

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

VOLUME II OF II

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Appeal from Charleston County
Honorable Roger L. Couch, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CALVIN BROWN, JR.,

APPELLANT

APPELLATE CASE NO. 2017-002537

RECORD ON APPEAL

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PAGES 501 - 918

INDEX

INDEX	i
TRIAL TRANSCRIPT (NOVEMBER 27 – DECEMBER 1, 2017)	1
<u>JACKSON V. DENNO HEARING</u>	
RICHARD HOLMES	48
OPENING STATEMENT BY MR. OSBORNE	78
OPENING STATEMENT BY MR. ARCHER	82
TESTIMONY	
SHELBY STOREN	88
RENE CHARLES	110
TONIA MALLETTE	133
SARAH GLADWELL	138
MARY PHILLIPS	163
PETER FARRELL	169
JEFF MILLER	175
MICHELE EICHENMILLER	199
JENNIFER NATES	221
CHRISTOPHER VICTORIA	235
TIANAI LEE	310
SHANORMA SMITH	329
SHELLIE GREEN	363
JOHN GLAZER	412
TYREIK G.	427

SHELLIE GREEN	439
GAIL HEATH	470
SHAPOLOEN HAYWARD	497
MARQUISE EDWARDS	519
RICHARD HOLMES	547
SHARI LUCAS	581
PAUL KRASOWSKI	593
JACK WEISS.....	608
DESMOND LEWIS.....	630
SIMILAR MCCLARY	647
RAY HAUPT.....	663
ROBERT SIMMONDS	698
DAN ENGLISH.....	736
HENRIETTA KINLOCH	794
DAN ENGLISH.....	803
CLOSING ARGUMENT BY MR. OSBORNE	808
CLOSING ARGUMENT BY MR. ARCHER.....	840
CHARGE ON THE LAW	862
VERDICT	900
SENTENCING	913
STATE’S EXHIBIT NO. 92 (FACEBOOK POSTING).....	915
STATE’S EXHIBIT NO. 93 (FACEBOOK POSTING).....	917
CERTIFICATE OF COUNSEL	918

1 Q. Okay. You don't recall texting him
2 that day?

3 A. I may have.

4 Q. You may have. And what was your phone
5 number back then?

6 A. I don't remember.

7 Q. Do you remember meeting with myself and
8 Investigator Ray Haupt on November the 2nd of this
9 year at your house?

10 A. Yes.

11 Q. Okay. Do you remember telling us that
12 your phone number back then was [REDACTED]-9774?

13 A. Yes.

14 Q. Okay. So was that your phone number
15 back then?

16 A. Yes.

17 Q. Do you also remember telling us that
18 you had exchanged texts with him back and forth on
19 that day?

20 A. Yes.

21 Q. And did you indeed exchange texts with
22 him back and forth that day?

23 A. Yes.

24 Q. Okay. And what was the Defendant's
25 phone number back then?

1 A. I don't know. I think it was a long
2 distance number.

3 Q. A long distance number?

4 A. Yeah.

5 Q. Does [REDACTED]-8874 sound familiar?

6 A. No.

7 Q. Do you remember telling me and
8 Investigator Haupt on November the 2nd of this year
9 that that was his number?

10 A. I don't recall.

11 MR. ARCHER: Objection, leading the
12 witness, Your Honor.

13 THE COURT: Overruled.

14 BY MR. OSBORNE:

15 Q. All right. What were you communicating
16 with him about? Were you supposed to get together
17 with the Defendant that day?

18 A. I believe he was supposed to drop off
19 something, I believe some money for the baby.

20 Q. Okay. So how was he going to get that
21 money, do you recall?

22 A. No. I think he cashed his check.

23 Q. So he was going to cash a check and
24 then drop off some money to you to help take care
25 of the kid and whatnot?

1. A. Yes.

2. Q. Okay. And did he ever show up to drop
3 off that money?

4. A. No.

5. Q. All right. So he doesn't show up. Did
6 you later that evening find out about the shooting?

7. A. Yes, through Facebook.

8. Q. Okay. And did you speak to the
9 Defendant after you learned about the shooting on
10 the phone?

11. A. I may have.

12. Q. Okay. And do you remember if you did
13 speak to him on the phone what he said in reference
14 to the shooting?

15. A. No.

16. Q. You don't remember?

17. A. No.

18. Q. Do you remember meeting with myself and
19 Investigator Haupt and telling us that he said he
20 didn't do it?

21. MR. ARCHER: Objection, leading her,
22 Your Honor. He is asking her did she remember and
23 she said no. And he is stuck with his answer. He
24 can't lead her and suggest.

25. THE COURT: He is asking about whether

1 or not they had a conversation about that phone
2 call. That's the first time he asked that
3 question. Overruled. I don't find that to be
4 leading. That is not suggesting an answer.

5 MR. ARCHER: Well, if he said what did
6 you say, did you say this.

7 THE COURT: I have ruled.

8 MR. ARCHER: Yes, sir.

9 THE COURT: Thank you. You may
10 proceed.

11 BY MR. OSBORNE:

12 Q. Do you or do you not recall meeting
13 with me and Investigator Haupt on November the 2nd
14 of this year?

15 A. Yes.

16 Q. At your house?

17 A. Yes.

18 Q. And during that meeting do you or do
19 you not recall telling us that you spoke to him,
20 the Defendant, after the shooting and he said he
21 didn't do it?

22 A. After y'all showed me the list of what
23 we called and texted then I remembered yes, we
24 might have had a conversation afterwards. But I
25 don't remember the whole conversation.

1 Q. Okay. You don't remember the
2 conversation now. Okay. But you did tell me and
3 Investigator Haupt that you spoke to him and he
4 said I didn't do it?

5 A. Yes.

6 MR. ARCHER: Objection. Again he is
7 heading her, Judge.

8 THE COURT: How is that suggesting an
9 answer?

10 MR. ARCHER: Because he says didn't you
11 call him and tell him this and this. He should say
12 what did you talk to Investigator Haupt, what did
13 you tell him. That's not leading. But to say
14 didn't you say this, this and this, that's leading.

15 THE COURT: Overruled.

16 MR. ARCHER: Okay.

17 BY MR. OSBORNE:

18 Q. During that conversation with the
19 Defendant did you or did you not on November
20 the 2nd tell myself and Investigator Haupt while at
21 your house during that conversation with the
22 Defendant that he said he had been having a beef
23 with the victim for years? Did you or did you not
24 say that?

25 A. I did.

1 THE COURT: Ladies and gentlemen of the
2 jury, I'm going to ask you to step back to the jury
3 room. I have to have a discussion with the
4 attorneys. Please don't discuss the case while you
5 are outside the courtroom.

6 (Thereupon, the jury exited the
7 courtroom at 11:18 a.m.)

8 MR. ARCHER: Judge, I am going back
9 again. I just don't see how these questions are
10 not leading. He is saying didn't you say this,
11 this and this. And that is essentially testifying
12 for her. I mean that's the --

13 THE COURT: He is asking about whether
14 or not a conversation occurred. He is telling her
15 what the conversation was.

16 MR. OSBORNE: Substance.

17 THE COURT: Substance of the
18 conversation. Now, the question is not what was
19 said. It was whether or not she remembers that
20 conversation occurring. He is not suggesting
21 whether she did or she didn't remember it. He is
22 asking her a yes or no question.

23 MR. ARCHER: And he is giving her the
24 gist of the conversation that he's asking about in
25 doing so.

1 THE COURT: I have found that it's not
2 leading. Now, I know you disagree with me.

3 MR. ARCHER: Yes.

4 THE COURT: You have put your objection
5 on the record.

6 MR. ARCHER: I'd also put the fact that
7 he's basically testifying as to what a conversation
8 was he had with her. I think that's improper too.

9 THE COURT: Well, in asking whether or
10 not a conversation occurred I believe what he is
11 doing is trying to be specific about the nature of
12 the conversation that he's asking about.

13 MR. ARCHER: Well, he's injecting
14 himself and members of the prosecution team as
15 witnesses.

16 THE COURT: You have changed the
17 objection now.

18 MR. ARCHER: Yeah, that's --

19 THE COURT: I will hear from the State
20 on this. But I will make a ruling and I am going
21 to ask you to abide by that ruling.

22 MR. ARCHER: Yes, sir.

23 MR. OSBORNE: Your Honor, what I am
24 trying to do is lay the foundation under 613(b) and
25 it says extrinsic evidence of a prior inconsistent

1 statement by a witness, that's what we have here,
2 is not admissible unless the witness is advised of
3 the substance of the statement, the time and the
4 place it was allegedly made and to the person to
5 whom the statement was given to and given an
6 opportunity to explain or deny. I am doing all of
7 this just setting it up if she denies it to then
8 call Investigator Haupt as rebuttal.

9 MR. ARCHER: I mean he is getting ready
10 to impeach his own witness.

11 THE COURT: That is allowed under the
12 rules.

13 MR. ARCHER: Yes, sir.

14 MR. OSBORNE: I fear, Your Honor, we
15 may be doing this a lot today.

16 THE COURT: Do you understand the rule
17 that he has quoted?

18 MR. ARCHER: Um-hmm.

19 THE COURT: He's saying that -- I
20 believe the cases under that rule state that if a
21 witness does not admit having made the statement,
22 the fact that they just denies knowledge of it,
23 that is not an admission under the rule and that
24 gives him the right then to later bring in
25 extrinsic information to prove the statement was

1 made.

2 Here the witness is denying knowledge
3 or remembering having made the statement so I
4 haven't heard an admission by this witness yet as
5 having made the statement.

6 MR. ARCHER: Yes.

7 THE COURT: The rule requires him to
8 advise them of the substance of the statement which
9 is what he's doing.

10 MR. ARCHER: Um-hmm. Your ruling is
11 your ruling, Judge.

12 THE COURT: Yes, sir. And I find that
13 he is within the rule and that it is not leading to
14 advise her of the substance of the statement he is
15 alleging that she made under that rule so that
16 later on he might have the ability to bring in
17 extrinsic evidence.

18 MR. OSBORNE: Your Honor, while the
19 jury is gone I will tell you where I am headed with
20 this. She also gave a statement to Detective
21 English which was audio recorded that she does not
22 admit to statements that are made in that
23 statement. I intend on impeaching her directly
24 with those clips and he's been provided a copy of
25 that audio recording.

1 THE COURT: Did you receive a copy of
2 the recordings?

3 MR. ARCHER: I received copies, yes.

4 THE COURT: Okay. Mr. Archer, we have
5 an understanding what my ruling is?

6 MR. ARCHER: Yes, sir.

7 THE COURT: Very good. State ready to
8 proceed?

9 MR. OSBORNE: Yes, Your Honor.

10 THE COURT: Defense ready to proceed?

11 MR. ARCHER: We are ready to proceed.

12 THE COURT: Very good. Bring the jury
13 in.

14 (Whereupon the jury entered the
15 courtroom at 11:25 a.m.)

16 THE COURT: Ladies and gentlemen of the
17 jury, I have made a ruling that where the State
18 alleges that a prior statement made by a witness
19 outside the court is not admitted in court that
20 they have the right to -- and a duty to advise the
21 witness of the gist of the statement that was made
22 and ask concerning whether or not that statement
23 was made. I have found that the State is within
24 its rights in asking the questions. Therefore the
25 objection is not sustained. It is overruled. And

1 the State may proceed with its questioning.

2 BY MR. OSBORNE:

3 Q. Thank you, Your Honor. All right. So
4 on November the 2nd of this year do you recall
5 meeting with myself and Investigator Haupt at your
6 house, correct?

7 A. Yes.

8 Q. And during that meeting did you or did
9 you not say that you spoke to the Defendant after
10 the shooting and he denied having did the shooting,
11 but he acknowledged that he had a beef with the
12 victim for years?

13 A. Yes.

14 Q. You did say that?

15 A. Yes.

16 Q. And you said that because it was true;
17 isn't that correct?

18 A. That's what he told me.

19 Q. That's what he told you. Okay. And
20 during that conversation did he say where he was
21 located, where he was at at that time?

22 A. No.

23 Q. Okay. During that meeting with
24 Investigator Haupt on November 2nd of this year did
25 you or did you not tell us that the Defendant on

1 this same phone call said that he was on Spring
2 Street?

3 A. Maybe. I don't recall.

4 Q. You don't recall, okay.

5 A. Yeah.

6 Q. Do you recall the time that that phone
7 call was made to the Defendant?

8 A. No.

9 Q. If I were to show you the phone records
10 from the 874 number showing that call, would that
11 help refresh your memory on what time that call was
12 made?

13 A. Yeah.

14 Q. It would. Your Honor, may I approach?

15 THE COURT: You may.

16 BY MR. OSBORNE:

17 Q. Showing you for ID purposes State's
18 95A. Take a look at the green highlighted section
19 right here. Does that say inbound?

20 A. Inbound call.

21 Q. And this [REDACTED]-9774, was that the number
22 you were using at the time?

23 A. Yes.

24 Q. And what's the time on that call say,
25 2132?

1 A. Yes.

2 Q. Are you good with military time?

3 A. No.

4 Q. 9:32 maybe? PM?

5 A. Yes.

6 Q. All right. Do you know a person named
7 Desmond Lewis?

8 A. No.

9 Q. Okay. Now, after the Defendant was
10 arrested did you visit him in jail?

11 A. Yes.

12 Q. Okay. And why?

13 A. I needed to speak to him.

14 Q. Okay. And how long after his arrest
15 did you go visit him in jail?

16 A. I remember once, but I was told it was
17 twice.

18 Q. Okay. Showing you now what's been
19 marked and admitted as State's Exhibit No. 123.

20 Can you read this right here what it says?

21 A. Yes. Visitor log.

22 Q. Visitors log. And under No. 3 is that
23 you?

24 A. Yes.

25 Q. Shapoleon Hayward. On June 8th?

1 A. Um-hmm.

2 Q. Is that correct? Sound about right?

3 A. Yes.

4 Q. If he was arrested on June the 5th you
5 don't recall going again on June the 9th?

6 A. No.

7 Q. That's okay. Let me talk about the
8 conversation that y'all had. When you visited him
9 just a few days after his arrest what was his
10 demeanor? How was he behaving?

11 A. Regular.

12 Q. Regular. Is his regular demeanor or
13 behavior to be laughing and giggling? Is that just
14 normally how he acts?

15 A. Yes.

16 Q. Okay. So he was just acting normal,
17 like nothing was unusual?

18 A. Yes.

19 Q. Okay. And when you saw him acting that
20 way what was your reaction?

21 A. It was strange considering the fact
22 that he got arrested for shooting a child.

23 Q. Okay. And you told him everything is
24 not all right?

25 A. Yes.

1 Q. What did he keep saying?

2 A. That he was fine, he was coming home.

3 Q. Didn't bother him?

4 A. I guess not.

5 Q. Did he mention anything about Desmond
6 then?

7 A. No.

8 Q. All right. Do you recall in our
9 meeting with Investigator Haupt a few weeks ago
10 November the 2nd that he said he had been having a
11 beef now with Desmond for a long time?

12 A. Yes.

13 Q. And did you tell us that because that's
14 indeed what he told you?

15 A. Correct.

16 Q. Okay. And what else did he tell you in
17 reference to the beef and how it could not be
18 handled?

19 A. I asked him if it was a better way the
20 situation could be handled and he told me no.

21 Q. You asked if there was a better way to
22 be handled and he said no. What else did he say?

23 A. I don't remember.

24 Q. You don't remember. Do you remember
25 telling me -- do you remember meeting with

1 Detective English on October the 15th of 2015 at
2 your house on Peppercorn Lane, do you remember
3 meeting with him then?

4 A. Yes.

5 Q. An audio recorded statement?

6 A. Yes.

7 Q. During that audio recorded statement
8 did you or did you not say while -- when you asked
9 him that if there was another way to handle that
10 the Defendant while laughing and giggling said the
11 beef was too serious and he couldn't handle it that
12 kind of way?

13 A. Correct.

14 Q. And you said that because that's what
15 he said?

16 A. Yes.

17 MR. OSBORNE: No further questions.

18 THE COURT: You may cross-examine, Mr.
19 Archer.

20 CROSS-EXAMINATION

21 BY MR. ARCHER:

22 Q. That response the beef was too serious
23 was in response to what?

24 A. Could you repeat that?

25 Q. You said you gave a statement saying

1 the beef was too serious?

2 A. Correct.

3 Q. What had you asked him?

4 A. If he had knew the person from before.

5 Q. If he knew the person from before?

6 A. I guess they had a previous beef.

7 Q. Previous beef. And he said the beef
8 was too serious?

9 A. Yes.

10 Q. Okay. He didn't relate anything to the
11 shooting, did he?

12 A. No.

13 Q. Okay. So he was just referring to the
14 relationship between him and Desmond?

15 A. Yes.

16 Q. Okay.

17 MR. ARCHER: No other questions.

18 THE COURT: Redirect.

19 REDIRECT EXAMINATION

20 BY MR. OSBORNE:

21 Q. Not exactly true, is it? During your
22 interview with Detective English you said, did you
23 or did you not, I said if this beef was going on
24 that long why y'all couldn't just dish it out with
25 your fists. Didn't you tell Detective English

1 that?

2 A. Yes.

3 Q. And then didn't you tell Detective
4 English that he said the beef was too serious and
5 he couldn't handle it that kind of way?

6 A. Yes.

7 Q. And weren't you all talking about why
8 he was sitting in jail in the first place?

9 A. Yes.

10 MR. OSBORNE: No further questions.

11 MR. ARCHER: I couldn't hear.. Can I
12 get the court reporter to read back the last few
13 questions to her.

14 (The Court Reporter read the questions
15 and answers as requested.)

16 MR. ARCHER: Okay. No other questions.

17 THE COURT: Ma'am, you may step down.
18 You wish to excuse the witness?

19 MR. OSBORNE: Yes, Your Honor.

20 THE COURT: Any objection, Mr. Archer?

21 MR. ARCHER: No objections.

22 THE COURT: Ma'am, you are free to
23 leave. State may call its next witness.

24 MR. DURANT: State would call Marquise
25 Edwards.

1 THE COURT: Sir, step over here to be
2 sworn.

3 MARQUISE EDWARDS

4 having been duly sworn, testifies as follows:

5 THE CLERK: Please state your full name
6 and spell your full name for the record.

7 THE WITNESS: M-A-R-Q-U-I-S-E,
8 E-D-W-A-R-D-S.

9 THE COURT: Counsel, it will be your
10 witness. I will ask the witness, sir, if you will
11 lean forward to the microphone, please. Be sure to
12 speak up.

13 MR. DURANT: Speak into that if you
14 could, sir.

15 THE COURT: Thank you very much for
16 your cooperation. You may proceed.

17 DIRECT EXAMINATION

18 BY MR. DURANT:

19 Q. Thank you, Your Honor. Marquise, how
20 old are you?

21 A. Twenty-four.

22 Q. And where are you from?

23 A. Downtown.

24 Q. Downtown Charleston I am assuming?

25 A. Yes.

- 1 Q. What part of downtown Charleston?
- 2 A. East side.
- 3 Q. Called the Romney Street projects?
- 4 A. Yes, sir.
- 5 Q. Where did you go to high school?
- 6 A. Burke.
- 7 Q. Did you finish?
- 8 A. No, sir.
- 9 Q. Do you have a GED?
- 10 A. Yes, sir.
- 11 Q. When did you get your GED?
- 12 A. 2014.
- 13 Q. Are you married?
- 14 A. No, sir.
- 15 Q. Do you have any children?
- 16 A. No, sir.
- 17 Q. Could you tell our jury where you were
- 18 living when this shooting occurred back on May the
- 19 22nd of 2015?
- 20 A. On Amherst Street.
- 21 Q. Do you remember the address on Amherst
- 22 Street?
- 23 A. [REDACTED].
- 24 Q. And who lived at [REDACTED] Amherst Street?
- 25 A. My aunt.

1 Q. And where is Amherst Street or where is
2 [REDACTED] Amherst Street in reference to America Street?
3 Is it close to Amherst and America?

4 A. Yes, sir, two blocks.

5 Q. Okay. And I believe your aunt's name
6 was Auntie Collins; is that correct?

7 A. Yes, sir.

8 Q. And what is Ms. Collins's telephone
9 number?

10 A. [REDACTED]-8758.

11 Q. [REDACTED]-8758; is that correct?

12 A. Yes, sir.

13 Q. And you obviously have had some
14 previous problems with the law, correct?

15 A. Yes, sir.

16 Q. I believe you were convicted for drugs
17 in 2014?

18 A. Yes, sir.

19 Q. And again in 2015?

20 A. Yes, sir.

21 Q. And again in 2017?

22 A. Yes.

23 Q. And you are actually serving a
24 five-year sentence in the Department of Corrections
25 now; is that correct?

1 A. Yes, sir.

2 Q. And you and I have discussed this case
3 before, correct?

4 A. Yes, sir.

5 Q. And have I or anybody in my office ever
6 promised you anything to come in and testify?

7 A. No, sir.

8 Q. Now, who is that?

9 A. Calvin Brown.

10 Q. And what is his nickname or street
11 name?

12 A. Calico.

13 Q. How long have you known Calico?

14 A. Couple of years.

15 Q. And how do you know Calico?

16 A. I used to buy weed from him.

17 Q. Pardon?

18 A. I used to buy weed from him.

19 Q. And what's your relationship like with
20 him? Was he a friend or acquaintance?

21 A. Acquaintance.

22 Q. Do you know what part of downtown
23 Calvin was from?

24 A. Spring Street.

25 Q. Is that east side or west side?

1 A. West side.

2 Q. Do you know a fella named Desmond
3 Lewis?

4 A. Yes, sir.

5 Q. Do you know what his street name is?

6 A. Fats.

7 Q. And how do you know Desmond Lewis?

8 A. Juvenile time we did.

9 Q. Okay. Do you consider Desmond Lewis as
10 being friends too?

11 A. No, sir.

12 Q. So he's just somebody you know?

13 A. Yes, sir.

14 Q. Of the two of them, Fats and Calico,
15 which one are you closer to?

16 A. Neither.

17 Q. Neither one of them?

18 A. No, sir.

19 Q. And what part of downtown is Fats from?

20 A. East side.

21 Q. Were you aware of any beef between
22 Calico and Fats?

23 A. Yes, sir.

24 Q. And do you know what that beef was
25 about?

1 A. Over a girl.

2 Q. Do you know who that girl was?

3 A. No, sir.

4 Q. It was -- was it somebody's baby mama?

5 A. Yes, sir.

6 Q. Were you aware of any physical
7 altercation between the two of them in the past?

8 A. Yes, sir.

9 Q. What do you know about that?

10 A. Fistfight.

11 Q. And how long was that prior to the
12 shooting?

13 A. Couple weeks.

14 Q. Have you ever heard Calico make any
15 threats about Fats?

16 A. Yes, sir.

17 Q. What have you heard him say?

18 A. That he was going to shoot him.

19 Q. Have you heard him say that more than
20 once?

21 A. Yes, sir.

22 Q. Once again what period of time are we
23 talking about in reference to the actual shooting
24 that brings us here today?

25 A. About two weeks.

1 Q. You have a Facebook account?

2 A. Yes, sir.

3 Q. And what is your Facebook name?

4 A. Stetson.

5 Q. And have you ever messaged with Calico
6 on Facebook?

7 A. Yes, sir.

8 Q. And do you recall what his Facebook
9 name was?

10 A. Spring Street MBMB.

11 Q. Getting to the day of the shooting May
12 the 22nd of 2015, were you living with your aunt at
13 38 Amherst at that time?

14 A. Yes, sir.

15 Q. And are you good at maps?

16 A. Yes, sir.

17 Q. Pardon me?

18 A. Yes, sir.

19 Q. I would like to show you -- would you
20 show State's Exhibit 98 I believe it is?

21 A. 98.

22 Q. Can you see that okay, Mr. Edwards?

23 A. Yes.

24 Q. And do you recognize Amherst Street?

25 A. Yes, sir.

1 Q. On this can you see your aunt's house
2 at 38 Amherst?

3 A. Yes, sir.

4 Q. Okay. Is it showing up on your thing?
5 This is the same thing as that.

6 A. Yes.

7 Q. If you can just put your finger where
8 your aunt lives. You can touch that screen there.

9 A. (Witness complies with request.) Right
10 here.

11 Q. Okay. And do you know where the
12 shooting took place in this case?

13 A. On South and America.

14 Q. America Street where it hits Mary.
15 That's right down at the bottom of the screen; is
16 that correct?

17 A. Yes, sir.

18 Q. So you're basically three blocks away,
19 correct?

20 A. Yes, sir.

21 Q. Was your aunt at home that night?

22 A. Yes, sir.

23 Q. Who else was there?

24 A. My uncle and a friend.

25 Q. So was it your mom and your uncle and

1 her friend and then you, correct?

2 A. Yes, sir.

3 Q. Do you recall whether or not you were
4 in contact with Calvin Brown earlier that day?

5 A. Yes, sir.

6 Q. And in reference to what?

7 A. I had owed him some money.

8 Q. And do you know -- do you remember how
9 you communicated with him? Were you communicating
10 by phone or Facebook or both?

11 A. Both.

12 Q. And what phone number were you using
13 during that time?

14 A. My aunt.

15 Q. That would be the number you previously
16 gave us?

17 A. Yes.

18 Q. [REDACTED]-8758?

19 A. Yes, sir.

20 Q. Why were you using your aunt's phone at
21 that time?

22 A. I didn't have a phone.

23 Q. Do you recall when you first talked to
24 Calvin that day?

25 A. Yes, sir.

1 Q. And what was he doing at that time?

2 A. I think he said he had been at work.

3 Q. Okay. And y'all made arrangements to
4 kind of catch up with each other later?

5 A. Yes, sir.

6 Q. I believe you said that you were using
7 Facebook to communicate during that day as well; is
8 that correct?

9 A. Yes, sir.

10 Q. I am going to hand you what's been
11 marked as State's Exhibit No. 97 for identification
12 purposes and ask if you have seen this document
13 before. Two-page document starting there and going
14 on to the next page.

15 A. Yes, sir.

16 Q. And what is that?

17 A. Facebook messages.

18 Q. Messages between you and who else?

19 A. Calvin.

20 Q. Okay. I'm going to ask you about these
21 messages. Not the times because the times are in
22 Greenwich time. His first message to you he
23 mentions that he's outhca, O-U-T-C-H-A. What does
24 that mean?

25 A. He outside.

1 Q. And looks like maybe 20 minutes or so
2 later you message him back saying call me at
3 [REDACTED]-8758; is that correct?

4 A. Yes, sir.

5 Q. I still here. I been in the shower?

6 A. Yes, sir.

7 Q. Obviously that was the number you were
8 using at that time?

9 A. Yes, sir.

10 Q. And when you say I still here I have
11 been in the shower, where is here?

12 A. My aunt's house.

13 Q. 38 Amherst?

14 A. Yes.

15 Q. Looks like about five minutes later you
16 message him again saying ay, bra roll, I ain't even
17 eat nothing out of them.

18 A. Yes.

19 Q. What does ay bra roll mean?

20 A. Come to my house.

21 Q. Telling him to come to your house?

22 A. Yes, sir.

23 Q. Okay. What do you mean by I ain't even
24 eatin nothing out of them yet?

25 A. Talking about some pills.

1 Q. What kind of pill?

2 A. Ecstasy.

3 Q. And why are you talking about pills?

4 A. That's why I owe him money for.

5 Q. Okay. Tell us about that. Did he
6 front you some?

7 A. Yes.

8 Q. And what did he front you?

9 A. About five pills.

10 Q. And for how much were those pills?

11 A. \$5 a piece.

12 Q. So you owed him how much?

13 A. Twenty-five.

14 Q. Okay. Did you have the \$25 a that
15 point?

16 A. No, sir.

17 Q. So what are you telling him when you
18 say I didn't even ate them yet?

19 A. I didn't take none.

20 Q. Pardon me?

21 A. I didn't take none.

22 Q. Okay. So basically you couldn't pay
23 him and you were offering to give them back to him,
24 correct?

25 A. Yes, sir.

1 Q. Okay. Then it looks like maybe 20
2 minutes later you message him again saying you
3 coming or not. That means what?

4 A. Coming or not.

5 Q. Okay. And then five minutes after that
6 he messages you HMJ. What does that mean?

7 A. Hit my jack.

8 Q. What does hit my jack mean?

9 A. Call somebody.

10 Q. Call me on my phone, right?

11 A. Yes.

12 Q. He says I on Spring. What does that
13 mean?

14 A. Spring Street.

15 Q. I on Spring bra. Then he gives a
16 number, correct?

17 A. Yes, sir.

18 Q. And what is that number?

19 A. [REDACTED]-8874.

20 Q. Did you call him?

21 A. Yes, sir.

22 Q. And do you recall what the conversation
23 was about?

24 A. About him getting his money.

25 Q. Okay. Did he want you to come to him

1 or him to come to you?

2 A. He come to me.

3 Q. Okay. He wanted you to come to him
4 first but you didn't have a ride, right?

5 A. Yes, sir.

6 Q. So did he end up coming over your way?

7 A. Yes, sir.

8 Q. Prior to him coming over to your house
9 that night, were you aware of this shooting that
10 had taken place?

11 A. Yes, sir.

12 Q. And could you tell our jury how you
13 became aware of the shooting?

14 A. I could hear all the sirens and blue
15 lights.

16 Q. Were you in the house at that time?

17 A. Yes.

18 Q. Where was your aunt and her friend?

19 A. On the porch.

20 Q. And when you heard the lights -- I mean
21 saw the lights and heard the sirens what did you
22 do?

23 A. Go outside.

24 Q. And did you talk to your aunt?

25 A. Yes, sir.

1 Q. And what did your aunt hear?

2 A. Somebody was shooting.

3 Q. Now, while you were outside did you run
4 into somebody that you knew?

5 A. Yes, sir.

6 Q. Who was that?

7 A. Marlowe.

8 Q. Who is Marlowe?

9 A. Somebody from the area.

10 Q. And based upon your conversation with
11 Marlowe what did you learn?

12 A. Fats got shot.

13 Q. That Fats had been shot?

14 A. Yes, sir.

15 Q. Now, sometime after you learned that
16 Fats had been shot did you actually meet with
17 Calvin Brown?

18 A. Yes, sir.

19 Q. And where was that at?

20 A. By my house.

21 Q. And tell us the circumstances
22 surrounding that, were you inside or outside of
23 your house?

24 A. Sir?

25 Q. Were you inside or outside?

- 1 A. Inside.
- 2 Q. Okay. Who came and got you?
- 3 A. My aunt.
- 4 Q. And what did your aunt tell you?
- 5 A. Somebody had been outside for me.
- 6 Q. Okay. Did you go outside?
- 7 A. Yes, sir.
- 8 Q. And who was there?
- 9 A. Calvin.
- 10 Q. And what was his demeanor at that time?
- 11 How was he acting?
- 12 A. Nervous.
- 13 Q. Why do you say he was acting nervous?
- 14 A. Because he was pacing around walking
- 15 back and forth.
- 16 Q. And what did you and him --
- 17 accommodation did you and him reach with regard to
- 18 this money that you owed?
- 19 A. I gave him his pills back.
- 20 Q. And where were y'all or did y'all go
- 21 anywhere together?
- 22 A. Yes, sir.
- 23 Q. And why? Why did y'all end up walking
- 24 somewhere?
- 25 A. He asked me to walk with him.

1 Q. Okay. This was when he was pacing back
2 and forth and acting nervous and so and so forth?

3 A. Yes.

4 Q. What did he want you to do while you
5 were walking?

6 A. Walk in front of him.

7 Q. Why did he want you to walk in front of
8 him?

9 A. Watch the street.

10 Q. Watch the street for what?

11 A. So I could tell him if police were
12 coming or something.

13 Q. And you had a conversation with him
14 that night, didn't you?

15 A. Yes, sir.

16 Q. And what did you ask him?

17 A. If he had shoot Fats.

18 Q. And what did he say?

19 A. Yeah.

20 Q. Specifically what did he say?

21 A. I clap that boy.

22 Q. What does I clap that boy mean?

23 A. He shoot somebody.

24 Q. Did he give you -- tell you any
25 specifics about what had happened?

1 A. Yes, sir.

2 Q. What did he say?

3 A. He said he walking down America Street,
4 he see Fats, he pull out his gun, start shooting
5 and when Fats fall he ran out of the way.

6 Q. Do you know whether Calvin Brown had a
7 girlfriend or baby mama that lived in the area of
8 the projects down there between that -- between
9 America and Drake and South and Mary Street?

10 A. Yes.

11 Q. Do you know where in those projects she
12 lived?

13 A. On the first or second row of Mary
14 Street.

15 Q. Okay. Now, as y'all were walking
16 having this conversation where do y'all walk to?

17 A. Meeting Street.

18 Q. And what happened when y'all got to
19 Meeting Street?

20 A. He went across Meeting Street and I
21 went back down Amherst.

22 Q. Where did he say he was going?

23 A. Spring Street.

24 Q. When he said he going on Spring Street
25 what is he talking about?

1 A. House, abandoned house or something.

2 Q. Now, you previously gave a statement to
3 Detective English with the Charleston Police
4 Department, correct?

5 A. Yes, sir.

6 Q. And you told him that -- is there an
7 Exxon station at the corner of Meeting and Woolfe
8 where you two separated?

9 A. Yes.

10 Q. Did you tell Detective English that you
11 had actually gone into the Exxon station?

12 A. Yes, sir.

13 Q. Was that the truth?

14 A. No, sir.

15 Q. I believe you also told Detective
16 English that you and Calvin were hiding out on the
17 front porch when he told you about him -- he had
18 clapped Fats. Was that true?

19 A. No, sir.

20 Q. Did you and him ever sit on the porch?

21 A. No, sir.

22 Q. When the conversation took place where
23 did it take place?

24 A. Walking down Amherst Street.

25 Q. Why?

1 A. I just not ready to get up there and
2 tell the police.

3 Q. But you told him the part about, you
4 know, him admitting he clapped Fats, right?

5 A. Yes, sir.

6 Q. Have you heard the expression before
7 put a 32 in there?

8 A. Yes, sir.

9 Q. What does that mean?

10 A. Extended clip.

11 Q. Extended clip and a gun?

12 A. Yes, sir.

13 Q. Common parlance in the area?

14 A. Yes, sir.

15 Q. Ever heard Calico make that statement
16 before?

17 A. Yes, sir.

18 MR. DURANT: Court's indulgence.

19 THE COURT: Yes, sir.

20 (Off-the-record conference.)

21 MR. DURANT: Just a couple more
22 questions.

23 BY MR. DURANT:

24 Q. These Facebook messages we went over
25 where he said he was on Spring and call him, you

1 called him, was there two or three different phone
2 calls back and forth between him and you before
3 y'all actually met up that night?

4 A. Yes.

5 Q. And when y'all actually did meet up how
6 long were you together?

7 A. Ten or fifteen minutes.

8 Q. Okay. Thank you very much. I have no
9 further questions. Please answer anything that Mr.
10 Archer may have for you.

11 THE COURT: Mr. Archer, you may
12 cross-examine.

13 CROSS-EXAMINATION

14 BY MR. ARCHER:

15 Q. Who is the fellow that came up and told
16 you about the shooting that night?

17 A. His name Marlowe.

18 Q. What did he tell you?

19 A. Sir?

20 Q. What did he tell you?

21 A. He said Cal shot my homeboy.

22 Q. He said Calico shot your homeboy?

23 A. Yes, sir.

24 Q. So what time was time?

25 A. About five or ten minutes after it

1 happened.

2 Q. About five or ten minutes? Did Marlowe
3 say where he had been when the shooting took place?

4 A. No, sir.

5 Q. Do you have any idea where he got his
6 information about first off who was shot?

7 A. No, sir.

8 Q. Got any information where -- any idea
9 where he got his information that Calico shot him?

10 A. No, sir.

11 Q. Okay. So five or ten minutes after the
12 shooting a fellow comes up and says Calico shot
13 Fats?

14 A. Yes, sir.

15 Q. And you didn't ask him any questions
16 about that?

17 A. No, sir.

18 Q. Okay. So how long would it take you to
19 walk from your house to where this shooting took
20 place on America Street?

21 A. About two minutes.

22 Q. Two minutes to walk a three-block walk?

23 A. Yes, sir.

24 Q. Okay. And you got a Facebook message
25 from Calico at 8:33 that night?

1 A. Yes, sir.

2 Q. Did you talk to him by phone after you
3 got that Facebook message?

4 A. Yes, sir.

5 Q. How long after the message would you
6 have talked to him by phone?

7 A. Couple of minutes.

8 Q. Couple of minutes. So maybe 8:35 or
9 8:36?

10 A. Yes, sir.

11 Q. Where was he? What was he doing?

12 A. On Spring Street. I don't know what
13 was doing.

14 Q. He was on Spring Street?

15 A. Yes.

16 Q. Okay. And where is Spring Street on
17 that picture?

18 A. Ain't on that picture.

19 Q. How many blocks away is Spring Street
20 from America Street where the shooting took place?

21 A. A good bit.

22 Q. A good bit?

23 A. Yes.

24 Q. More than five blocks?

25 A. Yes, sir.

1 Q. Ten blocks?

2 A. About ten blocks.

3 Q. Ten blocks away. So you talked to him
4 how many minutes about after you got that Facebook
5 message?

6 A. About five or ten minutes.

7 Q. So somewhere between 8:38 and 8:43 you
8 are talking to Calico on the phone, right?

9 A. Yes.

10 Q. Okay. And he is on Spring Street.
11 Okay. What time did Marlowe come by?

12 A. As soon as I got outside when I saw the
13 lights that's when he come by and told me.

14 Q. Okay. So he would have been -- let's
15 see how long after -- do you know when the shooting
16 took place?

17 A. No, sir.

18 Q. Okay. But after you heard the lights
19 how long after that did you see Marlowe?

20 A. As soon as I got outside.

21 Q. And the lights and police were already
22 at the scene, is that it?

23 A. Yes.

24 Q. You could see America Street from where
25 you live?

1 A. I could see down America Street.

2 Q. Down it?

3 A. Yes.

4 Q. Okay. But all right. I want to be
5 sure of this. You got -- you told I believe the
6 prosecutor that you got a Facebook message from
7 Calico at 8:33; is that right?

8 A. Yes, sir.

9 Q. All right. And then you call him five
10 minutes later or ten minutes later?

11 A. He called me.

12 Q. He called you. Five or ten minutes
13 after 8:33 and when you called him he was on Spring
14 Street?

15 A. Yes, sir.

16 Q. And that's maybe ten blocks away from
17 where the shooting is?

18 A. Yes, sir.

19 Q. Okay. And what -- stuff you are in
20 jail for, when did you get arrested for that?

21 A. For what I am doing now?
22 September 18th.

23 Q. Were you in any trouble back around May
24 the 21st when this happened?

25 A. No, sir.

1 Q. Okay. All right.

2 MR. ARCHER: I have no other questions.

3 THE COURT: You may redirect.

4 REDIRECT EXAMINATION

5 BY MR. DURANT:

6 Q. Referring to State's Exhibit 97, he
7 says he texted you on Facebook, said hit my Jack.
8 Hit my jack, gives his phone number, tells you to
9 call him at 9:22 p.m. when you adjust the local
10 time?

11 A. Yes, sir.

12 Q. And referring to State's Exhibit No.
13 45 -- excuse me -- 95A, ask you to look at this.
14 And this is the first call to you that night and
15 what time does it say it is at?

16 A. 9:25.

17 Q. Three minutes after that last text,
18 correct?

19 A. Yes, sir.

20 Q. And he said he was on Spring Street at
21 that time?

22 A. Yes, sir.

23 Q. And then he did not get over to your
24 house until sometime after that?

25 A. Yes, sir.

1 Q. Long enough for him to get over there
2 however he got over there?

3 A. Yes, sir.

4 MR. DURANT: Thank you very much.

5 RECROSS-EXAMINATION

6 BY MR. ARCHER:

7 Q. What phone number were you
8 communicating with him on, were you using?

9 A. My aunt's.

10 Q. What was that?

11 A. [REDACTED]-8758.

12 Q. Four?

13 A. [REDACTED]-8758.

14 Q. 8758. Okay. Is this in the record?

15 MR. OSBORNE: Just ID.

16 MR. ARCHER: I have no other questions,
17 Your Honor.

18 THE COURT: Sir, you may step down. I
19 will ask the attorneys to approach briefly.

20 (Off-the-record conference.)

21 THE COURT: Ladies and gentlemen of the
22 jury, it appears that the next witness may take a
23 bit longer than we might have before lunch so we
24 are going to go ahead and start lunch right now.
25 We will come back and take those folks as soon as

1 we finish the lunch.

2 You now know my instructions when you
3 leave the courthouse. I will tell you that I am
4 repeating those at this time. I will ask you to be
5 back in the jury room. Charleston is a busy place
6 to get lunch sometimes so I will say be back there
7 by 1:30. We should be in a position to start
8 shortly thereafter. Hope you have a good lunch.
9 You are free to go.

10 (Thereupon, the jury exited the
11 courtroom at 12:08 p.m.)

12 (Lunch recess taken.)

13 THE COURT: Is the State ready to go
14 forward?

15 MR. OSBORNE: Yes, Your Honor.

16 THE COURT: Defense ready?

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

18 THE COURT: Very good. Bring the jury
19 in.

20 (Whereupon the jury entered the
21 courtroom at 1:35 p.m.)

22 THE COURT: The jury has returned to
23 the courtroom. If anyone had any problems in
24 following my instructions during the lunch break,
25 if that became a problem for anyone please stand.

1 (No response from jurors.)

2 It appears that all jurors have been
3 able to comply with my instructions. When we
4 stopped earlier the State was in the process of
5 calling its witnesses. You may call your next
6 witness.

7 MR. OSBORNE: Thank you, Your Honor.
8 The State calls Richard Holmes.

9 THE COURT: Come forward and be sworn,
10 please.

11 RICHARD HOLMES

12 having been duly sworn, testifies as follows:

13 THE CLERK: Please state your full name
14 and spell your full name for the record.

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

17 THE COURT: Your witness.

18 DIRECT EXAMINATION

19 BY MR. OSBORNE:

20 Q. Mr. Holmes, you are retired now?

21 A. Yes, sir.

22 Q. Is that correct? And where did you
23 work?

24 A. I was employed at the Charleston City
25 Police Department.

1 Q. All right. And what did you do for the
2 CPD?

3 A. I worked with the Charleston Police
4 Department for a period of 29 years. I was a
5 violent crimes detective before retiring March of
6 this year.

7 Q. And you were a violent crimes detective
8 for many years?

9 A. Yes, sir.

10 Q. About how many years?

11 A. For about somewhere in the area of
12 maybe 17 to 18 years.

13 Q. Okay. And violent crimes. Murders,
14 shootings?

15 A. Yes, sir.

16 Q. What other types of investigations
17 would you have investigated?

18 A. Robberies, anything of that nature.
19 Violent crimes. We also assisted the robbery unit
20 when we did not have any crimes to investigate at
21 the time.

22 Q. You received several accommodations and
23 awards while you were with the department?

24 A. Yes, sir.

25 Q. Officer of the year twice?

1 A. Yes.

2 Q. Two different occasions. Did you have
3 the occasion to become involved in this shooting
4 investigation?

5 A. Yes, sir, I did.

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

8 A. In the original beginning of the
9 investigation I was the lead detective on the case.

10 Q. You were the lead detective?

11 A. Yes.

12 Q. Now, how did you first become aware of
13 the shooting?

14 A. The night of the shooting I was
15 contacted by my boss at that time on the 22nd. I
16 was contacted by at that time Lieutenant Beese. He
17 had advised me that there was a shooting and he
18 needed me to respond and come to assist with the
19 investigation that was going on.

20 Q. Okay. Did you respond directly to
21 MUSC?

22 A. Yes, sir, I did.

23 Q. When you got to MUSC what did you
24 learn?

25 A. Upon my arrival at the MUSC hospital I

1 learned that we had two victims. One was a
2 juvenile victim and one was an adult victim that
3 was shot in the area of where the shooting had
4 taken place.

5 Q. Okay. And we have already heard some
6 testimony regarding the juvenile Tyreik and his
7 condition and you knew that night that he would be
8 paralyzed?

9 A. Yes, sir.

10 Q. And in regards to Desmond what did you
11 learn in reference to his condition?

12 A. At the time of his shooting we learned
13 -- I learned that he was shot in the lower leg area
14 and he was also going -- the doctors had completed
15 their treatment with him. He was going to be
16 released from the hospital at that same night at
17 the same time.

18 Q. So it wasn't a serious injury?

19 A. No, sir.

20 Q. I mean it was a gunshot wound?

21 A. But it wasn't life threatening.

22 Q. Not life threatening. So learning that
23 he would be released from the hospital did you want
24 to talk to him?

25 A. Yes, sir, I did.

1 Q. Did you tell him that you wanted to
2 speak to him?

3 A. Yes, sir. That message was relayed
4 that I needed to conduct a formal interview with
5 him in reference to what had taken place early in
6 the night.

7 Q. And when you say formal interview, you
8 mean you prefer to speak to him at the station?

9 A. Yes, sir.

10 Q. More controlled environment?

11 A. Yes, sir.

12 Q. Okay. And did you interview Desmond on
13 the night of the shooting?

14 A. Yes, sir, I did.

15 Q. And was that interview audio and video
16 recorded?

17 A. Yes, sir, it was.

18 Q. All right. Let me just start by asking
19 you during that interview did you ask him if he was
20 familiar with an individual who went by the
21 nickname of Calico?

22 A. I did.

23 Q. And what was his response to that?

24 A. He advised me that he was not familiar
25 with, but he had seen on Facebook information about

1 that party. But he advised me again that he did
2 know anybody by that name.

3 Q. Didn't know anyone by that name. So I
4 assume he said then that he didn't any problems
5 with anyone by that nickname?

6 A. No, sir, he did not.

7 Q. At that time you didn't know that
8 Calvin Brown went by the nickname Calico; is that
9 fair to say?

10 A. No, sir, I did not.

11 Q. All you heard was that nickname of
12 Calico?

13 A. Yes.

14 Q. You just asked him?

15 A. Yes, sir.

16 Q. Have you heard of him?

17 A. Yes, sir.

18 Q. All right. Let me ask you this: Did
19 Desmond tell you on May the 22nd who shot him?

20 A. No, sir.

21 Q. The first time?

22 A. No, sir, he did not.

23 Q. Did the evidence in the case point
24 toward the shooter chasing Desmond?

25 A. Yes, sir, it did.

1 Q. Did the evidence in the case point
2 toward the shooter shooting at Desmond while he was
3 chasing him?

4 A. Yes, sir, it did.

5 Q. So is it fair to say that the evidence
6 pointed toward Desmond being the intended victim of
7 the shooting?

8 A. Yes, sir, it did.

9 Q. So when Desmond told you that he had no
10 idea who shot him did you believe him?

11 A. No, sir, I did not.

12 Q. All right. After this first night on
13 May the 22nd did you have information that you
14 would want to speak to someone else that maybe had
15 witnessed the shooting?

16 A. Yes, sir.

17 Q. And who was that individual?

18 A. A party by the name of -- I learned
19 through the investigation that a party by the name
20 of Christopher Victoria was also present with him
21 at the time of the shooting.

22 Q. Did you make efforts to locate
23 Christopher that night?

24 A. Yes, sir, we did. It was actually 2:00
25 in the morning. So was like two something in the

1 morning we attempted to locate him, yes, sir.

2 Q. Okay. Went by his house?

3 A. Yes, sir.

4 Q. Did you find him?

5 A. No, sir, not at that point.

6 Q. Did you leave messages that you needed
7 to talk to him?

8 A. I did.

9 Q. Okay. Did you speak to him the next
10 day? Well, it would be the 23rd?

11 A. The 23rd we did not, no, sir. I
12 believe I talked to him on the 24th it was.

13 Q. Okay. Either way a day or two later
14 you spoke -- did you speak to him?

15 A. Yes.

16 Q. And how did that come about? How did
17 he get to the station?

18 A. The reason that he came down to the
19 police department is because he stated at the time
20 that he looked down on his shoes and he believed
21 that he saw blood on his shoes and he wanted the
22 police department to have his shoes as a result so
23 we can test the blood to see what it was because he
24 was close to the shooting at the time.

25 Q. And I think that would have been on the

1 24th, right?

2 A. Yes, sir.

3 Q. You also interviewed him the day before
4 that?

5 A. Yes.

6 Q. And during that interview did Captain
7 Weiss assist you at all?

8 A. Yes, sir, he did.

9 Q. He was then a lieutenant?

10 A. He was a lieutenant at the time, yes,
11 sir.

12 Q. Okay. All right. Now, you said that
13 you did speak to him another day. Then it would be
14 the second day, that's whenever he brought back the
15 shoes?

16 A. Yes.

17 Q. Sound right? And during that interview
18 were you all trying to identify Calico?

19 A. Yes, sir, we was.

20 Q. Okay. And was he shown a photographic
21 lineup of the Defendant, Calvin Brown?

22 A. Yes, sir, he was.

23 Q. Okay. And that's when we heard
24 testimony he identified him, at least the Defendant
25 as being Calico, the person who was Calico?

1 A. Yes, sir.

2 Q. Eighty-five percent sure at that time?

3 A. Yes.

4 Q. Okay. And did you have the occasion to
5 speak to Desmond again on May the 26th?

6 A. Yes, sir, I believe I did, yes, sir.

7 Q. All right. Is that the day that he
8 came by the station looking to pick up some
9 belongings?

10 A. Yes, sir, he did.

11 Q. What was his demeanor when he came by
12 the station?

13 A. At that time he was more still not
14 wanting to talk with me. He was basically to get
15 some property that was collected that night during
16 the shooting and he basically just wanted to get in
17 the police department and get back out.

18 Q. Wanted to come and go?

19 A. Yes, sir.

20 Q. In fact, you tried to talk to him
21 upstairs, right?

22 A. I tried to, but he did not want to.

23 Q. He wouldn't even come up the steps with
24 you?

25 A. No, sir, he would not.

1 Q. All right. Did you give him back his
2 cell phone?

3 A. Gave him his cell phone, yes, sir.

4 Q. That's the same cell phone number that
5 was recovered by the AC unit on the scene?

6 A. Yes, sir.

7 Q. Okay. At that time did you try to show
8 him a lineup?

9 A. I attempted to show him a lineup, yes,
10 sir, I did.

11 Q. The same lineup with the Defendant?

12 A. Yes.

13 Q. And he looked at the lineup?

14 A. He refused to look at the lineup for
15 me.

16 Q. Wouldn't even look at it?

17 A. No, sir.

18 Q. All right. During this half lineup
19 procedure did you suggest to him hey look, I need
20 you to pick out Calico.

21 A. Never. Never do I do that.

22 Q. Okay. So is it fair to say that the
23 Defendant was a suspect in the case?

24 A. At the time we were just -- it was just
25 an initial investigation. We were just starting

1 out the investigation so it was just we call it in
2 the investigation a person of interest.

3 Q. Okay. So this person of interest, you
4 wanted to speak to him?

5 A. Yes, sir.

6 Q. Correct?

7 A. Yes, sir.

8 Q. Did you make an attempt on May the 28th
9 to speak to him?

10 A. Yes, sir, I did.

11 Q. What did you do?

12 A. I found out that he was employed at a
13 restaurant downtown of Charleston in the market
14 area so I responded to the restaurant which is
15 Tommy Condone's down on Church Street at about
16 3:25 in the afternoon. I spoke to the manager in
17 an attempt to see if they had a party there by that
18 name, listed by the party name of Calvin Brown at
19 which time I learned that he was employed at that
20 restaurant.

21 Q. He wasn't there at the time?

22 A. He wasn't at the time, no, sir.

23 Q. So at 3:25 you left messages I guess
24 saying you wanted to speak to the Defendant?

25 A. Yes, sir.

1 Q. All right. Did he ever make contact
2 with you or anyone at the department?

3 A. I got contacted from my supervisor at
4 about 4:45 in the afternoon that Mr. Brown had
5 called the Charleston Police Department in an
6 attempt to locate me to find out what was going on.

7 Q. And he called the central
8 investigations office; is that correct?

9 A. Yes.

10 Q. What is that phone number?

11 A. Phone number is 843-720-2487.

12 Q. All right. And did you tell him you
13 would like to speak to him?

14 A. Yes, sir, I did.

15 Q. Did he come in to the station?

16 A. Yes, sir, he did.

17 Q. And did you speak to him?

18 A. Yes, sir, I did.

19 Q. And on that same day?

20 A. Yes, sir.

21 Q. Did the interview begin about 5:45 or
22 so?

23 A. Yes, sir.

24 Q. Was that interview audio and video
25 recorded?

1 A. Yes, sir, it was.

2 Q. Your Honor, may I approach?

3 THE COURT: You may.

4 BY MR. OSBORNE:

5 Q. All right. Detective, I'm showing you
6 State's Exhibit 102A and State's 102B. Can you
7 take a look at 102A and tell me what that is and if
8 you recognize it?

9 A. This is a copy of the recording that
10 come out of our interview room from the Charleston
11 Police Department.

12 Q. And you know that how?

13 A. Because it has my signature -- my
14 initials on it.

15 Q. Okay. 102B is what?

16 A. It's also clips from the interview and
17 it also -- it's from our interview room. We record
18 the interview room. Also has my initials on it.

19 Q. Okay. So 102A is it fair to say is the
20 entire interview and 102B is clips from the
21 interview.

22 A. Yes, sir, it is.

23 MR. OSBORNE: Your Honor, at this time
24 we would seek to admit 102B into evidence.

25 THE COURT: Any objection?

1 MR. ARCHER: No objection.

2 THE COURT: Without objection it will
3 be admitted. If you wish to publish you may.

4 (STATE'S EXH. 102B in evidence.)

5 MR. OSBORNE: Your Honor, I would ask
6 that we publish 102B through another detective
7 later on who did the followup in reference to the
8 interview.

9 THE COURT: That would be fine.

10 BY MR. OSBORNE:

11 Q. All right. Detective, I do want to
12 talk about your interview with him. About how long
13 was the entire interview, do you recall?

14 A. It was pretty lengthy. I will give it
15 probably somewhere in the area of two hours.

16 Q. Hour and-a-half, two hours?

17 A. Yes, sir.

18 Q. And when you started the interview did
19 you advise him of his Miranda rights?

20 A. Yes, sir, he was.

21 Q. And you did that, but was he under
22 arrest?

23 A. No, sir, he wasn't at that time.

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

25 A. Yes, sir, he was.

1 Q. He came in on his own free will and if
2 he said I want to shut it down he could have left
3 at any time?

4 A. Yes, sir.

5 MR. ARCHER: No objection to this
6 either.

7 MR. OSBORNE: Your Honor, may I
8 approach?

9 THE COURT: You may.

10 BY MR. OSBORNE:

11 Q. Detective, showing you State's
12 Exhibit 103 can you take a look at that and tell me
13 if you recognize it.

14 A. Yes, sir.

15 Q. What is that?

16 A. This is the Miranda card that I read
17 his rights off and he actually signs on the back
18 and it is dated and the time placed on it.

19 Q. Okay. And when you advised him of his
20 Miranda warnings did he acknowledge that he
21 understood his rights?

22 A. Yes, sir, he did.

23 Q. And did he sign the card accordingly?

24 A. Yes.

25 Q. What's the date and time on the card?

1 A. The date on the card is 5-28-2015 at
2 about military time 1746.

3 Q. So about 5:46 p.m.?

4 A. Yes.

5 MR. OSBORNE: Your Honor, at this time
6 we would seek to offer State's 103 into evidence.

7 MR. ARCHER: No objection.

8 THE COURT: Without objection it will
9 be admitted.

10 (STATE'S EXH. 103 in evidence.)

11 BY MR. OSBORNE:

12 Q. And the process by which or the time
13 that you advised him of his Miranda warnings, that
14 is all video and audio recorded?

15 A. Yes, sir, it is.

16 Q. That's on 102B?

17 A. Yes, sir.

18 Q. The clips. I do want to ask you a
19 couple other questions about the interview. During
20 the interview did the Defendant appear to be
21 intoxicated or under the influence of drugs?

22 A. No, sir, he was not.

23 Q. Did the Defendant appear to have any
24 physical or mental disability that would impair his
25 ability to understand what was being said to him?

1 A. No, sir.

2 Q. Prior to or during your interview with
3 the Defendant did you offer any breaks, bathroom or
4 otherwise?

5 A. He would be given breaks if he
6 requested it, yes, sir.

7 Q. If he asked you wouldn't have denied
8 it?

9 A. No, sir, he wouldn't be denied, no.

10 Q. Was he denied then any access to food
11 or drinks?

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

13 Q. Okay. Lastly did you make any threats
14 or promises to the Defendant in exchange for his
15 statement?

16 A. No, sir.

17 Q. Okay. Just to clarify again, that's
18 just a small portion of the interview?

19 A. Yes.

20 Q. Clips. So you said he wasn't under
21 arrest. So at the conclusion of the interview was
22 the Defendant free to go?

23 A. Yes, sir, he was.

24 Q. And did he, in fact, leave?

25 A. Yes, sir.

1 Q. Now, I want to talk about this. So as
2 the case agent when you take an interview from a
3 person of interest do you often go back and review
4 the interview and see what was said, maybe it
5 wasn't so obvious while you were taking the
6 interview?

7 A. Yes, sir.

8 Q. And you do that for what reasons?

9 A. For me it's a learning experience. You
10 look at it and then there are certain clues you
11 might have missed during your initial
12 investigations that you can go back and pick up on
13 and see different things that you missed during the
14 investigation.

15 Q. Okay. And then on those things that
16 you might have missed or things that maybe need to
17 be corroborated, additional followup?

18 A. Yes, sir.

19 Q. Fair to say? Okay. And you said that
20 you were the case agent in the beginning. Did this
21 case then get reassigned to another detective?

22 A. Yes, sir, it did.

23 Q. That's because you went out on personal
24 leave?

25 A. Yes, sir.

1 Q. And the detective who it was reassigned
2 to is whom?

3 A. Detective English.

4 Q. Dan English. And he is in Quantico now
5 with the FBI?

6 A. Yes.

7 Q. Well, is it fair to say that the
8 substantive portion of the followup in regards to
9 this investigation was all conducted by Detective
10 English?

11 A. Yes, sir, it was.

12 Q. All right. Did you have the occasion
13 to meet with Desmond again on June the 5th of 2015?

14 A. Yes, sir, I did.

15 Q. And that was because he had been
16 arrested?

17 A. Yes, sir.

18 Q. On drug charges?

19 A. Yes, sir.

20 Q. And I think at the time of his arrest
21 he was in possession of a pistol; is that correct?

22 A. Yes.

23 Q. And did you speak to him again?

24 A. Yes, sir.

25 Q. All right. Now, let's talk about the

1 interview. During this interview did you have the
2 occasion to tell Desmond that you help us, we will
3 help you?

4 A. Yes, sir.

5 Q. During this interview did you have the
6 occasion to tell Desmond one hand washes the other?

7 A. Yes, sir, I did.

8 Q. You help me, I will help you?

9 A. Yes, sir, I did.

10 Q. And what kind of help was Desmond
11 looking for?

12 A. Desmond was looking for help in
13 reference to the charges that he was in on at the
14 time. He wanted assistance in reference to -- he
15 wanted to get out of jail that night to go home.

16 Q. He wanted to go home?

17 A. Yes, sir.

18 Q. He wanted you to take the handcuffs off
19 him?

20 A. Yes.

21 Q. What did you tell him?

22 A. I told him that was not going to
23 happen.

24 Q. Told him that it's all a process?

25 A. Yes.

1 Q. But you did tell him if you cooperate I
2 will relay your cooperation to the people who make
3 those decisions?

4 A. I did.

5 Q. Judges?

6 A. Yes, sir. Solicitors.

7 Q. And you do that by forwarding on the
8 interview; is that correct?

9 A. Yes, sir.

10 Q. Did you do that in this case?

11 A. Yes, sir, I did.

12 Q. Okay. But did you promise Desmond
13 anything?

14 A. No, sir, no promises were made.

15 Q. In fact, I think you told him I can't?

16 A. No, sir.

17 Q. Did you show him a lineup then with the
18 Defendant?

19 A. I did.

20 Q. Actually it was Detective Brown who did
21 it?

22 A. Yes. Another detective in our bureau
23 showed him.

24 Q. And at this time he identified the
25 Defendant?

1 A. Yes, he did.

2 Q. Okay. All right. Now, coincidentally
3 I guess on that same day on June the 5, 2015 the
4 Defendant was arrested; is that correct?

5 A. Yes, sir, he was.

6 Q. Now, after he was arrested did he ask
7 you for your note pad?

8 A. He did.

9 Q. Did you provide that to him?

10 A. Yes, sir, I did.

11 Q. And when he got your note pad what did
12 he write down?

13 A. He asked for my note pad because when
14 he is arrested you are not allowed to take anything
15 into the jail. So he was getting some phone
16 numbers out of his phone to write down to take with
17 him into the jail so he could have numbers that he
18 could contact people later on.

19 Q. Beg the Court's indulgence.

20 (Off-the-record conference.)

21 Q. Okay. So after he wrote down the
22 numbers did you give the numbers to him?

23 A. Yes, he got that piece that the numbers
24 were written on, yes, sir.

25 Q. Okay. And then but on the note pad

1 that you had left did you make an attempt to try to
2 see what he wrote down?

3 A. Yes, sir, I did.

4 Q. And how did you go about doing that?

5 A. I took a pencil and I basically just
6 took it. I went over the -- just laid, I was able
7 to lift the numbers from my pencil mark to see the
8 numbers that he had wrote down on a piece of paper.

9 Q. Okay. Your Honor, may I approach? I
10 am showing you what's been marked as State's
11 Exhibit 105. Is this is that note pad with the
12 pencil marking that you were talking about?

13 A. Yes, sir, it is.

14 Q. Okay. Your Honor, at this time I would
15 ask the detective to read the names and the numbers
16 that are on the note pad. We are not going to send
17 it back to the jury because of other things he
18 wrote on it.

19 THE COURT: That's not going to be
20 admitted.

21 MR. OSBORNE: It's not going to be
22 admitted, but we'd just like to publish the names
23 and the numbers.

24 THE COURT: Go ahead. Any objection?

25 MR. ARCHER: Let me take one quick look.

1 at what he has got, Judge.

2 THE COURT: Yes, sir.

3 MR. ARCHER: Okay.

4 THE COURT: Was there an objection?

5 MR. ARCHER: Your Honor, no objection.

6 THE COURT: You may proceed with
7 publishing.

8 BY MR. OSBORNE:

9 Q. Detective, here's what I would like you
10 to do. Just read only the number and the name that
11 he wrote down.

12 A. First number that I was able to lift
13 was a [REDACTED]-4713 and goes to momma. The other number
14 was [REDACTED]-5671 which goes to Nomi. The next number
15 was [REDACTED]-9605 which had initials MB by it. The
16 next one was [REDACTED]-7217, had the name Dave by it.
17 [REDACTED]-3096, that says manager at Ely's. There
18 was another number of [REDACTED]-2523 Tyrone and there was
19 another number of [REDACTED]-6872 and it says uncle.

20 Q. Okay. The only one I am interested in
21 is the number that says [REDACTED]-9605. What's the
22 initials by that again?

23 A. MB.

24 Q. Like Mary Boyd?

25 A. Yes, sir.

1 MR. OSBORNE: No further questions.

2 THE COURT: Your witness, counselor.

3 CROSS-EXAMINATION

4 BY MR. ARCHER:

5 Q. Were you the lead case agent on this?

6 A. In the beginning yes, sir, I was.

7 Q. You were?

8 A. Yes, sir.

9 Q. Let me see you what you got there that
10 he was just showing you. Now, is this your writing
11 here?

12 A. Yes, sir, it is.

13 Q. Okay. So you scratched over here and
14 get these numbers and write it on a little pad?

15 A. Yes, sir.

16 Q. Okey-dokey. Now, do you remember an
17 officer by the name of S August who may have been
18 involved in this investigation?

19 A. I'm not familiar with every officer
20 that handled the initial investigation because I
21 just handle the investigation part that comes up to
22 my office.

23 Q. But you would have reviewed case
24 reports by other officers that had done
25 investigations?

1 A. Once they are approved they are in our
2 system so then I compile it together to get ready
3 for a trial, yes, sir.

4 Q. Okay. Do you remember a report made by
5 -- do you know of an officer named S August?

6 A. Sir, I don't recall. There are so many
7 officers there.

8 Q. Let me let you look at this. This
9 report there. That is a standard case report, is
10 it not, that y'all would draw up as part of your
11 investigation?

12 A. This is the Charleston Police
13 Department supplemental report, yes, sir.

14 Q. Let me hold that a second if you would.
15 Address your attention --

16 MR. OSBORNE: Objection, Your Honor.

17 Q. First paragraph?

18 MR. OSBORNE: He's bringing to the
19 detective's attention -- attention to this
20 detective a report that he did not author.

21 MR. ARCHER: I am going to ask him if
22 he investigated certain facts reported in that
23 incident. He's the chief investigative detective
24 and I am going to ask him if he investigated
25 certain facts reported to him by another police

1 officer.

2 MR. OSBORNE: That's a roundabout way
3 to get in hearsay.

4 MR. ARCHER: I think it goes to the
5 effectiveness of the investigation, Judge.

6 THE COURT: Lay the foundation somehow
7 he used that in his investigation. I haven't heard
8 you go there yet. Before we start getting into the
9 contents of that report, perhaps we should
10 determine whether or not he used that report in any
11 fashion.

12 BY MR. ARCHER:

13 Q. Would you have reviewed that report as
14 part of your duties as a chief investigative
15 officer?

16 A. In the initial I can tell you I
17 probably had not seen this report here, no, sir.

18 Q. What?

19 A. I have not seen the report, no, sir.
20 As the initial investigating because I have my own
21 investigation I am doing so I don't know what's on
22 the report.

23 Q. You aren't reviewing other officers?

24 A. Not the supervisor, no. I can't
25 approve their reports in the system.

1 Q. Did you ever as part of your
2 investigation look into the possibility that there
3 was more than one shooter involved?

4 A. It was mentioned, yes, sir, it was
5 mentioned.

6 Q. Who would have mentioned that?

7 MR. OSBORNE: Objection, calls for
8 hearsay.

9 MR. ARCHER: Judge, the whole focus of
10 this case is one shooter, my guy. And apparently
11 there's information of possibly two shooters. I
12 think I got a right to pursue that.

13 THE COURT: You got a right to ask him
14 if he is -- his investigation revealed that.

15 BY MR. ARCHER:

16 Q. Well, I mean did you ever investigate
17 whether there were two shooters?

18 A. No, sir, I did not.

19 Q. You did not?

20 A. No, sir.

21 Q. But somewhere that came up in your
22 investigation?

23 A. It was -- I heard about it, but I never
24 investigated it.

25 Q. Do you remember where you heard about

1 it?

2 MR. OSBORNE: Objection, calls for
3 speculation.

4 MR. ARCHER: The question is how. He
5 said --

6 THE COURT: I will overrule the
7 objection.

8 MR. ARCHER: Huh?

9 THE COURT: I am ruling in your favor.

10 MR. ARCHER: Thank you, Your Honor.

11 THE COURT: Go ahead. Ask how he heard
12 about it, go ahead.

13 BY MR. ARCHER:

14 Q. How did you hear about it?

15 A. It was just general information when I
16 first started the initial investigation that came
17 out.

18 Q. General information within the officers
19 who were doing the investigation, is that what you
20 are saying?

21 A. It could have been the streets.
22 Because you have to realize I gather my information
23 from all different sources that I can compile my
24 investigation to get it where I need to go.

25 Q. So you can't remember exactly where you

1 heard that, but do remember hearing a report that
2 there were two shooters?

3 A. I heard it.

4 MR. OSBORNE: Objection, Your Honor.
5 That's where it gets to hearsay saying exactly who
6 said that.

7 MR. ARCHER: No, I am just asking did
8 he hear a report.

9 THE COURT: I am going to rule in your
10 favor.

11 MR. ARCHER: Thank you.

12 BY MR. ARCHER:

13 Q. You did hear a report that there were
14 not -- there was two shooters instead of one?

15 A. I did hear that.

16 Q. And you didn't investigate that?

17 A. No, sir.

18 Q. Okay. Any reason why you didn't
19 investigate that?

20 A. No, sir.

21 Q. Okay. And you don't remember where at
22 this point in time you heard that?

23 A. No, sir.

24 Q. Okay. When you did the interview with
25 Calvin that he was asking you about those disks?

1 A. Yes, sir.

2 Q. That lasted a couple of hours, right?

3 A. It did.

4 Q. And when it's over with -- he wasn't
5 under arrest when he came in, right?

6 A. No, sir.

7 Q. And when it was over with he left and
8 he was not under arrest?

9 A. No, sir.

10 Q. So I take it he didn't say anything
11 particularly self-incriminating during that
12 interview?

13 MR. OSBORNE: Objection. That question
14 calls for an opinion.

15 MR. ARCHER: Well, he's the officer who
16 does -- he can arrest him. The question did he say
17 anything incriminating?

18 THE COURT: Let me rule on it. I will
19 overrule the objection.

20 BY MR. ARCHER:

21 Q. Thank you, sir. Sorry to keep jumping
22 in on you. Did he say anything particularly
23 incriminating during that interview?

24 A. It's according to I take an
25 investigation and I look at it as a total aspect.

1 I don't look at one thing. I just totally when I
2 did investigations I look at totally everything
3 that comes in to me and then I start to pull it
4 apart where I need to go with it.

5 Q. I know, but and this interview was part
6 of the total picture, right?

7 A. Yes, sir.

8 Q. Did he say to you -- did he say
9 anything incriminating during that interview?

10 A. Yes, sir, he did to me at that time
11 based on my feeling of the investigation.

12 Q. What did he say incriminating?

13 A. Well, because during the investigation
14 I learned that him and at the time Mr. Lewis did
15 have a problem with each other. And looking back
16 at it and the interview he would say that Mr. Lewis
17 maybe took a shot at him and so I complied all of
18 that into my investigation.

19 Q. So the only thing he might have said
20 was Mr. Lewis may have taken a shot at me sometime?

21 A. Yes, sir.

22 Q. But he didn't say and I took a shot
23 back at him this other night?

24 A. I don't think he would.

25 Q. He didn't admit to any connection with

1 this particular shooting that we are here in court
2 on, did he?

3 A. No, sir.

4 Q. Okay. I got no other questions.

5 THE COURT: Redirect?

6 MR. OSBORNE: Just briefly.

7 REDIRECT EXAMINATION

8 BY MR. OSBORNE:

9 Q. During the interview did he relay phone
10 numbers to you?

11 A. Yes, sir, he did.

12 Q. Okay. And did Detective English do a
13 whole lot of followup in reference to phone
14 numbers, Facebook and a lot of other stuff?

15 A. Yes, sir, he did.

16 Q. So is it fair to say that you may not
17 have personal knowledge into everything Detective
18 English did afterwards?

19 A. No, sir, I did not.

20 Q. So did he say anything pertinent, I
21 guess another way of saying that, did he confess?

22 A. He did not confess, no, sir.

23 Q. Okay. No further questions?

24 MR. ARCHER: No redirect.

25 THE COURT: Recross.

1 MR. ARCHER: Recross. I am sorry.

2 THE COURT: That's all right. You may
3 step down, sir. Thank you very much. You wish to
4 excuse the witness?

5 MR. OSBORNE: Yes, Your Honor.

6 THE COURT: Any objection to excusing
7 the witness?

8 MR. ARCHER: No objection.

9 THE COURT: Sir, you are free to leave
10 the courthouse if you choose. Thank you very much.
11 State may call its next witness.

12 MR. DURANT: State would call Shari
13 Lucas.

14 THE COURT: Come forward.

15 SHARI LUCAS

16 having been duly sworn, testifies as follows:

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

19 THE WITNESS: S-H-A-R-I, L-U-C-A-S.

20 THE COURT: Thank you. Counsel, your
21 witness.

22 DIRECT EXAMINATION

23 BY MR. DURANT:

24 Q. Ms. Lucas, good afternoon.

25 A. Good afternoon.

1 Q. I would ask that you keep your voice up
2 and kind of speak towards that microphone and the
3 ladies and gentlemen of the jury can hear what you
4 have to say.

5 A. Okay.

6 Q. Can you tell our jury how old you are?

7 A. Thirty-two.

8 Q. And where are you employed?

9 A. Murphy's Gas Station, North Charleston.

10 Q. And what do you do at Murphy's?

11 A. I'm a cashier.

12 Q. How far did you go in school?

13 A. To 11th grade.

14 Q. You got your GED I believe?

15 A. Yes, sir.

16 Q. And when you were going to school where
17 did you go to school?

18 A. I went to three different high schools,
19 North Charleston, Berkeley and St. Andrews.

20 Q. You have kids?

21 A. One.

22 Q. And what his or her name and age?

23 A. Myisha. She is seven years old.

24 Q. And could you tell us how you became
25 acquainted with a girl named Shanorma Smith?

1 A. I met her in the neighborhood that I
2 used to live in.

3 Q. What neighborhood was that?

4 A. Bridgeview Village also known as
5 Bayside.

6 Q. That's on Romney Street?

7 A. North Romney Street, yes, sir.

8 Q. And how did you happen to come into
9 contact with Shanorma? Why was she in the area
10 because isn't she from Goose Creek?

11 A. She was visiting her sister.

12 Q. Okay. You got to know her through her
13 sister?

14 A. Yes, sir.

15 Q. And how did your relationship with her
16 develop? Well, first of all, when did you first
17 meet her if you recall?

18 A. I would say probably like 2011, 2012.

19 Q. Did you and her become friends?

20 A. Yeah, she's like a little sister to me.

21 Q. Okay. So she is more -- she's more of
22 a sister than y'all go out and hang out together?

23 A. Correct.

24 Q. And did she, in fact, end up moving in
25 with you?

- 1 A. Yes, sir.
- 2 Q. And when was that?
- 3 A. I believe in like either 2014 or '15.
- 4 Q. Was she pregnant at the time?
- 5 A. Yes, she was pregnant.
- 6 Q. And who was the father of her baby?
- 7 A. Calvin Brown.
- 8 Q. This is Calvin Brown over here, right?
- 9 A. Yes.
- 10 Q. Was Calico living over there too?
- 11 A. No, he was visiting. He didn't live
- 12 with her.
- 13 Q. Did he spend the night over there?
- 14 A. Sometimes, yes.
- 15 Q. Every now and then. How often would he
- 16 stay over?
- 17 A. Once in a while.
- 18 Q. And how would you describe your
- 19 relationship with him?
- 20 A. We don't get along.
- 21 Q. You don't get along with Calico.
- 22 Didn't get along back then, don't get along now; is
- 23 that correct?
- 24 A. No, sir, not at all.
- 25 Q. Do you know the older guy that got shot

1 in this case, Desmond Lewis?

2 A. He's my ex-boyfriend's little brother.

3 Q. Okay. And he goes by the name Fats,
4 right?

5 A. Yes, sir.

6 Q. And his little brother is who?

7 A. His older brother is my ex-boyfriend.

8 Q. And what is his name?

9 A. Dominique.

10 Q. And are you and Dominique still
11 involved with one another?

12 A. No, not really. I can't even say -- I
13 don't know the last time I talked to him.

14 Q. Now, back at the time when Shanorma was
15 living were you aware of the beef between Calico
16 and --

17 A. No.

18 Q. And Fats?

19 A. No, I didn't.

20 Q. Desmond. You found out about that
21 after?

22 A. After the fact, yes, sir.

23 Q. And do you know what the beef was
24 about?

25 A. From what I heard it was over a female.

1 Q. So back in 2015 when Shanorma was
2 actually living with you she was dating Calico?

3 A. Um-hmm.

4 Q. And you were still seeing Dominique,
5 Fats's brother, at the time?

6 A. Yes.

7 Q. Did that create some tension between
8 the two of them in your household?

9 A. I don't know what was going on with
10 them. I know when Calico was around Dominique
11 wouldn't come around. I didn't put two and two
12 together at the time. I didn't know because
13 Dominique is very antisocial so I just thought
14 that's what it was, but like I said, I didn't know
15 what the real situation was though until after the
16 fact.

17 Q. So if one of them was there the other
18 one was not?

19 A. Correct.

20 Q. As a general rule?

21 A. Right.

22 Q. Let's talk a little bit about Friday,
23 May 22nd, the day that Desmond got shot and the
24 little boy got shot. Do you remember that day?

25 A. That's -- yeah.

1 Q. Okay. Where were you that night -- in
2 that day and that night?

3 A. That night I was home. That day I was
4 with my daughter. She was graduating from CD.

5 Q. Okay. And after the graduation you
6 returned to your home on Romney Street?

7 A. Yes, sir.

8 Q. And do you recall what time that was,
9 about?

10 A. Probably around three maybe.

11 Q. Okay. And you remained at your house
12 the rest of that day and night?

13 A. Yes, sir.

14 Q. And was Shanorma there during that same
15 time?

16 A. Yes, sir.

17 Q. Was he there during that same time?

18 A. No.

19 Q. Was he ever there that afternoon or
20 that night?

21 A. No.

22 Q. Of the shooting. Was Shanorma in
23 communication with him?

24 A. I believe they was on the phone.

25 Q. Okay. And at some point that night did

1 -- how did you learn about the shooting?

2 A. Later on that night I got a phone call
3 from Dominique yelling in my ears about something
4 that something happened to his little brother, he
5 better not catch Calico back in my house and that
6 was all I remember hearing.

7 Q. When you were at home?

8 A. Yes.

9 Q. And that's when Shanorma was there at
10 the place as well?

11 A. Yes, sir.

12 Q. Now, sometime after that call did
13 Shanorma leave the apartment?

14 A. Yeah.

15 Q. And do you know where she was going?

16 A. She said she was going to the hospital
17 because she was in pain.

18 Q. And who did she leave with?

19 A. No one.

20 Q. Pardon?

21 A. Nobody. She walked out the door by
22 herself.

23 Q. What was her demeanor at the time?

24 A. She seemed pretty upset.

25 Q. Do you know why she was upset?

1 A. She wouldn't tell me..

2 Q. And do you know whether or not she did,
3 in fact, go to the hospital that night?

4 A. Yes, she did.

5 Q. And did she end up having the baby?

6 A. No. Huh-uh.

7 Q. It's kind of a false alarm?

8 A. Yeah.

9 Q. Did you ever see the Defendant back at
10 your apartment since?

11 A. He was there.

12 Q. The night of the shooting?

13 A. He was there I would say like the day
14 -- two days before Caleb was born so I guess around
15 June 1st is when she had another false alarm.

16 Q. That's the only time he's ever been
17 back?

18 A. That was the last time.

19 Q. Okay. And I believe you also told us
20 you saw him when Shanorma had her baby at the
21 hospital?

22 A. At the hospital, yes, but not at my
23 house.

24 Q. When did Shanorma end up having her
25 baby?

1 A. [REDACTED].

2 Q. That baby's name is what?

3 A. Caleb.

4 Q. How much longer did Shanorma continue
5 to live with you?

6 A. I can't quite remember when she got her
7 own apartment. I want to say I think it would have
8 been March of 2016 I think.

9 Q. Okay. So Caleb would have been almost
10 a year old at the time or so?

11 A. Yeah.

12 Q. And where did she move?

13 A. Right across the street.

14 Q. So she continues to stay in Bayside?

15 A. Um-hmm.

16 Q. She just got her own apartment?

17 A. Um-hmm.

18 Q. Okay. Did Shanorma have a cell phone
19 back then?

20 A. Um-hmm.

21 Q. Who got her that cell phone?

22 A. Calvin.

23 Q. I thought it was in your name?

24 A. Yes, it was in my name, but he got her
25 the chip actually.

1 Q. You actually had the account in your
2 name?

3 A. Um-hmm.

4 Q. And her number at that time was
5 [REDACTED]-1054, does sound correct?

6 A. That sounds about right.

7 Q. Do you remember whether or not Calico
8 used to carry around something that he kept his
9 stuff in?

10 A. His little black bag.

11 Q. Kind of like a backpack?

12 A. Man purse, whatever you want to call
13 it.

14 Q. And what color was it?

15 A. Black.

16 Q. Did he carry that with him frequently?

17 A. Um-hmm.

18 Q. Thank you, ma'am. Could you please
19 answer any questions that Mr. Archer has.

20 THE COURT: Mr. Archer,
21 cross-examination.

22 CROSS-EXAMINATION

23 BY MR. ARCHER:

24 Q. I believe the prosecutor asked you
25 about the date May 22nd, didn't he?

1 A. Yes, sir.

2 Q. What do you remember about Mr. Brown
3 being over there the day before May 21st?

4 A. I don't remember him being there the
5 day before.

6 Q. Are you saying he wasn't there or are
7 you saying you just don't remember?

8 A. I don't remember.

9 Q. Just don't remember. Okay. But it is
10 possible he could have been there on the 21st?

11 A. It could be a possibility, but I just
12 don't remember.

13 Q. You don't remember. Okay.

14 MR. ARCHER: No other questions.

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

17 MR. DURANT: We would ask that Ms.
18 Lucas be excused.

19 THE COURT: Any objection?

20 MR. ARCHER: No objection.

21 THE COURT: You are free to go, ma'am.
22 Thank you. State may call its next witness.

23 MR. OSBORNE: The State calls Captain
24 Jack Weiss. We will wait for him and call
25 Detective Paul Krasowski.

1 THE COURT: Come forward and be sworn,
2 please.

3 PAUL KRASOWSKI

4 having been duly sworn, testifies as follows:

5 THE CLERK: Please state your name and
6 spell your first and last name.

7 THE WITNESS: P-A-U-L,
8 K-R-A-S-O-W-S-K-I.

9 THE COURT: Counselor, your witness.

10 DIRECT EXAMINATION

11 BY MR. OSBORNE:

12 Q. Sergeant Paul Krasowski now, right?

13 A. That's correct.

14 Q. And 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. Started in 2006. I have been there for
19 11 and-a-half years now.

20 Q. During your time with the Charleston
21 Police Department what are some of the various
22 assignments that you have held?

23 A. Once I was hired in 2006 I went to the
24 justice academy in up Columbia. I graduated. I
25 started out in the patrol. I was in the James

1 Island area for approximately two years. I then
2 transitioned to the TOPS school, referred to as
3 TOPS unit. It was the bicycle patrol division down
4 in the tourist areas. Stood for Tourist Oriented
5 Police Services.

6 Then I transitioned into investigations
7 after that. I spent about the last five and-a-half
8 years in investigations. Started out in the
9 robbery division for about a year and then spent
10 the remaining part of my time as a homicide
11 detective, violent crimes unit detective.

12 Q. Okay. Back in 2015 were you a violent
13 crimes detective then?

14 A. I was.

15 Q. Part of the homicide unit. Have you
16 received any specialized training that might be
17 relevant to this case?

18 A. I have. I have went to numerous
19 training courses pertinent to interviews and
20 interrogations. I also went through what was
21 titled a homicide investigative class. It was also
22 a week long course and it dealt with major
23 investigations from the time of arrival all the way
24 to court testimony so it was a broad range, wide
25 range for major investigations.

1 Q. Okay. You weren't the case agent in
2 this case?

3 A. That's correct, I was not.

4 Q. You did help out with some auxiliary
5 responsibilities?

6 A. I did.

7 Q. All right. During this investigation
8 did you become familiar with an individual by the
9 name of Tyrese Steed?

10 A. I did.

11 Q. And back in December of 2015 where was
12 Mr. Steed laying his head?

13 A. He was incarcerated at the Charleston
14 County Detention Center.

15 Q. And what was Mr. Steed's charge?

16 A. He was on a murder charge.

17 Q. What happened to that charge?

18 A. It was ultimately dismissed and nolle
19 prossed. He was recently released earlier this
20 summer I believe.

21 Q. Where is Mr. Steed now?

22 A. He's back incarcerated. He has been
23 arrested on a different murder charge up in
24 Summerville, Dorchester County.

25 Q. Through your experience do you know an

1 individual named Terrence Gregory?

2 A. I do.

3 Q. What's his nickname?

4 A. He goes by the name of Squirrel.

5 That's his moniker.

6 Q. All right. Back in December 2015 where
7 was he laying his head?

8 A. He was also at the Charleston County
9 Detention Center in December of '15.

10 Q. Has he ever been arrested for murder?

11 A. Not for murder. He was arrested for a
12 shooting, an ABHAN investigation a year before.

13 Q. Are you familiar with someone named
14 Seth Smith?

15 A. I am.

16 Q. And how do you know Seth Smith?

17 A. So he came up in an investigation in a
18 homicide in April of 2015 down on the east side of
19 downtown Charleston on Reid Street. I became the
20 case agent in that investigation and he was
21 subsequently arrested for a murder charge related
22 to that murder.

23 Q. Where would he have been laying his
24 head December of 2015?

25 A. At that point he had been formally

1 charged and was at the Charleston County Detention
2 Center.

3 Q. Do you know if he goes by any
4 nicknames?

5 A. He does. He goes by -- his moniker is
6 actually consistent with a real name, Tony James he
7 goes by.

8 Q. Okay. Let's go to March the 23rd of
9 2015. Did you have the occasion to become involved
10 in the murder investigation of a victim by the name
11 of Brandon Washington?

12 A. I did. I was the case agent for that
13 homicide investigation.

14 Q. And where did was Brandon murdered?

15 A. He was murdered in the Gadsden Green
16 community also referred to as Back To Green. This
17 incident occurred on Norman Street in April of '15.

18 Q. Back To Green, Spring Street, is that
19 the east or west side of downtown?

20 A. So Back To Green is on the west side of
21 the peninsula and America Street, that's on the
22 east side of the peninsula.

23 Q. Okay. And just to clarify, Brandon
24 Washington's murder has nothing to do with this
25 case in the sense that the two aren't related?

1 They're not tied in?

2 A. That's correct. There is absolutely no
3 connection in those two incidents.

4 Q. Okay. But you did make an arrest in
5 that case, correct?

6 A. That's correct. Three arrests in that
7 case.

8 Q. Who did you charge?

9 A. We arrested Tequan Perry, Devin
10 Middleton and Davontay Bryant.

11 Q. Did you become familiar with Davontay
12 Bryant's nickname?

13 A. Yes, he was referred to as Smash.
14 That's what he goes by on the street.

15 Q. How about Devin Middleton?

16 A. Devin Middleton, we knew him mainly as
17 Devin Middleton. He also went by Little Dev and
18 through that homicide investigation we found some
19 -- another name that he would refer to himself as
20 Taliban or General Taliban.

21 Q. I am showing you what's been marked as
22 State's Exhibit No. 66. Can you take a look at
23 that and tell me if you recognize it.

24 A. (Witness complies with request.) This
25 DVD contains the Facebook contents of a search

1 warrant that was executed on Devin Middleton's
2 Facebook account, social media account.

3 Q. Okay. And so it's got Facebook
4 information in reference to Devin Middleton in the
5 year 2015?

6 A. That's correct.

7 MR. ARCHER: Judge, I object to these,
8 Your Honor. I don't think there has been any
9 authentication who they relate to, who they were
10 from or anything of that nature. There is no
11 authentication for these.

12 THE COURT: He hasn't offered it just
13 yet. I don't know whether he will go any further.
14 I think he was showing it to you.

15 MR. ARCHER: Right.

16 THE COURT: Let's proceed.

17 MR. OSBORNE: Thank you, Your Honor.
18 May I approach the witness?

19 THE COURT: You may.

20 BY MR. OSBORNE:

21 Q. All right. Sergeant, I'm showing you
22 State's 67, 68, 69, 70, 71 and 72. Do you
23 recognize those items?

24 A. I do. So these are the records that I
25 obtained through the search warrant that I executed

1 on Devin Middleton's Facebook account.

2 Q. Okay. So is it fair to say that
3 State's 66 contains all of Devin Middleton's
4 Facebook records that you obtained through a search
5 warrant for the murder investigation of Brandon
6 Washington and those exhibits just contain posts
7 and the overall opening page; is that correct?

8 A. That's correct. So when I obtained the
9 Facebook records through the warrant it was some
10 3,000 pages of data that was collected. So this
11 first, page 67, is essentially the main content or
12 the basic information of that Facebook page.

13 Q. Okay. And with 67 -- is it fair to say
14 with 67 looking at a target number you could find
15 out what other messages he may have posted on other
16 accounts based off of that target number?

17 A. That's correct. So the target number,
18 there's a few different ways to identify a Facebook
19 profile account.. There's a user name that everyone
20 can see, typically your name, that can be changed.
21 Facebook allows you to change it every so often.
22 They have limits. You can't change it all the
23 time. But that is not unique to the account.

24 There's a target number, a tag number
25 that is unique to the Facebook profile. That

1 number is unique to just one account and this
2 number is unique to Devin Middleton's account.
3 It's sort of like a VIN number to a number, just
4 one of those and that's it.

5 Q. Okay. On 68 through 71 do you see a
6 phone number that continues to repeat itself on the
7 messages?

8 A. I do. There is a number that repeats
9 itself.

10 Q. What is that number?

11 A. That phone number is area code
12 [REDACTED]-9605.

13 Q. Okay. And generally speaking, the
14 dates in which that -- whose the user saying that's
15 his number?

16 A. So the number is associated with
17 General Taliban's user or Devin Middleton's account
18 and I know that because the tag number is unique to
19 that Facebook profile.

20 Q. And what is the general dates -- I know
21 they're different dates, but general dates that he
22 is reporting that number? Is it around May of
23 2015?

24 A. It is. So on Exhibit 68 there are
25 messages authored by General Taliban, Devin

1 Middleton on May 7th, 2015, and they continue with
2 May 15th, 2015, May 17, 2015, so it is in that
3 range right there.

4 Q. Okay. And lastly on State's 72,
5 without getting the content, just tell me who the
6 two individuals who are engaged in communication?

7 A. So these are the private messages that
8 the messages that you correspond with one person.
9 They are not messages that are posted on the wall.
10 So there are -- this Exhibit 72 shows four messages
11 that are exchanged back and forth. The author of
12 the first one that I am referencing is named Spring
13 Street MBMB. And it was sent on the 4th of
14 May 2015. It was sent to Devin Middleton, General
15 Taliban Jeez Quez. The second message was authored
16 by General Taliban Jeez Quez Devin Middleton. It
17 was sent to Spring Street MBMB. The third one was
18 authored by Spring Street MBMB and so there's a
19 corresponding back and forth with those two names.

20 Q. Okay.

21 MR. OSBORNE: Your Honor, at this time
22 we would offer State's 67 through 72 into evidence.

23 MR. ARCHER: Any objection?

24 MR. ARCHER: Can I voir dire him a
25 little bit or two before I agree to admit it or

1 not?

2 THE COURT: Any objection to that?

3 MR. OSBORNE: No.

4 BY MR. ARCHER:

5 Q. The subpoena you issued was issued to
6 who to Facebook?

7 A. It was a search warrant. It wasn't a
8 subpoena. It was issued to Facebook.

9 Q. And the records you got came directly
10 from Facebook?

11 A. That's correct, sir.

12 Q. And what was the -- what were you
13 asking for in the subpoena, records of what?

14 A. The contents of Devin Middleton's
15 social media content.

16 Q. Devin Middleton?

17 A. For a period of time, yes.

18 Q. Okay.

19 MR. ARCHER: Let me take a quick look
20 at these, Your Honor.

21 (Brief pause.)

22 MR. ARCHER: Objection.

23 THE COURT: Without objection they will
24 be admitted as they have been marked. You may
25 publish them.

1 MR. OSBORNE: Thank you, Your Honor.

2 (STATE'S EXH. 67-72 in evidence.)

3 BY MR. OSBORNE:

4 Q. All right. We kind of talked about
5 this. I will go through it pretty briefly. This
6 is a long number to remember, but so the target
7 number right here, 3518, that's what you are
8 referring to?

9 A. Yes. That's the unique number to Devin
10 Middleton's Facebook account.

11 Q. Okay. And his first and last name
12 General Taliban Jeez Quez?

13 A. That's correct.

14 Q. Let's go to six. On May the 7th what
15 does Devin Middleton say his phone number is?

16 A. So you see Devin Middleton is saying
17 this. General Taliban is the author. So you see
18 that line there. If you go down to the very end
19 the body providing his phone number of
20 [REDACTED]-9605.

21 Q. Then again on May the 26th?

22 A. On the 26th you see General Taliban is
23 the author there and he is providing his phone
24 number call me and the phone number is

25 [REDACTED]-9605.

1 Q. Okay. So this shooting was May the
2 22nd so before and after the shooting he is
3 reporting this as his phone number?

4 A. That's correct.

5 Q. Then 69 again same phone number?

6 A. That's correct. He is the author
7 there.

8 Q. And 70 same number?

9 A. Same.

10 Q. 71? Same phone number?

11 A. Yes, same phone number again.

12 Q. Okay. And 72. So on May the 4th what
13 Spring Street MBMB tell Taliban?

14 A. So the author is Spring Street MBMB.
15 He says tell that fool stop talking reckless over
16 that jack.

17 Q. And General says what?

18 A. He responds with what he say, what he
19 say.

20 Q. And then what does Spring Street MBMB
21 say?

22 A. Spring Street MBMB says all type of S
23 tell that N use somebody else pin...about shooting
24 and all type of S.

25 Q. Through your investigation when you

1 hear that pin, through your experience as a
2 detective what is that commonly referred to as?

3 A. So at the Charleston County Detention
4 Center everyone when they are admitted there they
5 receive a pin number to make phone calls so that
6 shows their identification number. It's common for
7 somebody else there to exchange the phone number or
8 the pin number, excuse me, so that it is not
9 readily traceable to that one person so they kind
10 of go under disguise of somebody else to have their
11 conversations.

12 Q. Okay. I may have asked this, in
13 December of 2015, the individual named Devin
14 Middleton, General Taliban, and Devontay Bryant
15 nicknamed Smash, where would they have been housed?

16 A. They were at the Charleston County
17 Detention Center.

18 Q. Okay. And lastly, in reference to this
19 investigation did you have the occasion to take
20 handwriting exemplars from the Defendant?

21 A. I did.

22 Q. And so you weren't here, but SLED
23 handwriting expert Gail Heath has already
24 testified. When you are taking these handwriting
25 exemplars are you showing the template to the

1 Defendant or are you reading it?

2 A. I am reading it in that regards. So I
3 am narrating what needs to be written down.

4 Q. Okay. Your Honor, may I approach?

5 THE COURT: You may.

6 BY MR. OSBORNE:

7 Q. Showing you what has already been
8 marked and admitted as State's Exhibit 61. Do you
9 recognize that?

10 A. I do. So these are the samples that
11 were collected when the search warrant was executed
12 to collect these samples.

13 Q. Then they would have been submitted to
14 SLED for comparison?

15 A. That's correct.

16 MR. OSBORNE: No further questions.

17 MR. ARCHER: No questions, Your Honor.

18 THE COURT: You may step down.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: Any objection to the
21 witness being excused?

22 MR. OSBORNE: None.

23 THE COURT: Mr. Archer?

24 MR. ARCHER: No, sir.

25 THE COURT: You are free to go if you

1 would like, sir. State may call its next witness.

2 MR. OSBORNE: State calls captain Jack
3 Weiss.

4 THE COURT: Come forward and be sworn,
5 please.

6 JACK WEISS

7 having been duly sworn, testifies as follows:

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

10 THE WITNESS: First name is Jack,
11 J-A-C-K, last name Weiss, W-E-I-S-S.

12 THE COURT: Your witness.

13 DIRECT EXAMINATION

14 BY MR. OSBORNE:

15 Q. Captain, where do you work?

16 A. Charleston Police Department.

17 Q. And how long have you worked there?

18 A. I will be employed 20 years on
19 December 17th of this year.

20 Q. All right. And over that 20 year
21 period what are some of the assignments that you
22 have held?

23 A. First four years were spent in the
24 uniformed patrol division which at that time
25 consisted of downtown Charleston from Cannon Street

1 all to the way to the Battery. During that time I
2 was a field training officer for four cadet
3 officers. After my first four years of patrol I
4 went to special operations division safe street
5 units. In that unit I conducted uniform patrol in
6 high crime areas, mostly on the peninsula, some in
7 West Ashley, basically areas that were facing
8 quality of life issues where we had open narcotics
9 dealings, weapons offenses, violent crimes, more or
10 less occurred on the street. Predominantly worked
11 the night shift because that's when a lot of the
12 incidents took place from 6:00 p.m. to 2:00 a.m.
13 Tuesday through Saturday.

14 I did that for approximately four
15 years, at which point I was promoted to corporal.
16 As a corporal I moved over to our tactical unit
17 which was our plain clothes part of the safety
18 street streets. We conducted surveillance for
19 robbery details, major crimes that were going on in
20 various areas of the city. We also did protective
21 details for dignitaries that came to town, assisted
22 in safe streets.

23 After that I moved to a corporal team
24 one which was the other half of the peninsula. At
25 that point became Cannon Street north to Pittsburgh

1 Avenue. I was there for approximately two years as
2 a corporal. I became a sergeant in team one. I
3 was there for an additional two and-a-half years,
4 at which point I became the burglary sergeant in
5 the investigations. I have five detectives in my
6 squad. We did that for approximately two years and
7 I was promoted from there to lieutenant where I
8 became command duty officer which was the night
9 shift detail and I was responsible for responding
10 to any critical incidents that took place in the
11 City of Charleston. And we worked evenings when
12 the rest of the command staff was at home, notified
13 the chief and others of any major incidents that
14 took place.

15 After that for approximately one year I
16 became lieutenant over the central investigations
17 persons side which consisted of special victims
18 unit, the robbery unit, the violent crimes unit. I
19 did that for another four years and I was promoted
20 to captain probably a year ago.

21 At this time I am captain over the
22 entire investigations division which encompasses
23 the property side, which has on top of the three
24 areas burglary, white collar crime, narcotics
25 division and the crime scene unit.

1 Q. All right. So back in May of 2015 were
2 you the commander of the violent crimes unit then?

3 A. Yes, I was.

4 Q. And did you have the -- were you
5 working on the night of this investigation or this
6 shooting?

7 A. No. I was not working. I was notified
8 by detectives of the incident that occurred and
9 came from home to respond to the scene.

10 Q. What did you do when you got to the
11 scene?

12 A. Got to the scene. We walked the crime
13 scene. Looked for any potential witnesses.
14 Relayed information to me from patrol what they had
15 about the incident that had taken place. We then
16 began to canvass, go door to door, try to get
17 information from any other people, the detectives.
18 I began walking the neighborhood. After being with
19 the department 20 years all the people on the
20 peninsula, got to know a lot of people, was trying
21 to get some information about who was involved and
22 what took place before anything worse would happen.

23 Q. Let's talk a second about the crime
24 scene. When you walked through the crime scene is
25 it fair to say that all the shell casings were in

1 the same general area?

2 A. Yes. They wrapped around.

3 Q. Just point.

4 A. Around the bend.

5 Q. All right. Did you find shell casings
6 in any other location other than that little area?

7 A. No.

8 Q. Is it fair to say that the direction of
9 the projectiles were headed from the park where
10 Tyreik was towards America Street?

11 A. Yes.

12 Q. Did y'all find any bullets going from
13 America back towards Drake?

14 A. No, we did not.

15 Q. And Desmond Lewis's GSR came back
16 negative?

17 A. Correct. It was negative for GSR.

18 Q. All the shell casings came back to one
19 gun?

20 A. Correct.

21 Q. Okay. But since it has come up, y'all
22 did have information or least hear that there could
23 be two shooters; is that correct?

24 A. Yes, there was a possibility that there
25 could have been more than one gun used at the

1 scene.

2 Q. Let me ask you something. In your
3 experience, sounds like you were working some
4 pretty violent areas. You did safe streets,
5 special ops. You worked downtown for a while. You
6 ever heard gunshots?

7 A. Yes.

8 Q. Ever heard gunshot in the projects?

9 A. Yes.

10 Q. Is it fair to say that when you hear
11 gunshots that it echos?

12 A. Yes. It is very difficult downtown
13 just with the houses stacked together. You can't
14 sometimes tell where they come from, what direction
15 they come from.

16 Q. So when you were just hearing talk that
17 there might have been more than one shooter, did
18 that surprise you since it occurred in the
19 projects?

20 A. No.

21 Q. When y'all looked at it did you see any
22 evidence to corroborate there were two shooters?

23 A. We found no evidence. Everything
24 pointed to one firearm, one direction of fire.

25 Q. All right. Early on in the

1 investigation did you develop a nickname of a
2 person of interest?

3 A. Yes, we did.

4 Q. What was that nickname?

5 A. Calico.

6 Q. So that would have been on the night of
7 the incident?

8 A. Yes.

9 Q. On the following day did you have the
10 occasion to speak to one Christopher Victoria or
11 assist in the interview of Christopher Victoria?

12 A. Yes, I did.

13 Q. Now, at the conclusion of that
14 interview did you have any more information to
15 assist you in trying to identify Calico?

16 A. Yes, I did.

17 Q. And what was that?

18 A. I was told that the individual known as
19 Calico was a west side guy. Charleston since I've
20 here has been divided east and west side by groups
21 that consider themselves rivals and are involved in
22 shootings. Meeting Street is the line that
23 separates east and west. Guys east of Meeting
24 Street are considered east side, ESP, East Side
25 Posse, that encompasses that the whole area of

1 America Street, East Bay Street where this incident
2 occurred all the way up through Johnson Street and
3 Bridgeview area. West side was west of Meeting
4 Street which encompasses Romney Street, Athens
5 Court and referred to RSK, Romney Street Killers.
6 And then you have the Spring Street Bogard Line
7 area who align with BTG what is called Back To
8 Green which is the Gadsden Green area which was
9 right behind the police department on Lockwood
10 Boulevard.

11 Q. Would this -- you got other information
12 too. With that information were you able to
13 develop at least a profile of interest looking at
14 Facebook?

15 A. Yes.

16 Q. Looking at Facebook?

17 A. Yes.

18 Q. Let's talk a second about Facebook.
19 When you were searching through Facebook trying to
20 identify an individual by the name of Calico did
21 you use any police techniques to defeat any
22 security measures or anything like that?

23 A. No. Just open source.

24 Q. So it was all open source?

25 A. Yes.

1 Q. Okay.

2 MR. ARCHER: No objection.

3 THE COURT: Without objection that will
4 be admitted if you are offering it.

5 MR. OSBORNE: I will, Your Honor.

6 THE COURT: Okay.

7 BY MR. OSBORNE:

8 Q. Captain, can you look at State's
9 Exhibit 85A through C and just tell me if you
10 recognize it?

11 A. Yes, I do.

12 Q. And is this the Facebook -- you took
13 screen shots of those pictures?

14 A. Correct.

15 Q. You took screen shots of those pictures
16 the following night after the shooting?

17 A. Yes. Once I had the information on the
18 west side tie, went through another Facebook
19 looking for other information that I was able to
20 obtain that pointed to an involvement in reference
21 to a female, an ongoing feud and things like that.
22 That's when we found the Spring Street MBMB.

23 MR. OSBORNE: Your Honor, at this time
24 we would offer 85A through C into evidence I
25 believe.

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

3 (STATE'S EXH. 85A-C in evidence.)

4 BY MR. OSBORNE:

5 Q. Okay. So on this opening screen right
6 here just to reiterate that this was open source,
7 what does that say right there?

8 A. Add a friend.

9 Q. So this indicates that y'all were not
10 friends, this is public, everyone can see this?

11 A. Yes.

12 Q. And a little hard to see, there is a
13 Facebook profile?

14 A. Yes.

15 Q. All right. And the individual who is
16 right there, do you recognize them, a little
17 blurry?

18 A. Yes.

19 Q. Who is that?

20 A. Calvin Brown.

21 Q. All right. Now, let's look at this
22 post here. What does that post say?

23 A. Says I about peace and everything but
24 sometimes people deserve to get that ass bust.

25 Q. And this seven hours indicates it would

1 have been seven hours earlier?

2 A. Correct.

3 Q. Is that the way they do it?

4 A. Yes.

5 Q. Showing you 85B. Is this another set
6 of messages from the same account?

7 A. Yes.

8 Q. This was an open source as well?

9 A. Yes, still says add a friend.

10 Q. Who is the person right here?

11 A. That's Taliban MBMB is Little D, Devin
12 Middleton, who was a west side guy from Gadsden
13 Green.

14 Q. This name right here?

15 A. Runway General. He's another west side
16 guy. It is -- hold on a second.

17 Q. That's okay.

18 A. I will remember his name.

19 Q. Now, 85C, look at this. This says --
20 let's talk about the date first. This says
21 yesterday at 11:29 p.m. So this would have been on
22 the night of the shooting?

23 A. Yes.

24 Q. Shooting was at 8:45 p.m., am I
25 correct?

1 A. Roughly, yes.

2 Q. So just a little less than three hours.
3 What did he post a little less than three hours
4 after the shooting?

5 A. That you protect a snitch you might as
6 well sign your name under his name on that
7 paperwork, referring to identifying people to the
8 police. Live long Vardell. He was a west side guy
9 that was killed.

10 Q. After you -- with the information right
11 here were you ever able to -- you were able at some
12 point I take it to connect the Defendant to that
13 nickname?

14 A. Yes, I got that name for you if you
15 want it. Quran Allen.

16 Q. After that -- you said Quran Allen?

17 A. Yes.

18 Q. After that once you were able to do
19 that did you have the occasion to meet with
20 Christopher Victoria again?

21 A. Yes, on the 23rd, actually on the 24th.

22 Q. Was he presented a lineup with the
23 Defendant to see if that was indeed Calvin Brown?

24 A. Yes.

25 Q. And he said it was?

1 A. Yes, immediately.

2 Q. Did you all threaten him?

3 A. No.

4 Q. Promise him anything. So on June 5th
5 Desmond Lewis was arrested; is that correct?

6 A. Yes, he was.

7 Q. And what was he charged with?

8 A. Narcotics violation. He sold to an
9 undercover officer on the east side on the 4th,
10 then was arrested on the 5th.

11 Q. Sold to an undercover the day before?

12 A. Yes.

13 Q. Do you know what undercover, where he
14 sold to?

15 A. Over near Mall Park.

16 Q. On the east side?

17 A. Off America.

18 Q. Undercover sold to Desmond on the 4th.
19 He was arrested on the 5th. When he was arrested
20 was he in possession of anything?

21 A. Yes, a firearm, stolen.

22 Q. And that firearm was compared to shell
23 casings?

24 A. Yes, it was. Did not match.

25 Q. Not the gun?

1 A. No.

2 Q. Now, so you say undercover, I take it
3 that's a narcotic detective?

4 A. Correct.

5 Q. Was Desmond targeted in any way?

6 A. No.

7 Q. Did you or anyone with your unit direct
8 the narcotics unit to go catch Desmond, let's get
9 some leverage?

10 A. No, we did not.

11 Q. If you had -- have you done that
12 before?

13 A. Yes, we have. Unfortunately the snitch
14 thing carries a lot of weight in these communities
15 and the people are scared to come forward even
16 though they know what took place and there are
17 times when we will make drug buys and things from
18 known drug dealers in the hopes that they will come
19 forward with information to us in the hopes that
20 they will probably work with the solicitor's office
21 on their sentences.

22 Q. Didn't do it in this case, but there is
23 nothing wrong with that, it's accepted practice?

24 A. Yes. We have done it.

25 Q. Try to get leverage?

1 A. Yes.

2 Q. Lastly I will ask you this: Through
3 your experience in safe streets did you ever have
4 the occasion to or an encounter with an individual
5 by the name of Claunce Mazyck?

6 A. Yes, I have, Cabbage.

7 Q. Nice guy?

8 A. No. Back in the early 2000's he was
9 involved in numerous shootings and incidents that
10 took place throughout the city in an ongoing feud
11 with the east side of Charleston.

12 MR. OSBORNE: No further questions.

13 THE COURT: You may cross-examine, Mr.
14 Archer.

15 CROSS-EXAMINATION

16 BY MR. ARCHER:

17 Q. Now, I'm showing you 85A, B and C?

18 A. Yes, sir.

19 Q. Can you tell me what dates those were
20 posted on?

21 A. They say seven hours before.

22 Q. Before. So do you have any idea what
23 dates?

24 A. Those were screen captured on the 23rd.

25 Q. On the 23rd?

1 A. Seven hours prior.

2 Q. So go back from there?

3 A. Yes, sir. If you go past this initial
4 day then it will give you June 6th at that time.
5 Things like that. When you are talking about the
6 24-hour period just gives you seven hours before.

7 Q. So that was pulled down when? These --
8 you pulled these things off the net when?

9 A. These were taken on the 23rd.

10 Q. On the 23rd. So that first one would
11 have been posted when, dating back from the 23rd?

12 A. Sometime -- it would have been from
13 Saturday morning so it could have been any time
14 going back seven hours from Saturday morning.

15 Q. How about the next one?

16 A. The next one, those say nine hours, one
17 says one hour, and things talk about free little
18 left and little tree, that's on 85B. And there is
19 some stuff about Runway and money and things.
20 Those are all nine hours previously.

21 Q. Okay. And the next?

22 A. The last one where it says yesterday at
23 11: 29 actually shows that this took place on the
24 22nd at 11:29 p.m.

25 Q. Okay. That was posted on the 22nd at

1 11:29?

2 A. Yes, which would have been the night of
3 the incident.

4 Q. Now, on the 22nd, this one, this is
5 85C, you protect the snitch you might as well sign
6 your name or his name on that paperwork?

7 A. Yes.

8 Q. At the time that was posted y'all had
9 not arrested anybody, had you?

10 A. No.

11 Q. And you had Desmond Lewis and
12 Christopher Victoria denying that they recognized
13 anybody, right?

14 A. Victoria said that he was 85 percent
15 sure if I am correct about the person and that it
16 was Calico.

17 Q. But y'all had not at the time -- had
18 y'all picked up Calvin?

19 A. No. We had not picked him up at that
20 time.

21 Q. So and y'all are saying this is a post
22 by Calvin?

23 A. Yes.

24 Q. Okay. But so at the time this happened
25 he has got no idea about anybody snitching on him,

1 right?

2 A. Well, he knows the police may have been
3 out there. I don't know what he knew at the time.
4 I would assume he knew the police responded to the
5 shooting incident.

6 Q. Respond to the shooting incident but --

7 A. Yes, and I know that --

8 Q. Had y'all brought him in for
9 questioning?

10 A. Not, no we had not.

11 Q. So you hadn't even picked him up on
12 anything?

13 A. No, sir.

14 Q. Okay. So how is it you figure that
15 this relates to this incident?

16 A. It's very common on Facebook -- this
17 started over what we were told was a Facebook beef.
18 People making comments back and forth to each other
19 in reference to girls and issues between east and
20 west side.

21 Q. Okay.

22 A. We saw this post where it talked about
23 snitching.

24 Q. Well, in the hood snitching is a big
25 thing?

1 A. Yes.

2 Q. So people talking about snitching
3 doesn't necessarily relate to a particular crime,
4 just maybe talking about it, right?

5 A. Could be.

6 Q. Okay. Now, one second. Bear with me.

7 THE COURT: Yes, sir.

8 Q. I am looking for a particular document.
9 Do you have your reports with you?

10 A. No, sir.

11 Q. You don't. Do you remember bringing
12 Mr. Victoria in around the 23rd of May?

13 A. I remember when he responded. That was
14 a Saturday he came in.

15 Q. Okay. And when he came in he said he
16 didn't see the shooter's face, didn't he?

17 A. He said he saw the complexion, that it
18 was a dark skinned individual, but he did not
19 believe he could identify him and see his face that
20 well.

21 Q. Okay. Did he mention anything about a
22 physique?

23 A. He said that the individual was dark
24 complexed, average height, and that he talked about
25 his shoes when he took cover to lay down, he saw

1 his shoes run by.

2 Q. He said basically I hit the ground so I
3 didn't see much, right?

4 A. He saw somebody approaching him. He
5 saw Fats, his friend, look at the individual, begin
6 to flee. He saw the individual with a firearm
7 began to shoot, chase him around the corner and
8 then he took cover and that he described his
9 complexion, but didn't believe at a 100 percent,
10 but he was 85 percent that it was Calico.

11 Q. Okay. He said he didn't see his face,
12 right?

13 A. I don't recall. He may have.

14 Q. May have. Okay.

15 A. That's why he said he couldn't be a
16 hundred percent.

17 Q. Okay. Now, semiautomatic guns leave
18 shells on the ground, right?

19 A. Yes, sir.

20 Q. Revolvers don't leave shell casings?

21 A. No, sir.

22 Q. Okay. So if there was shots fired out
23 by a revolver there wouldn't be a shell on the
24 ground with a revolver?

25 A. No, sir.

1 Q. Okay. But do you remember Christopher
2 telling you he didn't get a good look at the
3 shooter's face?

4 A. Yes.

5 MR. ARCHER: No further questions.

6 THE COURT: Redirect?

7 REDIRECT EXAMINATION

8 BY MR. OSBORNE:

9 Q. Do you happen to know the exact time
10 that Desmond Lewis came into the interview room on
11 the night of the shooting?

12 A. No, he went to the hospital.

13 Q. Would it help if I just showed you the
14 first clip of Desmond being escorted into the
15 interview room by the officer right after leaving
16 the hospital to tell you what time he was brought
17 in?

18 A. Yes.

19 Q. Your Honor, may I show him just that to
20 refresh his memory?

21 THE COURT: It's in evidence already?

22 MR. OSBORNE: Not this interview.

23 THE COURT: Any objection to this tape
24 being --

25 MR. ARCHER: This is the tape --

1 MR. OSBORNE: Just a screen shot right
2 here to get the time.

3 MR. ARCHER: I don't mind looking at
4 the screen shot.

5 BY MR. OSBORNE:

6 Q. What time was Desmond Lewis brought
7 into the interview room?

8 A. 11:37 p.m.

9 Q. Okay. Eight minutes before Desmond was
10 brought into the interview room this is a message
11 that was sent?

12 A. Yes.

13 Q. Don't snitch.

14 MR. OSBORNE: No further questions.

15 MR. ARCHER: No redirect.

16 THE COURT: You may step down. Wish to
17 excuse the witness?

18 MR. OSBORNE: Yes, Your Honor.

19 THE COURT: Any objection, Mr. Archer?

20 MR. ARCHER: No objection.

21 THE COURT: You are free to go, sir.
22 Thank you very much. Ladies and gentlemen, this
23 would be a good time for us to take a break so you
24 may retire to the jury room. Please don't discuss
25 anything until I ask you to do so. You may retire.

1 (Thereupon, the jury exited the
2 courtroom at 3:08 p.m.)

3 THE COURT: I'm going to ask the
4 attorneys to approach the bench, please.

5 (Off-the-record conference.)

6 (A recess transpired.)

7 THE COURT: State ready to proceed?

8 MR. OSBORNE: Yes, Your Honor.

9 THE COURT: Defense ready?

10 MR. ARCHER: Yes.

11 THE COURT: Bring the jury in.

12 (Whereupon the jury entered the
13 courtroom at 3:21 p.m.)

14 THE COURT: The record will reflect the
15 jury has returned to the courtroom. State may call
16 its next witness.

17 MR. DURANT: Just a moment, Your Honor.

18 (Off-the-record conference.)

19 MR. OSBORNE: Thank you, Your Honor.

20 State calls Desmond Lewis.

21 DESMOND LEWIS

22 having been duly sworn, testifies as follows:

23 THE CLERK: Please state your full name
24 and spell your last name for the record.

25 THE WITNESS: Desmond Lewis,

1 D-E-S-M-O-N-D, L-E-W-I-S.

2 THE COURT: Mr. Lewis, I am going to
3 ask that you lean forward to the microphone as
4 close as you can, please. Thank you very much.
5 You may proceed.

6 DIRECT EXAMINATION

7 BY MR. OSBORNE:

8 Q. Thank you, Your Honor. Desmond, were
9 you shot on May the 22nd of 2015?

10 A. Yes, sir.

11 Q. And where on your body were you shot?

12 A. On the calf.

13 Q. Would it be the left leg or right leg?

14 A. My left leg.

15 Q. So in the back of your leg?

16 A. Yeah.

17 Q. Calf. Who shot you?

18 A. Say what?

19 Q. I said who shot you?

20 A. Where that question come from like?

21 Q. All right. Do you remember sitting
22 down with me and deputy solicitor Bruce DuRant and
23 investigator Ray Haupt on August the 27th of 2015
24 in my office?

25 A. You say August 15th?

1 Q. August 27th. Do you remember sitting
2 down with us, you had your attorney with you at the
3 time. Her name was Kelly Solar?

4 A. You said my attorney?

5 Q. Do you remember sitting down with us
6 giving an audio recorded interview?

7 A. My attorney named Cochran.

8 Q. Right. But back before that
9 nevertheless do you remember sitting down with us
10 and talking to us about this case?

11 A. Talk to y'all.

12 Q. Yeah, you did. And during that meeting
13 do you remember saying that it was Calvin Brown who
14 shot you?

15 MR. ARCHER: Objection, leading him,
16 Your Honor. He needs to ask him who shot him, not
17 leading him saying was it Calvin Brown.

18 THE COURT: This is -- I assume you are
19 giving the substance of the conversation you are
20 asking about; is that correct?

21 MR. OSBORNE: That's correct, Your
22 Honor.

23 THE COURT: I believe 601?

24 MR. OSBORNE: 613.

25 THE COURT: 613(b) is the rule that

1 requires that if a witness does not acknowledge an
2 out of court statement previously made he has the
3 obligation to inform them of the substance of the
4 statement when and where and who it was to be made,
5 give them an opportunity to either admit or deny
6 the statement having been made. If they deny the
7 statement having been made then he would be allowed
8 to go forward and bring in extrinsic evidence to
9 prove that the statement was made.

10 So based on that I find it not to be
11 hearsay, not to be leading and I will allow him to
12 go forward and ask the question.

13 So my ruling is to overrule the
14 objection. You may proceed.

15 BY MR. OSBORNE:

16 Q. Thank you, Your Honor. And during that
17 August the 27th meeting when asked who shot you
18 didn't you say it was Calvin Brown who shot you?

19 A. What's up with the camera man? What's
20 with the camera?

21 Q. All right. And during that same
22 meeting on August the 27th didn't you say that
23 Calico came around the corner while you and
24 Christopher sat on a bench or sat by the building;
25 isn't that correct?

1 A. I don't know, man. I don't know.

2 Q. Not sure? Your Honor, at this time we
3 would like to play a clip from that meeting.

4 THE COURT: Has that been introduced
5 into evidence?

6 MR. OSBORNE: It has not been
7 introduced.

8 MR. DURANT: We have it marked as
9 State's Exhibit 153, Your Honor.

10 THE COURT: All right.

11 MR. ARCHER: I think we need to
12 authenticate, Judge.

13 MR. OSBORNE: Then I will lay some more
14 substance.

15 THE COURT: Okay.

16 BY MR. OSBORNE:

17 Q. In fact, Desmond, when I asked you is
18 there any doubt in your mind that Calico is the one
19 that shot you did you or did you not respond I know
20 for a fact it was him?

21 A. I don't recall.

22 Q. You don't recall. And during that same
23 meeting did you not speak about your car being
24 spray painted and how you believed it was the
25 Defendant who had spray painted your car?

1 A. Right.

2 Q. You did say that?

3 A. Talking about my car being spray
4 painted, yeah.

5 Q. Okay. So let's talk about that then.
6 When was your car spray painted?

7 A. I can't remember the exact date.

8 Q. Do you remember in that meeting telling
9 us it was sometime during your incarceration in
10 2013?

11 A. It was that year.

12 Q. It was that year. And I believe your
13 incarceration that time was because you shot your
14 brother, right?

15 A. Right.

16 Q. And you were in jail for about, what,
17 30 days or so before you bonded out?

18 A. Yeah.

19 Q. And during that 30-day period you
20 started to hear about Similar and what she was
21 doing, didn't you?

22 A. I guess so.

23 Q. You guess so. And you heard that she
24 was out cheating on you, didn't you?

25 A. I don't know about all that, man. I

1 ain't too much into that.

2 Q. Well, you did question Similar about it
3 when you got out, didn't you?

4 A. No.

5 Q. You never questioned her?

6 A. No.

7 Q. So she never told you I never had sex
8 with him?

9 A. She -- I don't know. I don't recall.
10 I don't recall.

11 Q. While talking about Calico?

12 A. You say what?

13 Q. While she was talking about Calico,
14 meaning that she said that I never had sex with
15 him? She never told you that?

16 A. Yes, she did say that before.

17 Q. Okay. What do you think now? You
18 think she had sex with him or not?

19 A. I don't know. I don't care.

20 Q. You believed her back then though,
21 didn't you?

22 A. Believed what?

23 Q. That she never had sex with him?

24 A. I don't know.

25 Q. What's that? That's what you told

1 Detective Richard Holmes, right?

2 A. What?

3 Q. They never had sex. They never got
4 together, that's what you said, right?

5 A. Right.

6 Q. Right. Okay. Okay. And Similar and
7 you have a child together; isn't that correct?

8 A. Yeah.

9 Q. Diamante?

10 A. Yes.

11 Q. That's your daughter?

12 A. Yes, sir, yeah.

13 Q. Okay. What was spray painted on your
14 car?

15 A. Some stars.

16 Q. Stars?

17 A. Yeah.

18 Q. Five point stars; is that right?

19 A. Right.

20 Q. Let's back up just a second. In fact,
21 I think Similar told you that she told Calico to
22 stop texting her because she didn't need a friend;
23 isn't that what you said?

24 A. I don't recall.

25 Q. Okay. All right. But you were sitting

1 next to your friend P Roach, Christopher Victoria,
2 when the shooting started?

3 A. Right.

4 Q. That's right?

5 A. Right.

6 Q. And after the first couple of shots you
7 got up and you ran, didn't you?

8 A. Right.

9 Q. And then there were more shots, right?

10 A. Right.

11 Q. And that's when you were shot; is that
12 correct?

13 A. Right.

14 Q. Now, when you sat down with Detective
15 Holmes on the night of the shooting he asked you if
16 you knew who shot you and you told him that you
17 didn't; isn't that right?

18 A. Right.

19 Q. But that was a lie, wasn't it?

20 A. I don't know.

21 Q. That's what you told us on August the
22 27th, isn't it? In fact, you said that you were
23 mad at Detective Holmes, weren't you?

24 A. Mad for what reason?

25 Q. Say again?

1 A. What was I mad for?

2 Q. Well, you said you were mad at
3 Detective Holmes because he wouldn't let you go
4 home? You said you were mad at Detective Holmes
5 because you wanted your stuff back? Do you
6 remember that?

7 A. Right.

8 Q. You did say that?

9 A. I don't know about mad part.

10 Q. I mean in all fairness to you, you were
11 being interviewed on the night that you had been
12 shot; isn't that right?

13 A. Right.

14 Q. And you said that you were -- you told
15 us that you were in pain; isn't that right?

16 A. In pain?

17 Q. You were in pain from being shot,
18 that's why you wanted to go home; isn't that right?

19 A. That night, yeah.

20 Q. Okay. So that's why you were mad,
21 that's why you didn't want to identify the
22 Defendant, isn't that what you told us?

23 A. No.

24 Q. You didn't tell us that?

25 A. No.

1 Q. Okay. You got arrested on June
2 the 5th, didn't you?

3 A. Right.

4 Q. Because you sold some crack cocaine to
5 an undercover officer, didn't you?

6 A. Right.

7 Q. And you got arrested the next day,
8 right?

9 A. Right.

10 Q. And when you were arrested, I am now
11 showing you State's Exhibit 79 right here. You got
12 arrested with that, right?

13 A. Right.

14 Q. Right. Good news is, Desmond, that
15 wasn't the gun used in the shooting. But you know
16 that, don't you? Don't you?

17 A. Yeah.

18 Q. Because you didn't have a gun that
19 night, did you?

20 A. No.

21 Q. That we can agree on. All right. On
22 that -- you distributed to an undercover on the 4th
23 and then you were arrested on June the 5th, right?

24 A. Right.

25 Q. And when you were brought back in you

1 were interviewed again by Detective Holmes and this
2 time Detective Brown; is that correct?

3 A. Right.

4 Q. And they showed you a lineup then,
5 right?

6 A. Right.

7 Q. And you identified who? You don't
8 remember? You don't remember picking him out of
9 the lineup? Do you remember telling Detective
10 Holmes and Detective Brown on that day that you
11 wanted them to cut you loose? Let you go? Do you
12 remember that?

13 A. No.

14 Q. Do you remember Detective Holmes
15 telling you hey, man I can't make any deals with
16 you. I can't let you go. You are under arrest.
17 Do you remember that? Do you remember Detective
18 Holmes telling you it's all a process, I will relay
19 to them that you cooperated if you do, but I can't
20 do anything for you. Do you remember that?

21 A. Right.

22 Q. Right. That's correct. Okay. And you
23 got arrested and you went to jail. Beg the Court's
24 indulgence.

25 THE COURT: Yes, sir.

1 BY MR. OSBORNE:

2 Q. Okay. You wrote a letter while you
3 were in jail, do you remember that? Do you
4 remember writing a letter while you were in jail
5 saying that?

6 A. Notarize it, yes.

7 Q. You got it notarized and everything.
8 Do you remember that?

9 A. Right.

10 Q. Okay. I'm going to show you what's
11 already been marked and admitted as State's 60E.
12 Does that look familiar? Is that the letter you
13 wrote?

14 A. Yeah.

15 Q. That's it, right? Okay. Have you ever
16 seen 56C before? Ever seen that letter before?

17 A. No.

18 Q. No?

19 A. No.

20 Q. Are you sure?

21 A. I'm positive.

22 Q. But you wrote 60E, correct?

23 A. Right.

24 Q. Okay. I'm going to let you hold 60E.

25 Your Honor, may I approach? I want you to follow

1 along with me right where it says I only heard
2 shots, okay? See right there? That's your
3 handwriting so you follow along with me and you
4 tell me where I am messing it up beginning reading
5 from 56C. Okay. I only heard the shots and began
6 to run. While incarcerated at the ACDC I was
7 brought down to be questioned by the solicitor and
8 other detectives. During this interview I only
9 reiterated what I believe happened due to the
10 coercing of the detectives in previous interviews.
11 I only told the story of the shooting while adding
12 in the name of Calico not because I saw him do the
13 shooting, but because that's who the police led me
14 to believe did the shooting. Sound familiar? Word
15 for word, isn't it?

16 A. Yeah.

17 Q. Yep. You came up with those words on
18 your own? You've never seen this before, right?
19 That's quite a coincidence. So while you were in
20 jail you were never approached by Seth Smith,
21 Davontay Bryant, Terrence Gregory, Claunce Mazyck,
22 Devin Middleton?

23 A. No.

24 Q. Nope? Well, that's good. No further
25 questions.

CROSS-EXAMINATION

BY MR. ARCHER:

Q. Mr. Lewis, on the night of the shooting you told police, did you not, that you could not identify who shot you?

A. Right.

Q. You did. And you told them that on a number of other occasions too, did you not?

A. Say what?

Q. You told them not just on the night of the shooting, but on other occasions you told them you could not identify the person who shot you?

A. Right.

Q. Okay. That's true, right? You did tell them more than once you could not identify that person?

A. Right.

Q. Okay. And on February 23rd -- 66? Where is it. 68. On February 23rd you wrote what's been identified here as 60E, did you not, that letter?

A. Yeah.

Q. Okay. Now, are you familiar with what the letter says?

A. (Indicating.)

Q. Doesn't it say I only told that it was Calico not because I saw him did the shooting, but because the police led me to believe he did. I honestly don't know who shot me on May 22nd. Says that, doesn't it? And you swore that was true?

A. Yeah.

Q. Is it true?

A. What?

Q. Huh?

A. What are you saying it was true?

Q. This statement you gave, is it a true statement?

A. I write it.

Q. Yes, you wrote it. And you swore that it was true, right?

A. Yeah.

Q. Are you are saying now it is not true? Or is it true?

A. I write the letter -- man, I write the letter. We just going on this. I don't get it.

Q. You admit you wrote the letter and you said all of these things?

A. Right.

Q. Okay. Did you tell an officer -- let me look at something here. You talked to different

1 officers the night of the shooting, didn't you?

2 A. No.

3 Q. You didn't talk to officers the night
4 you got shot?

5 A. When they take me to the hospital.

6 Q. Did you -- do you remember telling an
7 officer, talking to an Officer August that night?

8 A. August of what night?

9 Q. The night you got shot?

10 A. The night I got shot they take me to
11 the hospital. I tell them I don't know who shot me
12 and I leave that night.

13 Q. Okay. Do you remember telling them
14 that you were walking down the street and two black
15 males shot at you?

16 A. I don't remember.

17 Q. You don't know?

18 A. I don't recall.

19 Q. You don't recall, okay. Is it -- did
20 two black males shoot at you?

21 A. No.

22 Q. No? It is no, they didn't?

23 A. They didn't.

24 Q. Did two black males -- were two black
25 males involved in shooting at you? I am not trying

1 to trick you up or anything, I just want to know
2 what you remember.

3 A. I just said no.

4 Q. Just said no, okay. I got no other
5 questions, Your Honor.

6 THE COURT: Ask the attorneys to
7 approach briefly.

8 (Off-the-record conference.)

9 THE COURT: Excuse us while we have a
10 conference.

11 (Thereupon, the judge and attorneys
12 left the courtroom for a conference.)

13 THE COURT: Sir, you may step down.
14 State may call its next witness.

15 MR. OSBORNE: Thank you, Your Honor.
16 State calls Similar McClary.

17 THE COURT: Come forward, ma'am.

18 SIMILAR MCCLARY

19 having been duly sworn, testifies as follows:

20 THE CLERK: Please state your name and
21 spell your last name for the record.

22 THE WITNESS: S-I-M-I-L-A-R,
23 M-C-C-L-A-R-Y.

24 THE COURT: Counsel, your witness.

25 DIRECT EXAMINATION

1 BY MR. OSBORNE:

2 Q. Okay, Ms. McClary. What's your full
3 name?

4 A. Similar McClary.

5 Q. And how old are you?

6 A. Twenty-eight.

7 Q. And where are you from?

8 A. North Charleston.

9 Q. Okay. Where did you go to school?

10 A. Stall.

11 Q. All right. What are some of the --
12 where do you work now?

13 A. Wal-Mart.

14 Q. Where have you worked prior to
15 Wal-Mart?

16 A. Circle K and Wal-Mart.

17 Q. You have been at Wal-Mart for a while,
18 right?

19 A. Um-hmm.

20 Q. And you are going to have to answer
21 yes. She is typing it down.

22 A. Okay.

23 Q. Are you married?

24 A. No, sir.

25 Q. Do you have any children?

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A. Yes.

Q. And who were your kids?

A. Diamante and Terrell Benjamin.

Q. Diamante, how old is she now?

THE COURT: Ma'am, I am going to ask you to roll forward and get closer to the microphone.

A. She will be seven next month.

Q. It's got to project. Get as close to the mic as you can. All right. You said she will be seven this month?

A. Next month.

Q. And Terrell is?

A. One.

Q. He's one. Okay. Who is Diamante's father?

A. Desmond Lewis.

Q. And what's Desmond's nickname?

A. Fats.

Q. How did you meet Desmond?

A. On the projects.

Q. Which one?

A. East side.

Q. Johnson?

A. Johnson, yes.

1 Q. And that would have been around what
2 year?

3 A. 2009.

4 Q. Okay. Fair to say he's an east side
5 guy?

6 A. Yeah.

7 Q. And do you know the Defendant?

8 A. Yeah.

9 Q. And when did you meet him?

10 A. High school.

11 Q. You knew each other back then?

12 A. Um-hmm.

13 Q. Did y'all have a relationship in high
14 school?

15 A. Not a relationship, but yeah.

16 Q. Well, bad question. You weren't like
17 boyfriend and girlfriend. Just friends?

18 A. Yes.

19 Q. What his nickname?

20 A. Calico.

21 Q. And fair to say he's a west side guy?

22 A. Yeah.

23 Q. Okay. Diamante, when was she born?

24 A. 2010.

25 Q. Okay. After Diamante's birth, maybe

1 even a little bit before that did you and Desmond
2 live together?

3 A. After.

4 Q. After?

5 A. Um-hmm.

6 Q. Where did you live?

7 A. Hub Village.

8 Q. That's over off Cosgrove?

9 A. Um-hmm.

10 Q. So is it accurate to say that you and
11 Desmond and Diamante all kind of lived as a family?

12 A. Yeah.

13 Q. And how long did that last with y'all
14 being in Hub Village?

15 A. Eight months to a year.

16 Q. Okay. Where did you move to when you
17 moved?

18 A. Downtown. Alexander Street.

19 Q. This was with your cousin? What's her
20 name?

21 A. Ramona Green.

22 Q. Where did Desmond move to?

23 A. His mother.

24 Q. Do you recall sometime in the summer of
25 2013 Desmond getting arrested?

1 A. Um-hmm.

2 Q. And what happened with you in reference
3 to the Defendant while Desmond was in jail?

4 A. We hook up.

5 Q. Okay. Where did you run into him at?

6 A. On Alexander.

7 Q. Okay. When you ran into him did you
8 have his phone number at the time?

9 A. No, we exchanged phone numbers.

10 Q. Okay. Y'all talked a few times?

11 A. Yeah.

12 Q. Not trying to get into your business,
13 but did y'all have sexual relations a couple of
14 times?

15 A. Yes.

16 Q. How many times?

17 A. I don't know.

18 Q. Don't know. When Desmond got out of
19 jail did he ask you about whether you did have an
20 affair with the Defendant?

21 A. Yes.

22 Q. And how did he hear about it?

23 A. I guess the streets.

24 Q. He'd been in jail?

25 A. Yeah. Streets talk.

1 Q. Streets talk in jail?

2 A. Um-hmm.

3 Q. And what did you tell him?

4 A. No.

5 Q. Lied to him?

6 A. Yep.

7 Q. Well, let me ask you when Desmond -- I
8 think I know the answer, but when he asked you if
9 you were having an affair with the Defendant was he
10 happy?

11 A. No.

12 Q. He was mad?

13 A. Upset.

14 Q. Okay. When he got out of jail do you
15 recall him spending the night with you at your
16 cousin's house on Alexander Street?

17 A. Yes.

18 Q. And he would have got out of jail maybe
19 around July, middle of July?

20 A. Um-hmm.

21 Q. And when he woke up the next morning
22 what did he notice had happened to his car?

23 A. Spray paint. The car was spray
24 painted.

25 Q. And he had that car parked right

1 outside your cousin's house?

2 A. Um-hmm.

3 Q. What kind of car was he driving then?

4 A. Marquis or Victoria, a red one.

5 Q. Grand Marquis maybe?

6 A. Yeah, one of those.

7 Q. What did he say?

8 A. Upset. He called the -- made a police
9 report and then he made a statement about Calvin
10 spray painting the car.

11 Q. Not to the police?

12 A. No.

13 Q. To you?

14 A. Yes, he was furious, yes, he did.

15 Q. He was furious.

16 A. Um-hmm.

17 Q. He liked that car, it was his car?

18 A. Yeah.

19 Q. All right. Now, after that is it fair
20 to say that your relationship sort of got rocky?
21 Were y'all sort of split?

22 A. Yeah.

23 Q. You still talked to him because you
24 have Diamante together?

25 A. Yes.

1 Q. Or do you?

2 A. We do.

3 Q. Okay. Did you and the Defendant
4 continue your relationship after that?

5 A. No.

6 Q. Sure about that?

7 A. Positive.

8 Q. Okay. Tell us about your encounter
9 with the Defendant on Mother's Day, May the 10th,
10 2015 where you ran into him.

11 A. In the taxicab going to pick up a gift
12 for my friend. We were in the same taxicab.

13 Q. You ran into each other, flagged down
14 the same cab?

15 A. Yeah.

16 Q. That was in Bayside I think?

17 A. Yep.

18 Q. Showing you what's already been marked
19 and admitted as State's 92. That you?

20 A. Yep.

21 Q. That's Calvin?

22 A. Yep.

23 Q. You saw this post on Facebook
24 afterwards?

25 A. Yep.

1 Q. What did you think about that?

2 A. It was just a post.

3 Q. Just a post?

4 A. Yeah.

5 Q. Okay. This would have been about 12
6 days before Desmond was shot; is that right?

7 A. Yep.

8 Q. I'm going to show you State's 93. This
9 has already been marked and admitted. You know the
10 Defendant's Facebook name was Spring Street MBMB?

11 A. Yep.

12 Q. You're Similar McClary?

13 A. Yep.

14 Q. Okay. Let's start with the first one.
15 May the 20th, that's actually May the 19th, UTC,
16 you probably don't know is four hours faster than
17 us. Got to take four away. So on May the 19th he
18 messaged you. What did he message you?

19 A. Face down in ya phone lol.

20 Q. What's he mean by that?

21 A. I have no idea. I still don't know
22 what he mean by that.

23 Q. You didn't hook up with him that night?

24 A. No.

25 Q. And now on May the 22nd our time at

1 11:43 p.m. what does he say?

2 A. Call me bra.

3 Q. And Tyreik was shot on May the 22nd;
4 isn't that correct?

5 A. Um-hmm.

6 Q. Just three hours after he shot Desmond
7 and Tyreik he messaged you call me bra?

8 A. Um-hmm.

9 Q. Thirty seconds later you say what's the
10 number?

11 A. Yep.

12 Q. Then he gives you this 8874 number?

13 A. Yep.

14 Q. I take it you called him?

15 A. Yep.

16 Q. What phone number did you use?

17 A. I have no idea, but the number I had at
18 that time.

19 Q. Was it Ramona's number, [REDACTED]-7106?

20 A. Probably was.

21 Q. Okay. You spoke to him?

22 A. Yep.

23 Q. What did he say?

24 A. Tell your baby daddy I had nothing to
25 do that. He keep repeating it, like keep

1 repeating, every phone call he keep repeating don't
2 call my name out because I ain't had nothing to do
3 with that.

4 Q. Wasn't it more like tell your baby
5 daddy to keep his mouth shut?

6 A. Maybe it was, but he just keep
7 repeating it.

8 Q. And you relayed that message?

9 A. No..

10 Q. Why not?

11 A. I don't know.

12 Q. There was a little more to the phone
13 call, wasn't there?

14 A. No..

15 Q. Why wouldn't you relay the message?

16 A. To be honest I don't know what them two
17 got going on.

18 Q. Going on for a while?

19 A. Yes, sir, it has.

20 Q. And they don't like each other at all,
21 do they?

22 A. No.

23 Q. They are shooting at each other?

24 A. I have no idea.

25 Q. You know they don't like each other?

1 A. Yep.

2 Q. Because of you?

3 A. Ain't because of me, but okay.

4 Q. They didn't have any problems before
5 that. It's not your fault. I am not saying that.
6 But that's what started it, right?

7 A. If y'all say so.

8 Q. Okay. Now, you end up speaking to
9 Desmond, did you not?

10 A. Um-hmm.

11 Q. About this?

12 A. About what?

13 Q. The shooting?

14 A. Yeah.

15 Q. The next day?

16 A. Um-hmm.

17 Q. And when he told you that he had been
18 shot what was your reaction? Do you remember
19 giggling?

20 A. Yeah.

21 Q. Laughing? You felt it was funny?

22 A. Not that he was shot, but yeah, because
23 he mentioned Calvin's name.

24 Q. I want to talk about that phone call
25 one last time where you spoke to the Defendant on

1 the night of the shooting.

2 A. Okay.

3 Q. Do you remember speaking to Detective
4 Baily and Detective Holmes?

5 A. Um-hmm.

6 Q. On June the 13th?

7 A. Yep.

8 Q. And they asked you over and over and
9 over again if you spoke to the Defendant at all on
10 the night of the shooting, didn't they, and you
11 told them you did not, correct?

12 A. Yes.

13 Q. And now you're saying all he told you
14 was --

15 A. That's all he tell me.

16 Q. Tell your baby daddy I didn't do it.

17 MR. OSBORNE: Okay. No further
18 questions.

19 THE COURT: Mr. Archer, your witness.

20 CROSS-EXAMINATION

21 BY MR. ARCHER:

22 Q. You talked to Calvin on the night of
23 the shooting. Were you aware of the shooting at
24 that time?

25 A. Not at that time, I wasn't, not that a

1 child was involved, no.

2 Q. You knew a child was involved?

3 A. No, I did not, not until the very next
4 day after the alert came to my phone.

5 Q. You knew Desmond had been shot?

6 A. Not until -- yeah, a little after I
7 talked to him.

8 Q. After you talked to who?

9 A. Calvin.

10 Q. Okay. Where he kept saying he didn't
11 have anything to do with it?

12 A. He told me tell your baby daddy don't
13 call my name, I ain't had nothing to do with that.

14 Q. What was your response when he said he
15 didn't have anything to do with that?

16 A. Asked him what was he talking about.

17 Q. What he was talking about?

18 A. What he was talking about.

19 Q. What did he say?

20 A. He just keep repeating the same thing.

21 Q. Didn't have anything to do with it?

22 A. Um-hmm.

23 Q. Okay. Desmond didn't like Calico worth
24 a damn, right?

25 A. Yep.

1 Q. He did? He hated him, is that a fair
2 way to say it?

3 A. Yes, that's a fair way to say it.

4 Q. And he didn't like him to the point he
5 would like to get even with him for whatever he
6 thought he had done wrong to him, right?

7 A. Yes, sir.

8 Q. Okay.

9 MR. ARCHER: No other questions.

10 THE COURT: Redirect?

11 REDIRECT EXAMINATION

12 BY MR. OSBORNE:

13 Q. Goes both ways, doesn't it?

14 A. Um-hmm.

15 Q. What's that?

16 A. What?

17 Q. I said it goes both ways? He did not
18 like him either?

19 A. Yeah both, ways.

20 Q. Both ways.

21 A. Um-hmm.

22 MR. OSBORNE: No further questions.

23 THE COURT: Anything further, Mr.

24 Archer?

25 MR. ARCHER: Nothing, Your Honor.

1 THE COURT: You may step down, ma'am.
2 Wish to excuse the witness?

3 MR. OSBORNE: Yes, Your Honor.

4 THE COURT: Any objection?

5 MR. ARCHER: No objection.

6 THE COURT: You are free to leave the
7 courthouse. Thank you very much. State may call
8 its next witness.

9 MR. OSBORNE: State calls Investigator
10 Ray Haupt.

11 RAYMOND HAUPT

12 having been duly sworn, testifies as follows:

13 THE CLERK: Please state your first and
14 last name and spell your last name.

15 THE WITNESS: Raymond Haupt, H-A-U-P-T.

16 THE COURT: Your witness.

17 DIRECT EXAMINATION

18 BY MR. OSBORNE:

19 Q. Thank you, Your Honor. Investigator
20 Haupt, where do you currently work?

21 A. Ninth Circuit Solicitor's Office.

22 Q. Okay. What do you do there?

23 A. I'm an investigator.

24 Q. How long have you worked there?

25 A. For three years.

1 Q. Tell the jury what does an investigator
2 do?

3 A. Role varies depending on the case that
4 we get. But main thing that we do is we request
5 all reports and all the evidence that an agency has
6 as soon as they make an arrest and we receive the
7 case. I then review everything. Read all the
8 reports, go through the evidence, see if there is
9 anything missing, see if there is anything that we
10 need to or we feel that we need to gather
11 ourselves. We can issue subpoenas to the jail to
12 get jail logs, video visits, the logs, recordings
13 from those visits. We can issue search warrants to
14 different businesses or other agencies. And we
15 just prepare the case for trial.

16 Q. Okay. Now, sometimes, you know, I'll
17 ask you to do some things for us that help prepare
18 for trial; is that correct?

19 A. Correct.

20 Q. And in this case I asked you to do a
21 lot of things, right?

22 A. Right.

23 Q. And one of the things I asked you to do
24 is if you could review some of the surveillance
25 footage from the city surveillance cameras,

1 correct?

2 A. Correct.

3 Q. Kind of split it up, you watched a lot,
4 correct?

5 A. Right, majority of it, yes.

6 Q. And if you saw an image you came back
7 and watched it again. What were you looking for?

8 A. Anything that stood out for a potential
9 suspect.

10 Q. Did you see anything of interest while
11 you were watching?

12 A. I saw all sorts of things, lot of
13 people walking around, riding bicycles, going to
14 the store. Just hanging out on the corners. But
15 nothing that really stood out as a potential
16 suspect.

17 Q. Okay. Now, during the course of this
18 investigation did you have the occasion to speak to
19 an individual by the name Danielle Alston?

20 A. I did.

21 Q. Okay. Your Honor, may I approach?

22 THE COURT: You may.

23 BY MR. OSBORNE:

24 Q. This has been marked for ID before.

25 This is State's Exhibit's 148. Can you tell me if

1 you recognize that individual?

2 A. I do.

3 Q. Who is that?

4 A. Danielle Alston.

5 Q. Okay. Now, how did that individual's
6 name come up through your investigation with the
7 case?

8 A. After speaking with numerous
9 individuals, potential witnesses, the name Danny
10 Alston came up a lot in relation to the Defendant
11 having a possible baby mama who lived on Chapel
12 Street.

13 Q. And then you were able to check
14 standard search engines and get this person's name?

15 A. Correct.

16 Q. Did you have the occasion to speak to
17 her?

18 A. I did.

19 Q. And in person or over the phone?

20 A. Just over the phone.

21 Q. And what number did she call you from?

22 A. I believe it's [REDACTED]-4139.

23 Q. And did that number pop out to you in
24 any way in the investigation?

25 A. It did.

1 Q. In what way?

2 A. On the Defendant's call detail records
3 there were multiple times where that phone number
4 appeared.

5 MR. OSBORNE: Your Honor, may I
6 approach?

7 THE COURT: You may.

8 BY MR. OSBORNE:

9 Q. Okay. Showing you what's been marked
10 as 95A. Can you take a look at that and tell me if
11 you recognize it?

12 A. I do.

13 Q. What is that?

14 A. That's a printout of the call detail
15 records for the Defendant, Calvin Brown.

16 MR. OSBORNE: Your Honor, at this time
17 we would seek to admit the call detail records,
18 95A, into evidence.

19 THE COURT: Any objection?

20 MR. ARCHER: No objection.

21 THE COURT: Without objection they will
22 be admitted as they are marked. You may proceed.

23 (STATE'S EXH. 95A in evidence.)

24 BY MR. OSBORNE:

25 Q. Can you see that okay?

1 A. Yes.

2 Q. All right. Now, I notice that there
3 are names over here. These names didn't come auto
4 filled from Sprint?

5 A. No, they did not.

6 Q. How were these names put in here?

7 A. Just through our investigation, go back
8 to the reports, interviewing new potential
9 witnesses. As we would get a number we would add
10 them to the spreadsheet.

11 Q. Okay. So I want to bring it back a
12 second. It gets hard to see as I come out. But
13 let's look here and this is going to be May the
14 22nd, that's the day of the shooting, right?

15 A. Correct.

16 Q. And we have some communication here
17 with this person you are talking about Danielle
18 Alston, is that fair to say?

19 A. Correct.

20 Q. More communication?

21 A. Yes.

22 Q. These zeros up here, what does that
23 indicate when you have a zero digit by a cell tower
24 record?

25 A. It's a text message.

1 Q. Because they don't register under
2 Sprint, these are cell tower usage?

3 A. That's correct. If it's a phone call
4 should have a time.

5 Q. Okay. Then we have Shapoleon who
6 testified that was her number, we have
7 communication with her?

8 A. Correct.

9 Q. Back to Danielle. And looks like is it
10 fair to say that last communication with Danielle
11 was around this time, 3:00 or 4:00?

12 A. That's what it looks like.

13 Q. No more communication?

14 A. Correct.

15 Q. Now, let's explain this here for a
16 second what you have done here with these yellow
17 indications. With Sprint how do they report text
18 messages? What time zone?

19 A. Central time zone.

20 Q. Okay. So when we have -- it says 1926
21 here, is this actually 2026, 8:20?

22 A. Yes, we are an hour behind, so an hour.

23 Q. So this is actually 8:20 we have a text
24 to Shapoleon, 8:34 and this is an unidentified
25 number; is that fair to say?

1 A. Correct.

2 Q. And then the red line indicates the
3 shooting?

4 A. Yes.

5 Q. And then after the shooting we have a
6 phone call to?

7 A. Devin Middleton.

8 Q. Looks like that would be four minutes
9 after the shooting?

10 A. Correct.

11 Q. Is that fair?

12 A. Yes.

13 Q. Okay. So around three or 4:00 we stop
14 seeing communications with the Danielle Alston
15 phone number?

16 A. Correct.

17 Q. Is that fair?

18 A. Yes.

19 Q. Okay. Let's go look at State's 81. On
20 State's 81, it's already been marked and admitted,
21 did you have a potential residence for Danielle?

22 A. Yes.

23 Q. And what street did she live on?

24 A. Chapel Street.

25 Q. Just go ahead and mark where Chapel

1 Street is.

2 A. (Witness complies with request.)

3 Q. And the surveillance cameras that you
4 looked at, go ahead and just circle those.

5 A. All of them?

6 Q. Yep.

7 A. Okay.

8 (Witness complies with request.)

9 Q. And we do not see any surveillance
10 video on Chapel?

11 A. That's correct.

12 Q. And that's where you had Danielle
13 living?

14 A. Yes.

15 Q. Back in 2015.

16 A. Correct.

17 Q. Okay. And communication with her
18 stopped around three or 4:00?

19 A. Correct.

20 Q. Okay.

21 MR. OSBORNE: No further questions.

22 THE COURT: Mr. Archer, your witness.

23 MR. DURANT: Your Honor, we do have
24 other questions.

25 THE COURT: Okay.

1 MR. OSBORNE: Forget about the Desmond
2 Lewis issue.

3 BY MR. OSBORNE:

4 Q. The Desmond Lewis issue. When we sat
5 down, do you recall sitting down with Desmond
6 Lewis?

7 A. I do.

8 Q. And what was the date on that?

9 A. August 27th, 2015.

10 Q. Okay. And do you recall, I think you
11 were the one who audio recorded it; is that fair to
12 say?

13 A. That's correct.

14 MR. OSBORNE: Your Honor, may I
15 approach?

16 THE COURT: You may approach.

17 BY MR. OSBORNE:

18 Q. I am showing you what's been marked as
19 State's Exhibit 153, can you at look at that?

20 A. Okay.

21 Q. And what is that?

22 A. That's the recording of the interview
23 with Desmond Lewis.

24 Q. All right. Who all was present during
25 the interview?

1 A. Myself, you, Deputy Solicitor DuRant,
2 his attorney and Desmond Lewis. I believe there
3 was a city officer there as well.

4 Q. Okay. Beg the Court's indulgence.

5 THE COURT: Yes, sir.

6 (Off-the-record conference.)

7 BY MR. OSBORNE:

8 Q. Okay. This CD right here, have you
9 altered it in any way?

10 A. No, I did not.

11 Q. This is about over an hour long; fair
12 to say?

13 A. Correct.

14 Q. Okay. And his attorney you said was
15 there when this CD was made?

16 A. Correct.

17 Q. Okay. Your Honor, at this time we
18 would seek to play clips instead of playing the
19 whole hour from 153. But we are going to offer 153
20 into evidence.

21 THE COURT: Objection?

22 MR. ARCHER: Yes, Your Honor, probably
23 have to do it outside the presence of the jury.

24 THE COURT: All right. Ladies and
25 gentlemen of the jury, I will ask you to step back

1 to the jury room. Don't begin discussion until I
2 tell you to as always.

3 (Thereupon, the jury exited the
4 courtroom at 4:19 p.m.)

5 THE COURT: Yes, sir.

6 MR. ARCHER: If he is introducing it to
7 impeach Desmond Lewis I think he has to have
8 presented to Desmond the specific statement and ask
9 him whether he admitted it or --

10 THE COURT: I think he says he is not
11 playing the whole thing. What he intends to do is
12 to play clips from that interview. I suspect,
13 correct me if I'm wrong, you're intending to play
14 the matters that you asked him about that he did
15 not admit.

16 MR. OSBORNE: That is correct, Your
17 Honor. I have kind of figured this was going to go
18 sideways so I brought it up into four different
19 clips. The first clip deals with who shot him.
20 That's the gist of that clip. He did not answer
21 the question do you remember sitting down with me,
22 Bruce DuRant, Investigator Ray Haupt and your
23 attorney August 27th. Got no response. And I did
24 not get a response to and during that meeting did
25 you say it was Calvin Brown AKA Calico who shot

1 you. So clip one would address impeaching him on
2 that -- those questions.

3 MR. ARCHER: He says he didn't respond.
4 He didn't admit or deny.

5 THE COURT: Yes, sir. The law says
6 that it has to be an admission or it is a denial.

7 MR. ARCHER: All right.

8 THE COURT: There's cases on the fact
9 that people say they did not remember, they don't
10 recall. Those are not admissions that they have
11 made the prior statements. And that does allow
12 extrinsic evidence to come in it's my understanding
13 of the law.

14 MR. ARCHER: Okay.

15 MR. OSBORNE: Clip two will deal with
16 the question which he did not admit to saying and
17 when asked is there -- when I asked is there any
18 doubt in your mind that Calico was the person who
19 shot you, you said I know for a fact it was him.
20 He did not respond affirmatively to that question.

21 THE COURT: Stand up, Mr. Archer. If
22 you are going to address this Court you are going
23 to get on two feet.

24 MR. ARCHER: Judge, I am experiencing
25 some dizziness. That's why I am sitting.

1 THE COURT: You can hold on to the
2 table if you would like.

3 MR. ARCHER: Okay. Truly I am having
4 some dizzy spells.

5 THE COURT: I understand. But you are
6 supposed to stand when you address the Court.

7 MR. ARCHER: I want to explain.

8 THE COURT: When you are talking to me
9 please stand. Hold on if you need so.

10 MR. ARCHER: Yes, sir.

11 MR. OSBORNE: As an example of the clip
12 I will not play clip three. I asked him about the
13 spray painting of the car. He admitted that he did
14 say that. I do not intend to play clip three.
15 Clip four deals with him being upset with Detective
16 Holmes and why he was upset with Detective Holmes
17 and why he did not identify him. I asked him was
18 it because you were in pain because you wanted your
19 stuff back. I did not get affirmatives on that. I
20 said the real reason was for that. That's what he
21 told us.

22 THE COURT: So what we are talking
23 about is that Rule 613 (b) says that extrinsic
24 evidence of a prior inconsistent statement by a
25 witness is not admissible until the witness is

1 advised of the substance of the statement, the
2 place where it allegedly was made, the person who
3 made it was given an opportunity to explain or deny
4 the statement.

5 If a witness does not admit that he has
6 made the prior inconsistent statement extrinsic
7 evidence of such statement is admissible.

8 That's the reason I overruled your
9 previous objection was that he has an obligation to
10 advise the witness of the substance of the
11 statement, the time and place it was made and the
12 person to whom it was made. He did that on those
13 issues. And the cases say unless the witness
14 admits having made that prior statement then he has
15 the right to bring in extrinsic evidence.

16 Where we are right now, though, is this
17 witness has identified that recording as a
18 recording of the statement that he was in
19 attendance at, that he participated in making the
20 recording. Your previous objection was as to the
21 authenticity of the recording.

22 So we are dealing with the authenticity
23 of the recording at this point in time. Let's get
24 over that hump and then if you want to do whether
25 or not it comes in we will talk about whether

1 Rule 613(b) applies or not.

2 MR. ARCHER: Yes, sir, Judge. I really
3 tell you I am really so dizzy I am having trouble
4 concentrating.

5 THE COURT: Have a seat then. Don't
6 sit on the front of the desk. I am afraid you will
7 fall off. Now, sir.

8 MR. ARCHER: Yes, sir.

9 THE COURT: On authenticity, I will be
10 happy to hear from you on authenticity.

11 MR. ARCHER: I guess he can
12 authenticate it. I'm not sure I am in a condition
13 to proceed right at the moment, Your Honor, to be
14 honest with you.

15 THE COURT: Are you asking me to
16 adjourn the hearing?

17 MR. ARCHER: Maybe until tomorrow
18 morning in hopes I will be in better shape. But I
19 have had sudden dizzy spells here. I hate to say
20 it, but I'm really having trouble concentrating on
21 what you are asking me and what's being said here.

22 THE COURT: All right. I will continue
23 the case until the morning then.

24 MR. ARCHER: I apologize, Your Honor.

25 THE COURT: Bring the jury in. I want

1 to get this done quickly so you might get a little
2 help with whatever you need to do. I need to bring
3 the jury in to dismiss them. I'm trying to do it
4 as quickly as we can so you can get some assistance
5 if you need it.

6 MR. ARCHER: I may go by the VA.

7 THE COURT: Okay, thank you.

8 (Whereupon the jury entered the
9 courtroom at 4:25 p.m.)

10 THE COURT: The jury has returned to
11 the courtroom. Ladies and gentlemen, this matter
12 is going to take a little bit longer than I thought
13 it was going to take. I know we are at 4:30 this
14 afternoon so rather than have you sit here and then
15 by the time we get finished it's after five I am
16 going to send you home for the evening.

17 I will ask that you be back in the jury
18 room at 9:00 in the morning. We should be in a
19 position to resume the case at that time. I don't
20 make promises to juries, but it appears the case
21 may wrap up sometime tomorrow just to let you know
22 that. I can't guarantee that because issues do
23 come up, things take longer than we think
24 sometimes. But it should be either tomorrow,
25 definitely if it does go over we will be done on

1 Friday for sure. So just to let you know that we
2 are getting close to the point where I can tell you
3 the case will be ending in the not too distance
4 future.

5 But at any rate 9:00 in the morning.
6 You know my instructions when you leave the
7 courthouse. I will be checking on those in the
8 morning so I hope you have a good evening. You are
9 free to go at this time.

10 (Thereupon, the jury exited the
11 courtroom at 4:27 p.m.)

12 THE COURT: I will caution the witness
13 not to discuss his testimony. We will resume with
14 you on the stand at 9:00. Court is adjourned until
15 9:00 in the morning.

16 MR. ARCHER: Your Honor, I intend to go
17 from here to the VA hospital. I'm a veteran.

18 THE COURT: Okay.

19 MR. ARCHER: They will check me out.
20 If something comes up as a result of that
21 examination is there a number I can call and notify
22 somebody?

23 THE COURT: You can call Mr. Osborne.
24 I know he has my e-mail address. I'm sure he can
25 communicate with me.

1 MR. ARCHER: Okay. And I apologize,
2 but I am really swimming.

3 THE COURT: I want you to go get
4 checked out. Good luck, sir.

5 (These proceedings were adjourned at
6 4:28 p.m., November 29, 2017, Charleston County,
7 South Carolina.)
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1 (The following proceedings were held
2 November 30, 2017, Charleston County, South
3 Carolina, @ 9:08 a.m.)

4 THE COURT: We are on the record in the
5 case of State of South Carolina versus versus Mr.
6 Brown. Mr. Brown, I would assume you were informed
7 of Mr. Archer's condition; is that correct?

8 THE DEFENDANT: No, sir.

9 THE COURT: Let me tell you the
10 information that I have received. My understanding
11 was that he went to the hospital yesterday. He
12 went through a series of tests yesterday evening
13 and I think that went on into the evening, did it
14 not?

15 MR. OSBORNE: That's correct, Your
16 Honor.

17 THE COURT: He was released at some
18 point in time during the night and is currently at
19 home with his daughter. He and his doctor agree
20 that he can finish the case, but they have told him
21 to rest today. He can start in the morning. So
22 what we are going to do at this point in time is I
23 am going to give the jury some instructions, go
24 over some matters with them, and let them go home
25 for the remainder of the day. We will resume the

1 trial in the morning.

2 So do you understand what we are doing?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And I would assume at some
5 point in time during the day you will hear from Mr.
6 Archer about his situation. But my understanding
7 is he is with his daughter, he is resting according
8 to doctor's orders at this time. Any questions you
9 have of me at this time?

10 THE DEFENDANT: No, sir.

11 THE COURT: Okay. I just wanted to be
12 sure you understand the situation. Let's bring the
13 jury in. Mr. Osborne, Mr. Brown, I do intend to
14 allow the jury today to elect their foreperson. At
15 this time I will let them will do that. And I will
16 go over some things with them for tomorrow.

17 (Whereupon the jury entered the
18 courtroom at 9:11 a.m.)

19 THE COURT: The record will reflect the
20 jury has returned to the courtroom. I hope
21 everyone had a good evening. If any of you had any
22 difficulty in complying with my instructions during
23 our overnight break I would ask that you now please
24 stand. It appears that everyone has been able to
25 follow my instructions.

1 You may have noticed when you came to
2 the courtroom that Mr. Archer is not present at the
3 defense table. Yesterday afternoon when we broke
4 for the afternoon he was experiencing some
5 dizziness. He is a veteran so he went over to the
6 veterans hospital to be checked last night. They
7 did tests on him apparently into the evening. It
8 went on, the last report I got was at 10:30 last
9 night. I did get a report back this morning. He
10 was released from the hospital during the evening.
11 His doctor has asked that because of that condition
12 and how late things went last night that he not
13 work today, that he can start again on Friday
14 morning.

15 We still anticipate on ending the case
16 once we start on Friday morning. So be prepared to
17 do that. Let me explain what we are going to do to
18 be prepared so that we can get the case done
19 because on Monday you were not informed this case
20 would take longer than a week and so we are going
21 to try to get it presented to you during that
22 period of time.

23 When you go back in just a moment I'm
24 going to ask that you go through election of your
25 foreperson that I asked you to do and I will

1 explain that to you in just a moment. We will have
2 the clerk come in and take a lunch order for you
3 tomorrow so that when you come back and we start
4 work tomorrow that we will be able to go to work
5 and probably only break long enough for you to step
6 back to the jury room, have your lunch and come
7 back into the courtroom.

8 So we plan to serve lunch to you here
9 at the courthouse tomorrow so that we can get --
10 move the case along. I will tell you to tell
11 family or friends that we may work a little later
12 into the afternoon if it is necessary. So be
13 prepared for that. Be sure that people are aware
14 that that could occur as well. So I just wanted to
15 bring you up to date where you are.

16 So it is an unusual occurrence. I have
17 been doing this for about 14 years, this is the
18 first time I have had to do something like that.
19 And of course Mr. Archer was not feeling well
20 yesterday afternoon. It wouldn't be fair to go
21 forward with him in that condition. So hopefully
22 that will resolve itself. It appears that it has
23 and we will be able to start in the morning.

24 So at this point I'm going to ask you
25 to step back to the jury room. Let's see here, the

1 gentleman in the back in the black, I want you to
2 -- your name is.

3 JUROR NO. 72: Colin Davis.

4 THE COURT: And your number?

5 JUROR NO. 72: 72.

6 THE COURT: Okay. I am going to ask
7 that you serve as basically the referee during the
8 election. In other words, that you will be the
9 person kind of presiding over that election and
10 once it is completed if you will write the name and
11 the juror number of the person that's been elected
12 to serve as foreperson on a piece of paper. When
13 we bring you back into the courtroom I will ask you
14 to give me that and I will put that into the record
15 of the case. So if you will do that for me, I
16 would appreciate that.

17 Also, as I indicated the clerk will be
18 stepping in. He will be taking that lunch order
19 from you and he will get that straightened out.
20 Once we have completed those two pieces of
21 business, I will bring you back into the courtroom,
22 give you some instructions about overnight and
23 tomorrow and we will be releasing you for the
24 remainder of the day. So if you would please step
25 back to the jury room and take care of that

1 election for me.

2 (Thereupon, the jury exited the
3 courtroom at 9:16 a.m.)

4 THE COURT: We will be in recess. I'm
5 going to stay on the bench. The Defendant can stay
6 in the courtroom. I don't think this is going to
7 take very long.

8 (Brief pause.)

9 Bring the jury in.

10 (Whereupon the jury entered the
11 courtroom at 9:30 a.m.)

12 THE COURT: It's my understanding you
13 have elected a foreperson of the jury; is that
14 correct?

15 JUROR No. 292: Yes, Your Honor.

16 THE COURT: So you are Juror No. 292.
17 So in the future you will be seated in that first
18 seat when we come in. The alternate will be behind
19 you and of course everyone else can fill in.

20 Now, I want to point out one thing to
21 you. I noticed Juror No. 346 has an appointment
22 after work hours tomorrow evening. Sir, we are
23 going to allow you to stay on the jury. We will
24 see how it works out. I don't know exactly the
25 timing of how things will fall. If it appears that

1 it's going to be a problem, then I would consider
2 doing something of the nature of replacing you
3 maybe with one of the alternates if that became
4 necessary. So I will ask you to stay on the jury
5 as we go forward and see how it works out.

6 JUROR NO. 346: I will see what I can
7 do about rescheduling it. I have a little bit of
8 time.

9 THE COURT: Okay. I understand. You
10 will let me know tomorrow if you have a problem. I'm
11 sure. Very good.

12 Now, in the morning the courthouse
13 opens at 8:30. So I'm going to ask you to arrive
14 as early as possible to get in so we will be here
15 before 8:30, but try to get here around 8:30. As
16 soon as all of the jurors are present I'm going to
17 have the attorneys and everyone else ready to go.
18 We will start maybe a little before 9:00 if I can
19 get everybody assembled and ready to go..

20 So if you could arrive here as soon as
21 after 8:30 as possible. Once we have everyone
22 present I will be convening court and we will be
23 proceeding. I want to thank you for your
24 cooperation thus far. You have been a very
25 cooperative group and I do appreciate it. And this

1 is a little bit of an unusual circumstance and I
2 appreciate your help in us working through this at
3 this time. So at this time you know my
4 instructions when you leave the courthouse. They
5 remain the same. They haven't changed. I will
6 check on that again in the morning. Again, be here
7 as early as possible and I will assure you we will
8 start as soon as we can and we will try to work as
9 efficiently as possible tomorrow to try to get
10 everything done. We want to be complete. We want
11 to be thorough and I also want to be as efficient
12 as we can be.

13 So thank you for your cooperation. At
14 this time you are free to go for the rest of the
15 day. In the morning we will start as soon as we
16 can. Thank you very much.

17 (Thereupon, the jury exited the
18 courtroom at 9:31 a.m.)

19 THE COURT: So everyone is aware, I
20 received a note after the election shown from
21 Juror 36. He said I have an appointment I cannot
22 reschedule at 7:00 p.m. on Friday. I have to leave
23 the building by 6:00 p.m. I will be glad to come
24 back late that night or over the weekend or Monday.
25 Thank you.

1 And that's what I was addressing with
2 him, but he apparently is going to try to rearrange
3 it if he can so we will see how that works out for
4 that juror. The note indicating Ms. Shepard's
5 election and that note will be made a part of the
6 record as a court exhibit.

7 We will be in recess until as close to
8 9:00 or around 8:30 as we can. I will ask that the
9 attorneys be available as soon after 8:30 as you
10 can get in the court room. I'm sure you will
11 inform Mr. Archer of that for me.

12 MR. OSBORNE: Yes, Your Honor.

13 THE COURT: If you would. And, Mr.
14 Brown, any questions you have of me at this time
15 concerning what we did this morning?

16 THE DEFENDANT: No, sir.

17 THE COURT: Okay. We will start in the
18 morning. Thank you very much.

19 (COURT'S EXH. 4-5 were marked for
20 identification.)

21 (These proceedings were adjourned at
22 9:33 a.m., November 30, 2017, Charleston County,
23 South Carolina.)
24
25

1 (The following proceedings were held
2 December 1, 2017, Charleston County, South
3 Carolina, @ 8:40 a.m.

4 THE COURT: State ready to go forward?

5 MR. OSBORNE: We are, Your Honor.

6 THE COURT: And defense ready?

7 MR. ARCHER: Defense is ready.

8 THE COURT: Let's bring the jury in.

9 (Whereupon the jury entered the
10 courtroom at 8:40 a.m.)

11 THE COURT: Good morning, ladies and
12 gentlemen. I hope everyone had a good day
13 yesterday and evening and we are ready to start. I
14 thank you for being here as early as you have
15 appeared. If any one of you had any difficulty in
16 complying with my instructions thus far, please
17 stand.

18 (No response from jurors.)

19 It appears the jury has been able to
20 comply with my instructions thus far. When we
21 stopped day before yesterday the State was in the
22 process of calling its witnesses. I understand Mr.
23 Archer feels better, is ready to go forward. We
24 are glad to have him back. You may call your next
25 witness.

1 MR. OSBORNE: Thank you, Your Honor.
2 Investigator Ray Haupt.

3 THE COURT: He was already on the
4 stand. I'll ask him about that. Take your seat,
5 sir. Now, sir, when we stopped earlier you had
6 been placed under oath. Do you recall that?

7 THE WITNESS: Yes, sir.

8 THE COURT: Do you acknowledge that
9 your testimony today is under that same oath?

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: All right. Counsel, you
12 may proceed.

13 DIRECT EXAMINATION

14 BY MR. OSBORNE:

15 Q. Thank you, Your Honor. Investigator
16 Haupt, so we left off when we were talking about
17 Desmond Lewis. Did you have the occasion to meet
18 with Desmond Lewis?

19 A. Yes.

20 Q. And what date was that?

21 A. August 27th, 2015.

22 Q. Okay. So a little less than -- well, a
23 little over I think three months after the
24 shooting?

25 A. Correct.

1 Q. And who else was present during that
2 meeting?

3 A. You were, Deputy Solicitor Bruce
4 DuRant, myself, and his attorney Charles Cochran.

5 Q. Okay. And did you -- we spoke to him;
6 is that correct?

7 A. Correct.

8 Q. And during that interview did you
9 memorialize it in any way?

10 A. I did.

11 Q. And how did you do that?

12 A. We recorded it.

13 Q. Okay. You were actually the one who
14 was recording it, correct?

15 A. Correct.

16 Q. Okay. And where we ended off the other
17 day I showed you State's Exhibit 153 and you said
18 that was an audio recording of the entire meeting?

19 A. Correct.

20 Q. Is that correct? I think it was about
21 an hour long?

22 A. Right.

23 Q. Your Honor, may I approach?

24 THE COURT: You may.

25 Q. Showing you what's been marked as 153A.

1 And what is that?

2 A. These are clips from that interview.

3 Q. Okay. How did you come about those
4 clips? Did you make them?

5 A. I did.

6 Q. Okay. You made them so you didn't
7 alter them in any way, right?

8 A. Correct.

9 Q. And those are just clips from the
10 meeting, the entire meeting?

11 A. Yes.

12 Q. Okay. And I think each one is just
13 maybe a minute or two long?

14 A. Minute or so each.

15 Q. Okay. Now, you heard -- you were in
16 here when Mr. Lewis testified. Correct?

17 A. Yes.

18 Q. Let me ask you how do you know that CD
19 does contain that -- those clips?

20 A. I made the CD.

21 Q. You wrote on it?

22 A. Correct.

23 Q. And okay. So you were in here when Mr.
24 Lewis testified.

25 A. Yes.

1 Q. Did you hear me ask Mr. Lewis if he
2 knew who shot him?

3 A. Yes.

4 Q. And he had no response to that?

5 A. Correct.

6 Q. Did he have a different response in our
7 meeting?

8 A. He did.

9 Q. Okay. And does clip one memorialize
10 that response?

11 A. Yes.

12 Q. You heard me ask him wasn't it true
13 during the meeting if I asked if you were sure or
14 positive that it was Calico who shot him, were you
15 here when I asked him that?

16 A. Yes.

17 Q. And he had no response to that?

18 A. Correct.

19 Q. And lastly, were you in here when I
20 asked him if the only reason why he identified --
21 well, when I was asking him about his meeting with
22 Detective Holmes, if I asked him if the only reason
23 why he failed to identify the Defendant then was
24 because he was mad at the Detective Holmes and once
25 again, he had no real response to that?

1 A. Correct.

2 Q. But during our meeting he did have a
3 different response?

4 A. He did.

5 Q. Okay. That's on clip four; is that
6 correct?

7 A. Yes.

8 MR. OSBORNE: Your Honor, at this time
9 I would seek to play clips 1, 2 and 4 from 153A.

10 MR. ARCHER: Judge, I think when we
11 left day before yesterday I had objected to that
12 and you had ruled against me, but I will --

13 THE COURT: You renew your objection.

14 MR. ARCHER: Yes.

15 THE COURT: It is noted that you renew
16 your objection. I have overruled the objection.
17 They will be admitted. You may proceed.

18 (STATE'S EXH. 153A in evidence.)

19 BY MR. OSBORNE:

20 Q. Okay. We will start by playing the
21 clip one.

22 (Clip one played.)

23 Now, we are going to lay clip four.

24 (Clip four played.)

25 Now we will play clip two.

1 (Clip two played.)

2 Q. That interview occurred on August
3 the 27th of 2015?

4 A. Yes.

5 Q. And that would have been before Desmond
6 received all those letters that we have already
7 admitted into evidence?

8 A. Correct.

9 MR. OSBORNE: No further questions,
10 Your Honor.

11 THE COURT: You may cross-examine.

12 MR. ARCHER: I have no questions, Your
13 Honor.

14 THE COURT: All right, sir. You may
15 step down. Thank you very much. State may call
16 its next witness.

17 MR. DURANT: State would call Clay
18 Simmonds.

19 ROBERT SIMMONDS

20 having been duly sworn, testifies as follows:

21 THE CLERK: Please state your full name
22 and spell your last name for the record.

23 THE WITNESS: Full name is Robert
24 Clayton Simmonds, last name is S-I-M-M-O-N-D-S.

25 THE COURT: Counsel, your witness.

DIRECT EXAMINATION

BY MR. DURANT:

Q. Good morning, Agent Simmonds.

A. Good morning.

Q. How are you today?

A. Good, sir.

Q. Could you tell our jury where you are employed?

A. I'm a special agent with the FBI here in Charleston, South Carolina.

Q. And how long have you been with the FBI?

A. A little over 15 years.

Q. And what's your educational background?

A. I have a double major in business and accounting from the College of Charleston, Bachelor of Science.

Q. Okay. And how about your law enforcement background?

A. Began my law enforcement career in 1995 here in Charleston. I worked for the Charleston Police Department. I did two years on patrol answering calls for service, 911 calls and things of that nature. Then I was transferred to the FBI violent crime task force where I served over there

1 for three years as a task force officer. I
2 investigated violations of federal law. I
3 eventually left, went to graduate school, Clemson
4 University for a little over a year and then FBI
5 hired me in May of 2002. I went to Quantico. I
6 spent 16 weeks in Quantico, Virginia learning the
7 training to be a special agent. Transferred from
8 Quantico to Oklahoma City where I spent ten years
9 out there. Eventually was promoted to a supervisor
10 at FBI headquarters where I worked a little over a
11 year for the assistant director of the FBI of the
12 criminal program on his executive staff. The CAST
13 unit was officially formed as a unit in 2013 and I
14 was transferred over there to be a supervisor in
15 charge of training of the CAST unit which stands
16 for Cellular Analysis Survey Team and then three
17 years ago I was transferred back here.

18 Q. And so CAST is Cellular Analysis Survey
19 Team?

20 A. Yes, sir.

21 Q. What is the function of CAST?

22 A. So the CAST unit became a division or a
23 part of the FBI in 2010. Just a mix of
24 approximately back then eight to ten agents that
25 utilized cell phone records to place them in

1 various areas throughout a period of time. So
2 every time your cell phone interacts with a cell
3 tower, you get a phone call, text, you're on the
4 internet, things of nature a record gets created.
5 And law enforcement was able to utilize that
6 information and place that phone within a
7 geographic area at the time of those transactions
8 took place. So with the advent of and popularity
9 of a cell phone being a part of our daily lives
10 staying in touch with friends and family is just so
11 much a part of our lives, law enforcement utilizes
12 those records to enhance their investigations
13 throughout the country.

14 Q. Those records are maintained by the
15 various cell providers; is that correct?

16 A. Yes, sir. It's required by law that
17 the cell phone providers have to maintain certain
18 records and law enforcement is able to utilize
19 those records to further investigations.

20 Q. And what training have you received to
21 become a CAST agent?

22 A. Individual is a certified CAST
23 investigator agent like I am receives approximately
24 400 hours of training. That training starts with
25 basic cell phone records, learning what they are,

1 how to read those records, what information is
2 available within those records. We then skip to
3 once we finish that class we take another one of
4 the advanced cellular phone record analysis. You
5 have some anomalies, time variations within those
6 records. You have to go through that. Cell phone
7 tracking is another course that we take. We
8 eventually get to a point where we are trained by
9 the engineers and the law enforcement personnel for
10 each one of the major service providers. They tell
11 us how the network is made up, what information is
12 available to law enforcement, how to get that
13 information and how to utilize that information for
14 investigations to assist us in locating missing
15 children, evidence, fugitives, placing individual's
16 phones at the crime scenes or in the vicinity of a
17 crime when it takes place.

18 But it's culminated at the very end
19 where we have a full week certification course
20 where we go through expert witness training and
21 also a moot trial where they give us a scenario, we
22 have to analyze those records and then present it
23 and present it to a jury of our peers like what we
24 are doing here today. It's our coworkers analyzing
25 us and at the end of each one of those phases we

1 have to take a test and pass to become a certified
2 agent.

3 Q. And it gets right complicated because
4 you are dealing with different service providers,
5 right?

6 A. Yes.

7 Q. And they all keep records differently,
8 correct?

9 A. Everyone is slightly different with
10 their record keeping.

11 Q. And primarily times. Let's just take
12 the issue of time for example. Some of them will
13 provide times in what's called UTC, right?

14 A. Yes. Universal time coordinated.

15 Q. What is UTC?

16 A. It's just a universal time that some
17 people in the military might have heard it as zulu
18 time. Greenwich mean time. Just the time that
19 every other time is based off of. And so some
20 companies will provide the records in UTC. Other
21 ones will provide it in the time that -- the times
22 the phone had that transaction take place.

23 Q. And some provide them in neither one
24 and provide them in the time that they keep the
25 records, right?

1 A. Where the phone was located that
2 particular time or where the switch that processes
3 that call, that text message.

4 Q. And there's also no unanimity between a
5 particular provider as to how you keep time because
6 they may keep phone calls in one time and text
7 messages in another time?

8 A. Yes. That's where some of the
9 complications come, yes, sir.

10 Q. And is Sprint an example of that?

11 A. Yes, sir. Sprint is an example of
12 that. For their phone calls and internet sessions
13 they keep the time in wherever the phone is. If
14 it's here on the east coast it's in this time zone.
15 If it's in Central time zone it's Central time
16 zone. If it's west coast Pacific time zone.
17 Unlike the text messages they keep all theirs in
18 Central, always in Central Time zone for them. And
19 now they have just relayed to us they are going to
20 start changing that process up. So we will wait
21 and see.

22 Q. So you are looking at call detail
23 records from Sprint the phone calls will be local
24 time, but the text messages will be in Central
25 time?

1 A. At this point, yes, sir.

2 Q. Which is one hour behind?

3 A. That's one hour behind us, yes, sir.

4 Q. Let's back up a little bit about UTC or
5 it was Greenwich mean time when I was growing up.
6 What is the difference between Greenwich mean time
7 and local time?

8 A. Today the difference would be five
9 hours. We are five hours behind UTC time. When
10 the daylight savings comes in we are four hours
11 behind. So when you see those records you have to
12 subtract during the daylight savings time four
13 hours or today it would be five hours.

14 Q. Okay. So back in May of 2015 when we
15 were in daylight savings time it would be a
16 four-hour time?

17 A. That's correct, yes, sir.

18 Q. So if something is in UTC time you
19 would have to subtract four hours to get local
20 time?

21 A. Yes, sir.

22 Q. Okay. And did your training as a CAST
23 agent include an exam at the end?

24 A. Every phase of our training has an exam
25 at the end that we must pass.

1 Q. And do you receive continuing education
2 and training on cellular analysis?

3 A. Yes, sir. So this group has grown from
4 eight to ten agents to now there's over 60 of us
5 conducting cell phone analysis. Every year we will
6 get all 60 of us meet someplace in the country. We
7 bring back in the service providers and their
8 engineers to provide us with updates to their
9 network, changes that are being made such as Sprint
10 changing their way they are going to configure text
11 messages once again. And then emerging new
12 technologies that are out there that the cell phone
13 companies may be going to in the near future.

14 Q. Do you have any instructional
15 responsibilities in that area?

16 A. Like I said, when I was transferred
17 over to the CAST unit at the FBI headquarters I was
18 in charge of training. I selected the individuals
19 that were going to attend the class, the basic
20 class, and then I was also an instructor during
21 those classes. I would get up there and teach
22 about the records, what's available, and then
23 assist them as they try and plot out the phone
24 calls from those call details records on to a map.

25 Q. What is historical cell site analysis?

1 A. So historical cell site records is if
2 you're familiar, I haven't seen a cell phone bill
3 in a hundred years, but back when they used to
4 charge you every minute for every call that you
5 used to make you used to get a bill, have a date,
6 the time, who you called, or who called you, how
7 many minutes that took place to verify your billing
8 procedures there.

9 Call detail records are just a little
10 bit more, it's that with just a little bit more.
11 Still gives the date and time the calls were
12 placed, how long the call took place, who called
13 you or who you called, and then also gives the last
14 bit of information, gives the tower and sector that
15 was used to utilize when the call was made.

16 And so basically these call detail
17 records give us a snippet of that person's life
18 through that day and time that we're -- we have
19 records for.

20 Q. And so you use that information to come
21 up with an approximate location of a phone at a
22 particular time?

23 A. Yes, sir. Because towers are normally
24 divided into three sectors with 120 degrees, three
25 sectors, 360 degrees in a circle, because they are

1 divided that way using that tower and sector that
2 was utilized when that call was taking place will
3 tell you what side of the tower that phone is.
4 Gives us an approximate location where the phone
5 was at that particular date and time.

6 Q. How many times -- approximately how
7 many times have you performed a historical cell
8 site analysis?

9 A. I look at cell phone records every day.
10 As soon as I am done here I got a set of records to
11 look at.

12 Q. Got a bunch for us, right?

13 A. A few.

14 Q. And what agencies can request the
15 services of CAST?

16 A. Any law enforcement agency, state,
17 local, federal, travel law enforcement can request
18 services, prosecuting offices. We travel
19 nationwide. We have had some of our guys -- I have
20 never personally done, but some guys travel
21 internationally to England, to other places where
22 terrorist incidents have taken place, have gone
23 over to provide assistance in those matters.

24 Q. Have you previously been qualified as
25 an expert witness in the area of historical

1 cellular telephone record and data analysis?

2 A. Yes, sir, I have.

3 Q. Your Honor, at this time we would offer
4 him as an expert in that area.

5 MR. ARCHER: No objection, Your Honor.

6 THE COURT: Without objection he will
7 be designated as an expert within the area. The
8 jury knows what that means. You may proceed.

9 BY MR. DURANT:

10 Q. Directing your attention to this
11 particular case did you have an opportunity to
12 receive some call detail records from our office?

13 A. Yes, sir, I received several records
14 from your office.

15 Q. I'm going to hand you what's been
16 marked as State's Exhibits 84, 91, and 94 and ask
17 you if you recognize those items.

18 A. Yes. State's Exhibit 84 are call
19 details records for cell phone number [REDACTED]-2165.
20 These are Sprint detail records for that number I
21 just read out. I know this because it's got my
22 initials and date of when I reviewed them.

23 Q. Okay.

24 A. State's Exhibit 91 are call detail
25 records from [REDACTED]-1054. This is a T-Mobile

1 number to the number you just described. This
2 again is because my initials and date reviewed it
3 are on the disk. And the last one is call detail
4 record for [REDACTED]-8874. Again this is another
5 Sprint telephone call detail record for that same
6 number I just read out. Again it's marked by my
7 initials and date when I reviewed them.

8 Q. Okay. And after being provided with
9 those records what did you do with them?

10 A. So cell phone companies are required to
11 keep these call detail records along with their
12 tower list. The tower list is basically a list of
13 all the towers within that company's network where
14 they are located, the latitude, street address can
15 be provided, and the orientation of each one of the
16 sectors. You know, how much angle is in that one
17 spot compared to the next sector.

18 And so with call detail records and
19 with that tower list we are able to merge those
20 together and basically draw a picture of what these
21 records would look like when they are placed on a
22 map.

23 Q. Okay. And do cell service providers
24 provide their -- have their own separate towers or
25 share towers?

1 A. Well, each cell phone company has their
2 own tower list. You may find several service
3 providers on the same tower location, but Verizon
4 will not service the T-Mobile that may be on the
5 bottom of the tower. Verizon is on the top because
6 Verizon is the biggest company out there. But it
7 may be co-located on the same tower, same location.
8 They won't service each one and Verizon can't
9 provide me where T-Mobile's towers are and vice
10 versa.

11 Q. So sometimes they have separate towers?

12 A. Sometimes you will see them separated.
13 If you see two towers besides each other they
14 probably wouldn't allow -- one company wouldn't
15 allow someone else on their particular tower.

16 Q. So what you do basically with these
17 call detail records is you try to place the
18 location of a particular phone over a relevant time
19 period?

20 A. That is correct.

21 Q. And is that what you did in this case?

22 A. Yes, sir.

23 Q. With these three different numbers?

24 A. Yes.

25 Q. What was the relevant time period you

1 were looking at in this case?

2 A. I was asked to look at the afternoon of
3 May 22nd, 2015, around noontime to early morning
4 hours of May 23rd, 2015.

5 Q. Okay. And this is essentially what's
6 called cell phone mapping, correct?

7 A. Yes, sir.

8 Q. And as a result of your analysis did
9 you prepare a PowerPoint presentation in
10 anticipation of this trial?

11 A. Yes, sir. I made a presentation to
12 visually depict what these calls would look like on
13 a map.

14 Q. Hand you what's been marked as State's
15 Exhibit No. 149 and ask if you recognize that?

16 A. Yes, sir. It's the PowerPoint
17 presentation that I presented and provided to your
18 office.

19 Q. Okay. And would reference to that
20 PowerPoint presentation assist you in explaining
21 what you do to this jury?

22 A. Yes, sir.

23 Q. Your Honor, we would at this time offer
24 State's Exhibit 149 as well as State's 84, 91 and
25 94 if there is no objection.

1 THE COURT: Would you like to see them?

2 MR. ARCHER: I would like to see them.

3 MR. OSBORNE: He has seen them.

4 THE COURT: Maybe not with those
5 numbers on them.

6 (Off-the-record conference.)

7 THE COURT: Is there any objection to
8 that being introduced?

9 MR. ARCHER: I don't have -- this is
10 the first time I have seen this, Your Honor.
11 That's why I am taking a little time to look at it.

12 THE COURT: Okay.

13 (Brief pause.)

14 MR. ARCHER: I think it's all right to
15 use the presentation as demonstrative evidence. I
16 don't know if we need to introduce these.

17 THE COURT: Is there an objection?

18 MR. ARCHER: Objection.

19 THE COURT: He's offering it to be
20 introduced, is that right?

21 MR. DURANT: Yes, sir.

22 THE COURT: What is the objection?

23 MR. ARCHER: I withdraw objection.

24 THE COURT: All right. It will be
25 admitted as marked. You may proceed.

1 MR. DURANT: Thank you, Your Honor.

2 (STATE'S EXH. 149, 84, 91, 94 in
3 evidence.)

4 BY MR. DURANT:

5 Q. Okay. We have this on a computer.
6 Would we put up No. 1. This is obviously the cover
7 page, correct?

8 A. Yes, sir, just an initial cover page
9 showing that I conducted the analysis. When I
10 finished conducting the analysis and numbers that
11 were analyzed which is the same three numbers I
12 spoke of earlier.

13 Q. Okay. And those are the three numbers
14 that correspond to these three disks that are
15 called detail records; is that correct?

16 A. Yes, sir.

17 Q. And there's one to T-Mobile and two to
18 Sprint?

19 A. That is correct.

20 Q. And the one to T-Mobile [REDACTED]-1054 was
21 the one that attributed it to Shanorma Smith?

22 A. Yes..

23 Q. And the [REDACTED]-8874 was the one
24 attributed to?

25 A. Mr. Calvin Brown.

1 Q. Calvin Brown. And that other number
2 [REDACTED]-2165 was a number Mr. Brown provided in a
3 statement?

4 A. That's my understanding. It's also my
5 understanding that number is actually subscribed to
6 a Curtis Williams.

7 Q. And not to Mr. Brown?

8 A. That is correct.

9 Q. Okay. Let's move on to slide two.

10 A. So this --

11 Q. Just explain what that is.

12 A. Sure. This slide here just shows you
13 what a typical three-sided cell tower that is up
14 and down the highway, maybe outside your residence
15 up there and on the streets that your phone needs
16 to have to provide service to make the calls and
17 text messages that we make on a daily basis. So
18 each one of them has a sector one, a sector two or
19 sector three. Some companies will name them alpha,
20 beta and gamma. Because you got one engineer and
21 another here. There is no rhyme or reason behind
22 it. Just the way they like to explain it.

23 Most of us describe sectors as sectors
24 1, 2 and 3. The orientation or direction you see
25 how the red arrow points north, that's just showing

1 what sides that would cover. But the orientation
2 varies from tower to tower. Sector 1 isn't always
3 on the north side. It could be on the south side.
4 Sector two could be on the west side instead of the
5 east side. It just varies from tower to tower.
6 And that's why we need those tower lists because
7 all that information is in there, explains to us
8 which side of the tower the sectors are located on.

9 Q. Okay. Like you say those are peculiar
10 to each carrier and perhaps to each tower?

11 A. That is correct. So the way they
12 describe or that we are able to tell what side of
13 the tower each sector on is they have a phrase
14 called azimuth. It's a center, direction or
15 orientation of that sector and they put it in
16 degrees. And based on those degrees we are able to
17 orient our mapping that way to face if it's 12:00
18 or zero degrees that's due north. We orient our
19 tower or that assembly for straight up north and if
20 it's 180 degrees we know that it's 6:00 and we
21 orient that sector down towards the 6:00.

22 Q. So you go 60 degrees each side?

23 A. You find the center point of that
24 azimuth and you go 60 degrees each side, gives it
25 120 degrees sectors to cover our 360 circle.

1 Q. Let's go to the next slide.

2 A. This is just our legend page, shows the
3 significance of -- locations that were significant
4 in this situation. Shows the black towers being
5 the Sprint towers that we utilize. The green dots
6 are the T-Mobile towers that were utilized. Up
7 there at the top the red box, I don't know if I can
8 touch this and they can see it.

9 Q. You can. As a matter of fact you can
10 draw on it if you want.

11 A. Great. This red box here is the crime
12 scene which is 4 America Street. The green one up
13 there in the very north end is [REDACTED] North Romney
14 Street which is attributed to Shanorma Smith's
15 residence. The purple one here is Calvin Brown's
16 residence, [REDACTED] Hampden Court down in Charleston. The
17 blue one here of course is the Medical University
18 of South Carolina at 171 Ashley Avenue and the
19 yellow one is Marquise Edwards's residence at [REDACTED]
20 Amherst Street.

21 Q. And just for your future reference, if
22 you use that little arrow in the left-hand corner
23 you can press that and if you hit clear it will
24 remove all the dots.

25 A. Nice.

1 Q. Okay. Let's go to the next slide.

2 A. This is just a page showing you how
3 these sectors are going to look when they are
4 starting to be presented on the maps on the
5 following pages. I show this because you have this
6 blue area right in here. That just shows the
7 orientation of the energy that's coming out from
8 that particular sector. That is not the footprint
9 of that particular tower. It is just showing you
10 where the energy from that tower is coming from
11 when a call was made or a text was placed. So that
12 energy just doesn't stop right here. It continues
13 outward from that.

14 Q. When you get to your illustrations
15 later that color part doesn't mean the phone is in
16 that section?

17 A. Exactly. That's exactly what we are
18 trying to show. The phone could be anywhere
19 within.

20 Q. Where those little red arrows are going
21 to, correct?

22 A. That's correct.

23 Q. And all the way out that way until they
24 get closer to another tower and then they will
25 start ping off that tower?

1 A. Correct. Because that brings up a
2 point. Cell phone towers are kind of set up like
3 your sprinkler system if you have at your yard.
4 You don't want to have dry patches in your yard so
5 you got to have each one of them overlap. Because
6 the last thing you want is a bunch of dead grass in
7 your yard.

8 The same when you are having cell
9 phones. Both cell phone towers and cell phone
10 sectors are set up to have overlap because the last
11 thing the phone companies wants you to do is get
12 mad any time you reach that point and that dead
13 zone. And if you were around as I was when cell
14 phones first came out always that had the spot
15 where you said just a second because your phone was
16 going to die. So cell phone companies have gotten
17 frustrations from all of us users and so they
18 overlap these things so the phone will start off on
19 one tower and as you travel around it will start
20 going to the other tower and you need to have that
21 overlap so you have this smooth transition.

22 Q. Do phones always ping off the closest
23 tower?

24 A. Phones when they make their initial
25 phone call or receive or text message, either way,

1 they will use the tower that has the clearest,
2 strongest signal. Nine times out of ten just as an
3 expression that's usually the closest tower, but
4 it's not always. You got other things to consider,
5 if there is a building in the way, if we are in the
6 Rocky mountains and you got tall mountains in the
7 way, maybe there was one it sees a little further
8 away because it has a better signal at that point.
9 But nine times out of ten you are probably going to
10 have the phone use the one with the closest tower
11 which is always the stronger, clearest signal at
12 that time.

13 Q. Okay. Let's move on to the next slide.
14 And this is for the phone number [REDACTED]-2165 during
15 that relevant time period?

16 A. Yes, sir. So again I was asked to look
17 at the phone records during this particular time
18 period for that [REDACTED]-2165 number registered to
19 Curtis Williams. There's only two phone
20 transactions that took place during that time
21 period. One was at 6:43 in the evening on May
22 22nd, then next one was at 7:28 the following
23 morning on May 23rd. Basically used the tower,
24 Sprint tower 601 sector -- I know a thing or two
25 about Sprint -- is that they use a particular tower

1 called Lucent, just the company that makes it and
2 instead of them naming their towers sector 1, 2 and
3 3 they name 2, 3 and 4. So when you see this 601-2
4 that's actually sector 1, 601-3 is actually sector
5 2. So what we always remember is Lucent, lose one
6 so I don't want to confuse you when I say the
7 sector 1 and 2. But I digress. But this is phone
8 used tower 601, sector 1 and 2 at those two
9 particular times. This tower is located up near
10 the Summerville/Sangaree area in South Carolina.

11 Q. Nowhere near downtown Charleston,
12 correct?

13 A. Several, several miles away from
14 downtown Charleston.

15 Q. Let's move on to the next slide.

16 A. This slide is a depiction of cell phone
17 activity from 12:00 in the afternoon to 11:00 p.m.
18 on May 22nd for [REDACTED]-1054. From the
19 investigation it's associated with Shanorma Smith.
20 This is a T-Mobile phone. So these are the three
21 towers that were utilized during that time period
22 in downtown Charleston.

23 Q. What trend that does show time wise?

24 A. So generally from 12, 12:30 the phone
25 uses the northern towers which covers [REDACTED] North

1 Romney Street and eventually around 10:27 the phone
2 begins to travel south down toward the Medical
3 University or down south towards the hospital or
4 southwards on the peninsula. Just moving into a
5 southerly direction.

6 Q. Okay. So it stays up in the area of
7 the green -- her residence until about 10:30 that
8 night?

9 A. That's correct.

10 Q. Okay. Let's move on to slide No. 7.

11 A. So this slide depicts Mr. Brown's phone
12 of [REDACTED]-8874. That activity on that phone from
13 approximately 12:00 p.m. to 5:00 p.m. that day.
14 Generally the phone until about at least at late as
15 3:18 in the afternoon was used in this southern
16 tower down here, tower 508. And then eventually
17 traveled more in a northerly direction eventually
18 stopping at almost 5:00 or 4:55 in the afternoon
19 covering tower 507 which is the area of his
20 residence which is this purple location there.

21 Q. And let's move on to slide No. 8.

22 A. Again this is just further phone
23 activity from Mr. Brown's phone from approximately
24 5:01 in the afternoon to 6:11 that evening. Again
25 at 5:00 it's using tower 507 which covers his

1 residence. It eventually travels back down to the
2 south using tower 705 around 5:31. Seems to be in
3 between those two towers between 5:35 and 5:33 and
4 eventually uses this tower 705 south at 6:11 in the
5 early evening.

6 Q. Okay. Not up at Bayside?

7 A. There's no way this phone used a tower
8 near this green dot up here.

9 Q. Okay.

10 A. On Romney Street.

11 Q. Let's go to slide No. 9 I think.

12 A. Again this shows that the phone moved
13 from that southern tower of 705 back to the tower
14 that serviced residences at this purple on Hampden
15 Court. Phone activity took place at 7:15 and 7:17
16 p.m. on May 22nd.

17 Q. Slide ten.

18 A. The phone eventually moved down to the
19 south at 7:38 p.m. using this tower 517 sector 3 at
20 7:38 in the afternoon.

21 Q. That would cover the area of Spring
22 Street; is that correct?

23 A. Yeah, generally it would. Goes out
24 that way, but yes, sir.

25 Q. Okay. Let's move on to slide 11.

1 A. Again shows the phone activity at 8:50
2 in the evening on May 22nd of 2015 again using
3 tower 705. Again it's sector 2. So it's shooting
4 energy shooting out to the west of that tower which
5 would cover the crime scene here at 4 America
6 Street.

7 Q. So he was in the area of the crime
8 scene at 8:50 p.m.?

9 A. The phone was in the area.

10 Q. The phone was?

11 A. In the area of the crime scene or the
12 phone was utilizing a tower that was servicing the
13 crime scene at that time.

14 Q. That was roughly five minutes after the
15 shooting?

16 A. From my understanding, yes, sir.

17 Q. Let's go to slide 12.

18 A. Again this is the phone, eventually
19 kind of moved southwesterly and began utilizing the
20 tower 517 at 8:56 and 8:58 the evening on May 22nd.

21 Q. So moving from east to west and back to
22 the tower that is covering the area of Spring
23 Street; is that correct?

24 A. That's correct.

25 Q. And I meant to ask you before, I notice

1 you got this tower right here?

2 A. Yes.

3 Q. That is between those two, but it never
4 pings off that tower. Could you explain that?

5 A. Sure. Kind of wondering that myself at
6 one point. So I went to Sprint's tower list and
7 found out what tower that is and discovered that it
8 is an inactive tower, but they happen to keep it in
9 their tower list. I don't know if it's an old
10 tower that Sprint had taken down or a possibility
11 of a future site because that tower is located or
12 would be located if there was one there right
13 behind the AME church.

14 Q. Downtown?

15 A. Yes, sir.

16 Q. Let's go to slide No. 13. And this is
17 Mr. Brown's phone from about 9:54 to 10:12 p.m.,
18 correct?

19 A. That's correct. So this tower again
20 705 using sector 2 and 3. Sector 2 would be right
21 here. And sector 3 would be that area. That area
22 there. Basically the phone starts off in sector 3
23 kind of up here in this general area. And then
24 eventually comes back down to use sector 2 in this
25 general area. Which to me indicates he was either

1 one in kind of that overlap area or better yet when
2 the next slide comes up I believe that it would be
3 my opinion that the phone was moving more toward
4 the westerly direction.

5 Q. So at that particular time he was in
6 the area servicing the location where Marquise
7 Edwards lives, correct?

8 A. That would be correct. To better
9 clarify that question, that would be at the times
10 at 9:54, 9:55 because it is using sector 3 of this
11 tower.

12 Q. Okay. And then appears to be moving --
13 after that moving back the other way, correct?

14 A. Correct.

15 Q. Okay. Let's go to the next slide,
16 please.

17 A. Again, this is why I say this slide is
18 a better illustration of the phone moving away from
19 the area because at 10:13 it is using the tower
20 right here. Eventually moves over and at the next
21 call using this tower here 752, comes back and
22 begins to use this tower here and then eventually
23 the phone travels northwards up towards that tower
24 and arrives at the tower that appears to service
25 the [REDACTED] North Romney Street at 10:51.

1 Q. 10:51?

2 A. Yes, sir.

3 Q. And you also reviewed the records after
4 10:51; is that correct?

5 A. Yes, sir. For Mr. Browns's records I
6 reviewed them I think all the way up to possibly
7 3:00 in the morning.

8 Q. During that period of time did his
9 phone ever ping off of that tower that was serviced
10 by Bayside other than that one time?

11 A. From after 10:51 the phone generally
12 stayed down in the downtown area down this way.

13 Q. Okay.

14 A. This direction.

15 MR. DURANT: Court's indulgence for
16 just a moment.

17 THE COURT: Yes, sir.

18 MR. DURANT: Could you please answer
19 any questions that Mr. Archer may have for you.

20 THE WITNESS: Yes, sir.

21 THE COURT: You may cross-examine, Mr.
22 Archer.

23 CROSS-EXAMINATION

24 BY MR. ARCHER:

25 Q. All right. May I approach the witness?

1 THE COURT: You may, yes, sir.

2 BY MR. ARCHER:

3 Q. We got a red box, a yellow box and a
4 purple box?

5 A. Yes, sir.

6 Q. What's the red box?

7 A. Red box is the crime scene, 4 America
8 Street.

9 Q. What's the yellow box?

10 A. Is Marquise Edwards residence on I
11 think it's [REDACTED] Amherst.

12 Q. And the purple box?

13 A. Is Hampden Court which is Mr. Browns'
14 residence.

15 Q. Okay. Mr. Brown's residence was close
16 to where the crime scene was; is that right?

17 A. His residence is close to the crime
18 scene of course.

19 Q. So it wouldn't be unusual for his phone
20 to be in the area of the crime scene if he lived
21 near the area of the crime scene?

22 A. But based on the previous slides that
23 were demonstrated it appears that when the phone
24 was near his residence it would use the tower here
25 and then when it seemed to be not as close to that

1 particular tower it used that tower here which in
2 my opinion would further cover the crime scene
3 instead of his residence.

4 Q. Okay. But in general, his residence is
5 fairly close to the crime scene?

6 A. Yes, sir. I don't know how far away it
7 is.

8 Q. So it wouldn't be unexpected for at
9 least some portion of the day for his phone to be
10 found close into where the crime was if he lived
11 close to it?

12 A. It's quite a coincidence his phone was
13 near the crime scene just a few minutes after the
14 shooting took place.

15 Q. Let's go -- can you pull up like the
16 time of the shooting 8:40. 8:50. All right. At
17 8:50 now is this supposedly Calvin's cell phone
18 here?

19 A. Yes, sir.

20 Q. Okay. And he is coming off of this
21 tower right over there off of East Bay Street?

22 A. That's correct.

23 Q. Can you tell where in that little
24 triangle the phone is?

25 A. Not specifically. All I know is that

1 the phone utilized that tower at this particular
2 time and that tower happens to cover the crime
3 scene. But I can't tell you if it was southbound,
4 northbound, real close to the tower or not. I just
5 can tell you it just utilized that tower at that
6 particular time.

7 Q. Okay. So now, the line going up cuts
8 right across to the crime scene there, right?

9 A. Correct.

10 Q. So and looks like, I can't tell from
11 the box, but the box part of it seems to be in one
12 sector and part of it seems to be in another
13 sector?

14 A. Well, if you get close enough, I don't
15 know how close you can see, may I stand up?

16 THE COURT: Yes.

17 A. So the box is -- you got to look at the
18 point where the point is pointing to. That's the
19 location of that particular address, not the red
20 box itself, just where it comes down to that point.
21 So it's clear that the crime scene falls within
22 that sector.

23 Q. But the crime scene is very close to
24 being out and into another sector; is that right?

25 A. I don't know the distance, how far it

1 is from it. You got to remember that these
2 sectors, these lines on these sectors are just
3 representations of that particular sector. Again,
4 sectors aren't these perfect pie shape. They are
5 these irregular shape polygons because there are so
6 many things that affect radio frequency. So I am
7 not saying that those lines are where it begins and
8 where that sector ends. Just to represent and give
9 you a better visual representation of where that
10 sector is located.

11 Q. Okay. So your lines there are just
12 generalizations to as what that sector is?

13 A. They are approximations, yes, sir.

14 Q. It could -- each one could come down a
15 little bit, one could go up a little bit, but
16 that's just approximations?

17 A. Yes, sir.

18 Q. Okay. Now, I am going to walk up
19 behind him because I want to point to something.

20 THE COURT: You may do so.

21 BY MR. ARCHER:

22 Q. All right. If I understand what you
23 are saying, at 10:50 the phone is somewhere between
24 here and here; is that right?

25 A. 8:50.

1 Q. At 8:50, right.

2 A. It's in this general location of this
3 tower here.

4 Q. So it could have been up -- we can't
5 tell where at 10:50 if it's up by Nassau Street or
6 down below Calhoun Street, can we?

7 A. At 8:50, no, sir.

8 Q. So it could have been anywhere in this
9 range, this being, this area covering the crime
10 scene all the way down to Meeting Street or King
11 Street below Calhoun, could be anywhere in that
12 sector?

13 A. This just gives you where what tower
14 sector the phone utilized at that particular time,
15 but to specifically state I can't tell you that.

16 Q. But the area in which it could have
17 been covers a pretty large sector of Charleston
18 County up near Calhoun Street and the cross town,
19 right?

20 A. It's a significant area.

21 Q. A what area?

22 A. Significant area.

23 Q. Right. So you can't say from his cell
24 phone records at 10:50 that he was actually up near
25 the crime scene, can you?

1 A. Again, the time is 8:50.

2 Q. 8:50 I am sorry.

3 A. And I say utilized that tower in that
4 sector at that particular time.

5 Q. And from what information you have he
6 could have been on Meeting Street or King Street
7 below Calhoun Street at that time too?

8 A. Again, I can only tell you that the
9 phone utilized that tower and sector at that
10 particular time. So it can be within that sector.

11 Q. So anywhere between the crime scene all
12 the way down to King Street and Meeting Street
13 below Calhoun, he could have been anywhere in that
14 area?

15 A. Certainly if that's the coverage area
16 of that particular sector the phone could be
17 anywhere within that particular area.

18 Q. I got you, okay. Good enough. I have
19 no other questions, Your Honor.

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION

22 BY MR. DURANT:

23 Q. Just one. So basically what you're
24 saying is that 50 minutes after the shooting his
25 phone pinged off of the cell tower that was closest

1 to the crime scene?

2 A. That's correct.

3 Q. Could have been moving like as Mr.
4 Archer pointed out anywhere in that pie?

5 A. Correct.

6 Q. And if you go to the slides after that
7 it would indicate that he was moving from the crime
8 scene, away from the crime scene?

9 A. No doubt that the phone moved to a
10 southwesterly direction after.

11 Q. And not down south of Calhoun Street
12 where Mr. Archer wants to put him, right?

13 A. No, it was very much so north of
14 Calhoun Street.

15 MR. DURANT: Okay. Thank you very
16 much. I have nothing else.

17 RECROSS-EXAMINATION

18 BY MR. ARCHER:

19 Q. At 8:50 he can be anywhere from King
20 Street below Calhoun Street up through purple which
21 is where his house is, right? That was not this
22 point the last one we looked at because those lines
23 seem to be basically through the same point, is it
24 the same tower at 8:50 -- wait a minute. Brown
25 phone activity at 8:50. Didn't we just have up

1 there at 8:58? All right. So at 8:50?

2 A. 8:50 the phone utilized I believe this
3 tower here.

4 Q. Right.

5 A. Then at 8:56 it utilized the one that
6 is depicted in the map.

7 Q. Okay. So he's moving -- at 8:50 he's
8 closer to Calhoun Street than he was to the crime
9 scene at -- 8:58 he's closer to Calhoun Street than
10 he was --

11 A. Again, the energy of the sector is
12 going to move out in this direction and this
13 direction here. So at 8:56 and 8:58 he was
14 somewhere within that area.

15 Q. I got you.

16 A. Or I shouldn't say he. The phone is
17 somewhere in that area.

18 Q. At 8:50 it's coming off this black dot
19 over by the Charleston museum?

20 A. Yes. So that would mean he's somewhere
21 in -- clear some of this off. So at 8:50 generally
22 that's the way that sector was drawn, at 8:50 he's
23 generally in probably more closer to this area
24 because I got to take into account the tower for
25 the overlap, but generally in this area here.

1 Q. Okay. And at 8:58 he's generally?

2 A. In this area here.

3 Q. Okay.

4 A. Again this tower is inactive so these
5 two towers are the ones that are overlapping so in
6 that five increment or six minute increment he's
7 got to go from this tower from here over toward
8 this way.

9 Q. Okay. And so he's moving in the space
10 of five minutes, six minutes to eight minutes, he's
11 moved -- his location has moved several blocks.
12 Can you give me how many block he has moved?

13 A. I can't do that because I don't have
14 the actual footprint of each tower to show where
15 those two towers would overlap.

16 Q. Okay.

17 MR. ARCHER: No other questions, Your
18 Honor.

19 THE COURT: You may step down.

20 MR. DURANT: Can Agent Simmonds be
21 excused?

22 MR. ARCHER: No objection.

23 THE COURT: Sir, you are free to leave
24 the courthouse. Thank you very much. State may
25 call its next witness.

1 MR. OSBORNE: State calls agent Dan
2 English.

3 DANIEL ENGLISH

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: My name is Daniel
8 English, D-A-N-I-E-L, E-N-G-L-I-S-H.

9 THE COURT: Your witness.

10 DIRECT EXAMINATION

11 BY MR. OSBORNE:

12 Q. Mr. English, I forget you are not
13 exactly an agent yet, are you?

14 A. No, sir.

15 Q. What is your title again?

16 A. I'm a special agent trainee with the
17 FBI.

18 Q. So you're with the FBI now?

19 A. Yes, sir.

20 Q. And you're in Quantico now?

21 A. Yes, sir.

22 Q. All right. And how long have you been
23 with the FBI?

24 A. Since September of this year.

25 Q. Prior to being hired with the FBI where

1 did you work?

2 A. Prior to the FBI I was a police officer
3 with the City of Charleston for ten years.

4 Q. Ten years. During that time at the
5 Charleston Police Department what are some of the
6 various assignments that you held?

7 A. Some of the assignments that I held I
8 was a patrol officer downtown. I was a patrol
9 officer in another team. After that I was a
10 detective in the property division. From there I
11 went to the robbery division for about two
12 and-a-half years. While in the robbery division I
13 assisted the homicide unit with cases that they
14 had. Eventually moved over to the homicide violent
15 crimes division. From there I was promoted to a
16 sergeant of West Ashley. And from there I was
17 hired with the FBI.

18 Q. Okay. During your time as a detective
19 with the violent crimes unit and the robbery unit
20 were you ever case agent?

21 A. I was, yes, sir.

22 Q. Just briefly explain the difference
23 between a case agent and your duties as a regular
24 detective?

25 A. Sure. So detectives do a lot of the

1 report writing. Do a lot of canvassing on crime
2 scenes for evidence or footage things like this.
3 You will be helping out case agents with things
4 that they need done. And as the case agent you are
5 the person that's responsible for a case from
6 inception to prosecution at the end. You basically
7 build the case, make all the reports and come to
8 trial to testify to the facts of the case.

9 Q. Okay. And following up that needs to
10 be done?

11 A. Yes, sir.

12 Q. Case agent directs other detectives to
13 help them and things like that?

14 A. Yes, sir.

15 Q. How many violent crime investigations
16 would you say you have investigated?

17 A. You know, I tried to think about a
18 number. It's pretty hard for me to put a number to
19 it. A lot. I was in the detective division for
20 just over four years. Very active unit.

21 Q. And how many times would you say that
22 you were the case agent?

23 A. I was a case agent several times. As
24 far as case count, that's probably in the hundreds,
25 but I don't have an exact number.

1 Q. And how many times would you say that
2 you have investigated shootings?

3 A. A lot of shootings.. Like I said, while
4 I was in robbery I assisted violent crimes unit on
5 a volunteer basis and went to anything they needed.
6 Obviously the robbery unit had a lot of shooting
7 components as well so again, you know, several,
8 several cases over four and-a-half years.

9 Q. Back in May of 2015 where were you
10 assigned?

11 A. I was assigned to the robbery division
12 at that time.

13 Q. Did you have the occasion to assist the
14 violent crimes detectives?

15 A. I did, yes, sir.

16 Q. In this investigation. At first what
17 was your role in the investigation?

18 A. At first my role in this investigation
19 was to help Detective Holmes with anything that he
20 needed. In this particular case it was some search
21 warrants.

22 Q. Did your role in this investigation
23 later change?

24 A. It did. In August 2015 I assumed the
25 case agent responsibilities for this investigation.

1 Q. Okay. When you became the case agent
2 to this investigation, what was one of the first
3 things that you did?

4 A. So having some working knowledge of
5 this case, one of the first things I did was
6 assumed case agent responsibilities was to review
7 everything. Make sure that I had full knowledge
8 instead of just working knowledge. So I reviewed
9 reports, looked at evidence admissions, made a to
10 do list, prioritize things that needed to be done,
11 began to do them and also ask people to help me
12 complete this.

13 Q. And when you are doing this to do list
14 and you're reviewing reports and whatnot, what are
15 some of the things that you are looking at or
16 trying to accomplish?

17 A. Looking to see if there's anything that
18 any -- people that need to be interviewed again,
19 any locations that need to be visited, any evidence
20 that might need to be submitted to a lab for some
21 sort of forensic purpose, things of that nature.

22 Q. And what are some of the types of lab
23 requests or analysis that you might request be
24 done?

25 A. Sometimes evidence will request

1 fingerprints, sometimes we will request DNA,
2 there's a couple others that we can get, GSR for a
3 shooting which is gunshot residue, things like
4 that.

5 Q. Okay. We have talked about this in
6 this case already. You weren't here. But GSR was
7 submitted in this case?

8 A. Yes, sir.

9 Q. GSR from Desmond Lewis?

10 A. Yes.

11 Q. And it came back negative?

12 A. Right.

13 Q. No evidence he fired a gun?

14 A. Correct.

15 Q. And that was taken on the night of the
16 incident within the parameters SLED requires?

17 A. Yes, sir.

18 Q. The GSR samples. Shell casings were
19 sent to SLED?

20 A. Yes.

21 Q. And SLED came back saying that they
22 were all fired by the same gun?

23 A. That's correct.

24 Q. Now, let's talk about DNA briefly. Was
25 DNA relevant or part of this investigation at all?

1 A. No, sir.

2 Q. And why was that? I mean they had
3 necklace, beer bottles, phones? Were those items
4 swabbed for DNA?

5 A. Those items were swabbed for DNA and
6 attributed to the person or the persons that say
7 that's my item, therefore we know who it is.

8 Q. So if an individual says it is mine,
9 phone or my necklace or something like that, you
10 wouldn't test it for DNA?

11 A. Right.

12 Q. Unless it was a suspect or something
13 like that?

14 A. Unless it was in question somehow.

15 Q. Okay. Well, you know, through your
16 experience as a detective did it surprise you that,
17 you know, you don't have DNA or DNA doesn't become
18 relevant in this type of case?

19 A. No, I wasn't surprised by that.

20 Q. Why is that?

21 A. Typically in shootings you are going to
22 have a situation that happened pretty quickly. A
23 shooter is going to go and shoot and leave. Not
24 touch anything or, you know, stick around to
25 deposit any DNA so that's why it didn't surprise

1 me.

2 Q. Walk up, shoot, not touching anything,
3 run?

4 A. Right.

5 Q. All right. Early on in the
6 investigation did you look at the possibility that
7 there might be multiple shooters?

8 A. We did, yes, sir.

9 Q. And did you eliminate that possibility?

10 A. Yes, sir. All the evidence in this
11 case pointed toward one shooter and, you know, I
12 can get into that if you would like, but shell
13 casings goes in the general direction, the blood
14 trail, again, that's the main factor. And then you
15 have got statements from people stating that one
16 shooter. So those things did come up and we looked
17 into it, but all the evidence suggested one
18 shooter.

19 Q. Showing you what's already been marked
20 and admitted as State's 1. And you talked about
21 shell casings.

22 A. Yes, sir.

23 Q. Were they grouped into two separate
24 groups?

25 A. They were, sir.

1 Q. Where was the first couple of shell
2 casings found?

3 A. So there was two shell casings from
4 this picture. I can't tell exactly where it is,
5 but there's two shell casings by a bench and two
6 shell casings by a bench and then there was six in
7 this location.

8 Q. All right. And clear that one more
9 time.

10 A. (Witness complies with request.)

11 Q. So you say you had two over here and
12 then you had six over here?

13 A. Yes.

14 Q. Was there a blood trail?

15 A. There was a blood trail, sir. Leading
16 from this tree line area here in the direction of
17 America Street and then Mr. Lewis was found on
18 America Street.

19 Q. Blood trail went all the way to
20 America?

21 A. Yes.

22 Q. Let me ask you this: Then you had a
23 projectile on a tree over here?

24 A. Yes.

25 Q. Was there any projectiles found on this

1 side?

2 A. No, sir.

3 Q. Was there any shell casings found on
4 this side?

5 A. No, sir.

6 Q. Okay. So let's move on into some other
7 followup. Did a lot of people call 911?

8 A. Yes, sir.

9 Q. About how many people?

10 A. There were about 11 people that called.

11 Q. Did you talk to all of them?

12 A. I was able to talk to I believe the
13 number is eight.

14 Q. Okay. Anything to further the
15 investigation?

16 A. No, sir. They just all had valid
17 reasons for being in the area. They were no direct
18 witnesses. They just heard the shooting, called it
19 in and we went and interviewed them.

20 Q. Okay. Show you State's 82. I'm going
21 to play clip six. Did you have the chance to
22 review this?

23 A. I did.

24 Q. During the investigation. Okay. I
25 want to know if you know who these two individuals

1 here are or were able to identify them.

2 (Clip played.)

3 A. So that would be Desmond Lewis and
4 Christopher Victoria.

5 Q. And they are walking from America to
6 toward Mary?

7 A. That's correct.

8 Q. South and America. This camera is
9 America and South?

10 A. Yes.

11 Q. What's the time on this?

12 A. The time on this footage is 8:00 p.m.,
13 2000 hours.

14 Q. And I think we get a better image here.

15 (Clip played.)

16 Okay. Now we are going to play again
17 from State's 82 clip one.

18 (Clip played.)

19 This is from America and Mary?

20 A. That's correct.

21 Q. All right. Who are these two
22 individuals?

23 A. That is Desmond Lewis and Christopher
24 Victoria.

25 Q. Time now is 8:02?

1 A. Yes, sir.

2 Q. This picks up right where the other one
3 left off?

4 A. Yes.

5 (Clip played.)

6 And clip two.

7 (Clip played.)

8 Q. Desmond and Christopher again?

9 A. Yes, sir.

10 Q. Clip three right where we leave off
11 again?

12 A. Yes, sir.

13 Q. And they are they walking towards the
14 direction of the park?

15 A. Yes, sir.

16 Q. And what's the time there?

17 A. The time is 8:05.

18 Q. Then we will play one last clip, clip
19 four.

20 (Clip played.)

21 What's the time now?

22 A. Time there is 8:47.

23 Q. Those individuals, are they looking
24 towards the direction of where the crime scene was?

25 A. Yes, sir. Then they start to go off

1 camera different directions.

2 Q. And who was what?

3 A. That would be Desmond Lewis.

4 Q. That's where he would stay until the
5 police come?

6 A. Yes, sir.

7 Q. Okay. Now, another thing that you
8 happened to review or did you happen to review the
9 Defendant's interview with Detective Holmes?

10 A. I did.

11 Q. All right. When you reviewed that
12 interview what, if anything, were you looking for?

13 A. Basically information that he provided,
14 whether it be phone numbers, whether he was or what
15 he was doing basically, just reviewing the
16 interview, make sure I had a full understanding
17 what was discussed.

18 Q. Okay. Try to corroborate what he said?

19 A. Yes, sir.

20 Q. All right. This has already been
21 marked and admitted. It's 102B. I will play clip
22 one.

23 (Clip played.)

24 Now, what's the date and time here?

25 A. It's May 28th, 2015, at 5:44 p.m.

1 Q. That's Detective Holmes?

2 A. Yes, sir.

3 Q. We will play clip two.

4 (Clip played.)

5 There will be a little bit of silence.

6 Just bear with me.

7 (Brief pause.)

8 [REDACTED] North Romney, what is that area
9 generally called?

10 A. It is referred to as Bayside, but it's
11 also Bridgeview. It's an apartment complex.

12 Q. And he said Shanorma Smith stayed
13 there?

14 A. Yes, sir.

15 Q. (Clip played.)

16 Let's stop it there for a second. So
17 two phone numbers?

18 A. Yes.

19 Q. One is long distance, one is this
20 [REDACTED]-2165.

21 A. Yes, sir.

22 Q. Did you have occasion to do any
23 followup on that number?

24 A. I did, yes, sir. We got a search
25 warrant for records pertaining to those numbers.

1 Q. Okay.

2 (Clip played.)

3 We will come back to that. Showing you
4 State's 84, I think it's already marked and
5 admitted. And you had a chance to look at 84 as
6 well, right?

7 A. Yes, sir.

8 Q. You had the call detail records for
9 this [REDACTED] number?

10 A. Yes, sir.

11 Q. What are we looking at?

12 A. That would be the subscriber
13 information for the [REDACTED]-2165.

14 Q. Who is the phone number registered to?

15 A. It's the name of Curtis Williams.

16 Q. What are we looking at here?

17 A. This would be the call detail records
18 for that number as well.

19 Q. I'm going to go down and put a space in
20 between here. What time was this shooting again?

21 A. Shooting was at approximately 8:46 p.m.

22 Q. Okay. So on May 22nd at about
23 7:00 p.m. until the following morning at 7:30
24 excluding this text here there was no activity on
25 the phone?

1 A. That's correct.

2 Q. Did you still ask FBI Agent Simmonds to
3 map these two calls?

4 A. Yes, sir.

5 Q. And he already testified those calls
6 indicate this phone was in Summerville?

7 A. Yes.

8 Q. During this investigation did you have
9 the occasion to gather a lot of phone numbers that
10 the Defendant frequently used?

11 A. I did, yes, sir.

12 Q. A lot of phone numbers?

13 A. Yes, sir.

14 Q. Did you see any of those phone numbers
15 that appeared on other phone records that you had
16 identified to the Defendant on any of these
17 records?

18 A. No.

19 Q. Not a one?

20 A. No, sir.

21 Q. We will pick it back up.

22 (Clip played.)

23 During this interview he mentioned a
24 long distance number. Did he relay the number
25 [REDACTED]-9188?

1 A. Yes.

2 MR. OSBORNE: Your Honor, may I
3 approach?

4 THE COURT: You may.

5 BY MR. OSBORNE:

6 Q. I am showing you State's 99. Can you
7 take a look at that and tell me if you recognize
8 that?

9 A. I do, sir. It's the call detail
10 records for the [REDACTED]-9188 number and I recognize
11 it because of my initials and the date I reviewed
12 it.

13 Q. So this is the long distance number
14 that he mentioned during the interview with
15 Detective Holmes?

16 A. Correct.

17 Q. Okay. How did you go back and obtain
18 those records?

19 A. We obtained the records for phone
20 records and a lawful search warrant.

21 Q. And you submitted them to Sprint and
22 then Sprint submitted them to you?

23 A. Correct.

24 Q. And they were then put on that CD?

25 A. Yes, sir.

1 Q. Were they altered with, tampered with,
2 anything?

3 A. No, sir.

4 MR. OSBORNE: Okay. Your Honor, at
5 this time we would seek to offer State's 99 into
6 evidence.

7 THE COURT: Objections?

8 MR. ARCHER: Is this a list? Did
9 compile the call detail records?

10 THE COURT: It is not your witness.

11 MR. ARCHER: I am sorry.

12 THE COURT: Did you have an objection
13 to the exhibit?

14 MR. ARCHER: Well, I would like to voir
15 dire him a minute or see if I do, Judge.

16 THE COURT: Any objection?

17 MR. OSBORNE: None.

18 THE COURT: I will allow you to do so.

19 BY MR. ARCHER:

20 Q. Did you compile the list?

21 A. Sprint would have compiled the phone
22 records requested by the search warrant.

23 Q. Okay. Did you get any kind of sort of
24 authenticity from Sprint about those records?

25 A. So the process that occurs when you

1 submit the search warrant to Sprint, you will
2 submit them the warrant and request for the
3 records. They will process your request, send you
4 back what they call call records. You get the
5 records just as they are. They oftentimes will
6 submit an authenticity or they will say if you need
7 authenticity call us.

8 What I did have a habit of doing over
9 my years in the detective division is I would get
10 those records, I will put a copy on my computer to
11 work with, but the original records from Sprint
12 would go on a disk into evidence. Not be messed up
13 again. And I would use the working records to
14 develop further. Does that answer your question,
15 sir?

16 Q. Well, did you get a certificate of
17 authenticity from Sprint as to those records?

18 A. This occurred in 2015. I don't
19 remember exactly what they sent me. That would be
20 in evidence.

21 Q. Okay.

22 MR. ARCHER: Judge, I'm not sure that
23 the records are properly authenticated if he didn't
24 get a certificate.

25 THE COURT: Mr. Osborne?

1 MR. OSBORNE: Your Honor, this is the
2 statute that we tried to utilize and spoke about
3 prior to trial. I had provided that certificate of
4 the authenticity to Mr. Archer concerning Facebook
5 records, his phone number, the Little Devin
6 Facebook records, the phone number of [REDACTED]-8874,
7 the Facebook records of Spring Street MBMB and also
8 this one, the 9188.

9 MR. ARCHER: Judge, honestly if he says
10 he provided it to me I'll accept that. I don't
11 recall it.

12 MR. OSBORNE: They have been filed with
13 the court.

14 THE COURT: So you will be withdrawing
15 your objection?

16 MR. ARCHER: I will withdraw it, yes,
17 sir.

18 THE COURT: All right. It will be
19 admitted as it has been marked. You may proceed.

20 (STATE'S EXH. 99 in evidence.)

21 BY MR. OSBORNE:

22 Q. Thank you, Your Honor. We will take a
23 look at State's Exhibit 99. Before I go do that
24 let me ask you this: You said for the 475 number
25 that was registered to Curtis Williams, you looked

1 at other phone numbers that the Defendant used
2 contacts and you weren't able to find any?

3 A. Right.

4 Q. Did you do the same for this
5 number [REDACTED]-9188?

6 A. Yes, sir.

7 Q. Did you find individuals that he
8 frequently made contact with on these call detail
9 records?

10 A. Yes.

11 Q. What are we looking at?

12 A. So we are looking to the subscriber
13 information for this phone number. It's in the
14 name of Calvin Brown.

15 Q. Okay. So he said this was his phone
16 number and it is registered to him?

17 A. Correct.

18 Q. And these are the actual -- we are
19 looking at now the call detail records, what FBI
20 Agent Simmonds talked about?

21 A. Correct.

22 Q. Cell towers, things of that nature.

23 Now, when you made your request to get these
24 records did you request to get the records from May
25 the 28th or after the date of this shooting?

1 A. No, sir. The request was made for
2 May 21st, 2015, through June 5th, 2015.

3 Q. So why did you only have May 28th?

4 A. Sprint advised us that that phone had
5 been activated on the 28th.

6 Q. It was activated on the 28th?

7 A. That's correct.

8 Q. And the first phone call on this phone
9 is at 4:52 p.m.?

10 A. That's correct.

11 Q. [REDACTED]-1054, that's to Shanorma Smith?

12 A. Yes.

13 Q. Already been identified earlier. And
14 so this call would have been made to Shanorma Smith
15 before he began the interview with Detective
16 Holmes?

17 A. Yes, sir.

18 Q. So FBI Agent Simmonds testified that
19 with a phone number you can map it, you can find a
20 lot of things about that number that was being used
21 during a particular time frame. Would you agree
22 with that?

23 A. Yes.

24 Q. Having this phone number were you able
25 to tell anything regarding the Defendant's

1 activities on May the 22nd?

2 A. No, sir. Like we said, the phone was
3 not activated until the 28th, therefore there was
4 no information period for any day prior.

5 Q. And I think we will go on to clip
6 three.

7 (Clip played.)

8 Let's stop right there for a second.
9 Throughout your investigation did you find any
10 evidence to indicate that the Defendant did play
11 with guns?

12 A. Yes, sir.

13 Q. And how did you go about finding that
14 out? Through what avenues?

15 A. That information was found on the
16 Defendant's Facebook.

17 Q. May I approach?

18 THE COURT: Yes.

19 Q. For ID purposes only showing you what's
20 been marked as State's Exhibit 87. Do you
21 recognize that?

22 A. I do. My initials and the date I
23 reviewed it are on that.

24 Q. And what are they?

25 A. That's the Facebook records for the

1 Defendant.

2 Q. How did you go about getting the
3 Facebook records?

4 A. Those were obtained under a lawful
5 search warrant as well.

6 Q. And these are for Spring Street MBMB?

7 A. Yes, sir.

8 Q. And they were provided by Facebook?

9 A. Yes.

10 Q. As custodian of records?

11 A. Yes.

12 Q. Did you alter them, tamper with them in
13 any way?

14 A. No, sir.

15 Q. I'm going to show you now first what's
16 been marked -- give me one second. (Brief pause.)

17 MR. ARCHER: No objection.

18 Q. Showing you first what's been marked as
19 State's Exhibit 88A. Can you look at that and tell
20 me if you recognize that?

21 A. Yes, sir.

22 Q. What is that?

23 A. This is the Facebook business record
24 for the Defendant Spring Street MBMB.

25 Q. Okay. Does that record give some

1 identifying information concerning that Facebook
2 user account?

3 A. Yes, sir. So each Facebook account is
4 issued by Facebook what they call a target number.
5 And this particular account the target number ends
6 in 1185.

7 Q. And that was provided to you from
8 Facebook?

9 A. Correct.

10 MR. OSBORNE: Your Honor, at this time
11 I would seek to admit 88A into evidence.

12 THE COURT: Any objection?

13 MR. ARCHER: No objection to these
14 records.

15 THE COURT: Without objection they will
16 be admitted as marked. You may publish.

17 (STATE'S EXH. 88A in evidence.)

18 BY MR. OSBORNE:

19 Q. Briefly here, you talk about the target
20 number?

21 A. Yes, sir.

22 Q. Ending in 1185?

23 A. Yes.

24 Q. And so is it fair to say that when a
25 message or a post is made and you see that target

1 number as being the author that that was generated
2 from the author Spring Street MBMB?

3 A. Yes, sir.

4 Q. And that's his name there?

5 A. Yes.

6 Q. Spring Street MBMB. And were you able
7 to -- other than witness testimony which we have
8 already heard, but other than that were you able to
9 identify Calvin Brown as being the user of this
10 Facebook account?

11 A. Yes, sir.

12 Q. Your Honor, may I approach? For ID
13 purposes only, I'm asking you if you recognize
14 88B, C, D, E, F, G, H. We will stop there.

15 A. Yes, sir.

16 Q. What are they?

17 A. Those are photographs of the Defendant,
18 Calvin Brown.

19 Q. Okay. So these were photographs of the
20 Defendant that were found in his Spring Street MBMB
21 account?

22 A. Yes, correct.

23 Q. Beg the Court's indulgence.

24 THE COURT: Yes, sir.

25 Q. Now, we began this discussion talking

1 about you said that you had found some posts
2 concerning a gun on this account?

3 A. Yes, sir.

4 MR. ARCHER: No objection.

5 THE COURT: Without objection it will
6 be admitted. Are you offering it?

7 MR. OSBORNE: Yes, Your Honor.

8 THE COURT: It will be admitted. You
9 may publish.

10 (STATE'S EXH. 89 in evidence.)

11 BY MR. OSBORNE:

12 Q. Okay. Showing you State's 89. What is
13 the date of the message sent by Spring Street MBMB?

14 A. So that day is May 20th, 2015.

15 Q. FBI Agent Simmonds testified to this is
16 UTC time, so 1219 we have to subtract four to get
17 to Eastern?

18 A. Yes.

19 Q. So this is 8:19 a.m.?

20 A. Correct.

21 Q. And what does he say?

22 A. He says I need something asap bro. I
23 ain't care about the price.

24 Q. May the 20th, this was two days before
25 the shooting?

1 A. Yes.

2 Q. And what does Runway General say?

3 A. Call me 575-7715.

4 Q. All right. Spring Street MBMB respond?

5 A. I at work. Get off at three. I about

6 to hit you.

7 Q. Then we have another post from Runway

8 General on May the 21st?

9 A. Yes.

10 Q. And that's about, what, 3:39 p.m. our

11 time?

12 A. Correct.

13 Q. Says what?

14 A. Says call me now bro.

15 Q. Okay. So this ended this

16 communication, ended with Runway General on May the

17 21st -- well, on May 20th, he says I'll call you

18 when I get off work at three?

19 A. Yes, sir.

20 Q. On May the 20th?

21 A. Yes.

22 Q. Your Honor, may I approach?

23 THE COURT: You may.

24 Q. Showing you what's already been marked

25 and ID'd as State's Exhibit No. 90. Can you take a

1 look at that and tell me if you recognize that?

2 A. Yes, sir.

3 Q. And what is that?

4 A. So again Facebook records. It's a
5 message sent by Spring Street MBMB. Says about to
6 put the 32 in dey and then there's a picture
7 attached of a Smith and Wesson pistol.

8 Q. And you got that from the Facebook
9 records of Spring Street MBMB?

10 A. Yes.

11 MR. OSBORNE: Okay. Your Honor, at
12 this time we would seek to submit or offer to admit
13 State's Exhibit 90 into evidence.

14 MR. ARCHER: I have no objection to
15 this as far as shows something showed up on the
16 website of Spring Street MBMB. I'm not admitting
17 to the authorship of it.

18 THE COURT: I haven't asked you to do
19 that. I think we are just asking whether or not
20 that is an admissible document.

21 MR. ARCHER: Yes, I'll consent to its
22 admission with the fact I'm not --

23 THE COURT: It will be admitted as
24 marked. You may publish.
25

(STATE'S EXH. 90 in evidence.)

BY MR. OSBORNE:

Q. Okay. So we ended off on the message with Runway General made on the 20th he said he would meet up with him after he got off work, correct?

A. Correct.

Q. What's the date on this message?

A. That message is May 20th, 2015.

Q. So 2336, we have to subtract four from that, so that's 11, so we are looking at about 7:36 p.m. our time?

A. Correct.

Q. And what does he say?

A. About to put the 32 in dey.

Q. And that was attached -- this photograph that was attached to that message?

A. Yes, sir.

Q. And what's the response?

A. Basically I'm about to -- says I'm about to HYJ, but basically I'm about to hit you up.

Q. About to call you?

A. Yes.

Q. Okay. So we are looking at May

1 the 20th, this would have been two days before the
2 shooting; is that correct?

3 A. Yes, sir.

4 Q. And he is communicating. We don't have
5 a name, we only have the author being 3518; is that
6 correct?

7 A. Correct.

8 Q. Beg the Court's indulgence.

9 THE COURT: Yes, sir.

10 Q. And showing you State's Exhibit 67.
11 Who is 3518?

12 A. 3518 has been associated to Devin
13 Middleton.

14 Q. And his user name?

15 A. And the user name on that account
16 there, sir, is -- well General Taliban right there.

17 Q. Okay. And Devin Middleton's name
18 became relevant in this investigation in other
19 ways; isn't that correct?

20 A. Yes, sir.

21 Q. Showing you what's been marked and
22 admitted State's Exhibit 54A. What are we looking
23 at here?

24 A. Those were letters from the detention
25 center. The addressee there is Devin Middleton and

1 the recipient would be Tyrese Steed.

2 Q. And we have already talked about this.
3 The author of the letter with the most probability
4 SLED analyst said was the Defendant?

5 A. Yes, sir.

6 Q. I'm going to show you one other thing
7 real quick. We are going to go to State's 95. And
8 have you seen this before?

9 A. Yes.

10 Q. Are these call detail records for 8874?

11 A. That's correct.

12 Q. And who is the first person the
13 Defendant calls after the shooting?

14 A. That's Devin Middleton's number.

15 Q. We will get back to that.

16 (Clip played.)

17 Are there any documented reports of
18 Desmond shooting at the Defendant before?

19 A. No, sir.

20 Q. Are there any documented reports of the
21 Defendant shooting at Desmond?

22 A. No, sir.

23 Q. But he says that Desmond had shot at
24 him before?

25 A. Yes.

1 Q. Did you go back and look?

2 A. I did.

3 Q. Did it surprise you that you didn't
4 find anything?

5 A. No.

6 Q. Why is that?

7 A. Oftentimes there's incidents that
8 happen where a shooting had taken place and no one
9 called. There's also times when officers respond
10 to areas where shootings are and find nothing, no
11 one comes forward. So it didn't really surprise
12 me.

13 Q. So even victims don't report it?

14 A. Correct.

15 (Clip played.)

16 Q. That ended at 6:09. Over the next 20
17 minutes or so anything significant said?

18 A. No, sir.

19 Q. All right. Playing clip four.

20 (Clip played.)

21 This person he's talking to that he was
22 200 percent sure he told her to say that or tell
23 you that he was with her, did you identify that
24 person?

25 A. Yes, sir.

1 Q. Who was that?

2 A. Shanorma Smith.

3 Q. Did you have the chance to speak to
4 Shanorma?

5 A. I did.

6 Q. And what day was that?

7 A. That was on I believe on the 28th. I
8 don't have the specific date.

9 Q. June 4th?

10 A. June 4th, yes, sir.

11 Q. Did you meet with her at MUSC?

12 A. I did.

13 Q. And did she, in fact, say that the
14 Defendant was with her?

15 A. She did.

16 Q. And now he said that Shanorma's phone
17 number, I think [REDACTED]-1054?

18 A. Yes.

19 Q. Did you have the occasion to get those
20 phone records?

21 A. Yes.

22 Q. Again by lawful search warrant?

23 A. Yes, sir.

24 Q. Let's take a quick look at those
25 records. This is State's 91, already been marked

1 and admitted. Do you recognize these?

2 A. I do, yes, sir.

3 Q. These phone records?

4 A. Yes, sir.

5 Q. And Shanorma has a T-Mobile phone?

6 A. Correct.

7 Q. Now, who is this account registered to?

8 A. Registered to Shari Lucas.

9 Q. And Shari Lucas is Shanorma's roommate?

10 A. Correct.

11 Q. Bayside?

12 A. Yes.

13 Q. Are these are the call detail records?

14 A. Yes.

15 Q. Going to go down and do the same thing
16 here again. Shooting occurred at 8:46?

17 A. Correct.

18 Q. So that right there would be in between
19 the shooting time; is that correct?

20 A. Yes.

21 Q. Now, so the reason why I am doing this,
22 when you looked at these records all you had at
23 that time was the 9188 number, correct?

24 A. Yes, sir.

25 Q. Did you feel like you had the

1 Defendant's phone number?

2 A. Based on that being activated the date
3 of the interview I felt there was another number.

4 Q. Asked better did you feel like you had
5 the phone number that the Defendant was using on
6 the date of the shooting?

7 A. No, sir.

8 Q. When you looked at Shanorma's phone
9 which is registered to Shari, did anything
10 interesting appear just before and just after the
11 shooting?

12 A. Yes, sir. There was another [REDACTED] number
13 that appeared in the records several times.

14 Q. What was that?

15 A. That number was [REDACTED]-8847.

16 Q. Okay. So we have another out of state
17 area code [REDACTED] that's a different number?

18 A. Correct.

19 Q. All right. When you saw this what did
20 you do then?

21 A. So we get records -- oftentimes when
22 you evaluate cell phone records if there's a number
23 that's in frequent contact with somebody,
24 especially around dates of interest, you also get
25 records for that phone number as well from a search

1 warrant.

2 Q. Did you happen to get or did you get
3 those records as well?

4 A. Yes.

5 Q. Okay. Now, I want to show you
6 something else. I am showing you what's been
7 marked as 100A through E. Look at those and tell
8 me if you recognize those.

9 A. (Witness complies with request.) Yes,
10 sir.

11 Q. What are they?

12 A. These are again Facebook business
13 records of conversations between the Spring Street
14 MBMB account and other users where they provide
15 cell phone information on numbers.

16 Q. And right around the time frame of the
17 shooting?

18 A. Yes.

19 Q. And those were provided from Facebook?

20 A. Yes.

21 MR. OSBORNE: Your Honor, at this time
22 we would seek to offer 100A through E into
23 evidence.

24 MR. ARCHER: I looked at one. I didn't
25 look at all of them.

1 THE COURT: Okay. Let me know when you
2 are ready.

3 MR. ARCHER: Yes, sir. No objection.

4 THE COURT: Without objection they will
5 be admitted as they have been marked.

6 (STATE'S EXH. 100A-E in evidence.)

7 BY MR. OSBORNE:

8 Q. Okay. We will start by showing you
9 100A. Not concerned about the content of the
10 message here, just the date and the phone number.
11 What's the date?

12 A. So the date is May 11th, 2015. You
13 will see the phone number there [REDACTED]-8874.

14 Q. That's from Spring Street MBMB?

15 A. Correct.

16 Q. And you know that because of the 1185
17 target number?

18 A. That's right.

19 Q. 100B. May the 18th, what's that
20 message say?

21 A. Says bro this Calico. I need you asap
22 [REDACTED]-8874.

23 Q. Then on May 18th? 100C. What does
24 this one say?

25 A. So that date is May 23rd, 2015, and at

1 the bottom the message is [REDACTED]-887r. Says ball
2 me asap.

3 Q. Then we have a May 23rd same number?

4 A. Yes.

5 Q. 100D?

6 A. Date there is May 27th, 2015, what's
7 banging damn you 2-12 me at [REDACTED]-8874. Then
8 again the bottom.

9 Q. Then again down here at the bottom?

10 A. May 27th, 2015, says [REDACTED]-8874.

11 Q. Up at the top?

12 A. Yes.

13 Q. And well interestingly here, we see a
14 May 27th we have that phone number and then on
15 May 29th it changes?

16 A. Correct.

17 Q. 9188 number. Now, when you got those
18 cell phone records for the 8874 number did you see
19 any numbers that the Defendant -- that you were
20 able to associate to the Defendant?

21 A. Yes, sir.

22 Q. And do you recall how many times on
23 those 8874 numbers during the requested time period
24 Shanorma's phone communicated with that 8874?

25 A. For her record it was a total of 87

1 times.

2 Q. And that number, show you real quick,
3 showing you State's Exhibit 94, been marked and
4 admitted. That number was registered to whom?

5 A. 8874 registered to Calvin Brown.

6 Q. Okay.

7 (Clip played.)

8 Lots of names there. Let's clarify.
9 Shanorma Smith is his alibi, correct?

10 A. Correct.

11 Q. And Shanorma Smith is the girl that
12 lives on Bayside?

13 A. Yes.

14 Q. And Similar McClary is Desmond's baby
15 mama?

16 A. Correct.

17 Q. This is the girl that he knew from back
18 in high school?

19 A. Correct.

20 Q. Said he knew her before Desmond did?

21 A. Right.

22 Q. And he said that this whole thing
23 started because he got together with Similar?

24 A. Yes.

25 Q. Desmond's baby mama?

1 A. Correct.

2 Q. Okay.

3 (Clip played.)

4 Through your investigation and your
5 experience as a detective, phone tagging, have you
6 ever heard the term?

7 A. Yes.

8 Q. So alerting him to where another person
9 was and vice versa?

10 A. Basically, yes, sir.

11 (Clip played.)

12 Q. Similar, briefly. We are almost
13 finished. State's 92. And that's Similar there?

14 A. Yes, sir.

15 Q. That's Desmond's baby mama?

16 A. Correct.

17 Q. And State's 93, he said that he spoke
18 to her?

19 A. Yes.

20 Q. And this shows there was communication
21 between Spring Street MBMB and Similar?

22 A. Yes, sir.

23 Q. And again we have to take four hours
24 away from this, so we are looking at let's start
25 with 1143 on May the 22nd on the night of the

1 shooting, Spring Street MBMB?

2 A. Says call me bro.

3 Q. And Similar responds back?

4 A. She responds what's the number.

5 Q. And then again at 11:45 on the night of
6 the shooting he gives the 8874 phone number again?

7 A. Correct.

8 Q. Clip five.

9 (Clip played.)

10 Did you make any efforts to verify that
11 he got off work that day as he said?

12 A. Yes, sir.

13 Q. And how did you go about doing that?

14 A. So his two jobs at the time were Ely's
15 Table and Tommy Condone's. We learned from the
16 employers that he was actually off from Tommy
17 Condone's that day and had gotten off from Ely's
18 Table at 2:00 p.m.

19 Q. Did you make any effort to verify that
20 he took a cab from Safety or Express from [REDACTED] Hampden
21 Court, his grandma's house to Bayside?

22 A. Yes, sir. Both cab companies had no
23 documented pickups from that location.

24 Q. Showing you State's 95. Did you have
25 the occasion to look at cell phone records and see

1 whether there was a phone call placed to a cab
2 company that day?

3 A. There was, yes, sir.

4 Q. Sure about that?

5 A. There was -- I am sorry. So none on
6 his phone records for that day. There was calls to
7 cab companies throughout the records, but not on
8 that day.

9 Q. Let's look at that real quick.
10 May 21st I am just scrolling down. Call Safety and
11 Express. He said if I call one cab I will call
12 another?

13 A. Yes.

14 Q. And then again Safety and Express on
15 May 21st. And then we are going down. Now we are
16 on May 22nd. There is a call on May 22nd, but
17 that's in the morning right that's like --

18 A. Right.

19 Q. -- the night of the 21st 12:00 a.m. so
20 again 5:00 a.m.

21 And now we are moving on and now we are
22 getting into the part where he would have gotten
23 off work around two or three?

24 A. Correct.

25 Q. And tell me if you see where he called

1 the cab company?

2 A. There's no calls there.

3 Q. Okay.

4 (Clip played.)

5 No further questions.

6 THE COURT: Ladies and gentlemen, we
7 will take a short break before we do the
8 cross-examination. As always when you leave the
9 courtroom I will ask you not to talk about the case
10 until I ask you to begin deliberations. You may
11 retire to the jury room.

12 (Thereupon, the jury exited the
13 courtroom at 11:13 a.m.)

14 THE COURT: I will caution the witness
15 not to discuss his testimony during our break. You
16 may step down as well. We are in recess for about
17 ten minutes.

18 (A recess transpired.)

19 (Whereupon the jury entered the
20 courtroom at 11:24 a.m.)

21 THE COURT: The record will reflect the
22 jury has returned to the courtroom. Mr. Archer,
23 you may cross-examine the witness.

24 CROSS-EXAMINATION

25 BY MR. ARCHER:

1 Q. Detective English, did you ever recover
2 a gun in this case?

3 A. No, sir.

4 Q. Y'all had some information as to where
5 the gun might be, right?

6 A. No, sir.

7 Q. You didn't have -- Ms. Shanorma Jones
8 didn't tell you it was with the Defendant's
9 grandmother?

10 A. That was past my involvement, sir.

11 Q. Okay. Do you know whether a search
12 warrant was ever issued for his grandmother's
13 house?

14 A. I did execute a search warrant at her
15 house.

16 Q. And that was for what?

17 A. That was for evidence of the crime,
18 sir, clothing, firearm.

19 Q. And did you help serve that search
20 warrant?

21 A. Yes, sir.

22 Q. Did you ever find any firearm at her
23 house?

24 A. No, sir.

25 Q. Okay. I believe you said when you

1 started your testimony that you never developed any
2 evidence of there being more than one shooter; is
3 that correct?

4 A. I stated that the evidence did not
5 suggest more than one shooter.

6 Q. Okay. Well, let's -- can you mark
7 that, please.

8 (DFT. EXH. 1, report, was marked for
9 identification.)

10 BY MR. ARCHER:

11 Q. That's not exactly true, is it?

12 A. I don't know what you are asking me.

13 Q. Well, there was some evidence there was
14 more than one shooter, was there not?

15 A. I don't recall that, sir.

16 Q. Let me let you look at this.

17 MR. OSBORNE: Your Honor, may I see
18 what he is showing the witness?

19 THE COURT: You may.

20 BY MR. ARCHER:

21 Q. Could you tell us what that is?

22 A. Sir, this is a supplemental report that
23 I did. It's dated September 1st, 2015. It's
24 documenting my assignment in this case on
25 August 28th.

1 Q. This is a supplemental report drafted
2 by you, correct?

3 A. Yes, sir.

4 Q. And you were the chief case agent at
5 that time?

6 A. At that point, yes, sir.

7 Q. All right. I will direct your
8 attention to this paragraph right there. Can you
9 read that for us.

10 A. Yes, sir. Tyreik's grandmother,
11 Doretha Jones, was who with Tyreik when he was shot
12 told detectives that the two black males came from
13 the side of the building shooting at each other
14 which resulted in Tyreik being shot.

15 Q. Okay. So there was information in your
16 investigation of more than one individual out there
17 shooting that night, right?

18 A. Well, you specifically asked me earlier
19 if there was any evidence of that. This is simply
20 stating someone told someone else that. So that's
21 not what I was consider evidence.

22 Q. Well, Ms. Jones was a witness to the
23 shooting, was she not?

24 A. Ms. Jones provided a statement to the
25 detectives that I just read to you, but not to me.

1 Q. Wasn't she a witness to the shooting
2 that night? She was out there with her grandson?

3 A. I documented what I was reviewing in
4 the case file, but she did not give a statement to
5 me, sir. I don't want to tell you exactly what she
6 said.

7 Q. Okay. But there was evidence in the
8 case file that the child's grandmother said that
9 there were two people shooting at each other,
10 correct?

11 A. You keep using the term evidence. I
12 will say that it is documented from her statement,
13 sir, information.

14 Q. Okay. And you are not aware whether
15 she was out there when the shooting took place?

16 A. She was out there, sir.

17 Q. Okay. And she said she even described
18 one of the shooters?

19 MR. OSBORNE: Objection.

20 Q. Did she not?

21 THE COURT: Sir?

22 MR. OSBORNE: Objection. He is
23 literally reading what Ms. Jones said.

24 MR. ARCHER: Well, this is a
25 question --

1 THE COURT: You can show him the
2 document and ask him if he used that in his
3 investigation. But you can't publish a document to
4 the jury that hasn't been placed into the record so
5 I will sustain the objection.

6 MR. ARCHER: Okay. This is not
7 Detective English's report so I'm not sure I can
8 cross-examine on it.

9 THE COURT: All right.

10 BY MR. ARCHER:

11 Q. Okay. Desmond Lewis, did you ever
12 interview Desmond Lewis?

13 A. I reviewed his interviews. I was
14 present during one of the meetings with Solicitor
15 Osborne.

16 Q. Desmond Lewis denied on several
17 occasions, did he not, that Calvin Brown was the
18 fellow who shot him?

19 A. As the jury has heard, the story has
20 changed several times during the course of his
21 investigation.

22 Q. Yes, he was, no, he wasn't, yes, he
23 was, right?

24 A. Sir?

25 Q. And, in fact, he gave a written

1 statement saying it wasn't him I believe in
2 February of 2016, did he not?

3 A. As there are several pieces of written
4 statements and I don't know exactly which ones you
5 are referring to.

6 Q. But did he give a written statement
7 saying he only said that because the police pushed
8 him, right?

9 A. Yes, sir.

10 Q. Okay. And did you ever talk to
11 Christopher Victoria?

12 A. I did, sir.

13 Q. And he too also gave a written
14 statement, did he not, where he backed off of
15 saying that my client was the shooter, right?

16 A. His written statement was post my
17 involvement, sir.

18 Q. Okay.

19 MR. ARCHER: No other questions, Judge.

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION

22 BY MR. OSBORNE:

23 Q. Since he asked a bunch of questions
24 about what Ms. Jones said, have you seen her in the
25 courtroom the entire time?

1 A. Yes, sir.

2 Q. I think she might be outside right now
3 I think. Ms. Jones also said that she didn't get a
4 good look at either one of the guys; is that right?

5 A. Correct.

6 Q. And then she also said that one guy was
7 chasing the other guy; isn't that right?

8 A. Yes.

9 Q. So did it surprise you through your
10 investigation as a detective that she may not have
11 been so focused on remembering a clothing
12 description?

13 MR. ARCHER: Judge, I don't think he
14 can ask him what was in a witness's mind. You can
15 call the witness to the stand.

16 THE COURT: You asked if he was
17 surprised in that occurred. I'm going to sustain
18 the objection.

19 BY MR. OSBORNE:

20 Q. Let me try it another way. Through
21 your experience as an investigator or detective how
22 many victims do you think that you have spoken to?

23 A. Countless victims throughout the course
24 of ten years in the police department, countless.

25 Q. And how many witnesses do you think you

1 have spoken to crimes that were occurring right at
2 that moment?

3 A. Again, a lot of witnesses.

4 Q. And through your experience as a
5 detective when clothing descriptions vary based
6 upon a witness who is seeing something in the
7 moment where the shooting is occurring, is that
8 something that surprises you?

9 A. No.

10 Q. Do you see that often?

11 A. It is an often occurrence, yes, sir.

12 Q. Okay. I think you covered this well
13 enough when you said there was no evidence of there
14 being two shooters. You were referring to physical
15 evidence; is that fair to say?

16 A. Yes, sir. So the jury remembers the
17 overview picture that we showed you where the shell
18 casings were recovered.

19 THE COURT: Sir, you have to answer
20 your questions to the attorney, don't address had
21 the jury.

22 THE WITNESS: That's correct.

23 BY MR. OSBORNE:

24 Q. So you were just referring to shell
25 casings, GSR, projectiles, all going toward America

1 Street; that's what you were referring to?

2 A. Yes, sir, physical evidence.

3 Q. Okay.

4 MR. OSBORNE: No further questions.

5 THE COURT: Recross?

6 RECROSS-EXAMINATION

7 BY MR. ARCHER:

8 Q. Mr. Osborne asked you about
9 descriptions of witnesses. Did Ms. Jones ever give
10 a description of anybody shooting?

11 A. Are you trying to -- you want me to
12 look at reference material, sir?

13 Q. Yeah. (Handing.)

14 A. This is a report that was typed by
15 another detective.

16 Q. Right. Are you familiar with that
17 report?

18 A. I have reviewed the report. If you
19 want me to go over the report I can.

20 MR. OSBORNE: Your Honor, I object to
21 that. Ms. Jones is right here. If he wants to
22 call her certainly can.

23 MR. ARCHER: That's all right.

24 THE COURT: That's not his report, Mr.
25 Archer.

1 MR. ARCHER: I withdraw it, Your Honor.

2 THE COURT: Thank you.

3 MR. ARCHER: I got no other questions.

4 THE COURT: You may step down, thank
5 you very much.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: State may call its next
8 witness.

9 MR. OSBORNE: The State rests.

10 THE COURT: Ladies and gentlemen of the
11 jury, that completes the presentation of evidence
12 by the State. There is some matters I have to take
13 up with the attorneys at this stage of the
14 proceeding without you being present so I will
15 excuse you to the jury room. Don't discuss the
16 case until I ask for you to do so. You may retire.

17 (Thereupon, the jury exited the
18 courtroom at 11:36 a.m.)

19 THE COURT: Any motions?

20 MR. OSBORNE: None from the State, Your
21 Honor.

22 MR. ARCHER: Just to preserve the
23 record, I would move to dismiss for lack of
24 adequate evidence, Your Honor.

25 THE COURT: The motion will be noted.

1 I do find -- however, I don't weigh the evidence at
2 this stage, I simply determine there exists
3 evidence and there is testimony from witnesses
4 directly linking the Defendant with the event and
5 so I will deny the motion.

6 Now, at this time I need to go over
7 some matters with your client, Mr. Archer, so we
8 are going to ask that the clerk place him under
9 oath at this time.

10 (Defendant sworn.)

11 THE COURT: You can be seated, Mr.
12 Brown. Mr. Brown, at this time I'm going to go
13 over with you certain of your rights. When I am
14 finished if you do not understand what I have
15 explained to you, you can ask questions of me. You
16 have a right to consult with your lawyer about
17 these matters at this time if you choose to do so.
18 So do you understand what I am doing at this point
19 in time?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: We have reached the stage
22 of this trial where you have the right to present
23 your defense. As part of that defense you have the
24 right to testify in this case, but you also have
25 the right not to testify. I will make you aware of

1 a portion of the Fifth Amendment to the United
2 States Constitution. That amendment reads in part
3 that no person can be compelled in a criminal case
4 to be a witness against himself.

5 Now, what that means is that while you
6 have the right to testify, no one can make you
7 testify. You cannot be required to testify in this
8 case. The right as to whether or not to testify is
9 a personal right that belongs only to you. I will
10 inform you that if you decide to testify your
11 testimony will be governed by the same rules that
12 govern any other witnesses testimony. You will be
13 examined by your lawyer, you will be cross-examined
14 by the State.

15 Now, at the beginning of the trial I
16 believe I was informed by the State that you do not
17 have any convictions that you would intend to
18 impeach him?

19 MR. OSBORNE: That is correct.

20 THE COURT: Is that still the case?

21 MR. OSBORNE: That is, Your Honor.

22 THE COURT: Now, I will tell you that
23 if you decide not to testify that I will instruct
24 the jury that the fact that you did not testify is
25 not a fact for them to consider at all in reaching

1 a verdict. In fact, my instruction to them would
2 be that they could not even discuss during their
3 deliberations the fact that you did not testify.

4 Now, you have the right to consult with
5 your lawyer, with family, friends or anyone else
6 you would like to talk to about your decisions as
7 to whether or not to testify in this case, but in
8 the final analysis at the end of the day the
9 decision is your decision and your decision alone.
10 So do you understand the right that I just
11 explained to you?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you have any questions
14 about that right?

15 THE DEFENDANT: No, sir.

16 THE COURT: Have you discussed this
17 matter with your lawyer?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you feel the need to
20 talk it over with him any further at this time?

21 THE DEFENDANT: No, sir.

22 THE COURT: Do you intend to testify in
23 this case?

24 THE DEFENDANT: No, sir, I don't.

25 THE COURT: Thank you, sir. Now,

1 anything further from the State before we proceed
2 from the defense?

3 MR. OSBORNE: No, Your Honor.

4 MR. DURANT: We do need to make sure of
5 our exhibits at some point, Your Honor. We haven't
6 had a chance --

7 THE COURT: We are not going to go that
8 far just yet. Mr. Archer, do you intend to call
9 other witnesses?

10 MR. ARCHER: Just one.

11 THE COURT: Okay.

12 MR. ARCHER: Very short.

13 THE COURT: Very good. Is there
14 something you need to check right now?

15 MR. DURANT: No, sir, I just want to
16 make sure that at some point before --

17 THE COURT: What we are going to do I
18 will tell you, is we have got lunch being delivered
19 at noon for the jury. So what I'm going to do is
20 try to do this first witness that he has, that
21 should take us up to at least noon, maybe a little
22 past it. So we will break and have lunch before we
23 get into arguing and closing and things going back
24 to the jury.

25 MR. DURANT: Very good, Your Honor.

1 THE COURT: That's my intentions at
2 this point. State ready?

3 MR. OSBORNE: Yes Your Honor.

4 THE COURT: Defense ready?

5 MR. ARCHER: Yes, Your Honor.

6 THE COURT: Bring the jury in.

7 (Whereupon the jury entered the
8 courtroom at 11:43 a.m.)

9 THE COURT: The jury has returned to
10 the courtroom. When you left the State had rested
11 its case and so we are now in a position for the
12 defense to call any witnesses the defense would
13 like to call. You may call your first witness.

14 MR. ARCHER: Yes, sir. Your Honor. We
15 have only one. We call Ms. Henrietta Kinloch to
16 the stand.

17 THE COURT: Come forward and be sworn,
18 please.

19 HENRIETTA KINLOCH
20 having been duly sworn, testifies as follows:

21 THE CLERK: Please state your full name
22 and spell your last name for the record

23 THE WITNESS: K-I-N-L-O-C-H.

24 DIRECT EXAMINATION

25 BY MR. ARCHER:

1 Q. All right. Ms. Kinloch, how old are
2 you?

3 A. I'm 65.

4 Q. All right. And are you related to
5 Calvin?

6 A. That's my grandson.

7 Q. Okay.

8 THE COURT: Ma'am, if you will slide up
9 to the microphone, I want everybody to be able to
10 hear what you have to say. If you don't get close
11 to that microphone we won't be able to hear you.
12 Thank you, ma'am.

13 BY MR. ARCHER:

14 Q. Do you work?

15 A. No.

16 Q. Did you ever work?

17 A. Yes, I retired from Ernie's Restaurant
18 on Spring Street.

19 Q. What?

20 A. Ernie's Restaurant on Spring Street.

21 Q. Okay. How long did you work at
22 Ernie's?

23 A. About 30 years.

24 Q. Thirty years?

25 A. Yes.

1 Q. How many kids you got?

2 A. I got two.

3 Q. How many grandkids you got?

4 A. About seven.

5 Q. Seven. And Calvin is one of your
6 grandchildren?

7 A. Yes.

8 Q. Now, I believe you have been here
9 pretty much all week long listening to testimony?

10 A. Yes, sir.

11 Q. Were you here when Shanorma Smith
12 testified that she brought a bag to your house that
13 she got from Calvin?

14 A. Yes, sir.

15 Q. And were you here when she testified
16 that there was a gun in that bag?

17 A. Yes, sir.

18 Q. Did Shanorma Smith ever bring a bag to
19 you?

20 A. No, sir.

21 Q. Okay. Did you ever receive a gun from
22 the time of this shooting until now?

23 A. No, sir.

24 Q. Did the police come to your house and
25 search for that gun?

1 A. Yes, sir.

2 Q. Did they seize anything from your
3 house?

4 A. No, sir.

5 Q. Okay. So you never got a bag that was
6 supposedly Calvin's from Shanorma?

7 A. No, sir.

8 Q. And if she said that she brought it to
9 you, that's not just true?

10 MR. OSBORNE: Objection.

11 THE WITNESS: No, sir.

12 MR. OSBORNE: Pitting.

13 THE COURT: I will sustain the
14 objection.

15 MR. ARCHER: All right. I have no
16 other questions, Your Honor.

17 THE COURT: Thank you.

18 MR. ARCHER: That's all. We have no
19 other witnesses.

20 THE COURT: Your witness, counselor.

21 CROSS-EXAMINATION

22 BY MR. OSBORNE:

23 Q. Ms. Kinloch, my name is David Osborne
24 with the solicitor's office. You don't remember
25 whether the Defendant was with you on the day of

1 May the 22nd of 2015, the day of the shooting, do
2 you?

3 A. No, sir, I don't remember.

4 Q. I am not going to take long. And you
5 don't know where he was that day?

6 A. No, sir. He said he was going to work.
7 I don't know.

8 Q. Okay. Now, on September -- Mr. Archer
9 asked you about the police coming by. They came by
10 your house on September the 5th; isn't that
11 correct?

12 A. I can't remember. I know they been by.

13 Q. That sounds about right, though?

14 A. Yes, sir.

15 Q. So Calvin was arrested on June the 5th
16 so this would be three months after; is that
17 correct? Does that sound about right?

18 A. I don't know. I can't --

19 Q. It was sometime after that, correct?

20 A. I don't know exactly how long.

21 Q. And you spoke to them?

22 A. Yes.

23 Q. Now, it was that man right there,
24 Detective English, tall guy?

25 A. Yes, I think.

1 Q. He wanted to take an audio recording
2 statement from you, didn't he?

3 A. I know he take a statement. I don't
4 know.

5 Q. He wanted to record it, but you didn't
6 want to be recorded, did you?

7 A. I don't think so.

8 Q. All right. They searched your
9 apartment, they didn't find anything, right?

10 A. Yes.

11 Q. About three months after?

12 A. Um-hmm.

13 Q. So let's talk about Calvin's bookbag
14 for a minute. You have seen Calvin with a black
15 bag, right? He has one, right?

16 A. He probably do.

17 Q. Probably does or you have never seen
18 him with one?

19 A. I can't say. Probably had one. I
20 don't know, briefcase or whatever.

21 Q. Okay. So this bag is it like a man
22 purse or like a bookbag?

23 A. I don't know. Probably like a man
24 purse. I don't know. I don't pay much attention
25 to it.

1 Q. Something that you have seen him carry
2 around a lot? He's your grandson, right?

3 A. Yes.

4 Q. Lives with you, right?

5 A. Huh?

6 Q. He lived with you, right?

7 A. Yes, he be there.

8 Q. Okay. You testified that Shanorma
9 never came by your house with the black man purse.
10 But isn't it true that Calvin's sister, Althea's
11 daughter, came by your house and picked up that
12 black bag?

13 A. Out there?

14 Q. Althea, your daughter?

15 A. No.

16 Q. Your daughter never sent your
17 granddaughter, Calvin's sister?

18 A. No, no, huh-uh.

19 Q. Isn't it true that my investigator Ray
20 Haupt called you on November the 7th just a few
21 weeks ago and asked if we could talk to you?

22 A. He been by there.

23 Q. I understand that.

24 A. Yes.

25 Q. But before he came by didn't he speak

1 with you and you agreed to come in and talk to us?

2 A. Yes.

3 Q. But you never made it, did you?

4 A. No.

5 Q. And then the next day he came by your
6 house; isn't that right?

7 A. Um-hmm.

8 Q. And he wanted to talk to you then,
9 right, didn't he?

10 A. Yeah.

11 Q. He said he wanted to ask you a couple
12 questions, didn't he?

13 A. He said he wanted to ask me a couple
14 questions about Calvin. I tell him I would have
15 come but since the lawyer said I can come down here
16 so I came to court. So he said I don't have to
17 come. He said I could have come to court and
18 that's what I come at.

19 Q. I understand.

20 A. Yes.

21 Q. I understand that. I'm not trying to
22 give you a hard time. I am just trying to say that
23 -- I know Mr. Archer --

24 A. I asked him, I said you want me to
25 come? He said no, I don't have to come. I can

1 just meet the court and he give me a paper.

2 Q. And that's what I am getting at.

3 A. Yes.

4 Q. I'm not fighting you. I am just saying
5 that when Investigator Haupt asked to talk to you,
6 you know, and I understand Mr. Archer said talk to
7 him if you want, but you don't have to and you
8 chose the latter? You chose not to talk to him?

9 A. Yes, he said come here. He said I can
10 come to court or I don't have to talk to him. So I
11 decided I wanted to talk to him, but then he said I
12 could just come to court. So that's what I did.

13 Q. The reason why you didn't talk to my
14 investigator is because your daughter, Calvin's
15 mom, told you not to talk to him?

16 A. No. She didn't tell me not to talk to
17 him. I didn't really want to talk to him anyway.

18 Q. Okay.

19 A. Yeah.

20 Q. But you didn't talk to him?

21 A. Yeah. I mean I didn't really want to
22 talk. I didn't have nothing to talk about.

23 MR. OSBORNE: No further questions.

24 THE COURT: Redirect?

25 MR. ARCHER: No redirect, Your Honor.

1 THE COURT: You may step down, ma'am.

2 THE WITNESS: Thank you.

3 THE COURT: Any reason for the witness
4 to stay if she chooses to leave?

5 MR. ARCHER: Free to go.

6 MR. OSBORNE: Free to go.

7 THE COURT: Ma'am, you can leave or you
8 can stay if you would like. Defense may call its
9 next witness.

10 MR. ARCHER: We have no other
11 witnesses, Your Honor.

12 THE COURT: Ladies and gentlemen of the
13 jury, that completes the presentation of evidence
14 in the case. Is there a rebuttal witness?

15 MR. OSBORNE: I would like to call
16 Detective English for one question.

17 THE COURT: Okay. I will let you do
18 that.

19 MR. OSBORNE: State calls Detective Dan
20 English.

21 DAN ENGLISH

22 having been duly sworn, testifies as follows:

23 DIRECT EXAMINATION

24 BY MR. OSBORNE:

25 Q. You met with Ms. Kinloch?

1 A. Yes.

2 Q. That was on September the 5th; is that
3 correct?

4 A. Yes, sir.

5 Q. Three months after the Defendant was
6 arrested?

7 A. Correct.

8 Q. Is that correct?

9 MR. OSBORNE: Okay. No further
10 questions.

11 MR. ARCHER: No questions.

12 THE COURT: You may step down. Thank
13 you very much. Any other reply witnesses?

14 MR. OSBORNE: No, Your Honor.

15 THE COURT: Ladies and gentlemen of the
16 jury, that completes the presentation of evidence
17 in the case. We have reached the stage of the
18 trial I told you the attorneys would be given their
19 second opportunity to address you directly
20 concerning the evidence that you have heard and
21 their closing arguments.

22 Following that I will be charging you
23 concerning the law in this case. I am told that
24 your lunch is to be delivered at noon and it is
25 here? We are good?

1 THE CLERK: Not yet.

2 THE COURT: Just a couple of minutes
3 out. At any rate we are going to go ahead and
4 break for that lunch right now. As soon as it gets
5 here we are going to give you about 30 minutes to
6 eat it and then we are going right back to work.
7 So I ask you to stay in the jury room until we take
8 care of that with you. And we will be resuming
9 shortly.

10 So you may retire to the jury room.
11 Don't discuss the case until I ask you to do so.
12 Thank you very much.

13 (Thereupon, the jury exited the
14 courtroom at 11:54 a.m.)

15 THE COURT: Any specific request for
16 charge from the State? I received your request on
17 transferred intent. I do intend to charge that
18 area of the law.

19 MR. OSBORNE: Thank you, Your Honor.

20 THE COURT: Anything else from the
21 State?

22 MR. OSBORNE: No.

23 THE COURT: From the defense?

24 MR. ARCHER: I would ask for a charge
25 on assault and battery first as a lesser included

1 offense of attempted murder.

2 MR. OSBORNE: Assault and battery
3 first. I don't have that statute pulled up, but
4 it's a little bit weird the way it is written as
5 attempt or an offer to cause an injury. Both of
6 these victims were injured. So if they find that
7 he committed -- that he fired that gun and injured
8 both Desmond and Tyreik then we are past A and B
9 1st. He could argue ABHAN I assume, but not
10 assault and battery first.

11 MR. ARCHER: What?

12 MR. OSBORNE: Assault and battery high
13 and aggravated nature.

14 MR. ARCHER: Assault and battery of a
15 high and aggravated I will ask for, Your Honor.

16 THE COURT: State have a problem me
17 doing that?

18 MR. OSBORNE: No, I think just goes to
19 degree of injury then.

20 THE COURT: All right. We will break
21 for lunch as well. And then I will return. So
22 stay close.

23 (A luncheon recess transpired.)

24 THE COURT: Come to order, please.

25 Now, you agreed upon a lesser included offense of

1 assault and battery of a high and aggravated
2 nature; is that correct?

3 MR. OSBORNE: I did, Your Honor. I
4 think I misspoke. When I went back and looked at
5 it again it seems like that would be whether he had
6 the specific intent.

7 THE COURT: To commit. And I think the
8 way the charge on the attempted murder is that
9 specific intent to kill is not required. A general
10 intent is required.

11 MR. OSBORNE: For attempted murder.

12 MR. ARCHER: General intent for
13 attempted murder?

14 THE COURT: I think specific intent. I
15 was looking at the charge again. I think it does
16 require specific intent.

17 MR. OSBORNE: Yes, Your Honor.

18 MR. ARCHER: I believe it does, Your
19 Honor.

20 THE COURT: Now, you are going to be
21 first in full?

22 MR. OSBORNE: Yes.

23 THE COURT: Followed by the defense and
24 then you will be allowed to rebut.

25 MR. OSBORNE: Yes.

1 THE COURT: And try to keep it succinct
2 and efficient, okay?

3 (Whereupon the jury entered the
4 courtroom at 12:42 p.m.)

5 THE COURT: The jury has returned to
6 the courtroom. I told you upon your return we will
7 be entering the phase of the trial where the
8 attorneys would again be given their opportunity,
9 second opportunity, to talk directly with you in
10 their summations or their closing arguments.
11 Again, the State will be going first, followed by
12 the defense, and then the State will be given a
13 brief rebuttal. You may proceed, Mr. Osborne.

14 MR. OSBORNE: Thank you, Your Honor.
15 May it please the Court, when you got warfare
16 anything can happen in the projects, you feel me?
17 Some people say oh, what's that little boy doing
18 there at night. That's one thing. Mistakes
19 happen.

20 (Clip played.)

21 That's aren't our words, those are his
22 words. Mistakes happen. It's just life on the
23 east side of downtown Charleston. What was that
24 kid doing out there anyway at night? It's not his
25 fault. To this Defendant in a war you are going to

1 have collateral damage. To him Tyreik was nothing
2 more than a mistake.

3 Now, before I go through all the
4 evidence, not all, but some of the evidence I want
5 to talk to you a second about credibility.
6 Credibility of witnesses. That's what this whole
7 case is all about. The judge told you in the
8 beginning, I'm sure he will probably tell you
9 again, credibility is all yours. You can believe
10 some, none or all of what a witness tells you.
11 Look at what fits and what doesn't. And the most
12 important thing in this entire trial is
13 corroboration. Don't just believe them because
14 they are up there. Corroborate what they say. You
15 can corroborate that by other witnesses, by other
16 evidence, and when there is a difference, you ask
17 yourself why. Use your common sense.

18 Now, like I said, I am not going to go
19 through all the evidence, okay? But we have thrown
20 a lot at you. We have thrown a lot of nicknames,
21 we have thrown a lot of phone numbers. We have
22 thrown a cast of characters at you.

23 So I want to go just kind of through it
24 in a way that sort of ties it all together and how
25 you see it all makes sense. First, the Defendant's

1 war with Desmond. Now, it all started two years
2 ago. That's when Similar cheated on Desmond by
3 having sex with that man on at least two different
4 occasions. I want to show you something, this
5 seems like a long time ago now, but I want to show
6 you something that illustrates just how quickly
7 this war escalated.

8 Desmond was arrested on June the 6th of
9 2013. You will have this document back there with
10 you. Desmond has been arrested many times. He is
11 not a good guy. He got arrested on this occasion
12 for shooting his brother.

13 Now, while he was in jail sitting there
14 trying to bond out he was hearing those rumors.
15 Streets talk. Remember Similar told you that.
16 Streets even talk in the jail and he heard rumors
17 about how she was out there having sex with this
18 guy.

19 I am not here trying to suggest to you
20 that Desmond was in love with Similar and that's
21 what upset him. You saw him. You saw his demeanor
22 when he was up there. Maybe that did have to do
23 with it, they did have a child together, but I
24 would submit to you that it was more likely that
25 disrespect issue. Not only was she out there

1 cheating on him, she was cheating on him with an
2 east side guy. Desmond is an east side guy. And
3 this thing escalates quickly.

4 He gets out, bonds out of jail on
5 July 13th of 2013. When he gets out of jail he
6 goes and he confronts Similar. She lies to him. I
7 never had sex with him. He then sleeps with her at
8 her cousin's house in Alexander Street, parks his
9 Grand Marquis right outside. The very next day he
10 wakes up. He goes outside. His car has been
11 vandalized. Spray painted with a star. Similar
12 looks at him and says what happened? He says
13 Calico did it. Did he do it? We don't have any
14 proof of that, but Desmond sure thought he did.

15 And you don't have to just listen to
16 what Similar told you. He told you that as well.

17 (Clip played.)

18 Don't think that this was a one-day
19 battle either. Desmond has shot at him before.
20 And, of course, you are not going to hear about
21 these documented battles because they weren't
22 documented. The Defendant himself said he wouldn't
23 call the police, but you have heard testimony from
24 multiple witnesses that said they shot at each
25 other before and they fought each other before.

(Clip played.)

You can hear from the carefree tone in his voice about being shot at. It is nothing to him. That's the type of person that if he is presented with the opportunity to kill he would do it. And that's what he did on May the 22nd. And he even told Detective Holmes later I'm not the type of person that would call the police. No, you are not going to hear about those battles.

Remember what the Defendant wanted Tyrese Steed to do. See if you can get in dog corner. Get him to do something. Because his statement is the only thing that's got me F'd up. You let bro know all he got to do is write a statement and get the PD public defender screener to notarize that shit. Let that N word know he done shot at me and I kept that shit in the street so he needs to do the same.

In other words, don't be a snitch. Don't get the police involved. Keep that shit straight. You did what I did. You shoot at me. Don't get the police involved. You will have these letters with you back there to read them.

Now, this was two years ago. We don't know exactly what caused this war to reignite,

1 okay? For all we know it could have been going on
2 this entire time. We have heard about the battles.
3 We have heard about the fights. But we do know
4 that just two weeks before the shooting it
5 escalated. It really heated up. The first time
6 you heard about the escalation was from Marquise.
7 Do you remember Marquise Edwards? Marquise says
8 that he buys marijuana from him. Marquise lives on
9 Amherst Street. Marquise said that about two weeks
10 before the shooting he heard the Defendant say on
11 more than one occasion if I see Fats on the streets
12 I'm going to shoot him. That was two weeks before
13 the shooting.

14 Then we have this post twelve days
15 before the shooting on Mother's Day. May the 10th.
16 He's taking a picture with Similar, Desmond's baby
17 mama. Happy Mother's Day, Happy Mother's Day to my
18 N word, my N word. That's how it supposed to be.
19 I have your chick in the pic like she's posing for
20 me lol.

21 There's no doubt who he is sticking
22 that middle finger to. He's talking to Desmond.
23 He's disrespecting Desmond. And I want to point
24 out something that might not be so obvious during
25 trial. He ended up messaging Similar on May

1 the 19th at 10:30 p.m. Shanorma told you, remember
2 Shanorma was the girl who lived on Bayside, his
3 alibi, his girlfriend pregnant with his child at
4 the time. When she saw that post she got mad.
5 Because she knew what that meant. That they had
6 hooked up. And that was at 10:30 at night.

7 The very next day, the very next
8 morning I need something bro. I can't care about
9 the price. Similar, the night before and now he
10 needs something ASAP. He needs it quick. And he
11 is messaging Runway General. Captain Weiss told
12 you that he is now dead. He has been murdered.

13 Now, how do you know that was a gun?
14 Because they were supposed to meet up at about
15 3:00. Just a few hours after that he messages his
16 buddy General Taliban, another west side guy, about
17 to put 32 in dey. He said call me. Attached to
18 that message was that photograph.

19 Marquise told you he has heard this
20 Defendant use that expression before. And when he
21 used that expression when he's using that
22 expression what he means is he has got that
23 extended magazine that has 32 rounds in it and he's
24 about to put it in his gun. He sent this message
25 to Devin Middleton, General Taliban, two days

1 almost to the minute that he would shoot Desmond.
2 He is telling Devin that he is getting ready to
3 kill.

4 All right. Now, let's look at what
5 happened on the day of the shooting. Remember what
6 I told you about credibility. Corroboration. You
7 have to corroborate what they are telling you. All
8 right. Christopher and Desmond walk to the park
9 together. At least that's that Christopher told
10 you. Desmond told us on August the 27th. He
11 didn't really have much to say when he was on the
12 stand.

13 Now, need to corroborate that. So the
14 first thing we see, Detective English tells you he
15 saw it at 8:00, you see Desmond and Christopher
16 walking down America Street headed towards the
17 park. I think this is a pretty telling photograph.
18 I mean they know cameras are out there.
19 Christopher told you everyone knows where those
20 cameras are. If you are trying to avoid them, they
21 are easy to avoid. These two are walking in the
22 middle of the road. They aren't packing heat.
23 They aren't doing wrong or at least by their
24 standards. Walking down the road going toward the
25 park. Christopher even looks like he's yawning

1 there, not a care in the world. They say they walk
2 toward the park that was around 8:00 or so. And
3 there they are walking toward the park. Okay.

4 Desmond told you in his audio recording
5 and Christopher told you that they were sitting by
6 the AC. They were drinking beer. Christopher was
7 using Desmond's phone taking pictures. They were
8 just hanging out having a good time smoking, doing
9 what they normally do. Then the Defendant
10 approached them. Let's take a look. There you
11 have a beer bottle, remember Christopher said he
12 busted up his. He did not want anything to do with
13 this. And he knew they would get his fingerprints.
14 Right next to the beer bottle you have Desmond's
15 phone which makes sense. Christopher is standing
16 there with Desmond's phone. Guy comes up, starts
17 shooting. You drop the phone. Get out. Makes
18 sense. I want to show you something that may not
19 have been so obvious.

20 The Defendant approached from this
21 direction. All right. Christopher said that he
22 had his back to the Defendant on the right of him.
23 Would have been Tyreik's grandmother's building and
24 the Defendant ended up walking to the right. So
25 Christopher never saw him until he saw Desmond mean

1 mugging him, then he looked over and saw him.
2 Desmond never saw this Defendant come up and
3 approach. That fence was in his way. If
4 Christopher wasn't in his way. He never saw him
5 coming. And while that fence blocked Desmond's
6 view of the Defendant, it also blocked the
7 Defendant's view of Desmond. If the Defendant had
8 known that Desmond was sitting right there we would
9 be here for a different trial. Because he would
10 have pulled that gun out and he would have killed
11 him right there. He didn't know he was there. So
12 he walked past them.

13 Kept going until he went around the
14 tree. Got around the tree, reached down with the
15 black bag that he's always carrying, pulled out his
16 gun, approached his target, fired twice. He has
17 got plenty of bullets to spare. He's just getting
18 started.

19 Christopher said, you heard other
20 testimony, there were multiple shots that were
21 being fired. The first shot. Second shot. As
22 he's approaching Desmond shooting at him. Now, I
23 would submit to you there's something important
24 right here about this photograph that's
25 corroboration. When Christopher spoke to the

1 police the night after the shooting and the night
2 after that he said that he was only 85 percent
3 sure. When this second shot was fired Christopher
4 ducked down. He didn't run. He knew he wasn't the
5 target. Desmond, on the other hand, knew he was.
6 That's why Desmond got up and ran for his life. If
7 Christopher had any doubt in his mind that he may
8 have been the intended target he would have ran
9 too. He was 100 percent sure that Calico is not
10 shooting at me, he's shooting at Desmond so I will
11 just duck down. Desmond is the one that got up and
12 ran for his life.

13 I want to point out something else too
14 about this. These are the 12 shots. These are the
15 first two shots that he fired at Desmond. Had he
16 stopped there I don't think we would be here today.
17 Tyreik is on the other side of that building
18 calling out to his grandmother. If he had just
19 stopped there we wouldn't be here. The angle is
20 not there to hit Tyreik. But he wasn't finished.
21 He had 32 bullets, 30 now, and he was just getting
22 started. As he chased Desmond he fired again and
23 again and again and again and again and again. And
24 this right here shows the angle even better.
25 Defendant is chasing Desmond. He is running for

1 his life. Hits him in the back of his leg. Blood
2 trail going all the way up back toward America.
3 He's firing recklessly. Hits the tree. Just take
4 a look at that. That's that roof line. That's
5 just how wild he's shooting.

6 There's Tyreik standing there by the
7 tree where he got hit. What was that kid doing out
8 there anyway, right? Especially not in the middle
9 of a war. All right.

10 Let's take a second and talk about what
11 the Defendant said he was doing on that day. He
12 said he got off work and he walked to [REDACTED] Hampden
13 Court where he lives with his grandmother. Police
14 checked on that. They went to Ely's Table, they
15 verified from the time sheet that he did get off
16 work around three just like he said. They wanted
17 to go further. And to go further in today's
18 investigation just like FBI Clay Simmonds told you,
19 you get a guy's a phone number. With that phone
20 number you can find out a whole lot. You can find
21 out who they talked to at a particular time or how
22 long they talked to them. You can also find out
23 where they were when they were talking to them.

24 He knew that too. At 3:25 on May 28th
25 Detective Holmes left a message at Tommy Condone's

1 saying he needed to speak to the Defendant. He
2 must have gotten that message because just about
3 20 minutes later he called central investigations
4 office. You need to talk to me? Yeah, we need to
5 talk to you. Right after that he called Shanorma
6 twice again with the 8874 number. These would be
7 the last calls he would make on that 8874 number.
8 Before he went into that interview room with
9 Detective Holmes he had already changed his number.
10 He already started covering his tracks. He didn't
11 want them to find out what the number was. Because
12 if Detective English and FBI Agent Simmonds found
13 out where the number was, they would find out where
14 he was.

15 But ultimately his efforts didn't work.
16 Detective English, I know it was a lot of
17 information, I hope it made sense, he got
18 Shanorma's phone records. Once he got those that's
19 his girlfriend, he saw that there was a lot of
20 communication between Shanorma and a different 678
21 number. So he got a search warrant for those
22 records, found out it was registered to Calvin
23 Brown. Asked FBI Agent Simmonds to map that phone
24 number. And look at what it showed. Little hard
25 to see at times, but I think you will have it back

1 there with you. At 3:18 he is there. That's
2 literally right around the corner from Ely's Table.
3 He is walking just like he said he was to his
4 grandmother's house. And that ends like right
5 around 5:00. Grandmother's house is the purple
6 one.

7 That would be where that's the last
8 thing to corroborate his story. He then said that
9 he took a cab from Hampden Court to Bayside.
10 Detective English told you I looked through his
11 phone records. I saw where he called a cab a lot,
12 Safety, then Express, but not on May 22nd. But
13 they didn't stop there. He went to Safety Express.
14 There are no documented pickups for a fare from 2
15 Hampden Court to Bayside on May 22nd. And the
16 reason why there are none is because he never left.
17 There he is between 5:00 and 7:00. At 5:01 he's
18 talking to Shanorma at his grandmother's house.
19 7:17 talking to Shanorma at his grandmother's
20 house. 7:38. Moves a little bit. Remember Clay
21 told you that would ping off the area of Spring
22 Street, probably where he is. Marquise said
23 probably went to the abandoned house and he needed
24 something to pick up. Who knows. Either way he
25 was still downtown. And now we have this one.

1 At 8:50 this is just four minutes after
2 the shooting. Four minutes after the shooting he
3 pings off a tower, the closest tower to the crime
4 scene. That is just two and-a-half blocks south of
5 the crime scene. Look at who he calls. Devin
6 Middleton, another west side guy. And you know
7 that's Devin's number because Detective Krasowski
8 showed you from the Facebook records he was using
9 that number before and after the shooting.

10 And why is that important? Why is that
11 relevant that he would call Desmond just four
12 minutes after the shooting? I would submit to you
13 it is relevant because when he got his hands on the
14 gun the first person he messaged about it was
15 Devin. Bragging to Devin about what he was going
16 to do with it. And when he did, when he shot that
17 east side guy he called him and bragged about it
18 again. Didn't call his mom or Shanorma, called
19 Devin.

20 I want to show you another thing. All
21 right. So that tower is south of the crime scene.
22 There's something else that's south of the crime
23 scene. It's important because you may be asking
24 yourself well, I see a whole bunch of surveillance
25 cameras everywhere. How come we are not seeing

1 him. Well, there is two things to that. One,
2 Christopher told you everyone knows where those
3 surveillance cameras are and if you are trying to
4 avoid them you can avoid them, it's not hard. But
5 the second thing south of the crime scene is Chapel
6 Street. Danielle lives on Chapel Street. I know
7 he has got a lot of baby mamas. We have been
8 talking about a lot of them. But Danielle lives on
9 Chapel Street. The phone records show that he was
10 communicating with Danielle before the shooting and
11 it stopped right around the time frame of the
12 shooting. You don't need to call somebody if you
13 are with them.

14 All right. And those are all the
15 surveillance camera locations that Mr. Haupt said
16 that he watched looking for.

17 Now, there's more evidence than that to
18 show you that he was out there in the area of the
19 crime scene at the time of the crime scene. He
20 messaged Marquise. I'm out here. And now remember
21 you have got to take four hours away from this to
22 get to our time zone. So at 8:33, 13 minutes
23 before the shooting he is telling Marquise I'm out
24 here. Marquise lives just two blocks, maybe three
25 blocks from the crime scene. All right.

1 So that brings us to what Marquise said
2 happened when he ran into the Defendant on the
3 night of the shooting. Marquise testified that he
4 was inside of his house, his aunt alerted him that
5 she heard gunshots. Well, that ought to tell you
6 right there Marquise lives really close to the
7 crime scene. Marquise come outside, police are
8 swarming everywhere. He then talks to Marlowe.
9 Marlowe tells him well, I heard that it was Calico
10 that shot Fats. All right. Marquise tells you
11 that he then communicates with Calico. He
12 communicates with him because about he owes him
13 some money.

14 Calico fronted him five pills \$5 a
15 piece. He owes him 25 bucks. They message each
16 other. They talk to each other on the phone couple
17 times. They arrange to get together. Now, they
18 did get together. They walk and as they are
19 walking from his house toward Meeting Street only a
20 few blocks he already knows because Calico has been
21 telling him I see Fats out there I'm going to shoot
22 him and he knows what Marlowe told him. So the
23 Defendant tells him to walk in front, keep an eye
24 out for the police. Marquise says, well, I will
25 ask. Did you shoot that boy? Yeah, I shot that

1 boy. Now, if what Marquise tells you is true
2 he said more than that, didn't he? I want to point
3 this out too. He said yeah, I clapped that boy. I
4 walked past him. I backed up. I saw him. I
5 pulled out my gun. I shot him and Desmond took off
6 running. That's what he said.

7 That's exactly what happened. He
8 walked past him, backed up behind the tree, pulled
9 out his gun, shot at him and Desmond took off
10 running. All right.

11 So now he says mentioned they were
12 Facebook messaging back and forth. Well, if that's
13 true we should see it. There's 8:33 p.m. message.
14 I'm out here. He's messaging Marquise. Marquise
15 tells him I was in the shower. This is 8:51. Roll
16 on me bro. I ain't even eaten them yet. Marquise
17 is telling him I haven't even taken the pills yet.
18 Just come back around. I will just give them to
19 you. I don't have the 25 bucks. You coming or
20 not? 9:17. He's a little busy right now. He's
21 shooting Desmond in between that time, shooting
22 Tyreik and he's trying to get out of there.

23 And then he chimes in here hit me on my
24 jack, call me. I'm on Spring Street... That's what
25 the cell tower records show. When he left the

1 crime scene he would have been in the area of
2 Spring Street. And he uses that 874 number again.

3 Now, I want to bring up something right
4 here that came up during cross of Marquise that was
5 a little bit confusing to Marquise. Mr. Archer
6 asked him once you got that message you called him
7 and he says yeah. And then he said that he was on
8 Spring Street. Yeah. Well, Mr. Archer made it out
9 and I think Marquise believed that he was talking
10 about the first message I'm out here. That's not
11 the message he was referring to. And Marquise
12 doesn't know these times. He hasn't seen the
13 records. He only tells you what happened. If you
14 look at the records he doesn't that make phone call
15 until 9:24, not 8:33, he makes it at 9:24. So of
16 course at that point he was on Spring Street.

17 Okay. And Marquise told you that they
18 spoke on the phone back and forth a couple of
19 times. They ended up getting together. Then he
20 said we were together. We walked from my house
21 toward Meeting Street. We were together for about
22 15, 20 minutes. If that's true at or around this
23 call for the next 15, 20 minutes his phone should
24 be pinging off an area in which Marquise's house is
25 or at least near that tower. And that's exactly

1 what you see. For the next 15, 20 minutes he's
2 moving, but not so much as to get him on another
3 tower, just enough to move from one sector to the
4 next like he was walking westbound and that's where
5 these sectors go, just like Marquise said.

6 And Marquise told you that whenever he
7 left the Defendant said that he was going back to
8 Spring Street. Well, if that's true the cell tower
9 records should show that he was there. That's
10 Marquise's home after he left. He is pinging off
11 that tower, that tower, west side Spring Street
12 right in the middle. Exactly like Marquise said.

13 Okay. I think this is important too.
14 Just three hours after the Defendant shot Desmond
15 he made contact with Similar. And there you see
16 the messages. This is 11:43. He said call me bra.
17 What's your number. She calls. And the records
18 show that... They spoke on the phone for two minutes
19 and 19 seconds. I know what she said. She
20 testified that she spoke to the Defendant. The
21 Defendant said tell your baby daddy don't put my
22 name in this. Keep his mouth shut. Just what he
23 did on the stand. He made a lot of effort to keep
24 Desmond's mouth shut. So I think he probably did
25 say that.

1 But I don't think that's all he said.
2 And the reason why I would submit to you that
3 suggest he did say that, remember what she said.
4 The very next day she spoke to Desmond. He said he
5 was shot. Calico did it. What was her response?
6 She said I laughed. I giggled. It was no surprise
7 to her if she already knew.

8 All right. Now, of course everything
9 that I have talked about right there the Defendant
10 had no idea that the police knew any of that and in
11 all fairness they didn't know that. It was still
12 early on in the investigation. So on May 28th when
13 he went in and he spoke to Detective Holmes he only
14 needed to get one thing right. That was his alibi
15 that was important to him.

16 (Clip played.)

17 Now, I know Shanorma testified and said
18 the Defendant didn't tell her that. Maybe he
19 didn't use those exact words, but I think she got
20 the message. The records show that. Before he
21 walked into the interview room he called her twice.
22 When Detective English and Detective Holmes spoke
23 to her in the hospital she did exactly what he was
24 200 percent sure she did. She lied to them.

25 But you may think to yourself well, I

1 mean maybe she doesn't like him now, maybe she is
2 lying on him now and back then she was telling the
3 truth he really was with her. The evidence doesn't
4 support that. They were talking to each other
5 before and they were talking to each other after
6 the shooting. And that's just what Shari told you,
7 Shari being Shanorma's roommate. And he doesn't
8 hit off Shanorma's tower until later on in the
9 night, 10:30 at night. Shanorma, on the other
10 hand, does exactly what she said she did. She
11 started experiencing stomach pains. She walks to
12 MUSC and she is hitting off the towers as she's
13 walking. All right.

14 The Defendant's efforts to cover up his
15 tracks did not end when he was arrested. They were
16 just getting started. The first problem that he
17 had was his alibi. Remember Shari is Shanorma's
18 roommate. Shari and Shanorma were together that
19 day. If he was with Shanorma he's got to be with
20 Shari too.

21 (Clip played.)

22 Shari testified she doesn't even care
23 for him. They weren't friends. This was the very
24 first night that he was arrested and he got's
25 something that he needs Shari to do for him. She

1 ain't got to do it.

2 (Clip played.)

3 Ten days after he is arrested still
4 trying to get in touch with Shari. Girl doesn't
5 even like him. Shari did not do what he needed her
6 to do. She told you the truth. He wasn't with
7 Shanorma that night. He wasn't at their apartment
8 and the phone records corroborate that.

9 So now he's working on solidifying his
10 alibi, but he's got another problem. He has to get
11 Desmond Lewis, nickname Fats, to switch up his
12 story. He's got to get his enemy to switch up his
13 story. Th problem with that is the jail has them
14 separated. He can't get to him. That's okay.
15 He's got a solution for that. He knows plenty of
16 people at the jail that can help him out. He
17 starts writing letters. The first one to Tyrese
18 Steed. Do you remember Tyrese was in jail for
19 murder at this time. He beat it. Got arrested
20 again, he's back in jail for a separate murder.

21 Look at who the letter is addressed
22 from, Devin Middleton who is also in jail at the
23 time for murder. Again all these letters you are
24 going to have them back with you so you can take a
25 look at them. You can read the tone, see is he

1 really trying to get him to do the right thing.

2 I need you and Big Man to holler at
3 Fats. See how boy rock and changing that shit up.
4 Get the statement notarized. He shot me before and
5 I kept it in the streets and he needs to do the
6 same. Holla at Big Cabbage, get him. Big Cabbage,
7 Claunce Mazyck, Captain Weiss told you not a good
8 guy. But he is nice enough to sign it OYG AKA
9 Calico. Six days later writes another letter to
10 Tyrese Steed, this time addressed from Devontay
11 Bryant nickname Smash. Remember Devontay is also
12 in jail for murder at the time.

13 Do me a favor. Get this kite or
14 letter, remember Sergeant Shelle told you that
15 means letter, to Big Cabbage. I have already
16 talked to bra and Tony James and they told me what
17 he says he's going to do. Don't let him keep that
18 original. Rip that shit up after he copies it.
19 Tell bra that he's got to stand solid and tell him
20 he don't want to get questioned no more about this
21 case and tell his lawyer he don't want to be
22 interviewed no more.

23 And just to make sure that Desmond
24 understands what do the right thing is he gives him
25 a letter. He tells him write it word for word, do

1 the right thing. Don't mess it up.

2 And Tony Smith, Seth Smith, he was in
3 jail for murder at that time as well. Last letter
4 he writes to Terrance Gregory again from Devontay
5 Bryant, Terrance Gregory, Squirrel. I am not going
6 to play the video between him and Shanorma, but if
7 you were to listen to it very carefully he talks
8 about the letters in there. He admits to it. And
9 in that meeting in December 2015 he asks Shanorma
10 what is the Terrance's last name? He didn't know
11 it then. He must have found out. This was written
12 first part of January -- 2016. Now he knows
13 Terrance's last name.

14 Things are starting to heat up with
15 this letter. This is Calico off Spring Street. I
16 need you to do me a favor. Holler at my victim,
17 tell him to do the right thing and write this
18 letter word for word. Talk to him one on one so he
19 doesn't feel played in front of a crowd. Show him
20 the paper and ask whether he is going to write it
21 or not. If he says yes then tell him to use his
22 own handwriting. If he's not trying to do right
23 expose that sucker ass N word big bra. Sound like
24 do the right thing?

25 Then he gives him another template

1 letter. You will have this letter back there. You
2 will also have the letter that Desmond wrote. When
3 you have them because I would suggest you start
4 about ten lines down and then you will see it is
5 word for word. Desmond telling you he didn't get
6 this letter and he wasn't intimidated, that can't
7 be corroborated. That was a lie.

8 And let's think about it. Desmond is
9 sitting in jail. He is getting approached. He is
10 getting intimidated by one murderer after another.
11 These are killers. Seth Smith.

12 MR. ARCHER: Objection.

13 MR. OSBORNE: Devontay Bryant, Devin
14 Middleton.

15 MR. ARCHER: Objection, Your Honor.
16 There is no evidence or testimony that anybody
17 talked to Desmond or was a murderer. He's saying
18 he getting threatened by one murderer after
19 another.

20 THE COURT: Mr. Osborne, I don't recall
21 that through the testimony.

22 MR. OSBORNE: Captain Jack Weiss stated
23 that these individuals had been arrested for
24 murder. Detective Paul Krasowski, now sergeant,
25 testified to that as well. And I split it up to

1 who knew who and there was a lot of nicknames.

2 THE COURT: Was the evidence they
3 approached the Defendant?

4 MR. OSBORNE: Sorry?

5 THE COURT: That they approached the
6 Defendant in jail?

7 MR. OSBORNE: Well, the effort was to
8 send one killer after another after him. That's
9 said clearly in the letter. Tell him to go after
10 him.

11 THE COURT: I'm going to ask you to
12 move off that. I will sustain the objection.

13 MR. OSBORNE: Now, you don't have to --
14 like I told you, you heard the video. He talks
15 about it. That he wrote the letters. You also
16 heard from the SLED analyst Gail Heath. She told
17 you there were five levels of identification. This
18 was the very second highest level of
19 identification. And the only reason why she
20 couldn't say 100 percent that it was him was
21 because of his efforts to disguise his handwriting.

22 Now he had another problem though.
23 While he was working on Desmond switching his story
24 he still needed to get to P Roach, Christopher.
25 And Christopher told you that he was approached and

1 told to change his story. That's what he did.

2 Okay. Now he is getting these
3 witnesses to change their story. He's working on
4 solidifying his alibi. Now he has got to get rid
5 of some of the evidence.

6 (Clip played.)

7 He should have been listening a little
8 more carefully to that one. That hesitation in
9 Shanorma's voice tells you everything. She had
10 already gotten rid of the gun. Play that again.

11 (Clip played.)

12 Everyone knew that he was the one that
13 shot Fats. No one wanted their hands on that. The
14 very next day Shanorma was going to hit him with
15 some really bad news.

16 (Clip played.)

17 He already knew what was in there. He
18 was so mad that he yelled at her for call after
19 call going on into the next day. He knew if the
20 police found that gun there was no way to cover his
21 tracks.

22 Now, the police did not find the gun,
23 okay? But they did find this. And I will submit
24 to you that's the second best thing. This is a
25 Smith and Wesson black semiautomatic handgun

1 model SW9F. Why is that important? Well, it's
2 important because SLED, Michele Eichenmiller, the
3 firearms examiner told you every one of those eight
4 fired shell casings were fired from the same gun.
5 The mark that was made by the firing pin on the
6 back of that shell is unique. There's only a few
7 guns that make that. Two, in fact, that she is
8 aware of. A Glock which is pretty common and this
9 gun. Smith and Wesson. This particular model.
10 This particular model which is no longer being
11 made. But she said well, I know it wasn't a Glock
12 that was used though because the projectiles had
13 distinctive marking and the grooves and the rifling
14 that can be eliminated from it being a Glock. So
15 that brings us back to this gun.

16 A gun that is no longer in
17 manufacturing. 20 or 30 years ago they stopped
18 making it. Because Glock sued them. Even looks
19 like a Glock. This gun that was sitting on his lap
20 just two days before he used it. Like the judge
21 told you, I'm talking to you now. Mr. Archer will
22 talk to you. If there is anything he says I feel I
23 need to readdress with you I will come back. I
24 will be back then.

25 I do want to talk to you briefly about

1 the law. Okay? He's been charged with two counts
2 of attempted murder. Now, the judge will be the
3 one that instructs you on the law. If I say
4 anything that differs from the judge you follow the
5 judge's instruction. That goes for Mr. Archer.

6 In order for you to convict him for two
7 counts of attempted murder or attempted murder, we
8 have to prove to you that the Defendant with
9 specific intent to kill attempts to kill another
10 person with malice aforethought.

11 Now, this malice aforethought, they are
12 kind of old English terms. You don't really hear
13 that, don't ever hear that used anymore. We will
14 start with aforethought. Aforethought is pretty
15 simple. Just means that he thought about it.
16 There's no time requirement. He could have thought
17 about it in an instant. So just has to enter his
18 mind. The malice. And what's malice? Malice is a
19 hatred, ill will or hostility toward another
20 person. It's an intentional doing with subsequent
21 intent to inflict harm without just cause or
22 excuse. Fired eight times. Certainly wasn't an
23 accident. He intended, tried to kill Desmond.

24 And you may think to yourself, you
25 probably did, that Desmond may have deserved to get

1 shot. This has been an ongoing war. But not that
2 on that night. On that night Desmond was just
3 sitting there smoking, drinking doing what he
4 normally does. He wasn't posing a danger to
5 anyone.

6 If you convict him of either count of
7 attempted murder you may also like to convict him
8 of this charge. That he was in possession of a
9 firearm during the commission of a violent crime.
10 Attempted murder is a violent crime. You will also
11 have the option of convicting him for the lesser
12 included charge of assault and battery of a high
13 and aggravated nature. That is basically an
14 assault and the individual that you assault is
15 severely hurt, okay? They are hurt bad. He did
16 more than assault and hurt Desmond and tried to
17 hurt Desmond and Tyreik. He tried to kill Desmond.

18 And now that brings to us this point.
19 So I'm sure you thought that maybe you believe that
20 he did try to kill Desmond, but he certainly didn't
21 try to kill Tyreik. The law doesn't give him a
22 pass on that. Transferred intent. You will hear
23 the judge instruct you on this. If the Defendant
24 with malice aforethought attempts to kill another
25 person, but by mistake injures a different person

1 the Defendant still has the intent to kill. You
2 may have heard the expression that intent follows
3 the bullet. He is accountable for each one of
4 those bullets.

5 I want to talk to you second about
6 proof beyond a reasonable doubt. Now, when you are
7 sitting here if you have absolutely no doubt as a
8 juror, I mean no doubt that he's guilty, you don't
9 need to be up there. You need to be in the witness
10 stand telling us how you know that. We are not
11 required to prove proof beyond all doubt, simply
12 reasonable doubt. And it's proof that leaves you
13 firmly convinced of the Defendant's guilt. While
14 it does not require proof that overcomes every
15 possible doubt. There are few things in life that
16 we know to absolute certainty.

17 I heard Mr. Archer say in his opening
18 that proof beyond a reasonable doubt, if you
19 hesitate, some hesitation, that's not proof beyond
20 a reasonable doubt. Well, don't think that
21 hesitation and deliberation are the same terms.
22 When you are back there you should deliberate. You
23 should talk about it. You should go through the
24 evidence. That's not hesitation.

25 All right. I will end with this. We

1 have talked a lot about this entire trial his
2 actions. All right? We have not talked much about
3 Tyreik. And the reason why we have done that is
4 because you're going to be sympathetic toward
5 Tyreik. You wouldn't be human if you didn't. And
6 you may even have sympathy for him. That's okay
7 too. But when you walk past that threshold of that
8 door and you go into the deliberation room you
9 check your sympathy out the door. Sympathy
10 shouldn't go into this decision at all. I am
11 asking you to hold this Defendant accountable for
12 his actions and I am you asking to reach a verdict
13 that's going to show him that Tyreik is more than
14 an accident. And I'm asking you to do that by
15 finding him guilty of two counts of attempted
16 murder and possession of a weapon during the
17 commission of a violent crime. Thank you.

18 THE COURT: Mr. Archer, you may
19 proceed.

20 MR. ARCHER: Ladies and gentlemen, we
21 have been here for four days. All except for a
22 couple of minutes has been the State presenting
23 evidence. Very little of that evidence goes
24 directly to the shooting incident. It's this
25 telephone number, this person called this person,

1 that person called that person and the State trying
2 to say because they called each other you need to
3 assume that they ask you to make these huge leaps
4 of faith from the fact that there was a telephone
5 call to the fact that somebody shot somebody.

6 Okay?

7 You just need to really examine the
8 State's case and ask yourself first off how much of
9 the evidence presented really proved anything?

10 Okay? And I would submit that very little of it is
11 directly proof of anything. And that I would also
12 submit to you that the two critical witnesses to
13 what happened are Desmond Lewis and Christopher
14 Victoria. And those are two completely -- lack
15 complete credibility, both of them. In fact, the
16 majority of the State's case is based on testimony
17 of the biggest collection of criminals and liars
18 that you could be presented with. Virtually nobody
19 other than the police is credible in this case.

20 It's a bunch of liars and crooks. Okay?

21 And not even a doubt that they're liars
22 and crooks because like Desmond Lewis, one day he
23 says it's Calico, the next day he says it's not.

24 Okay? He tells the police on a number of occasions
25 that he didn't know who shot him. And then at some

1 point in time he says he does know who shot him and
2 then on February 23rd, 2016, he writes Exhibit 60E
3 in which he says that he was coerced by the
4 detectives into saying that my client shot him and
5 he can't say that, okay?

6 Now, the prosecution said my client
7 told him what to say. Well, my client probably did
8 send him a letter saying this is what I need you to
9 say, bro. But I don't think -- but he never
10 threatened him. All he ever told him is Desmond,
11 do the right thing. And he's talking to a guy, I
12 mean makes sense that you would maybe say hey, this
13 is what I need you to say because he's talking to a
14 guy who don't like him worth a damn, got no reason,
15 who has every reason to try to hurt my client, not
16 to help him.

17 Supposedly my client slept with
18 Desmond's girlfriend. Supposedly according to
19 testimony Desmond took a shot at my client at some
20 point in time. Okay? So I mean he is
21 communicating with somebody who really is highly
22 unlikely to help him. But my client says this in
23 jail. He will write and say bro, do the right
24 thing. Never tells Desmond to lie. Never tells
25 anybody to lie. The only thing he ever says is do

1 the right thing.

2 Okay? And as a result of that Desmond
3 writes this letter and has it notarized, swears to
4 it, okay? So here on February 23rd, 2016, he is
5 denying everything.

6 Same thing is true with Christopher
7 Victoria. Exhibit 58C. Okay? Exhibit 58C which
8 is February 8th, 2017, this year, he says all the
9 statements I gave were false and I said it because
10 I was under pressure from the detectives who
11 questioned me and the victims parents. I have
12 realized now that I am wrong and want to exercise
13 my Fifth Amendment right. Even if I go to court I
14 will not testify against this man. And this is
15 February of this year. Is Christopher Victoria
16 saying that, okay?

17 So the two people who have the ability
18 to know who did the shooting totally lack any
19 credibility whatsoever. They have alternatively
20 from one day to the next the stories change. One
21 day they say it is my client. The next day they
22 say it's not my client. One day they say I don't
23 know who it was, and goes on and on. Okay?

24 You know, there's a book that was
25 written 20 or 30 years ago called Anatomy of a

1 Murder. And it's about a murder trial. And in it
2 one of the lawyers looks at the jury and tells them
3 I wouldn't send a yellow dog to the pound on
4 evidence like this. And that's what I think this
5 case is. I wouldn't send a yellow dog to a pound
6 on evidence like this.

7 All right? Now, we have got -- I don't
8 know of anybody that's come in here and told you
9 the truth, the whole truth and nothing but the
10 truth. All right? Because some of them are
11 criminals. Some of them obviously have lied.
12 Others like Shanorma, his girlfriend, she says she
13 turned the bag over to my client's grandmother.
14 His grandmother said it didn't happen. She never
15 brought anything over there. So I don't know
16 whether she did or not.

17 With respect to Marquise Edwards, I
18 don't know what we are to believe. I know in his
19 testimony he told us that my client called him
20 about six minutes before the shooting and said he
21 was outside at his house, okay? And then called
22 him shortly after the shooting and he told him
23 that, this is the testimony, he said he was down on
24 Spring Street. So I mean I don't know how --
25 that's awful -- cutting it awful close for my

1 client to be standing outside of Marquise's house
2 and calling him and saying I am out here, come out
3 just a minute or two, few minutes before a
4 shooting. So I'm not sure how credible anything
5 Marquise said is. He said a few minutes after the
6 shooting somebody comes running up and starts
7 telling him all about it.

8 How much of what Marquise says is
9 something he actually heard and experienced and how
10 much of it is something he was told by somebody
11 else? This is a case when you go into the hood,
12 the neighborhood, sometimes you see cases where a
13 crime happens and rumor spreads all the way through
14 the neighborhood from one house to the next, from
15 one person to the next and by the time it is over
16 you got somebody saying that the police chief shot
17 him and somebody saying this young black man shot
18 him. Okay?

19 But you get all sorts of different
20 stuff that runs through. But the bottom line is
21 the two people who should have known and should
22 have been able to positively identify did not. Not
23 an issue. And then later everyone who said I said
24 it was him said no, I lied. Okay?

25 Now, I'd like to bring up something

1 else here which is that we got Doretha Jones whose
2 Tyreik's grandmother. Okay? And I was talking to
3 Detective English, I said you ever have any
4 information that there was maybe more than one
5 shooter out there and he said no. Then I brought
6 out this police report, okay? I said what about
7 Tyreik's grandmother Derotha Jones who was with
8 Tyreik when he was shot told detectives that two
9 black males came around the side of the building
10 shooting at each other which resulted in Tyreik
11 being shot.

12 They never looked into that. They
13 never really checked into that. The grandmother
14 who has been here the whole time said when she was
15 out there with her grandson two people were
16 shooting at each other. Well, let's assume for the
17 sake of argument that one of them was my client.
18 Who caused the injury to Tyreik? Okay? Was it my
19 client or was it the second person who was there
20 shooting? Apparently according to the grandmother
21 they were exchanging gunfire out there back and
22 forth.

23 Police say yes, it was a
24 semi-automatic. We found shell casings. If it was
25 a revolver there wouldn't be shell casings. So we

1 don't know, but we know that the police had
2 information that there were two people firing guns
3 out there. Not one. And they never really looked
4 it up and looked into it. We know that the
5 prosecution knew about this because it's in the
6 police records and then they never called Ms.
7 Jones to the stand to testify. She was sitting
8 right there the whole time. They could have called
9 her to the stand to say hey, you see two people
10 shoot or not? Why didn't they do it? Maybe they
11 didn't want you to hear what she had to say. You
12 know? That's just a worrisome thing. These are
13 serious, serious charges for which -- you can
14 imagine, I won't mention any particular
15 punishments, if you find him guilty of shooting
16 little Tyreik he's going to draw a lot of time.

17 I don't know about shooting Desmond.
18 Desmond is a piece of work. I mean in 40 some
19 years of practicing law I don't know if I have seen
20 many fellows as worthless as Desmond. Desmond gets
21 on the stand. He won't answer the prosecutor's
22 questions. He won't answer my questions, and he
23 doesn't identify my client as being the person who
24 shot him on the stand here in front of y'all, okay?
25 He's just getting surely and mean. If I were on

1 the jury -- as a juror, I don't think you ought to
2 convict and send anybody to jail for shooting
3 Desmond. You might send them to jail for being a
4 bad shot, but not for shooting him.

5 THE COURT: Mr. Archer, the question of
6 punishment and sentencing is for the Court.

7 MR. ARCHER: I know, I didn't mean --

8 THE COURT: You need to stop that line
9 of argument.

10 MR. ARCHER: All right. I won't get
11 anywhere near it, Your Honor.

12 THE COURT: Well, you already did. So
13 don't go there again.

14 MR. ARCHER: Okay. Let me talk a
15 little bit about a reasonable doubt, okay? It is a
16 very high standard. The prosecutor will say well,
17 yeah, which means got to be good proof, but it
18 ain't all that high, but it's a really high
19 standard. You know, there's a saying in America
20 law and English law too that it is better for 100
21 guilty men to go free than for one innocent man to
22 be convicted and suffer the sling and arrows of a
23 false conviction, okay?

24 The person who is attributed saying
25 that in America the first time was a lawyer. Of

1 course. Sounds like lawyer talk, doesn't it? He
2 was a lawyer. He was a radical lawyer. He was a
3 revolutionary. He took up arms against his duly
4 appointed government and fought against his duly
5 appointed government in a civil war. Okay? He was
6 a lawyer, he was a radical, he was a revolutionary.
7 He was John Adams. A signer of the Declaration of
8 Independence, a signer of the -- drafter of the
9 United States Constitution, the first vice
10 president of the United States of America, and our
11 second president. Ben Franklin in 1880 something
12 wrote to a plantation owner in Virginia, he said
13 virtually the same thing. It's better for many
14 guilty people to go free than for an innocent man
15 to go to jail.

16 So this idea of a reasonable doubt was
17 a holy grail of our founding fathers. Some of the
18 greatest framers of our democracy believed in it
19 and believed in it strongly. All right? And so I
20 submit to you that those expressions put a high
21 standard of what reasonable doubt should be. I
22 think we have got the one, a case that most of
23 which is what you call smoke and mirrors. Put a
24 little piece in evidence in and you are supposed to
25 make a big leap of faith from there to the fact

1 that my client is guilty. Put another piece of
2 evidence in there. But when you look at it it's
3 all confusing and the reason it's confusing is
4 because it's nothing but a jumble of pieces here
5 and there. They haven't really proved anything.
6 You know? Lot of people over there saw stuff.
7 Desmond changes his story every time he turns
8 around. Christopher changes his story every time
9 he turns around. And Tyreik grandmother's said it
10 wasn't one person who was shooting out there, it
11 was two people.

12 Now, let's assume just for the sake of
13 argument that one of the two people out there
14 shooting was my client. I think we can assume then
15 that the person who shot Desmond was my client.
16 But who shot Tyreik? Which one of the people
17 shooting each other had a stray bullet shot Tyreik?
18 There's no way for you to know that. No way for
19 any of us to know that because nobody saw fit to
20 really look into the possibility that it was more
21 than one person shooting out there. Okay?

22 And so as tragic as Tyreik's situation
23 is as much as they try it for justice, we may never
24 be able to say who shot Tyreik. Could have been my
25 client, could have been Desmond, could have been

1 Christopher. Who knows. There is no way to say
2 who shot that little boy. All we can say is it is
3 a tragedy, truly a tragedy. And it cries out for
4 justice. Okay? But justice, I remember one time
5 listening to an Irish revolutionary said justice
6 for the many, justice for the free, let each man be
7 paid in full. That's just enough for me. Meaning
8 let everybody get what they deserve, okay?

9 Now, you can't make a jump from the
10 terrible thing that happened to this little boy and
11 it, demands justice to finding my client guilty
12 just because he's the only person you got in front
13 of you.

14 Your duty is to let him go if there's a
15 reasonable doubt. And a reasonable doubt, you can
16 think he did it. You can think probably he did it.
17 Unless you are convinced beyond a reasonable doubt
18 that would make you maybe hesitate in some decision
19 in your life, okay, you cannot find him guilty.

20 That's going to be -- that is going to
21 be a tough job for you. You got tough jobs all the
22 way around. You got a tough job. You sat here and
23 looked at that poor little boy and you want to do
24 justice and you got a tough job in that you may
25 have to go back there and without knowing whether

1 it is true or untrue find my client not guilty.
2 Those are the things that make you wake up at
3 night. But it's the duty you assumed when you took
4 the oath here. This is the greatest thing you can
5 do in our democracy is serve on a jury. And being
6 the greatest thing carries with it the greatest
7 responsibilities and weight. It's not -- you are
8 not guaranteed it is going to be easy. A good
9 portion, particularly in a situation like this. A
10 good portion of what you have to decide is going to
11 be tough as can be because it will carry
12 substantial consequences with respect to Tyreik or
13 with respect to my client.

14 But as jurors you took an oath to
15 accept that responsibility. And quite frankly, I
16 think when you look at it all -- like the gun. We
17 got everybody having him having a gun, but the
18 prosecutor doesn't bring in anybody to say he sold
19 it to him. Shanorma said she gave it to his
20 grandmother. You saw his grandmother. Worked 30
21 years in one place. Ain't nobody give me no gun.
22 You know. That's how the whole case goes. Yes,
23 they did, no, they didn't. There is nothing that
24 has been proven clearly, cogently and without a
25 reasonable doubt. And I think that's why your duty

1 is you are going to have to go back and enter a
2 judgment and I think you are going to have to enter
3 a judgment of not guilty and you are not going to
4 know for sure whether it is right or wrong. But
5 the one thing you can't do, you cannot do, is enter
6 a verdict of guilty and not be sure, pretty much
7 absolutely, but not totally, but to a super high
8 standard. You cannot enter a verdict of guilty
9 unless you're certain, all right? If you enter a
10 verdict of not guilty you are never going to know
11 for sure that you were right. All you can know is
12 I had a reasonable doubt in my mind.

13 And that's the beauty of the duty that
14 you have is if you have a reasonable doubt to enter
15 a verdict of not guilty. Thank you very much.

16 THE COURT: Before you reply we will
17 give the jury a short break. Ladies and gentlemen
18 of the jury, I will ask you to step back to the
19 jury room. It will be a short break. When you
20 come back the State is going to do its rebuttal.
21 As always when you leave the courtroom don't
22 discuss anything about the case until I ask you to
23 start your deliberations. You may retire to the
24 jury room.

25 (Thereupon, the jury exited the

1 courtroom at 1:54 p.m.)

2 (A recess transpired.)

3 THE COURT: State ready to proceed?

4 MR. OSBORNE: Yes.

5 THE COURT: Defense ready?

6 MR. ARCHER: Yes, Your Honor.

7 THE COURT: Let's bring the jury in.

8 (Whereupon the jury entered the

9 courtroom at 2:03 p.m.)

10 THE COURT: The jury has returned to
11 the courtroom. The State has the right to rebut.
12 You may proceed, Mr. Osborne.

13 MR. OSBORNE: Thank you, Your Honor. I
14 think I can sum all that up by just ignore all that
15 little evidence, that's just nitpicking. I can't
16 really make sense out of anyway, right?

17 Now, this is why I told you that don't
18 listen to what I told you when it comes to the law.
19 And don't listen to what he tells you. Listen to
20 what the judge tells you. The judge is going to
21 instruct you on the law. Mr. Archer's statement of
22 reasonable doubt was nothing less than a
23 misstatement of the law. He told you that you have
24 to be certain in order to convict. That's an
25 impossible burden. That's not what the law says.

1 The judge is going to instruct you on reasonable
2 doubt. It is the doubt that leaves you firmly
3 convinced, not certain. If you were certain that
4 means you saw it. You were there. If that were
5 the case you would be up there, not over there.

6 All right. I want to address Ms.
7 Jones for a second. He is right. We can call Ms.
8 Jones as a witness. He can too. That's all he had
9 to do. There's a lot that maybe there's reasons
10 why we didn't call her. You don't know. Maybe she
11 doesn't want to testify. You don't know. Maybe we
12 are abiding by her wishes by not calling her. You
13 don't know. But he certainly could have. But you
14 did hear Detective English testify that she said
15 she didn't see a thing. She couldn't identify
16 anyone. And that makes perfect sense too. She
17 walks outside, gunfire erupting everywhere.
18 Grandson on the ground crying out for her just like
19 he said. Do you really think that she was paying
20 close attention to how many shooters there were or
21 what was happening? People were running. He read
22 that. She saw two people. And Captain Weiss even
23 told you that he has been in the projects before.
24 He has heard gunfire. It sounds like it is coming
25 from everywhere, it's echoing .

1 Let's talk about that multiple shooter
2 scenario that Mr. Archer is saying. It is just --
3 well, I will do it two ways. One he said how do
4 you know which bullet -- if there were two
5 shooters, how do you know which bullet would have
6 shot Tyreik? Well, let's give him the benefit of
7 the doubt that were two shooters. I will explain
8 to you how it doesn't matter. But let's say that
9 there were two shooters. Tyreik is standing right
10 here. The tree is hit over here. The Defendant's
11 shell casings are all over here. Desmond is
12 running away. All of the bullets are going this
13 way. Are shooting up here, are shooting down here.
14 Tyreik gets hit over here. While Desmond is
15 running this way had he turned around and shot that
16 way well, then Tyreik wouldn't have got hit right
17 here. That doesn't work out. He got shot when
18 this Defendant -- Tyreik got shot when this
19 Defendant was shooting right over there. There is
20 a lot marks. You will have it back there to look
21 at it.

22 Why doesn't it even matter, okay?
23 Well, it doesn't even matter because of this.
24 Clerk is working a gas station, robber comes in,
25 robber got a gun. Clerk pulls out a gun. Robber

1 shoots the clerk. Clerk shoots back. Clerk
2 accidentally hits a customer. Do you think the
3 clerk is guilty of murder? No. It's the robber.
4 That's the way that works. Not the clerk.

5 But that's not the scenario that we
6 have here. We don't have two shooters. They did
7 look at that. They bag Desmond's hands that night.
8 When they were hearing rumors there might be two
9 shooters what's the first thing they did? They put
10 bags around his hands. No GSR. No shell casings
11 going down that way. Michele Eichenmiller
12 testified she can't say for sure what projectile or
13 what caliber the projectile is that was in Tyreik's
14 back. She can't say for sure. But it has
15 characteristics that are similar to a
16 .9-millimeter, the one that was taken out of the
17 tree. She can't say for sure, but it has
18 characteristics that are because of the way they
19 are damaged that are similar to .9-millimeter. The
20 bullet taken out of Desmond's leg while he was
21 running mind you, while he was running away, has
22 characteristics that are similar to a
23 .9-millimeter. The characteristics from the
24 bullets that are taken from the tree and from
25 Desmond's leg are both similar. Can't make a

1 positive ID because they are not in that good of
2 shape.

3 So that puts to bed the whole red
4 herring of the two shooter thing. It doesn't
5 matter. You are going down a rabbit hole that he
6 wants you to go down and there's no evidence to
7 suggest that. He could have put her on the stand
8 if he wanted to.

9 Now Shanorma. Shanorma is not just up
10 here telling you that's what she did with the bag.
11 You heard it on the jail call. That was back in
12 2015. And he knew exactly what she was talking
13 about. He didn't hesitate when she said I took
14 that bag, I took it -- when she said I took that
15 bag and I took it to your granny's house without
16 hesitation why the hell did you do that? He knew
17 what was in that bag. That's corroboration right
18 there. If she had come and said that, and that's
19 all you hear, well you might doubt it. I get it.
20 But she said that back in 2015 and you can tell
21 from his reaction he knew exactly what she was
22 talking about with that bag and what was in this.
23 That black bag.

24 All right. Marquise. You'll have the
25 Facebook posts back there. You will have the call

1 detail records. He is confusing the Facebook
2 messages with the phone calls. The message was at
3 8:33 I'm out here from him to Marquise. Marquise
4 lives less than two blocks from the -- three blocks
5 from the crime scene. He said I can walk there in
6 a couple minutes. I'm out here means I'm out here.
7 I'm out here on the east side. It wasn't five
8 minutes before this shooting he made that message.
9 You will have it back there. 8:33 he made that
10 message. The shooting was at 8:46. That's
11 13 minutes before.

12 Then Marquise called him and then
13 that's on the phone records. He didn't call him
14 until the message that came long after that at 9:34
15 where he says call me. Here's my number 8874.
16 Then Marquise called him and he said I'm on Spring
17 Street. Like 40 minutes after the shooting. And
18 what Marquise told you and when Marquise heard that
19 the Defendant is the one who shot Desmond, this was
20 right after the shooting. But that's all he knew
21 until he met with him and that's when he gets
22 specifics about what he did when he shot Desmond,
23 specifics that can only have been known by the
24 person who did the shooting. Pass by him, backed
25 up, pulled out the gun, attack, chase him, shot

1 him, Desmond went around the corner. Exactly what
2 happened.

3 Well, the reason why we didn't call the
4 person who sold the gun to him is because he's
5 dead. Quran Allen, Runway General, that's the
6 person who sold the gun to him. He just got
7 murdered this year. We can't call him.

8 Jail letters. You will have them back
9 there. You can look at them. Do the right thing.
10 Yep. But not once do you see him anywhere in those
11 letters say just tell the truth. Do the right
12 thing means stop being a snitch. You have heard
13 enough about the street code and how snitching is a
14 bad thing. Do the right thing means stop
15 snitching. Switch your story up. And Desmond by
16 the way was told to keep his mouth shut, okay?
17 When he testified on the stand notice what he
18 didn't say. Second question I could see as soon as
19 he got up there he was going to fight it. I went
20 straight to it. Who shot you. What did he say?
21 Nothing.

22 He did exactly what he told him to. He
23 kept his mouth shut. Didn't say a word. He could
24 have said it wasn't him. I don't know who it was.
25 He didn't say anything. He knows it was him. And

1 he did what he was told to do, kept his mouth shut.

2 But Christopher Victoria Mr. Archer
3 said told a whole bunch of different stories. Not
4 exactly true. Christopher told pretty much the
5 same story. The only thing he changed was the
6 description a little bit and he had to put a hoodie
7 on him because otherwise with that light you can
8 almost see in that picture, he had to explain why
9 can you not see a shooter with that light. So he
10 put a hoodie on him. That's the only thing that he
11 changed. And 85 percent went to a hundred, but
12 everything else about how that shooting happened
13 stayed the same.

14 But here is the other thing. I showed
15 you how he knew, Christopher knew when that
16 shooting started that he wasn't the intended
17 target. He could see it was Calico. That's why he
18 didn't run, but look at what else Christopher did
19 after the shooting. After the shooting he went and
20 hung out with Tianai Lee. She testified. She said
21 that she was with Christopher just after the
22 shooting. And Christopher said Calico shot Fats.
23 He didn't say I think it was Calico, he didn't say
24 it might have been Calico. He said Calico shot
25 Fats. And this is how you know that he was 100

1 percent sure. Because he took Fats brother. They
2 grabbed their gun and they went to Shanorma's house
3 and they waited for hours. Hours. And they were
4 going to kill him. If he had showed up that night
5 to Bayside he would be dead. He didn't show up
6 until much later. And I'll tell you this. That's
7 100 sure. That's not 85 percent sure, that's 100
8 percent sure. And that tells you right there the
9 mindset of these guys. They would rather kill than
10 snitch.

11 THE COURT: Mr. Osborne, could you help
12 me by rolling the lectern back, please.

13 MR. OSBORNE: Yes.

14 THE COURT: Thank you very much.
15 That's good. Ladies and gentlemen of the jury,
16 that completes the closing statements or arguments
17 by counsel and I told you that once we reached this
18 stage of the proceedings it would be my
19 responsibility to charge you concerning the law in
20 this case.

21 The first thing I want to discuss with
22 you is that during arguments you heard arguments
23 concerning the level of penalty that a person can
24 serve for the crimes alleged in this particular --
25 in these indictments.

1 In determining the guilt or the
2 innocence of a Defendant which is which your job
3 you cannot consider any possible penalty for any
4 particular crime. The level of punishment for a
5 crime is a matter for me, the Court, to decide and
6 should never be considered by you, the jury, in any
7 manner in arriving at an impartial verdict as to
8 the guilt or the innocence of the Defendant. I
9 want that to be clear to you. It's a matter that
10 should not even be discussed by you in determining
11 the guilt or the innocence of the Defendant.

12 Now, the indictments in this case
13 allege three different crimes. I want to remind
14 you that the fact a Defendant has been arrested,
15 charged or indicted in a case is not evidence in
16 the case and cannot be considered by you as
17 evidence of guilt in the case. Nor does the fact
18 that indictments have been issued create any
19 presumption of guilt. Those are the documents,
20 formal written instruments, that bring this case
21 into this court. It informs you of the charges
22 that have been lodged against the Defendant and
23 that are being tried. It informs the Defendant of
24 the charges that have been lodged against him.

25 But the indictments themselves do not

1 constitute evidence of any wrongdoing and cannot be
2 considered by you as such. Now, the three
3 indictments that are in this case, case number
4 15-6572, the indictment is for attempted murder and
5 these indictments will be given to you to take back
6 into the jury room for your use during
7 deliberations.

8 It states that in Charleston County on
9 or about May 22nd of 2015 the Defendant, Calvin
10 Brown, Jr., did with the intent to kill and malice
11 aforethought attempt to kill Desmond Lewis. This
12 is in violation of Section 16-329 of the code of
13 laws of South Carolina 1976 as amended against the
14 peace and dignity of the state and contrary to the
15 statute in such case made and provided.

16 The second indictment is for case
17 number 2015-6573 also for the crime of attempted
18 murder. This indictment states that in Charleston
19 County, South Carolina, on or about May the 22nd of
20 2015 the Defendant, Calvin Brown, Jr., did with the
21 intent to kill and malice aforethought attempted to
22 kill Tyreik G. [REDACTED]. This is in violation of
23 Section 16-329 of the code of laws of South
24 Carolina 1976 as amended against the peace and
25 dignity of the state and contrary to the statute in

1 such case made and provided.

2 The final indictment is case number
3 15-6574. This is a charge of possession of a
4 weapon during the commission of a violent crime.
5 This indictment states that in Charleston County,
6 South Carolina, on or about May the 22nd of 2015
7 the Defendant, Calvin Brown, Jr., did possess a
8 firearm or did visibly display what appeared to be
9 a firearm or did visibly display a knife during the
10 commission or the attempted commission of a violent
11 crime, to wit, attempted murder in violation of
12 Section 16-23-490 of the code of laws of South
13 Carolina 1976 as amended against the peace and
14 dignity of the state and contrary to the statute in
15 such case made and provided.

16 Now, each of those indictments alleges
17 a separate and distinct offense. You will be
18 called upon to write a separate verdict as to each
19 of those indictments and you should decide each of
20 the indictments based on its own merits unaffected
21 by your decision on any of the other indictments.
22 Again, you'll write a separate verdict as to each
23 of those indictments.

24 To each of those indictments the
25 Defendant has pled not guilty. Under our system of

1 justice that plea places the sole burden of proof
2 in this case upon the State. It's the State's
3 burden to prove the Defendant guilty. A person
4 charged with the commission of a criminal offense
5 in this state is never required to prove himself
6 innocent. It's an important rule of law that a
7 Defendant in a criminal trial, it doesn't matter
8 how serious the offense might be, is always
9 presumed to be innocent of the crime for which an
10 indictment has been issued until and unless guilt
11 has been proven to you, the jury, by proof beyond a
12 reasonable doubt.

13 The presumption of innocence doesn't
14 end when you began your deliberations. It remains
15 with the Defendant until such time as it has been
16 taken from him by evidence that satisfies you of
17 his guilt beyond a reasonable doubt.

18 Some people describe that presumption
19 of innocence like a robe the judge wears in a
20 courtroom. It's around his shoulders, the
21 Defendant's shoulders at the beginning of the trial
22 and it stays about his shoulders throughout the
23 trial. It's about his shoulders when you start
24 your deliberations and remains about his shoulders
25 through those deliberations until such time as that

1 presumption of innocence might be stripped from him
2 by evidence that satisfies you of the Defendant's
3 guilt beyond a reasonable doubt.

4 So it is not just a legal theory, not
5 just a legal phrase. The presumption of innocence
6 is a substantial right that every Defendant is
7 entitled to until and unless you, the jury, are
8 satisfied from the evidence of the Defendant's
9 guilt beyond a reasonable doubt.

10 Now, you have heard me mention the
11 standard of proof beyond a reasonable doubt several
12 times and it's been stressed to you in this case
13 and you may ask yourself well, just what is the
14 legal definition of a reasonable doubt? What is a
15 reasonable doubt? The cases that have defined what
16 a reasonable doubt is have said that a reasonable
17 doubt is that kind of doubt that causes a
18 reasonable person to hesitate to act. The State
19 has the burden of proving the Defendant guilty
20 beyond a reasonable doubt. I don't want you to be
21 confused by civil cases and some of you may have
22 been involved in civil cases. In civil cases in
23 this court that's where somebody is seeking
24 monetary damages. It can be because somebody
25 breached a contract or didn't pay a debt or

1 somebody injured someone, but those kind of cases
2 where monetary damages are sought. The standard of
3 proof is simply by the greater weight of the
4 evidence. That's the scales of justice tilting
5 ever so slightly one way or the other when you
6 weigh the evidence.

7 That is the standard of proof in a
8 civil case. The standard of proof in this case,
9 the case we are in is proof beyond a reasonable
10 doubt. It's more powerful than the level of proof
11 in a civil case. So don't confuse yourself by
12 those two standards of proof if you have ever been
13 involved in a civil case.

14 I will tell you that proof beyond a
15 reasonable doubt is the kind of proof that leaves
16 you firmly convinced of the Defendant's guilt.
17 Now, there's very few things that happen in this
18 world that can be proven beyond any doubt
19 whatsoever. The State is not put to that level of
20 proof. The State is not required to produce proof
21 that overcomes every possible doubt. What I will
22 tell you if after considering the evidence and
23 weighing the evidence if you are firmly convinced
24 of the Defendant's guilt of the crime charged
25 beyond a reasonable doubt, you must find the

1 Defendant guilty. On the other hand, if you think
2 there's a real possibility that the Defendant is
3 not guilty you must give the Defendant the benefit
4 of the doubt and find the Defendant not guilty.

5 I told you at the beginning of the
6 trial when we started that you and I would have
7 different duties in the case and it's been my job
8 as the presiding judge to preside over the case and
9 make rulings on questions that were asked and
10 evidence that is presented.

11 I want to tell you now that if there
12 was anything that I overruled or I did not allow to
13 come into the record you should not consider any of
14 those factors at all in reaching a verdict. They
15 are not to be considered in any way whatsoever.
16 You are to consider only the evidence that was
17 admitted into the record of the trial during the
18 trial. You are to consider only the competent
19 evidence before you therefore. I want also to
20 point out to you that that was my job to do that.
21 So don't take from anything that I said or did in
22 the exercise of those duties or even during this
23 charge on the law to somehow indicate to you that I
24 have got an opinion as to how you should determine
25 the facts in this case. I told you at the

1 beginning I am the sole judge of the law in this
2 case, but you are the sole judges of the facts in
3 this case. So don't take anything that I say or do
4 to indicate that I have got an opinion one way or
5 the other as to how you should determine the facts
6 in this case. That is your job and your job alone.

7 I have the additional duty now of
8 charging you on the law and I told you as the
9 presiding judge it is your duty as jurors to take
10 the law exactly as I give it to you now and apply
11 that law to the facts as you decide those facts to
12 be. You are the sole judges of the facts in this
13 case, and again don't infer from anything that I do
14 that I have got an opinion on that subject.

15 As jurors it is your duty and your
16 responsibility to determine the effect, the value
17 and the weight of the evidence that's been
18 presented during the trial. Now, in doing that you
19 have the right to consider two types of evidence.
20 Let me explain to you what I mean by two types of
21 evidence. The law divides evidence into either
22 what we refer to as direct evidence or
23 circumstantial evidence. Direct evidence is
24 testimony that is given by a witness directly
25 seeking to prove the facts in question. An

1 eyewitness recounting what happened, someone who
2 has experienced something directly or has the
3 direct knowledge that something is either or not
4 true. That's what we mean by direct evidence.
5 Someone testifying directly on the fact that they
6 are seeking to prove.

7 Circumstantial evidence, on the other
8 hand, is proof of a set of facts or a chain of
9 facts or circumstances that indicates the existence
10 of another fact. Now, the law doesn't make a
11 distinction between the weight or value that jurors
12 can give to either direct or circumstantial
13 evidence as there is not a greater degree of
14 certainty required of circumstantial evidence in
15 the case.

16 Let me give you an example of what I
17 mean by proof of facts by circumstantial evidence.
18 Let's say last night before you went to bed you
19 were in your bedroom. You walk over to the window,
20 looked outside. The stars were shining, beautiful
21 night. And so you climbed into bed. You slept
22 well all night. You didn't wake up once during the
23 night. The next morning you get up and sun is
24 coming through that window and you walk over to it
25 and look outside and sure enough sun is shining,

1 when you look a little closer you notice there is
2 water dripping out of the trees. You notice there
3 is puddles in the road of the driveway in front of
4 your house that weren't there the night before.
5 Perhaps the lawn is totally covered with dew or a
6 lot of water, heavy water cover. Now, you slept
7 all night. You didn't see it rain. You didn't
8 hear it rain so you can't testify directly as to
9 whether it rained or not. But from the chain of
10 facts or circumstances you do know to be true,
11 water dripping out of the trees, puddled in the
12 road or driveway, water coming the lawn. From
13 those facts you know to be true you could
14 reasonably infer that at sometime during the night
15 it rained. So that's what we mean by proof of
16 chain of facts and circumstances that indicate the
17 existence of another fact.

18 The law -- the existence of the fact
19 does not require a deduction. Circumstantial
20 evidence is proof of a chain of facts and
21 circumstances that indicate the existence of a
22 fact. Crimes may be proven by circumstantial
23 evidence. As I said, the law doesn't make a
24 distinction between the two types of evidence and
25 how they can be used by you. But for a chain of

1 facts and circumstances to warrant a finding of
2 fact, all of the circumstances must be consistent
3 with each other and when taken together point to
4 conclusively the fact sought to be proven or
5 conclusively to the guilt of the accused beyond a
6 reasonable doubt.

7 If the circumstances merely portray
8 suspicious behavior the proof has failed. The
9 State has the burden of proving the Defendant
10 guilty beyond a reasonable doubt. The burden rests
11 with the State regardless of whether the State
12 relied on direct evidence, circumstantial evidence
13 or some combination of the two types of evidence.

14 Now, in doing your job as the finders
15 of facts you have the duty and you will have the
16 duty of determining credibility of the testimony
17 you have heard. It is your duty as jurors to
18 analyze and evaluate the evidence and decide which
19 of the evidence convinces you that it is true. In
20 determining the believability of witnesses who
21 testified in this case as the sole judges of the
22 facts you have the right to believe all -- one
23 witness against all the others, all the others
24 against one, you have the right to believe all of
25 them or part or none of what any witness may have

1 testified to.

2 You may consider whether or not a
3 witness exhibited a bias, a prejudice or some other
4 motive in delivering their testimony. You have the
5 right to consider the appearance and the manner in
6 which a witness testified while the witness was on
7 the witness stand. I urged you at the beginning of
8 the case to use your good common sense to determine
9 credibility of what you hear in the courtroom and I
10 will urge you again to use your good common sense
11 in making a determination as to the credibility of
12 the testimony that you heard.

13 Now, I want to instruct you and I want
14 to emphasize one thing to you. The fact that the
15 Defendant did not testify in this case is not a
16 factor that can be considered by you in any way in
17 your deliberations and in your consideration of the
18 question of guilt or innocence. It must not be
19 considered by you in any manner whatsoever. You
20 see, a Defendant has a constitutional right to
21 remain silent and the assertion of that right by a
22 Defendant must not be considered by you in your
23 deliberations. I will repeat and emphasize to you
24 that under your oath you are to draw no conclusions
25 whatsoever from the fact that the Defendant did not

1 testify. The fact that the Defendant did not
2 testify should not even be discussed by you in the
3 jury room during your deliberations. As I told you
4 earlier, the burden of proof is solely upon the
5 State. It's the State's obligation to prove the
6 Defendant's guilt. The Defendant is not required
7 to prove his innocence.

8 The burden of proof remains upon the
9 State throughout the trial and that burden is to
10 prove the Defendant guilty beyond a reasonable
11 doubt.

12 Now, in every case the identification
13 of a Defendant as the person who committed the
14 crime charged is a necessary element. The State
15 has the burden of proving identity. That again
16 like all facts has to be proven beyond a reasonable
17 doubt. You must be satisfied beyond a reasonable
18 doubt of the accuracy of the identification before
19 a Defendant can be convicted. Identification
20 testimony is an expression or a belief or
21 impression by a witness. You must determine the
22 accuracy of the identification. You must consider
23 the believability of the identification witnesses
24 in the same manner as all other witnesses. You may
25 consider whether the witness had an adequate

1 opportunity to observe the offender at the time of
2 the offense... This can be affected by the length of
3 time, how far or close the witness was from the
4 event, the lighting conditions, whether the witness
5 had a chance to know or see the person in the past.
6 Once again, I will instruct you the burden of proof
7 extends to the State as to every element of the
8 crime charged.

9 That includes the burden of proving
10 beyond a reasonable doubt the identity of the
11 Defendant as the person who committed the crime.
12 Again, after examining the testimony if you have a
13 reasonable doubt of the accuracy of the
14 identification you must find the Defendant not
15 guilty. However, on the other hand, if you are
16 firmly convinced of the identification of the
17 Defendant as the person who committed the crime and
18 if you are firmly convinced beyond a reasonable
19 doubt you must find the Defendant guilty.

20 Now, in a minute I'm going to describe
21 the crimes to you. I'm going to go over the law as
22 to the specific crimes charged. And in order to
23 establish any criminal liability the law requires
24 some level of criminal intent. And as I go over
25 that be listening for those phrases in the law that

1 talk about what somebody intended to do. And let
2 me tell you in order to establish criminal
3 liability criminal intent is required. That's the
4 mental state that's required to be proven by the
5 State for a Defendant to be guilty of a particular
6 crime. There are different levels of intent
7 depending on the crime and it can be purpose,
8 knowledge, recklessness, criminal negligence, so
9 there's different words that are used and listen in
10 this case for the words of intent.

11 Now, criminal intent is one of those
12 things that has to be proven beyond a reasonable
13 doubt, but I will tell you the intent that someone
14 had at the time of an event must be determined by
15 you from the circumstances surrounding the
16 situation because you see, there's no way we can
17 open up somebody's head when they are doing
18 something, look at their brain and be able to
19 scientifically determine what they're intending to
20 do. That's not possible. So we can't prove it by
21 direct evidence. It has to be proven given the
22 circumstances that existed at the time of the
23 events. Criminal intent therefore can be inferred
24 from the circumstances that are shown to have
25 existed at the time of the event. That's how you

1 make a determination as to whether or not the
2 element of a crime that requires intent was present
3 in any particular case. Again, it is not necessary
4 to establish it by direct evidence. It can be
5 established by circumstantial evidence taking into
6 consideration the facts and circumstances of the
7 case.

8 Now, criminal intent is a mental state.
9 It's a conscious wrongdoing. It's up to you to
10 determine what a Defendant intended to do based on
11 the circumstances shown to have existed. And it
12 can arise from the action or the failure to act on
13 the part of the Defendant. And I will tell you in
14 our law if the Defendant with malice aforethought
15 attempted to kill another person, but by mistake
16 injures or kills a different person, that Defendant
17 would still have the intent to kill. The intent to
18 kill is merely transferred from the original
19 attempted victim to the person who was actually
20 killed or injured. The Defendant would be guilty
21 of the crime just as if the attempt resulted in
22 injury or death to the person that he intended to
23 attempt to kill. So that's what we refer to as
24 transferred intent.

25 Now, two of the charges in this case

1 are attempted murder. And the statute under which
2 that charge is made is code section 16-329. I will
3 read a portion of that code section to you. A
4 person who with intent to kill attempts to kill
5 another person with malice aforethought either
6 expressed or implied commits the offense of
7 attempted murder. That's reading directly from the
8 statute. The Defendant is charged with attempted
9 murder. In order to prove that crime the State
10 must prove that the Defendant attempted to kill
11 another person with malice aforethought. And that
12 malice aforethought can be expressed or implied.

13 Now, malice is defined as hatred, ill
14 will or hostility toward another person. It's the
15 intentional doing of a wrongful act without just
16 cause or excuse and with the intent to comit an
17 injury or under circumstances that the law will
18 infer an evil intent. Now, malice aforethought is
19 a phrase that you probably don't use in your
20 day-to-day language and let me explain to you what
21 we mean by malice aforethought. Malice
22 aforethought does not require that the malice,
23 that's the ill will, exist at any particular time
24 or for any length of time before the act is
25 committed. But malice must exist in the mind of

1 the Defendant just before and at the time the act
2 is committed. Therefore, there has to be a
3 combination between the evil intent and the act.

4 I hope you are picking up on these
5 intent words in this statute is what I was telling
6 you earlier. Now, malice aforethought under the
7 statute can be either expressed or implied or
8 inferred. The terms express or inferred don't mean
9 different kinds of malice. What that means is that
10 there's different ways in which to show that malice
11 existed. That is, either by direct evidence or by
12 inference from the facts and circumstances which
13 are proven.

14 Express malice is shown when a person
15 speaks words which express hatred or ill will
16 toward another or when the person prepares
17 beforehand to do the act which is later
18 accomplished. For example, someone lying in wait
19 for another person or any other act of preparation
20 going to show that the deed was within the
21 Defendant's mind with the express malice.

22 Malice also can be inferred from the
23 conduct of a Defendant. That conduct which would
24 show a total disregard for human life could rise to
25 an inference of malice. Now, if facts have been

1 proven to you beyond a reasonable doubt sufficient
2 to raise an inference of malice to your
3 satisfaction this inference would simply be an
4 evidentiary fact. It should be considered by you,
5 the jury, along with the other evidence in the
6 case. You give it the weight you think it should
7 receive. Now, a specific intent to kill is an
8 element of attempted murder. Intent again means
9 intending the result which actually occurs. In
10 other words, not accidental or involuntarily.
11 Intent may be shown again by the act and conduct of
12 the Defendant or other circumstances from which you
13 may naturally or reasonably infer intent.

14 Evidence of the character of the act,
15 the nature of the act or the instrument used or the
16 manner in which instruments are used, the purpose
17 to be accomplished, the resulting wounds or
18 injuries are all facts which can be considered by
19 you in determining the intent with which the act
20 was committed. Intent can be inferred when it is
21 demonstrated that the Defendant voluntarily and
22 willfully committed an act, the natural tendency of
23 which is to destroy another's life.

24 Now, in both cases should you find the
25 Defendant not guilty of attempted murder, I have

1 given you a choice of considering a lesser included
2 offense. Now, what that means is under the law
3 there are higher level offenses and lesser offenses
4 included within those higher level offenses, but
5 they don't have perhaps one of the elements that
6 the higher level offense requires. Assault and
7 battery of a high and aggravated nature is
8 committed by a Defendant if the person unlawfully
9 injures another person and great bodily injury to
10 another person results or the act is accomplished
11 by means likely to produce death or great bodily
12 injury. Great bodily injury means bodily injury
13 which causes a substantial risk of death or which
14 causes serious permanent disfigurement or
15 protracted loss or impairment of the function of a
16 body member or organ.

17 I will point out to you that assault
18 and battery of a high and aggravated nature does
19 not require that element that attempted murder has,
20 that is the element of malice aforethought.

21 Now, should you find the Defendant
22 guilty of either attempted murder or assault and
23 battery of a high and aggravated nature, you will
24 then be called upon to render a verdict in the
25 charge of possession of a weapon during the

1 commission of a violent crime. The Defendant is
2 charged with possession of a weapon during the
3 commission or attempted to commit a violent crime.
4 The State must prove beyond a reasonable doubt that
5 the Defendant was in possession of a firearm or
6 visibly display what appeared to be a firearm
7 during the commission of a violent crime. A
8 firearm is any weapon, machine gun, automatic
9 rifle, revolver, pistol or any weapon which is
10 designed to or may be readily used to expel a
11 projectile. In order to find the Defendant guilty
12 of possession of a weapon during the commission of
13 a violent crime the Defendant as I said must first
14 be found guilty of committing a violent crime.

15 I will tell you that under our law
16 attempted murder and assault and battery of a high
17 and aggravated nature are both violent crimes.

18 Now, ladies and gentlemen of the jury,
19 your verdict on the questions I'm going to ask you
20 has to be unanimous. You all must agree on the
21 verdict before it is the verdict of the jury. You
22 have the right during your deliberations to ask
23 questions of the Court. I will tell you that I
24 cannot answer all of your questions because I can't
25 get involved in your decisions on the facts. I can

1 answer certain questions about the procedure that
2 we follow, the law that I have charged you and make
3 certain evidence available to you should you want
4 to review certain evidence. But I am not going to
5 ask the forelady to edit any questions. Just write
6 it on a piece of paper once you've agreed on the
7 question. Knock on the door, give it to the
8 bailiffs. They will bring it to me and I will
9 decide after consultations with the lawyers as to
10 the appropriate response that should be given.

11 So it may take us a little while to get
12 those answers back to you, but we will get back to
13 you on it eventually.

14 Now, I have gone over a lot of things,
15 there is a lot of evidence. We will gather that
16 evidence up and give it to you to take back to the
17 jury room and I'm going to give you a verdict form
18 so there is a few more housekeeping things that we
19 are going to do before I tell you to start your
20 deliberations. This will probably be the last time
21 I tell you to go back to the jury room and not
22 discuss the case. So please retire. I will call
23 you back for final instructions shortly. Thank
24 you.

25 (Thereupon, the jury exited the

1 courtroom at 2:45 p.m.)

2 THE COURT: Any exceptions from the
3 State?

4 MR. OSBORNE: No, Your Honor.

5 THE COURT: Any from the defense?

6 MR. ARCHER: Judge, I would ask you
7 give a supplemental charge which is the whereas
8 aggravated assault requires an intent to cause
9 bodily harm, that attempted murder needs -- there
10 must be an actual intent to cause death.

11 THE COURT: I am not sure I understand
12 what you are saying.

13 MR. ARCHER: Well basically --

14 THE COURT: Earlier we agreed that the
15 lesser included offense would be assault and
16 battery of a high and aggravated nature that you
17 were requesting. I charged and I have given them
18 that option.

19 MR. ARCHER: I know, but I am just
20 asking that high and aggravated requires an intent
21 to do bodily harm. Attempted murder must include
22 intent to actually cause death, not just bodily
23 harm, serious bodily harm.

24 THE COURT: Well, let's see. What I
25 charged was assault and battery of a high and --

1 person who commits assault and battery of a high
2 and aggravated nature, a person unlawfully injures
3 another person and great bodily injury to another
4 person results or the act is accompanied by means
5 likely to produce great bodily. Great bodily
6 injury means bodily injury which causes substantial
7 risk of death or causes serious permanent
8 disfigurement or protracted use. So I charged the
9 law on the assault and battery of a high and
10 aggravated nature is what you requested.

11 MR. ARCHER: Right. Well --

12 THE COURT: I don't intend to charge
13 them on something that's not being presented to
14 them for a verdict. Are you asking me to do that?

15 MR. ARCHER: No, I am not.

16 THE COURT: I charged them on the
17 intent required for attempted murder which is
18 malice aforethought.

19 MR. ARCHER: Has to be intent to cause
20 actual death, not just harm. That's what I am
21 referring to, Judge.

22 THE COURT: The State must prove
23 Defendant attempted to kill another person with
24 malice aforethought, either express or implied. I
25 went on to say a specific intent to kill is an

1 element of attempted murder. I charged that. Did
2 you not hear that?

3 MR. OSBORNE: I did, yes, Your Honor
4 were.

5 THE COURT: I think I did that.

6 MR. ARCHER: All right, Your Honor.

7 THE COURT: I told them they did not
8 have the same level in assault and battery of a
9 high and aggravated because there is no malice
10 aforethought or specific intent to kill. I will
11 mention that to them again in the assault and
12 battery of a high and aggravated nature.

13 Now, the verdict form that I have --
14 any other exceptions?

15 MR. ARCHER: No, Your Honor.

16 THE COURT: The form that I have is
17 here. I want you to look at that and tell me if
18 there is any objection to it. And then I want you
19 to go through the exhibits and agree upon what's to
20 be sent back.

21 (Brief pause.)

22 There is no objection to the verdict
23 form.

24 MR. OSBORNE: During one of the breaks
25 we have already gone through all the exhibits,

1 right?

2 MR. ARCHER: I think. I want to make
3 sure that I got --

4 (Off-the-record conference.)

5 THE COURT: Let me point out to you one
6 of the jurors indicated he had an appointment that
7 may take him away. I'm going to inquire of him as
8 to whether or not he has been able to rearrange
9 that appointment. If he hasn't then I think it
10 will be best if we replace him on the jury at this
11 stage. They may go later than that appointment.

12 MR. DURANT: Yes, sir.

13 THE COURT: Could you get that juror to
14 come back. We think he is 36. Ask him to step in.

15 (Juror 36 brought to courtroom.)

16 THE COURT: Sir, you are Juror 36 and
17 you and I had a discussion yesterday about an
18 appointment you might have. What's your situation?

19 JUROR NO. 36: I found a babysitter.

20 THE COURT: So you are fine to stay
21 with us?

22 JUROR NO. 36: Yes, sir.

23 THE COURT: Very good. I will ask you
24 to step back to the jury room then. Thank you,
25 sir.

1 (Juror 36 left the courtroom.)

2 THE COURT: As he goes you can now
3 bring them all back in. Just ask him to wait until
4 they get here.

5 (Whereupon the jury entered the
6 courtroom at 3:01 p.m.)

7 THE COURT: Ladies and gentlemen of the
8 jury, let me just go over one thing with you to be
9 sure I made this clear. The Defendant is charged
10 with attempted murder. In order to prove the crime
11 the State must prove beyond a reasonable doubt that
12 the Defendant attempted to kill another person with
13 malice aforethought either express or implied.
14 Attempted murder is a crime that does require a
15 specific intent to kill.

16 Now, the lesser included offense that I
17 am charging you that if you find him not guilty of
18 attempted murder, you can consider the lesser
19 included offense and that is a person commits that
20 offense, assault and battery of a high and
21 aggravated nature, if the person unlawfully injures
22 another person and great bodily injury to another
23 person results and the act is accompanied by means
24 or the act is accomplished by means likely to
25 produce great bodily injury and or death.

1 Now, that does not require a specific
2 intent to kill. That's the difference in those and
3 it does not require malice aforethought. So those
4 -- I want to be sure we were clear on those.

5 Now, Mr. Bailiff, if you will step over
6 here just a moment, please, sir. I will give you
7 these documents and ask that you take those to the
8 forelady for me. Ma'am, let's go over the top
9 document first. That's the verdict form. And at
10 the top it will have the state, county that we are
11 located in, has the names of the parties, the State
12 versus Mr. Brown. And there's a straight verdict
13 for each of the indictments. The indictments are
14 the documents right up under that verdict form.

15 Now, question No. 1 has to do with one
16 of the attempted murder charges. It will
17 specifically state the indictment number and the
18 alleged victim. Now, as to that your choices are
19 either not guilty or guilty. Now, if the jury were
20 to find the Defendant not guilty of that charge
21 then you will consider whether or not the Defendant
22 was guilty of the lesser included charge. That is
23 stated in 1A right below that. Now, if you find
24 the Defendant guilty of the attempted murder
25 there's no reason to consider the lesser included

1 offense so you would not write a verdict for that
2 in No. 1.

3 No. 2 is again attempted murder for the
4 other alleged victim, same choices again, not
5 guilty or guilty. If you find the Defendant not
6 guilty of that then you would consider the lesser
7 included offense. No. 3 on the verdict form,
8 possession of a weapon during the commission of a
9 violent crime. If the Defendant is found guilty of
10 any of those charges in one or two, then you would
11 consider whether or not he possessed a weapon
12 during the commission of a violent crime.

13 Please don't take from the order in
14 which I put the verdict choices on that form to
15 indicate I have a preference. I have been
16 preparing those forms now for about 14 years. And
17 every one I have ever done has those choices in the
18 same order. It means no preference to me, just the
19 way I do it. You would sign it and date it once
20 the jury has reached a unanimous verdict on the
21 appropriate questions to be answered.

22 Now, on the back of each indictment,
23 flip those over to the back, below that red square,
24 do you see that on the back? Maybe it's on the
25 front. Right below that you will see there's a

1 place to record the verdict on each indictment.

2 You see that?

3 THE FOREPERSON: Yes.

4 THE COURT: You would write the verdict
5 on that particular indictment in that square, sign
6 it and date. You will bring that back into the
7 courtroom with you as well. Once you reach a
8 unanimous verdict knock on the door, tell the
9 bailiffs. They will bring you back to the
10 courtroom to receive those verdicts.

11 I don't know how late we are going to
12 go on deliberations. If it becomes necessary for a
13 bailiff to come into the jury room while you are
14 deliberating, I will instruct you to stop your
15 discussions until that person has completed their
16 duties and left the room. You should only discuss
17 the case with members of the jury only in the jury
18 room. So if somebody steps in stop your
19 discussions until that occurs. That may become
20 necessary, depends how long we are here. We may
21 order dinner for you as well so we may have to step
22 in to do something like that.

23 So any questions, madam forelady,
24 before I send you back?

25 PROSPECTIVE JUROR: Yes, Your Honor.

1 If we find the Defendant not guilty on the first
2 two charges on the indictments there's not a place
3 for the lesser included charge.

4 THE COURT: You would write the lesser.
5 You say we found him guilty of assault and battery.

6 THE FOREPERSON: That would go to the
7 verdict section.

8 THE COURT: Make that notation.

9 THE FOREPERSON: Thank you.

10 THE COURT: Again, in the block for the
11 verdict on the back. Any other questions?

12 THE FOREPERSON: No, sir.

13 THE COURT: Now, the exhibits are here.
14 The bailiffs are going to bring those back to the
15 jury room with you so you can view them. There's a
16 computer back there that will allow you to look at
17 any of the disks or listen to the disks if you feel
18 the need to do that. So it is all available to
19 you. If you have any technical difficulties with
20 those things again knock on the door, let the
21 bailiffs know. We will try to get that
22 straightened out for you.

23 Now, the three alternates I'm going to
24 ask you to remain seated. Those members of the
25 jury itself should step back to the jury room and

1 begin your deliberations.

2 (Thereupon, the jury exited the
3 courtroom at 3:08 p.m.)

4 THE COURT: Any exceptions to my
5 instructions, final instructions?

6 MR. OSBORNE: No.

7 MR. ARCHER: No, Your Honor.

8 THE COURT: Now, you three lady and
9 gentlemen who served as my alternates this week, I
10 want to thank you very much for your attention to
11 your duties. I know it's been a little tough with
12 all the comings and goings and I thank you for
13 cooperating with me. The law says that once the
14 jury retires to the jury room and all 12 go back,
15 the alternates work is finished. So I'm going to
16 release you of any further responsibility in this
17 case. I will tell you that you have the right now
18 to discuss the case with someone if you wish to do
19 so. You also have the right not to discuss it.
20 You see, a citizen doesn't owe anyone an
21 explanation for what they do on a jury. You are
22 not required to talk to anyone unless you choose to
23 do that. If anybody were in any way to bother you
24 or harass you about your service on the jury panel
25 let the clerk know and we will see that the

1 appropriate action is taken. I don't anticipate
2 that happening, but if it happens please let them
3 know so that we can be of assistance.

4 Now, the bailiffs will check you out.
5 If you need an excuse for work for this week they
6 can see that you get that. You will be getting a
7 voucher for your pay that I think you take that to
8 the treasurer's office.

9 THE CLERK: Just the bank, Your Honor.

10 THE COURT: Bank will take care of it.
11 I will tell you don't plan to buy Christmas on that
12 because it's not going to be enough for that. It's
13 all the law allows us to pay you, certainly not
14 enough for your time and efforts.

15 So again I thank you for your help and
16 your service and you are free to go. The bailiffs
17 will check you out. Thank you very much. We will
18 be in recess until there is either a question or a
19 verdict. Thank you very much.

20 (Thereupon, the jury began deliberating
21 at 3:11 p.m. and the following proceedings were had
22 at 4:06 p.m. outside the hearing of the jury.)

23 THE COURT: I have received a question
24 from the jury. Is the State ready to proceed?

25 MR. OSBORNE: Yes, Your Honor.

1 THE COURT: Defense ready?

2 MR. ARCHER: Yes.

3 THE COURT: Bring the jury in, please.

4 (Whereupon the jury entered the
5 courtroom at 4:07 p.m.)

6 THE COURT: The jury has returned to
7 the courtroom. I have received an inquiry from the
8 foreperson. I'm going to go over that with you.
9 The inquiry says that if we find that the Defendant
10 had malice toward Desmond does that malice transfer
11 with the transfer of the intent when he shot
12 Tyreik. In other words, does the malice have to be
13 directed toward Tyreik intent or does malice toward
14 Desmond transfer with the bullet?

15 Now, I will tell you that South
16 Carolina law does recognize the concept or the
17 theory of what's called transferred intent. And
18 should a jury find beyond a reasonable doubt that a
19 Defendant with malice aforethought and with
20 specific intent to kill attempt to kill another
21 person, but in doing that act by mistake injures or
22 kills a different person, then the law says that
23 the Defendant still had the intent to kill. The
24 intent to kill is merely transferred from the
25 original person that the Defendant attempted to

1 kill to the person who was actually killed or
2 injured.

3 The Defendant could be found guilty of
4 attempted murder just as if the attempt had
5 resulted in the death or the injury to the person
6 that the Defendant originally attempted to kill
7 with malice aforethought and with specific intent
8 to kill.

9 Now, madam forelady, does that respond
10 to your question?

11 THE FOREPERSON: Yes, sir, Your Honor,
12 it does.

13 THE COURT: Then I'm going to ask you
14 to return to the jury room and resume your
15 deliberations.

16 (Thereupon, the jury exited the
17 courtroom at 4:10 p.m.)

18 THE COURT: Any exceptions to my
19 response from the State?

20 MR. OSBORNE: No, Your Honor.

21 THE COURT: From the defense?

22 MR. ARCHER: No, Your Honor.

23 THE COURT: The question will be made a
24 Court's exhibit and part of the record. I did
25 receive one communication from the jury back when

1 they were eating their lunch. They were just
2 asking if they could step outside and use their
3 cell phones. They were not in deliberations at
4 that time so I allowed them to do that. I'm going
5 to have that note marked as an exhibit as well.

6 We will remain in recess until another
7 question is asked or we receive a verdict. Thank
8 you.

9 (Thereupon, a verdict was reached at
10 4:21 p.m.)

11 THE COURT: I am informed by the
12 bailiff a verdict has been reached. Is the State
13 ready to receive the verdict?

14 MR. OSBORNE: Yes, Your Honor.

15 THE COURT: Defense ready?

16 MR. ARCHER: Yes, Your Honor.

17 THE COURT: Let me before I bring the
18 jury in caution those who are in the courtroom.
19 Court cases are emotional. I understand that. The
20 issues involved in these trials are very personal.
21 If there's anyone in the courtroom who has any
22 difficulty in keeping emotions in check and your
23 self-decorum, at times like that please step
24 outside. If someone were to disrupt the court
25 proceedings then I would consider that to be

1 contempt of court. I have the authority to
2 sentence people up to one year in jail for contempt
3 of the court. I certainly do not want to do that
4 to anyone in the courtroom.

5 So if you have any difficulty in
6 holding your emotions in check or being able to sit
7 with decorum, now would be the time to step
8 outside. You will learn about the verdict very
9 quickly if you're here. But don't have any
10 outburst or anything of that nature because I would
11 treat that as a contempt of court.

12 If you need to leave, now would be the
13 time for you to step out of the courtroom. Bring
14 the jury back.

15 (Whereupon the jury entered the
16 courtroom at 4:25 p.m.)

17 THE COURT: Madam forelady, the
18 bailiffs have informed me that a verdict has been
19 reached. Is that true?

20 THE FOREPERSON: It is.

21 THE COURT: If you will pass that
22 document to the bailiff. Thank you.

23 Clerk, you may publish the verdict.
24 The Defendant please rise.

25 THE CLERK: In the matter of State of

1 South Carolina, County of Charleston, the State
2 versus Calvin Brown, Jr. As to indictment number
3 2015-GS-10-6572 attempted murder of Desmond Terrell
4 Lewis, we the jury unanimously find the Defendant
5 guilty. As to indictment number 2015-GS-10-6573
6 attempted murder of Tyreik G. [REDACTED] we the jury
7 unanimously find the Defendant guilty. As to
8 indictment number 2015-GS-10-6574 possession of a
9 weapon during the commission of a violent crime we
10 the jury unanimously find the Defendant guilty.
11 This is signed by the foreperson December 1st,
12 2017.

13 THE COURT: Ladies and gentlemen of the
14 jury, if this is your verdict and still your
15 verdict please let it be known by raising your
16 right hand.

17 (All hands raised.)

18 THE COURT: Thank you. Anything
19 further from the State before I release the jury?

20 MR. OSBORNE: No, Your Honor.

21 THE COURT: From the defense?

22 MR. ARCHER: No, Your Honor.

23 THE COURT: Ladies and gentlemen of the
24 jury, I want to thank you very much for your
25 service in this case and your attention to your

1 duties. We appreciate your efforts and your
2 cooperation through the period of time. Throughout
3 the trial I have told you not to discuss this case
4 with anyone. I tell you now that you have the
5 right to do so, you have the right not to do so. A
6 citizen owes no one an explanation for their
7 service on a jury. You're not required to discuss
8 this unless you choose to do that. Should anyone
9 in any way harass or bother you concerning your
10 service on the jury panel, report that to the
11 clerk's office immediately. I can assure you the
12 appropriate action will be taken as soon as
13 possible.

14 Now, the bailiffs will be checking you
15 out. If you need an excuse for your work they can
16 arrange for that. Later on you will get a voucher
17 for your pay for the time that you have been here.
18 It will not be enough to pay you for the time that
19 you have spent with us, but it's all the law allows
20 us to do.

21 Again, I will thank you for your
22 service, for the time that you have spent and at
23 this time you are free to go. The bailiffs will
24 check you out. Have a great weekend.

25 (Thereupon, the jury exited the

1 courtroom at 4:28 p.m.)

2 THE COURT: Any motions at this point
3 in time?

4 MR. OSBORNE: None from the State, Your
5 Honor.

6 MR. ARCHER: Motion for directed
7 verdict of not guilty notwithstanding the jury's
8 verdict.

9 THE COURT: You are renewing your
10 previous motions?

11 MR. ARCHER: Yes, sir.

12 THE COURT: The Court would make the
13 same rulings I made during the trial so that would
14 be denied. Mr. Brown, if you would please stand.
15 Mr. Brown, having been found guilty by a jury of
16 your peers of two counts of two indictments of
17 attempted murder and one indictment of possession
18 of a weapon during the commission of a violent
19 crime at this time I'm going to consider the
20 appropriate sentence in the case.

21 I'm going to give your attorney the
22 opportunity to speak to me. If you would like to
23 speak to me you certainly have the right to do so
24 and I will give you that opportunity as well. If
25 there are any family members or people who would

1 like to speak on your behalf at this time we will
2 take those people in an orderly fashion. We will
3 start with your attorney. Yes, sir, I will be
4 happy to hear from you.

5 MR. ARCHER: Your Honor, he is 29 years
6 old. He's been a pretty hard working fellow. He
7 worked for two restaurants. I don't think he's got
8 a history of prior violence. There was an
9 unfortunate situation where the victim Desmond
10 apparently shot at him one time before and was an
11 ongoing feud. It wasn't -- he shouldn't have took
12 it upon himself to take shots at somebody and of
13 course a child, a child is the tragedy. Nobody
14 intended for that child to get hurt. Nobody. I'm
15 sure not him, not anybody, okay?

16 The solicitor had previously offered a
17 plea for 15 years. I think that's an appropriate
18 sentence particularly since this is an 85 percent
19 offense. He's going to have to do virtually all of
20 it. We would ask that you not just look at him,
21 Judge, that give him a sentence that's a
22 substantial sentence, but one that he can come out
23 and be -- he has been at least pretty well a
24 productive fellow up to now. Give him a chance to
25 do his sentence, do his time, come out and be a

1 productive citizen.

2 THE COURT: I will ask the State is
3 there any prior record for this individual?

4 MR. OSBORNE: The only prior record he
5 has, Your Honor --

6 THE COURT: I think the two drugs
7 offenses.

8 MR. OSBORNE: 2006 possession of
9 cocaine, possession of marijuana, 2011 possession
10 of marijuana second, and then a DUS second in 2014.

11 MR. ARCHER: And there was no history
12 of violence on his behalf.

13 THE COURT: Is there anyone present who
14 wants to speak on his behalf? Sir, get your name,
15 please.

16 THE SPECTATOR: Dexter Kinloch, Your
17 Honor.

18 THE COURT: I will be happy to hear
19 from you. What relationship do you have?

20 THE SPECTATOR: His mom is my first
21 cousin.

22 THE COURT: I will be happy to hear
23 from you.

24 THE SPECTATOR: Yes, sir. Before this
25 evening transpired the City of Charleston what

1 happened in our community --

2 THE COURT: I want you to address me.
3 Don't be looking over there.

4 THE SPECTATOR: Yes, sir. What
5 happened in our community, we are a community
6 family. We have a restaurant that we run for
7 40 years. Everybody in the community eat in our
8 restaurant. All us raised up in that restaurant.
9 That's our first job in that restaurant moving
10 dishes, washing dishes, helping his grandmother
11 cook, all that. And when this transpired with this
12 situation, I collected money for Tyreik. The
13 situation happened because we were a community
14 people. We are community people and I got in touch
15 with his mom, called her and everything.

16 A few weeks later when this happened I
17 was the first person went to the jail to see him
18 and looked him in his face and said did you do
19 this. He looked me in my face with tears in his
20 eyes and said no, because he don't call me cousin.
21 He said Uncle Dexter no, I didn't do that. I kept
22 calling him asking him because he would work with
23 me and keep saying I got to take care of my kids.
24 I got to take care of my kids. So the jury found
25 him guilty, but I believe in my heart that he

1 didn't do this because he looked me in my eye and I
2 can tell from his performance and his work habit
3 going to work and because our family background is
4 a community family, we stuck with the family that
5 the incident happened too as well as Desmond,
6 whatever. I didn't even know who he was. But I
7 know my cousin when he looked me in my face and
8 admitted to me he didn't do it. That's all I want
9 to say.

10 THE COURT: Thank you, sir. Appreciate
11 that. Anyone else in the family wish to be heard?

12 THE SPECTATOR: Henrietta Kinloch. I'm
13 his grandmother. He was staying with me. He was
14 trying to do good. I want you to please set down
15 the -- he wouldn't hurt, or a child and his
16 grandmother over there. She talks to me and she
17 told me, she see somebody running, but she said she
18 wasn't even thinking was him. And I try to talk to
19 my grandson and I know his grandma talk to me.

20 THE COURT: I understand.

21 THE SPECTATOR: She comes to my house
22 and talks to me.

23 THE COURT: Thank you, ma'am.

24 MR. ARCHER: I think it is pretty
25 significant that despite the tragedy these two

1 families have talked and I guess in a way tried to
2 console each other.

3 THE COURT: I see. All right. Mr.
4 Brown, this is the opportunity that I told you that
5 I would give you to speak to me if you wish to do
6 so. Anything you want to tell me?

7 THE DEFENDANT: I want to say my heart
8 goes out to the Tyreik G. family. But I want
9 to let them know I didn't have anything to do with
10 this shooting, you know. Tried to do my best for
11 my family, my for kids. But I know it was a
12 tragedy, accident. Somebody shot the little kid,
13 but it wasn't me.

14 THE COURT: All right. Now, from the
15 State's perspective any of the victims wish to be
16 heard?

17 THE SPECTATOR: I'm Tawana Warren.

18 THE COURT: Your relationship to the
19 situation?

20 THE SPECTATOR: He's my Godson. I am
21 actually crying for both of them, for him and for
22 Tyreik. I don't know if he did it or not. If he
23 did it I know he didn't mean to do it. But I want
24 him to go ahead and do his time and repent and ask
25 God to forgive him if that's what he has done.

1 He's alive and Tyreik can't walk. And this is a
2 tragedy and I'm sorry just for them and I'm sorry
3 for my Godson's mother. It's hard.

4 THE COURT: I understand. Thank you,
5 ma'am. Anyone else wish to be heard?

6 THE SPECTATOR: I'm Tracy Gadsden.

7 THE COURT: Your relationship?

8 THE SPECTATOR: We're all family.
9 Tawana is actually my sister. And she is the
10 Godmother of Tyreik. I just want to say, you know,
11 it's sad. As I sit here and just look at everybody
12 here because it is like doesn't have to be like
13 this. God created all of us whether you believe in
14 him or not. He created all of us to love one
15 another and as they read the verdict and said that
16 he was guilty it just brings -- I am just
17 overwhelmed because this is tragedy on both ends.
18 All I can say is the truth will set you free
19 always. Nobody wants to go do time, but there is
20 consequences for all of our actions. And as a
21 whole it is not separate from the black community
22 or white community, all go together. And people we
23 need to come together as one and love one another
24 just as you would love your brothers and sisters
25 like it has to stop somewhere. We all have to be

1 accountable for our actions. Whether it is your
2 son, your brother, whether it is my mother, you
3 have to be accountable because there is
4 consequences and repercussions. This little boy
5 may never walk again, but I believe that he will
6 walk again for all of us are going to walk out of
7 here, he going to roll out of here.

8 THE COURT: Thank you, ma'am,
9 appreciate that. Anything further from the State
10 at this time?

11 MR. OSBORNE: Very briefly, Your Honor.
12 As you know, attempted murder carries from 20 to 30
13 years. I cannot think of a factual scenario in
14 which the maximum sentence is not more deserving
15 than this one. My 15-year offer was based on the
16 strength of the case, certainly not what I felt the
17 Defendant deserved for his actions.

18 From the State's perspective Mr. Brown
19 can walk out of jail when Tyreik walks and until
20 that time the State's position is he should get 30
21 years for Tyreik, five years for the gun, and
22 nothing for Desmond Lewis. Thank you, Your Honor.

23 MR. ARCHER: I don't sense even
24 Tyreik's family are looking for vengeance. They
25 want justice. But they're not really -- both of

1 these families have communicated with each other.
2 I think tried to ease each other's pain. I don't
3 see 30 years, Your Honor. He has got no history or
4 prior record.

5 THE COURT: What is Mr. Brown's age?

6 MR. ARCHER: Twenty-nine.

7 THE COURT: Today?

8 MR. ARCHER: Yes, sir.

9 THE COURT: You can be seated. Thank
10 you, sir.

11 On the additional punishment for a
12 firearm the way I read the statute the service of a
13 five-year sentence is mandatory unless there's a
14 longer mandatory sentence for the main crime; is
15 that correct? But can be run concurrent as long as
16 he serves at least five?

17 MR. OSBORNE: Yes, Your Honor.

18 THE COURT: That's your understanding.
19 It is written kind of convolutedly. I want to be
20 sure that we agree on that. How many days does he
21 have credit for service?

22 MR. ARCHER: He has been in 29 months,
23 Your Honor.

24 THE COURT: Can you give me a date of
25 arrest?

1 MR. DURANT: June 5th.

2 MR. OSBORNE: 2015, June the 5th of
3 2015.

4 THE COURT: June 5th of 2015.

5 MR. OSBORNE: Yes, sir.

6 THE COURT: Mr. Brown, it's troubling
7 to the Court that we have events such as this
8 occurring in our society and on our streets where
9 people allow their personal disagreements and
10 hatred to spill over and touch the lives of people
11 who had nothing to do with it and certainly were
12 innocent.

13 This young victim here is probably the
14 most innocent victim there could have been on the
15 street. We allow these personal hatreds and
16 grudges and I guess sometimes it's the attitude of
17 the street was exhibited during the trial. Not
18 necessarily by you, but by the witnesses who came
19 in here, refused to talk, refused to answer
20 questions, refused to follow simple directions of
21 the court. If we allow society to continue to go
22 in that fashion eventually there will be no
23 society.

24 I guess we will all simply have to arm
25 ourselves and it will be like Dodge City out there.

1 That's not how I want to live my life. And I think
2 the vast majority of the people in this courtroom
3 don't want to live like that. Something has to be
4 done to bring it to an end. The guns are
5 destroying this country.

6 Now, in this particular case I
7 understand that you don't have a serious record;
8 your attorney has pointed out that you are not a
9 violent person. I can assure had you had a record
10 of violence my sentence would be much worse than it
11 is today. Because that type of activity can't be
12 tolerated on the streets. It is not enough for
13 individuals to be out there. So I am not talking
14 just to you, I am talking to a lot people sitting
15 in the room and hopefully people who will later
16 look at this case.

17 But at any rate, I do find this to be a
18 rather heinous crime. And somebody went through a
19 residential area indiscriminately firing a weapon
20 that can bring death and destruction to anybody in
21 its wake. That's -- the case is talking about a
22 total disregard for human life and safety. That's
23 exactly what that was.

24 That a total disregard for life and
25 safety and as a result we have got a young child

1 here who has a life sentence in his condition.
2 Won't be changed.

3 Therefore I find that the appropriate
4 sentence on the two attempted murder cases that you
5 be confined to the State Department of Corrections
6 for a period of 25 years. I have run those
7 concurrent. I have the sentence for possession of
8 a weapon during the commission of a violent crime
9 is five years. It also is run concurrently. I
10 have ordered that you be given credit for every day
11 that you have already served. Good luck to you,
12 sir.

13 (These proceedings were concluded at
14 4:45 p.m., December 1, 2017, Charleston County,
15 South Carolina.)
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25

1 CERTIFICATE OF REPORTER

2
3 I, Ruth C. Weese, Registered Diplomate
4 Reporter for the State of South Carolina at Large,
5 do hereby certify that the foregoing transcript is
6 a true, accurate, and complete record.

7 I further certify that I am neither related
8 to nor counsel for any party to the cause pending
9 or interested in the events thereof.

10 Witness my hand, I have hereunto affixed my
11 official seal this 19th day of January, 2018 at
12 Charleston, Charleston County, South Carolina.

13
14 *Ruth C. Weese*

15
16 Ruth C. Weese

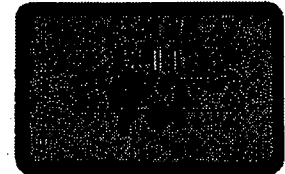
17 Registered Diplomate

18 Reporter
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Photo Id:

1415273278794769

**Id** 1415273278794769**Title** Happy Mothers Day To my Nigga My Nigga.....Dats How It Pose To Be, Have Ya Chick In The Pic Like Pose For Me lol**Photo** http://scontent-sea1-1.xx.fbcdn.net/v/t31.0-8/s720x720/11194471_1415273278794769_2923972178327574698_o.jpg?_nc_ad=z-m&oh=9e43084e172af01f5c9f09003d8bada3&oe=5A222911**Link** <http://www.facebook.com/photo.php?fbid=1415273278794769&set=a.1414719175516846.1073741828.100009363321185&type=3>**Upload Ip** 66.87.133.109**Album Name** Mobile Uploads**Uploaded** 2015-05-10 20:40:09 UTC**Tags**

Thread (mid:1432088990539:b494e146990ca36e22)

Current 2017-08-10 20:16:51 UTC

Participants Similar Mcclary (100001070221245)
SpringSt MbMb (100009363321185)

Author SpringSt MbMb (100009363321185)

Sent 2015-05-20 02:29:50 UTC

Body Face down in ya phone for I wet cha ass up lol

Author SpringSt MbMb (100009363321185)

Sent 2015-05-23 03:43:13 UTC

Body Call me bra

Author Similar Mcclary (100001070221245)

Sent 2015-05-23 03:43:46 UTC

Body What's the number

Author SpringSt MbMb (100009363321185)

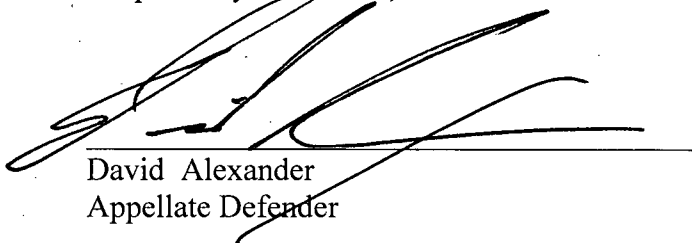
Sent 2015-05-23 03:45:33 UTC

Body 678-521-8874

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 25th day of July, 2018.