

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

VOLUME I OF II

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SC Court of Appeals

Appeal from Charleston County

Honorable Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CALVIN BROWN, JR.,

APPELLANT

APPELLATE CASE NO. 2017-002537

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON 2015-GS-10-06572
2015-GS-10-06573
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STATE OF SOUTH)
CAROLINA,)
PLAINTIFF,) TRANSCRIPT OF RECORD
vs.)
NOVEMBER 27-DECEMBER
1, 2017
CALVIN BROWN,) CHARLESTON, SC
DEFENDANT.)

B E F O R E:

HONORABLE ROGER COUCH, JUDGE, AND A JURY.

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* * * * *

Ruth C. Weese, RDR
Official Court Reporter
Ninth Judicial Circuit

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1 (The following proceedings were held
2 November 27, 2017, Charleston County, South
3 Carolina, @ 11:27 a.m. outside presence of jurors.)

4 THE COURT: We're on the record in the
5 case of the State of South Carolina versus Calvin
6 Brown, Jr. I have been presented with three
7 indictments, it appears indictment number 15-6472,
8 15-6573, those are both for the offense of
9 attempted murder. The other indictment is 15-6574
10 which is possession of a weapon during the
11 commission of a violent crime. Solicitor, are
12 those the indictments you are presenting for trial?

13 MR. OSBORNE: Yes, Your Honor.

14 THE COURT: Thank you. Now, I'll ask
15 the defense counsel, has your client been arraigned
16 on the charges?

17 MR. ARCHER: No, he has not, Your
18 Honor.

19 THE COURT: Does he waive formal
20 arraignment or does he wish to be arraigned?

21 MR. ARCHER: I would like to have him
22 arraigned.

23 THE COURT: All right. In front of the
24 jury?

25 MR. ARCHER: Yes, Your Honor. Let me

1 ask you, do you use a modern arraignment saying how
2 do you plead or do you use the old how do you
3 choose to be tried, by God, by country? Do you use
4 that?

5 THE COURT: Whatever he tells me I will
6 respond to. If he responds with a modern answer I
7 will continue that way. I don't require that he
8 give me the traditional answer.

9 MR. ARCHER: Okay.

10 THE COURT: So he can plead not guilty
11 and ask for a trial by jury.

12 MR. ARCHER: Okay.

13 THE COURT: If he wishes to do so. I
14 have received the State's requested voir dire and I
15 have received a witness list and on the defense
16 side I have received a witness list and also
17 requested voir dire.

18 MR. ARCHER: That's correct, Your
19 Honor. I would like to put on the record a portion
20 of the voir dire.

21 THE COURT: In my pretrial conference
22 with the attorneys I was aware of the fact that the
23 defense intended to ask its first request which is
24 that the evidence will show that a five-year old
25 child was shot and paralyzed as a result of this

1 crime and the question is would that fact prevent
2 you from entering an unbiased verdict? I informed
3 the defense that I found that to be somewhat
4 objectionable as a comment on the facts and an
5 effort to stake out witnesses concerning facts
6 specific to this case. I know the defense would
7 like to put that on the record, yes, sir.

8 MR. ARCHER: Yes, Your honor.

9 THE COURT: Have I correctly stated our
10 conference?

11 MR. ARCHER: That's correctly stated,
12 yes, sir. I just feel that that is such an
13 inflammatory fact that I need to know from these
14 jurors whether this will affect their verdict that
15 that overrides any concern Your Honor may have
16 expressed that it's a comment on the facts.

17 THE COURT: As I told you I would ask
18 the jury and intend to ask the jury whether or not
19 they are able to give a verdict based upon the law
20 and the evidence in a fair and unbiased way, if
21 they know of any reason of if they have biases or
22 prejudices, but I don't intend to ask fact specific
23 questions on the case. State have a position in
24 regard to that issue?

25 MR. OSBORNE: Yes, Your Honor. We

1 would object to that question being asked in voir
2 dire.

3 THE COURT: I see. My ruling would
4 remain the same in that regard so I do not intend
5 to ask that fact specific question of the jury.

6 MR. ARCHER: Let my objection be noted
7 on the record.

8 THE COURT: Very good. Thank you, sir.
9 Anything further from the State before we bring the
10 jury in for qualification?

11 MR. OSBORNE: No, Your Honor.

12 THE COURT: Anything further from the
13 defense before we bring the jury in?

14 MR. ARCHER: No, Your Honor.

15 THE COURT: I will ask the bailiff to
16 bring the jury panel in.

17 (Whereupon the prospective jurors
18 entered the courtroom at 11:37 a.m.)

19 THE COURT: Good morning, ladies and
20 gentlemen. I have not had the pleasure of meeting
21 you yet this morning. My name is Roger Couch. I
22 am a circuit court judge. I am from Spartanburg,
23 South Carolina and the Seventh Circuit. It is my
24 pleasure to be serving this week in conducting a
25 one week term of General Sessions court here in

1 Charleston County. Circuit judges do ride
2 circuits, we move around the state and hold court
3 throughout the state and I am happy to be here in
4 Charleston working with you.

5 As I am sure you are aware the General
6 Sessions court is the criminal division of the
7 circuit court. That means the cases that I will be
8 handling this week involve situations where
9 citizens have been charged with the commission of a
10 crime. We are about to begin the trial of the
11 State of South Carolina versus the Defendant,
12 Calvin Brown, Jr. I have been presented with three
13 indictments by the State and I am going to go over
14 those indictments with the Defendant at this time.
15 And as I do so, I ask you to pay attention to what
16 we're talking about. These are the charges that
17 have been presented to us. We will be discussing
18 these in more detail with you in just a few
19 moments.

20 I'm going to ask the Defendant to
21 please stand and that he be placed under oath by
22 the clerk at this time.

23 (Thereupon the Defendant was sworn.)

24 THE COURT: Mr. Brown, I have been
25 presented as I indicated to you with three

1 indictments. I'm going to go over these
2 indictments with you individually. When I finish I
3 will be asking you if you understand the
4 indictments, and I will be asking how you wish to
5 plead to each indictment. Do you understand what I
6 am doing at this time?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And, of course, if you feel
9 the need to stop and consult with your attorney
10 during this process you have every right to do so,
11 you just let me know that fact. Okay, sir?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: The first indictment I have
14 is case number 2015-GS-10-6574. This is for
15 possession of a weapon during the commission of a
16 violent crime. That indictment reads in part that
17 in Charleston County, South Carolina on or about
18 May the 22nd, 2015 the Defendant, Calvin Brown, Jr.
19 did possess a firearm or did visibly display what
20 appeared to be a firearm or did visibly display a
21 knife during the commission of or attempted
22 commission of a violent crime, to wit, attempted
23 murder in violation of Section 16-23-490 of the
24 code of laws of South Carolina 1976 as amended
25 against the peace and dignity of the state and

1 contrary to the statute in such case made and
2 provided. Mr. Brown, did you understand the
3 indictment that I just read to you?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You have the right to plead
6 either guilty or not guilty to the indictment. How
7 are you pleading?

8 THE DEFENDANT: Not guilty.

9 THE COURT: How do wish to be tried?

10 THE DEFENDANT: By God and my country.

11 THE COURT: God grant you a speedy
12 delivery in the case, sir. The next indictment is
13 case number 2015-GS-10-6573. This indictment is
14 for the offense of attempted murder. It reads in
15 part that in Charleston County, South Carolina, on
16 or about May the 22nd of 2015 the Defendant, Calvin
17 Brown, Jr. did with the intent to kill with malice
18 aforethought attempt to kill Tyreik G. . This
19 is in violation of Section 16-3-29 of the South
20 Carolina code of laws 1976 as amended against the
21 peace and dignity of the state and contrary to the
22 statute in such case made and provided. Did you
23 understand the indictment that I just read?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Again you have the right to

1 plead either guilty or not guilty to that
2 indictment. How are you pleading?

3 THE DEFENDANT: Not guilty.

4 THE COURT: How do you wish to be
5 tried?

6 THE DEFENDANT: By God and my country.

7 THE COURT: God grant you a speedy
8 delivery on that indictment, sir. The final
9 indictment that I will go over with you is
10 2015-GS-10-6572. This indictment is for the
11 offense of attempted murder. It states in part
12 that in Charleston County, South Carolina, on or
13 about May 22, 2015 the Defendant Calvin Brown, Jr.
14 did with the intent to kill with malice
15 aforethought attempt to kill Desmond Terrell Lewis
16 in violation of Section 16-3-29 of the code of laws
17 of South Carolina 1976 as amended against the peace
18 and dignity of the state and contrary to the
19 statute and such case made and provided. Sir, did
20 you understand that indictment?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: How are you pleading?

23 THE DEFENDANT: Not guilty.

24 THE COURT: And how do you wish to be
25 tried?

1 THE DEFENDANT: By God and my country.

2 THE COURT: God grant you a speedy
3 delivery. Sir, that completes your arraignment.
4 You can be seated.

5 Now, ladies and gentlemen of the jury,
6 the Defendant has pled not guilty to the indictment
7 and has requested a trial by a jury so at this
8 point in time we are going to begin the process of
9 jury selection.

10 Now, what we are going to do is I'm
11 going to ask you a series of questions that applies
12 to this case. We will follow a similar procedure
13 that you followed in jury qualification. That is,
14 if you have a response I'll ask you that you stand,
15 I will call on you individually. I'll need your
16 juror name and number before I discuss any response
17 that you might have to the questions that I am
18 about to ask.

19 I will point out to you as they
20 probably did upstairs that the answers that you
21 give to these questions are important answers.
22 They will be used by this Court in determining your
23 qualifications to serve in this case and they will
24 be used by the attorneys in exercising their legal
25 right to strike a jury in this case.

1 So the answers are important that they
2 be truthful honest and complete. Now, if there is
3 anything in this matter that you feel you would
4 rather discuss with me at a later time after we
5 finish the questioning in a more private situation,
6 when you stand if you will let me know that, we
7 will make arrangements to talk with you in a more
8 private situation if that is necessary for us to do
9 that.

10 It is important again that the answers
11 you give are truthful, honest and complete. For
12 that reason I will ask the clerk to put you under
13 oath in this case concerning the responses you are
14 about to give. Mr. Clerk.

15 (Thereupon, the prospective jurors were
16 sworn.)

17 THE CLERK: Your Honor, the jury has
18 been sworn.

19 THE COURT: It appears that all jurors
20 have been sworn. We will begin the questioning at
21 this time. Now, is there any member of the jury
22 panel who has ever been related by marriage or are
23 you related by blood to either the Defendant,
24 Calvin Brown, Jr. or the alleged victims in this
25 case, which is Desmond Terrell Lewis, or Tyreik

1 [REDACTED] So if you have ever been related by
2 marriage or are related by blood, please stand.

3 Ma'am, I will ask to state your name
4 and juror number.

5 PROSPECTIVE JUROR: Juror No. 105.

6 THE COURT: And your relationship is to
7 whom?

8 PROSPECTIVE JUROR: Tyreik G. [REDACTED].

9 THE COURT: And how are you related to
10 that person?

11 PROSPECTIVE JUROR: He's my nephew.

12 THE COURT: That's too close of a
13 relationship for you to serve on this jury. So I
14 am excusing you from this trial. So you don't have
15 to answer any more of my questions. So you can be
16 seated at this time. Thank you very much.

17 Now, as to the Defendant or the two
18 alleged victims has any member of this jury panel
19 ever had a close personal, social or a business
20 relationship with any of those individuals? Now,
21 if that's true, please stand.

22 Now I'm going to go over a list of
23 people that have been provided to me as potential
24 witnesses in this case. There's a good many of
25 these names so please pay close attention to the

1 people that I am identifying and I may break this
2 up into a couple of groups so that we are sure we
3 don't have confusion as we go through this. Where
4 I have been informed of where they work or what
5 agency they were with I will also make you aware of
6 that information as well.

7 So the potential witnesses include this
8 is with the Charleston Police Department, Captain
9 Jack Weiss, W-E-I-S-S, Detective Yolanda Brown,
10 Detective Richard Holmes, Detective Joe Owens,
11 Officer Shelby August, crime scene technician Rene
12 Charles, crime scene technician Jeff Miller, crime
13 scene technician Sarah Gladwell. Lieutenant Pete
14 Ferrell. Sergeant Paul Krasowski,
15 K-R-A-S-O-W-S-K-I, Detective Dan English, crime
16 scene investigator Richard Wiersma, W-I-E-R-S-M-A.
17 With the Charleston County Sheriff's Office
18 consolidated dispatch supervisor Tonia Mallette,
19 consolidated dispatch supervisor Angela
20 Casy, C-A-S-Y, and Sergeant Shelle Green. I will
21 stop at this point in time.

22 Now, as to those people that I have
23 identified as possible witnesses, is there any
24 member of this jury panel who has ever been related
25 by marriage or are you related by blood or have you

1 ever had a close social, personal or business
2 relationship with any of those individuals that I
3 have just named? If that's true, please stand.

4 (No response from jurors.)

5 I'm going to continue with the list.
6 Working for SLED and that's the State Law
7 Enforcement Division, is Michele Eichenmiller,
8 Lieutenant Jennifer Nates, Gail Heath, working for
9 the FBI Federal Bureau of Investigation is agent
10 Clay Simmonds, S-I-M-M-O-N-D-S. Investigator with
11 the Ninth Circuit Solicitor's Office Ray Haupt,
12 H-A-U-P-T, and Josh Cheney. Lay witnesses Derotha
13 Jones, Christopher Victoria, Shapoleon Hayward,
14 Chandra Lee, Marquise Edwards, Shari Lucas,
15 S-H-A-R-I. Shanorma Smith, Desmond Lewis, Similar
16 McClary, Tyreik G. [REDACTED], Dr. John Glaser with MUSC,
17 Megan Alston, Danielle Alston, Calvin Brown, Lee
18 Bennett.

19 Now, as to those individuals that I
20 just named, has any member of the jury panel ever
21 been related by marriage or are you related by
22 blood or have you ever had a close social, personal
23 or business relationship with any of those
24 individuals? If that's true, please stand.

25 (No response from jurors.)

1 Now, as to the attorneys that are
2 involved in this case has any member of the jury
3 panel ever been -- I haven't had them name
4 themselves to you. Let me do that first. I will
5 ask the attorneys to introduce themselves to the
6 jury panel for the State.

7 MR. OSBORNE: Thank you, Your Honor.
8 My name is David Osborne. I am an assistant
9 solicitor here in the Ninth Circuit. This is my
10 boss, Chief Deputy Bruce DuRant. You are also
11 going to see an intern employed with our office and
12 investigator Ray Haupt and Josh Cheney works for
13 us. They will be in and out of the courtroom
14 throughout the trial.

15 THE COURT: Thank you very much. And
16 the attorney for the defense.

17 MR. ARCHER: I'm Mark Archer. I'm the
18 attorney for Calvin Brown.

19 THE COURT: Thank you very much. Now,
20 as to the attorneys involved in this case has any
21 member of the jury panel been represented by any of
22 the attorneys involved in this case or have you
23 ever appeared or been on the other side of some
24 legal matter from you? If that's true, please
25 stand.

1 (No response from jurors.)

2 Is there any member of this jury panel
3 who has ever been related by marriage or are you
4 related by blood or have you ever had a close
5 social, personal or business relationship with any
6 of the attorneys involved in the trial? If that's
7 true, please stand.

8 (No response from jurors.)

9 Has any member of the jury panel or a
10 member of your immediate family ever had any
11 criminal charges that were handled in some fashion
12 by the Ninth Circuit Solicitor's Office, that's the
13 office here in Charleston? If that's true, please
14 stand.

15 PROSPECTIVE JUROR: Repeat the
16 question.

17 THE COURT: If you would stand up I
18 need your name and number.

19 PROSPECTIVE JUROR: Aasha Brown, 42.

20 THE COURT: Your question was?

21 PROSPECTIVE JUROR: I didn't understand
22 the question. Repeat your question.

23 THE COURT: Well, I am asking you if
24 you or a member of your immediate family has ever
25 had any criminal charges that were handled in any

1 fashion by the Ninth Circuit Solicitor's Office,
2 that would be someone who was charged with a crime
3 or someone who perhaps was a victim of a crime who
4 worked with the solicitor's office. So if you have
5 ever had any family members or yourself whose been
6 in that situation.

7 PROSPECTIVE JUROR: No.

8 THE COURT: Thank you. Sir, your name
9 and number?

10 PROSPECTIVE JUROR: Lawrence Laddaga,
11 Juror 179.

12 THE COURT: Your situation?

13 PROSPECTIVE JUROR: I was the victim of
14 an armed robbery.

15 THE COURT: So that was handled by the
16 solicitor's office. That case has been ended at
17 this point in time?

18 PROSPECTIVE JUROR: Yes, sir. The
19 Defendant pled guilty.

20 THE COURT: Would that experience
21 affect your ability to be fair and impartial to
22 either the State or the defense in this trial?

23 PROSPECTIVE JUROR: I don't think so.

24 THE COURT: I need to know for sure.
25 Could you be impartial?

1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: Thank you. Sir, name and
3 number?

4 PROSPECTIVE JUROR: Shawn Webster,
5 No. 334. I was charged with a crime maybe three
6 years ago, Ninth Circuit handled it. I'm not sure,
7 but it was General Sessions.

8 THE COURT: Now, would that experience
9 affect your ability to be impartial in this trial?

10 PROSPECTIVE JUROR: No, sir.

11 THE COURT: Thank you. You can be
12 seated. Anyone else? Is there any member of the
13 jury panel who has any personal, political or
14 religious beliefs that somehow would prevent you
15 from being able to sit on a jury and determine
16 whether or not a person is either guilty or not
17 guilty of committing a criminal offense? If you
18 have such a belief, please stand.

19 (No response from jurors.)

20 Now, has any member of the jury panel
21 or a member of your immediate family ever had any
22 experience with a law enforcement officer that you
23 would consider to be bad or that it would somehow
24 taint your view of law enforcement officers, their
25 work or their testimony or their capacity to be

1 honest in a trial, so if you had such an experience
2 that would affect you in that fashion please stand.

3 (No response from jurors.)

4 Now, is there any member of the jury
5 panel who would have any difficulty in following
6 the law as charged to you by me, the judge, even
7 though you may personally believe that the law is
8 wrong or inappropriate or even unfair? So if you
9 would have any difficulty in applying the law as
10 given to you by this court, please stand.

11 (No response from jurors.)

12 Is there any member of the jury panel
13 or a member of your immediate family or even a
14 close personal friend of yours who has ever been
15 the victim of a violent crime? If that's true,
16 please stand.

17 Yes, ma'am, your name and number.

18 PROSPECTIVE JUROR: Amanda Millien,
19 215. My son was a victim of a crime.

20 THE COURT: I see. Now, would that
21 fact affect your ability to be fair and impartial
22 to both sides of this case if you were seated on
23 the jury?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Thank you, ma'am. You can

1 be seated. Yes, ma'am.

2 PROSPECTIVE JUROR: Pearl Dickerson,
3 No. 78.

4 THE COURT: And your situation?

5 PROSPECTIVE JUROR: I had a cousin that
6 was killed.

7 THE COURT: I see. Now, would that
8 fact if you were seated on the jury affect your
9 ability to be fair and impartial to both sides in
10 this trial?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Thank you, ma'am, you can
13 be seated. Anyone else? Yes, sir.

14 PROSPECTIVE JUROR: Juror 32, Luke
15 Blessinger. My father is a police officer and he
16 was attacked by multiple people during his time as
17 a police officer.

18 THE COURT: I see. Would that fact
19 affect your ability to be fair and impartial in
20 this trial?

21 PROSPECTIVE JUROR: No.

22 THE COURT: Thank you, sir. Anyone
23 else?

24 Now, I went over the indictments with
25 the Defendant briefly so I went over the facts that

1 have been alleged in those indictments. And my
2 question now is has any member of this jury panel
3 received or gathered any information about this
4 case or the allegations in this case such that it
5 would have caused you to either form or express an
6 opinion about the issues that might be involved in
7 this trial? So if you have gathered such
8 information, please stand.

9 (No response from jurors.)

10 Now, is there any member of this jury
11 panel who is aware of a bias or a prejudice that
12 you might have either for or against either the
13 State or the defense? So if you are aware of such
14 a bias or prejudice that you might have, please
15 stand.

16 (No response from jurors.)

17 Now, is there anyone on the jury panel
18 who may have served as a member of the Ninth
19 Circuit or Charleston County grand jury that may
20 have issued the indictments in this case? And
21 those indictments were issued on December the 7th
22 of 2015. So if you were a member of the Charleston
23 County grand jury that would have issued those
24 indictments, please stand.

25 (No response from jurors.)

1 Now, is there any member of this jury
2 panel who is a member of or a contributor to a
3 group that has as its primary concern the promotion
4 of law enforcement and/or victims rights? These
5 groups would include, but not be limited to such
6 groups as Mothers Against Drunk Driving, Students
7 Against Drunk Driving, Citizens Against Violent
8 Crimes, the South Carolina Sheriff's Association,
9 the South Carolina Troopers Association, or any
10 similarly oriented organization. So if you are a
11 member of or a contributor to a group that promotes
12 law enforcement or victims right, please stand.

13 Your name and number.

14 PROSPECTIVE JUROR: Luke Blessinger,
15 Juror 32. Sergeants Benevolence Association.

16 THE COURT: Would that fact affect your
17 impartiality in the trial?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Thank you, sir. Anyone
20 else?

21 PROSPECTIVE JUROR: Thomas Cane, I
22 believe it's 168. I contribute every year to the
23 police about this time of year.

24 THE COURT: I see. Would that affect
25 your impartiality if you were seated on the jury?

1 PROSPECTIVE JUROR: No, sir.

2 THE COURT: Thank you. Anyone else?

3 JUROR NO. 164: Cynthia Keys. We also
4 contribute to the Troopers Association.

5 THE COURT: Would that affect your
6 impartiality?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Thank you, ma'am. You can
9 be seated. Anyone else? Now, does anybody on the
10 jury panel know of any reason whatsoever why he or
11 she should not serve as a juror in this case with
12 particular emphasis being placed upon your ability
13 to be both fair and impartial to both the State and
14 the defense? If you are aware of such a reason,
15 please stand.

16 (No response from jurors.)

17 State request any additional questions?

18 MR. OSBORNE: No, Your Honor.

19 THE COURT: Does the defense request
20 any additional questions?

21 MR. ARCHER: One juror indicated his
22 father is a police officer.

23 THE COURT: Yes, sir.

24 MR. ARCHER: I would ask that you ask
25 him would that affect his ability to --

1 THE COURT: I asked him that question
2 and he indicated it would not. I think his father
3 has been attacked at one time as a police officer.

4 MR. ARCHER: Right.

5 THE COURT: He said those facts would
6 not affect his impartiality. Sir, is that still
7 true, sir?

8 PROSPECTIVE JUROR: That is true.

9 THE COURT: Thank you very much.
10 Anyone else? Any other questions, I am sorry?

11 MR. ARCHER: No other questions.

12 THE COURT: Okay. Now, I'm going to
13 instruct then the clerk to prepare a list of
14 potential jurors in this case. The strikes are
15 going to be five strikes for the State, five
16 strikes for the Defendant. We will pick two
17 alternates, State having one strike for the
18 alternates and two for the defense.

19 MR. DURANT: Your Honor, may we
20 approach for a moment?

21 THE COURT: Yes, please do.

22 (Off-the-record conference.)

23 (Brief pause.)

24 THE COURT: They call that white noise.
25 That's to keep you from hearing what we say up

1 here. What we have done is I'm going to go ahead
2 and select three alternates on the case. But at
3 any rate, what we do is there is a computer program
4 in the possession of the clerk that our Supreme
5 Court has proved as a random selection device. We
6 have run your names through that and they have
7 prepared a list of your names. What we are going
8 to do is call out these names and let me be sure,
9 is there anyone who wished to speak to me about
10 anything privately before I proceed?

11 Nobody informed me of that, but I want
12 to be sure. No one. So we are going to call your
13 names in the order in which they happen on the
14 list. When your name is called I want you to step
15 out in the center aisle, come down to where we have
16 this lectern set up and stand there, face the back
17 door of the courtroom.

18 Now, at that time the attorneys will be
19 in a position to exercise their strikes. As I
20 indicated, the State will have five strikes, the
21 defense will have five for the jury. That's
22 allowed by law, and then we will pick the three
23 alternates, State having one strike, defense having
24 two strikes for each alternate that we select.

25 Now, as you come forward, if you have

1 any personal belongings, a jacket, a purse, a book,
2 something of that nature, bring that with you when
3 you come forward because if you are selected on the
4 jury you are going to immediately go over to this
5 bailiff over here, Mr. Pryor. He will have you
6 take a seat over here and so you won't be going
7 back to your seat. So bring whatever you have with
8 you forward when your name is called.

9 I will authorize the clerk to begin the
10 jury selection process.

11 THE CLERK: Please come forward when I
12 call your name and number, stand here and face the
13 attorneys. Juror No. 25, Kipley Best. What say
14 you for the State?

15 MR. OSBORNE: Please present the juror.

16 MR. ARCHER: Please excuse the juror.

17 THE CLERK: Sir, you have been excused
18 from service on this jury. Please take your seat
19 in the audience. Juror No. 220, Vicki Mitchum.
20 What say you for the State?

21 MR. OSBORNE: Please present the juror.

22 THE CLERK: What say you for the
23 Defendant?

24 MR. ARCHER: Please seat the juror.

25 THE CLERK: Ma'am, you have been

1 selected for the trial of this case. Please take a
2 seat in the jury box.

3 Juror No. 78, Pearl Dickerson. What
4 say you for the State?

5 MR. OSBORNE: Please present this
6 juror.

7 THE CLERK: What say you for the
8 Defendant?

9 MR. ARCHER: Please seat the juror.

10 THE CLERK: Ma'am, you have been
11 selected for the trial of this case. Please take
12 your seat in the jury box.

13 Juror No. 59, Dorothy Clinton. What
14 say you for the State?

15 MR. OSBORNE: Please present the juror.

16 THE CLERK: What say you for the
17 Defendant?

18 MR. ARCHER: Please seat the juror.

19 THE CLERK: Ma'am, you have been
20 selected for the trial of this case. Please take a
21 seat in the jury box.

22 Juror No. 55, Shayann Casey. What say
23 you for the State?

24 MR. OSBORNE: Please present the juror.

25 THE CLERK: What say you for the

1 Defendant?

2 MR. ARCHER: Please dismiss the juror.

3 THE CLERK: Ma'am, please take your
4 seat back in the audience. You have not been
5 selected for the trial of this case.

6 Juror No. 72, Cullen Davis. What say
7 you for the State?

8 MR. OSBORNE: Please present the juror.

9 THE CLERK: What say you for the
10 Defendant?

11 MR. ARCHER: Please seat the juror.

12 THE CLERK: Sir, you have been selected
13 for the trial of this case. Please take your seat
14 in the jury box.

15 Juror No. 165, Gerald Kilcourse. What
16 say you for the State?

17 MR. OSBORNE: Please present the juror.

18 THE CLERK: What say you for the
19 Defendant?

20 MR. ARCHER: Please seat the juror.

21 THE CLERK: Sir, you have been selected
22 for the trial of this case. Please take a seat in
23 the jury box.

24 Juror No. 19, Christopher Beatty. What
25 say you for the State?

1 MR. OSBORNE: Please present the juror.

2 THE CLERK: What say you for the
3 Defendant?

4 MR. ARCHER: Please excuse the juror.

5 THE CLERK: Sir, you have been excused.
6 Please take your seat. The Defendant has exhausted
7 three strikes.

8 Juror No. 186, Michael Lee. What say
9 you for the State?

10 MR. OSBORNE: Beg the Court's
11 indulgence.

12 MR. ARCHER: Seat the juror --

13 THE COURT: State hasn't announced yet.

14 MR. ARCHER: I am sorry. I thought
15 they had.

16 THE COURT: Okay.

17 MR. OSBORNE: Please excuse this juror.

18 THE CLERK: Sir, you have been excused.
19 Please take a seat back in the audience.

20 Juror No. 259, Sheryl Plowden. What
21 say you for the State?

22 MR. OSBORNE: Please present the juror.

23 THE CLERK: What say you for the
24 Defendant?

25 MR. ARCHER: Please excuse the juror.

1 THE CLERK: Ma'am, you have been
2 excused from the trial of this case. Please take a
3 seat in the audience.

4 Juror No. 229, Jennifer Shepard. What
5 say you for the State?

6 MR. OSBORNE: Please present the juror.

7 THE CLERK: What say you for the
8 Defendant?

9 MR. ARCHER: Please seat the juror.

10 THE CLERK: Ma'am, you have been
11 selected. Please take your seat in the jury box.

12 Juror No. 304, Julian Sora. What say
13 you for the State?

14 MR. OSBORNE: Please excuse the juror.

15 THE CLERK: Sir, you have been excused.
16 Please take a seat back in the audience.

17 Juror No. 41, Christine Brockenfelt.
18 What say you for the State?

19 MR. OSBORNE: Please present the juror.

20 THE CLERK: What say you for the
21 Defendant?

22 MR. ARCHER: Please seat the juror.

23 THE CLERK: Ma'am, you have been
24 selected. Please take your seat in the jury box.

25 Juror No. 167, Thomas King. What say

1 you for the State?

2 MR. OSBORNE: Beg the Court's
3 indulgence.

4 THE COURT: Yes, sir.

5 MR. OSBORNE: Please present the juror.

6 THE CLERK: What say you for the
7 Defendant?

8 MR. ARCHER: Please seat the juror.

9 THE CLERK: Sir, you have been selected
10 for the trial of this case. Please take your seat
11 in the jury box.

12 THE CLERK: Juror No. 197, Andrea
13 Kruuk.

14 PROSPECTIVE JUROR: My number is 174.

15 THE CLERK: Excuse me, 174. I
16 apologize. What say you for the State?

17 MR. OSBORNE: Beg the Court's
18 indulgence.

19 (Off-the-record conference.)

20 MR. OSBORNE: Please excuse the juror.

21 THE CLERK: Ma'am, you have been
22 excused. Please take a seat. State has exhausted
23 three strikes. Juror No. 36, Phillip Bozzelli.
24 What say you for the State?

25 MR. OSBORNE: Beg the Court's

1 indulgence.

2 (Off-the-record conference.)

3 MR. OSBORNE: Present the juror.

4 THE CLERK: What say you for Defendant?

5 MR. ARCHER: Please seat the juror.

6 THE CLERK: Sir, you have been selected
7 for the trial of this case. Please take your seat
8 in the jury box.

9 Juror No. 215, Amanda Millien. What
10 say you for the State?

11 MR. OSBORNE: Please excuse the juror.

12 THE CLERK: Ma'am, you have been
13 excused from the trial of this case. Please take a
14 seat in the audience. State has exhausted four
15 strikes.

16 Juror No. 164, Cynthia Keyes. What say
17 you for the State?

18 MR. OSBORNE: Please present the juror.

19 THE CLERK: What say you for the
20 Defendant?

21 MR. ARCHER: Please seat the juror.

22 THE CLERK: Ma'am, you have been
23 selected. Please take a seat in the jury box.

24 Juror No. 18, Jonathan Bazzle. What
25 say you for the State?

1 MR. OSBORNE: Please present the juror.

2 THE CLERK: What say you for the

3 Defendant?

4 MR. ARCHER: Please excuse the juror.

5 THE CLERK: Thank you, sir. You have

6 been excused. Defendant has exhausted all five

7 strikes.

8 Juror No. 195, Caruella Manigault.

9 What say you for the State?

10 MR. OSBORNE: Please present the juror.

11 THE CLERK: Any challenge from the

12 Defendant?

13 MR. ARCHER: No challenge, Your Honor.

14 THE CLERK: Thank you. Ma'am, you may

15 be seated in the jury box.

16 Juror No. 46, Helen Bunche. What say

17 you for the State?

18 MR. OSBORNE: Please excuse the juror.

19 THE CLERK: Ma'am, you have been

20 excused from the trial of this case. Please take a

21 seat. State has exhausted all five strikes.

22 Juror No. 32, Luke Blessinger. Any

23 challenge from the State?

24 MR. OSBORNE: None.

25 THE CLERK: Any challenge from the

1 Defendant?

2 MR. ARCHER: No challenges.

3 THE CLERK: You may be seated in the
4 jury box. Thank you, sir.

5 THE COURT: We will now select the
6 first alternate.

7 THE CLERK: Now selecting the
8 alternate. Juror No. 31.

9 MR. ARCHER: How many strikes do we
10 get?

11 THE COURT: You have two, he has one.

12 MR. ARCHER: Okay.

13 THE CLERK: Juror 23, Malone Blackman.
14 What say you for the State?

15 MR. OSBORNE: Please present the juror.

16 THE CLERK: What say you for the
17 Defendant?

18 MR. ARCHER: Please seat the juror.

19 THE CLERK: Sir, you have been selected
20 for the trial of this case. Please take a seat in
21 the jury box.

22 THE COURT: Selecting the second
23 alternate.

24 THE CLERK: Juror No. 190, Thomas
25 Litton. What say you for the State?

1 MR. OSBORNE: Please excuse the juror.

2 THE CLERK: Sir, you may be seated.
3 You have been excused from the trial of this case.
4 Juror No. 334, Shawn Webster. Any challenge from
5 the State?

6 MR. OSBORNE: None.

7 THE CLERK: What say you for the
8 Defendant?

9 MR. ARCHER: Seat the juror.

10 THE CLERK: Sir, you have been selected
11 for the trial of this case. Please take a seat in
12 the jury box.

13 THE COURT: Selecting the third
14 alternate.

15 THE CLERK: Juror No. 42, Aasha Brown.
16 Any challenge from the State?

17 MR. OSBORNE: No.

18 THE CLERK: What say you for the
19 Defendant?

20 MR. ARCHER: Seat the juror.

21 THE CLERK: Ma'am, you have been
22 selected for the trial of this case. Please take
23 your seat.

24 THE COURT: Thank you, Mr. Clerk. Any
25 objection to the jury selection process from the

1 State?

2 MR. OSBORNE: None, Your Honor.

3 THE COURT: From the defense?

4 MR. ARCHER: None except for the number
5 of strikes, Your Honor.

6 THE COURT: Sir?

7 MR. ARCHER: Except for the number of
8 strikes.

9 THE COURT: I understand that. But no
10 objection to the process; is that right?

11 MR. ARCHER: Excuse me?

12 THE COURT: No objection to the
13 process?

14 MR. ARCHER: No, no objection to the
15 process.

16 THE COURT: Thank you. Now, ladies and
17 gentlemen of the jury, those of you who have not
18 been selected as jurors in this case I want to
19 thank you very much for your cooperation with me
20 this morning. I'm going to return you to the jury
21 pool and the bailiffs will make you aware what you
22 need to do next and where you need to go. Again
23 thank you for your cooperation. I would ask that
24 as you leave the courtroom you leave quietly.
25 Thank you very much.

1 (Remaining jurors exited the
2 courtroom.)

3 THE COURT: Ladies and gentlemen of the
4 jury, you have been selected as jurors in the case
5 and again thank you for your cooperation with us
6 thus far. There's some things that I want to go
7 over with you at this time. Before we actually
8 begin the trial of the case there are a couple of
9 matters that I have to take up with the attorneys.
10 We will be going over some issues that might come
11 up during the trial. I will be making rulings on
12 some matters that they are asking me to make
13 rulings on and of course you're not required for
14 that process.

15 So at this point in time I'm going to
16 release you to go to lunch. I am going to give you
17 a fairly longer than normal lunch break because I
18 will be dealing with those hearings outside of your
19 presence and I can't see making you come and sit in
20 the jury room while I do all of that. So I'm going
21 to ask you to be back to the jury room by 2:30 this
22 afternoon. I expect we should be in a position to
23 start shortly thereafter.

24 Now, as you leave the courthouse let me
25 make you aware of my instructions. When you do

1 leave the courthouse I give these instructions
2 every time you are doing that. So please take heed
3 because when you return I will be asking you under
4 oath whether or not you have been able to comply
5 with the instructions that I am about to give you.

6 First of all, as you can tell we have
7 gone through a great deal of trouble this morning
8 to pick a jury that has an open mind concerning the
9 issues in this trial. And I want you to try to
10 maintain that open mind throughout the trial while
11 you hear the arguments of the lawyers, you receive
12 the evidence, I charge you on the law and only
13 after we have completed that process will I ask you
14 to begin your deliberations or your discussions
15 about the issues in this case.

16 I hope you realize even the most
17 innocent conversation that you might have with a
18 family member, a friend, someone you know out in
19 the public about the issues that might be involved
20 in this trial or the facts of the case or even the
21 people involved in the case, those discussions if
22 you start talking about those things they may begin
23 to cause you to start making up your mind about
24 certain issues in the case. And you haven't heard
25 the first words of evidence or testimony at this

1 point in time.

2 So it is dangerous in that respect for
3 you to be discussing the case until I ask you to
4 begin your deliberations. So don't discuss the
5 case with anyone, even among yourselves, until I
6 ask you to begin those deliberations. It's okay to
7 tell your spouse or your friend or a brother or
8 sister that you have been selected on a jury, that
9 you are going to be serving on the jury this week.
10 That's where the discussion should stop. Talk
11 about sports, politics, weather, holidays; anything
12 else, don't just talk about the case. When you
13 come back you are going to take an oath concerning
14 your responsibilities as jurors. And that oath is
15 that you will decide this case based upon the law
16 and the evidence presented in the courtroom. The
17 only place you will hear law and evidence is in the
18 courtroom during the trial from witnesses who are
19 sworn to tell the truth who will testify from that
20 witness stand and whatever evidence comes into the
21 record through that testimony.

22 So it would be a violation of your oath
23 for you to try to gather information about the
24 issues in the trial from any source outside of the
25 courtroom.

1 Now, I know you can do a Google search
2 on anything. I know you can look up information in
3 moments on a smart phone. Don't do that. Again,
4 it would be a violation of your oath to do so. I
5 can assure you those sources of information contain
6 incorrect or improper information that a juror
7 should never consider in reaching a verdict in the
8 case so don't attempt to gather information that
9 way.

10 While you are out should this case be
11 reported in the local media, radio, television,
12 newspaper don't read it, don't listen about it,
13 don't watch about it. If you hear that start
14 walking away. Turn it off. Don't try to gather
15 any information from the media.

16 The last thing I will mention to you is
17 it's a crime in this state for someone to try to
18 improperly influence a juror's decision during a
19 trial. If someone were to contact you or approach
20 you about your service in this trial don't discuss
21 it with those people, report it upon your return.
22 I can assure you I will see that the proper
23 investigations are begun to stop that activity.

24 So in a nutshell, don't discuss the
25 case with anyone, don't try to gather any

1 information on your own, don't listen to, watch or
2 read any media reports about the case, and let us
3 know should anyone try to contact you about your
4 service.

5 Now again, the bailiffs will show you
6 how to report back to the jury room. You will be
7 reporting to this jury room, not to the assembly
8 room, but to this jury room at 2:30. Thank you
9 very much. You are free to go.

10 (Thereupon, the jury exited the
11 courtroom at 12:25 p.m.)

12 (A luncheon recess transpired.)

13 (The following proceedings were held at
14 @ 1:35 p.m.)

15 THE COURT: This is the case of State
16 versus Calvin Brown, Jr. We are back on the
17 record. It's my understanding defense has a
18 motion.

19 MR. ARCHER: I have a Jackson v. Denno
20 voluntariness of confession motion.

21 THE COURT: All right. This is a --
22 what statement is the State attempting to
23 introduce?

24 MR. OSBORNE: We are attempting to
25 introduce clips from the statement that the

1 Defendant gave to Detective Richard Holmes on May
2 the 28th.

3 THE COURT: All right. Are you ready
4 to present evidence concerning his voluntariness?

5 MR. OSBORNE: Yes, Your Honor.

6 THE COURT: You may proceed.

7 MR. OSBORNE: State calls Detective
8 Richard Holmes.

9 RICHARD HOLMES

10 having been duly sworn, testifies as follows:

11 THE CLERK: Please state your full name
12 and spell your last name for the record.

13 THE WITNESS: Richard Holmes,
14 R-I-C-H-A-R-D, H-O-L-M-E-S.

15 THE COURT: Counsel, your witness.

16 DIRECT EXAMINATION

17 BY MR. OSBORNE:

18 Q. Good afternoon, Detective Holmes.

19 A. Good afternoon.

20 Q. Where do you work now?

21 A. I am presently retired.

22 Q. And retired from where?

23 A. Charleston City Police Department.

24 Q. How long have you worked there?

25 A. A total of 29 years.

1 Q. Okay. I want to go back to May
2 the 22nd of 2015, this shooting investigation with
3 the victims of Tyreik G. [REDACTED] and Desmond Lewis.
4 Were you involved in that investigation?

5 A. Yes, sir, I was.

6 Q. And what was your initial role in the
7 investigation?

8 A. Initially I was the lead detective on
9 the case.

10 Q. Okay. We are just going to get right
11 into this. This is concerning the statement. Did
12 you have a suspect in the case early on?

13 A. Early on? Not in the beginning. We
14 developed a suspect, yes, sir.

15 Q. Okay. And what suspect did you
16 develop?

17 A. We developed a suspect by -- we decided
18 to interview a suspect by name of Calico who we
19 later found out to be Calvin Brown.

20 Q. Okay. And did you determine where he
21 worked?

22 A. Yes, sir, we did.

23 Q. All right. And on May the 28th did you
24 make an attempt to try to locate him at his work?

25 A. Yes, sir, I did.

1 Q. And where did he work?

2 A. He worked at Tommy Condon's down on the
3 market.

4 Q. Okay. When you went by Tommy Condon's
5 was he there?

6 A. No, sir, he wasn't.

7 Q. Did you leave a message saying you
8 wanted to speak to him?

9 A. Yes, sir, I did.

10 Q. What time was that about, if you
11 recall?

12 A. It was about I want to say five, maybe
13 between 3:00 and 5:00 in the afternoon.

14 Q. Okay. All right. Did Calvin Brown or
15 the Defendant, did he contact you?

16 A. Yes, sir, he did.

17 Q. And how did that come about?

18 A. He called the detective's office which
19 is the main bureau I worked out of at the time and
20 he spoke to our secretary at the time and I later
21 made contact with him.

22 Q. Okay. And that was about an hour or
23 two after you left Tommy Condon's?

24 A. Yes, sir.

25 Q. Okay. And did you tell him that you

1 needed to speak to him or was that message related
2 to him?

3 A. Yes, it was.

4 Q. Did he come to the station to be
5 interviewed?

6 A. Yes, sir, he did.

7 Q. Do you remember about what time the
8 interview began?

9 A. It was sometime in the afternoon of
10 about 5:00, somewhere around in there.

11 Q. Okay. And you sat down and spoke to
12 him; is that correct?

13 A. Yes, sir.

14 Q. How long was the entire interview?

15 A. The interview lasted probably in the
16 area of two hours.

17 Q. Okay. Did you advise him of his
18 Miranda warnings?

19 A. I did, yes, sir.

20 MR. OSBORNE: Your Honor, may I
21 approach?

22 THE COURT: You may.

23 Q. I am showing you what's been marked as
24 State's Exhibit 103. Can you look at that and tell
25 me if you recognize it?

1 A. Yes, sir.

2 Q. What is that?

3 A. This is a way that we tag our evidence,
4 well, they tag the evidence over at Charleston
5 Police Department.

6 Q. What is in that evidence envelope?

7 A. Inside the evidence envelope is the
8 Miranda warning that I read to the Defendant and he
9 acknowledged that he understood.

10 Q. Okay. And he signed it?

11 A. Yes, sir, he did.

12 Q. All right. And afterwards you placed
13 -- after the interview you placed that into
14 evidence I take it?

15 A. Yes, sir.

16 Q. All right. During the interview with
17 the Defendant did he appear to be intoxicated or
18 under the influence of drugs?

19 A. No, sir, he wasn't.

20 Q. During the interview did the Defendant
21 appear to have a physical or mental disability that
22 would have impaired his ability to understand what
23 was being said to him?

24 A. No, sir.

25 Q. Prior to or during your interview with

1 the Defendant did you offer any breaks, bathroom or
2 otherwise?

3 A. It's a customary rule over at the
4 police department that we stop and ask anybody
5 whose in the interview room if they have to use the
6 bathroom, if they need anything to drink or
7 whatever, so that's customary during our interview
8 interrogation.

9 Q. Either way even if you didn't ask if he
10 asked you wouldn't have denied it?

11 A. No, sir. We never deny those.

12 Q. Okay. Was the Defendant denied access
13 to a telephone, food or drinks?

14 A. No, sir, he wasn't.

15 Q. Were there any threats or promises made
16 in exchange for the statement?

17 A. No, sir.

18 MR. OSBORNE: Your Honor, at this time
19 we would seek to play the clips that we intend to
20 introduce during the trial.

21 THE COURT: You may do so.

22 MR. OSBORNE: It's State's 102B. We
23 are going to start with clip one.

24 MR. DURANT: We are having problems
25 with the video, Your Honor.

1 (Off-the-record conference.)

2 (State's 102B played.)

3 BY MR. OSBORNE:

4 Q. That was clip one. Was that you
5 entering the interview room?

6 A. Yes, it was.

7 Q. That was the Defendant with you?

8 A. Yes, sir.

9 Q. And can you see the time and the date?

10 A. The date and time up top, it's May the
11 28, 2015 at about 5:44 p.m.

12 Q. This was the first time that you walked
13 into the interview room?

14 A. Yes, sir.

15 Q. We will move on to clip two.

16 (State's 102B played.)

17 BY MR. OSBORNE:

18 Q. Detective, I notice that he's not in
19 handcuffs. So was he under arrest at that point?

20 A. No, sir, he was not.

21 Q. Does he become under arrest at any
22 point during this interview?

23 A. Not this interview, no, sir.

24 Q. Okay. So was he free to go?

25 A. Yes, sir, he was.

1 Q. And, in fact, at this point in the
2 investigation y'all hadn't even drafted any arrest
3 warrants or anything; is that correct?

4 A. No, sir.

5 Q. His name came up so you are just
6 questioning him?

7 A. Yes, sir.

8 Q. All right. We will move on to clip
9 three.

10 (State's 102B played.)

11 MR. OSBORNE: All right. We will move
12 on to clip four.

13 (State's 102B played.)

14 MR. OSBORNE: We will play the last
15 clip for the trial.

16 (State's 102B played.)

17 BY MR. OSBORNE:

18 Q. And the interview goes on a little bit
19 longer after that?

20 A. Yes, sir.

21 Q. And at the conclusion of the interview
22 was he free to go?

23 A. Yes, sir, he was.

24 Q. And did he leave?

25 A. Yes, sir, he did.

1 Q. He was 28 years old at the time?

2 A. Yes, sir.

3 Q. No further questions.

4 THE COURT: You may cross-examine.

5 CROSS-EXAMINATION

6 BY MR. ARCHER:

7 Q. Officer, as a result of this interview
8 did you arrest Mr. Brown?

9 A. As a result of this interview? No,
10 sir, the investigation continued.

11 Q. Okay. Did you make -- did you do a
12 supplemental incident report concerning the
13 interrogation?

14 A. Of this interview? Yes, sir, I did.

15 Q. And what's the -- do you know what the
16 date of that was?

17 A. It was the 28th. That's the date of
18 it.

19 Q. What it is -- I mean y'all are on there
20 and you are talking over each other, almost
21 yelling. I will be honest, I couldn't make out all
22 what y'all were saying. What is it you contend he
23 said during the interview that was incriminating?

24 MR. OSBORNE: Objection, Your Honor.

25 Goes to the facts, doesn't go to voluntariness.

1 MR. ARCHER: I think it goes to whether
2 the whole interview is relevant to be admitted,
3 Your Honor.

4 THE COURT: Well, the motion was
5 Jackson v. Denno which has to do with voluntariness
6 of the statement.

7 MR. ARCHER: Yes, sir.

8 THE COURT: This is not a discovery
9 process.

10 MR. ARCHER: Okay. All right.

11 BY MR. ARCHER:

12 Q. Did you take notes of what was said?

13 A. I did.

14 Q. Okay. Did you retain those notes?

15 A. No, I don't have them because I am not
16 working over there anymore, sir.

17 MR. ARCHER: Okay. I have no other
18 questions.

19 THE COURT: Anything further from the
20 State?

21 MR. OSBORNE: No, Your Honor.

22 THE COURT: You may step down, sir.
23 Thank you. State wish to call additional
24 witnesses?

25 MR. OSBORNE: No, Your Honor.

1 THE COURT: I will hear from counsel.

2 It is your motion.

3 MR. ARCHER: Well, Judge, I think he
4 read him his rights at the beginning.

5 THE COURT: Yes, he did.

6 MR. ARCHER: And my initials of -- so
7 I'm not sure that I have got a real objection to
8 argue to be honest. I won't make something out of
9 nothing.

10 THE COURT: Thank you very much. I
11 will find that the statement was given voluntarily,
12 the Defendant participated in the discussion in
13 what I would describe as a robust manner. He was
14 very -- he fully volunteered his statement and so I
15 will deny the motion. I believe there was a
16 question in chambers concerning any convictions you
17 might be using for impeachment purposes. So I'll
18 ask you on the record at this time for the State to
19 identify any convictions of the Defendant that you
20 would intend to use for impeachment purposes.

21 MR. OSBORNE: We wouldn't be intending
22 to use either. I believe he has a possession of
23 marijuana and a possession of cocaine base. Either
24 way we wouldn't intend to use either one to
25 impeach.

1 THE COURT: Any other motions from the
2 defense?

3 MR. ARCHER: No other motions, Your
4 Honor.

5 THE COURT: Anything from the State?

6 MR. OSBORNE: No.

7 THE COURT: The jury should be here.
8 Why don't we take a short break before we bring
9 them back. We will be in recess for about ten
10 minutes or so.

11 (A recess transpired.)

12 THE COURT: State ready to proceed?

13 MR. OSBORNE: We are, Your Honor. We
14 do have one witness issue. And we would request
15 that a bench warrant be issued for her.

16 THE COURT: You can tell me.

17 MR. OSBORNE: Chandra Lee is her name.

18 THE COURT: Um-hmm. And you served her
19 with a subpoena?

20 MR. OSBORNE: We have served her with a
21 subpoena. We actually made contact with her this
22 morning realizing she might be difficult so we told
23 her to be here 9:00. She was here at 9:00. Our
24 investigator said to come back at 12:00. She did
25 not come back and now she is off the radar.

1 THE COURT: She was properly served
2 with a subpoena?

3 MR. OSBORNE: Yes, Your Honor.

4 MR. DURANT: We will get your proof of
5 service..

6 THE COURT: Did appear, but is now not
7 present.

8 MR. OSBORNE: That's correct.

9 THE COURT: Name again?

10 MR. OSBORNE: Tianai Lee.

11 MR. DURANT: T-I-A-N-A-I, Lee, L-E-E.

12 I believe her middle name is Chandra.

13 THE COURT: I'm going to ask one of the
14 bailiffs to step outside and call her name to be
15 sure she is not outside the courtroom.

16 (Brief pause.)

17 I assume if she was present he would
18 have heard from her. See if she is outside.

19 THE BAILIFF: Your Honor, I called
20 three times. No one answered.

21 THE COURT: All right. I will grant
22 the motion for a bench warrant to be issued. If
23 you will prepare one for my signature if you've got
24 one.

25 MR. DURANT: This is just the proof of

1 service in case, Your Honor.

2 THE COURT: Any objection to making
3 that a court's exhibit?

4 MR. ARCHER: No objection to making it
5 a court's exhibit.

6 THE COURT: Okay. Thank you very much.
7 Anything further from the State?

8 MR. OSBORNE: I don't know if this is
9 the appropriate time, Your Honor, we have a number
10 of stipulations to bring items into evidence that
11 defense has agreed to and we also have two
12 stipulations regarding chain of custody.

13 THE COURT: Why don't we do this.
14 Let's bring the jury in and go ahead and do our --
15 I will make my opening comments, allow you to make
16 your opening statement, and when we open up the
17 record for evidence we will put those in.

18 MR. OSBORNE: Thank you, Your Honor.

19 THE COURT: All right. Anything from
20 the defense before we bring the jury in?

21 MR. ARCHER: No.

22 THE COURT: All right. Bring the jury
23 in, please.

24 (COURT. EXH. 1, subpoena, was marked
25 for identification.)

1 (Whereupon the jury entered the
2 courtroom at 2:45 p.m.)

3 THE COURT: Let the record reflect the
4 jury has returned to the courtroom. I hope
5 everyone had a good break. If any of you had any
6 difficulty in complying with the instructions that
7 I gave you concerning your behavior while you were
8 away from the courthouse, if you had any problems
9 in that regard, please stand. It appears that all
10 jurors have been able to comply with my
11 instructions thus far.

12 I told you that upon your return to the
13 courthouse you would be taking an oath concerning
14 your responsibilities as jurors in this case. At
15 this time I will ask the clerk to please swear the
16 jury panel.

17 THE CLERK: Please have the Defendant
18 stand.

19 (Jury sworn by clerk.)

20 THE COURT: The record will reflect the
21 jury has been sworn. Now, at this point in time
22 there's some things that I would like to go over
23 with you. It's my belief that for most of you this
24 would be your first opportunity to sit on a jury in
25 the trial of a criminal case and for those of you

1 for whom this is your first opportunity to do that,
2 there's some things I would like to go over with
3 you and of course for anyone who has already been
4 in this position, maybe I could refresh your memory
5 about a few things.

6 If you have never been in this position
7 before, never sat on a jury in the trial of a
8 criminal case, I would suspect that most of what
9 you might know or believe about what jurors do and
10 how they function you would have gathered from
11 television shows you watched or movies you have
12 seen, maybe books you have read. They don't teach
13 much about the jury process in school these days,
14 but those other sources I'm sure you would have
15 gathered some information from those. You know,
16 while television shows and movies and books are
17 full of high drama and intense action and riveting
18 circumstances, they're intended to keep your
19 attention and entertain you because of course if
20 you ever think about television you can have an
21 event occur, the case can be tried and wrapped up
22 in the space of one hour and they still have time
23 to stop for commercials four or five times.

24 So you might think about it and realize
25 that they take what is called literary license in

1 how they present what goes on in courtrooms.

2 They make it fit the plot, the story
3 line. That's again because that is intended to
4 entertain you. Keep your attention. Keep you
5 watching because they are paid by the number of
6 people that watch the commercials.

7 But at any rate, what you are engaged
8 in today is intended for anything but your
9 entertainment. I hope you realize that you're
10 involved in a fundamental part of our governmental
11 structure here in the United States and in South
12 Carolina because every citizen in the State and in
13 the United States is entitled under the
14 Constitution of both the United States and South
15 Carolina to a trial by a jury of their peers. That
16 right to a trial by jury dates back to a document
17 signed in England in the year 1215 called the Magna
18 Carta. That's the first time citizens were
19 guaranteed the right to be tried by their fellow
20 citizens in this type of situation.

21 If you think about it, that document
22 enjoyed its 800th anniversary two years ago.
23 800 years, that's a long time for anything
24 instituted by man to last. That's longer than the
25 City of Charleston. I know you are very proud of

1 your history around here. But at any rate, it is a
2 fundamental part of your governmental structure and
3 if you were to look around the world today at most
4 of the governments in this world you would find
5 that most of them do not allow their citizens to
6 participate directly in the decision-making process
7 of those courts.

8 We are different. We do ask our
9 citizens to come forward in the form of jury duty
10 and perform a very important function for your
11 fellow citizens. So first of all, I want to thank
12 you very much for your willingness to come forward
13 and participate. I know you got a subpoena, you
14 were required to be here, but nevertheless we
15 didn't send the sheriff out to get you. You came
16 voluntarily. If it weren't for your participation
17 our system couldn't function as it was intended to
18 function by our forefathers. So I want to thank
19 you for your participation in this process that we
20 are going to participate in.

21 You are accepting an important role and
22 responsibility in doing that. What I am telling
23 you now is not intended to be an instruction on the
24 law. Later on once all the arguments have been
25 made by the attorneys and all the evidence has been

1 presented and ruled upon one way or the other, I
2 will instruct you concerning the law to be applied
3 in this case. What I am going to go over with you
4 is the procedure and the roles and responsibilities
5 that we all have in a trial in this case.

6 Now, earlier I went over with the
7 Defendant the indictments in this case and I will
8 explain to you an indictment is simply the document
9 that brings this case into this court. It cannot
10 be used by a jury in any fashion in determining the
11 guilt or the innocence of someone charged with a
12 document. It's an informational document. It
13 informs this court of the charges that have been
14 lodged against the Defendant. It informs the
15 Defendant of the charges that have been brought
16 against him. But those documents are not evidence
17 and cannot be considered by you as evidence on any
18 issue in the case. These are simply the charges
19 that bring the cases into the court. I remind you
20 I will go over these with you in greater detail
21 during the charge on the law. We have three
22 indictments, two are for the offenses of attempted
23 murder. Each of those indictments has different
24 alleged victims. And then there is a third
25 indictment for the possession of a weapon during

1 the commission of a violent crime.

2 And I will discuss those charges again
3 with you in greater detail when I charge you on the
4 law at the close of the case.

5 Now, the Defendant has pled not guilty
6 to those indictments. Under our system of
7 government that plea places the burden of proof in
8 this trial solely on the State. It is the State's
9 obligation now to go forward and prove the
10 allegations that are contained in the indictments
11 to you by proof beyond a reasonable doubt. It is
12 your duty at the close of the trial to decide
13 whether or not the State has met its burden of
14 proof in regard to those charges.

15 So it will be your job as jurors during
16 this trial to find and determine the facts in the
17 case. I will tell you that our law and our system
18 makes you the sole judges of the facts in the case.

19 I will serve as the presiding officer
20 in the trial. It will be my responsibility during
21 the trial to rule on certain questions or
22 objections that might be raised. But I will tell
23 you that in my doing that I'm not allowed to make
24 any comment concerning the facts in this case. So
25 please do not take from anything that I do in the

1 discharge of my duties as the presiding officer in
2 this trial somehow to indicate to you that I have
3 an opinion one way or the other as to how you
4 decide the facts in this case. Again, the law
5 doesn't allow me an opinion on that and I have no
6 opinion as to how you should determine the facts in
7 this case.

8 Now, the same law that makes you the
9 sole judges of the facts makes me the sole judge of
10 the law in the case. As I told you, at the close
11 of the trial I will charge you on the law that you
12 are to apply to the facts as you decide the facts
13 to be. It is your obligation to take that law
14 exactly as I give it to you and apply it to the
15 those facts. Just as I cannot disagree with you
16 concerning your determination of the facts in this
17 case, you are not allowed to disagree with me
18 concerning my charge to you on the law to be
19 applied to those facts. So you are the sole judges
20 of the facts; I will serve as the sole judge of the
21 law to be applied in this case.

22 Now, you're to decide the facts from
23 the testimony that you hear. The only evidence in
24 the trial will be statements made by witnesses who
25 are sworn to tell the truth who will testify from

1 this witness stand and whatever documents or other
2 pieces of evidence are admitted into the record of
3 the case through their testimony. Of course
4 evidence can come into the trial by agreement
5 between the attorneys for evidence to be presented
6 to you. But that's the evidence in this case. So
7 the only place that you will hear any evidence in
8 this case or view or see any physical evidence is
9 in this courtroom during the trial through that
10 testimony or through the items that are admitted
11 into evidence during the trial.

12 I will tell you that it is up to you
13 then to determine the facts in this case based on
14 that evidence. You will decide what inferences you
15 feel can be properly and reasonably drawn from the
16 evidence that you hear. It is important that you
17 perform your duty as jurors of determining the
18 facts in this case diligently and conscientiously
19 because at the close of the trial you will be
20 called upon to make a finding as to the guilt or
21 the innocence of the Defendant, whether or not the
22 State has met its burden of proof, and I will tell
23 you that ordinarily under our system of justice
24 there's no way to correct an erroneous
25 determination of facts made by a jury.

1 Now, I have already explained to you
2 and I am just going to touch on this briefly and
3 that is that you should not try to gather any
4 information outside of this courtroom and again
5 don't listen to, watch or read any media reports
6 about the case. The only place you will hear
7 evidence in this case will be in this courtroom and
8 you are sworn to decide the case based solely upon
9 the evidence.

10 Now, during the trial I'm going to urge
11 you as I did when we took our break to try to keep
12 an open mind about all the issues in this case.
13 Don't attempt to decide or make up your mind on any
14 issue in the case until you have heard all the
15 arguments by the lawyers, you have heard all the
16 evidence to be presented, the attorneys then would
17 make their closing arguments and I will have at
18 that time instructed you on the law.

19 When you begin your deliberations you
20 then should have all of the information that you
21 need to begin to make up your mind on those issues.
22 Until then please don't try to make any decisions
23 about issues in the case. Again, it is your solemn
24 responsibility to determine the guilt or the
25 innocence of the defense and it must be based

1 solely upon the evidence presented during the
2 trial.

3 Now, we are going to start the case in
4 just a few moments. At that time the attorneys
5 will make what is referred to as an opening
6 statement or argument to you. Attorneys are
7 allowed to talk directly to you, the jury, only on
8 two occasions during the trial. One is at the
9 beginning of the trial when they make that opening
10 statement. At that time they will tell you what
11 the case is about, perhaps what they intend to
12 prove during the trial, but things that you should
13 look for or be aware of in their case. They will
14 explain those things to you. Then at the close of
15 the trial once all the evidence has been presented
16 we will allow them again to directly talk to you or
17 address you in what's called their summation or
18 their closing argument. And at that time what they
19 are going to do is go over the evidence that you
20 heard in the trial and they're going to urge you to
21 draw certain inferences or conclusions from that
22 evidence as the case may be.

23 But I want to caution you statements
24 made by lawyers during a trial are not evidence in
25 this case. The only evidence is the statements

1 made from the witnesses who are sworn to tell the
2 truth who testify on the witness stand. The
3 attorneys statements do serve to give you their
4 client's position and to urge you to draw certain
5 conclusions, but those statements themselves are
6 not evidence, therefore, they can't be used
7 directly by you in determining the guilt or the
8 innocence of the Defendant. That should be done
9 from the evidence and the evidence alone.

10 And during the trial from time to time
11 you may hear the attorneys make an objection
12 concerning something or offer a piece of evidence
13 which is objected to. If it's my belief that the
14 discussion about that issue may involve a
15 discussion about some matter that the rules of
16 evidence would not allow to come into the record in
17 the case, that perhaps a piece of evidence will be
18 discussed that would not be admissible under those
19 rules, if I believe that the discussion is going in
20 that direction, I may ask you to leave the
21 courtroom while I have that discussion on the
22 admissibility of that information with them
23 directly.

24 I hope you understand that when I do
25 that I am not trying to influence your decision on

1 the facts in this case. What I am doing is my job
2 is what we refer to in many cases as the
3 gatekeeper. The judge decides what comes into the
4 record under the rules of evidence and what does
5 not come into the record under the rules of
6 evidence.

7 It is my job to see that you decide the
8 case solely upon evidence that has been properly
9 admitted under the rules of evidence. So if I ask
10 you to step outside while I have that discussion,
11 it will be so that I can discuss something that I
12 feel may not be admissible into the record of the
13 case. What I will do is when I have finished that
14 discussion and made my ruling, I will bring you
15 back into the courtroom. I will announce whatever
16 ruling I made. We will proceed with the trial, but
17 understand that's just me doing my job to see to it
18 that you decide the case on proper information.
19 Don't take it as an effort on my part to somehow
20 influence your decision as to what the facts are or
21 what the facts are not. That's your job and your
22 job alone.

23 I'm going to tell you as the case goes
24 on and I have told you your job is to determine the
25 facts and a necessary part of that fact finding

1 process is to determine the credibility or the
2 believability of the testimony that you hear during
3 the trial. That's what credibility means. It
4 means believability. I'm going to ask you to use
5 your own good common sense in making that
6 determination.

7 You know, I don't know if you thought
8 about it or not, but every single day of your life
9 you make commonsensical decisions as to what you
10 choose to believe and what you choose not to
11 believe. You do it all the time, sometimes don't
12 even think directly about making those decisions.
13 You do it every day of your life. Today will be no
14 different. Tomorrow will be no different than any
15 other day. You will be listening to the testimony.
16 It will be up to you to use your common sense to
17 determine the credibility or the believability of
18 what you hear. As the sole judges of the facts you
19 have the right to believe all of, part of or none
20 of what a witness may testify to. You have the
21 right to believe one witness against all the others
22 or all the others against one. It will be your job
23 to determine the credibility and the believability
24 of the witnesses.

25 In doing that you can consider whether

1 or not a witness might have an interest in the
2 outcome of the trial, whether or not a witness may
3 have a bias or prejudice if they exhibit in favor
4 of one side of the other.

5 You have a right to determine whether
6 the witness actually had the ability to know the
7 facts about which the witness is testifying to.
8 And I tell people I have been coming to courtrooms
9 far too long, I have been doing this for about
10 42 years. And I tell you that I have never been in
11 a courtroom where a witness didn't sit right in
12 front of the jury box. That's where the witness
13 stand always is. That's so you can observe them,
14 watch them while they testify, evaluate the way
15 they deliver their testimony, use your good common
16 sense and be aware that you are going to need to
17 make that determination as to the credibility and
18 believability of what you hear in the courtroom.
19 It will be your job to pay close attention to
20 what's being said so I will urge you try not to let
21 thoughts wander. Try to pay attention to what's
22 being said. Do that so that at the end of the
23 testimony after the arguments of counsel and the
24 charge on the law you will be in a position to
25 discuss with your fellow jurors what the true facts

1 are and apply the law to those facts.

2 It will be your duty at the close of
3 the trial to determine the weight, the value and
4 the believability of the testimony that you have
5 heard in this case.

6 Now, I do not appoint a foreperson of
7 the jury at the beginning of the trial. What I
8 will do is at the stage in the trial once you have
9 a chance to get to know each other I'm going to
10 allow you to elect a foreperson among your number.
11 So we will probably do that maybe sometime tomorrow
12 and at that point in time I will appoint a
13 foreperson based on your election, but I will tell
14 you that no one juror in this case is more
15 important than any other juror. At the close of
16 the trial the 12 jurors on the jury begin
17 deliberations; you cannot reach a verdict or a
18 decision in the case unless it is unanimous. Each
19 and every juror on the panel must agree with the
20 verdict before it is the verdict of the jury.

21 So don't think that we appoint or elect
22 someone as the foreperson that that person is more
23 important than anyone else or has any greater say
24 than anyone else. You all have an equal say in the
25 outcome of the case and a verdict cannot be reached

1 unless and until a unanimous verdict is reached in
2 the case.

3 Now, I want to be sure that I haven't
4 violated anyone's rights in what I have said thus
5 far. So is there any objection from the State?

6 MR. OSBORNE: None, Your Honor.

7 THE COURT: Anything from the defense?

8 MR. ARCHER: No objection, Your Honor.

9 THE COURT: Now, I told you that the
10 State has the burden of proof. It has the only
11 burden of proof in the case. So for that reason
12 the State is allowed to go first with its opening
13 statement, followed by the defense, then the State
14 will be allowed to go first in presenting whatever
15 evidence it wishes to present, followed by the
16 defense having the right to present evidence if it
17 chooses to. Then once all the evidence is
18 presented at that time they will be allowed to do
19 their summation or closing arguments, then I will
20 charge you on the law and the case will be turned
21 over to you for your verdict. So those are the
22 steps you will go through as we proceed in the
23 trial.

24 Since the State has that burden of
25 proof, at this time, Mr. Osborne, you may proceed

1 with your opening comments.

2 MR. OSBORNE: Thank you, Your Honor.
3 May it please the Court, on May the 22nd of 2015
4 then a five-year-old boy named Tyreik G. [REDACTED] was
5 standing outside of his grandmother's apartment.
6 He was excited. He wanted to go to his cousin's
7 house which was right around the corner. She was
8 having a birthday party. He wanted his grandmother
9 to walk with him. So he was urging her come on.
10 Come on.

11 Tyreik wouldn't make it to that
12 birthday party and that's because of the actions of
13 this man. His name is Calvin Brown. People call
14 him Calico. He's the Defendant in this case. You
15 see, this man was in a middle of a war with a guy
16 named Desmond Lewis and on that night when he saw
17 Desmond sitting outside of a building where
18 Tyreik's grandmother lived that opportunity to kill
19 Desmond was just too much to pass up. So he pulled
20 out his gun and he fired over and over and over
21 again. He hit Desmond. He would hit Desmond in
22 his leg, but Desmond would be fine. But he also
23 hits Tyreik and Tyreik would fall right there right
24 outside of his grandmother's apartment. In his
25 senseless, stupid war with Desmond Lewis to him

1 Tyreik would be nothing more than an accident.

2 Nothing more than collateral damage.

3 Now, this war between Desmond and the
4 Defendant began back in 2013, two years before the
5 shooting. Desmond, he has a daughter. Her name is
6 Diamonte Lewis. And Diamonte's mother is named
7 Similar McClary. In June of 2013 Desmond got
8 arrested. And you will hear Desmond is always
9 getting arrested. Not a good guy.

10 On this particular occasion while he
11 sat in jail he started hearing rumors. He was
12 hearing rumors about how Similar was cheating on
13 him, Similar was cheating on him with that man.

14 When he got out of jail about 30 days
15 later he confronted Similar and about the rumors
16 that he was hearing. And she told him that's not
17 true. Don't believe it. It's all a lie. Similar
18 was the one who was lying. She knew the Defendant
19 from back in high school and during that 30-day
20 period while Desmond was in jail they ran into each
21 other. They exchanged phone numbers and ended up
22 having sex on least two different occasions. It's
23 not surprising that Similar and Desmond's
24 relationship didn't last long after this affair.
25 Kind of a rocky relationship even before that. But

1 what did last was the conflict that began between
2 these two as a result of that. It lasted for two
3 years right up to the point where Tyreik was shot.
4 During that two-year period you'll hear that the
5 Defendant spray painted or vandalized Desmond's car
6 or at least Desmond thought he did. You'll hear
7 how Desmond didn't take it laying down, he shot at
8 him only at least a couple of different occasions.

9 On then you'll hear how things really
10 started to heat up about two months before the
11 shooting. And that's when the Defendant is heard
12 to say on multiple occasions if I see Desmond,
13 Fats, that's Desmond's nickname, if I see Fats out
14 there I'm going to shoot him. Then you'll hear
15 about 12 days before the shooting he took a picture
16 and wasn't just any picture. It was a picture with
17 him with a girl. Similar McClary. And in that
18 picture while he's pointing his middle finger right
19 toward the camera, he's got a little message that
20 he puts up on Facebook for all the world to see. I
21 have your chick in the pic like she is posing for
22 me.

23 Two days before the shooting things are
24 really heating up. You'll hear how he tries to get
25 his hands on a gun. How he does get his hands on a

1 gun and not just any gun, but a black Smith and
2 Wesson .9-millimeter semi-automatic handgun, the
3 same type of handgun that was used to shoot Tyreik.

4 On the day of the shooting Desmond is
5 hanging out in the projects. He doesn't live
6 there. Just hanging out like he always does
7 smoking, drinking. And he is hanging out with his
8 friend Christopher Victoria. Christopher's
9 nickname is P Roach. We got Fats and P Roach
10 hanging out. The Defendant walks up. Defendant
11 sees Desmond. He then reaches into his bag he is
12 always carrying, pulls out his gun and starts
13 shooting at Desmond. Fires the first two shots.
14 Christopher knows about the beef between Desmond
15 and the Defendant. He knows he's not the target.
16 So he ducks down. Desmond on the other hand knows
17 that his life is in danger. So he gets up. He
18 runs for his life. And he runs around the corner
19 of the building. Unfortunately he runs right by
20 Tyreik whose standing outside calling to his
21 grandmother.

22 He kept firing. Firing over and over
23 again. Hitting Desmond in the back of his leg when
24 he ran and hits Tyreik in his back while he was
25 there.

1 Ladies and gentlemen, at the end of
2 this trial I'm going to ask you to hold the
3 Defendant accountable and show him that Tyreik is
4 more than an accident, he is more than collateral
5 damage. I am going to ask you to do that by
6 convicting him of two counts of attempted murder
7 and possession of a weapon during the comission of
8 a violent crime. Thank you.

9 THE COURT: Yes, sir. Mr. Archer, you
10 may proceed for the defense.

11 MR. ARCHER: Ladies and gentlemen,
12 there are really four main actors in this case.
13 One is Desmond Lewis. All right? One is a fella
14 by the name of Christopher Victoria. Both of those
15 are present the night of the shooting. Okay?
16 Third is Tyreik G. [REDACTED], the little boy who got
17 shot, okay? And my client Calvin Brown, okay?

18 Now, the real tragedy in this case is
19 the little boy Tyreik who clearly is collateral
20 damage to whatever happened out there that night.
21 I don't care who was involved. Nobody intended to
22 shoot Tyreik, but poor Tyreik got shot in the back
23 and left him paralyzed. That's horrible. Okay?
24 And I know you are going to feel revulsed by that.
25 But the question is you cannot find my client

1 guilty because you think that's awful that Tyreik
2 got shot in the back. You have to find my client
3 guilty based upon the evidence and whether or not
4 he is the person responsible, all right?

5 Now, we have got two people. We have
6 got Desmond Lewis and we have got Christopher
7 Victoria. Those are the two that are hanging out.
8 They both know my client for several years as the
9 prosecution noted. The evidence will show that
10 Desmond Lewis was angry with my client over
11 sleeping with a girlfriend and Desmond Lewis at one
12 time took a shot at my client. And Desmond Lewis
13 thought my client painted a star on his car. Well,
14 the bottom line is the person with motive to shoot
15 somebody is not Calvin Brown. It is Desmond Lewis.
16 All right? And the prosecutor talks about this
17 ongoing war of years. I will be interested to hear
18 about the various battles that he claims took place
19 between the two, all right?

20 But the person with the real motive to
21 be shooting somebody is not Calvin Brown, it's
22 Desmond Lewis, all right? And as the prosecutor
23 pointed out, we got a sterling group of witnesses.
24 Good portion of them will be brought here to
25 testify to you out of jail. Are in jail or prison,

1 all right? And but the two people, the people who
2 one, knew my client and should have been able to
3 identify him were Desmond Lewis and Christopher
4 Victoria. Both knew him for several years.
5 Neither one of them identifies him basically on the
6 night in question. Not of the shooting.

7 Desmond Lewis tells the police he don't
8 know who shot him. Okay? And he certainly knew my
9 client. If my client shot him he would have known
10 immediately who shot him. He tells the police he
11 does not know who shot him.

12 And he changes his story several times
13 after that.. Once he gets in trouble with the law
14 and the law says you help us out on Tyreik's case,
15 we will cut you some breaks here. So he did say
16 okay, Calico did it. And meaning my client, okay?
17 But only with the prompting of the police that he
18 will get some benefit out of it.

19 With respect to Christopher Victoria,
20 when police first come to him we doesn't say Calico
21 shot me. He says that he -- first off he said he
22 didn't see the shooter's face. He says that the
23 shooter had on dark clothing and a hood over his
24 head. All right? And then on May 23rd, the next
25 day, the day following the shooting he tells

1 Detective English that well, the guy who shot had a
2 physique that reminded me of Calvin, Calico. My
3 client. He doesn't say that that's who it is. He
4 says the fellow had a body style that reminded him
5 of Calico. All right?

6 So and of course somewhere in between
7 they have asked all of them was there any bad blood
8 out there anywhere and there was some mention of
9 Calvin Brown. Well, we are getting the name of
10 Calvin Brown and Calico sort of the same. But now
11 both Desmond Lewis and Christopher Victoria change
12 their stories just with the wind. Yes, it was
13 Calvin. No, it wasn't Calvin.

14 And specifically in February of 2016
15 Desmond Lewis write a letter, sends it to Mr.
16 Brown's mother saying it wasn't Calico, it wasn't
17 Calvin. Okay? Denying it was Calvin. This is a
18 year after the shooting. Okay? In February of
19 2017 Christopher Victoria writes a note which says
20 everything I said was a lie. Cops influenced me to
21 do it. Okay? So we got both of the key witnesses
22 who have recanted their stories about my client
23 being the shooter, okay?

24 So I just don't think there is evidence
25 and there is credible evidence and believable

1 evidence. And the evidence that's going to be
2 submitted by the prosecution isn't really
3 believable because the primary witnesses are not
4 believable guys, Desmond Lewis and Christopher
5 Victoria. And we are going to sit here probably
6 for four or five days listening to a picky little
7 piece of evidence here and a picky little piece of
8 evidence there and the prosecution is going to say
9 well, add this to that and that to that and that it
10 means Calvin Brown shot the guy. But it's a case
11 people call smoke and mirrors.

12 It is not hard evidence. The hard
13 evidence of two people, there were two people who
14 knew my client for years could have said
15 immediately it was him and should have said
16 entirely throughout this thing it was him, but
17 didn't. They either said no, I don't know who it
18 was or, you know, said it was him, the cops were
19 pushing him, they wanted help and then later said
20 no, it wasn't. It was all a lie. And that's the
21 case you got.

22 And to me no matter, there may be some
23 evidence presented that's going to suggest that my
24 client is responsible. But the standard isn't
25 whether it is suggestive that he is responsible.

1 It's not -- the standard isn't well, he's probably
2 responsible. Or it's not -- it's more likely than
3 not that he was responsible. The standard is is
4 there proof beyond a reasonable doubt. Reasonable
5 doubt is a doubt that would cause an average person
6 to think well, maybe this isn't what happened,
7 okay?

8 And I'm going to tell you -- it's clear
9 that this was a big story over on the east side.
10 Okay? And then following this shooting the rumor
11 mill started up, okay? And there are all sorts of
12 rumors out there. There was one supposedly that
13 Tyreik's father said that he heard that Desmond
14 Lewis had robbed the fellow that shot at him. That
15 wasn't true. But that's the kind of rumors that
16 float around the community. Everybody had
17 something to say who did it and why. But rumors
18 are not evidence. Okay? You are going to make a
19 decision based on the evidence you hear and as far
20 as I can see it is clearly a reasonable doubt as to
21 whether Calvin is responsible for any of that.

22 And like I say, it is tragic that
23 Tyreik got hurt. You can't do anything about that
24 and that's, you know, but you cannot make your
25 decision based on that. I mean don't come to a

1 verdict based on feelings of sorrow for a five or
2 seven-year old child. Come to your decision based
3 on the hard facts and the evidence that is
4 presented to you. And it would be just as
5 unfortunate for y'all to wrongly decide that my
6 client was responsible for this act and having to
7 go to jail for many years as it is to Tyreik is now
8 unable to walk. That's all I have to say at this
9 time.

10 THE COURT: The State may call its
11 first witness.

12 MR. OSBORNE: State calls officer
13 Shelby August.

14 SHELBY STOREN

15 having been duly sworn, testifies as follows:

16 THE CLERK: Please state your full name
17 and spell your last name for the record.

18 THE WITNESS: Shelby, S-H-E-L-B-Y, last
19 name is Storen, S-T-O-R-E-N.

20 DIRECT EXAMINATION

21 BY MR. OSBORNE:

22 Q. Your maiden name was August?

23 A. Yes, sir.

24 Q. So, Officer Storen, where are you
25 employed?

1 A. I'm employed with the City of
2 Charleston Police Department.

3 Q. And how long have you worked there?

4 A. I have worked there for five and-a-half
5 years.

6 Q. During that five and-a-half year period
7 what have been some of your assignments?

8 A. I am currently in Team Two patrol. I
9 worked in Team One as a patrol officer. I am also
10 a training officer and I'm on the crisis
11 intervention team.

12 Q. You have a trainee here?

13 A. Yes, I do.

14 Q. The crisis intervention team, explain
15 to the jury briefly what is that?

16 A. We have specialized training so in
17 situations, suicidal parties, individuals with
18 mental handicaps we are asked to be first on scene
19 to kind of talk down a situation, de-escalate
20 what's going on.

21 Q. Sometimes like hostage negotiations?

22 A. Of course, yes, sir.

23 Q. Let's go to the night of this incident
24 on May the 22nd, 2015. Were you working that
25 night?

1 A. Yes, sir.

2 Q. And where were you assigned then?

3 A. I was assigned to Team One.

4 Q. You were doing what, patrol?

5 A. I was a patrol officer in Team One,
6 yes, sir.

7 Q. Generally speaking where is Team One?

8 A. That's everything north of Calhoun
9 Street.

10 Q. Okay. Toward North Charleston?

11 A. Correct.

12 Q. At approximately 8:45 p.m. did you have
13 the occasion to be dispatched to the area of
14 America and Reed Street?

15 A. Yes, sir.

16 Q. And what was the nature of the call?

17 A. Was a shots fired call.

18 Q. And where you when you received the
19 shot?

20 A. I was currently at Meeting and Conway
21 which is right near the Team One office.

22 Q. All right. And for those who aren't
23 familiar, about how far is that from America and
24 South Street?

25 A. About a mile, I'd say maybe even less.

1 Q. What direction did you take to get
2 there?

3 A. I had to go south.

4 Q. Any other officers respond with you?

5 A. It was Officer Bianci and Officer
6 Thomas.

7 Q. And I guess that's pretty common for
8 the nature of the call to have backup?

9 A. Exactly. We are all in separate cars
10 at the time so shots fired call we have a lot of
11 people going.

12 Q. Okay. When you arrived on scene or
13 thereabouts where did you park your patrol car?

14 A. I parked at America and Reid because
15 that's where the call came out at.

16 Q. What happened after you parked?

17 A. I was flagged down in front of 8E
18 America Street. I was about a block and-a-half
19 south of where I had parked my car.

20 Q. And when you were flagged down what
21 happened?

22 A. I ran to the scene. I saw a black male
23 in the road. He had a gunshot wound to his lower
24 left leg. There was a lot of blood coming from his
25 leg at that time.

1 Q. Okay. And was that in the area of 8E
2 America Street?

3 A. Correct.

4 Q. City and County of Charleston?

5 A. Yes, sir it is.

6 Q. Did you identify that individual?

7 A. He identified himself as Desmond Lewis.

8 Q. Okay. Now, did it appear to you as
9 though he was shot right where you found him in the
10 street?

11 A. It was not. I did see there was a
12 blood trail from that location.

13 Q. Okay. Where did blood trail lead to?

14 A. The blood trail went south on America
15 Street in the road. It then jumped on to the
16 sidewalk and then it went between the buildings of
17 4 and 6 America Street.

18 Q. Okay.

19 MR. ARCHER: No objection.

20 MR. OSBORNE: Your Honor, I am showing
21 her State's Exhibit 1 at this time. I believe
22 there's no objection to publishing it.

23 THE COURT: Without objection it will
24 be admitted. You may publish.

25 (STATE'S EXH. 1 in evidence.)

1 BY MR. OSBORNE:

2 Q. Let's start by saying do you see
3 America Street?

4 A. Yes, I do.

5 Q. You can actually touch the screen right
6 there. So where is America Street?

7 A. America Street is right here.

8 Q. When you responded you said you came
9 down America?

10 A. I did. I was running down America
11 Street.

12 Q. Where did you end up parking?

13 A. I was at the -- this should be Mary
14 right here. I believe Mary. I was right around
15 here.

16 Q. Okay. And now, you said that whenever
17 you responded you were flagged down to the area of
18 8E America Street?

19 A. Yes.

20 Q. About generally speaking where is that?

21 A. That is right up here.

22 MR. OSBORNE: Your Honor, at this time
23 I would request to admit State's Exhibit 2 I think
24 without objection.

25 MR. ARCHER: Without objection.

1 THE COURT: Without objection it will
2 be admitted. You may publish.

3 (STATE'S EXH. 2 in evidence.)

4 BY MR. OSBORNE:

5 Q. There is an arrow on the top of the
6 screen. If you press that arrow and then clear.
7 What does State's Exhibit 2 show?

8 A. Shows the blood trail that I located.

9 Q. Okay. Is that where Desmond was
10 sitting?

11 A. Yes, that's where he was laying on the
12 ground.

13 Q. Okay. Your Honor, at this time I
14 request to admit State's Exhibit 3 I think without
15 objection and publish.

16 THE COURT: Any objection?

17 MR. ARCHER: No objection.

18 THE COURT: Without objection it will
19 be admitted. You may publish.

20 (STATE'S EXH. 3 in evidence.)

21 BY MR. OSBORNE:

22 Q. You said you saw a blood trail. Is
23 that what we are seeing here?

24 A. Yes, sir.

25 Q. Okay. Your Honor, can I admit State's

1 Exhibit 4, 5, 6, 7, 8, 9, 10, and 11?

2 THE COURT: Any objection?

3 MR. ARCHER: Let me take a look at
4 them. I don't believe I do, Your Honor.

5 (Brief pause.)

6 No objection.

7 THE COURT: Without objection those
8 exhibits will be admitted and you may publish them
9 to the jury.

10 (STATE'S EXH. 4-11 in evidence.)

11 BY MR. OSBORNE:

12 Q. All right. Let's look at State's
13 Exhibit 4. Okay. So we are looking here at these
14 little orange markers there. I take it they
15 weren't there at the time?

16 A. No, sir.

17 Q. And those are markers that were put
18 down by crime scene I take it?

19 A. Yes, sir.

20 Q. What are they showing, the direction of
21 the blood?

22 A. Yes, sir, going south.

23 Q. All right. Showing you State's
24 Exhibit 5 now. We have more blood trail?

25 A. Going up the sidewalk, yes, sir.

1 Q. Okay. So we are actually working
2 backwards here, correct?

3 A. Yes, sir.

4 Q. So we are following that blood trail
5 again, is that correct, in State's Exhibit 6?

6 A. Yes, sir.

7 Q. Now, this leads to a walkway. Is that
8 what's State's Exhibit 7 is showing us?

9 A. Yes, sir.

10 Q. Okay. These are housing projects,
11 these yellow buildings here?

12 A. Yes, they are.

13 Q. Moving on to State's Exhibit 8. This
14 is the walkway?

15 A. Yes.

16 Q. Is that correct?

17 A. Yes, sir.

18 Q. What do we have back here?

19 A. We have the street back there.

20 Q. Crime scene tape?

21 A. Yes, sir.

22 Q. Buildings on both sides again. All
23 right. State's Exhibit 9, did you happen to see
24 this item over here?

25 A. Yes, sir.

1 Q. A child's shoe?

2 A. Yes, sir.

3 Q. All right. Let's stop right here for a
4 second. While you were out there with Mr. Lewis
5 were you flagged down and told in reference to a
6 second victim?

7 A. Yes, sir. I followed the blood trail
8 going south on America. I then saw it jumped on to
9 the sidewalk and then coming to the courtyard
10 between 4 and 6. At that point I had two females
11 in front of [REDACTED] America Street flag me down and say
12 a little boy had been shot.

13 Q. Okay. What happened then?

14 A. At that point I ran inside of the
15 apartment [REDACTED]. There's a lot of people inside.
16 Everybody was upset. And I saw a grandmother
17 sitting and she had a little boy chest to chest
18 with her and there was -- she was holding a towel
19 to his back.

20 Q. So she had a little boy against her
21 chest?

22 A. Yes, sir.

23 Q. With the towel to his back?

24 A. Yes, sir.

25 Q. Imagine it was pretty upsetting, pretty

1 hectic?

2 A. Yes.

3 Q. The apartment that you went into, was
4 it the first or second one?

5 A. It was the second one.

6 Q. Okay. The grandmother, what was her
7 name?

8 A. Derotha Jones.

9 Q. All right. Ms. Jones, the child's name
10 -- did you learn the child name?

11 A. Yes. It was Tyreik G. [REDACTED].

12 Q. Okay. Was he conscious?

13 A. He was.

14 Q. While Ms. Jones is holding Tyreik and
15 she has the towel to his back could you tell if
16 there was any -- if he had wounds?

17 A. I couldn't tell anything until she
18 moved the towel.

19 Q. What did you see when she removed?

20 A. At that point looked like it was a
21 graze wound from a bullet.

22 Q. All right. What did you do then?

23 A. At that point I ran back outside. And
24 I flagged down the fire. The fire department came
25 on scene and one of the fireman actually picked up

1 Tyreik G. [REDACTED] and brought him to the EMS unit on
2 the street.

3 Q. Okay. Showing you State's Exhibit 10.
4 Now we are looking back towards America here?

5 A. Correct.

6 Q. That's the street? And again one of
7 Tyreik's shoes is right here?

8 A. Yes, sir.

9 Q. Now showing you 11. Is that you over
10 here?

11 A. Yes, sir.

12 Q. All right. Were you all able to locate
13 any fired shell casings that night?

14 A. Yes. Officer Bianci located five spent
15 shell casings right toward the playground at the
16 end of the building 4 and 6.

17 Q. Those shell casings would be collected
18 later by the crime scene unit?

19 A. Yes, sir.

20 Q. Generally speaking looking at your
21 location there where were those shell casings?

22 A. They are around this area.

23 Q. Okay. And just to orient the jury a
24 little bit, tell me if I'm correct. If we removed
25 you right here is Tyreik's shoe back behind that

1 tree?

2 A. Correct.

3 Q. So grandmother's apartment would be off
4 to the left?

5 A. Yes, sir.

6 Q. Okay. When Tyreik was transported by
7 EMS what happened then or what did you do?

8 A. At that point again I was checking the
9 area for -- I located the shoe. I then saw blood
10 around the shoe where he was struck and at that
11 point I tried to look for any bullet holes in the
12 house, but there was none at that time.

13 Q. Okay. Did you locate a cell phone and
14 a bottle of half drunk Heineken?

15 A. Yes, sir, this was right near building
16 4 at the end.

17 Q. We will show that through the crime
18 scene technician, but is it fair to say there's a
19 fence right here?

20 A. Yes.

21 Q. It would be just off this shot?

22 A. Exactly.

23 Q. Rene Charles I think processed the
24 scene?

25 A. Yes, sir.

1 MR. OSBORNE: Okay. Your Honor, at
2 this time I would seek to admit and publish State's
3 Exhibit 82 I think without objection. It's a clip
4 from the surveillance from the city.

5 MR. ARCHER: No problem.

6 THE COURT: Without objection, the
7 video will be admitted. What number did you say?

8 MR. OSBORNE: It's 82.

9 THE COURT: It will be admitted as 82.
10 And you may publish.

11 (STATE'S EXH. 82 in evidence.)

12 BY MR. OSBORNE:

13 Q. Briefly before I start showing this,
14 the city has surveillance cameras that are set up
15 in certain areas of the city?

16 A. Yes, sir.

17 Q. That's what we are watching here?

18 A. Yes, sir.

19 Q. You have seen these clips before?

20 A. Yes, I have.

21 Q. Okay. Let me just back it up right
22 here real quick. Who is the individual standing
23 here in the roadway?

24 A. That's Desmond Lewis.

25 Q. And this is right where you found him

1 where the pool of blood was on the photograph?

2 A. Yes, sir.

3 Q. What's the time?

4 A. That's 8:48.

5 Q. Looking north on America there?

6 A. Correct.

7 (Clip played.)

8 Q. That's east on South?

9 A. Yes, sir.

10 Q. Desmond on the street?

11 A. Yes, sir.

12 Q. You have not responded to the scene?

13 A. No, I have not.

14 Q. That's you guys up there?

15 A. Yes, it is.

16 (Clip played.)

17 Q. Is that you and Desmond?

18 A. I believe that's Officer Bianci and
19 Officer Thomas.

20 Q. The rotation of the camera I notice
21 changed toward the end. Can that be controlled?

22 A. No.

23 Q. Not that you are aware of?

24 A. Not that I am aware of.

25 Q. All right. Showing State's Exhibit 82,

1 clip five. This is -- can you tell where the
2 camera is?

3 A. That is going to be America. That's
4 south on America.

5 Q. Who are these two people?

6 A. That's myself and Officer Bianci.

7 Q. That was you and Officer Bianci
8 following the blood trial in between the buildings
9 like you said?

10 A. Yes, sir.

11 Q. All right. Afterwards did you have the
12 occasion to check with MUSC regarding the condition
13 of Mr. Lewis?

14 A. Yes. They stated that Mr. Lewis was in
15 stable condition.

16 Q. How about Tyreik G. ?

17 A. They advised me that the bullet had
18 struck his spinal cord and he was paralyzed.

19 Q. This was a child?

20 A. Yes, Tyreik G.

21 MR. OSBORNE: No further questions.

22 THE COURT: Mr. Archer, your witness.

23 CROSS-EXAMINATION

24 BY MR. ARCHER:

25 Q. When you came up you found Desmond in

1 the middle of the street, right?

2 A. Yes, sir.

3 Q. You were the first person there?

4 A. Myself and Officer Bianci, yes, sir.

5 Q. Did you all arrive in the same car?

6 A. No.

7 Q. Did you go over to Desmond?

8 A. Yes, sir.

9 Q. Was he conscious?

10 A. Yes, sir.

11 Q. Did you talk to him?

12 A. I just got his name.

13 Q. Just got his name. You didn't ask him
14 what happened?

15 A. I asked him what happened. He did not
16 give me any information.

17 Q. He said nothing?

18 A. He didn't say anything to me. I asked
19 who did this to you. He said I don't know.

20 Q. You asked who did it and he said I
21 don't know?

22 A. Um-hmm.

23 Q. And that's a point how long after he
24 would have gotten shot would you have asked him
25 that question?

1 A. I honestly don't know, sir. You will
2 have to look at the time frame when I came to when
3 we arrived on the scene.

4 Q. When did you arrive on scene?

5 A. A few minutes after the call.

6 Q. You don't know what time that was,
7 8:50?

8 A. I believe about 8:50.

9 Q. About 8:50. So it wasn't long after
10 the shooting had taken place?

11 A. No, sir.

12 Q. You come up. Is he laying in the
13 street or is he sitting in the street?

14 A. He's laying in the street.

15 Q. Laying in the street. And you asked
16 him what happened and what did he say?

17 A. He said I was shot in any leg.

18 Q. Did he say how many people were
19 shooting at him?

20 A. Not that I know of.

21 Q. Okay. But he said he did not know who
22 shot him?

23 A. Yes, he did not tell me who shot him at
24 that time.

25 Q. Did he not tell you or he said he

1 didn't know?

2 A. He said didn't know.

3 Q. He didn't know. Okay. What was his
4 demeanor? Was he upset, was he --

5 A. Honestly at that point I just looked at
6 the -- there was another officer on scene with me.
7 So I started to follow the blood trail.

8 Q. Okay. So you left him with who,
9 another officer?

10 A. Yes, sir.

11 Q. That would have been who?

12 A. That would have been Officer Bianci or
13 Officer Thomas.

14 Q. Okay. You don't remember which?

15 A. No, sir.

16 Q. You don't remember which?

17 A. No, sir.

18 Q. Did you ever have any more contact with
19 Desmond?

20 A. No, sir.

21 Q. Okay. Other than to find out he had
22 been taken to MUSC?

23 A. Um-hmm.

24 MR. ARCHER: Okay. I have no other
25 questions.

1 THE COURT: Redirect?

2 MR. OSBORNE: Just briefly.

3 REDIRECT EXAMINATION

4 BY MR. OSBORNE:

5 Q. This shooting occurred, and what do
6 they generally call that area of downtown
7 Charleston?

8 A. The east side.

9 Q. East side. On the east side of
10 downtown Charleston do you find that individuals
11 are normally pretty cooperative with the police?

12 A. No, they're not.

13 Q. Did it surprise you that Desmond said
14 he didn't know who shot him?

15 A. No, not at all.

16 MR. OSBORNE: No further questions.

17 THE COURT: Recross?

18 RECROSS-EXAMINATION

19 BY MR. ARCHER:

20 Q. Are you saying victims aren't
21 cooperative with the police?

22 A. No, sir, I'm not saying that. I am
23 saying in the area of the east side people are not
24 usually cooperative when we are asking them
25 questions.

1 Q. General population?

2 A. In the east side yes, sir.

3 Q. Do you have any experience with victims
4 of crimes being uncooperative over there?

5 MR. OSBORNE: Objection. Beyond the
6 scope.

7 MR. ARCHER: He is asking --

8 THE COURT: I will allow him to ask the
9 question.

10 THE WITNESS: Could you say the
11 question again.

12 BY MR. ARCHER:

13 Q. Do you have a history of victims being
14 uncooperative with the police?

15 A. Towards me?

16 Q. Yeah.

17 A. No, not with me. I'm --

18 Q. Your experience, personal experience is
19 victims -- the neighborhood generally may not
20 cooperate with police, right?

21 A. The victims of crimes on the east side,
22 in my experience they do not cooperate with us.

23 Q. The victims don't cooperate?

24 A. The east side.

25 Q. The victims. I thought you just said

1 they did?

2 MR. OSBORNE: Objection. Asked and
3 answered.

4 THE COURT: Well, I'm going to let him
5 clear it up. There's a little bit of confusion.
6 I'm not sure she heard the question so I will let
7 her answer.

8 THE WITNESS: Can you repeat?

9 BY MR. ARCHER:

10 Q. Well, are you saying the victims don't
11 cooperate? You said they did cooperate?

12 A. What exactly are you talking about?
13 The east side you are talking about?

14 Q. Where this shooting took place?

15 A. East side, yes, sir. People are not
16 cooperative on the east side when we ask them
17 questions about a crime.

18 Q. Even the victims aren't cooperative?

19 A. Correct.

20 MR. ARCHER: Okay. No other questions.

21 THE COURT: You may step down. Thank
22 you very much. Wish to excuse the witness?

23 MR. OSBORNE: Yes, Your Honor.

24 THE COURT: Any objections?

25 MR. ARCHER: No objection.

1 THE COURT: Ma'am, you can leave the
2 courthouse if you would like. Thank you very much.
3 State may call its next witness.

4 MR. OSBORNE: State calls Rene Charles.

5 THE COURT: Come forward and be sworn.

6 RENE CHARLES

7 having been duly sworn, testifies as follows:

8 THE CLERK: Please state your full name
9 and spell your last name for the record.

10 THE WITNESS: My first name is Rene,
11 last name Charles, C-H-A-R-L-E-S.

12 DIRECT EXAMINATION

13 BY MR. OSBORNE:

14 Q. Mr. Charles, where do you work?

15 A. I work for the City of Charleston
16 Police Department.

17 Q. How long have you been there?

18 A. I have worked for the police department
19 for 20 years.

20 Q. What is your position at the Charleston
21 Police Department?

22 A. My position with CPD, I work as a crime
23 scene technician.

24 Q. Have you held that position your entire
25 time with CPD?

1 A. Yes, sir.

2 Q. What are some of your duties and
3 responsibilities as a crime scene tech?

4 A. Yes, sir. As crime scene tech my
5 duties is to respond to crime scene calls, process
6 the scene, photograph the scene, document the
7 scene, and also collect physical evidence at the
8 crime scene.

9 Q. Okay. In that capacity did you have
10 the occasion to respond to a shooting call at
11 America Street on May the 22nd of 2015?

12 A. Yes, sir, I did.

13 Q. Tell the jury what happened when you
14 first arrived on the scene?

15 A. Yes, sir. When I first arrived on the
16 scene on May 22nd at [REDACTED] America Street I spoke with
17 the first responding officer, Officer Shelby
18 August, and she explained to me that a shooting
19 just occurred and there was several fired shell
20 casings at the scene. Also there were two victims.
21 The two victims were shot and there were one adult
22 victim and also five-year old victim. And both
23 victims were transported to MUSC for gunshot
24 wounds. And the five-year old suffered a gunshot
25 wound to his lower back and the adult victim also

1 was shot in the legs.

2 Q. Okay. So you are on scene and you hear
3 there are two victims and there are found shell
4 casings. First explain to the jury what are found
5 shell casings?

6 A. Yes, sir. First before anything I will
7 conduct a walkthrough of the scene with the first
8 responding officer to see what's evidence. There
9 were located or found at the scene and there were
10 five shell casings at that time that were found at
11 the scene and I took photographs of the fired shell
12 casings and also of the evidence and after that
13 collect the fired shell casings.

14 Q. Okay. So -- and the fired shell
15 casings just in case anyone doesn't know, is that
16 an ejection from a semi-automatic pistol?

17 A. Yes, sir.

18 Q. So the bullet, it has the projectile
19 portion and the fired shell casing portion, fired
20 shell casing ejects, the bullet goes forward?

21 A. Bullets go forward. The fired shell
22 casings will eject from the weapon.

23 Q. From a semi-automatic weapon?

24 A. From a semi-automatic weapon.

25 Q. Okay. So you got fired shell casings.

1 Is that one of the first things you want to try to
2 collect?

3 A. Yes, sir. As a crime scene tech we
4 collect the fired shell casings, yes.

5 Q. And why is that one of your first?

6 A. The reason why I will collect the fired
7 shell casings first because it's a small item and
8 easy to destroy. Anyone will step on the evidence.
9 I don't want the evidence to be destroyed or lost
10 so I will collect the fired shell casings just for
11 secured without anyone destroying it.

12 Q. Explain to the jury how you go about
13 collecting these fired shell casings?

14 A. At first I would explain I will take
15 photographs of the fired shell casings at the
16 scene, the locations, and I will collect gloves and
17 put in bags and seal the bags and transport it to
18 my office.

19 Q. And what was the make and caliber of
20 the fired shell casings in this case?

21 A. Yes, sir, all five fired shell casings.
22 They were all the same caliber. They were all
23 .9 millimeters Luger fired shell casings. They are
24 all the same.

25 MR. OSBORNE: Your Honor, at this time

1 I would seek to admit State's Exhibit 12
2 through 21. I believe without objection.

3 THE COURT: Any objection to those?

4 MR. ARCHER: No objection.

5 THE COURT: Without objection the
6 exhibits will be admitted. You may publish them to
7 the jury if you like.

8 (STATE'S EXH. 12-21 in evidence.)

9 MR. OSBORNE: Thank you, Your Honor. I
10 have one last, it's a little out of order, State's
11 Exhibit 147. Seek to admit that as well.

12 THE COURT: Any objection to 147?

13 MR. ARCHER: No objection.

14 THE COURT: That one also will be
15 admitted. You may publish.

16 (STATE'S EXH. 147 in evidence.)

17 BY MR. OSBORNE:

18 Q. Start off by showing you State's
19 Exhibit 2. What is this picture showing?

20 A. This picture is showing the location
21 where the adult shooting victim was found right in
22 front of 8 America Street. That's -- he was found
23 in the middle of the road in front of America
24 Street.

25 Q. Okay. And these little orange placards

1 here, are you putting those down?

2 A. Yes, sir. I put those down to show the
3 different blood stain. Also showing the directions
4 of the pattern of the blood stain on the roadway.

5 Q. Okay. Mr. Charles, if you would press
6 that little arrow up there on the top on your
7 screen?

8 A. On my screen, the green one?

9 Q. Yes. Then clear that. You just keep
10 controlling that.

11 A. Thank you, sir.

12 Q. I'm going to go to State's Exhibit 12
13 now. What do we have here by placard 11?

14 A. Placard item No. 11. That's the silver
15 necklace was -- the necklace was also found on the
16 in the roadway, the same location where the
17 shooting victim was found.

18 Q. Okay. Show you State's Exhibit 9 here.
19 We are looking back towards America Street?

20 A. Yes, sir. This picture showing the
21 pathway between building four and building six and
22 that's the pathway going out on America Street.

23 Q. Okay. Then what do we have over here
24 by the tree?

25 A. Over here by the tree we have here is

1 one shoe, a kid shoe right foot. Was also found at
2 the scene between building four and building six.

3 Q. Okay. Showing you State's 10, just
4 another photograph showing a shoe?

5 A. Yes, sir. That's a close-up photograph
6 of the shoe right here.

7 Q. All right. State's 11?

8 A. In the photograph displaying the
9 playground area, the kids playground area where
10 some of the or where the fired shell casings were
11 found at the scene.

12 Q. Moving onto State's 13. Now, on
13 State's 13, these numbers that are back here, what
14 do they represent, these placards?

15 A. Yes. These numbers represent the
16 location where the fired shell casings were located
17 at the scene. We have here placard 17, 2, 3
18 close-up photograph.

19 Q. Once again a child's shoe. Now, moving
20 on to State's 14 and this is just a close-up
21 photograph showing the shell casings?

22 A. Yes, sir. This placard No. 2, placard
23 No. 3, No. 4, placard No. 5, placard No. 6, they
24 are all showing the fired shell casings, the
25 location we located all the fired shell casings at

1 the scene.

2 Q. State's 15 shows individual an
3 photograph of each one of these shell casings?

4 A. Yes, sir. Placard No. 2 is showing the
5 close-up photographs of the fired shell casings at
6 the scene.

7 Q. We will move to 16. Showing 3 and 4?

8 A. Placard No. 3 and also placard No. 4
9 display close-up photographs of the fired shell
10 casings.

11 Q. All right. 17?

12 A. 17 is also showing a close-up
13 photographs of the fired shell casings at the scene
14 and in the playground area.

15 Q. 18?

16 A. 18 also showing a close-up photograph
17 of the fired shell casings at the scene.

18 Q. 19?

19 A. 19 showing an overall photograph of the
20 playground area, also displaying the fired shell
21 casings on the ground.

22 Q. 20?

23 A. In this photograph this is a photograph
24 where the beer bottle was found near the unit,
25 Heineken beer bottle on top of the wall. I took a

1 picture of it.

2 Q. And next to the Heineken is what?

3 A. Next to the Heineken beer bottle is a
4 cell phone right here. In the photograph you can
5 see a cell phone. It's T-Mobile cell phone right
6 here next to the beer bottle.

7 Q. Where are the shell casings in
8 reference to this photograph?

9 A. In reference to the photograph the
10 shell casings were located in the area right near
11 the playground.

12 Q. Okay. And this is just close up of the
13 two?

14 A. Yes, sir. That's the close up, that's
15 placard No. 7 showing the close-up photographs of
16 the cell phone and also placard No. 8 showing
17 close-up photograph of the Heineken beer bottle.

18 Q. Okay. Now I am showing you State's
19 Exhibit 147. Can you point out on here where the
20 Heineken beer bottle and cell phone would be?

21 A. Yes, sir. The Heineken beer bottle was
22 located right here and next to it is the T-Mobile
23 cell phone.

24 Q. Can you see the child's shoe in this
25 photograph?

1 A. The child's shoe is going to be between
2 building four and building six somewhere near the
3 tree, on the ground near the tree.

4 Q. Okay. Then what do we have above the
5 Heineken beer bottle right up here? Can you look
6 at the screen behind you?

7 A. Okay. That's better. May I stand up,
8 please?

9 THE COURT: Yes.

10 THE WITNESS: You talking about the
11 street light?

12 BY MR. OSBORNE:

13 Q. Right.

14 A. Yes, sir. And that's the beer bottle
15 and the Light Touch cell phone and also the area
16 that's where all the fired shell casings were
17 located. That's the street light.

18 MR. ARCHER: No objection.

19 MR. OSBORNE: Your Honor, may I
20 approach?

21 THE COURT: You may.

22 BY MR. OSBORNE:

23 Q. Showing you what's been marked 134, do
24 you recognize this?

25 A. Yes, sir.

1 Q. What is it?

2 A. That's the overall photograph of the
3 area of the shooting area and also the showing the
4 playground.

5 Q. Your Honor, at this time I would seek
6 to use 134 as demonstrative purposes to help
7 illustrate where some of this evidence was.

8 THE COURT: Any objection to him doing
9 that, Mr. Archer?

10 MR. ARCHER: I have no objection to him
11 using it for demonstrative purposes.

12 THE COURT: You may do so.

13 BY MR. OSBORNE:

14 Q. All right. Mr. Charles, first can you
15 point on here generally speaking where that pile of
16 blood was where you first arrived on scene around
17 America Street?

18 A. Yes, sir. When I first arrived on the
19 scene and America Street the large amount of blood
20 were in front of building A. This is building A
21 and the blood was located in front of -- in the
22 roadway right in that area in front of building A
23 America Street. So this is America Street and the
24 blood were located exactly -- location would be
25 somewhere on America Street in front of building A.

1 Q. And you said there was a walkway in
2 between two buildings. Where is that walkway?

3 A. The walkway between the two buildings,
4 building four and building six. So the walkway
5 between the two buildings would be right in this
6 area right there.

7 Q. And where was the Heineken and the cell
8 phone located?

9 A. The cell phone and the Heineken bottle
10 were located right there on top of the grate wall
11 next to the AC unit.

12 Q. And generally where were the shell
13 casings?

14 A. Yes, sir, the fired shell casings were
15 located one in the area near the playground on this
16 area.

17 Q. Okay. Thank you.

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

20 THE COURT: Yes, sir.

21 BY MR. OSBORNE:

22 Q. I am showing you now what's been marked
23 for ID purposes as State's 74. Do you recognize
24 that?

25 A. Yes, sir.

1 Q. And what is that?

2 A. There were -- these are the fired shell
3 casings that I collected from the scene, all five
4 fired shell casings.

5 Q. Okay. And you know that how?

6 A. I know that because of my initials is
7 in the outside of the envelope R.C., Renee Charles,
8 so that's how I know that that I collected myself
9 from the scene.

10 Q. Okay. Once you collected them you put
11 them in evidence?

12 A. They were collected, bagged and sealed
13 and placed into evidence.

14 Q. Okay. I am showing you now what's been
15 marked as State's Exhibit No. 29. Can you tell me
16 if you recognize that?

17 A. Yes, sir.

18 Q. What is that?

19 A. That's the kid's shoe right foot side
20 shoe and also collected at the scene, I took
21 photograph of it and my initials on the outside of
22 the envelope R.C., Renee Charles, and that's the
23 item I collected from the scene.

24 MR. OSBORNE: Okay. Your Honor, at
25 this time I would request State's 29 be admitted

1 and published to the jury.

2 MR. ARCHER: Judge, I don't have an
3 objection to the fact that he's identified it. But
4 I don't think he has shown any relevance of this
5 shoe that belonged to anybody involved in the
6 shooting or that it was not just trash laying out
7 in the street. He has got to show relevance of it.

8 MR. OSBORNE: Okay.

9 THE COURT: Lay a foundation for it.

10 MR. OSBORNE: We can certainly do that
11 later.

12 THE COURT: You may do so.

13 BY MR. OSBORNE:

14 Q. Well, do that now. You found out that
15 there was a child who was shot?

16 A. Yes, sir, that's correct.

17 Q. How big is that shoe?

18 A. That's the size of a child shoe.

19 Q. And you said that or did you say that
20 another shoe was later recovered?

21 A. I don't recall another shoe was
22 recovered. That was only shoe that I recall that
23 was found at the scene near the playground where
24 the five-year old boy was shot and there was a shoe
25 that was right near the same area, same location

1 and then matched the description of a child shoe.

2 Q. So you learned a child was shot in the
3 area, you found a child's shoe in the area, and
4 then you also found a number of shell casings as
5 that photograph showed earlier photograph right
6 next to where the shell casings were?

7 A. Yes, sir, that is correct.

8 Q. Your Honor, at this time we will seek
9 to admit State's Exhibit 29.

10 MR. ARCHER: I don't think he has shown
11 -- still hasn't shown any relevance. Shoe sitting
12 out in the middle of a courtyard. They need to
13 have some sort of evidence that the child Tyreik
14 lost a shoe, then maybe he can connect it up. But
15 it is not relevant.

16 THE COURT: Overruled. I will admit
17 it.

18 (STATE'S EXH. 29 in evidence.)

19 BY MR. OSBORNE:

20 Q. Is this the shoe that you recovered on
21 the scene?

22 A. Yes, sir. That is the shoe. I have my
23 initial, my initials on the tag with the case
24 number, evidence item number and my name is on the
25 tag.

1 MR. OSBORNE: Thank you. No further
2 questions.

3 THE COURT: You may cross-examine.

4 CROSS-EXAMINATION

5 BY MR. ARCHER:

6 Q. How long have you been a crime scene
7 investigator?

8 A. Yes, sir. I have been working as a
9 crime scene investigator for 20 years.

10 Q. Twenty years?

11 A. Yes, sir.

12 Q. And I would suspect you would have
13 collected a lot of shells over those 20 years?

14 A. Yes, sir.

15 Q. And any idea about how many shell
16 casings you may have collected?

17 A. A lot. I don't know the --

18 Q. A few thousand?

19 A. I would say a lot. I couldn't give you
20 an exact number, but I know it's a lot.

21 Q. Okay. Do you have any idea what
22 percentage of those shell casings were
23 .9-millimeter shells?

24 A. At that time when I responded I was
25 advised that there were several fired shell casings

1 at the scene so I was told they were all in the
2 same area where the shooting took place. When I
3 took photographs of the fired shell casings and I
4 collected the fired shell casings there were all
5 the same caliber when I looked and checked the
6 information on the fired shell casings.

7 Q. Well, I understand that. But you go to
8 crime scenes?

9 A. Yes, sir.

10 Q. And when you go to crime scenes whether
11 it's this scene or some other scene you collected
12 shell casings?

13 A. That is correct yes, sir.

14 Q. What percentage of those shell casings
15 appear to be .9-millimeter shell casings,
16 50 percent, 70 percent?

17 A. I will say it all depends on the scene.
18 Some scene I can respond to a shooting I can
19 recover 40-caliber shell casings, I can recover .45
20 or .38 or a .9. It's all based on the location and
21 also what type of incident. I don't have the exact
22 number percentage wise.

23 Q. Let me ask you this: Rather than how
24 many shell casings what percentages of instances
25 where you collect shell casings whether it's one or

1 40 involve .9-millimeter pistols?

2 A. It happens often, sir. All depends
3 like if I to go a shooting I don't know what kind
4 of type of fired shell casings I am recovering.
5 Could be -- I don't know the exact -- I don't know
6 how the question is if it's a .9 or .45, I just
7 don't know. When I go to a scene the first
8 responding officer would say crime scene tech
9 Charles we have a shooting. We recovered some
10 shell casings and based on the information from the
11 officer I will say okay, I photograph the scene and
12 I would collect it. I would check the information
13 after I collect the fired shell casings.

14 Q. I sort of understand that, okay? But
15 how many of the crimes did you investigate, what
16 percentage of the crimes that you investigate
17 involve .9-millimeter? I mean is it half of them,
18 .9-millimeter are fair -- let me withdraw that
19 question.

20 A. Rephrase it for me, sir.

21 Q. .9-millimeter is a fairly popular
22 pistol?

23 A. Yes, sir.

24 Q. Okay. And you get called to
25 investigate shootings?

1 A. Yes, sir.

2 Q. Now, would you say half the shootings
3 involve .9-millimeter pistols or two-thirds or do
4 you have any idea from your 20 years experience
5 what percentage of the shootings you investigate
6 involve .9-millimeter pistols?

7 A. I will say it's a lot. I will say
8 roughly one more than half.

9 Q. More than half?

10 A. Yes, sir.

11 Q. Okay.

12 A. That's -- more than half.

13 Q. And there are lots of various caliber
14 pistols?

15 A. There was various caliber pistols, yes,
16 sir.

17 Q. And is there any other caliber pistol
18 that comes anywhere near half of the shells you
19 collect?

20 A. I do collect .45 calibers and .40
21 calibers and .38 calibers, but at the shooting I
22 recovered the .9 millimeters fired shell casings.

23 Q. That's one you recover the most often
24 is .9 millimeters, right?

25 A. Yes, sir, you are correct.

1 Q. Okay. That's all I wanted to know.
2 Oh, let me ask, I do have some questions. You got
3 those shell casings?

4 MR. OSBORNE: Probably up there.

5 MR. ARCHER: Are they in evidence?

6 MR. OSBORNE: I did not move them.

7 BY MR. ARCHER:

8 Q. You collected I believe this is No. 79.

9 A. Yes, sir.

10 Q. These are the shell casings that you
11 would have collected?

12 A. These are the fired shell casings that
13 I collected myself.

14 Q. Okay. Did you turn them over to
15 anybody else for processing?

16 A. Normally fired shell casings we send it
17 to latent recovery to be process for fingerprints
18 for further analysis.

19 Q. Did you send these out for fingerprint
20 processing?

21 A. Allow me to check my records.

22 Q. Sure.

23 A. Can I please look at that.

24 Q. Sure. (Handing.)

25 A. Yes, sir. They were submitted for

1 processing yes, sir.

2 Q. Who would have processed them for
3 fingerprints?

4 A. Yes, sir. That would be the latent
5 recovery crime scene tech Mary Phillips.

6 Q. Mary Phillips, she works with the City
7 of Charleston?

8 A. Yes, sir. She works with crime scene
9 forensic department.

10 Q. And you don't know what she may have
11 found?

12 A. No, sir. That would be something she
13 will.

14 Q. Have to testify to?

15 A. About.

16 Q. Right. But it is not uncommon to find
17 a fingerprint on a shell, is it?

18 A. It's possible that she process any
19 fired bullets.

20 Q. Okay. That's pretty well standard
21 procedure?

22 A. Yes.

23 MR. ARCHER: Okay. No further
24 questions.

25 THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. OSBORNE:

Q. Nines are common?

A. Yes.

MR. OSBORNE: No further questions.

THE COURT: Recross?

MR. ARCHER: No.

THE COURT: You may step down, sir.

Wish to excuse the witness?

MR. OSBORNE: Yes, Your Honor.

THE COURT: Any objection?

MR. ARCHER: To excusing him? No, sir.

THE COURT: You are free to go. Thank you very much. Ladies and gentlemen of the jury, we are going to take a short break at this point in time. You may step back to the jury room. Please don't discuss anything about this case until I ask you to do so. You may retire to the jury room. Thank you very much.

(Thereupon, the jury exited the courtroom at 4:14 p.m.)

THE COURT: We are in recess for about ten minutes. Thank you very much.

(A recess transpired.)

THE COURT: State ready to proceed?

1 MR. OSBORNE: Yes.

2 THE COURT: Defense ready to go
3 forward?

4 MR. ARCHER: Yes, sir, Your Honor.

5 THE COURT: Bring the jury in.

6 MR. ARCHER: I think we have kind of a
7 basic agreement to do a couple of crime scene
8 people or something like that, then adjourn for the
9 evening if it's permissible with Your Honor.

10 THE COURT: If you are happy with it
11 I'm happy with it. What do you want to do about
12 the stipulations? I didn't pick them up at the
13 beginning.

14 MR. OSBORNE: We can do it in the
15 morning I think.

16 THE COURT: Okay. We will do it in the
17 morning..

18 MR. OSBORNE: We have a couple of
19 custodians here.

20 MR. ARCHER: I am old. I get tired,
21 Your Honor.

22 (Whereupon the jury entered the
23 courtroom at 4:26 p.m.)

24 THE COURT: The record will reflect
25 that the jury has returned to the courtroom. The

1 State is in the process of calling its witnesses
2 and you may call your next witness.

3 MR. OSBORNE: Thank you, Your Honor.
4 State calls Tonia Mallette.

5 THE COURT: Come forward and be sworn,
6 please, ma'am.

7 TONIA MALLETTE

8 having been duly sworn, testifies as follows:

9 THE CLERK: Please state your full name
10 and spell your last name for the record.

11 THE WITNESS: It's Tonia Mallette,
12 T-O-N-I-A, M-A-L-L-E-T-T-E.

13 DIRECT EXAMINATION

14 BY MR. OSBORNE:

15 Q. Good afternoon, Ms. Mallette. Where
16 are you employed?

17 A. Charleston County Consolidated 911
18 Center.

19 Q. How long have you worked there?

20 A. Twenty-seven years.

21 Q. What's your position there?

22 A. I am an analyst. Moreover I am the
23 records custodian.

24 Q. And as a records custodian what are
25 some of your duties and responsibilities?

1 A. Some of my duties include I am the
2 keeper of all 911 calls, incident reports, radio,
3 audio and for any request that comes to the 911
4 center.

5 Q. Okay. And some of those requests for
6 reports and 911 calls, are they made by law
7 enforcement agencies?

8 A. Yes, they are.

9 Q. And investigators sometimes from my
10 office will make such requests?

11 A. Yes.

12 Q. And in reference to this shooting
13 investigation did an investigator with my office
14 make a request for a call detail report?

15 A. Yes.

16 Q. And what is a call detail report?

17 A. A call detail report is a report that
18 begins with the surmise information between first
19 of all, the call taker and the actual victim or the
20 caller and then it also includes the information
21 between the dispatcher and the actual officers that
22 respond to an incident.

23 Q. Also called an incident detail report I
24 think?

25 A. Yes.

1 Q. All right. Are those reports made at a
2 time or near the time of the incident or the call?

3 A. Yes, it is.

4 Q. Okay. Are those reports kept in the
5 ordinary course of business for consolidated
6 dispatch?

7 A. Yes, it is.

8 Q. All right. May I approach? I am
9 showing you what's been marked as State's Exhibit
10 No. 65. Can you tell me if you recognize what that
11 is?

12 A. I do.

13 Q. What is that?

14 A. This is the incident detail report.

15 Q. Okay. And that's an incident detail
16 report in reference to a vandalism; is that
17 correct?

18 A. Yes.

19 Q. And who is the individual who reported
20 that call?

21 A. Looks like Desmond Lewis.

22 Q. Your Honor, at this time we would seek
23 to admit State's Exhibit 65 into evidence.

24 THE COURT: Any objection?

25 MR. ARCHER: I need to see it, Your

1 Honor.

2 MR. OSBORNE: (Handing.)

3 MR. ARCHER: No objection, Your Honor.

4 THE COURT: Without objection then it
5 will be admitted. You may publish if necessary.

6 (STATE'S EXH. 65 in evidence.)

7 BY MR. OSBORNE:

8 Q. What is the nature of this call again?
9 Where do you see that?

10 A. If you go to the left that would be it
11 says incident type on your left. It would be the
12 second entry on your left, line item on your left.
13 Says incident type, there's a computer code there
14 111, says damage vandalism mischief.

15 Q. Okay: And this location name here, [REDACTED]
16 Alexander Street [REDACTED] is that where the caller called
17 from?

18 A. That's the incident location, yes.

19 Q. Okay. Caller name you mentioned?

20 A. Desmond Lewis.

21 Q. And what is the date that the call is
22 reported?

23 A. The incident date was July 14th, 2013.

24 Q. Here by the comment section what is
25 reflected in the nature of this call?

1 A. The complainant which is the caller,
2 Mr. Lewis, complained 2000 Grand Marquis red in
3 color has been vandalized.

4 Q. All right. Negative on wanting a 17 at
5 this time. What is a 17?

6 A. A report.

7 Q. You may not know this, do you know that
8 Chapel Street is on the east side of Charleston?

9 A. I know it is downtown. I don't know
10 exactly where.

11 MR. OSBORNE: No further questions.

12 MR. ARCHER: No questions.

13 THE COURT: You may step down. Wish to
14 excuse the witness?

15 MR. OSBORNE: Yes, Your Honor.

16 MR. ARCHER: Yes, sir.

17 THE COURT: You may leave the
18 courthouse. Thank you, ma'am. Mr. Osborne, you
19 may call your next witness.

20 MR. DURANT: State would call Sarah
21 Gladwell.

22 THE COURT: Come forward and be sworn,
23 please.

24 SARAH GLADWELL

25 having been duly sworn, testifies as follows:

1 THE CLERK: Please state your full name
2 and spell your last name for the record.

3 THE WITNESS: My name is Sarah
4 Gladwell. S-A-R-A-H, G-L-A-D-W-E-L-L.

5 THE COURT: Counselor, your witness.

6 DIRECT EXAMINATION

7 BY MR. DURANT:

8 Q. Thank you, sir. Ms. Gladwell, could
9 you tell the jury where you're employed?

10 A. I work for the Charleston Police
11 Department and I work in the forensic services
12 division, the crime scene unit.

13 Q. How long have you been with the crime
14 scene unit at the Charleston Police Department?

15 A. I have worked in the crime scene unit
16 for almost eight years now.

17 Q. And you have been with the crime scene
18 unit your entire career with the Charleston Police
19 Department?

20 A. Yes, sir.

21 Q. Did you have the occasion to respond to
22 the area of [REDACTED] America Street on the morning,
23 Saturday morning of May the 23rd of 2015?

24 A. Yes, sir.

25 Q. That was around 7:00 a.m. I believe?

1 A. It was, yes, sir.

2 Q. For what purpose?

3 A. There had been a shooting the night
4 before and it's standard practice when something
5 like that happened at nighttime because of the
6 darkness and everything and the lighting we usually
7 go out the next morning to search the scene to look
8 for additional evidence.

9 Q. Okay. And were you doing this alone or
10 accompanied by someone?

11 A. Yes. There were a couple of other
12 people with me helping me search the scene again.

13 Q. Okay. Other uniformed officers out
14 there as well; is that correct?

15 A. Yes, sir.

16 Q. What did you do upon arriving at the
17 scene that morning?

18 A. When I got there I was told what had
19 happened, what areas had been searched, where the
20 evidence was located the night before. So I knew
21 which areas to focus on and to extend outward from.
22 So I started with taking photographs of the scene.

23 Q. And at the time you arrived there had
24 any additional evidence been located?

25 A. Yes, sir. Charleston Police Department

1 officer had located an additional fired cartridge
2 case and they had marked it with a CPD business
3 card to identify its location for us.

4 Q. Okay. And referring you to State's
5 Exhibit No. 134 in evidence, this is previously
6 America Street. Could you show the jury basically
7 where that additional shell casing was found?
8 General area.

9 A. Right here.

10 Q. Corner of the playground?

11 A. Yes, sir.

12 Q. This would be building four?

13 A. Yes.

14 Q. This is building six over here; is that
15 correct?

16 A. Yes.

17 Q. Okay. And what did you do with this
18 additional shell casing that had been located by
19 the police officers before you arrived?

20 A. I photographed it where it was and then
21 after I photographed how it was by itself I took a
22 yellow evidence marker and put it beside the
23 evidence and then I photographed it again.

24 Q. And after you photographed it the
25 second time what did you do with the actual shell

1 casing?

2 A. I collected it.

3 Q. And what was the make and caliber of
4 that shell casing?

5 A. Sig .9-millimeter Luger.

6 Q. And during the course of your trip to
7 [REDACTED] America Street were you able to locate other
8 shell casings?

9 A. Yes, sir.

10 Q. And what did you use to locate those
11 shell casings or how did you locate those shell
12 casings?

13 A. The officers had already identified the
14 one fired cartridge case, but the standard practice
15 for us is we use a metal detector the next day in
16 the daylight hours as well just to make sure that
17 we located everything. So I used a metal detector
18 on all of those areas and surrounding areas around
19 and located two additional fired cartridge cases.

20 Q. Were those kind of outside the
21 perimeter that had been marked off the night
22 before?

23 A. Yes, sir.

24 Q. And once again referring to State's
25 Exhibit No. 134, can you point out to the jury the

1 location of those additional shell casings you
2 located?

3 A. Yes, sir. They were down here. A
4 little bit hard to tell with the trees.

5 Q. Kind of over here under these trees?

6 A. Yes, sir.

7 Q. In that area?

8 A. Um-hmm.

9 Q. Okay. And as with the other one what
10 did you do with -- I believe you have marked the
11 other one with a No. 1; is that correct?

12 A. Yes, sir. I went there and marked the
13 first fired cartridge case with an evidence marker
14 and marked No. 1 and the two additional ones were
15 marked with 2 and 3 and after they were marked they
16 were photographed again with the evidence marker in
17 place.

18 Q. And what were the make and caliber of
19 the other two shell casings you located?

20 A. The other two were the same. They were
21 all three Sig .9-millimeter Luger.

22 Q. So basically the same, all three of
23 them you collected were the same make and caliber?

24 A. Yes, sir.

25 Q. Hand you what's previously been marked

1 as State's Exhibit No. 75.

2 MR. ARCHER: No objection.

3 MR. DURANT: Your Honor, at this time
4 we would offer State's Exhibit No. 75.

5 MR. ARCHER: Without objection.

6 THE COURT: Okay. It will be admitted
7 as marked.

8 (STATE'S EXH. 75 in evidence.)

9 BY MR. DURANT:

10 Q. Could you tell the jury what State's
11 Exhibit No. 75 is?

12 A. These are the three fired cartridge
13 cases that I collected that morning.

14 Q. Okay. How do you know that?

15 A. They have my handwriting on them as
16 well as my initials and my reporting number.

17 Q. Okay. And they appear to be in
18 substantially the same condition now as when you
19 collected them?

20 A. Yes.

21 Q. And I believe those were later sent to
22 SLED with other evidence in this case to SLED
23 laboratories; is that correct?

24 A. Yes..

25 Q. Now, while out there that morning did

1 someone point out something unusual in a tree?

2 A. Yes. Around the same area just outside
3 where the playground was a bullet strike damage to
4 one of the trees was observed.

5 Q. And did you check that tree for a
6 projectile?

7 A. Yes.

8 Q. And did you locate a projectile?

9 A. No, sir.

10 Q. Did you find out later that a
11 projectile had been located in that tree?

12 A. Yes, sir.

13 Q. Who collected that projectile?

14 A. Crime scene officer Richard Wiersma.

15 Q. And do you recall when that was done?

16 A. No, sir, I don't recall the date.

17 Q. Would that have been on June the 11th
18 of 2015?

19 A. Yes, sir, that sounds right.

20 MR. ARCHER: No objection.

21 THE COURT: Without objection it will
22 be admitted as marked. What was the number?

23 MR. DURANT: State's 77, Your Honor.

24 THE COURT: Thank you very much.

25 (STATE'S EXH. 77 in evidence.)

1 BY MR. DURANT:

2 Q. Handing you what is marked as State's
3 Exhibit 77 in evidence and ask if you recognize
4 this as being the projectile recovered by
5 Investigator Wiersma?

6 A. Yes, sir.

7 Q. That was on June 11th of 2015?

8 A. Um-hmm, yes, sir.

9 Q. I believe that item was also sent to
10 SLED laboratory later for analysis; is that
11 correct?

12 A. That's correct, yes, sir.

13 MR. DURANT: Your Honor, at this time
14 the State would introduce I believe without
15 objection State's Exhibit 42, 43, 44, 45, 46, 47,
16 48, 49, 50, 51, and 52.

17 MR. ARCHER: No objection.

18 THE COURT: Without objection they will
19 be admitted as they have been marked. You may
20 publish the photos.

21 (STATE'S EXH. 43-52 in evidence.)

22 BY MR. DURANT:

23 Q. I would like to go through these
24 photographs and just have you testify to the jury
25 what they are.

1 A. Yes, sir.

2 Q. We will start with State's Exhibit
3 No. 42. And can you tell me what that depicts?

4 A. Yes.

5 Q. Okay. And that is this project we are
6 talking about, correct?

7 A. Yes. Looks like it's looking in from
8 America Street towards the playground.

9 Q. Is that correct?

10 A. Yes, sir.

11 Q. And that building on the right-hand
12 side of the photograph would be building four?

13 A. Yes, sir.

14 Q. And that's the -- one of those
15 apartments is the one that Tyreik G. lived in;
16 is that correct?

17 A. Yes, sir.

18 Q. Moving on to 43. What does that show?

19 A. I am sorry. I am a little turned
20 around.

21 Q. This is basically looking the other way
22 from the other photograph.

23 A. Yes.

24 Q. This little thing right here would be
25 the edge of the park; is that correct?

1 A. Yes, sir.

2 Q. Building four is this, building six is
3 over here?

4 A. America Street down the middle, yes,
5 sir.

6 Q. Okay.

7 A. Thank you.

8 Q. And this tree right here is basically
9 where the bullet was removed from?

10 A. Yes, sir.

11 Q. Is that correct?

12 A. Yes, sir.

13 Q. State's 44, what does that show?

14 A. That is the tree and the brown tan
15 circular area right there that you can see that's
16 where the damage to the tree from the bullet.

17 Q. That's more clearly shown in 45?

18 A. Yes, sir.

19 Q. Okay. 46.

20 A. This is looking towards the playground.
21 I believe the tree we were just speaking about is
22 on the right side. That tree right there.

23 Q. Building four would be to your right?

24 A. On the right, yes, sir.

25 Q. Most of that -- a number of the shell

1 casings were found over in this area; is that
2 correct?

3 A. Yes, sir.

4 Q. That corner of the park?

5 A. Yes, sir.

6 Q. Would maybe be shown better in 47?

7 A. Yes.

8 Q. And you mentioned that one of the
9 police officers had already marked a shell casing
10 when you got there. Does that depict the location
11 where this shell casing was located?

12 A. Yes.

13 Q. Where that was you can mark with your
14 finger.

15 A. (Witness complies with request.)

16 Q. In that area where you have got the red
17 dot? To remove that all you got to do is hit the
18 arrow up there in the upper right-hand corner and
19 hit clear.

20 A. (Witness complies with request.)

21 Q. Okay.

22 A. It was in this general area.

23 Q. And we will show this State's
24 Exhibit 48. What does placard one depict?

25 A. That is the first shell casing that the

1 officers had located.

2 Q. That's the officer's business card that
3 he marked it with?

4 A. It is, yes, sir.

5 Q. And 49, do you know what that depicts?

6 A. This is further back from that side of
7 the playground. I believe in this area is where I
8 found the two additional fired cartridge cases with
9 the metal detector.

10 Q. And this building right here you see
11 where my mouse is or can you see?

12 A. Yes, sir.

13 Q. That would be building four?

14 A. Building four.

15 Q. And right over on the other side of
16 this bench between that and the playground is where
17 most of the shell casings were found?

18 A. Yes, sir.

19 Q. And the ones you found, can you put the
20 approximate locations on this photograph?

21 A. (Witness complies with request.)

22 Q. Let me go to the next photo because I
23 think it may show --

24 A. Yes, thank you.

25 Q. Okay. One of them is marked, correct,

1 or both of them?

2 A. They are both marked, yes, sir.

3 Q. And show where two was found?

4 A. Right here.

5 Q. And three?

6 A. Right here.

7 Q. You can kind of -- and then moving on
8 to 51.

9 A. That's the second fired cartridge case.

10 Q. Which you can see zoomed in on,
11 correct?

12 A. Yes, sir.

13 Q. And finally 52?

14 A. And that's the third fired cartridge
15 case.

16 Q. Okay. A couple of other photographs I
17 want to show you. See if we have any objection to
18 them.

19 MR. ARCHER: No objection.

20 MR. DURANT: Your Honor, we would offer
21 State's Exhibit 141 and 146 without objection I
22 believe.

23 THE COURT: Without objection they will
24 be admitted as they have been marked.

25 (STATE'S EXH. 141, 146 in evidence.)

1 BY MR. DURANT:

2 Q. Let me start with 146 if I could. And
3 do you recognize what that depicts?

4 A. Yes, this is the middle between the two
5 buildings of building four and building six looking
6 towards the playground of the edge of building
7 four.

8 Q. Okay. And this location right here was
9 where most of the shell casings were found,
10 correct?

11 A. Yes, sir.

12 Q. I think you found some around the
13 corner over here, correct?

14 A. Yes, sir.

15 Q. This is the tree that was hit by the
16 bullet?

17 A. Yes.

18 Q. The bullet strike was on the other
19 side?

20 A. Yes, sir.

21 Q. And over here [REDACTED] would be [REDACTED]
22 Tyreik G. [REDACTED] apartment; is that correct?

23 A. Yes, sir.

24 Q. And finally I would like you to look at
25 141. Do you recognize what that depicts?

1 A. Yes, sir.

2 Q. Okay. What building is this?

3 A. That's building four.

4 Q. Okay. And once again this is the
5 playground over here?

6 A. Yes, sir.

7 Q. Correct?

8 A. Yes, sir.

9 Q. Now, at our request you were asked to
10 go out and measure the distance from this tree to
11 this grate over here; is that correct?

12 A. Yes, sir.

13 Q. Did you do that?

14 A. I did.

15 Q. And what is that distance?

16 A. It was 61 feet 8 inches.

17 Q. Okay. Thank you, Ms. Gladwell. I
18 don't believe I have any further questions. Could
19 you please answer Mr. Archer may have.

20 THE WITNESS: Yes, sir, thank you.

21 THE COURT: Mr. Archer, your witness.

22 CROSS-EXAMINATION

23 BY MR. ARCHER:

24 Q. Ms. Gladwell, you recovered three shell
25 casings?

1 A. Correct.

2 Q. What did you do those shell casings
3 after they were recovered?

4 A. After they were collected they were
5 taken back to our office, our crime scene office,
6 where they were packaged and then they were
7 submitted to our evidence unit.

8 Q. Okay. Let me ask you, it is not
9 uncommon for shell casings to contain fingerprints;
10 is that correct?

11 A. I rarely know of any fingerprints that
12 have ever been recovered from spent shell casings.

13 Q. Did you submit the shell casings for
14 examination for fingerprints?

15 A. Yes, sir.

16 Q. To who would you have submitted it?

17 A. Those -- we have another crime scene
18 investigator in our unit and she is the latent
19 recovery specialist and anything that we want to be
20 fingerprinted with chemicals or that we cannot do
21 ourselves on scene we submit to her so she can
22 process the items for latent prints.

23 Q. Do you know her name?

24 A. Mary Phillips.

25 Q. Do you know what the results of her

1 examination were?

2 A. I do not, sir.

3 Q. Okay.

4 MR. ARCHER: No further questions.

5 REDIRECT EXAMINATION

6 BY MR. DURANT:

7 Q. I have just a couple on redirect, Your
8 Honor. You have been doing this for eight years?

9 A. Almost eight years.

10 Q. Have you ever heard of a fingerprint
11 being collected off of a spent shell casing in your
12 eight-year career?

13 A. No, sir.

14 Q. It doesn't happen, does it?

15 A. Not that I have seen and not that I
16 have heard.

17 Q. That's because fingerprints are
18 moisture and bullets when they are expelled are
19 basically red hot and burn off the moisture?

20 A. Yes, sir.

21 MR. DURANT: Thank you. I have nothing
22 further.

23 THE COURT: Recross?

24 MR. ARCHER: No recross, Your Honor.

25 THE COURT: You may step down. Wish to

1 excuse the witness?

2 MR. DURANT: We will, Your Honor.

3 THE COURT: Any objection?

4 MR. ARCHER: No objection.

5 THE COURT: You are free to leave,
6 ma'am, thank you. Ladies and gentlemen, we have
7 reached the stage of where we are at about 5:00 and
8 it's a good time to break for the evening.

9 Now, you know my instructions I gave
10 you earlier when you left the courthouse. The same
11 instructions will apply again. You should not try
12 to gather any information on your own outside the
13 courthouse. Don't listen to, watch or read
14 reports. Don't discuss this case with anyone.
15 Don't allow anyone to discuss it with you and
16 report any contact that might occur over the
17 evening.

18 We will start again in the morning at
19 9:00. Be in the jury room at that time. We will
20 start as soon thereafter as we can. I hope you
21 have a great evening and we will see you in the
22 morning. You are free to go.

23 (Thereupon, the jury exited the
24 courtroom at 4:58 p.m.)

25 (These proceedings were adjourned at

1 5:00 p.m., November 27, 2017, Charleston County,
2 South Carolina.)
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1 (The following proceedings resumed
2 November 28, 2017, Charleston County, South
3 Carolina, @ 9:11 a.m.)

4 (COURT'S EXH. 2-3 marked for
5 identification.)

6 THE COURT: I have been informed the
7 jury has arrived. Is the State ready to proceed?

8 MR. OSBORNE: We are, Your Honor. We
9 have two issues.

10 THE COURT: Mr. Archer, are you ready
11 to go forward?

12 MR. ARCHER: Ready to go forward, Your
13 Honor.

14 THE COURT: Yes, sir.

15 MR. OSBORNE: We have two stipulations
16 regarding projectiles and fired shell casings.

17 THE COURT: Okay.

18 MR. OSBORNE: And we have marked them
19 as court exhibits.

20 THE COURT: Have both parties signed
21 those?

22 MR. OSBORNE: Yes, Your Honor.

23 THE COURT: Do you want to pass that
24 up? Mr. Archer, have you agreed to those
25 stipulations?

1 MR. ARCHER: Yes, sir, Your Honor.

2 THE COURT: All right. What I would
3 intend to do then once the jury has come in, I will
4 announce the stipulations have been reached,
5 explain what they are and go over them with them.

6 MR. OSBORNE: Thank you, Your Honor.
7 The next issue is with regard Mary Phillips. She's
8 the crime scene technician that fingerprinted the
9 fired shell casings. We hadn't planned on calling
10 her as a witness, but based on numerous questions
11 that were brought out on cross, she is outside.
12 She is prepared to testify. We request to call her
13 as a witness and then just poll the jury to make
14 sure no one knows her.

15 THE COURT: All right. If you will let
16 me know when that is I will ask them whether or not
17 anybody is aware of.

18 MR. OSBORNE: We were going to call her
19 first.

20 THE COURT: We will do that when we
21 first call. Anything, Mr. Archer, from the
22 defense?

23 MR. ARCHER: No, Your Honor.

24 THE COURT: Okay. Bring the jury in.

25 (Whereupon the jury entered the

1 courtroom at 9:14 a.m.)

2 THE COURT: The record will reflect the
3 jury panel has been returned to the courtroom.

4 Hope everyone had a good evening. If any of you
5 had any problems or difficulty in complying with
6 the instructions that I gave you when you left
7 yesterday, please stand.

8 (No response from jurors.)

9 It appears that all jurors have been
10 able to comply with my instructions thus far.
11 Ladies and gentlemen, let me go over something with
12 you this morning. I have told you in the past that
13 the evidence in the case is the testimony of the
14 witnesses who testify from the witness stand and
15 whatever documents or other evidence comes into the
16 record through that testimony and then I always say
17 or by agreement of counsel.

18 What I am going to go over with you at
19 this time, the counsel in this case have agreed to
20 two stipulations of fact. Stipulations of fact are
21 agreements by counsel that certain facts are true
22 and for that reason we can announce it to the jury
23 and there's no need then to call witnesses to
24 establish these facts as being true. They have
25 agreed as to their truthfulness. So let me go over

1 these stipulations with you at this time. These
2 will be placed into the record as an exhibit of the
3 court and would be available to you during your
4 deliberations in the case for your review.

5 The first stipulation that I have has
6 been marked as Court's Exhibit No. 2. It is a
7 chain of custody stipulation and what it says is
8 the attorneys for the State and the Defendant agree
9 that appropriate measures took place in the
10 collecting and transporting of the following
11 exhibits while in the custody of the Charleston
12 Police Department and SLED, the South Carolina Law
13 Enforcement Division, the exhibit was not tampered
14 with at any time. Those exhibits are listed as
15 Charleston Police Department Item 20-204, SLED
16 container A-10, State's Exhibit 76. Projectile
17 recovered from Desmond Lewis's leg.

18 The next item is CPD Item 205 SLED
19 container A-11, State's Exhibit 62, that is GSR,
20 that's a gunshot residue taken from Desmond Lewis.
21 Next is CPD Item 102 through 106, SLED container
22 A-2 through A-6, State's Exhibit 74, that's five
23 fired shell casings .9-millimeter Luger. Next item
24 is CPD Item 301 through 303 SLED container A-7
25 through 9, State's Exhibit 75, that is three fired

1 shell casings .9-millimeter Luger.

2 The final item on this stipulation is
3 CPD Item 95 through -- excuse me -- 59 through 501
4 SLED container A-14, State's Exhibit 77, that's one
5 fired projectile recovered from tree. So that's
6 the end of that stipulation.

7 The second stipulation has been marked
8 as Court's Exhibit No. 3. And that states that the
9 attorneys for the State and Defendant agree that
10 appropriate measures took place in the collecting
11 and transporting of the following exhibit. While
12 in the custody of the Charlotte Mecklenburg Police
13 Department, Charleston Police Department and State
14 Law Enforcement Division, the exhibit was not
15 tampered with at any time. This is the following
16 item: CPD item 63-1 SLED container A-1, State's
17 Exhibit 78, that's a fired projectile removed from
18 Tyreik G. back.

19 Ladies and gentlemen of the jury, those
20 stipulations have been received by the court. They
21 will be entered into evidence as I stated and again
22 they will be available to you for your review
23 during your deliberations.

24 Let me turn these over to the court
25 reporter. When we completed our testimony

1 yesterday, the State was in the process of calling
2 its witnesses. The State may call its next
3 witness.

4 MR. OSBORNE: This is the witness Mary
5 Phillips, Your Honor.

6 THE COURT: Thank you.

7 MR. OSBORNE: Would you like to poll
8 the jury?

9 THE COURT: I will once we have her on
10 the stand and they can see who she is.

11 MR. OSBORNE: Thank you, Your Honor.
12 State calls Mary Phillips.

13 THE COURT: Thank you.

14 MARY PHILLIPS

15 having been duly sworn, testifies as follows:

16 THE CLERK: State your full name and
17 spell your last name for the record:

18 THE WITNESS: My name is Mary Phillips.
19 M-A-R-Y, P-H-I-L-L-I-P-S.

20 THE COURT: Ladies and gentlemen of the
21 jury, this witness was not listed on the list of
22 potential witnesses that I went over with you
23 yesterday when we went through jury qualifications
24 for this trial. Because of certain questions and
25 testimony that was received yesterday, the State

1 feels the need to call this witness at this time.
2 So I'm going to ask you the questions that I asked
3 you earlier about the witnesses that I did list and
4 that is is there any member of the jury panel who
5 has ever been related by marriage or are you
6 related by blood or have you ever had a close
7 social, personal or business relationship with this
8 witness, Ms. Mary Phillips? If that's true, I
9 would ask that you please stand.

10 (No response from jurors.)

11 The record will reflect that the jury
12 did not express that they have any relationship
13 with this witness. Mr. Archer, any other questions
14 you want me to ask concerning this matter?

15 MR. ARCHER: No, Your Honor.

16 THE COURT: All right. Then I will
17 declare the witness is competent to proceed to
18 testify. You may proceed.

19 DIRECT EXAMINATION

20 BY MR. OSBORNE:

21 Q. Ms. Phillips, thanks for coming down on
22 short notice.

23 A. Yes, sir.

24 Q. We had some questions that came up
25 yesterday in reference to fingerprinting fired

1 shell casings. I would like to ask you a couple of
2 questions on it. First where do you work?

3 A. I work for the City of Charleston
4 Police Department within the crime scene unit.

5 Q. The crime scene unit?

6 A. Yes, sir.

7 Q. And how long have you worked there?

8 A. A little over 11 years now.

9 Q. All right. And you say you work in the
10 crime scene department. What are your duties and
11 responsibilities there?

12 A. Well, I'm one of the master crime scene
13 investigators so I kind of lead a group of crime
14 scene investigators reviewing reports, making sure
15 we get training and I am also assigned as the lead
16 latent recovery specialist which means I process
17 evidence that is collected in the field for
18 fingerprint processing in the laboratory setting.

19 Q. Okay. Do you have any prior law
20 enforcement experience?

21 A. I worked for five years with the
22 Charlotte Mecklenburg Police Department within the
23 crime scene unit.

24 Q. And with Charlotte Mecklenburg as well
25 as CPD have you received any training in reference

1 to crime scene?

2 A. Of course. We are all accredited
3 through ASCLD/LAB as well as through the
4 International Association of Identification which
5 requires a certification to have at least 90 hours
6 of training every five years. So we are sent to
7 numerous classes for fingerprint recovery or blood
8 stain patterns analysis every year to keep up with
9 the certifications.

10 Q. Okay. Let's talk just a minute about
11 fingerprints. What does the term latent
12 fingerprint recovery even mean?

13 A. So in latent recovery my job is to take
14 the evidence that's collected out in the field and
15 process it using different techniques depending on
16 what kind of evidence it is for any fingerprints.
17 Latent fingerprints means basically that's an
18 invisible print that we can't see it right now, but
19 after the processing we would be able to develop a
20 print so that we can visualize it and collect it
21 and submit it for analysis.

22 Q. Okay. And so do you recover latent
23 fingerprints off every surface that you process?

24 A. I only wish. No, we do not.

25 Q. And why is that?

1 A. There's a lot of surfaces that aren't
2 good. As great as it looks on television, reality
3 is different. You have to have -- I always relate
4 an ink pad to your finger. If you have an ink pad
5 and there is not enough ink on it, are you going to
6 leave an impression on something? No. Your sweat
7 and oils on your skin work the same way. Also a
8 lot of people have worn down fingerprints over the
9 years so they don't leave enough of that ridge
10 detail on items. So you have to make good contact.
11 The surface also has to be receptive to a
12 fingerprint. Inside of cars are great examples.
13 They are textured. All that texture makes it to
14 where it is much harder to recover a print so
15 there's of course a lot of areas and items that are
16 bad surfaces. The best surface of course is clean
17 glass, but in a perfect world for me everything
18 would be made of that. Unfortunately it is not.

19 Q. So the fingerprint that's left is left
20 by moisture, chemicals, sweat that is on a person's
21 fingers?

22 A. Correct, your sweat and your oil which
23 is like 90 percent water.

24 Q. Okay. Let's talk about fingerprinting
25 fired shell casings. How many -- I know this is a

1 tough question, but how many fired shell casings do
2 you estimate that you have tried to lift
3 fingerprints off of over your 16 years in law
4 enforcement?

5 A. I would say thousands.

6 Q. All right. And of those thousands of
7 attempts to get fingerprints of fired shell
8 casings, how many times were you successful?

9 A. None.

10 Q. None. And that's because a bullet gets
11 hot?

12 A. Correct.

13 Q. Real hot?

14 A. Correct.

15 Q. Evaporates the moisture. In reference
16 to fired -- fingerprinting fired shell casings has
17 CPD recently changed its policy?

18 A. They have.

19 Q. All right. Explain that to the jury.

20 A. Because national studies, our own
21 studies, we have tried every method we could to
22 recover prints off of shell casings. It just does
23 not happen. So we currently do not process them
24 any more because we were processing so many of them
25 with zero percentage recovery rate.

1 Q. Let's go back though to -- when did the
2 policy change?

3 A. It started just this year in January.

4 Q. So back in 2015 you all were still
5 processing fired shell casings?

6 A. Correct.

7 Q. All right. Did you process the eight
8 fired shell casings from this investigation trying
9 to retrieve fingerprints?

10 A. I did.

11 Q. And did you have any success?

12 A. No, sir.

13 Q. Okay. And did you submit a report
14 saying that you did not have any luck getting those
15 fingerprints?

16 A. I did.

17 Q. And you submitted that report to us?

18 A. Correct.

19 MR. OSBORNE: No further questions.

20 THE COURT: Mr. Archer, you may
21 cross-examine.

22 MR. ARCHER: No questions.

23 THE COURT: Ma'am, you may step down.
24 Thank you very much. Wish to excuse the witness?

25 MR. OSBORNE: Yes, Your Honor.

1 THE COURT: Any objection from the
2 defense?

3 MR. ARCHER: No objection.

4 THE COURT: Ma'am, you are free to
5 leave the courthouse. Thank you very much. The
6 State may call its next witness.

7 MR. OSBORNE: State calls Lieutenant
8 Pete Farrell.

9 THE COURT: Come forward to be
10 sworn.

11 PETER FARRELL

12 having been duly sworn, testifies as follows:

13 THE CLERK: Please state your full name
14 and spell your last name for the record.

15 THE WITNESS: I'm Peter Farrell,
16 P-E-T-E-R, F-A-R-R-E-L-L.

17 THE COURT: Your witness.

18 DIRECT EXAMINATION

19 BY MR. OSBORNE:

20 Q. Lieutenant, where do you work?

21 A. I work for the Charleston Police
22 Department.

23 Q. For how long?

24 A. Twenty-two years.

25 Q. What are some of the positions that you

1 have held while you have been there?

2 A. I began at patrol. I also worked
3 investigations. I have been a property supervisor,
4 supervisor of detectives and I have been a
5 commander of a property division as well.

6 Q. Where do you work now?

7 A. Currently I am commander of a group
8 called the CYIC or the Criminal Intelligence
9 Operations Center. Basically a real time crime
10 center.

11 Q. Okay. What's your position there?

12 A. I supervise the intelligence unit
13 there.

14 Q. Your title?

15 A. I am sorry. I am a commander of that
16 group as well as special projects.

17 Q. Okay. How long have you had that
18 position?

19 A. June of 2015 I began this position.

20 Q. All right. What are some of your
21 duties as the commander of this crime unit?

22 A. I mentioned I supervise the
23 intelligence unit and under that are a couple
24 areas. One is field intelligence and the other is
25 the criminal analysts that work there. And then a

1 third area would be the camera monitoring unit.

2 Q. Let's talk about the camera monitoring
3 unit. When was that put up, the cameras?

4 A. They were put up in the City of
5 Charleston in 2010 I believe.

6 Q. And what was the purpose or goal that
7 the Charleston Police Department had when they put
8 up those cameras?

9 A. It was sort of twofold. It was
10 prevention as well as of crime deterrent by having
11 visible cameras throughout the city as well as also
12 apprehending criminals post incident by reviewing
13 those videos.

14 Q. To assist with investigations?

15 A. Absolutely.

16 Q. All right. So we will go into this in
17 a second. They are not all over the city, they are
18 just in targeted areas; is that fair?

19 A. That's correct.

20 Q. High crime areas?

21 A. High crime areas towards wherever you
22 have large groups of people congregating.

23 Q. All right. Can an individual who works
24 for you access the camera live time to actually
25 control it?

1 A. It can. There are analysts that
2 actually are camera monitoring that can.

3 Q. But a patrolman wouldn't have access to
4 that?

5 A. No, no.

6 Q. Okay. In fact, a patrolman might not
7 even know that you have those capabilities; is that
8 fair to say?

9 A. I would hope they would. Perhaps you
10 are right.

11 MR. ARCHER: No objection.

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

14 THE COURT: You may.

15 BY MR. OSBORNE:

16 Q. I am showing you what's been marked as
17 State's Exhibit 81. Can you take a look at that?

18 A. Sure.

19 Q. Do you recognize it?

20 A. I do.

21 Q. What is it?

22 A. It's a map of the peninsula and the
23 camera locations are noted on there.

24 MR. OSBORNE: Okay. Your Honor, at
25 this time I believe without objection we would

1 offer State's Exhibit 81 into evidence.

2 THE COURT: Mr. Archer, you indicated
3 no objection.

4 MR. ARCHER: No objection.

5 THE COURT: Without objection it will
6 be admitted as marked. You may publish if you
7 would like.

8 (STATE'S EXH. 81 in evidence.)

9 BY MR. OSBORNE:

10 Q. I just want to ask you a couple of
11 questions about that. Is it fair to say that each
12 one of these dots here represent a camera location?

13 A. That's correct, yes.

14 Q. All right. Let's talk about this green
15 cluster of dots over here?

16 A. Yes, sir.

17 Q. What side or what area of Charleston
18 does that refer to?

19 A. This would be referred to as the east
20 side of Charleston.

21 Q. I think it's even notated that.

22 A. It is.

23 Q. And you said that cameras are put in
24 tourism areas. I guess that would indicate King
25 here in the purple?

1 A. That's correct. Then you are looking
2 at the area of the market where you are moving the
3 cursor now.

4 Q. Okay. And you also have cameras over
5 on this side, the red dots?

6 A. That's Gadsden Green right near the
7 Charleston police station.

8 Q. That is commonly referred to as the
9 west side?

10 A. That's right.

11 Q. So we have a camera here at America and
12 South; is that correct?

13 A. Yes.

14 Q. We have a camera at America and Mary?

15 A. Yes, sir.

16 Q. Do we have a camera at Chapel and
17 America?

18 A. We don't have anything in that southern
19 area.

20 Q. Nothing over here on Chapel and Drake?

21 A. No.

22 MR. OSBORNE: No further questions,
23 Your Honor.

24 THE COURT: Wish to cross-examine?

25 MR. ARCHER: No, Your Honor.

1 THE COURT: You may step down. Thank
2 you very much. Wish to excuse the witness I will
3 assume?

4 MR. OSBORNE: Yes, Your Honor.

5 THE COURT: Any objection?

6 MR. ARCHER: No objection.

7 THE COURT: You are free to leave the
8 courthouse, sir. Thank you for coming. State may
9 call its next witness.

10 MR. DURANT: State would call Jeff
11 Miller.

12 JEFF MILLER

13 having been duly sworn, testifies as follows:

14 THE COURT: Have a seat in the witness
15 stand, please. Once seated I would ask that you
16 state your full name and spell your last name for
17 the court reporter.

18 THE WITNESS: Jeffery Miller,
19 M-I-L-L-E-R.

20 THE COURT: Thank you. Counsel, your
21 witness.

22 DIRECT EXAMINATION

23 BY MR. DURANT:

24 Q. Thank you, Your Honor. Good morning,
25 Jeff.

1 A. Good morning.

2 Q. Can you please tell our jury where you
3 are employed?

4 A. I work for the City of Charleston crime
5 scene unit.

6 Q. And how long have you been with the
7 Charleston Police Department?

8 A. Total I will have 32 years next month.

9 Q. And how many of those 32 years have you
10 worked in the crime scene?

11 A. Twenty-three.

12 Q. I believe you're a civilian, you
13 retired as a police officer and came back as a
14 civilian employee; is that correct?

15 A. That's correct.

16 Q. How long you have been a civilian
17 employee?

18 A. I have been a civilian since 2009.

19 Q. And you were working in that capacity
20 on May 22nd of 2015; is that correct?

21 A. Yes.

22 Q. On that occasion did you have the
23 opportunity to be dispatched to the Medical
24 University of South Carolina on the evening of
25 May 22, 2015?

1 A. Yes, I did.

2 Q. For what purpose?

3 A. I was contacted by crime scene
4 investigator Charles, two victims from the shooting
5 were at the hospital and he wanted me to go to the
6 hospital.

7 Q. Okay. And what time did you arrive at
8 the Medical University, if you know?

9 A. Was about 10:26 in the evening.

10 Q. Okay. Sorry, I didn't mean to cut you
11 off. What did you do upon first arriving at the
12 hospital?

13 A. There were two officers that were there
14 and they pointed out the clothing items from both
15 of the shooting victims.

16 Q. And the shooting victims would have
17 been Desmond Lewis and Tyreik G. [REDACTED] ?

18 A. Yes, that's correct.

19 Q. Did you make contact with the victim
20 Desmond Lewis?

21 A. Yes, I did.

22 Q. And for what purpose did you make
23 contact with him?

24 A. I was requested to do a gunshot residue
25 test on his hands. His hands were bagged at the

1 time and I also collected the bags.

2 Q. And why were the hands bagged?

3 A. Whenever there is a shooting
4 occasionally they will place paper bags over the
5 hands because gas residue will fall off or it can
6 be wiped off. So the bags will help protect that
7 from happening.

8 Q. Okay. So you removed the bags to do
9 the gunshot residue test?

10 A. Correct.

11 Q. What's gunshot residue?

12 A. It is fired particles that are left
13 behind from a gun being discharged.

14 Q. And how do you go about collecting
15 samples for a gunshot residue test?

16 A. The kits that we use are basically like
17 a sticky stub. It's a plastic bag container with a
18 lid. And we open it and then it's just like an
19 adhesive and then you just touch. You have one for
20 each side of the hand and one for the back, one for
21 the palm and then so you have four total. And then
22 you seal them up and then you place them and you
23 seal them in an envelope.

24 Q. Okay. And did you do that in this
25 case?

1 A. Yes, I did.

2 Q. Hand you what's previously been marked
3 as State's Exhibit 62. I will let counsel take a
4 look at it.

5 MR. ARCHER: That's fine.

6 MR. DURANT: Do you have any objection
7 to its introduction?

8 MR. ARCHER: No.

9 MR. DURANT: Jeff, I hand you what's
10 been marked as State's Exhibit 62 for
11 identification. I will offer at this time I
12 believe without objection from the defense.

13 THE COURT: Any objection?

14 MR. ARCHER: No objection.

15 THE COURT: Without objection that item
16 will be admitted into evidence. You may proceed.

17 (STATE'S EXH. 62 in evidence.)

18 BY MR. DURANT:

19 Q. Thank you, Your Honor. And what is
20 that item, Jeff?

21 A. This is the gunshot residue kit that I
22 collected.

23 Q. How do you know?

24 A. Well, the tag that's on here on this
25 side, that's the tag that I placed on it. So it

1 has my name and then the item numbers that I placed
2 on it when I sealed it. That's my initials on the
3 back.

4 Q. Okay. And could you tell us when you
5 obtained those samples from Mr. Lewis?

6 A. The gunshot residue was done at 2230,
7 which would have been 10:30.

8 Q. About 10:30. As a general rule these
9 are required to be collected within six hours of
10 the event that could have deposited gunshot
11 residue?

12 A. That's what SLED --

13 Q. That's SLED requirement?

14 A. Yes.

15 Q. And I believe that item was later --
16 State's Exhibit 62 was later sent to SLED's lab for
17 analysis; is that correct?

18 A. I believe it was, yes.

19 Q. Now, while at MUSC did you have an
20 opportunity to collect a projectile which had been
21 removed from the leg of Desmond Lewis?

22 A. Yes.

23 MR. ARCHER: No objection subject to
24 identification.

25 BY MR. DURANT:

1 Q. I hand you what's been marked as
2 State's Exhibit No. 76. Ask you if you can
3 recognize that?

4 A. This is the projectile I picked up at
5 the hospital. The yellow envelope is what I placed
6 inside it of and then that's my tag, my name, the
7 item number that I gave it and then I would seal it
8 and initialled it.

9 Q. Okay. And that item was later
10 transported to SLED's lab for analysis; is that
11 correct?

12 A. I'm not sure about this one.

13 Q. Okay. Your Honor, we would offer 76 at
14 this point if there is no objection.

15 THE COURT: I believe that's without
16 objection; is that right?

17 MR. ARCHER: Well, Your Honor, I think
18 he needs to say where this exhibit came from.

19 MR. DURANT: I believe we did, Your
20 Honor.

21 BY MR. DURANT:

22 Q. That came from the Medical University
23 of South Carolina, correct?

24 A. Yes, I picked it up with all the items
25 from the victim.

1 Q. And that was the projectile that had
2 been removed from the victim Desmond Lewis?

3 A. That's correct.

4 MR. ARCHER: All right.

5 THE COURT: Any objection?

6 MR. ARCHER: No objection.

7 THE COURT: All right. Without
8 objection then it will be admitted as it's been
9 marked. Counsel, you can proceed.

10 (STATE'S EXH. 76 in evidence.)

11 BY MR. DURANT:

12 Q. Thank you, Your Honor. While there did
13 you have the occasion to photograph clothing and
14 the projectile you collected at the Medical
15 University?

16 A. No, that wasn't done at the hospital.
17 All the items were taken -- because they were
18 bloody were taken to our office. We have drying
19 cabinets. And they were placed in the drying
20 cabinets so I didn't actually get that done until
21 the next day. That's when the photographs were
22 taken.

23 Q. But you did take photographs of the
24 items that you collected at the Medical University;
25 is that correct?

1 A. Yes.

2 MR. ARCHER: I have no objection to 30
3 and 31. I object to 32 and 41 in that they are
4 bloody pictures clothing. I think he can describe
5 it.

6 THE COURT: We need to take those
7 matters up? You intend to offer them I assume?

8 MR. DURANT: Yes, sir.

9 THE COURT: Ladies and gentlemen of the
10 jury, at this point in time it's one of those times
11 I need to discuss some evidence matters with the
12 attorneys. I told you that would happen from time
13 to time. I would ask you step back to the jury
14 room while I discuss this with the attorneys.
15 Please don't discuss the case while you are outside
16 of the courtroom. Thank you very much.

17 (Thereupon, the jury exited the
18 courtroom at 9:43 a.m.)

19 THE COURT: Specifically the items that
20 you are objecting to, Mr. Archer, you said, can you
21 repeat the numbers again, please.

22 MR. ARCHER: Well, it would be numbers
23 32 through 37 I guess. No objection to 41 which is
24 a picture.

25 THE COURT: I will ask --

1 MR. ARCHER: I would say too no
2 objection to 37. So basically that means I got
3 objections to 32 through 36. The others I do not
4 object to.

5 MR. DURANT: May we approach with the
6 photographs?

7 THE COURT: I think I have copies here.

8 MR. DURANT: Okay. The numbers he has
9 objected to are 32, 33, 34, 35 and 36.

10 THE COURT: Give me a moment and then
11 we will discuss them.

12 MR. DURANT: Yes, sir.

13 (Brief pause.)

14 THE COURT: I believe the witness has
15 already testified those are the clothing that were
16 recovered at MUSC; is that correct?

17 MR. DURANT: That's correct, Your
18 Honor.

19 THE COURT: So the question I don't
20 believe is -- your objection specifically is to the
21 fact that they are covered in -- some of them are,
22 I won't say totally covered but have blood on them?

23 MR. ARCHER: Yes, sir.

24 THE COURT: And, Mr. Archer, when you
25 are talking to the Court stand up.

1 MR. ARCHER: Sorry.

2 THE COURT: Thank you. That's
3 customary in the state. Now, my understanding is
4 that your objection I would assume would be that
5 perhaps the probative value of these is
6 substantially outweighed by the prejudicial effect.

7 MR. ARCHER: Yes, sir, Your Honor.

8 THE COURT: Is that where we are?

9 MR. ARCHER: Yes.

10 THE COURT: All right.

11 MR. ARCHER: I think he can testify
12 that this shirt and has some blood on it that
13 belonged to so and so, but I don't want the
14 pictures going back there.

15 THE COURT: Okay. Well, the State I'm
16 sure is going to tell me what the probative value
17 of these is as opposed to the prejudicial effect.

18 MR. DURANT: Your Honor, first of all,
19 I would deny that there is any prejudicial effect
20 of any of those photos. All they are is just
21 photos of clothing that have some blood on them.
22 Certainly not anything to inflame the passions of
23 the jury or anything of that nature.

24 So No. 1, I would object that they are
25 prejudicial in any way. With regards to 32, these

1 are the photographs of Desmond Lewis's shoes. The
2 testimony in this case was Desmond Lewis was shot
3 in his left leg, his lower left leg.

4 THE COURT: Yes, sir.

5 MR. DURANT: This shows that he has a
6 bloody left shoe as opposed to the right shoe and
7 basically we are corroborating the testimony in
8 this case.

9 THE COURT: As I think I recall the
10 original police officer arriving at the scene
11 indicated she followed a blood trail.

12 MR. DURANT: That's correct.

13 THE COURT: Which would have indicated
14 I guess blood.

15 MR. DURANT: Would have been Mr.
16 Lewis's blood.

17 THE COURT: On the ground.

18 MR. DURANT: Yes, sir. With regards to
19 State's Exhibit No. 33, Your Honor, this is a
20 t-shirt that's got some picture of rap artists in
21 the front. This is the t-shirt of Christopher
22 Victoria. Mr. Victoria will testify that he was
23 present when Mr. Lewis was shot, that after the
24 shooting he walked up to Mr. Lewis who was laying
25 in the middle of America Street and used his shirt

1 to wrap the wound on his leg.

2 THE COURT: All right.

3 MR. DURANT: State's Exhibit 204, Your
4 Honor, is basically a picture of State's Exhibit
5 No. 76 previously admitted into evidence which is
6 the projectile that was removed from the left leg
7 of the victim Desmond Lewis. And then with regard
8 to 35 and 36, Your Honor, this is basically the
9 front and back of the shirt of the minor child .

10 Tyreik G. [REDACTED] corroborating the fact that he was,
11 in fact, shot, corroborating the fact from the
12 bullet hole in the back of the shirt that he was,
13 in fact, shot in the back.

14 MR. ARCHER: I don't think there's any
15 question that he was shot, Judge. I don't think we
16 need to put that in to prove he was shot. I think
17 that's generally accepted and we will stipulate he
18 was shot in the back. We will stipulate that
19 Desmond Lewis was shot in the leg.

20 MR. DURANT: Your Honor, he can't
21 stipulate to how we prove our case.

22 THE COURT: They are not required to
23 accept stipulations.

24 MR. ARCHER: Oh, I understand that,
25 Judge.

1 THE COURT: I understand that you might
2 be willing to do that. But unless one is offered
3 to me.

4 MR. ARCHER: I think -- I can't
5 stipulate how he proves his case, but I think he
6 makes reference when you are talking about the
7 probative value versus --

8 THE COURT: Well, unless there's a
9 stipulation the fact is not proven. So the fact
10 that you are willing to stipulate doesn't mean he
11 has to stipulate to that. I can't make him do
12 that.

13 MR. ARCHER: Oh, I understand.

14 THE COURT: That's interesting. Does
15 not really have an effect on my ruling in this
16 particular situation.

17 MR. ARCHER: Yes, sir.

18 THE COURT: Because he has chosen this
19 method of proving his case so he is within his
20 rights to offer. The question is whether or not
21 the probative value outweighs the prejudicial
22 effect. Of course the issue is whether or not
23 these items would inflame the passions of the jury,
24 is shocking to them in some fashion. I'm not sure
25 on the picture of the bullet with the blood still

1 on it, I'm not sure exactly what that proves one
2 way or the other. The bullet is in evidence.

3 MR. DURANT: The bullet is in evidence,
4 just corroborates his testimony basically that was
5 the bullet that he recovered.

6 THE COURT: Well, he testified and
7 that's been admitted as such.

8 MR. DURANT: I believe that
9 corroboration of testimony has always been
10 established reason for admitting evidence.

11 THE COURT: Well, if they clean it up
12 I'm not sure what the blood being on it proves, you
13 follow me?

14 MR. DURANT: I understand, Your Honor.

15 THE COURT: There's a way to do it
16 differently so it would be less shocking.

17 MR. DURANT: I understand.

18 THE COURT: You and I see these things
19 a lot. These people don't see these.

20 MR. DURANT: That's what I was going to
21 say, after 35 years of doing this that's not very
22 shocking to me.

23 THE COURT: I understand that but
24 unlike a lot of these people on the jury have not
25 been in this position before.

1 MR. DURANT: Judge, they have seen
2 blood now. Come on. They have cut their finger.

3 THE COURT: I'm not sure they have seen
4 a bullet taken out of someone before. I know I
5 hadn't until I took the job. But anyway, do you
6 have -- is there a picture that shows less of the
7 blood and more of the bullet hole?

8 MR. DURANT: That's the only picture we
9 have of the back of the shirt as far as we know.

10 THE COURT: I am referring to
11 Exhibit 36 at this time. I'm not sure what 35
12 shows other than the front of the shirt.

13 MR. DURANT: 35 just shows that where
14 they cut the shirt off of him at treatment and 35
15 is just not blood. I mean it's basically front of
16 the shirt, just a --

17 THE COURT: 36 shows the back of the
18 shirt, but it -- pretty blood covered, let's put it
19 that way. I do see the bullet hole. It does
20 indicate where the entry of the bullet would be and
21 I suppose that would be later on tied together with
22 the place where the child was wounded.

23 MR. DURANT: Correct, Your Honor.
24 There will be some medical testimony later too.

25 THE COURT: All right. Here's what I

1 am going to do. In the case of Exhibit 32, the
2 shoe, I do find that it does indicate that there
3 was more than likely a left leg wound since the
4 left shoe does appear to have more of the blood
5 than the other one and it does show that the blood
6 would have run down the shoe to the ground. And
7 there was testimony there was a blood trail leading
8 to where Mr. Lewis was located on the ground. I
9 find those to be that the probative value is not
10 substantially outweighed by the prejudicial effect.
11 And therefore I will admit 32.

12 33 is a T-shirt that was used in
13 assisting Mr. Lewis. I'm sure it will be and it is
14 -- while there is some blood on it, it is not
15 overly demonstrative in that nature other than to
16 show it was used in that fashion. It came from a
17 corroborating witness. I find that one is not
18 substantially -- the probative value is not
19 substantially outweighed by the prejudicial effect.
20 And therefore I will admit Exhibit 33. 34 on the
21 owner hand, the actual bullet itself, has been
22 admitted. The witness has testified that he
23 collected it at the hospital. I think there's a
24 stipulation it's not been tampered with even; is
25 that correct?

1 MR. ARCHER: Yes, sir.

2 THE COURT: In the record. So I find
3 that the probative value here would be
4 substantially outweighed by the prejudicial effect.
5 I'm not going to allow 34 to be admitted. 35, I
6 see no prejudicial effect as to 35. It will be
7 admitted. 36, at this point in time I find that
8 the prejudicial effect for 36 would substantially
9 outweigh its probative value. I will say at this
10 time, the reason I am saying at this time, later on
11 if it is shown through the testimony of the
12 doctors, the pathologists or whoever else testifies
13 as to the location of the wound or the nature of
14 the wound or if that becomes an issue then the
15 probative value of this photograph would go up.
16 But at this point in time I'm not going to admit
17 it. I believe that there could be a better way of
18 presenting that evidence without showing the entire
19 bloody shirt.

20 MR. DURANT: With that in mind, Your
21 Honor, would the Court consider us being able to
22 admit black and white?

23 THE COURT: If you want to redact it
24 and show.

25 MR. DURANT: We could do black and

1 white for sure.

2 THE COURT: Black and white may get it
3 in. I don't know. I will have to see it. I won't
4 make that ruling.

5 MR. DURANT: Would you give us a couple
6 of minutes to print out black and white ones, Your
7 Honor?

8 THE COURT: Sure. I am in -- I am in a
9 hurry to get the case handled, but not that big of
10 a hurry. We will take a short recess. Those are
11 my rulings on the other items.

12 MR. DURANT: Yes, sir, Your Honor. We
13 will try to get it.

14 THE COURT: We will take about a
15 five-minute recess. I'm going to stay on the
16 bench. Sir, you can move around. If you need to
17 go just don't discuss your testimony while that's
18 going on. Thank you.

19 (A recess transpired.)

20 THE COURT: Did you wish to submit the
21 black and white copies?

22 MR. DURANT: Mr. Archer has a copy. I
23 will submit a proposed one for the Court. We have
24 marked this as 36A if Your Honor decides to.

25 THE COURT: Mr. Archer, your position

1 with regards to the black and white?

2 MR. ARCHER: I don't think the black
3 and white substantially changes Your Honor's ruling
4 in any way. It's still the blood of a five-year
5 old child and I think not only is it -- potential
6 prejudicial value not only the blood, but also the
7 fact that the victim is a five-year old and those
8 are things that can enrage the jury. But yes, it
9 may be slightly better because it isn't red, but
10 it's still clearly blood on there. I think it's
11 still prejudicial.

12 THE COURT: I will hear from you,
13 counsel.

14 MR. DURANT: Your Honor, Court's
15 indulgence.

16 (Off-the-record conference.)

17 MR. DURANT: Your Honor, once again I
18 just don't see anything prejudicial about this
19 photograph especially when we have -- the color has
20 been taken out of it and also the location of the
21 bullet hole corroborates the fact that testimony
22 later will be showing that the boy was coming out
23 of ■, that he was shot from his right side, graze
24 type wound to his back. The bullet hole is on the
25 right side of his t-shirt. I just think it is

1 corroborative of other testimony that will come
2 later in the case and I don't see that it is
3 prejudicial.

4 THE COURT: Well as I said, I will
5 re-evaluate once we get to that stage of the case
6 where I can tell what the probative value truly is.
7 I'm not sure that we have changed much as far as
8 the fact that the jury will be faced with a very
9 bloody garment. I still believe that perhaps there
10 is ways of cropping this so that you could identify
11 where the bullet hole was without showing all the
12 blood from the shoulder all way down to the tail of
13 the shirt. I'm not sure -- a jury knows when
14 someone is shot they bleed. I understand that.
15 But the volume of the blood is shocking,
16 potentially shocking. So I'm still going to say
17 that I'm going to withhold an admission ruling
18 until I see the actual probative value of that
19 information. At this time I find the prejudicial
20 effect to outweigh the probative value
21 substantially and therefore I am not going to admit
22 36 or 36A. Later on again if it becomes an
23 important issue in the case, I will re-evaluate
24 that ruling. So 32 is in, 33 is in. 34 is out.
25 35 is in. 36 and 36A are out. Ready to proceed

1 with the jury?

2 (STATE'S EXH. 30-33 in evidence.)

3 (STATE'S EXH. 35-36, 36A in evidence.)

4 MR. DURANT: I believe so, just to make
5 sure I got it right, 30, 31, 32, 33.

6 THE COURT: 32 is in. 33 is in. 34 is
7 out. 35 is in. 36 and 36A are out.

8 MR. DURANT: 37 and 41 were previously.

9 THE COURT: They were not -- I wasn't
10 ruling on them.

11 MR. DURANT: We got it.

12 THE COURT: Very good. Let's bring the
13 jury in.

14 (Whereupon the jury entered the
15 courtroom at 10:08 a.m.)

16 THE COURT: The jury has returned to
17 the courtroom. After a discussion with counsel I
18 have admitted Exhibit 32 and 33. I have sustained
19 an objection to Exhibit 34. I have admitted
20 Exhibit 35. And I have sustained an objection to
21 36 and 36A. You may proceed, counsel.

22 BY MR. DURANT:

23 Q. Thank you, Your Honor. Could I put up
24 State's Exhibit 30?

25 THE COURT: You may publish the ones I

1 said.

2 MR. DURANT: Thank you, Your Honor.

3 BY MR. DURANT:

4 Q. This is State's Exhibit No. 30. Could
5 you please tell our jury what that depicts?

6 A. That's a picture of a shirt.

7 Q. That was the shirt that belonged to the
8 victim Desmond Lewis?

9 A. Yes.

10 Q. State's Exhibit 31?

11 A. 213 are the black pants with belt.

12 They were also Desmond Lewis's.

13 Q. Okay... State's Exhibit 32?

14 A. 228 and 219, those are tennis shoes of
15 Desmond Lewis.

16 Q. State's Exhibit 33?

17 A. 214, that was the shirt that was also
18 collected from Desmond Lewis's property.

19 Q. Okay. You don't know of your own
20 personal knowledge where that shirt came from?

21 A. It was collected as part of his items
22 from the hospital.

23 Q. Okay. State's 35?

24 A. The 211, that's the shirt that Tyreik
25 was wearing.

1 Q. And on the -- is there any defect on
2 the other side of that shirt?

3 A. There is a hole that is on the back
4 side of the shirt.

5 Q. Is that hole compatible with a bullet
6 hole?

7 A. It could be, yes, it is a hole.

8 Q. State's Exhibit 37?

9 A. Those are the shorts that belonged to
10 Tyreik.

11 Q. And State's Exhibit 41?

12 A. That is the shoe of Tyreik.

13 Q. And that is compatible with State's No.
14 29; is that correct?

15 A. Yes.

16 Q. Could you please answer any questions
17 Mr. Archer may have for you.

18 THE COURT: Mr. Archer, you may
19 cross-examine.

20 MR. ARCHER: I have no questions.

21 THE COURT: Sir, you may step down from
22 the witness stand. I assume the State would like
23 to excuse the witness?

24 MR. OSBORNE: We would, Your Honor.

25 THE COURT: Any objection?

1 MR. ARCHER: No objection.

2 THE COURT: Sir, you are free to leave
3 the courthouse. Thank you very much.

4 MR. DURANT: State would call Michele
5 Eichenmiller.

6 THE COURT: Come forward and be sworn
7 please, ma'am.

8 MICHELE EICHENMILLER

9 having been duly sworn, testifies as follows:

10 THE CLERK: Please state your full name
11 and spell your last name for the record.

12 THE WITNESS: My name is Michele
13 Eichenmiller. M-I-C-H-E-L-E,
14 E-I-C-H-E-N-M-I-L-L-I-R..

15 THE COURT: Counsel, your witness.

16 MR. DURANT: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. DURANT:

19 Q. Good morning.

20 A. Good morning.

21 Q. Could you tell our jury what you do for
22 a living?

23 A. I'm a forensic scientist at the South
24 Carolina Law Enforcement Division commonly known as
25 SLED. I work in the forensic lab and firearms

1 department.

2 Q. How long have you been with SLED?

3 A. Approximately 11 and-a-half years.

4 Q. And has that entire time been in the
5 SLED lab firearms department?

6 A. Yes.

7 Q. Could you tell our jury what the field
8 of firearms identification consists of?

9 A. My portion of forensics deals with any
10 fired components, bullets or cartridge casings
11 found at a crime scene and any firearms that may or
12 may not be related to that crime scene. So the
13 evidence is submitted to the lab and then I will do
14 an examination and try to determine if the
15 cartridge casings and the bullets were fired by a
16 certain firearm.

17 Q. Okay. And what is your education
18 background?

19 A. I have a Bachelor's Degree in Biology.
20 I also have a Master of Science in Forensic
21 Science.

22 Q. And what specialized training have you
23 had in the area of firearms identification?

24 A. In order to be a firearms examiner
25 there's no class you can take. It's basically an

1 apprenticeship program. So I sat with all the
2 firearms examiners at SLED. I learned how to do
3 the work that they do. I did a lot of examinations
4 on my own. I did a lot of test taking, a lot of
5 reading. We learned a history of firearms. We
6 learned how different firearms work. We take apart
7 firearms and put them back together. And then at
8 the end of it I take a comprehensive test after. I
9 pass that test and they deem that I can work cases
10 on my own.

11 Q. How long did this apprenticeship
12 program last?

13 A. It was basically three to four years.

14 Q. And you are currently authorized or
15 certified by SLED to conduct examination in the
16 field of firearms identification; is that correct?

17 A. Correct.

18 Q. How many cases have you worked while
19 you were at SLED?

20 A. Hundreds.

21 Q. And are you a member of any
22 professional organizations regarding your field of
23 expertise?

24 A. I'm a member of the Association of
25 Firearms and Tool Mark Examiners known as AFTE.

1 Q. Have you ever been qualified as an
2 expert in the area of firearm identification?

3 A. I have.

4 Q. On how many occasions?

5 A. Over 50 times.

6 Q. What courts?

7 A. All state courts in South Carolina.

8 MR. DURANT: Your Honor, at this time I
9 would offer Ms. Eichenmiller as an expert in the
10 field of firearms identification.

11 MR. ARCHER: No objection.

12 THE COURT: Ladies and gentlemen of the
13 jury, let me take just a moment to explain to you
14 what we are doing because I assume there will be
15 other witnesses in the same situation. Under the
16 rules of evidence that govern the testimony of
17 witnesses in a trial, lay witnesses are not allowed
18 to state their opinions about matters. They're
19 required to testify about facts within their
20 knowledge.

21 There's an exception to that general
22 rule and that is that in the case of a witness who
23 has been designated as an expert within some
24 profession, field, science or calling. If the
25 Court designates a witness as such that that

1 witness is allowed to state their opinions within
2 their area of expertise and then allowed to state
3 the basis or the reasons why they hold those
4 opinions. So that's an exception to the general
5 rule.

6 Now, later on during my charge on the
7 law I will discuss the testimony of expert
8 witnesses with you in a little greater detail and
9 explain how you can view that. But at any rate,
10 this witness is being offered as an expert in
11 firearms identification without objection from the
12 defense and so I will qualify her as an expert in
13 the field. The law allows her to state her
14 opinions in that field of expertise and the reasons
15 why she holds them. As I said, later on I'll
16 discuss this with you further. So I will accept
17 the designation as an expert. You may proceed.

18 MR. DURANT: Thank you, Your Honor.

19 BY MR. DURANT:

20 Q. Ms. Eichenmiller, could you tell the
21 jury how you go about matching a shell casing or a
22 fired bullet to a particular weapon?

23 A. When a cartridge case or bullet is
24 fired by a firearm the firearm will leave marks on
25 it. Firing pin impressions, the part of the

1 firearm that actually hits the cartridge case will
2 leave a mark. The breach face when the cartridge
3 case is fired, the pressure will push the cartridge
4 case back into the breach face. That will leave
5 marks. I examine those marks under a microscope
6 and based on my training can determine if those
7 marks lead to a certain firearm.

8 Q. How about with regards to projectiles?

9 A. Projectiles as they travel out the
10 barrel of the firearm, most barrels have rifling.
11 The rifling will leave marks on the bullet. Most
12 cases it will be a certain number of lands and
13 grooves of a certain dimension. A certain twist,
14 so right or left. I will look at the individual
15 marks in those larger marks to see if the
16 characteristics that make it unique to a firearm
17 are present.

18 Q. In this particular case, it would be
19 your lab number L1512849. Did you have the
20 occasion to receive some evidence from the
21 Charleston Police Department relative to this case?

22 A. I did.

23 Q. And that was on October the 21st of
24 2015?

25 A. If that's what the chain of custody

1 said, I don't have that in front of me.

2 Q. I'm going to hand you some items and
3 ask if you recognize them as being among the items
4 that you examined. First State's Exhibit No. 74
5 which appears to be five spent shell casings.

6 A. Whenever I receive evidence in a case I
7 will mark it with my lab number, the item number
8 and my initials. And then when I am finished with
9 it I will seal it and put my initials on it. These
10 are the items I examined and they are still in my
11 heat sealed package.

12 Q. Okay. And State's Exhibit No. 75 which
13 appears to be three spent shell casings?

14 A. Correct.

15 Q. Do you recognize that item?

16 A. Yes. This is the evidence I examined,
17 still has my heat seal and my initials on each
18 item.

19 Q. State's Exhibit No. 76 appears to be a
20 spent projectile?

21 A. That's the projectile, one of the
22 projectiles I examined.

23 Q. Okay. And once again you know from
24 your initials on it. State's Exhibit 77.

25 A. Correct. This is another one of the

1 projectiles I examined.

2 Q. Court's indulgence a moment.

3 THE COURT: Yes, sir.

4 (Off-the-record conference.)

5 BY MR. DURANT:

6 Q. And finally State's Exhibit No. 78, ask
7 if you recognize that item as being one of the
8 items that you examined?

9 A. This is the last projectile I examined.

10 Q. Okay. Your Honor, at this time we
11 would move State's Exhibits 74, 75, 76, 77 and 78
12 into evidence. I believe 74 and 75 may be into
13 evidence.

14 MR. ARCHER: 74 and 75?

15 MR. DURANT: I believe 75 is already
16 into evidence, but I am moving all of these into
17 evidence.

18 MR. ARCHER: No objection.

19 THE COURT: Without objections they
20 will be admitted as they have been marked. You may
21 proceed.

22 (STATE'S EXH. 76-78 in evidence.)

23 BY MR. DURANT:

24 Q. Were all those items properly sealed
25 and labeled when they came into your possession?

1 A. They were.

2 Q. Any evidence that they have been
3 tampered with?

4 A. No.

5 Q. Now, let's begin with the cartridge
6 cases which are State's Exhibits 74 and 75. Could
7 you tell our jury what the caliber of those shell
8 casings are?

9 A. All eight of these cartridge cases are
10 .9-millimeter Luger caliber.

11 Q. And could you tell the jury who the
12 manufacturer of those shell casings are?

13 A. I can refer to my notes?

14 Q. You may.

15 A. They all have the Sig brand head stamp.

16 Q. I am assuming Sig is a brand of
17 ammunition?

18 A. Yes.

19 Q. So all the same caliber, all the same
20 make?

21 A. Correct.

22 Q. How did you go about examining those
23 items?

24 A. I physically examined them. We have
25 worksheets that we fill out. We write down the

1 caliber of the composition, if there was any trace
2 evidence found. And then I microscopically compare
3 them on my microscope. It's a comparison
4 microscope. Basically looks like a pair of
5 binoculars and I can put one cartridge case on one
6 side and one on the other. Look through the
7 binoculars and move the cartridge cases around with
8 different lights to see that characteristics I need
9 to see.

10 Q. And based upon your examination of
11 those eight items what conclusion did you reach?

12 A. I concluded that all eight cartridge
13 cases were fired by one firearm.

14 Q. And all fired by the same firearm; is
15 that correct?

16 A. Correct.

17 (Off-the-record conference.)

18 BY MR. DURANT:

19 Q. Ms. Eichenmiller, hand you what's a
20 portion of State's Exhibit 9 and ask if you have
21 seen that photograph before?

22 A. I have.

23 Q. And how did you come in possession of a
24 copy of that photograph?

25 A. It was sent to me by the solicitor.

1 Q. Okay. And what is it a photograph of?

2 A. It appears to be a photograph of a
3 Smith and Wesson semiautomatic pistol model SW9F.

4 Q. What model or what series of Smith and
5 Wesson pistol is that particular pistol considered?

6 A. They call it the Sigma series.

7 Q. And what is the Sigma series?

8 A. It's a series of pistols that Smith and
9 Wesson made to try to compete with Glock pistols on
10 the market.

11 Q. And when were those pistol
12 manufactured?

13 A. They were the early to mid 1990's.

14 Q. And how long were they manufactured?

15 A. I believe they were only manufactured
16 for a couple of years, maybe three or four.

17 Q. Do you know why that was?

18 A. There were copyright issues. Glock
19 brought a lawsuit actually against Smith and Wesson
20 and said it was too close of a copy so they had to
21 stop making them.

22 Q. Okay. Could you tell -- you said there
23 was a series of Smith and Wesson Sigma. Was that a
24 series of different caliber type weapons?

25 A. Yes, different calibers and different

1 variations in the different calibers.

2 Q. With regards to the Smith and Wesson
3 model SW9F that is depicted there, what caliber is
4 that weapon?

5 A. That is a .9-millimeter Luger caliber.

6 Q. Is there anything unusual about the
7 firing pin on that particular weapon as opposed to
8 numerous other semiautomatic weapons?

9 A. Most semiautomatic firearms have a
10 circular or hemispherical firing pin. The Sigma
11 series actually has a square to rectangular firing
12 pin and a firing pin aperture.

13 Q. And is there any other brand of pistol
14 besides the Sigma that has that same configuration?

15 A. Glock is the one -- currently the one
16 that has a square firing pin and a rectangular
17 shape firing pin aperture.

18 Q. Okay. Could you tell our jury whether
19 or not those shell casings you examined are
20 consistent with having been fired by that pistol?

21 A. The cartridge cases I examined have a
22 square firing pin aperture impression. So it could
23 have been fired by Sigma series or a Glock.

24 Q. Is that model SW9F a relatively rare
25 model?

1 A. All the Sigma series are rare in that
2 they were made 20 to 30 years ago and there weren't
3 very many of them made.

4 Q. Okay. They are no longer manufactured;
5 is that correct?

6 A. Correct.

7 Q. Let's move often to the spent shell
8 casings in this case which would be your -- let's
9 start with your State's Exhibit 76 and 77 which
10 would be the fired bullets recovered from Desmond
11 Lewis's leg and the bullet recovered from a tree.
12 What analysis did you perform on those items?

13 A. I physically examined these items. We
14 have a worksheet that we fill out for bullets as
15 well. We write down diameter, lands and grooves if
16 we can see what kind of damage the bullet has, and
17 then I microscopically compare them on my
18 comparison microscope which is the same as the
19 cartridge case. I put one on one side and one on
20 the other. I can rotate them around to view the
21 whole surface of the bullet.

22 Q. And what conclusions did you reach
23 after your examination of item 76 and 77?

24 A. 76 and 77 were damaged and they didn't
25 have sufficient corresponding characteristics that

1 I would look for. So my comparisons were
2 inconclusive. I couldn't tell you if they were
3 fired by the same firearm or two different firearms
4 due to their damage.

5 Q. Could you tell what caliber they were
6 most consistent with?

7 A. They were .9-millimeter Luger caliber.

8 Q. Okay. And you indicated in the report
9 it couldn't determined if fired by the same firearm
10 or different firearms with similar rifling
11 characteristics. Could you explain that just a
12 little bit?

13 A. Like I said, they were damaged and I
14 couldn't see enough marks to say definitively they
15 were fired by the same firearm. Similar rifling
16 characteristics would be the general
17 characteristics that I look to. So both of these
18 projectiles had five lands and grooves. They were
19 both right twist. They were both the same size
20 lands and grooves. I just couldn't see microscopic
21 marks that could let me say they were fired by the
22 same firearm.

23 Q. Okay. And speaking of five lands and
24 grooves, are you able to tell a general -- in
25 general what manufactured or brand weapons could

1 potentially have fired a bullet with five lands and
2 grooves such as what you examined?

3 A. Yes. There's a database that's
4 maintained by the FBI that has the measurements
5 from different manufacturers. We can put in our
6 measurements, how many lands and grooves, what
7 direction of twist and the computer will tell us
8 what manufacturers have made firearms with those
9 specifications.

10 Q. Could you tell us what potential
11 firearms could have fired those particular
12 projectiles?

13 A. Fabrique Nationale is one manufacturer,
14 Ruger or Smith and Wesson.

15 Q. But not Glock?

16 A. No.

17 Q. Finally do you have State's Exhibit 78
18 up there and that would be the bullet that was
19 removed from Tyreik G. back?

20 A. Yes.

21 Q. Were you able to draw any conclusions
22 from your examination of that item?

23 A. State's Exhibit 78 was a piece of led,
24 it was missing a jacket so any material that would
25 have come in contact with the barrel is missing

1 from this item. Has no marks of value for
2 identification and was unsuitable for
3 identification.

4 Q. So basically what you need is a jacket
5 because that's what gets the impressions when it is
6 -- the bullet is going through the barrel; is that
7 correct?

8 A. Correct.

9 Q. That is just the cord?

10 A. Correct.

11 Q. Ms. Eichenmiller, I hand you what's now
12 been marked as State's Exhibit No. 79 for
13 identification purposes only and ask you if you
14 recognize that item?

15 A. This is a firearm I examined in
16 reference to this case.

17 Q. And what is the make and model of that
18 firearm?

19 A. It's a Smith and Wesson model SD9BE.

20 Q. That's not the same firearm that you
21 just identified a picture of?

22 A. No.

23 Q. Were you aware that that firearm was
24 removed from Desmond Lewis when he was arrested on
25 June the 5th of 2015?

1 A. No, I wasn't.

2 Q. And were you asked to compare that
3 firearm with the projectiles and shell casings that
4 had been submitted in the case?

5 A. It was requested that we compare them.

6 Q. Okay. How did you go about doing that?

7 A. When we have a firearm we have another
8 worksheet that we fill out documenting what the
9 firearm's condition was, if the safeties work, what
10 its rifling is. After that is all completed I will
11 take it to our bullet recovery room. We have a
12 vertical water tank so it basically is a two-story
13 water tank. We put the firearm in there, shoot, it
14 collects the bullet. The cartridge casings pop out
15 on top. I collect those. I bring all that to my
16 office so I know that those tests were fired by
17 that firearm. Then I will compare those tests with
18 any evidence I received.

19 Q. And after doing that in this particular
20 case what conclusion did you reach regarding
21 State's Exhibit I believe it was shells were 74 and
22 75, shell casings, those eight shell casings, what
23 conclusions did you reach with regard to them being
24 fired by that weapon?

25 A. The cartridge cases my conclusions were

1 they were not fired by that firearm based on
2 differences in class characteristics. This firearm
3 made circular firing pin impressions and as we
4 discussed previously the cartridge cases we had
5 were rectangular.

6 Q. Court's indulgence for a moment.

7 THE COURT: Yes, sir.

8 MR. DURANT: Could you please answer
9 any questions Mr. Archer may have for you.

10 CROSS-EXAMINATION

11 BY MR. ARCHER:

12 Q. You got no idea, do you, where that gun
13 you're looking at came from?

14 A. No.

15 Q. All right. So it's just a gun that was
16 sent to you?

17 A. Right. The evidence is submitted at
18 the SLED lab at the log in department. I have no
19 idea where it came from or who got it in unless I
20 look at the chain of custody.

21 Q. Right. And so you have got no idea
22 whether it's a gun that belonged to Desmond Lewis
23 or Doug Jones or Tom Smith?

24 A. Correct.

25 Q. Okay. Now, the shell casings have

1 rectangular firing pin marks?

2 A. Correct.

3 Q. And those could be made by either a
4 Smith and Wesson or a Glock?

5 A. Smith and Wesson Sigma series or a
6 Glock.

7 Q. So it's -- it would be possible for
8 those shells to have been fired by either one of
9 those guns?

10 A. Correct.

11 Q. Or some by a Smith and Wesson and some
12 by a Glock?

13 A. No, they were all fired by one firearm,
14 the same firearm.

15 Q. Okay. Were you able to tell what they
16 were fired by?

17 A. Sorry?

18 Q. Were you able to tell which of the two
19 guns they were fired by?

20 A. No, because I didn't receive a firearm.

21 Q. Okay. And let me ask you this: Are
22 you familiar with -- you do firearms
23 identification. With the general percentage of
24 guns, handguns out there, are various calibers like
25 how many handguns out in the public are

1 .9-millimeter, how many of them are .32s, how many
2 of them are .38s?

3 A. I have no idea what the numbers are. I
4 can tell by my case work the number the ones we see
5 more of, but I have no idea actual numbers.

6 Q. What calibers do you see the most of in
7 your case work?

8 A. We see a lot of .9-millimeter,
9 40-caliber, we see .45s.

10 Q. About what percentage of the weapons
11 you see or cases you see are .9 millimeters?

12 A. I don't really have a good guess.
13 Maybe 25 to 40 percent.

14 Q. A substantial amount?

15 A. Yes.

16 Q. As high as 40 percent of what you look
17 at would be .9 millimeters?

18 A. Correct.

19 Q. Okay. So it's not a real rare gun out
20 there in the public?

21 A. Not a rare caliber.

22 Q. Right. And I seem to remember from
23 years ago .9 millimeters could -- that certain
24 bullets could be used interchangeably and I can't
25 remember if it was .9 millimeter and 32-caliber or

1 a .9 millimeter and .38-caliber. Are you familiar
2 with what I am talking about?

3 A. Some firearms will shoot different
4 calibers that are not intended for those. Some .9
5 millimeters shoot .380 auto.

6 Q. Okay. So any of these bullets may have
7 been a .380 auto?

8 A. No, the diameter and overall physical
9 characteristics make them a .9-millimeter Luger.

10 Q. Okay. All right.

11 MR. ARCHER: No other questions, Your
12 Honor.

13 THE COURT: Redirect?

14 MR. DURANT: I have just a couple of
15 followup.

16 REDIRECT EXAMINATION

17 BY MR. DURANT:

18 Q. That weapon that you examined, although
19 it is a Smith and Wesson it is not a Smith and
20 Wesson Sigma; is that correct?

21 A. Correct. I believe they actually call
22 it still Sigma, but it is enhanced Sigma, which is
23 the second generation, not the copy of the Glock as
24 the first one was.

25 Q. And assuming if the casings that you

1 examined in this case which are 74 and 75 and the
2 projectiles that you examined, the ones that had --
3 the ones that actually had the jacket with them, I
4 believe were 76 and 77; is that correct?

5 A. Correct.

6 Q. Assuming those came from the same
7 firearm, could that firearm have been a Glock?

8 A. No. The Glock's rifling is completely
9 different. And the bullets that I received here,
10 Glocks have six lands and grooves and they also
11 have a rifling which is smoother. This is called a
12 conventional rifling which is more squared off.

13 Q. Thank you very much. I have nothing
14 further.

15 THE COURT: Recross?

16 MR. ARCHER: No, Your Honor.

17 THE COURT: Ma'am, you may step down.
18 Wish to excuse the witness?

19 MR. DURANT: I would ask that she be
20 excused.

21 MR. ARCHER: No objection.

22 THE COURT: Ma'am, you may leave the
23 courthouse. I believe the firearm and the box is
24 not placed into evidence?

25 MR. DURANT: That's correct, Your

1 Honor.

2 THE COURT: You need to retrieve that.
3 It's up on the witness stand.

4 MR. DURANT: Okay. Jennifer
5 Nates.

6 JENNIFER NATES

7 having been duly sworn, testifies as follows:

8 THE CLERK: Please state your full name
9 and spell your last name for the record.

10 THE WITNESS: Jennifer Nates,
11 J-E-N-N-I-F-E-R, N-A-T-E-S.

12 DIRECT EXAMINATION

13 BY MR. DURANT:

14 Q. Good morning. Could you tell our jury
15 what you do, Lieutenant?

16 A. I'm employed by the South Carolina Law
17 Enforcement Division in the forensic service
18 section, specifically assigned to the trace
19 evidence section.

20 Q. And you are a lieutenant with SLED; is
21 that correct?

22 A. Yes, sir.

23 Q. And how long have you been in trace
24 evidence with SLED?

25 A. I have been in trace evidence for

1 19 years.

2 Q. What is trace evidence?

3 A. Trace evidence is a term used in the
4 forensic community. It describes many different
5 types of analysis. Different labs across the
6 country will have a trace evidence section that
7 they may not perform the same exams that we do.
8 For the State of South Carolina the trace evidence
9 consists of gas residue analysis, fiber analysis,
10 paint analysis, tape and adhesive analysis,
11 explosives, bank die and general chemical unknowns
12 or identifications and also just physical fit
13 comparisons.

14 Q. And could you tell our jury what
15 background and training you have had in the area of
16 trace examination?

17 A. I received a Bachelor of Science Degree
18 in Chemistry from a very small state school in
19 Pennsylvania called California University of
20 Pennsylvania. Once I received that degree I
21 interned at SLED in the trace evidence section for
22 a summer to see if that was the career path I
23 wanted to go down. I very much enjoyed the work
24 and felt I wanted to pursue it. I was then hired
25 in the drug analysis section at SLED. I performed

1 their training program, went through the police
2 academy and began accepting drug and poison cases
3 for approximately one year.

4 At that time there was an opening in
5 trace evidence and I requested a transfer which I
6 was then given. At that time I began the training
7 program in trace. It was approximately three
8 and-a-half years. Was under the supervision of the
9 lieutenant and under the senior analyst in that
10 department. It included on-the-job training,
11 shadowing, classes and courses in the different
12 types of instrumentation that is used in trace
13 examinations and on results and interpretations and
14 what you can expect to find when you present a
15 result.

16 Q. How long did that training program
17 last?

18 A. It was about three and-a-half years.

19 Q. And are you deemed competent by SLED in
20 the area of gunshot residue examination?

21 A. I am.

22 Q. And how many gunshot residue exams have
23 you performed in your tenure with SLED?

24 A. In the time that I have been doing GSR
25 I have performed in excess of a thousand samples

1 for gunshot residue.

2 Q. And have you previously been qualified
3 as an expert in the area of GSR examination?

4 A. I have been.

5 Q. How many occasions?

6 A. For GSR or for testimony.

7 Q. Well, testimony and GSR.

8 A. I have testified 116 times in state,
9 federal and magistrate level court. And 91 of
10 those testimonies I have been deemed an expert in
11 gunshot residue analysis.

12 MR. DURANT: Your Honor, at this time
13 we would offer Lieutenant Nates as an expert in the
14 field of trace examination, specifically gunshot
15 residue analysis.

16 THE COURT: Any objection?

17 MR. ARCHER: No objection.

18 THE COURT: Without objection then she
19 will be designated as an expert within that field.
20 I have explained to the jury that designation. You
21 may proceed.

22 BY MR. DURANT:

23 Q. Thank you, Your Honor. What is gunshot
24 residue?

25 A. Gunshot residue is a term that the

1 forensic community uses to describe any residue
2 that is generated when a firearm is discharged.
3 Our laboratory specifically analyzes for what is
4 called primer gunshot residue or what we refer to
5 as PGSR. This residue is specific to the primer
6 component of the cartridge. So we are looking for
7 specific components. We are looking for barium,
8 antimonium and lead that is generated when the
9 weapon is fired. Gunshot residue can include the
10 organic gunshot residue from the gun, any debris
11 from the gun, any metal. But specifically gunshot
12 residue for our laboratory is looking for the
13 elements that are in the primer residue of that
14 weapon.

15 Q. And you all do that by using
16 microscopes or what equipment do you use to perform
17 these examinations?

18 A. We use what is called a scanning
19 electron microscope. It is a high powered
20 microscope that uses electrons to magnify the
21 image.

22 Q. And how does gunshot residue get on
23 someone?

24 A. Gunshot residue is formed whenever a
25 firearm is discharged. It will exit any of the

1 manmade ports in a weapon which is the muzzle, if
2 it is a revolver and got a cylinder gap it will
3 come out of the trigger area. And if it is a
4 semiautomatic when the slide comes back the gunshot
5 residue will exit. It's formed in a high heat high
6 pressure environment. So these metallic particles,
7 they will vaporize and then condense quickly when
8 they hit the atmosphere and form microscopic
9 particles that are indicative of gunshot residue.

10 Q. And can you get gunshot residue on you
11 from firing a weapon for example?

12 A. You can have gunshot residue on your
13 hands and your clothing from firing a weapon.

14 Q. How about being in proximity to a
15 firearm?

16 A. That is also another way to have
17 gunshot residue on you. If I fired a weapon from
18 here you potentially could have gunshot residue on
19 you from me firing the gun towards you or even away
20 from you.

21 Q. How about from handling a gun that had
22 been recently discharged?

23 A. That is the third scenario where you
24 can have gunshot residue deposited on your hands.
25 If you pick up a weapon or an item that has gunshot

1 residue on it you can transfer it to your hand.

2 Q. How long does gunshot residue typically
3 remain on a living human being?

4 A. Usually it will only remain on your
5 hands up to four to six hours after the discharge
6 of the firearm. The reason for this is it is very
7 fragile. It's not like it is stuck on your hands.
8 It's just a light coating on your hands. Anything
9 you do will remove it. If you wash your hands you
10 can remove that residue. If you put your hand in
11 and out of your pocket and rub your hands together
12 and everything you touch will remove it. So
13 usually from six hours the shooting we don't expect
14 to find any residue from that incident on your
15 hands.

16 Q. And how are samples generally
17 collected?

18 A. Usually the GSR samples are collected
19 in the field by the police officers or the medical
20 examiners or the coroner. We provide a gunshot
21 residue collection kit to the agencies. Currently
22 it consists of four samples or what we call
23 particle lifts. Very small plastic container with
24 a lid on top and inside that is a round piece of
25 aluminum that has carbon on top of it with a light

1 adhesive. They will just take each one of those
2 samples and dab it over the area of the hands to
3 obtain that collection. If it is labeled RP that
4 means that's the right palm collection. They will
5 dab it over the right palm to collect any material
6 that may be present on the hand. Currently they
7 collect four of these for each GSR kit and then
8 submit them to the laboratory for analysis.

9 Q. Relative to this case, your lab number
10 L1512848 did you receive a GSR kit on the items on
11 the victim in this case Desmond Lewis from the
12 Charleston Police Department?

13 A. I received a GSR kit from Desmond
14 Terrell Lewis.

15 Q. Hand you what's been previously -- I
16 believe State's Exhibit 62, I believe that's in
17 evidence. And ask if you recognize that item?

18 A. This is the packaging that the GSR kits
19 come in that we provide to the officers. On the
20 back it has a label that I generate that lists the
21 unique laboratory and unique item number. Every
22 case that is admitted to SLED will be given a
23 laboratory number which is its unique identifier
24 and any evidence submitted after that date will be
25 assigned the same lab number, just additional

1 items. In this case it is Item 11 with the lab
2 number and then my initials and the date.

3 Q. Was that item properly sealed and
4 labeled when it came into your possession?

5 A. It was. When we receive these we will
6 open the evidence up. We check if this was in a
7 different type of container, it might have been in
8 a manilla envelope. We check the seal on the
9 envelope for initials and dates and make sure it is
10 properly sealed. And we also check the seal on the
11 actually GSR kit and we document on our paperwork
12 and in this case there was no indication it had
13 been tampered with or was improperly sealed.

14 Q. And did the paperwork submitted with
15 that particular State's exhibit indicate that the
16 sample had been taken within your six-hour time
17 frame?

18 A. It did.

19 Q. And do you recall what time?

20 A. In each GSR kit there will be an
21 information sheet that they submit to us that has
22 the name of the person, who collected it, when the
23 incident was and when the collection was. In this
24 case the shooting information was it occurred at
25 2046 on 5-22-15. And it was collected on 2230 on

1 5-22-15. So it well within the six hour time
2 frame.

3 Q. Okay. And within a four-hour time
4 frame?

5 A. Yes, within two hours.

6 Q. And did you examine State's Exhibit 62?

7 A. I did.

8 Q. And what conclusion did you reach?

9 A. On the GSR kit that was submitted from
10 Desmond Terrell Lewis I did not find any particles
11 characteristic of gunshot primer residue.

12 Q. And were those findings consistent with
13 Desmond Lewis having fired or handled a weapon?

14 A. There is no indication to support that
15 he fired or handled a weapon.

16 Q. Thank you very much. Could you please
17 answer any questions Mr. Archer may have for you.
18 I think 62 is in, but if it's not I am offering it,
19 Your Honor.

20 THE COURT: All right. Mr. Lewis, your
21 witness -- Mr. Archer, excuse me.

22 CROSS-EXAMINATION

23 BY MR. ARCHER:

24 Q. Gunshot residue clings fragile to the
25 hands, does it not?

1 A. It does.

2 Q. It's easily removed?

3 A. It is easily removed.

4 Q. If you wash your hands you are going to
5 wash it away?

6 A. Yes, sir.

7 Q. What if you do that to your hands?

8 (Indicating.)

9 A. You can remove it, some of it or
10 completely remove it depending on how much is on
11 your hands.

12 Q. Okay. If somebody at the hospital
13 swabbed the hands that would --

14 A. Yes, sir.

15 Q. Do you know where from the samples that
16 you were shown by the prosecutor, do you know where
17 they were taken from or were they taken from the
18 hands, from shirts, from clothing?

19 A. This was a conventional kit. It was
20 taken from the four areas of the hands, the right
21 palm, the right back, the left palm and left back
22 of the hands.

23 Q. So you can say that at 2230 when the
24 samples were taken that there's no evidence of
25 gunshot residue on the individual's hands, right?

1 A. That is correct.

2 Q. But you cannot necessarily say that it
3 was not there at 2046?

4 A. I don't have any knowledge of what
5 happened prior to the collection or what the person
6 may have done prior to the collection.

7 Q. Right. So it's conceivably possible
8 there was at some point gunshot residue on the
9 hands of the individual, but that that was removed
10 somehow either by washing or doing your hands or
11 having your hands swabbed at the hospital?

12 A. That is a possibility.

13 Q. Okay. So you can only say that the
14 time this was collected at the hospital you didn't
15 see evidence of gunshot residue?

16 A. On the samples that was submitted that
17 were collected at 2230 I did not find any gunshot
18 residue on this sample.

19 Q. And does your paperwork say who they
20 were collected from?

21 A. The paperwork stated they were
22 collected from Desmond Terrell Lewis.

23 Q. Okay. So in short, it is possible that
24 -- conceivable that there was gunshot residue on
25 his hands at 2046, but not at 2230?

1 A. That is possible.

2 Q. Okay.

3 MR. ARCHER: No other questions.

4 THE COURT: Redirect?

5 REDIRECT EXAMINATION

6 BY MR. DURANT:

7 Q. Would that be true if his hands were
8 bagged?

9 A. Depends on when his hands were bagged.

10 Q. He was bagged at the scene, taken all
11 the way to the hospital, then assuming that those
12 bags were removed by the technician who took those
13 samples is that true?

14 A. If that were the case I would expect to
15 find it if it were present at 2046 and the hands
16 were bagged.

17 Q. Thank you.

18 THE COURT: Recross?

19 RECROSS-EXAMINATION

20 BY MR. ARCHER:

21 Q. There is nothing in your paperwork to
22 say at what time the hands were bagged?

23 A. I received two items that said they
24 were bags from him, but I do not know what time the
25 hands were bagged.

1 Q. So they could have been bagged at the
2 hospital, they could have been bagged at the scene,
3 you have no way of telling?

4 A. I have no way of telling.

5 Q. Okay.

6 THE COURT: Ma'am, you may step down.
7 You wish to excuse the witness?

8 MR. DURANT: I would ask that she be
9 excused.

10 THE COURT: Any objections?

11 MR. ARCHER: No objection.

12 THE COURT: You are free to go, ma'am.
13 Thank you very much. We are going to take a short
14 break at this time. I will allow you to step back
15 to the jury room for a brief period of time. As
16 always when you leave the courtroom my instructions
17 are not to discuss the case even among yourselves.
18 You may retire to the jury room.

19 (Thereupon, the jury exited the
20 courtroom at 10:55 a.m.)

21 THE COURT: Court will be in recess for
22 about ten minutes.

23 (A recess transpired.)

24 THE COURT: State ready to proceed?

25 MR. OSBORNE: Yes, sir.

1 THE COURT: Defense?

2 MR. ARCHER: Yes, sir.

3 THE COURT: Bring the jury in.

4 (Whereupon the jury entered the
5 courtroom at 11:08 a.m.)

6 THE COURT: The record will reflect the
7 jury has returned to the courtroom. At this time
8 the State may call its next witness.

9 MR. DURANT: Thank you, Your Honor.
10 The State would call Christopher
11 Victoria.

12 CHRISTOPHER VICTORIA

13 having been duly sworn, testifies as follows:

14 THE CLERK: Please state your full
15 name.

16 THE WITNESS: Christopher Victoria.

17 THE COURT: Please spell your last name
18 for us.

19 THE WITNESS: V-I-C-T-O-R-I-A.

20 THE COURT: Thank you. Counsel, your
21 witness.

22 DIRECT EXAMINATION

23 BY MR. DURANT:

24 Q. Thank you, Your Honor. Could you tell
25 our jury what you go by on the street, what your

1 street name is?

2 A. P Roach.

3 Q. And you have been pretty much known as
4 P Roach your whole life?

5 A. Yeah.

6 Q. How old are you, Mr. Victoria?

7 A. Twenty-four.

8 Q. And where are you from?

9 A. Downtown Charleston.

10 Q. What part of downtown Charleston?

11 A. Johnson Street area, east side.

12 Q. Okay. And where did you grow up on the
13 east side?

14 A. Johnson Street area and Drake Street.

15 Q. That's like Johnson Street projects you
16 are talking about?

17 A. Yeah.

18 Q. How far did you go in school?

19 A. Made the 10th grade, got a GED and I
20 been college for like a few weeks.

21 Q. Okay. That was at Trident Tech?

22 A. Yeah.

23 Q. Do you recall when that was?

24 A. 2010, 2011.

25 Q. You didn't complete any study; is that

1 correct?

2 A. No, sir.

3 Q. And tell our jury why not?

4 A. I got locked up.

5 Q. And that's not a new occurrence for
6 you, is it?

7 A. No, sir.

8 Q. Have you -- what kind of work have you
9 done in the past?

10 A. Cleaning and fast food.

11 Q. Okay. I believe you worked for a
12 janitorial service at one time?

13 A. Yeah, cleaning.

14 Q. That was owned by your mom I believe?

15 A. Yeah.

16 Q. Are you married?

17 A. No, sir.

18 Q. Do you have any children?

19 A. No, sir.

20 Q. But you have had considerable problems
21 with the law; is that correct?

22 A. Yes, sir.

23 Q. And I want to go through your record
24 and have you tell me if this is correct. You were
25 convicted in 2007 of possession of a stolen motor

1 vehicle and malicious injury to personal property?

2 A. Yes, sir.

3 Q. And in 2010 of aggravated assault?

4 A. Yes, sir.

5 Q. 2010 of two counts of B&E auto and two
6 counts of grand larceny?

7 A. Yes, sir.

8 Q. 2012 of B&E auto and possession of a
9 stolen auto?

10 A. Yes, sir.

11 Q. And then 2014 for petty larceny?

12 A. Yes, sir.

13 Q. And you also have a number of charges
14 pending right now; is that correct?

15 A. Yes, sir.

16 Q. And you are currently being locked up
17 in the Charleston County Jail?

18 A. Yes, sir.

19 Q. And that is why you are shackled now,
20 correct?

21 A. Yes, sir.

22 Q. Could you tell our jury how you know
23 Desmond Lewis?

24 A. I grew up with him.

25 Q. And how long have you known him?

1 A. For a long time now, probably like
2 since I was like 14 or 13.

3 Q. So at least ten years or so. What name
4 do you know him by? Your name is P Roach. What is
5 his street name?

6 A. Fats.

7 Q. And would you consider him a friend or
8 an acquaintance?

9 A. Friend.

10 Q. And have you been friends with him
11 constantly since you met him ten years or so ago?

12 A. Yeah, but we had -- we don't hang out
13 like that. We have been getting locked up.

14 Q. You were getting locked up. So was
15 there a period of time where y'all weren't hanging
16 out that much together because of both of y'all
17 difficulties with the law?

18 A. Yes.

19 Q. And also did you move to a different
20 part of the projects or did he move to a different
21 part of the projects during that time too?

22 A. He used to be on Johnson Street, but I
23 start being on Drake and Reid Street.

24 Q. So he remained at the Johnson Street
25 projects?

1 A. Yes.

2 Q. In any event was time when you and him
3 kind of got back together again?

4 A. Yeah. 2015 after I came home
5 from SCDC.

6 Q. Okay. Do you recall how long you had
7 been at SCDC?

8 A. I think like seven months, eight
9 months.

10 Q. So when did you get out of prison in
11 2014 -- I mean 2015?

12 A. March the 13th.

13 Q. Okay. And after you got out of prison
14 in March 2015 did you kind of run into Fats again?

15 A. Yeah.

16 Q. Where was that?

17 A. Drake and Reid Street area. His baby
18 mamma was in the yellow projects.

19 Q. And the yellow projects, are those the
20 projects which are kind of off of America Street
21 and South Street and Drake Street and Chapel Street
22 and they're all yellow?

23 A. Yeah.

24 Q. So Fats had a baby mama in that area at
25 the time?

1 A. Yeah.

2 Q. And so when you got out of prison in
3 March you and him started hanging out together?

4 A. Yeah.

5 Q. How do you know him? (Indicating.)

6 A. Just seeing him in the neighborhood.

7 Q. How long have you known him?

8 A. Not that long.

9 Q. How long had you known him in 2015?

10 A. I don't know.. I probably saw him like
11 couple of times in the neighborhood. Wasn't very
12 long.

13 Q. Had you ever seen him in the yellow
14 projects?

15 A. Close around, yeah.

16 Q. And do you know if he had anybody that
17 he knew in the yellow projects?

18 A. Yeah. I think he had a baby mamma or
19 his mother or somebody lived on Chapel Street.

20 Q. What name did you know him by back
21 then?

22 A. At first I didn't know his name, but
23 now I know him, call him Calico.

24 Q. You knew him as Calico back at the time
25 of this shooting in May of 2015, didn't you?

1 A. Yes, sir.

2 Q. You didn't know his real name, but you
3 knew him by Calico, correct?

4 A. Yes, sir.

5 Q. And why did you pay any attention to
6 him being around there?

7 A. Could you repeat that.

8 Q. Why would you pay any attention to him
9 being around the east side?

10 A. Why wasn't I paying attention? Why
11 wasn't I?

12 Q. I mean why would you take notice of him
13 is what I am asking you being in the area?

14 A. Because he not from around there. He
15 wasn't a usual face.

16 Q. Do you know where he is from?

17 A. Spring Street.

18 Q. That's considered the east side or the
19 west side?

20 A. West side.

21 Q. And prior to this shooting in May of
22 2015 you said you had seen him in the yellow
23 projects. Had you seen him in any other locations?

24 A. Hampden Street, Columbus Street, from
25 places, America Street.

1 Q. So you had seen him several times; is
2 that correct?

3 A. Yes, sir.

4 Q. Would you consider him a friend?

5 A. No.

6 Q. Were you aware of a beef that he was
7 having with your friend Fats?

8 A. At what point in time?

9 Q. Well, before this shooting on May
10 the 22nd were you aware of a beef between the two
11 of them?

12 A. Yeah.

13 Q. And when did you first learn about this
14 beef?

15 A. When my homeboy car got spray painted.

16 Q. When you say your homeboy you mean who?

17 A. I mean Desmond car got spray painted.
18 Somebody wrote snitch and a five point star on it.

19 Q. Okay. And that was back in 2013 I
20 believe or do you remember?

21 A. I don't even remember when exactly it
22 happened.

23 Q. Who did Fats believe spray painted his
24 car?

25 A. Calico.

1 MR. ARCHER: Objection. That's calling
2 for a conclusion who did he believe.

3 MR. DURANT: I asked him if he knew who
4 Desmond believed spray painted his car.

5 THE COURT: I'm going to sustain the
6 objection. You are asking him what was in someone
7 else's mind and I think that would call for
8 speculation on his part unless there was some
9 expression of that that he could relate to I
10 haven't heard that yet. So I will sustain the
11 objection.

12 BY MR. DURANT:

13 Q. Let me ask you this: Why do you
14 believe that he believed that Calico had spray
15 painted his car?

16 MR. ARCHER: Objection. Again calls --
17 requires him to get into the mind of --

18 THE COURT: I'm going to sustain the
19 objection.

20 BY MR. DURANT:

21 Q. Anyway somebody spray painted this car?

22 A. Yeah.

23 Q. You have had numerous conversations
24 with Desmond Lewis?

25 A. Yes.

1 Q. You have had numerous conversations
2 with Desmond Lewis regarding this man?

3 A. Yeah.

4 Q. Are they friends?

5 A. No, sir.

6 Q. Have they ever been friends?

7 A. No, sir.

8 Q. Were you aware that they were not
9 friends?

10 A. Yes, sir.

11 Q. Were you aware of any other instances
12 between them besides the spray painting of the car?

13 A. Yeah, got in a couple of shoot-outs in
14 the neighborhood.

15 Q. How about fist fights?

16 A. I don't recall at the moment.

17 Q. Okay. So this was not their first
18 rodeo?

19 A. No, sir.

20 Q. Do you know what they were beefing
21 about?

22 A. To my knowledge it was over --

23 MR. ARCHER: Objection. I don't know
24 how he would know this other than hearsay, Judge.

25 THE COURT: Well, he is not asking him

1 for any statements made by anyone or any
2 quotations. So I'm going to overrule that
3 objection.

4 BY MR. DURANT:

5 Q. Do you know what this beef was over?

6 A. To my knowledge it was over Calico
7 being or sleeping with Desmond's baby mother.

8 Q. And do you know who Desmond's baby
9 mother is, what her name is?

10 A. Yes, Similar.

11 Q. Similar McClary?

12 A. I don't know her last name for sure. I
13 believe so.

14 Q. Mr. Victoria, I'm going to hand you
15 what's been marked as State's Exhibit 92 for
16 identification. Seems to be a photo. Have you
17 seen that photograph before?

18 A. I have.

19 Q. And who is in that photograph? Who are
20 the two people depicted?

21 A. Desmond baby mother Similar and Calico.

22 Q. And moving to the second page of that
23 document, do you recognize where the photo is from?

24 A. It's Facebook.

25 Q. From Facebook, and is there a date on

1 there?

2 A. Yeah.

3 Q. What is the date?

4 A. 5-10-2015.

5 Q. May the 10th of 2015. And what is --
6 the male in that photo is who?

7 A. Calico.

8 Q. And the female is who?

9 A. Similar.

10 Q. Who is Fats's baby momma, correct?

11 A. Yeah.

12 Q. And this is 12 days before our
13 shooting, correct?

14 MR. ARCHER: I don't know if he has got
15 any way to know that other than reading what he
16 showed him. That's hearsay.

17 MR. DURANT: Withdraw the question.

18 THE COURT: Okay. Rephrase it.

19 BY MR. DURANT:

20 Q. And what is Mr. Calico doing in the
21 photograph?

22 A. Sticking up his middle finger.

23 Q. He's shooting the bird, isn't he?

24 A. Yeah.

25 Q. To who?

1 A. The camera.

2 Q. Um-hmm. Court's indulgence.

3 THE COURT: Yes, sir.

4 (Off-the-record conference.)

5 BY MR. DURANT:

6 Q. And when it was posted on Facebook what
7 did Mr. Calico have to say?

8 MR. ARCHER: Wait a minute. I don't
9 know -- he can identify the person in the
10 photograph, but I don't know that he can
11 authenticate anything else that is attached to the
12 photograph.

13 THE COURT: I will ask the jury to step
14 back to the jury room. I will discuss something
15 with the attorneys. Don't discuss the case while
16 you are outside of the courtroom.

17 (Thereupon, the jury exited the
18 courtroom at 11:26 a.m.).

19 THE COURT: What exhibit number are we
20 looking at?

21 MR. DURANT: This is 92.

22 THE COURT: 92. Now, your question was
23 I believe what Mr. Calico said.

24 MR. DURANT: What I needed to ask and I
25 haven't asked, but I need to ask if he knows what

1 Calico's Facebook name is.

2 THE COURT: Let's go through this
3 outside the hearing of the jury, let's make a
4 little proffer and then we will make a decision as
5 to how we want to proceed.

6 BY MR. DURANT:

7 Q. Were you aware of Calico's Facebook
8 name?

9 A. At the time of the shooting, no.

10 Q. Okay. So you don't know Spring Street
11 MBMB being Calico's --

12 MR. ARCHER: Objection, leading.

13 MR. DURANT: It's leading in your
14 direction though.

15 THE COURT: Well, you know, leading
16 does not make it per se excludable. We are in a
17 proffer. I don't think that he will gain any
18 advantage with this Court. Go ahead.

19 BY MR. DURANT:

20 Q. And so you didn't know his Facebook
21 name at the time, but you do recognize the two
22 people in the photo as being Calico and Similar
23 McClary?

24 A. Yes, sir.

25 Q. Your Honor, I would also argue Rule 104

1 in terms of because we are going to authenticate
2 this later, I believe it's authenticated through
3 the certification of the Facebook people as being
4 the business record. So we would also link it up
5 with the authentication issue later in terms of --
6 and we also will link it up later to be able to
7 establish that Spring Street MBMB as the --

8 THE COURT: We will cross that bridge
9 when we get there. Right now we are not there.

10 MR. DURANT: Okay.

11 THE COURT: I don't mind him
12 identifying who is in the photo if he knows who
13 they are. Now, 92 is a two page exhibit. There's
14 this printed portion too.

15 MR. DURANT: Yes, sir, that's the
16 part --

17 THE COURT: That's the part I assume
18 that Calico supposedly posted.

19 MR. DURANT: Yes, sir. I wasn't going
20 to offer it into evidence at this time.

21 THE COURT: Okay.

22 MR. DURANT: I wasn't intending to --

23 THE COURT: I don't have any problem
24 identifying who is in the photo. That's as far as
25 we go.

1 MR. DURANT: Okay. That's fine.

2 THE COURT: To that extent I am
3 sustaining the objection. Bring the jury in.

4 (Whereupon the jury entered the
5 courtroom at is 11:30 a.m.)

6 THE COURT: I have sustained an
7 objection by the defense. State may proceed.

8 BY MR. DURANT:

9 Q. Thank you, Your Honor. When we
10 previously spoke about this case you had made a
11 statement to us about Fats wanting you to be on
12 point when you saw Calico. What did you mean by
13 that?

14 A. He told me if I see Calico let him
15 know.

16 Q. Now, I want to talk about the night of
17 the shooting, May the 22nd of 2015. Who were you
18 with that day?

19 A. Desmond.

20 Q. And how long had you been with Desmond?

21 A. All day..

22 Q. And were you all downtown together all
23 day or had you been somewhere else?

24 A. We were in North Charleston at the
25 beginning of the day and then around afternoon,

1 late evening we went downtown, caught the bus
2 downtown.

3 Q. And where did y'all end up going
4 downtown?

5 A. We went to the store and to the yellow
6 projects.

7 Q. Was the yellow projects on America
8 Street or South Street, it's on both streets I
9 guess. Is that somewhere y'all hang out at often?

10 A. Yes, sir.

11 Q. And what were y'all doing there?

12 A. Hanging out, drinking, smoking.

13 Q. Smoking weed?

14 A. Yeah.

15 Q. And do you know how long you had
16 actually been in the projects?

17 A. I can't recall, but I know we been
18 there most of the day.

19 Q. Okay. Or most of the afternoon at
20 least I would assume?

21 A. Most of the evening.

22 MR. ARCHER: No objection.

23 MR. DURANT: Your Honor, I would offer
24 State's Exhibit No. 96 I believe without objection
25 at this time.

1 THE COURT: Any objection?

2 MR. ARCHER: No, Your Honor.

3 THE COURT: 96 will be admitted. You
4 may proceed without objection.

5 (STATE'S EXH. 96 in evidence.)

6 BY MR. DURANT:

7 Q. And have you seen that State's
8 Exhibit 96 photograph before?

9 A. Yes, sir.

10 Q. And do you recognize who that is in the
11 photograph over there on the left-hand side?

12 A. Yes, sir. That's me and Desmond.

13 Q. You and Desmond. And can you read to
14 the jury what time that photograph was taken or
15 that screen shot was made?

16 A. In military time I believe that's 8:05.

17 Q. 8:05 p.m. Now, is that the first time
18 y'all had gone to the projects? Could you publish
19 to the jury by the way?

20 A. I don't believe so. I believe we had
21 been there before that.

22 Q. Okay. So y'all left and then came
23 back; is that correct?

24 A. Yes, sir.

25 Q. And that is when y'all arrived in the

1 park at 8:05 p.m.?

2 A. Yes, sir.

3 Q. And when you say -- this is what you
4 call the yellow projects over there?

5 A. Yes, sir.

6 Q. And who was this?

7 A. Me and Desmond.

8 Q. And that would be -- who is in the
9 front and who is in the back?

10 A. Me in the front and Desmond in the
11 back.

12 Q. And is that walking into the projects
13 at the area of ■ America Street?

14 A. Yes, sir, I believe so.

15 Q. Actually maybe back behind ■ America.
16 We know that that's where ■ America would be to the
17 left; is that correct?

18 A. Yes, sir.

19 Q. Do you recognize where that photograph
20 comes from?

21 A. Camera on the corner of Mary and
22 America Street.

23 Q. And being around that area are you
24 aware of the city's cameras in the area?

25 A. Yes, sir.

1 Q. How about everybody else that lives on
2 the east side?

3 A. Yes, sir.

4 Q. Is it possible to get into the area
5 where this shooting occurred without getting on
6 these cameras?

7 A. Yes, sir.

8 Q. How is that?

9 A. Drake and South doesn't have any
10 cameras. Alexander doesn't have any cameras.
11 Chapel and Drake doesn't have any cameras. Nowhere
12 on Drake Street has any cameras.

13 Q. So pretty much anywhere from the south
14 or the west side -- east side you can get in
15 without getting on camera?

16 A. Yes, sir.

17 Q. Do you know that little fellow on the
18 end of the pew?

19 A. Yes, sir.

20 Q. Do you remember seeing him out there
21 that night or that afternoon?

22 A. Yes, sir.

23 Q. Had you ever seen him before that
24 night?

25 A. Yes, sir..

1 Q. Where?

2 A. In the park. I see him a lot in the
3 park.

4 Q. When you say the park, you are talking
5 about that little playground in the middle of all
6 these buildings?

7 A. Yes, sir.

8 Q. Referring to State's Exhibit 134. When
9 you say park, you are talking about this area right
10 here?

11 A. Yes, sir.

12 Q. This would be building 4?

13 A. Yes. That's America Street right
14 there.

15 Q. This would be America Street?

16 A. Yes, sir.

17 Q. That would be Drake Street over here?

18 A. Yes, sir.

19 Q. So you remember Tyreik being out there
20 that night?

21 A. Yes, sir.

22 Q. Was it dark then?

23 A. No, sir, it was getting dark.

24 Q. Okay. Did you talk to him?

25 A. Yeah. We had -- he likes to come dap

1 us up, me and whoever I'm with, you know, whoever,
2 he likes to dap the older guys up and stuff.

3 Q. When you say dap up, what are you
4 talking about?

5 A. Shake hands.

6 Q. So he's always dapping up the older
7 guys when he's out there at the park?

8 A. Yes, sir.

9 Q. Did you say anything to him?

10 A. Yeah. Me and Desmond told him to go in
11 the house because it was getting dark.

12 Q. And did he leave at that point?

13 A. Yes, sir.

14 Q. Now, where were you and Desmond sitting
15 at the time?

16 A. We were on the end of Ms. D's road.
17 That's apartment [REDACTED]. We were on the end of
18 apartment [REDACTED] by the grate.

19 Q. And I am going to refer you back to
20 State's Exhibit No. 134 again. If you can reach,
21 if this was building 4 could you show the jury
22 where?

23 A. Right here.

24 Q. Okay. And what is on that end of the
25 building at building 4?

1 A. Air conditioners and sewer grate.

2 Q. Okay. So y'all were sitting at that
3 end of the building. You had already talked to
4 Tyreik and Tyreik had left. Tell us what happened
5 next.

6 A. Me and Fats started taking pictures of
7 something. I believe we were taking pictures -- I
8 was taking pictures of him on his phone.

9 Q. What phone?

10 A. His cell phone.

11 Q. What for? Why were you taking his
12 picture?

13 A. Put them on Facebook.

14 Q. Where were you sitting at the time?

15 A. I was sitting on the air conditioner,
16 concrete slab that the air conditioners are on
17 behind the black grate. Desmond was sitting in
18 front of me on the sewer drainage.

19 Q. What direction would you have been
20 facing, like toward Chapel Street or Drake Street?

21 A. Chapel Street.

22 Q. Okay. And which way was Desmond
23 facing?

24 A. Towards Drake Street.

25 Q. Okay. So referring back to this

1 Exhibit 134, you would have been sitting facing
2 this direction; is that correct?

3 A. Yes, sir.

4 Q. And Desmond was on the other side of
5 you facing in that direction?

6 A. No, sir.

7 Q. Facing in this direction?

8 A. Yes, sir.

9 Q. Okay. And you were -- had his phone?

10 A. Yes, sir.

11 Q. And tell us what happened then.

12 A. I noticed Desmond start staring at
13 somebody walking past. I looked up and I saw
14 Calico walking past and he had --

15 Q. When you say you saw him walking past,
16 where you are sitting would he be coming from your
17 right or left side?

18 A. He was coming from behind me.

19 Q. Okay. On your left side or your right
20 side?

21 A. You would have to show me like how you
22 mean.

23 Q. Okay. If you were sitting facing this
24 way and your right shoulder would be towards the
25 building and your left shoulder would be over

1 toward this building, did he pass in between you
2 and the building or did he pass on that side?

3 A. On the left side.

4 Q. So it would be on the left side?

5 A. Yes, sir.

6 Q. And what directed your attention to
7 him?

8 A. Fats was staring at him.

9 Q. Do you recall what he was wearing?

10 A. He had on a gray outfit and a bookbag.

11 Q. Was he wearing any kind of hoodie?

12 A. No, sir.

13 Q. Was he -- did he have anything covering
14 his face?

15 A. No, sir.

16 Q. And what was Fats doing when Calico was
17 walking by?

18 A. He was just mugging him, staring at him
19 hard.

20 Q. Is that what you mean by mugging, just
21 staring?

22 A. Yes, sir.

23 Q. Was it dark?

24 A. No, sir, it was still light. It was
25 still like in between getting dark.

1 Q. So it's kind of in between dark and
2 light?

3 A. Yes, sir.

4 Q. Did you have any problems seeing his
5 face?

6 A. No, sir.

7 Q. Was the light any impediment to seeing
8 his face?

9 A. Sir?

10 Q. Was the lack of light any problem with
11 you seeing who this was?

12 A. No, sir.

13 Q. In fact, even if it had been this was
14 happening right under a street light, right?

15 A. Yes, sir.

16 Q. Referring you to State's Exhibit No.
17 147, I believe it's already in evidence, does this
18 depict where you and Desmond were sitting that
19 evening?

20 A. Yes, sir. The black gate and the
21 little concrete slab is shown.

22 Q. Okay. What you are talking about is
23 right here?

24 A. Yes, sir.

25 Q. This right here is the street light,

1 correct?

2 A. Yes, sir.

3 Q. Anyway, you were saying Fats was
4 distracted mugging someone. You looked and saw it
5 was Calico. What happened then?

6 A. Fats stood up and I think Calico was
7 pointing behind a tree or something and --

8 Q. Was he walking? Did he stop at all or
9 did he keep walking?

10 A. No, he stopped like in behind the tree,
11 but I don't know if he was hiding behind the tree
12 or if he was like a little bit away, but the tree
13 was blocking his view because Fats was like he come
14 from that tree. He about to shoot. He about to
15 bust and --

16 Q. When you say he's about to bust you
17 mean what?

18 A. About to shoot and that's when Calico
19 came from behind the tree with the shot like once
20 or twice, I can't remember, but Fats took off
21 running around the building.

22 Q. Okay. And what did you do?

23 A. I jumped on the ground right there.

24 Q. Calico ever make any effort to shoot
25 you?

1 A. No, sir.

2 Q. And what did he do after he shot those
3 first couple of rounds?

4 A. He chased -- I believe he started
5 chasing Desmond around the corner still shooting at
6 him.

7 Q. Okay. He's coming right towards where
8 you are on the ground?

9 A. Yes, sir.

10 Q. And when you say Fats ran away, Fats
11 ran away in what direction?

12 A. Up towards Mary Street in between Ms.
13 D's building and the building across from her.

14 Q. Your Honor, would it be possible to at
15 least unshackle enough where he could point to
16 stuff?

17 MR. ARCHER: I am sorry. I didn't hear
18 what he said.

19 THE COURT: Well, I have left that up
20 to the guards. What do you want?

21 THE DEPUTY: Your Honor --

22 MR. DURANT: I will be showing him
23 photographs and stuff.

24 THE COURT: Well, I will leave that to
25 the bailiffs as to how he should be handled.

1 MR. DURANT: I understand.

2 (Defendant unshackled.)

3 BY MR. DURANT:

4 Q. Thank you. Okay. I want to go back to
5 State's Exhibit 134 again. You said -- I believe
6 testified y'all were at the -- I got this upside
7 down. You were at the end of this building. Could
8 you point out to the jury which direction you saw
9 Calico walking.

10 A. (Witness complies with request.)

11 Q. Okay. And he was headed down Chapel
12 Street way?

13 A. Yes, sir.

14 Q. And where were y'all again on this
15 diagram?

16 A. Right here.

17 Q. And when he walked by did he stop right
18 there or did he keep walking?

19 A. No, he kept walking until he got to
20 like. (Indicating.)

21 Q. There's a tree right there?

22 A. Yes, sir.

23 Q. And then he went behind that tree?

24 A. Yes, sir.

25 Q. When he came out behind the tree

1 shooting what way did Fats run?

2 A. This way.

3 Q. Okay. And where did you jump on the
4 ground at?

5 A. Right there.

6 Q. And when he started chasing Fats which
7 way was he chasing Fats?

8 A. This way.

9 Q. So basically ran right by you?

10 A. Yes, sir.

11 Q. Okay. Do you recall how many times he
12 shot?

13 A. No, I would say was numerous.

14 Q. Numerous?

15 A. A lot.

16 Q. Okay. And after he stopped shooting
17 did you see where Calico went?

18 A. Yeah. When he stopped shooting I got
19 up off the ground. I didn't get up. I lifted my
20 head up. He was running towards the Chapel Street
21 direction.

22 Q. Okay. So he was headed in the
23 direction he had been headed originally?

24 A. Yes, sir.

25 Q. And when you saw him running away what

1 did you do?

2 A. I got up and I went around the corner
3 and I saw Ms. D holding Tyreik on the ground. He
4 was bleeding so I ran back around the corner.

5 Q. Could you tell if Tyreik was injured at
6 the time?

7 A. Yeah, he was crying and he was shot so
8 I mean yeah.

9 Q. Okay. So you came out, you saw that
10 ms. D, that's his grandmother?

11 A. Yes, sir.

12 Q. What did you do when you came around
13 and saw Ms. D holding Tyreik and crying?

14 A. I ran back, I got my bottle, my beer
15 bottle that I was drinking, I threw it up against
16 the -- got the beer bottle, ran back around the
17 corner and threw it up against the wall to try to
18 like get me off the scene of the crime because I
19 didn't want to be in the mixup of it.

20 Q. You threw it up against which building?

21 A. The one right across from the four
22 building.

23 Q. So it would have been this building
24 over here?

25 A. Yes, sir.

1 Q. You can point it out?

2 A. Right there.

3 Q. So you threw it against this building?

4 A. You got it upside down.

5 Q. I'm always doing that. Thank goodness

6 you are paying attention. So up against that

7 building?

8 A. Yes, sir.

9 Q. That was as you were headed back to
10 America Street?

11 A. Yes.

12 Q. And you did that why?

13 A. Because I didn't want to be involved in
14 the situation.

15 Q. Because you knew your fingerprints were
16 going to be on that beer bottle, right?

17 A. Yes, sir.

18 Q. Okay. What did you do when you got out
19 to America Street, Mary and America?

20 A. I saw Desmond laying on the ground
21 bleeding and I went to go wrap my shirt around his
22 leg.

23 Q. Okay. And referring to State's
24 Exhibit 33, do you recognize that shirt?

25 A. Yes. That's my shirt.

1 Q. What did you do with that shirt?

2 A. I wrapped it around Desmond's leg.

3 Q. And where was Desmond? What road was
4 Desmond in?

5 A. On America Street.

6 Q. Okay. And could you point out once
7 again going back to 134 roughly where on America
8 Street you found him?

9 A. (Witness complies with request.)

10 Just --

11 Q. Okay. So about halfway up building
12 eight?

13 A. Yes.

14 Q. Did you end up calling anybody?

15 A. Yeah. I called his mother and his
16 brother.

17 Q. And did you tell them what had
18 happened?

19 A. Yes, sir.

20 Q. And who was his brother?

21 A. Dominique Lewis.

22 Q. Did you call on your phone or someone
23 else's phone?

24 A. Someone else's.

25 Q. Why is that?

1 A. Because I think my phone was either off
2 or it was dead, one of the two.

3 Q. Out or what?

4 A. Dead.

5 Q. Out of battery?

6 A. Yes, sir.

7 Q. And of course did the police come
8 there?

9 A. Yes, sir.

10 Q. And of course you told them exactly
11 what happened?

12 A. No, sir.

13 Q. You didn't?

14 A. No, sir.

15 Q. Why not?

16 A. Because I didn't want to be involved in
17 the situation.

18 Q. Is that done on the east side?

19 A. Yes, sir.

20 Q. What?

21 A. Yes, sir.

22 Q. Is it characteristic on the east side
23 to cooperate with the police?

24 MR. ARCHER: Objection. I don't think
25 he can speak for the whole community, Judge.

1 THE COURT: He can answer for himself.
2 If he has had any direct experience you need to lay
3 a foundation.

4 BY MR. DURANT:

5 Q. Do you have any experience with people
6 that live on the east side in their dealings with
7 the police?

8 A. Yes, sir.

9 Q. And you have been hanging out on the
10 east side for how long?

11 A. Most of my whole life.

12 Q. And what is the relationship between
13 the people on the east side and the police
14 department?

15 A. We just don't talk to the police at
16 all.

17 Q. Don't what?

18 A. We don't snitch, talk to the police.

19 Q. You don't snitch, do you?

20 A. No, sir.

21 Q. And what's the problem with snitching?

22 A. It's just, you know, lot of bad things
23 come from that.

24 Q. It's just not done, is it?

25 A. No, sir.

1 Q. So you didn't tell them what happened?

2 A. No, sir.

3 Q. Did anybody even try to take your
4 statement or anything like to that?

5 A. No, sir. Well, they asked me if I knew
6 what was going on. I told them no.

7 Q. You told them no?

8 A. Yes, sir.

9 Q. Okay. How long did you stay there
10 where Desmond was?

11 A. Until the ambulance came.

12 Q. Court's indulgence?

13 THE COURT: Yes, sir.

14 (Off-the-record conference.)

15 BY MR. DURANT:

16 Q. Mr. Victoria, I want to go through some
17 of the photographs that have previously been
18 admitted into evidence and ask you some questions
19 about them. They should pop up right on the screen
20 in front of you. If you need to do anything it's a
21 touch screen, you can touch it and it will leave a
22 mark so you can do whatever you need to do.

23 A. Yes.

24 Q. Let's start with State's Exhibit No.

25 20. What does that depict?

1 A. Place where me and Calico -- me and
2 Desmond was sitting.

3 Q. That's on the side of building No. 4?

4 A. Yes, sir.

5 Q. And could you show the jury where you
6 were sitting?

7 A. (Witness complies with request.) Right
8 here.

9 Q. And where was Desmond?

10 A. Right here.

11 Q. And when you say that Calico came from
12 up behind, what direction did he come from?

13 A. This way.

14 Q. Put a little arrow on the end so we
15 know which way he was going.

16 A. (Witness complies with request.)

17 Q. Okay. And which way were you facing
18 when he came walking up behind you?

19 A. This way.

20 Q. Okay. Now, when the shooting started
21 you said you jumped on the ground. Where did you
22 jump on the ground?

23 A. Right here.

24 Q. And which way did Fats run?

25 A. This way.

1 Q. And then around the corner of the
2 building, correct?

3 A. Yes, sir.

4 Q. Let's go to State's 21. Can you tell
5 what that depicts?

6 A. Fats, Desmond's beer and his cell
7 phone.

8 Q. That was the phone that you had been
9 using to take his picture?

10 A. Yes, sir.

11 Q. Is your beer bottle around there?

12 A. No, sir.

13 Q. Because you had broken it against the
14 building, correct?

15 A. Yes, sir.

16 Q. Let's go to State's Exhibit 13. Do you
17 recognize that photograph?

18 A. Yes, sir.

19 Q. Where would you have been and Fats have
20 been in relation to where the photograph was taken?

21 A. Right here.

22 Q. Okay. And where that shoe is, is that
23 in the area where you saw Tyreik when you came
24 around the corner?

25 A. Yes, sir.

1 Q. That's where his grandma was holding
2 him?

3 A. Yes, sir.

4 Q. Could we have State's Exhibit's 141,
5 please. Do you recognize that photograph?

6 A. Yes, sir.

7 Q. Could you point out in the area where
8 you and Desmond were sitting?

9 A. (Witness complies with request.)

10 Q. And you testified on direct that Calico
11 walked by y'all and then went behind a tree. Does
12 the photograph show the tree the Calico went
13 behind?

14 A. (Indicating.)

15 Q. When he came out from behind that tree
16 what did he have in his hand?

17 A. A gun.

18 Q. And he started shooting in which
19 direction?

20 A. Towards me, this direction right here.

21 Q. Okay. And when Fats ran which
22 direction did he run?

23 A. This way.

24 Q. And you remained at the side of the
25 building the entire time?

1 A. Yes, sir.

2 Q. Lastly State's No. 2. Do you recognize
3 that photo?

4 A. Yes, sir.

5 Q. And where is that?

6 A. That's where Desmond was laying on the
7 ground.

8 Q. That's on America Street in front of
9 building 8?

10 A. Yes, sir.

11 Q. Now, when you the cops got there you
12 just kind of made yourself scarce?

13 A. Sir?

14 Q. When the cops got there you just kind
15 of walked off; is that correct?

16 A. When an ambulance got there.

17 Q. When the ambulance got there and when
18 they took Desmond you wandered off?

19 A. Yes, sir.

20 Q. Where did you wander off to?

21 A. I went to my friend Maya's house.

22 Q. And let me ask you another question.

23 Let's go back to State's 41 -- 141 I mean. Do you
24 know who was living in that apartment at the time?

25 A. Yes. That's another one of my friends

1 named Tianai.

2 Q. Tianai Lee?

3 A. Yes, sir.

4 Q. Does Tianai have any children?

5 A. Yes, sir.

6 Q. And are you close to her children?

7 A. Yes, sir.

8 Q. Now, you said you went to whose
9 apartment afterwards?

10 A. My friend Maya.

11 Q. Who is Maya?

12 A. Just some girl from the neighborhood.

13 Q. And did you see a woman named Megan
14 that night?

15 A. Yes, sir.

16 Q. And at any time did you see your friend
17 Tianai night?

18 A. I believe so. I can't recall if I saw
19 her that night or the next morning.

20 Q. But in any event did you tell your
21 friends what had happened to you?

22 A. Yes, sir.

23 Q. And did you tell them who was shooting
24 at Desmond?

25 A. Yes, sir.

1 Q. Now, who showed up after a while?

2 A. That night?

3 Q. Yeah.

4 A. Desmond's brother.

5 Q. Desmond's brother and his name again
6 is?

7 A. Dominique Lewis.

8 Q. And what did you and Dominique do when
9 Dominique got there?

10 A. We went to Maya's house and I got my
11 gun and then we went to the east side to wait and
12 see if Calico was going to come to his baby mama's
13 house.

14 Q. And where did his baby mama live?

15 A. On the east side.

16 Q. That's over there? Also call that
17 Bridgeview or used to be Bridgeview, or Bayside is
18 the name of the housing complex?

19 A. Yeah.

20 Q. Okay. You knew that Calico's baby mama
21 lived over there?

22 A. Yes, sir.

23 Q. Why were you going over there?

24 A. To kind of get revenge.

25 Q. And did you see him?

1 A. No, sir.

2 Q. How long were and you Dominique over
3 there?

4 A. A few hours.

5 Q. Where did you get the gun?

6 A. From Maya's house. I used to leave it
7 over there.

8 Q. Now, of course you went home and slept
9 and thought about it and you decided you were going
10 to get up and go to the police?

11 A. Yes, something like that.

12 Q. It wasn't like that at all, was it?

13 A. No, sir.

14 Q. Did people want you to go to the
15 police?

16 A. Yes, sir.

17 Q. Who?

18 A. My mother, my friends, everybody,
19 actually a lot of people.

20 Q. And did you go?

21 A. No. I didn't go.

22 Q. You went eventually because they came
23 and got you, right?

24 A. Yes, sir.

25 Q. You didn't just walk in the front door

1 and say here I am?

2 A. No, sir.

3 Q. And you didn't do that because why?

4 A. I didn't want nothing to do with it.

5 Q. Tianai wanted you to go in?

6 A. Yes, sir.

7 Q. As a matter of fact, she threatened
8 you, right?

9 A. Yes, sir.

10 Q. What did she say she was going to do?

11 A. She was going to -- told me I couldn't
12 come around her house and her children no more
13 because her kids had been in the park that day.

14 Q. So anyway you didn't go to the police
15 that morning. Were you back in that area the next
16 day?

17 A. Yes, sir.

18 Q. And about 5:00 in the afternoon were
19 you stopped?

20 A. Yes, sir.

21 Q. By whom?

22 A. Charleston Police.

23 Q. Who were you with?

24 A. My girlfriend.

25 Q. And what did they want?

1 A. Speak to me about the crime.

2 Q. And did you agree to speak to them?

3 A. Yes, sir.

4 Q. Did they take you down to headquarters
5 or did you go down there on your own?

6 A. No, they took me.

7 Q. Were you interviewed?

8 A. Yes.

9 Q. Did you tell them the truth?

10 A. Most of it.

11 Q. That's true. You told them most of it,
12 right?

13 A. Yes, sir.

14 Q. Do you remember what you lied about?

15 A. Calico's description.

16 Q. What did you tell them that Calico was
17 wearing?

18 A. All black with a hoodie.

19 Q. And was Calico, in fact, wearing all
20 black with a hoodie?

21 A. No, sir.

22 Q. Did you tell them that the shooter's
23 face was covered?

24 A. Yes, sir.

25 Q. Was that true?

1 A. No, sir.

2 Q. Did you tell them you got a good look
3 at the shooter?

4 A. No, sir.

5 Q. What did you tell them about Calico?

6 A. I was 85 percent sure it was him.

7 Q. Eighty-five percent sure?

8 A. Yes.

9 Q. Why 85 percent? Why didn't you just
10 tell them the truth?

11 A. Because I didn't want to be the reason
12 why he got locked up and I know when you get
13 interviewed by the police you got to be 100 percent
14 sure about things so...

15 Q. Well, let's put it this way. The
16 evening of May the 22nd of 2015 were you sure that
17 he was the one that shot Fats?

18 A. Yes, sir.

19 Q. You just didn't tell the police that?

20 A. Yes, sir.

21 Q. Eighty-five percent?

22 A. Yes, sir.

23 Q. Now, the next day which was May
24 the 24th did you return to the police department?

25 A. Yes, sir, if I recall yes, sir.

1 Q. Do you recall why? They wanted
2 something, correct?

3 A. They wanted my shoes because I told
4 them my shoes had blood on it.

5 Q. Okay. The shoes had blood on them from
6 you taking care of Desmond until the EMS got there?

7 A. Yes.

8 Q. And you brought your shoes in, correct?

9 A. Yes, sir.

10 Q. Do you recall ever talking to a
11 Lieutenant Weiss?

12 A. Yes, sir.

13 Q. What did Lieutenant Weiss want?

14 A. He wanted me to identify Calico.

15 Q. Okay. Did he show you some pictures?

16 A. Yes, sir.

17 Q. And did you identify Calico?

18 A. Yes, sir.

19 Q. When you identified Calico you still
20 didn't tell them at that time that he was the
21 shooter, did you?

22 A. No, sir, I told him I just know that's
23 Calico. I didn't know if he was the shooter or not
24 for sure.

25 Q. You were still 85 percent, right?

1 A. Yes, sir.

2 Q. Moving on to May 31 of 2016. Do you
3 remember meeting with Mr. Osborne and his
4 investigator Ray Haupt back there at the
5 solicitor's office with your Attorney Kelly Solar
6 at that time?

7 A. Yes.

8 Q. What did you tell them?

9 A. Basically the same thing I told the
10 police officer.

11 Q. About being 85 percent sure it was
12 Calico?

13 A. Yes, sir.

14 Q. You did tell them a little bit more of
15 the truth, didn't you?

16 A. Yes, sir.

17 Q. What did you tell them?

18 A. Who all I went to go see afterwards.

19 Q. How about what Calico was wearing that
20 night?

21 A. Yeah, exactly what he was wearing, he
22 wasn't wearing all black.

23 Q. Did you tell them that he wasn't
24 wearing a hoodie, correct?

25 A. Yes.

1 Q. And there wasn't anything over his
2 face?

3 A. Yes, sir.

4 Q. You still didn't tell them or go past
5 the 85 percent?

6 A. Yes, sir.

7 Q. Then when we met with you again on
8 November 3rd of this year what did you tell us?

9 A. That I was 100 percent sure it was
10 Calico.

11 Q. Is that the truth?

12 A. Yes, sir.

13 Q. Has that always been the truth?

14 A. Yes, sir.

15 Q. Mr. Victoria, I want to hand you what's
16 marked as State's 85C for identification. Ask you
17 do you recognize that?

18 A. Yes, sir.

19 Q. What is that?

20 A. A letter I wrote to try to get out of.

21 Q. A letter you wrote to what?

22 A. Try and get Calico off his charges.

23 Q. Is there a date on that letter?

24 A. Yes, sir.

25 Q. What is the date on that letter?

1 A. February the 8th, 2017.

2 Q. Where were you on February 8th of 2017?

3 A. In jail at the Al Cannon Detention
4 Center.

5 Q. Okay. You just all of a sudden out of
6 the blue decided you were going to write a letter
7 clearing Calvin Brown, correct?

8 A. No, sir.

9 Q. That's not what happened?

10 A. No, sir.

11 Q. What happened?

12 A. Somebody was yelling at me across the
13 brickyard to do the right thing.

14 Q. Do you remember who that was?

15 A. No, sir. I could hear a voice. I
16 couldn't understand or, you know, determine who it
17 was, the voice.

18 Q. Were you pressured to write that
19 letter?

20 A. Yeah.

21 Q. And what does the letter say?

22 A. Do you want me to read it?

23 Q. Yeah.

24 A. "To whom it may concern. I Christopher
25 Victoria want to exercise my right to remain

1 silent. I do not wish to have anything to do with
2 Calvin Brown's case. All the statements I gave
3 were false and I said because I was under pressure
4 from the detectives who questioned me and the
5 victims parents. I have realized now that I am
6 wrong and want to exercise my Fifth Amendment.
7 Even if I had to go to court I will not testify
8 against this man. Sincerely Christopher Victoria."

9 Q. You wrote that?

10 A. Yes, sir.

11 Q. Is it true?

12 A. No, sir.

13 Q. Has it ever been true?

14 A. No, sir.

15 Q. Have you ever heard the phrase put a 32
16 in there?

17 A. Yes, sir.

18 Q. What does that mean on the street?

19 A. Put an extended clip in the guy,
20 extended magazine.

21 Q. Court's indulgence for a moment?

22 THE COURT: Yes, sir.

23 (Off-the-record conference.)

24 MR. DURANT: Thank you, Mr. Victoria.

25 Please answer any questions Mr. Archer may have for

1 you.

2 THE COURT: Mr. Archer, you may
3 cross-examine. Mr. Archer, how long do you think?

4 MR. ARCHER: Probably an hour.

5 THE COURT: I think we will break for
6 lunch and come back rather than break it up.
7 Ladies and gentlemen of the jury, we are going to
8 break for lunch. The cross-examination will take
9 long enough that will take us well into the lunch
10 hour so we will stop at this point in time. You
11 will be leaving the courthouse. You know my
12 instructions so they are the same instructions I
13 have given you in the past as you leave courthouse.
14 I will ask you to return to the jury room, let's
15 see, if you will be back there at 1:30. We should
16 be able to start shortly thereafter. So we will be
17 in recess until that time. You may retire for
18 lunch. Thank you very much.

19 (Thereupon, the jury exited the
20 courtroom at 12:18 p.m.)

21 THE COURT: I will caution the witness,
22 sir, don't discuss your testimony with anyone
23 during the lunch break. Do you understand that?

24 THE WITNESS: Yes, sir.

25 THE COURT: All right. We will be in

1 recess until 1:30.

2 (A luncheon recess transpired.)

3 THE COURT: We will need to put need to
4 put the witness back on the stand, please. State
5 ready to proceed?

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

7 THE COURT: Defense?

8 MR. ARCHER: Yes, sir, Your Honor.

9 THE COURT: Bring the jury in.

10 (Whereupon the jury entered the
11 courtroom at 1:42 p.m.)

12 THE COURT: The record will reflect the
13 jury has returned to the courtroom. If anyone had
14 any difficulty in complying with my instructions
15 during the lunch break, please stand.

16 (No response from jurors.)

17 It appears that all jurors have been
18 able to comply with my instructions thus far. When
19 we broke earlier this witness was under oath and
20 testifying. The State had completed its direct
21 examination. The defense now may cross-examine.

22 CROSS-EXAMINATION

23 BY MR. ARCHER:

24 Q. Mr. Christopher, how old did you say
25 you were?

1 A. Twenty-four.

2 Q. Twenty-four?

3 A. Yeah.

4 Q. And you are currently in Charleston
5 County Jail, are you not?

6 A. Yes, sir.

7 Q. And you are charged with some serious
8 offenses, aren't you?

9 A. Yes, sir.

10 Q. All right. Now, on the night in
11 question how -- you say it was Calvin Brown that
12 did the shooting? That's what you are telling us
13 now, right?

14 A. Yes, sir.

15 Q. Okay. What was he wearing?

16 A. Gray outfit and a bookbag.

17 Q. Gray outfit and a bookbag?

18 A. Yes, sir.

19 Q. And according to you the bookbag is
20 where the gun came from?

21 A. I'm not sure.

22 Q. You're not sure?

23 A. No, sir.

24 Q. Okay. Did you see where the gun came
25 from?

1 A. No, sir.

2 Q. Okay. Now, that's not what you told
3 the police on the night in question, is it?

4 A. I don't remember what I told them.

5 Q. You don't remember what you told them?

6 A. Not exactly.

7 Q. Do you remember telling them that you
8 did not get a good look at the shooter's face?

9 A. Yes, sir.

10 Q. You told them that. And you said that
11 was because you dove to the ground, right?

12 A. Yes, sir.

13 Q. Do you remember telling them that the
14 shooter had on dark clothing and a hood pulled on
15 to his head?

16 A. Yes, sir.

17 Q. You told them that?

18 A. Yes.

19 Q. Didn't you testify earlier he did not
20 have a hood?

21 A. Yes, sir.

22 Q. You did testify that he did not have a
23 hood?

24 A. Yes.

25 Q. So which one is true? Did he have a

1 hood or did he not have a hood?

2 A. He did not, sir.

3 Q. Okay. So when you told the police that
4 he had a hood you lied?

5 A. Yes, sir.

6 Q. Okay. Is that the first time you lied
7 to the police?

8 A. As in my whole life?

9 Q. Well, you can start off as early as you
10 want to. You have lied to the police before this
11 occasion?

12 A. Yes, sir.

13 Q. Okay. What would you have lied to them
14 about?

15 A. Whether or not I stole somebody's car
16 or something.

17 Q. Okay. Let's go to this incident, okay?
18 What's the first lie you told the police?

19 A. That I didn't know what was going on.

20 Q. Didn't know what was going on at all?

21 A. Yes, sir.

22 Q. Okay. What's the second lie that you
23 told the police?

24 A. I don't really remember everything I
25 told them. I went to go get interviewed.

1 Q. You went to the interview. Now, when
2 you went to the first interview initially you don't
3 specifically say Calvin was the shooter, right?

4 A. Yes, sir.

5 Q. You don't?

6 A. No, sir, I don't.

7 Q. Okay. Do you remember being
8 interviewed on the 23rd of May?

9 A. Which year, sir?

10 Q. 2015, a day or two after the incident?

11 A. Kind of.

12 Q. Kind of. Do you know what the word
13 "physique" means?

14 A. Yes, sir.

15 Q. What would that mean in your mind?

16 A. Like the body.

17 Q. Your body shape, right?

18 A. Yes.

19 Q. And the first time you mentioned Calico
20 don't you tell them not that he was the shooter,
21 but that the shooter's physique reminded you of a
22 male known as Calico?

23 A. Yes, sir.

24 Q. Was that truthful?

25 A. Yes, sir.

1 Q. Okay. And you looked at a photo lineup
2 and you picked Calico out of that lineup, right?

3 A. Yes, sir.

4 Q. When you picked him out of the lineup
5 did you identify him as the shooter or are you just
6 identifying the person that you say his physique
7 looked like?

8 A. I identified him as the person that I
9 said physique looked like.

10 Q. Okay. So when is the first time you
11 told the truth in this matter?

12 A. I got interviewed this year. Sometime
13 recently.

14 Q. Recently?

15 A. Like November, early November or
16 something.

17 Q. So you went from May of 2015 to
18 November of 2017 before you told the truth?

19 A. Yes, sir.

20 Q. Okay.

21 A. Yes, sir.

22 Q. All right. And who did you tell that
23 truth to?

24 A. First I told it to my attorney, then I
25 told it to the solicitor.

1 Q. The solicitor. One of these two
2 fellows?

3 A. Yes.

4 Q. Okay. That would have been November?

5 A. Yes, sir.

6 Q. You didn't tell anybody else the truth
7 between May of '13 and November of 2015?

8 A. I mean I told my friends and people the
9 truth, but nobody like the police or nothing.

10 Q. Okay. You were shown a letter you
11 wrote?

12 A. Yes, sir.

13 Q. In which you said you waive the right
14 to exercise, to remain silent, I do not wish to
15 have anything to do with Calvin Brown's case, all
16 the statements I gave were false. And I said them
17 because I was under pressure from the detectives
18 who questioned me and the victims parents. I
19 realize now I was wrong and want to exercise my
20 Fifth Amendment Right. You wrote that, right?

21 A. Yes.

22 Q. And you say you wrote it because
23 somebody yelled at you you need to do the right
24 thing?

25 A. Yes, sir.

1 Q. Were you doing the right thing here?

2 A. In terms of what we do in the
3 neighborhood about snitching and stuff.

4 Q. Okay. You snitched all throughout the
5 case to some degree or another, right?

6 A. Yes.

7 Q. But the main thing is you tell partial
8 lies on some occasions and you say you tell the
9 truth on other occasions?

10 A. Yes.

11 Q. Okay. And you only admit to telling
12 the truth on one occasion which is when you talked
13 to the prosecutors in the fall of this year. When
14 was that now?

15 A. In November.

16 Q. November?

17 A. Yes, sir.

18 Q. November of this year. Now, during
19 part of this going on you tried to make deals with
20 the police about this, haven't you?

21 A. Yes, sir.

22 Q. Okay. Like in February of 2015 don't
23 you tell Detective English that you want to provide
24 additional details that you left out in exchange
25 for help from the police department?

1 A. Yes.

2 Q. And the help you wanted was you wanted
3 them to get you a personal recognizance bond?

4 A. Yes.

5 Q. So you were willing to tell the truth
6 if they gave you something?

7 A. Yes, sir.

8 Q. Okay. What do you think you are going
9 to get out of testifying here?

10 A. I don't know.

11 Q. You don't know?

12 A. No, sir.

13 Q. You expect to get something out of
14 testifying here, don't you?

15 A. If it happens.

16 Q. If it happens?

17 A. Yes.

18 Q. Don't you feel like by helping the
19 prosecutor you are going to get help on your
20 charges? Don't you believe that?

21 A. Hopefully.

22 Q. You are hoping?

23 A. Yes.

24 Q. Okay. So you are here testifying with
25 the hope that you by your testimony which is

1 favorable to the prosecution you will get help on
2 your charges?

3 A. Yes, sir.

4 Q. Okay. Now, you said that you told the
5 police at some point that you were 85 percent
6 certain it was Calico, right?

7 A. Yes, sir.

8 Q. And I believe you said that you didn't
9 tell them you were 100 percent sure because you
10 didn't want to be responsible for sending him to
11 jail?

12 A. Yes, sir.

13 Q. That's correct, right?

14 A. No, I didn't want to be looked at as
15 the snitch.

16 Q. Okay. But you said the night of the
17 shooting you met up with Desmond's brother, right?

18 A. Yes.

19 Q. And y'all went over to Calvin's
20 girlfriend's house, right?

21 A. Yes.

22 Q. And you waited outside for four or five
23 hours, right?

24 A. Few hours.

25 Q. And you took a gun with you, right?

1 A. Yes, sir.

2 Q. And the purpose of taking the gun with
3 you, you all were planning on shooting him if you
4 saw him, right?

5 A. Yes.

6 Q. Okay. So you didn't want to be a
7 snitch, but it was all right to shoot him?

8 A. At the time I was aggravated and angry
9 that he shot toward me and my friend.

10 Q. But you didn't want to be responsible
11 for putting him in jail. It was okay to shoot and
12 try to kill him; is that what you felt?

13 A. Yes, sir.

14 Q. Okay. Now, Desmond -- how long have
15 you known Desmond?

16 A. Since I was like 13.

17 Q. How long have you known Calvin or
18 Calico?

19 A. I don't really know him, just know of
20 him.

21 Q. Just know of him. How many times have
22 you met him?

23 A. Met him?

24 Q. Been in his physical presence, yes.

25 A. Like a couple, like walk past him and

1 things like that.

2 Q. Okay. Walk past him, but you knew
3 where his girlfriend lived, right?

4 A. Yes.

5 Q. So if you only knew a fellow to walk
6 past him how do you know where his girlfriend
7 lived?

8 A. I knew who his girl was and I knew
9 where she lived at.

10 Q. How did you know who his girlfriend
11 was?

12 A. Because my friends told me.

13 Q. Friends told you. So why before this
14 happened, before Calvin supposedly takes a shot at
15 you and Desmond, why are you asking people about
16 who his girlfriend is if you only met him a couple
17 times? Why would you do that?

18 A. It wasn't purposely me asking, more
19 like conversation was being had and the information
20 was brought up.

21 Q. Okay. Well now, you said there was a
22 beef between Desmond and Calvin, right?

23 A. Yes, sir.

24 Q. And that part of that beef was Desmond
25 believed that Calvin had slept with his girlfriend,

1 right?

2 A. Yes, sir.

3 Q. And another part of it was Desmond
4 believed that Calico had spray painted his car,
5 right?

6 A. Yes, sir.

7 Q. So it seems to me that Desmond is the
8 fellow that has the motive to be shooting at
9 somebody?

10 A. I don't really know.

11 Q. You don't know?

12 A. Yeah.

13 Q. Okay. So what is it that during this
14 period of time supposedly my client Calvin did to
15 Desmond?

16 A. I don't know.

17 Q. Nothing?

18 A. I'm not 100 percent sure.

19 Q. Okay. So you don't know of any reason
20 or motive my client would have to be mad at
21 Desmond?

22 A. No, sir.

23 Q. Okay. But Desmond had reasons to be
24 mad at my client, right?

25 A. Yes, sir.

1 Q. Okay. Do you know if Desmond ever did
2 anything like take a shot at my client?

3 A. I have heard that they taken shots at
4 each other.

5 Q. Okay. Now, how many people did you see
6 out in front of the apartment that night, the night
7 of the shooting?

8 A. At the time of the shooting?

9 Q. Yes.

10 A. I was behind a gate so I don't see
11 nobody.

12 Q. Didn't see nobody. You didn't see my
13 client?

14 A. I mean I saw him and my friend, but I
15 don't see nobody in front of the apartments.

16 Q. Okay. Those are the only -- Calvin and
17 Desmond were the only two people, other people, you
18 saw out there that night?

19 A. At the time of the shooting.

20 Q. At the time of the shooting. Did you
21 actually see -- do you claim that you actually saw
22 Calvin shooting a gun?

23 A. Yes, sir.

24 Q. You do?

25 A. Yes, sir.

1 Q. When is the first time you told the
2 police that?

3 A. I never told the police.

4 Q. Never told the police?

5 A. No, sir.

6 Q. So the first time you told anybody you
7 saw Calvin shooting the gun was in what, November
8 of this year?

9 A. Yes, sir. That's the first time I told
10 the solicitor. I told my friends.

11 Q. You didn't tell the police that you saw
12 Calvin shooting a gun before November of this year?

13 A. Yes, sir.

14 Q. But you did in -- so the first time you
15 told anybody in authority was in November of this
16 year when you met with the prosecutor?

17 A. Yes.

18 Q. Okay. Do you think that's important
19 information?

20 A. Yes, sir.

21 Q. Okay. What -- are you still waiting to
22 come to court?

23 A. Yes, sir.

24 Q. So you haven't pled guilty yet or been
25 found guilty or anything like that? You are

1 waiting to come to court?

2 A. Yes, sir.

3 Q. All right. And on the charges you have
4 what is your understanding of the amount of time
5 you might end up having to do on those charges?

6 A. My charge is 15 to life. The other one
7 is zero to 20, one is zero to 15, one is zero to
8 10, one is zero to five and one is zero to three.

9 Q. But at least one of them is zero to
10 life, it's up to life?

11 A. Yes, sir.

12 Q. So you got a real major reason to want
13 to get help on your charges, don't you?

14 A. Yes, sir.

15 Q. Okay. Were you ever barred from being
16 on this property when the shooting took place?

17 A. Yes.

18 Q. Were you barred from being on there the
19 night of the shooting took place?

20 A. Yes, sir.

21 Q. What was that about?

22 A. I got locked up for trespassing, but I
23 was never on in the trespassing list so they
24 brought me the paper when I was in county. I was
25 in process and they brought me the paper for being

1 on trespassing. So I was never on the trespassing
2 list. I don't know why they didn't put me on the
3 trespass.

4 Q. So now, you're claiming now that the
5 person who did the shooting wasn't wearing a
6 hoodie, is that what you claim now?

7 A. That's what I'm saying.

8 Q. That's what you're saying?

9 A. Yes.

10 Q. And tell me again what was supposedly
11 Calvin wearing that night?

12 A. All gray, gray outfit.

13 Q. Gray shirt and gray pants?

14 A. Yes, sir, gray sweater and gray sweats.

15 Q. Gray sweater and gray sweats?

16 A. Yes, sir.

17 Q. Okay. I have no other questions.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 MR. DURANT: I have a couple, Your
21 Honor.

22 BY MR. DURANT:

23 Q. Mr. Victoria, is it unusual in your
24 world for people to take care of things themselves
25 without going to the police?

1 A. Yes, sir.

2 Q. As a matter of fact, going to the
3 police is about the last thing in the world y'all
4 think of doing, isn't it?

5 A. Yes, sir.

6 Q. And that's why you went over to Romney
7 Street with Dominique Lewis with a gun?

8 A. Yes, sir.

9 Q. I'm a bit curious. You said the letter
10 that you wrote while you were in jail, anybody ever
11 bother you again after you wrote that letter?

12 A. Not that I remember right now.

13 Q. And but they were bothering you before
14 you wrote that letter, weren't they?

15 A. Yes, sir.

16 Q. And the people that were bothering you
17 were his friends?

18 A. I believe so.

19 Q. And you mentioned that you didn't see
20 where the gun came from right before the shooting.
21 Why didn't you see where the gun came from?

22 A. Because Calico was hiding behind a
23 tree.

24 Q. So you don't know where the gun came
25 from, you just know he came out from around that

1 tree and he had it?

2 A. Yes, sir.

3 Q. And as he pointed out, there was one
4 time where I think you were in trouble on a
5 probation violation where you asked to speak to
6 Detective English?

7 A. Yes, sir.

8 Q. And you wanted some help on your
9 probation violation and you told him you would tell
10 him what happened?

11 A. Yes.

12 Q. And they didn't bite, did they?

13 A. No, sir.

14 Q. Is it true with this 85 percent you
15 kept telling the police were you trying to point
16 them in the right direction?

17 A. Yes, sir.

18 Q. Without being a complete snitch?

19 A. Yes, sir.

20 Q. Because the fact of the matter is even
21 back on May the 23rd what you told the police is
22 pretty much what you told the jury today, correct?

23 A. Yes, sir.

24 Q. With a couple of exceptions that we
25 pointed out?

1 A. Yes.

2 Q. That being the 85 percent and what the
3 Defendant was wearing?

4 A. Yes, sir.

5 Q. Correct?

6 A. Yes, sir.

7 Q. But everything else you testified to
8 you told the police back on May the 23rd?

9 A. Yes, sir.

10 Q. And you told him on cross-examination
11 you never told us the truth until November of this
12 year?

13 A. Yes, sir.

14 Q. You did tell other people the truth,
15 right?

16 A. Yes, sir.

17 Q. You told Tianai the truth?

18 A. Yes, sir.

19 Q. Told Maya the truth?

20 A. Yes, sir.

21 Q. Told Megan the truth?

22 A. Yes, sir.

23 Q. You did that the night of the shooting,
24 didn't you?

25 A. Yes, sir.

1 MR. DURANT: I have nothing else.

2 Thank you.

3 THE COURT: Recross?

4 RECROSS-EXAMINATION

5 BY MR. ARCHER:

6 Q. I'm old and don't hear so good. Who
7 are those three people you say you told the truth
8 to?

9 A. Megan.

10 Q. Maya?

11 A. Megan.

12 Q. Megan?

13 A. Maya and Tianai.

14 Q. Towel?

15 A. Tianai.

16 Q. Who are these people?

17 A. Girls in the neighborhood who I be
18 around a lot.

19 Q. Okay. When you went and talked to the
20 prosecutor and supposedly told them the truth did
21 you talk to them any about your charges?

22 A. They just told me they knew what my
23 charges were.

24 Q. They told you they knew what they were?

25 A. Yes. They knew that I was locked up.

1 Q. Okay. Did they say anything about it
2 might help you to be truthful?

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

4 Q. Okay. But you don't know? You don't
5 recall?

6 A. No, sir.

7 Q. Was your lawyer there with you?

8 A. Yes, sir.

9 Q. Who was your lawyer?

10 A. Which time?

11 Q. When you were talking to the
12 prosecutors?

13 A. Which time?

14 Q. November when you supposedly finally
15 told your whole truth.

16 A. Mary Ford.

17 Q. Huh?

18 A. Ms. Mary Ford.

19 MR. ARCHER: Okay. No further
20 questions.

21 THE COURT: You can step down. State,
22 may call its next witness.

23 MR. DURANT: State would call Tianai
24 Lee.

25 THE COURT: Come forward and be

1 sworn.

2 TIANAI LEE

3 having been duly sworn, testifies as follows:

4 THE CLERK: Please state your full name
5 and spell your last name for the record.

6 THE WITNESS: Tianai, T-I-A-N-A-I, last
7 name is L-E-E.

8 THE COURT: Your witness, counselor.

9 DIRECT EXAMINATION

10 BY MR. DURANT:

11 Q. Ms. Lee, good afternoon.

12 A. Good afternoon.

13 Q. Could you please tell our jury how old
14 you are?

15 A. Thirty-five.

16 Q. And how far did you go in school?

17 A. 11th grade, but I have my GED.

18 Q. Okay. And are you employed?

19 A. Yes, I am.

20 Q. Where do you work?

21 A. I'm a manager at Hannibal's Kitchen.

22 Q. And how long have you been at
23 Hannibal's?

24 A. Five years.

25 Q. And you are a manager?

1 A. Slash server.

2 Q. Okay. Do you have any children?

3 A. Six kids.

4 Q. And what are the ages of your six
5 children?

6 A. 16, 14, 10, 7, 5 and 4.

7 Q. And could you tell our jury where you
8 were living at the time of the shooting that was
9 involved in this case when Tyreik G. [REDACTED] and
10 Desmond Lewis were shot?

11 A. [REDACTED] Alexander Street.

12 Q. That's known as the yellow projects?

13 A. Yes, sir.

14 Q. Do you know the little boy that got
15 shot, Tyreik G. [REDACTED] ?

16 A. Yes, sir.

17 Q. And did you know his grandmother
18 Derotha Jones?

19 A. Yes, sir.

20 Q. And where do you live in relation to
21 Tyreik and Derotha?

22 A. Right off Derotha's back door across
23 the yard, two doors down.

24 Q. Could we have State's Exhibit 141,
25 please. Previous testimony indicated that Ms.

1 Jones lived in this building right here, building
2 [REDACTED] is that correct?

3 A. Yes.

4 Q. This would be your apartment right
5 here?

6 A. Yes, sir.

7 Q. And so you're on the back side of her
8 apartment?

9 A. Um-hmm.

10 Q. Is that correct?

11 A. Yes.

12 Q. Do you know a fellow named Christopher
13 Victoria?

14 A. Yes.

15 Q. How do you know Christopher Victoria?

16 A. He's a friend of the family.

17 Q. And what name does Christopher Victoria
18 go by?

19 A. P Roach.

20 Q. And how long have you known P Roach?

21 A. Like six years.

22 Q. And you consider him a friend or?

23 A. Yes.

24 Q. And please, you know, if you'd just
25 answer up because this lady has to take down what

1 you say.

2 A. Yes.

3 Q. And how long have you known him?

4 A. About six years.

5 Q. Okay. And you had a good relationship
6 with him in the past?

7 A. Yes.

8 Q. Does he have a good relationship with
9 you and your children?

10 A. Yes.

11 Q. Did you know a guy named Desmond Lewis
12 or Fats, goes by the name Fats?

13 A. Yes, sir.

14 Q. And how did you know Desmond Lewis or
15 Fats?

16 A. I just knew him through people. I
17 wasn't like in contact with him like that, but I
18 was closer to Christopher.

19 Q. Okay. You kind of knew Fats from
20 Christopher; is that correct?

21 A. Yes.

22 Q. Do you know who that is?

23 A. Yes.

24 Q. Who was that?

25 A. Calico.

1 Q. His real name is Calvin Brown?

2 A. Yes, I guess.

3 Q. How did you come to know Calico?

4 A. I just know him from passing or
5 Facebook.

6 Q. Okay. Has he ever been in the
7 restaurant before?

8 A. Yes.

9 Q. When you say you know him from
10 Facebook, what do you mean by that?

11 A. Facebook friend.

12 Q. He was trying to be more than a
13 Facebook friend, wasn't he?

14 A. (No response.)

15 Q. Was he?

16 A. He's already messaged me before if
17 that's what you are saying.

18 Q. Because he was kind of found of you,
19 right? Is that true?

20 A. I don't know.

21 Q. Did you ever see Calico around the
22 yellow projects before?

23 A. Yes.

24 Q. Do you know why he hung in that area
25 sometime?

1 A. Huh-uh.

2 Q. Do you know if he had a baby mama that
3 lived in that area?

4 A. No, I don't know if he had a baby mama.
5 I seen him walk with a female. I don't know if it
6 his kid's mother or anything like that. I have
7 seen him in the projects before.

8 Q. Okay. Let's talk a little bit about
9 the night of the shooting. Do you remember that
10 night?

11 A. Somewhat.

12 Q. Where were you when the shooting took
13 place?

14 A. In the shower.

15 Q. At your apartment at [REDACTED] Alexander?

16 A. Um-hmm.

17 Q. And how did you find out about the
18 shooting?

19 A. After I got dressed I went outside.

20 Q. Okay. Because?

21 A. I heard all -- the commotion was close
22 to my house. I heard all the commotion. Me and my
23 kids were just in the house like 10, 15 minutes.

24 Q. Did you hear the actual gunshots when
25 you were in the shower?

1 A. Um-hmm.

2 Q. And when you went outside did you go
3 over to Derotha Jones's apartment?

4 A. Yes, I did.

5 Q. She lives in that building that's
6 circled to the right, correct?

7 A. Yes.

8 Q. In the second apartment down from that?

9 A. Um-hmm.

10 Q. What was going on when you went over to
11 Ms. Jones's residence that night?

12 A. Ms. Jones and some of her friends were
13 over there. Her grandson was on his knees. She
14 was holding him with a bullet wound was in his back
15 with a towel over him.

16 Q. Okay. And had the police or the
17 ambulance or any of those folks gotten there yet?

18 A. No.

19 Q. How long did you stay over at Ms.
20 Jones's place?

21 A. I didn't stay long.

22 Q. Did you leave before the police got
23 there?

24 A. Yeah.

25 Q. Where did you go then?

1 A. Back home.

2 Q. Pardon me?

3 A. Back home.

4 Q. Okay. Did you call anybody when you
5 got back home?

6 A. Yes.

7 Q. Who was that?

8 A. My sister.

9 Q. What's her name?

10 A. Megan.

11 Q. Ms. Megan Alston?

12 A. Yes, sir.

13 Q. Why did you call your sister?

14 A. Because she is friends of P Roach.

15 Q. Did you end up going over to the
16 apartment of someone that night named Maya?

17 A. Yes.

18 Q. Who is Maya?

19 A. A friend.

20 Q. She is related to Megan?

21 A. No.

22 Q. That's no or you don't know?

23 A. No. They are just friends.

24 Q. Okay. And did you end up going over to
25 Maya's apartment that night?

1 A. Yes.

2 Q. Was P Roach there?

3 A. Um-hmm.

4 Q. And this was about how long after the
5 shooting?

6 A. Probably an hour or two.

7 Q. And did P Roach say what happened?

8 MR. ARCHER: Objection to hearsay.

9 MR. DURANT: Not hearsay, Your Honor,
10 803 -- 801, excuse me.

11 THE COURT: What exception are you
12 referring to?

13 MR. DURANT: 801(d)1(b).

14 THE COURT: Tell me what that is.

15 MR. DURANT: Yes, sir, prior consistent
16 statement.

17 THE COURT: Ladies and gentlemen of the
18 jury, I'm going to ask you to step back to the jury
19 room while I discuss a matter with the attorneys.
20 Please don't discuss the case while you are outside
21 the courtroom. Thank you.

22 (Thereupon, the jury exited the
23 courtroom at 2:15 p.m.)

24 THE COURT: Now, your full objection is
25 hearsay.

1 MR. ARCHER: Yes, sir.

2 THE COURT: And you are stating what?

3 MR. ARCHER: Me or him.

4 THE COURT: Talking about him.

5 MR. DURANT: I'm saying is a prior
6 consistent statement specifically under 801(d)1(b).
7 801(d) statements which are not hearsay. A
8 statement is not hearsay if it is consistent with
9 declarant's prior testimony and is offered to rebut
10 an express or implied charge against the declarant
11 of recent fabrication or improper influence or
12 motive provided, however, the statement must have
13 been made before the alleged fabrication or before
14 the alleged improper influence or motive arose.

15 Through his cross-examination of
16 Christopher Victoria he continually hashed on the
17 fact that Mr. Victoria did not name Calico as the
18 shooter until he met with us at November 3rd and
19 made the inference to this jury that he did so to
20 curry favor with our office for his pending
21 charges. We have a statement that was made two
22 hours after the shooting which I fully expect to be
23 he told us that Calico shot Fats which was made two
24 hours after the shooting and before any improper
25 motive arose. It clearly falls within that rule,

1 Your Honor.

2 THE COURT: Help me because I am having
3 a little bit of a problem in determining how the
4 rule is written. It seems to me that it would
5 allow the -- you can back up. This is referring to
6 statements made by the declarant.

7 MR. DURANT: And Mr. Victoria was the
8 declarant.

9 THE COURT: So you're saying the
10 declarant testifies at trial and is subject to
11 cross-examination concerning the statements. And
12 the statement is (b) I think is what you are saying
13 is consistent.

14 MR. DURANT: Exactly.

15 THE COURT: With his testimony. It is
16 offered to rebut an express or implied charge
17 against the declarant of a recent fabrication or
18 improper influence or motive provided, however, the
19 statement must have been made before the alleged
20 fabrication or before the alleged improper
21 influence or motive arose. That's the one.

22 MR. DURANT: That's the one I am
23 referring to. The inference he made to this jury
24 was that he changed his statement from being 85
25 percent sure to being 100 percent sure in November

1 of this year and to curry favor with the
2 solicitor's office because he was facing 15 to life
3 and all of these other charges and he was hoping
4 that if he got in and testified for us that he
5 would get help with his charges. But the fact of
6 the matter was he wasn't arrested on these charges
7 until after he made this statement to this witness.
8 And it clearly falls within that rule.

9 MR. ARCHER: Well, Your Honor, I think
10 that one, I don't think you can show it is prior
11 because we talking about the night in question,
12 okay? And what statement is consistent with what
13 was said the night in question we don't know --
14 this is what, a couple of hours after...

15 MR. DURANT: After the shooting.

16 MR. ARCHER: After the shooting before
17 he supposedly goes off to shoot my client?

18 MR. DURANT: This was before he went
19 off to shoot your client.

20 MR. ARCHER: Okay. But I'm not sure
21 about the timing on this thing. He tells a police
22 officer sometime that night that he didn't see the
23 person's face. Okay? And now they want to say --

24 MR. DURANT: That's not the inference
25 he was arguing to the jury.

1 THE COURT: What he's saying is you are
2 arguing that he is trying to make up these various
3 stories to get favor with the police.

4 MR. DURANT: Correct.

5 THE COURT: When was he charged?

6 MR. DURANT: He was charged in July of
7 2015 with his most recent charges which was two
8 months after this statement was made.

9 THE COURT: And after this alleged
10 statement.

11 MR. DURANT: Yes, sir.

12 MR. ARCHER: He testified it's pretty
13 clear the first time he tells the truth is when he
14 goes to talk to them.

15 THE COURT: You can argue all that.
16 The question is whether or not the statement he
17 made to this witness, I think that we are getting
18 ready to hear, is hearsay or not. And this rule it
19 seems to me to indicate that it would not be
20 considered to be hearsay.

21 MR. ARCHER: Well, I don't have the
22 rule in front of me, sir, so I can't really --

23 THE COURT: He has got it right there.
24 Take a look at it. It's a fairly fine point in the
25 rule, but I'm understanding the argument.

1 MR. ARCHER: I am trying to work
2 through this in my mind, Your Honor. I don't know
3 that I have done anything other than get him to
4 admit to lying.

5 THE COURT: You asked him about his
6 charges, how serious they were, whether or not he
7 expected to get some assistance with those charges,
8 promises hadn't been made, but that he still wants
9 to get assistance and expected that, but --

10 MR. ARCHER: He testified, yes, he did.

11 THE COURT: He testified, but you
12 questioned him along the lines that wasn't he
13 expecting some type of -- wasn't there some type of
14 motive for him to give that testimony.

15 MR. ARCHER: Right. I believe he
16 answered basically yes.

17 THE COURT: Well, but what he's saying
18 is before that motive arose he had made the same
19 statement to this witness right here.. Now, I don't
20 know what she's going to say, but I assume that's
21 the reason he is asking the questions.

22 MR. DURANT: That's what she told us
23 before.

24 THE COURT: He is saying that can be
25 used to rebut the motive that you raised. And this

1 rule seems to say that that takes the statement
2 outside the realm of hearsay.

3 MR. ARCHER: Well, let me ask you this.
4 And is this jumping, this lady's name is --

5 THE WITNESS: Tianai Lee.

6 MR. ARCHER: Are you the same as
7 Chandra Lee?

8 THE WITNESS: Uh-hmm.

9 MR. ARCHER: Okay. Well, I don't have
10 much more to argue.

11 THE COURT: Well, I'm going to overrule
12 the objection. I will allow you to go forward and
13 question him about it. Bring the jury in.

14 (Whereupon the jury entered the
15 courtroom at 2:30 p.m.)

16 THE COURT: The record will reflect the
17 jury has returned. I have overruled the objection.
18 You may proceed.

19 MR. DURANT: Thank you, Your Honor.

20 BY MR. DURANT:

21 Q. Ms. Lee, we were at the point where
22 like an hour or two after shooting you were at
23 Maya's and P Roach is over there. What did P Roach
24 or Christopher Victoria tell you regarding the
25 shooting?

1 A. He said that they was coming through
2 the back porch and Calico shot at him.

3 Q. And hit who?

4 A. Hit Fats.

5 Q. And he told you that two hours after
6 the shooting?

7 A. (Indicating.)

8 THE COURT: You have to answer
9 verbally.

10 A. Sorry about that, sir. Yes, sir.

11 Q. He did not say 85 percent it was
12 Calico, did he?

13 A. No, sir.

14 Q. What did you want P Roach to do?

15 A. I wanted P Roach to tell what happened
16 because I have kids. I wasn't thinking of P Roach,
17 I was worrying about my kids is out there and I was
18 upset with him because he did not want to talk to
19 the people because I have kids.

20 Q. Could have been your kids, right?

21 A. Yes.

22 Q. And what did you do when he told you he
23 wasn't going to the police?

24 A. I told him he cannot be around me and
25 my kids.

1 Q: And what was his relationship with your
2 children?

3 A. He was like an uncle. Like he play
4 with them and stuff.

5 Q. Two days after the shooting you told a
6 couple police officers the same thing, didn't you?

7 A. Yes.

8 Q. And --

9 THE COURT: Ma'am, did you answer that?

10 A. Yes, I did.

11 Q. And then two days after that on May
12 the 26th you were interviewed by Detective Holmes
13 and told him the same thing?

14 A. Yes.

15 Q. That interview was recorded?

16 A. Yes.

17 Q. He asked you to pick out a picture like
18 a photographic lineup; is that correct?

19 A. Yes.

20 Q. Whose picture did you pick out?

21 A. Calvin.

22 Q. Pardon me?

23 A. I don't know his real name.

24 Q. Calico?

25 A. Yes.

1 Q. This guy over here?

2 A. Yes.

3 Q. Thank you. Answer any questions the
4 defense may have for you.

5 THE COURT: Mr. Archer, your witness.

6 CROSS-EXAMINATION

7 BY MR. ARCHER:

8 Q. You didn't see Calico?

9 A. No, I didn't see. I wasn't -- no, I
10 didn't.

11 Q. So all you know is what --

12 A. I heard.

13 Q. What you heard?

14 A. Yes, sir.

15 Q. From Christopher?

16 A. Yes.

17 Q. And when he said this what exactly did
18 he say? Do you remember?

19 A. I think I did more of asking him what
20 happened.

21 Q. Um-hmm.

22 A. Like why would you be shooting in the
23 projects with kids, that's what I asked him.

24 Q. What was his answer to that?

25 A. He was like more he was telling me who

1 did it. He didn't really get into the story of
2 what was happening.

3 Q. Did he say it was somebody who looked
4 like Calvin or Calico or --

5 A. No.

6 Q. What was the answer?

7 A. No, sir.

8 Q. He didn't say it was somebody looked
9 like him?

10 A. No, sir.

11 Q. Do you remember exactly what he said?

12 A. That's what he said.

13 Q. Said what?

14 A. He said Calico was shooting at Fats,
15 that's who shot Fats.

16 Q. Okay.

17 MR. ARCHER: Nothing further.

18 MR. DURANT: I have nothing further. I
19 ask she be excused.

20 THE COURT: Any objection to excusing
21 the witness?

22 MR. ARCHER: No objection.

23 THE COURT: Ma'am, you may step down
24 and you may leave the courthouse. Thank you very
25 much.

1 THE WITNESS: Thank you.

2 THE COURT: State may call its next
3 witness.

4 MR. OSBORNE: State calls Shanorma
5 Smith.

6 THE COURT: Come forward and be sworn.

7 SHANORMA SMITH

8 having been duly sworn, testifies as follows:

9 THE CLERK: Please state your full name
10 and spell your last name for the record.

11 THE WITNESS: S-H-A-N-O-R-M-A,
12 S-M-I-T-H.

13 DIRECT EXAMINATION

14 THE COURT: Ma'am, I will ask you, you
15 have a soft voice. If you will speak into the
16 microphone as best you can, thank you very much.

17 THE WITNESS: Okay.

18 THE COURT: You may proceed.

19 BY MR. OSBORNE:

20 Q. Shanorma, how do you know him, the
21 Defendant?

22 A. That's my baby's father.

23 Q. You love him, don't you?

24 A. Yes, I do.

25 Q. Really don't want to be here, do you?

1 A. No. No, I don't.

2 Q. Well, I am sorry about that, but we are
3 going ahead, okay?

4 A. Okay.

5 Q. How old are you?

6 A. Twenty-five.

7 Q. And where are you employed?

8 A. Food Lion.

9 Q. How long have you worked there?

10 A. Nine months.

11 Q. And where did you go to high school?

12 A. Berkeley High.

13 Q. Graduated?

14 A. Yes, sir.

15 Q. All right. And you too have some
16 pending charges with my office; isn't that correct?

17 A. Yes, sir.

18 Q. And what are they?

19 A. First degree burglary and assault and
20 battery.

21 Q. Burglary first and assault and battery?

22 A. Yes, sir.

23 Q. You were arrested on what date?

24 A. January 24th.

25 Q. Of this year?

1 A. Yes, sir.

2 Q. Has anyone in my office promised you
3 anything in exchange for your testimony today?

4 A. No.

5 Q. Has anyone in my office told you to
6 testify in a certain way or say a certain thing?

7 A. No.

8 Q. All right. How many children do you
9 have?

10 A. One and one on the way.

11 Q. All right. The child that's born,
12 what's his name?

13 A. Caleb [REDACTED]

14 Q. How old is he?

15 A. Two.

16 Q. The Defendant is his father?

17 A. Yes, sir.

18 Q. Okay. And how did you meet Calvin?

19 A. Through a mutual friend.

20 Q. Okay. And this is going back to high
21 school? You have to answer because she is writing
22 down everything you are saying.

23 A. Yes.

24 Q. Pull that mic into you just a little
25 bit. All right. So you met in high school and

1 what year was that about?

2 A. 2014.

3 Q. All right. Were you all just friends
4 at first or did y'all hit it off and start dating
5 pretty early?

6 A. We was friends first.

7 Q. When did you start dating him?

8 A. August 3rd, 2014.

9 Q. 2014?

10 A. August 3rd.

11 Q. August 3rd, okay. All right. Let's go
12 right into 2015.

13 A. Okay.

14 Q. Where did you live back then?

15 A. Bayside.

16 Q. And who was your roommate?

17 A. Shari Lucas.

18 Q. Shari Lucas?

19 A. Yes, sir.

20 Q. And where did Calvin live back then?

21 A. With his grandmother.

22 Q. And do you know what road she lived on?

23 A. Hampden Court.

24 Q. Your Honor, may I approach?

25 THE COURT: You may.

1 BY MR. OSBORNE:

2 Q. Do you know of anyone that the
3 Defendant knew in the area of Chapel Street in
4 2015?

5 A. All of us. He was my baby daddy. It
6 was his other baby mama.

7 Q. Okay. Your Honor, may I approach?

8 THE COURT: You may.

9 BY MR. OSBORNE:

10 Q. For ID purposes showing you State's
11 Exhibit 148.

12 A. Okay.

13 Q. Do you recognize her?

14 A. Yeah.

15 Q. Who is that?

16 A. His other baby mama.

17 Q. His other baby's mom? What's her name?

18 A. Danielle.

19 Q. And she is the one that lived on Chapel
20 Street?

21 A. I guess her sister do.

22 Q. Sister or somebody?

23 A. Somebody over there.

24 Q. Do you know somebody by the name of
25 Desmond Lewis or Fats?

1 A. Yes.

2 Q. Is Desmond more of an east side guy or
3 a west side guy?

4 A. East side.

5 Q. How about the Defendant? East side or
6 west side?

7 A. West side.

8 Q. Do you know of any disagreement between
9 Desmond and the Defendant?

10 A. Somewhat.

11 Q. All right. What do you know?

12 A. They had an altercation back in the
13 day.

14 Q. And what was the altercation about?

15 A. I guess over a baby mama.

16 Q. Over whose baby mama?

17 A. Desmond.

18 Q. Do you know her name?

19 A. Similar.

20 Q. Similar. And how far back prior to the
21 shooting did this altercation start, do you know?

22 A. I told you I didn't know. It was just
23 like I just know -- I can't even say when it was.

24 Q. Years ago?

25 A. Yes, like years.

1 Q. Years. Beg the Court's indulgence.

2 THE COURT: Yes, sir.

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

5 THE COURT: You may.

6 BY MR. OSBORNE:

7 Q. Before I do that, the Defendant, he had
8 a Facebook account?

9 A. Yes.

10 Q. What was his user name?

11 A. Spring Street MBMB.

12 Q. Spring Street MBMB?

13 A. Um-hmm.

14 Q. I'm showing you what's been marked as
15 State's Exhibit No. 92. You can take it. Who is
16 shown in that photograph?

17 A. Calvin with Similar.

18 Q. You say Calvin with Similar?

19 A. Yes, sir.

20 Q. Did you see that Facebook post?

21 A. Yes, sir.

22 Q. And did you see that post when it was
23 made?

24 A. Yes, sir.

25 Q. Who made that Facebook post?

1 A. Calvin.

2 Q. Calvin did?

3 A. Yes.

4 Q. You saw it at the time it was made?

5 A. Um-hmm.

6 Q. Your Honor, at this time we would seek
7 to admit State's Exhibit 92, the photograph, as
8 well as the message attached to the post into
9 evidence.

10 MR. ARCHER: I got no objection to the
11 photograph. I do object to the message attached to
12 it, Your Honor.

13 THE COURT: What is the objection?

14 MR. ARCHER: Well, there is nothing
15 authenticating that message.

16 THE COURT: Did she not just indicate
17 she was present when the post was made?

18 MR. OSBORNE: Yes. I can go a little
19 bit further.

20 THE COURT: Go a little bit further to
21 be sure she is aware and she can authenticate the
22 written part of it.

23 BY MR. OSBORNE:

24 Q. Did you have the occasion to read the
25 message that was attached to that photograph when

1 it was made?

2 A. Talking the caption under it?

3 Q. You don't have to read it now. I am
4 just asking when the message was posted by the
5 Defendant did you have the occasion to read the
6 message?

7 A. Yes, sir.

8 Q. How did that make you feel when you
9 read the message?

10 A. Angry.

11 Q. And what did you do as a result of
12 that?

13 A. Cursed him out.

14 Q. Cursed out the Defendant?

15 A. Right.

16 Q. Your Honor, at this time we will seek
17 to offer the message into evidence.

18 THE COURT: Objection?

19 MR. ARCHER: I'm not sure she can
20 authenticate a Facebook page, Your Honor, but --

21 THE COURT: She indicated she was there
22 and read it when it was posted. I will overrule
23 the objection. It will be admitted. What's the
24 number on that?

25 MR. OSBORNE: State's 92.

1 THE COURT: It's been admitted. You
2 may publish if you like.

3 (STATE'S EXH. 92 in evidence.)

4 BY MR. OSBORNE:

5 Q. Okay. That's the Defendant to the
6 right?

7 A. Yes, sir.

8 Q. And sticking out his middle finger?

9 A. Yes.

10 Q. And the girl to the left is who?

11 A. Similar.

12 Q. That's Similar, that's Desmond's baby
13 mama?

14 A. Yes, sir.

15 Q. Okay. Take a look at this message.
16 Can you see it okay?

17 A. Yes, sir.

18 Q. Can you read what it says next to the
19 title?

20 A. "Happy Mother's day to my nigga my
21 nigga. Have ya chick in the pic like pose for me
22 lol."

23 Q. Have ya chick in the pic like pose for
24 me?

25 A. Yes, sir.

1 Q. What's the date of that?

2 A. Mother's Day.

3 Q. Mother's Day. What's -- next to
4 uploaded?

5 A. 2015.

6 Q. Does that seem about right?

7 A. Um-hmm.

8 Q. And you confronted him about that
9 message?

10 A. That's right.

11 Q. What was it about the message that made
12 you mad?

13 A. He was supposed to be with me and he
14 post a picture with someone else on Mother's Day.

15 Q. Your Honor, may I approach?

16 THE COURT: You may.

17 Q. Showing you what's been marked as
18 State's Exhibit No. 93. Can you look at these
19 messages here.

20 A. (Witness complies with request.)

21 Q. Did you ever -- have you ever seen that
22 before, those messages?

23 A. Um-hmm.

24 Q. Not talking to us, I'm talking about
25 back in 2015 have you seen?

1 A. Um-hmm.

2 THE COURT: You have to answer yes or
3 no, ma'am.

4 A. Yes, sir.

5 Q. Okay. And what are the circumstances
6 behind you seeing those messages?

7 A. When he called me from jail.

8 Q. When he did what?

9 A. When he called me from jail about the
10 Facebook account and everything. When he called me
11 from the jail he was acting crazy.

12 Q. So sometime after the Defendant was
13 arrested you --

14 A. I found out about this.

15 Q. Found out about this message?

16 A. Yes.

17 Q. And where did you see the message
18 again?

19 A. On my forum.

20 Q. So was that included in his Facebook
21 account?

22 A. Um-hmm.

23 Q. The Defendant?

24 A. Yes, sir.

25 Q. And how did you gain access to the

1 Defendant's Facebook account?

2 A. He gave his friend his password and
3 e-mail address.

4 Q. I am sorry?

5 A. He gave his friend his e-mail and
6 password and he gave it to me.

7 Q. So his user password was relayed to
8 you. That's how you were able to access it?

9 A. Yes, sir.

10 Q. Did you see other posts and other
11 photographs in the Facebook account which made you
12 confident that it was indeed his Facebook account?

13 A. Yes, sir.

14 Q. Okay. When you confronted him about
15 that message what did he say?

16 A. He tried to blow it off, trying to tell
17 me to calm down because I was yelling.

18 Q. He didn't deny making the message?

19 A. Huh?

20 Q. He didn't say I didn't say that?

21 A. He did not say that he didn't say that
22 because he was in jail when this was made. That
23 was him.

24 MR. OSBORNE: Your Honor, at this time
25 I will seek to admit State's Exhibit 93 into

1 evidence.

2 THE COURT: Objection.

3 MR. ARCHER: I need to look at it
4 again.

5 THE COURT: Show it to him, please.

6 (Handing.)

7 MR. ARCHER: This is on Facebook.

8 Okay? But I think there's no authentication who is
9 posting and who is responding so I just think it's
10 not really completely authenticated.

11 MR. OSBORNE: Well, in reference to the
12 author she said that she confronted him about these
13 messages and she had an argument with him about
14 these messages. And she had an argument with him
15 about these messages.

16 THE COURT: You agree he had admitted
17 having written them.

18 MR. OSBORNE: No, he did not deny
19 having written them. She told him that she was mad
20 about the contents of these messages. She
21 confronted him about it and that he didn't deny it
22 and she knows this to be coming from his Facebook.
23 She had the user name and the passwords and she saw
24 other distinctive characteristics about that
25 Facebook account which she knew to belong to him.

1 MR. ARCHER: Not denying is not the
2 same as admitting, Your Honor.

3 MR. OSBORNE: Well, I don't think 901
4 requires that we identify every single post to the
5 Defendant. What we have to do is to identify
6 similar characteristics to the post or to the user
7 name to tie him into it. That would be a pretty
8 high threshold.

9 THE COURT: I will overrule the
10 objection. I will allow it to come
11 in.

12 MR. OSBORNE: Thank you, Your Honor.

13 THE COURT: You may publish.

14 (STATE'S EXH. 93 in evidence.)

15 BY MR. OSBORNE:

16 Q. Let's start with you said that you know
17 the Defendant as being Spring Street MBMB, that's
18 his Facebook?

19 A. Yes, sir.

20 Q. All right. This first message here on
21 May the 20th or at least that's the date on there,
22 what does that message say?

23 A. Face down in ya phone lol.

24 Q. What does that mean?

25 A. He wants to have sex with her.

1 Q. He wants to have sex with her. On the
2 date on here it says May 23rd. Says what?

3 A. Call me bra.

4 Q. And then an individual named Similar
5 McClary responds back with what?

6 A. What's the number.

7 Q. And Similar McClary is Desmond's baby
8 mama?

9 A. Yes, sir.

10 Q. Are you familiar with this phone number
11 here?

12 A. Yes, sir.

13 Q. Whose number is that?

14 A. Calvin Brown.

15 Q. Was Calvin Brown's phone number?

16 A. Yes, it was.

17 Q. But he changed it?

18 A. Yes, sir.

19 Q. We will get to that in a second. Let's
20 move right into the day of the shooting. The night
21 before do you, or maybe you don't recall, did he
22 sleep at your apartment the night before the
23 shooting?

24 A. I'm pretty sure he did.

25 Q. Okay. And then when he woke up did he

1 go to work?

2 A. Yes, sir.

3 Q. And one of his jobs was at Eli's Table?

4 A. Yes.

5 Q. Right around the corner there?

6 A. Yes.

7 Q. Do you remember about what time he got
8 off that day?

9 A. Like around 4:00.

10 Q. Did talk to him on the phone?

11 A. Yes.

12 Q. What was your phone number back then?

13 A. 843 something. I can't remember my
14 number.

15 Q. Was it [REDACTED]-1054?

16 A. Yes, sir.

17 Q. Yes?

18 A. Yes, sir.

19 Q. And we see it up there. That was his
20 phone number [REDACTED]-8874?

21 A. Yes, sir.

22 Q. All right. Did you see him during the
23 day of the shooting?

24 A. Yes, I'm thinking I did.

25 Q. Okay. Did he come by your apartment or

1 you his?

2 A. He came by mine.

3 Q. This was on Bayside? What time do you
4 think he got there?

5 A. Around five.

6 Q. Say again?

7 A. Like five something.

8 Q. Now, is there anything that --

9 MR. ARCHER: I didn't catch that.

10 5:15?

11 THE WITNESS: I can't remember. It was
12 after five.

13 MR. ARCHER: Five.

14 BY MR. OSBORNE:

15 Q. Is there anything that is drawing your
16 memory to that day in specific? Was there like
17 some sort of party going on?

18 A. It was my niece's graduation. She was
19 having a little cookout.

20 Q. A little cookout, a little graduation
21 party. And so that's your point of reference to
22 remember back to that day?

23 A. That's why I remember.

24 Q. So is it fair to say that the party
25 could have been on that day or the next day?

1 A. Yeah, I'm thinking. You guys keep
2 asking me two years later. I can't remember, but
3 that's the only thing I can actually draw to
4 remember.

5 Q. That's your point of reference?

6 A. Yes. Yes, sir.

7 Q. Either way did he stay the entire
8 night?

9 A. No.

10 Q. Okay. How long did he stay?

11 A. Like an hour and he left.

12 Q. Okay. So he would have left Bayside
13 around six, something like that?

14 A. Yes, sir.

15 Q. 6:30 maybe. How did you first hear
16 about a shooting?

17 A. Desmond's brother Dominique called
18 Shari's boyfriend and he called Shari.

19 Q. So Dominique Lewis is -- who is
20 Desmond's brother?

21 A. Um-hmm.

22 Q. Was dating your roommate Shari?

23 A. Yes, sir.

24 Q. So Dominique obviously knew that you
25 dated Calvin?

1 A. Yes, sir.

2 Q. Okay. If Dominique knew I guess it is
3 not hard to imagine then that Desmond would also
4 know?

5 A. Yes, sir.

6 Q. Desmond knew, Desmond's friends
7 probably knew as well?

8 A. Yes, sir.

9 Q. So they would know where you lived?

10 A. Yes, sir.

11 Q. All right. After you heard about the
12 shooting did you receive a call from Calvin?

13 A. Yes, sir.

14 Q. After you spoke to him on the phone did
15 you have the occasion to leave Bayside?

16 A. Yes.

17 Q. Why did you leave?

18 A. Because when he called me I told him I
19 was having pains.

20 Q. You said you were having pains?

21 A. I was having pains.

22 Q. You were really pregnant?

23 A. Like eight months pregnant. I was due
24 almost a week later.

25 Q. So after you spoke to him you start to

1 have pains and so what did you do then?

2 A. I walked to MUSC.

3 Q. Take a walk to where?

4 A. MUSC because I was hurting.

5 Q. So you start to walk to MUSC. Did you
6 communicate with the Defendant to tell him where
7 you are at?

8 A. Yes, sir.

9 Q. Where did you all end up -- did you all
10 meet?

11 A. Yes, sir.

12 Q. And where was that about?

13 A. Like around Brigade and Meeting.

14 Q. And from there you all went to MUSC
15 together?

16 A. Yes.

17 Q. So is it fair to say that once the
18 Defendant left your house around 6:30 or so on the
19 date of the shooting he did not come back to
20 Bayside?

21 A. No.

22 Q. You ran into him or y'all met up around
23 Meeting and Brigade and walked to MUSC?

24 A. Yes.

25 Q. What time do you think that would have

1 been that you would have met up with him walking to
2 MUSC?

3 A. Like nine something, nine, almost ten.

4 Q. When you got to MUSC I suppose that was
5 like around ten?

6 A. Yes.

7 Q. Did you see anyone else at the
8 hospital?

9 A. Yes.

10 Q. Who did you see?

11 A. Saw my ex-boyfriend's mother.

12 Q. Your ex-boyfriend's mother?

13 A. Um-hmm.

14 Q. Did you see any of the Gadsdens there?

15 A. Yeah, I seen them because it was my
16 ex-boyfriend. I just ran into them.

17 Q. Okay. So your ex-boyfriend's mother
18 is --

19 A. Related to them, yes.

20 Q. When you got to MUSC what did they do
21 to you or for you?

22 A. Check me because I had fluid came out.

23 Q. Kind of like a false alarm. When you
24 got there did they treat like you were having your
25 child? Did they bring you into the labor and

1 delivery?

2 A. Yes, they did.

3 Q. So you got rushed in pretty quick?

4 A. Yes.

5 Q. So while -- before they found out that
6 it was a false alarm and you were sitting there in
7 labor and delivery was the Defendant with you?

8 A. No.

9 Q. Why not?

10 A. Because he left. He told me to call
11 him if the baby come.

12 Q. So he left MUSC?

13 A. Yes, sir.

14 Q. He didn't hang around?

15 A. No.

16 Q. That was before you found out?

17 A. Yes.

18 Q. That it was a false alarm?

19 A. Yes.

20 Q. All right. So you didn't have the baby
21 that night. You went home that night I take it?

22 A. Yes, sir.

23 Q. Did you see Calvin again later that
24 night?

25 A. Um-hmm.

1 Q. About what time?

2 A. Was like almost 3:00 in the morning
3 when he called me.

4 Q. Three or 4:00 into the next morning?

5 A. Yes.

6 Q. Did you see him again?

7 A. Um-hmm.

8 Q. So did he come by your apartment after
9 that?

10 A. Yeah.

11 Q. So now we are going on into the next
12 day after the shooting. Was everything sort of
13 normal the next day?

14 A. Yes, sir.

15 Q. He go back to work?

16 A. Yes, sir.

17 Q. All right. Now, a few days later did
18 you hear that police detectives wanted to speak to
19 Calvin?

20 A. Yes, sir.

21 Q. And how did you hear that?

22 A. He called me and told me.

23 Q. And when he called you and told you
24 that the police wanted to talk to him did he call
25 you from that number, the 874 number?

1 A. He called me from the phone number
2 right here.

3 Q. 874 number?

4 A. Um-hmm.

5 Q. Prior to speaking to the police did he
6 call you from a different number?

7 A. After he spoke to them he called me
8 from a different phone number.

9 Q. Either way if we were to look at the
10 call records they would show he changed his number
11 sometime?

12 A. Yes.

13 Q. Is that correct? Either before or
14 after speaking to the police.

15 A. Yes, sir.

16 Q. Do you remember what that number was?

17 A. It was a 678 number.

18 Q. Another 678. Do you remember if it
19 ended in 9188?

20 A. Might have been.

21 Q. Okay. All right. So I want to move
22 ahead to June the 2nd. That would be like a few
23 days later. Did you go back to MUSC?

24 A. Yes, sir.

25 Q. This time it was for real?

1 A. Yes, sir.

2 Q. Having the contractions. When was
3 Caleb born?

4 A. [REDACTED]

5 Q. Very next day?

6 A. Yes, sir.

7 Q. On June the 4th did some detectives
8 come by and speak to you at MUSC?

9 A. Yes.

10 Q. Now, how were you alerted that the
11 detectives were on their way to speak to you?

12 A. Calvin Brown told me.

13 Q. And how did Calvin tell you?

14 A. He called me, he say people are
15 downstairs bra.

16 Q. He said people are downstairs bra. And
17 that it was the detectives?

18 A. Um-hmm.

19 Q. Now, when he told you the detectives
20 were downstairs and wanted to talk to you what else
21 did he say?

22 A. Talk to them.

23 Q. Did you talk to them?

24 A. Yes, sir.

25 Q. All right. While you were speaking to

1 the detectives and you were being interviewed it
2 was audio recorded, correct?

3 A. Yes, sir.

4 Q. I think Detective Holmes might be in
5 the back row was one of the detectives, correct?

6 A. I can't see.

7 Q. Okay. And Detective English?

8 A. Stand up. I can't see.

9 Q. English isn't here. He will be here
10 Thursday. But you were interviewed by two
11 detectives and it was audio recorded?

12 A. Yes.

13 Q. And what did they want to know? What
14 was their only question?

15 A. Where was Calvin Brown at the time of
16 the case.

17 Q. At the time of the shooting?

18 A. Yes, sir.

19 Q. What did you tell them?

20 A. He was with me.

21 Q. Was that true?

22 A. No.

23 Q. Okay. After the detectives left your
24 room did the Defendant come back into the room?

25 A. Yes.

1 Q. And was he carrying anything?

2 A. No.

3 Q. Are you sure?

4 A. I'm sure.

5 Q. You don't remember him carrying a bag?

6 A. That's not when he came back to the

7 room the first time. That was the second time.

8 Q. He came back a second time?

9 A. Um-hmm.

10 Q. What date did he come back on the
11 second time?

12 A. He came June the 4th. He came back
13 then like 5:00 right after they left. He came
14 back. He left the hospital room and then like
15 later that night he was going to get clothes. He
16 came back to hospital.

17 Q. So he came back 11:00 that night and at
18 that time he had a bag with him?

19 A. Yes, sir.

20 Q. Okay. The night of June 4th?

21 A. Yes, sir.

22 Q. And you were discharged from the
23 hospital the very next day on June the 5th?

24 A. Yes, sir.

25 Q. Defendant, did he sleep in the hospital

1 with you on the night of June 4th?

2 A. Yes, sir.

3 Q. And then he went to work the next day?

4 A. Yes, sir.

5 Q. When he left to go to work did he bring
6 his bag with him or did he leave it there?

7 A. No, he left it in my room.

8 Q. Left the bag in the room?

9 A. Yes, sir.

10 Q. Were you discharged on June the 5th
11 from the hospital?

12 A. Yes, sir.

13 Q. And your stepdad came and picked you
14 up?

15 A. Yes, sir.

16 Q. And then brought you home?

17 A. Yes.

18 Q. I know you made a stop or two on the
19 way home to pick up supplies for your child?

20 A. Yes.

21 Q. But on your way home did you recognize
22 that it seemed like somebody might be following
23 you?

24 A. Yes.

25 Q. Wasn't too secretive?

1 A. No, they weren't.

2 Q. Who did you think was following you?

3 A. The police.

4 Q. Was that thought confirmed when you got
5 home?

6 A. Yes.

7 Q. In what way? How?

8 A. They came to Shari's door looking for
9 Terrell Benjamin. They was trying to see if Calvin
10 Brown really was there.

11 Q. So they went to Shari's door, your
12 roommate, and then they are asking for Terrell
13 Benjamin. Do you even know someone named Terrell
14 Benjamin?

15 A. Yes.

16 Q. But you didn't think that's who they
17 were looking for?

18 A. I knew they weren't.

19 Q. You knew?

20 A. I knew.

21 Q. So knowing that they were was looking
22 for the Defendant what did you do then?

23 A. I didn't do anything. He told me -- I
24 called him first. I told him the police following
25 me. I don't know what you're doing, but you better

1 be careful.

2 Q. Did you find out that he -- the
3 Defendant was arrested that day?

4 A. Yes, sir.

5 Q. How did you find out that?

6 A. Because I got a jail call.

7 Q. You got a jail call. May I approach?

8 Showing you what's been marked as State's
9 Exhibit 120B, can you tell me if you recognize
10 that.

11 A. Yes, sir.

12 Q. What is that?

13 A. This is the first call.

14 Q. Is it the first or a bunch of calls?

15 A. I don't know how many calls you got,
16 but I know the one you about to play is the first
17 call.

18 Q. And you know that -- when you say call,
19 what kind of call?

20 A. The collect call.

21 Q. Is this the Defendant calling you from
22 the jail?

23 A. He called me from jail.

24 Q. Okay. And you know that the CD
25 contains that call because of are these your

1 initials?

2 A. Yes.

3 Q. And what's the date on there?

4 A. 1-19-17.

5 Q. And so it's fair to say that we
6 listened to these calls?

7 A. Yes, sir.

8 Q. And it is you speaking on many of these
9 calls?

10 A. Yes, sir.

11 Q. I think almost all of them.

12 A. Yes.

13 Q. But nevertheless the individual on the
14 other side of the call who was calling from the
15 jail is who?

16 A. Calvin Brown.

17 Q. The Defendant?

18 A. Yes.

19 Q. Your Honor, at this time we would seek
20 to admit State's Exhibit 120B and play a portion of
21 these clips.

22 THE COURT: Objection?

23 MR. ARCHER: I don't know how this was
24 made or when it was made or what the procedure was
25 for having been made, so I'm not sure if it's been

1 authenticated.

2 MR. OSBORNE: This is her voice. These
3 are clips from this. This individual has made
4 several calls from the jail. These are the just
5 clips that we seek to introduce. She has listened
6 to each one. She's known this Defendant since high
7 school. She is the person on many of these calls.
8 Those in which she is not the individual in the
9 other call, I think only one call, and she heard
10 that one as well and she can identify the
11 Defendant's voice.

12 MR. ARCHER: The disk is obviously made
13 by the jail. We need to bring somebody from the
14 jail to authenticate it.

15 MR. OSBORNE: We would seek to do this
16 through 104(b) which allows us to introduce this
17 and authenticate it later. We have the custodian
18 outside. Just for courtroom purposes and to save
19 time we were going to play this through Shanorma,
20 authenticate it through Ms. Green who would then
21 complete the authentication circle.

22 THE COURT: Ladies and gentlemen of the
23 jury, I'm going to ask you to step back to the jury
24 while I discuss a matter with the attorneys.
25 Please don't discuss the case while you are outside

1 the courtroom. We will probably take a courtroom
2 break during the break so it may be a few minutes.
3 Thank you very much.

4 (Thereupon, the jury exited the
5 courtroom at 3:06 p.m.)

6 THE COURT: Mr. Archer, if I understand
7 your objection you're saying that all the calls on
8 there were recorded at the jail obviously and that
9 they have not yet been authenticated by the keeper
10 of those records.

11 MR. ARCHER: That's right, Your Honor.

12 THE COURT: Well, then why don't I just
13 stop this witness's testimony. We will bring that
14 person in and let him make a proffer of the
15 authentication.

16 MR. ARCHER: That would probably fix
17 the problem, but otherwise it is putting the cart
18 before the horse.

19 THE COURT: I'm trying to see if they
20 are authenticated. So let's see if they are
21 authentic. Ma'am, I'm going to ask you to step
22 down. You can remain in the courtroom. Don't
23 discuss your testimony while you are off the
24 witness stand.

25 (Witness left the stand.)

1 THE COURT: Ma'am, come forward to the
2 witness stand to be placed under oath.

3 SHELLIE GREEN

4 having been duly sworn, testifies as follows:

5 THE CLERK: Please state your full name
6 and spell your last name for the record.

7 THE WITNESS: First name is Shellie
8 S-H-E-L-L-I-E, last name Green, G-R-E-E-N.

9 THE COURT: Your witness, counsel.

10 DIRECT EXAMINATION

11 BY MR. OSBORNE:

12 Q. Sergeant, right?

13 A. Correct.

14 Q. And where do you work?

15 A. At the sheriff's office, Al Cannon
16 Detention Center.

17 Q. What is your position there?

18 A. Currently now as of September 15th I am
19 the administrative sergeant over security threat
20 group.

21 Q. What are some of your duties there?

22 A. We monitor and report any threats or
23 dangers that come to the facility.

24 Q. We are going to talk -- I know we have
25 a lot to talk to you about, but what we are going

1 to talk about specifically here is your duties as a
2 custodian.

3 A. Correct.

4 Q. In regards to jail calls and jail
5 visitation video. So we are going to talk
6 exclusively about that for a minute, okay? As part
7 of this threat security group do y'all often get
8 subpoenas from law enforcement?

9 A. Yes.

10 Q. What are the nature of some of those
11 subpoenas?

12 A. Most of them are for videos of video
13 visitation and phone records.

14 Q. Okay. Let's start with the video
15 visitation and do that as well while we are here.
16 So what is video visitation? How does that work?

17 A. Any time an inmate gets a visit into
18 the jail our jails are video recorded and they are
19 stored on the server and if they get subpoenaed we
20 will just download from the server.

21 Q. And when an inmate receives a visit are
22 those visitations video recorded and stored at that
23 time?

24 A. Yes, they are.

25 Q. And when you get a subpoena requesting

1 those how do you actually go about retrieving those
2 requested video visitations?

3 A. We will go to the server and download
4 it from the program directly from the server.

5 Q. Whatever has been requested?

6 A. Whatever has been requested, yes, sir.

7 Q. In reference to this case did you or a
8 member of your office receive a subpoena requesting
9 visit or video visitation and recordings for this
10 Defendant Calvin Brown?

11 A. Yes, sir.

12 Q. And did you honor that request and make
13 a video of such recordings?

14 A. Yes, we did.

15 Q. Your Honor, may I approach? Showing
16 you what's been marked as State's Exhibit 132A
17 first. Can you look at that and tell me if you
18 recognize that.

19 A. Yes.

20 Q. And I'm going to show you what's been
21 marked as State's Exhibit 132B. And you can --
22 what is 132A?

23 A. That's a download of the video
24 visitation.

25 Q. Okay. So these are all the requested

1 video visitations or at least ones that were
2 requested?

3 A. Yes, sir.

4 Q. And 132B contains what?

5 A. Visitation as well.

6 Q. The clips?

7 A. Clips, yes, sir.

8 Q. So 132B is just a section of 132A?

9 A. Right.

10 Q. And you had the chance to watch these?

11 A. Yes, sir.

12 Q. And are these your initials on the CD?

13 A. Yes, they are.

14 Q. And this was on November the 15th of
15 2017?

16 A. Yes, sir.

17 Q. All right. Now let's talk a second
18 about jail recordings. How are jail recordings
19 made?

20 A. Pretty much the same way. They are
21 stored on the server. Once somebody picks up the
22 phone it lets them know the phone call is recorded
23 so the phone call is automatically recorded when
24 they pick the phone up and start dialing. And when
25 we get a subpoena for the phone records all are

1 downloaded from the program from the server.

2 Q. And those recordings too are all kept
3 at the time in which the call is made?

4 A. Yes, sir.

5 Q. And when you receive -- so you receive
6 subpoenas from law enforcement requesting those
7 recordings?

8 A. Yes.

9 Q. You go to the server once you see what
10 is being requested, punch it in, make a copy?

11 A. Yes.

12 Q. Okay. Did you receive such a request
13 for this investigation?

14 A. Yes, we did.

15 Q. Your Honor, may I approach? I am
16 showing you State's Exhibit 120A and 120B. Let's
17 start with 120A. What is that?

18 A. These are the phone recordings from
19 June 4th to August 21st.

20 Q. For inmate named?

21 A. Calvin Brown.

22 Q. So those are all of the recordings from
23 those requested dates?

24 A. Yes, sir.

25 Q. 120B?

1 A. These would be the audio clips from
2 those same recordings.

3 Q. You know because these are your
4 initials on both CDs?

5 A. Correct.

6 Q. Just briefly these are categorized not
7 by an inmate name, but a pin number?

8 A. Yes, sir.

9 Q. So every time an inmate makes a jail
10 call they have to punch in their pin number?

11 A. Yes, sir.

12 Q. So it is possible that an individual
13 could switch pin numbers with another inmate and
14 they could then use their pin number; is that
15 correct?

16 A. Correct.

17 Q. It would be helpful to have a person
18 who knew his voice to identify his voice?

19 A. Or the phone numbers that he previously
20 dialed from his pin number.

21 Q. Thank you, Your Honor. No further
22 questions.

23 THE COURT: Do you wish to ask the
24 witness any questions?

25 MR. ARCHER: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. ARCHER:

Q. When y'all record phone conversations is there any point in the conversation where you get the permission of one of the parties to the conversation to have it recorded?

A. No, sir. When the phones are picked up both parties are notified by the recording that that the calls are recorded.

Q. But you do not get permission from either party to have the call recorded?

A. No, sir.

MR. ARCHER: Judge, I think it's inadmissible as a violation of the federal act on wire tapping. You got to have permission of one party.

THE COURT: Well, that's if it's their private phone. This is a public phone in a state run, city run, county run facility.

MR. ARCHER: Well, I still think in order to call record phone conversations in compliance with federal law --

THE COURT: I think we have had this discussion in a prior case, Mr. Archer.

MR. ARCHER: Not you and I.

1 THE COURT: Well, I have with another
2 attorney here in Charleston. I thought it was you.
3 I am sorry. But my understanding of the recording
4 is that the -- what she just testified to is that
5 the person using the phone is informed that they
6 use the phone it will be recorded. So by deciding
7 to go forward with the discussion knowing it is
8 going to be recorded.

9 MR. ARCHER: I take the position the
10 law requires they have to give permission to have
11 it recorded.

12 THE COURT: If it's secretly recorded
13 and it's a private line. This is a publically
14 owned line and publically operated line by a
15 government and they are informed before they use it
16 it will be recorded. So that wasn't your objection
17 though. We were trying to see whether they were
18 authenticate or not.

19 MR. ARCHER: Correct.

20 THE COURT: I will not rule that it was
21 an illegal wire tap.

22 MR. ARCHER: Right.

23 THE COURT: Now, let's get back to
24 authentication, the purpose of our profer. Are you
25 still challenging the authentication of the

1 recordings?

2 MR. ARCHER: As to authentication, if I
3 can ask.

4 THE COURT: I hoped you were asking
5 those questions earlier, but go ahead.

6 BY MR. ARCHER:

7 Q. Your authentication is based upon that
8 -- who calls is based upon entering a pin number,
9 right?

10 A. Pin numbers or inmate number.

11 Q. And you have no way of knowing whether
12 the pin number was actually entered by the inmate
13 that that relates to?

14 A. Correct. There are cameras that show
15 who it was at the phone.

16 Q. Well, I think --

17 THE COURT: Mr. Archer, are you
18 finished asking your questions?

19 MR. ARCHER: I am finished asking my
20 questions.

21 THE COURT: Okay. Very good. Now,
22 what's your objection? Or is there an objection?

23 MR. ARCHER: Judge, I mean I'm not sure
24 what we need to authenticate whether --

25 THE COURT: You raised the issue, Mr.

1 Archer.

2 MR. ARCHER: I am trying to -- is it
3 just that these are calls made from the jail or
4 recorded and then the witness comes in and says
5 this is a call with him which ultimately I think it
6 may be two steps. She has to say we recorded.

7 THE COURT: Well, I recall you had
8 already asked the prior witness whether or not she
9 had listened to them and whether or not she
10 recognized the Defendant's voice.

11 MR. OSBORNE: That's correct, Your
12 Honor.

13 MR. ARCHER: Okay.

14 THE COURT: So that's already in the
15 record. My understanding, is it correct?

16 MR. OSBORNE: Yes.

17 THE COURT: And then this person said
18 that she took it off of the recording devices
19 according to the pin number assigned to your
20 client.

21 MR. ARCHER: All right. Then I don't
22 have -- I think that completes the circle.

23 THE COURT: So you no longer have an
24 objection on authenticity.

25 MR. ARCHER: On the authenticity,

1 right.

2 THE COURT: My only concern would be
3 that the -- I have not -- I don't know what the
4 experts say yet, we haven't got to that point, but
5 I do notice that there is some case law that says
6 that when you're playing jail recordings that must
7 be specific to the issues involved in the trial.
8 There can't be information on there that would be
9 prejudicial to the Defendant about other bad acts,
10 perhaps bad language or things that would reflect
11 adversely on the Defendant. That can be excluded
12 and still get the evidence in in this case.

13 So are you telling me that that's been
14 -- I know that's been redacted. Has it been
15 provided to Mr. Archer?

16 MR. OSBORNE: Yes, it has.

17 THE COURT: The redacted version?

18 MR. OSBORNE: Yes.

19 THE COURT: Mr. Archer, did you review
20 that?

21 MR. ARCHER: I have not reviewed that,
22 Your Honor. I was having trouble with my computer
23 putting it loud enough to be heard.

24 THE COURT: Well, again my concern is
25 that the recordings may have something on them that

1 somehow would be prejudicial to your client. It's
2 been provided to you. If you have an objection to
3 any of that on that basis now would be the time to
4 raise that objection.

5 MR. ARCHER: Quite honestly, Your
6 Honor, I have not been able to play it so I could
7 hear.

8 THE COURT: How long is the redacted
9 version?

10 MR. OSBORNE: There are 17 clips I
11 believe which sounds bad, but I think the longer
12 one is about ten minutes, but most are like a
13 minute. Some are only like 20 seconds.

14 THE COURT: I'm going to -- I told the
15 jury we would take a break at this time. I'm going
16 to take a short break. Mr. Archer, I'm sure they
17 have equipment to play it because they are getting
18 ready to play. So I will ask the State to make
19 that available to you. When I return I will ask
20 about whether or not there's anything that you feel
21 should be objected to on the tape before it's
22 played to the jury.

23 MR. ARCHER: I understand.

24 THE COURT: We are in recess. Ma'am,
25 I'm going to let you get up and go to the restroom

1 or something of that nature. But don't talk about
2 your testimony during the break.

3 THE WITNESS: Yes, sir.

4 THE COURT: Thank you, ma'am.

5 (A recess transpired.)

6 THE COURT: Ma'am, you can resume the
7 stand, please. Mr. Archer, have you had an
8 opportunity to review the audio?

9 MR. ARCHER: I have, Your Honor. They
10 took notes what I said I objected to. Clips one
11 and two use the nigger word.

12 THE COURT: Talk to me.

13 MR. ARCHER: Clips one and two use the
14 word nigger and might offend some people.
15 Throughout the whole thing pretty much they use
16 fuck and shit and a bunch of cursing. I'm not sure
17 that's appropriate to be played to the jury.
18 That's my only objection, use of certain words that
19 might be offensive.

20 THE COURT: I will hear from the State.

21 MR. OSBORNE: The clips that he
22 mentioned that he did not like the language that
23 was being used by the Defendant, not Shanorma, are
24 clips 1, 2 and 10. I mean he does use the F word
25 two times in clip one. He uses shit eight times in

1 clip one. And he uses the N word seven times by my
2 count. I don't find it particularly offensive,
3 again maybe my barometer is a little bit different,
4 but it would be -- and my investigator was in
5 there, he's here right now, he would be the one who
6 would redact that. It is a very short clip, only
7 couple of minutes long to my recollection. I don't
8 know how we could redact that out because the
9 context of the calls he is literally talking while
10 he's cursing. I don't know how we can redact that
11 out, but I don't think it's more prejudicial to
12 outweigh the probative value of it. Especially in
13 clip ten. Clip ten is the clip that is the most
14 important clip where he talks about where Shanorma
15 relays to him that I found the gun and I got rid of
16 the gun and I took it to your grandma's apartment.
17 And his reaction is he goes ballistic.

18 So we really need the jury to hear that
19 this isn't just a bag. It's that it contains the
20 gun and his reaction to that I think is important.

21 THE COURT: Well, I'm trying to -- I
22 understand that you say that that particular
23 outburst would have probative value that would not
24 be substantially outweighed by its prejudicial
25 effect. The others I didn't hear that.

1 MR. OSBORNE: Well, it's clip 1 and 2.
2 Those are the other two that he didn't like the use
3 of the word. This is where he is first arrested
4 and coincidentally Desmond Lewis is arrested in the
5 exact same time. They are in jail together. He is
6 saying look at my N word. My N word is standing
7 right there. The biggest gangsta of them all has
8 put this on me. The biggest gangsta of them all.
9 She is like who are you talking about? He is not
10 angry there. And the manner in which he is using
11 those curse words isn't prejudicial. That's just
12 his language. He is just talking then. He is
13 upset that the biggest gangsta of them ratted on
14 him and snitched and him. And the probative value
15 I think goes into that he's upset because he
16 thought -- he's saying that Desmond Lewis thought
17 he had a get out of jail free card, yet he's
18 sitting here staring at me right now.

19 And so I don't think it is prejudicial
20 at all, the language that he is using. He is not
21 upset and in fact he's laughing while he finds the
22 whole thing funny. So I don't know it's
23 particularly prejudicial at all.

24 THE COURT: Apparently they did not
25 mention any other bad acts?

1 MR. OSBORNE: No, Your Honor.

2 THE COURT: All right. I will note
3 that there's already in evidence the Facebook page
4 in which the N word was used referring to the
5 alleged victim in the case. That's already in the
6 record. It was not objected to when it came in.
7 So based on that I will find that the probative
8 value is not outweighed by the prejudicial effect
9 those words might have. Especially in a case where
10 he was expressing his anger over the gun being
11 removed to his grandmother's house. So I will
12 allow that in on that basis.

13 I will find that they have been
14 properly authenticated. Do you wish to take this
15 testimony about the authentication in front of the
16 jury? Authentication is really a question for the
17 Court. You may wish to do so. I don't know if you
18 wish to or not.

19 MR. OSBORNE: I do not, Your Honor,
20 because we have so much other testimony to deal
21 with this witness so I will ask she be excused and
22 bring her back tomorrow.

23 THE COURT: Okay. Ma'am. You wish to
24 ask her any other questions today on this point?

25 MR. ARCHER: No.

1 THE COURT: Ma'am, you may step down.
2 Please do not discuss your testimony until you have
3 completed it. Thank you very much. Then we will
4 resume with the witness who was on the stand
5 originally. You may resume the stand, ma'am.
6 Bring the jury in.

7 (Whereupon the jury entered the
8 courtroom at 4:06 p.m.)

9 THE COURT: I have ruled that the
10 recordings were properly authenticated and you may
11 proceed.

12 MR. OSBORNE: Thank you, Your Honor.

13 BY MR. OSBORNE:

14 Q. All right. Let's take a listen to some
15 of these jail clips.

16 (Clip played.)

17 This first intro that we heard, is this
18 the beginning of a call when an individual calls
19 from the jail?

20 A. Yes, sir.

21 (Clip played.)

22 Q. Nomi Jean, is that what he calls you?

23 A. Yes.

24 Q. That's you talking to who?

25 A. Yes, sir.

1 Q. You are talking to whom?

2 A. Calvin Brown.

3 Q. Okay.

4 (Clip played.)

5 Q. This call right here, what's the date
6 on it?

7 A. June 5th, 2015.

8 Q. Was this the date that he was arrested?

9 A. Yes, sir.

10 Q. Okay. So this is you talking to him
11 after he is in jail?

12 A. Yes, sir.

13 Q. For the very first time?

14 A. Yes, sir.

15 (Clip played.)

16 Q. All right. We are moving into clip
17 two.

18 (Clip played.)

19 Q. Same date?

20 A. Yes, sir.

21 Q. This is just later on in the same call?

22 A. Yes, sir.

23 (Clip played.)

24 Q. What does he mean put it on Facebook?

25 A. It wasn't me.

1 (Clip played.)

2 Q. Who is he talking to?

3 A. Me.

4 Q. And whose the biggest gangsta of them
5 all?

6 A. Fats.

7 Q. Play clip three.

8 (Clip played.)

9 Q. What did he just say?

10 A. Spring don't look like that.

11 Q. What does he mean by that?

12 A. The spring don't snitch.

13 (Clip played.)

14 Q. What does that mean, keep that shit
15 strictly?

16 MR. ARCHER: I object to him asking her
17 what different things mean playing the clip. The
18 clip speaks for itself. He is asking her to
19 interpret something he said, not say yes, this is
20 what he said or didn't say.

21 THE COURT: Maybe you need to lay some
22 kind of basis for her understanding of this talk so
23 I will sustain the objection at this moment.

24 BY MR. OSBORNE:

25 Q. How long have you known the Defendant?

1 A. Since 2014.

2 Q. Since 2014. So we are going on three
3 years plus?

4 A. Yes, sir.

5 Q. And you have a child with him?

6 A. Yes, sir.

7 Q. Talk to him?

8 A. Yes, sir.

9 Q. Talk to him a lot?

10 A. Yes.

11 Q. Talked to him recently, haven't you?

12 A. Um-hmm, yes, sir.

13 Q. And during that time does he often use
14 vernacular or communicate with you in a way that
15 you understand what he means?

16 A. Yes, sir.

17 Q. Because you love him?

18 A. Yes.

19 Q. I will ask the same question. What did
20 he mean when he said keep that shit strictly?

21 MR. ARCHER: Judge, he is asking her to
22 be in essence an interpreter.

23 THE COURT: She just testified that she
24 was aware of some vernacular words that he uses to
25 mean certain things and if she does not know what

1 that means she can state that. So I am going to
2 ask you first of all, to ask her if she understands
3 what that means. If it has another meaning to her,
4 she is party to the conversation. He was conveying
5 information to her I would assume. So you can ask
6 her if she understands another meaning for that
7 word. If she says yes then you can ask her what
8 that means to her. That would be what it means to
9 her, not what he means. That would be his state of
10 mind. So that's my ruling. You may proceed.

11 BY MR. OSBORNE:

12 Q. I guess to clarify that is you on the
13 jail recording there?

14 A. Yes, sir.

15 Q. And that is you speaking to the
16 Defendant?

17 A. Yes, sir.

18 Q. When he used the term keep that shit
19 strictly or that phrase to you did that have a
20 particular meaning to you?

21 A. Yes, sir.

22 Q. And might that meaning not be
23 necessarily understood by other people?

24 A. No, it might not be.

25 Q. It is understood to you?

1 A. Yes.

2 Q. And what does it mean to you?

3 A. Keep it strictly. Don't tell. Keep it

4 in the street.

5 (Clip played.)

6 Q. Desmond didn't keep it on the street?

7 A. No, he didn't.

8 Q. He wants to go home. Now we are

9 playing clip five.

10 (Clip played.)

11 Q. Whose Shari again?

12 A. My roommate.

13 Q. Shari Lucas?

14 A. Yes, sir.

15 Q. The date on this is June 5th?

16 A. 2015.

17 Q. Playing clip six.

18 (Clip played.)

19 Q. What did he ask you?

20 A. Cut that shit.

21 Q. What's he talking about?

22 A. His bookbag.

23 Q. What's in the bookbag?

24 A. A gun and drugs.

25 Q. A gun?

1 A. Yes, sir.

2 Q. You didn't have it?

3 A. No.

4 Q. The date on this is what?

5 A. The 9th.

6 Q. You had already gotten rid of it?

7 A. Yes, sir.

8 (Clip played.)

9 Q. Did you take the gun?

10 A. No.

11 Q. You didn't have it anymore; is that
12 right?

13 A. No, sir, I didn't.

14 Q. Clip seven.

15 (Clip played.)

16 Q. Let's stop right there for a second.

17 Who is Taliban?

18 A. A mutual friend.

19 Q. What's his name?

20 A. Devin Middleton.

21 Q. Okay. And so now he's asking you what
22 in regard to Taliban?

23 A. See if Taliban wanted to see if someone
24 wanted to buy the gun.

25 Q. Say again?

1 A. For me to talk to Taliban to see if
2 someone wanted to buy the gun.

3 Q. Okay. So talk to Taliban to see if
4 somebody wanted to buy the gun?

5 A. Yes, sir.

6 Q. Okay. This is on June the 9th?

7 A. Yes, sir.

8 Q. Back that up just a little bit.

9 (Clip played.)

10 Q. Okay. What does he mean when he's
11 saying about Taliban ducking him?

12 A. Taliban owed him \$50.

13 Q. Owe him \$50?

14 A. Yes.

15 Q. That's why he said don't even deal with
16 Taliban with the gun?

17 A. Right.

18 Q. We got it?

19 A. Yes.

20 Q. How much are you supposed to get for
21 it?

22 A. 600.

23 Q. 600?

24 A. Yes, sir.

25 Q. But that's including what else was in

1 the bag?

2 A. The gun.

3 Q. That was it, two for the black gun?

4 A. Yes.

5 (Clip played.)

6 Q. Seemed like you were trying to shut him
7 up, you didn't want him talking about that; is that
8 right?

9 A. Yes.

10 Q. All right. Clip eight.

11 (Clip played.)

12 Q. What's the date on this?

13 A. The 15th.

14 Q. Shari Lucas is your roommate?

15 A. Yes.

16 Q. Still trying to get in o touch with
17 her?

18 A. Yes.

19 Q. All right. Clip nine.

20 (Clip played.)

21 Q. Devin said what?

22 A. He got somebody.

23 Q. Then the Defendant's response?

24 A. He ain't getting it. He got somebody
25 to buy the black.

1 Q. Listen to it one more time.

2 (Clip played.)

3 Q. What does he say?

4 A. Ain't nobody touching it.

5 Q. Ain't nobody touching that?

6 A. Yes, sir.

7 Q. Why wouldn't anybody touch it?

8 A. Because I guess he had somebody inside
9 that was going to bring him some.

10 (Clip played.)

11 Q. All right. Now we get to clip ten.
12 What's the date on this?

13 A. 16th.

14 Q. I'm going to play a little and I have
15 to stop it because you talk really fast, all right?

16 (Clip played.)

17 Q. What did you just ask?

18 A. I asked who had access to granny's
19 house.

20 (Clip played.)

21 Q. All right. Before you explain why you
22 asked that question, let's backtrack and bring the
23 jury up to speed with what happened, okay?

24 A. Okay.

25 Q. You said that or you testified that on

1 June the 4th the Defendant came to the hospital at
2 MUSC around 11:00?

3 A. Yes, sir.

4 Q. He left a black bag?

5 A. Yes, sir.

6 Q. All right. And you were discharged on
7 June the 5th?

8 A. Yes.

9 Q. You had Caleb and you went home?

10 A. Yes.

11 Q. When he went to work did he bring his
12 black bag with him?

13 A. No, he left it at the hospital.

14 Q. When you went home with Caleb with your
15 stepdad driving you you collected all the
16 belongings from MUSC?

17 A. Yes, sir.

18 Q. Did you collect his black bag as well?

19 A. Yes, sir.

20 Q. Does he carry that black bag with him
21 all the time?

22 A. Yes.

23 Q. You see him with it all the time?

24 A. Yes, sir.

25 Q. He left it in the hospital room that

1 day?

2 A. Yes, sir.

3 Q. You took it home?

4 A. Yes.

5 Q. All right. When you got home you
6 brought the black back inside the apartment with
7 you?

8 A. Yes.

9 Q. Did you have the occasion to open up
10 the black bag and look inside?

11 A. Yes, sir.

12 Q. Tell the jury when did you do that?

13 A. Either after I got off the phone and he
14 told me that he was in jail and I kept the black
15 bag and the black bag because it was heavy. I was
16 putting Caleb's stuff up and the bag was heavy. So
17 I opened it up and I saw what was in there and
18 started panicking.

19 Q. You saw what was in there and you
20 started panicking?

21 A. There was -- saw a gun and a little
22 Maui.

23 Q. A gun and a what?

24 A. Little container of Maui.

25 Q. Small amount of marijuana?

1 A. Yes.

2 Q. All right. This happened on the 9th
3 that he was arrested after you spoke to him?

4 A. Yes.

5 Q. You opened up the bag and looked
6 inside. What color was the gun?

7 A. Black.

8 Q. And you started panicking?

9 A. Yes, sir.

10 Q. Why?

11 A. Because being the fact they just
12 followed me home from the hospital and already come
13 and question me in the hospital. It was just too
14 much. I was living with a roommate. They couldn't
15 afford to let me just go get a search warrant even
16 though they don't need one, I don't need you coming
17 in here and finding me and her going to jail.

18 Q. You didn't want to get caught with that
19 gun?

20 A. At all.

21 Q. So what did you do?

22 A. Took it to his granny's.

23 Q. Took it to his granny's house?

24 A. Yes, sir.

25 Q. Where did his granny live again?

1 A. Hampden Court.

2 Q. [REDACTED] Hampden Court?

3 A. [REDACTED].

4 Q. What happened when you got to his
5 granny's house with the bag?

6 A. I knocked on the door and I told her
7 that this is Calvin's.

8 Q. And did she take it?

9 A. Yes.

10 Q. Did you tell her that there was a gun
11 inside the bag, I need to get rid of this?

12 A. No, I gave her the bag.

13 Q. You gave her the bag and she took it?

14 A. Yes, sir.

15 Q. And then you spoke to Calvin again on
16 the phone after that right?

17 A. Yes, sir.

18 Q. So you told him heads up, I took the
19 gun to your granny's house, you told him
20 immediately, didn't you?

21 A. No.

22 Q. You waited, right? You knew that
23 wasn't a smart thing to do, right?

24 A. It was smart at the moment. I ain't
25 going to jail.

1 Q. Smart for you. But not smart for him.
2 So this is the call where you break it to him?

3 A. Yes.

4 Q. Correct? This is on June the 16th?

5 A. Yes, sir.

6 Q. Eleven days after he was arrested?

7 A. Yes, sir.

8 (Clip played.)

9 Q. What did you say there?

10 A. I said my mom went through the bag the
11 same night everything went down.

12 Q. When you say same night everything went
13 down what are you referring to?

14 A. Same night he got arrested.

15 Q. Tell the jury, was it true that your
16 mom went through his bags?

17 A. No, I needed that to cover up.

18 Q. Cover up. So you kind of put it off on
19 your mom?

20 A. Yes, she went through the bag and saw
21 the gun and I got rid of it.

22 Q. Say that one more time?

23 A. I told him that my mom went through the
24 bag. I went through the bag and I saw what it was.
25 I just told him so he wouldn't be mad, but that

1 still didn't work.

2 Q. You told that lie because you knew he
3 wouldn't be happy?

4 A. Yes, it didn't matter. Still didn't
5 matter.

6 (Clip played.)

7 Q. You have talked to him several times;
8 is that correct?

9 A. Yes, sir.

10 Q. And being your boyfriend and he -- I
11 would assume that you have heard him or have you
12 heard him use that term before, you know the people
13 might go there?

14 A. Yes, sir.

15 Q. And when he uses that term that the
16 people might go there, does he through your
17 knowledge dealing with him, do you know him to be
18 using a term when he says people other than what it
19 might commonly be used to refer to as?

20 A. Yes, sir.

21 Q. What is he referring to?

22 A. People, the police and the
23 investigators.

24 Q. They might go to his granny's house?

25 A. Yes.

1 Q. Where you took the gun?

2 A. Yes, sir.

3 Q. That's the same address on his ID; is
4 that correct?

5 A. Yes, sir.

6 Q. Clip 12.

7 (Clip played.)

8 Q. All right. When you speak to an
9 individual who is at the jail how long are these
10 calls?

11 A. Fifteen minutes.

12 Q. Then it cuts off, right?

13 A. Yes, sir, automatically.

14 Q. And that was on -- tell me the date
15 again?

16 A. The 16th of June.

17 Q. 16th. All right. Now we are playing
18 clip 13.

19 (Clip played.)

20 Q. What's the date on this?

21 A. The 17th.

22 Q. Is it fair to say that he is upset with
23 you on multiple calls that go into the next day?

24 A. Yes, sir.

25 Q. We are just hearing a small portion of

1 them?

2 A. Yes, sir.

3 (Clip played.)

4 Q. Sounds like he's not worried about it?

5 A. No.

6 Q. All right. Clip 14.

7 (Clip played.)

8 Q. Fair to say that's not you on the other
9 end?

10 A. Yes.

11 Q. You do recognize the Defendant as being
12 the individual who made the call?

13 A. Yes, sir.

14 (Clip played.)

15 Q. Says Roach ratted him out. Do you know
16 who Roach is?

17 A. Yes, sir.

18 Q. Who is that?

19 A. Christopher Victoria.

20 Q. All right. Clip 15.

21 (Clip played.)

22 Q. Is that you on the other end here?

23 A. Yes, sir.

24 Q. When he says did you do what I do what
25 was he asking you to do?

1 A. If I gave it to someone.

2 Q. Okay. What do you mean by that?

3 A. If I gave a statement to somebody to
4 let them know it's not true.

5 Q. So you were given a copy of Fats'
6 statements, the statement he made?

7 A. The statement, the affidavit that he
8 gave to Calvin Brown when he went to jail.

9 Q. The affidavit. Which mentioned that
10 Fats said snitch?

11 A. Yes, Desmond.

12 Q. What were you supposed to do with it?

13 A. Give it to somebody.

14 Q. To pass that along to someone else?

15 A. Yes, sir.

16 Q. To do what? With the goal of calling
17 Desmond a snitch?

18 A. Yes, sir.

19 Q. Did you do that?

20 A. No.

21 Q. You didn't do it?

22 A. No, sir.

23 Q. But you said on here you did?

24 A. To him. I told him that to shut him up
25 about it.

1 Q. You told him that to shut him up?

2 A. Yes, sir.

3 Q. All right. Clip 17.

4 (Clip played.)

5 Q. What did he just say?

6 A. Two weeks until the snitches drop.

7 Q. What does that he mean by that?

8 A. I guess I am supposed to drop..

9 Q. Snitch is supposed to drop?

10 A. Yes, sir.

11 Q. What does that mean the snitches are

12 supposed to drop?

13 A. Die.

14 Q. Die?

15 A. Yes.

16 Q. Why in two weeks? What's going to

17 happen in two weeks?

18 A. From his prelim he would get home.

19 Q. Last one? Clip 18.

20 (Clip played.)

21 Q. What's that mean, see them people?

22 A. To change his statement.

23 Q. Christopher change his statement?

24 A. Yes, sir.

25 Q. What people does he need to see to

1 change his statement?

2 MR. ARCHER: Judge, she is making some
3 assumptions here nowhere in this dialogue. The
4 dialogue says tell him to get that boy Roach and go
5 see the people.

6 THE COURT: I won't ask you to publish
7 that to the jury.

8 MR. ARCHER: And then he's asking what
9 does she mean. He wants him to change his
10 statement. That's nothing on here about changing a
11 statement in that clip.

12 THE COURT: I am going to ask the jury
13 to step back in the jury room while I discuss a
14 matter with the attorneys. Please don't discuss
15 the case.

16 (Thereupon, the jury exited the
17 courtroom at 4:46 p.m.)

18 THE COURT: Mr. Osborne.

19 MR. OSBORNE: We can certainly listen
20 to it again.

21 THE COURT: What in the dialogue refers
22 to changing statements?

23 MR. OSBORNE: He tells her to tell
24 someone else to get with Christopher to get with
25 those people and I think he even said in there

1 about changing that shit up. I might have that
2 confused with another one.

3 MR. ARCHER: We got a transcript here
4 what was said.

5 THE COURT: Let's get the transcript
6 out. I am asking Mr. Osborne. Get his transcript
7 out.

8 MR. ARCHER: I have a copy of it,
9 Judge. We are talking about the clip.

10 THE COURT: Get back to counsel table
11 unless you get permission to approach.

12 MR. ARCHER: Yes, sir.

13 THE COURT: Back to the counsel table.

14 MR. ARCHER: I'm going to, Judge.

15 MR. OSBORNE: So here's what we have.

16 Listen man, after you get off the phone with man
17 tell Taliban that I say that I need him to holler
18 at Gusto, right? He already know who Gusto is.
19 Holler at Gusto and tell him to get at that boy
20 Roach to doggone see them people from me to
21 doggone, you know, yeah, I know. All right, all
22 right, all right. Stop talking about that. All
23 right. I know man and Brown says man, yeah, just
24 see them people, you know what I'm saying. Then
25 she says yes. Then he says word.

1 THE COURT: Talking to her.

2 MR. OSBORNE: Talking to her. Then she
3 understands what that message means so I would ask
4 that I do it the same way I did the other ones.
5 When you are talking to him and he is telling you
6 to get -- tell so and so to get at those people and
7 see what Roach is going to do, what message did she
8 believe she was supposed to relay and then I would
9 follow that up with did you relay that message.

10 MR. ARCHER: I think he is putting a
11 lot of interpretation into this.

12 THE COURT: Take your paper back.

13 MR. ARCHER: May I approach?

14 THE COURT: Please do.

15 MR. ARCHER: I think it's a long
16 stretch from what is said --

17 THE COURT: You certainly can
18 cross-examine her on that point if she says that.
19 I don't have any problem with you doing that. But
20 if he's asking her what that meant to her, what her
21 understanding of that conversation, if she has an
22 understanding of that conversation she can state
23 what her understanding is. I don't find that to be
24 a violation of any rule. Is there some particular
25 rule that you say that she can't say what that

1 meant to her? Her state of mind was at that point?

2 MR. ARCHER: I guess, Your Honor, but I
3 think he is asking her to interpret everything that
4 is said here when the words speaks for themselves.

5 THE COURT: They do. And if they don't
6 convey that meaning then the jury certainly can
7 take it that way. But if it has a meaning to her
8 and she indicated that it does we have already been
9 through that on one occasion earlier in the
10 testimony. I will let her state what her
11 understanding was and then he can ask her what
12 actions she took as a result of that conversation.

13 Certainly you can cross-examine her on
14 that. How much longer are we going to be with the
15 direct examination?

16 MR. OSBORNE: This is the last clip. I
17 was going to ask those few questions, then I have a
18 jail visitation video clip, two total. I should be
19 finished by five.

20 THE COURT: Let's do that. I hope to
21 do that. Bring the jury in.

22 (Whereupon the jury entered the
23 courtroom at is 4:50 p.m.)

24 THE COURT: I have overruled the
25 objection. You may proceed, Mr. Osborne.

1 BY MR. OSBORNE:

2 Q. Let's play clip 18.

3 (Clip played.)

4 Q. Okay. Who is Roach again?

5 A. Christopher Victoria.

6 Q. All right. What did you understand the
7 Defendant wanted you to do?

8 A. He wanted me to tell Taliban to get
9 with Gusta to tell P Roach to change his statement
10 with the people, with the police officers and the
11 investors.

12 Q. Okay. To get P Roach to change his
13 statement. Did you indeed tell Taliban to get with
14 Gusta to get P Roach to change his statement?

15 A. No.

16 Q. You didn't relay the message?

17 A. No, I did not.

18 Q. Why not?

19 A. Because I just feel like this is just
20 too much and he didn't need to be dragging a lot of
21 people to deal with it.

22 (Clip played.)

23 Q. Okay. Did you have the occasion to
24 visit the Defendant while he was in jail?

25 A. Yes, sir, I did.

1 Q. And you actually walked in and met with
2 him; is that correct?

3 A. Yes, sir.

4 Q. Your Honor, may I approach?

5 THE COURT: You may.

6 Q. Showing you what's been marked as
7 State's Exhibit 132B. Can you take a look at that
8 and tell me if you recognize that?

9 A. Yes, sir.

10 Q. And you recognize that by these being
11 your initials down here?

12 A. Yes.

13 Q. What's on this video clip here?

14 A. Calvin Brown and me.

15 Q. Is this when you went to visit with him
16 while he was in jail?

17 A. Yes, sir.

18 Q. Again you visit him a lot, these aren't
19 all of it? Small portion; is that correct?

20 A. Yes, sir.

21 Q. Your Honor, at this time we would seek
22 to admit and publish 132B.

23 THE COURT: Objection?

24 MR. ARCHER: No.

25 THE COURT: No objection. It will be

1 admitted. You may publish.

2 (STATE'S EXH. 132B in evidence.)

3 (Clip played.)

4 BY MR. OSBORNE:

5 Q. So once again we are talking about
6 getting P Roach to change his statement. What he's
7 talking about when he says you still got that shit
8 I gave you?

9 A. The paperwork.

10 Q. What paperwork?

11 A. That Desmond do, the statement and
12 Christopher's statement.

13 Q. The statement that they wrote while
14 they were in jail or statements to the police?

15 A. Statements to the police.

16 THE COURT: Mr. Osborne, I'm going to
17 caution you. You asked what he meant by that
18 statement. I've made a ruling that she can state
19 what her understanding of the statement was.

20 MR. OSBORNE: Yes, Your Honor.

21 THE COURT: Not what he meant. She
22 does not have knowledge of what's in his mind.

23 THE WITNESS: I understand it was he
24 wanted me to make sure I had the paper.

25 THE COURT: You may respond to Mr.

1 Osborne's questions.

2 (Clip played.)

3 BY MR. OSBORNE:

4 Q. That's you in the video?

5 A. Yes, sir.

6 Q. Okay.

7 (Clip played.)

8 Q. You know who he is referring to when he
9 is talking about Smash?

10 A. Yes, sir.

11 Q. Who is Smash?

12 A. Smash is a common friend.

13 Q. Do you know his name?

14 A. Davontay.

15 Q. Do you know his last name?

16 A. I think Bryant.

17 Q. Do you know what he is talking about
18 when he's talking about getting P Roach to notarize
19 that shit? Do you know what he is referring to?

20 A. Yes, sir.

21 Q. What do you believe he is referring to?

22 A. He's saying Christopher to change his
23 statement and get it notarized and give it back to
24 him as I guess the changed statement.

25 (Clip played.)

1 Q. Did you ever find out what Squirrel's
2 real name was?

3 A. No.

4 (Clip played.)

5 Q. Do you know who he was referring to
6 when he says I need somebody to F with the dog?

7 A. Yes.

8 Q. Who is he referring to?

9 A. I don't know who he is referring to,
10 but I know what he meant by that.

11 Q. What did he mean by that?

12 A. He needs somebody who is going to put
13 pressure on Desmond.

14 Q. Pressure on Desmond?

15 A. Yes, sir.

16 Q. Get him to do what?

17 A. Change his statement.

18 (Clip played.)

19 Q. Do you know who got moved out of the
20 unit?

21 A. Fats got moved out the unit where Smash
22 was.

23 Q. Fats got moved out of the unit with
24 who?

25 A. Fats got moved out of the unit where

1 Calvin Brown friends was. They moved Fats out of
2 that unit I guess.

3 Q. They moved Fats out of the unit where
4 Calvin Brown's friends couldn't get in touch with
5 him?

6 A. Yes.

7 (Clip played.)

8 MR. OSBORNE: No further questions,
9 Your Honor.

10 THE COURT: Ladies and gentlemen of the
11 jury, that completes the direct examination of this
12 witness. I do note that we are after 5:00 at this
13 point so we are going to stop for the afternoon.
14 We will resume again at 9:00 in the morning. As
15 you're leaving the courthouse my instructions
16 remain the same not to discuss the case with
17 anyone, don't allow anyone to discuss it with you,
18 don't attempt to gather any information about the
19 case on your own. Don't listen to, watch or read
20 any media report about the case. If anyone should
21 contact you please report that.

22 Hope you have a good evening. We will
23 see you at 9:00 in the morning. Thank you very
24 much.

25 (Thereupon, the jury exited the

1 courtroom at 5:05 p.m.)

2 THE COURT: You are in the middle of
3 your testimony. It would be improper for you at
4 this point in time to discuss your testimony with
5 anyone, do you understand?

6 THE WITNESS: Yes, sir.

7 THE COURT: You remain under subpoena
8 in the case; is that correct? You issued a
9 subpoena so I am directing you to return to the
10 courthouse at 9:00 in the morning. We will begin
11 with the cross-examination.

12 THE WITNESS: Yes, sir.

13 THE COURT: Do you understand that?

14 THE WITNESS: Yes, sir.

15 THE COURT: Now you may step down.
16 Thank you very much. We are in recess until 9:00
17 in the morning.

18 (These proceedings were adjourned at
19 5:06 p.m., November 28, 2017, Charleston County,
20 South Carolina.)
21
22
23
24
25

1 (The following proceedings were held
2 November 29, 2017, Charleston County, South
3 Carolina, @ 9:06 a.m.)

4 THE COURT: Ma'am, you can resume the
5 stand, please.

6 MR. DURANT: Your Honor, may we have a
7 word first? We have a doctor here from Med U that
8 is going to testify in this case and he has surgery
9 scheduled at 10:00 and we have consulted with the
10 defense counsel. He had no problem with us putting
11 this doctor up. He will be very short and excuse
12 him and then resuming the cross-examination.

13 THE COURT: Any objection?

14 MR. ARCHER: No objection.

15 THE COURT: Because you were to
16 cross-examine the witness so you are okay with
17 that?

18 MR. ARCHER: I'm okay with that.

19 THE COURT: All right. I will allow
20 you to call the witness. I will explain that to
21 the jury. State ready to proceed?

22 MR. DURANT: Yes, sir.

23 THE COURT: And I assume, Mr. Archer,
24 defense is ready?

25 MR. ARCHER: I am ready.

1 THE COURT: Okay. Let's bring the jury
2 in.

3 (Whereupon the jury entered the
4 courtroom at 9:10 a.m.)

5 THE COURT: Good morning, ladies and
6 gentlemen. I hope everyone had a good evening and
7 if any of you had any problems in following my
8 instructions during your absence please stand.

9 (No response from jurors.)

10 It appears that all jurors have been
11 able to follow my instructions thus far. When we
12 broke yesterday a little after 5:00 there was a
13 witness testifying. The State had completed its
14 examination and the defense was about to
15 cross-examine. We have a witness who is on our
16 witness list for today who is with the Medical
17 University and because of surgery schedules we have
18 decided to take that witness a little bit out of
19 order so that we can get that testimony and they
20 can get back to some very important work at the
21 hospital. So at this time the State may call its
22 next witness.

23 MR. DURANT: Thank you very much, Your
24 Honor. The State would call Dr. John Glaser.

25 THE COURT: Sir, if you would come

1 forward to be sworn over here to my right.

2 JOHN GLASER, M.D.

3 having been duly sworn, testifies as follows:

4 THE CLERK: Please state your full name
5 and spell your last name.

6 THE WITNESS: J-O-H-N, G-L-A-S-E-R.

7 DIRECT EXAMINATION

8 BY MR. DURANT:

9 Q. Dr. Glaser, would you please tell our
10 jury where you're employed?

11 A. I have two employers, the Medical
12 University of South Carolina and at the VA medical
13 Center in Charleston.

14 Q. And what is your occupation?

15 A. I'm a physician and orthopedic surgeon.

16 Q. And you are with the Department of
17 Orthopedics at the Medical University of South
18 Carolina?

19 A. Yes.

20 Q. How long have you been with them?

21 A. For all but two of the last 24 years.

22 Q. And in that capacity did you have the
23 occasion to participate in the treatment of [REDACTED]
24 Tyreik G. on May 22nd of 2015?

25 A. I believe for me it was May the 23rd.

1 Q. Okay. And it was after he was shot,
2 correct?

3 A. Yes, sir. Yes.

4 Q. And how did you become involved in his
5 treatment?

6 A. I was on spine call. We alternate
7 between the physicians who take care of spine
8 problems a week at a time for problems that come in
9 through the emergency room, things like that.

10 Q. Okay. And you were called in because
11 of the nature of his injury; is that correct?

12 A. Yes.

13 Q. What was the nature of his injury?

14 A. He had a gunshot wound to his thoracic
15 spine.

16 Q. And was his spinal cord compromised?

17 A. Yes.

18 Q. Was he referred elsewhere for
19 treatment?

20 A. He ended up going to rehabilitation
21 after he left the Medical University.

22 Q. And where did he go?

23 A. I didn't look up that. I believe it
24 was Charlotte. I could be wrong on that.

25 Q. Okay. Why was he sent to Charlotte

1 instead of being kept here treated locally?

2 A. The State of South Carolina does not
3 have any spinal cord injury rehabilitation centers.

4 Q. Okay. And it's my understanding that
5 as a result of his gunshot wound Tyreik now has a
6 severed spinal cord?

7 A. That is most likely the case. I did
8 not see it with my eyes, but that is most likely
9 the case.

10 Q. And what is his current medical
11 condition?

12 A. I haven't seen him since he was in the
13 hospital in May of 2015.

14 Q. Was he a paraplegic at the time?

15 A. Yes.

16 Q. Okay. Would you expect him to recover
17 from this?

18 A. No.

19 Q. So this would be a permanent injury?

20 A. Yes.

21 Q. When you say a paraplegic you mean that
22 he is paralyzed from the site of the wound down?

23 A. Yes.

24 Q. And where exactly was the wound to his
25 back?

1 A. It was in the lower thoracic -- do you
2 mean the spine injury or the wound?

3 Q. The spine injury?

4 A. The spine injury was in the lower
5 thoracic spine.

6 Q. And where is that roughly in the back?
7 Obviously below the arms?

8 A. Yes. It's roughly halfway between your
9 belt line and your shoulders, maybe a little lower
10 than halfway.

11 Q. Okay. And the prognosis of that is
12 once again is that is not something you recover
13 from?

14 A. I do not expect him to get any
15 recovery.

16 Q. Thank you very much. Would you please
17 answer any questions.

18 THE COURT: Counsel, before you step
19 down, I assume you have offered this witness as an
20 expert witness in the case.

21 MR. DURANT: I will offer him as an
22 expert witness, but it was actually more of a fact
23 witness, but --

24 THE COURT: Well, you did offer some
25 opinions on prognosis.

1 MR. DURANT: I will offer him as an
2 expert in the field of orthopedic surgery.

3 THE COURT: Any objection to him
4 testifying in that fashion?

5 MR. ARCHER: No, Your Honor.

6 THE COURT: Okay. The Court will
7 recognize him as an expert within the field of
8 orthopedic surgery. At this time you may
9 cross-examine, I believe Mr. Archer.

10 MR. ARCHER: I have no questions.

11 THE COURT: All right. Sir, you may
12 step down. Thank you very much.

13 THE WITNESS: Thank you.

14 THE COURT: I assume all of your
15 opinions were within a reasonable degree of medical
16 certainty; is that correct?

17 THE WITNESS: Yes.

18 THE COURT: Okay. Thank you, sir. Any
19 objection to the witness being excused?

20 MR. DURANT: No, sir, Your Honor.

21 MR. ARCHER: No, Your Honor.

22 THE COURT: Thank you. Sir, you are
23 free to go. Thank you very much for coming this
24 morning. I believe our witness from yesterday
25 would be next?

1 MR. DURANT: Yes.

2 THE COURT: Ma'am if you will step up,
3 please. If you will resume the witness stand.
4 Again if you would please state your full name for
5 me.

6 THE WITNESS: Shanorma Smith.

7 THE COURT: And, ma'am, yesterday you
8 were placed under oath concerning your testimony in
9 this case, do you recall that?

10 THE WITNESS: Yes, sir.

11 THE COURT: Do you acknowledge that
12 your testimony today is under that same oath?

13 THE WITNESS: Yes, sir.

14 THE COURT: Thank you. Mr. Archer, I
15 believe you're going to cross-examine the witness?

16 MR. ARCHER: Yes.

17 CROSS-EXAMINATION

18 BY MR. ARCHER:

19 Q. Now if I remember your testimony
20 correctly, did you see Calvin on the day of the
21 alleged shooting?

22 A. Yes.

23 Q. Huh?

24 A. Yes, sir.

25 Q. And when was the first time you saw

1 him?

2 A. Around 4:00.

3 Q. Around 4:00 in the afternoon?

4 A. Yes, sir, after he got off work.

5 Q. Okay. At some point in time you told
6 the police he was with you that night, didn't you?

7 A. Um-hmm. He walked with me to MUSC.

8 Q. When he walked with you to MUSC?

9 A. Yes.

10 Q. Was he with you when you walked to
11 MUSC?

12 A. Yes.

13 Q. He was? Okay. What time was that?

14 A. Like after 9:00.

15 Q. After nine?

16 A. 9:15, I'd say close to ten.

17 Q. Nine close to ten. So he walked with
18 you to MUSC at nine close to ten?

19 A. Yes, sir.

20 Q. Do you know was he with you at any time
21 before 9:00 or after four?

22 A. He was with me after four. He left.

23 Q. What?

24 A. He was with me after four and he left.

25 Q. What time did he leave?

1 A. Like before six.

2 Q. Before six or seven. Okay. So he is
3 with you from six to seven and he's with you from
4 nine to ten sometime?

5 A. Yes. He never walked with me inside
6 the building.

7 Q. But you walked to the building between
8 nine and ten?

9 A. Um-hmm.

10 Q. And that's when he was with you again?

11 A. What do you mean? He never walked me
12 in the building.

13 Q. He walked with you to the building,
14 didn't he?

15 A. Yeah.

16 Q. And you walked to the building, the
17 time you walk to the building was between 9:00 and
18 10:00, right? Huh?

19 A. Between around like 11 by that time.

20 Q. 11?..

21 A. If he met me around nine to ten and we
22 walked to MUSC you really think we going to get to
23 MUSC nine or ten?

24 Q. I am sorry. I am having trouble
25 understanding you.

1 A. When we walk what makes you think it
2 would be ten minutes? That's what I am saying.

3 Q. Ten minutes to walk to MUSC?

4 A. No. I am asking you what makes you
5 think that we would get there in ten minutes?

6 Q. You said you would get there in ten
7 minutes?

8 A. Are you listening to me?

9 Q. Excuse me?

10 A. I said can you hear me?

11 Q. I am having a little trouble. I am
12 hearing you, but I am having a little trouble
13 understanding.

14 A. I am saying that if I just told you
15 that me and him met up at nine to ten. What makes
16 you think that between nine and ten that we would
17 get to MUSC? That's what I am asking you.

18 Q. When did you get to MUSC that night?

19 A. Between ten and eleven.

20 Q. Between ten and eleven?

21 A. We started walking close to ten.

22 Q. You started walking there at nine,
23 close to ten?

24 A. Yes. I told you that.

25 Q. Was he with you when you started

1 walking?

2 A. No, not when I started walking. He met
3 up with me at Meeting and Brigade.

4 Q. He started walking with you to MUSC
5 between nine and 10:00. Then he left for a while
6 and came back; is that what you're saying?

7 A. I never said he came back because he
8 never came back to the hospital.

9 Q. Okay. But he walked with you to the
10 hospital between nine and 10:00?

11 A. Can you hear me?

12 Q. Huh?

13 A. Can you hear me?

14 Q. I hear you now.

15 A. I met him between nine close to ten.
16 What makes you think that walking from Meeting
17 Street that we could get all the way from Rutledge
18 and Ashley Avenue to MUSC in ten minutes? That's
19 not possible.

20 Q. I am just trying to find out what time
21 period he walked with you.

22 A. This is what I am telling you. You all
23 keep asking me two years later. How am I supposed
24 to know exactly what time period?

25 Q. What's your best recollection?

1 A. Best recollection is that 9:30 to 10:00
2 at Meeting and Brigade. I am going to walk all the
3 way to Rutledge and Ashley for me to get to the
4 emergency room portion of MUSC. We can't get there
5 in ten minutes.

6 Q. All right. How far away from America
7 Street did you live?

8 A. Probably like drive five minutes.

9 Q. Five minutes driving?

10 A. Yeah. With the lights.

11 Q. With the lights five minutes from where
12 you live driving to America Street. You say half a
13 mile or a mile away?

14 A. Yeah.

15 Q. Probably? Okay. Now, you said when in
16 a phone conversation that was played -- let me ask
17 you this: When you got -- did you ever give the
18 jail permission to record your phone calls?

19 A. I can't give permission if they tell me
20 the call is recorded.

21 Q. So you never gave them permission to
22 record your call?

23 A. It don't matter. They tell you that it
24 is recorded. It don't matter. That's already
25 recorded.

1 Q. I am just asking. Maybe it is already
2 recorded. But --

3 A. That's my permission. I can't give
4 them permission.

5 Q. So you never gave them permission to
6 record?

7 A. Because how can I?

8 Q. Okay. You never gave permission to
9 record the phone calls with Calvin, right?

10 A. They tell me that it's recorded.

11 Q. You say it is recorded? You know, the
12 question is not whether they recorded it or not.

13 A. What are you trying to get at?

14 Q. Huh?

15 A. What are you trying to get at?

16 Q. I am trying to find out if you ever
17 told the jail that --

18 A. Yes, I gave them permission because I
19 press five.

20 Q. You told them they had permission?

21 A. Yes. I pressed five to accept the
22 call.

23 Q. When does -- when you accept the call
24 does it say this call will be recorded?

25 A. It tell you before you even accept the

1 call all calls are recorded. They tell you the
2 call will be recorded.

3 Q. Okay. You never got asked by anybody?

4 A. I gave them permission. They asked me
5 and told me and I pressed five to accept it so I
6 knew that it was going to be recorded. So
7 basically they did have my permission.

8 Q. Okay. Now, you told him that you took
9 a bag to his grandmother's house?

10 A. Yes, I did.

11 Q. Do you know what his grandmother's name
12 is?

13 A. Ms. Kinloch.

14 Q. Have you seen Ms. Kinloch in the
15 courtroom yesterday?

16 A. Yes, sir, I did.

17 Q. Did you actually take that bag to her
18 house?

19 A. Yes, I took the bag to her house. I
20 told her that this is Calvin's.

21 Q. Okay. All right. You gave it directly
22 to her?

23 A. Directly to her.

24 Q. Okay. Well, if she said you didn't
25 would she be lying?

1 MR. OSBORNE: Objection, pitting.

2 THE COURT: I will sustain the
3 objection.

4 MR. ARCHER: I have no other questions,
5 Your Honor.

6 THE COURT: Redirect?

7 REDIRECT EXAMINATION

8 BY MR. OSBORNE:

9 Q. Just one. So you met up with the
10 Defendant around 9:30 or 10:00?

11 A. Um-hmm.

12 Q. And that was when you were already
13 walking to MUSC?

14 A. Yes.

15 Q. You get there around 11:00?

16 A. Yes, sir.

17 MR. OSBORNE: No further questions.

18 MR. ARCHER: Judge, there was one
19 question I forgot to ask.

20 THE COURT: Any objection to him
21 asking?

22 MR. OSBORNE: No.

23 THE COURT: I assume it was not raised
24 by the redirect.

25 MR. ARCHER: Right. It is not but --

1 THE COURT: There is no objection. Go
2 ahead.

3 BY MR. ARCHER:

4 Q. He got upset, did he not, when you told
5 him you had taken this gun to his grandmother,
6 right?

7 A. Yes.

8 Q. And he was upset because he didn't like
9 the fact you got his grandmother involved in
10 anything?

11 A. So why should it be cool if I'm
12 involved in it?

13 Q. Okay.

14 A. Why would you leave me in that
15 position?

16 Q. Okay. No other questions.

17 THE COURT: Any follow up? All right,
18 ma'am. You may step down. Thank you very much.
19 You wish to have the witness excused if she'd like
20 to go?

21 MR. ARCHER: That's fine, Your Honor.

22 THE COURT: Ma'am, you are free to go
23 if you would like to go. Thank you very much. The
24 State may call its next witness.

25 MR. OSBORNE: State calls Tyreik

1 [REDACTED]
2 THE COURT: Ladies and gentlemen, the
3 witness has some disabilities so we have arranged
4 for testimony to be given in front of the podium.
5 Sir, if you would speak into the microphone for us,
6 okay? Your witness, counselor.

7 [REDACTED] Tyreik G.

8 having been duly sworn, testifies as follows:

9 DIRECT EXAMINATION

10 BY MR. OSBORNE:

11 Q. All right, Tyreik. Well, thanks for
12 coming in this morning. Do you want to be here
13 today?

14 A. Maybe.

15 Q. Maybe? I want to tell the jury a
16 little bit about you, okay, and in doing so I think
17 it would be the best way to explain you to them
18 might be to tell them about a conversation that we
19 just had outside the courtroom. When I asked you
20 if you mind the cameras being in here what did you
21 say?

22 A. Yes, sir.

23 Q. You said you did?

24 A. (Indicating.)

25 Q. Why do you mind the cameras being in

1 here?

2 A. A TV show.

3 Q. You want to be on a TV show? Cameras
4 got to be in here if you want to be on a TV show,
5 right?

6 MR. ARCHER: Your Honor, I am having
7 trouble hearing him.

8 THE COURT: I will let you move up to a
9 place if you would like to so you can hear better.
10 Speak loudly so everybody can hear you, okay?
11 Counsel, I do want you at some point in time to go
12 through the questions to determine the witness's
13 competency to testify.

14 MR. OSBORNE: I will, Your Honor.

15 THE COURT: Thank you.

16 BY MR. OSBORNE:

17 Q. Tyreik, how old are you?

18 A. Ten.

19 Q. Where do you go to school?

20 A. Goose Creek Primary.

21 Q. Goose Creek?

22 A. Primary.

23 Q. Primary. What grade are you in?

24 A. First.

25 Q. You are in first grade. Do you have

1 any brothers?

2 A. Yes.

3 Q. And what's your brother's names?

4 A. Quamaine and Ricky.

5 Q. How old is Quamaine?

6 A. Nine.

7 Q. What about Ricky?

8 A. Fifteen.

9 Q. Do you like watching TV shows?

10 A. Yes.

11 Q. What's your favorite TV show?

12 A. Judge Judy.

13 Q. Judge Judy, okay. What about any
14 cartoons? You like watching cartoons?

15 A. Yes.

16 Q. What's your favorite cartoon?

17 A. Alvin and the Chipmunks.

18 Q. That's a good one. Whose your favorite
19 character on that show?

20 A. Alvin.

21 Q. Alvin is the star. You like to play
22 any kind of video games or anything?

23 A. WWE.

24 Q. WWE. You got a favorite wrestler?

25 A. John Cena.

1 Q. Big guy, ain't he? Let me ask you
2 something, Tyreik. Let's talk about the difference
3 between the truth and a lie, okay? If I said,
4 Tyreik, I am wearing a red suit right now would
5 that be a truth or a lie?

6 A. A lie.

7 Q. A lie. If I said I'm wearing a blue
8 suit would that be a truth or a lie?

9 A. A lie?

10 Q. A blue suit? What color is my suit?

11 A. Look like light blue.

12 Q. Light blue, okay. Maybe a trick
13 question. All right. Let's talk about the day you
14 got shot. Okay? How did you end up --

15 THE COURT: Just one second. Let me be
16 sure, Mr. Archer, do you agree that the witness is
17 qualified to testify?

18 MR. ARCHER: At this point what is
19 going on at this point in time. I can't say about
20 when he was five years old.

21 THE COURT: Well, I am asking about
22 today. He has to be competent to testify in this
23 courtroom and the Court has to make the finding
24 that he is. He is obviously of tender years and
25 the Court has to make that finding before he can go

1 forward and testify.

2 MR. ARCHER: Yes, sir.

3 THE COURT: If you have an objection
4 now would be the time.

5 MR. ARCHER: Well, my objection is that
6 we know I think today as to what he observes today
7 he is certainly competent to testify. Whether he
8 was competent to testify as to what he saw at five
9 years old.

10 THE COURT: Well, you can cross-examine
11 him, but the question is whether he is competent to
12 testify in this courtroom today and I have heard no
13 objection. Is there an objection?

14 MR. ARCHER: Well, I will put -- just
15 for the record put an objection on the record that
16 the prosecutor has not established his competency
17 as to events that took place when he was five.

18 THE COURT: Well, I do want you to ask
19 him if you would what the consequences of telling
20 the truth and not telling the truth might be before
21 I make a ruling on his competency. So I will ask
22 you to ask a couple questions before we get into
23 the meat of his testimony.

24 BY MR. OSBORNE:

25 Q. Yes, Your Honor. When you came up here

1 just now, Tyreik, and you put your hand on the
2 Bible do you understand that you were swearing to
3 tell the truth?

4 A. Yes, sir.

5 Q. And you swore to God to do that, right?

6 A. Yes, sir.

7 Q. Do you understand that if you lie that
8 there would be consequences to that?

9 A. Yes.

10 Q. You do understand that?

11 A. (Indicating.)

12 THE COURT: You have to answer
13 verbally, son.

14 Q. Yes or no? Do you understand there
15 will be consequences if you were to lie?

16 A. Yes, sir.

17 Q. Okay. Do you intend on telling the
18 truth here today?

19 A. Yes, sir.

20 Q. Okay.

21 THE COURT: The Court will find that
22 the witness is capable of testifying today, does
23 know the difference between the truth and a lie and
24 that there are consequences for lying. So I find
25 that he is competent to testify at this time. You

1 may proceed with the meat of his testimony.

2 BY MR. OSBORNE:

3 Q. All right. On the day you were shot,
4 Tyreik, why did you go downtown that day?

5 A. Because my cousin was having a birthday
6 party.

7 Q. Your cousin was having a birthday
8 party. And what's your cousin name?

9 A. Montaisha.

10 Q. Do you remember how old Montaisha was
11 on her birthday?

12 A. No, sir.

13 Q. Was she about your age?

14 A. No, sir.

15 Q. Was she just a little bit older than
16 you or a lot older than you?

17 A. A little bit older than me.

18 Q. About the age of Ricky?

19 A. No.

20 Q. A little bit older or younger than
21 Ricky?

22 A. Younger.

23 Q. A little younger than Ricky. And Ricky
24 is nine now or 13 now, right?

25 A. (Indicating.)

1 Q. All right. How did you get downtown?

2 A. My mom dropped me off.

3 Q. Mom dropped you off. That's your mom
4 in the courtroom?

5 A. Yes, sir.

6 Q. Okay. And when she dropped you off
7 where did you go?

8 A. To my granny's house.

9 Q. To your granny's house. And is she in
10 the courtroom too?

11 A. Yes, sir.

12 Q. Do you know her name?

13 A. Derotha Jones.

14 Q. D Jones. Ms. D. Okay. When you got
15 downtown and your mom dropped you off where did you
16 go first?

17 A. At the park.

18 Q. You went to the park. You played in
19 the park by your grandmother's house?

20 A. Yes, sir.

21 Q. You played there a lot?

22 A. Not very much.

23 Q. Okay. What did you do then?

24 A. Just played on the slides and the
25 swings.

1 Q. Did you end up going to Montaisha's
2 birthday party?

3 A. My granny told me to wait.

4 Q. Okay. So you were at your granny's
5 house. Did she have company?

6 A. Yes, sir.

7 Q. All right. Did you want to go -- you
8 didn't want to be around the adults, did you?

9 A. No, sir.

10 Q. You wanted to go to the birthday party?

11 A. Yes, sir.

12 Q. And did you ask your granny to walk you
13 over there?

14 A. Yes, sir.

15 Q. And she just said wait for a minute?

16 A. Yes.

17 Q. Did she eventually agree to take you
18 there?

19 A. Yes, sir.

20 Q. All right. After she agreed to take
21 you there what did you do?

22 A. I went and then she said okay.

23 Q. You walked out of the door. Were you
24 telling your grandmother to come with you?

25 A. Yes, sir.

1 Q. And what happened then?

2 A. I got shot.

3 Q. You got shot. Did you hear the
4 gunshots at all?

5 A. No, sir.

6 Q. You never saw -- did you see anything?

7 A. No, sir.

8 Q. You didn't even hear it?

9 A. No, sir.

10 Q. And when you were shot you were
11 standing outside your grandmother's door?

12 A. Yes, sir.

13 Q. Did it hurt when you got shot?

14 A. No, sir.

15 Q. No? What did it feel like?

16 A. A little weird.

17 Q. Felt weird. Did you see anyone run by
18 you?

19 A. No, sir.

20 Q. Did you see anything?

21 A. No, sir.

22 Q. What's the next thing you remember?

23 A. Nothing else.

24 Q. Do you remember the EMS coming?

25 A. Yes, sir.

1 Q. You do remember that.

2 A. (Indicating.)

3 Q. Do you remember them taking you to the
4 hospital?

5 A. Yes, sir.

6 Q. Where were you shot, Tyreik?

7 A. Downtown.

8 Q. Where on your body?

9 A. On my back.

10 Q. In your back. Do you remember at some
11 point getting in a helicopter?

12 A. No, sir.

13 Q. You were out then?

14 A. Yes, sir.

15 Q. Did you go to Charlotte at some point
16 or you are not sure?

17 A. I'm not sure.

18 Q. Okay. Are you going to walk again,
19 Tyreik?

20 A. Yes, sir.

21 Q. That's good. No further questions.

22 THE COURT: Mr. Archer, you may
23 cross-examine.

24 CROSS-EXAMINATION

25 BY MR. ARCHER:

1 Q. Tyreik, how are you doing in school,
2 good or bad?

3 A. Good.

4 Q. Good. You made good grades?

5 A. Yes, sir.

6 Q. A's and B's?

7 A. I'd say A's.

8 Q. Yeah. You seem to be an awful smart
9 little boy. We want to say how sorry we are for
10 your injury. I have got no other questions, Your
11 Honor.

12 THE COURT: Anything further from the
13 State?

14 MR. OSBORNE: Nothing, Your Honor.

15 THE COURT: All right. The witness may
16 come down. I assume you want to excuse the
17 witness?

18 MR. OSBORNE: Yes, Your Honor.

19 THE COURT: I assume?

20 MR. ARCHER: Yes, Your Honor.

21 THE COURT: He is free to go if he
22 would like to go. Thank you very much. State may
23 call the next witness.

24 MR. DURANT: State would call Shellie
25 Green.

1 THE COURT: Come forward and be sworn,
2 please, ma'am.

3 SHELLIE GREEN

4 having been duly sworn, testifies as follows:

5 THE CLERK: Please state your full name
6 and spell your last name for the record.

7 THE WITNESS: Shellie Green,
8 S-H-E-L-L-I-E, G-R-E-E-N.

9 THE COURT: Counselor, your
10 witness.

11 DIRECT EXAMINATION

12 BY MR. DURANT:

13 Q. Thank you, Your Honor. Good morning,
14 Sergeant Green. How are you doing?

15 A. Good.

16 Q. Could you please tell our jury where
17 you are employed?

18 A. I am employed at the Sheriff Al Cannon
19 Detention Center.

20 Q. And the detention center is run by the
21 sheriff's office, correct?

22 A. Yes, sir.

23 Q. How long have you been with the
24 sheriff's office Al Cannon Detention Center?

25 A. Thirteen years five months.

1 Q. And what jobs have you performed while
2 being at the detention center?

3 A. I have been in housing for six years --
4 I am sorry -- housing for four years. Bond court
5 for six years and currently in the security threat
6 group the last three years five months.

7 Q. What is the purpose of the security
8 threat group?

9 A. The purpose of the security threat
10 group is to detect and deter any type of threat
11 that may come to the facility.

12 Q. I guess that could be in terms of
13 contraband or drugs or --

14 A. Cell phones.

15 Q. Cell phones or anything of that nature?

16 A. Yes, sir.

17 Q. And threats of course could come in any
18 form?

19 A. Correct, yes, sir.

20 Q. How many people are in the security
21 threat group?

22 A. Myself and one other officer.

23 Q. That would be Lisa Bloodworth?

24 A. Correct.

25 Q. And what is your rank?

1 A. Sergeant.

2 Q. And are you currently in charge of the
3 security threat group?

4 A. Yes, I am.

5 Q. Now, let's talk a little bit about
6 mail. Is one of your responsibilities with the
7 security threat group to monitor inmate mail, mail
8 coming into the detention center?

9 A. Yes, it is.

10 Q. And why do y'all monitor mail coming
11 into the detention center?

12 A. We monitor the mail for contraband and
13 anything that's deemed a threat to the facility.

14 Q. And so y'all monitor pretty much all
15 mail?

16 A. Yes.

17 Q. Coming to the facility?

18 A. Yes, we do.

19 Q. Is that correct? And what is the
20 general process for doing this? What happens when
21 the mail comes in during the day?

22 A. Okay. When the mail comes to the jail
23 it is brought in by a postal carrier. It comes
24 through -- the postal worker will walk in and goes
25 through the metal detector. Once it goes through

1 the metal detector the lobby officer will get it.
2 They will set it down on the floor. They don't go
3 through it until I have been notified and our K9s
4 have been notified. We will come downstairs. I or
5 my other partner will spread it out. The dog will
6 actually sniff it and check it for contraband. And
7 then we will physically go through it by hand after
8 that and then we will give it to the lobby officer.

9 Q. So you and Ms. Bloodworth will visually
10 inspect the mail, the exterior of the mail?

11 A. Correct.

12 Q. What are you looking for in terms of
13 the exterior of the mail?

14 A. We are looking to see any breaks in the
15 any of the letters, if anything is stuffed in the
16 sides of them, any unusual tears, any unusual
17 markings on them, be it writings or if anything
18 like liquid could have dried on the envelope
19 itself.

20 Q. Okay. And stuff that you don't isolate
21 at that point is opened by the lobby personnel?

22 A. Correct, yes, it is.

23 Q. And read by the lobby personnel?

24 A. Correct.

25 Q. Now, what happens if somebody in the

1 lobby reads something that causes them some
2 concern? What do they do with it?

3 A. Then they put it in our box and then we
4 will get it after that.

5 Q. Okay. Ms. Green, I would like to hand
6 you what's previously been marked as State's
7 Exhibit 54A and 54B and ask can you identify that
8 exhibit?

9 A. Yes, sir. This was a letter that was
10 addressed from Devin Middleton to Tyrese Sneed.

11 Q. Is there a postmark date on that?

12 A. The date is December 9th, 2015.

13 Q. And the letter is from -- allegedly
14 from a Devin Middleton a Tyrese Sneed.

15 A. Yes, sir.

16 Q. Okay. Did that particular letter come
17 to the attention of the security threat group at
18 the jail?

19 A. Yes, it did.

20 Q. And was that due to the contents of the
21 letter?

22 A. Initially because Tyrese Sneed is a
23 documented gang member in the facility.

24 Q. And so did you read that letter?

25 A. Yes, I did.

1 Q. And did the contents of the letter
2 raise any concern to you?

3 A. Yes, sir. When I got the letter and
4 opened it up I noticed that it was not written by
5 Devin Middleton.

6 Q. It was written by someone who signed
7 his name what?

8 A. Calico.

9 Q. And with regards to the content of the
10 letter what was Calico trying to get Mr. Steed to
11 do?

12 A. In this letter, I believe this is the
13 one where he was attempting to get Tyrese Steed to
14 get -- I am -- I can't remember his name -- Desmond
15 Lewis, someone named Desmond Lewis to change his
16 statement.

17 Q. Okay. At our request did you kind of
18 type out the --

19 A. Yes, sir.

20 Q. -- contents of that letter?

21 A. Yes.

22 Q. As you understood it to be? For ease
23 of reading?

24 A. Yes, sir.

25 Q. I hand you what's been marked as

1 State's Exhibit No. 136 and ask if that is the
2 transcription you actually typed?

3 A. Yes, it is.

4 Q. And would reference to State's
5 Exhibit 136 assist you in reading the contents of
6 that letter to the jury?

7 A. Okay.

8 Q. Would it?

9 A. Yes, sir.

10 Q. And what exactly was said in that
11 letter?

12 A. You want me to read it?

13 Q. Yes, ma'am.

14 A. Okay. It says, "Sup bra, this Cal. I
15 need you and Big Main to holla at that boy Fats."

16 Q. Speak slowly because this lady has got
17 to take down what you say.

18 A. "Sup bra. This Cal. I need you and
19 Big Main to holla at that boy Fats for me."

20 Q. Do you know who Big Main is?

21 A. No, I don't. I wasn't able to
22 determine who that was.

23 Q. Okay.

24 A. "To holla at that boy Fats for me, see
25 how that boy rocking with changing that shit up

1 with them people. Because everybody else done did
2 right except him. See if you can get in dog corner
3 and get him to do the right thing because the
4 statement is the only thing got me fucked up." One
5 word I wasn't able to determine what it was. "You
6 let them know all he got to do is write a statement
7 to the PD screener, notarize that shit. I can
8 slide and his name be clear with that rack shit.
9 Let them know he done shoot at me and I kept -- I
10 keep that shit in the street so he need to do the
11 same. My lawyer said they got him thinking they
12 going to cut him a deal, but can't use in trial
13 because he already change his statement so much
14 time so they playing him like a snitch for free.
15 Word on big B. I need y'all to do that. Holla at
16 Big Cabbage."

17 Q. Who is Big Cabbage?

18 A. Claunce Mazyck. "To see if y'all can"
19 I wasn't able to determine what that word was. One
20 of the words again. "Dog to do the right thing
21 because I go up for bond next. Let him know how
22 boy rocking. Get a real nigger that he fuck with
23 to holla at him with you. All he got to do is let
24 them people know the truth in his statement that he
25 honestly don't know who shoot him, he only assumed

1 it been me because that's what the street and
2 police say. Write me back under Smash name."

3 Q. Whose Smash?

4 A. Devontay Bryant. "And let me know how
5 dog rocking because he facing probation, got me
6 facing 30 years. Stay O 50. Big B. OIG Calico,
7 AKA Calico. PS tear this letter up and sign up for
8 Jum'ah. Stay solid."

9 Q. What does sign up for Jum'ah mean?

10 A. Jum'ah is a Muslim religious service
11 that we have in the jail.

12 Q. Why would he want to sign up for
13 Jum'ah?

14 A. Because at Jum'ah the inmates are all
15 together in the room and they are able to pass
16 contraband.

17 Q. And kytes too?

18 A. Correct.

19 Q. What are kytes?

20 A. Kytes are little letters that they are
21 passing from hand to hand instead of letting the
22 mail go through the mail like it is supposed to and
23 the stuff they don't want the officers to know
24 about.

25 Q. So basically signing up for Jum'ah is a

1 way for inmates to communicate, correct?

2 A. Correct.

3 Q. And Smash is Devontay Bryant, the
4 person that this letter was allegedly sent from,
5 correct?

6 A. Yes, sir.

7 Q. Now, did you know what case was being
8 talked about in this letter?

9 A. At that time, no, sir, I did not.

10 Q. What do you do when you get a letter
11 like this?

12 A. Usually when we get letters of this
13 nature we will pass it to our liaison between the
14 jail and the police department.

15 Q. Okay. And did you get involved with
16 some lady named Lauren Mosher?

17 A. Yes, sir. She is the liaison between
18 the jail and the police department.

19 Q. Okay. What does Ms. Mosher do?

20 A. She is an intel analyst for the county
21 so she will vet the information and she will
22 determine where it or what they possibly are
23 talking about and they pass the information on to
24 where it needs to go to.

25 Q. Based upon her analysis who was this

1 letter passed on to?

2 A. Alana.

3 Q. Keith? Who is Alana Keith?

4 A. She's an intel analyst for the City of
5 Charleston.

6 Q. Charleston Police Department?

7 A. Yes, sir.

8 Q. And what did y'all do with the original
9 letter?

10 A. We allowed it to go in the mail in its
11 normal course and the inmate received it.

12 Q. And you all generally do that unless
13 what?

14 A. Well, really we don't keep it unless
15 there is a physical threat like if they were just
16 saying that hey, you need to get this person
17 physically we will keep it and give it to who we
18 need to give it to.

19 Q. And if it was like an explicit threat
20 to kill or something like that y'all would keep it?

21 A. Yes.

22 Q. I understand. Moving ahead a few days
23 to December, somewhere around December the 15th,
24 did you have the occasion to intercept another
25 letter relevant to this case?

1 A. Yes, sir.

2 Q. I hand you what's been marked as
3 State's Exhibit No. 55. Ask you if you can
4 identify that document.

5 A. This is a letter that was written from
6 Devontay Bryant to Tyrese Steed on the 15th.

7 Q. Okay. And December 15th is the
8 postmark date on that?

9 A. Yes.

10 Q. So that's kind of a week after the
11 first one?

12 A. Yes.

13 Q. And the same two people on the
14 envelope?

15 A. Yes.

16 Q. Now, do you recall how that letter came
17 to the attention of the security?

18 A. Both of these gentlemen are documented
19 gang members.

20 Q. Devontay Bryant and Tyrese Steed?

21 A. Yes, sir.

22 Q. And if you could, what was unusual
23 about the contents of that letter?

24 A. When it was opened I noticed that there
25 were two different letters written by two different

1 people on the inside of it.

2 Q. Okay. Once again was an effort to get
3 somebody to get Desmond Lewis to change his story?

4 A. Yes, it was.

5 Q. And as in the first one did you do a
6 typed transcript to assist you in reading the
7 contents of that letter?

8 A. Yes, I did.

9 Q. Hand you what's been marked as State's
10 Exhibit 137 for identification and ask you if that
11 is the transcript you prepared.

12 A. Yes, sir, it is.

13 Q. And would reference to 137 assist you
14 in reading the contents of that letter to the jury?

15 A. Yes, sir.

16 MR. ARCHER: Could we have these
17 letters admitted into evidence if we are reading
18 them to the jury?

19 MR. DURANT: We will be more than happy
20 to admit them.

21 THE COURT: Any objections?

22 MR. ARCHER: No, sir.

23 THE COURT: Without objections they
24 will be admitted into the record. They can be
25 published.

1 MR. DURANT: In that case I will go
2 ahead and admit I think it's 54, 55, 137, 136.

3 THE COURT: Any objection?

4 MR. ARCHER: Not 54 and 55. I haven't
5 seen 136 and 137.

6 THE COURT: 54 and 55 are admitted.

7 (STATE'S EXH. 54-55 in evidence.)

8 BY MR. DURANT:

9 Q. What are the contents of the December
10 15th letter? Can you please read that to the jury?

11 A. "If Cabbage already slide hand this for
12 me. A bro."

13 Q. Cabbage is who?

14 A. Claunce Mazyck. "Hey, bro, do me a
15 favor and give this kyte to Big Cabbage. I write
16 in your name cuz bro we are hot. Sup, big bra.
17 Beach and Tony James tell me that deal with dog and
18 how he saying I gunna rock. I'm going to send my
19 lawyer at him but he might not roll too quick
20 because dog got a lawyer already so it might be a
21 conflict of interest in the case. They might say
22 he make dog write the statement so what I need you
23 to do for me big bro is get that boy to recopy the
24 statement I sent. Don't let him keep the original.
25 Rip that shit up after he copy it. Tell him ask

1 the screener who come in for the public defender to
2 notarize it for him so it can be legal document.
3 Tell him make another copy and send it off to my
4 lawyer Mark Peper, 1637 Savannah Highway, suite
5 202, Charleston, South Carolina, 29407. Tell me
6 bro after he handle that everything official. I
7 got some change on his bond or his lawyer off the
8 strength. Soon as he handle that they gunna drop
9 my charges because that's all they got on me is his
10 word. Tell bro he got to stay solid and tell them
11 he don't want to get questioned no more about the
12 case. And to tell his lawyer he don't want to get
13 interviewed no more. Tell bra don't let those
14 scare him with no time because his charges ain't
15 that big. Just stand firm on some real shit. Copy
16 my lawyer address and get rid of this letter. I
17 got you when I touch one love. PS, make sure bro
18 copy a letter two times. Send one to my lawyer and
19 get the other notarized, but I'm going to send the
20 private investigator to him. Tell him just let me
21 know he write it and send it notarized."

22 Q. What was the statement that was
23 included with that letter? Can you read that to
24 the jury?

25 A. Yes, sir. "I, Desmond Lewis, am

1 writing to the courts admittedly and willingly. On
2 June 5th, 2015, I was questioned about the shooting
3 to which I was a victim of. During the
4 interrogation I was asked by a Detective Holmes
5 that he believed I knew who shot me. After his
6 suggested information during a previous interview
7 asking me if I knew somebody by the name of Calico
8 and rumors arising on the streets about who shot me
9 was the only reason I picked Calico out in a
10 photographic lineup. I never actually saw who was
11 doing the shooting. I only heard the shots and
12 began to run. While incarcerated at ACDC I was
13 brought down to be questioned by the solicitor and
14 other detectives. During this interview I only
15 reiterated what I believe happened due to the
16 coercion of detectives in previous interviews. I
17 only told the story of the shooting while adding
18 name of Calico not because I saw him do the
19 shooting, but because that's who police led me to
20 believe do the shooting. I am writing the
21 statement on my own free will because I feel it
22 isn't fair that an innocent person be in jail for
23 something he probably didn't do. Calico is a
24 person that I known for years whose real name is
25 Calvin Brown. Although we have had problems in the

1 past I honestly don't believe he was involved in
2 the shooting on May 22nd, 2015."

3 Q. That's the letter he wanted somebody to
4 recopy and get rid of the original?

5 A. Yes, sir.

6 Q. And once again, what did you do with
7 the originals of those after they came into your
8 possession?

9 A. They were forwarded to Alana Keith.

10 Q. The original actually was delivered?

11 A. Yes.

12 Q. Finally, could you tell the jury if you
13 intercepted another piece of mail relative to the
14 case in January of 2016?

15 A. Yes, sir.

16 Q. And that would be State's 56A, B, C and
17 D?

18 A. Yes, sir.

19 Q. That is a copy of the letter that was
20 intercepted in January; is that correct?

21 A. Yes, sir.

22 Q. We will offer 56 at this time if there
23 is no objection.

24 THE COURT: I believe 56 has already
25 admitted, was it not?

1 MR. DURANT: I think it's 54, 55 and
2 56.

3 THE COURT: Any objection to 56, Mr.
4 Archer?

5 MR. ARCHER: Huh?

6 THE COURT: Any objection to
7 Exhibit 56?

8 MR. ARCHER: I am trying to look
9 through it right now.

10 THE COURT: I will give you a moment.
11 Let me know when you are ready.

12 MR. ARCHER: No objection.

13 THE COURT: Without objection it will
14 be admitted as it has been marked. You may publish
15 it.

16 (STATE'S EXH. 56 in evidence.)

17 MR. DURANT: Thank you, Your Honor.

18 BY MR. DURANT:

19 Q. And as in previous letters you were
20 asked to do a transcript?

21 A. Yes.

22 Q. I hand you State's 138 for
23 identification. Is that the transcript you
24 prepared?

25 A. Yes, sir.

1 Q. Would reference to that assist you in
2 reading the contents of 56 to the jury?

3 A. Yes, sir.

4 Q. Could you please read the contents of
5 State's Exhibit 156?

6 A. "Sup, big bro. This Calico. Tony
7 James and me people off Spring Street. I need you
8 to do me a real nigger. Look out and holla at my
9 victim for me. I had big bro Cabbage doing for me
10 but the nigga ended up getting moved. The nigga
11 claim he about to do right thing but I need you all
12 to write that shit down. I write it exactly word
13 for word. This nigga keeps screaming he's going to
14 get tapped by the nigger stupid and just start
15 doing time. But anyways holla at dog on some one
16 and one shit so he don't feel so played in front of
17 the crowd. Show the nigger his paperwork and ask
18 him if he going to write the statement or not. If
19 he say yeah then tell that nigga copy the shit in
20 his handwriting. Then you send it back to me in
21 Tony James name. If the nigga ain't trying to do
22 right expose that sucker as nigga big bro. I
23 really want the screener to notarize his statement
24 since them boy saying they come once a week but I
25 ain't trying to wait. If it is his handwriting

1 that will be good enough to give to my lawyer and
2 then he can come see dog and let him notarize it.
3 If he don't do right big bro at least make sure you
4 get a statement and shit from him so he don't try
5 and give it to them people. The niggers name
6 Desmond Lewis AKA Fats out to eat. I send the
7 statement in his name and your letter in Seth name.
8 If you want you can send the shit through Jum'ah.
9 I am C3K. If I ain't there give it to Tony James
10 AKA Seth. Make sure he do it in the daytime in
11 case it checks out but the nigga play hard so he
12 should do right. One love big bro, Calico SN
13 coming."

14 Q. And unlike the other two that were
15 addressed to -- who were the other two addressed
16 to?

17 A. Tyrese Steed.

18 Q. This was addressed to Terrence Gregory;
19 is that correct?

20 A. Yes, sir.

21 Q. And the reason for that is between the
22 second and third letter is that Desmond Lewis had
23 been moved out of the unit with Tyrese Steed?

24 A. Yes.

25 Q. Correct?

1 A. Yes, sir.

2 Q. As part of your duties at the detention
3 center are you tasked with subpoena compliance?

4 A. Yes, sir.

5 Q. What are your responsibilities at the
6 detention center regarding the subpoena compliance?

7 A. Subpoenas are sent through our subpoena
8 e-mail. When we get them we will go ahead and
9 start gathering up the information that's requested
10 and then we will send it back to the receiver.

11 Q. And in this capacity did the detention
12 center receive a subpoena from our office for the
13 inmate transaction logs on Claunce Mazyck, Desmond
14 Lewis, Calvin Brown, Tyrese Steed and Terrance
15 Gregory?

16 A. Yes.

17 Q. And in preparing for this trial first
18 of all, what is an inmate transaction log?

19 A. The inmate transaction log will tell us
20 everywhere that they moved in the jail, the money
21 they received, any medical charges that they may
22 have incurred from start from when they walk in the
23 jail and booking to the point where they were
24 released from jail. So every move they make is
25 documented in the computer.

1 Q. Okay. That's from the time they are
2 booked into the jail until they're released for
3 whatever reason?

4 A. Yes, sir.

5 Q. Could you tell our jury whether inmates
6 Desmond Lewis, Tyrese Steed and Claunce Mazyck were
7 all housed together from December 3rd of 2017 to
8 December -- excuse me -- December 3rd of 2015 to
9 December 17th of 2015?

10 A. Yes.

11 Q. They were all in the same unit?

12 A. They were in the same unit, yes, sir.

13 Q. That would be unit C3L?

14 A. Yes, sir.

15 Q. Now, do inmates housed in the same unit
16 at the jail have contact with one another?

17 A. Yes, they do depending on whether
18 they're in the old jail or new jail. Old jail they
19 are separated by floors. So if they are in the old
20 jail and they have any enemy status or anything, if
21 they have gotten into an argument with anybody they
22 separate them by floors. At this time they were in
23 the new jail. The new jail is open bay. They have
24 rec all day so they will have access to each other.

25 Q. How many inmates are generally kept in

1 the units?

2 A. Sixty-four inmates.

3 Q. Was the Defendant Calvin Brown in that
4 same unit during this period of time?

5 A. No, sir.

6 Q. Do you recall what unit he was in?

7 A. I believe he was in C3K which would
8 have been right next door.

9 Q. So Calvin Brown would not have had
10 access to Desmond Lewis during this particular
11 time?

12 A. Yes, sir.

13 Q. In December; is that correct?

14 A. Yes, sir.

15 Q. Now, were you also asked to look at an
16 inmate transaction log for an inmate named Terrance
17 Gregory?

18 A. Yes, sir.

19 Q. And after Desmond Lewis was moved out
20 of the unit on December 17th was he moved into
21 Terrance Gregory's unit?

22 A. Yes, he was.

23 Q. So he and Terrance Gregory would have
24 been in the same unit together?

25 A. Yes, sir.

1 Q. When that third letter was written in
2 January?

3 A. Yes, sir.

4 Q. 2015?

5 A. Yes, sir.

6 Q. That was a unit C2H?

7 A. Yes.

8 Q. At this time, Sergeant Green, I would
9 like to move on to another document. I am now
10 handing you what has been marked as State's Exhibit
11 No. 123 and ask if you recognize that document.

12 A. These are visitation logs for Calvin
13 Brown.

14 Q. For what period of time?

15 A. From July -- June 6th of 2015 to
16 July 2nd, 2015.

17 Q. And what is a visitor log?

18 A. At the jail we document every visitor
19 that comes to visit an inmate.

20 Q. And are visitations contained in the
21 visitor log entered at or near the time the visits
22 actually occur?

23 A. Yes, sir.

24 Q. Are they entered by someone that is
25 aware of and has knowledge of the actual

1 visitation?

2 A. Yes.

3 Q. And are these documents maintained by
4 the detention center in the normal and ordinary
5 course of its business?

6 A. Yes.

7 Q. Your Honor, at this time we would move
8 to admit State's Exhibit 123.

9 MR. ARCHER: No objection.

10 THE COURT: Without objection it will
11 be received into evidence as marked. You may
12 publish it if you to desire.

13 (STATE'S EXH. 123 in evidence.)

14 BY MR. DURANT:

15 Q. And back during those visits -- let me
16 ask you a question about visitation. You all do
17 video visitation now, correct?

18 A. Correct.

19 Q. And how long have y'all been doing
20 that?

21 A. Since December of 2015.

22 Q. Okay. And before December of 2015
23 there was no videotape of visitation?

24 A. Correct.

25 Q. Finally I want to hand you one more

1 document. Been marked as State's Exhibit 135 for
2 identification. Ask you do you recognize that
3 document?

4 A. Yes, sir. This is the charge list for
5 Desmond Lewis.

6 Q. What is a charge list?

7 A. The charge list will tell -- it's just
8 documentation of every charge that an inmate has
9 had or been charged with since they came into the
10 detention center.

11 Q. So any time someone has been arrested
12 for whatever reason and taken to the detention
13 center it would be reflected in that --

14 A. Correct.

15 Q. -- book; is that correct? Are the
16 events contained in the inmate charge list entered
17 at or about the time the events actually take
18 place?

19 A. Yes, sir.

20 Q. By a person with knowledge of those
21 events?

22 A. Yes, sir.

23 Q. Are they maintained by the detention
24 center in the normal and ordinary course of its
25 business?

1 A. Yes, sir.

2 Q. And you are a custodian of those
3 records?

4 A. Yes, sir.

5 MR. DURANT: Your Honor, we would move
6 State's Exhibit 135 into evidence.

7 MR. ARCHER: No objection.

8 THE COURT: Without objection it will
9 be received into evidence as marked. You may
10 publish it.

11 (STATE'S EXH. 135 in evidence.)

12 MR. DURANT: State has no further
13 questions. Please answer any questions Mr. Archer
14 may have.

15 THE COURT: Mr. Archer, you may
16 cross-examine the witness.

17 CROSS-EXAMINATION

18 BY MR. ARCHER:

19 Q. You made transcripts of these letters?

20 A. Yes, sir.

21 Q. And you got them with you up there?

22 A. Yes, sir.

23 Q. Your Honor, I would ask to be able to
24 approach the witness.

25 THE COURT: You may do so.

1 Q. I want to cross-examine her about and
2 be able to show you copies. Do you have
3 transcriptions?

4 A. (Handing.)

5 Q. All right. Now, on these, do you know
6 the dates that these were sent?

7 A. The date they were sent as in mailed?

8 Q. Yes.

9 A. I don't know the exact date that they
10 were sent. I just know the date that they came
11 into the facility.

12 Q. Came in the facility, okay. Now, I'm
13 looking at 136.

14 A. Um-hmm.

15 Q. Do you have -- I mean in that he says
16 if you can get in dog corner and get him to do the
17 right thing, Desmond?

18 A. Yes, sir. That's what it says.

19 Q. Okay. So he is just asking -- he's not
20 asking him to lie in this letter, he's asking him
21 to get Desmond Lewis to do the right thing, right?

22 A. Um-hmm.

23 Q. Huh?

24 A. Yes.. That's what he wrote, yes, sir.

25 Q. Do you see anywhere in there that he is

1 asking somebody to get Desmond Lewis to lie?

2 A. No, he doesn't say that.

3 Q. Okay. And can you look at the
4 envelopes and see when that one was sent?

5 A. It was received on December 9th.

6 Q. September the 9th?

7 A. Yes.

8 Q. Of what year?

9 A. 2015.

10 Q. Okay. Now, looking at I guess this is
11 137, okay -- one second, Your Honor. Is there
12 anywhere in 137 where Calvin asks for Desmond the
13 lie?

14 A. No, he doesn't ask him to lie.

15 Q. Okay. Does he say anything again about
16 doing the right thing in there?

17 A. He doesn't use the word do the right
18 thing in this one. He did it in the first one.

19 Q. Okay. How about 238? Is there
20 anywhere in there that he is asking Desmond to lie?

21 A. No, sir.

22 Q. No. So the only thing he's ever said
23 to Desmond about is telling him to do the right
24 thing, right?

25 A. Yes, sir.

1 Q. Huh?

2 A. Yes.

3 Q. Which sort of implies tell him to tell
4 the truth, right?

5 A. If that's -- he is just telling him to
6 do the right thing. I guess that's what he was
7 trying to say, I'm not sure.

8 Q. Trying to do the right thing?

9 A. Told him to do the right thing.

10 Q. Okay. No other questions.

11 MR. DURANT: I have one.

12 REDIRECT EXAMINATION

13 BY MR. DURANT:

14 Q. What he didn't say in there is tell the
15 truth, did he?

16 A. Correct. That's what he did not say.

17 MR. DURANT: I have no further
18 questions.

19 RECROSS-EXAMINATION

20 BY MR. ARCHER:

21 Q. What in your mind would be the right
22 thing, tell the truth or tell a lie?

23 A. If you were telling someone to do the
24 right thing you are telling them to tell the truth.

25 Q. Okay. No other questions.

1 THE COURT: Ma'am, you may step down.

2 You wish to excuse this witness?

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

4 THE COURT: Any objection to her being
5 excused?

6 MR. ARCHER: No objection.

7 THE COURT: You are free to leave the
8 courthouse. If you will leave the exhibits with
9 the court reporter. Thank you very much. Court
10 will take about a ten-minute break. We will be in
11 recess. The jury as you retire do not discuss the
12 case among yourselves.

13 (Thereupon, the jury exited the
14 courtroom at 10:12 a.m.)

15 (A recess transpired.)

16 THE COURT: State ready to proceed?

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

18 THE COURT: Mr. Archer, is the defense
19 ready to proceed?

20 MR. ARCHER: We are, Your Honor.

21 THE COURT: All right. Bring the jury
22 in.

23 (Whereupon the jury entered the
24 courtroom at 10:27 a.m.)

25 THE COURT: The jury has returned to

1 the courtroom. State may call its next witness.

2 MR. DURANT: Thank you, Your Honor.

3 The State would call Gail Heath.

4 GAIL HEATH

5 having been duly sworn, testifies as follows:

6 THE CLERK: Please state your full name

7 and spell your last name for the record.

8 THE WITNESS: My name is Gail Heath,

9 H-E-A-T-H.

10 THE COURT: Thank you. Counsel, your

11 witness.

12 DIRECT EXAMINATION

13 BY MR. DURANT:

14 Q. Thank you, sir. Good morning, Ms.

15 Heath. How are you?

16 A. Good morning. How are you?

17 Q. I'm doing well, thank you. Could you

18 please tell our jury where you're employed?

19 A. I'm employed by the South Carolina Law

20 Enforcement Division commonly known as SLED.

21 Q. And what do you do for SLED?

22 A. I am a forensic document examiner.

23 Q. And a forensic document examiner is

24 what the average Joe on the street would call a

25 handwriting expert, correct?

1 A. That is correct.

2 Q. How long have you been involved in the
3 field of questioned documents?

4 A. For 33 years.

5 Q. And are you certified?

6 A. Yes, I am.

7 Q. By whom?

8 A. By the American Board of Forensic
9 Document Examiners.

10 Q. And what is your formal educational
11 background and academic background?

12 A. I have two undergraduate degrees from
13 the University of South Carolina and I'm a graduate
14 of the Federal Law Enforcement Training Center and
15 the South Carolina Criminal Justice Academy.

16 Q. And could you briefly describe the
17 nature and extent of your training and preparation
18 in the field of questioned documents?

19 A. I completed the two-year internship at
20 the SLED forensic laboratory under another
21 qualified examiner and became familiar with the
22 literature and examination procedures and all the
23 textbooks related to questioned documents.

24 Q. And have you received any specialized
25 training in the field of questioned documents since

1 your training program at SLED?

2 A. Yes, I have. I have attended the
3 United States Secret Service Course on questioned
4 documents and the Federal Bureau of Investigation
5 Course on questioned documents as well as attending
6 training sessions throughout the last 33 years.

7 Q. And is this the generally accepted
8 method of preparing for your type of work?

9 A. Yes, it is.

10 Q. Are you a member of any professional
11 organizations related to questioned documents?

12 A. I am a member of the America Academy of
13 Forensic Science Questioned Document Section and
14 the Southeast Association of Forensic Document
15 Examiners.

16 Q. And you have been doing this for
17 33 years?

18 A. Yes, sir, that is correct.

19 Q. Have you previously been qualified as
20 an expert in the field of questioned documents?

21 A. Yes, sir, I have.

22 Q. On how many occasion?

23 A. One hundred ninety one occasions.

24 Q. And in what court?

25 A. In state, federal and municipal courts

1 in South Carolina.

2 Q. Your Honor, at this time we will offer
3 Ms. Heath as an expert in the field of examination
4 questioned documents.

5 MR. ARCHER: No objection.

6 THE COURT: Without objection she will
7 be designated as an expert within that field. You
8 may proceed.

9 BY MR. DURANT:

10 Q. Thank you, sir. Could you tell the
11 jury basically what you do as a questioned document
12 examiner?

13 A. Yes, sir. A document will come into
14 the laboratory that's authorship or authentication
15 has been called into question. And then I will
16 receive a set of known handwriting standards or
17 known writings to compare to it. And I
18 microscopically examine the document to try to
19 determine if the individual whose handwriting I
20 have as known handwriting, if that individual wrote
21 the questioned writing on the questioned documents.

22 Q. Why and how is handwriting unique to a
23 particular individual?

24 A. Everyone's handwriting is unique to
25 them. Everyone learned from copybook style in

1 school. But once they get out of elementary school
2 and all they develop kind of unique similarities
3 that only they do in combination with other letter
4 forms. And so that makes handwriting identifiable
5 to one particular person.

6 Q. And how do you account for variations
7 in handwriting?

8 A. You can usually account for variation
9 in handwriting when you receive several sets of
10 known handwriting standard. For instance if you
11 just had one then you would not know that person's
12 range of variation. But if you have had five or
13 ten or 25, usually we actually recommend to at
14 least receive 25 and then that way you get the
15 widest range of variation of all of the letters and
16 letter combinations that they are capable of
17 making.

18 Q. And in this case where did you get the
19 known handwriting examples from Calvin Brown?

20 A. The known handwriting samples of Calvin
21 Brown were actually obtained by one of the
22 investigators who actually dictated writing to him.
23 He actually prepared the writing for him and then I
24 also received a set of collective writings from a
25 work or social environment.

1 Q. And when you do that when there is a
2 handwriting exemplar where they are giving these
3 handwriting samples, how do you guard against them
4 trying to fake what their handwriting looks like?

5 A. Sometimes that can be difficult if the
6 person is intent on disguise. Usually the more an
7 individual writes then the more freely they compare
8 to their own natural handwriting. If they only
9 give one sample then it would be easy to disguise
10 it. But once you get up around 10, 15, 20, 25
11 samples then it is hard to maintain a disguise the
12 more you write.

13 Q. So when you get these handwriting
14 exemplars you may have them copy or rewrite the
15 same sentence 15 or 20 times?

16 A. That is correct, yes, sir.

17 Q. Let's talk a little bit about our case,
18 your lab number L1512849. I believe you received a
19 number of different documents from the Charleston
20 Police Department in inference to this case?

21 A. Yes, sir, I did.

22 Q. I am going to hand you just a few of
23 those and ask if you could look at them and tell us
24 if that were amongst the documents you examined and
25 we are going to start with State's 54A and B. Do

1 you recognize -- I believe that's in evidence by
2 the way. Do you recognize that document?

3 A. Yes, sir, I do. It contains my
4 laboratory number, my item number and my initials.

5 Q. And can you just describe the basic
6 contents of 54A and B?

7 A. Yes, sir. 54A is a photocopy of an
8 envelope addressed to Tyrese Steed and 54B is a
9 letter beginning yo, bro, this Cal. And it is
10 signed Calico.

11 Q. Okay. And next I hand you what's been
12 marked as State's 55 also in evidence and ask if
13 you can identify that as one of the documents that
14 you examined in this case?

15 A. Yes, sir. It contains my laboratory
16 number, my item number and my initials.

17 Q. Okay. And could you just page by page
18 kind of explain the contents of generally the
19 contents of that particular document?

20 A. Yes, sir. 55A is a photocopy of an
21 envelope addressed to Tyrese Steed. And 55B is a
22 letter beginning it's Cabbage and it ends he needs
23 it notarized. 55C begins I Desmond Lewis and ends
24 I am writing this. 55D begins statement of my own
25 free will and ends May 22nd, 2015.

1 Q. Okay. And finally I will ask the same
2 thing with document number State's 56 into
3 evidence.

4 A. These documents also contain my
5 laboratory number, my item number and my initials.
6 And document 56A is a photocopy of an envelope
7 addressed to Terrance Gregory and 56B is a letter
8 beginning sup big bro, and it is signed Calico SM
9 Coming and 55C begins I Desmond Lewis am writing
10 and it ends on May 22nd, 2015.

11 Q. Okay. And finally I will hand you
12 what's been marked as State's Exhibit No. 61 and
13 ask if you recognize that document?

14 A. Yes, sir. It contains my item number
15 and my case number and my initials. And these are
16 the known exemplars or known handwriting standards
17 that were received from Calvin Brown, Jr.

18 Q. Okay. That's what you used for
19 comparison purposes when you did your analysis with
20 regards to State's Exhibit 54 and 55 and 56?

21 A. That is correct, yes, sir.

22 Q. With regard to 54, 55 and 56, I guess
23 probably the best way to kind of go through these
24 documents is a page at a time and just ask you what
25 conclusions you reached with regard to them. And

1 let's start with State's Exhibit No. 54.

2 A. May I refer to my laboratory report?

3 Q. You certainly may. You prepared it in
4 anticipation of this case I presume?

5 A. Yes, sir.

6 Q. Okay.

7 A. Begin with 54A.

8 Q. Let's go if we could, and I know it is
9 probably not the best way for you to do it, but
10 probably makes the most sense for us. Just go
11 through these documents page by page, start with
12 54A, then go to 54B and first of all, describe what
13 is 54A again?

14 A. Okay. 54A is a photocopy of an
15 envelope addressed to Tyrese Steed.

16 Q. And from whom?

17 A. It is from the name on the outside of
18 the envelope is Devin Middleton.

19 Q. And did you draw a conclusion regarding
20 the authorship of the writing on that envelope?

21 A. Yes, sir, I did. My conclusion was
22 that there was a strong probability that Calvin
23 Brown, Jr. wrote the entries on this envelope.

24 Q. Okay. Let's move onto the second
25 page of 54B. The letter that begins up bro this

1 Cal and signed Calico. What conclusions did you
2 reach regarding that particular letter?

3 A. My conclusion on that letter was that
4 there was also a strong probability that Calvin
5 Brown, Jr. wrote each of the entries on this page.

6 Q. Let's move on to State's Exhibit 55 if
7 we could. We start out with State's Exhibit 55A
8 and that is the envelope to Tyrese Steed from
9 Devontay Bryant?

10 A. Correct. And my opinion was that it
11 was probable that Calvin Brown, Jr. did not write
12 this envelope.

13 Q. Okay. How about moving on to the next
14 page, 55B which is the letter beginning Cabbage
15 already slide.

16 A. It was my opinion that there was a
17 strong probability that Calvin Brown, Jr. did write
18 each of the entries on this page.

19 Q. Okay. Let's move on to 55C, the
20 document beginning I Desmond Lewis.

21 A. It was my opinion that Calvin Brown,
22 Jr. probably did not write the entries on this
23 page.

24 Q. Okay. And 55D page beginning statement
25 on my own and ending?

1 A. May 22nd, 2015. It is my opinion that
2 Calvin Brown probably did not write the entries on
3 that page.

4 Q. Okay. And that is a statement
5 allegedly written by a Desmond Lewis?

6 A. That is correct.

7 Q. Just another question on that statement
8 saying I Desmond Lewis.. You also compared it with
9 Desmond Lewis's handwriting; is that correct?

10 A. That is correct.

11 Q. And what conclusion did you reach with
12 regard to whether or not Desmond Lewis wrote that I
13 Desmond Lewis statement?

14 A. I concluded that it was probable that
15 Desmond Lewis did write the entries on this letter.

16 Q. Now, that's not what my report says.

17 A. Is that item --

18 Q. That would be item I believe 15.3.

19 A. Excuse me. It is probable that Desmond
20 Lewis did not write the entries on item 55C or 55D.

21 Q. Okay. It is probable that Desmond
22 Lewis did not?

23 A. Did not write, yes, sir.

24 Q. That was allegedly from Desmond Lewis?

25 A. That is correct, yes.

1 Q. Okay. Let's move on to 56. What
2 conclusions -- well, first of all, what is 56A?

3 A. 56A is a photocopy of an envelope
4 reportedly from Devontay Bryant to Terrance
5 Gregory.

6 Q. Okay. And what conclusion did you draw
7 regarding its authorship?

8 A. My opinion was there was a strong
9 probability that Calvin Brown, Jr. wrote the
10 entries on this envelope.

11 Q. Okay. And regarding 56B with the
12 letter beginning sup big bro and signed by Calico?

13 A. It was my opinion that there was a
14 strong probability that Calvin Brown, Jr. prepared
15 the entries on that page.

16 Q. And finally 56C, the document beginning
17 I Desmond Lewis.

18 A. I said that it's probable that Calvin
19 Brown, Jr. did not write the entries on item 56C.

20 Q. Nor Desmond Lewis, correct?

21 A. Nor Desmond Lewis, that is correct.

22 Q. Now, these documents that you have said
23 there was a strong probability that Calvin Brown
24 wrote them, what do you mean by a strong
25 probability? What rating scale do you use as a

1 documents examiner?

2 A. The SLED forensic lab uses a national
3 scale that is recognized by our ASCLD accreditation
4 bureau and the ASTM which governs scientific
5 standards. We use a nine point scale at the SLED
6 laboratory. The first of that being an
7 identification where we fully identify someone as
8 being the writer of an item. The next phase down
9 would be a strong probability which means there
10 were one or two features that we were not able to
11 account for in the set of known writing that we had
12 from that individual. We were not able to account
13 for that in the questioned documents.

14 Now, that could be in this particular
15 case because the documents themselves were
16 photocopies and so that leads to a lot of the
17 minute detail and features can be lost in the
18 photocopying process. It also can be contributed
19 to the fact that the individual may try to disguise
20 or alter their handwriting somewhat and not give
21 freely and naturally prepared exemplar to compare
22 to.

23 The next step down is a probable that
24 someone prepared something. Again we would have
25 several more features that we were not able to find

1 in the known writing compared back to the
2 questioned. Then we say indications that person
3 wrote and that would be even more features that we
4 were not able to find in the known writing that we
5 also found in the questioned. Then we have a no
6 conclusion which even though questioned documents
7 does not use a scale or percentages and all, I
8 always look at it like this. A no conclusion is
9 kind of at the 50 mark on the scale right in the
10 middle. And then you have indications they wrote
11 it, probable, strong probability that they wrote it
12 and identification. Then once you get back to the
13 50 percent right in the middle where you have no
14 conclusion or no opinion whatsoever, then we have
15 the negative side of the scale where you have
16 indication that an individual did not write
17 something which there would have been several
18 features that were different or dissimilar and we
19 couldn't account for them in the known writing,
20 probable they did not write it, a strong
21 probability that they did not write it and an
22 elimination.

23 So we can go all the way from an
24 identification to eliminating a writer. We also
25 have three phases in between where there are

1 features, more features than you would expect to
2 find in a writing from someone who did not write it
3 then if they were if it's on the positive side of
4 the scale. If it is on the negative side of the
5 scale then there would be more features that were
6 dissimilar or not like the ones that you found in
7 the questioned writing.

8 Q. So all cases where you found there was
9 a strong -- in this case there was a strong
10 probability Calvin Brown wrote the document that's
11 not the top level, but the one right under that; is
12 that correct?

13 A. That is correct, yes.

14 Q. With regard to the two documents with
15 the I Desmond Lewis, I Desmond Lewis letters, you
16 have already testified that they were not written
17 by Calvin Brown or Desmond Lewis. Did you reach
18 any conclusion regarding whether they written by
19 the same people or not?

20 A. I did determine that indeed those two
21 letters were written by the same writer or what we
22 refer to as common authorship. However, the writer
23 remains unidentified.

24 Q. Okay.

25 A. Another individual wrote those.

1 Q. Did you prepare any exhibits in
2 anticipation of your testimony today that would
3 kind of assist you in explaining to the jury how
4 you go about doing what you do?

5 A. Yes, sir, I did.

6 Q. And would reference to that exhibit
7 assist you in explaining how you do what you did?

8 A. Yes, sir, it would.

9 Q. This it here? I haven't seen it yet.

10 A. Yes, sir.

11 Q. Would you mind showing it to me?

12 A. May I approach?

13 THE COURT: You may step up.

14 MR. DURANT: I will mark this for
15 identification if I could.

16 (STATE'S EXH. 152 marked for
17 identification.)

18 BY MR. DURANT:

19 Q. I have now marked State's Exhibit
20 No. 152 for identification. Was that prepared by
21 you?

22 A. At my direction in our photography
23 department.

24 Q. If you would, tell the jury how you go
25 about -- in this particular case how you went about

1 concluding Calvin Brown was the authorship?

2 A. Could we move that a little bit closer?

3 Q. You can. We will move it anywhere.

4 A. Because of the photocopying process it
5 is difficult to get it enlarged. So what a
6 document examiner does is when we receive items for
7 comparison we microscopically examine the
8 questioned documents looking for uniqueness,
9 looking for flourishes, looking for natural or
10 anything that we see that makes it stand out from
11 copybook style. We then microscopically examine
12 our set of known writings that we receive from an
13 individual. And we look again for similarities as
14 well as differences looking for naturalness of
15 their handwriting, anything that might be a
16 deviation from copybook style how every day people
17 maybe write and form their letter. We look at
18 combinations of those, features and all.

19 Then we actually usually will take the
20 questioned document with the known standards and we
21 do what is called a side by side comparison where I
22 take each and every set of known standards I have
23 and compare it back to each and every questioned
24 document in the set of writings that I have.

25 And again I am looking for any

1 similarities or any differences. And I mark them.
2 Now on my notes that I making as I am examining I
3 use the yellow highlighter to mark similarities and
4 a red marker to mark any differences that I might
5 see. For the purposes of this exam I just put red
6 arrows on the things that were similar. Here you
7 have a Y formation that has kind of a hooked curve
8 on it. And when Mr. Brown did it, when he actually
9 gave his standard he actually came down with a
10 straight line and came over. And he was trying to
11 alter his handwriting and not give his natural
12 handwriting in this particular case and all, but as
13 the standards went on, I believe he actually
14 prepared 42.

15 So later on in the standard I found
16 that same Y on one that was number 27 that he had
17 done in the standard that he gave. Again looking
18 at the formation of the D, most people would bring
19 the first letter down of the D formation up to the
20 was line at the top. This particular writer makes
21 the D very short. He comes down on it and forms
22 the bowl of it and leaves it open on the end. I
23 also found that on the Ds in dis that Mr. Brown
24 made. Looking at the H formation, the H again is
25 very short. The letter that should come all the

1 way up to that top line and all, actually come
2 almost like a smaller or a lower case letter. They
3 don't come up as high. And so again the H
4 formation is down real low almost in line with
5 the S in this particular case and the bowl of that
6 H is a lot wider like giving it two letter spaces
7 instead of one. And I found that in the questioned
8 writing and I also found the exact same thing down
9 when he wrote it in the known standards that he
10 gave. So you have the same formation there.

11 With the A formation in copybook style
12 most people will do them, come around the bowl of
13 the A and come off and square off in an upward
14 curve. This particular writer comes straight down
15 with the A and I found that in Mr. Brown's writing
16 as well throughout. This particular writer has a
17 tendency to make a capital R at the end of a word
18 like in lawyer. He makes an upper case R and I
19 found that in Mr. Brown's writing as well when he
20 wrote lawyer down in the known standard. He ended
21 with a capital R. Throughout the writings and all
22 there were capital Rs at the end of a word instead
23 of at the beginning of a word. That's a habit or a
24 unique feature of that particular writer.

25 The W formation instead of like making

1 the bowl of the W and making two Vs and all this,
2 particular writer makes just a slight -- comes down
3 the bowl and makes a slight wedge up and then again
4 I found that in the questioned writing as well as
5 finding it several places within the known
6 standards and all that Mr. Brown gave.

7 And then looking at the word statement
8 which was found throughout several of these
9 letters, the word statement the T formation again
10 did not come up to the natural baseline of the top
11 of the writing. It was very small. Looked like a
12 lower case letter and then the cross bar of the T
13 came down even below it in the word statement in
14 the questioned and he had it in the word statement
15 in the known several times. So throughout all of
16 the writings and all and the word statement and all
17 it was almost an overlay of how that particular
18 writer writes the word statement.

19 So I compared each of the features in
20 the questioned to all 42 pages of the known
21 standards and all and determined that there was a
22 strong probability that Calvin Brown had written
23 the questioned entries on the page.

24 Q. Thank you very much, Ms. Heath. You
25 can resume your seat. We will offer State's 61 and

1 State's Exhibit 152 into evidence.

2 THE COURT: Any objection?

3 MR. ARCHER: What is he offering?

4 THE COURT: 61 and 152.

5 MR. ARCHER: Let me see what we are
6 offering.

7 MR. DURANT: This is 152.

8 MR. ARCHER: Okay.

9 MR. DURANT: 61 is his handwriting
10 exemplar.

11 MR. ARCHER: Okay. No problem.

12 THE COURT: Without objection those two
13 exhibits will be made part of the record.

14 (STATE'S EXH. 61 in evidence.)

15 (STATE'S EXH. 152 in evidence.)

16 MR. DURANT: Please answer any
17 questions Mr. Archer may have for you.

18 THE COURT: Mr. Archer, you may
19 cross-examine.

20 CROSS-EXAMINATION

21 BY MR. ARCHER:

22 Q. You examined several documents to
23 determine whether they were perhaps probably or not
24 written by Desmond Lewis, did you not?

25 A. That is correct.

1 Q. Could you pull those for me?

2 A. I actually looked at all of the
3 questioned documents to determine if Desmond Lewis
4 had written any of those.

5 Q. You indicated there were two that you
6 did find were written by him, right?

7 A. Yes. Desmond Lewis did write items
8 17.2, 21.1 and 22.1.

9 Q. Can I approach the witness, Your Honor?

10 THE COURT: You may.

11 THE WITNESS: Doesn't appear to be a
12 copy of those particular items up here with me.

13 BY MR. ARCHER:

14 Q. You don't have the ones from Desmond
15 Lewis?

16 A. Well, not in what the solicitor gave
17 me. I need Item 17.2, 21.1 and 21.2.

18 Q. Do you have --

19 A. I have a copy of my case file.

20 Q. Can you look through your case file and
21 determine what they were? That's what I am trying
22 to find out.

23 A. (Witness complies with request.) This
24 is 17.2.

25 MR. ARCHER: Excuse me, Your Honor. I

1 am looking for something.

2 (Brief pause.)

3 BY MR. ARCHER:

4 Q. Those are the two?

5 A. Here is 21.1 and 17.2.

6 Q. Okay. Is this --

7 A. These are my items 21.1 and 21.2.

8 Q. Let me ask you did you ever examine
9 this document?

10 A. Yes, sir, I did.

11 Q. What is that?

12 A. Okay. That's 18. Hang on one second.
13 Let me find that. This is 18.6. 18.6 was given to
14 me as a known standard of Desmond Lewis as Desmond
15 Lewis's known handwriting.

16 Q. All right. So this letter would have
17 been given to you as an example of his known
18 handwriting?

19 A. That is correct, yes, sir.

20 Q. Okay. Your Honor, I would like to
21 enter this into evidence. It's State's Exhibit --
22 they may have already entered it.

23 MR. DURANT: May I see it? I don't
24 have any problem with what she identified as
25 belonging to him which I think is 60E, but the rest

1 of it no. You are okay with that?

2 MR. ARCHER: That's fine. I can wait
3 until later.

4 MR. DURANT: That's the one you want?

5 MR. ARCHER: That's the one I want,
6 yes.

7 MR. DURANT: No objection.

8 THE COURT: To 60E?

9 MR. DURANT: 60E.

10 THE COURT: All right. Without
11 objection it will be admitted into the record. You
12 may proceed. You can publish that if you would
13 like.

14 (STATE'S EXH. 60E in evidence.)

15 BY MR. ARCHER:

16 Q. This is a known sample of his, right?

17 A. That is correct.

18 Q. Are you able to read that to us?

19 A. "I Desmond Lewis am writing to the
20 court admittedly and willingly on June 5th, 2015.
21 I was told I knew who shot me. After suggested
22 information writing" -- I can't read what the next
23 word is, "previous interview asking me if I knew
24 somebody by the name of Calico and rumors" I think
25 that's supposed to be "rising on the street about

1 who shot me was the only reason I picked him out of
2 a lineup. I never actually saw who was doing the
3 shooting. I only heard the shots and began to run.
4 While locked up at ACDC I was questioned by the
5 solicitor and detectives and during this interview
6 I only reiterated what I believed happened due to
7 coercing by detectives in previous interviews. I
8 only told the shooting while adding the name of
9 Calico not because I saw him do the shooting but
10 because the police led me to believe he did. I
11 honestly don't know who shot me on May 22nd, 2015.
12 Subscribed and sworn before me this 25th day of
13 February 2016, Rachel something, a notary public.
14 My commission expires June 22, 2024, signed
15 sincerely Desmond Lewis."

16 Q. Okay. And this was submitted to you as
17 a known sample?

18 A. That's correct.

19 Q. You didn't make a determination on
20 this, you were just submitted by the police and
21 prosecutor that this was a known sample; is that
22 correct?

23 A. That is correct.

24 Q. You never did examine that particular
25 letter?

1 A. Not as questioned, no.

2 Q. But as I said, you were told by the
3 police and prosecutor this was a known sample of
4 his writing?

5 A. That is correct.

6 Q. Okay.

7 MR. ARCHER: I have no other questions.

8 MR. DURANT: I have one.

9 REDIRECT EXAMINATION

10 BY MR. DURANT:

11 Q. You went through I believe 55 and 56,
12 correct?

13 A. Yes, sir.

14 Q. Both of which had a letter attached to
15 them stating I Desmond Lewis, correct?

16 A. That is correct.

17 Q. And isn't it true that the contents of
18 those two letters are virtually identical to the
19 contents of the letter you just wrote or just read,
20 excuse me?

21 A. Yes, sir, they appear to be.

22 Q. Thank you very much.

23 MR. DURANT: No further questions.

24 THE COURT: Recross?

25 REXCROSS-EXAMINATION

1 BY MR. ARCHER:

2 Q. Which letter did you look at to see if
3 it was nearly identical?

4 A. 55C and 55D and 56C.

5 Q. Okay. I don't know whether to give
6 these back to you or put them up on the table. I
7 think I have no other questions, Your Honor.

8 THE COURT: All right. Ma'am, you may
9 step down.

10 MR. DURANT: We would ask that she be
11 excused.

12 THE COURT: Any objection, Mr. Archer?

13 MR. ARCHER: No objection.

14 THE COURT: Ma'am, you are free to
15 leave the courthouse. Thank you very much. Give
16 her a moment just to get her things together.
17 State may call its next witness.

18 MR. OSBORNE: Thank you, Your Honor.
19 The State calls Shapoleon Hayward.

20 SHAPOLEON HAYWARD

21 having been duly sworn, testifies as follows:

22 THE CLERK: Please state your full name
23 and spell your last name for the record.

24 THE WITNESS: S-H-A-P-O-L-E-O-N,
25 H-A-Y-W-A-R-D.

1 THE COURT: Counsel, your witness.

2 DIRECT EXAMINATION

3 BY MR. OSBORNE:

4 Q. Thank you, Your Honor. Shapoleon, how
5 old are you?

6 A. You say how old? 23.

7 Q. Where are you employed?

8 A. Nowhere at the time.

9 Q. You have had jobs before?

10 A. Huh?

11 Q. What type of work have you done?

12 A. Restaurants.

13 THE COURT: Ma'am, you have to speak up
14 a little louder, please.

15 A. Restaurants and gas stations.

16 Q. Do you want to pull the microphone up
17 to you a little bit? All right. How far did you
18 go in school?

19 A. Eleventh grade.

20 Q. Where did you go to high school?

21 A. Stall.

22 Q. Stall?

23 A. Yes, sir.

24 Q. Okay. Do you have any kids?

25 A. Yes.

1 Q. How many kids do you have?

2 A. I have a three-year old and I am
3 pregnant now.

4 Q. Okay. And your three-year old is a
5 boy?

6 A. Yes.

7 Q. Named Princeton?

8 A. Yes.

9 Q. Okay. And do you know now who
10 Princeton's father is?

11 A. Yes.

12 Q. And who is that?

13 A. Rondell Washington.

14 Q. Is it fair to say back in 2015 that you
15 and Calvin Brown thought that he was the father?

16 A. Yes.

17 Q. Okay. And let's talk about Calvin
18 Brown for a second. How long have you known him?

19 A. Like a year.

20 Q. A year prior to 2015?

21 A. Yeah.

22 Q. So that would have been like around
23 2014 I guess?

24 A. Um-hmm.

25 Q. How did you meet?

1 A. Through a friend.

2 Q. Okay. Now, at some point did you
3 become involved in a relationship?

4 A. Um-hmm.

5 Q. Fair to say?

6 A. Yes.

7 Q. And when was Princeton born?

8 A. August 14th, 2014.

9 Q. Okay. In 2014. So in 2014 were you
10 and the Defendant dating each other exclusively?

11 A. No.

12 Q. Were you seeing other people?

13 A. Yes.

14 Q. Okay. Did you see something on
15 Facebook regarding a person that the Defendant may
16 have been dating at the time?

17 A. Yes.

18 Q. And who did you learn that he was
19 dating as well?

20 A. Shanorma.

21 Q. And her last name is Smith I think?

22 A. I believe so.

23 Q. Okay. And what was the nature of the
24 post? What did it say?

25 A. I don't remember what it said. It was

1 a picture of them two.

2 Q. Did it say anything about Shanorma
3 being pregnant?

4 A. I mean I guess it was in there
5 somewhere.

6 Q. It was in there somewhere?

7 A. Yes.

8 Q. Okay. Were you happy about that?

9 A. No.

10 Q. Did you confront him about it?

11 A. Yes.

12 Q. So is it fair to say that your
13 relationship with the Defendant kind of
14 deteriorated a little bit once Shanorma became
15 pregnant with his child?

16 A. Yes.

17 Q. You still spoke to him?

18 A. Yes.

19 Q. Y'all had a child together, at least
20 that's what you thought?

21 A. Yes.

22 Q. All right. Let's move into the day of
23 the shooting on May the 22nd. Did you communicate
24 with the Defendant on May the 22nd?

25 A. I don't recall.