would do. We also had
9 three other shot shells that were the number seven and a
10 half leads. Same manufacturer, the wads are not exactly
11 the same. They're similar, but they're not exactly the
12 same. So with this we had no ammunition available. And
13 ammunition of this type, I generally like to have
14 exactly the same ammunition in order to try to pinpoint
15 the best results we can have. So some results might
16 have been available with regard to what this shot shell
17 would have done. None was available with regard to the
18 other three.

19 Q. So you don't know what -- whether it was a number
20 seven or a number seven and a half that caused the
21 injury versus just shooting a hole in the wall?

22 A. Right.

23 Q. And the specific placement of the shell casings
24 around the house, are you able to testify to any
25 significance of that other than that's where the shell

1 was laying?

2 A. No. There are a number of factors that can affect
3 that. And while assuming that the gun was held
4 vertically, you would expect a shot shell to be ejected
5 to the right, I can't infer anything about the position
6 of the shooter from the position that the shot shell was
7 recovered from.

8 Q. Okay. And consequently, the location of the shell
9 doesn't indicate that that shell, the shell by the
10 bathroom door, necessarily caused the damage to the
11 bathroom door or anything else, does it?

12 A. It's an inference, but you can't say for sure that
13 that's the case.

14 Q. Okay. Nothing that you can, in your area of
15 expertise, can say with scientific certainty?

16 A. No.

17 Q. Okay. And in your expertise to a reasonable degree
18 of scientific certainty, you cannot identify which of
19 those expended shot shells injured anybody, can you?

20 A. Not by looking at the shot shell, no.

21 Q. In any of the testing that you have done?

22 A. That's correct.

23 Q. Okay. And in any of the testing that you have
24 done, were you able to determine who fired the weapon?

25 A. No, sir. I can't tell you that by looking at a

1 fired shotgun shell.

2 Q. And you said -- I guess what you did identify was
3 that those expended rounds, those four expended rounds,
4 came out of State's Exhibit 74 which is the shotgun?

5 A. That's correct.

6 Q. And you talked about the unique case markings and
7 firing pin?

8 A. It had both unique breech face markings, and it had
9 an extremely unique firing -- breakage around the firing
10 pin aperture. It marks the shot shells in a very unique
11 way.

12 Q. Did you do anything to preserve that evidence, take
13 photographs of it or anything of that nature?

14 A. I did.

15 Q. And do you have those photographs with you?

16 A. I do.

17 Q. And were you able to blow them up? Are they on a
18 disk or how are they ...

19 A. I just have some thumbnails of them. They're not
20 blown up, but I do have electronic photographs of it at
21 the office.

22 Q. Okay. And with a pump shotgun and with the jury
23 sitting here just to make sure we're clear, you said --
24 and I think you demonstrated -- when you pull the
25 trigger that releases the action, when you fire the

1 shell, that releases the pump action part of it so that
2 it can be pumped?

3 A. Correct. Upon firing, the action -- when the
4 hammer goes forward, the action is released so that all
5 you have to do is pull back ---

6 Q. Pull back?

7 A. --- and push forward.

8 Q. Right. But that doesn't happen automatically. You
9 have to pull it back?

10 A. Right. It requires a manual -- in order to make it
11 fire again, you have to cycle the action by pulling the
12 fore end back, pushing it forward. And you also have to
13 let up on the trigger.

14 Q. Right.

15 A. The trigger has a disconnecter that if you hold
16 back on the trigger and push the pump handle forward, it
17 won't fire.

18 Q. Not like the old trench shotgun ---

19 A. The older pump shotguns would, but that one has
20 that other safety feature.

21 Q. I got you. So wouldn't that be the major
22 determinative factor in where the shell was laying is
23 where the pump action was actually pumped?

24 A. Right. I can shoot one here and walk out to the
25 parking lot and pump it there. So it's like -- it's

1 where it's pumped, not necessarily where the shot's
2 fired.

3 Q. Okay.

4 MR. ROBINSON: The Court's indulgence for just
5 one moment.

6 THE COURT: Yes, sir.

7 Q. One final question, Mr. DeFreese. I just want to
8 make sure I'm clear. I think two of the exhibits,
9 number 78 and 79, were actually fired shot shells with
10 waddings in the same package?

11 A. That's correct.

12 Q. Were you able to connect the fired shot shell with
13 the wadding that was contained in that package?

14 A. No.

15 Q. You could not positively identify those two as
16 coming from the same projectile?

17 A. No, sir, I couldn't.

18 Q. Okay. Thank you.

19 A. Thank you.

20 MR. ROBINSON: No further questions.

21 THE COURT: Any redirect?

22 MR. FINNEY: Just one question.

23 REDIRECT EXAMINATION

24 BY MR. FINNEY:

25 Q. I'm confused a little bit. When you pump the

1 shotgun, Mr. DeFreese, that expels the spent shell and
2 it places a new cartridge in the firing position; is
3 that correct?

4 A. That's correct.

5 Q. But you still have to pull the trigger; is that
6 correct?

7 A. That's correct. You have to let up on the trigger
8 from the previous pull, and you have to pull it again.

9 Q. Thank you, sir.

10 MR. FINNEY: Nothing further, Your Honor.

11 THE COURT: Any recross?

12 MR. ROBINSON: No.

13 THE COURT: All right.

14 Thank you, Mr. DeFreese. If you could put that
15 lock back on the gun. Or is it already on there?

16 THE WITNESS: (Complied) We're good, Your
17 Honor.

18 THE COURT: Thank you.

19 THE WITNESS: Thank you.

20 MR. FINNEY: Your Honor, we call Mr. Charles
21 Weathersbee.

22 **CHARLES WEATHERSBEE,**

23 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION

25 BY MR. FINNEY:

- 1 Q. Good afternoon, sir.
- 2 A. Good afternoon.
- 3 Q. Mr. Weathersbee, where do you reside?
- 4 A. In Sumter, South Carolina.
- 5 Q. And have you lived there for some time?
- 6 A. Yes, sir. About six years.
- 7 Q. All right, sir. Did you have occasion to be
- 8 employed by the EZ Shop Convenience Store in Manning,
- 9 South Carolina, in 2011?
- 10 A. Yes, I did.
- 11 Q. All right, sir. What was the store number?
- 12 A. Twenty-eight.
- 13 Q. And how long were you employed there?
- 14 A. I was at that location from April of 2010, I think,
- 15 until November of 2011.
- 16 Q. All right, sir. Were you the store manager?
- 17 A. I was the store manager.
- 18 Q. As the store manager, did you have responsibility
- 19 for running the store, making reports, and keeping
- 20 things up-to-date?
- 21 A. Yes. A twenty-four hour location.
- 22 Q. Pardon me?
- 23 A. It's a twenty-four hour location.
- 24 Q. All right, sir. So you had personnel people that
- 25 were working with you that you had to manage?

1 A. Yes.

2 Q. And also stocking the store, keeping the cash in
3 the store?

4 A. Yes, sir.

5 Q. Did you all have occasion to have a ATM machine
6 inside the store?

7 A. Yes, sir. We have an ATM machine in the store, and
8 we furnish and operate the ATM machine our self.

9 Q. Right. So it's not like it belongs to the Bank of
10 America or the Bank of Clarendon?

11 A. No.

12 Q. One of your responsibilities was to put money in
13 the ATM machine?

14 A. Yes, sir. You had to do that every morning.. You
15 have to -- you print out a report out that tells you how
16 many transactions were on the machine and everything.
17 Then you take the money out, go in the back in our
18 office, lock the door, of course, and then count the
19 money. And then that way you knew how much money you
20 had to put back into the ATM to get it to the normal
21 limit, which is two thousand dollars we normally kept in
22 it.

23 Q. All right, sir. Store number twenty-eight, where
24 is it located?

25 A. It's on Paxville Highway right on the other side of

1 Interstate 95.

2 Q. How far across I-95 -- would you be on Highway 261?

3 A. Yes.

4 Q. How far across 95 would you ---

5 A. Not even half a mile. I mean, it's -- you have one
6 -- there's a lot going as you go across it. And then
7 there's another Paxville store. And then we were right
8 after that.

9 Q. Did you all have a company that sold you gas that
10 you had a sign outside?

11 A. Yes.

12 Q. What was that company's name?

13 A. It's Brabham Oil Company. They actually own the
14 store location. Yes, sir.

15 Q. All right. Did you sell gas under the name
16 Marathon?

17 A. No. It was Horizon is what they called it back
18 then.

19 Q. Back then in 2011?

20 A. Yes, sir.

21 Q. All right. Do you know whether Brabham still owns
22 that store?

23 A. Yes, they do.

24 Q. Okay. Now, in the year 2011, in April of 2011,
25 would you have been the store manager?

1 A. Yes, I was.

2 Q. All right. And did you have occasion to operate as
3 a part of your normal business a videotaping machine
4 inside that store?

5 A. Oh, yes. There's sixteen total cameras at that
6 location. Four of them are outside for drive-offs and
7 that type thing. And then we have -- the other twelve
8 are actually in the store from different -- every angle
9 in the store, including the walk-in cooler and
10 everything else so you can tell exactly what's going on.

11 Q. All right, sir. And did you have an occasion to be
12 contacted by Clarendon County Law Enforcement to ask to
13 look at your video system on April the 6th, 2011?

14 A. Yes, we did.

15 Q. And were you able to allow them to download a video
16 inside your store number twenty-eight?

17 A. Yes, sir.

18 Q. All right. Have you seen the video?

19 A. Yes, sir, I've seen it.

20 Q. And that video, was it a camera operating inside
21 your store on Highway 261?

22 A. Yes, sir. It's one that's actually under, on the
23 front counter. It's underneath there where the overhead
24 is. It's one that directly shoots down that aisle.

25 Q. All right, sir.

1 MR. FINNEY: Your Honor, at this time we would
2 offer the video from the EZ Store number twenty-eight.

3 THE COURT: Any objection, Mr. Robinson?

4 MR. ROBINSON: No objection.

5 THE COURT: Without objection -- what number?

6 MR. FINNEY: It's been marked as State's
7 Exhibit Number 71.

8 THE COURT: ... State's Exhibit Number 71.

9 (WHEREUPON, State's Exhibit Number 71 was admitted
10 into evidence and published for the jury.)

11 Q. Is this the store location, sir?

12 A. Yes, sir.

13 Q. And the gentleman that just entered, where's he
14 headed?

15 A. He's heading, going down to the ATM.

16 Q. How many ATM machines do you have in the store?

17 A. One in the store.

18 Q. All right. The person that is running the cash
19 register, where would they be in this picture?

20 A. Where you see the hand of that person, they'd be on
21 the other side of the counter. That would be a customer
22 standing at the front.

23 Q. All right. At the bottom of the picture, sir,
24 there's some writing or numbers. What is that?

25 A. That's the date, the time of the recording.

1 Q. All right. And can you read what that date is?

2 A. April the 5th or 6th of 2011.

3 Q. All right, sir. And does it also show a time?

4 A. Yes, sir. 9:01, I believe.

5 Q. And forty-four right now.

6 A. And forty-four or forty-five, yes, sir.

7 Q. All right, sir. To your knowledge, was the time
8 and date stamp working on the machinery at your store?

9 A. Yes, sir.

10 Q. The gentleman that came in that was on the ATM, is
11 he still on the ATM?

12 A. Yes, sir.

13 Q. Has he now left the ATM?

14 A. Yes, sir. He's walking over at the front of the
15 store.

16 Q. All right.

17 A. The bathrooms are located over on that far wall,
18 and then the fountain stuff, coffee and all that's on
19 that wall.

20 Q. All right, sir. Do you have to have a key to get
21 in the bathroom?

22 A. No, sir.

23 Q. All right. And the gentleman that was on the ATM,
24 has he left?

25 A. He just left the building.

1 Q. All right, sir. All right, sir. And is that the
2 end of that tape?

3 A. Yes.

4 Q. All right. Thank you, sir. Answer any questions
5 Mr. Robinson has.

6 THE COURT: Mr. Robinson?

7 MR. ROBINSON: I don't have any questions,
8 Judge.

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

10 MR. DURANT: I beg the Court's indulgence one
11 moment.

12 THE COURT: Yes, sir.

13 Sir, you are excused.

14 THE WITNESS: Okay. Thank you.

15 MR. DURANT: The State would call Lativia
16 Brogdon.

17 **LATIVIA BROGDON,**

18 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MR. DURANT:

21 Q. Ms. Brogdon, where do you live?

22 A. I currently live in Bishopville ---

23 THE COURT: All right, ma'am. You're going to
24 have to speak into the microphone. You can pull it
25 closer to you. The microphone will come ---

1 A. I currently live in Bishopville, South Carolina.

2 Q. In Bishopville?

3 A. Yeah.

4 Q. Did you drive here to Manning this afternoon?

5 A. I got my nephew to drop me off.

6 Q. Ms. Brogdon, do you know the Defendant in this
7 case, Justin Johnson?

8 A. Yes.

9 Q. How do you know him?

10 A. That's my sister's ex-fiancé.

11 Q. You sister's ex-fiancé?

12 A. Yes.

13 Q. And what sister is that?

14 A. My other sister, Danisha Brogdon.

15 Q. Danisha.

16 MADAM COURT REPORTER: Can you spell that,
17 please?

18 THE WITNESS: D-A-N-I-S-H-A B-R-O-G-D-O-N.

19 Q. Has Mr. Johnson ever lived in the same house with
20 you?

21 A. Yes.

22 Q. And did he live in the same house with you back in
23 April of 2011?

24 A. Yes.

25 Q. Do you remember -- let me direct you back to April

- 1 6, 2011. Do you remember that day?
- 2 A. Yeah.
- 3 Q. And how do you remember it?
- 4 A. We woke up early that morning to go to school.
- 5 Q. You were still in high school?
- 6 A. Yes.
- 7 Q. And where did you go to school?
- 8 A. Manning.
- 9 Q. Manning High?
- 10 A. Manning High School. We went to school, and he
- 11 dropped us off at school. And he said he had something
- 12 to do so he would have picked us up later.
- 13 Q. Mr. Johnson dropped you off at school that day?
- 14 A. Yes.
- 15 Q. You and who else?
- 16 A. Me and my sister.
- 17 Q. Do you know about what time it was he dropped you
- 18 off at school?
- 19 A. I'd say about seven 7:45, 8:00 o'clock, somewhere
- 20 around there.
- 21 Q. The home that you lived in, did you have your own
- 22 room?
- 23 A. Yeah.
- 24 Q. Did Mr. Johnson keep any of his belongings in your
- 25 room?

1 A. No.

2 Q. Do you ever remember seeing Mr. Johnson with a
3 shotgun?

4 A. Yes.

5 Q. Where did he keep that shotgun?

6 A. He had it in my room.

7 Q. He had it in your room?

8 A. It was in my room.

9 Q. Okay. And do you remember when you returned home
10 on April 6th, 2011, was Mr. Johnson's shotgun still in
11 your room?

12 A. No.

13 Q. It was not?

14 A. No.

15 Q. The night before, on April the 5th of 2011, do you
16 remember whether Mr. Johnson's shotgun was in your room
17 then?

18 A. Yes.

19 Q. It was?

20 A. Yes.

21 Q. So when you went to bed on April 5th, Mr. Johnson's
22 shotgun was in your room?

23 A. Yes.

24 Q. And when you returned home on April 6th, 2011, that
25 shotgun was gone?

1 A. Yes.

2 MR. DURANT: No further questions.

3 THE COURT: Mr. Robinson?

4 MR. ROBINSON: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. ROBINSON:

7 Q. Ms. Brogdon, where did Mr. Johnson keep that
8 shotgun in your room?

9 A. That night it was in my son's crib. And then it
10 got moved to under the bed.

11 Q. It was in your son's crib the day before?

12 A. Yeah. The night -- I was pregnant.

13 Q. Okay. So you didn't have a son at that time?

14 A. No.

15 Q. That was a little disturbing. So you moved it and
16 put it under the -- did you put it under the bed?

17 A. Yes.

18 Q. The night before?

19 A. (No verbal response.)

20 Q. Okay. And did you look for it the next day?

21 A. No.

22 Q. Then how do you know it wasn't there?

23 A. When I came home from school, I went in my room and
24 checked under the bed where it was, and it wasn't there.

25 Q. So you did look for it?

1 A. Yeah.

2 Q. And why did you look under your bed?

3 A. Because I knew that the shotgun was there earlier.

4 Q. Okay. And you know why we're here today, don't
5 you?

6 A. Yes.

7 Q. You know what Mr. Johnson's been accused of?

8 A. Yes.

9 Q. How long have you known -- did you know Mr. Johnson
10 at that time in April of 2011?

11 A. Say for about almost a year.

12 Q. Okay. And had he been dating your sister that
13 whole time?

14 A. Say about six months.

15 Q. And how long did he live in the same house with you
16 and your sister?

17 A. About four months at the time.

18 Q. Okay. And during the time that you've known Mr.
19 Johnson, did you know him to have a bad temper?

20 A. No, not really. I would see him get upset
21 sometimes, but nothing like serious.

22 Q. Did you ever see him use the gun out of anger or
23 point the gun at anybody?

24 A. No.

25 Q. Threaten anybody with a gun?

- 1 A. No.
- 2 Q. Is he what you would consider a violent person?
- 3 A. No.
- 4 Q. Were you ever in a situation where you and your
- 5 brother or your sister or other members of your family
- 6 got into an altercation? You ever fight with your
- 7 brothers or sisters?
- 8 A. Yes.
- 9 Q. And did Mr. Johnson -- what did he do when y'all
- 10 got into an argument?
- 11 A. Tell us that we don't need to fight because we're
- 12 brothers and sisters.
- 13 Q. So he didn't jump in and take sides and ---
- 14 A. No.
- 15 Q. --- try to break y'all up and make peace?
- 16 A. Yeah.
- 17 Q. Is that typically how he reacted to situations like
- 18 that?
- 19 A. Yeah. If I was having a problem with my sister,
- 20 like sometimes he'd take us out. And we'd go out for
- 21 the evening, and he'd just let us enjoy ourselves.
- 22 Q. Okay. Was he ever abusive to your sister that you
- 23 noticed?
- 24 A. No.
- 25 Q. Did he ever put his hands on her?

- 1 A. No.
- 2 Q. Did he ever put his hands on you?
- 3 A. No.
- 4 Q. Did you ever see him put his hands on anybody?
- 5 A. No.
- 6 Q. Did he have a good job as far as you know?
- 7 A. Yes.
- 8 Q. Where did he work?
- 9 A. In the military.
- 10 Q. Okay. Do you know what he did?
- 11 A. I'm not sure.
- 12 Q. Okay. And he had a vehicle?
- 13 A. Yes.
- 14 Q. And did you ever have any occasion to hear him --
- 15 well, let me strike that. Did you know who Kaisha
- 16 Caraway was prior to this event?
- 17 A. His baby mom.
- 18 Q. So that wasn't a secret that he was keeping from
- 19 you or your sister?
- 20 A. No.
- 21 Q. Did you ever have an occasion to hear them arguing
- 22 over the telephone about money or the children or
- 23 anything like that?
- 24 A. Not that I'm aware of.
- 25 Q. Okay. Did you ever see him come in the house and

1 slam his fist down or kick or punch the wall or
2 something and Kaisha this or Kaisha that or anything of
3 that nature?

4 A. No. I would see him talk to her sometimes on the
5 phone, but like not where he was mad or upset really,
6 no.

7 Q. Okay.

8 MR. ROBINSON: The Court's indulgence for just
9 a minute.

10 THE COURT: Yes.

11 Q. You said you had seen Mr. Johnson with that shotgun
12 before. Had you ever been around it when it was being
13 shot?

14 A. Uh-uh (negative), no.

15 Q. Okay. Okay.

16 MR. ROBINSON: I don't have any further
17 questions.

18 THE COURT: Any redirect?

19 MR. DURANT: Just a couple, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. DURANT:

22 Q. Lativia, that gun that was kept under your bed, was
23 it in a case?

24 A. No, not at time.

25 Q. Okay. Mr. Robinson asked you about Mr. Johnson's

1 job. And you stated earlier that he took you to school
2 that day. Did he take you to school often?

3 A. Yeah, a lot.

4 Q. So he was home often?

5 A. Not often. In the morning time before school, he
6 would drop me and my sister off and go on to work.

7 Q. And you said that you were pregnant at the time?

8 A. Yes.

9 Q. How far along were you?

10 A. About three months.

11 Q. And your sister was pregnant at the time too,
12 wasn't she?

13 A. Yes.

14 Q. And was she pregnant by Mr. Johnson?

15 A. Yes.

16 MR. DURANT: No further questions.

17 THE COURT: All right. Any recross?

18 MR. ROBINSON: The Court's indulgence.

19 RECROSS-EXAMINATION

20 BY MR. ROBINSON:

21 Q. Now, just for clarification, Ms. Brogdon, you
22 weren't pregnant by Mr. Johnson as well, were you?

23 A. No.

24 Q. Okay. I just wanted to make sure of that.

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

1 MR. DURANT: May we approach, Your Honor?

2 THE COURT: You may.

3 (WHEREUPON, a bench conference was held off the
4 record.)

5 THE COURT: All right. Ladies and gentlemen,
6 that is all the testimony that you are going to hear for
7 today. I'm going to dismiss you for the evening with
8 instructions that you do not discuss the case with
9 anyone. Do not read any newspapers tomorrow morning
10 either. All right. As y'all have always done. Y'all
11 have been a very good jury on that. So ladies and
12 gentlemen, have a nice evening. I think it's kind of
13 nasty out there, so it's not going to be a great night.
14 Stay well. We need you to stay well. Thank you. Have
15 a nice evening.

16 (WHEREUPON, the jury exited the open court at
17 approximately 4:18 P.M.)

18 THE BAILIFF: The jurors want to know what
19 time.

20 THE COURT: I thought I said nine thirty. I
21 didn't say that in front of them. Okay. Nine thirty.
22 Nine thirty. Nine thirty. Y'all have been very good on
23 being prompt.

24 For y'all who were back in there, it's nine-thirty
25 tomorrow morning. Clear?

1 All right. Anything from the State or the Defense
2 before we adjourn?

3 MR. DURANT: No, sir. The only other ---

4 THE COURT: Anything that needs to be on the
5 record?

6 MR. ROBINSON: I've got something, but nothing
7 on the record.

8 MR. DURANT: One thing I would like to put on
9 the record, Judge, when we broke court on Friday
10 afternoon, we had a witness Jeff Crooks on the stand for
11 the State.

12 THE COURT: You did.

13 MR. DURANT: I believe him to be an ancillary
14 witness, not a necessary witness for chain of custody.
15 I spoke to Mr. Robinson after court on Friday, asked him
16 if he would have any objection to me not having Mr.
17 Crooks return. And when we commenced court this week,
18 my understanding was that I had asked him a few
19 questions, Your Honor, but again they were biographical
20 questions and no confrontation right of the Defendant
21 would be prejudiced by not having Mr. Crooks return to
22 the stand. Mr. Robinson indicated to me at that time
23 that he didn't have any objection. And I just wanted to
24 clarify that.

25 THE COURT: Mr. Robinson?

1 MR. ROBINSON: Your Honor, I agree with that.
2 I don't think he got two questions into it when the
3 Foreman had ---

4 THE COURT: Right.

5 MR. ROBINSON: --- a lapse. And I told Mr.
6 DuRant at that time I didn't have any problem with him
7 talking directly to Mr. Crooks from that Friday
8 afternoon forward because I did not believe it had
9 gotten to the point of testimony, so to speak.

10 THE COURT: Okay.

11 MR. ROBINSON: So I would agree with that
12 characterization and consented to him not being brought
13 back.

14 THE COURT: So you may have many motions when
15 they finish their case, but it won't be on that.

16 MR. ROBINSON: It won't be that one.

17 THE COURT: All right. Anything further? All
18 right. Thank you. I'll see the attorneys in my
19 chambers so we can discuss where we're going and when
20 we're going.

21 Court's adjourned until nine thirty tomorrow
22 morning.

23 (WHEREUPON, court stood at recess for the day at
24 approximately 4:21 P.M.)

25 **March 19, 2014**

1 (WHEREUPON, court convened with all parties
2 present, and the following proceedings were had
3 commencing at approximately 9:30 A.M.)

4 THE COURT: All right. Is the State ready to
5 proceed?

6 MR. DURANT: Yes, sir, Your Honor.

7 THE COURT: Is the Defense ready?

8 MR. ROBINSON: We're ready.

9 THE COURT: Are our jurors ready? You want to
10 give them -- if they're ready, we'll go ahead and start.

11 (WHEREUPON, the jury entered the open court at
12 approximately 9:48 A.M.)

13 THE COURT: Good morning, ladies and
14 gentlemen. Hope you had a nice evening.

15 Just trying to give you an idea -- because y'all
16 are probably wondering when this might be over. Well --
17 and don't hold me to this. But I've talked to the
18 attorneys. They're hoping to finish all the testimony
19 in this case some time tomorrow morning. Now, it could
20 change. We thought this case was only going to take a
21 week, and here we're well into our second week. So
22 don't hold me to that. But I just wanted to give you an
23 idea so you better understand.

24 Is the State ready to proceed?

25 MR. DURANT: Yes, sir, Your Honor.

1 THE COURT: Is the Defense ready to proceed?

2 MR. ROBINSON: We're ready, Your Honor.

3 THE COURT: All right. Call your next
4 witness.

5 MR. DURANT: Good morning. The State calls
6 Lisa Waananen.

7 **LISA WAANANEN,**

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MR. DURANT:

11 Q. Good morning.

12 A. Good morning.

13 Q. Ms. Waananen, am I saying that correct?

14 A. Right. That's correct.

15 Q. Where do you live?

16 A. In Fayetteville, North Carolina.

17 Q. Did you drive down to Manning this morning?

18 A. Yes, sir.

19 Q. How long did that take you?

20 A. A little over two hours.

21 Q. Okay. It's my understanding that you formerly
22 worked for the South Carolina Law Enforcement Division;
23 is that right?

24 A. Yes, sir. I retired.

25 Q. You retired? How long did you work for SLED?

1 A. For about twenty-six years.

2 Q. When did you retire?

3 A. October 31st, 2011.

4 Q. Are you working -- well, let me ask you, did you
5 receive any evidence in a case that we're here for
6 today, the State v. Justin Johnson?

7 A. Yes, sir, I did.

8 Q. And what evidence did you receive?

9 A. I need to look at my chain of custody here. I
10 received GSR kits.

11 Q. And how many?

12 A. There was three.

13 Q. I'm going to show you what's been marked as State's
14 Exhibits 69, 72, and 81. And would you tell me if these
15 are the GSR kits that you received?

16 A. Yes, sir, they are.

17 Q. And were they in sealed packages when you received
18 them?

19 A. Yes, they were.

20 Q. And that seal hadn't been broken?

21 A. No, it had not.

22 Q. And when it came to you, what did you do with it?

23 A. I processed them to get them ready for the analyst.
24 I open them up. Well, first I make sure when I pick
25 them up down in log-in that it's sealed, the envelope.

- 1 When I get them up to my office on the third floor, I
2 opened it and made sure that it was sealed. I opened it
3 up. There was an information form inside. I take that
4 form out. And I open one kit at a time. And I compare,
5 you know, make sure all the information is on the form,
6 the name, the time it was taken, you know, all the
7 information we need. And I know that I opened these
8 because my initials are on here. And at the time, I was
9 Lisa McReynolds, so there's an LM on here.
- 10 Q. Okay. Have you received any specialized training
11 or education in breaking these kits down and analyzing
12 them?
- 13 A. I had to go through six months worth of training
14 with an analyst.
- 15 Q. And you took these forms out. And what are you
16 looking on the forms inside ---
- 17 A. To make sure they're filled out correctly with the
18 information that we have to have so that the analyst can
19 go ahead and analyze these samples.
- 20 Q. And had all the forms been filled out correctly?
- 21 A. If I could refer back to those forms. They were.
- 22 Q. And those forms indicate the date and time the
23 samples were collected?
- 24 A. Yes, sir.
- 25 Q. Can you tell me what time the samples were

1 collected?

2 A. All of the forms say 10:00 A.M. on April the 6th,
3 2011.

4 Q. And after checking that the paperwork was in order
5 and correct, did you have any further involvement with
6 the kits in this case.

7 A. I'd break them down into sub-items. There was a
8 right palm, right back, left palm, left back. I break
9 them down with the computer. It assigns like -- I
10 believe this is twenty-two. Twenty-two point one is
11 right palm, twenty-two point two is left or right back,
12 and then left palm, left back. And I break them down,
13 and then I give them to the analyst.

14 Q. And you didn't perform the testing yourself, did
15 you?

16 A. No, sir.

17 Q. After you broke them down, you put them in sealed
18 containers before you gave them to the analyst?

19 A. They were put in locked storage cabinets. And then
20 when I have a run ready, which could be a hundred
21 samples sometimes, then I would let the analyst know.
22 And then they would get it from the locked storage. And
23 they'd do whatever they need to do, put them back in
24 locked storage, and then I would take them back out to
25 return them to log-in.

1 MR. DURANT: I beg the Court's indulgence a
2 moment.

3 THE COURT: Yes, sir.

4 Q. The forms that you referenced that were prepared in
5 each kit, can you tell me if you have an indication
6 about who might have prepared the forms?

7 A. It's different people on each one. On Maxine
8 Caraway, it was Scott Hardee from SLED. On Justin
9 Johnson, it was M. Moore from Clarendon County. And on
10 Kaisha Caraway it was Kenneth Clark from Clarendon
11 County.

12 MR. DURANT: I don't have any further
13 questions.

14 THE COURT: Mr. Robinson?

15 MR. ROBINSON: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. ROBINSON:

18 Q. Can I see those forms that you're referring to,
19 please, ma'am?

20 MR. ROBINSON: The Court's indulgence for just
21 a second, please, sir?

22 THE COURT: Yes, sir.

23 Q. Now, Ms. Waananen, is that right?

24 A. That's correct.

25 Q. I think you told the Solicitor that the time on

1 each form indicated 10:00 A.M.?

2 A. Yes, sir. Now, the last one did say 9:40. But
3 when it was compared to the others and called, it was
4 10:00 A.M. on my notes, so I just went with the ten,
5 10:00 A.M., because that's what I accepted.

6 Q. But that's not the time that the samples were
7 actually collected; right? That's just the time of the
8 alleged incident; right? Isn't that what the form says?

9 A. Yes, sir. I'm sorry. The time collected was at
10 the bottom. It was 3:50 P.M. on Maxine Caraway, 11:00
11 on Justin Johnson. And it's got 1:40 on Kaisha Caraway.
12 And that was per Ricky Richards.

13 Q. And that wasn't indicated by Kenneth Clark?

14 A. Kenneth Clark filled out the form, but I had to --
15 A.M. and P.M. was not circled, and so I had to call to
16 get clarification on that.

17 Q. Okay. But you didn't talk to Kenneth Clark; you
18 talked to Ricky Richards to get that clarification?

19 A. Right. And when you're running the -- doing the
20 samples, you have to get your information then because I
21 can't open another GSR kit until I have this one
22 finished.

23 Q. Got you. Now, let me ask you about the storage
24 process you talked about. You take them in. And I'm
25 assuming you're wearing gloves?

- 1 A. That's correct.
- 2 Q. And why is that? Why are you wearing gloves?
- 3 A. Just so there's no contamination.
- 4 Q. Okay. And tell -- I've read up, but perhaps the
- 5 jury hasn't. What kind of contamination are you worried
- 6 about on these GSR kits?
- 7 A. Actually, I wasn't. I mean, I don't shoot a
- 8 firearm, so I wasn't worried about any. But if somebody
- 9 would have, you know, gunshot residue on their hands,
- 10 then it could contaminate the samples.
- 11 Q. Okay. And that could be possible at collection
- 12 time as well?
- 13 A. If somebody's not wearing gloves.
- 14 Q. And what about -- have you ever heard the term
- 15 bagging the hands?
- 16 A. I have.
- 17 Q. Is that perhaps the best way to make sure that the
- 18 suspects hands are not contaminated?
- 19 A. Ila Simmons, the analyst in this case, would better
- 20 answer that. I don't know.
- 21 Q. Okay. I'm not trying to make you speculate.
- 22 A. Yeah.
- 23 Q. If you don't know, tell me just what you told me.
- 24 A. I don't know.
- 25 Q. Okay. Now, is processing GSR kits the only thing

1 that you were doing at that time, or were you processing

2 ---

3 A. At that time, I was in a special room.

4 Q. Okay. And in that room is where they had these
5 special lockers that you were talking about?

6 A. You go from our offices into another lab. The
7 locked storage containers are there. Through that lab,
8 I go into the room I was using.

9 Q. Okay. And those locked storage containers, are
10 they metal or plastic or ---

11 A. Basically file cabinets.

12 Q. Okay. Just a regular three- or five-drawer file
13 cabinet, something like that?

14 A. Yeah. I think it's five.

15 Q. Okay. And are those file cabinets used for storing
16 anything else? The ones that you use, are they used for
17 storing anything other than the GSR kits? Are they
18 divided up?

19 A. They're used only for GSR kits.

20 Q. Okay. Ane when you put these samples into that
21 drawer, did you reseal the package they were in?

22 A. As I open it and process it, then when I take my
23 samples and put in my rack, my test tube rack, then I
24 have to close and initial the GSR kit before I can move
25 to the next one.

1 Q. Okay. I mean, when you say close, you seal it?

2 A. Right. And initial it. There's a piece of tape
3 there, and it's under all the other tape that's on
4 there.

5 Q. And the reason I'm asking you that, you would agree
6 with me if these drawers are used for storing GSR kits
7 and the kits in them aren't sealed, then there's
8 possible cross-contamination within the drawer?

9 A. Right.

10 Q. But y'all took steps to eliminate that at SLED?

11 A. Yes, sir.

12 Q. That's something y'all are very conscious of is
13 being aware of contamination of the sample?

14 A. Yes, sir. And to make sure there was only one open
15 at a time.

16 Q. Okay. And to make sure the forms are filled out
17 properly?

18 A. That's correct.

19 Q. So when you come to court you can answer questions
20 like what time was that sample taken, who took it, that
21 kind of stuff?

22 A. Yes. It's been a long time.

23 Q. I know. I understand. You're doing fine.

24 Q. So on the kit that was marked Kaisha Caraway, you
25 did have to call back because that form was not

1 originally completed; is that correct?

2 A. That is correct.

3 Q. Okay.

4 MR. ROBINSON: The Court's indulgence for just
5 a minute..

6 THE COURT: Yes, sir.

7 MR. ROBINSON: I don't have any further
8 questions.

9 THE COURT: Any redirect?

10 MR. DURANT: No, sir, Your Honor.

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

13 MR. DURANT: I beg the Court's indulgence.

14 THE COURT: Yes, sir.

15 MR. DURANT: May it please the Court?

16 THE COURT: Yes, sir.

17 MR. DURANT: The State calls Ila Simmons.

18 MR. ROBINSON: Your Honor, may we approach for
19 a second?

20 THE COURT: You may.

21 (WHEREUPON, a bench conference was held off the
22 record.)

23 THE COURT: All right. Ladies and gentlemen,
24 we have a matter of law that we need to take up, so I'm
25 going to send you back for just a few minutes. And I

1 don't intend to be long, so don't get too comfortable
2 back there. But please do not discuss anything about
3 the case while you're there.

4 (WHEREUPON, the jury exited the open court at
5 approximately 10:02 A.M.)

6 THE COURT: Ms. Simmons, you can go ahead and
7 sit back down for right now.

8 (WHEREUPON, the witness stepped down from the
9 witness stand.)

10 THE COURT: All right. Mr. Robinson?

11 MR. ROBINSON: Your Honor, I have a concern
12 about or an objection perhaps to the admissibility of
13 some of these GSR tests from this witness based on the
14 testimony of the last witness that the forms may not
15 have been completed properly which would cause a break
16 in the chain of custody through no fault of hers. But
17 quite frankly, I did not know that testimony was
18 forthcoming until this morning, or I would have
19 addressed it earlier. But based on that information
20 that basically some of the information was based on
21 hearsay, because there's no testimony that Ricky
22 Richards was present at the collection of this GSR.

23 THE COURT: So you're talking about the fact
24 that it was A.M. versus P.M.?

25 MR. ROBINSON: Yes, sir.

1 THE COURT: Okay. What say the State?

2 MR. DURANT: Judge, I would respond that
3 according to the witness, the time was 1:40 on the
4 collection sheet. The concern of whether or not this
5 was A.M. or P.M., she called the officer to verify that.
6 The date was April the 6th. That was my understanding
7 of the testimony. All the testimony in this case has
8 been that this incident occurred sometime around nine
9 A.M. or after on the morning of April 6th. Certainly,
10 one forty in the A.M. on April 6th would be before the
11 incident even happened. So that wouldn't be plausible.
12 And further SLED -- Scott Hardee testified that he
13 collected these samples from the Sheriff's office at
14 12:02 A.M. on the morning of April the 7th. So before
15 1:40 A.M. on the 7th. So clearly these samples would
16 have had to have been collected at 1:40 P.M. on the 6th.
17 And there's plenty of evidence on the record from which
18 the jury can infer that.

19 THE COURT: All right. I respect your
20 position on that, but I don't find that by not crossing
21 a 'T' or dotting an 'I' that it makes the evidence bad.
22 So I'm going to allow it in.

23 All right. You can bring them back. Thank you.

24 Your motion's denied.

25 Ms. Simmons, you can come back up. You'll be sworn

1 in just a moment.

2 (WHEREUPON, the jury entered the open court at
3 approximately 10:06 A.M.)

4 THE COURT: Y'all barely had time to sit down.
5 I told you not to get comfortable.

6 (WHEREUPON, the witness was duly sworn.)

7 THE COURT: Ms. Simmons, if you could speak
8 into the microphone that's right there. Thank you.

9 **ILA SIMMONS,**

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. DURANT:

13 Q. Ms. Simmons, good morning.

14 A. Good morning.

15 Q. It's my understanding that you formerly worked for
16 the South Carolina Law Enforcement Division; is that
17 right?

18 A. Yes, sir.

19 Q. How long did you work for SLED?

20 A. I worked there for fourteen years.

21 Q. And when did you leave SLED?

22 A. I retired in October of last year.

23 Q. Of last year?

24 A. Yes, sir.

25 Q. Did you receive any evidence -- well, first of all,

1 tell me what was your job at SLED?

2 A. I worked in the forensic services laboratory's
3 trace evidence department where we analyze gunshot
4 residue, gunpowder residues. We perform comparisons of
5 paint, glass, fibers, as well as analyzing explosive
6 post-blast residues and arson samples.

7 Q. What is gunshot residue?

8 A. Gunshot residue is a mixture of microscopic
9 chemicals that come out of a gun when its discharged.
10 You see the old west movies and there's a puff of smoke
11 that comes out of a gun? The gunshot residue is mixed
12 up in that smoke. It can get on anything in close
13 proximity to the gun when it's discharged, including the
14 hands of the person shooting the gun or someone that
15 sustains a gunshot wound.

16 Q. Have you received any specialized training or
17 education in analyzing gunshot residue?

18 A. Yes, sir, I have.

19 Q. What kind?

20 A. I received a Bachelors of Science degree in
21 chemistry. After that, I went to work at SLED where for
22 the first three years I worked with a court-qualified
23 SLED-certified trace evidence examiner. During that
24 time, I was trained in how to collect and analyze all
25 disciplines of trace evidence. I had to take written

1 and practical examinations at that time and pass them
2 with one hundred percent efficiency. And I had to take
3 a proficiency examination every year that was submitted
4 by an outside agency and pass it with one hundred
5 percent efficiency. I was a member of the FBI's GSR
6 Symposium where we all got together in Quantico in 2005,
7 analysts from all over the world, and we actually set up
8 the standards and practices that are now in place for
9 analyzing gunshot residue.

10 Q. Have you been qualified as an expert in the
11 analysis of gunshot residue before?

12 A. Yes, sir. Over two hundred and fifty times in
13 federal, state and civil courts of South Carolina.

14 MR. DURANT: Your Honor, at this time I would
15 submit Ms. Simmons as an expert in gunshot residue
16 analysis.

17 THE COURT: Would you like to voir dire her,
18 or do you consent?

19 MR. ROBINSON: No. I consent.

20 THE COURT: All right. Ladies and gentlemen,
21 as I said before -- and this is a new day, so I'm going
22 to tell you again -- that normally people can only
23 testify as to what they heard, smelled, tasted, felt.
24 However, when somebody has a level of education and
25 experience, they are allowed to give their opinions.

1 Whether or not you decide to accept her opinion will be
2 up to you, and you should give it the weight that you
3 think that it deserves along with all the other evidence
4 in this trial. Thank you.

5 You may proceed.

6 Q. Ms. Simmons, did you receive some evidence in this
7 case, State v. Justin Johnson, to analyze?

8 A. Yes, sir, I did.

9 Q. And what evidence did you receive?

10 A. I received three gunshot residue collection kits.

11 Q. Okay. And on the table before you are State's
12 Exhibits 69, 72, and 81. Would you tell me if those are
13 the kits you received?

14 A. Yes, sir, they are. They are marked with our
15 unique identification number. Every case that comes in
16 to the SLED laboratory is given a unique number, and
17 each piece of evidence that is submitted within that
18 case is given an item number. These are marked with my
19 initials, Lisa Wannanen's initials, as well as the date
20 that they were opened to begin analysis.

21 Q. And what date were they opened to begin analysis?

22 A. 4/11 of 2011.

23 Q. And were they in the same condition as they are now
24 when you received them?

25 A. Yes, sir, other than that I sealed them after I

1 completed the analysis.

2 Q. Were they still sealed in the kits before you, or
3 had they been broken out already?

4 A. They had been opened and processed, but the kits
5 were resealed, yes, sir.

6 Q. Okay. And when they were processed, what do you
7 mean?

8 A. What would have happened was the samples would have
9 been taken out, a small amount of nitric acid would have
10 been put into the swab. This would extract any possible
11 material that may be in the swabs that was consistent
12 with gunshot residue. And then that would have been
13 analyzed on our scientific instrumentation.

14 Q. Okay. Were the kits broken down to different areas
15 of testing?

16 A. Yes, sir. It's a standardized kit. So the samples
17 are already in there labeled. They're labeled for the
18 right palm of the hand, the back of the right hand, the
19 left palm, and then the back of the left hand. So
20 they're already in vial tubes that are separates. They
21 are labeled, and they have a cap on them. So when you
22 remove those to being processing, you have to take the
23 cap off of each sample. Every sample in here is
24 independent of one another and sealed.

25 Q. All right. I'm going to start with the gunshot

1 reside kit labeled as belonging to Maxine Caraway.

2 A. Yes, sir.

3 Q. Did you analyze gunshot residue pertaining to her?

4 A. Yes, sir, I analyzed it for the presence of gunshot
5 residue.

6 Q. And what were your results?

7 A. On the palm of the right hand, I did not find any
8 metals that were consistent or associated with gunshot
9 residue. On the back of the right hand, I found metals
10 that may be associated with gunshot residue. On the
11 palm of the left hand, I got metals that are consistent
12 with gunshot residue. And on the back of the left hand,
13 I found metals that may be associated with gunshot
14 residue.

15 Q. All right. And let me stop you there. I heard you
16 indicate several different types of results. You said
17 one area did not indicate, one was consistent with, and
18 one may be associated with. What types of results are
19 possible for a gunshot residue kit?

20 A. Actually, these are the three results that are
21 possible. What we do is we're analyzing the swabs to
22 see how much of the metals that are in gunshot residue
23 are found on the swabs. It would be lead, barium, and
24 antimony. And when they are found on a swab in a
25 certain ratio one to the other, then we can say that it

1 could be associated with gunshot residue if lower
2 amounts are found. And then if higher amounts are
3 found, it's consistent with gunshot residue. It's a
4 slightly more positive answer.

5 Q. Let me review those results again. The right palm
6 of Ms. Maxine Caraway that did not indicate the presence
7 of gunshot residue?

8 A. Right. The metals that we found did not reach our
9 threshold levels.

10 Q. The right back of the hand?

11 A. It may be associated with gunshot residue.

12 Q. The left palm of the hand?

13 A. It was consistent with gunshot residue.

14 Q. And the left back of the hand?

15 A. May have been associated with gunshot residue.

16 Q. So the left palm of the hand was the strongest
17 indicator of gunshot residue?

18 A. Yes, sir. It would have had the largest amount of
19 gunshot residue metals present.

20 Q. Would you expect an individual with a gunshot
21 injury to their left hand to have strong -- to have a
22 strong presence of gunshot residue on that palm?

23 A. Yes, sir. If they were within a close proximity to
24 the gun when it was discharged, yes. That's not
25 uncommon. In fact, about sixty-five percent of people

1 who sustain a gunshot wound, even if they do not have a
2 gunshot -- have a gun present on them, have gunshot
3 residue on their hands.

4 Q. I want to go to the gunshot residue kit collected
5 from Justin Johnson. Tell me what your results were
6 there.

7 A. Okay. On the right palm, round lead particles were
8 found. Round lead particles are one of the components
9 of gunshot residue. Like I was saying earlier, that
10 gunshot residue is made up of lead, barium, and
11 antimony. If you have all three elements together in
12 one round particle, it is consistent with gunshot
13 residue. And it has not been found in a round form with
14 those three elements in anything else manmade or
15 natural. So it has to have come from a discharge of a
16 primer from a firearm. Here we have one component
17 found. And it is in a round form. On the back of the
18 right hand, we have round lead particles found. On the
19 left palm we have round lead particles found. And on
20 the back of the left hand, gunshot residue was found.

21 Q. So the back of the hand you've got all three
22 particles?

23 A. Yes, sir.

24 Q. And let me, I guess, stop you there and ask you is
25 there -- is it possible to wash gunshot residue off of

1 your hands and get rid of it?

2 A. Yes, sir. Gunshot residue has the consistency of
3 flour. It's very easily removed. You can wash your
4 hands. If you put your hands in and out of your
5 pockets, it would wipe off. If you would use hand
6 sanitizer or wipe your hands on a cloth, it can come
7 off.

8 Q. And now looking at the gunshot residue kit
9 collected from Kaisha Caraway, tell me what your
10 findings were.

11 A. On the right palm, the back of the right hand, and
12 the left palm, the quantities of metals we found did not
13 indicate the presence of gunshot residue. And on the
14 back of the left hand, the quantities of metals we found
15 may be associated with gunshot residue.

16 Q. So the only place on Ms. Kaisha Caraway that you
17 found any metals associated with gunshot residue was the
18 left back of her hand?

19 A. Yes, sir.

20 Q. Or the back of her left hand?

21 A. Yes, sir.

22 Q. If you would, Ms. Simmons, just kind of review for
23 us again the particles that make up gunshot residue.

24 A. Gunshot residue particles contain lead, barium, and
25 antimony, all in the same particle, and they're round.

1 The significance of the roundness is when the gun is
2 fired, these metals are in a molten state. So if you
3 were to throw water in the air and freeze it, you'd have
4 round droplets. Well, when it's coming out of this gun,
5 it's in a molten state, it's under pressure. Once it
6 hits the skin, it starts to cool. Therefore, round
7 particles containing all three elements are specific to
8 be under heat, pressure and being from the discharge of
9 a primer from a fired gun.

10 Q. So round particles containing all three of those
11 elements are they -- can you find them anywhere else in
12 nature?

13 A. No, sir, not to my knowledge, and not to any of the
14 articles and literature that I've read on the analysis
15 of gunshot residue.

16 Q. Is it possible for someone to shoot a gun and not
17 have gunshot residue on their hands?

18 A. It's a possibility. I have seen it happen once in
19 fourteen years over the thousands of guns I've shot.
20 Only seen it happen once.

21 Q. Okay. Is there a -- does the type of gun have any
22 bearing on the amount of gunshot residue?

23 A. Yes, sir, it does. A larger caliber gun like a .45
24 or .357 magnum is going to produce more gunshot residue
25 simply because there is more gunshot residue in the

1 primer cartridge that's in the gun. If you have a .22,
2 there's going to be much less gunshot residue produced.

3 Q. And how about a shotgun?

4 A. A shotgun should produce large amounts of gunshot
5 residue just because it's a very powerful weapon.

6 Q. Can you tell me what area of the shotgun the
7 gunshot residue is emitted from?

8 A. Ninety-eight percent of gunshot residue comes out
9 of the muzzle end of the gun where the projectile comes
10 out of, either -- in a shotgun's case, it would be small
11 round pellets, or in a handgun, it would be a bullet.
12 There are other places on a shotgun. If it is a pump
13 style shotgun where you actually have to push a reliever
14 and pull the pump fore stop back to extract the empty
15 shell, it can come out there when the shell is
16 extracted. If it's a semi-automatic, when the shell is
17 automatically extracted, it can come out of the
18 extractor. If it's the type of shotgun where you break
19 open the shotgun, you break the breech, it can come out
20 there once it's open. But it's a sealed system until
21 it's opened.

22 Q. And on Mr. Johnson, you said that some lead
23 particles were found. Were those particles -- were they
24 round as you stated earlier?

25 A. Yes, sir.

1 Q. And the roundness of the particles, is that
2 important?

3 A. Yes, because you can find lead in other forms.
4 However, when you find round lead, it is consistent with
5 it being under heat and pressure. So it's more
6 consistent with having come from a firearm than coming
7 from other sources.

8 Q. Okay.

9 MR. DURANT: No further questions.

10 THE COURT: Mr. Robinson?

11 MR. ROBINSON: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. ROBINSON:

14 Q. Ms. Simmons, let me ask you a little bit first
15 about the collection process for gunshot residue. What
16 is the recommended or preferred method of collection?

17 A. Well, you get a standardized kit, and it contains
18 two components. It contains double-sided sticky tape
19 with a handle, and it also contains swabs. The double-
20 sided sticky tape with the handle is collected first,
21 and the swab's collected second.

22 Q. Okay. What I meant was handling the sample. In
23 other words, the individual collecting it, the officers
24 or whoever it is, should they be wearing gloves?

25 A. Yes, sir, they should.

1 Q. And what's the reason for that?

2 A. Just in case they have touched something, they
3 don't want to take the chance of transferring anything
4 that may be on their hands to the sample because their
5 hands should never touch the samples. The only hand
6 that should touch these samples would be the person from
7 whom the GSR kit's being collected. And that's why each
8 sample has a handle so that when you're holding it, my
9 hand would be nowhere near the area that I'm going to
10 use to sample somebody else's hand.

11 Q. Would you agree that it would be a bad idea for the
12 officer to touch the suspect's hand or the subject's
13 hand with their hand, their hand to hand? That could
14 create a danger of transfer?

15 A. It could create a transfer option.

16 Q. How about if the officer had just drawn his weapon,
17 cleared a residence, re-holstered his weapon, and then
18 touched somebody's hand? Would that heighten the
19 possibility of transfer, especially in the case if
20 they'd just touched their own weapon?

21 A. It's a possibility, but generally transfer is like
22 if I had ten particles of GSR on my hands, maybe only
23 one particle would transfer. It wouldn't be multiple
24 particles most likely.

25 Q. Okay. But if that process were repeated, that

1 heightens the risk of transfer, doesn't it?

2 A. Yes, sir, it can.

3 Q. Would you agree that it's probably not a good idea
4 to cuff a suspect with their hands behind their back in
5 a patrol car because of danger of contamination?

6 A. There is a possibility if there is gunshot residue
7 in the patrol car that they could pick that up.

8 Q. And in your experience, isn't that a place where
9 there's likely to be gunshot residue is in a patrol car?

10 A. Well, there were studies done. And a thousand cars
11 were tested in different agencies around the country,
12 but only two particles were found in the car out of a
13 thousand different cars. So it is a possibility;
14 however, it's improbable.

15 Q. Okay. Would you agree with me that gunshot residue
16 also degrades over time?

17 A. Absolutely, yes, sir.

18 Q. Okay. So the sooner you collect the sample, the
19 better?

20 A. Yes, sir.

21 Q. And do your SLED -- as far as you know, do you
22 train people at SLED in the collection process?

23 A. Yes, sir. We train our crime scene unit, yes, sir.

24 Q. Okay. So would you know of a reason if a crime
25 scene unit arrived at noon and a body was in the yard

1 why they would wait until four o'clock that afternoon to
2 collect gunshot residue?

3 A. With a decedent, gunshot residue will remain on
4 someone who is deceased for an indefinite amount of
5 time. In fact, we've had suicide victims that the
6 coroner said died a month before and they weren't found
7 until four weeks later, and gunshot residue was still on
8 the hands. So generally with someone who is deceased,
9 they have a longer window. And generally they will try
10 to get people who are living because it's coming off
11 immediately when you're still alive.

12 Q. What -- I think you talked about some things that
13 do that. Washing your hands, putting your hands in and
14 out of your pocket, hand sanitizer, anything of that
15 nature, would possibly degrade or destroy it?

16 A. Yes, sir.

17 Q. How about if you were changing your shirt and you
18 had to put your hand through the sleeves and that kind
19 of stuff? Would that degrade it?

20 A. Yes, sir, it can.

21 Q. Okay. If you went to a hospital environment, would
22 that either degrade or contaminate the sample?

23 A. It probably wouldn't contaminate the sample, but it
24 could remove the gunshot residue if they cleaned the
25 hands in some way.

1 Q. Okay. And, again, the more time you changed your
2 clothes by taking a shirt on or off that passed across
3 your hands and put your hands on your pants to pull them
4 on and off, everything like that would degrade the
5 sample?

6 A. Yes, sir.

7 Q. And when I say "degrade the sample," remove
8 potential gunshot residue?

9 A. Yes, sir, that would not be found when the test was
10 collected.

11 Q. So if the test would have been done immediately
12 versus done after these acts that we're talking about,
13 the presence of gunshot residue could be greatly reduced
14 or totally diminished; is that correct?

15 A. It can be, yes, sir.

16 Q. Okay. Now, I believe you said something about in
17 your qualification, something to do with an FBI
18 symposium?

19 A. Yes, sir.

20 Q. Does the FBI still use gunshot residue?

21 A. The FBI stopped doing gunshot residue two years
22 ago. It was because they have gone more to an anti-
23 terrorism, to an anti-terrorism group. They are more
24 concerned with that. And they were only getting ten GSR
25 kits a year where we were getting four thousand GSR kits

1 a year. So they said that their resources and the money
2 they were spending on keeping the instrumentation up
3 just -- it didn't make any sense for them to keep doing
4 it.

5 Q. And who told you that?

6 A. DeMarcus Wright who is the gunshot residue analyst
7 at the FBI.

8 Q. Did you know that they suspended the use of it
9 actually in March of 2006 in an FBI bulletin. Have you
10 seen that bulletin?

11 A. I don't believe that they had suspended it at that
12 time. What they were doing is they had discussed ---

13 Q. Phasing it out?

14 A. --- stopping -- phasing it out, using the ICPNS,
15 yes, sir.

16 MADAM COURT REPORTER: I'm sorry?

17 THE WITNESS: Using the ICPNS. It's a
18 scientific instrument.

19 Q. And other than the gentleman you've just named,
20 have you read any of the FBI bulletins discussing their
21 reason for stopping use of GSR testing?

22 A. No. But we received an actual letter, all the
23 different laboratories that were performing gunshot
24 residue, from Mr. DeMarcus.

25 Q. Okay. And so the order or the timeliness of the

1 collection of gunshot residue could affect the strength
2 of the sample or the quality of the sample. Would you
3 agree with that?

4 A. It can.

5 Q. And so the fact that Mr. Caraway -- I'm sorry --
6 Mr. Johnson had, I guess, on his left back the strongest
7 remnant of gunshot residue?

8 A. Yes, sir. It was definitively gunshot residue.

9 Q. If I told you that his was collected within an hour
10 or so of the alleged incident whereas everyone else was
11 several hours thereafter, could that be one of the
12 reasons it was stronger on him?

13 A. It's a possibility if the other people were also
14 still alive.

15 Q. And gunshot residue is what it says it is; correct?

16 A. Yes, sir. It is the residue that comes from a gun.

17 Q. Right. You cannot make a definitive statement
18 about any of these individuals firing the weapon, can
19 you?

20 A. No, sir, I can't say if they fired the weapon or
21 were in close proximity to one when it was discharged.

22 Q. But simply that, that they were somewhere within
23 the proximity of a fired weapon?

24 A. Yes, sir.

25 Q. Beyond that, you can't say whether Kaisha fired a

1 weapon or -- Kaisha Caraway -- or Mr. Johnson fired a
2 weapon or anything of that nature?

3 A. No, sir, I cannot.

4 Q. And that the timing of this collection and the way
5 that these samples were handled could affect the amount
6 of gunshot residue present?

7 A. Yes, sir, it's possible.

8 Q. And I think the Solicitor -- and I just want to
9 make sure I'm clear -- asked you a question, "Can you
10 shoot a gun and not have gunshot residue?" And I think
11 your answer was that was possible, but rare?

12 A. Yes, sir.

13 Q. But the reverse is not rare, is it? You can
14 certainly have gunshot residue without shooting a gun?

15 A. Yes, sir, if you're in the proximity of the gun
16 when it's discharged, you can get it on your hands.

17 Q. Okay. And you can also get it from cross-
18 contamination if you had none on your hands. Isn't that
19 true?

20 A. That's a possibility, yes, sir.

21 Q. Okay.

22 MR. ROBINSON: Thank you, Your Honor. I have
23 no further questions.

24 THE COURT: Any redirect?

25 MR. DURANT: Just one for clarification.

1 REDIRECT EXAMINATION

2 BY MR. DURANT:

3 Q. Ms. Simmons, you testified that the FBI had stopped
4 using gunshot residue. Is that based on any concern, as
5 far as you understand, of the reliability of those test
6 procedures?

7 MR. ROBINSON: And, Your Honor, I believe
8 that's hearsay. I let her finish her answer. I simply
9 asked her was she aware of that situation. I think for
10 her to testify ---

11 THE COURT: I'm going to allow it. I think
12 you opened the door on that one. Proceed.

13 A. It has nothing to do with the scientific
14 reliability of the gunshot residue. They just chose to
15 use their resources, their manpower, and their time in
16 something that they get so much more samples of like
17 explosives and things of that nature. It had nothing to
18 do with the scientific validity. They still endorse
19 gunshot residue.

20 Q. Thank you.

21 MR. DURANT: No further questions.

22 THE COURT: Any recross based on ---

23 MR. ROBINSON: Just one.

24 RECROSS EXAMINATION

25 BY MR. ROBINSON:

1 Q. Do you have any documentation where they have
2 endorsed gunshot residue with you today?

3 A. They have sent out letters that it is okay for the
4 other -- that they have no problem with the scientific
5 validity of gunshot residue. They just don't do it at
6 their laboratory.

7 Q. But not endorsing it, just saying, yeah, it's fine
8 for y'all to do it?

9 A. Yes, sir, they say that they have no problems with
10 the scientific validity of it.

11 Q. Okay.

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

14 And since they weren't there when I said it, "All
15 witnesses are excused," if y'all would like to be
16 excused now, any objection?

17 MR. FINNEY: No objection, Your Honor.

18 MR. ROBINSON: No objection.

19 THE COURT: All right. Thank you.

20 MR. DURANT: Korianda Walker. The State calls
21 Korianda Walker, Your Honor.

22 THE COURT: All right.

23 **KORIANDA WALKER,**

24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MR. DURANT:

2 Q. Ms. Walker, where do you live?

3 A.

4 MADAM COURT REPORTER: I'm sorry?

5 THE WITNESS:

6 Q. Is that in Clarendon County?

7 A. Yeah.

8 Q. Do you know the Defendant in this case, Justin
9 Johnson?

10 A. Yes.

11 Q. How do you know him?

12 A. He used to talk to my girlfriend's sister.

13 Q. And who was that?

14 A. Danisha Brogdon.

15 Q. Have you ever lived in the same house with Mr.
16 Johnson?

17 A. Yeah.

18 Q. When did you live in the house with him?

19 A. I'm not -- I can't really remember, but a couple
20 years ago.

21 Q. Was he living in the house with you back in April
22 of 2011?

23 A. Probably so, yeah..

24 Q. All right. Let me direct your attention back to
25 April the 6th of 2011. Do you remember that day?

- 1 A. Yeah.
- 2 Q. What do you remember about it?
- 3 A. Him knocking on my room door asking me where his
- 4 guns was. And that's it.
- 5 Q. And what time was that?
- 6 A. Maybe like early morning, 7:30, 7:45.
- 7 Q. Okay. And you say he came to the room and asked
- 8 for his gun?
- 9 A. Yeah.
- 10 Q. Did he ask for the bullets as well?
- 11 A. No.
- 12 Q. Do you remember giving a statement to an agent,
- 13 Tina Carter, that worked for SLED?
- 14 A. Uh-huh (affirmative).
- 15 Q. When did you give her your statement?
- 16 A. Maybe like three, three days after, I guess.
- 17 Q. Your memory was better three days after it than it
- 18 is three years later?
- 19 A. I mean, it's still the same.
- 20 Q. Okay. Do you remember telling Ms. Carter that Mr.
- 21 Johnson came in your room at 9:15 that morning asking
- 22 for some bullets?
- 23 A. No. I told her a gun.
- 24 Q. Okay. So you're saying today that you did not tell
- 25 Tina Carter on April 11th, 2011, that Mr. Johnson came

1 into your bedroom at 9:15 in the morning asking for his
2 bullets?

3 A. No. I remember what I said.

4 Q. Okay. But he did come in your room that morning
5 asking for his gun?

6 A. Yeah.

7 Q. And was the gun kept in your room?

8 A. Yeah, after they come from hunting.

9 Q. All right.

10 MR. DURANT: No further questions.

11 THE COURT: Thank you.

12 Mr. Robinson?

13 MR. ROBINSON: Thank you, Your Honor. The
14 Court's indulgence just a minute. Your Honor, I don't
15 have any questions for this witness.

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

18 MR. DURANT: May we approach?

19 THE COURT: You may.

20 (WHEREUPON, a bench conference was held off the
21 record.)

22 THE COURT: All right. Ladies and gentlemen,
23 we'll take a 15-minute recess at this time. Please do
24 not discuss anything about the case while you're back
25 there.

1 (WHEREUPON, the jury exited the open court at
2 approximately 10:33 A.M.)

3 THE COURT: All right. Court will be in
4 recess until a quarter till eleven. Thank you.

5 (WHEREUPON, court stood in recess for a short
6 break.)

7 THE COURT: Is the jury ready?

8 (WHEREUPON, the jury entered the open courtroom at
9 approximately 11:37 A.M.)

10 THE COURT: All right. Is the State ready to
11 proceed now?

12 MR. DURANT: Yes, sir.

13 THE COURT: All right. You may call your next
14 witness.

15 MR. DURANT: Thank you, Your Honor. With
16 the Court's permission, I'd ask to recall Ila Simmons to
17 the stand.

18 THE COURT: You may.

19 You're still under oath, Ms. Simmons.

20 **ILA SIMMONS,**

21 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION

23 BY MR. DURANT:

24 Q. Ms. Simmons, I'd just like to show you again
25 State's Exhibit 69 and 81 and ask you, are those the two

1 gunshot residue kits that you received in evidence of
2 Maxine Caraway and Justin Johnson?

3 A. Yes, sir, they are. They're marked with our unique
4 identification number, the item number, my initials as
5 well as Lisa Wannanen's initials.

6 MR. DURANT: And Your Honor, I'd ask to admit
7 these two exhibits into evidence.

8 THE COURT: Any objection?

9 MR. ROBINSON: No objection.

10 THE COURT: Without objection. They're
11 admitted. Thank you.

12 (WHEREUPON, State's Exhibit Numbers 69 and 81 were
13 admitted into evidence.)

14 MR. DURANT: And no further questions.

15 THE COURT: All right. Thank you.

16 What were the numbers for the exhibits?

17 MR. DURANT: 69 and 81.

18 THE COURT: 69 and 81 are admitted without
19 objection.

20 MR. DURANT: Your Honor, the State would call
21 Tina Carter to the stand.

22 (WHEREUPON, the witness was duly sworn.)

23 THE WITNESS: Your Honor, let me apologize for
24 making you guys wait.

25 THE COURT: All right. Thank you.

1 **TINA CARTER,**
2 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:
3 DIRECT EXAMINATION
4 BY MR. DURANT:
5 Q. Ms. Carter, where do you work?
6 A. State Law Enforcement Division.
7 Q. And how long have you worked for SLED?
8 A. Ten years.
9 Q. What is your position at SLED?
10 A. I'm a regional investigator.
11 Q. Were you assigned to assist the Clarendon County
12 Sheriff's Office with the investigation of a case
13 against Justin Johnson?
14 A. I was.
15 Q. Let me show you a document and have you tell the
16 jury whether you recognize that or not?
17 A. I do.
18 Q. What is it?
19 A. This is a memorandum of interview of where I spoke
20 with Korianda Walker.
21 Q. Okay. And when was that interview? Did you
22 prepare that memorandum?
23 A. I did.
24 Q. When did that interview take place?
25 A. March 11th -- I mean, May 11th.

1 Q. May 11th?

2 A. April 11th, sorry.

3 Q. April of 2011?

4 A. Of 2011, yes.

5 Q. When you spoke to Ms. Walker, did she tell you
6 whether she had seen Mr. Johnson on the day of April
7 6th, 2011?

8 A. Yes, she did.

9 Q. And what did she tell you about that interaction.

10 A. She said she was asleep in the bedroom when Johnson
11 knocked on the door and came in. She thinks it was
12 about 9:15 to 9:30. He came in and asked where the
13 bullets were. She told him they were on the closet
14 shelf, at which time she said he got them off of the
15 closet shelf and left the room.

16 Q. And, again, what time did she tell you that
17 happened?

18 A. She said it was approximately between 9:15 and
19 9:30.

20 Q. All right.

21 MR. DURANT: No further questions, Judge.

22 THE COURT: All right. Mr. Robinson.

23 MR. ROBINSON: Thank you.

24 CROSS-EXAMINATION

25 BY MR. ROBINSON:

1 Q. Agent Carter, the testimony you just rendered, is
2 that just based on your memorandum?

3 A. Yes, sir. That's based on where I interviewed her.

4 Q. I mean, do you remember ---

5 A. Yes, I remember.

6 Q. --- without looking at that?

7 A. Yes, I do.

8 Q. Okay. Everything in that memorandum is a hundred
9 percent accurate?

10 A. It is.

11 Q. Okay. You took some other memorandums or prepared
12 some other memorandums in this case?

13 A. I have.

14 Q. Are they all one hundred percent accurate?

15 A. There was one memorandum where I accidentally put
16 that there was a recording because I'd used it as a
17 template, and there was not. But other than that, yes,
18 they are.

19 Q. Let me ask you to look at this memorandum and see
20 if you recognize it.

21 A. Sure. I do.

22 Q. And that is one where you talked with Ms. Kaisha
23 Caraway on April the 6th, 2011; is that correct?

24 A. Correct. This is where I talked with her at the
25 hospital.

1 Q. Okay. But where does that memorandum say you
2 talked to her?

3 A. It says at the Clarendon County Sheriff's Office,
4 so there is a mistake in that.

5 MADAM COURT REPORTER: I'm sorry?

6 A. It does say the Clarendon County Sheriff's Office,
7 and this interview was done at the hospital.

8 Q. Okay. So it is possible that every now and again
9 you make mistakes?

10 A. It is.

11 Q. Okay. And your testimony, again, is based on your
12 refreshed recollection from three years ago relying on
13 your memorandum?

14 A. It is. But I also do remember speaking with her
15 because I spoke with several others on that day.

16 Q. Okay. But you didn't make an audio or video copy
17 of her interview?

18 A. We did not.

19 Q. Okay.

20 MR. ROBINSON: I don't have any further
21 questions.

22 THE COURT: Any redirect?

23 MR. DURANT: Just briefly.

24 REDIRECT EXAMINATION

25 BY MR. DURANT:

1 Q. Did you takes notes on a notepad or something when
2 you were speaking with Ms. Walker?

3 A. I do. I take notes before I type it out.

4 Q. And those notes are what you converted to your
5 memorandum?

6 A. Correct.

7 MR. DURANT: No further questions.

8 THE COURT: Any recross based on that?

9 MR. ROBINSON: No, sir.

10 THE COURT: All right. Thank you.

11 THE WITNESS: Thank you.

12 THE COURT: You may step down.

13 MR. FINNEY: Your Honor, at this time, we have
14 one other witness from Columbia who would not be able to
15 be present until one thirty. We'd ask the Court for an
16 early lunch hour and reconvene at one thirty.

17 THE COURT: All right.

18 All right. Ladies and gentlemen, we will have an
19 early lunch, and it'll be a long lunch for you. Don't
20 go home sleeping or anything like that and forget to
21 come back. So, ladies and gentlemen, have a nice lunch.
22 Please do not discuss the case with anyone. We're
23 drawing towards the close. So let's keep it -- y'all
24 have been very good so far, and I expect you -- you got
25 to make it all the way to the end. Thank you, ladies

1 and gentlemen, have a nice lunch. Be back just a little
2 bit before one thirty so we can start at one thirty.

3 (WHEREUPON, the jury exited the open court at
4 approximately 11:44 A.M.)

5 THE COURT: All right. Why don't we use this
6 time so I can go ahead and question the Defendant, and
7 then I'll leave the final question ---

8 MR. ROBINSON: We've got a juror coming back
9 in, looks like, Judge.

10 THE COURT: Oh, okay.

11 (WHEREUPON, the juror entered and then exited the
12 open court.)

13 THE COURT: All right. Will the Defendant
14 please stand?

15 Please put the Defendant under oath, Ms. Beulah.

16 **JUSTIN JOHNSON,**

17 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

18 EXAMINATION BY THE COURT

19 THE COURT: All right. Mr. Johnson, at this
20 time I'm going to ask you some questions concerning your
21 rights. If you do not understand anything that I say,
22 please let me know. And if you want me to explain
23 anything in greater detail, let me know. Do you
24 understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. Now, we've reached the
2 stage of the trial where you may present your defense --
3 or we're close to that point. They still have another
4 witness to put up. But I'm not going to ask you the
5 ultimate question until after they have done that --
6 where you can claim the -- place where you would claim
7 your protections given to you by the Fifth Amendment of
8 the United States Constitution. And, again -- which
9 states in part that "no person shall be compelled in any
10 criminal case to be a witness against himself." Now,
11 this means that you cannot be required to testify in
12 this case. You have a right to testify in this case;
13 however, no one can make you testify. This is a
14 personal right, and no one may waive this right except
15 for you.

16 Now, if you decide to testify, you'll be subject to
17 the same rules that govern other witnesses. And you may
18 be examined and cross-examined on any relevant issue in
19 this case.

20 In addition, if you have any convictions involving
21 dishonesty or false statements or for crimes punishable
22 by imprisonment for more than one year and the Court
23 determines that the probative value of admitting this
24 evidence outweighs its prejudicial effect on you, the
25 Solicitor will be able to introduce your record to

1 attack your credibility.

2 Is there anything in his record that y'all know of
3 that you would be able to attack his credibility?

4 MR. FINNEY: No, Your Honor.

5 THE COURT: All right. Thank you.

6 Now, if you decide to testify, the decision on your
7 part must be freely, voluntarily, and intelligently made
8 with knowledge of the protections given to you by the
9 Fifth Amendment and the consequences of your decision to
10 testify. If you decide not to testify, I will instruct
11 the jurors that they cannot give the fact that you did
12 not testify any consideration whatsoever and that there
13 is to be absolutely no prejudice to you because you do
14 not testify. It is left entirely up to you. You may
15 talk with your attorney, your family, your friends, or
16 anyone else. But the final decision will be left
17 entirely up to you. Do you understand what I've
18 explained to you?

19 THE DEFENDANT: I do.

20 THE COURT: Okay. Do you have any questions
21 about what I've explained to you?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: All right. And I'm going to give
24 you until the State closes to discuss this with your
25 family and friends, and then I will ask you the ultimate

1 question at that time. All right. Thank you.

2 MR. ROBINSON: Thank you, Your Honor.

3 THE COURT: Anything else?

4 MR. FINNEY: Not at this time, Your Honor.

5 THE COURT: All right. Court stands adjourned
6 until one thirty. Let's make sure we've got everybody
7 here right at one thirty.

8 And then, Mr. Robinson, about how many witnesses do
9 you expect this afternoon?

10 MR. ROBINSON: I think there's two, perhaps
11 three, Your Honor. But, again, nothing ...

12 THE COURT: So we're looking at three thirty?

13 MR. ROBINSON: I would think so.

14 THE COURT: At the latest. All right. Thank
15 you. Court's adjourned until one thirty.

16 (WHEREUPON, court stood in recess for a lunch
17 break.)

18 THE COURT: Anything from the State?

19 MR. DURANT: Your Honor, the witness isn't
20 here.

21 THE COURT: Do what?

22 MR. DURANT: My witness isn't here.

23 THE COURT: Have you talked to him recently?

24 MR. DURANT: I talked to him about ten thirty
25 this morning. He assured me he would be here at 1:30.

1 THE COURT: I'll give you about ten minutes.

2 MR. DURANT: Thank you.

3 THE COURT: Court will remain at ease.

4 (WHEREUPON, court stood at ease.)

5 THE COURT: All right. Are we ready now?

6 MR. DURANT: Yes, sir.

7 MR. FINNEY: Yes, sir.

8 THE COURT: Okay. Let's bring them in.

9 (WHEREUPON, the jury entered the open court at
10 approximately 1:53 P.M.)

11 THE COURT: All right. Ladies and gentlemen,
12 let me emphatically thank y'all for being on time. So
13 we will move forward at this point in time.

14 Is the State ready for their next witness?

15 MR. DURANT: We are, Your Honor.

16 THE COURT: Okay.

17 MR. DURANT: Thank you. The State calls Luke
18 McGowan.

19 **LUKE MCGOWAN,**

20 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. DURANT:

23 Q. Mr. McGowan, tell the jury where you work.

24 A. WalMart.

25 Q. Which WalMart?

- 1 A. Garner's Ferry, which is store 1286 in Columbia.
- 2 Q. How long you been working at WalMart in Columbia?
- 3 A. In Columbia about six months now.
- 4 Q. All right. And did you work at WalMart before
- 5 then?
- 6 A. Yes.
- 7 Q. Where?
- 8 A. Spartanburg.
- 9 Q. And what is your position at WalMart?
- 10 A. I'm assistant manager over the hard lines and soft
- 11 lines.
- 12 Q. Over what?
- 13 A. Hard lines, guns, ammunition, TLE, electronics.
- 14 Q. At the WalMart in Columbia, you deal in firearms?
- 15 A. Yes, sir.
- 16 Q. Do you know whether WalMart is required to keep
- 17 records of the sale of firearms and who the purchaser is
- 18 going to be?
- 19 A. Yes, we are.
- 20 Q. And you keep those records in the normal course of
- 21 business?
- 22 A. Yes, sir.
- 23 Q. Are you the custodian of those records?
- 24 A. Yes, sir.
- 25 Q. All right. Mr. McGowan, I want to show you what

1 has been marked as -- let me see if I can find the
2 marker -- State's Exhibit 74. And would you please tell
3 me if you recognize that?

4 A. That's one of the shotguns we sell.

5 Q. Who's the manufacturer of that shotgun?

6 A. That's a Maverick by Mossberg.

7 Q. Does it have the serial number on it?

8 A. Yes.

9 Q. Can you tell me what the serial number is?

10 A. Mike, Victor, 40993 Papa.

11 Q. Based on that serial number, can you tell me
12 whether or not that's a firearm that was sold at the
13 WalMart on Garner's Ferry Road in Columbia?

14 A. Yes, it was.

15 Q. And when was it sold?

16 A. May 7th, 2010.

17 Q. And who was the purchaser of that firearm?

18 A. Justin J. Johnson.

19 Q. Have you got the date of birth of Mr. Johnson?

20 A. Yes.

21 Q. Have an address for Mr. Johnson?

22 A. Yes.

23 Q. What is that?

24 A. , Summerton.

25 Q. Do you have a race and a gender for Mr. Johnson?

1 A. Yes.

2 Q. And what is that?

3 A. Black African-American male.

4 Q. Height and weight?

5 A. Five ten, 287.

6 Q. And this -- State's Exhibit 74 is the firearm that
7 was sold to Justin Johnson on May 7, 2010, at WalMart?

8 A. Yes. Same serial number.

9 MR. DURANT: I don't have any further
10 questions.

11 THE COURT: Any cross-examination?

12 MR. FINNEY: Excuse me, Your Honor. One
13 moment.

14 Q. Any record of whether any ammunition that was sold
15 along with that firearm?

16 A. We don't sell ammo with the gun when you first buy
17 it. You have to buy the gun, take it outside, and then
18 come back and get the ammo.

19 MR. DURANT: No further questions.

20 THE COURT: All right. Thank you.

21 Mr. Robinson?

22 MR. ROBINSON: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. ROBINSON:

25 Q. Mr. McGowan, how long have you been in, I think you

1 called it hard lines, guns, ammunition, electronics,
2 stuff like that?

3 A. At this store?

4 Q. In general with WalMart?

5 A. With WalMart? Since I've been with them, so about
6 two years.

7 Q. Do you regularly interact with guns sales ---

8 A. Yes.

9 Q. --- or oversee the paperwork of gun sales?

10 A. Yes.

11 Q. Okay. And is it as simple as walking into WalMart
12 and handing you money and you hand me a gun and I walk
13 out?

14 A. Oh, no.

15 Q. What procedures are involved with purchasing a gun?

16 A. Have to show a picture I.D., have to complete the
17 application on the ---

18 MADAM COURT REPORTER: Sir, could you speak
19 toward the microphone?

20 A. Have to complete a picture ID.

21 THE COURT: Much better.

22 Q. I'll try to come a little bit closer so you're not
23 looking at me, away from the microphone.

24 A. All right. You've got to present a picture ID.

25 Q. Get a little bit closer to that, right there.

- 1 A. And you have to complete the 4473.
- 2 Q. And what is a 4473?
- 3 A. Federal Firearms License Application.
- 4 Q. Okay. And what happens when you fill out a 4473?
- 5 A. You complete all the information, your name,
6 address, race, date of birth, have you had a criminal
7 record, everything.
- 8 Q. Okay. And what happens? Do y'all just take their
9 word for that ---
- 10 A. Oh, no.
- 11 Q. --- when they fill that out?
- 12 A. And then you run a background check with the FBI.
- 13 Q. Okay. So y'all run a background check through the
14 FBI. And in order for somebody to purchase that, they
15 can only have one or two little problems or ...
- 16 A. No felonies. No domestic violence.
- 17 Q. Nothing like that?
- 18 A. Right.
- 19 Q. Okay. And is that part of the paperwork that you
20 brought here today?
- 21 A. Yes, sir.
- 22 Q. That 4473?
- 23 A. Uh-huh (affirmative).
- 24 Q. And does the paperwork you have indicate that Mr.
25 Johnson passed the background check?

1 A. At that point he did.

2 Q. Okay. Because he was able to purchase the firearm?

3 A. Right.

4 Q. Okay. Thank you.

5 MR. ROBINSON: No further questions.

6 THE COURT: Any redirect?

7 MR. DURANT: No, sir.

8 THE COURT: All right. Thank you. You may
9 step down. This witness is excused. Thank you, sir.

10 MR. FINNEY: Your Honor, the State of South
11 Carolina rests.

12 THE COURT: All right. Ladies and gentlemen,
13 I'm going to send you back to the jury room for just a
14 few minutes while we take up a few matters of law. It
15 won't be that long. I mean, it'll be longer than -- ten
16 or fifteen minutes.

17 (WHEREUPON, the jury exited the open court at
18 approximately 2:00 P.M.)

19 THE COURT: All right. Mr. Robinson, does the
20 Defense have any motions?

21 MR. ROBINSON: Your Honor, at this point, and
22 without going into specific detail, I would renew any
23 previous objections and motions that I have made just to
24 protect them for the record.

25 THE COURT: All right.

1 MR. ROBINSON: In addition to that, Your
2 Honor, I also have a directed verdict motion to make in
3 this case. This is a case, as the Court is very well
4 aware, involving two counts of murder, a burglary first,
5 a kidnapping, an attempted murder, and use of a weapon
6 -- possession of a weapon during a violent crime.

7 First to the murder, Your Honor, I believe that the
8 State has failed to introduce any evidence, even in the
9 light most favorable to the State, from which the jury
10 could properly infer that Mr. Johnson had murdered
11 anyone. With regard to the victim, Ms. Maxine Caraway,
12 the only testimony in this case -- there's been no
13 direct link to proving that Mr. Johnson had anything to
14 do with that. Ms. Kaisha Caraway, the only alleged
15 eyewitness, testified that at the time that that could
16 have happened, she was in the house, didn't hear the
17 shot, didn't see that, didn't see Mr. Johnson with a
18 gun, by her testimony, until sometime later in the
19 house. And then came out, and Ms. Caraway was dead.
20 Again, didn't report to hear the shot.

21 With reference to J.C. , same type
22 situation. She testified -- again, in the light most
23 favorable to the State, believing her testimony -- that
24 the gun was pointed at her. She closed her eyes. Heard
25 a shot fired. And the child was, she presumed, to be

1 dead. Not that he ever pointed the gun at the child,
2 anything of that nature.

3 In addition, Your Honor, I think they have failed
4 to introduce any evidence of malice aforethought to rise
5 to the level of a murder charge, which is the particular
6 charge in this case.

7 With regard to the burglary first, there has been
8 no physical evidence introduced as to what happened to
9 the door. Apparently, there are pictures that indicate
10 that the door may have been broken. There was some
11 speculation or testimony on behalf of law enforcement
12 that the door was, quote, unquote, "kicked in on a
13 number of occasions." But the crime scene analyst from
14 SLED, the footwear expert, indicated there was no such
15 indication. And so I believe they have failed in regard
16 to the burglary first.

17 With regard to the kidnapping, Your Honor, I think
18 Ms. Caraway's testimony is that she went with Mr.
19 Johnson -- go ahead?

20 THE COURT: Go ahead, yeah.

21 MR. ROBINSON: Even after ---

22 THE COURT: He just had the door open.

23 MR. ROBINSON: I understand. Even after the
24 gun had been laid down that there was no outward threats
25 and that she even voluntarily helped him come up with

1 some other ideas or versions of the alleged story.

2 With regard to the attempted murder, again, there's
3 been no evidence that he did anything. Mr. Johnson,
4 that is, did anything. She didn't see him shoot at her.
5 Could only testify that she heard two shots throughout
6 this whole incident, one which was allegedly resulted in
7 J.C. 's death and one which went into the bathroom
8 door. There's no proof what shot that was fired, what
9 pellet struck her, whether that came from down the hall,
10 whether the gun was ever aimed at her, whether it was an
11 accidental discharge. And, again, those things are the
12 burden of the State to prove.

13 So based on that information, Your Honor, I think
14 the State has failed. And the Defense would
15 respectfully move for a directed verdict of not guilty.

16 Which leads to the next argument. Obviously, if
17 those are gone, possession of a weapon during a violent
18 crime would necessarily have to go.

19 THE COURT: All right. Thank you.

20 MR. ROBINSON: Thank you.

21 THE COURT: Mr. Finney?

22 MR. FINNEY: May it please the Court, Your
23 Honor. The State contends, Your Honor, that there is a
24 multiple amount of evidence for the jury to consider on
25 all of the charges starting with the murder charge where

1 we have a video where the Defendant in his own words put
2 himself holding the gun and firing the weapon. Your
3 Honor, we also have a eyewitness, Ms. Kaisha Caraway,
4 who testified about the threat to her with the weapon
5 before the baby was shot. She testified about hearing
6 the shot that killed her child and that she ran away
7 from the Defendant to save her own life and knows for a
8 fact that she was shot at one more time through the
9 bathroom door. She did not hear the shot down the hall,
10 but we have physical evidence of that shot. It wasn't
11 there prior to Mr. Johnson's appearance at the house
12 that day.

13 As to the burglary, there's sufficient evidence to
14 show that the front door was kicked in or pushed in or
15 shoved in in such a manner that it caused the physical
16 damage to the door. It doesn't have to be a foot to be
17 a burglary. His using his shoulder, which is what Ms.
18 Caraway testified he was running towards the door caused
19 her fear, and that's the door he came through violently.
20 That would be the basis of the burglary.

21 As far as the kidnapping, Your Honor, Ms. Caraway
22 testified that she was still under fear for her safety
23 and that of her living daughter, that she went with him
24 in order to make him calm and so that they -- she and
25 her daughter would not be in any threat of being the

1 victims of any further violence.

2 As to the attempted murder, we think that her
3 testimony and the physical evidence at the house support
4 there were at least two shots at Ms. Caraway with a
5 Mossberg shotgun, and that they would have caused her
6 death had they been sufficiently aimed at her. And
7 based on those factors, we believe the possession of the
8 firearm should stand as well.

9 THE COURT: All right. Thank you.

10 Mr. Robinson, would you like to respond since
11 you're the moving party?

12 MR. ROBINSON: I don't think I have anything
13 in addition, Your Honor.

14 THE COURT: Okay. All right. At this stage
15 of the trial, as you are well aware, the Court is more
16 concerned about the existence of evidence, not the
17 weight. So I'm going to respectfully deny your motion.
18 And now we will go to the -- and allow it to go to the
19 jury at this point.

20 Now, let me -- if your client will please stand
21 again.

22 (WHEREUPON, the Defendant stood.)

23 THE COURT: Before we went to lunch, Mr.
24 Johnson, you were under oath, and I questioned you
25 concerning your right to testify, the consequences of

1 your testifying, and the fact that if you decided not to
2 testify, that I would inform the jury that they couldn't
3 hold that against you. I gave you an opportunity to
4 talk to your family, your friends, and your attorney.
5 Have you made a decision as to whether or not you want
6 to testify?

7 THE DEFENDANT: Yes, I have.

8 THE COURT: And what is your decision?

9 THE DEFENDANT: I do not wish to.

10 THE COURT: All right. Very well. Thank you.
11 You may be seated. Let's bring our jury.

12 (WHEREUPON, the jury entered the open court at
13 approximately 2:08 P.M.)

14 THE COURT: All right. Mr. Robinson, you may
15 call your first witness.

16 MR. ROBINSON: Thank you, Your Honor. We
17 would call Mr. Moses Levy to the stand.

18 **MOSES LEVY, JR.,**

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. ROBINSON:

22 Q. Mr. Levy, good afternoon.

23 A. Good afternoon.

24 Q. Please tell the jury where you currently live.

25 A. I live at , Manning.

1 Q. And what area -- is that in the town of Manning?

2 A. That's in the lake area of Santee Dam, Highway 267.

3 Q. Okay. You live down toward the lake?

4 A. That's right.

5 Q. Okay. And how long have you lived there?

6 A. All of my life, sixty-five years.

7 Q. Okay. Do you work now?

8 A. Yes, I am employed.

9 Q. Okay. And what do you do for a living?

10 A. I'm employed by Clarendon School District Two at
11 Phoenix Charter High School as a classroom teacher.

12 Q. Okay. How long have you been at Phoenix Charter
13 School?

14 A. This is my third year.

15 Q. Okay. And where were you prior to the Phoenix
16 School?

17 A. Prior to Phoenix Charter High School, I was at
18 Manning High for two years. Prior to that, I was at
19 Scotts Branch High School for twenty-five years. And
20 prior to that, I was with the Clarendon County Board of
21 Education for five and a half years, and five and a half
22 years with Manning Middle School.

23 Q. Okay. Do you know Mr. Justin Jermaine Johnson?

24 A. Yes, I do.

25 Q. And how is it that you had occasion to know Mr.

1 Johnson?

2 A. I knew Mr. Johnson from high school grades nine
3 through twelve.

4 Q. And just briefly, if you would, tell me about your
5 involvement with him. Were you a teacher?

6 A. I was a classroom teacher. Not only was I a
7 classroom teacher, I worked with him through student
8 government and through some other school extracurricular
9 activities.

10 Q. Okay. Do you remember what some of those
11 extracurricular activities were?

12 A. Yes, sir. One of the main ones that Justin was
13 involved with was with the Scotts Branch High School
14 JROTC, again with student government, athletic
15 department.

16 Q. Okay. And to your recollection, what kind of
17 student was Mr. Johnson?

18 A. Mr. Johnson was an academically prepared student.
19 He was one of our students that was quite frequently or
20 most often he was recognized at all of our third-quarter
21 academic achievement programs because he was normally on
22 the A/B honor roll. I also had the opportunity to -- in
23 his senior year to take Mr. Johnson and his mother to an
24 affair in Columbia, South Carolina, where he was one of
25 the students from Scotts Branch High School and one of

1 the many students throughout the State of Carolina that
2 was recognized on the State House for his academic
3 achievement in high school and also community
4 involvement.

5 Q. Okay. And during your involvement with him through
6 his high school years, did you ever have any
7 disciplinary problems with Mr. Johnson?

8 A. I had no discipline problem. As a matter of fact,
9 he was one of our student leaders. I don't know of any
10 disciplinary problem that came about. If there were
11 any, I was not aware of them.

12 Q. Okay. Have you had a whole lot of contact with Mr.
13 Johnson since high school?

14 A. Not since high school.

15 Q. Okay. And do you remember what year Mr. Johnson
16 graduated from high school?

17 A. 2008. I recall that year because that was my last
18 year at Scotts Branch.

19 Q. Okay.

20 MR. ROBINSON: The Court's indulgence?

21 THE COURT: Yes, sir.

22 Q. Thank you, Mr. Levy. I don't have any further
23 questions.

24 THE COURT: Does the State have any cross-
25 examination?

1 MR. FINNEY: May it please the Court?

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. FINNEY:

5 Q. Mr. Levy, good afternoon.

6 A. Good afternoon.

7 Q. Mr. Levy, in your -- it sounds like about fifty
8 years you've been a professional educator?

9 A. Almost.

10 Q. Congratulations.

11 A. Thank you.

12 Q. Let me ask you, is it true in your experience as a
13 professional educator that once young men and women
14 leave the high school ranks, they sometimes don't find
15 themselves -- even though they were good students and
16 good athletes in high school, that they have trouble
17 adjusting to the real world?

18 A. Sometimes that is true. Sometimes they do not find
19 themselves until later on.

20 Q. Is it within your knowledge to know whether Justin
21 Johnson ever finished another course of study after high
22 school? Technical college? Regular college?
23 University? Anything else that you're aware of?

24 A. That I'm not sure of because I didn't have any
25 contact with Justin after he left high school other than

1 sometimes asking family members, "When have you heard
2 from him?"

3 Q. All right. And both you and he left this high
4 school at about 2008, which would be almost six years --
5 we're coming up on six years in June, I believe?

6 A. 2008, yes, sir.

7 Q. And so for the last six years, you're not sure what
8 his life has been about in terms of relationships? Are
9 you aware of relationships?

10 A. I have no knowledge of that.

11 Q. Children?

12 A. No knowledge of that.

13 Q. Job status?

14 A. No, sir.

15 Q. All right. Thank you, Mr. Levy. That's all I
16 have.

17 THE COURT: Any redirect?

18 MR. ROBINSON: No, sir, Your Honor.

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

21 MR. ROBINSON: Your Honor, we would call Ms.
22 Kimberly Johnson to the stand.

23 (WHEREUPON, the witness was duly sworn.)

24 THE COURT: You may proceed.

25 MR. ROBINSON: Thank you, Your Honor.

1 **KIMBERLY JOHNSON,**

2 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION

4 BY MR. ROBINSON:

5 Q. Ms. Johnson, how are you this afternoon?

6 A. I'm good. How are you?

7 Q. Good. Let's go ahead and identify the elephant in
8 the room. You are Justin's sister; is that correct?

9 A. That's correct.

10 Q. Okay. And I'm going to ask an improper question.
11 Not legally improper, but mannerly improper. Are you
12 older or younger than Mr. Johnson?

13 A. I'm the oldest.

14 Q. Okay. Have you got any children?

15 A. No.

16 Q. Okay. And where do you currently live?

17 A. Columbia, South Carolina.

18 Q. Okay. And how long have you known Mr. Johnson?

19 A. Since 1990.

20 Q. That's his whole life. And that wasn't a trick
21 question. Making sure I got it on the record. Now, you
22 grew up in the house with Mr. Johnson, or should I say
23 he grew up in the house with you?

24 A. Until about 1997.

25 Q. Okay. What happened in 1997?

- 1 A. I moved. I went to Columbia.
- 2 Q. And have you stayed in frequent contact with Mr.
- 3 Johnson since 1997?
- 4 A. Yes, sir.
- 5 Q. Over the last six years too?
- 6 A. Yes, sir.
- 7 Q. Okay.
- 8 A. Yes, sir.
- 9 Q. And what kind of little brother was Mr. Johnson?
- 10 A. Just a little brother. I mean, I've never seen
- 11 Justin get upset or cry or raise his voice or -- I've
- 12 never seen it at any time.
- 13 Q. Have you ever seen him throw temper tantrums around
- 14 the house, break anything, do anything like that?
- 15 A. He was a child. He had -- yeah, he was a child.
- 16 Q. Okay. So I mean, he wasn't an angel?
- 17 A. No.
- 18 Q. Okay. But nothing that you considered out of the
- 19 ordinary?
- 20 A. No.
- 21 Q. How about how did he get along with your mama from
- 22 your observation?
- 23 A. Him and my mom, they were really close. All of us
- 24 are with my mom, especially her younger ones.
- 25 Q. And what kind of temperament did Justin have or

1 does Justin have in your personal observation?

2 A. That I've witnessed is happy. Happy and he loves
3 to joke and laugh.

4 Q. Since you've left the home, you said you have kept
5 up with Mr. Johnson?

6 A. Yes. Not directly all the time. Either through my
7 mom or sister, but, yeah.

8 Q. Okay. Do you come visit on occasion?

9 A. Yes.

10 Q. Anything that you've observed in that period of
11 time to change your opinion of him?

12 A. No, sir.

13 Q. Thank you. I don't have any further questions.

14 THE COURT: Any questions from the State?

15 MR. FINNEY: Just a few, Your Honor. Thank
16 you.

17 CROSS-EXAMINATION

18 BY MR. FINNEY:

19 Q. Ms. Johnson, my name is Chip Finney. Good
20 afternoon.

21 A. Good afternoon.

22 Q. Did I understand that you left Manning, the home
23 house, in 1997?

24 A. That's correct.

25 Q. So it's been over ten years that you've been out on

- 1 your own?
- 2 A. Yes, sir.
- 3 Q. Did you graduate high school?
- 4 A. Yes, sir.
- 5 Q. Where?
- 6 A. Manning High School.
- 7 Q. And did you go on to study at another institution?
- 8 A. Yes, sir.
- 9 Q. Where was that?
- 10 A. Benedict College.
- 11 Q. In Columbia?
- 12 A. That's correct.
- 13 Q. And did you graduate?
- 14 A. In 2003.
- 15 Q. What is your field of study?
- 16 A. Computer information science.
- 17 Q. And do you work in that field of study now?
- 18 A. No, sir.
- 19 Q. Okay. What type of job do you have now?
- 20 A. I have a full-time job at a community bank as head
- 21 teller and a part-time job at a grocery store.
- 22 Q. And where -- let me start over. How long have you
- 23 held that job at the bank?
- 24 A. One year.
- 25 Q. All right. And are you a family person? Do you

- 1 have a husband? Children?
- 2 A. No, sir, no children. Just nieces and nephews.
- 3 Q. You've described your brother as a happy person?
- 4 A. Yes, sir.
- 5 Q. And this is based on your recollection of growing
- 6 up with him and being close to him?
- 7 A. And whenever I see him, yes, sir.
- 8 Q. When is the last time you saw him before April of
- 9 2011, April 6th, of 2011, if you can remember?
- 10 A. I cannot remember.
- 11 Q. Okay. When you heard about this incident, what was
- 12 your first reaction in April 2011?
- 13 A. I couldn't believe it.
- 14 Q. Do you love your brother?
- 15 A. I do.
- 16 Q. And you're here today to help him in any way you
- 17 can?
- 18 A. I'm here to testify and tell the truth.
- 19 Q. Thank you, ma'am. Nothing further.
- 20 A. Thank you.
- 21 THE COURT: Any redirect?
- 22 MR. ROBINSON: No redirect.
- 23 THE COURT: All right. Thank you, ma'am. You
- 24 may step down.
- 25 THE WITNESS: Thank you.

1 MR. ROBINSON: Your Honor, based on the
2 schedule, that's all the witnesses that are able to be
3 present today. I have a couple because of conflicts
4 that can't be here until in the morning.

5 THE COURT: Okay. Ladies and gentlemen, that
6 is all the testimony that you're going to hear today.
7 Now, we've talked. We'll have a few more witnesses in
8 the morning. And then the attorneys will argue and
9 charge, and then you should have this case by early
10 afternoon.

11 So, ladies and gentlemen, get a good night's sleep.
12 Have a nice afternoon. And I'll see you tomorrow.
13 Let's start a little early. Let's start at nine. Does
14 nine o'clock work for y'all? All right. Let's be here
15 at nine o'clock tomorrow morning where we will conclude
16 the trial. Thank you. Please do not discuss this with
17 anyone or read any newspapers in the morning. Thank
18 you.

19 (WHEREUPON, the jury exited the open court at
20 approximately 2:21 P.M.)

21 THE COURT: Keep it down.

22 All right. Is there anything we need to take up at
23 his point in time? Do y'all want to look over the
24 charges tonight, and do y'all want to have a charge
25 conference about 8:30 tomorrow morning?

1 MR. ROBINSON: Yes, sir.

2 THE COURT: Why don't we do that. That'll
3 give you the afternoon and evening to review what we've
4 got and what y'all want to consent to come in.

5 All right. Anything else?

6 Court's adjourned until nine o'clock tomorrow
7 morning for everybody else, 8:30 for y'all. Thank you.

8 (WHEREUPON, court stood in recess for the day at
9 approximately 2:23 P.M.)

10 **MARCH 20, 2014**

11 (WHEREUPON, court convened with all parties present
12 and the following proceedings were had commencing
13 at approximately 9:03 A.M.)

14 THE COURT: All right. Mr. Robinson, I have
15 received the communication that you gave me from your
16 client. I'd like to question him concerning that.

17 Mr. Johnson, would you please stand?

18 THE COURT: Please place Mr. Johnson under
19 oath.

20 **JUSTIN JOHNSON,**

21 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

22 THE COURT: All right. Mr. Johnson, this
23 morning or yesterday your attorney was given a copy of
24 the proposed charges to be presented to the jury. And
25 your attorney had made some requests for additional

1 charges that he wanted to have in here where he also
2 requested voluntary manslaughter, involuntary
3 manslaughter, assault and battery first degree and/or
4 assault and battery second degree, which would have
5 given the jurors other things to consider.

6 And the document that I'm looking at says, "I,
7 Justin Jermaine Johnson, have reviewed the additional
8 jury charges submitted by my attorney. I request that
9 we withdraw our requests for any lesser-included
10 offenses of the charged indicted offenses. I
11 specifically do not want the jury to be charged the law
12 of voluntary manslaughter, involuntary manslaughter,
13 assault and battery first degree, and/or assault and
14 battery second degree." And it's signed, "Justin
15 Jermaine Johnson, 3/19/14." Is this your document, sir?

16 THE DEFENDANT: It is.

17 THE COURT: Okay. And this is your intent and
18 this is what you want Mr. Robinson to follow your
19 instructions on?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Have you had
22 sufficient time to talk to Mr. Robinson about this?

23 THE DEFENDANT: I have.

24 THE COURT: Did Mr. Robinson advise you that
25 this was not the best legal course for you?

1 THE DEFENDANT: Excuse me?

2 THE COURT: Did he advise you that he thought
3 this was not a good legal strategy for you to do?

4 THE DEFENDANT: Yes.

5 THE COURT: Okay. And despite his warnings,
6 you still want him to withdraw his request for these
7 specific charges?

8 THE DEFENDANT: Correct..

9 THE COURT: All right. Let me ask you -- now,
10 you're not under the influence of alcohol or drugs
11 today?

12 THE DEFENDANT: I'm not.

13 THE COURT: Not taking any medications that
14 would cloud your judgment?

15 THE DEFENDANT: I'm not.

16 THE COURT: And you're sure this is how you
17 want him to act in representing you?

18 THE DEFENDANT: I am.

19 THE COURT: All right. Now, I'm going to ask
20 you one more time because you've just got a couple more
21 witnesses, and then you're going to close your case.

22 Now, we went over everything yesterday about
23 whether or not you wanted to testify. Do you still not
24 want to testify in this case?

25 THE DEFENDANT: I do not.

1 THE COURT: All right. And you've discussed
2 that again with your attorney?

3 THE DEFENDANT: I have.

4 THE COURT: All right. Thank you.

5 Any other questions you want to ask him, Mr.
6 Robinson?

7 MR. ROBINSON: Mr. Johnson, with regard to
8 your decision to testify, that was your decision alone?

9 THE DEFENDANT: It is.

10 MR. ROBINSON: And I didn't exert any pressure
11 or influence or anything of that nature to force you to
12 make that decision with one regard or the other?

13 THE DEFENDANT: No, you haven't.

14 MR. ROBINSON: That's it, Your Honor.

15 THE COURT: All right. Thank you.

16 Have y'all reviewed the charge, proposed charge?

17 MR. ROBINSON: Yes, sir.

18 THE COURT: Are there any additional charges
19 that you're requesting?

20 MR. ROBINSON: Not from the Defendant.

21 MR. DURANT: Your Honor, we would have an
22 objection to the Defendant's request for a mere presence
23 charge. I think that charge is only appropriate when
24 the State has made some allegation of accomplice
25 liability or, you know, co-defendant liability. We

1 important.

2 Is the State ready to proceed?

3 MR. FINNEY: We are, Your Honor.

4 THE COURT: Is the Defense ready to proceed?

5 MR. ROBINSON: We're ready, Your Honor.

6 THE COURT: All right. You may call your next
7 witness, Mr. Robinson.

8 MR. ROBINSON: Your Honor, we'd call Reverend
9 Johnny Lee Lawson to the stand.

10 THE COURT: Reverend Lawson, please come
11 forward.

12 **JOHNNY LEE LAWSON,**

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION

15 BY MR. ROBINSON:

16 Q. Good morning, Reverend Lawson. How are you this
17 morning?

18 A. Fine, sir. How are you?

19 Q. Good. Reverend Lawson, where do you live?

20 A. I live down at a little place called Davis
21 Crossroads in Summerton.

22 Q. Okay. And how long have you lived in that area?

23 A. I started living back there again permanently after
24 I retired from the United States Marine Corps in 2002.

25 Q. 2002?

1 A. Yes, sir.

2 Q. And you retired from the Marine Corps. Do you work
3 now?

4 A. I'm self-employed. I take care of my wife who is
5 immobile due to multiple sclerosis and poisoning by the
6 water at Camp LeJeune, North Carolina.

7 Q. Okay. And in living in that area, have you come in
8 contact with Mr. Justin Jermaine Johnson?

9 A. Yes, I have.

10 Q. Okay. How long have you known Mr. Johnson?

11 A. I've known him all of his life.

12 Q. Got you.

13 A. In fact, while I was stationed in Beaufort, I
14 voluntarily coached over at Scotts Branch High School.
15 And I was one of the coaches there on the football team
16 at the middle school, and I coached Justin on the
17 football team.

18 Q. So you got to interact with him on a regular basis
19 back then?

20 A. Yes, sir.

21 Q. Okay. And how would you describe Mr. Johnson in
22 your experience with him?

23 A. My time with Justin, he was quiet. He was
24 reserved. He was one of those type people who would
25 step back and let you go. He had a very quiet demeanor,

1 but he understood and he did everything that was
2 required of him. If Justin had a sandwich and we had to
3 eat and someone didn't have one, they could get half of
4 Justin's without a doubt. That's the type of person he
5 was.

6 Q. Now, after retiring and moving to this area, you
7 stayed in contact with Justin through the years?

8 A. Well, yeah. Justin sang down there on Spring
9 Hill's choir. I'm a pastor over there in Davis Station.
10 And they came over and sang with our youth, and our
11 youth would go back and sing with them. However, I knew
12 Justin's family all my life. His mother and I went to
13 school together. So I've been knowing Justin's family
14 for a long, long time.

15 Q. And I guess in coaching Justin, you've seen him in
16 some difficult situations where he was tired, different
17 things of that nature. Have you ever seen Justin lose
18 his temper or display anger in an inappropriate way?

19 A. No, I haven't. He was tired. There was a time
20 when we were about to lose the championship game to
21 Alice Drive. And when things got tough and we got on
22 them, Justin, he had a choice, either break down and cry
23 or go out and run the ball like he's supposed to. So he
24 decided that he would go and run the ball. He didn't
25 get frustrated with anger or any form of retaliation,

1 but he was frustrated at the way the game was going,
2 which is normally expected of a person who is -- or an
3 athlete who is trying to accomplish a goal. And we had
4 some good days and we had some bad days.

5 Justin had a breathing problem, but he would not
6 use that for an excuse. He had his pump that he took
7 with him, but he wouldn't use that for an excuse. He
8 tried to persevere in all that he did. In every area we
9 called upon him, he tried to do what was required of
10 him.

11 Q. Thank you, Reverend Lawson. I don't have any
12 further questions.

13 THE COURT: Cross-examination from the State?

14 MR. FINNEY: Please the Court, Your Honor?

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. FINNEY:

18 Q. Good morning, Reverend Lawson.

19 A. Good morning, sir.

20 Q. I just want to get a little clarification. You
21 were a coach at Scotts Branch. Is that the high school
22 or the junior high?

23 A. Both.

24 Q. All right. So when you were assisting the football
25 team when Justin was on the team, was that ---

- 1 A. Middle.
- 2 Q. That was middle school?
- 3 A. Yes, sir, or junior high. But it's middle.
- 4 Q. It would be seventh or eighth grade?
- 5 A. Right.
- 6 Q. Before he got in the ninth grade?
- 7 A. Right.
- 8 Q. Ninth, tenth, eleventh, and twelfth, that would be
- 9 the high school years?
- 10 A. Right.
- 11 Q. All right. Did you coach him in the high school
- 12 years?
- 13 A. Once the year they went to high school, and then
- 14 that was it.
- 15 Q. All right. So when you were talking about his
- 16 football time, that would have been seventh and eighth
- 17 grade?
- 18 A. Mostly, yes.
- 19 Q. All right. And the choir he sang on, was that
- 20 seventh and eighth grade?
- 21 A. No. I mean, that had nothing to do with school.
- 22 That had to do with the church.
- 23 Q. I understand that. I'm asking you is that when he
- 24 was in seventh and eighth grade?
- 25 A. Oh, he was past that. Yes, they sung beyond that.

1 Q. All right. So do you know when he graduated high
2 school?

3 A. Yeah.

4 Q. When?

5 A. I'm going to lie if I tell you the year. But he
6 graduated along with my daughter, so I don't want to
7 mess this up.

8 Q. Yeah. Well, think about it then.

9 A. Yeah. So ...

10 Q. What school did your daughter graduate from?

11 A. Scotts Branch.

12 Q. And so did Justin?

13 A. Yes, sir.

14 Q. Same graduating class?

15 A. To the best of my knowledge, they were, yes, sir.

16 Q. All right. And so since he graduated with your
17 daughter in that class, what has he done about his
18 education or job? What do you know about him?

19 A. I don't know. As far as that goes, I can't say.

20 Q. Thank you, sir.

21 A. Yes, sir.

22 MR. FINNEY: Nothing further.

23 THE COURT: All right. Any redirect?

24 MR. ROBINSON: No redirect, Your Honor.

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

1 THE WITNESS: Yes, sir.

2 MR. ROBINSON: And, Your Honor, Mr. Lawson
3 wasn't here yesterday. Mr. Lawson, if you'd like to
4 leave, I think that'd be fine.

5 THE COURT: You're excused, sir.

6 THE WITNESS: Yes, sir.

7 THE COURT: You're welcome to stay as a
8 citizen to watch the trial, or you can go back and do
9 what you want to do.

10 THE WITNESS: I would love to stay. I have
11 some assistance this morning, so I'm going to stay a
12 little while, but I may have to leave.)

13 THE COURT: Whenever you choose. Thank you.

14 THE WITNESS: Yes, sir.

15 MR. ROBINSON: Thank you, Reverend Lawson.
16 Your Honor, we would call Reverend Harold Conyers
17 to the stand.

18 **HAROLD CONYERS,**

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. ROBINSON:

22 Q. Good morning, Reverend Conyers.

23 A. Good morning.

24 Q. I appreciate your being here this morning. Tell
25 the jury a little bit about yourself, if you would.

1 Where are you currently residing?

2 A. I grew up in Summerton, and I reside in Irmo, South
3 Carolina.

4 Q. Okay. And this is probably an obvious question.
5 But just for the record, what do you do for a living?

6 A. I pastor Heyward AME Church, and I'm also retired
7 from the federal government.

8 Q. And where is that church that you pastor now
9 located?

10 A. It's right outside Columbia in a community called
11 Sandy Run, right off Interstate 26.

12 Q. Okay. And how long have you been a pastor at that
13 church?

14 A. I've been at that church a little over three years
15 now.

16 Q. Okay. Were you a pastor prior to that?

17 A. Yes. I pastored four churches, and I had the
18 privilege of coming back to Summerton and pastoring my
19 home church, which is Spring Hill AME.

20 Q. Spring Hill AME. And that's the one I think
21 Reverend Lawson just mentioned that Mr. Johnson sang in
22 the choir?

23 A. Yes, it's the same church.

24 Q. Okay. So obviously that begs the question. At
25 some point in time you were Mr. Johnson's pastor?

1 A. Yes, sir. I was his pastor going out of 2007 into
2 2008.

3 Q. Okay. And did you know Justin prior to 2007?

4 A. Yes. I grew up in the community where he grew up,
5 and I went to school with his mother and his cousin.

6 Q. Okay. So tell the jury, if you would, just time-
7 wise how long you've known Justin. Basically all of his
8 life?

9 A. Yeah. I've known Justin basically all of his life.

10 Q. Okay. And you pastored him from what period of
11 time?

12 A. I've pastored him from October 2007 to May 2008.

13 Q. Okay. And what happened in May of 2008?

14 A. In May of -- he was a senior. When I came, he was
15 a senior at Scotts Branch. And he graduated. That year
16 he graduated, and he was still coming. But when he
17 left, I believe he went in the military.

18 Q. Okay. And so during those times knowing Mr.
19 Johnson, what kind of person did you know him to be?

20 A. I've known Justin all of his life, and I've known
21 him to be a quiet young man. And he always had great
22 potential. Very smart. He would do everything that is
23 asked of him. And he was a good leader.

24 Q. Was he a leader in the church?

25 A. Yeah. Justin had skills beyond most. He was our

1 worship leader. He could carry a service and remember
2 the service by heart and don't even read some parts of
3 it. He was our youth worship leader. He was our YPD
4 leader.

5 Q. And what is YPD?

6 A. That's the young people department in the church.
7 He was basically the leader of that. He sung in the
8 choir, and he was an usher under my leadership.

9 Q. And during your tenure as his pastor, did you ever
10 have an occasion to have to pastor him about any
11 behavioral problems or issues or anything like that that
12 he was having?

13 A. No. Justin was getting good reviews from his high
14 school. As I followed him, he was a leader in his ROTC.
15 He would go over to South Carolina State when they went
16 over there. He had the highest average coming out of
17 Scotts Branch, if my memory was right. In his high
18 school class, he had a good GPA, one of the highest if
19 not the highest average, that is. He was a great young
20 man. Is a great young man.

21 Q. Did you keep in contact with Mr. Johnson after he
22 graduated?

23 A. After he graduated, before he left, I was
24 encouraging college for him because I seen a great
25 potential in him to go on to college. And from my

1 understanding, he had some opportunities of scholarships
2 at that time.. And when he went in the military, he came
3 back to visit but not on a constant basis.

4 Q. But you did see him occasionally while he was still
5 there?

6 A. Yes. Yeah. I stayed there four years, and
7 occasionally he would come home.

8 Q. Okay. Thank you, Reverend Conyers.

9 A. You're welcome.

10 THE COURT: Does the State have any cross-
11 examination?

12 MR. FINNEY: Just a few questions.

13 CROSS-EXAMINATION

14 BY MR. FINNEY:

15 Q. Good morning, Reverend Conyers.

16 A. Good morning.

17 Q. Reverend Conyers, what has been your relationship
18 or ability to know what Justin's been doing for the last
19 five years or so?

20 A. I haven't known what Justin was doing for the last
21 five years because I left. I left Spring Hill over four
22 years ago and went to Sandy Run community right outside
23 of Columbia.

24 Q. All right. And you say you don't know his job
25 status over the last five years?

1 A. No, I don't know his job status.

2 Q. You don't know his children's situation. Does he
3 have children? How many children?

4 A. No, I don't know that situation either.

5 Q. Would you describe him as somebody who was good at
6 thinking on his feet?

7 A. Yes.

8 Q. Nothing further. Thank you, sir.

9 A. Thank you.

10 THE COURT: Hold on. Any redirect?

11 MR. ROBINSON: No redirect, Your Honor.

12 THE COURT: Thank you. You are excused. You
13 may stay here as long as you like to as a citizen, or
14 you may go back to do what you want to do. Thank you.

15 THE WITNESS: Thank you.

16 THE COURT: Have a good day.

17 MR. ROBINSON: Your Honor, with that, the
18 Defense rests.

19 THE COURT: All right.

20 Let me see the attorneys for just a second.

21 (WHEREUPON, a bench conference was held off the
22 record.)

23 THE COURT: Thank you, Mr. Robinson. Ladies
24 and gentlemen of the jury, with the conclusion of that
25 witness and the Defense resting, you have heard all of

1 the testimony that you will hear in this case. We have
2 a few matters of law to take up, and then we have some
3 discussions we have to do between the attorneys and I.
4 So what we will do is I'm going to send you back
5 probably for about a half hour. So they'll get you a
6 Coke and any goodies that they have. And then we will
7 come back out and have the arguments and the charge on
8 the law by me. And then you will be allowed to begin
9 your deliberations.

10 All right. Thank you, ladies and gentlemen.
11 Please do not discuss anything about the case while
12 you're back there.

13 (WHEREUPON, the jury exited the open court at
14 approximately 9:25 A.M.)

15 THE COURT: All right. Mr. Robinson, any
16 motions?

17 MR. ROBINSON: Yes, sir, Your Honor. At this
18 point, I would renew all of my previous motions and
19 objections, Your Honor, that I've stated for the record.
20 And I don't have them noted down. But specifically, for
21 instance, the admission of the tapes over my objection,
22 and that there were some other objections that I'd like
23 to protect for the record.

24 THE COURT: All right.

25 MR. ROBINSON: In addition, I would renew my

1 directed verdict motion that I put on the record
2 yesterday based on the evidence that we put on. I don't
3 have any additional grounds for that argument.

4 THE COURT: All right. Thank you.

5 Would the State like to respond?

6 MR. FINNEY: Your Honor, we would just ask you
7 to consider the arguments made during the directed
8 verdict motion yesterday and believe that the case
9 should go forward to the jury at this time.

10 THE COURT: All right. I certainly respect
11 your motion, but I'm, again, denying it based upon the
12 fact the evidence in this should go to the jury.

13 As to the charge of mere presence, under the case
14 of State versus James which states that, "Mere presence
15 is generally applicable in two circumstances. First, in
16 instances where there's some doubt over whether the
17 person's guilty of the crime by virtue of accomplice
18 liability, the trial court may be required to instruct
19 the jury that a person must personally commit the crime
20 or be present at the scene of the crime intentionally or
21 through a common design, aid, abet, or assist in the
22 commission of that crime through some overt act.
23 Secondly, mere presence is generally an issue where the
24 State attempts to establish the Defendant's possession
25 of contraband because the Defendant is present where the

1 contraband is found. In such cases, the trial court may
2 be required to charge the jury that the Defendant's mere
3 presence near the contraband does not establish
4 possession."

5 Based on the law of State versus James, I don't
6 believe either of those apply in this matter. And,
7 therefore, the Court will not charge the jury on mere
8 presence. All right. Thank you.

9 I'll give y'all -- what do y'all want, about twenty
10 minutes, half hour? I told them about a half hour, so
11 we'll reconvene in a half hour for final arguments.

12 All right. Thank you.

13 MR. ROBINSON: Thank you, Your Honor.

14 THE COURT: Court's in recess until, we'll
15 say, ten o'clock.

16 (WHEREUPON, court stood in recess for a short
17 break.)

18 THE COURT: Anything before we bring the jury
19 in?

20 MR. FINNEY: Not from the State, Your Honor.

21 THE COURT: From the Defense?

22 MR. ROBINSON: Nothing from the Defense, Your
23 Honor.

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

1 (WHEREUPON, the jury entered the open court at
2 approximately 10:01 A.M.)

3 THE COURT: All right. Is the State ready to
4 proceed?

5 MR. FINNEY: We are, Your Honor.

6 THE COURT: Defense ready to proceed?

7 MR. ROBINSON: We're ready.

8 THE COURT: All right. Mr. Durant?

9 MR. DURANT: Thank you, Your Honor. May it
10 please the Court.

11 THE COURT: Yes, sir.

12 CLOSING ARGUMENT

13 BY MR. DURANT:

14 Ladies and gentlemen of the jury, Mr. Robinson,
15 Madam Clerk, let me just start by thanking y'all again
16 for your patience. I know when you reported for jury
17 duty last Monday, you didn't have any idea that you
18 would be here for ten days. And I didn't know you'd be
19 here this long either. And I don't have to reiterate to
20 you the importance of this case. I know y'all
21 understand what we're dealing with here.

22 Now, let me just start by giving you a little bit
23 of a framework for the laws and the charges that apply
24 in this case. Mr. Johnson has been charged with two
25 counts of murder, one count of attempted murder, one

1 count of burglary in the first degree, kidnapping, and
2 possession of a weapon during the commission of a
3 violent crime. And as you heard in the Defense's
4 opening statement, it's the Prosecutor's job to prove
5 those charges, to prove the evidence of those charges
6 beyond a reasonable doubt. And you've heard that phrase
7 a lot and will hear it some more. So let me just go
8 ahead and kind of explain to you what that means.

9 But before I get into the law, let me first say
10 that if at any point I say something that is different
11 from how Judge Young charges you the law, that
12 contradicts or isn't exactly what Judge Young says,
13 disregard what I say and apply the law as Judge Young
14 gives it to you. But I submit to you that proof beyond
15 a reasonable doubt is that proof which would leave you
16 firmly convinced in the Defendant's guilt. It's not
17 proof beyond any and all doubt. It's reasonable. Some
18 people would say that reasonable means make sense.

19 You weren't required to leave your common sense at
20 the door when you come in here. We picked you because
21 we believe you have it. And I'd ask you to use that
22 common sense as you evaluate the evidence in this case,
23 as you evaluate whether the State has proven the
24 evidence of the crimes charged.

25 The first crime that we spoke about is murder. Two

1 counts of murder, one for Ms. Maxine Caraway and one for
2 little J.C. . Murder is the killing of another
3 person with malice aforethought. Now, I know that
4 malice aforethought, that sounds like legal ease, but
5 let me try to break that down for you. Malice, I submit
6 to you, is that that's the wrongful intent to injure
7 another person, the ill will. It indicates a formal
8 purpose to do a wrongful act.

9 Now, as you know, it's difficult to know exactly
10 what's going on in another person's mind. So that
11 malice can be expressed or implied. It can be expressed
12 by words such as, "You made me do this. You made me do
13 this." Or it may be implied. You may infer that malice
14 from such things as brutal conduct, the breaking of a
15 person's nose, the use of a deadly weapon, bringing a
16 shotgun into a home, bringing a shotgun into an
17 argument. You may infer that malice by, I submit to
18 you, attempts to mislead the police about who may have
19 killed these victims, attempts to tell them, "Somebody
20 else did it. It wasn't me."

21 Aforethought -- malice aforethought was the
22 element. What is aforethought? Aforethought is simply
23 the time when the evil is conceived. No particular
24 length of time before the killing is required. It
25 doesn't have to -- this intent to kill doesn't have to

1 be formed half an hour before the killing or even two
2 minutes. It's just no particular length of time is
3 required. It's just the time when the evil was
4 conceived.

5 And, again, you may consider the actions of the
6 Defendant in deciding whether the State has proven that
7 element of the crime. Or that the Defendant left an
8 argument and went to his home to get a gun and came
9 back. Left the argument and went across town when he's
10 supposed to be in the middle of town taking the children
11 to the doctor, he goes to the other side of 95 and gets
12 a gun and comes back. I submit to you you may infer
13 that malice aforethought from those actions.

14 And let me -- before I finish up the elements of
15 murder, let me tell you that motive is not an element of
16 murder. And it need not be proved by the State of South
17 Carolina. We don't have to know why. We just have to
18 know who. It may not make sense to us why somebody
19 would kill a nine-month-old child. And we don't have to
20 answer the question why. We just have to know who. The
21 State does not have to show you motive in this case.

22 Attempted murder. Mr. Johnson is charged with the
23 attempted murder of Kaisha Caraway. The elements of
24 attempted murder are the intent to kill -- the attempt
25 to kill another person with the intent to kill and

1 malice aforethought, either expressed or implied.
2 Similar elements as murder, that malice aforethought
3 would be defined the same way.

4 The intent to kill. You may infer that by the fact
5 that two other individuals had already been killed when
6 shots were fired down the hall into a bathroom door at
7 the victim. Do those facts show you intent to kill?

8 Kidnapping. Mr. Johnson is charged with the
9 kidnapping of Kaisha Caraway. Now, you hear the term
10 kidnapping, you think that a child has been abducted. I
11 submit to you that, first of all, it doesn't have to be
12 a child for the kidnapping. And they don't have to be
13 bound with ropes or chains and thrown into a trunk of
14 the car. Kidnapping is defined by law as the unlawful
15 seizure or confinement or carrying away of another
16 person by any means. It's the deprivation of that
17 person's freedom, holding that person at gunpoint and
18 making them do what you want them to do. Like telling
19 that person to, "Get in the car. We're leaving." The
20 deprivation of that person's freedom, that's what
21 kidnapping is.

22 Burglary in the first degree. Mr. Johnson is
23 charged with burglary in the first degree. And the
24 elements of that is the unlawful entry into another
25 person's home, into the dwelling of another without

1 consent and with intent to commit a crime in that
2 dwelling. And in addition, a circumstance of
3 aggravation must be proved by the State for burglary in
4 the first degree. And I submit to you the circumstance
5 of aggravation is the possession of a deadly weapon, the
6 shotgun.

7 Again, burglary first, the entry into a another
8 person's dwelling without consent. Where's the evidence
9 without consent? How about a door that had been forced
10 open? I submit to you that that is evidence that there
11 was not consent to enter the residence. He's entering
12 that residence without consent and with intent to commit
13 a crime therein.

14 The intent to commit a crime therein. Going into
15 somebody's home, forcing the door open and having a
16 shotgun in your hand. Folks, that's the intent to
17 commit a crime in the house.

18 And finally, the last charge is possession of a
19 weapon during the commission of a violent crime. That's
20 just what it sounds like. Possession of a weapon during
21 any of these crimes we've talked about. I submit to you
22 that murder, attempted murder, burglary in first degree,
23 and kidnapping are all violent crimes. If the Defendant
24 possessed a weapon during the commission of those
25 crimes, if he possessed that shotgun, then he is guilty

1 of possession of a weapon during the commission of a
2 violent crime.

3 Now, folks, in a minute, Mr. Robinson's going to
4 have a chance to come up here and address you. And then
5 finally, Solicitor Finney will have a chance to address
6 you on some of the facts in the case. Mr. Robinson told
7 you in his opening statement or he urged you not to put
8 emotion before duty in this case. I submit to you that
9 your duty in this case is to find the truth. We're
10 going to ask you -- the Judge is going to ask you --
11 after the lawyers are finished and all the evidence has
12 been presented, the Judge is going to ask you to go into
13 the jury room and deliberate and render a verdict. And
14 verdict comes from the Latin phrase veredictum, which
15 means to speak the truth. Make no mistake about it.
16 That is your job. Render a verdict that speaks the
17 truth. Render a verdict that finds justice in this
18 case. That's your goal. Do not fall short. Thank you.

19 THE COURT: Thank you, Mr. DuRant.

20 Mr. Robinson, for the Defendant.

21 MR. ROBINSON: Thank you, Your Honor. May it
22 please the Court, Mr. Solicitor.

23 CLOSING ARGUMENT

24 BY MR. ROBINSON:

25 Good morning, ladies and gentlemen. Let me check.

1 Yeah, it's still morning.

2 First of all, I'm going to start and I'm going to
3 agree with the Solicitor. That's probably going to
4 surprise y'all, but I'm going to agree with him on a
5 couple of things. Number one, thank you. This has been
6 more than any of us expected, quite frankly, when we
7 started. But it is, as they said, extremely important.
8 It's the most important day in a lot of people's lives
9 in this courtroom. And I know y'all have all sacrificed
10 a great deal, time away from work, time away from
11 family, children's ball games. All of this stuff is
12 important. But that's your civic duty, and you've done
13 it and you've done it well. You've paid attention,
14 you've been attentive, and you've listened and looked at
15 things that are very difficult and very emotional.

16 And I'm going to agree with the Solicitor again in
17 that you do need to do your duty, which is not to let
18 this case be decided by emotion. It's got to be decided
19 solely based on the evidence that came into court that
20 you heard. And as I told you before, things that you
21 didn't hear may be evidence of reasonable doubt or
22 evidence of not guilty.

23 Now, the Judge is going to charge y'all in a little
24 while on the law. And you took an oath at the beginning
25 of this case that you would follow that law and apply it

1 to the facts. As the Judge told you earlier, and he's
2 going to tell you again, you're the judge of the facts.
3 You get to decide what facts you believe, disbelieve,
4 the credibility of the witnesses, the weight you give
5 it. But once you determine what those facts are, you
6 have to apply the law as he tells you, whether you agree
7 with it or whether you like it or not. And we trust
8 that you're going to do that or we wouldn't have
9 selected you. As you saw during the selection process,
10 both parties were able to excuse people. We picked you
11 because we trust you. We trust your common sense, your
12 life experiences, and your ability to come in here and
13 look at and listen to very difficult, very tragic
14 circumstances and do it impartially without bias,
15 without prejudice.

16 And the Judge is going to tell you about some
17 presumption. One is the presumption of innocence. That
18 is probably the most important right that we have in
19 this country. What that simply means is nobody, person,
20 law enforcement agency, government office, anybody can
21 take away your freedom unless they can prove it to
22 twelve jurors who are impartial beyond a reasonable
23 doubt. And that's what your job is here today, is to
24 protect that right and to find the truth.

25 Now, this is an emotional case. And the mistake

1 that I don't want you to make is the mistake, quite
2 frankly, that I think law enforcement has made in this
3 case and that I think the evidence will show you has
4 been made in this case, which is they based -- they
5 being Clarendon County Law Enforcement -- based their
6 investigation, their presentation, collection, and
7 analysis of evidence on three words and emotion. Well,
8 what three words is that? When law enforcement first
9 responded, when Ricky Richards, the lead investigator in
10 this case, responded to the scene and cleared the house
11 first -- he got very emotional on the stand -- he was
12 shaken by what he saw. And rightfully so. He told you
13 he came out of the house, had to go behind the patrol
14 car to gain his composure. And then he got mad. He
15 walked over. Somebody had done this to an innocent
16 child and an innocent woman in his county on his watch,
17 and he wasn't going to tolerate it. Somebody was going
18 to pay.

19 So he went over, talked to the people that were
20 there. Kaisha Caraway was separated and here come the
21 three words, "He did it." And guess what? At that
22 point law enforcement decided Justin Johnson was guilty.
23 And those three words and that decision have tainted the
24 entire jury -- evidence process in this case. They
25 didn't engage in an investigation from that point

1 forward. They engaged in a witch hunt. They were set
2 to gather evidence to prove in court that Justin Johnson
3 was guilty.

4 But that's not what their job is. You heard
5 Investigator Richards tell you that. What was their
6 job? To investigate, to eliminate suspects so that when
7 they came in here and presented the evidence, not only
8 could they say, this evidence proves Justin Johnson did
9 it, but this evidence eliminates all third parties. And
10 they have evidence galore, ladies and gentlemen.
11 There's much more.

12 You've heard about photographs and other things
13 that have not been put into evidence, that have not been
14 analyzed. And remember when I asked the different
15 witnesses, "Well, why didn't you analyze that? Why
16 didn't you look at it?" "Oh, law enforcement told us
17 not to. We didn't need to. We had a suspect in
18 custody. We had him." Those three words, "He did it,"
19 and the emotion that took over that investigation
20 deprives you of the opportunity, quite frankly, to see
21 all of the evidence, to answer that question beyond a
22 reasonable doubt.

23 Did Justin Johnson do it? Because how can you be
24 firmly convinced that Justin Johnson did it to the
25 exclusion of all other parties when the SLED expert

1 said, "We've got third-party DNA on this murder weapon
2 in two places." Not Mr. Johnson's. Not Ms. Caraway,
3 either one of Ms. Caraways. A third party. We don't
4 know whose it is. "Well, we took some pictures of some
5 footprints that we think were in blood. One of them
6 matches Kaisha Caraway. One of them is somebody else's
7 that wasn't at the scene. We could have dusted the
8 trunk of the car for fingerprints." Did they do that?
9 No. The crime scene investigator told us they didn't do
10 that. Well, "Crime scene investigator, why in the world
11 -- you were there for hours, taking pictures of
12 everything in the world, collecting everything, putting
13 markers. Why didn't you dust the trunk of that car to
14 eliminate the possibility that there could be somebody
15 else?"

16 Law enforcement told us, "We didn't need to. We
17 got the guy." That's a rush to judgment based on
18 emotion, ladies and gentlemen. That is extremely
19 dangerous, and that is what y'all cannot allow to
20 happen. Y'all are the safeguard of the presumption of
21 innocence. And until and unless the State removed that
22 with evidence that convinces you beyond a reasonable
23 doubt of Mr. Johnson's guilt, that presumption has to
24 stay. The Judge will tell you that. It has to stay.

25 So what evidence do we have? Let's talk about the

1 evidence. I've talked a little bit about what we don't
2 have. What evidence do we have? We've got some clothes
3 with some blood on them. Okay? Justin Johnson's
4 clothes. They're in. Ms. Maxine's blood on them. What
5 else is in? There's a pair of pink sneakers in this box
6 that belonged to Kaisha Caraway. Guess what they had on
7 them. Ms. Maxine's blood. Well, let's look at her
8 pants. Oh, that's right. They had blood on them, but
9 SLED was told, "Don't look at that."

10 We've got her shirt that was supposedly ripped off
11 of her, the shirt she had on at the hospital. Let's
12 look at that and make sure that doesn't have Ms.
13 Maxine's blood or some third-party DNA on it. No, no,
14 we don't need to do that. We got him. He did it. We
15 got him. We don't need to investigate that. We know
16 who did it. We've put this puzzle together. You know
17 what the difference is between putting a puzzle together
18 and solving a mystery? You get to cheat with a puzzle
19 because the picture's on the box.

20 This is not a puzzle, ladies and gentlemen. This
21 is supposed to be a mystery. The problem is law
22 enforcement had Justin Johnson's picture on the box as
23 soon as Kaisha Caraway said, "He did it," because the
24 emotion took over. From that point forward, mistakes
25 were made, shortcuts were taken. We've got a murder

1 weapon. No fingerprints from Mr. Johnson, no DNA from
2 Mr. Johnson. Somebody else's DNA that's not dead or in
3 this courtroom. We don't know whose it is. We don't
4 have her clothes, Kaisha's clothes, to analyze. What
5 about Ms. Maxine's fingernails? If there was an
6 altercation and somebody else did it, you heard the
7 pathologist, the lady who did the autopsy, and the SLED
8 expert say, "That's a great place to get DNA if she was
9 fighting somebody." If it was Justin's DNA, guess what,
10 I couldn't talk about this. I'd have to admit, yep,
11 they got it. They didn't test it. Didn't even test it.

12 They took the time at MUSC in Charleston to collect
13 that evidence because it's important. They had a deputy
14 drive it back, keep a chain of custody from Charleston
15 to Manning because it's important. Have y'all seen it?
16 Have y'all heard any testimony about it other than, "We
17 weren't asked to analyze it." Why? Because he did it.
18 We already know that. We don't need to investigate. We
19 got it.

20 The shotgun shells. Numerous pictures of shotgun
21 shells with markers. And this one is in front of the
22 baby, and this one is by the bathroom door. What did
23 the firearms expert tell you? "I can't link those
24 shells to anything other than they came out of that gun.
25 I can't tell you where that one was fired, who it hit,

1 what it hit."

2 There's a picture of a wadding and the shell
3 together. That must be important. What did the expert
4 tell you? "I can't even say that wadding came out of
5 that shell." That's not evidence of anything other than
6 there's a shell in the floor. That doesn't connect
7 Justin Johnson to anything. No DNA off the shotgun
8 shells, no fingerprints, no evidence.

9 Photographs throughout the house. Was there
10 anything in those photographs that proved anything that
11 we didn't know when the trial started? That there was a
12 struggle in the home and two people were killed?
13 Anything else in those photographs? And I'm not
14 expecting y'all to answer. These are rhetorical
15 questions. But I do want you to answer them and talk
16 about them in the jury room because they're important.
17 Does that eliminate reasonable doubt? With these
18 questions, are you firmly convinced that there is no
19 possibility, no reasonable possibility -- I'm not
20 talking about a Martian coming down and doing it. A
21 reasonable possibility that Justin Johnson didn't do it,
22 that there is a third party, that somebody else lied,
23 that somebody else made mistakes, because the State is
24 firmly convinced that Justin lied because they told you.
25 Y'all saw the video. They worked him for a long time.

1 And y'all had to watch most of it. There was about
2 three hours of it we didn't make you watch. There
3 wasn't a whole lot of questioning going on. It was
4 evidence collection. But he was in that room in
5 handcuffs with two officers for over eleven hours. And
6 they say, "Hey, he confessed. He confessed."

7 The Judge is going to tell you, although the tape
8 came in, the ultimate question of the validity of that
9 confession is yours. You don't have to believe it. You
10 don't have to believe any of it. You can believe part
11 of it. You got to see it and you can watch it again.
12 Y'all probably don't want to watch it for another eight
13 hours, but you can. But did he really? Is that
14 confession freely and voluntarily given -- and here's
15 the real question -- without threat, force or coercion?
16 And I'm going to talk a little bit about that later.
17 But if they don't have that confession, what do they
18 have besides those three words, "He did it"? What
19 physical evidence? Oh, oh, wait a minute. We've got
20 gunshot residue, ladies and gentlemen. He must have
21 done it. We've got gunshot residue on Justin Johnson's
22 hands. What did the expert tell you about that? It can
23 be easily wiped off. That the timing of it makes a big
24 difference. And whose did they take first? They took
25 Mr. Johnson's by the SLED evidence yesterday about

1 eleven o'clock that morning, within an hour or so of
2 responding. They took Kaisha's. And I'm going to take
3 a leap of faith on this one and say 1:40 P.M. It took
4 us about five people to get that information, and I'm
5 still not sure that it's accurate. But if you trust
6 that, hers was taken several hours after Mr. Johnson
7 after she put a shirt on. Remember her testimony that
8 her red shirt got ripped off. The other shirt that
9 we've never seen was put on.

10 She was in the bathroom. Look at the pictures.
11 There's water in the sink. Who knows whether she washed
12 her hands or not. She was holding the baby in the car.
13 Went to the hospital, rode in an ambulance, changed
14 clothes, did all of this stuff, and then the police
15 decided, we'll get some from her. Guess what? They
16 still found some. It wasn't as strong as Mr. Johnson's,
17 but the expert said, "Hey, that could be a lot of
18 different reasons." And, of course they found some on
19 Ms. Maxine. I'm not glossing over that, but I'm not
20 going to sit here and pretend that anything happened
21 other than that's where she got shot.

22 And then what did the expert tell you? I said,
23 "What does gunshot residue prove?" "They were near a
24 gun that was fired." So if Justin's clothes and shoes
25 have Ms. Maxine's blood on them, Kaisha's shoes have Ms.

1 Maxine's blood -- I can't talk about her clothes because
2 we didn't get to get that analyzed. They both have
3 gunshot residue present, and there's third-party DNA and
4 a third-party footprint. What evidence have they given
5 you to firmly convince you, to cause you not to
6 hesitate, to believe that Justin Johnson did it to the
7 exclusion of everybody else?

8 We don't have to prove anything, ladies and
9 gentlemen. I don't have to come in here. It's not my
10 job to round up suspects and test evidence. I don't
11 have the means, the authority or the ability to do that.
12 It's the State's job. They had it. It's not like, oh,
13 we couldn't find it. They didn't look. And what they
14 had, they didn't look at because of the three words, "He
15 did it."

16 And the emotion. That's what I implore you not to
17 do today. You cannot do that. Well, let's talk about
18 the non-physical evidence. Okay? Because I think --
19 and you take your own view of the evidence. But from
20 what I recall, the only real evidence out there is
21 gunshot residue and blood. And Kaisha and Justin had
22 it. The other evidence out there is DNA. It ain't
23 Justin's. It's somebody else's. It's a footprint that
24 belongs to somebody else. There's a trunk of a car that
25 was never checked for prints to eliminate somebody else.

1 Remember I asked Ms. Leisy about the little blood spots
2 on the floor that they took pictures of? One on the
3 porch, one in the house on the broken chair. Why didn't
4 y'all test that? What if that was the third-party DNA?
5 What if there was third-party DNA on the trunk? These
6 are not pie in the sky questions. This is evidence the
7 State still has and still to this day has not tested so
8 that they can come in here and put a witness on that
9 stand and say, we tested that. There is no possibility
10 it's anybody else. They could have done that.

11 They want you to get emotional about this tragic
12 situation that Justin Johnson -- he did it because
13 Kaisha said he did it. That's good enough for us.
14 Ladies and gentlemen, that can't be good enough for you.
15 Because what do we know about Kaisha? Well, we know
16 that she wasn't completely truthful and forthcoming in
17 her testimony. She forgot a few things until I played
18 the tape to remind her, that the day after the funeral
19 she went to the Sheriff's department looking for her
20 child's DNA from autopsy so she could try to get some
21 money. Or that right after this tragedy happened, when
22 she got to the hospital she was so stricken with grief
23 that she had to call the bank to check on her money to
24 see if there was money in the account. And that she
25 told you that Mr. Johnson busted down the door and stuck

1 a gun in her face and she was able to sweet talk him out
2 of killing her and told him to go check on her daughter.
3 But you couldn't hear that on the 9-1-1 tape because she
4 moved the phone. Is that credible? Is that believable?
5 That's your choice.

6 How about this, ladies and gentlemen? "Mr. Johnson
7 is a cold blooded killer. He shot and didn't stop
8 shooting until he ran out of bullets." That turned out
9 to be a lie too, didn't it? Because the firearms expert
10 told you it was a six-shot shotgun. We only got four
11 expended shells. And Kaisha herself told you he
12 unloaded the gun and put the shells in his pocket, threw
13 the gun in the yard. Does that add up? Does that add
14 up, ladies and gentlemen? When you put the evidence,
15 not the emotion, not the speculation, not "He did it."
16 When you put that on paper, if this was a word problem,
17 I'd hate to see what the answer came out to be. I think
18 we'd all miss it. Because it's kind of like those
19 questions that the investigators were asking Mr. Johnson
20 when they were closing in his box with their mountain of
21 evidence and picking his story apart. There is no
22 answer because it's based on lies.

23 And so when you go into the jury room and you
24 deliberate today, and you talk about these things and
25 you consider the evidence, I'm going to ask you to

1 consider what does the evidence show? Does the
2 testimony of the witnesses, of the State's witnesses,
3 support their theory of the case, that it couldn't have
4 been anybody but Justin Johnson? Or is the real truth
5 we didn't look at anybody but Justin Johnson. And if
6 that's what you believe, then I think you have to follow
7 the Judge's instruction. If you have a reasonable
8 doubt, a realistic reasonable doubt, that Mr. Johnson
9 did it, you must find him not guilty because the
10 evidence doesn't rule out other people. And it's not,
11 again, as I said, pie in the sky evidence, made up
12 evidence, stuff you've never heard. It's stuff that the
13 police have in their possession. SLED came prepared to
14 do but wasn't asked to do or worse than that, told not
15 to do.

16 Now, what if I came in here today and asked y'all,
17 told y'all, "Ladies and gentlemen, Mr. Johnson didn't do
18 it. I know who did it, and I have some evidence and you
19 have to find him not guilty." If I came in here and
20 said that with a straight face, first thing -- and y'all
21 took me seriously -- y'all would probably be offended
22 because you know that ain't true. Well, what I'm going
23 to ask you to do is hold the State of South Carolina to
24 that same standard. And what do I mean by that? I want
25 you to consider just some brief words that I'd like to

1 leave y'all with. And y'all bear with me for a second.
2 Remember, I have a tendency to make this thing go
3 haywire, so I'm going to try not to do that. It's
4 already doing it. I have that touch. I'm sorry. Y'all
5 bear with me for just a second. I talked too long, and
6 the computer froze.

7 Ladies and gentlemen, I want you to remember these
8 words. These aren't my words. This is a question that
9 the State of South Carolina posed to Mr. Johnson. Now,
10 I'd like to pose it to you to consider when you're
11 deliberating.

12 (Video played)

13 CLOSING ARGUMENT

14 CONTINUED BY MR. ROBINSON:

15 I want y'all to consider that the State lied. And
16 I'm not accusing the Solicitors. But in this interview,
17 in the preservation of evidence, have they lied? I'm
18 not going to ask y'all to answer that on your own, and
19 I'm not going to answer it for you. I'm going to let
20 the State answer it from what they told Mr. Johnson.

21 (Video played)

22 CLOSING ARGUMENT

23 CONTINUED BY MR. ROBINSON:

24 Okay. Just a few of these -- and they're short --
25 but I wanted to comment on them for your consideration.

1 The first thing they talked about -- I hope y'all
2 remember that and note it -- was the ring. "This is
3 going to be your undoing, your downfall. We've got your
4 ring. You broke Ms. Maxine's nose with it. You left a
5 big 'ole knot on Kaisha's head." Blood was everywhere.
6 The ring's going to do it.

7 SLED tested the ring. Y'all remember what they
8 said was on it? His DNA, nobody else's. Nobody else's.
9 Does the evidence, the mountain of evidence, support the
10 State's contention that Mr. Johnson did that? Or did
11 the fact that somebody who had a ring that size on that
12 hit somebody hard enough to break their nose, had blood
13 all over their clothes, left a knot on Kaisha's head
14 with an imprint of the ring allegedly, wouldn't get some
15 DNA on that ring that was collected immediately? Y'all
16 saw when they got it. Or does that leave you a
17 question, some doubt as to the accuracy of that?

18 The next clip. Did y'all hear that second one
19 where Mr. Moore asked him about cell phone
20 conversations? You want me to play that again? Let me
21 see if I can back it up just a touch.

22 (Video played)

23 CLOSING ARGUMENT

24 CONTINUED BY MR. ROBINSON:

25 "Cell phone conversations are recorded. When

1 somebody gets murdered, they're pretty easy to get
2 them." Did y'all hear any cell -- I hope they're not
3 recorded. Did y'all see anybody bring in recorded cell
4 phone conversations between Mr. Johnson and Kaisha
5 Caraway and play them for y'all so y'all could hear? I
6 mean, he said, "In a murder it's pretty easy to get
7 them." He's lying.

8 (Video played)

9 CLOSING ARGUMENT

10 CONTINUED BY MR. ROBINSON:

11 Did he just tell him they pulled fingerprints off
12 the trunk thirty minutes ago? And the SLED expert that
13 came and processed the crime scene told y'all the exact
14 opposite. We don't have any fingerprints off the trunk
15 because law enforcement said, don't dust the trunk. "He
16 did it." We got him.

17 How about this one?

18 (Video played)

19 CLOSING ARGUMENT

20 CONTINUED BY MR. ROBINSON:

21 Tire tracks. We had a footwear and tire track
22 expert from SLED here. What did they tell y'all about
23 the tire tracks? "We didn't get any tire tracks.
24 Nobody asked us to look at any tire tracks." You just
25 heard Investigator Coker tell him, "Hey, we got your

1 tire tracks." Guess what? That's a lie. No. I'm
2 sorry. That's not a lie. That's floating something by
3 to get a reaction. That's how you get a voluntary
4 statement. Did you hear him ask about Robert's
5 fingerprints should be all over the house? He knew he
6 weren't going to check. To this day they haven't
7 checked. Not only did they not recover any, not only
8 did they not make an effort to get any, they stopped
9 SLED from getting any. It's not an act of negligence
10 where I forgot to turn the light off. I was walking out
11 the door, and Mr. Johnson said, "Hey, Scott, you want me
12 to cut the ..." "No. Leave it on. Let the county pay
13 the bill." It's an intentional act, ladies and
14 gentlemen. Don't dust the trunk. He did it. This is
15 how the State was picking Mr. Johnson's story apart with
16 all the lies he was telling. Well, if he was lying,
17 guess what? He wasn't by himself because you heard him.
18 I didn't tell you what they said. You heard him. You
19 saw it. You can take it in the jury room. But guess
20 what? That didn't change Mr. Johnson's story. He told
21 them the same thing and did the best he could to answer
22 questions that didn't have answers because they were
23 based on lies.

24 So what happened? What did the State do when they
25 didn't get that, when that didn't break him? They knew

1 they had to get a confession because they knew they
2 weren't looking at other evidence. They weren't trying
3 to eliminate suspects. It happened today. We're going
4 to stay here until you confess. And if these aren't
5 working, let's try this.

6 (Video played)

7 CLOSING ARGUMENT

8 CONTINUED BY MR. ROBINSON:

9 Does that sound like he wasn't threatened at all?
10 "You're going to prison for this BS story, or you're
11 going to get the death penalty. We're not here to hurt
12 you, son. We're here to help you." No promise of
13 reward. "If you tell the truth, things will go a lot
14 easier." Put him on an emotional roller coaster. Y'all
15 watched three minutes of it. This went on for eleven
16 hours.

17 So can you go back in that jury room and be firmly
18 convinced that anything he said after that was not the
19 result of force, threats, or coercion? Not the result
20 of the promise of hope or reward? Not based on a lie?
21 "I just want somebody to man up and tell the truth."
22 Well, he certainly wasn't setting a good example, was
23 he?

24 The State decided with those first three words, "He
25 did it." Everything from that point forward has been

1 focused. They're not out there with a wide searchlight
2 looking for something. They've got a little pen light
3 shining it on -- there it is right there. They found
4 it. They don't need to look. You don't need any other
5 evidence. And why did they do that? Why? Is it
6 emotion? Is it pride? What does Mr. Moore tell him it
7 is?

8 (Video played)

9 CLOSING ARGUMENT

10 CONTINUED BY MR. ROBINSON:

11 They don't have a dog in the fight. I guess Mr.
12 Moore and Mr. Coker had a dog in the fight, huh? It
13 happened in their county. Guess what? That's emotion.
14 That's a vendetta. Somebody's going to pay. In our
15 county on our watch. I got a dog in this fight. Now,
16 SLED doesn't, so you can trust their evidence. What
17 evidence? What evidence, ladies and gentlemen?

18 So I want to leave you with those and a few closing
19 thoughts. Y'all have seen the evidence. Y'all have
20 heard the testimony. As I've asked you several times
21 and -- I don't mean to wear you out about it. I'm not
22 going to start yelling at you and screaming and
23 threatening you. But I do want you to leave the emotion
24 out of this. It's emotional. I'm not saying don't get
25 emotional. But don't make a decision based on emotion.

1 Make it based on the facts, not the mountain of evidence
2 that says he did it that doesn't exist. The mountain of
3 BS that I call it. Don't base it on this confession
4 that was supposedly freely and voluntarily given after
5 ten and a half hours of, "You going to prison. You're
6 going to get the death -- I know you did it. We're here
7 to help you, son. We don't want to hurt you. I
8 promise. Just tell the truth. Things will go a lot
9 better." Are y'all firmly convinced that that ain't a
10 threat, that that ain't a promise, that that ain't a
11 hope of reward? Are you firmly convinced?

12 When you go back there and talk about everything
13 you've seen and heard over these last two weeks, that
14 there is no realistic, reasonable possibility that
15 anybody but Justin Johnson could have done this, even
16 though there's third-party DNA that hasn't been
17 explained on the murder weapon, that there is a third-
18 party footprint that was never identified. There were
19 fingerprints that they lied about testing. That tells
20 you, ladies and gentlemen, it wasn't a mistake. It
21 wasn't an accident. It wasn't, oh, my God we're so
22 emotional, we messed up. We made a mistake. They told
23 him they'd pulled fingerprints thirty minutes ago. The
24 SLED expert said, "They told us not to pull them." They
25 decided from the word go or the words, "He did it," what

1 happened.

2 And that's what happened to this case. That is
3 something that you can't do. And I submit to you if you
4 follow the Judge's instructions, consider all the
5 evidence, good, bad, and indifferent, when you go in
6 that room and deliberate, I don't think you're going to
7 be firmly convinced that there's not a realistic
8 possibility that somebody else could have done it.

9 Again, I don't have to call witnesses. That ain't
10 my job. I don't have a badge and a gun and SLED and
11 forensic experts and all these people. The State has
12 that job, that duty, that burden. Why? Because they're
13 the ones that are accusing Mr. Johnson of doing this.
14 And it's not fair to him or to you, quite frankly, to
15 come in here with a half prepared pile of evidence, pile
16 of something else, and try to convince you that it says
17 what it doesn't say.

18 My client was telling me last night -- he said,
19 "Two and two don't make six." Third-party DNA, third-
20 party footprint, not analyzing potential evidence
21 doesn't make him guilty. All you got was excuses of why
22 we didn't have his DNA on the gun or why their DNA
23 wasn't on the ring. Not why we didn't look at the other
24 evidence, because I agree. There may be good reasons
25 why DNA wasn't on the gun. But somebody's DNA was on

1 the gun, and it wasn't Justin Johnson's, it wasn't
2 Kaisha Caraway, and it wasn't Maxine Caraway. I don't
3 know whose it was. Are y'all firmly convinced that that
4 DNA didn't come from the killer? That that footprint
5 didn't come from the killer? That Ms. Maxine's
6 fingernails didn't have somebody else's DNA under it?
7 That the trunk of the car didn't have somebody else's
8 prints on it?

9 All I ask you to do is be fair and impartial and
10 don't make an emotional mistake like the State did.
11 Thank you.

12 THE COURT: Mr. Finney?

13 MR. FINNEY: May it please the Court, Your
14 Honor.

15 THE COURT: Yes, sir.

16 MR. FINNEY: Mr. Robinson.

17 CLOSING STATEMENT

18 BY MR. FINNEY:

19 Ladies and Gentlemen, it's hard to be the last one
20 talking because a lot of the good things have already
21 been said; but maybe not everything. I want to thank
22 you, first of all, for serving. I want to thank you for
23 giving up your time and helping us with this important
24 case. It's important not just because of the community
25 we live in and the kind of place we want to say we call

1 home, it's really, really, really important because John
2 Caraway and Kaisha Caraway had to go through a lot to be
3 here with you this week. We already know what they went
4 through on April the 6th. John was at work, but he left
5 his wife that morning thinking that he was just going to
6 go to work, not that he was going to come back and have
7 his whole life turned upside down. And Kaisha Caraway's
8 been through more than anybody. And quite frankly, I
9 don't appreciate her being called anything but what she
10 is. And that is a victim and kind of a hero for coming
11 through it the best she could. She didn't ask for this.

12 Now, she may not be perfect, and she may not have
13 done everything the way we would have wanted our
14 daughter or our sister or our wife to do things, but
15 there's no evidence at all that would allow somebody to
16 come in here and say that, well, she had blood on her.
17 Maybe she did it. You know, the fact of the matter is
18 Mr. Robinson showed you the videotaped pieces that he
19 picked out. He doesn't show you the piece where the
20 young man, Mr. Johnson, decides at the end of it all
21 that his road is not going anywhere, that he's going to
22 tell the officers, "I'm sorry I've wasted your time.
23 You all have got families. You all need to go on home
24 to your families. We've been here long enough. I tried
25 to put this off on somebody else that doesn't exist, but

1 it's not going to work because you guys still are out
2 there in the field at midnight trying to take pictures,
3 trying to find out what's going on, trying to put the
4 case together," based on his telling them hour after
5 hour, "Robert did it."

6 Now, if anybody should be called a liar in this
7 case, it's that man sitting right next to Mr. Robinson
8 because he's the one that led the cops on this little
9 goose chase for several hours. As the officers told you
10 over and over and over, they came into the room cold.
11 They hadn't even been in the house. Kipp Coker's not
12 been in that house. He doesn't know what's going on.
13 He's told, take the suspect down to the law enforcement
14 center. Give him his rights. Take his GSR and other
15 buccal swabs so we can have that. Take his clothes
16 because he's covered with blood from head to toe, and
17 let's find out what this guy's doing. Let's find out
18 where he's been and what he's gone through.

19 He wants to talk about Robert. Fine. There is no
20 Robert, ladies and gentlemen. We know that. If you
21 don't believe anybody else, Kaisha told you that. It
22 was Justin. He did do it.

23 They want to talk about the ring. That officer
24 wasn't lying. They had evidence that Kaisha had an
25 injury to her head. A good officer's going to say,

1 look. Well, look. We didn't take his rings from him.
2 He's in the examining room -- he's in the interrogation
3 room. He hasn't had his rings taken from him. Maybe
4 the ring is connected with the injury. They're getting
5 information by and by. They didn't know until she got
6 to the emergency room that she'd been shot. What does
7 Justin say? "I don't know if she got shot. I have to
8 believe you. You're telling me she got shot." Yes,
9 they didn't lie about it. She had all kinds of injuries
10 on her. And, yes, she had blood on her, Maxine
11 Caraway's blood, just like Justin Johnson. Did Justin
12 Johnson ever -- from photographs, testimony, Kipp Coker,
13 have you ever heard anybody say he had a scratch on him?
14 No, not a scratch.

15 Who was Ms. Caraway involved with? Where was her
16 blood? On Justin Johnson. There's no scratches on
17 Justin Johnson. There's really no reason to look at his
18 [sic] fingernails unless we think that the fingernail
19 scrapings are going to lead us to Justin Johnson. Not a
20 scratch on him.

21 He was in charge that afternoon, that morning, at
22 the house on Carissa. He was having it his way, and
23 that's why he went and got that gun out of the trunk of
24 his car.

25 Did you hear Mr. Robinson say anything about the

1 gun? No. That's not part of his case. He can't
2 explain the WalMart man saying that Justin bought that
3 gun. He can't explain Ms. Lativia saying he came in the
4 room that day and asked for the gun.. He can't explain
5 Korianda Walker coming in here and saying, "He came in
6 my room and asked for the bullets." You didn't hear him
7 say anything about that.

8 MR.. ROBINSON: And, Your Honor, I'm going to
9 object to that. I think that's improper burden
10 shifting.

11 THE COURT: Overruled.

12 CLOSING ARGUMENT

13 CONTINUED BY MR. KINNEY:

14 This is not a witch hunt. Kipp Coker's been an
15 officer a long time. Kenneth Clark's been an officer a
16 long time. These people were out there trying to put
17 John Caraway's life back together. And Kaisha too.
18 Kaisha Caraway lost two of the most important people
19 that day that she's ever had, that she ever will have.

20 Mr. DuRant told you we don't have to answer the
21 question, why did it happen. We don't have that answer.
22 What we do have is the gun case in the trunk of the car.
23 Everybody here's got a car. Everybody here has got
24 stuff in the car. He told the officers he was going to
25 sell the gun.

1 He went to the house that morning, probably with
2 the kids in the car. They didn't go to the doctor.
3 That probably never happened either. There was no --
4 she called the doctor. There was no evidence that he
5 ever went to the doctor and signed them in. That's what
6 he -- I mean, he's good at it. He told you -- he told
7 the law enforcement on the videotape that he went to the
8 door of the doctor's office with sick kids and took the
9 word of some female he didn't know that they weren't
10 taking walk-ins. Two babies, all the way down to Black
11 River. Is that true? Or do you believe the videotape
12 at the EZ Mart that he was trying to get his money. And
13 when he didn't get his money -- he didn't buy anything
14 at the EZ Mart, he went on down to the house and got his
15 gun and his bullets. He knew how he was going to
16 straighten this out.

17 Maxine Caraway's nose was broken in a fight in the
18 house. Not only was it broken, it was displaced. So it
19 wasn't just hit and broken like non-displaced. He broke
20 her nose and displaced it. She was bleeding on him and
21 on Kaisha and probably on herself. And, no, we didn't
22 test her blood on her clothes. And, no, we didn't test
23 the fingerprints on Justin's car. That wasn't going to
24 lead us anywhere. But Mr. -- the Defense has to say
25 something to keep you off base.

1 We have given you every piece of evidence that we
2 think can show, without even thinking about the
3 videotape. Kaisha's statement. Look at the shells.
4 They are important. Everywhere Kaisha said there was a
5 confrontation and there was a shot, there's a shell.
6 There was a confrontation in the house with Ms. Maxine
7 before the gun came in. How many shells are on the
8 front of the house, on the porch or in the yard? They
9 found one.

10 State's Exhibit Number 32, what does that tell you?
11 Well, first of all the officers didn't know this because
12 they were in the room talking to Justin Johnson. But it
13 tells you that Justin Johnson didn't shoot at the car of
14 Robert as it was trying to get away because there would
15 be two shells in the front yard. One killed Ms. Maxine.
16 One, according to him, was shot at the car as it was
17 leaving. There's only one shell, ladies and gentlemen.
18 They looked for the wadding. They looked for other
19 evidence in the yard. There was no other evidence. He
20 fired once on the front porch area. There's the shell.
21 This was after he crashed in the door to the front of
22 the house to get in the house. That's the door. That's
23 how it looked. Why would they take fingerprints of the
24 front door knob? Do you think the man that crashed that
25 door was putting his hands on the door to open it? Not

1 reasonable. No. He crashed that door in, and that's
2 what it looked like afterwards.

3 You think they were inside talking nice to each
4 other? Look at State's Exhibit Number 63. I'm sorry.
5 Number 13. That's not a pretty sight. Ms. Maxine
6 wasn't having any control of the situation.

7 We talked about the shells in the house and their
8 location in that area, that room with the wooden floor.
9 The two shells on each side of the TV. Very closely it
10 connected to the events that Kaisha told you about.
11 One, the gun comes in the house after the accident,
12 after Ms. Maxine is trying to get away, to get in her
13 car with the two-year-old daughter. That's when the
14 first shot goes off. Kaisha says she doesn't even hear
15 that shot. That's because of the state of fear that's
16 going on. That's because of how Justin's acting.
17 That's because of what fear she's in. She doesn't even
18 know what state Grandma and the two-year-old are in
19 outside. Justin comes in with the gun, points it at
20 her. She closes her eyes. Boom, she hears the gun.
21 What did the man tell you about how that gun operates?
22 "If there's two shells on the floor, that gun had to be
23 pumped." No, we can't tell you that that shell at this
24 position in State's Exhibit Number 14 was the first
25 shot. No, we can't tell you the other shell is the

1 second shot. No, we can't tell you that. But you can
2 look and see. The baby is in this room. State's
3 Exhibit Number 42, there's the shell, twelve, fifteen
4 feet away. Kaisha's running for her life now down the
5 hall. The baby's been shot.

6 She still doesn't know what's going on outside with
7 Ms. Maxine and the little girl. I asked Kaisha did she
8 hear another shot as she's going in the bathroom? No.
9 Well, there's evidence that there was another shot in
10 that hallway right beside the door where the bathroom
11 goes left.

12 Boom, another shot down the hall. And then she's
13 in the bathroom. She's got the door closed behind her.
14 She's hoping that the best thing will happen is that
15 nobody else will get hurt. Boom, another shotgun shell
16 goes through the bathroom door. The door gets pushed
17 open, crashed open, almost off the hinges. And right
18 there at the bathroom door, sure enough, there's another
19 shell and the wadding. No, the expert can't tell you
20 whether it comes in, but the expert could tell you that
21 shotgun, that shotgun, Justin's shotgun, fired all four
22 of those shells that were found in that house. He was
23 coming in. He wasn't going to play around with Kaisha.

24 We don't have any other evidence that there were
25 any other bullets in that gun, shells in that gun. If

1 you believe the evidence that Kaisha told you, if you
2 believe what has been said earlier, maybe she was just
3 lucky. Maybe he didn't want to kill her, but he tried.
4 We know that. Twice, he tried to shoot, once injuring
5 her in the shoulder.

6 Ladies and gentlemen, this is not about winners and
7 losers. I told you that in the beginning. There are no
8 winners here. My heart goes out to the Johnson family
9 because I know they gave that young man everything they
10 could. We've heard that today. This is not anybody's
11 fault. This is not about why. This is about who.

12 Justin Johnson bought a gun. Justin Johnson took
13 that gun over to the house on Carissa Lane. Justin
14 Johnson fired that gun four times. Not because he said
15 so on the video. That's evidence. Consider it. Use it
16 for what you can. But if you don't believe the video,
17 believe what Kaisha said. She thought she was going to
18 die that first shot. And then he said, "Look what you
19 made me do," and shot the baby.

20 At the end of that video, there's a part where he
21 looks at the officers. And it's gotten quiet. And they
22 ask him, "Was it an accident?" No response. The
23 officer's said, "We don't think you're a cold-blooded
24 killer. Was it an accident?" No response. And then he
25 said something that's very important, very powerful. He

1 said, "Don't let love make you stupid." That's good
2 advice for all of us. Unfortunately, J.C. and Maxine
3 don't get the benefit of that because on April the 6th,
4 Justin Johnson shot Maxine, and he shot J.C. . And he
5 did so intentionally, and he did so with malice
6 aforethought. He didn't even go over there and check on
7 the baby. He never went over to Maxine to check on her.
8 There's GSR on Mr. Caraway [sic]. There's GSR on Ms. --
9 GSR on Kaisha. There's GSR on Mr. Johnson. Mr.
10 Robinson talked to you to you about it. And there's
11 only two ways to get GSR on you. You either are
12 shooting the gun or you're being shot at. Everybody in
13 that house that day got shot at except Justin Johnson.
14 That GSR on his hands came from him using that weapon.
15 I don't know how you can say that there is evidence
16 that some third party did this crime. When Mr. Robinson
17 said to you over and over again, "There's another
18 person, an unknown person's DNA on that gun," you
19 remember from the testimony -- you can hear it again if
20 you want to -- that the young lady, Lativia, told us
21 that she took that gun that night before on the 5th and
22 moved it out of her baby crib to put it in another
23 position. And that when Justin -- and that that's where
24 she had moved it to, and it was not there. So we have a
25 third person. We know who touched that gun. And he

1 knows too.

2 You've seen the evidence in the pictures. Justin's
3 shirt, on the sleeve is Kaisha's blood. On the front
4 they tested it. It was Ms. Maxine's blood. On his
5 shoes, Ms. Maxine's blood.

6 We don't know what Justin was thinking or what he
7 wanted. We don't know why he wanted Kaisha to go with
8 him so bad that day. We know this. There is a request
9 on your part to find that the State has not proven the
10 case against Justin Johnson based on some ability or
11 some disability that we've had in proving fingerprints,
12 we didn't dust his car and things like that. Think
13 about what problems the State would have in this case
14 proving that Justin Johnson was guilty if he had killed
15 Kaisha and there was no living witness? There would be
16 no Maxine, there would be no Kaisha, there would be no
17 J.C. . We'd have a two-year-old in the yard alone. He
18 would have put the two-year-old in the car and left and
19 gone to see the police and said, "Oh, I just brought my
20 two-year-old home, and look what I found." We'd have
21 had a real hard case. We got a break. We have a living
22 witness.

23 We got another break. We've got two good law
24 enforcement officers that stayed in that room and talked
25 to him and pushed him and pushed his buttons and tried

1 to get him to say things, tried to see where he was
2 going with his story. And they stayed on it until he
3 said, "I've had enough."

4 The decision is now in your hands. We -- all the
5 lawyers and the judges, we've done as much as we can do.
6 That's the beauty of this system. It is a test. You
7 test our evidence. You test our witnesses. All of our
8 witnesses didn't come from the Caraway family. Some of
9 our witnesses come from SLED, but some of these
10 witnesses up here were Justin's friends. They were
11 staying in the house with Justin. Justin bought the gun
12 at WalMart. We didn't bring that man in here because he
13 worked for us.

14 Talk to one another. Test the evidence. If you
15 are firmly convinced that we have proven our case, then
16 we ask you to do your job to find him guilty of the six
17 charges that we have placed against him in the
18 indictment. And we thank you for your time.

19 THE COURT: Thank you, Mr. Finney.

20 Does the jury want a short break before I charge
21 you the law?

22 (No response)

23 THE COURT: Y'all good? All right.

24 Please secure the courtroom.

25 CHARGE

1 BY THE COURT:

2 All right. Ladies and gentlemen, all of the
3 testimony and the other evidence in this case have been
4 presented to you. The attorneys have given you their
5 closing arguments. Now is the time in the trial where I
6 will charge you the law that is to be applied to this
7 case.

8 Ladies and gentlemen, I remind you that during this
9 trial, you and I have certain duties to perform. As the
10 trial judge, it is my responsibility to preside over the
11 trial of this case, and I also have the duty to rule on
12 the admissibility of evidence that has been offered
13 during this trial. You are to consider only the
14 competent evidence that is before you. If there was any
15 testimony ordered stricken from the record in this case
16 during this trial, you must disregard that testimony.
17 You're to consider only the testimony which has been
18 presented from the witness stand and any exhibits which
19 have been made a part of the record in this case and any
20 stipulations of counsel and any facts of which this
21 Court has taken judicial notice.

22 Ladies and gentlemen, I have the additional duty to
23 charge you the law that is applicable in this case. I
24 am the sole judge of the law in this case, and it is
25 your duty, as jurors, to accept and apply the law

1 exactly as I now state it to you. If you already have
2 some idea as to what the law is or what the law ought to
3 be and it does not agree with what I now tell you the
4 law is, you must abandon that idea because you are sworn
5 to accept and apply the law exactly as I now state it to
6 you.

7 In every case tried in this court before a jury,
8 the jury becomes the sole and exclusive judges of the
9 facts in a case. And as a trial judge, I cannot
10 intimate, state, comment, or make any statement to a
11 trial jury about the facts in a case. Since you are the
12 jury, you are the sole judges of the facts, and you are
13 not to infer from what I have said during the progress
14 of this trial in ruling upon the admissibility of
15 evidence or otherwise or anything that I now say during
16 the course of these closing instructions that I have any
17 opinion about the facts in the case. The law simply
18 does not allow me to have an opinion about the facts in
19 this case.

20 This is a matter solely for you, the jury, to
21 determine. And as jurors it is your duty to determine
22 the effect, the value, the weight, and the truth of the
23 evidence that has been presented during this trial.

24 Ladies and gentlemen, the indictment in this case,
25 indictment number 2011-GS-14-294, alleges six counts

1 against the Defendant, Justin Jermaine Johnson, on or
2 about April 6th of 2011. Count one alleges that the
3 Defendant committed the offense of murder upon J.C.

 . Count two alleges that the Defendant committed
5 the offense of murder upon Maxine Caraway. Count three
6 alleges that the Defendant committed the offense of
7 attempted murder upon Kaisha Caraway. And count four
8 alleges that the Defendant committed the offense of
9 burglary in the first degree. Count five alleges that
10 the Defendant committed the offense of kidnapping. And
11 count six alleges that the Defendant committed the
12 offense of possession of a weapon during the commission
13 of a violent crime.

14 And ladies and gentlemen, throughout -- and again,
15 I remind you the fact that the Defendant was arrested,
16 charged, and indicted is not evidence in this case and
17 cannot be considered by you as evidence of guilt, nor
18 does it create any presumption or inference of guilt.
19 The indictment is simply the formal written instrument
20 which contains the charge made against the Defendant.
21 And it is the formal document by which this case is
22 brought into this court.

23 Now, ladies and gentlemen, the Defendant has pled
24 not guilty to the charge in the indictment. And that
25 plea puts the burden on the State to prove the Defendant

1 guilty. A person charged with committing a criminal
2 offense in South Carolina is never required to prove his
3 innocence. I charge you that this is an important rule
4 of law that the Defendant in a criminal trial, no matter
5 how serious the charge is, will always be presumed to be
6 innocent of the crime for which the indictment was
7 issued unless guilt has been proven by evidence
8 satisfying you of that guilt beyond a reasonable doubt.

9 The presumption of innocence does not end when you
10 begin your deliberations, but it accompanies the
11 Defendant throughout the trial until you reach a verdict
12 of guilt based on evidence satisfying you of that guilt
13 beyond a reasonable doubt.

14 The presumption of innocence, ladies and gentlemen,
15 is like a robe of righteousness that is placed about the
16 shoulders of the Defendant which remain with that
17 Defendant until it has been stripped from the Defendant
18 by evidence satisfying you of the Defendant's guilt
19 beyond a reasonable doubt.

20 And the presumption of innocence is not a mere
21 legal theory. It is not just a legal phrase that we
22 use, but it is a substantial right which every defendant
23 is entitled to unless you, the jury, are satisfied from
24 the evidence of the Defendant's guilt beyond a
25 reasonable doubt.

1 Now, ladies and gentlemen, there are two types of
2 evidence which are generally presented during the trial.
3 There is direct evidence and circumstantial evidence.
4 Direct evidence is the testimony of a person who claims
5 to have actual knowledge of a fact, such as an eye
6 witness. It is evidence which immediately establishes
7 the main fact to be proved.

8 Circumstantial evidence is proof of a chain of
9 facts and circumstances indicating the existence of a
10 fact. It is evidence which immediately establishes
11 collateral facts from which the main fact may be
12 inferred. And circumstantial evidence is based on
13 inference and not on personal knowledge or observation.

14 And the law makes absolutely no distinction between
15 the weight or value to be given to either direct or
16 circumstantial evidence, nor is a greater degree of
17 certainty required for circumstantial evidence than of
18 direct evidence. Ladies and gentlemen, you should weigh
19 all the evidence in this case. And after weighing all
20 of the evidence, if you are not convinced of the guilt
21 of the Defendant beyond a reasonable doubt, you must
22 find the Defendant not guilty.

23 Now, ladies and gentlemen, necessarily you must
24 determine the credibility of witnesses who have
25 testified in this case. Credibility simply means

1 believability. And it becomes your duty as jurors to
2 analyze and to evaluate the evidence and determine which
3 evidence convinces you of its truth.

4 In determining the believability of witnesses who
5 have testified in this case, you may believe one witness
6 over several witnesses or several witnesses over one
7 witness. You may believe a part of the testimony of a
8 witness and reject the remaining part of the testimony
9 of that same witness. You may believe the testimony of
10 a witness in its entirety or reject the testimony of a
11 witness in its entirety. You may consider whether any
12 witness has exhibited to you any interest, bias,
13 prejudice, or other motive in this case. You may
14 consider the appearance and manner of a witness on the
15 witness stand.

16 Now, ladies and gentlemen, there's been evidence
17 presented that witnesses have made prior statements
18 which are not consistent with the witness' present
19 testimony. You may use this evidence to decide whether
20 to believe the witness. You may also use evidence of an
21 earlier contradictory statement to determine the truth
22 of those statements. And it is up to you to decide
23 whether to believe the earlier statements or testimony
24 given at trial. And if a witness has shown to have
25 knowingly testified untruthfully concerning any material

1 matter, you may consider this in determining whether to
2 trust the witness' testimony as to other matters. You
3 may reject all testimony of that witness or give all or
4 part of the testimony the weight that you think it
5 deserves.

6 Now, ladies and gentlemen, the rules of evidence
7 ordinarily do not permit witnesses to testify to
8 opinions or conclusions. An exception to this rule
9 exists for witnesses we call expert witnesses. A
10 witness who by education and experience has become
11 expert in some art, science, or profession may give an
12 opinion as to the subject the witness claims to be an
13 expert in and may also give the reason for that opinion.
14 And you should consider any expert opinion given by a
15 witness and, like any other evidence, give it the weight
16 that you think it deserves.

17 If you decide that an expert witnesses' opinion is
18 not based on sufficient education and experience or if
19 you decide that the reasons given in support of the
20 opinion are not sound or that the opinion is outweighed
21 by other evidence, you may disregard the opinion
22 entirely. And an expert witnesses' testimony is to be
23 give no greater weight than that of other witnesses
24 simply because the witness is an expert, and you do not
25 have to accept an expert witness' testimony even though

1 it is uncontradicted.

2 Now, ladies and gentlemen, I instruct you, and I
3 emphasize, the fact that the Defendant did not testify
4 is not a factor to be considered by you in any way in
5 your deliberation and in your consideration on the
6 question of guilt or innocence of the Defendant. It
7 must not be considered by you in any manner whatsoever.

8 Ladies and gentlemen, the Defendant has the
9 constitutional right to remain silent, and the assertion
10 of this right must not be considered by you in your
11 deliberations. And I repeat, under the oath that you
12 took, you are to draw no conclusion whatsoever from the
13 fact that the Defendant in this case did not testify.
14 The fact that the Defendant did not testify should not
15 even be discussed in the jury room. The burden of
16 proof, as I have stated to you, is on the State. And
17 the Defendant is not required to prove his innocence.
18 The burden of proof remains on the State to prove guilt
19 beyond a reasonable doubt.

20 Now, ladies and gentlemen, a statement alleged to
21 have been made by the Defendant has been admitted into
22 evidence in this case. While the Court has determined
23 that the statement is admissible, I instruct you that
24 you make the ultimate decision as to whether or not the
25 Defendant made the statement. If the Defendant did make

1 the statement, you must determine whether the statement
2 was made by the Defendant voluntarily and of his own
3 free will. This means that the statement was not caused
4 by pressure, force, fear of threats, coercion, or
5 intimidation or by the hope or a promise of leniency or
6 a reward of any kind.

7 In determining whether the statement was voluntary
8 you should consider both the characteristics of the
9 Defendant and the details of the questioning. Some of
10 the factors that you must consider -- or you may -- must
11 consider are, one, the age of the Defendant, two, the
12 Defendant's education or lack of education, three, the
13 Defendant's mental ability or capacity, four, the
14 Defendant's IQ or intelligence, five, the Defendant's
15 background and environment, six, the place and length of
16 detention, seven, the nature of the questioning, and,
17 eight, the advice or lack thereof to the Defendant of
18 his constitutional rights, including but not limited to
19 the right to remain silent and that any statement could
20 be used against him in a court of law, the right to have
21 a lawyer present, that if he could not afford a lawyer,
22 a lawyer would be appointed to represent him without any
23 cost, and that he could stop making a statement at any
24 time.

25 You must carefully consider all the surrounding

1 circumstances before you give any weight to an alleged
2 statement. The State has the burden of proving beyond a
3 reasonable doubt that the alleged statement was
4 voluntary. If you determine it was, you may give the
5 statement any further consideration that you deem
6 proper. And you must decide what weight, if any, should
7 be given to the alleged statement. And if you determine
8 the alleged statement was not the free and voluntary
9 statement of the Defendant, you should not consider the
10 statement at all.

11 Now, ladies and gentlemen, we have discussed
12 reasonable doubt throughout this trial. And this begs
13 the question, what is a reasonable doubt in the law? A
14 reasonable doubt is the kind of doubt that would cause a
15 reasonable person to hesitate to act.

16 The State has the burden of proving the Defendant
17 guilty beyond a reasonable doubt. And some of you may
18 have served as jurors in civil cases where you were told
19 that it is only necessary to prove that a fact is more
20 likely true than not true, such as by the greater weight
21 or the preponderance of the evidence.

22 In criminal cases, the State's proof must be more
23 powerful than that. It must be beyond a reasonable
24 doubt. Proof beyond a reasonable doubt is proof that
25 leaves you firmly convinced of the Defendant's guilt.

1 Ladies and gentlemen, there are very few things in
2 this world that we know with absolute certainty. And in
3 criminal cases the law does not require proof that
4 overcomes every possible doubt. If, based upon your
5 consideration of the evidence, you are firmly convinced
6 that the Defendant is guilty of the crime charged, you
7 must find the Defendant guilty. If, on the other hand,
8 you think that there is a real possibility that the
9 Defendant is not guilty, you must give the Defendant the
10 benefit of the doubt and find him not guilty.

11 Now, ladies and gentlemen, the Defendant is charged
12 with murder. The State must prove beyond a reasonable
13 doubt that the Defendant killed another person with
14 malice aforethought. Malice is hatred, ill will, or
15 hostility towards another person. It is the intentional
16 doing of a wrongful act without just cause and with an
17 intent to inflict an injury or under circumstances that
18 the law will infer an evil intent.

19 Malice aforethought does not require that malice
20 exist for any particular time before the act is
21 committed, but malice must exist in the mind of the
22 Defendant just before and at the time that the act is
23 committed. Therefore, there must be a combination of
24 the previous evil intent and the act.

25 And malice aforethought may be expressed or

1 inferred. The terms expressed and inferred do not mean
2 different kinds of malice, but merely the manner in
3 which malice may be shown to exist. That is either by
4 direct evidence or by inference from the facts and
5 circumstances which are proved. And expressed malice is
6 shown when a person speaks words that express hatred or
7 ill will for another or when the person prepared
8 beforehand to do the act which was later accomplished.
9 For example, lying-in-wait for a person or other acts of
10 preparation going to show that the deed was within the
11 Defendant's mind would be expressed malice.

12 Malice may be inferred from conduct showing a total
13 disregard for human life. Inferred malice may also
14 arise when the deed is done with a deadly weapon. If
15 one intentionally kills another during the commission of
16 a felony, the inference of malice may arise. If facts
17 are proved beyond a reasonable doubt sufficient to raise
18 an inference of malice to your satisfaction, this
19 inference would simply be an evidentiary fact to be
20 taken into consideration by you along with all other
21 evidence in this case, and you may give it the weight
22 that you decide that it should receive.

23 Burglary in the first degree is a felony.
24 Kidnapping is a felony.

25 Now, ladies and gentlemen, the Defendant is charged

1 with attempted murder. In order to prove this crime,
2 the State must prove the Defendant attempted to kill
3 another person with malice aforethought, either
4 expressed or implied. If facts are proved beyond a
5 reasonable doubt sufficient to raise an inference of
6 malice to your satisfaction, this inference would be
7 simply an evidentiary fact to be considered by you, the
8 jury, along with the other evidence in the case, and you
9 may give it the weight that you decide that it should
10 receive.

11 A specific intent to kill is not an element of
12 attempted murder, but there must be a general intent to
13 commit serious bodily injury. Intent means intending
14 the result which actually occurs, not accidentally or
15 involuntarily. Intent may be shown by acts and conduct
16 of a Defendant and other circumstances from which you
17 may naturally and reasonably infer intent. And evidence
18 of the character of the act -- the character of the
19 instrument used, the manner in which it was used, the
20 purpose to be accomplished, and the resulting wounds or
21 injuries may be considered in determining the intent
22 with which the act was committed.

23 Intent may be also inferred when it is demonstrated
24 that the Defendant voluntarily and willfully commits an
25 act, the natural tendency for which is to destroy

1 another's life.

2 Now, ladies and gentlemen, the Defendant is charged
3 with first degree burglary. The State must prove beyond
4 a reasonable doubt that the Defendant entered the
5 dwelling without consent. A dwelling is any building or
6 portion of a building in which a person ordinarily
7 sleeps. In order to prove that the Defendant entered
8 the dwelling, the State does not have to show that a
9 Defendant's entire body entered the dwelling. In
10 addition, the State does not have to prove that force
11 was used to gain entry.

12 Next, the State must prove beyond a reasonable
13 doubt that the Defendant intended to commit a crime,
14 either a felony or misdemeanor, at the time of the
15 entry. The mere entry into a dwelling without consent
16 is not burglary. If the intent to commit a crime is
17 formed after the entry, it is not burglary. If, on the
18 other hand, the Defendant intends to commit a crime at
19 the time of the injury, it is burglary even if the
20 intent was abandoned after the entry. And it does not
21 matter that the intended crime was not completed.
22 Intent may be shown by acts and conducts of the
23 Defendant and other circumstances from which you may
24 naturally and reasonably infer intent.

25 And, finally, the State must prove beyond a

1 reasonable doubt that when entering, while in the
2 dwelling, or when fleeing, the Defendant was armed with
3 a deadly weapon. A deadly weapon is any particular
4 instrument or substance which is likely to cause death
5 or great bodily harm. And whether an instrument has
6 been used as a deadly weapon depends on the facts and
7 the circumstances of each case. The following are
8 examples of instruments which may be a deadly weapon: a
9 pistol, shotgun, a rifle. A gun may be a deadly weapon
10 even if it is not operating.

11 The Defendant was also charged with kidnapping.
12 The State must prove beyond a reasonable doubt that the
13 Defendant knowingly and unlawfully confined, inveigled,
14 decoyed, kidnapped, abducted, or carried away another
15 person without the authority of law. To do a thing
16 unlawfully is to do it willfully against the law.
17 Knowingly means with knowledge, conscientiously, not
18 accidental. Seize means to hold, take hold of suddenly
19 or forcibly. And confine means to limit, restrict, or
20 enclose within bounds, imprison, or shut or keep in.
21 Inveigle means to lure, entice, or lead astray by false
22 representations, promises, or other deceitful means.
23 Decoy means to lure as if by a decoy. A decoy is
24 something to entice a person into a trap. And to kidnap
25 is to remove a person against his or her will by

1 unlawful force or by fraud. And abduct means to carry
2 off secretly or by force for an illegal purpose. And
3 carry away means to remove.

4 The State does not have to prove the Defendant did
5 all of these things. Instead, if you find beyond a
6 reasonable doubt the Defendant did any of these things,
7 you may find the Defendant guilty of kidnapping. And
8 something done without authority of law is something
9 which the law does not sanction, permit, allow, condone,
10 or provide justification for. The kidnapping does not
11 have to be for any personal or monetary gain for any
12 illegal purpose, but may be for any reason whatsoever.

13 Now, ladies and gentlemen, the Defendant is charged
14 with possession of a weapon during the commission or
15 attempt to commit a violent crime. The State must prove
16 beyond a reasonable doubt that the Defendant was in
17 possession of a firearm during the commission of a
18 violent crime. And a firearm means any gun, automatic
19 rifle, pistol, shotgun, or any weapon which will and is
20 designed to or may readily convert to expel a
21 projectile.

22 In order to find the Defendant guilty of possession
23 of a weapon during the commission of a violent crime,
24 you must first find the Defendant guilty of either
25 committing a violent crime or attempting to commit a

1 violent crime. Murder, burglary in the first degree and
2 kidnapping are violent crimes. Now, ladies and
3 gentlemen, the State must prove beyond a reasonable
4 doubt that the weapon further advanced or helped in the
5 commission of a crime.

6 Now, ladies and gentlemen, the Defendant has
7 presented evidence of his good reputation and character
8 to show that it would be inconsistent with the Defendant
9 committing the crime. The weight you give to that
10 testimony, like all other testimony in this case, is for
11 you to decide in your good judgment. You may consider
12 the testimony of the Defendant's good character along
13 with all other evidence in deciding whether or not the
14 Defendant committed the crime.

15 Now, ladies and gentlemen, for the Defendant there
16 are two possible verdicts on each charge. In this case
17 on the charge in indictment 2011-GS-14-294, count one,
18 murder of J.C. , you may find the Defendant
19 either not guilty or guilty. Likewise, on the charge on
20 count two of the indictment, murder of Maxine Caraway,
21 you may find the Defendant either not guilty or guilty.
22 On the charge of count three of that indictment,
23 attempted murder of Kaisha Caraway, you may find the
24 Defendant either not guilty or guilty. And on the
25 charge count four of that indictment, burglary in the

1 first degree, you may find the Defendant not guilty or
2 guilty. On the charge of count five of that indictment,
3 kidnapping, you may find the Defendant either not guilty
4 or guilty. And finally on the charge of count six of
5 that indictment, possession of a weapon during the
6 commission of a violent crime, you may find the
7 Defendant not guilty or guilty.

8 And ladies and gentlemen, there is no significance
9 whatsoever in the order that I state the possible
10 verdicts. It's simply that one must be stated first.

11 Now, ladies and gentlemen, your verdict must be
12 unanimous. All twelve of you must agree on the verdict
13 on each charge, and it must be deliberated upon
14 independently and the verdict rendered separately as to
15 each charge.

16 Your decision must not be based on sympathy,
17 passion, prejudice, or any other emotion or any other
18 consideration that is not in evidence in this case.

19 Mr. Foreman, when the jury reaches their verdict,
20 you will write the verdict on the verdict form. And I'm
21 going to send this back in the jury room with you. And
22 you will check the boxes that are applicable. You will
23 then sign your name and knock on the jury room door and
24 inform the bailiff that you have reached a verdict. At
25 that time, you will then be received back here in the

1 courtroom for publication of your verdict.

2 Now, ladies and gentlemen, I ask that you return to
3 your jury room, but do not begin your deliberations
4 until you're told to do so by the clerk or the bailiff
5 as there are still some matters that must be discussed
6 with the attorneys before you begin your deliberations.
7 Thank you, ladies and gentlemen.

8 And ladies and gentlemen, I will remind you that
9 what I have just stated to you in the charge, a written
10 copy will be sent back into the jury room with you if
11 you want to look at it again. Thank you.

12 (WHEREUPON, the jury exited the open court at
13 approximately 11:39 A.M.)

14 THE COURT: Are there any new objections to
15 the charge that have been made or the verdict form that
16 I have presented to the jury from the Defense?

17 MR. ROBINSON: None from the Defense, Your
18 Honor.

19 THE COURT: From the State?

20 MR. FINNEY: None from the State, Your Honor.

21 THE COURT: All right. Thank you. Please
22 gather the evidence together and instruct the jury to
23 begin their deliberations.

24 (WHEREUPON, the verdict forms and exhibits were
25 delivered to the jury to begin their deliberations

1 (WHEREUPON, the juror signed the document.)

2 THE COURT: All right. Mr. Foreman, this is
3 your verdict form which you have dated March 20th, 2014,
4 and signed it?

5 THE FOREMAN: Yes, it is.

6 THE COURT: All right. Please publish the
7 verdict. The Defendant will please stand.

8 (WHEREUPON, the Defendant and counsel stood.)

9 THE CLERK: On indictment number 2011-GS-14-
10 294, the State versus Justin Jermaine Johnson, as to the
11 charge of murder of J.C. , we, the jury,
12 unanimously find the Defendant guilty.

13 As to the charge of murder of Maxine Caraway, we,
14 the jury, unanimously find the Defendant guilty.

15 As to the charge of attempted murder of Kaisha
16 Caraway, we, the jury, unanimously find the Defendant
17 not guilty.

18 As to the charge of burglary in the first degree,
19 we, the jury, unanimously find the Defendant guilty.

20 As to the charge of kidnapping, we, the jury,
21 unanimously find the Defendant guilty.

22 As to the charge of possession of a weapon during
23 the commission of a violent crime, we, the jury,
24 unanimously find the Defendant guilty.

25 Dated this 20th day of March, 2014. William J.

1 Letourneau, Foreperson.

2 THE COURT: All right. Does the Defense
3 request polling of the jury?

4 MR. ROBINSON: We do, Your Honor.

5 THE COURT: Ms. Beulah, please poll the jury.

6 THE CLERK: Give me one second. Let me get my
7 pad.

8 Ladies and gentlemen of the jury, I'm going to ask
9 you two questions. I'm going to begin with the
10 foreperson. As I call your name, I need you to stand
11 and I'll ask you the two questions.

12 THE CLERK: Mr. William J. Letourneau.

13 THE JUROR: Letourneau.

14 THE CLERK: Is this your verdict?

15 THE JUROR: Yes.

16 THE CLERK: Is it still your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Thank you, sir.

19 Lula M. Darley, is this your verdict?

20 THE JUROR: Yes.

21 THE CLERK: It's still your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Thank you, ma'am.

24 Tiffany L. Osborne, is this your verdict?

25 THE JUROR: Yes.

26 THE CLERK: Is it still your verdict?

1 THE JUROR: Yes.

2 THE CLERK: Phyllis D. Baker, is this your
3 verdict?

4 THE JUROR: Yes.

5 THE CLERK: Is it still your verdict?

6 THE JUROR: Yes, ma'am.

7 THE CLERK: Thank you, ma'am.

8 Penny D. Tisdale, is this your verdict?

9 THE JUROR: Yes, ma'am.

10 THE CLERK: And still your verdict?

11 THE JUROR: Yes, ma'am.

12 THE CLERK: Thank you.

13 Robert L. Russell, is this your verdict?

14 THE JUROR: Yes.

15 THE CLERK: And still your verdict?

16 THE JUROR: Yes.

17 THE CLERK: Thank you, sir.

18 Dominique Hilton, is this your verdict?

19 THE JUROR: Yes, ma'am.

20 THE CLERK: And still your verdict?

21 THE JUROR: Yes, ma'am.

22 THE CLERK: Thank you.

23 Allethia Clark, is this your verdict?

24 THE JUROR: Yes, ma'am.

25 THE CLERK: And still your verdict?

1 THE JUROR: Yes, ma'am.

2 THE CLERK: Thank you.

3 Jimmie D. Ethridge, is this your verdict?

4 THE JUROR: Yes, ma'am.

5 THE CLERK: And still your verdict?

6 THE JUROR: Yes, ma'am.

7 THE CLERK: Thank you.

8 Ronald K. Wingard, is this your verdict?

9 THE JUROR: Yes, ma'am.

10 THE CLERK: And still your verdict?

11 THE JUROR: Yes, ma'am.

12 THE CLERK: Tonya D. Byrd, is this your

13 verdict?

14 THE JUROR: Yes.

15 THE CLERK: And still your verdict?

16 THE JUROR: Yes.

17 THE CLERK: Thank you, ma'am.

18 And Rebecca Bryant, is this your verdict?

19 THE JUROR: Yes, ma'am.

20 THE CLERK: And still your verdict?

21 THE JUROR: Yes, ma'am.

22 THE CLERK: Thank you.

23 Your Honor, the jury's been polled.

24 THE COURT: All right. The jury has been

1 polled, and the verdict stands.

2 Now, ladies and gentlemen, I want to take this
3 opportunity to thank you for being jurors. It is never
4 ever easy holding the life of a fellow citizen in your
5 hands. But you have conducted yourself well. You have
6 done the task that has been assigned to you, and that is
7 to reach a verdict. I would say these same things to
8 you regardless of what your verdict was.

9 Now, ladies and gentlemen, again, like I said, it's
10 never easy. But you did your job, and you did it
11 admirably. Throughout these two weeks, you have been
12 attentive. You have been on time. You have never
13 complained about anything. And you have certainly
14 upheld your civic obligation for jury duty.

15 Ladies and gentlemen, the amount of money that will
16 be paid to you, the small amount of money, it pales in
17 comparison to the service that you have given to the
18 State of South Carolina and to Clarendon County.

19 Ladies and gentlemen, I've got a lucky job here. I
20 get to sit between these flags as I do my job. And
21 these flags that you're looking at are pieces of cloth.
22 But what they stand for is people like y'all who leave
23 their jobs, leave their homes and their families, and
24 come here and do a difficult task. But we are America.
25 So when you leave here, I want you to think of

1 yourselves as fibers of those flags. Because when they
2 say, what makes America great?, it's not the lawyers.
3 It's not the politicians. But it's ordinary people like
4 y'all who come out and do the right job when you're
5 needed. So, again, thank you.

6 Ladies and gentlemen, let me remind you that you
7 will not have to serve as jurors for the next three
8 years if you do not want to. You cannot serve as jurors
9 for the next year. If somebody comes up and tells you
10 that they've got jury duty, well, you can tell them that
11 you have had real jury duty. Ain't no question about
12 that.

13 Ladies and gentlemen, throughout this trial, I have
14 told you that you cannot discuss the case with anyone.
15 That prohibition has now been lifted. You may discuss
16 the case with anyone you want to for as long as you want
17 to or as short a period of time as you want to. So if
18 somebody persists in talking to you about this, please
19 if you will contact one of the bailiffs I will make sure
20 that that -- somebody's request to talk to you ends
21 immediately.

22 And, again, ladies and gentlemen, there were a lot
23 of important things going on in the State of South
24 Carolina over these past two weeks. But I can assure
25 you that nothing was more important than ensuring that

1 justice was done in Manning, South Carolina.

2 Now, ladies and gentlemen, it will now be my
3 responsibility -- you have found the Defendant guilty.
4 It will now be my responsibility to sentence the
5 Defendant. You have been here throughout, so you have a
6 right, if you want, to stay and see the sentencing. I
7 am going to sentence the Defendant at two thirty. I'm
8 going to give his attorneys an opportunity to talk. And
9 I guess the best place -- does anybody have any
10 objection to the jurors staying right there if they want
11 to?

12 MR. FINNEY: No objection.

13 THE COURT: I mean, I don't see any place else
14 for them.

15 MR. ROBINSON: No, sir, Your Honor.

16 THE COURT: If you would like to leave, you
17 are welcome to leave. If you want to stay here and see
18 this to the very end, you're welcome to do that. But
19 you do not have to.

20 So ladies and gentlemen, I'm going to send you back
21 to your jury room for just a minute. But it would be my
22 honor to shake your hand as you leave here or come back
23 as just spectators. But you have done a fine job, and
24 you are to be commended for the work that you have done.

25 (WHEREUPON, the jury exited the open court at 2:08

1 P.M.)

2 THE COURT: Are there any post-trial motions?

3 MR. ROBINSON: Your Honor, I do have a few.

4 But I would like to reserve those and maybe even have
5 some additional time ---

6 THE COURT: Would you like ten days to file
7 any post-trial?

8 MR. ROBINSON: Well, I may. I may just prefer
9 to make them orally. If you'll give me until two-thirty
10 to decide that part of it, I'll be glad to let you know.

11 THE COURT: All right. Very well. Court will
12 be in recess until two thirty.

13 MR. DURANT: Thank you, Your Honor.

14 THE COURT: The Defendant will be taken into
15 custody. Thank you.

16 (WHEREUPON, Court stood at recess for a short
17 break.)

18 THE COURT: All right. Mr. Solicitor, what is
19 the Defendant's prior record?

20 MR. FINNEY: He has no General Sessions
21 record, Your Honor.

22 THE COURT: All right. Would the Solicitor or
23 any of the victims like to make a statement?

24 MR. FINNEY: Yes, Your Honor. We do have a
25 family member, Ms. Ranelle Conyers, who is the sister of

1 Maxine Caraway. She would like to address the Court.

2 THE COURT: Certainly. Please state your name
3 for the record, ma'am.

4 MS. CONYERS: Ranelle Conyers.

5 THE COURT: All right. Ms. Conyers, what
6 would you like to tell the Court?

7 MS. CONYERS: I just want to say that my
8 sister was a loving person. She was always there for
9 us. She never did nobody no harm. And we know if we
10 needed her, she was there. And we always was there for
11 her.

12 And she was a loving person. She always do things
13 to help people, you know. And she won't harm a fly, you
14 know. That's the type of person she was. And I
15 remember always laughing at her because she had like
16 twenty-five cats. And she always, "Got to feed my cats.
17 I got to feed my cats." She loved every one of them.
18 That's the kind of person she was.

19 And when my son was in the hospital last year,
20 seven months and two weeks, dying -- which he didn't
21 die, thank God -- I went to the phone so many times to
22 call Maxine and say, "Maxine, I need to talk to you,"
23 because she knew how to encourage someone. And she knew
24 how to make somebody feel good. And she knew how to be
25 there for someone. And now I don't have that anymore.

1 You know, if I could go and see her once a month and she
2 was living, I could visit her once a month or once a
3 year, I would feel better. But I can't see her no more.
4 She's gone.

5 MR. FINNEY: Thank you, Your Honor.

6 This is Mary Whitfield, Ms. Maxine's daughter.

7 THE COURT: All right. Ms. Whitfield?

8 MS. WHITFIELD: First, I would like to thank
9 the Solicitors for a job well done as well as the jurors
10 for doing their civic duty. As has been said, there's
11 no winners, only losers here today. I lost my mom who
12 was my best friend as well as Ms. Johnson has. She
13 still has her son, but the dreams that she might have
14 had for him may not come true.

15 Like he said his self, love is stupid. Love will
16 make you do stupid things. If I could go back and
17 change the hands of time -- because I know Justin. The
18 Justin I knew, my heart goes out to him. Yes, I lost my
19 mother, but my mother wasn't a person that held grudges.
20 She always said, "You let God handle it." So I just --
21 I'm glad that everything is over, and maybe my family
22 can move towards closure and putting all of this behind
23 us and just live each day day-by-day. Thank you.

24 THE COURT: All right. Thank you.

25 Anything else from the State?

1 MR. FINNEY: Nothing, Your Honor.

2 THE COURT: Mr. Robinson, on behalf of the
3 Defendant, would you like to say anything, or would he
4 like to say anything?

5 MR. ROBINSON: Your Honor, I believe his
6 mother, Ms. Delores Johnson, would like to address the
7 Court.

8 THE COURT: Certainly.

9 MR. ROBINSON: Come up here, Ms. Johnson.

10 MS. JOHNSON: Your Honor.

11 THE COURT: Yes, ma'am.

12 MS. JOHNSON: The jury and to the Caraway
13 family, I am so sorry. If I could go back and change
14 the hands of time, it would be a different story.

15 Justin, I love you dearly, and none of that will
16 never change. But this is a justification. And I hope
17 I can say what I need to say.

18 THE COURT: Yes, ma'am.

19 MS. JOHNSON: Kaisha, you lost your son, but I
20 lost a grandson. You lost your mother. My mother is
21 fighting for her life too. But if you had never called
22 me that morning, Justin would have never been out there.
23 I did ---

24 THE COURT: Ma'am, hold on. I'm going to stop
25 you at that point. You're not going to cast blame on

1 the victim.

2 MS. JOHNSON: I'm not -- I just want to say.

3 THE COURT: You talk to me from this point.

4 MS. JOHNSON: I am so sorry for everything. I
5 am so sorry for everything. And I just throw the mercy
6 on the Court.

7 THE COURT: All right. Thank you.

8 Anyone else, Mr. Robinson?

9 MR. ROBINSON: I don't believe so, Your Honor.
10 No, sir, Your Honor.

11 THE COURT: Mr. Robinson, would you like to
12 speak on behalf of your client?

13 MR. ROBINSON: I would, Your Honor. Your
14 Honor, this is a, as we've said from the beginning --
15 and I think it's probably clearer today than it has been
16 at any point in this proceeding. That as the Solicitor
17 said, as Ms. Caraway's family has said, that there are
18 no winners here today. Everybody's losing quite
19 frankly. Everybody, whether they're family or not. The
20 community has lost good citizens, young people with
21 potential, young people with promise whether they're
22 dead or whether they're facing imprisonment for crimes.
23 You've heard the testimony from Mr. Johnson's
24 character witnesses, Your Honor. You've heard Ms.
25 Caraway's daughter that this act is not the Justin

1 Johnson that anybody knows, that anybody knew. "Don't
2 let love make you stupid." We've heard that. And I
3 hope everybody in the courtroom is listening to that
4 because it has cost lives and done damage that will
5 never be repaired no matter what happens here today.

6 But, Your Honor, what I would ask you to focus on
7 and to consider when imposing sentence is that this is
8 an isolated, rare, uncharacteristic event. That this is
9 not the description of Justin Johnson that you've heard
10 from anyone, including the victim's family. That there
11 is a great deal of love and respect between them. They
12 shared grandchildren. They cared about each other's
13 children. And they have found it in their hearts at
14 least to try to move beyond this to some extent. So I
15 hope that the Court can keep that in mind.

16 Mr. Johnson is twenty-four years old now. He was
17 twenty-one at the time this happened. You heard that he
18 was an exemplary student, a leader in his school and the
19 church, in ROTC. He's now the father of two children.
20 He was employed as a helicopter mechanic with the
21 National Guard at McEntire National Guard Base when this
22 happened.

23 And as the Solicitor artfully stated in his closing
24 argument, we don't have a why answer, Your Honor. It
25 happened. I don't think there's a soul in this

1 courtroom that doesn't have regret for what happened.
2 But I would ask you to consider all of that, the
3 totality of the circumstances.

4 The testimony of Dr. Frierson two weeks ago said
5 that Mr. Johnson did not have any type of mental defect
6 illness or anything that would classify him as a danger
7 or a threat, a serial killer, a danger to re-offend. I
8 think the accuracy of some of the information on the
9 interview was this was a situation where he snapped that
10 day. No behavior associated with this kind of violence
11 before and obviously none since given the circumstances.
12 No prior record. Just a tragic waste of life on a lot
13 of levels.

14 Based on all that, Your Honor, I would ask the
15 Court to consider imposing the minimum sentence as
16 allowed by law on these charges and to run them
17 concurrent. To address those, to take all of that into
18 consideration and to -- although there is punishment, I
19 think the minimums will be great punishment.

20 THE COURT: You understand the minimums on
21 murder is thirty years.

22 MR. ROBINSON: Yes, sir, I understand that.
23 And I understand that means thirty years. So that -- as
24 the Court pointed out, that is a great deal of
25 punishment. Part of the other objective of our system

1 is to reform. And I think with somebody with the
2 promise, with the potential that Mr. Johnson has, that I
3 would ask the Court to consider not making him give up
4 his entire life. Even though what he's done certainly
5 carries that sentence, it's within the Court's
6 discretion, given all the factors available to the
7 Court, to sentence him to the minimum on these charges
8 and to run those charges concurrent so that there may be
9 a chance for him to get out one day and to prove to
10 society, to himself, to these families that had so much
11 hope and trust in him, that this was an isolated
12 incident. And if he can, give something back in some
13 way and make a redress for his wrong.

14 THE COURT: Would your client like to make a
15 statement to the Court?

16 MR. ROBINSON: No, sir, Your Honor.

17 THE COURT: All right. Thank you.

18 Anything further from the State?

19 MR. FINNEY: Your Honor, just for the record,
20 we would oppose any concurrent sentences feeling that
21 neither parties at issue here had anything to do with
22 Justin being upset that day. And I've called him Justin
23 because we used his name -- Mr. Johnson. I would like
24 to say for the record that even though it is not part of
25 our court testimony, there had been prior difficulties

1 between Kaisha and Justin that required 9-1-1 calls. It
2 required law enforcement contact. And that was not
3 something that we could bring out during this trial, but
4 I did want the Court to know that this was not the first
5 time that he had snapped.

6 He had a bad temper. I don't know why. It was
7 something that he couldn't take care of some other way,
8 but this was actually the second occasion within about a
9 three-month period of time that Kaisha had to have law
10 enforcement help.

11 MR. ROBINSON: Your Honor ---

12 THE COURT: Yes, sir.

13 MR. ROBINSON: --- just for the record, I
14 would object to that. I think it's only proper to
15 consider convictions on the record and would ask the
16 Court not to consider that.

17 THE COURT: I'm not considering that.

18 All right. Anything further?

19 (No response)

20 THE COURT: The Defendant will stand.

21 (WHEREUPON, the Defendant stood.)

22 THE COURT: Mr. Johnson, the jury has listened
23 to the evidence. You have been provided with a fair
24 trial over a two-week period. The jury has analyzed the
25 evidence, and they have found you guilty on all but one

1 charge.

2 I know your family wants mercy in this matter.
3 Quite frankly, a lot of mercy was shown to you by the
4 Solicitor's office when they did not seek the death
5 penalty in this case. And today is your day for
6 justice. As I said, you received a fair trial. And now
7 I intend to give you the same mercy that you gave to
8 J.C. and Ms. Maxine Caraway.

9 You know, in a civil society we are taught, and it
10 was ingrained in most people, to protect the elderly and
11 the children. This situation is one that shocks the
12 conscience to have an older lady gunned down as she was
13 by you, to have a baby who is sitting in his high chair
14 gunned down by you causes me to feel that the sentence
15 that I give you is absolute justice. Although the laws
16 of the State of South Carolina will allow you to live
17 for these crimes, the citizens of this society will not
18 have to live with you.

19 The sentence of the Court on the charge of murder
20 under indictment 2011-GS-14-294 is that you will be
21 committed to the State Department of Corrections for the
22 remainder of your natural life. And that's for J.C. .

23 On the murder of Ms. Maxine, the sentence is that
24 you be committed to the State Department of Corrections
25 for a period of the remainder of your natural life.

1 On the charge of burglary in the first degree, the
2 sentence is that you be committed to the State
3 Department of Corrections for a period of the remainder
4 of your natural life.

5 On the charge of kidnapping -- and this would be of
6 Kaisha. Of the charge kidnapping, that you be committed
7 to the State Department of Corrections for a period of
8 thirty years.

9 These four sentences will run consecutively. The
10 charge of possession of a weapon during the commission
11 of a violent crime, which carries five years, you are
12 sentenced to the State Department of Corrections for a
13 period of five years, which will run concurrent with the
14 other charges.

15 It is the intention of this Court that I be able to
16 give you the maximum sentence possible. And I believe I
17 have done that.

18 Anything further from the Prosecution or the
19 Defendant?

20 MR. FINNEY: Not from the State, Your Honor.

21 MR. ROBINSON: From the Defense, Your Honor, I
22 had asked you earlier for a little bit of time to
23 consider post-trial motions. I would request ten days
24 in which to ---

25 THE COURT: Yes, sir, I will be glad to give
26 you the ten days. I also want to state that on the

1 kidnapping charge, I make a finding on the record that
2 it was not sexual in nature.

3 MR. FINNEY: Very good, Your Honor.

4 THE COURT: And so I believe that's the
5 balance of our work for today. Court is hereby
6 adjourned. I would like to take the opportunity to
7 thank all of those who work with the Court: Ms. Beulah,
8 my court reporter, Bonnie, the attorneys in this matter.
9 You have handled yourself with the utmost
10 professionalism. You are to be commended. In a
11 difficult situation, you have performed outstandingly.
12 Thank you very much. The bailiffs, everything, thank
13 you. Jurors, thank you. Y'all are released now.

14 Hold on. Let the jurors leave first, and then we
15 will wait ten minutes before anyone else is allowed to
16 leave. Thank you.

17 (WHEREUPON, the trial ended at approximately 2:58
18 P.M.)

19 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

1 THE STATE OF SOUTH CAROLINA

2 COUNTY OF CLARENDON

3

4 The State of South Carolina, Motion to Reconsider
5 Plaintiffs 2011-GS-14-00294

6 vs.

7 Justin Jermaine Johnson, April 17, 2014
8 Defendant Manning, S.C.

9

10 BEFORE THE HONORABLE W. Jeffrey Young, Judge.

11

12 A P P E A R A N C E S:

13 Mr. Christopher Ryan Durant,
14 Assistant Solicitor for the State

15 Mr. Scott L. Robinson,
16 Public Defender

17

18 Margaret T. Sullivan,
19 Court Reporter

20

21

22

23

24

25

1 THE COURT: This is the State versus
2 Justin Jermaine Johnson.

3 MR. ROBINSON: That's correct, Your Honor.

4 THE COURT: Yes, sir.

5 MR. FINNEY: A copy of Mr. Robinson's
6 motion, Your Honor.

7 THE COURT: Thank you. Mr. Robinson.

8 MR. ROBINSON: Thank you, Your Honor. May
9 it please the court, Your Honor, as the court will
10 recall at the end of this trial back in March, I
11 asked the court for 10 days to make my post-trial
12 motions. I think that was the 18th. And I think
13 if I stand, where I can't read it anyway these
14 were I believe timely filed on the 28th of March.

15 Your Honor, I will just address them in
16 order. The first request is for the court to set
17 aside the jury verdict and a directed verdict of
18 not guilty or in the alternative, a new trial
19 based on the State's failure to introduce any
20 evidence to exclude possible third party
21 participation in the crime.

22 The essential argument there is based upon
23 the undisputed evidence in the case, that there
24 was third party DNA on the murder weapon, and a
25 third party footprint in the victim's blood at the

1 scene, that no reasonable juror could have
2 concluded beyond a reasonable doubt that this act
3 was committed solely by Mr. Johnson.

4 In other words, those two pieces of
5 evidence along with other issues in the case,
6 failure to investigate and eliminate. But those
7 two specific affirmative pieces of evidence, I
8 think would rise to the standard that no
9 reasonable juror in looking at that evidence,
10 which was undisputed and uncontradicted, could
11 find beyond a reasonable doubt that it was
12 Mr. Johnson to the exclusion of all other parties.

13 In other words, those pieces of evidence
14 themselves and I know there's no such thing as
15 reasonable doubt per se, but basically would rise
16 to reasonable doubt per se. So based on that, the
17 failure to explain that, to exclude that, wasn't
18 objected to. You know, it wasn't denied. It was
19 uncontradicted that there was at least two
20 positive pieces of physical evidence of some third
21 party being at the scene. And I don't mean
22 fingerprints in the house. But it could have
23 somebody else. A bloody footprint which happened
24 obviously sometime during the commission of the
25 crime, and the murder weapon which I think the

1 testimony was that it was not there prior to the
2 commission of this crime.

3 Those two key pieces of evidence again
4 would make it impossible for a reasonable juror
5 applying the law as it was charged by Your Honor,
6 to conclude beyond a reasonable doubt that
7 Mr. Johnson was guilty of these crimes.

8 THE COURT: Thank you. Mr. Durant, or,
9 Mr. Finney.

10 MR. DURANT: Your Honor, specifically in
11 regard to the first ground, I think essentially
12 what Mr. Robinson is arguing when he said the
13 State didn't present any evidence to exclude the
14 possibility of a third party participation, he's
15 saying the State didn't present any evidence to
16 exclude some remote possibility. That's not the
17 State's burden. The State's burden is to prove
18 the case beyond a reasonable doubt. It's not any
19 and all doubt. So we don't have to exclude every
20 remote possibility out there. As far as the two
21 particular pieces of evidence that he cited, the
22 first being the DNA and the gun. There's evidence
23 in the record that the defendant's girlfriend's
24 friend, handled the shotgun the night before this
25 incident.

1 And as far as the third party footprint,
2 Judge, there's evidence in the record that there
3 were several other people in the house. There was
4 a young girl and the defendant's and daughter who
5 was running around. There's the victim, the
6 deceased grandmother, her shoes weren't tested,
7 Judge. Two officers cleared their house. So
8 several other possibilities that could have lead
9 to those footprints. And Mr. Robinson had the
10 argument and had the opportunity and did argue in
11 his closing argument, that these pieces of
12 evidence suggested or gave rise to reasonable
13 doubt. Clearly the jury didn't find that. And I
14 believe, Your Honor, that there was -- that the
15 other evidence in record weighed against these
16 allegations of a third party participation, would
17 affirm the jury's finding and their reasonable
18 doubt.

19 THE COURT: Anything further?

20 MR. ROBINSON: Your Honor, just that the
21 State's, I guess, contention that there were other
22 people there, doesn't exclude that it could have
23 been somebody that was not---

24 THE COURT: Well I mean, I think the jury
25 listened to everything. Again, the burden is not

1 beyond all possible doubt. It's beyond a
2 reasonable doubt. The jury heard the testimony
3 concerning the girlfriend the night before
4 touching the weapon, and they heard the evidence
5 that there were a number of people in the house.
6 So they could reasonable infer that that's who did
7 it, and found him guilty. And I will note, it
8 didn't take the the jury that long. I mean it was
9 two hours after 8 days of testimony. In two hours
10 they seemed, they weren't -- that wasn't where
11 their case drew strength on.

12 MR. ROBINSON: And, Your Honor, just our
13 only response to that is we believe that that was
14 not reasonable; that that's the standard here.

15 THE COURT: And I am going to
16 respectfully deny your motion on that basis.

17 MR. ROBINSON: Thank Your Honor. The
18 second ground, Your Honor, and this is kind of
19 vaguely stated in my motion, because I did not
20 have the details until today; that there was some,
21 that we had received some evidence of juror
22 misconduct. Specifically, that one of the jurors
23 began discussions about the merits or the facts of
24 the case prior to Your Honor giving two other
25 jurors, prior to Your Honor giving them the case

1 and clearing them to do that, and against Your
2 Honor's instructions. Specifically, don't talk
3 about the case, don't form any opinions et cetera.

4 At the time that I filed this, I had
5 gotten that second hand. I didn't know anyone's
6 identity or how that evidence came to me other
7 than through the defendant's mother had told me
8 that. She has since unveiled, I guess the rest of
9 that information to me today. I do not know the
10 juror's name today. I can find that particular
11 juror's name. But I did not -- I wasn't sure
12 whether I was going to have that information
13 today, Your Honor.

14 It is my understanding, and I have got
15 Ms. Johnson here to testify to what she knows. If
16 the court would please....

17 THE COURT: Well I mean I just got to hear
18 or just what it basically was.

19 MR. ROBINSON: And I don't remember the
20 young lady's name. But like I said if I had that,
21 I could certainly provide that. And just the
22 physical description was given to me a little
23 while ago. But one of the jurors---

24 THE COURT: I mean that's just coming up
25 now? I mean....

1 MR. ROBINSON: What happened the day after
2 the trial, I was notified that somebody had
3 contacted Ms. Johnson, my client's mother, about
4 the juror misconduct. She didn't know all the
5 details, just that she had been given some
6 information and was supposed to get more details
7 over the weekend.

8 I contacted her, I think, Monday. She was
9 supposed to talk to that person. They were not
10 able to talk over the weekend. She was supposed
11 to talk to them Monday. Tuesday I contacted her,
12 and she said that that particular individual had
13 kind of backed away, and did not want to
14 participate. And she didn't want to give me any
15 further information. I felt it was quite frankly
16 it was my duty not to just say, I'm stopping
17 there, because of Ms. Johnson or these other
18 individuals or my client. Once that made aware of
19 me, I have a duty to at least disclose it the
20 court. The details of that were not revealed to
21 me quite frankly, until today when Ms. Johnson had
22 a chance to talk to her son. Because basically
23 that was his decision whether to pursue this
24 ground or not. So that's why my information was
25 somewhat late in the day, but it was included at

1 least and made reference to it.

2 It's my understanding that this particular
3 juror went into the jury room days prior to the
4 end of the trial, and made inappropriate comments
5 to the effect of how could he do that to his
6 child. I think it was immediately following some
7 of the pictures being put up; how could he do that
8 to his child. I can't believe anybody would do
9 that to their child. Isn't that awful. Can you
10 believe he did that. This information was relayed
11 to Ms. Blackmon. She was a potential witness in
12 our case, but ended up not testifying. She was
13 there, I think, just about every day of trial.
14 And Ms. Blackmon conveyed that information.

15 THE COURT: Well before I can even
16 consider that, I have to affidavits.

17 MR. ROBINSON: And I understand, Your
18 Honor.

19 THE COURT: And I will hold that one in
20 abeyance.

21 MR. ROBINSON: Okay. And I would request
22 a little bit of time. Because like I said, those
23 names just came to me today, so I will be glad to
24 supplement that for the court's review further.
25 Your Honor, my next ground would be under the

1 kidnapping statute 16-3-910. I would ask the
2 court to vacate the 30-year sentence that has been
3 imposed on Mr. Johnson. In accordance with the
4 wording of the statute itself, and I'll just read
5 the last applicable portion. It says, must be in
6 prison for a period not to exceed 30 years unless
7 sentenced for murder as provided in Section
8 16-3-20.

9 THE COURT: But I think under that statute
10 of murder, that's the capital murder.

11 MR. ROBINSON: Your Honor, there is case
12 law. Let's see it state v. Copeland, is an
13 older---

14 THE COURT: I mean that was -- Copeland
15 was a death penalty case.

16 MR. ROBINSON: Right.

17 THE COURT: I think what it's saying is
18 that if kidnapping is one of the statutory
19 aggravating circumstances, and if he gets death,
20 then you don't worry about the kidnapping.

21 MR. ROBINSON: And, Your Honor, you're
22 right, I cited the wrong case. It's State vs.
23 Perry, which basically stands for the proposition
24 that a separate sentence for kidnapping is
25 precluded, regardless of whether the sentence for

1 murder is capital punishment.

2 MR. DURANT: Your Honor, if I may, I think
3 the case that clarifies this point is
4 State v. Vick. It's a Court of Appeals case in
5 2009. 384, S.C., 189. And that case states that
6 where a defendant has been sentenced for the
7 murder of a victim, the kidnapping statute
8 precludes a separate---

9 THE COURT: Right yeah, this was---

10 MR. DURANT: For kidnapping the same
11 victim.

12 THE COURT: Right, yeah, okay. This was a
13 separate victim.

14 MR. DURANT: Right.

15 THE COURT: Yeah, on the one that they had
16 the -- they didn't find him guilty of attempted
17 murder. But they did---

18 MR. DURANT: That's right. The girlfriend
19 that survived. And obviously the murder is to the
20 grandmother and the defendant's child.

21 THE COURT: I think that answers the
22 question on that pretty clearly.

23 MR. ROBINSON: And, Your Honor, I
24 understand the court's position.

25 THE COURT: I mean just because of the

1 fact that he murdered two other people doesn't
2 mean he can't commit a crime against the
3 kidnapping.

4 MR. ROBINSON: And, your Honor, and I
5 understand the court's, just for the record, just
6 to make sure I am protected; that it is our
7 position that that is not what's set out in the
8 statute. And we would ask the court to give the
9 statute its plain and ordinary meaning.

10 THE COURT: Okay. But I mean he was
11 convicted of murdering two other people. But the
12 kidnapping was against the mother.

13 MR. ROBINSON: Right. But all I am saying
14 is the statute itself doesn't specifically say
15 that, but certainly could if that's the
16 legislature intended.

17 THE COURT: Thank you. I respectfully
18 deny your motion on that.

19 MR. ROBINSON: Thank you, Your Honor.
20 Finally, well I won't say finally, I do have one
21 other ground that I advised you all about in
22 chambers. My next ground, Your Honor, I would ask
23 the court to reconsider the sentence that it
24 imposed on Mr. Johnson. In this case it's our
25 belief that even though these were particular

1 disturbing crimes, the mitigating facts concerning
2 Mr. Johnson is lack of any prior record.

3 Basically that prior to these incidents, he was
4 more or less model citizen. And the fact that the
5 solicitor's office told you that there had been
6 prior domestic disturbance without a conviction,
7 may have been improperly considered and not
8 weighted. And in taking all that into account and
9 imposing sentence on Mr. Johnson. I think the
10 court gave him the maximum.

11 THE COURT: I did. And I told him I was
12 going to give him the maximum. And I intended to
13 give him no break whatsoever on anything. And
14 therefore, that domestic relations had nothing to
15 do with my decision to give him all I could.

16 MR. ROBINSON: And so, I mean -- I'm
17 assuming you're telling me that my request for you
18 to reconsider that is that you are not going to.

19 THE COURT: Is denied, yes, sir.

20 MR. ROBINSON: Your Honor, finally, we
21 would move for a new trial. And I classify this
22 as after discovered evidence. This is not
23 disclosed in my motion. Because again this is
24 information that just came to me today while I was
25 meeting with my client. As, Your Honor, will

1 recall, my client gave a statement, a very long
2 statement, and was sometime thereafter was
3 examined, had a forensic exam, a psychological
4 examination conducted by the State. You know, I
5 think it was by agreement to determine his
6 competency to stand trial. His criminal
7 responsibility.

8 THE COURT: Well we had that hearing on
9 that one.

10 MR. ROBINSON: Yes, sir. I think his name
11 is Frierson, Dr. Frierson. Remarked during that
12 interview and in his testimony, that my client
13 related to him that he was unable to remember
14 post that interview. In other words, since that
15 time, he had some sort of repressed memory, and
16 could not differentiate whether it was fake and
17 whether it was traumatically triggered. It has
18 been somewhat of a disadvantage to me quite
19 frankly, to have a client who couldn't remember
20 what happened, and have to rely on an older
21 statement.

22 He has told me today that since that time,
23 he has remembered details. And quite frankly,
24 would have been very beneficial and helpful to me
25 in not only in the preparation of this case for

1 trial, but in the trial. And it may have very
2 well lead to evidence of a third party and give
3 potential evidence of a third party's guilt, had I
4 had the opportunity to investigate that evidence.

5 Since there is some testimony in the
6 record that does not preclude that that is a
7 legitimate medical condition that he has, and
8 based on the fact that he has just brought that
9 information to my attention today, I would take
10 the position that that would constitute after
11 discovered evidence, because I -- despite him
12 talking to them psychiatrist, he was unable to
13 remember until after the trial.

14 THE COURT: Until after he was sentenced.

15 MR. ROBINSON: Until after he was
16 sentenced, yes, sir.

17 THE COURT: And that jogs the memory, you
18 think?

19 MR. ROBINSON: Your Honor, he didn't relay
20 the specifics of what caused him to remember. I
21 am not sure he knows. But I think like I said,
22 with that evidence in the record, this isn't, you
23 know, me coming in and making this argument---

24 THE COURT: Sure.

25 MR. ROBINSON: ---the first time. But the

1 evidence in the record, he did have some sort of
2 inability to remember whether it was traumatic or
3 didn't want to, you know, force himself to
4 remember. Whatever the case was. But there is
5 new evidence now available that I did not have
6 access to previously, and that we would be
7 entitled to a new trial based on that information.

8 THE COURT: Yes, sir.

9 MR. DURANT: Judge, and of course as Your
10 Honor is well aware, the standard is not just
11 whether there is after discovered evidence. It's
12 whether or not that evidence was available at the
13 time of trial. And clearly if there is something
14 that his client knew or does know, that evidence
15 was available then. Even Mr. Robinson makes the
16 argument---

17 THE COURT: I think what he's saying is,
18 he couldn't have known it, because he had lost his
19 memory prior to being convicted. And then after
20 he got convicted, he has some epiphany and starts
21 remembering everything at that point and time.

22 MR. DURANT: In response to that, Your
23 Honor, I offered up Dr. Frierson's testimony,
24 which I believe was something to the effect that
25 he believed that this lack of memory was

1 essentially a suppression of memory that could
2 have been caused by this outburst of anger.

3 And, Judge, I also find it interesting
4 that, you know, this case was from April of 2011.
5 And he couldn't remember whatever he now
6 remembered. He couldn't remember for 2 years and
7 11 months. And then he goes through a 2-week
8 trial and is sentenced. And now, three weeks
9 later, all of a sudden he remember these crucial
10 details. Three years before the trial, he
11 couldn't remember them, and now all of a sudden he
12 does.

13 THE COURT: Well I think if I remember
14 correctly, the doctor also said it doesn't matter
15 whether he remembers or not. I mean that's not
16 something because if that were the case in every
17 situation, a defendant would say he didn't
18 remember and would not be able to help in his own
19 case. I mean I think that's---

20 MR. ROBINSON: Your Honor, and I'm sorry
21 if I cut you off I certainly didn't want to do
22 that. I'm not alleging this is a competency
23 issue. I'm alleging this is information that like
24 I said, there is some evidence in the record
25 however it was suppressed, that was voluntarily.

1 So I mean there was evidence from Dr. Frierson to
2 say that he couldn't specifically say he's just
3 making this up because he didn't want to talk
4 about it.

5 THE COURT: Well he didn't say he
6 certainly didn't -- he had a loss of memory. He
7 said he said he had a loss of memory.

8 MR. ROBINSON: Right.

9 THE COURT: So I mean that's a subjective
10 standard on that. So I am going to respectfully
11 deny that motion as well.

12 MR. ROBINSON: Court's indulgence.

13 THE COURT: Yes, sir.

14 MR. ROBINSON: I would ask under the
15 grounds that I put in my motion, as well as the
16 one that was brought to my attention today, and I
17 would ask the court for perhaps 10 days to submit
18 affidavits about the juror's conduct.

19 THE COURT: If you want 10 days on it,
20 that's fine.

21 MR. ROBINSON: Thank you, Your Honor.

22 --End of Requested Transcript of Record--

23

24

25

BEULAH G. ROBERTS
 CLERK OF COURT
 STATE OF SOUTH CAROLINA
 COUNTY OF CLARENDON
 IN THE COURT OF GENERAL SESSIONS
 THIRD JUDICIAL CIRCUIT
 INDICTMENT NO: 2011-GS-14-0294
 2014 JUN -5 AM 10:56

State of South Carolina,)
)
 vs.) **ORDER REGARDING**
) **DEFENDANT'S NOTICE OF MOTION AND**
) **MOTION TO SET ASIDE VERDICT AND DIRECT**
 Justin Jermaine Johnson,) **A VERDICT, FOR A NEW TRIAL PURSUANT TO**
) **RULE 29 SCRCrimP, TO VACATE SENTENCE,**
) **AND TO RECONSIDER THE SENTENCE**
 Defendant.)

This matter came to be heard before me on the 17th day of April, 2014, in Sumter County, South Carolina, by the consent of both parties, for the Court to hear the Defendant's timely filed post-trial motions. Present and appearing at the hearing was the Defendant along with his attorney, Scott L. Robinson of the Third Circuit Public Defender's Office. Also present were Third Circuit Solicitor Ernest A. Finney, III, along with Assistant Solicitor Christopher R. DuRant.

The Court heard arguments from both parties on the Defendant's motions and denied said motions save and except the motion based on alleged juror misconduct. The Defendant requested and was given thirty (30) days to supplement his motions with affidavits from the witness or witnesses to this alleged juror misconduct and the final ruling on Defendant's motions were held in abeyance pending receipt of such affidavits. More than (30) days have elapsed since said hearing and the Court has been advised by the Defendant's attorney that no affidavits will be forthcoming.

Based upon the information presented at the hearing on the motions and the lack of any supplemental affidavits submitted by Defendant,

CERTIFIED TRUE COPY
 OF ORIGINAL FILED IN THIS OFFICE
 DATE 6-5-14
Beulah G. Roberts
 CLERK OF COURT
 CLARENDON COUNTY, SC

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the post-trial motions
filed by the Defendant are hereby denied *in toto*.

AND IT IS SO ORDERED.

Dated: 28 May 2014


The Honorable W. Jeffrey Young
Judge of the Third Judicial Circuit

WITNESSES

Ricky Richards

Clarendon County Sheriff

ARREST WARRANT NUMBER

M085495 M085496 M085497

M085498 M085499 M085500

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

Robert J. Stanley
7/2/11

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-14-0294

The State of South Carolina

County of CLARENDON

COURT OF GENERAL SESSIONS

JULY TERM 2011

THE STATE

vs.

JUSTIN JERMAINE JOHNSON

Indictment for

**MURDER (2 COUNTS); ATTEMPTED MURDER;
BURGLARY 1ST; KIDNAPPING; POSSESSION OF A
WEAPON DURING THE COMMISSION OF A VIOLENT
CRIME**

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CLARENDON)

INDICTMENT FOR
 MURDER (2 COUNTS); ATTEMPTED MURDER; BURGLARY
 1ST; KIDNAPPING; POSSESSION OF A WEAPON DURING
 THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on July 7, 2011, the Grand Jurors of
 CLARENDON County present upon their oath:

COUNT ONE - MURDER

That Justin Jermaine Johnson did in Clarendon County, on or about April 6, 2011, willfully, feloniously, and intentionally kill the victim, J.C., with malice aforethought, either express or implied, by means of shooting, and the victim did die as a proximate result thereof on or about April 6, 2011 in Clarendon County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

COUNT TWO - MURDER

That Justin Jermaine Johnson did in Clarendon County, on or about April 6, 2011, willfully, feloniously, and intentionally kill the victim, Maxine Caraway, with malice aforethought, either express or implied, by means of shooting, and the victim did die as a proximate result thereof on or about April 6, 2011 in Clarendon County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

COUNT THREE - ATTEMPTED MURDER

That Justin Jermaine Johnson did in Clarendon on or about 2011-04-06, violate Section 16-3-29 of the Code of Laws of South Carolina (1976), as amended, in that the said Justin Jermaine Johnson did with intent to kill, attempt to kill another person, Kaisha Caraway, with malice aforethought, either express or implied, by shooting at the victim.

COUNT FOUR - BURGLARY 1ST

That Justin Jermaine Johnson did in Clarendon County on or about April 6, 2011 enter the dwelling of Maxine and John Caraway, without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, the defendant was armed with a deadly weapon, to wit: a 12 gauge shotgun, in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

COUNT FIVE - KIDNAPPING

That Justin Jermaine Johnson did in Clarendon County on or about April 6, 2011, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Kaisha Caraway, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

COUNT SIX - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That Justin Jermaine Johnson did in Clarendon County, on or about April 6, 2011, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, to wit: a 12 gauge shotgun during two (2) Murders, Kidnapping, and Burglary 1st: in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Solicitor

Ernest A. Finney III

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

May 11, 2016


Laura R. Baer
Appellate Defender

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

ATTORNEY FOR APPELLANT