

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Horry County

Honorable Larry B. Hyman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTWUAN L. NELSON,

APPELLANT

APPELLATE CASE NO. 2017-001406

RECORD ON APPEAL

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SC Court of Appeals

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2 COUNTY OF HORRY) CASE NO.: 2015-GS-26-00011
3 2015-GS-26-00013

4 -----

5 June 12-15, 2017

6 BEFORE: The Honorable Larry B. Hyman, Jr.

7 -----

8 STATE OF SOUTH CAROLINA,

9 Plaintiff,

10 vs.

11 ANTWUAN LEVON NELSON,

12 Defendant.

 ORIGINAL

13 -----

14
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18 Scott Hixson, Esq.
19 Attorneys for the State.

20 Charles Barr, Esq.
21 Attorneys for the Defendant.

22 Official Court Reporter
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P-R-O-C-E-E-D-I-N-G-S

1
2 THE COURT: Do you have any requests for voir
3 dire? Do you have a witness list?

4 MS. WALTER: I do, Your Honor. I apologize, I
5 thought we were doing this after lunch so we'll do
6 this quickly.

7 THE COURT: Judge Seals needs the panel back.

8 MS. WALTER: Do you prefer it broken down; for
9 instance, with the police witnesses, do you --

10 THE COURT: I don't care. You can submit one
11 list if you want, fine with me.

12 MS. WALTER: I'm happy to do that, but I don't
13 know Mr. Barr's witnesses. Do you want to combine our
14 list, Mr. Barr?

15 MR. BARR: Yeah.

16 (A discussion was had off the record and Mr.
17 Nelson enters the courtroom.)

18 MR. BARR: I have some voir dire.

19 THE COURT: You have some voir dire.

20 MR. BARR: Do you want to take a look at this?

21 MS. WALTER: Yes, please.

22 THE COURT: The defendant is now in the
23 courtroom.

24 Let's take up the issue of voir dire.

25 Question No. 1: Is there anyone on the jury

JURY SELECTION

1 THE COURT: Brian Babbit, Tony Poye, Andre
2 Hannah, Michelle Cantey, Kenny Harlow, Rhett Ammons,
3 Doug Robinson, Edward Proctor, William Stair -- is
4 that Stire?

5 MS. WALTER: Stair, Your Honor.

6 THE COURT: Stair, okay. Suzann Cromer, Jennifer
7 Nates, Melinda Shadoan, Lynn Grayden-Labiak,
8 L-A-B-I-A-K, Tom Day, Claudia White, Jerome Rogers,
9 Lilian Brockington and Antwuan Nelson.

10 MS. WALTER: And, Your Honor, I did neglect to
11 put Michelle McSpadden, M-C-S-P-A-D-D-E-N, with two
12 L's.

13 THE COURT: Michelle McSpadden. Anyone related
14 by blood or marriage, do you have a close personal
15 relationship with, do you have any kind of social
16 relationship as far as you know with any of these
17 witnesses that I have named, any of these potential
18 witnesses? Yes, sir, stand.

19 JUROR: I recognize the last name, Cantey. I'm
20 friends with a person by the name of Cantey, but not
21 that particular person --

22 THE COURT: Michelle Cantey?

23 JUROR: Yes, I'm friends with someone from her
24 family.

25 THE COURT: Do you know her at all?

OPENING STATEMENT - MR. HIXSON

1 MR. HIXSON: May it please the Court. Your
2 Honor, beg the Court's indulgence for a moment.

3 Yes, you will buy it. You will buy it. That is
4 what Antwuan Nelson, the defendant in this case, told
5 the victim in the case, Michael Rogers. When Michael
6 Rogers refused to buy a quantity of illegal drugs that
7 Antwuan Nelson tried to sell him. This whole thing
8 happened in the victim's kitchen, right in front of
9 his common-law wife, girlfriend, mother of his child.
10 So you will hear much of this case with the eyes and
11 the words and the perceptions of Kristen Bloomer.

12 You will buy it. When he didn't, Antwuan Nelson
13 used the first weapon, his fist, going about beating
14 Michael Rogers on his kitchen floor. Michael Rogers
15 was getting beaten, he told his wife, Get my gun. Get
16 my gun. Antwuan Nelson heard that. He headed for the
17 door.

18 About 45 minutes later, Antwuan Nelson got his
19 gun. He went to the trunk of his car, popped it,
20 produced an AR-15 and fired a fatal shot in the chest
21 of Michael Rogers. Yes, you will buy it.
22 Fortunately, Myrtle Beach Police Department were very
23 close to the scene. You'll hear the testimony of the
24 police officers who were just around the corner,
25 around 37 Avenue North, Myrtle Beach, near Oak Street.

OPENING STATEMENT - MR. HIXSON

1 They arrived on scene right at the time Mr. Nelson was
2 placing his weapon back in the trunk of his vehicle to
3 leave.

4 He was placed under arrest at that time. Of
5 course it is in a neighborhood, right, residential
6 neighborhood. You'll hear the officers talking about
7 folks coming out going, Man, man, man, what just
8 happened. As a result of that, they had to get the
9 defendant out of the scene pretty quickly, so you will
10 hear the testimony of Jim Garrett who put the
11 defendant in custody, he was in handcuffs, in the back
12 of his car. You'll hear Jim Garrett testify that
13 Antwuan Nelson said, I shot him, but he was going to
14 shoot at me, or something along those lines.

15 That is the case that we're here about. That's
16 what we'll talk about whether or not, as you can
17 imagine, sitting in your house and a door-to-door
18 salesman knocks on your door and asks you to buy an
19 item and you say, No, I don't want to buy it, and that
20 salesman smacks you in your face in your house. You
21 push him out the door and that salesman gets a gun and
22 kills you for not purchasing that item. Is that
23 self-defense? Could that ever be self-defense? It
24 never could be. It is murder. That is murder.

25 Let's talk about that. The Judge is going to

OPENING STATEMENT - MR. HIXSON

1 charge you on the law at the end of the day on what to
2 apply to this case. This defendant is facing three
3 different charges, okay. He's facing murder, which in
4 South Carolina is one of the most serious things, but
5 the simplest charge to comprehend. That is the
6 unlawful killing of another with malice aforethought,
7 either expressed or implied. It's pretty simple. So
8 the evidence will show without doubt that Michael
9 Rogers was a person, and the evidence will show that
10 he was killed by Antwuan Rogers, by the evidence and
11 Antwuan's own statement. Pretty easy.

12 So expressed malice is did you say "I'm going to
13 kill you," or did you do something to manifest extreme
14 indifference to human life, like the use of a high
15 capacity AR-15 military-style weapon with a round to
16 the chest. You can infer the intent to kill by that.
17 We'll talk about that at the end of the day.

18 Does self-defense apply? I'll give you a road
19 map as we go through this case to think about it as
20 you review evidence. One of the key components of
21 self-defense is you cannot be at fault in bringing on
22 the difficulty, so remember that. The basic element
23 of this trial is illegal drug sales. You are at fault
24 by bringing on the difficulty if you are engaging in
25 the illegal sale of crack cocaine, and that's before

OPENING STATEMENT - MR. HIXSON

1 you get out of the gate. We are not selling tomatoes
2 on the side of the road or Avon lotion to someone,
3 we're selling illegal crack cocaine and marijuana in
4 someone else's house.

5 So right out of the gate, pay attention as you
6 listen to the facts, Antwuan Nelson is at fault for
7 bringing on the difficulty. You'll hear from Kristen
8 Bloomer that Antwuan Nelson is the initial aggressor,
9 punched him in the face and on top of Michael Rogers
10 in his own kitchen, beating a man he later shoots on
11 his own kitchen floor. That is being at fault and
12 bringing on the difficulty. Self-defense does not
13 apply right out of the gate.

14 The other thing to pay attention to is you have a
15 duty to retreat. So if you say, Man, the only thing
16 left to do because I'm afraid because this man has a
17 gun, all you have to do is this (indicates), I'm
18 getting out of here. If you can do that, you can't
19 kill another person if you can go, right. So if you
20 can walk away, if there is a period of time -- in
21 other words, not boom, boom, boom, boom, it is 35, 45
22 minutes, which the testimony will be that is how much
23 time when the initial fist fight, the drug deal, until
24 later on when shots were fired. Kristen Bloomer will
25 testify roughly 35, and some people say an hour, but

OPENING STATEMENT - MR. HIXSON

1 say 35 to 45 minutes, that is called a "cooling off
2 period" in the law. There is a time of reflection on
3 what we should do, like walk away and no one dies.
4 Just that simple. You have to do that before you kill
5 someone, right, walk away. The only time you don't
6 have to is if you are in your own home, you don't have
7 a duty to retreat in your own home. You would have
8 been considered to retreat as far as you can, but that
9 applies to Michael Rogers in his house, not Antwuan
10 Nelson.

11 So those are the arguments you will hear. That
12 is what the basic trial is about. You'll hear a
13 simple charge which is possession of a weapon during
14 the commission of a violent crime. The testimony will
15 be, as you can imagine, murder in South Carolina is a
16 violent crime, probably the most violent one there is
17 we have in the law, and you have to decide whether
18 that AR-15 is a weapon. Pretty straight-forward stuff
19 there. That is a weapon during the commission of a
20 murder that Antwuan possessed it at the time that he
21 killed Michael Rogers.

22 The last one is possession with the intent to
23 distribute crack cocaine, that Antwuan Nelson in Horry
24 County, on or about January 27, 2014, that is the day
25 that this happened, that he possessed a quantity of

OPENING STATEMENT - MR. HIXSON

1 crack cocaine, cocaine base under the law, with the
2 intent to sell it, distribute it, give it to someone
3 else. Note that the allegation isn't that he
4 completed the transaction, but he possessed it with an
5 intent, not that he actually did it, because the
6 testimony will be Michael Rogers said, No, I don't
7 want to buy it, no. So he didn't complete the
8 transaction, that is why it is possession with the
9 intent to distribute.

10 You'll hear about a quantity of crack cocaine on
11 the kitchen table that Kristen Bloomer observed, and
12 you'll hear after the fact a witness who -- her
13 apartment was right beside the apartment complex, and
14 when at least three rounds were fired by the AR-15,
15 one hits a brick wall beside Michael Rogers' head, one
16 hit Michael Rogers, and the second goes through the
17 wall of the apartment complex 75 yards down stream
18 where a lady is sitting on her sofa, it comes through
19 the wall and hits her end table right when she's
20 sitting at the computer typing on the computer. She
21 gets up, looks out the window, looks where Michael
22 Rogers was struck and she sees a black male with black
23 clothing, red trim, throw an object over the fence.
24 You'll hear her testimony.

25 Based on that testimony, law enforcement deployed

OPENING STATEMENT - MR. HIXSON

1 a K-9 unit to look for any article thrown around
2 there. The witness testified she thought maybe it was
3 a gun because she heard shots, but she couldn't see
4 what it was. There you will see 11 rocks of crack
5 cocaine wrapped in cellophane wrapping. You'll hear
6 from a SLED chemist that tested that, that will
7 testify that is crack cocaine, and that the
8 African-American wearing black and red trim that just
9 got done shooting Michael Rogers threw the drugs over
10 the fence that he was in possession of, so when cops
11 arrived, he wouldn't have drugs on him and he could
12 claim self-defense.

13 That is the trial in a nutshell about as
14 precisely as I can give you in a short period of time.
15 This case won't last that long. It is a pretty
16 serious one. You have 18 witnesses or so, give or
17 take what happens. We anticipate you getting this
18 case tomorrow sometime for you to deliberate. When
19 you go back in the jury room and heard all of the
20 testimony, considered all of these issues, each one of
21 you will be firmly convinced in your return to the
22 jury room, and you'll find that the defendant is
23 guilty of murder, guilty of possession of crack
24 cocaine with intent to distribute, and guilty of
25 possession of a weapon during the commission of a

OPENING STATEMENT - MR. BARR

1 violent crime.

2 THE COURT: Mr. Barr.

3 MR. BARR: May it please the Court.

4 THE COURT: Sir.

5 MR. BARR: Ladies and gentlemen, after such a
6 traumatic opening statement, I'm almost tempted -- I'm
7 scared to introduce myself. My name is Charles Barr.
8 I'm an attorney. My office is in Kingstree, and that
9 is where I've been practicing law for last 38 years.
10 I represent the person that is referred to in this
11 litigation as "the defendant," Antwuan Nelson, the
12 young man seated over to my right. He is about 26, 27
13 years old, lives in Andrews.

14 This incident took place here in Horry County,
15 and I believe you will hear from the evidence when it
16 is presented that at the time it took place, Antwuan
17 was in school over here in Horry County. That is how
18 he got over here. Now, I'll tell you what, I sat and
19 watched you and you intently listened to Judge Hyman
20 as he gave you your preliminary jury instructions, and
21 I never -- I've never heard better instructions in my
22 life. As you listen to those instructions, and then
23 you heard from my good friend Scott Hixson, you almost
24 wondering is it quite that simple. Would the
25 narrative he gave, very emotional, but it is a

OPENING STATEMENT - MR. BARR

1 narrative, and that is what it is.

2 His Honor instructed you initially that at this
3 stage of the litigation, what the lawyers are doing --
4 one of which is myself, and the other Scott Hixson and
5 Ms. Walter -- what we are doing now is we are
6 outlining the theory of our cases. Of course I
7 learned a long time ago don't promise jury things
8 because you don't know what you are going to get.
9 Don't promise what the evidence will show, especially
10 when you don't -- let me give you an example what I'm
11 talking about. His Honor instructed you this is not
12 made for TV drama. This is real. What we're doing
13 here, and what you are doing with respect to your
14 role, is a search for the truth.

15 There is no question that a young man got killed
16 on the 27th of January 2014 here in Horry County.
17 There is no question that Antwuan Nelson is accused of
18 shooting and killing him. We understand that. I'm
19 not making light of it. But now it is a search for
20 the truth, and it would be nice if things were as
21 simple as what Scott has painted. It is just not that
22 simple. In order to get you entrapped into the
23 Prosecutor's case, in order to get you thinking the
24 man is guilty, the first thing he did is grab up a
25 shotgun, and that is not even in evidence yet. Not

OPENING STATEMENT - MR. BARR

1 even in evidence. That is to strike up your emotions.
2 There is another shotgun under the table. Now, there
3 will be two guns. There will be two guns, the assault
4 rifle and there is another shotgun hiding under these
5 chairs over here. I won't get it and bring it over
6 here and let you see it. I believe you have seen a
7 gun before. I don't need to show you a gun to get
8 your attention.

9 Your Honor has done that and instructed you what
10 your duties are, and it is to determine what the facts
11 are in this case. There is no question that the facts
12 are in dispute. Here is what I will talk about. I'm
13 not going to tell you what the evidence will show.
14 Quite frankly, I don't know what some of the people
15 will -- I learned sometimes people change their
16 stories. Sometimes they are sitting right up on
17 something and can't see it. So I've learned that.
18 But let me tell you what I'm going to talk about. I'm
19 going to talk about something called "rules of the
20 road." I've been fishing within all my life, and
21 within the maybe 15, 20 years I started fishing
22 offshore. I do a lot of fishing in Murrell's Inlet.
23 Let me tell you something. There is rules of the
24 road. If you don't know what you are doing when you
25 get out there on the water -- most people don't

OPENING STATEMENT - MR. BARR

1 realize it, but there is more rules for operating a
2 boat than driving a car on the street. It's nice.
3 What I did a couple of years ago, I took it upon
4 myself to go down to Charleston and enrolled in a
5 school, a course, down there where they taught --
6 people teach people how to operate boats and how to
7 navigate, and ultimately it leads to a captain's
8 license if you complete the course.

9 But, anyhow, here is what it is. The rules of
10 the road is how you go about discharging your duties
11 as jurors and finding the facts. Now, the last thing
12 Your Honor told you about and emphasized to you is the
13 first thing I'm talking about. I'm not going to grab
14 a shotgun, but I'll tell you, and His Honor told you,
15 with respect to this whole scenario, this man, Antwuan
16 Nelson, irrespective of what Scott claimed he did,
17 right there he is presumed innocent. That presumption
18 of innocence is not something I sat in my office and
19 made up. That is a rule of the road.

20 In other words, one of the things lawyers try to
21 do is -- you all saw us with our heads down, making
22 notes, probably saw me spinning through all sorts of
23 paper trying to find out things, trying to find out
24 things about you. Well, why do I want to -- because
25 what we want to do is make sure that we have 12 people

OPENING STATEMENT - MR. BARR

1 on a jury that can sit down and listen to the facts,
2 that can determine what the facts are and that can
3 apply the law as His Honor gives it to you at the
4 appropriate time, the facts as you collectively find
5 them to be. In other words, he'll tell you that your
6 verdict in this case has to be an unanimous verdict.
7 It has to be an unanimous verdict. You have to apply
8 the law. That is easy to say, but I'm telling you, it
9 is not easy to do, because sometimes some people come
10 into situations about preconceived notions about what
11 things ought to be, what the law ought to be, and that
12 is not what this process is all about.

13 What this process is about is about people that
14 can be impartial, people that can sit down and listen.
15 People that are willing to take the law, whether they
16 like it or not, and apply the law, the facts as they
17 find them to be in this case. There is no question
18 that Antwuan Nelson shot Michael Rogers to keep him
19 from shooting him.

20 Scott was talking about going around with an
21 assault weapon. Well, I believe you might hear that
22 he was walking around with a shotgun looking for
23 Antwuan Nelson. What was he looking him for with a
24 shotgun? Well, in addition to presumption of
25 innocence, which applies even right now, and His Honor

OPENING STATEMENT - MR. BARR

1 will instruct you, that that presumption of innocence
2 is a very, very strong substantive right of any
3 individual who is charged with committing a crime in
4 the State of South Carolina. That is what presumption
5 of innocence is.

6 Burden of proof. His Honor already talked about
7 that. Antwuan Nelson, as he sits here in this
8 courtroom, has no responsibility of proving himself
9 innocent of this charge of murder, has no
10 responsibility of proving him innocent of this charge
11 of possession of a weapon during a violent crime and
12 no responsibility to prove himself innocent of PWID,
13 possession of -- in this case it's actually possession
14 of cocaine -- crack cocaine with intent to distribute.
15 He has no responsibility proving himself innocent.
16 The burden of proof is absolutely on this table
17 (indicates) to prove his guilt, and to prove it by a
18 standard that His Honor will instruct you, a standard
19 beyond a reasonable doubt.

20 What is beyond a reasonable doubt? It is not
21 simple. It is not simple. I don't admire you for
22 where you have to sit, but I have to thank you for
23 sitting here, because your job is not an easy one. At
24 the end of the day you'll decide, and I can see
25 already there is dust in the air, shouting, war dance

OPENING STATEMENT - MR. BARR

1 for rain, whatever, but I will tell you, it is not as
2 simple as throwing something up in the air and asking
3 you to find the defendant guilty when the prosecutor
4 hasn't proven their case beyond a reasonable doubt.

5 You'll hear the evidence. It should leave you
6 firmly convinced -- firmly convinced of the person's
7 guilt beyond a reasonable doubt. That is what this
8 case is, and that is what your duty and responsibility
9 in this case is about.

10 It is a very interesting story that the
11 prosecutor told. It is -- quite frankly, no one wants
12 to see anyone shot and killed, nowhere, Williamsburg
13 County, Georgetown, Horry County, we don't, but life
14 -- life -- life is full with complicated situations
15 where from time to time we are called upon to be able
16 to sit down and exercise our good commonsense, draw
17 from a vast collection of experiences that we've
18 accumulated over the years that will enable you to sit
19 down and say what is right and wrong. What is the
20 truth, or what's a lie? We're believing in you to sit
21 down and determine whether or not, under the law, the
22 prosecutor has met their responsibility by proving
23 this man guilty and proving it beyond a reasonable
24 doubt. That is not unusual. As I said, I thank you
25 for it. Thank you for it.

OPENING STATEMENT - MR. BARR

1 Now, before I sit down, on behalf of the victim's
2 family, Michael Rogers' family, because they are here,
3 too. It is amazing to see his family over here. They
4 believe justice is to find Antwuan Nelson guilty and
5 send him up the road. His family over here, they
6 believe justice and the truth is to find him not
7 guilty and send him back home. You are standing in
8 between. That is why it is so important, as I said
9 earlier, that we find people to put on the jury who
10 can be impartial and listen to the evidence and come
11 back with a verdict which speaks the truth. You will
12 hear footsteps -- you'll be concerned, well, what do
13 they think, what do they think. Well, His Honor
14 already has spoken from the high chair and told you
15 what the law is, and if at the end of the day you are
16 satisfied when your conscience speaks to you through
17 your heart and through your mind and says, hey, did
18 you do the right thing, make a truthful decision, make
19 a decision, not based necessarily on what you wanted,
20 but did you make a decision based on the law and the
21 evidence of the case. That is what the truth is.
22 That is what the truth is, and that is where it lies.
23 As long as have you done that, at the end of the day,
24 I promise you, you will sleep well. You will find
25 peace, and you will find your experience as a juror in

JARROD MACKIN - DIRECT EXAMINATION

1 this case will certainly boost -- will boost your
2 civic knowledge on how things operate in a civilized
3 society, and you'll be satisfied and live with
4 yourself tomorrow. Thank you.

5 THE COURT: You may proceed.

6 MR. HIXSON: We call Officer Jarrod Mackin from
7 the Myrtle Beach Police Department.

8 (JARROD MACKIN, having been duly sworn,
9 testified as follows:)

10 WITNESS: Jarrod Mackin, J-A-R-R-O-D,
11 M-A-C-K-I-N

12 DIRECT-EXAMINATION

13 BY MR. HIXSON:

14 Q Good morning. How are you?

15 A Good.

16 Q Can you tell the jury what you do for a living?

17 A Police officer with Myrtle Beach Police
18 Department in South Carolina.

19 Q How long have you been doing that?

20 A August is my ten years.

21 Q Congratulations. So if you've been working ten
22 years, were you working for the police department back
23 on January 27 of 2014?

24 A Yes, I was.

25 Q And tell me about what you were doing approaching

JARROD MACKIN - DIRECT EXAMINATION

1 around 4 o'clock that afternoon.

2 A I was on patrol. Dispatch calls out with a
3 weapon law violation at the address in question. I was
4 right down the road, pulled up on scene. Officer Owens
5 was right behind me. While we're pulling down the
6 street, told station to give us the radio so there was
7 no other communication except for us. While we were
8 driving down the street, multiple people were coming up
9 to our vehicle saying, hey, there is a guy over here in
10 a parking lot that just shot somebody, shooting a gun
11 in the parking lot. They told us it was a black male
12 behind the red car with a black jacket on. We pulled
13 up on scene, and what is now known as the defendant was
14 leaning up against the back of the car.

15 Q Slow down. You are doing great. All of us that
16 are not police officers, what do you mean -- what is
17 your expectation when you say you were called for a
18 weapons violation? What does that mean, and what is
19 your expectation when you head that way?

20 A Basically just means that there is some sort of
21 gun in the area that someone might be shooting off in a
22 parking lot in the area where we'll be.

23 Q At the time you approach, do you know if anyone
24 was shot or not?

25 A No. We figure it could be anything from

JARROD MACKIN - DIRECT EXAMINATION

1 someone's been shot, to someone is running around with
2 a gun in their hand. We just don't know.

3 Q Sorry to interrupt. I'll just take time before
4 you get there. So you pull up -- and let me ask you
5 this, did this occur in Horry County?

6 A Yes, sir.

7 Q Have to check that box. Proceed, I apologize.

8 A We pulled up. There was a red like an older
9 style, longer Crown Vic or Grand Marquis, older
10 vehicle, like an old police car but it was red.
11 Defendant was leaning up against the back of the
12 vehicle and he had something up to his head. We exited
13 the vehicle, made our announcement who we were. We
14 unholstered our weapons, because we were told this man
15 just shot someone and we didn't know what kind of gun
16 he had, if it was in his coat or whatever. So for our
17 own protection, we had our duty weapons drawn on the
18 suspect.

19 When we approached, told him who we were. He
20 took whatever was in his hand and threw it. At that
21 point, we approached him. He listened to all of our
22 commands, didn't resist us at all. We placed him in
23 handcuffs. After we placed him in handcuffs, we had
24 other people telling us saying that the victim was
25 laying down in the alley bleeding. At that point, I

JARROD MACKIN - DIRECT EXAMINATION

1 stayed with the defendant, because there was probably
2 about 40 people around making threats, yelling,
3 threatening the defendant. So my partner went down to
4 render aid to the victim while I stood by with the
5 defendant so no one didn't do anything to him and he
6 didn't get away.

7 Q Let's go through that in more detail. Let me
8 show you State's 1, see if you recognize that.

9 MR. HIXSON: Mr. Barr?

10 MR. BARR: Yes, that's good.

11 MR. HIXSON: Any objection?

12 MR. BARR: No.

13 Q (MR. HIXSON) Do you patrol in the area of
14 37th Avenue North in Myrtle Beach?

15 A Yes.

16 Q And you have knowledge of the layout of the
17 street and general orientation of that area?

18 A I do.

19 Q Do you recognize that?

20 A Yes, that is the location.

21 Q What is that? For madam court reporter, what are
22 you looking at?

23 A Apartment complex with the apartment in front of
24 it.

25 Q You are looking at a photograph?

JARROD MACKIN - DIRECT EXAMINATION

1 A Oh, yeah, photograph of the incident location.

2 Q I'll show that to the Court.

3 MR. HIXSON: We'll like to admit that as State's

4 1?

5 MR. BARR: No objection.

6 THE COURT: Without objection, State's 1.

7 MR. HIXSON: May I publish to the jury?

8 THE COURT: Yes, you may.

9 (State's Exhibit 1 admitted.)

10 (Published to the jury.)

11 Q (MR. HIXSON) Can you describe to the jury what
12 we're looking at? 37th North is the bottom.

13 A So the L-shape building with the lighter brown
14 roof --

15 Q This one?

16 A Yes, sir. That is the apartment complex where
17 the victim lived at and where the incident took place
18 at. The front parking lot is where he was located upon
19 our pulling up.

20 MR. HIXSON: May I ask the witness to come
21 around?

22 THE COURT: Yes, you may. Do you need an easel?

23 MR. HIXSON: I don't mind it, but I can hold it.

24 THE COURT: All right.

25 Q (MR. HIXSON) All right. Let's orient for the

JARROD MACKIN - DIRECT EXAMINATION

1 jury what we're talking about, where is our discussion
2 about?

3 A So his vehicle was parked right here, and there
4 was another vehicle parked right here. We drove down
5 from this section, because it is a dead-end road, you
6 can't come to this location from this way.

7 Q So what road goes up and down this way?

8 A Is -- so if this was flat, you would have Oak
9 Street, north and south, and then continuation of
10 37th down to King's Highway, the main road through
11 Myrtle Beach.

12 Q So the ocean is over here?

13 A Correct.

14 Q Dead-end, and this is the way to Oak Street?

15 A Correct.

16 Q Okay. More detail, my friend.

17 A So as we pull in, we have people stopping us on
18 the street, telling us what is going on. We make our
19 approach and park at an angle facing the car to use our
20 engine blocks as a place to get back to in case he does
21 have a gun and starts to shoot at us. I parked -- his
22 vehicle was approximately right here. I made my
23 vehicle parked right here. I think Officer Owens had
24 his vehicle parked somewhere behind me. He was leaning
25 up against the back of the car here. Where he threw

JARROD MACKIN - DIRECT EXAMINATION

1 the object, it was a little grassy area here.

2 Q Did you recover that object?

3 A We did. It turned out to be a cell phone.

4 Q Take a seat and I'll show you a couple of them.

5 (A brief pause in the proceedings.)

6 Q (MR. HIXSON) I'll show you three photographs,
7 they are marked State's 2, 3 and State's 4. Take a
8 look, and I'll ask you questions about all of them.

9 A (Witness examines document.) Okay.

10 Q Are these photographs a fair and accurate
11 representation of the scene you saw on January 27, 2014
12 in Horry County, Myrtle Beach?

13 A Yes.

14 MR. HIXSON: I would like to authenticate. I
15 showed them to counsel. Any objection?

16 MR. BARR: No, sir. No, sir.

17 THE COURT: I think we saw the exhibits
18 yesterday, and we're on line with which exhibits?

19 MR. BARR: I'm on line, Judge, and I have no
20 objection.

21 THE COURT: Without objection 2, 3 and 4.

22 (State's Exhibits 2, 3 and 4 admitted.)

23 Q (MR. HIXSON) Let's talk about State's 2. What
24 are we looking at? There is a red vehicle, whose
25 vehicle did that belong to?

JARROD MACKIN - DIRECT EXAMINATION

1 A At that time I didn't know, but that was the
2 vehicle that the defendant was standing behind at the
3 time.

4 Q It appears it is backed into the spot; is that
5 correct?

6 A Correct.

7 Q When you see the photograph, there isn't anything
8 in the front. Was there anything blocking that vehicle
9 to pull out to 27th Avenue to Oak Street?

10 A No, sir. .

11 Q I'll show you what is marked as State's 4 --
12 excuse me, let's do State's 3. What is that building
13 in the background you see?

14 A The front of the apartment complex where the
15 victim resided at.

16 Q Is that the same vehicle, different angle, from
17 that vehicle?

18 A Yes.

19 Q On the side of the house in this area, what is
20 down this area here?

21 A It is an alley that goes to the back side of the
22 top of the L-shaped buildings.

23 Q Is that where the victim was found?

24 A Just down the alley.

25 Q Can you point to that alley as it corresponds to

JARROD MACKIN - DIRECT EXAMINATION

1 this larger photograph? I'll show it to the Court.

2 This area; is that correct?

3 A Right.

4 Q Right here?

5 A Yes, sir.

6 Q So the witness pointed to this area; is that
7 correct?

8 A Yes. That's the alley that goes back to the back
9 of the apartment complex.

10 Q Now, I think you indicated as you approached the
11 vehicle you indicated that the defendant had something
12 in his hand, he threw it and you found out that it was
13 a cell phone. I think that is where he left off. Did
14 you see the defendant with a rifle?

15 A When we were handcuffing him, to the left side
16 where we were standing at the corner of the car, there
17 was an AR-15. The magazine had been -- I don't know if
18 it fell or whatever, but the magazine was out of the
19 gun. It wasn't up inside -- like it wasn't ready to
20 fire.

21 Q State's 4 is in evidence. Take a look at that.

22 A Yes.

23 Q Is that a fair and accurate representation of the
24 scene you saw when you took Antwuan Nelson into
25 custody?

JARROD MACKIN - DIRECT EXAMINATION

1 A Yes.

2 Q What is the bottom of the photograph?

3 A Assault rifle with a magazine.

4 Q Now, as it specifically relates to the rifle, did
5 you do anything to make sure that that rifle didn't get
6 taken or moved?

7 A I stood by with the defendant until Corporal
8 Garrett arrived on scene and put him in a patrol car.
9 I stood by with that weapon until another officer
10 relieved me. I think it was Officer Harlow.

11 Q You mentioned that you recall seeing the
12 defendant wearing a black jacket. Let me -- let me
13 show you State's 42.

14 (State's Exhibit 42 marked.)

15 Q (MR. HIXSON) What is that a photograph of?

16 A Looks like the jacket he was wearing the night in
17 question.

18 MR. HIXSON: We move that into evidence.

19 MR. BARR: Let me see. No objection.

20 THE COURT: Without objection, State's 42.

21 (State's Exhibit 42 admitted.)

22 Q (MR. HIXSON) You approached him and he was
23 wearing a black jacket?

24 A That is what we got from the people flagging us
25 down, just wearing a black coat.

JARROD MACKIN - DIRECT EXAMINATION

1 Q Let's me show you State's 29 and see if you
2 recognize this -- I believe it is 29. You testified
3 earlier that you were standing over in the parking lot
4 by the Crown Victoria?

5 MR. HIXSON: I'm showing the witness what is
6 marked as State's 29. It has been secured with a
7 cable lock pursuant to the supreme court order.

8 THE COURT: Yes, sir. And I have -- ladies and
9 gentlemen, we have several firearms that may or may
10 not be presented to you. I had an opportunity to
11 inspect them and assured by the State that they are
12 safety locked. I inspected them and made sure myself
13 they are safety locked so they cannot fire, so you
14 should not be concerned.

15 Q (MR. HIXSON) You testified that you stood guard
16 over the AR-15 rifle. Does that appear to be the
17 rifle you were protecting until Crime Scene arrived?

18 A Yes, sir.

19 MR. HIXSON: At this time we move State's 29.

20 MR. BARR: No objection.

21 (State's Exhibit 29 admitted.)

22 MR. HIXSON: May I secure that back here?

23 THE COURT: Yes.

24 Q (MR. HIXSON) And I think you indicated there was
25 a magazine laying besides State's 29. I'm showing you

JARROD MACKIN - DIRECT EXAMINATION

1 State's 29A. See if you recognize that.

2 A Yeah. Looks like the magazine next to the gun
3 when we approached.

4 Q Do you recall if the magazine was empty or
5 loaded? It is clear it is empty now, but do you
6 recall --

7 A I don't remember if the magazine was loaded or
8 not, but I just remember there was one out of the gun,
9 on the side of it.

10 MR. HIXSON: Fair enough. We move State's 29A.

11 MR. BARR: No objection.

12 (State's Exhibit 29A admitted.)

13 Q (MR. HIXSON) Is that the magazine here in
14 State's 4?

15 A Yeah.

16 Q When you initially arrived on scene, it was a
17 possession of a weapon. Why is it that you focused
18 your attention on Mr. Nelson? I think you indicated a
19 crowd was gathering?

20 A The people that were stopping us on the road as
21 we were driving down was saying it was black male
22 behind the car who is the one that shot someone, so we
23 focused our attention on him. That is why we just put
24 him in handcuffs until we figured out what was going
25 on, plus people were saying he has a gun. Our safety

JARROD MACKIN - CROSS-EXAMINATION

1 comes into play, so we have to make sure we are safe,
2 because if something happens to us, we can't do
3 anything for anyone else.

4 MR. HIXSON: No more questions, Your Honor.
5 Answer any questions Mr. Barr may have.

6 THE COURT: Mr. Barr.

7 CROSS-EXAMINATION

8 Q Officer Mackin.

9 A Yes, sir.

10 Q You were the first law enforcement officer to
11 arrive on the scene at this incident location; is that
12 correct?

13 A Yes, sir. Myself and PFC Owens. We arrived at
14 the same time.

15 Q And you were directed to go to that location by a
16 dispatcher?

17 A Correct.

18 Q And who is the dispatcher?

19 A I don't recall at the time.

20 Q You don't recall who the dispatcher was?

21 A No, sir. We had multiple dispatchers. Anyone
22 could be on at the time.

23 Q You have what?

24 A We have many dispatchers that can jump in for
25 someone on a break, so as to who it actually was -- I

JARROD MACKIN - CROSS-EXAMINATION

1 mean, it was a few years back, I don't remember.

2 Q What do dispatchers do?

3 A Dispatch calls, tell us what is going on.

4 Q Tell you what is going on?

5 A Yes.

6 Q And send you to a particular location?

7 A Correct, based on the information they receive
8 from whoever calls in and whatever information they
9 give to them.

10 Q In this instance, when you went to this location,
11 you went at the request of your dispatcher?

12 A Correct.

13 Q Do you recall whether or not your dispatcher told
14 you what was going on at the scene?

15 A She told us there was a weapon law violation at
16 this location, and by the time she was able to get
17 anymore out, we were pretty much already on scene. So
18 basically we gathered what the dispatcher told us, what
19 the people flagging us down told us, and basically made
20 an educated decision of what was happening, and that is
21 why we handled it the way we handled it.

22 Q You are not familiar with any of the 911 calls
23 that were made?

24 A No, sir.

25 Q But you were dispatched to the location. You got

JARROD MACKIN - CROSS-EXAMINATION

1 there, and you had no trouble figuring out who you
2 needed to talk with -- I mean you found Antwuan Nelson
3 without having to go looking for him?

4 A Correct. He was still on scene, correct.

5 Q And what was he doing?

6 A Leaning up against the back of his car with and
7 what we later found out was on his cell phone.

8 Q Did he make any attempt or appear to you to make
9 any attempt to flee the scene?

10 A No, sir.

11 Q He was just there waiting?

12 A Yes, sir.

13 Q You mentioned that it was pretty belligerent, a
14 pretty good crowd. I think you said around 40 people?

15 A Give or take, yeah.

16 Q That is a pretty good crowd.

17 A Uh-huh.

18 Q And, of course, you would agree that they were
19 all pretty hostile towards Antwuan Nelson?

20 A Correct.

21 Q You had to get him away from them?

22 A We did.

23 Q Someone called Officer Garrett?

24 A We called whoever was in the area to show up. We
25 didn't care who showed up. He was one of the officers

JARROD MACKIN - CROSS-EXAMINATION

1 that responded.

2 Q And he took him out of there?

3 A Yes, sir.

4 Q Now, State's Exhibit -- the assault rifle,
5 State's 29, the rifle you obtained, where did you get
6 the rifle from?

7 A Laying on the ground where he was standing.

8 Q It was laying on the ground where Mr. Nelson was
9 standing?

10 A Yes, sir.

11 Q And did you ask him anything about the rifle?

12 A No, sir.

13 Q You just picked up the rifle?

14 A Didn't touch it at all. I left it on the ground
15 and stood by until someone relieved me.

16 Q So you did not handle the rifle on the scene?

17 A No, sir.

18 Q But you were able to identify it?

19 A Yes, sir. I was looking right at it. It was
20 below where I was standing next to the defendant.

21 Q Have you ever seen a rifle?

22 A Yes, sir. I carry one in my car every day I
23 work.

24 Q You can get that rifle down at Walmart?

25 A Okay.

JARROD MACKIN - CROSS-EXAMINATION

1 Q Can't you?

2 A I would assume.

3 Q Yes, sir. You go straight -- how many Walmarts
4 do you have in Myrtle Beach, do you know? You don't
5 know, do you? Any one of them you can go and purchase
6 that rifle. Let's not talk about a gun store.

7 All right. Now, the crime scene, there was no
8 crime scene established when you got to the location?

9 A No. We were first responders, that is why he was
10 not placed under arrest, just detained.

11 Q As a first responder, is it part of your duty to
12 secure the crime scene?

13 A As best you can with two people, one victim
14 bleeding out, one person with a gun laying next to him
15 and about 40 irate people, we did the best we could.

16 Q Probably difficult to secure that crime scene,
17 right? So you all didn't -- you didn't make any effort
18 to secure --

19 A We secured what we could based on what we had.
20 No one came over and picked up the gun. No one in the
21 crowd just walked over and decided to pick up the gun
22 while we were standing there, because we were still
23 standing with it. Once more officers showed up,
24 everyone dissimulated to a spot to secure what we had.
25 It wasn't like a crime scene all down the street or up

JARROD MACKIN - CROSS-EXAMINATION

1 a road or through a whole apartment complex. It is no
2 different from here to where the defendant is, not hard
3 to secure a crime scene that size.

4 Q You know it was not simply the crime scene in and
5 of itself, it extended beyond the area where you were?

6 A The crime scene itself I don't believe did
7 because where he was laying and bleeding out was right
8 where we were, so that is what we secured that we knew
9 about when we were there.

10 Q All right. Now, where Mr. Rogers was laying, was
11 that near a fence?

12 A It was down the fence a little bit down the
13 alley.

14 Q In the alley?

15 A Uh-huh.

16 Q And of course there are two ways into that alley?

17 A Uh-huh, front way and a back way.

18 Q Front way and a back way?

19 A Correct.

20 Q You are not an investigator?

21 A No, sir.

22 Q And of course you didn't inquire and don't
23 know -- perhaps even today -- which end of the alley
24 Michael Rogers came in from, do you?

25 A No, sir.

JARROD MACKIN - CROSS-EXAMINATION

1 Q If he came in from the back, he would have been
2 at the back of the apartment complex; would he not?

3 A Possibly, yes.

4 Q And of course you didn't even go back there, did
5 you?

6 A No, sir. I stayed with the defendant.

7 Q But there were people all around there, weren't
8 there?

9 A Correct.

10 Q You would not agree as an officer with respect to
11 the crime scene, if Mr. Rogers entered the alley from
12 the back, that would have been part of the crime scene?

13 A Possibly. I'm not sure.

14 MR. HIXSON: Object, posing a hypothetical. He
15 can't answer a hypothetical.

16 THE COURT: I'll let him answer that question,
17 okay.

18 MR. BARR: Thank you, Judge.

19 A Say it one more time.

20 Q (MR. BARR) I said, You would agree that
21 depending which end of the alley Michael Rogers
22 entered from, and he had to enter by one, if he
23 entered from the back, that portion of the apartment
24 complex would have been part of the crime scene?

25 A That is where the incident took place and he was

JARROD MACKIN - CROSS-EXAMINATION

1 shot at, yes.

2 Q You did find him in the alley?

3 A Correct.

4 Q Now, there were people standing all around the
5 crime scene; is that right?

6 A Correct.

7 Q You don't know how long he was in the position he
8 was in, do you?

9 A No, sir.

10 Q And you don't know whether or not anything had
11 been tampered with prior to the time you got there?

12 A No, sir.

13 Q You indicated that the crowd was friendly to
14 Mr. Rogers; am I correct?

15 A No, sir.

16 Q Hostile?

17 A Towards him, but they -- I never said they were
18 friendly towards him. We didn't know if they were just
19 upset because of what happened and he is the one that
20 did it -- at that point, we had no idea who was who.
21 For all we knew, we still had suspects running around
22 the location. We had no idea with just the two of us.

23 Q I'll ask you again. I think I wrote it down when
24 you said it the first time. The crowd was hostile
25 towards Antwuan Nelson?

JARROD MACKIN - CROSS-EXAMINATION

1 A The majority, yes, sir.

2 Q All right. So now if they were hostile towards
3 Antwuan Nelson, that stands to reason that they were at
4 least sympathetic as a result of what happened to Mr.
5 Rogers?

6 A Possibly.

7 Q All right. All right. All of these people,
8 bystanders, sympathetic people, hostile people, they
9 were all around the crime scene -- you didn't interview
10 any witnesses? Did you interview any witnesses?

11 A No, sir.

12 Q So you didn't take any statement from anyone?

13 A No.

14 Q You didn't do any further investigation to
15 determine whether or not the weapon that you saw was
16 registered or -- you didn't do any of that, did you?

17 A No, sir.

18 Q When you left -- did you leave before or after
19 Officer Barrett (sic)?

20 A Officer who?

21 Q The gentleman that came to pick up Antwuan
22 Nelson.

23 A Garrett?

24 Q Garrett, I'm sorry.

25 A Yes, sir. I was still on scene when he left with

JARROD MACKIN - CROSS-EXAMINATION

1 him.

2 Q You were still on the scene?

3 A Yes, sir.

4 Q How long did you stay on the scene after he left
5 with Antwuan Nelson?

6 A Maybe a half an hour, 45 minutes at the most for
7 crowd control.

8 Q Crowd control. Did you participate -- put up any
9 yellow tape?

10 A No, sir.

11 Q You didn't put up any?

12 A No, sir.

13 Q At the time you left, was there any yellow tape
14 up anywhere?

15 A Yes, sir.

16 Q But you don't know who put it up?

17 A It was one of our supervisors, Corporal Toole
18 (phonetic) at the time.

19 Q You didn't participate or assist in putting it
20 up?

21 A No, sir.

22 Q Do you have a recollection where the crime scene
23 tape extended at the time it left, what it encompassed?

24 A Not to my recollection, the whole area, no, sir.

25 MR. BARR: Nothing further.

JARROD MACKIN - REDIRECT EXAMINATION

1 THE COURT: Anything further?

2 REDIRECT-EXAMINATION

3 BY MR. HIXSON:

4 Q When you arrived, and I think you did -- well, it
5 was a fairly intense situation?

6 A Yes.

7 Q Did you see anyone running in and out of the
8 alley or taking anything out of the alley as you were
9 focusing your attention on Mr. Nelson?

10 A No, sir.

11 Q You also indicated the reason your attention was
12 directed towards Mr. Nelson was because the crowd said
13 he just shot?

14 A Yes, sir.

15 Q Is your testimony that they were agitated because
16 they saw this guy kill another man?

17 A It is possible, yes, that that is why they were
18 upset.

19 MR. HIXSON: Nothing further.

20 THE COURT: Let's give the jury a quick break --
21 we've been here about an hour and 15 minutes -- before
22 we start the next witness. Let's give the jury a
23 quick break.

24 (The jury exits at 10:45 a.m., and a recess
25 was taken.)

NICHOLAS "SHANE" OWENS - DIRECT EXAMINATION

1 THE COURT: Thank you. If you would, give us the
2 jury. Have they brought your witness around yet?

3 MR. HIXSON: I haven't called him yet.

4 THE COURT: Go ahead.

5 MR. HIXSON: Shane Owens.

6 (The jury enters at 11:01 a.m., and the
7 following is heard in the presence of the jury.)

8 THE COURT: Have all of our jurors -- if you are
9 not ready, just tell him you haven't had enough time,
10 okay. Yes, ma'am, swear the witness.

11 (NICHOLAS SHANE OWENS, having been duly sworn,
12 testified as follows:)

13 WITNESS: Nicholas Shane Owens, O-W-E-N-S.

14 MR. HIXSON: Thank you, Your Honor.

15 DIRECT-EXAMINATION

16 BY MR. HIXSON:

17 Q Could you tell the Court what you do for a
18 living?

19 A UPS currently.

20 Q On January 27 of 2014, did you work for the
21 Myrtle Beach Police Department?

22 A I did.

23 Q What were your responsibilities back in
24 January 2014?

25 A 2014, I was assigned to the Myrtle Beach Traffic

NICHOLAS "SHANE" OWENS - DIRECT EXAMINATION

1 Division, traffic enforcement. Along with various
2 duties, I was also responsible for patrol calls and
3 things like that with Officer Mackin as well.

4 Q So at some point in time around 4 o'clock or so,
5 did you receive a call to go to 37th Avenue North in
6 Myrtle Beach?

7 THE COURT: Is someone on the jury having trouble
8 hearing? Would you move the mic?

9 A Is that better? I received a call --

10 THE COURT: Thank you.

11 A If I remember, my recollection is it was a shots
12 fired call. I think it was in the area of 33rd and
13 King's Highway, close to the incident location. I
14 remember turning in. Officer Mackin was right in front
15 of me, so we posted together at the same time. Came
16 down the road, the address of [REDACTED] 37th Avenue North I
17 was familiar with. I had prior narcotic calls, so I
18 was familiar with the address, so I knew it was on the
19 right-hand side. I came down. Mackin was to the left,
20 I was to the right. I could visually see people down
21 the road running around and back -- I think Mackin
22 called for radio silence. Came up to the roadway and
23 there was --

24 Q (MR. HIXSON) Let me stop you for a second.

25 Let's build on this. This is State's 1. The jury has

NICHOLAS "SHANE" OWENS - DIRECT EXAMINATION

1 seen this. I'll request you point out what we are
2 looking at to help the jury understand.

3 A This is 37th Avenue North, this is going west
4 towards Conway. This is east towards King's Highway,
5 north, south. We're coming in from this way here.
6 Officer Mackin is to the left, I'm to the right of him,
7 parallel to him. [REDACTED] 37th is the incident location,
8 where it happened right here. This is the alleyway
9 where the incident took place as well.

10 Q At what point in time do you see -- at some point
11 do you see a red Crown Victoria parked?

12 A I do. As I come up here you have a tree way.
13 You could see a burgundy/red Crown Victoria kind of
14 right up in here, and I could see it right there.

15 Q Was it pulled in or backed in; do you remember?

16 A To my recollection, it was backed in.

17 Q Let's me show you what is in evidence, marked as
18 State's Exhibit 2. Do you recognize that?

19 A I do.

20 Q That photograph already in evidence, is that what
21 you recall? Do you remember seeing that when you
22 approached 37th Avenue?

23 A That is it, yes, sir.

24 Q I think that the photograph shows the vehicle is
25 backed in and can pull straight out into 37th?

NICHOLAS "SHANE" OWENS - DIRECT EXAMINATION

1 A It is.

2 Q If this aids your testimony, tell the jury what
3 you did next?

4 A Continued to approach the location. We stopped
5 and got out. There was people -- patrol vehicles here,
6 I guess to the south. There is people over here. I
7 remember seeing a lady. I think she said there's
8 shooting, and that's him. When I looked to the right,
9 I saw I guess the defendant beside a vehicle. I drew
10 my weapon out, along with Officer Mackin, Get your
11 hands up, let me see your hands. At that time the
12 defendant kind of dropped down, made me kind of
13 nervous. We charged the location to cut the distance
14 between himself and our location, because we didn't
15 know what he had. He rose back up with a small item in
16 his hand, identified it as a cell phone and then we
17 moved around to where he was at. Officer Mackin pulled
18 his handcuffs out. When we obtained him, it was not an
19 investigation. We didn't know what we had, so.

20 Q Let me show you State's 4 and see if you
21 recognize that?

22 A Yeah. That is the back of the car. When we got
23 around back, put him on the ground, that is when I
24 noticed there was an AR-15 laying behind him, and that
25 is when I got nervous. I didn't know if he was going

NICHOLAS "SHANE" OWENS - DIRECT EXAMINATION

1 for it or not. Officer Mackin went ahead and secured
2 the defendant.

3 Q When you say he was "going for it" --

4 A He went down in a rapid motion, and we're telling
5 him to get his hand up, and he went down. So I
6 couldn't see behind the car. I didn't know what was
7 behind there. I didn't know there was a weapon there.

8 Q When you first saw him, did he have a weapon in
9 his hand?

10 A No, sir. He had a small object, later identified
11 as a cell phone.

12 Q So he wasn't setting the weapon down, he was
13 bending toward the weapon?

14 A Yes, sir. That is the recollection I have.

15 Q But ultimately did Mr. Nelson raise that towards
16 you?

17 A He did not raise the weapon at me, no, sir.

18 Q Did he submit to your commands rather quickly; is
19 that fair?

20 A After we charged a distance on him, we were right
21 on top of him at that point, and that is when we got
22 around to the back side of the car and placed him on
23 his knees, and Officer Mackin secured him.

24 Q And both had duty weapons on him?

25 A Absolutely.

NICHOLAS "SHANE" OWENS - DIRECT EXAMINATION

1 Q Let me show you what is marked as State's 3 in
2 evidence.

3 A That is the front of the apartment complex,
4 basically the vehicle that we observed, and this is the
5 alleyway beside where the victim was shot.

6 Q The jury has already seen this, and I have
7 testimony off of this. So, after, Mr. Nelson was
8 placed in custody -- or in detention?

9 A We were still investigating at this time, so we
10 didn't know what we had, so we just placed him in
11 detention. It was very rapid, because at that point
12 the scene was chaotic. There was people running
13 around, yelling and screaming. It was like five
14 seconds after Mackin put the handcuffs on him we -- I
15 looked to my left and I could see the alleyway in
16 question, and there was people like running around. I
17 seen a victim laying on the ground, black male.

18 Q Is that the first time that you came to
19 understand that someone actually had been hit?

20 A It was, yes. At that point, it is a gun call. I
21 knew there was a weapon involved after that. You know,
22 I'm thinking everything is okay, but then I saw the
23 victim, so I said, Oh. I left Officer Mackin with the
24 suspect. I tried to clear the alleyway out. There was
25 a lot of people in the alleyway. Maybe a dozen people

NICHOLAS "SHANE" OWENS - DIRECT EXAMINATION

1 were there. I saw a white female with the victim. She
2 was crying, upset. I got my weapon up and pointing --
3 not pointing, but, Get out of the way, because I need
4 to get in there to get to the victim to help him. I
5 got him out -- I came up around where she was at, and
6 she was like, I guess, on her knees, to the best of my
7 recollection, crying. She was saying something about
8 needing -- get it out of his neck. I could see a large
9 bulge in his neck where it was blown out. I knew from
10 combat it was a fatal blow, when I was in Iraq. I did
11 what I could. I tried to get her away and push her. I
12 looked around the best I could, and I started -- I
13 think she had a towel, if I remember correctly. I
14 think I did CPR. I felt a little pulse, I think, but I
15 knew he was kind of -- I had to go through the steps to
16 help the man. I had blood on me. I called dispatch, I
17 need EMS now, it's bad. She said, They are coming. I
18 said, You need to get them here now because he's not
19 going to make it. There is nothing I could do for him.
20 I tried what I could until EMS got there.

21 Q Let's let that settle in for a second. Let's go
22 back to lighten it up a touch. When you approached
23 Mr. Nelson, when he was at the back of the car -- by
24 the way, do you see Mr. Nelson in the courtroom today?

25 A Yeah, right there (indicates).

NICHOLAS "SHANE" OWENS - DIRECT EXAMINATION

1 MR. HIXSON: Let the record reflect that he is
2 pointing at Mr. Nelson in a tan suit sitting at
3 counsel table.

4 Q (MR. HIXSON) As you approached him, do you
5 recall any style of what type of clothing he was
6 wearing when you approached him?

7 A Black and red trim. Once I got around back, I
8 could see his shoes, like red or black or something.

9 Q I'll show you a couple of photographs. One is
10 already in evidence, State's 42. We've published that
11 already. I'll show you a couple of others and see if
12 you recognize these. I'm specifically referring to
13 State's 44, State's 45 and State's 46. Take a look at
14 all of those.

15 MR. HIXSON: Mr. Barr has seen all of those.

16 A That is like the shirt he had on. The jeans and
17 definitely the shoes, is what I can recall.

18 THE COURT: Are those in?

19 MR. HIXSON: I'm moving them in now.

20 MR. BARR: No objection.

21 THE COURT: That is 44, 45 and 46.

22 (State's Exhibits 44, 45 and 46 admitted.)

23 Q (MR. HIXSON) So you approached, and that is what
24 the defendant was wearing?

25 A That's correct.

NICHOLAS "SHANE" OWENS - DIRECT EXAMINATION

1 Q With a black jacket top?

2 A With a black jacket.

3 Q Let's take what you talked about piece by piece.

4 I'll show you three items, State's 5, State's 6 and
5 State's 7. Take a look at those at once, and if you
6 will talk about them individually.

7 A There is the alleyway where the victim was shot,
8 black male.

9 Q What number are you referring to?

10 A Exhibit 5.

11 Q State's 5. Is that a fair and accurate
12 representation of the scene you saw -- obviously
13 everything has been removed, but --

14 A Right. Yes, sir. It is the view. This is a
15 view coming into the alleyway, a little bit better view
16 where additional shots were fired into. This is where
17 it kind of -- victim was laying about middle ways into
18 the alleyway. That is State's Exhibit 6.

19 Q Okay.

20 A This is a crime scene photo. It is more like in
21 the nighttime. It was kind of nighttime when I was
22 there, just prior to dark. So this shows kind of where
23 there is a weapon and where the victim was laying,
24 State's Exhibit 7.

25 MR. HIXSON: Yes. Move 5, 6 and 7 into evidence.

NICHOLAS "SHANE" OWENS - DIRECT EXAMINATION

1 THE COURT: Mr. Barr?

2 MR. BARR: No objection.

3 (State's Exhibits 5, 6 and 7 admitted.)

4 Q (MR. HIXSON) Let's talk about State's 5, the
5 point of view with the camera, if we look at the
6 chart, where you were in the photograph -- where would
7 you stand in this photograph so the jury can
8 understand?

9 A You would be up in here looking this way, so
10 coming from the north looking south.

11 Q So the photographer is taking the picture that
12 way?

13 A Correct.

14 Q And does that appear to be the red Crown
15 Victoria?

16 A It does.

17 Q Let's talk about State's 6. Can you describe
18 that for the jury?

19 A Entrance to -- I guess it would be the south
20 entrance to the apartment complex to the west side of
21 the building looking back northbound.

22 Q So when you initially arrived on the scene, you
23 were headed down the alley, is that the way you
24 approached where Mr. Rogers was?

25 A Correct.

NICHOLAS "SHANE" OWENS - DIRECT EXAMINATION

1 Q And then State's 7?

2 A Again, appears to be a north view shot, and it's
3 the image coming from the south side of the west side
4 of the apartment complex.

5 Q As you approached, did you see a weapon lying on
6 the ground up there?

7 A Initially, no, because I was trying to move
8 everyone out. I was worried about someone having a gun
9 in the alleyway. I'm trying to keep myself safe, but
10 trying to get to the victim to help him. But to the
11 best of my recollection, soon thereafter I seen the
12 shotgun laying there.

13 Q Is that the location when you saw the shotgun
14 laying there?

15 A To the best of my recollection it was laying
16 close to him.

17 Q Additionally, when you were there, did you see
18 any fire or unfired shotgun shells around that
19 location?

20 A Yes, I didn't see any I seen unfired shotgun
21 shells. I didn't see any spent shells at that time. I
22 think they were green, I can't remember, but I seen no
23 shotguns shells that weren't fired.

24 Q How many did you say?

25 A I think I saw two that were not spent.

NICHOLAS "SHANE" OWENS - DIRECT EXAMINATION

1 Q Two unfired?

2 A Yes, sir.

3 Q Can you point to where you recall seeing the
4 shotgun for the first time?

5 A Right up in here (indicates). Right there
6 (indicates).

7 Q Were you able to get a look at the shotgun?

8 A I wasn't able to look at the dimensions, but I
9 made a mental note of what it looked like.

10 Q Do you think you would recognize it if I
11 presented it to you today?

12 A I would.

13 Q This is State's 30. This weapon is secured with
14 a cable lock. Do you recognize that?

15 A I do, that is the weapon from the day of the
16 incident.

17 Q Did you handle that weapon when you arrived at
18 the crime scene?

19 A To my recollection, I did not. I never touched
20 that weapon.

21 Q When you were there, after you are trying to
22 resuscitate Mr. Rogers, did you secure that scene or
23 make sure -- protect the integrity of the scene?

24 A I tried to do my best with what I had. I
25 guess -- I found out that it was his common-law spouse

NICHOLAS "SHANE" OWENS - DIRECT EXAMINATION

1 was there. She was highly upset. I guess she kept
2 trying to get to the victim, for obvious reasons. I
3 tried to get her back. Behind me was the alleyway.
4 You can see, I'm worried about someone taking shots
5 from behind me as well. So it is a hard angle. I'm
6 trying to help him, giving CPR the best I can and tried
7 to secure the scene. I know it is a crime scene, so
8 I'm trying to secure it, the integrity. Like I
9 testified earlier, you have a chaotic scene. Dozens of
10 people highly charged. Someone is shot. It is him on
11 the ground by himself with the defendant, and I'm
12 calling for backup for more officers. You try the best
13 you can to work with.

14 Q Did -- approximately how long do you think that
15 you were trying to assist Mr. Rogers until EMS arrived
16 until he was taken to the hospital?

17 A I don't know the exact time. It seems like a few
18 minutes. I called like twice to get help there. It's
19 close proximity to the 38th station, so I knew they
20 would be coming quick, but it seemed like a couple of
21 minutes. They got there pretty quick, but nothing they
22 could do, I don't think.

23 Q And we'll probably talk about this, but the
24 nature of the agitation, what is your understanding
25 when you are seeing the nature of the agitation, why

NICHOLAS "SHANE" OWENS - DIRECT EXAMINATION

1 everyone was so upset?

2 A Well, someone was shot. I assumed maybe the
3 gentleman that lived there was shot, maybe neighbors
4 and friends and family. I didn't ascertain that at the
5 time, but that is what it was.

6 Q That's fair enough.

7 MR. HIXSON: Beg the Court's indulgence.

8 Q Did you have the opportunity to learn the
9 functionality of a pump shotgun through your training
10 and experience?

11 A I did it when I was in the service as well as in
12 the Army as a scout, so I know shotguns and assault
13 rifles very well.

14 Q And specifically as it relates to the
15 functionality of this, maybe you can help explain to a
16 layperson on the jury what the significance is between
17 a loaded shotgun shell and an unloaded shotgun shell
18 is, and how a pump action -- how do you go about
19 putting this into fire, whether it is loaded or not
20 loaded?

21 A I mean, the shotgun shell, if it was ready to
22 fire, obviously the shell would have been inserted into
23 the weapon system, so you can't observe this on the
24 ground. If it would have been in a fired position, I
25 don't know if I could testify exactly to it being ready

NICHOLAS "SHANE" OWENS - DIRECT EXAMINATION

1 to fire at that point.

2 Q Just from general experience as to how it relates
3 to what it means --

4 A Yes.

5 Q And I don't want you to handle it -- there is
6 biological evidence on there, but as it relates to the
7 function of the weapon, would you load it in here, live
8 round?

9 A Yes, sir. You can load it different ways,
10 through the bottom or top. I mean, it depends on the
11 person, what they are comfortable with. I can do it
12 either way, but I couldn't testify as to the
13 Defendant's abilities.

14 Q Just for your understanding, when you look at a
15 shotgun shell, a live versus an unfired -- fired versus
16 unfired shotgun shell, is it easy to see if it is fired
17 or unfired?

18 A Yes. The casing would be opened on it and there
19 would be no -- there would be a difference of shot and
20 unfired.

21 Q I'll show you what is marked as State's
22 Exhibit 55 (sic) and 35. See if you recognize that.
23 I'm handing the witness State's 35.

24 A That is the weapon -- shotgun shell I observed on
25 the day of the incident, next to the victim, laying in

NICHOLAS "SHANE" OWENS - DIRECT EXAMINATION

1 front of him.

2 Q And State's 35?

3 A That is the second shell I observed laying next
4 to the victim, next to the weapon system.

5 Q Has that shotgun shell been fired?

6 A No, it has not.

7 Q And that's for both of them, 55 (sic) and 35, are
8 they live rounds --

9 A Those are live rounds and neither one has been
10 fired.

11 MR. HIXSON: Move them into evidence.

12 THE COURT: Mr. Barr?

13 MR. BARR: Without objection.

14 (State's Exhibits 34 and 35 admitted.)

15 Q If it's fired, what would it look like?

16 A It would be open and spent on the bottom as well.
17 The top part would have -- where the cylinder hits the
18 pin, you could tell that it was fired.

19 Q As it relates to the specific type of weapon, the
20 round this is, does it say anything on there about the
21 size of shot? Is that 12 gauge No. 8?

22 A 12 gauge No. 8, yes.

23 Q And that is bird shot?

24 A I guess some bird shot, yes.

25 Q At some point in time, did Crime Scene arrive and

NICHOLAS "SHANE" OWENS - DIRECT EXAMINATION

1 recover the items we talked about?

2 A They did. Once I got EMS there, get the
3 victim -- I kind of got the victim away from the
4 common-law spouse, I assume. She had blood all over
5 her. We tried to clean her up a little bit. I had
6 blood on me. Crime Scene, there was a lot of officers
7 showing up. I don't know the actual sequence of
8 officer arrivals, who came next. I think Officer
9 Garrett was next, Corporal Garrett. I remember seeing
10 Corporal Toole put tape up for the Crime Scene Unit,
11 and then I assume the crime scene guy showed up and
12 started doing their processing, but I don't know the
13 exact sequence on how that went down. There was a lot
14 going on.

15 Q Is it safe to say -- did you maintain the
16 integrity of the scene as best you could until Crime
17 Scene arrived?

18 A I did. Once you get all of the officers there,
19 it is easy to maintain. I mean, we did a good job, I
20 think, but it was hard to maintain until you got more
21 people there.

22 Q I'll bring to your attention, towards the back of
23 that building, do you see Crime Scene tape in that
24 photograph?

25 A I do.

NICHOLAS "SHANE" OWENS - CROSS-EXAMINATION

1 Q So that is what we're talking about physically
2 taking it off to secure the area?

3 A Yes, sir.

4 THE COURT: You are referring to what exhibit?

5 MR. HIXSON: State's 6. Thank you. I apologize,
6 Your Honor. We move in the shotgun, State's 30.

7 THE COURT: Mr. Barr?

8 MR. BARR: No objection.

9 THE COURT: Without objection, it is submitted.

10 (State's Exhibit 30 admitted.)

11 MR. HIXSON: I no further questions.

12 THE COURT: Mr. Barr.

13 CROSS-EXAMINATION

14 BY MR. BARR:

15 Q I didn't hear you when you indicated what your
16 job is with the Myrtle Beach Police Department; what do
17 you do?

18 A At the time, I was assigned to the Traffic Unit,
19 traffic officer. I do traffic enforcement within the
20 police department. That was my official title, traffic
21 officer.

22 Q So you were assigned to the traffic department?

23 A Yes, sir, at the time.

24 Q Write speeding tickets?

25 A I rode motorcycles, everything.

NICHOLAS "SHANE" OWENS - CROSS-EXAMINATION

1 Q You don't investigate crime scenes?

2 A Certainly, I do, yeah. Before you go to traffic,
3 a patrol officer, same thing Officer Mackin was at the
4 time. I do crime reports as well. My specialty is
5 traffic enforcement, that is what I do.

6 Q So you have a supervisor?

7 A I do.

8 Q What is your supervisor's title?

9 A Actual title was corporal.

10 Q And you said you also investigate crime scenes?

11 A Certainly, yeah. That is what I was trained to
12 do. As a patrol officer, I've been to dozens and
13 dozens of crime scenes. I know how to integrate, how
14 to keep a scene secured, I do all of that.

15 Q So when you went to the location on -- is it
16 37th?

17 A [REDACTED] 37th North.

18 Q It is a dead-end, isn't it?

19 A To my recollection it is a dead-end, yes, sir.

20 Q It is a dead-end. All right, sir. So when you
21 went there, was there crime scene tape when you got
22 there?

23 A No. It was an active situation, there wouldn't
24 be anything there.

25 Q There was no crime scene tape up?

NICHOLAS "SHANE" OWENS - CROSS-EXAMINATION

1 A No, sir.

2 Q All right. Now, I'm going to show you what is
3 marked and entered into evidence as State's Exhibit 7.
4 I believe that exhibit may have been entered into
5 evidence through you. Are you familiar with it?

6 A I didn't take the crime scene photos.

7 Q You didn't take that?

8 A No. I didn't take any photos, no, sir. I'm
9 familiar with the area. I see what you are saying, the
10 tape. I see the tape back there, the yellow tape, yes,
11 sir.

12 Q Do you know who placed that tape back there?

13 A I wouldn't know that, sir.

14 Q Are you at all familiar with the layout of this
15 apartment complex?

16 A The internal workings of it, I'm not familiar
17 with it.

18 Q You don't know what is beyond that tape?

19 A I couldn't testify what is beyond that tape, no,
20 sir. I can imagine there would be an apartment
21 complex, being as the picture would show and based on
22 the statements of rounds hitting the back of the
23 apartment complex. There was one adjacent to it.

24 Q Did you know there was an alleyway from where --
25 back where that tape is, to go back around to the

NICHOLAS "SHANE" OWENS - CROSS-EXAMINATION

1 apartment that Mr. Rogers was living in.

2 A You are referring to a north side entrance?

3 Q Yes, sir.

4 A Possibly. I've never used it, but I would
5 imagine being that if the west side had an entranceway,
6 there would be one on the north side.

7 Q There is an actual alley that goes back on the
8 back of the building, comes straight down from his
9 apartment up top -- or did you go back there?

10 A No, sir, I did not go back there. No, sir.

11 Q I see. Now, you didn't take this photograph?

12 A No, sir. I would speculate it was done by the
13 crime scene people.

14 Q And there are number markers 13, 12, maybe 9; do
15 you see those?

16 A I do. 8, 9, 10, 12 and a 13.

17 Q Did you put those markers down?

18 A Not to my knowledge, no, sir.

19 Q And you don't know why the markers were placed
20 there?

21 A Markers identify items that correlate to the
22 crime.

23 Q Identify items that correlate to the crime, but
24 you didn't put them there, so with respect to the items
25 that were found by somebody that would perhaps be

NICHOLAS "SHANE" OWENS - CROSS-EXAMINATION

1 considered of some evidentiary value, you had no input
2 in making the selection or picking those particular
3 items?

4 A At the scene what I secured, that is the items I
5 can testify, that placement of the shotgun, the rounds
6 are what I can relate on the day of question.

7 Q Take a look at and tell me which items correlate
8 to where the shotgun was?

9 A Shotgun is here. No. 8. It looks like No. 8 in
10 the corner. No. 8 in the corner, shotgun. I remember
11 the shell -- my recollection -- being back in here, 9
12 and 10. That is what I can remember.

13 Q So you saw the shells back at 9 and 10, two
14 shells?

15 A Best I can remember, 9 and 10.

16 Q And the shotgun at?

17 A 10 -- or I think 8. Can I see it again? Looks
18 like it's marked as 8 to the shotgun, yes. I'm not
19 sure what 13 or 12 is. I don't know what those are.
20 You have to have crime scene people to that.

21 Q You are sure that this is the shell or shotgun?

22 A Yes, sir. It was against the wall just like I
23 remember. It was close to the wall.

24 Q And No. 9, tell me what No. 9 is.

25 A Best that I can remember, that is where the shell

NICHOLAS "SHANE" OWENS - CROSS-EXAMINATION

1 was close -- that is where I remember the shells being
2 close to the victim and that's where he was laying at,
3 if I remember correct.

4 Q Victim was laying at 9?

5 A I'm not sure if that is how they had it marked,
6 but he was in the middle, and the shells were close to
7 him, and the shotgun was across -- that is how I
8 remember it. How they mark that scene -- that is what
9 I can remember. The shells were close to him, and the
10 shotgun was away from him next to the wall.

11 Q Did you see blood on the ground?

12 A Yes. I had blood on me.

13 Q Is that where No. 9 is?

14 A Possibly. Could be No. 9.

15 Q Looks like No. 9.

16 A Could be. Very well could be.

17 Q You don't know how -- now, the blood, obviously
18 that is where Mr. Rogers' body was, right?

19 A I imagine it would be, yes, sir.

20 Q The shotgun, you don't know how the shotgun got
21 way up towards the front of the alley?

22 A I didn't touch the shotgun. If he's laying here,
23 it was like over here in the tight space. Like in the
24 pictures it is very close to like a wall.

25 Q So you have the shotgun in one place, blood in

NICHOLAS "SHANE" OWENS - CROSS-EXAMINATION

1 another place, and the two shells, unspent shells,
2 unshot shells, all in different places?

3 A That is what I can recall. They were close to
4 the victim. The shells were closer to the victim
5 than -- I think the shells were a little ways over
6 here. That is the way I can recall it.

7 Q But the markers you got, you say the markers
8 indicate where the shells were found, where the shotgun
9 was found and where the victim was?

10 A Those markers are more accurate to where I
11 remember the shells being at.

12 Q They are all scattered around?

13 A I agree. That is the best I can recall.

14 Q Now, tell me, if you would, inasmuch as you also
15 have some experience investigating, and that is part of
16 your job, you don't -- you have not written down
17 anything in your notes or anywhere to indicate how
18 those pieces of evidence got scattered around?

19 A No, sir. Like I said, I did my best I could to
20 secure it, and that is just what I can recall. The
21 shotgun shells being separated from the shotgun, and
22 then the victim, that is what I recall.

23 Q As you sit here today with all of your
24 experience, knowing how evidence is at a crime scene,
25 knowing the way the victim was and the shells was, the

NICHOLAS "SHANE" OWENS - CROSS-EXAMINATION

1 shotgun was, what do you think of how they got
2 scattered around; have you thought about it?

3 A That is what I observed when I walked up to the
4 victim, because I'm looking as I'm coming down. I
5 remember that is the first thing that caught my eye,
6 was the shotgun shells because they were green in
7 color, and I remember them being close to the victim.

8 Q But you will agree, they are all scattered
9 around?

10 A Certainly based off that photo, if that is the
11 way they are marked. I couldn't testify as to why it
12 was marked like that.

13 Q If you think about it now as an experienced
14 investigator, how do you think they got scattered
15 around like that?

16 MR. HIXSON: Once again --

17 MR. BARR: I'll rephrase the question.

18 MR. HIXSON: Unless you want him as an expert.

19 THE COURT: Asked what he observed.

20 Q No question you observed where they were?

21 A Yes, sir.

22 Q And no question you didn't move them?

23 A I didn't touch anything to my knowledge, no, sir.

24 Q And no question, as far as you know, that
25 photograph with the markers is accurate?

NICHOLAS "SHANE" OWENS - CROSS-EXAMINATION

1 A I mean close to what I remember. I remember the
2 shotgun being in the location where it was at, and I
3 thought the shells were close to the victim. I don't
4 know if they marked the marker the 9 or 8 -- I don't
5 know how they marked that scene, I don't know that.

6 Q But I'm talking about what your recollection is
7 of what you saw when you say you were there?

8 A I come up and saw the shotgun shells close to the
9 victim, the victim laying there. He was bleeding out
10 with a hole through his neck, and the shotgun was
11 laying across from him next to the wall, and the
12 shotgun shells not spent was laying directly -- pretty
13 close to him. That is what I can remember.

14 Q Is that a 12 gauge?

15 A I would have to look at it again. I think it is
16 a 12 gauge. I would have to look at it again.

17 Q Mr. Hixson said it was a 12 gauge, but I wouldn't
18 take his word (laughing). 12 gauge (indicates)?

19 A Looks to be a 12 gauge, yes sir.

20 Q Automatic shotgun?

21 A Looks to be a 12 gauge, yes, sir.

22 Q Carries five shells?

23 A I imagine so. I don't know what brand.

24 Q Remington. Carries five shells?

25 A Correct.

NICHOLAS "SHANE" OWENS - CROSS-EXAMINATION

1 Q And when you put five shells in it, every time
2 you shoot, it kicks one out, doesn't it?

3 A It does. I imagine -- actually, I'm -- I can't
4 testify the workings of the weapon system. I imagine
5 it does spit the shell out.

6 Q You haven't shot one of these?

7 A Exact model, I don't know. Maybe I have. I
8 can't be sure.

9 Q Any 12 gauge automatic?

10 A It will spit a shell out.

11 Q It will kick a shell out as soon as you shoot it?

12 A Yes, sir.

13 Q Ain't no telling where it's going to kick it to,
14 is there?

15 A No, sir. No, no. No, sir.

16 Q Do you know whether or not there was shells in
17 the magazine when this shotgun was found?

18 A I do not know, sir, no, sir.

19 Q Don't know. Now, if you were carrying -- well,
20 that is a hypothetical. I won't ask you that.

21 Based upon what you know about shotguns, these
22 don't shoot unless you have shells in them, does it?

23 A Yes, sir.

24 Q You have to have shells in it?

25 A Yes, sir.

NICHOLAS "SHANE" OWENS - CROSS-EXAMINATION

1 Q You can't have them scattered around, you have to
2 put them in the magazine of the weapon?

3 A Yes, sir, you have to load it.

4 Q You didn't notice anywhere any spent shotgun
5 shells?

6 A I did not. I seen the victim and tried to help
7 him the best I could. The lady had pressure on his
8 neck. I remember seeing the unspent shells. I didn't
9 see any spent shell casings, sir.

10 Q Did you go around the alley that goes back to
11 Mr. Rogers' house?

12 A I don't remember going around looking for shell
13 casings, no, sir. Not to my knowledge, no, sir.
14 Nothing like that.

15 Q Do you know where Mr. Rogers' house was?

16 A No, sir, I did not. At the time, no, sir. I
17 didn't know where he lived at the time, no, sir.

18 Q If you are up in that alley, you can get a pretty
19 good view of the side of that red Crown Vic back in
20 that alley, can't you?

21 A Where it was positioned at, you can get a piece
22 of view of it, yes, sir.

23 Q Yeah, you could get a pretty good view of it?

24 A Yes, sir.

25 Q I have a few more questions. You didn't have any

NICHOLAS "SHANE" OWENS - CROSS-EXAMINATION

1 conversation with Mr. Antwuan Nelson?

2 A No. I didn't meet the gentleman. I had dealings
3 when we placed handcuffs on him. The immediate
4 attention was to the victim and trying to help him as
5 best I could.

6 Q Do you know who put the markers down?

7 A I wouldn't know that, sir.

8 Q Don't know who put up the crime scene tape?

9 A I seen Corporal Toole with some crime scene tape.

10 Q Corporal who?

11 A Corporal Toole. I seen him put some crime scene
12 tape right in front of that apartment complex, but in
13 the photos, it's on the back side of it as well. I
14 don't know if he did the whole complex. I couldn't
15 testify to that.

16 Q He put crime scene tape in front of the apartment
17 complex?

18 A I seen that going up. I did observe that going
19 up, and that was fresh right there when it happened
20 after everyone got on scene, crime scene tape began to
21 go up.

22 Q As far as you know -- well, you wouldn't know
23 that.

24 Did you have any conversations with the 911
25 dispatcher?

NICHOLAS "SHANE" OWENS - CROSS-EXAMINATION

1 A Not really conversations. All it was about was
2 just we need EMS quickly with the condition of the
3 victim. I think I told him twice at least to get there
4 quick, and I think I called for backup for Officer
5 Mackin. A lot of people running around, hostile scene,
6 and I was worried about the safety of our people as
7 well, so that is why I was calling for backup.

8 Q So there wasn't anyone from your dispatch that
9 called you relaying information to you that was being
10 relayed to them from Crime Scene?

11 A Such as?

12 Q Such as a caller calling into the dispatcher
13 telling the dispatcher what was going on at the crime
14 scene.

15 A I probably -- imagine that that went on. There
16 was shots being fired through people's houses and
17 stuff, so it's possible other people were calling 911
18 at the time relaying it, but it was so hectic and my
19 duty was to the victim. I'm trying to help him. There
20 could have been a lot going on, I just don't recall
21 that.

22 Q I just want to know what you know. You were not
23 privy to any of those conversations that were being
24 taken place between the dispatcher and the people that
25 were calling the dispatcher?

NICHOLAS "SHANE" OWENS - REDIRECT EXAMINATION

1 A I would not be privied to that, no, sir.

2 Q You don't know about any of those calls, do you?

3 A Not to my knowledge, no, sir.

4 MR. BARR: Thank you, sir.

5 THE COURT: Mr. Hixson.

6 MR. HIXSON: Couple clarifications.

7 REDIRECT-EXAMINATION

8 BY MR. HIXSON:

9 Q What is the function of a first responder
10 officer?

11 A Protect and serve, help people, preserve and save
12 lives.

13 Q To kind of streamline the redirect, you secured
14 the scene until reinforcements arrived?

15 A Yes, sir.

16 Q And reinforcements include Crime Scene?

17 A Lots of people came. We called for a number of
18 units because of the amount of people we had at scene,
19 lots of people. Yeah, Crime Scene came, yes, sir.

20 Q And Myrtle Beach employs dozens of crime scene
21 specialists to apply and put up tape --

22 A I'm not aware of the accurate number that they
23 had, but we had a number of staff at the time.

24 Q I'll show you a series of three photographs that
25 are excerpts or highlights of that to solve this

NICHOLAS "SHANE" OWENS - REDIRECT EXAMINATION

1 problem. There is 16, 19 and 18.

2 A That it is a spent shell casing that I seen.

3 Q Spent or --

4 A Unspent, I'm sorry. Unspent shell casing that I
5 observed, the green one by Marker 10.

6 Q Now, let's be clear. When you were there, were
7 there evidence markers at that location?

8 A There was not evidence markers. It was a fresh
9 scene. It just happened. I did not mark the scene or
10 anything. It is really the first time I think I saw
11 those photos.

12 Q Since you saw it in real life?

13 A Yeah. Yeah. It was almost three years ago, so.
14 This is Marker No. 11, unspent shell casing as well.

15 Q And this is State's 19?

16 A This looks like a crime scene photo with more
17 markers on the ground, 9 through 12.

18 Q In that photograph, is 10 and 11 depicted also?

19 MR. BARR: Can I see?

20 MR. HIXSON: Let me lay a foundation and I'll let
21 you see it.

22 A It's 9 through 12. And 10 and 11 would be the
23 spent shell casings --

24 MR. BARR: Judge, objection. He said he is
25 laying a foundation. Of course the exhibits that I

NICHOLAS "SHANE" OWENS - REDIRECT EXAMINATION

1 cross-examined him on were already in evidence, and if
2 he is laying a foundation for something else to get in
3 this witness, then he's beyond the scope of
4 cross-examination.

5 THE COURT: Let me see where he is going.

6 MR. HIXSON: Your Honor, I'm simply redirecting
7 him on the location of the shell casings, because Mr.
8 Barr on cross-examination elicited some confusion as
9 to the locations on these photographs.

10 THE COURT: I'll allow it.

11 MR. BARR: He's gone beyond the scope of
12 cross-examination if he now has new exhibits.

13 THE COURT: I'm going to let him testify. I
14 think it is clear that this witnesses testified that
15 he didn't put them there, so I'm going to let him
16 clarify.

17 Q (MR. HIXSON) Finally, State's 16. I think you
18 mentioned that is a further out shot?

19 A It is, yes, sir, with the markers identifying
20 items.

21 Q Are these photographs a fair and accurate
22 representation of your recollection, absent the
23 markers, of what was in that alleyway that night?

24 A Yes, sir. That may have been where the victim
25 was laying as well, as best as I can remember.

NICHOLAS "SHANE" OWENS - REDIRECT EXAMINATION

1 Q That appears to be blood letting right there
2 (indicates)?

3 A It does.

4 Q Would you like to look at these in more detail
5 now, sir?

6 MR. HIXSON: I'll let the record reflect we did
7 pretrial on these photographs ahead of time.

8 THE COURT: Okay.

9 MR. HIXSON: State moves 19, 18 and 16 into
10 evidence.

11 THE COURT: Mr. Barr, subject to your objection?

12 MR. BARR: Your Honor, I object at this point,
13 and of course I would assume that the prosecution has
14 some witness through which they can get the photograph
15 properly authenticated. He didn't take the
16 photographs. He now has been redirected on these
17 photographs.

18 THE COURT: Those are the same numbers you asked
19 him about. These are just photographs of what action
20 is there, so I'll allow it.

21 MR. HIXSON: May I publish these to the jury, 16,
22 18 and 19?

23 (State's Exhibits 16, 18 and 19 admitted and
24 published to the jury.)

25 Q State's 7, Mr. Barr was referring to the marker

NICHOLAS "SHANE" OWENS - REDIRECT EXAMINATION

1 numbers? Do you see the close-up of the marker numbers
2 on that photograph.

3 A Yeah, 9 and 10, but the 11 is off -- I can't see
4 the 11 in this picture, but the 10, that's how it would
5 look, yes.

6 Q Fair enough.

7 MR. HIXSON: I'm publishing 17 and 19, Markers 10
8 and 11 that show the shotgun shells.

9 Q (MR. HIXSON) And I think you testified earlier 9
10 is blood letting where you think the victim was
11 located?

12 A Yes, sir.

13 Q And the shotgun shells right next to him?

14 A Yes, sir.

15 Q One last question to clarify. This is a
16 pump-action shotgun? Can you read that stamp on the
17 side of that?

18 A 870 Magnum.

19 Q Yes, sir. That's a pump-action shotgun? What
20 does that mean?

21 A You release the -- basically you have to slide it
22 back to charge it, and spent shell casing comes out
23 automatically when it is fired.

24 Q So isn't it safe to say that this is not a
25 semi-automatic, and this is not an automatic, you have

NICHOLAS "SHANE" OWENS - RECROSS-EXAMINATION

1 to function the weapon every time for it to work?

2 A Correct, sir.

3 Q So shells just don't shoot out of there like
4 exhaust from a car? You have to actually function
5 it --

6 A Yes, sir, that's correct.

7 MR. HIXSON: Nothing further.

8 THE COURT: Mr. Barr?

9 MR. BARR: Thank you, Judge.

10 RECROSS-EXAMINATION

11 BY MR. BARR:

12 Q With respect to the shotgun, are you at all
13 familiar -- do you hunt?

14 A I hunt occasionally, yes, sir.

15 Q Deer?

16 A Hunt for deer, yes, sir.

17 Q A 12 gauge shotgun is buckshot?

18 A I don't use a shotgun. I use rifles.

19 Q You still hunt?

20 A I still hunt. I try to stay away from shotguns.

21 Q With respect to that shotgun, are you familiar
22 with it?

23 A I can't testify to that exact rifle, that
24 shotgun. I don't personally own one, and I don't know
25 if I have ever shot that kind of shotgun. I don't

NICHOLAS "SHANE" OWENS - RECROSS-EXAMINATION

1 know.

2 Q But now your testimony hasn't changed as far as
3 having five, six shells in the chamber?

4 A Well, sure it will take five shells into it, yes,
5 sir. That hasn't changed, no, sir. I'll keep that.

6 Q If you pump it to throw another shell out of the
7 magazine into the chamber, it is going to kick a shell
8 out, isn't it?

9 A Correct.

10 Q Whether it is automatic or semi-automatic?

11 A Correct.

12 Q Or even bolt action, it is going to kick a shell
13 out?

14 A Correct.

15 Q Now, take a look at Exhibit No. 6; that is what
16 we're talking about?

17 A Yes, sir.

18 Q I think you can see that alleyway a lot clearer;
19 in fact, there is a marker there that says "11"?

20 A Yes, sir.

21 Q What was at that marker?

22 A To my knowledge, it is the shell casing or the
23 unspent shell.

24 Q To your knowledge the unspent shell?

25 A Yes, sir.

NICHOLAS "SHANE" OWENS - RECROSS-EXAMINATION

1 Q A shotgun shell that hasn't been fired, the one
2 that Ms. Walter had a few minutes ago?

3 A That would be the one, yes, sir.

4 Q It's either one or two, she only had two.

5 A Well, the other one is 10. It is close to it
6 right there.

7 Q So that's 10?

8 A Right.

9 Q You don't know what distance that is apart
10 though, do you, and you really can't tell from the
11 photographs, can you?

12 A I couldn't testify to the exact measurements of
13 that, no, sir.

14 Q Did you note that this alleyway here, where "11"
15 was found, goes up to Mr. Rogers' house?

16 A I did not know that, no, sir. I did not know
17 that.

18 Q You don't deny that based on your knowledge Tab
19 No. 9 would be blood?

20 A Pretty sure that is where it was --

21 Q Presumed to be to blood?

22 A Presumed to be blood, yes, sir, where the victim
23 laid, yes, sir.

24 Q And what is No. 12?

25 A I don't know what No. 12 would be, sir.

NICHOLAS "SHANE" OWENS - RECROSS-EXAMINATION

1 Q You don't know what No. 12 would be?

2 A I can't tell from the photos, and I don't have a
3 recollection. I don't know. I don't recall that.

4 Q Of course the shotgun is not depicted in
5 Exhibit 16, is it?

6 A It is not depicted at all, no, sir.

7 Q It is not depicted at all? You've got the blood
8 where Mr. Nelson supposedly was. You have shotgun
9 shells some distance away. You have another shotgun
10 shell, No. 11, up in the alley. Doesn't this seem a
11 bit unusual to you?

12 A As far as location, or what are you referring to?

13 Q If a person had a shotgun and got shot, how does
14 everything get scattered around like this?

15 A I imagine if the gentleman took a round to the
16 neck he was highly likely -- he was disoriented and
17 everything could have went off. I don't know what was
18 in his hands, I can't testify to that. But he took a
19 round to looks like the neck area, so it could have got
20 disbursed in that manner. It is plausible -- that's
21 the most plausible how it happened like that, he took a
22 round to the neck and everything came down.

23 Q He took a round to the neck and -- you don't know
24 what the weight of the shells are, do you?

25 A Exact weight of the shells?

NICHOLAS "SHANE" OWENS - RECROSS-EXAMINATION

1 Q Yeah. What the weight of those shells -- they
2 have pellets in them. No. 8 shells you said, right?

3 A Yeah.

4 Q I mean, usually they just fall down?

5 MR. HIXSON: I object. Beyond the scope of
6 redirect. We have had a lot of time talking.

7 THE COURT: Sustained. I mean we're going way
8 beyond your recross.

9 MR. BARR: I'll go back. I thought we were at
10 crossing his redirect?

11 THE COURT: Yes, you are.

12 Q (MR. BARR) You don't know if that shotgun was
13 sent to SLED to be examined, do you?

14 A I can't testify to that, no.

15 Q Sir?

16 A I could not testify to that, sir, I do not know
17 that. Don't know that.

18 Q But no question that that is the shotgun that you
19 saw in the alley next to Mr. Rogers?

20 A That is the shotgun I recall, yes, sir.

21 Q All right.

22 MR. BARR: Thank you.

23 THE COURT: You may step down. Thank you. Call
24 your witness.

25 MR. HIXSON: Jim Garrett.

JAMES GARRETT - DIRECT EXAMINATION

1 (JIM GARRETT, having been duly sworn,
2 testified as follows:)

3 THE CLERK: State your full name and spell your
4 first and last for the Court.

5 THE WITNESS: James Garrett, J-A-M-E-S,
6 G-A-R-R-E-T-T.

7 DIRECT-EXAMINATION

8 BY MR. HIXSON:

9 Q Good morning. How are you?

10 A Fine.

11 Q You tell could us what you do for a living?

12 A Until the 20th of June, I'm a policeman for the
13 Myrtle Beach Police Department, and then I retired.

14 Q So you are on medical leave towards the end of
15 your career --

16 A Medical leave and then retired 20th of June.

17 Q Congratulations. Thank you. Were you working
18 for the police department back in January 27th of 2014?

19 A Yes, I was.

20 Q Did you have an opportunity to go to a scene
21 around 37th Avenue North in the City of Myrtle Beach?

22 A Yes, I did.

23 Q Tell us about that, please.

24 A I heard it being dispatched out, and then I heard
25 from the other officers on scene that they needed

JAMES GARRETT - DIRECT EXAMINATION

1 backup. So when I arrived, I observed a pretty large
2 crowd irritated. I got out of my car, observed they
3 had one individual, Mr. Nelson, in handcuffs.

4 Q When you say "they," who are you referring to?

5 A Officer Mackin had him in handcuffs. I said, Put
6 him in my car, let me take him to the station. I
7 didn't know if the aggressor was after him, going
8 towards him or if the crowd was just upset. I just
9 knew I needed to remove him from the scene for his
10 safety and to calm things down.

11 Q At that moment in time, did you know exactly what
12 was transpiring, what had just happened?

13 A I know it was some kind of shooting incident. I
14 didn't know whether he shot someone, or someone shot
15 him or what. I didn't know. I know he was being
16 detained. I wanted to remove him from the scene for
17 his safety and to calm down the incident location.

18 Q So is it safe to say that your role transformed
19 to backup officer to kind of a transportation officer?

20 A Yeah. I was a supervisor, but my car is there.
21 I said, Put him in the car, let me get him to the
22 station.

23 Q Okay. In fact, did you do that?

24 A Yes, sir, I did.

25 Q And during the course of transporting Mr. Nelson

JAMES GARRETT - DIRECT EXAMINATION

1 to the detention center, did he have any -- did you
2 question him? Did you ask him any questions during
3 that period of time?

4 A No, I didn't ask him any questions.

5 Q Did Mr. Nelson say anything to you during that
6 period of time?

7 A Yeah. He said that he shot him because he was
8 going to shoot me.

9 Q So let's make sure we understand that. Where did
10 that statement take place?

11 A In the rear of my vehicle. He was in the
12 backseat, and I was transporting him approximately 20
13 blocks to the police station.

14 Q At that time you said he was in handcuffs?

15 A Yes, sir.

16 Q Was he under arrest at that time?

17 A I assumed he was under arrest or detained. I
18 didn't arrest him. All I knew is he needed to get out
19 of there and be taken to the police station.

20 Q But at the time that you made that decision, you
21 were kind of trying to diffuse the scene as hectic?

22 A Correct. Yes, sir. Yes, sir.

23 Q So did you ask him what happened, ask him any
24 questions?

25 A No, sir, I didn't ask him any questions. Only

JAMES GARRETT - DIRECT EXAMINATION

1 thing I stated is that the detective will talk to you
2 when you get to the police station.

3 Q So let's be clear specifically. He said --
4 Mr. Nelson tells you in the police car on the way to
5 the police station --

6 A Yes, sir.

7 Q What did he say?

8 A He said I shot him because he was going to shoot
9 me.

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

11 MR. BARR: Nothing.

12 THE COURT: All right, sir. You may step down.
13 It is noon. Let the jury have lunch. Let's have them
14 back at 1:30. Mr. Ropp, take them to the jury room
15 and let them collect their things.

16 (The jury exits at 12:00 p.m., and the
17 following is heard out of the presence of the jury.)

18 THE COURT: All right. Let's be back in -- just
19 to give you a heads up, I want both of you to be
20 familiar with State versus Frasier, State versus
21 Hernandez for your cases.

22 MR. BARR: State versus Frasier?

23 THE COURT: State versus Frasier, that is 401
24 South Carolina 224. Hernandez is 386, South Carolina
25 655. I know where we are going with the case -- or I

MICHELLE CANTEY - DIRECT EXAMINATION

1 think I know where we are going, and I want you both
2 to be familiar with that case as we proceed.

3 MR. HIXSON: Thank you, Your Honor.

4 MR. BARR: With those two cases, State versus
5 Hernandez and --

6 THE COURT: State versus Frasier.

7 (A lunch recess was taken.)

8 THE COURT: Thank you, please be seated. I
9 apologize, I had things I had to take care of. Please
10 get us a jury.

11 MR. BARR: Judge, may we approach the bench?

12 THE COURT: Yes.

13 (Whereupon, a bench conference was had.)

14 THE COURT: Go ahead and call the witness up.

15 MR. HIXSON: Michelle Cantey.

16 (The jury enters at 2:01 p.m., and the
17 following is heard in the presence of the jury.)

18 THE COURT: We have all of our jurors. I
19 apologize, there is always something going on and we
20 had to take things going on before I bring you back in
21 here. Madam Clerk, swear the witness.

22 (MICHELLE CANTEY, having been duly sworn,
23 testified as follows:)

24 THE CLERK: State your full name and spell your
25 first and last for the Court.

MICHELLE CANTEY - DIRECT EXAMINATION

1 THE WITNESS: Michelle Canty, M-I-C-H-E-L-L-E,
2 C-A-N-T-E-Y.

3 DIRECT-EXAMINATION

4 BY MR. HIXSON:

5 Q Good afternoon, ma'am, how are you?

6 A Well.

7 Q Can you tell this Court and jury what you do for
8 a living?

9 A I'm in marketing for a local state agency.

10 Q Have you lived in Myrtle Beach for a period of
11 time?

12 A Over 20 years.

13 Q So 20 years or so you lived in Myrtle Beach back
14 in January 27 of 2014; is that correct?

15 A Correct.

16 Q Where were you living?

17 A I had recently moved to Broadway Station.

18 Q So is that somewhere near 37th Avenue North
19 here in the City of Myrtle Beach?

20 A It faces 38th, yes, sir. So it is right across
21 37th.

22 Q Let me show you something already admitted into
23 the evidence. In case the jury doesn't know where
24 Broadway Station is, this is State's 1; do you
25 recognize generally that overview? Here is

MICHELLE CANTEY - DIRECT EXAMINATION

1 37th Avenue and the building. It is already admitted
2 into the evidence. And then this unit back here, that
3 is 38th Avenue. Do you recognize that, generally
4 speaking?

5 A Yes, sir.

6 Q Let me show you a couple of photographs and we'll
7 make sure the jury understands where you were so they
8 understand your testimony. I'll show you a series of
9 photographs, five of them, State's 24, 25, 26, 27 and
10 28. Take a look at those all at once. I'll ask you
11 individual questions about them after you take a look
12 at them. Do you recognize all of those?

13 A Yes, sir. That is the unit I was living in at
14 the time, and the other photographs are -- that is the
15 balcony of the first floor condo.

16 Q What is that?

17 A That is actually what I pointed out to the
18 investigators as a bullet hole.

19 Q And State's 26?

20 A That is just an overview of the general area of
21 the first floor. That is actually the window I was
22 looking out of that day.

23 Q And that one, State's 27?

24 A That shows the bullet hole entering my condo.

25 Q And, finally, State's 28?

MICHELLE CANTEY - DIRECT EXAMINATION

1 A Where the bullet is embedded in the drawer of my
2 end table.

3 Q All of those photographs, are they fair and
4 accurate representations of those individual scenes
5 outside of your apartment, inside your den, sofa and
6 the bullet hole?

7 A Yes, sir.

8 MR. HIXSON: We move these into evidence, 24, 25,
9 26, 27 and 28.

10 THE COURT: They are in evidence without
11 objection.

12 (State's Exhibits 24-28 admitted.)

13 MR. HIXSON: Do you want to see them, Judge?

14 THE COURT: Yes, thank you.

15 MR. HIXSON: Thank you. May I publish?

16 THE COURT: Yes.

17 Q (MR. HIXSON) Let's look at this. What is the
18 jury looking at?

19 A They are looking at from the sidewalk area of the
20 condo, it's a first floor condo, so that is the
21 balcony, and through those sliding glass doors was the
22 den area.

23 Q To help understand the importance of this, can
24 you help show looking at this one what view, if you
25 are -- if you are in your apartment looking out your

MICHELLE CANTEY - DIRECT EXAMINATION

1 apartment, what would you see?

2 A This is the stairwell. My condo is on the first
3 floor here, so you look down the alley.

4 MR. HIXSON: For the Court, she testified this is
5 her unit and this is the view she sees from her place.

6 THE COURT: Okay. Do you want the witness to
7 mark the unit so the record is clear?

8 MR. HIXSON: That is fine with me. I'll get a
9 Sharpie.

10 Q (MR. HIXSON) See if you can make a dot.

11 A Understand, this was the first floor, although
12 I'll mark here.

13 THE COURT: Put her initials or something that
14 for the record would indicate that she's showing it
15 being her unit.

16 Q (MR. HIXSON) You indicated it is a first floor
17 unit, obviously?

18 A Uh-huh. You can see far left where the breezeway
19 is in the smaller photo, and that is the stairwell.

20 Q So if we were to explain the importance of
21 setting up this photo, I just want to show you this
22 photo, and that is State's 25. Can you point for the
23 jury the defect you are referring to through that
24 fence?

25 A Yes. You see the flowers along the balcony and

MICHELLE CANTEY - DIRECT EXAMINATION

1 right here is -- so through the flowers you see there
2 is a bullet hole about the size of a pencil going
3 through it, it is small to see in the picture, but.

4 Q Right here?

5 A That's it, yes, sir.

6 Q Let's talk about State's 26, tell us what that
7 is.

8 A That is my living room or den area. You see that
9 I have my books packed and my computer is still on the
10 couch. At the time the bullet came in under the lip of
11 the end table and embedded itself into the end table
12 itself, making the drawer go ajar. At the time of the
13 incident, I was sitting at the very end on the sofa,
14 feet propped up on the coffee table with my computer
15 checking my E-mail.

16 Q So if you were standing right in front of the
17 door slide glass door and you are looking that way,
18 what would you see?

19 A Actually, from that glass door you look through
20 the balcony and look straight down the alley between
21 the buildings, and then there is a wooden fence that
22 separated them.

23 Q Let me show you something already put in
24 evidence, two of them. I'll show you State's
25 Exhibit 6. What is the unit you see at the end of the

MICHELLE CANTEY - DIRECT EXAMINATION

1 photograph?

2 A That would be the bottom unit, would be my unit.

3 Q And the reverse of that, State's 5, that view?

4 A That is actually -- oh, that is down the alley
5 now.

6 Q At the very end?

7 A Yeah, the end of this alley, so basically the
8 opposite view looking towards 37th Avenue.

9 Q This is State's 6. That is your unit?

10 A Yes, sir.

11 MR. HIXSON: Judge.

12 THE COURT: All right.

13 Q (MR. HIXSON) Right here?

14 A Yes, sir.

15 (Published to the jury.)

16 Q (MR. HIXSON) And then the reverse of what we
17 talked about. The jury saw this already. If you are
18 standing here, that is the very end of the view all
19 the way down?

20 A That is inside the chain linked fence at the
21 time.

22 Q All the way to the red Crown Vic at the end.

23 (Published to the jury.)

24 Q (MR. HIXSON) So with all of the pictures with
25 the foundation questions, what in the world were you

MICHELLE CANTEY - DIRECT EXAMINATION

1 doing January 27, 2014, four-and-a-half in the
2 afternoon, tell us about why these pictures mean
3 something to you?

4 A I got home a little early that day from some
5 meetings, so it was close to 3:00 when I got home, took
6 out my trash and had music on and listening to that and
7 checking E-mails on my sofa instead of in the office
8 area I had. So we heard several shots. All the sudden
9 there was a reverberation of the building, and I
10 couldn't figure out what that was. It just felt like a
11 mini earthquake. So I heard neighbors outside talking,
12 and I couldn't tell -- they were muffled. So I go to
13 look out the window, and then that is when I see
14 someone trying to scale the fence, that brown fence you
15 just showed us.

16 Q Tell us what you saw. A person?

17 A It was a gentleman, yes, sir, a black male.

18 Q Do you recall what he was wearing?

19 A He was in dark clothing, black clothing, looked
20 like a hoody because he had like just something pulled
21 around the neck. It was cold. It was the end of
22 January and we were expecting to have ice and rain that
23 night.

24 Q Was it dreadlocks, hoody?

25 A I don't recall exactly that aspect of it. I just

MICHELLE CANTEY - DIRECT EXAMINATION

1 remember that it was bulky, so I naturally assumed it
2 was a hoody. It was dark clothing, red trim I saw at
3 the bottom of the jacket, and that is in my report as
4 well, because I gave a report the night of the
5 incident. So he was like scaling up either trying to
6 jump over, or trying to reach the top of the fence. I
7 saw what appeared at the time to be a handgun dropped.
8 I just assumed it was kids playing with guns and they
9 got caught so they were just trying to get rid of
10 evidence. I'm not trying to say anything, but you just
11 heard noises all the time, so you never knew what to
12 expect.

13 Q Yeah.

14 A Like it was kids that that they literally were
15 dropping something.

16 Q Did that individual climb the fence, or did they
17 -- what --

18 A No. They were jumping up to climb it or just to
19 get to the top, and that is when I saw the drop on the
20 other side of the fence.

21 Q Did you see a gun drop?

22 A I saw something from his hand drop, because I
23 just heard guns shots. I naturally assumed it was a
24 handgun and that the kids were out playing and got
25 caught and trying to ditch the evidence or whatever.

MICHELLE CANTEY - DIRECT EXAMINATION

1 Q So just to try to understand, do you believe that
2 you saw something thrown over the fence?

3 A I do, yes. I do recall that it was either
4 dropped or thrown; however, it was across the top, and
5 I mentioned that that evening to the investigating
6 officers.

7 Q Let's close the loop and we'll come for more
8 detail. Did you bring what you saw to the attention of
9 law enforcement?

10 A I did.

11 Q How did you do that?

12 A Because there was a lot of neighbors from our
13 development as well trying to see what was going on, I
14 realized that I had a hole in my wall, and that was the
15 reverberation, the bullet coming through and how
16 blessed I was, for one thing, to still be there. So I
17 called an officer over to the chain link fence, and
18 mentioned we had a stray bullet, to look through my
19 plants and they would see a bullet hole. Also during
20 that investigation I mentioned to the officer that I
21 thought I saw him drop a gun. At that point, when I
22 saw it, I didn't know what had happened, and through
23 the course of the neighbors and finding out that there
24 had been a shooting.

25 Q So when you say -- I know you referenced the

MICHELLE CANTEY - DIRECT EXAMINATION

1 report you gave to law enforcement, you referenced what
2 you said appears to be a gun, I want to clarify that.
3 Did you see what was a gun, or are you assuming it is a
4 gun and you don't know what was thrown?

5 A That's it. I'm assuming it is a gun. I don't
6 know what is thrown. I know something left his hand
7 and went over the fence area to the other property.

8 Q Let me show you a couple of pictures in evidence.
9 I think these previously have been admitted as State's
10 42, 44, State's 45 and 46. I think they were
11 previously identified as the Defendant's clothing. Do
12 you recognize any of those by chance?

13 A All I can tell you is it was black, dark
14 clothing. It could have been that jacket, or could
15 have been another jacket with that hoody aspect. I
16 just remember he had something around his neck. So it
17 was definitely dark black, I mean.

18 Q In your report you recognize it was black
19 clothing with red trim?

20 A Yes. My report stipulates black clothing, red
21 trim.

22 MR. HIXSON: Beg the Court's indulgence.

23 (A brief pause in the proceedings.)

24 MR. HIXSON: Nothing further. Thank you. See if
25 Charles Barr has any questions.

MICHELLE CANTEY - CROSS-EXAMINATION

1 THE COURT: Mr. Barr.

2 CROSS-EXAMINATION

3 BY MR. BARR:

4 Q The person you say you saw attempting to scale
5 the fence or get up to the top to throw something over,
6 did you ever see the person's face?

7 A It was a side view. I just happened to look out
8 with the reverberation and hearing people. At the
9 time, the person happened to be scaling the fence, or
10 doing whatever. So I just saw the side. He turned as
11 soon as he came to the ground and went towards
12 37th away from me. So I never saw full face. It was
13 purely from the side.

14 Q You were interviewed by officers with the Myrtle
15 Beach Police Department concerning what you saw. Were
16 you ever shown any photographs of any persons?

17 A No, sir.

18 Q Now, I noticed when you were testifying under
19 direct examination you mentioned that you only saw the
20 person's clothing and the clothing was black, and then
21 Mr. Hixson mentioned to you that you had given a
22 statement with red trim?

23 A Yes, sir. My report reflected it was black and
24 red trim. You know, it is three years later so you
25 recall the darkness of the day, ice and a storm was

MICHELLE CANTEY - CROSS-EXAMINATION

1 coming up, and it was just dark clothing, that is what
2 I recall three years ago versus what I gave the day of
3 the incident.

4 Q So you were not able to ascertain the height or
5 maybe the physique of the person that you saw?

6 A No. It was just a black male. I couldn't tell
7 you 5'6" or 5'4".

8 Q So you can't identify the person, and was not
9 able to identify the person?

10 A No, sir.

11 Q All right. When you saw this person trying to
12 scale the fence, how long after -- approximately --
13 after you heard the last shot?

14 A I can't tell you exactly because it was so
15 quickly. You heard the sounding of the bullet and then
16 the reverberation of the building, and then hearing
17 neighbors outside that caused me to look down the alley
18 or out my window that was opened, which was the sliding
19 glass door, as far as the blinds, to see what was going
20 on. In looking to see what was going on, that is when
21 I noticed a gentleman trying to scale the fence or
22 climb to the top of it.

23 Q So you could hear the neighbors -- you could hear
24 noise coming from?

25 A Outside of my condo. I heard people talking. I

MICHELLE CANTEY - CROSS-EXAMINATION

1 couldn't tell what they were saying. It was muffled
2 noises with people.

3 Q Now, were you able to look from your condo -- if
4 you are looking straight down the alley almost to the
5 dead-end, were you able to see any persons congregating
6 in that area?

7 A Not in the alley area. This was purely -- I
8 mean, honestly, immediately after it happened, the
9 reverberation of the wall, then I happened to look down
10 the alley. Basically, I was looking out of my window
11 to see what was going on and happened to catch sight
12 down the alley of the male trying to scale the fence,
13 which was totally -- almost as if I'm looking down the
14 alley here or the row, that is how it was with someone
15 trying to scale the fence.

16 Q And after --

17 A Then --

18 Q After the reverberation of your wall, no more
19 gunshot sounds?

20 A No, sir. It could have been, but the
21 reverberation was in that end, so I can't tell you. I
22 just know we heard a couple different gunshots -- or I
23 did, and then the reverberation of the wall.

24 MR. BARR: Thank you. Nothing further.

25 THE COURT: Anything further, Mr. Hixson?

MICHELLE CANTEY - REDIRECT EXAMINATION

1 MR. HIXSON: Briefly.

2 REDIRECT-EXAMINATION

3 BY MR. HIXSON:

4 Q After you saw the individual with the dark color
5 with red trim scale or throw something over the fence,
6 did you see which direction the individual went?

7 A I think I may have stated earlier he came down to
8 the ground and ran away from me down 37th.

9 Q Back towards the red car in that photograph?

10 A Yes.

11 MR. BARR: Judge, I would move to strike the last
12 statement that Counsel made concerning the red car.

13 THE COURT: I'll deny the motion.

14 MR. HIXSON: Nothing further. May we excuse her
15 from her subpoena?

16 THE COURT: You may. Do you have any further
17 need for this witness?

18 MR. HIXSON: No, sir.

19 THE COURT: Do you need her, Mr. Barr?

20 MR. BARR: She can be excused.

21 THE COURT: You are released from your subpoena.

22 THE WITNESS: Thank you.

23 MS. WALTER: State calls Corporal Harlow.

24 (KENNETH HARLOW, having been duly sworn,
25 testified as follows:)

KENNETH HARLOW - DIRECT EXAMINATION

1 WITNESS: My name is Kenneth Wayne Harlow,
2 Junior. H-A-R-L-O-W.

3 DIRECT-EXAMINATION

4 BY MS. WALTER:

5 Q How are you employed?

6 A Employed by the City of Myrtle Beach Police
7 Department.

8 Q What is your rank?

9 A Current rank is patrol first class.

10 Q Were you working for the Myrtle Beach Police
11 Department on January 27, 2014?

12 A Yes, ma'am, I was.

13 Q And did -- directing your attention to sometime
14 at 4:30 in the afternoon, did you get called to the
15 area of [REDACTED] 37th Avenue North in Myrtle Beach?

16 A I did hear a call coming out in regards to,
17 obviously, a serious situation, which I responded since
18 I was in the general area, yes.

19 Q When you responded to the scene -- first of all,
20 were you working alone or with a partner?

21 A Special kind of partner, I have a K-9.

22 Q This K-9 partner what is his name?

23 A Roscoe.

24 Q Did you and Roscoe respond to the scene?

25 A Yes.

KENNETH HARLOW - DIRECT EXAMINATION

1 Q What did you see when you first responded to the
2 scene?

3 A When I arrived on scene, there were a couple
4 other officers that got there prior to me. The scene
5 was still not completely under control, make sure
6 everything was preserved. So I made sure everything
7 was safe and started securing the scene where I secured
8 the AR-15 on the ground.

9 Q So when you pulled up, are you able to tell us
10 any of the officers you saw there?

11 A I know that Shane Owens and Mackin was.

12 Q Do you recall where Officer Mackin was when you
13 pulled up?

14 A Not directly, no. I can't give you the exact
15 position.

16 Q I'll show you what is previously admitted as
17 State's Exhibit 1. Is this the scene you pulled up to?

18 A Yes.

19 Q [REDACTED] 37th Avenue North, can you tell us to the
20 best your recollection where you pulled up?

21 A It would generally be in here.

22 Q Almost to the property to the east --

23 A Correct, the car was parked somewhere here.

24 Q And you got out of the car, so you were parked
25 over here?

KENNETH HARLOW - DIRECT EXAMINATION

1 A Correct. Yes, ma'am.

2 Q Did you go towards [REDACTED]?

3 A Yes. Yes.

4 Q You said that you -- the scene was not full --

5 MR. BARR: May we approach?

6 (Whereupon, a bench conference was had.)

7 Q (MS. WALTER) You said when you first arrived at
8 the scene, you took initiative control of the
9 environment?

10 A Yes. I wanted to make sure everyone was safe and
11 get EMS as quick as possible.

12 Q You mentioned you stood over an AR, can you tell
13 us where you saw it when you got on scene?

14 A You have a parking lot there, and there were
15 couple of cars parked closer to 37th, and it was
16 laying -- I made sure I got over to it and made sure
17 everyone was away from it and secured it, basically not
18 touching it, just preserving the area around it until
19 we can get crime scene there.

20 Q I'm showing you what is admitted as State's 2.

21 A Yes.

22 Q Is this a fair and accurate representation of the
23 scene when you arrived?

24 A Yes. I mean, obviously there was people around,
25 but, yes, the car -- I definitely remember the car.

KENNETH HARLOW - DIRECT EXAMINATION

1 Q And where was the AR in relationship to what is
2 depicted on Exhibit 2?

3 A I can't give you exactly where it was. It was
4 generally in the area of the car.

5 Q So showing you what was previously admitted as
6 State's Exhibit 4; do you recognize that?

7 A Yes.

8 Q Is this the AR you stood guard over?

9 A Yes.

10 Q Is that just at the back of the red Crown
11 Victoria?

12 A Yeah, that is the red Crown.

13 Q State's 2?

14 A Yes.

15 Q So from the time that you got there and noticed
16 the AR, how long -- well, what finally made you move
17 from standing guard over the AR?

18 A I did not move until another officer arrived on
19 scene because I'm not -- the magnitude of the case,
20 something like laying on the ground, I'm not going to
21 leave it.

22 Q And the condition that it is depicted in State's
23 4 with the magazine out, that is how it was when you
24 found it, saw it?

25 A Yes. Yes.

KENNETH HARLOW - DIRECT EXAMINATION

1 Q While you were standing there, did you make note
2 of any other type of evidence that you would want to
3 draw someone's attention to?

4 A Yes, I noticed spent shell casings, yes, ma'am.

5 Q I'm going to show you what is marked as State's
6 Exhibit 10 without showing them to the jury, 11, 12 and
7 13; do you recognize what is depicted in those photos?

8 A Yes, ma'am.

9 Q And I'm going to go back again to State's Exhibit
10 2. Can you tell us where in State's 2 these photos
11 relate to?

12 A Yeah. We have the trashcans laying here, and the
13 shell casings here.

14 Q Can't show them to the jury.

15 A Oh, I'm sorry.

16 Q That's okay. So these pictures are reflective in
17 the areas of the photograph?

18 A Yes, ma'am.

19 Q And other than perhaps the time of day and
20 evidence markers, are those photos a fair and accurate
21 representation of what you saw when you were standing
22 guard over the AR?

23 A Yes, ma'am.

24 MS. WALTER: I ask that these be admitted,
25 State's 10 through 13.

KENNETH HARLOW - DIRECT EXAMINATION

1 MR. BARR: No objection.

2 (State's Exhibits 10-13 admitted.)

3 Q (MS. WALTER) So showing you State's 10, and I'll
4 show it to the jury, but can you describe what they
5 will be seeing?

6 A Yeah, I mean that is the area with -- let me make
7 sure I have everything. You have the shell casing
8 which -- spent shell casing, which means used shell
9 casing, laying up against the trashcans.

10 Q In the corner, is that the same red Crown
11 Victoria?

12 A Yes, ma'am.

13 Q To be clear, these little yellow tents are
14 evidence markers?

15 A Correct.

16 Q That is not something you take care of?

17 A No.

18 Q Are those normally put there by Crime Scene?

19 A Usually, yes, ma'am.

20 Q And then this is in the corner, the red Crown
21 Victoria?

22 (Published to the jury.)

23 Q (MS. WALTER) So then State's Exhibit 11, 12 and
24 13, are these just showing the actual spent cartridge
25 casings you saw?

KENNETH HARLOW - DIRECT EXAMINATION

1 A Yes, ma'am.

2 Q Again, you did not put the evidence markers
3 there?

4 A Correct, I did not.

5 Q And for State's Exhibit 11, the fired cartridge
6 casing right there, Exhibit 12 kind of next to it and
7 then --

8 A I just remember them next to the trashcan, yes,
9 ma'am.

10 Q Did you notify Crime Scene or someone else what
11 you saw?

12 A Yes.

13 Q Now, after someone came and relieved you from
14 guarding the AR, did you -- were you assigned another
15 task at this crime scene?

16 A Yes, I was.

17 Q What was that?

18 A A commanding officer on scene -- we learned that
19 something was possibly thrown over a fence. My K-9 is
20 certified for using what is called "article search."
21 Article search is basically to locate something that
22 does not belong in an area. If you have -- in the
23 simple -- to try to explain it to you a little bit
24 further, so if you have an area that is grass and
25 something is thrown in there and does not belong there,

KENNETH HARLOW - DIRECT EXAMINATION

1 grass or dirt, keys, guns, wallet, does not matter,
2 he'll stop, stare and squat next to it and not touch
3 it, just lock in.

4 Q Is that what you call "an alert"?

5 A Yes, ma'am.

6 Q So Roscoe would lock in on whatever he finds and
7 sits?

8 A Correct.

9 Q And that is how you recognize he's found
10 something?

11 A Correct. Yes, ma'am.

12 Q So, again, let's go back to State's 1. Can you
13 tell the jury where you and Roscoe were conducting this
14 search?

15 A There is a fence that runs between these two, and
16 it was this side of the fence, is what I was advised to
17 use the dog to clear the area. So we start here and
18 work all the way down the fence.

19 Q When you say "this side of the fence," for the
20 record, that is the west side?

21 A Yes, ma'am, the side of 616 37th Avenue North,
22 yes, ma'am.

23 Q Did you and Roscoe search all along the wooden
24 fence?

25 A Yes. Basically, we conducted an article search

KENNETH HARLOW - DIRECT EXAMINATION

1 all the way down the fence, yes.

2 Q Did Roscoe find anything?

3 A Yes, he did.

4 Q If you could, show us on Exhibit 1.

5 A It was in this general area back here.

6 Q Back in the 37th Avenue?

7 A Yes.

8 THE COURT: Could you have him mark that?

9 A With my initials?

10 Q (MS. WALTER) Yeah, just put an "X" with your
11 initials.

12 A (Witness complied.)

13 Q You indicated that it was the corner of 616
14 37th Avenue.

15 (Published to the jury.)

16 Q (MS. WALTER) Can you tell us what it was that
17 Roscoe alerted to?

18 A I didn't understand -- didn't handle it, but it
19 kind of looked like a ball of saran wrap, green leafy
20 substance and a white powder that looked like cocaine.

21 Q Didn't touch it?

22 A I didn't touch it or do anything. I had another
23 officer secure that while I took Roscoe and made sure
24 everything else was checked and put back up.

25 Q Who was the other officer?

KENNETH HARLOW - DIRECT EXAMINATION

1 A Officer Ammons.

2 Q So approaching you.

3 (A brief pause in the proceedings.)

4 Q (MS. WALTER) Showing you 21 and 22, and without
5 showing them to the jury, can you tell us what is in
6 the photo?

7 A That is what it looked like.

8 Q By Roscoe?

9 A Yes, ma'am.

10 Q Other than maybe the time of day and the evidence
11 marker, is that a fair and accurate representation of
12 how it looked when Roscoe found it?

13 A Yes, ma'am.

14 MS. WALTER: I ask that these be admitted.

15 MR. BARR: We object on the grounds that it is
16 irrelevant to this prosecution.

17 THE COURT: All right.

18 MR. BARR: This is in addition to the earlier
19 objection.

20 THE COURT: We'll put it on the record fully on
21 the next break. They are admitted, 21 and 22.

22 (State's Exhibits 21 and 22 admitted.)

23 MS. WALTER: Can I publish?

24 MR. BARR: Additionally, it would be our
25 position --

1 THE COURT: Take the jury out.

2 (The jury exits at 2:40 p.m., and the
3 following is heard out of the presence of the jury.)

4 THE COURT: All right, Mr. Barr.

5 MR. BARR: Judge, assuming that it is cocaine, it
6 wouldn't become relevant until we had someone to say
7 it is cocaine. The mere fact that they found a piece
8 of paper outside of a fence -- and that is all he can
9 say it is -- the fact that it is a piece of paper does
10 not mean -- it has no relevance to this case.

11 THE COURT: Mr. Barr, how would you suggest then
12 that we ever make a drug case if you can't testify as
13 to what you found, where it was found and how it
14 relates to the Defendant, which we've already heard
15 that, before there is an analysis? In fact, that
16 foundation must be laid before there can be an
17 analysis.

18 MR. BARR: Judge, he can testify what he found,
19 but he can't put it in evidence, because no one knows
20 what it is. Now, once --

21 THE COURT: He hadn't put it in evidence, Mr.
22 Barr. What he put in evidence or offered in evidence
23 is the photograph of its location where it was when he
24 saw it. You are saying it is not relevant. Well,
25 relevant evidence is evidence that tends to have -- or

1 has a tendency to make the existence of any fact that
2 is of consequence to the determination of the action
3 more probable or less probable than it would have been
4 without the evidence. That is a rule. That is the
5 401 definition of relevance. All relevant evidence is
6 admissible in this state unless it is excluded by 403.
7 403 would exclude -- among other things -- if its
8 probative value is substantially outweighed by its
9 prejudice to the Defendant. Of course if it is
10 prejudicial to the Defendant it wouldn't be offered
11 otherwise. The key is whether probative value is
12 substantially outweighed by that prejudice. Well, in
13 this case it has very high probative value because it
14 goes to what was found, where it was found and the
15 charge, that being possession with intent to
16 distribute. Now, that is highly probative. Tell me
17 how it is excludable?

18 MR. BARR: I'm not even arguing with 403, because
19 this evidence doesn't even get next to 403. The
20 simple fact of the matter is a piece of paper found
21 outside of a fence does not in and of itself make it
22 relevant.

23 THE COURT: If you can't tie it in, it has to go
24 to probative value and you can move to exclude under
25 403, but we are not at that point. That is what he is

KENNETH HARLOW - DIRECT EXAMINATION

1 attempting to do. He said he found this ball wrapped
2 in saran wrap, that is what it was, so we'll have to
3 hear whether or not that is an illegal drug. I don't
4 know whether it is or not at this juncture, but we
5 have hear it. He says this is what I found. Let's
6 see what it is.

7 I'll admit it, the photographs. The photographs
8 show nothing more than something on the ground. Let's
9 see what the evidence will show. Bring the jury in.
10 I think you were seeking to publish those?

11 MS. WALTER: Yes.

12 THE COURT: Very well, you may.

13 MS. WALTER: Thank you, Your Honor.

14 (The jury enters at 2:45 p.m., and the
15 following is heard in the presence of the jury.)

16 THE COURT: You may publish.

17 MS. WALTER: Thank you, Your Honor.

18 Q (MS. WALTER) To orient the jury, 21 is just a
19 further out view of what Roscoe found, and 22 is a
20 closeup?

21 A Yes, ma'am.

22 Q And that corner of the building, is that the
23 building you pointed out on Exhibit 1?

24 A Yes, ma'am.

25 (Exhibits 21 and 22 published to the jury.)

KENNETH HARLOW - DIRECT EXAMINATION

1 Q Neither you nor Roscoe touched these items?

2 A Correct, did not touch them.

3 Q You simply turned over scheduling of the items to
4 Officer Ammons?

5 A Yes, ma'am.

6 Q Did that essentially conclude your activity on
7 this case?

8 A Yes.

9 MS. WALTER: Court's indulgence.

10 Q (MS. WALTER) You told the jury briefly about
11 Roscoe's training to be an article dog?

12 A Searcher, yes.

13 Q So can you tell us about that? Is there any
14 perimeter on how recently something has to have been
15 thrown?

16 A Odor is usually ways that he'll locate. Like I
17 said, it is -- you have to think of something that if
18 you have a grassy open field and someone runs or throws
19 anything, drops anything, keys, wallet, it does not
20 matter, Roscoe will go across a ground grid pattern to
21 cover as much area, and my job is to make sure he
22 checks all locations. When he gets to that and smells
23 something that doesn't belong in that location, he will
24 sit and stare and lock on it. He won't come off of it.

25 Q Going back to Exhibit 1 again, you said you did a

KENNETH HARLOW - CROSS-EXAMINATION

1 grid search. Can you show us where you started?

2 A We started up on this end and worked back this
3 direction. All I knew was something -- what was told
4 to me was possibly a firearm was thrown over the fence,
5 so either way I don't want anything in my city that
6 doesn't belong there and I need to make sure we find
7 all evidence to the case. We started here, and
8 basically you take him and have him on a long leash,
9 about 15 feet, and it's back and forth, back and forth
10 covering as much of an area down there as we can.

11 Q When you say "started here," so you started sort
12 of down where the cars were parked?

13 A Correct, in this general area because this is
14 obviously where evidence was located, so I want to
15 check as much area as possible.

16 Q And then the long lead grid search went all the
17 way back to where you found the drugs?

18 A Yes, ma'am.

19 Q Did you notice anything else?

20 A No.

21 Q And did Roscoes notice anything else?

22 A No.

23 MS. WALTER: Nothing further for this witness.

24 THE COURT: Mr. Barr.

25 CROSS-EXAMINATION

KENNETH HARLOW - CROSS-EXAMINATION

1 BY MR. BARR:

2 Q As I understand it, you initially did -- I
3 thought you said you did a report?

4 A Did a what? I'm sorry, sir?

5 Q You did an incident report?

6 A I did a supplemental to the report, yes, sir.

7 Q Yes, uh-huh. And I thought you said in that
8 supplemental that initially you did the grid search and
9 Roscoe didn't indicate to you that there was anything
10 out of place?

11 A I'm not following you, sir. We worked down that
12 fence, and when we got to the back of that area, he
13 alerted.

14 Q He alerted?

15 A Yes.

16 Q And you found -- and you found.....

17 A I think it is the one on top.

18 Q Over here?

19 A Yes, sir.

20 Q All right. You found -- this is tagged as --
21 entered into evidence as State's 22. That is what you
22 found over there?

23 A Yes. That is what Roscoe alerted to, yes, sir.

24 Q So now you were not on the apartment side of the
25 fence, you were on the opposite side?

KENNETH HARLOW - CROSS-EXAMINATION

1 A Correct. If you pull up the map I'll show you
2 where I was at exactly, but there is a fence that runs
3 down, and I was on the opposite side.

4 Q You were on the opposite side of the fence?

5 A Yes, sir.

6 Q And you had been briefed by some other providers
7 and police officers before you started your search?

8 A Yes. I mean, if I'm going to learn of a
9 situation where there is possibly further evidence,
10 that is what the K-9 is trained to do. If there is
11 something thrown for an article search, yes, I'm
12 absolutely going to use him to check that area.

13 Q And you were told -- you were looking for
14 something that appeared to be a gun, were you told
15 that?

16 A Yes, I was.

17 Q Now, even though you did not have any details of
18 the description of what it was that you were actually
19 looking for, other than it appeared to be a gun?

20 A Yes. Understand, I wasn't the investigating
21 officer. I stood by with a gun, because I'm the only
22 K-9 on scene, another officer came to me and said
23 something was thrown over a fence, and my dog is
24 trained to detect and locate those items so, therefore,
25 I used him to go down through there. I didn't speak to

KENNETH HARLOW - REDIRECT EXAMINATION

1 whoever saw. I was just advised something was thrown
2 over the fence.

3 Q When you found No. 2, you didn't stop searching,
4 did you? Or did you stop searching?

5 A Yes, because that is almost at the back. I
6 basically ran to the end all the way to the back of the
7 fence, all the way down that fence that separates the
8 two buildings. I made sure that whole area was cleared
9 with my K-9.

10 Q Didn't appear to be a gun, but you felt that you
11 found whatever was over there that shouldn't have been
12 over there?

13 A Yes, sir.

14 Q And how long had this been -- how long had No. 2
15 been over there; do you know?

16 A I don't know.

17 Q A day, two days or even longer?

18 A Sir, I can't give you an exact specific time.

19 MR. BARR: Thank you.

20 REDIRECT-EXAMINATION

21 BY MS. WALTER:

22 Q If you recall, if there is something that would
23 refresh your recollection, what time did you deploy
24 Roscoe?

25 A I can't give you an exact time. Like I said, as

KENNETH HARLOW - REDIRECT EXAMINATION

1 all of the events were going on, I wasn't looking down
2 at a watch or anything like that. Like I said, once I
3 was relieved of securing the evidence, the AR, that is
4 when, like I said, the commanding officer asked me --
5 because I was the only K-9 on scene -- we learned
6 something was possibly thrown over the fence.

7 Q I believe Mr. Barr asked you if you filled out
8 any reports in this case?

9 A Yes. There was a K-9 report.

10 Q You filled out one of those every time you
11 deployed Roscoe?

12 A Yes.

13 Q Would that report refresh your recollection as to
14 what time you deployed him?

15 A Yes, it should have all the times -- the general
16 times from the incident, yes, ma'am.

17 MR. BARR: I'll object to this line of
18 questioning. I asked him about an incident report, I
19 made no mention of time. It is our position that this
20 is beyond the scope of cross-examination.

21 MS. WALTER: Your Honor, he just asked how long
22 it had been out there, so if we use the circumstantial
23 evidence of Ms. Cantey's testimony that someone threw
24 something over the fence and what time he deployed
25 Roscoe --

RHETT AMMONS - DIRECT EXAMINATION

1 THE COURT: I'll allow it then.

2 MS. WALTER: May I approach, Your Honor?

3 THE COURT: Yes.

4 (State's Exhibit 48 marked.)

5 Q (MR. BARR) I'll show you State's 48 for
6 identification only; do you recognize that?

7 A I'm just verifying. I just want to make sure
8 that I give you the correct information.

9 Q Do you recognize it first?

10 A Yes. I mean, it is a K-9 report from the system
11 we use, yes, ma'am.

12 Q Would that refresh your recollection as to what
13 time Roscoe was deployed on that day?

14 A Yeah.

15 Q And if it would, then I need you to -- you can
16 read it over and then turn it over and let me know when
17 you are done.

18 A It shows my deploy time around 17:46.

19 Q So 5:46 p.m.?

20 A Roughly, yes, ma'am.

21 MS. WALTER: Nothing further, Your Honor.

22 MR. BARR: Nothing further.

23 THE COURT: You may step down.

24 MS. WALTER: State calls Rhett Ammons.

25 (RHETT AMMONS, having been duly sworn,

RHETT AMMONS - DIRECT EXAMINATION

1 testified as follows:)

2 THE CLERK: Please state your full name and spell
3 your first and last for the Court.

4 THE WITNESS: My name is Matthew Rhett Ammons,
5 M-A-T-T-H-E-W, A-M-M-O-N-S.

6 DIRECT-EXAMINATION

7 BY MS. WALTER:

8 Q Shall I call you Mr. Ammons?

9 A You can call me Rhett.

10 Q Where were you working in January 2014?

11 A Myrtle Beach Police Department.

12 Q How long have you been with Myrtle Beach at this
13 point?

14 A Since 2011.

15 Q When did you leave the Myrtle Beach Police
16 Department?

17 A End of this last month.

18 Q So you were on duty January 27, 2014 around 4:30
19 in the afternoon?

20 A Yes, ma'am.

21 Q Did you respond to a call at [REDACTED] 37th Avenue
22 North in the Myrtle Beach vicinity of Horry County?

23 A Yes, ma'am.

24 Q If you recall, what brought you to that location?
25 What was the call?

RHETT AMMONS - DIRECT EXAMINATION

1 A As Officer Harlow -- I heard it come over the
2 radio with the severity of the call. I was in the
3 area, so I responded. Due to shots being fired, I
4 responded.

5 Q When you got to the location, were there other
6 officers already on scene?

7 A Yes, ma'am.

8 Q If you recall, do you know who was on scene?

9 A When I first pulled up, I could see Officer
10 Mackin was there, and on my computer screen I could see
11 Officer Shane Owens should have been on scene as well.

12 Q So when you first pulled up --let me use State's
13 Exhibit 1. Is this an accurate reflection of the
14 scene?

15 A Yes, ma'am.

16 Q Where did you pull up when you got to the scene?

17 A Wherever I pulled up, I pulled right along here,
18 which would have been southeast of the location.

19 Q Once you pulled up onto the scene, what did you
20 do?

21 A I immediately got out of my vehicle, approached
22 Officer Mackin and asked him what he needed as far as
23 assistance. There was still numerous people on scene
24 who were very irate and aggravated. I began to calm
25 them down and back them away to attempt to preserve the

RHETT AMMONS - DIRECT EXAMINATION

1 crime scene.

2 Q What was Officer Mackin doing when you saw him?

3 A He was standing there with a black male with
4 dreads with cuffs on at the back of the four-door
5 burgundy sedan.

6 Q I'm showing you State's Exhibit 2. Does this
7 depict where you saw Officer Mackin?

8 A Yes, ma'am. He would have been at the trunk of
9 the vehicle.

10 Q The red Crown Victoria?

11 A Yes.

12 Q And you said you saw a black male with dreadlocks
13 in custody?

14 A Yes, ma'am.

15 Q And I recognize it is three years, did you have
16 much interaction with the male at that time?

17 A I did not, no, ma'am.

18 Q Are you able to recognize him in the courtroom?

19 A I couldn't say if that is him or not because of
20 the time plus the drastic change in hair.

21 Q So once you ascertained -- did Officer Mackin
22 need your help at that point?

23 A He was asking to back people away, as I started
24 to do as well, and that is the only assistance he
25 needed right then.

RHETT AMMONS - DIRECT EXAMINATION

1 Q When you were doing that, did you have a view
2 down the alley?

3 A Yes, ma'am.

4 Q That runs behind the building?

5 A Yes, ma'am.

6 Q Were you able to see anyone down that alley?

7 A Yes. Past a couple air conditioning units there
8 was a black male laying on the ground with a white
9 female over him, along with Officer Owens as well.

10 Q From what you were able to see, were there other
11 people in that alley?

12 A I don't recall. That was the main thing. I just
13 wanted to keep an eye on Officer Owens and make sure he
14 was safe.

15 Q As you were doing that -- and we understand the
16 scene was somewhat chaotic -- are you doing the best
17 you can at that point to keep the scene secure?

18 A Yes, ma'am.

19 Q While looking down the alley, did you see anyone
20 picking up any items?

21 A No, ma'am, no one -- nothing was picked up.
22 Everything was -- all the attention was to the
23 victim.

24 Q Did you later come to find out there was a
25 shotgun in the alley?

RHETT AMMONS - DIRECT EXAMINATION

1 A Yes, ma'am.

2 Q Did anyone that you saw ever approach that
3 shotgun?

4 A No, ma'am.

5 Q And no one picked up anything from the ground of
6 that alley?

7 A No, ma'am.

8 Q At some point, a little later in the day, were
9 you tasked with helping Officer Harlow search the other
10 side of the fence?

11 A Yes, ma'am, I was.

12 Q And you heard him testify at -- tell us from your
13 perspective what you saw during the search, or what you
14 did during the search.

15 A I spoke with the neighbor who earlier testified
16 that the bullet had gone through her door -- her wall.
17 She told me at that time that she thought that
18 something --

19 MR. BARR: Objection to hearsay.

20 MS. WALTER: It goes to course of action.

21 THE COURT: It isn't offered for the truth of the
22 matter asserted but to establish his state of mind and
23 why he reacted, what he did, so I'll allow it.

24 Q (MS. WALTER) Ms. Cantey told you?

25 A She told me that she believed that something had

RHETT AMMONS - DIRECT EXAMINATION

1 been thrown over the fence to the west of the location
2 that the victim was found. At that time I informed the
3 commanding officer on scene, who in turn informed
4 Officer Harlow. Once he proceeded to get his partner,
5 Roscoe, out of his vehicle, I was able to -- because of
6 the fact he has to pay so much attention to Roscoe,
7 another officer is to stay with them for their safety.
8 I stayed with him the entire time as he did the grid
9 search towards the back of the building, which is
10 towards the north of it. At that time, an item was
11 located.

12 Q So, again, you heard him testify that the whole
13 area on the west side of the fence was searched?

14 A Yes, ma'am.

15 Q After Roscoe found something, what did you do
16 with respect to that item?

17 A Once Roscoe alerted to it, I stayed at that
18 location so Roscoe was able to be put back into the
19 vehicle.

20 Q I'm showing you what is admitted as 21 and 22.

21 A Yes, ma'am, that is the item that was located.

22 Q And other than the evidence marker, same
23 condition as --

24 A Yes, ma'am. It was not touched by Officer
25 Harlow, the dog or myself.

RHETT AMMONS - DIRECT EXAMINATION

1 Q You never touched these items?

2 A No, ma'am.

3 Q At what point did you stop standing guard over
4 the items?

5 A Once CSI got there, placed those markers and
6 photographs depicted.

7 Q CSI, Crime Scene Unit?

8 A Crime Scene, yes, ma'am.

9 Q After the marker was placed and photographs
10 taken, did you have anything to do with that particular
11 item?

12 A I assisted with obtaining that item and carrying
13 it back to the crime scene van just to assist.

14 Q Crime Scene Unit person who will be testifying
15 shortly, would you say she was fairly busy that day?

16 A Yes, ma'am.

17 Q Were you simply helping her to transport
18 evidence?

19 A Yes. That is the only evidence, just so that it
20 wouldn't have been left there for her to come back
21 to it.

22 Q Did you see her place the marker and photograph
23 it?

24 A Yes, ma'am.

25 Q And then from there you took it to the Crime

RHETT AMMONS - CROSS-EXAMINATION

1 Scene van or vehicle and secured it in there, or she
2 did?

3 A Yes, ma'am.

4 Q Did that essentially conclude your involvement in
5 this case?

6 A Yes, ma'am.

7 MS. WALTER: Nothing further. Answer any
8 questions Mr. Barr has.

9 A Yes, ma'am.

10 CROSS-EXAMINATION

11 BY MR. BARR:

12 Q What is your job title?

13 A At that time I was a patrol officer.

14 Q Patrol officer. And being a patrol officer, did
15 that also include investigative responsibilities at
16 crime scenes?

17 A Yes, sir.

18 Q Did you discharge that function in regards to
19 this crime scene? Were you doing any investigation?

20 A Of course. That is part of being an officer.

21 Q So you did some investigation?

22 A Yes, sir. Speaking with the witness, Ms. Cantey,
23 who spoke earlier and putting that together with the
24 officers that needed to be -- as far as Officer Harlow,
25 the K-9 officer, so the best assets can be utilized.

RHETT AMMONS - CROSS-EXAMINATION

1 Q Did you assist anyone in locating what would
2 otherwise be -- or could turn out to be physical or
3 forensic evidence?

4 A As I just testified, I assisted Officer Harlow in
5 finding the substance that was located at the back of
6 the house.

7 Q Did you put any of the little tabs in place where
8 the evidence is?

9 A No, sir. No, sir. That is not my job.

10 Q Not your job?

11 A No, sir.

12 Q Did you cover the entire crime scene?

13 A What do you mean "cover," sir?

14 Q Did you inspect the crime scene looking for
15 evidence?

16 A No, I did not inspect the entire crime scene.
17 No, sir. Again, that is not my job.

18 Q So you just specifically dealt with the K-9
19 officer and what he felt he had located?

20 A Yes, sir.

21 Q You never had occasion to -- you never had an I
22 indication to go -- the alleyway which extends to the
23 front of the building where the incident took place,
24 you know -- you are familiar with that?

25 A Yes, sir.

RHETT AMMONS - CROSS-EXAMINATION

1 Q And of course at the very end of the alleyway
2 which would be going west, was where the red Crown
3 Victoria was; would you agree?

4 A At the end of the alley.

5 Q Parked in the parking lot?

6 A Yes, sir. Yes, sir.

7 Q And then there was a truck parked close beside
8 it, but just a little bit further pointing north?

9 A A little closer to the building, yes, sir.

10 Q If you go down the alleyway to approximately
11 where the tape was, there is another alleyway that goes
12 southeast?

13 A Yes, sir.

14 Q And that alleyway that goes southeast goes
15 directly up to the apartment where Michael Rogers
16 lived?

17 A Correct.

18 Q Did you ever have an occasion to go in that area?

19 A No, I did not go up the stairs or in that
20 alleyway, no, sir, in the alleyway.

21 Q So from where Mr. Rogers' apartment was, which is
22 supposedly where the -- were you aware about the
23 scuffle in the apartment?

24 A Not in the apartment, no, sir.

25 Q You weren't aware of that?

KELLY MATTESON - DIRECT EXAMINATION

1 A No, sir.

2 Q All right. Well....

3 MR. BARR: Thank you. Nothing further.

4 MS. WALTER: Nothing further, Your Honor.

5 THE COURT: You may step down.

6 MS. WALTER: I ask that he be excused from the
7 subpoena.

8 THE COURT: Any objection?

9 MR. BARR: No, sir.

10 THE COURT: You are released from the subpoena.

11 MS. WALTER: State calls Kelly Matteson.

12 (KELLY MATTESON, having been duly sworn,
13 testified as follows:)

14 THE CLERK: State your full name and spell your
15 first and last name for the Court.

16 THE WITNESS: Kelly Lynn Matteson, K-E-L-L-Y,
17 M-A-T-T-E-S-O-N.

18 DIRECT-EXAMINATION

19 BY MS. WALTER:

20 Q Good afternoon, Ms. Matteson.

21 A Good afternoon.

22 Q Where do you work now?

23 A Self-employed. I work in Cleveland, Ohio.

24 Q Where did you work prior to that?

25 A Myrtle Beach Police Department.

KELLY MATTESON - DIRECT EXAMINATION

1 Q How long were you with the police department?

2 A Approximately 12 years.

3 Q When did you leave?

4 A The end of December 2015.

5 Q So you were working on January 27th, 2014 with
6 the police department?

7 A Yes.

8 Q What was your position there?

9 A I was street crimes officer.

10 Q What does that mean?

11 A I would respond to crime scenes to document,
12 preserve evidence, process.

13 Q On this particular day, directing your attention
14 to around 4:30, were you on duty yet?

15 A No, ma'am.

16 Q Was there another crime scene officer on duty?

17 A Yes.

18 Q Who was that?

19 A Michelle McSpadden.

20 Q At some point, did you assist Officer McSpadden
21 with the crime scene duties?

22 A Yes, ma'am.

23 Q Can you tell us what you did?

24 A I arrived on scene. I met with Officer
25 McSpadden. She briefed me of the situation. I

KELLY MATTESON - DIRECT EXAMINATION

1 assisted her with some measurements, a search of an
2 apartment. That is what I did at the scene.

3 Q What are some of the duties -- I'll get into that
4 with her. You've heard Officers Harlow and Ammons
5 testify about items that were found on the west side of
6 the fence?

7 A Yes, sir.

8 Q At some point, did you have anything to do with
9 those items?

10 A After I left the scene back in the laboratory,
11 yes.

12 Q What did you do with those items?

13 A When we arrived back at the laboratory, I weighed
14 and inventoried the narcotics.

15 Q So when you say you weighed and inventoried,
16 could you just describe -- let me show you State's
17 Exhibit 22. Do you recognize -- maybe not in the
18 situation it is now, but do you recognize the item in
19 State's 22?

20 A Yes.

21 Q What do you recognize it to be?

22 A A baggy containing green leafy substance and a
23 rock substance, white in color.

24 Q Is that the baggy that you opened and inventoried
25 back at the police department?

KELLY MATTESON - DIRECT EXAMINATION

1 A Yes, ma'am.

2 Q So when you -- can you describe the process of
3 what you do? So you have this balled up piece of
4 plastic, what do you do and how do you package it?

5 A I open it up. There is two separate baggies. I
6 put the baggies out onto a table. I put on gloves. I
7 took a sample of the marijuana. I put into a field
8 test kit, which tested positive for THC, and then I
9 also went and took a sample of the substance in the
10 other bag and put it into a field test kit, which
11 tested positive for cocaine.

12 Q I recognize that you didn't -- you are not part
13 of the chain of custody to get the items to SLED, but
14 did you -- after you did that, analyzed parts and got a
15 weight, did you repackage them in any way?

16 A No, I did not.

17 Q Did someone else repackage them?

18 A Yes.

19 Q Who would have repackaged them?

20 A Michelle McSpadden.

21 Q Once you inventoried them, what did you do with
22 them?

23 A We were working together at the lab at the time.
24 We were multi-tasking on several different things. So
25 when we completed our tasks, all of the evidence was

KELLY MATTESON - DIRECT EXAMINATION

1 collected, secured and placed into a crime scene
2 evidence room.

3 Q To eventually be processed by evidence staff?

4 A At a later date she put it into a SLED package,
5 which was sent off to SLED.

6 Q SLED being South Carolina Law Enforcement
7 Division?

8 A Yes, ma'am.

9 Q You didn't have any part in that?

10 A No, ma'am.

11 Q So your essential part of this case is opening
12 the item depicted in State's 22, sampling the two
13 different substances and inventorying them?

14 A Correct.

15 Q If you recall, and understanding it's been some
16 time, do you recall the inventory you took? You told
17 us a green leafy substance and off-white rock
18 substance; do you recall how the off-white rock
19 substance was packaged or how much of it there was?

20 A Yes, ma'am. There was approximately 11 separate
21 small baggies. The baggies were tied into a knot and
22 the substance was approximately the same weight in each
23 of the bags, which is very common when you distribute
24 narcotics.

25 Q So each of the 11 rocks was separately tied in a

KELLY MATTESON - CROSS-EXAMINATION

1 little bag?

2 A That would be correct.

3 MS. WALTER: Nothing further.

4 CROSS-EXAMINATION

5 BY MR. BARR:

6 Q Did you do a collective weight on the items?

7 A Yes, sir.

8 Q 2.4 grams?

9 A I believe that is correct, yes.

10 Q Now, when it was repackaged by Ms. McSpadden, you
11 were present?

12 A I want to make myself clear. When I weighed and
13 tested the substance, it was altogether. Not
14 everything needed to be exactly repackaged. It was
15 placed into crime scene evidence room, and then at a
16 later date she took it out and put it in a SLED BEST
17 packet.

18 Q You analyzed it?

19 A Yes, sir.

20 Q And you left it out to be repackaged by
21 McSpadden?

22 A No, sir.

23 Q Tell me how it was.

24 A Okay. So I took the substance out. We're in the
25 laboratory together. I tested it, and then I left it

MICHELLE McSPADDEN - DIRECT EXAMINATION

1 in the packaging that it was in, because we would take
2 all of the evidence at the same time, walk it into the
3 laboratory and -- sorry, excuse me, into the crime
4 scene evidence room and secure it. We both were
5 present. We were both in the room at the same time.
6 We never left the evidence unattended.

7 MR. BARR: Thank you, ma'am.

8 A Thank you.

9 THE COURT: All right. Anything further?

10 MS. WALTER: No, Your Honor, I would ask that she
11 be excused from her subpoena.

12 MR. BARR: I don't have an objection.

13 THE COURT: You are excused and released from
14 your subpoena. Thank you.

15 MS. WALTER: I didn't know if you wanted to take
16 a break or?

17 THE COURT: Do you have something relatively
18 short? Let's take a break then now.

19 (The jury exits at 3:17 p.m., and the
20 following is heard out of the presence of the jury.)

21 THE COURT: All right. We have everyone here.
22 We're ready.

23 (The jury enters at 3:31 p.m., and the
24 following is heard in the presence of the jury.)

25 THE COURT: We have everyone back in the

MICHELLE McSPADDEN - DIRECT EXAMINATION

1 courtroom. Call your witness.

2 MS. WALTER: State calls Michelle McSpadden.

3 (MICHELLE McSPADDEN, having been duly sworn,
4 testified as follows:)

5 THE CLERK: State your full name and spell your
6 first and last name.

7 THE WITNESS: M-I-C-H-E-L-L-E, M-C-S-P-A-D-D-E-N.

8 DIRECT-EXAMINATION

9 BY MS. WALTER:

10 Q You have a computer open now. What are you
11 looking at?

12 A I have my report from this incident just for
13 refreshing my memory.

14 Q So if you kind of close the lid on your computer,
15 when you need your recollection refreshed, let me know
16 and we'll deal with it then.

17 A Okay.

18 Q Where are you currently employed?

19 A Horry County Coroner's Office.

20 Q How long have you been with them?

21 A Since September of 2014.

22 Q Where did you work before that?

23 A Myrtle Beach Police Department.

24 Q I'm going to ask you to slow down so the jury can
25 hear you. How long were you with the Myrtle Beach

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1 Police Department?

2 A For 14 years.

3 Q So safe to say you were working on January 27,
4 2014?

5 A I was.

6 Q What was your position at that time?

7 A Crime scene investigator.

8 Q What does a crime scene investigator do, in
9 general?

10 A Our job is to respond to a scene where there is
11 physical evidence, any kind of evidence, process the
12 evidence, collect it, some analysis, depending what it
13 is.

14 Q Do you have any type of special education or
15 training that helps you with your job?

16 A Sure. I have lots of specialized training from
17 evidence just collection to fingerprinting,
18 fingerprinting exams, blood spatter analysis.

19 Q Did you respond to a scene at [REDACTED] 37th Avenue
20 North in the Myrtle Beach section of Horry County in
21 January 27, 2014?

22 A I did.

23 Q And that was in your capacity as a crime scene
24 officer?

25 A Yes.

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1 Q Can you tell us what you did when you first got
2 there?

3 A Okay. One of the first jobs would have been to
4 start marking evidence. The scene would have been
5 secured at that point by the other officers already
6 there. So start marking evidence and photographing the
7 scene as we found it.

8 Q How do you know where there is evidence?

9 A In some cases it is pointed out by officers. For
10 instance, Officer Harlow testified about standing over
11 a rifle, so that would have been pointed out to me. In
12 other cases they would have pointed me down the
13 alleyway and say the scene happened down there, and I
14 would have searched it myself and locate anything that
15 didn't seem to belong there.

16 Q Once you -- and I just want to try to get through
17 your procedure. So do you walk around the whole scene
18 first and then come up with a plan of attack, or just
19 start putting markers down?

20 A You kind of make a plan as you go. It is not --
21 there are a lot of things to be done at a scene so you
22 are pulled in a lot of different directions, but you
23 kind of move on the fly.

24 Q When you say you put markers down, that's those
25 little tents that we've been seeing all over the place?

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1 A Yes, the little yellow tents with numbers on
2 them.

3 Q You are the one that puts them down?

4 A I'm the one that puts them down.

5 Q Excellent. And another thing that you do would
6 be to take pictures of the crime scene?

7 A Yes.

8 Q And in this particular instance, could you tell
9 me in general descriptions what areas you consider the
10 crime scene that you processed or took photos or
11 anything?

12 A Sure. The area in front of [REDACTED] 37th North, it
13 was a parking lot, there was a couple of vehicles. The
14 alleyway that leads down the west side of that
15 building. There was an apartment that was considered
16 part of the crime scene, the victim's apartment. There
17 was also another crime scene investigator who helped me
18 with Ms. Cantey's apartment, and then pointed out to me
19 by Officers Harlow and Ammons the area on the other
20 side of the fence where there was some evidence
21 located.

22 Q Do you, as part of your job, create a crime scene
23 diagram?

24 A I did.

25 Q I'm going to show you -- I really need to start

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1 wearing my glasses -- I think that's 23.

2 MS. WALTER: Your Honor, these have all been
3 shown to Mr. Barr and provided to him prior to trial.

4 Q I'm showing you what is marked as State's Exhibit
5 23; do you recognize this?

6 A I do. It is a diagram that I completed that
7 shows the location of the evidence where we put the
8 little tents.

9 Q Okay. And you created this?

10 A I did.

11 Q So it is a fair and accurate representation of
12 the scene, as far as you know?

13 A It is missing one item that just looks like it
14 didn't get printed off on the top, Item 2.

15 Q That is the drugs?

16 A That would be the drugs, yes.

17 MS. WALTER: Your Honor, I would ask that this be
18 admitted.

19 THE COURT: Mr. Barr?

20 MR. BARR: Judge, I'm going to object to it going
21 into evidence. I don't have a problem using it to
22 illustrate, but it is not drawn to scale, and
23 certainly not accurate.

24 THE COURT: Let's see how she testifies. I'm
25 concerned as to what else may be on there. Let me

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1 hear you describe it, okay. Let's hear her testimony,
2 okay. She can certainly reference it.

3 MS. WALTER: Okay. Okay. So is it acceptable to
4 publish to the jury for now?

5 THE COURT: Yes.

6 Q (MS. WALTER) Just to orient us, this is [REDACTED]
7 37th Avenue North?

8 A Yes.

9 Q So then 37th Avenue runs along the west to east
10 on the bottom portion of the crime scene?

11 A Yes.

12 Q And then the legend up at the top, those numbers
13 correspond to the numbers on the diagram?

14 A Yes.

15 Q Are those numbers also -- that corresponds to the
16 little yellow tents?

17 A They, yes.

18 Q Perfect.

19 THE COURT: All right. I'm going to overrule the
20 objection, and I'll allow you to put it into evidence.

21 MS. WALTER: Thank you, Your Honor.

22 (State's Exhibit 23 admitted.)

23 THE COURT: It is basically nothing more than a
24 chart showing where the evidence markers are?

25 MS. WALTER: Correct.

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1 THE COURT: Okay. I'll admit it.

2 MS. WALTER: It's just rather than all the
3 different pictures.

4 THE COURT: Okay.

5 Q (MS. WALTER) So you mentioned the AR -- this is
6 previously admitted Exhibit 4; is this the AR that
7 Officer Harlow pointed out?

8 A It is.

9 Q And you collected that?

10 A I did.

11 Q I'm showing you what is admitted as State's 29;
12 do you recognize that?

13 A Yes.

14 Q And is that --

15 A That is the rifle that we found -- or was pointed
16 out to me at the back of the Crown Victoria in the
17 parking lot.

18 Q And Exhibit 29A?

19 A Yes.

20 Q What is Exhibit 29A?

21 A The magazine for that weapon.

22 Q When you recovered Exhibit 29 and 29A, can you
23 describe their condition as to whether or not they were
24 loaded with ammunition?

25 A Okay. The weapon was on the ground with the

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1 magazine laying next to it. The weapon was unloaded.

2 I believe there were rounds in the magazine.

3 Q Is it standard practice when you recover a weapon
4 to unload the ammunition, or is that required for
5 Property and Evidence --

6 A Right. Yes. We would have unloaded it first to
7 inventory it. Once we got back to the lab, we would
8 have unloaded the magazine to inventory the number of
9 rounds that were in it. It's not necessarily standard
10 to unload it at the scene.

11 Q I'm sorry, I didn't mean at the scene, but at
12 some point you unloaded it?

13 A Yes.

14 Q I'm showing you what is marked as State's
15 Exhibit 40.

16 A These appear to be the ammunition that were
17 removed from the magazine once we got back to the lab.

18 MS. WALTER: Your Honor, I ask that Exhibit 40 be
19 admitted and published.

20 MR. BARR: No objection.

21 THE COURT: Without objection.

22 (State's Exhibit 40 admitted.)

23 Q (MS. WALTER) If you need to refer to your notes
24 that's fine, but do you know approximately how many
25 rounds are in Exhibit 40?

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1 A I believe there was 16. If you don't mind, I'll
2 check.

3 (A brief pause in the proceedings.)

4 A Sorry, just scrolling through. Yes, 16 unfired
5 rounds.

6 Q Then State's 23, so if we go to the legend, No.
7 6, the rifle; No. 7, the magazine. You are showing
8 them on the left corner. Ford Crown Victoria, is that
9 accurate (indicates)?

10 A Yes.

11 Q So that is where they were recovered from?

12 A Yes.

13 Q And we heard Officer Harlow testify, and you've
14 testified, that he pointed out some evidence. So
15 showing you previously admitted Exhibits 10, 11, 12 and
16 13; did you take these photographs?

17 A I did.

18 Q And so are these a fair and accurate
19 representation of what you saw?

20 A They are.

21 Q And did you touch the evidence in any way prior
22 to photographing them?

23 A No. It would have been photographed, marked and
24 collected.

25 MS. WALTER: Court's indulgence. Your Honor, I'm

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1 going to do this in front of the jury because this box
2 is sealed. We're going to open this.

3 MR. BARR: Uh-huh.

4 MS. WALTER: This is marked as State's Exhibit
5 No. 47, but we need to open it because there is
6 individual items inside.

7 Q (MS. WALTER) Now, the tags on the outside; do
8 you recognize those tags?

9 A They are marked as ammunition.

10 Q Where would they come from?

11 A They were generated by Myrtle Beach Police
12 Department to -- as a way to inventory evidence that is
13 stored in Property and Evidence.

14 Q And then I'm going to show you -- we'll mark this
15 as we go.

16 (State's 47A, 47B and 47C marked.)

17 Q 47B; do you recognize that?

18 A It is marked as Evidence Marker No. 5, fired
19 shell casing from a rifle.

20 Q Similar to the ones that you found at the scene?

21 A Yes.

22 Q And the same with 47C and 47B.

23 A These are the shell casings recovered by the side
24 of trashcans.

25 Q Is there anything on those packages that would

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1 tell you where they correspond to with the crime scene?

2 A Yes. In the description area I have put that
3 this one was covered, for example, for Marker 3, Tent
4 No. 3. 3, 4 and 5 is marked on the box, which one came
5 from where.

6 Q So 47B is Marker 3; 47C, Marker 4, and 47B (sic)
7 is Marker 5?

8 A Yes.

9 Q After collecting the evidence that was at that
10 very first part of the crime scene, where did you go
11 next? Would you have worked your way down the alley?

12 A Yes.

13 Q And I kind of used both of these. So we see on
14 your crime scene sketch this kind of almost like a
15 little breezeway between the buildings?

16 A Yes.

17 Q Where does that correspond to on here?

18 A It is covered, but it's right along here.

19 Q So you're indicating on the photo a little break
20 in the two buildings just above where it says [REDACTED]
21 37th Avenue North?

22 A Yes.

23 Q And would you have taken -- put down little
24 yellow tents taken overall photographs?

25 A Yes.

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1 Q And as you are doing that, are you relying just
2 on what other officers are telling you, or are you
3 doing your own scan?

4 A I would have done my own scan as I moved through
5 that scene, and I spent quite a bit of time on that
6 scene.

7 Q Do you know how long you spent at that scene?

8 A I can tell you, if you give me a moment.

9 (A brief pause in the proceedings.)

10 A Took the first photographs at about 5:40,
11 5:50 p.m., and we worked that alleyway until about
12 8:15 p.m., so a little over two hours.

13 Q (MS. WALTER) Had you received any type of
14 briefing prior to beginning kind of your survey of the
15 scene?

16 A Yes. I spoke to the -- I think she was a
17 lieutenant at the time -- Lieutenant Brock, who was the
18 on-scene ranking officer, who briefed me just about the
19 general layout.

20 Q Does that help you form how you will go about
21 looking for evidence?

22 A Sure. I certainly don't want to destroy anything
23 as I move, so if there is a particular place that I
24 need to pay special attention to, I move slower through
25 those areas.

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1 Q Had you been told that there had been a shooting?

2 A Yes.

3 Q So does that inform what type of evidence you are
4 looking for?

5 A Sure. We're look for weapons, we're looking for
6 ammunition, yes.

7 Q Do you look for different types of ammunition
8 dependent on what type of weapon either was involved or
9 you find?

10 A Sure.

11 Q So in this case you had already recovered -- or
12 at some point you recovered the AR, so what type of
13 evidence does that cause you to look for?

14 A We would be looking for shell casings and any
15 fired rounds. The AR rounds are small in diameter, so
16 we look for anything that is -- a small diameter round.

17 Q Do you look for possible places where a fired
18 round could have struck?

19 A Sure.

20 Q Did you find anything in this case?

21 A A couple of them. Ms. Cantey already testified
22 about the hole in the wall in her apartment, so there
23 was that. And there was also in that breezeway a chip
24 in the brick that could have been from an ammunition
25 strike, we can't say that for sure, but appeared to be

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1 fresh damage.

2 Q And I'm going to show you what is admitted as
3 State's Exhibit 28.

4 A Yes.

5 Q Is that consistent with the AR round?

6 A Yes.

7 Q And that is the bullet, as far as you know, that
8 is recovered -- the projectile that was recovered from
9 Ms. Cantey's apartment?

10 A Ms. Cantey's apartment, correct.

11 Q So as you work your way down the alley, just kind
12 of tell us what else you see. You mentioned a strike
13 mark. What else do you see of note in the alley?

14 A We located an unfired rifle round. It was
15 marked, I believe, No. 13. There was a shotgun that
16 was found near the first of the two buildings, the
17 front building at ■ 37th North. Beyond the shotgun
18 there was a fairly substantial area that was red in the
19 dirt that appeared consistent with a pool of blood.
20 Near there we found two unfired shotgun rounds and a
21 hat that had some blood stains on it, and then the
22 previously mentioned unfired rifle round and the defect
23 in the wall.

24 Q Did you find any unfired shotgun shells?

25 A Two of them, yes.

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1 Q And I'm showing you what is admitted as State's
2 Exhibit 30; do you recognize that?

3 A The shotgun that was found in the alleyway.

4 Q And as you do -- at some point during your
5 investigation, did you try to determine whether the
6 shotgun was loaded or unloaded at the time it was
7 recovered?

8 A Unloaded.

9 Q No unfired bullets in there?

10 A Correct.

11 Q Or shotgun shells. Were there any spent shotgun
12 shells?

13 A None.

14 Q Shotgun was completely empty?

15 A It was.

16 Q And, again, as you went down the alley, you took
17 pictures prior to collecting them, you think?

18 A I did.

19 MS. WALTER: I believe those are admitted,
20 Exhibit 7 and 16?

21 THE COURT: Is that correct, Ms. Dahl?

22 COURT REPORTER: That is correct.

23 MS. WALTER: Thank you.

24 Q (MS. WALTER) So I'm showing you Exhibit 7. Can
25 you just describe for the jury -- did you take this

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1 picture?

2 A I did take a picture.

3 Q And what is it meant to show?

4 A It is the alleyway leading -- we're standing
5 facing Ms. Cantey's apartment away from those two
6 vehicles -- they would have been to our back -- looking
7 down the alleyway.

8 Q What items of evidence are marked in this
9 photograph?

10 A Item 13, this was an unfired rifle round. Item
11 9, this was the pool of blood. 10 is an unfired
12 shotgun round, and I could see 12 is a hat that has
13 blood stains, and this would be the shotgun.

14 Q So when you arrived on scene, that is where the
15 shotgun was in relation to the pool of blood?

16 A Correct. The other items in that photograph are
17 remnants of the medical people who were treating the
18 victim. So you will see like a collar, C-collar, but
19 that was not evidence.

20 Q Okay.

21 MS. WALTER: Your Honor, if I may approach.

22 Q I'm showing State's Exhibit 20 and 36.

23 A Yes. This was the unfired rifle round from
24 Marker 13, and it's still packaged the way we would
25 have packaged it at the crime scene.

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1 Q So did you do that packaging?

2 A Yes.

3 Q And what does Exhibit 20 depict?

4 A The unfired rifle round at Marker No. 13.

5 Q So, essentially, what is there, is in here
6 (indicates).

7 A Yes.

8 MS. WALTER: Your Honor, I would move to admit
9 items -- Exhibits 20 and 36 and publish them?

10 MR. BARR: Without objection.

11 THE COURT: Without objection.

12 (State's Exhibits 20 and 36 admitted and
13 published to the jury.)

14 Q (MS. WALTER) So going back to your -- going back
15 to your crime scene diagram, 13 would be the unfired
16 cartridge we just saw?

17 A Yes.

18 Q You talked about a possible bullet strike in the
19 wall.

20 MS. WALTER: I'm approaching with Exhibit 17,
21 Your Honor.

22 Q If you can, look at this before we show it to the
23 jury and just tell me if you recognize that picture?

24 A I do. I took the photograph.

25 Q And what is that meant to depict?

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1 A It is meant to depict the defect in a wall that
2 appeared to be fresh.

3 MS. WALTER: Your Honor, I ask that Exhibit 17 be
4 admitted and published?

5 MR. BARR: Yes, sir, no objection.

6 THE COURT: Without objection.

7 (State's Exhibit 17 admitted.)

8 Q (MS. WALTER) As we're looking at Exhibit 14 -- I
9 mean Marker No. 14 -- I'll show the jury first.

10 A Sure.

11 Q Just to orient us, what is in this direction?

12 A Ms. Cantey's apartment would be in this
13 direction, so this would be 38th Avenue North area.
14 This is that breezeway we talked about between the
15 buildings, and then behind us would have been the
16 parking lot.

17 Q There appears to be some sort of substance or
18 stain on the concrete there?

19 A It appears to be blood, but I can't say.

20 Q It wasn't tested or marked?

21 A No.

22 Q And this scene also shows Marker No. 11?

23 A Marker 11 was an unfired shotgun shell, kind of
24 in the breezeway.

25 Q I'm showing you previously admitted 34 and 35.

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1 A These were the shotgun shells recovered from
2 Markers 10 and 11.

3 Q So the shotgun shells that you just spoke of?

4 A Yes.

5 Q And you testified also that you collected the
6 items that Item No. 2 -- or Marker No. 2 that Officer
7 Ammons and Harlow testified to?

8 A Correct.

9 Q And we've seen those. You mentioned there was an
10 apartment that was considered part of the crime scene.
11 Did you take photos there as well?

12 A I did.

13 Q I just have two there.

14 MR. BARR: I've seen them.

15 MS. WALTER: Your honor, I'm referring to Exhibits
16 8 and 9.

17 A These are photographs that I took in the
18 apartment.

19 Q So I'm showing you Exhibit 8; what does that
20 depict?

21 A Living room area of the amendment.

22 Q And Exhibit 9?

23 A And the kitchen area.

24 MS. WALTER: I move to admit these and publish to
25 the jury.

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1 MR. BARR: No objection.

2 THE COURT: Without objection, 8 and 9.

3 (State's Exhibits 8 and 9 admitted.)

4 Q (MS. WALTER) I believe you said there was a
5 different crime scene officer that went into Ms.
6 Cantey's apartment?

7 A Yes.

8 Q Did that -- we have heard testimony in addition
9 from Officer Ammons and Officer Harlow and also
10 Ms. Matteson about the drugs that were recovered at
11 Marker No. 2?

12 A Yes.

13 Q Can you describe for me what happens when you
14 recover something that is believed to be a controlled
15 substance?

16 A Okay. We would have weighed and inventoried all
17 of the items once we got them back to the lab. So
18 let's back up. You do not leave a controlled substance
19 the same way you leave a firearm, like Officer Harlow
20 testified to. So there would have been someone there
21 present with it until we could have locked it in one of
22 the vehicles. That was done, it was locked in my
23 vehicle until we got back to the crime scene lab.

24 At that point, all of the evidence was brought
25 in. Officer Matteson talked about having weighed and

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1 inventoried that evidence, which she did while I was
2 there. We were working side-by-side in the lab.
3 After that is complete, it is locked into a secured
4 evidence storage area, the same with all other
5 evidence, though there is a safe in that storage area
6 that is just for drugs. So the drugs go into a safe.

7 At some point later, they are tested. Officer
8 Matteson would have done a field test, a presumptive
9 test in the lab, but at some point later there is a
10 confirmation test. Marijuana testing is done at
11 Myrtle Beach Police Department, other drugs are not
12 tested at Myrtle Beach Police Department. We just
13 don't have the training or technology to be able to do
14 that; that is done by the State Law Division by their
15 chemists.

16 Q What we heard Ms. Matteson testify to, the
17 off-white rock substance, 11 rocks, is that something
18 sent to SLED?

19 A It is.

20 Q How would the packaging change from when it was
21 found on the ground to when it got submitted to SLED?

22 A Once it -- once it was found on the ground, there
23 were little small baggies. The rocks were packaged
24 into little small baggies that were tied with a knot,
25 like a corner of a Ziploc bag is kind of what they

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1 looked like. And then once we -- when I packaged them
2 to send off to SLED, there is an envelope they go in.
3 They would have been heat sealed into plastic and then
4 placed into an envelope with some paperwork that lets
5 SLED know what they need to do with them.

6 Q We heard talk about a SLED BEST kit; can you
7 describe what that is?

8 A That is the BEST kit. So it's an envelope with
9 some paperwork that says the details of the case and
10 what kind of testing needs to be done, and those 11
11 baggies with the rock-like substance would have been
12 heat sealed and placed into that envelope. That's the
13 BEST packet.

14 Q The BEST packet, is that assigned an unique
15 number, almost like a control number?

16 A It is, yes. Each packet has its own number.

17 Q So that number will never be duplicated?

18 A As far as I know, that's correct, yeah.

19 Q And that is how you can track it from Myrtle
20 Beach police custody through SLED and back?

21 A Correct. Yes.

22 Q I'm approaching with Exhibits 31, 32 and 33. If
23 you could look at 31, 32 and 33; do you recognize that?

24 A Yes.

25 Q Starting first with State's Exhibit 31, what do

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1 you recognize that to be?

2 A The baggies recovered from the fence, so Item
3 No. 2.

4 Q So those are the baggies that the drugs
5 originally --

6 A That they originally came in, yes.

7 Q The packaging it is in now, manila envelope,
8 where does that come from?

9 A Once we got back to the lab, and Officer Matteson
10 un-packaged, unwrapped things, she would have placed
11 them into this envelope.

12 Q And what about Exhibit 32?

13 A That SLED BEST packet has this tear-off tab with
14 that control number we talked about, that is what is
15 inside this.

16 Q So you just pulled out another manila envelope
17 that has marking on it; do you recognize that?

18 A Officer Matteson's markings, and this is where
19 she originally sealed the white rock-like substance
20 before it was placed into the SLED packet.

21 Q And the second item you took out was the plastic
22 tab?

23 A Yes.

24 Q So now turning your attention to Exhibit 33, what
25 do you recognize Exhibit 33 to be?

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1 A This is the SLED BEST packet, the SLED packet.

2 MS. WALTER: Your Honor, I would ask that these
3 exhibits be admitted and published.

4 MR. BARR: Subject to our previous objection.

5 THE COURT: All right. Very well. It is
6 admitted.

7 MS. WALTER: So that was 31, 32 and 33.

8 (State's Exhibits 31, 32 and 33 admitted.)

9 Q (MS. WALTER) As part of your duties as crime
10 scene officer, did you ever have any contact with the
11 defendant?

12 A I did. Before I responded to the scene, the
13 defendant was taken into custody by Officer Mackin and
14 transported from the scene to the police department. I
15 had contact with him once he was at the police
16 department.

17 Q Do you see him in court today?

18 A I think so. I haven't seen the defendant in
19 three years, but I would say that the man seated at the
20 front table would be the defendant.

21 Q Is there anything markedly different about his
22 appearance when you saw him the day of the incident?

23 A I don't recall.

24 Q So when you saw him when he was in custody, did
25 you collect any evidence from him?

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1 A I did, a couple of things. A gunshot residue
2 kit, I would have done that on his hands, and then I
3 would have collected his clothing after he changed into
4 clothing provided by the detention center.

5 Q When you collected his clothing, did you also
6 take photographs of the clothing?

7 A Not at the time. That was done when we got back
8 to the lab.

9 Q But, eventually, you took the photographs?

10 A Yes.

11 Q So I'm showing you previously admitted 42, 44, 45
12 and 46; is that the clothing that you recovered from
13 the defendant?

14 A It is, yes.

15 Q You said you did a gunshot residue test for the
16 defendant; can you describe what you do for that?

17 A The gunshot residue test has little sticky pads
18 and they are -- I would stick them all over the back
19 side of the right hand. There would be another sticky
20 pad that would be stuck on the front side of the right
21 hand. We would do one for the back of the left, and
22 one for the front of the left hand as well. They are
23 processed by SLED. They are looking for barium
24 antimony and lead, all three of those things are
25 present in gunshot residue.

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1 Q So a different pad for each side of both hands,
2 so four different pads?

3 A Correct.

4 Q Exhibit 41. I'm approaching with what has been
5 marked as State's 41, which we need to open. Do you
6 recognize one of the labels?

7 A Yes.

8 (State's Exhibits 41A and 41B marked.)

9 Q So A and B. And you have selected what I have
10 now marked as Exhibit 41A; do you recognize that?

11 A I do, it is the gunshot residue test kit for the
12 defendant.

13 Q How do you recognize it as that? Do you mark
14 anything on it?

15 A His name is marked at the top, my name as the
16 collecting officer, the agency, my badge number and the
17 case number for this incident.

18 MS. WALTER: Your Honor, I move to admit Exhibit
19 41A.

20 MR. BARR: Judge, does that include findings?

21 MS. WALTER: No.

22 MR. BARR: Just the kit?

23 MS. WALTER: This is the kit.

24 MR. BARR: No objection.

25 THE COURT: All right.

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(State's Exhibit 41A admitted.)

1
2 Q (MS. WALTER) Once a gunshot residue kit is
3 collected, what do you do with it?

4 A Simply packaged by us and sent to SLED.

5 Q Does it go through Property and Evidence?

6 A All evidence goes through Property and Evidence.

7 Q So pretty much everything that we've spoken of so
8 far, and everything we yet have to speak of, every
9 evidence that you collect goes through Property and
10 Evidence?

11 A It does.

12 Q Is it their responsibility then if things are to
13 be sent to SLED for testing to transport it to SLED?

14 A They do that, yes.

15 Q Did you assist Ms. Matteson with searching the
16 defendant's car pursuant to a search warrant?

17 A Yes.

18 Q Where was that done?

19 A It was down in the Crime Scene lab. We have a
20 garage door we can roll up, and our lab is big enough
21 for a car.

22 Q Did you photograph that process as well?

23 A Yes.

24 Q Approaching with Exhibits 14 and 15; do you
25 recognize those items?

MICHELLE McSPADDEN - DIRECT EXAMINATION

1 A I do.

2 Q Starting first with Exhibit 14, what does it
3 depict?

4 A This is the trunk of the red Crown Victoria, and
5 it is opened.

6 Q Do you recall how you opened the trunk?

7 A I don't.

8 Q And was there anything in the trunk of interest
9 to you?

10 A There was a case for a rifle.

11 Q And now I'm showing you State's 15. Is this the
12 case you found in the trunk?

13 A It is the case.

14 Q Was there anything else in the case?

15 A We can see a gun lock, and we can see two more
16 magazines, and then some boxes of ammunition and
17 paperwork for the rifle.

18 MS. WALTER: Your Honor, I would ask that 14 and
19 15 be admitted and published, and I don't think Mr.
20 Barr had an objection.

21 MR. BARR: No, sir.

22 THE COURT: All right. They are admitted.

23 (State's Exhibits 14 and 15 admitted.)

24 Q (MS. WALTER) I'll approach with Exhibits 37, 38
25 and 39, and I believe Ms. McSpadden will probably have

MICHELLE McSPADDEN - DIRECT EXAMINATION

1 to look at her notes.

2 A I will.

3 Q Do you recognize those exhibits?

4 A I do.

5 Q Start first with 37; what do you recognize that
6 to be?

7 A It is marked as rifle ammunition from the Crown
8 Victoria trunk.

9 Q So that would have been recovered pursuant to the
10 search we discussed?

11 A Correct.

12 Q Is that what would have been shown in the boxes?

13 A Yes.

14 Q Do you know how many rounds of ammunition were in
15 those boxes?

16 A There were three boxes. In the first box there
17 was 20; second box, 11 and then the third box, 20.

18 Q You also recovered the two magazines in the rifle
19 case?

20 A Yes.

21 Q So looking at Exhibit 38; do you recognize that?

22 A It is marked as the magazine with 25 rounds.

23 Q And exhibit 39?

24 A Another magazine with 16 rounds.

25 Q So over 50 rounds, if you do the math?

MICHELLE McSPADDEN - DIRECT EXAMINATION

1 A Yes.

2 MS. WALTER: I ask 37, 38 and 39 be admitted.

3 MR. BARR: No objection.

4 THE COURT: Without objection.

5 (State's Exhibits 37, 38 and 39 admitted.)

6 Q (MS. WALTER) Do you know whether there was any
7 ballistic evidence or other items of evidence
8 recovered during the autopsy, not by you, but by
9 someone else?

10 A Yes, there was.

11 Q Would you have had anything to do with packaging
12 that?

13 A I would have completed the SLED request to have
14 that analyzed, but the packaging would have been done
15 by Officer Stair.

16 Q Excellent. We have heard testimony that the
17 shotgun was -- the unfired shotgun shells that were
18 recovered were filled with bird shot. With that
19 information in mind, does that cause you to look for
20 anything in particular in the area where that shotgun
21 was found?

22 A Sure. Bird shot is small pellets, little metal
23 pellets, so when that round is fired, you don't have a
24 bullet, per se, that comes out the end of that shotgun,
25 but you have multiple little pellets. We didn't find

MICHELLE McSPADDEN - DIRECT EXAMINATION

1 any of the pellets, nor did we find, for example, holes
2 in the fence where it looked like there would be a
3 strike from that kind of ammunition.

4 Q When a shotgun is fired, the shotgun shells that
5 we would have seen, and I'm using Exhibit 35, if this
6 is fired, in addition to the pellets you might look
7 for, is there any other part of this round?

8 A Yes. There is something called "wadding" that
9 would also come out of that. We did not find anything
10 that looks like that either. A lot of time it looks
11 like a cross shape, we did not find that.

12 Q So you found no evidence of birdshot anywhere in
13 the scene that you looked?

14 A Did not, nor did we find any fired shotgun
15 rounds.

16 Q And you didn't see any wadding anywhere?

17 A Correct.

18 Q Did you ever look at a van that was across the
19 street from the scene?

20 A I don't recall looking at a van across the street
21 from the scene.

22 Q We covered a lot. Does that essentially cover
23 your involvement, or is there anything I forgot to ask
24 you?

25 A We did search both of the vehicles. That is the

MICHELLE McSPADDEN - CROSS-EXAMINATION

1 only other thing I have in my notes that we haven't
2 talked about, is the second vehicle.

3 Q Second vehicle being the victim's truck?

4 A Yes, inside that vehicle.

5 Q What did you find inside that vehicle?

6 A Inside that vehicle there were some more of that
7 white rock-like substance on a dinner plate on the
8 floorboard, a razor, some scales and a cell phone.

9 Q All in that same area?

10 A Yes.

11 Q Was the victim's truck, that was also searched
12 pursuant to a warrant, or consent?

13 A One of those two, I don't recall which.

14 Q Does that about cover it?

15 A That's it.

16 Q That's a lot that you've done, but that covers
17 it?

18 A That covers it, I believe.

19 MS. WALTER: No further questions.

20 CROSS-EXAMINATION

21 BY MR. BARR:

22 Q You said you searched the victim's truck?

23 A Yes.

24 Q And you found what?

25 A Some more of that white rock-like substance that

MICHELLE McSPADDEN - CROSS-EXAMINATION

1 tested positive for cocaine, about a half a gram.

2 Q In the victim's truck?

3 A Yes.

4 Q And you found scales?

5 A Yes.

6 Q As far as your job as crime scene investigator,
7 were you assisted by any other person in conducting the
8 investigation of the crime scene we're talking about
9 here?

10 A Officer Matteson assisted me with the forensic
11 side.

12 Q But as far as the person in charge, you were the
13 person in charge?

14 A Of forensics.

15 Q So when you say "forensics," tell the ladies and
16 gentlemen of the jury, what do you mean by "forensics"?

17 A "Forensics" means anything that has to do with
18 the evidence. I would not have done interviews with
19 the witnesses. I wouldn't have, you know -- that would
20 have been separate officers that did that.

21 Q So when you collect evidence at the crime scene,
22 you also collect evidence, I believe, that sometimes
23 has to be sent to the South Carolina Law Enforcement
24 lab to be examined?

25 A Yes, sir.

MICHELLE McSPADDEN - CROSS-EXAMINATION

1 Q And as far as the SLED map, they have various
2 departments that you send evidence to?

3 A Yes, sir.

4 Q Depending upon what the evidence is?

5 A Correct.

6 Q You send firearms to the Firearms Department,
7 material stuff to Trace, blood to Serology?

8 A That is handled by SLED itself. We package
9 everything together, and it is divided up once it gets
10 there.

11 Q And they divide it up. But they divide it up to
12 send it to the right place to have it properly
13 analyzed?

14 A Sure.

15 Q All right. Now, would you not agree -- how long
16 have you been doing this?

17 A I was there for almost 14 years.

18 Q 14 years. Would you not agree that with respect
19 to the quality of the results that you get from the
20 forensic investigation, it depends on how well the
21 crime scene is preserved?

22 A I would say that is fair.

23 Q That is a fair statement, isn't it?

24 A Sure.

25 Q In other words, if the crime scene is

MICHELLE McSPADDEN - CROSS-EXAMINATION

1 contaminated, you get contaminated evidence?

2 A Sure.

3 Q And if for some reason the crime scene has been
4 tampered with, and there are things that have been
5 moved, you can't very well find them or tag them or
6 send them to SLED, can you?

7 A That depends on what it is.

8 Q Pardon me?

9 A That depends on what it is.

10 Q Well -- well, let me give you an example of what
11 we're talking about. You didn't find any shotgun --
12 spent shotgun shells?

13 A I did not.

14 Q Now, you have not looked at any of the witnesses'
15 statements or not interviewed any of the witnesses in
16 this case, have you?

17 A No, sir.

18 Q Let me do this first. I'm not trying to say --
19 here is my problem with your diagram. I'll stand
20 around here. Now -- and this is State's Exhibit No.

21 23. The highway -- 37th Avenue is here?

22 A Yes, sir.

23 Q Out here?

24 A Yes, sir.

25 Q This is the Crown Victoria, Antwuan Nelson's

MICHELLE McSPADDEN - CROSS-EXAMINATION

1 vehicle?

2 A Yes, sir.

3 Q This Ford truck is the vehicle of Mr. Rogers?

4 A Yes, sir.

5 Q Now, this is a split level duplex here, isn't it?

6 A I didn't go in the front building, but I believe
7 it is two levels.

8 Q It is two levels. It's upstairs and downstairs.

9 There is an entranceway here?

10 A Yes, sir.

11 Q This is the alleyway we've been hearing about
12 where you have various pieces of evidence, and this is
13 the breezeway in here, No. 11. No. 11 is where -- you
14 found the shotgun shell at No. 11?

15 A Yes, sir.

16 Q If you follow the breezeway through here and turn
17 right here, this is the entrance to the split level
18 where Michael Rogers lived; is that right?

19 A Yes, sir, Michael Rogers lived in that building.

20 Q He lived in that building?

21 A Yes, sir.

22 Q Not on the ground floor, but on the second floor?

23 A Second floor I believe is correct.

24 Q Were you responsible for tagging the various
25 items?

MICHELLE McSPADDEN - CROSS-EXAMINATION

- 1 A Yes, sir.
- 2 Q You tagged Item 11, this is a shotgun shell?
- 3 A Yes, sir.
- 4 Q What was No. 13?
- 5 A Unfired rifle round.
- 6 Q Unfired rifle round. What was No. 8?
- 7 A Shotgun.
- 8 Q The shotgun. And how about 10?
- 9 A 10 was unfired shotgun shell.
- 10 Q Unfired shotgun shell. And No. 9?
- 11 A 9 is the blood.
- 12 Q The blood?
- 13 A Yes, sir.
- 14 Q The blood?
- 15 A Yes, sir.
- 16 Q How do you know that?
- 17 A It was consistent with blood. It is a red liquid
- 18 on the ground.
- 19 Q Red liquid on the ground consistent with blood?
- 20 A Yes.
- 21 Q Whose blood?
- 22 A I don't know that.
- 23 Q You don't know?
- 24 A Mr. Rogers was transported from the scene prior
- 25 to my arrival there. I was told that it is where he

MICHELLE McSPADDEN - CROSS-EXAMINATION

1 was found.

2 Q Here is my point. Do you know of anyone with the
3 Myrtle Beach Police Department have any idea whose
4 blood that is, do you?

5 A I don't remember if we had it tested for DNA.

6 Q No, ma'am, you didn't send it.

7 A Okay. Then that is where I was told Michael
8 Rogers was found. That is where medical equipment used
9 to treat him was found, so it is believed to be his
10 blood.

11 Q Is it his blood?

12 A I would say most likely it is his blood.

13 Q You don't know. The truth is you don't know if
14 that's the man's blood or not, do you?

15 A I can't say a hundred percent sure, but all the
16 evidence points to that as his blood.

17 Q Don't SLED have a serology lab?

18 A Sure.

19 Q You send blood -- when blood goes to SLED, it
20 goes to them, they separate it, and unless it involves
21 DNA, they send it to Serology to determine -- all kinds
22 of things they could determine, if you send it, but you
23 all didn't send a sample of what -- you just assumed it
24 was the man's blood, and you started calling it his
25 blood, right?

MICHELLE McSPADDEN - CROSS-EXAMINATION

1 A But SLED protocol says they do not test victim
2 blood when there is evidence at the scene saying that
3 that is the victim's blood. They didn't do DNA for
4 that purpose.

5 Q Now, of course, you don't remember the purposes
6 for which DNA or a serology test was done. You
7 determined it -- you send it to prove as evidence to
8 court -- to come to court and prove things, don't you?

9 A I'm not sure I followed you.

10 Q I mean, is that the whole purpose, you send all
11 this other stuff -- by the way, I have a box of -- bag
12 of shells here from Mr. Antwuan Nelson's rifle, a whole
13 group of them that you selected, right?

14 A Yes, sir.

15 Q And you selected them for a reason, didn't you?

16 A Sure.

17 Q Now, as far as you know, is it illegal to possess
18 any of these things?

19 A No.

20 Q It is not illegal, is it?

21 A No.

22 Q Someone said earlier, well, I can go to K-Mart,
23 and that is probably where all that came from. Of
24 course we're investigating a homicide?

25 A Yes, sir.

MICHELLE McSPADDEN - CROSS-EXAMINATION

1 Q Now, as I was saying earlier, if you come up this
2 breezeway and there is a shotgun shell here -- now, of
3 course, I can't remember who it was, but they testified
4 earlier in the day that he had a theory about how the
5 shells got scattered. What is No. 12?

6 A A hat.

7 Q Whose hat?

8 A I don't know.

9 Q If there is a hat back there, in all likelihood
10 someone was wearing it, right?

11 A Yes, sir.

12 Q From a forensic standpoint, it must have some
13 promise of having some evidentiary value, otherwise,
14 you would have it marked on here, right?

15 A It was in the alleyway in the area of the crime
16 scene.

17 Q So you sent it to SLED, and in other words you
18 wanted to see who was back there in the alleyway -- he
19 could have been someone who threw some dope over the
20 fence, but you wanted to see who was in the alleyway,
21 so you collected the hat and sent it to the SLED lab
22 and they sent it to their Trace Department, right?

23 A I have to check to see if we sent it.

24 Q I can tell you now you all didn't do it. I don't
25 know why you didn't collect it, it is over here. You

MICHELLE McSPADDEN - CROSS-EXAMINATION

1 are the crime scene investigator. As far as you know,
2 do you have anything from the trace lab with hair
3 samples, DNA or anything like that to identify who may
4 have been wearing the hat?

5 A No, sir.

6 Q Does it seem odd to you -- and I know you've
7 investigated a whole lot of these crime scenes -- well,
8 as far as you know -- you knew there was a shotgun
9 found?

10 A Yes.

11 Q And you don't know -- or did you know that
12 Mr. Nelson had claimed --

13 MR. HIXSON: Objection, it's a self-serving
14 statement if he says anything about what Mr. Nelson
15 said. He can't say what Mr. Nelson would say?

16 THE COURT: Sustain it.

17 Q (MR. BARR) Do you know that your officer -- was
18 it Barrett that talked with Mr. Nelson in his vehicle?

19 A I'm not aware of any statements made during
20 interviews. That is not part of my job.

21 Q Part of your job. So you don't know anything
22 about the facts, it is just forensics?

23 A My job is the forensics.

24 Q And, of course, you don't have any knowledge or
25 explanation as to why -- with respect to gun shell No.

MICHELLE McSPADDEN - CROSS-EXAMINATION

1 9, Shotgun No. 8, right -- isn't it shotgun No. 8?

2 A Yes, sir.

3 Q And the gun shell and another gun shell, No. 11,
4 coming back up the alley going towards Mr. Rogers'
5 house?

6 A 10 and 11 were shotgun shells.

7 Q Let me ask you one more question. Was this
8 breezeway a part of the crime scene that was corded
9 off?

10 A I don't recall where the tape was. It wasn't
11 placed by me.

12 Q Isn't it true that there was tape back here
13 somewhere?

14 A There was. I would have to refer to my
15 photographs.

16 Q Well, it is visible -- you can see it on one of
17 these exhibits, I'll show it to you.

18 A There was -- yes, in the part of the alleyway.

19 Q In the back part of the alleyway?

20 A Yes, sir.

21 Q You could just walk through the alleyway and walk
22 all around and stomp all around in the crime scene.
23 Some officers testified that there was as many as 40
24 people out here. Anything could have happened to a
25 shotgun shell, spent shotgun shell?

MICHELLE McSPADDEN - CROSS-EXAMINATION

1 MS. WALTER: Objection, calls for speculation.

2 THE COURT: I'll allow it.

3 MS. WALTER: I ask that she be allowed to answer.

4 THE COURT: Are you going to let her answer it?

5 Q (MR. BARR) Go ahead.

6 A So the question was?

7 Q Anything could have happened to it, we don't know
8 what could have happened to it?

9 A There was no other forensic evidence saying that
10 a shotgun was fired back there. There were pellets
11 found. I cannot say that there was not a shell that
12 was removed from the scene, but there is no evidence
13 that there was ever -- fired there.

14 Q You didn't find any evidence?

15 A Correct.

16 Q That doesn't mean that none didn't exist; you
17 would agree with that? You said earlier that the
18 results of the examination, the quality of the
19 examination depends on the quality of the forensic
20 scene; you told me that earlier?

21 A That's true. We spent quite a bit of time at
22 that scene there, and I feel confident we would have
23 seen evidence of a shotgun blast had it been there.

24 Q Is it the same confidence -- now tell the truth,
25 this blood, someone should have analyzed the blood.

MICHELLE McSPADDEN - CROSS-EXAMINATION

1 Someone should have taken a sample and analyzed it,
2 shouldn't they?

3 A Not according to SLED protocols, no.

4 Q Not according to what?

5 A SLED protocols.

6 Q SLED protocol. You mean in this case, where
7 someone claimed to have been shot and killed, you can't
8 even say in the whole case that this is the decedent's
9 blood, and you are saying it is not significant?

10 A SLED does not do DNA analysis on decedent's -- on
11 victim's blood when there is evidence to say that it
12 does belong to the victim. And in this case we have
13 statements from the officers saying that is where the
14 victim was located. We have the medical personnel,
15 their equipment at the scene. So there is no reason to
16 believe that it is anyone's blood other than the
17 victim.

18 Q Now, question. We've heard some other testimony
19 concerning theories about whether or not it was
20 actually blood, and I'm satisfied with the answer you
21 have given me. The shotgun that was found -- and of
22 course you don't know anything about the statements of
23 anyone who claims that they may have had a shotgun?

24 MR. HIXSON: Objection. Once again, you can't
25 disclose contents --

MICHELLE McSPADDEN - CROSS-EXAMINATION

1 MR. BARR: Judge, I'll rephrase my question.

2 THE COURT: All right.

3 Q (MR. BARR) You're familiar with a shotgun?

4 A Yes, sir.

5 Q You tagged it and had it sent to SLED?

6 A I don't recall if it went to SLED. I'll check.

7 Q Well, it didn't go.

8 A Okay.

9 Q It did not go. Do you know why it wasn't sent?

10 A There was nothing to compare it to from the
11 scene. There was no fired ammunition to compare it to.

12 Q Do you know whether or not this gun is operable?

13 A Don't know.

14 Q Do you know whether or not it has been shot
15 within the last two years?

16 A Have no way of knowing that.

17 Q Do you know whether or not it was shot within a
18 day of the day you found it?

19 A I have no way of knowing that.

20 Q And you don't know whether the firearm department
21 at SLED could tell you if this gun was shot within 24
22 hours? You don't know whether they could do that?

23 A I've never asked them to do that.

24 Q Do they have a firearms department?

25 A They do.

MICHELLE McSPADDEN - CROSS-EXAMINATION

1 Q And said all the other stuff -- someone sent it
2 to the firearm department?

3 A Yes, sir. The rifle and the fired casings were
4 sent.

5 Q Was it part of your investigation to determine
6 the owner of the gun?

7 A No, sir.

8 Q You just picked it up and turned it over to
9 someone else?

10 A It would have gone to Property and Evidence for
11 storage.

12 Q Now, the clothing -- I can't remember the exhibit
13 number -- that belonged to Mr. Nelson, was it sent to
14 SLED?

15 A It was not.

16 Q The victim -- generally there is someone from the
17 sheriff's department or police department in attendance
18 when an autopsy is done.

19 A That's correct. And there was. It was not me.

20 Q It was not you?

21 A No, sir.

22 Q It would have been somebody else?

23 A Yes, sir.

24 Q I can't remember who it was. The residue that
25 you used to take the samples from Mr. Nelson --

MICHELLE McSPADDEN - CROSS-EXAMINATION

1 A Yes, sir.

2 Q -- did you also -- or were you responsible for
3 conducting the same test with Mr. Rogers?

4 A That was done at autopsy by the crime scene
5 investigator that attended the autopsy, not done by me.

6 Q You wouldn't have done that?

7 A I would not have done that.

8 Q Of course once you do the test, you don't follow
9 up for the test results?

10 A Those go our -- the detective, the lead
11 detective. I don't know the results.

12 Q That is Mr. Clothier? He would be the lead
13 detective?

14 A I believe so, yes.

15 Q I have a few more. Back to this crime scene.
16 You don't recall ever seeing -- if I'm not mistaken,
17 there was crime scene tape, yellow tape, encompassing
18 this parking lots in front of the building?

19 A There was tape in the parking lot when I got
20 there, yes.

21 Q In the parking lot?

22 A Yes, sir.

23 Q And of course not too much happened in the
24 parking lot, did it?

25 A I can't say that.

MICHELLE McSPADDEN - CROSS-EXAMINATION

1 Q Do you recall seeing any crime scene tape back
2 here near Mr. Rogers' apartment?

3 A I don't have photographs, and I don't recall.

4 Q You said you would have been the one that put it
5 up?

6 A I did not put up the tape. I only put up the
7 evidence markers. The tape was done by another officer
8 prior to my arrival.

9 Q So as far as you know, from the time that this
10 incident occurred until whatever, the whole --
11 everyone -- public had access to all of this area --

12 MR. HIXSON: That has been asked and answered a
13 couple, two or three times.

14 THE COURT: I think so.

15 MR. BARR: Judge, well, you know.

16 THE COURT: Let's move along. Go ahead. You may
17 continue.

18 MR. BARR: Is she allowed to answer the last
19 question?

20 THE COURT: Yes. Yes.

21 Q (MR. BARR) As far as you know, the public had
22 access to all of this area in here, in this breezeway,
23 in front of the apartment, up the stairs until you got
24 there?

25 A Until I got there, there were other officers

MICHELLE McSPADDEN - CROSS-EXAMINATION

1 securing that scene. That should have been secured.

2 There was evidence in the breezeway that was visible,
3 so it should have been secured by other officers. I
4 would not think there would be access to the public.

5 Q Give me the name of one.

6 A Shane Owens.

7 Q How did you know he was there?

8 A There was testimony earlier that he was with the
9 victim. Officer Mackin testified that he was with the
10 victim, and that is same area of the shotgun shells.

11 Q Was with the victim? The victim was over here in
12 the alley.

13 A At the corner of that breezeway and alleyway
14 there, where the pool of blood was.

15 Q This is where the victim was in the alley. I'm
16 talking about on this end.

17 A On that end, I don't know.

18 Q The vehicle, Crown Victoria, you searched the
19 rear of it?

20 A Yes, sir.

21 Q Did you ever have the occasion to inspect the
22 ignition center inside of there?

23 A We would have -- we searched the entire vehicle.
24 We would have noted anything that would have been out
25 of place with the ignition, and I don't have anything

MICHELLE McSPADDEN - REDIRECT EXAMINATION

1 in my notes that says anything was.

2 Q Of course at the time that you searched the
3 vehicle -- well, you didn't read any of the statements
4 or anything, did you?

5 A I did not.

6 Q So you did not check the ignition system?

7 THE COURT: I think she said she did, Mr. Barr.

8 MR. BARR: I apologize. I'm so sorry. I
9 just....

10 A We didn't start the car, but we didn't notice
11 anything out of place.

12 Q (MR. BARR) We have a man charged with murder --

13 MS. WALTER: Objection, Your Honor. Move to
14 strike.

15 THE COURT: You will disregard the last
16 statement.

17 REDIRECT-EXAMINATION

18 BY MS. WALTER:

19 Q There was evidence that the shotgun was fired.
20 You talked about the strike mark on the wall that
21 appeared -- could have been made by the rifle bullet?

22 A Correct.

23 Q You said that you looked for strike marks from
24 the pellets that would have come out of the shotgun
25 shell?

MICHELLE McSPADDEN - REDIRECT EXAMINATION

1 A Yes.

2 Q Is that something that someone could have taken
3 away if the crime scene was chaotic?

4 A In bird shot, we are talking about dozens and
5 dozens of pellets, so it would have been hard to pick
6 up every single one so they were missing. That strike
7 mark was not consistent with a shotgun, it was
8 consistent with a single solid round. We didn't see
9 multiple patterns on the wall that would be consistent
10 with multiple pellets.

11 Q And going the other way, I won't try to find a
12 picture because it is getting late, but the strike mark
13 was kind of as you were looking north up the alley,
14 which would have been up the direction of fire from
15 where the victim was shot?

16 A Correct.

17 Q If the victim is facing south down the alley, you
18 checked east side of the alley and west side for strike
19 marks from pellets?

20 A Yes, correct.

21 Q Did you see any?

22 A No, we did not see anything.

23 Q Would someone be able to erase a strike mark on a
24 building or fence?

25 A No.

MICHELLE McSPADDEN - REDIRECT EXAMINATION

1 Q There also has been some question as to what this
2 pool of red liquid at Marker No. 9 was. If there is
3 testimony that the victim took a shot from a rifle to
4 the neck, fell to the ground and was bleeding profusely
5 from that wound --

6 MR. BARR: Objection.

7 THE COURT: Wait a minute, Mr. Barr. You asked
8 her these questions now. It is redirect. You raised
9 it, I'm going to let her answer the question. Wait
10 until she asked it, and then maybe I'll rule with you,
11 but I want to hear what she's asking first. Go ahead.

12 Q (MS. WALTER) I have a victim who takes a rifle
13 shot to the neck, falls to the ground and is bleeding
14 out as officers and his common-law wife are trying to
15 render aid to him, additionally EMS workers try to
16 render aid; do you think it is a good use of resources
17 to scoop up some of this red liquid and ask SLED to
18 violate their protocol --

19 MR. BARR: Now, Judge, I just ask that she be
20 sworn if she's going to testify.

21 THE COURT: Well, she's just asking a question.
22 Let her answer it.

23 Q (MS. WALTER) Would that be a good use of your
24 resources?

25 A It would not be a good use of resources; in

MICHELLE McSPADDEN - RECROSS-EXAMINATION

1 addition, it is against SLED protocols to do that. We
2 wouldn't have selected it without knowing that we were
3 not going to have it tested.

4 MS. WALTER: Thank you. One second.

5 Q Oh, sorry. You testified that you did encounter
6 the defendant while he was in custody when you did the
7 gunshot residue test?

8 A Correct.

9 Q Had he been injured?

10 A I checked him for injuries. He was not bleeding.
11 I checked his hands, spent probably 10 minutes looking
12 at his hands, there were no on his hands.

13 Q So no injuries?

14 A That I saw.

15 MS. WALTER: Thank you.

16 THE COURT: Recross?

17 RECROSS-EXAMINATION

18 BY MR. BARR

19 Q You would agree that if the shotgun was fired it
20 didn't necessarily have to have No. 8 bird shots, did
21 it?

22 A We only found No. 8 bird shot.

23 Q I understand what you found. You found two No. 8
24 shots, which we shoot quail with, dove, but that does
25 not necessarily mean that that is the only kind of

DR. EDWARD PROCTOR - DIRECT EXAMINATION

1 shell that that gun can fire, buckshot?

2 A Certainly not --

3 Q No. 5, 4?

4 MS. WALTER: I ask that he allow the witness to
5 answer.

6 THE COURT: Let her respond, Mr. Barr.

7 A It is not the only shell that could have been
8 fired. It is the only shell we found.

9 Q And the only way you would have found a scratch
10 mark is if the gun was shot and hit something --
11 something physical that you could go look at?

12 A Well, that is correct, yes.

13 MR. BARR: Thank you, ma'am.

14 THE COURT: Thank you. You may step down.

15 MS. WALTER: I'd ask that she be released.

16 THE COURT: Any objection?

17 MR. BARR: No, sir.

18 THE COURT: You are released. Thank you, ma'am.

19 MR. HIXSON: Dr. Edward Proctor.

20 (EDWARD PROCTOR, having been duly sworn,
21 testified as follows:)

22 WITNESS: I'm Edward Leroy Proctor, Junior.

23 DIRECT-EXAMINATION

24 BY MR. HIXSON:

25 Q Can you tell this jury what you do for a living?

DR. EDWARD PROCTOR - DIRECT EXAMINATION

1 A I'm a medical doctor engaged in the practice of
2 pathology, to include anatomical, clinical and forensic
3 pathology.

4 Q Just so you are aware we had a discussion, Mr.
5 Barr and I, and you are to testify and are qualified
6 and we've stipulated to your qualifications as it
7 relates to being an expert.

8 THE COURT: Is that right?

9 MR. BARR: Yes, it is.

10 THE COURT: He is qualified in the field of
11 forensic pathology.

12 MR. HIXSON: That is correct.

13 THE COURT: Ladies and gentlemen, normally a
14 witness is not allowed to testify as to opinion;
15 however, there is an exception for witnesses who have
16 been qualified as an expert in some field, art or
17 science. In this case, Dr. Proctor has been, by
18 stipulation, admitted as an expert, and he may give an
19 opinion and reason for his opinions.

20 Q (MR. HIXSON) Even though we jumped ahead, tell
21 the jury -- because they haven't heard you testify
22 before a little bit about what you do, how often you
23 do it?

24 A I'm a forensic pathologist. Forensic pathologist
25 is engaged in the medicolegal investigation of a death.

DR. EDWARD PROCTOR - DIRECT EXAMINATION

1 I work at the request of the coroner's office and
2 contacted to do a forensic evaluation which includes an
3 external exam, an anatomical dissection taken of
4 specimens, taken specimens for toxicology, getting all
5 of the information together, and based upon my findings
6 coming up with a cause of death.

7 Q And you have testified in South Carolina?

8 A Many, many times, yes, sir.

9 Q So did you have an opportunity to perform a
10 session, or what is commonly referred to as an autopsy,
11 on the victim in this case, Michael Rogers?

12 A Yes, sir.

13 Q What is your basic findings, age and things like
14 that, just generally upon your initial observations?

15 A Mr. Rogers was an African-American male, appeared
16 to be approximately 40 to 50 years of age, greater than
17 6 feet tall, weighed around 175, 200 pounds. My
18 examination revealed a gunshot wound to the anterior
19 neck, midline, and a wound in the right posterior
20 sternocleidomastoid towards the shoulder area. This
21 wound traversed anterior to posterior and to the
22 victim's right causing extensive destruction of the
23 carotid artery, the veins. It hit the vertebral bodies
24 around the C2 level, up high, and was trajected to the
25 victim's right side. There was an exit, but within the

DR. EDWARD PROCTOR - DIRECT EXAMINATION

1 body we found a jacket from a projectile.

2 Q So to clarify, a lot of times when we hear
3 wounds, we don't think about penetrating wounds and
4 what that means, entrance versus exit. So you referred
5 to two wounds. Can you be specific about in your
6 expert opinion does one projectile cause that?

7 A That's correct. I feel like one projectile
8 caused that. The entrance was within the anterior part
9 of the neck based upon the tissues being forced in an
10 anterior to posterior direction, you can trace the path
11 of the projectile as well as the jacketed piece that
12 came loose from the main projectile, which then exited
13 the body.

14 Q So when you talk about deflecting this and
15 exiting here, potentially the body of the victim is
16 here and coming out this way (indicates)?

17 A Correct.

18 Q Was there any particular artifact of that
19 penetration, any stippling or anything that you
20 discovered around the area of the wound?

21 A No stippling around the wound.

22 Q What does that tell you as an expert?

23 A When a wound, a gunshot wound, is examined, we
24 look for what is called "residue" and, "stippling."
25 Stippling is actually the burning powder that comes out

DR. EDWARD PROCTOR - DIRECT EXAMINATION

1 of a gun and burns the skin. Residue is the smoke, the
2 soot, that comes out as well. If you do not see that,
3 the distance away from the body is at least greater
4 than 18 to 24 inches. If you see residue, it means
5 they were close to the victim, probably within 2 feet.

6 Q So based on your expert opinion, the absence of
7 stippling, or the artifact, coming from the weapon
8 indicates to you that they were at least 24 inches or
9 further to an indeterminate range away?

10 A Yes, sir.

11 Q Is there any substantial findings relating to
12 your examination of Mr. Rogers?

13 A The most significant things were the extensive
14 degree of injury to all of the blood vessels in the
15 neck. The carotid artery, which was just totally
16 destroyed, is the main artery that comes off the right
17 side of the aorta out of the heart going to the head,
18 it was missing. It was gone. As a part of that, the
19 destruction of the jugular vein beside it, it was also
20 totally destroyed. The soft tissues were extensively
21 macerated and torn apart. The bone in that area was
22 fragmented, and then the muscle going through towards
23 the right side had extensive damage to it.

24 Q This obviously goes without saying, but in court
25 you have to say it, a wound of that nature would lead

DR. EDWARD PROCTOR - DIRECT EXAMINATION

1 to substantial bloodletting and bleeding by this
2 victim?

3 A That wound with the destruction of the carotid
4 artery, every time the heart would beat, blood would
5 just spew.

6 Q As it relates to Mr. Rogers' ability to act after
7 receiving an injury such as that, how viable do you
8 believe, in your expert opinion, he might be in the
9 seconds and minutes sustaining a wound like that?

10 A The heart would rapidly make him extenuate
11 without immediate pressure on the wound site, probably
12 could not do a whole lot.

13 Q I ask you this question to a reasonable degree of
14 medical certainty, Dr. Proctor, were you able to form
15 an expert opinion as to the cause and manner of death
16 relating to Michael Rogers?

17 A Yes, sir.

18 Q Could you please tell the jury.

19 A The cause of death was a gunshot wound to the
20 neck area with extensive visceral -- which means
21 tissue -- damage and hemorrhage. Manner of death being
22 homicide.

23 MR. HIXSON: Beg the Court's indulgence.

24 Q (MR. HIXSON) In this particular case, do you
25 recall if law enforcement agents were around you for

DR. EDWARD PROCTOR - CROSS-EXAMINATION

1 the purpose of protecting any -- processing or handing
2 off any evidence to you from any other agencies?

3 A There would have been a crime scene person
4 available. I do not have it documented, but they are
5 always in these cases -- crime scene investigators and
6 detectives.

7 MR. HIXSON: Thank you very much. Nothing
8 further.

9 CROSS-EXAMINATION

10 BY MR. BARR:

11 Q I'm Charles Barr and I'm defending Antwuan
12 Nelson. You and I met about 30 years ago in the case
13 of the Misnalt (phonetic)?

14 A That is correct.

15 Q Do you remember that case?

16 A I do.

17 Q Years have treated you well.

18 A And you too, sir.

19 Q I just have two questions for you. You did a
20 toxicology?

21 A That is correct.

22 Q And was it significant?

23 A The blood that I removed from the deceased was
24 sent to National Medical Services Laboratory, which is
25 a national forensic laboratory, and they examined the

DR. EDWARD PROCTOR - REDIRECT EXAMINATION

1 blood for ethanol, and they do a drug screen. The
2 blood ethanol was negative. Blood drug screen was
3 positive for marijuana, marijuana metabolite and
4 cocaine metabolite.

5 Q Marijuana and cocaine? Thank you, sir.

6 MR. HIXSON: Briefly.

7 REDIRECT-EXAMINATION

8 BY MR. HIXSON:

9 Q What does a metabolite mean?

10 A The breakdown product of the actual drug.
11 Marijuana, the metabolite can be present for, gosh
12 knows, a couple of weeks. Cocaine -- cocaine is very
13 rapidly metabolized to its metabolite, which can be
14 present two, three days.

15 Q So no question there is no drinking in the blood.
16 THC, so recent use of THC, but the fact that it is
17 metabolite, it is past marijuana use, and the
18 metabolite of cocaine means past cocaine use maybe even
19 as far as a few days prior to the passing, his death,
20 and of course his body stops metabolizing when he
21 passes?

22 A There was no evidence to any active drug, to
23 include the active component of THC, which is the main
24 component of marijuana, or cocaine, which is cocaine.

25 Q So metabolites are like an artifact of what

DR. EDWARD PROCTOR - REDIRECT EXAMINATION

1 happened days earlier?

2 A It is a breakdown, yes, sir.

3 MR. HIXSON: Nothing further.

4 MR. BARR: No, sir.

5 THE COURT: You may step down. Any further use?

6 MR. HIXSON: I do not.

7 THE COURT: Dr. Proctor, you are released from
8 your subpoena. Thank you for coming.

9 MR. HIXSON: May we approach?

10 (Whereupon, a bench conference was had.)

11 THE COURT: Ladies and gentlemen, it is 5
12 o'clock, and I do hate to keep you past 5:00, so I'll
13 let you go home. Please don't discuss the case with
14 anyone or allow anyone to approach you about the case.
15 Don't do any research on your own, and be back in the
16 morning. Mr. Ropp will have something for you. Thank
17 you.

18 (Whereupon, the jury exits at 5:05 p.m., and the
19 proceedings for June 13, 2017 concluded. The
20 following is had on June 14, 2017 out of the presence
21 of the jury.)

22 (State's Exhibits 47D and 47E marked.)

23 THE COURT: Ready? Okay. Bring them in.

24 (The jury enters at 9:40 a.m., and the
25 following is heard in the presence of the jury.)

WILLIAM STAIR - DIRECT EXAMINATION

1 THE COURT: We have our jurors and alternates
2 back in the courtroom, and they are ready to go.

3 MR. HIXSON: Counsel and I have had discussions
4 relating to either taking judicial notice of Section
5 16-1-160, which defines violent crimes. I don't know
6 -- we ask the Court to take judicial notice of the
7 statute.

8 THE COURT: We'll take that up in a charge
9 conference.

10 MR. HIXSON: I didn't know if it had to be prior
11 to us resting or not.

12 THE COURT: We'll put that on there, okay.

13 MR. HIXSON: Thank you, Your Honor.

14 (State's Exhibits 49 and 50 marked.)

15 THE COURT: At the first opportunity outside of
16 the presence of the jury.

17 MR. HIXSON: Thank you.

18 MS. WALTER: State calls Officer William Stair.

19 (WILLIAM STAIR, having been duly sworn, testified
20 as follows:)

21 THE CLERK: State your full name and spell your
22 first and last for the Court.

23 THE WITNESS: William Stair, S-T-A-I-R.

24 DIRECT-EXAMINATION

25

WILLIAM STAIR - DIRECT EXAMINATION

1 BY MS. WALTER:

2 Q Good morning, Officer Stair. Where do you work?

3 A Myrtle Beach Police Department.

4 Q How long have you been there?

5 A Almost 11 years.

6 Q So fair to say you were working in January and
7 February of 2014?

8 A Yes.

9 Q What was your position at that time?

10 A At that time I was assigned to the Crime Scene
11 Unit.

12 Q As part of your duties as a crime scene officer,
13 did you attend the autopsy of the victim in this case,
14 Michael Rogers?

15 A Yes, I did.

16 Q When you attend an autopsy as a crime scene
17 officer, what are your duties or what is your function?

18 A We photograph injuries, photograph the victim.
19 We also collect any evidence that we locate and take
20 DNA samples.

21 Q Would you also receive any evidence that the
22 doctor takes from the body during the actual autopsy?

23 A Yes. Anything that the doctor locates, he hands
24 over to us.

25 Q Now, thinking specifically to this case, when you

WILLIAM STAIR - DIRECT EXAMINATION

1 arrived at autopsy, did you notice anything about the
2 victim's hands?

3 A His hands had paper bags over them and taped to
4 his wrists.

5 Q What is the purpose for that?

6 A Contain any potential evidence.

7 Q With respect to the victim's hands, did you
8 perform any kind of tests?

9 A Once I photographed and removed the bags, I
10 completed a gunshot residue test, which at that time
11 for a gunshot residue test, it is a four adhesive
12 vials. You open each vial and they are labeled for
13 left hand front, left hand back, right hand front,
14 right hand back. They are adhesive bagging that you
15 apply to the front and back of each hand and it will
16 pick up any trace evidence.

17 Q Once you perform that gunshot residue test on the
18 victim, what did you do with the kit?

19 A The kit, along with any evidence I collected, was
20 then brought back to our department and was turned into
21 Property and Evidence Department.

22 Q I'm approaching with what is marked as 41B.

23 A Yes, that is the gunshot residue I collected from
24 the victim.

25 Q How do you recognize it?

WILLIAM STAIR - DIRECT EXAMINATION

1 A It has my handwriting and the victim's name as
2 well as mine and case number.

3 MS. WALTER: I ask that 41B be admitted into
4 evidence. I believe 41A already has, and 41 is just
5 the envelope they both came in.

6 MR. BARR: No objection.

7 (State's Exhibit 41B admitted.)

8 Q (MS. WALTER) Did you receive any evidence from
9 Dr. Proctor removed from the victim's body?

10 A There was a partial copper jacket removed from
11 the victim's right shoulder.

12 Q I'm approaching with State's 47E; do you
13 recognize that?

14 A Yes, that would be a copper jacket that was
15 located just under the skin in the right shoulder.

16 Q And there is a paper bag in there also, is that
17 how you originally packaged the evidence?

18 A Yes, it was placed into the container and then
19 packaged inside the paper bag and sealed.

20 Q What did you do with it once you packaged it?

21 A After it was packaged, it was placed in Property
22 and Evidence.

23 MS. WALTER: Your Honor, I ask that 47E be
24 admitted and published?

25 MR. BARR: Without objection.

WILLIAM STAIR - DIRECT EXAMINATION

1 THE COURT: Without objection, it is admitted.

2 (State's Exhibit 47E admitted.)

3 Q (MS. WALTER) Lastly, did you have an opportunity
4 to go through the victim's belongings?

5 A Yes. They were collected and packaged when he
6 was originally brought to the hospital, and when I got
7 back to our office and our lab, I laid out all of his
8 belongings to photograph and document and collect
9 anything that was inside the pockets.

10 Q As you were going through the belongings, did you
11 come across any unfired shotgun shells?

12 A Yes. He had two unfired shotgun shells, one was
13 in his left, and the other was loose amongst all of his
14 belongings.

15 Q I'm approaching with Exhibit 43, and I won't open
16 it because it is marked "biohazard." Can you tell me
17 if you recognize Exhibit 43?

18 A This would be the box I placed the two recovered
19 shotgun shells with my initials on the back of it.

20 Q And just to be clear, it is marked as "biohazard"
21 because it was collected during autopsy?

22 A Yes, it was with his clothing, which had blood on
23 it.

24 MS. WALTER: Your Honor, I ask Exhibit 43 be
25 admitted.

WILLIAM STAIR - CROSS-EXAMINATION

1 MR. BARR: Without objection.

2 (State's Exhibit 43 admitted.)

3 MS. WALTER: I believe at this time, if we can,
4 admit, if possible, the remainder of 47. Everything
5 in there has been testified, so that would be 47A
6 through E.

7 THE COURT: Is that correct?

8 MR. BARR: Yes, sir.

9 (State's Exhibits 47A through D admitted.)

10 Q (MS. WALTER) Now, with the items of evidence
11 that you collected, you said you turned them into
12 Property and Evidence, specifically in this case, do
13 you recall who you turned them over to in Property and
14 Evidence?

15 A Property and Evidence technician, Lynn Grayden
16 Labiak.

17 Q That is G-R-A-Y-D-E-N, hyphen L-A-B-I-A-K.

18 A Yes.

19 MS. WALTER: Nothing further. If you would
20 answer any questions Mr. Barr has for you.

21 CROSS-EXAMINATION

22 BY MR. BARR:

23 Q Could you tell me how you spell your name again?

24 A S-T-A-I-R.

25 Q You were the representative from the Myrtle Beach

WILLIAM STAIR - CROSS-EXAMINATION

1 Police Department attending the autopsy with Dr.
2 Proctor?

3 A Yes, I was.

4 Q And the clothing you said that belonged to the
5 decedent, did the clothing ever get to the autopsy?

6 A Yes, clothing was in the autopsy room.

7 Q And you packaged the clothing?

8 A The clothing was already packaged. It was
9 removed when he was brought into the hospital, it was
10 in a bag, and I took that bag back to our office,
11 separated everything and packaged it individually.

12 Q So you had an opportunity to look at the
13 clothing?

14 A Yes, I did.

15 Q And do you have a recollection of what they
16 consist of?

17 A I would have to go through the Property and
18 Evidence report, but it was -- I think it was a pair of
19 camouflaged sweatpants, T-shirt, shoes, socks. I'm not
20 sure what other clothing was with him.

21 Q What color were the sweatpants?

22 A Camouflage.

23 Q Camouflage?

24 A Yes.

25 Q And the shotgun shells you removed from the

WILLIAM STAIR - CROSS-EXAMINATION

1 victim's pocket, were they -- what were they, No. 8
2 shells? Did you look at them?

3 A Remington 12-gauge shotgun shells.

4 Q Do you know what kind of load they were?

5 A No, I don't.

6 Q Now, you indicated that you were also a crime
7 scene investigator, and that is principally the
8 position that you have with the Myrtle Beach Police
9 Department?

10 A At that time, yes.

11 Q And so did you participate in the gathering of
12 evidence from the incident location?

13 A No, I did not.

14 Q You were a crime scene investigator, you did not
15 participate in investigating in the crime scene?

16 A I was working the autopsy. I did not work the
17 night the incident occurred.

18 Q Have you ever been to the crime scene?

19 A No, I have not.

20 MR. BARR: Thank you, sir. Nothing further.

21 MS. WALTER: Briefly, I'll open up the box so we
22 can see what the shotgun shells are. Can I borrow the
23 scissors again, please?

24

25 REDIRECT EXAMINATION

WILLIAM STAIR - REDIRECT EXAMINATION

1 BY MS. WALTER:

2 Q I'm handing you Exhibit 43; is that sealed right
3 now?

4 A Yes, it is.

5 Q Tell me if I need to turn it this way. Is that
6 telling you -- (indicates) does it have any indication
7 on it as to what it is?

8 A 70-millimeter and eight gauges -- yeah, eight.

9 MS. WALTER: Did you want to see these, Mr. Barr?

10 MR. BARR: Yeah. No. 8.

11 MS. WALTER: It says No. 8 bird shot. Nothing
12 further, Your Honor.

13 THE COURT: Mr. Barr?

14 MR. BARR: Sir?

15 THE COURT: Any recross?

16 MR. BARR: No, sir.

17 THE COURT: You may step down.

18 MS. WALTER: We call Lynn Grayden-Labiak.

19 (LYNN GRAYDEN-LABIAK, having been duly sworn,
20 testified as follows:)

21 THE CLERK: State your full name and spell your
22 first and last for the Court.

23 THE WITNESS: Lynn, L-Y-N-N, G-R-A-Y-D-E-N,
24 hyphen, L-A-B-I-A-K.

25 DIRECT-EXAMINATION

LYNN GRAYDEN-LABIAK - DIRECT EXAMINATION

1 BY MS. WALTER:

2 Q Is it Officer Grayden-Labiak, Technician
3 Grayden-Labiak?

4 A Lynn is fine.

5 Q Lynn?

6 A Yeah.

7 Q Where are you employed?

8 A I'm employed by City of Myrtle Beach Police
9 Department.

10 Q How long have you been there?

11 A A little over five years.

12 Q So you were working in January and February of
13 2014?

14 A Yes, ma'am.

15 Q What was your assignment then?

16 A I am assigned as a property and evidence
17 technician for the Property and Evidence room.

18 Q Call you tell us what a property and evidence
19 technician does?

20 A Yes. We take in evidence that has been gathered
21 by police officers, and we house them securely in the
22 evidence room.

23 Q When you say "securely," do you house items of
24 evidence so that they cannot be accessed by
25 unauthorized personnel?

LYNN GRAYDEN-LABIAK - DIRECT EXAMINATION

- 1 A Absolutely. Correct.
- 2 Q Is there any type of recordkeeping to show who is
3 submitting evidence, who receives it, et cetera?
- 4 A Yes, ma'am.
- 5 Q Now, specifically in this case, did you receive
6 some items of evidence from Officer Stair, that just
7 testified?
- 8 A I did.
- 9 Q Do you recall what you received from him?
- 10 A May I?
- 11 Q Yes. What are you referring to, for the record?
- 12 A My notes.
- 13 Q Yes.
- 14 A On February 24, 2014, I received a GSR kit,
15 copper jacket from a bullet, as well as shotgun shells.
- 16 Q And if I can just approach. I'll show you 47,
17 47E and 41B. Are those the items you are referring to?
- 18 A Yes, those are.
- 19 Q Once you received them from Officer Stair, what
20 did you do with them?
- 21 A I take the item in. I give it a home in the
22 room. I put it in a certain secured location, and that
23 is where it remains until it is needed for other
24 reasons, and chain of custody is taken.
- 25 Q Did you receive videos in this case?

MALINDA SHADOAN - DIRECT EXAMINATION

1 A Yes, ma'am, on February 11th.

2 Q From?

3 A Officer Steven Clothier.

4 Q And these are just videos of interviews, correct?

5 A Correct.

6 Q Is it fair to say that Evidence Technician
7 Malinda Shadoan received the bulk of the evidence in
8 this case?

9 A Absolutely.

10 MS. WALTER: Nothing further.

11 THE COURT: Mr. Barr.

12 MR. BARR: No questions.

13 THE COURT: You may step down. Thank you.

14 MS. WALTER: State calls Malinda Shadoan.

15 (MALINDA SHADOAN, having been duly sworn,
16 testified as follows:)

17 THE CLERK: State your name and spell your first
18 and last for the Court.

19 THE WITNESS: Malinda Shadoan, M-A-L-I-N-D-A,
20 S-H-A-D-O-A-N.

21 DIRECT-EXAMINATION

22 BY MS. WALTER:

23 Q Where do you work?

24 A City of Myrtle Beach Police Department.

25 Q How long have you been there?

MALINDA SHADOAN - DIRECT EXAMINATION

- 1 A Nine years in July.
- 2 Q What is your current position?
- 3 A Property and evidence technician.
- 4 Q Did you have that same position back in January
5 and February of 2014?
- 6 A I did.
- 7 Q And did you, as part of your -- first of all, are
8 your duties as an evidence technician the same as what
9 Ms. Grayden-Labiak just stated?
- 10 A They are.
- 11 Q Do part of your duties include receiving evidence
12 in this case?
- 13 A I did.
- 14 Q Did you actually receive all evidence other than
15 what Ms. Grayden-Labiak testified to?
- 16 A Yes, I did.
- 17 Q Let's deal specifically with a couple of pieces
18 of evidence. Did you receive 41A, which is the gunshot
19 residue kit already admitted taken from the defendant?
- 20 A Yes, ma'am.
- 21 Q Did you receive item 47A, B, C and D?
- 22 A Yes, ma'am.
- 23 Q Did you receive the AR rifle that you've seen
24 displayed in court?
- 25 A I did.

MALINDA SHADOAN - DIRECT EXAMINATION

1 Q What did you do with those items once you
2 received them?

3 A Once they come into our room, we assign an unique
4 number to each one; it is called a property record
5 number. From there, we stick the white labels that you
6 see on that box right there and secure it in our
7 division within the evidence room.

8 Q Now, directing your attention to Exhibit 32 and
9 33 --

10 A Yes, ma'am.

11 Q -- do you recognize those?

12 A I do.

13 Q And they've already been admitted. Can you tell
14 us what they are?

15 A This particular one is called a BEST packet, and
16 it housed the cocaine that was in this case. These
17 others were apparently the baggy that the drugs were
18 housed in originally, and the BEST tab that comes off
19 where Michelle McSpadden told you yesterday in
20 reference to taking it off when they secure it in the
21 BEST kit.

22 Q So you received these items and secured them as
23 well?

24 A I did.

25 Q At some point, were you asked to take these items

MALINDA SHADOAN - DIRECT EXAMINATION

1 to SLED -- and I can detail them -- so that would be
2 the rifle, the two gunshot residue kits, the BEST
3 kit -- or SLED BEST kit, the shell casings and the
4 projectile?

5 A Yes.

6 Q And how does it get to SLED? Can you describe
7 that process for me?

8 A First it needs to be requested for analysis, and
9 that is informative of an I-lab, which is basically a
10 piece of paper requesting it. And from there, I take
11 all of the items out off the secured location and drive
12 it to Columbia at the State Law Enforcement Division.

13 Q With Exhibit 47, which has all of these
14 different -- A through E?

15 A Yes, ma'am.

16 Q So Exhibit 47 is a box. Did you put the times in
17 this box?

18 A No, ma'am. I watched the log-in tech at SLED put
19 them into the box.

20 Q Do you recall who that was?

21 A I believe that was Doris Yarbrough.

22 Q Once the items were placed in the SLED box, were
23 they sealed in any way?

24 A They were. There is this yellow evidence tape
25 from SLED, and from there they initial and date, and I

MALINDA SHADOAN - DIRECT EXAMINATION

1 watch them to do that.

2 Q So this box was sealed in your presence?

3 A It was.

4 Q When you get to SLED, if you are aware, do they
5 have any type of electronic recordkeeping to track the
6 chain of custody for items they receive?

7 A They do. There is an actual bar code on what the
8 I-lab is called, and they scan that and scan all the
9 pieces of evidence into their room, and then they give
10 the receipt that shows the scan and the electronic
11 signature that I do on a signature pad.

12 MS. WALTER: So this is marked for identification
13 as Exhibit 50, Your Honor.

14 Q Do you recognize Exhibit 50?

15 A Yes, ma'am. That is my signature.

16 Q That is the SLED chain of custody report?

17 A Yes. That means they have that now in custody.

18 Q After SLED finishes with whatever analysis or
19 testing that they are going to do, how does the
20 evidence get back to Myrtle Beach?

21 A When I drive other items for other cases there,
22 then at that point they give me everything that has
23 been done with the analysis.

24 Q So did you at some point then pick up all of the
25 items we just went through?

MALINDA SHADOAN - DIRECT EXAMINATION

1 A I did.

2 Q That you would originally deliver?

3 A Yes, ma'am.

4 Q Are you familiar with the process of how 911
5 calls are gathered for a particular investigation?

6 A Yes, ma'am.

7 Q Can you describe that for the jury?

8 A We have a database with all of the phone calls we
9 get, usually the retention is only 30 days. They will
10 pull the date and time of which an event occurred, and
11 pull all the 911 calls for that particular case or that
12 particular incident and put those -- burn them onto a
13 disk, which they take that disk and voucher it into my
14 system, and I assign them a PR number. So I will have
15 the original calls on the original disk.

16 Q What do you mean by "PR"?

17 A Property record number.

18 Q Did you have an opportunity to review the 911
19 calls in this case?

20 A I have.

21 Q How many 911 calls were received?

22 A Total of five 911s.

23 Q If you just mentioned this, I'm sorry, but the
24 911 calls, do they all come in directly to Myrtle Beach
25 Police Department?

MALINDA SHADOAN - DIRECT EXAMINATION

1 A They first go to Horry County, which is up the
2 road here, and then Horry County knows what
3 jurisdiction they need to send it to, and then transfer
4 it to whatever division they need to, and that would
5 have been ours.

6 Q So your jurisdiction received five 911 calls
7 relating to this incident?

8 A We did.

9 Q Did you have an opportunity to listen to those
10 five calls?

11 A All of them, yes, ma'am.

12 Q Did any of those calls come from the defendant?

13 A No.

14 Q And you mentioned that you put a CD of the 911
15 calls in evidence along with everything else; is that
16 evidence secured throughout the normal course of
17 business?

18 A It is. It is.

19 Q No one is allowed to access it without specific
20 authority and without some record being made?

21 A Some kind of chain, correct.

22 Q Does that essentially summarize your involvement
23 in this case?

24 A Yes, ma'am.

25 MS. WALTER: Thank you. Answer any questions

MALINDA SHADOAN - CROSS-EXAMINATION

1 that Mr. Barr has.

2 CROSS-EXAMINATION

3 BY MR. BARR:

4 Q The CDs for the five 911 calls, where are they
5 at?

6 A They more than likely are still housed in my
7 evidence room in Myrtle Beach.

8 Q And you did not bring them here today?

9 A Not the original copy, no.

10 Q So with respect to Myrtle Beach Police
11 Department, if I wanted to authenticate the calls and
12 play them in this courtroom, would you be the person
13 with Myrtle Beach Police Department that could
14 authenticate the calls?

15 A I was not the one to put them on the CD, I was
16 just the one that housed them into my evidence room.

17 Q But you said earlier that you listened to them?

18 A Yes. The communication supervisor is the one
19 that put them onto the original CD and vouchered it for
20 me to put it into my room.

21 Q How do I determine the identity of the person
22 that took these calls in order to have that person to
23 come here and play it?

24 A They would be on that CD, sir.

25 Q It is on the CD?

MALINDA SHADOAN - CROSS-EXAMINATION

1 A Their names would be on the CD. When a 911 call
2 is taken, we have to ask them their name and number.

3 Q Would not the 911 calls -- or all of the 911
4 calls for this incident, were they all taken by the
5 same person?

6 A No, sir.

7 Q They were not?

8 A No, sir.

9 Q But the original recording of the 911 calls you
10 got then are under your authority now, because you have
11 them in a particular place, but no one else has access
12 to them?

13 A The original CD they put it onto, yes, sir.

14 Q Ms. Walter asked you if you reviewed the 911
15 calls, and you indicated that you had, you said that
16 none of the 911 calls came from Antwuan Nelson?

17 A Correct.

18 Q So, now, apparently you had actually looked at --
19 or listened to the content of the 911 calls and
20 essentially know what information they contain?

21 A I listened to it in its entirety, yes, sir.

22 Q Now, the 911 calls there were -- was it six or
23 was it seven?

24 A There were five, sir.

25 Q Six or five?

MALINDA SHADOAN - CROSS-EXAMINATION

1 A Five, sir.

2 Q Does the 911 dispatcher indicate that there were
3 six?

4 A No, they wouldn't do that, sir.

5 Q I'll show you a transcript of one of the 911
6 calls and I'll --

7 MR. HIXSON: We'll object to the content. You
8 have to offer that into evidence, the transcript, but
9 it doesn't get in the transcript of it, just the
10 existence.

11 THE COURT: The Best Evidence Rule -- don't you
12 have the tapes, Mr. Barr?

13 MR. BARR: I have copies of the tapes, Judge.

14 THE COURT: Okay.

15 MS. WALTER: Those were provided in March of
16 2014.

17 THE COURT: Do you have the evidence tapes -- I
18 mean evidence --

19 THE WITNESS: I have the original in my room in
20 Myrtle Beach, the original that the communications
21 supervisor dropped into our property and evidence
22 room.

23 THE COURT: Is there any doubt that yours is
24 not --

25 MR. BARR: I'm just refreshing her memory here.

MALINDA SHADOAN - CROSS-EXAMINATION

1 I'm not attempting to put it into evidence.

2 MS. WALTER: Excuse me, Mr. Barr. She hasn't
3 said yet that she needs her memory refreshed.

4 THE COURT: That is the rule, Mr. Barr. Ask her
5 if she needs her memory refreshed, and then give her
6 an opportunity to inspect that document and say
7 whether or not it is a true transcript of the actual
8 -- you have a transcript, you must have the tape.
9 Couldn't you play that for her?

10 MR. BARR: Pardon me?

11 THE COURT: If you have a transcript, you must
12 have the CD.

13 MR. BARR: I have the CD, Judge, but the CD is
14 back with the court reporter to transcribe.

15 MS. WALTER: I can provide a second copy if he
16 would like to introduce it into evidence.

17 MR. BARR: Well, here is what I'll do then. You
18 have all six of them?

19 MS. WALTER: I have five. There were only five
20 calls. I have the same discovery that was turned over
21 March of 2014, I have another copy here of five calls.

22 MR. BARR: Your Honor, then I would like to
23 introduce them into evidence, and we would be out of
24 turn now, but if that is the case then I would --

25 THE COURT: Do we agree, Counsel, that that is an

MALINDA SHADOAN - CROSS-EXAMINATION

1 authenticate reproduction of the calls received in
2 reference to this matter by the 911 operators?

3 MS. WALTER: Yes, Your Honor. And I can show --

4 THE COURT: Well, let's mark it for
5 identification so Mr. Barr will have access to it, and
6 then at the proper time Mr. Barr may introduce it.

7 MS. WALTER: If I may, Your Honor, this is a copy
8 that is provided to us. It is marked "Solicitor's
9 Copy," it has the Myrtle Beach Police Department logo
10 on it and it says "audio 911 recordings." This is my
11 only copy, so we made a duplicate of it, but it is the
12 same thing.

13 THE COURT: Mr. Barr is familiar with it and he
14 has a transcript, it is transcribed. So we'll mark
15 that, and if it turns out that it's not, we certainly
16 will know it. Defendant's 1.

17 (Defendant's Exhibit 1 marked.)

18 THE COURT: The 911 tape by agreement of the
19 State, subject to your inspection.

20 MR. BARR: Based on what she said, there were a
21 number of dispatchers. In order to get it into
22 evidence, I would have to have each dispatcher, but if
23 the prosecution is willing to stipulate, then.

24 MR. HIXSON: I don't know what he's asking to
25 stipulate to.

MALINDA SHADOAN - CROSS-EXAMINATION

1 MR. BARR: The admissibility of the 911.

2 MR. HIXSON: I won't stipulate to admissibility.

3 You have to lay a foundation. You can ask the witness
4 to lay a foundation, but I can't stipulate to the
5 content. I know we have five 911 calls and we've
6 listened, and Antwuan Nelson is not on it. That's the
7 only reason we're offering it. If you want to flush
8 that out in your case in chief, then --

9 THE COURT: Let's send the jury out for a moment.

10 (The jury exits at 10:13 a.m., and the
11 following is heard out of the presence of the jury.)

12 THE COURT: Mr. Barr, we're not all on the same
13 page as to this evidence. The State, as I understand
14 it, offers this witness to say that she has retrieved
15 the 911 tapes or conversations. They have been
16 reduced to a single CD that there is five, and there
17 is no conversation from the defendant. That is the
18 purpose of the offer, right? The defendant didn't
19 talk?

20 MS. WALTER: That is the purpose of the offer.
21 She did not physically pull the calls in, but she
22 reviewed it.

23 THE COURT: I understand, but she has the tapes
24 and there is no tape from the defendant.

25 Now, Mr. Barr, my understanding is you want to

MALINDA SHADOAN - CROSS-EXAMINATION

1 introduce the contents of those tapes, and we don't
2 know who called or what is on them. Now, aren't you
3 going to have to go beyond this witness' testimony?
4 This witness just said I don't have one for Antwuan
5 Nelson. Now, where are you going with this? What are
6 you trying to put in?

7 MR. BARR: Judge, ordinarily, and of course from
8 the standpoint of this witness I don't think that that
9 witness' -- I didn't realize that she was the person
10 that had the 911 calls -- the disk, but if she does
11 have the disk, then in order to get the 911 calls into
12 evidence, I would have to get the dispatcher for each
13 call.

14 THE COURT: Yes.

15 MR. BARR: That is why I asked -- now, if I've
16 got to subpoena to dispatcher for each call, I can do
17 that, but I don't know the identity of the dispatcher
18 for each calls.

19 THE COURT: Mr. Barr, maybe I'm missing something
20 here. Ms. Walter just told me that she gave it to you
21 on --

22 MS. WALTER: March 2014, March 3rd, so well
23 over three years ago.

24 THE COURT: She gave them to you three years ago,
25 and you tell me that you've had transcriptions made of

MALINDA SHADOAN - CROSS-EXAMINATION

1 those tapes?

2 MR. BARR: I have.

3 THE COURT: So you should be well familiar with
4 the tapes and who may have been on those tapes.

5 MR. BARR: I am familiar.

6 THE COURT: Why have you not subpoenaed those
7 people if they are pertinent to your case? I don't
8 know. I don't know if there is anything on there that
9 makes a hill of difference, because I don't know what
10 is on them.

11 MR. BARR: She said she reviewed the tapes. Now
12 -- now -- and apparently to tell whether or not
13 Antwuan Nelson is on them, she obviously had to listen
14 to them.

15 THE COURT: Certainly she reviewed them, but that
16 does not make her a witness who can testify as to what
17 is on the tapes.

18 MR. BARR: I'm not trying to get --

19 THE COURT: She can give you the tape and say
20 here it is. I understand you already have the tape.
21 In fact, counsel for the State just stipulated that
22 that item just marked is a true and accurate copy of
23 the tapes as they exist right out of evidence. You
24 don't have to prove that. Now, if you want to talk
25 about who said what, if you want to go into any of

MALINDA SHADOAN - CROSS-EXAMINATION

1 that, you're going to have to have the speaker here,
2 you're going to have the dispatcher, going to have
3 something.

4 MR. BARR: Well, Judge, this is what I'm saying.
5 I've got the tapes. I've transcribed the tapes, but
6 the tapes don't identify the dispatcher, and I don't
7 know who the dispatcher is for each tape.

8 THE COURT: But you have had them three years.

9 MR. BARR: I've had them quite a while.

10 THE COURT: Have you --

11 MR. BARR: Judge.

12 THE COURT: Have you filed a Freedom of
13 Information Act to request to determine who was on
14 duty or anything like that? Does this witness know --
15 do you know who the specific dispatchers are?

16 THE WITNESS: There is a difference between
17 dispatchers and call summaries from our dispatch room.

18 THE COURT: I think we're talking about call
19 takers.

20 THE WITNESS: I heard two call takers who I
21 obviously knew who they were, but I can't be certain
22 if they were the only two. I know for sure there were
23 two.

24 THE COURT: You know of two?

25 THE WITNESS: I know of two.

MALINDA SHADOAN - CROSS-EXAMINATION

1 THE COURT: Well, you can ask her that, Mr. Barr,
2 who they are.

3 THE WITNESS: We don't hear the police dispatcher
4 on the 911 calls, just the call takers.

5 THE COURT: I don't know what is on these tapes.
6 I don't have any idea. I don't know whether what
7 would be on the tape would be relevant to this case.
8 I don't know the circumstances of each call. We need
9 to --

10 MR. BARR: Of course if this witness claims she
11 reviewed the tapes and she knows that Antwuan Nelson
12 did not make a call, then apparently she's reviewed
13 the tapes and knows the content of the tapes.

14 MR. HIXSON: Your Honor --

15 THE COURT: That's hearsay on hearsay.

16 MR. HIXSON: If I may. We have a certified court
17 reporter that has done a transcript of the contents of
18 the tapes. Mr. Barr knows exactly what is on the
19 tapes. He has it in writing by the court reporter,
20 and he knows Antwuan Nelson is on there. If he is on
21 there, he can impeach her with the transcript.

22 THE COURT: I think he may be going somewhere
23 else and looking for something that someone else may
24 have said.

25 MR. HIXSON: Perhaps.

MALINDA SHADOAN - CROSS-EXAMINATION

1 THE COURT: Perhaps. That is the only thing I
2 could envision him wanting to do with this. I'm just
3 not going to let him have this lady say what somebody
4 else -- who is unknown to the Court, who is not
5 present for cross-examination -- may have said about
6 this case.

7 MR. HIXSON: That's exactly right. That is our
8 opinion. Just for the Court's edification, the reason
9 the State offers that is because in Antwuan Nelson's
10 recorded statement he maintains that he's the one that
11 is calling 911, and that is what is probative.

12 THE COURT: Mr. Barr, when people call 911, don't
13 they have to give their names and all?

14 MR. BARR: They gave their names.

15 THE COURT: Well, if that person has some
16 information that that person, he or she, revealed or
17 indicated on the tapes, we're going to have to have
18 that person come and testify, and the State would have
19 an opportunity then to --

20 MR. BARR: All right, Judge. So in terms of your
21 final ruling --

22 THE COURT: I don't know what I'm ruling.

23 MR. BARR: Ruling on the admissibility of the 911
24 tape based on the fact that she's --

25 THE COURT: What I'm saying is this witness --

MALINDA SHADOAN - CROSS-EXAMINATION

1 this witness is not in a position -- she can identify
2 that -- that -- that tape, and I think she has.
3 Whether she has or not, Mr. Hixson and Ms. Walter have
4 said this is it, this is authenticated, we will not
5 fuss at you with that.

6 Now -- so this witness has done what she can do
7 on this. She identified the documents. She didn't
8 make it. She didn't take it. It was just -- her only
9 testimony in regard that is germane in this case is I
10 received it and I did not receive one from the
11 defendant to the call taker.

12 MR. HIXSON: We're not advancing content, we're
13 advancing the non-existence of evidence.

14 THE COURT: Precisely. And I understand that.
15 But your purpose is to show that 911 didn't receive a
16 call from the defendant Mr. Barr may be going
17 somewhere else with this, but I don't think he can
18 prove this.

19 MR. HIXSON: Perhaps. Before I forget this, just
20 as it relates to discussions of the -- this is a copy
21 of South Carolina Code, Section 16-160, violent
22 crimes --

23 THE COURT: You all stipulate that voluntary
24 manslaughter or murder is a violent crime?

25 MR. HIXSON: Yeah. I'm showing Mr. Barr State's

MALINDA SHADOAN - CROSS-EXAMINATION

1 49. We ask for a stipulation; if not, then we ask for
2 judicial notice. I thought I needed to put it in case
3 in chief, is why I'm asking it now.

4 THE COURT: I'm familiar with the statute. We've
5 gone that far with our preparation of the charge. Mr.
6 Barr, you want to respond?

7 MR. BARR: No, sir, Judge. I'm withdraw any
8 further question from this particular witness.

9 THE COURT: I'm talking about do you concede that
10 murder or voluntary manslaughter are statutorily --

11 MR. BARR: They are violent crimes under the
12 statute, yes, sir.

13 MR. HIXSON: We moved State's 49.

14 THE COURT: You may place it into evidence.

15 (State's Exhibit 49 admitted.)

16 (A recess was taken.)

17 MR. BARR: Before the jury comes in, and I'm not
18 going -- all I'll do is ask this young lady to
19 identify the two people she says were --

20 THE COURT: Okay. All right.

21 MR. BARR: Can you identify those two people?

22 THE WITNESS: I can.

23 THE COURT: You don't want this on the record
24 with the jury?

25 MR. BARR: Well, I'll put it on the record, but

MALINDA SHADOAN - CROSS-EXAMINATION

1 before the jury came back in, there was a point we
2 stopped yesterday and I think we indicated we would
3 put something on the record, and we never did. We
4 object -- I objected to it coming into evidence of a
5 copy -- this was -- I think it may have been the K-9
6 officer who found.....

7 THE COURT: The drugs?

8 MR. BARR: Yes. And I objected to the copy
9 coming into evidence.

10 MS. WALTER: Copy of what?

11 MR. BARR: He had a copy of the little bag he
12 found beside the fence.

13 THE COURT: You mean a photograph?

14 MR. BARR: Photograph of it, yes, sir.

15 THE COURT: Oh, okay. I thought I ruled on it.

16 MS. WALTER: You did.

17 MR. BARR: You ruled on it, but we didn't rule on
18 it on the record.

19 MS. WALTER: I believe it was ruled and published
20 to the jury.

21 MR. HIXSON: We had a discussion on 401 and 403.

22 MR. BARR: The 403 balancing issue was not
23 even -- I didn't -- that wasn't even an issue
24 regarding that.

25 THE COURT: You said it wasn't. You said we

MALINDA SHADOAN - CROSS-EXAMINATION

1 didn't even get there, but I certainly did. I do it
2 in every case whether -- in fact, I set out the
3 standard very specifically, the probative value
4 substantially outweighs by the prejudicial -- unfair
5 prejudicial --

6 MR. BARR: Judge, I thought I recall --

7 THE COURT: You said that that wasn't your
8 argument.

9 MR. BARR: -- bench conference and we said that
10 we would put this on the record at a later date.

11 THE COURT: We'll put it on the record. I
12 admitted the photographs --

13 MR. BARR: Yes, sir.

14 THE COURT: -- of the drugs or the object -- I
15 don't think we heard from SLED yet, have we?

16 MS. WALTER: No, Your Honor.

17 THE COURT: In its place as found, the photograph
18 that was made, we had the crime scene officer who then
19 came in and identified and said she was the person who
20 made the photograph, and that was the photograph of
21 the drugs as found.

22 Now, your objection was, I think, that it can't
23 be admitted until they're analyzed; isn't that what
24 you were saying?

25 MR. BARR: Yes, Judge. My objection was in terms

MALINDA SHADOAN - CROSS-EXAMINATION

1 of relevance. At that point, the photograph of
2 whatever it was that was on other side of the fence
3 was not relevant and should not have been admitted
4 into evidence.

5 THE COURT: And not relevant, we have a case here
6 where a defendant has been charged with possession
7 with intent to distribute crack cocaine I think. I
8 think that is what it is. I haven't seen the
9 analysis. We have a witness who testified that she
10 actually felt -- not only heard, but felt the thud, if
11 you will, of the bullet that entered her apartment.
12 She immediately stood up. The defendant -- no
13 question by his statements -- was the shooter. We
14 have lots of testimony as to what he was wearing. The
15 witness says I saw a young, black male at the fence,
16 appeared to have dropped something over the fence at
17 that location immediately following the time I heard
18 the shots. I think that it is so well connected, Mr.
19 Barr, it certainly is relevant to this case.

20 The relevance is as to where you find it. We're
21 going to hear, I assume, someone testify as to an
22 analysis of that substance. If it turns out it is not
23 drugs, I'll give this jury a curative charge that they
24 should disregard it, but I don't think it is relevant
25 in this case, but it was offered to show where this

SUZANN CROMER - DIRECT EXAMINATION

1 substance, whatever it may be, was found. It is
2 admissible, and I'm going to enter it or have it
3 admitted.

4 Mr. Palmer, bring the jury in.

5 (The jury enters at 10:36 a.m., and the
6 following is heard in the presence of the jury.)

7 THE COURT: Mr. Barr, you may continue.

8 MR. BARR: Nothing further, Judge.

9 THE COURT: Anything further?

10 MS. WALTER: Nothing further.

11 THE COURT: You may step down. Thank you.

12 MS. WALTER: State calls Suzann Cromer.

13 (SUZANN CROMER, having been duly sworn,
14 testified as follows:)

15 THE CLERK: Please state and spell your first and
16 last name.

17 THE WITNESS: My name is Suzann Cromer,
18 S-U-Z-A-N-N, C-R-O-M-E-R.

19 MS. WALTER: May I?

20 THE COURT: Yes.

21 DIRECT-EXAMINATION

22 BY MS. WALTER:

23 Q Ms. Cromer, by whom are you employed?

24 A Employed by the South Carolina Law Enforcement
25 Division, commonly referred to as SLED.

SUZANN CROMER - DIRECT EXAMINATION

1 Q What is your position with SLED?

2 A I'm a firearm and tool mark examiner in the
3 Forensic Services Laboratory.

4 Q Can you tell us what education and training
5 you've had to get into that position?

6 A I have a bachelor's degree from Clemson
7 University. I did some graduate work at the University
8 of South Carolina in criminal justice where I did an
9 internship in the Forensic Services Laboratory. I was
10 hired at SLED and started their in-house training
11 program for fireman and tool mark examiners. It is a
12 three- to five-year intense study program. We take
13 written tests, oral tests, practical exercises and work
14 under court-qualified firearm examiners.

15 Upon completion of that training, we're given a
16 comprehensive final exam, which is graded by your
17 training officer and your lieutenant, before you are
18 allowed to take casework on your own. I have taken
19 classes through the Association of Firearm and Tool
20 Mark Examiners, which is an international organization
21 for our profession. They meet once a year for
22 week-long seminars. I've been fortunate enough to
23 attend several of those seminars and take extra
24 classes at those seminars, such as barrel making,
25 machine gun conversion, gunshot residues, ethics, high

SUZANN CROMER - DIRECT EXAMINATION

1 point firearm familiarization. I've also taken
2 classes through the South Carolina Chapter of the
3 International Association of Identification, most
4 pertinent being a three-day shooting scene
5 reconstruction workshop. I've taken classes with the
6 Bureau of Alcohol, Tobacco and Firearms on serial
7 number restoration, and in conjunction with the ATF
8 and Forensic Technology International, I've taken
9 classes on the International Ballistics Integrated
10 System, which is a digital searchable database of
11 pictures of cartridge cases, which I'm also sitting on
12 the users conference for the ATF and representing
13 North and South Carolina.

14 I've toured numerous firearm manufacturers, some
15 being Smith and Wesson, Ruger, FN, Daniel Defense,
16 Parry USA, and also toured tool manufacturers.

17 MS. WALTER: Your Honor, Mr. Hixson just
18 conferred with Mr. Barr and I believe Mr. Barr will
19 stipulate that she is an expert in the area of
20 firearms identification.

21 MR. BARR: Yes, sir.

22 THE COURT: She is so qualified. I spoke to you
23 earlier about experts being the only people who are
24 normally permitted to give opinions and the reasons
25 for their opinions in this court. This witness, by

SUZANN CROMER - DIRECT EXAMINATION

1 stipulation and agreement, will be admitted as an
2 expert in the field of firearms identification, so she
3 may give an opinion and the reasons for that opinion.
4 You will judge her testimony and give it such weight
5 and faith such as you, the jury, determine to be
6 appropriate in this case. Okay.

7 MS. WALTER: Thank you, Your Honor.

8 Q (MS. WALTER) And just to be clear, you -- have
9 you been qualified in other areas other than simply
10 firearm identification?

11 A No. I've just been qualified in firearm
12 identification approximately 98 times, that includes
13 federal court and state court.

14 Q Very good. How long have you been employed by
15 SLED?

16 A Over 18-and-a-half years.

17 Q So fair to say you were working there from 2014
18 until present?

19 A I've been there since 1998.

20 Q When you -- can you describe for the jury what
21 firearms identification entails?

22 A Firearms identification, we look at ammunition
23 components, bullets, cartridge cases, shotgun shells,
24 waddings, unfired cartridges to determine whether they
25 were fired by or loaded into and extracted out of a

SUZANN CROMER - DIRECT EXAMINATION

1 specific weapon. If we do not have a specific weapon,
2 we can look at the ammunition we receive from the case
3 and give investigators a clue of how many firearms they
4 could be looking for. We also do tool mark
5 identification, bolt cutters on padlocks, pry marks on
6 safes.

7 Q When you are looking -- let's focus in on what I
8 call firearms or ballistic evidence. How is it that
9 you are able to potentially match something such as a
10 fired cartridge with a gun?

11 A A fired cartridge case can be marked by the
12 firearm in five different locations. It can be marked
13 by the breach face of the gun. The breach face is the
14 part of the firearm that holds that cartridge, unfired
15 piece of ammunition still during the firing process.
16 So any defect left during a manufacturing process on
17 that part of the firearm can be imprinted into this
18 cartridge case head.

19 There is also the firing pin. The firing pin is
20 what comes through the breach face, hits the cartridge
21 on the primer and causes that initial spark that
22 lights the gun powder that causes the burning of the
23 pressure of the gasses that pushes that bullet down
24 the barrel, but it also pushes that cartridge case
25 back into the breach face. Any defect on the firing

SUZANN CROMER - DIRECT EXAMINATION

1 pin can be imprinted on the primer of that cartridge.

2 There is also what we call the "extractor." It
3 is a claw that holds that cartridge in place that --
4 during the firing process. So if it is a
5 semi-automatic weapon, that cartridge is going to hold
6 it still, and when you see -- if you have seen it in
7 the movies, that slide comes backward and forward on
8 the firearm, that will hold that cartridge in that
9 slide. Any marks or defects made from that cartridge
10 or that claw holding that cartridge can be imprinted
11 on that cartridge case. That claw is going to hold it
12 until it hits what we call the "ejector." That
13 ejector is going to kick the cartridge out of the
14 semi-automatic firearm, and that can also leave
15 markings.

16 The last place that the cartridge can be marked
17 by the firearm is the chamber itself. Any defects in
18 the chamber, which is the part of the firearm that
19 holds that whole cartridge still during firing, can be
20 imprinted on the cartridge case.

21 The bullet is a little different. The bullet
22 goes down the barrel of the gun. What is put in the
23 barrel of the gun is called "rifling." Rifling is put
24 there by the manufacturer to put a spin, rotary
25 motion, on that bullet, very similar to a quarterback

SUZANN CROMER - DIRECT EXAMINATION

1 who throws a football, he wants to go into a tight
2 spiral so it goes more accurately towards its target,
3 that is the premise towards rifling, it makes the
4 bullet spin. Rifling is made of up what we call
5 "lands" and "grooves," raised and depressed areas.
6 You can have any number of lands and grooves, 4, 9, 8.
7 So we have the number of lands and grooves, we have
8 the rifling.

9 And then we have the way that the rifling is
10 going to spin. Is it going to spin to the left or to
11 the right? So we have lands and grooves, the
12 direction of the twists, direction of the spin, and
13 then the actual size of those lands and grooves, too,
14 is an indication. Is it small lands or big grooves?
15 Those are indications of the particular rifling that
16 fired that bullet.

17 When -- during the manufacturing process, when
18 that rifling is pressed inside that gun barrel, it
19 leaves defects, and those defects can be imprinted on
20 the bullet during the firing process.

21 Q Specifically -- and I'll direct you to your SLED
22 lab number -- were you assigned to do a firearms
23 identification analysis under SLED Lab L-1402331?

24 A Yes, ma'am, I was.

25 Q And the information on that was that the victim

SUZANN CROMER - DIRECT EXAMINATION

1 was Michael Rogers and the suspect was Antwuan Nelson?

2 A Yes, ma'am.

3 Q I'm going to approach you with two different
4 pieces of evidence. This has been admitted in evidence
5 as State's Exhibit 29. I can show you the box if you
6 need that as well. From Exhibit 47A, B C, D and E, and
7 47 is the box, which I'll show you. Do you recognize
8 -- start with Exhibit 47; do you recognize 47?

9 A Yes, ma'am, I recognize this. This still has my
10 lab number and my initials.

11 Q And can you briefly describe the intake process?
12 We had Evidence Technician Shadoan explain how she
13 drops something off at Sled, so once it gets to SLED,
14 what happens?

15 A Once it gets to SLED, people drop off evidence in
16 our Evidence Control Department, and it should be
17 sealed once it gets there. What they do is give it a
18 bar code, and that bar code tracks that particular case
19 or that particular piece of evidence through the whole
20 building. So then they log it into our computer
21 system, and our computer system lets them know you have
22 a firearms request on this case. So then they will put
23 it in part of the Evidence Control Department, called
24 Firearms Intake Holding, until I go down and physically
25 pick it up from the location and take it upstairs, and

SUZANN CROMER - DIRECT EXAMINATION

1 all of that time it is still sealed.

2 Q What would happen if you received it and the seal
3 was broken?

4 A If the seal was broken, I would photograph that
5 and I would call the submitter and let them know that
6 the seal was broken.

7 Q Is there any type of documentation that is done
8 to document the different individuals at SLED that
9 handle evidence?

10 A Yes. Any time you take a piece of evidence into
11 your custody, you scan that bar code showing that it is
12 in your custody. So even when the evidence control
13 technicians put it into the Firearms Intake Holding,
14 they will scan it to that location. When they take it
15 out to hand it to me, they scan it to them. Then I
16 scan it to myself, and then when I take it back
17 downstairs to await pickup from the submitting agency,
18 it is scanned back there. So this bar code tracking
19 system stays accurately with everywhere it goes.

20 Q Would all items submitted -- strike that.

21 If different items of evidence are submitted to
22 SLED, but would be going to different sections, would
23 -- are they assigned the same SLED number?

24 A Yes, ma'am, they are. Each case that comes in
25 from an agency, as long as it is the same case number,

SUZANN CROMER - DIRECT EXAMINATION

1 is given one SLED lab number. It does not matter which
2 department in SLED it is going to it, it all has that
3 same SLED lab number.

4 Q Does SLED create or have the ability to create
5 what we call a "chain of custody report" that would
6 show where all of the evidence assigned to a particular
7 SLED lab case number goes?

8 A Yes, they do.

9 Q And I'm showing you what is marked as State's
10 Exhibit 20; do you recognize that?

11 A Yes, ma'am, I do. There is a chain of custody
12 report for SLED Lab L-1402331.

13 Q So that would be this case, correct?

14 A That's correct.

15 Q Now, when you -- you told us a little bit about
16 how you can compare fired cartridge casings to
17 projectiles to a particular weapon. What are the
18 possible conclusions that you can draw?

19 A In the firearms department we reach four
20 conclusions: Positive, yes, it was fired by this gun
21 or, yes, they were fired by the same gun. Negative,
22 no, it was not fired by this gun, or these were not
23 fired by the same firearm. Unsuitable, meaning that
24 this piece of evidence doesn't have enough of those
25 individual markings or it is too damaged for us to

SUZANN CROMER - DIRECT EXAMINATION

1 reach a conclusion at all about this piece of evidence.
2 Or we have "inconclusive," meaning that we can't rule
3 this piece of evidence in, but we can't rule it out.
4 We just can't render a conclusion because there is not
5 enough of the information that we need to make an
6 informed decision.

7 Q So let me start -- I'll start with the fired
8 cartridge case, that should be 47B, C and D. Can you,
9 again, briefly describe the process that you go through
10 to determine whether or not -- first of all, what were
11 you comparing those to?

12 A What I do first, when I work a case, I'll open up
13 and look at my fired evidence, I'll see what I have.
14 In this case, State's Exhibit 47B, C and D were fired
15 -- hold on one second -- 223 Remington caliber
16 cartridge cases, brass case with brass primers. Then
17 I'll move to my firearm I have, and then I'll shoot the
18 similar or the same type of ammo in that firearm so I
19 can compare those test specimens that I knowingly fired
20 from this firearm to each other and then
21 microscopically compare those five areas that I talked
22 about earlier, the breached face, the firing pin, the
23 extractor, the ejector and the chambers marks against
24 my unknowns or questions.

25 Q Did you do that in this case?

SUZANN CROMER - DIRECT EXAMINATION

1 A Yes, I did.

2 Q And were you able to make any of those four
3 conclusions that you just spoke of with respect to
4 47 -- I think it is was B, C and D and E?

5 A Yes. I concluded in my opinion that there was
6 enough of the individual agreement between my test
7 specimens that I knowingly fired from the firearm to
8 say that these were, indeed, fired from this firearm.

9 Q Did you also receive 47A and 47E?

10 A Yes, ma'am, I did.

11 Q Start with 47A.

12 A 47A was my "Item 1." It is in sealed container
13 still sealed with my initials and sealed date. This is
14 a fired 223 or 556 Nato caliber bullet. I did a
15 microscopic comparison against this bullet versus test
16 bullets that I fired from the firearm I received in
17 this case.

18 Q Does the packaging on that indicate where that
19 fired projectile was recovered from?

20 A Packing does not, but our intake documents have
21 it labeled as recovered from 3768 Citation Way.

22 Q So were you able to draw any of -- which of the
23 four conclusions did you draw with respect to that?

24 A It was inconclusive, meaning I did not have
25 enough evidence to say it was fired by this firearm,

SUZANN CROMER - DIRECT EXAMINATION

1 but I also could not rule this firearm out. When I do
2 microscopic examination of the bullet, when I talked
3 about all of those things that create the markings,
4 lands and grooves, direction of twists, we have to have
5 all of those. I call it "climbing the ladder" to my
6 microscope.

7 First, is it the same caliber of the firearm I
8 fired? Is it the same number of lands and grooves?
9 Then I can step up the next step. Is it the same type
10 of riffling, because there is two types of riffling,
11 conventional or polygonal. If it is, I can step up.
12 Is it the same direction of twist? If it is, I can
13 step up. Anywhere along the way if it doesn't meet
14 the agreement, I don't even have to go to my scope, I
15 know it wasn't fired by the firearm.

16 During microscopic examinations, it was
17 determined inconclusive. I could not say it was fired
18 by there gun, but I could not rule it out.

19 Q Meaning it met all of the step-up requirements,
20 you got to the microscopic analysis, and at that point
21 you weren't able to draw the conclusion?

22 A That's correct.

23 Q This is probably obvious to everyone, but when
24 you say it is consistent with being fired from that
25 weapon or something similar, that would not have been

SUZANN CROMER - CROSS-EXAMINATION

1 fired from a shotgun, correct?

2 A That's correct.

3 Q And if you could move to I think it was 47E.

4 A 47E was my "Item 9." Again, it is still sealed
5 in a container with my initials and seal date. It is
6 another fired 223 Remington or 556 Nato caliber bullet.

7 Q Did you do the same type of comparison to make a
8 determination whether or not it had been fired from
9 Exhibit 29, which is the AR rifle?

10 A Yes, I did. Again, it met all of the criteria to
11 go to the microscopic examination, but, again, my
12 result was inconclusive. There just wasn't enough of
13 the individual agreement that I needed to either say,
14 yes, or enough difference to say, no. So it was
15 inconclusive.

16 MS. WALTER: At this time I would simply ask that
17 Exhibit 50 be admitted into evidence, and I would have
18 no more questions for Ms. Cromer.

19 MR. BARR: What is 50?

20 MS. WALTER: The SLED chain of custody.

21 MR. BARR: No objection.

22 THE COURT: Without objection.

23 (State's Exhibit 50 admitted.)

24 THE COURT: Mr. Barr.

25 CROSS-EXAMINATION

SUZANN CROMER - CROSS-EXAMINATION

1 BY MR. BARR

2 Q The SLED case number assigned to Antwuan Nelson
3 with Michael Rogers, did you not receive a shotgun?

4 A No, sir, I did not.

5 Q If you would, please, ma'am, tell me again --
6 identify your particular specialty? I know you're in
7 the Firearms Department at SLED, but what particularly
8 -- what is your specialty? I mean what do you do?

9 A We do firearms identification.

10 Q As a part of firearms identification -- and I
11 know you've been doing this a long time -- is it
12 possible to examine or -- that has not be fired --
13 let's do it this way.

14 Is it possible for you to examine a firearm that
15 has been recently fired and make that determination?

16 A No, sir, we cannot determine when the last time a
17 firearm was fired.

18 Q Even if it was fired, say, for instance, within
19 two, three days?

20 A No, sir, I cannot pick up a gun and just say this
21 was fired two, three days ago.

22 Q You don't participate in -- you don't participate
23 in making the decision as to where evidence goes when
24 it comes to the SLED lab? Say, for instance, whether
25 it goes to the DNA Department or Serology Department or

SUZANN CROMER - CROSS-EXAMINATION

1 Trace Department, you don't participate in that
2 decision?

3 A No, I don't.

4 Q The decision is already made when it comes to you
5 in firearms?

6 A That's correct. Usually the firearms is the last
7 person to receive evidence.

8 Q You identified an item in your report from your
9 analysis which indicates that an item that you examined
10 came from the body of Michael Rogers?

11 A Yes. It was labeled as -- I put, Described as
12 recovered from the body of Michael Rogers at autopsy.

13 Q And I believe you said based on your analysis it
14 was inconclusive as to whether or not that particular
15 projectile was the projectile that entered Michael
16 Rogers' body?

17 A I said it was inconclusive with the firearm.

18 Q Inconclusive with the firearm?

19 A That's correct.

20 Q And that is the AR rifle?

21 A Yes, it is a AR type rifle.

22 Q AR type rifle. It is not the kind of ones you
23 usually get probably, but. And of course you did say
24 that -- and I can't remember what exhibit it is, but
25 its shell casings, you did say that the shell casings

SUZANN CROMER - REDIRECT EXAMINATION

1 that were given to you, that you recall analyzing, you
2 conclusively found that they were fired from the AR
3 rifle?

4 A In my opinion, they were fired by the AR rifle
5 due to matching individual identifying characteristics
6 in the breach face, extractor, ejector, cycling works.

7 Q But, of course, shell casings don't kill people;
8 bullets do, right?

9 A I can't attest to that. Bullets can and can't
10 kill people. That is a medical examiner issue.

11 Q Well, I mean, you don't shoot people with shell
12 casings, you shoot them with bullets?

13 A When this was fired it had a bullet in it.

14 Q But you don't know whether or not the bullet came
15 from any of those shell casings?

16 A No, I can't determine whether the bullet came
17 from any of these shell casings.

18 MR. BARR: Thank you, ma'am.

19 REDIRECT-EXAMINATION

20 BY MS. WALTER:

21 Q Briefly, there are two fragments of projectile
22 evidence that you examined. Are they similar or
23 consistent with the fired cartridge casings you
24 examined?

25 A They are similar in brand -- in caliber, yes.

SUZANN CROMER - RECROSS EXAMINATION

1 MS. WALTER: Nothing further. I ask that she be
2 released from subpoena.

3 THE COURT: Mr. Barr?

4 RECROSS-EXAMINATION

5 BY MR. BARR:

6 Q When you say "in caliber," you mean just for that
7 particular caliber of weapon?

8 A No. I mean the caliber of the ammunition. The
9 caliber was consistent with a 223 Remington or 556 --

10 Q That's what I thought, yes, ma'am. Yes, ma'am.

11 A Both my cartridge cases -- all three of the
12 cartridge cases were 223 Remington, and both of the
13 fired bullets were consistent with 223 Remington or 556
14 Nato, which you can load that type of bullet in either
15 one of those caliber cartridge cases.

16 Q In other words, if I went back to Walmart or went
17 to Walmart--

18 MR. HIXSON: Objection. Outside the scope of
19 redirect.

20 THE COURT: I'll let him ask it. You were
21 saying, Mr. Barr?

22 Q There might be another gun wherever this was
23 purchased -- they are in all of the gun stores that
24 would have 223 Remington, the shell casings would be
25 consistent with that, right?

DOUGLAS ROBINSON - DIRECT EXAMINATION

1 A These shell casings, in my opinion, were fired by
2 this gun.

3 Q All right.

4 (A brief pause in the proceedings.)

5 Q (MR. BARR) The shell casings. All right. Thank
6 you.

7 MS. WALTER: Nothing further. I ask her to be
8 released.

9 THE COURT: Any objection?

10 MR. BARR: No, sir. No, sir.

11 THE COURT: You are released from your subpoena.
12 Thank you.

13 MS. WALTER: State calls Doug Robinson.

14 (DOUGLAS ROBINSON, having been duly sworn,
15 testified as follows:)

16 THE COURT: State your full name and spell your
17 first and last to the court.

18 THE WITNESS: Douglas, D-O-U-G-L-A-S,
19 R-O-B-I-N-S-O-N.

20 MS. WALTER: May I, Your Honor?

21 THE COURT: Yes.

22 DIRECT-EXAMINATION

23 BY MS. WALTER:

24 Q Where do you work?

25 A South Carolina Law Enforcement Division, commonly

DOUGLAS ROBINSON - DIRECT EXAMINATION

1 known as SLED.

2 Q Do you work in a particular area?

3 A Yes, ma'am. I'm a forensic chemist assigned to
4 the Drug Analysis Department.

5 MS. WALTER: And, your honor, Mr. Barr has agreed
6 to stipulate to Mr. Robinson's expertise in the area
7 of chemical analysis of controlled substances.

8 THE COURT: Is that correct?

9 MR. BARR: Yes, it is.

10 THE COURT: Again, ladies and gentlemen, this
11 witness has been qualified by stipulation as an
12 expert, and as such, he may give an opinion in the
13 field of --

14 MS. WALTER: Chemical analysis of controlled
15 substances.

16 Q (MS. WALTER) I'm approaching with State's
17 Exhibit 33, which is already admitted into evidence.
18 Mr. Robison, do you recognize that exhibit?

19 A Yes, ma'am.

20 Q What do you recognize it to be?

21 A This is drug evidence that was submitted and
22 analyzed under SLED Lab No. L-1402331. I recognize my
23 initials on several different items.

24 Q That packaging refereed to as the "SLED BEST
25 packaging," is that fairly typical for how drug

DOUGLAS ROBINSON - DIRECT EXAMINATION

1 evidence comes to you?

2 A Yes, ma'am. We have several different layers
3 here. The outer packaging is actually the K-pack.
4 This is a heat-sealed bag we use within the department
5 to reseal the evidence after analysis. The bag inside
6 with the green strip across the top and blue swirl
7 pattern across the other sides, that is referred to as
8 the "BEST bag," BEST is short for Best Evidence Sample
9 Testing. It is a uniform procedure that SLED uses to
10 issue these bags to agencies throughout the State as a
11 uniformed way to package drug evidence potentially on
12 scene and have it sealed in a uniform manner throughout
13 the chain of custody to us.

14 The word "seal intact" with my initials and the
15 day I inspected are written on the bag. On the
16 reverse side you have the actual drug evidence that
17 was submitted, and in Ziploc bags. Each of the Ziploc
18 bags has the lab number, item number and bag and my
19 initials and the word "bag added." The "bag added"
20 signifies that I added the Ziploc as a way to contain
21 each individual item during analysis.

22 Q Now, you noted that you had written "seal
23 intact," so let me back you up.

24 A Sure.

25 Q When something is brought in by law enforcement

DOUGLAS ROBINSON - DIRECT EXAMINATION

1 that would require your expertise, can you tell me how
2 it is that you get that evidence?

3 A Yes, ma'am. All evidence is submitted through
4 the Evidence Control Department. We do not have
5 technicians in our department, we physically retrieve
6 our own evidence per analyst. So I would go and
7 retrieve this evidence and bring it back up and store
8 it in a secured location until it was time to do the
9 analysis. When that time comes, the first thing that
10 happens is the BEST bag is removed from an outer manila
11 envelope used for transporting and protection of the
12 bag. The seals are checked at that point before any
13 analysis starts. The note "sealed intact" appears
14 here, and it is noted on my analysis worksheet. So it
15 is verified that that seal is intact.

16 Q If it had not been intact, would you have noted
17 that as well?

18 A Absolutely.

19 Q After you verify the seal is intact, very
20 briefly, if you could describe the process you go to to
21 analyze a controlled substance.

22 A Every case is a little different, so once the
23 case is opened, all the evidence is separated and
24 itemized accordingly. Once it has been determined how
25 the evidence will be itemized, each item is worked

DOUGLAS ROBINSON - DIRECT EXAMINATION

1 independently from the other items as a separate unit.

2 Per item, individually, all packaging is removed
3 from that item and an initial weight is taken. Once
4 the weight has been recorded, an initial or
5 presumptive test is performed. This gives us a
6 general idea of what the substance could be of
7 classification. Based on that, additional
8 confirmatory testing is performed to identify the
9 substance to the exclusion of all other compounds.

10 Q Did you, in fact, do that testing on the items in
11 that SLED BEST packet?

12 A Yes, ma'am.

13 Q Were you able to form an opinion to a reasonable
14 degree of scientific certainty as to what the items
15 were?

16 A Yes, ma'am.

17 Q What were they?

18 A May I refer to my notes?

19 Q Yes, please.

20 A For Item 7.1, heat-sealed bag containing the
21 following:

22 Item 7.1.1: Plastic corner bag containing rock
23 substance. Cocaine base crack C2 found in sample
24 tested. One tested. Net weight, 0.108 grams, 1.666
25 grains.

DOUGLAS ROBINSON - DIRECT EXAMINATION

1 Item 7.1.2: Plastic corner bag containing rock
2 substance. Cocaine base crack C2 found in the sample
3 tested. One tested. Net weight, 0.108 grams, 1.666
4 grains.

5 Item 7.1.3: Plastic corner bag containing
6 crystal substance. Methylone C1 found in the sample
7 tested. One tested. Net weight, 0.149 grams, 2.299
8 grains.

9 Item 7.1.4: Plastic corner bag containing
10 crystal substance. Methylone C1 one found in the
11 sample tested. One tested. Net weight, 0.155 grams,
12 2.391 grains.

13 Item 7.1.5: Plastic corner bag containing
14 crystal substance. Methylone C1 found in the sample
15 tested. One tested. Net weight, 0.161 grams, 2.484
16 grains.

17 Item 7.1.6: Plastic corner bag containing
18 crystal substance. Methylone C1 found in the sample
19 tested. One tested. Net weight, 0.189 grams, 2.916
20 grains.

21 7.1.7: Plastic corner bag containing crystal
22 substance. Methylone C1 in the sample tested. One
23 tested. Net weight, 0.182 grams, 2.808 grains.

24 Item 7.1.8: Plastic corner bag containing
25 crystal substance. Methylone C1 found in the sample

DOUGLAS ROBINSON - DIRECT EXAMINATION

1 tested. One tested. Net weight, 0.194 grams, 2.993
2 grains.

3 Item 7.1.9: Plastic corner bag containing
4 crystal substance. Methylone C1 found in the sample
5 tested. One tested. Net weight, 0.141 grams, 2.175
6 grains.

7 Item 7.1.10: Plastic corner bag containing
8 crystal substance. Methylone C1 found in the sample
9 tested. One tested. Net weight, 0.173 grams, 2.669
10 grains.

11 Item 7.1.11: Plastic corner bag containing rock
12 substance. Cocaine base crack C2 found in sample
13 tested. One tested. Net weight 0.090 grams, 1.388
14 grains.

15 Q To be clear, when you opened the evidence, there
16 were 11 doses -- for lack of a better word -- of
17 controlled substances?

18 A 11 different bags. Because they appeared to be
19 two different substances, and there was some ambiguity
20 as to what would go with what or what would be the same
21 substance, all were broken out separately and tested as
22 separate reporting items. For recording purposes, they
23 were all separated into 11 different items as well.

24 MS. WALTER: Nothing further at this time. If
25 you would, answer any questions by Mr. Barr.

JENNIFER NATES - DIRECT EXAMINATION

1 A Yes, ma'am.

2 MR. BARR: No questions.

3 THE COURT: Anything further need for this
4 witness?

5 MS. WALTER: No, Your Honor.

6 THE COURT: Mr. Barr?

7 MR. BARR: No, Your Honor.

8 THE COURT: You are released.

9 MS. WALTER: State calls Jennifer Nates.

10 (JENNIFER NATES, having been duly sworn,
11 testified as follows:)

12 THE WITNESS. J-E-N-N-I-F-E-R, N-A-T-E-S.

13 DIRECT-EXAMINATION

14 BY MS. WALTER:

15 Q Where do you work?

16 A South Carolina Law Enforcement Division in the
17 Trace Evidence Section.

18 MS. WALTER: Your Honor, Mr. Barr agreed to
19 stipulate to Ms. Nates' expertise in the area of
20 analysis of trace evidence.

21 THE COURT: Trace evidence, and likewise she has
22 been, by stipulation and agreement, offered as an
23 expert in that field, and you may give her testimony
24 such weight as you feel is appropriate. Thank you.

25 Q (MS. WALTER) Have you been qualified as an

JENNIFER NATES - DIRECT EXAMINATION

1 expert before?

2 A I have, 108 times.

3 Q How long have you worked for SLED?

4 A 20 years at the end of this year.

5 Q Part of being an expert in the analysis of trace
6 evidence, would that also include the area of gunshot
7 residue?

8 A It does. Trace evidence includes several
9 different areas. We are qualified in paint, fiber,
10 glass, explosives, fire debris, tape and gunshot
11 residue.

12 Q So specifically for this case -- and I'll direct
13 you to SLED Lab No. L-1402331 -- were you called upon
14 simply to do a gunshot residue analysis?

15 A Correct. In this case I was asked to perform a
16 gunshot residue analysis on two gunshot residue kits.

17 Q Can you describe briefly for the jury what is
18 involved in a gunshot residue analysis?

19 A Gunshot residue analysis is a test that is
20 usually performed on a subject's hands. The test or
21 kit is commonly collected in the field by the
22 investigating officer, by the coroner or by a crime
23 scene unit. The kit is -- it contains particle lifts,
24 which are small -- it is a round area that has a light
25 adhesive on it. The officer or coroner will use one

JENNIFER NATES - DIRECT EXAMINATION

1 particle lift for each area of the hands. They dab
2 over each area to pick up any material that is present
3 on that person's hands. The evidence is then preserved
4 on the particle lift until it is submitted to the
5 laboratory for analysis.

6 We will open up the kit and determine if they
7 were collected within the right amount of time.
8 Gunshot residue is very fragile, and there are time
9 limits on how long after the incident the kit can be
10 collected for the evidence to be viable. Once we
11 determine that, we put our samples on a microscope.
12 The particles we're analyzing are very, very small.
13 You can't see it with a naked eye. They have to be
14 magnified. Usually we perform analysis at 670 times
15 what the actual size is. When we focus on these
16 particles, sometimes I have to go up to 18,000 times
17 to actually obtain a picture of the particle.

18 We load the samples onto the instrument, set up
19 the parameters for the analysis and the instrument
20 performs an automated analysis overnight. We then go
21 in and determine each category that the instrument put
22 these particles into to verify if gunshot residue is
23 present or not by the sample.

24 Q You mentioned the collection has to be done
25 within a certain time period; what is that time period,

JENNIFER NATES - DIRECT EXAMINATION

1 typically?

2 A The time frame for collection for our state is
3 six hours, and this only applies to living subjects.
4 Once a person is deceased, anything that can remove the
5 residue from the hands no longer comes into play. If I
6 fire a weapon and wash my hands, or I sweat, put my
7 hands in and out of the pockets, touch things, anything
8 I do can remove that residue. Once a subject is
9 deceased, they are no longer moving or breathing or
10 absorbing that residue, and it would have to be removed
11 from an outside force. So six hours is the limit for
12 living subjects for a collection of a GSR kit.

13 Q We heard testimony in this case that the victim's
14 hands were bagged with tape around the bottom, does
15 that preserve any gunshot residue that might have been
16 there?

17 A Usually, agencies bag a victim's hands to prevent
18 any removal of the evidence during the transport of the
19 person either to the hospital or morgue. So that will
20 allow outside objects not to interfere with the hands
21 or come into contact with them.

22 Q I'm approaching you with what is admitted
23 Exhibits 41A and 41B. Let's start with 41. That would
24 be the gunshot residue test taken from the defendant,
25 Antwuan Nelson, correct?

JENNIFER NATES - DIRECT EXAMINATION

1 A That is.

2 Q Did you perform the analysis on that exhibit?

3 A I did.

4 Q Can you tell us to a reasonable degree of
5 scientific certainty whether or not the defendant had
6 gunshot residue, or whether the test indicated that the
7 defendant had gunshot residue on his hands?

8 A On the evidence that I received from Antwuan
9 Nelson, I received four particle lifts collected from
10 his hands. During the testing, I found particles of
11 gunshot residue were present on the right hand, and one
12 particle of gunshot residue was present on the left
13 hand.

14 Q When you say particles of gunshot residue were
15 found on his right hand, is there any way -- and I know
16 you testified to how microscopic these -- this residue
17 can be, is there any way to quantify how much gunshot
18 residue was there?

19 A How many particles were present?

20 Q Yes.

21 A May I refer to my notes?

22 Q Yes.

23 A When we do reporting for gunshot residue, we
24 don't report exact number of particles unless it is
25 one, because if it is one, I cannot use the term

JENNIFER NATES - CROSS-EXAMINATION

1 "multiple" or plural form. So if there is more than
2 two, it is "multiple." In this case, I found two on
3 his right hand, and one particle on his left hand.

4 Q Turning to Exhibit 41B, which is gunshot residue
5 kit taken from the victim in this case, did you perform
6 that same analysis kit?

7 A I did.

8 Q What were your results or conclusions to a
9 reasonable degree of scientific certainty?

10 A In a kit submitted from Michael Rogers, I did not
11 find the presence of gunshot residue on the sample
12 submitted.

13 Q So on either of his hands?

14 A Correct.

15 Q And, again, the adhesive pads would have tested
16 the backs of both hands and palms of both hands?

17 A Correct.

18 MS. WALTER: I have no other questions. Please
19 answer any by Mr. Barr.

20 CROSS-EXAMINATION

21 BY MR. BARR:

22 Q In addition to your findings in your trace
23 evidence report, you've indicated at least -- and
24 really you talked about -- I think you basically
25 covered all of them today, but I want to talk about one

JENNIFER NATES - CROSS-EXAMINATION

1 in particular, briefly.

2 Negative results can occur under certain -- when
3 six hours pass between firing and sampling. So if
4 somebody's sample is taken say, for instance, 12
5 hours, 13 hours, even longer than that, it's quite
6 possible to get a negative result?

7 A On a living subject, not deceased.

8 Q And how about deceased?

9 A Not on a deceased. On a deceased subject, once
10 they are pronounced dead, at that point the time frame
11 stops and the requirement no longer applies to that.

12 Q And I noticed that you also mentioned the firing
13 of a firearm that does not produce primer --

14 A Can you repeat that please?

15 Q Firing a firearm that does not produce primer,
16 the --

17 A Right. That is one instance we have seen in some
18 of our test firing that -- actually, with a Glock we
19 test fired and the shooter did not have any gunshot
20 residue on their hands. So we've seen it in some
21 limited instances where the firearm doesn't produce
22 enough primer residue to be deposited on the hands.

23 Q Have you seen it in a shotgun?

24 A Have not. Normally, a shotgun produces much more
25 residue than the smaller caliber weapons. With gunshot

JENNIFER NATES - CROSS-EXAMINATION

1 residue, 22 or a 380, smaller guns don't produce as
2 much residue because there is not as much primer in
3 that weapon. Larger caliber weapons produce more
4 residue.

5 Q All right. High powered shells have more primer
6 or less primer?

7 A Depends on the shell, but usually has more than a
8 22.

9 Q More powder?

10 A Yes. All guns are different.

11 Q But the actual shell themselves, depending on the
12 load that they are designed to carry, more powder
13 carries a heavy load?

14 A Can't answer a firearms question. All I can tell
15 you if the gun contains a higher load and has more
16 primer, more primer will be produced, but I can't tell
17 you which guns, other than high caliber/low caliber,
18 would fall into these categories.

19 Q And you couldn't say ordinarily with a light
20 load, less primer?

21 A That is what I can say, light load versus --

22 Q Okay. Good. Good. Thank you.

23 MR. BARR: Nothing further.

24 REDIRECT-EXAMINATION

25

JENNIFER NATES - REDIRECT EXAMINATION/RE CROSS EXAMINATION

1 BY MS. WALTER:

2 Q There has been evidence admitted in this case
3 about a shotgun and shotgun shells of that size. You
4 would believe that shotguns of this size would have
5 more of a load or less of a load, if you can tell us?

6 A I can't answer that question. I can testify to
7 what I have seen with larger caliber weapons, we see
8 more primer produced on the hands when shooting.

9 Q And you included shotguns as a larger caliber?

10 A I did, yes.

11 MS. WALTER: Nothing further at this time.

12 THE COURT: Mr. Barr?

13 RECROSS-EXAMINATION

14 BY MR. BARR:

15 Q Larger caliber, but not necessarily coinciding
16 with the load?

17 A Primer residue -- what we look for -- is actually
18 in the primer cap of the cartridge. So you can have
19 whatever type of bullet in there, but it may take more
20 primer residue to ignite a larger load. That is just
21 basic -- what we are taught with a primer. I can tell
22 you that with the majority of the guns produce gunshot
23 residue, we will see gunshot residue on a person up to
24 four to six hours after they have fired a weapon if
25 they are living. On a deceased individual, the residue

JURY OUT

1 remains on the hands until it is physically removed by
2 an outside force. So if a weapon was fired and primer
3 was produced, we should see it on that person's hands.

4 Q Blood affects it as well?

5 A It can dissolve the residue.

6 MR. BARR: Thank you.

7 MS. WALTER: Nothing further.

8 THE COURT: You may step down. Any objection to
9 releasing this witness from her subpoena?

10 MR. BARR: No, sir.

11 THE COURT: Ms. Walter, any objection?

12 MS. WALTER: No, Your Honor.

13 THE COURT: You are released from your subpoena.

14 MR. HIXSON: May we approach?

15 THE COURT: Yes.

16 (Whereupon, a bench conference was had.)

17 THE COURT: Let's take about a 10-minute bathroom
18 break. Ladies and gentlemen, the next witness -- they
19 tell me -- could be rather long, so what I'll do is --
20 it is 11:30. I'll let you go to lunch until 1:00.
21 That is an hour-and-a-half. Be back and we'll be
22 ready. Mr. Ropp, take the jury to the jury room.

23 (The jury exits at 11:28 a.m., and the
24 following is heard out of the presence of the jury.)

25 MS. WALTER: I believe I neglected to have some

JURY OUT

1 of my witnesses released on their subpoenas on the
2 record.

3 THE COURT: Any problem with them? Who do you
4 have that you think you are done with?

5 MS. WALTER: My evidence technician and my crime
6 scene specialist, Mr. Stair and Officer Harlow from
7 yesterday.

8 THE COURT: Any objection to releasing those?

9 MR. BARR: Who did you say now?

10 MS. WALTER: Stand up that has not been released.
11 There you go. Shadoan, Ms. officer Stair --

12 MR. BARR: No, sir.

13 MS. WALTER: No objection.

14 THE COURT: They are all released from their
15 subpoenas.

16 (A lunch recess was taken.)

17 THE COURT: How many more do you have,
18 Mr. Hixson?

19 MR. HIXSON: We believe this will be the last
20 one. Kristen Bloomer.

21 THE COURT: Oh, yeah, that's right.

22 MR. HIXSON: She did CPR and all of that. We'll
23 see what develops with Ms. Bloomer, but most likely.

24 THE COURT: Is there any criminal history that
25 you intend to use that you gave Mr. Barr?

KRISTEN BLOOMER - DIRECT EXAMINATION

1 MR. HIXSON: I don't think he has any impeachment
2 or conviction -- I'll check in a second.

3 (A recess was taken.)

4 THE COURT: Are we ready? I see -- it's
5 1 o'clock. Is he up here? As soon as he is up --
6 okay. We're ready. Bring the jury in.

7 (The jury enters at 1:10 p.m., and the
8 following is heard in the presence of the jury.)

9 THE COURT: We have everyone back, Mr. Hixson. I
10 believe you have a witness.

11 MR. HIXSON: The State calls Kristen Bloomer.

12 (KRISTEN BLOOMER, having been duly sworn,
13 testified as follows:)

14 THE CLERK: State your full name and spell your
15 first and last for the Court.

16 THE WITNESS: My name is Kristen Bloomer,
17 K-R-I-S-T-E-N, B-L-O-O-M-E-R.

18 DIRECT-EXAMINATION

19 BY MR. HIXSON:

20 Q Good afternoon. How are you?

21 A I have been better.

22 Q That is just a test drive so you get used to the
23 mic. Let's take you back to January 2014. Did you
24 know a man by the name of Michael Rogers?

25 A Yes, I did.

KRISTEN BLOOMER - DIRECT EXAMINATION

1 Q How do you know Michael Rogers?

2 A We were in a committed relationship together. We
3 shared a residence and we also shared a child together.

4 Q And so you have a child in common?

5 A Yes.

6 Q Boy or girl?

7 A A girl.

8 Q What is her name?

9 A Cameron. She's four.

10 Q So when this happened years ago, she was a little
11 over one around January 27, 2014?

12 A She just turned one.

13 Q Were you taking care of her at that time, in
14 daycare, where was she in the afternoon of January 27
15 of 2014?

16 A Earlier in the day she was in daycare. Towards
17 the afternoon is when I would -- I usually picked her
18 up from daycare around 5:00, 5:00 o'clock in afternoon.

19 Q Okay. So were you living -- just trying to set
20 the stage for you -- were you living in the
21 37th Avenue area of the City of Myrtle Beach in Horry
22 County?

23 A Yes, I was.

24 Q Do you remember the specific address?

25 A [REDACTED] 37th Avenue North, Apartment [REDACTED] in Myrtle

KRISTEN BLOOMER - DIRECT EXAMINATION

1 Beach.

2 Q Let me show you what is in evidence already, it's
3 State's 1; do you recognize that?

4 A I do. That is the street I lived on.

5 Q Can you point to the building you lived on?

6 A This back building right here, and on the top
7 level onto the apartment on this side.

8 Q And in order for you -- like where would -- if
9 you were to go to your apartment right now, if you
10 still lived there, where would you go?

11 A A little front entryway that leads into a little
12 hallway and a staircase directly as you enter the
13 doorway. So once you enter the doorway and go up to
14 the stairs, you go to the apartment on the right.

15 Q So let me ask you this. Does Michael have a
16 green pickup truck?

17 A Yes.

18 Q And if you were to pull into park -- let me show
19 you and set the scene. Let me show you what is marked
20 as State's 2; do you recognize that?

21 A Yes, I do.

22 Q Is that -- was that Michael's pickup truck?

23 A It was.

24 Q Is that where he normally would park, generally
25 speaking?

KRISTEN BLOOMER - DIRECT EXAMINATION

1 A Either there or in the back driveway.

2 Q Can you point?

3 A Right over in here somewhere. He would only park
4 it out here shortly after he was washing it.

5 Q So generally speaking, you park in here or
6 sometimes out here?

7 A Correct.

8 Q And just normal every day, if you are coming
9 home, how are you going to get up into your apartment?

10 A There is a little driveway right here where the
11 shade is blocking, there is a driveway that leads up
12 this way and it goes into the parking lot.

13 Q So no normal every day thing is, Hey, Honey, I'm
14 home, and he is coming up this way?

15 A Yes.

16 Q And you have to go up the steps to get up to that
17 apartment?

18 A Yes.

19 Q Thank you. So let's set the scene a little bit
20 more. I'll show you what is marked as State's 3; do
21 you recognize that? What is that?

22 A That is the two vehicles, and this is the
23 entryway to the front building of the -- I would say --
24 complex.

25 Q Let me see if I can turn into an octopus here.

KRISTEN BLOOMER - DIRECT EXAMINATION

1 So that picture -- so this picture, if you are a
2 photographer taking this pictures, where would you be
3 standing taking the picture?

4 A You would be standing facing this building, so
5 you would be facing north from the street.

6 Q So this entrance for this door is like right
7 here?

8 A Correct.

9 Q And that goes upstairs to the second floor on
10 that?

11 A Yes.

12 Q Okay. So let's take it back to January 27th.
13 Anything particularly eventful for the trial of this
14 case happened prior to 3 o'clock that day? I mean, I'm
15 sure you did a bunch of stuff, but as it related to
16 what happened, anything up to around 3 o'clock?

17 A Nothing really until about 3 o'clock. I remember
18 dropping my daughter off at daycare that morning,
19 coming back to the house, getting some laundry and old
20 baby clothes ready for Beach Baby Kids Sales. So I was
21 getting them ready and prepared to take those. Sitting
22 on my couch watching TV, washing and folding them.
23 That was pretty much about it until about 3 o'clock.

24 Q Let me show you what is put in evidence as
25 State's Exhibit 8; do you recognize that?

KRISTEN BLOOMER - DIRECT EXAMINATION

1 A I do. That was my apartment.

2 Q What is on the sofa there?

3 A Baby clothes.

4 Q Doing laundry, folding clothes?

5 A Yes.

6 Q I'm showing the jury what is already in evidence

7 State's 8.

8 (Published to the jury.)

9 Q (MR. HIXSON) And at some point in time -- I'm
10 getting you to the point, and let me know if you need
11 a break. At some point in time, does Michael Rogers
12 and Antwuan Nelson come into the front door of your
13 apartment?

14 A Yes, they do.

15 Q Let's start talking about them there, okay. If
16 you can go from there, tell the jury what you saw and
17 heard that afternoon somewhere after 3 o'clock on the
18 27th.

19 A As I said, I was sitting on the couch folding
20 some clothes. Next thing I noticed was Michael and the
21 defendant coming through the door of my apartment.
22 They headed over to the kitchen area, which if I'm
23 sitting on the couch, it is over to the right of me
24 divided by a fish tank.

25 Q Let me show you what is State's 9 already in

KRISTEN BLOOMER - DIRECT EXAMINATION

1 evidence; do you recognize that?

2 A Yes, that's it.

3 Q Can you point to where the front door, the door
4 in and out in that picture?

5 A Right here. This is the front door in and out.
6 This is the kitchen area, and over in here is the couch
7 in the living room where I was sitting.

8 Q So it's all one great big room, you have an
9 alcove, but it's a great room, they call it?

10 A Yes. Yes.

11 Q I guess that's safe to say.

12 (Published to the jury.)

13 Q (MR. HIXSON) What is the demeanor when they come
14 into the room? Are they screaming, happy, what is
15 going on?

16 A Everything is fine, normal, not really any words
17 or anything, just me sitting on the couch. They headed
18 straight into the kitchen area, but nothing out of the
19 ordinary as far as words or demeanor wise. It was
20 pretty calm and collected.

21 Q Had you seen Mr. Nelson before? Did you
22 recognize him from anything in the past?

23 A I had not.

24 Q As it relates to Mr. Nelson's appearance, is his
25 hair different today when you first saw him?

KRISTEN BLOOMER - DIRECT EXAMINATION

1 A It is. He had really long dreads, and that day
2 his dreads were kind of pulled back, so like you have a
3 ponytail, your hair is long, so if you pull it down
4 like this, he had dreads.

5 Q So take us from there then. Everything is okay.
6 What happens?

7 A Yeah. So wasn't paying attention too much. All
8 of a sudden, I hear Michael start saying --

9 MR. BARR: Objection, hearsay.

10 THE COURT: Repeat the question.

11 MR. HIXSON: I asked what happened, and just
12 asking for presence sense impression.

13 THE COURT: Let me hear the response again.

14 MR. HIXSON: She has not responded yet.

15 Q (MR. HIXSON) What were you observing or
16 perceiving?

17 A Well, what I was -- what I was perceiving at the
18 point where I started hearing voices, other than my
19 own, because I was not speaking, when I started hearing
20 two male voices speaking, it was getting hostile. So I
21 proceeded to look up and stand up. At that point, when
22 I stood up, I saw the defendant throw a punch at
23 Michael Rogers.

24 Q Back up for a second. When you say you went from
25 folding clothes to suddenly paying attention to what

KRISTEN BLOOMER - DIRECT EXAMINATION

1 was going on in there, did you hear Antwuan Nelson say
2 anything?

3 A I did.

4 Q What did he say to Michael Rogers?

5 A He was saying, No, you will buy these.

6 Q And do you know what they were doing in the
7 kitchen?

8 A Initially, no. But once they started speaking,
9 yes. It was a drug -- intended drug-sale.

10 Q Did you see what they were arguing over?

11 A I did not. I did not.

12 Q Did you -- were you aware whether or not Michael
13 ever used drugs?

14 A Here and there, yes.

15 Q Do you know whether or not Michael ever sold
16 drugs?

17 A On occasion.

18 Q You don't know anything about Antwuan Nelson?

19 You just testified that you didn't know anything about
20 him as he is coming in the room?

21 A No. It was one of those things where I tried to
22 keep it away from my home, so certain things that were
23 conducted, I really was not a part of, per se, I would
24 say.

25 Q So now we have a concept of what we're talking

KRISTEN BLOOMER - DIRECT EXAMINATION

1 about. So tell us again, when you first noticed
2 something that takes you away from folding laundry?

3 A I heard Michael's voice and he was talking.

4 Q What did he say?

5 A He said, No, I'm not buying these, it does not
6 look correct.

7 Q And what is your impression of what he was
8 referring to when he said I'm not buying it?

9 A Whatever he was purchasing was not to the
10 standard of what someone else would want to purchase.

11 Q And then in response to that, what does Antwuan
12 Nelson tell Michael Rogers?

13 A He said, You will, you will buy these.

14 Q What happened after that? I think you mentioned
15 at that time --

16 A Yeah, at that time I stood up because, of course,
17 I heard things getting hostile. So I stood up and
18 looked over to the right of me, and I saw Antwuan throw
19 a punch at Michael.

20 Q And he hit him?

21 A Yes. And then from there they kind of just
22 started scuffling around in the kitchen, kind of from
23 one end to the other.

24 Q Let's get a picture so we can show what we're
25 talking about. Can you point for the jury to see what

KRISTEN BLOOMER - DIRECT EXAMINATION

1 area you are referring to?

2 A Yes. Initially, they were standing over here, so
3 when I saw the punch thrown, they were about in here,
4 and then they ended up being over by the stove and the
5 refrigerator initially when they were scuffling.

6 MR. HIXSON: Your Honor, she's referring to this
7 area of the photograph.

8 THE COURT: All right.

9 Q (MR. HIXSON) Referring to this area of the
10 photograph?

11 A Yes.

12 (Published to the jury.)

13 Q (MR. HIXSON) Basically by the kitchen counter
14 towards the sink; is that safe to say?

15 A Yes.

16 Q You start to see a fight ensue; what do you do?

17 A I'm yelling at both of them to stop it, it is
18 ridiculous. I can't remember my exact words, it was
19 three years, but along the lines of, stop, this is
20 ridiculous, you all need to stop fighting in my house.
21 As I was saying that, they were still scuffling, and
22 then both the defendant and Michael ended up being in
23 between the kitchen table and the couch.

24 Q Let me ask you this. At some point in time, did
25 Michael Rogers go to the ground?

KRISTEN BLOOMER - DIRECT EXAMINATION

1 A Yes.

2 Q Did Antwuan Nelson go on the ground on top of him
3 and kick him and punch him?

4 A Yes.

5 Q Talk about that and go forward from there. I
6 keep interpreting.

7 A No, you're fine. So when they were scuffling,
8 they ended up on the floor, which was in between the
9 kitchen table and the end of the couch, kind of
10 diagonally. So they were on the ground and the
11 defendant was on top of Michael, and he was continuing
12 to hit him. They were scuffling that way. Then, at
13 that point, Michael did tell me to get his gun. When
14 he said that, I froze because of the situation going on
15 and I also did not know where it was. So what I did
16 was I went around them fighting, which was easy to do
17 from where the placement was. I went around and opened
18 up my front door. I opened up my front door and I told
19 Michael hit him, get him out of the house, push him
20 down the stairs if he had to. At that point, not long
21 after I opened the front door, Mr. Nelson took off
22 running and went out my front door and went down the
23 stairwell out of the building that I lived in.

24 Q Were things in disarray inside the kitchen,
25 inside your house during the scuffle?

KRISTEN BLOOMER - DIRECT EXAMINATION

1 A They were. The trashcan was knocked over, the
2 tables and chairs were knocked over, refrigerator door
3 handle had been taken off in the scuffle. There is
4 just -- it was a mess.

5 Q When Michael said, Get my gun, get my gun, did
6 you know specifically what type of gun or whatever he
7 was referring to?

8 A I did.

9 Q Had you seen it in the apartment?

10 A I did.

11 Q Referring to a long gun or pistol?

12 A A long gun.

13 Q Shot gun?

14 A Yes.

15 Q Did you, in fact, go get that gun for him when
16 Antwuan Nelson was on top?

17 A I did not. Like I said, I didn't know where it
18 was, so I couldn't.

19 Q So Mr. Nelson goes down the steps. Tell us what
20 happens in the apartment right after he goes down the
21 steps?

22 A After he goes down the stairs, I shut my front
23 door and I'm talking to Michael trying to get him to
24 calm down, get him to stay in the apartment. That did
25 not happen.

KRISTEN BLOOMER - DIRECT EXAMINATION

1 Q What is his mindset?

2 A He's furious. He was pretty much attacked in his
3 own house and he has me and our daughter wasn't there
4 at that time, but this is where we live. This is our
5 house and he was just attacked, so he was in a
6 protective defense mode for his family.

7 So I shut the front door, was trying to talk to
8 him, trying to get him to calm down, like, okay, it's
9 not a big deal, you know. I opened up the front door
10 and started walking down the stairs, which in this
11 passing we had passed his son, who was also kind of
12 staying there at the time. We passed his son along
13 the way, stopped and talked to him for a second and we
14 all proceeded to go outside of the building and go
15 around to the front buildings, and Michael did go a
16 little ahead of me to the front building.

17 Q When you see -- when Michael goes down the steps,
18 do you see if he had a gun on him at that time?

19 A I don't know. It is three years ago. I can't --
20 I don't remember. At this point I don't remember if I
21 did or not.

22 Q Can you point to the direction where you recall
23 -- let me ask another question. From the time that
24 Mr. Nelson, the defendant, leaves the house, your
25 house, until you go down the steps, about how much time

KRISTEN BLOOMER - DIRECT EXAMINATION

1 do you think passed between --

2 A When?

3 Q When says, Get my gun, get my gun. Mr. Nelson
4 goes down the steps, you talk to Michael try to get him
5 to calm down, he decides he's going down the steps; how
6 much time do you think went by?

7 A About two minutes maybe, give or take. But no --
8 I would say no less than a minute-and-a-half, probably
9 two minutes on up.

10 Q So he was right on his heels, but it was also
11 directly as a result of --

12 A Correct.

13 Q Fair enough. Did you see where the defendant
14 went after he left the building?

15 A I did not.

16 Q And let's talk about Michael. What did Michael
17 do?

18 A Michael ran down the stairs, and I did not see
19 which way he took, but he -- when I went down the
20 stairs, I walked around this way down the driveway and
21 to the front of the building, which is where I saw
22 Michael standing.

23 MR. HIXSON: Your Honor, she goes this way and
24 goes here and sees Michael general down here
25 (indicates).

KRISTEN BLOOMER - DIRECT EXAMINATION

1 THE COURT: Okay.

2 MR. HIXSON: Can you all see that?

3 Q (MR. HIXSON) So the next time you see Michael,
4 you testified that you and he are standing in this
5 area?

6 A Correct. A little bit closer to this front door
7 kind of where the truck was parked, kind of in front of
8 that, in that area.

9 THE COURT: Let's mark on the exhibit.

10 MR. HIXSON: Mark on the big one, Judge?

11 THE COURT: So it will be complete.

12 Q (MR. HIXSON) Mark on there where you and
13 Michael -- when you have come down and around?

14 A (Witness complied.)

15 Q Good job. All right.

16 THE COURT: For the record, how did she mark it?

17 MR. HIXSON: With her initials, with a dot and
18 with that "KB".

19 A Yes.

20 THE COURT: Thank you.

21 Q (MR. HIXSON) What is Michael doing at this point
22 in time?

23 A He's standing there pretty outraged. He's
24 yelling up to the top of the stairs of the front
25 building that you all were showing earlier. He was

KRISTEN BLOOMER - DIRECT EXAMINATION

1 yelling, outraged. He was kind of popping around, but
2 yelling -- I can't say exact words, but along the lines
3 of, Come on, come out, fight like a man, to where he
4 believed where the defendant was.

5 Q The words he was using, was he threatening to
6 kill Antwuan Nelson?

7 A No.

8 Q This is offered for presence sense impression,
9 state of mind, what is in the mind of this individual.
10 Is he saying, I'm going to kill you, or, Come down and
11 fist fight like a man? What is your testimony?

12 A No. My overall impression was, Come down and
13 fist fight.

14 Q I'll show you State's 3. When he is saying that,
15 did he have a weapon in his hands?

16 A He didn't.

17 Q Do you recognize that?

18 A I do.

19 Q Where are you located when Mr. Rogers is yelling
20 up the steps to where he believes Mr. Nelson to be?

21 A Pretty close to his proximity, two, three feet
22 away.

23 Q Pretty much standing there with him?

24 A Yes.

25 Q When this is going on, does Mr. Nelson -- do you

KRISTEN BLOOMER - DIRECT EXAMINATION

1 see Mr. Nelson -- does he come down the steps? Do you
2 see him?

3 A No.

4 Q At some point in time -- please, go ahead with
5 your story. I'll stop asking questions.

6 A So after he yelled for a few minutes, I guess he
7 was kind of -- not really calming down, but I realized
8 the time and I know it was closer to picking up our
9 daughter from daycare, so I was trying to get him out
10 of the situation, Come on, let's go, let's go get
11 Cameron, leave it alone, let's get Cameron.

12 At that point, he agreed to go ahead and go. So
13 we walked back up to -- back around that front way
14 back to our apartment.

15 Q Was Jerome -- or his son -- around there at that
16 point?

17 A Yes. Yes. He was standing within proximity of
18 us, and we all headed up to the apartment.

19 Q Prior to him turning and going out of the
20 apartment, did he get anything out of the truck?

21 A He did. He grabbed a shotgun out of the bed.

22 Q So the shotgun was downstairs at that point in
23 time?

24 A Yes.

25 Q Is that the first time you remember seeing the

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1 shotgun?

2 A Yes.

3 Q Let's talk about that. Let's use this diagram.

4 This is State's 23. It is a sketch with a truck. So
5 point to that area where you remember the front
6 entrance and where you were standing?

7 A Front entrance is about here, and we're standing
8 about here.

9 Q And then when you are talking about leave him
10 alone, let's go, in more detail now, because there is a
11 piece in there, you see him reach in the back of his
12 truck and get a shotgun. So talk about that in more
13 detail.

14 A So I convinced him to come with me. He grabbed
15 his shotgun out of the trunk of his car.

16 Q Is that a pickup truck?

17 A I'm sorry, out of the bed of the truck. He was
18 holding it in his hand, and all three of us proceeded
19 to just -- I would say casually walk back around this
20 way back up to our apartment.

21 Q What was his demeanor there? You mentioned he
22 was calming down. Is he still agitated?

23 A He was -- I mean, I'm sure -- can't say state of
24 mind, but it was calmer than initially, but it was
25 probably -- he knew we were going to go get our

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1 daughter, so it was kind of cut-a-loss kind of thing.

2 Q Do you recall what time this was that you started
3 to think, hey, we need to go get our daughter?

4 A I want to say maybe like 4:15-ish. Maybe a
5 little before that. Maybe a little afterwards.

6 Q Because I think you testified earlier that you
7 had to pick her up at 5:00?

8 A Correct.

9 Q So up to this point, how long do you think this
10 has been going on since the initial altercation
11 downstairs, time goes by and now you are thinking have
12 to get moving?

13 A At least 20 minutes. At least 20 minutes.

14 Q Up until the time he leaves and goes back up?

15 A (Witness nods head.)

16 Q At some point in time, do you come back down here
17 as you are -- what vehicle are you going to drive to
18 pick her up in?

19 A The green truck.

20 Q So you have to go back where that is. So at some
21 point in time, do you come back down towards the green
22 truck?

23 A I do. At some point in time, we actually all --
24 I cannot say "all." I know me and Michael definitely
25 walked back down to the truck from the apartment after

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1 having been up in the apartment for about five minutes
2 cleaning up the mess. We walked back down to the
3 truck.

4 Q When you are down towards the back of the truck a
5 second time, do you see Antwuan Nelson?

6 A No.

7 Q At some point in time, do you see Antwuan Nelson
8 come back and get in the red Crown Victoria?

9 A I do.

10 Q Tell us about that.

11 A I can't remember exactly why Michael decided not
12 to come with me to pick up my daughter from daycare.
13 So he started to walk back up to the apartment, and I
14 was going to get in the truck to go get her.
15 Mr. Nelson came down from the stairs from the top of
16 that building. Came down the stairs. He kind of
17 crouched down, looked around for a second and ran to
18 the trunk of his car. When he ran to the trunk of his
19 car, he opened it. I couldn't necessarily see what he
20 was doing, but I could see him out of the little space
21 where the trunk and the car don't necessarily meet when
22 you open a trunk. He was crouched down, so I can't say
23 necessarily what he was doing at that time. He stood
24 up, closed the trunk and he approached me with a black
25 rifle in his hand. When he approached me -- when he

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1 approached me, he told me to call my boyfriend and tell
2 him to bring him his stuff. At that point, I told him
3 no. I said, no, I'm not, my phone is about to die. I
4 wouldn't have been able to make the call. So after I
5 told him that, I walked away from him and started to
6 walk back up to my apartment.

7 Q What was the defendant's demeanor at the time he
8 walked up with a rifle in his hand to ask you tell him
9 to bring me my stuff?

10 A Kind of hostile, but not necessarily towards me,
11 more towards the situation.

12 Q Was he pointing the weapon at you?

13 A No. He had it in his hands talking.

14 Q This is State's 2. So where are you standing in
15 relation to this photograph when you see Mr. Nelson go
16 to his truck?

17 A You can't really see it from this picture because
18 it is over more towards that initial driveway that
19 leads to the back building where I was.

20 Q Try this one, referring to State's 1, which you
21 already initialed. Where you were first standing, how
22 about this time when Mr. Nelson is getting the rifle
23 out of the trunk of the car?

24 A I would say right around here where this hard
25 black concrete ends to kind of the softer gray, so

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1 right around in that area.

2 Q I'll have you mark that, too. If you will mark
3 that with your initials and a number "2" to show your
4 second position, okay. Mark the second time where you
5 are -- when Mr. Nelson approaches you with a rifle.

6 A (Witness complies.)

7 MR. HIXSON: Here is the location she marked,
8 Your Honor.

9 THE COURT: Very well, thank you.

10 Q (MR. HIXSON) So you are further up the walkway
11 so you can see the other side of the house, not the
12 alleyway?

13 A Correct.

14 Q Is Michael there at the time?

15 A No. He was already up in the apartment, as far
16 as I know. I know he left before me, and when -- he --
17 he would have had time to get up to the apartment while
18 I was speaking with the defendant.

19 Q So the last time you see Michael -- not the very
20 last time, we'll tread lightly on that -- the last time
21 you see him, he is taking the shotgun and your
22 understanding is he's going back upstairs because he
23 says he's going with you to pick up your child; is that
24 safe to say?

25 A Yes.

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1 Q After Mr. Nelson asks you to tell your boyfriend
2 to bring his stuff, what happens then?

3 A I start walking around the front of the first
4 building more so around -- slightly around the corner
5 of it, so I'm walking around the east side of that
6 building headed back towards my apartment, and as I'm
7 walking, I make it to about the breezeway area --

8 Q I don't think we used that term, "breezeway,"
9 what do you mean? This area?

10 A Yes.

11 Q Between the buildings is what you are calling a
12 breezeway?

13 A Yes.

14 Q Okay.

15 A So I make it to about to that area. I hear the
16 front door to the apartment -- the building I lived in,
17 that front doorway had a door on it that you had to
18 open to get to the stairway and the other apartments.
19 As I am walking away, I hear that door shut. I see
20 Michael behind -- through the glass of the cars that
21 were parked walk up against the edge of the building
22 and towards that small breezeway area.

23 Q Does he have a shotgun in his hand then?

24 A He does.

25 Q Tell us what happened then?

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1 A I walked around, got through the breezeway and I
2 -- it happened so quick. I didn't have time to say
3 anything. I saw him peek around the corner and duck
4 back. I heard shots in that time frame. I also heard
5 Michael's son, who was standing in that doorway of my
6 building with the door opened, telling me to get over
7 there, to get over there, come over there with him.

8 MR. BARR: Objection, hearsay.

9 THE COURT: Excited utterance.

10 MR. HIXSON: I would offer it for that.

11 Q (MR. HIXSON) Was this a very stressful
12 experience?

13 A Yes.

14 Q Did Jerome's voice seem to be under the stress of
15 the excitement of this situation when he's calling to
16 you?

17 A Yes.

18 MR. HIXSON: I ask that --

19 THE COURT: It is admitted.

20 Q (MR. HIXSON) Please continue, ma'am.

21 THE COURT: Under the theory of excited utterance
22 and not offered for the truth of the matter asserted.

23 MR. HIXSON: That's right. Thank you, Your
24 Honor.

25 A At that point, Jerome was yelling to me. I

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1 walked into -- I went into the hallway area and stood
2 with Jerome. I didn't feel very long that we were in
3 there, maybe 10, 15 seconds, if that. I heard a few
4 more shots in that time frame. It happened very
5 quickly. So I heard a few more shots and it stopped,
6 and maybe about 10 seconds after I heard it stop, I
7 proceeded to tell Jerome that we needed to go out
8 there, we needed to go out there, he could be laying on
9 the ground bleeding out for all we know, we needed to
10 check on him. I was instructed not to, to stay in the
11 building and he would go out first. He walked outside
12 of the doorway before I did. When he walked out of the
13 doorway, he got to the breezeway area and started
14 yelling and screaming. I ran out over there (witness
15 crying). At that point in time, I ran over there --
16 ran past Jerome in the breezeway because I could see
17 Michael laying on the ground. I approached Michael,
18 who was on the ground. I went and got beside him, and
19 I got down and kneeled into the dirt next to him. I
20 started applying pressure to his neck, which is where
21 he had been shot. I started applying pressure to his
22 neck. I took off my sweater and I tried putting
23 pressure on him. I was yelling for help. I yelled to
24 a couple of people that was on the scene that I needed
25 a straw, that he can't breathe. I was trying to help

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1 him. (witness crying)

2 At that time, while I was down on the ground with
3 him, the defendant was approaching me taking apart his
4 rifle and saying, He threatened me first, he
5 threatened me first. I told him that he needed to get
6 away from me, that he was still alive and Michael was
7 on the ground bleeding to death, that he needed to get
8 away from me. He walked away. By the time he made it
9 to the trunk of his car, officers arrived on scene and
10 told him to get down on the ground. I was yelling to
11 the officers, Forget him, forget him, we need help
12 over here, he's bleeding out, dying.

13 Then, one of the officers came over and tried to
14 help with CPR. I know another woman, I don't know her
15 name or remember what she looks like, but she came
16 from somewhere and tried to help. And very shortly
17 after that, EMS came out and got me out of way to help
18 him. Then they went and sat me in a chair until Crime
19 Scene could come and take pictures of everything.

20 Q (MR. HIXSON) Let me show you what is State's 4
21 that is in evidence. Take your time. Do you
22 recognize that?

23 A I do.

24 Q What is that vehicle and what is that object
25 laying on the floor?

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1 A Defendant's vehicle and the defendant's weapon.

2 Q There was a little discussion about the location

3 where Michael fell with the shotgun and all of that.

4 I'll show you a picture and see if you remember this.

5 I'm referring to State's 7. Does this adequately

6 depict the area where you remember Michael being on the

7 ground?

8 A It is.

9 Q Did you see anyone disturbing that scene or

10 taking anything out of the scene?

11 A I didn't. I didn't. They were pretty quick at

12 securing the alleyway.

13 Q Did you take any fired shotgun shells out of the

14 scene?

15 A I didn't. I was too busy attending to Michael.

16 Q Let's talk about what you saw and the gunshots

17 that you heard. Did you see Michael fire that shotgun?

18 Do you believe that Michael fired the shotgun?

19 A I really don't know. I can't differentiate

20 between sounds. I saw him with the shotgun, but I also

21 saw him peak out and duck back down, so I can't really

22 say whether or not I saw him take a shot or not.

23 Q In your statement, you tell law enforcement that

24 you believe he shot the shotgun?

25 A Yeah. And it is kind of one of those things you

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1 hear -- see a person with a gun and you don't see
2 another person, so the person who I saw was Michael and
3 I saw him with a gun and I heard gunshots, so at that
4 time I could say I presumed that looking at it that he
5 did, but I can't say for sure he did or not because
6 there was a lot of commotion, and there was a couple of
7 sounds of gunshots, and he was the only one I saw.

8 Q Give more detail about that. About how many
9 shots do you believe that you heard?

10 A About three to four overall.

11 Q I don't want you to have to mimic too much, but
12 as far as pacing, is it bang and a long time and
13 another bang, or was it pretty quick, bang, bang, bang,
14 bang?

15 A Pretty quick together.

16 Q Did they all sound the same? Did one sound
17 differently than the other?

18 A Honestly, I don't know. I can't say if they did
19 or not.

20 Q Did you see Michael actually struck and hit,
21 or -- I just want to make sure you understand -- so the
22 jury can understand what you saw, because you mentioned
23 Jerome asked you to get out of the way. Do you believe
24 that you saw Michael be shot or --

25 A No. It was before.

KRISTEN BLOOMER - DIRECT EXAMINATION

1 MR. HIXSON: Beg the Court's indulgence for a
2 moment.

3 Q (MR. HIXSON) I think you mentioned in your
4 statement before -- let's talk about this for a
5 second. I'll take you back after Antwuan Nelson and
6 the fight and Michael and you are up there and you say
7 you are cleaning up, okay. Were there drugs in the
8 apartment at that time?

9 A I can't remember.

10 Q Let me be more direct. Did you assume that law
11 enforcement was coming over and --

12 A Yes.

13 MR. BARR: Objection, leading the witness.

14 Q (MR. HIXSON) Did you put anything in the green
15 truck?

16 A I did.

17 Q What did you put in the green truck?

18 A Drugs. I don't remember exactly what it was or
19 what it looked like, but I put paraphernalia in the
20 truck.

21 Q Did you put a razor blade in there?

22 A I can't remember.

23 Q Scales? Okay. And why did you do that? What
24 was your thought process and why did you do that?

25 A That if the cops got called because of a physical

KRISTEN BARR - CROSS-EXAMINATION

1 altercation, that they would be found in the house and
2 it was something that I didn't allow in my house -- or
3 tried best not to. I was a new mom. I did not partake
4 in those activities, so at the end of the day, I didn't
5 want my child taken from me if officers came and drugs
6 were found in the residence.

7 Q So do you know on this day if those were the
8 defendant's drugs or Michael Rogers' drugs?

9 A I don't know.

10 Q You know you did not see them in there prior to
11 Antwuan Nelson being in the apartment?

12 A Correct.

13 Q We talked about a fair amount, so looking back
14 relating to the amount much time that went by, do you
15 believe that from the initial time when Mr. Nelson and
16 Mr. Rogers come through the door, until the time you
17 see your boyfriend laying passed out -- passing on on
18 the ground, about how long do you believe -- how much
19 time you do think transpired, total?

20 A 30, 45 minutes.

21 MR. HIXSON: Thank you. I have no further
22 questions.

23 THE COURT: Mr. Barr.

24 CROSS-EXAMINATION

25

KRISTEN BARR - CROSS-EXAMINATION

1 BY MR. BARR:

2 Q Ms. Bloomer, you -- you gave a statement to the
3 officers with the Myrtle Beach Police Department the
4 day this incident occurred; do you have a recollection
5 of giving a statement?

6 A I remember giving a statement. Of course I had
7 to, I was there. It's been three years, I can't word
8 for word recall what I told them.

9 Q The second gentleman from the wall, Officer
10 Clothier, do you recognize him?

11 A From somewhere. I honestly can't say whether it
12 was that night or not.

13 Q Does he appear to be a person you gave a
14 statement to?

15 A I, honestly, really don't know. I remember a
16 younger female officer escorting me to the police
17 station, but as far as my statement, I don't -- I was
18 in a numb phase. I don't remember who interviewed me
19 about what.

20 Q I see. You gave that statement on the 27th of
21 January, five minutes after 7 o'clock in the afternoon,
22 but you have no recollection of what you said in that
23 statement?

24 A Pretty much what I've said here, as far as what I
25 saw, but it is also three years ago. So can I tell you

KRISTEN BARR - CROSS-EXAMINATION

1 word for word what I said in that statement? I cannot.

2 Q Well, starting to begin with, there are quite a
3 few things that seem to be different. Let me direct
4 your attention to the very first.

5 Now, do you deny that in that statement you made
6 no mention, whatsoever, about seeing Antwuan Nelson
7 throwing a first punch when he and your husband -- or
8 he and your boyfriend came up to your apartment?

9 A Not trying to be rude, I can't really deny
10 putting something in a statement that I just said it
11 was three years ago. I don't remember exactly what was
12 in the statement.

13 THE COURT: Mr. Barr, if you are going to examine
14 her as to her statement, give her a copy of it so she
15 can look at it.

16 MR. BARR: Um, well, I'm not -- inasmuch as she
17 says she doesn't remember, I can't impeach her, but it
18 will certainly come along again, and I'll make sure
19 she has a copy of it.

20 THE COURT: Well, you can show it to her and ask
21 her and refer her.

22 MR. BARR: All right, sir.

23 Q (MR. BARR) Now, you indicated that your
24 boyfriend told you when you were upstairs to get the
25 gun?

KRISTEN BARR - CROSS-EXAMINATION

1 A Correct.

2 Q And you thought that he was referring to a
3 shotgun?

4 A Correct.

5 Q And you said you didn't know where the shotgun
6 was?

7 A Correct.

8 Q But you had seen the shotgun before?

9 A Correct.

10 Q All right. Now, you saw the shotgun before in
11 your house, correct? Is this the shotgun you saw in
12 your house owned by your boyfriend?

13 A Yes.

14 Q Now, I'm showing you what is marked and entered
15 into evidence as State's No. 23. As far as this
16 diagram reflects where your apartment is located, is it
17 fair to say there are steps where my fingers are
18 pointing?

19 A Incorrect, there are not steps there.

20 Q The steps up to your apartment are in the middle?

21 A Correct.

22 Q I see. And you are in the apartment at the top
23 of the steps on the right?

24 A Correct.

25 Q Now, so when Antwuan Nelson ran out of your

KRISTEN BARR - CROSS-EXAMINATION

1 apartment the very first time, did he run through the
2 breezeway to get to the front of the apartment, or did
3 he run around to that parking lot?

4 A Can't speak for his actions because, as I stated
5 earlier, when he ran out, I was still in my apartment,
6 so he could have taken any route other than outside of
7 my back window to get where he was.

8 Q Ms. Bloomer, isn't it true that your boyfriend
9 shot at Antwuan Nelson directly from his steps as
10 Antwuan Nelson ran around the building going to the
11 front of the building, didn't he?

12 A That, again, I cannot say because I was in the
13 apartment. He ran out before me. I was still in my
14 apartment, so you are asking me questions I can't
15 answer about another person's actions.

16 Q You did come out of the building?

17 A Yes.

18 Q And isn't it true that Antwuan -- that your
19 boyfriend blew a hole in the door in the next building
20 over here shooting at Antwuan?

21 A I'm not trying to be rude, but you're asking me
22 questions that I'm unaware and cannot speak for. If
23 the forensic unit would have found something, I'm sure
24 they would have seen it, or other witnesses or the
25 person that lived in that apartment where there was a

KRISTEN BARR - CROSS-EXAMINATION

1 hole shot through would have said something.

2 Q Did you see Antwuan or your boyfriend take the
3 shotgun from upstairs and carry it and place it --

4 A I can't say. I don't remember. I remember him
5 grabbing it out of the truck at a later point in time,
6 but I cannot remember.

7 Q So you don't know how the shotgun got -- so when
8 he told you to grab a gun, it obviously was upstairs
9 when he told you to grab the gun; you would agree with
10 that? It was upstairs then?

11 A Again, I can't say. I don't know where it was.

12 Q Now, you don't remember leaving out of his
13 presence at any time during this incident, other than
14 the time when he got shot, do you? You were right
15 there?

16 A And as I stated, he left the apartment before me
17 the first time. He also went upstairs before me that
18 first time. He went upstairs. So there were some
19 minutes that he was out of my presence.

20 Q Isn't it true that when you gave that statement,
21 Officer Clothier, you never once mentioned to him
22 anything about getting your boyfriend to take you to
23 pick up your daughter, did you?

24 A Again, I don't have my statement in front of me.
25 You ask me questions that I'm supposed to remember

KRISTEN BARR - CROSS-EXAMINATION

1 after a traumatic experience three years later.

2 Q In fact, you specifically told -- did you not --
3 Officer Clothier that your boyfriend was the first
4 person to shoot a weapon in this altercation, didn't
5 you?

6 A Again, I do not remember..

7 MR. HIXSON: Your Honor, as it relates to
8 impeachment, she's not denying she didn't make the
9 statement. You can't impeachment someone if they say
10 they can't remember, only if they deny the statement
11 can you impeach.

12 (A brief pause in the proceedings.)

13 Q (MR. BARR) Let me do this a different way. Now,
14 there was some point when you indicated, at least
15 earlier, that you saw your boyfriend shoot that
16 shotgun?

17 A When? When I just spoke today?

18 Q No, ma'am. Well, you gave the statement to
19 Officer Clothier, you did tell him that you saw him
20 shoot the shotgun?

21 A Yeah, it is probable, I would say. It was three
22 years ago. Again, I don't have my statement. You
23 clearly have it, I cannot say whether I did or not. It
24 is probably three years ago that I said that, that he
25 took a shoot. Again, motions were high.

KRISTEN BARR - CROSS-EXAMINATION

1 Q When Antwuan Nelson left your apartment and ran
2 downstairs, you said you and your boyfriend went
3 downstairs after he did; is that correct?

4 A Correct.

5 Q Do you know, or did he tell you, your boyfriend,
6 where Antwuan Nelson had ran?

7 A I can't speak for Mr. Rogers as far as what was
8 said to him. He is no longer here to say that. As far
9 as me, I was not told anything as to his whereabouts.

10 Q Didn't your boyfriend at that point take the
11 shotgun, went upstairs and went into someone else's
12 apartment looking for Antwuan?

13 A I don't recall seeing that at all. From what I
14 remember, from what I recall from three years ago is
15 that when we were downstairs, he did not have a shotgun
16 in his hand. He was at the very bottom of the stairs
17 on the concrete, not even in the building, yelling up
18 the top of the stairs.

19 Q In fact, didn't you tell your boyfriend, Here he
20 is, when he came downstairs? You pointed him to
21 Antwuan and said, Here he is?

22 A I don't remember that.

23 Q You didn't tell your boyfriend at some point that
24 afternoon, after you couldn't find Antwuan when he came
25 downstairs, Here he is?

KRISTEN BARR - CROSS-EXAMINATION

1 A I don't remember.

2 Q Let me show you something.

3 MR. HIXSON: Once general, can't complete
4 impeachment. She didn't deny making the statement, so
5 he can't use extrinsic evidence to word something she
6 doesn't recall. It is witness creditability, not
7 impeachment, unless she denies.

8 MR. BARR: I'll show it to her and --

9 THE COURT: If he has her statement and he wants
10 to show it to her and give her an opportunity to
11 review and then ask her, and she still wants to say
12 that she doesn't recall making that statement, that is
13 fine. I think, in fairness, you need to give her her
14 statement.

15 MR. BARR: Yes, sir.

16 A (Witness examines document.) I'm sorry, I'm done
17 reading it, where you underlined.

18 Q (MR. BARR) Didn't you tell Mr. Rogers, Here he
19 is?

20 A It is what I said in the statement. I cannot
21 recall if I said it that evening, in that moment, at
22 that time. It is in my statement so, therefore, at
23 some point I did say it for my statement, but I can't
24 tell you in that moment if I said it or not.

25 Q In fact, did you also not tell Officer Clothier,

KRISTEN BARR - CROSS-EXAMINATION

1 I really shouldn't have done that? After you --
2 because you knew your boyfriend was looking for him to
3 shoot him with the shotgun?

4 A As I stated, I don't remember saying that, but it
5 is in my statement, which you have let me read.

6 Q Well, your boyfriend came downstairs and went out
7 in front of the apartment complex, did he not go went
8 (sic) there and waited and waited for Antwuan to come
9 downstairs?

10 A Which time?

11 Q The very first time.

12 A I mean, I wouldn't say waited and waited and
13 waited. It was maybe about five, ten minutes, because
14 then I was speaking with him, and we went back up to
15 the apartment so we could get stuff to get my daughter
16 from daycare. So there was points and times where we
17 left from the front of the building together and was
18 upstairs in my apartment. So it wasn't necessarily
19 what I would say a waiting around for hours on end in
20 the entire time of the length of -- from beginning to
21 end.

22 Q But you do admit that you told Officer Clothier
23 that he sat out there and waited for him to come down;
24 didn't you tell him that?

25 A Again, please show me my statement so I can say.

KRISTEN BARR - CROSS-EXAMINATION

1 You are asking me questions from three years ago that I
2 don't remember everything I said.

3 Okay. I see where it says he was out there
4 waiting, which I already stated in my statement
5 earlier, that when Michael went out the first time, he
6 was out at the front of the building. When I went out
7 there, I was out at the front of the building.

8 Clearly, waiting, he was yelling up to him. So if
9 that is what is being called "waiting," then, yes, we
10 were out there for a period of time waiting.

11 Q You called it waiting, that is what you said you
12 were doing. What were you waiting for?

13 A Honestly, who knows. For him to come down and
14 duke it out like a man, that is what Michael was
15 saying.

16 Q Fight like a man, and he told you to get the
17 shotgun?

18 A Originally up in the apartment, because the
19 defendant was over him punching him and they were in my
20 house having an altercation in my property.

21 Q Now, isn't it true that you never told Officer
22 Clothier anything, not one word, about Antwuan Nelson
23 being over Michael punching him?

24 A Again, I cannot say whether that is true or not
25 for what I said three years ago.

KRISTEN BARR - CROSS-EXAMINATION

1 (A brief pause in the proceedings.)

2 Q (MR. BARR) You told this jury that you persuaded
3 your boyfriend that it was time to go pick up your
4 daughter from daycare. Are you telling us that your
5 boyfriend was about to take you to pick up your
6 daughter?

7 A That we were going to go together, yes.

8 Q He was going to take you to get his daughter, he
9 got shot in the alley?

10 A Correct.

11 Q Now, there is only two accesses to the alley, is
12 through the breezeway and through the front. How did
13 he get in the alley then?

14 A As I stated before, the first time we were
15 downstairs is when I persuaded him to come with me to
16 pick up my daughter from daycare, so that is when we
17 went up to the apartment the second time, what I'm
18 calling a second time as far as the first time being
19 the altercation. The second time after that period of
20 waiting out in the front of the building, so that
21 second time we went out there, and that was after I
22 persuaded him to come with me. We went up there to the
23 apartment.

24 Q You went up to the apartment, and then all the
25 sudden he said, well, I guess I'll go back down to the

KRISTEN BARR - CROSS-EXAMINATION

1 alley. How did he get back down to the alley?

2 A I mean, not necessarily. We went back down the
3 stairs the second time.

4 Q Did you go with him?

5 A Yes, I did, because we were going to get into the
6 truck to pick up my daughter from daycare, then he
7 changed his mind and proceeded to head back up to the
8 apartment for the third time, with me following him
9 shortly after, which is when the defendant approached
10 me with his rifle in hand.

11 Q And where was your boyfriend then?

12 A At that point in time I didn't necessarily notice
13 his whereabouts, seeing as I had a man standing there
14 with a rifle next to me. I didn't necessarily notice
15 exactly where he was at until I walked around the
16 corner and saw him walking out from that front door to
17 my apartment building and walk behind the cars, as I
18 stated earlier, into the alleyway -- into the
19 breezeway.

20 Q All right. So you didn't know where he was, and
21 when you spoke to Antwuan Nelson, he didn't know where
22 he was either, but he knew he was looking with him for
23 a shotgun, but didn't know where he was coming from;
24 isn't that true?

25 A I can't say his state of mind and what he was

KRISTEN BARR - CROSS-EXAMINATION

1 believing or not. I can't speak for Mr. Nelson.

2 Q How then did your boyfriend get by you, because
3 you were at the bottom of your stairs? How did he get
4 by you into the alley?

5 A I was not at the bottom of my stairs. If you
6 want to pull that diagram up, I can show you again and
7 show the jury where I was standing when we crossed
8 paths.

9 Q Do you know --

10 A Can I hold this real quick?

11 Q Yes, ma'am, sure.

12 A So when we went up -- after he went up that third
13 time and I started following after him, he left before
14 me, walking around this way to the front doorway. I
15 followed him, made it to about here when Mr. Nelson
16 approached me with his rifle and told me to call my
17 boyfriend and tell him to bring his stuff. After I
18 told him, no, I wasn't going to, my phone is about to
19 die, I started to walk around this corner right here --
20 I started walking around this corner here. As I made
21 it to about here, I heard this door close and saw
22 Michael walking along this way and into the breezeway.

23 Q Did he have a shotgun?

24 A As I already stated, yes.

25 Q When did he get the shotgun out of the truck?

KRISTEN BARR - CROSS-EXAMINATION

1 A After the first time -- after the first time we
2 were downstairs. So there was still another time that
3 we came back down from the apartment where he did not
4 have the shotgun until the very last time he came from
5 the apartment. He came down the stairs a total of
6 three different times. The first time, I'm not sure
7 about. The second time, I know he didn't, and then the
8 third time, I know he did.

9 Q I thought you said you didn't see the shotgun
10 down?

11 A And I just said that, until the third and final
12 last time, which I stated earlier when the prosecutor
13 was asking me questions.

14 Q If you didn't see him bring a shotgun down, how
15 do you know when he got it?

16 A I just told you, the third and last final time, I
17 saw him with the shotgun in his hand. I saw it with my
18 eyes.

19 Q Well --

20 A And I stated that earlier when I was giving my
21 testimony.

22 Q Now, you are saying that you saw him in the alley
23 with the shotgun. What I'm asking you is did you ever
24 see him bring it from downstairs? How did he get the
25 shotgun from downstairs down to the ground floor?

KRISTEN BARR - CROSS-EXAMINATION

1 MR. HIXSON: This is asked and answered. She
2 said she watch him come down with the shotgun.

3 THE COURT: Hasn't she answered that several
4 times?

5 MR. BARR: I don't think so.

6 THE COURT: Rephrase your question.

7 MR. BARR: Here is what I do.

8 THE COURT: Don't ask the same question over and
9 over. Rephrase, and maybe she can understand it.

10 MR. BARR: She didn't seem to have a problem with
11 English when she was testifying under direct.

12 THE COURT: Mr. Barr, the question is posed the
13 same way and she's giving the same answer. Apparently
14 you need to rephrase your question if you are looking
15 for some other information, please do.

16 Q (MR. BARR) Had your boyfriend and his son, were
17 they using drugs earlier that morning?

18 A I'm not really sure. I'm not them. I can't say
19 whether they were or not.

20 Q Didn't hear Jerome tell the police --

21 MR. HIXSON: Objection, hearsay. What Jerome
22 told someone else, that is classic hearsay.

23 THE COURT: It certainly is, Mr. Barr. I'll
24 sustain.

25 (A brief pause in the proceedings.)

KRISTEN BLOOMER - REDIRECT EXAMINATION

1 Q (MR. BARR) I just have one issue I need revisit,
2 and I think we'll be through. That is the issue of
3 who swung first. Didn't you tell Officer Quinn, when
4 you were being interviewed, that you didn't even see
5 who swung first?

6 A That is what is in my statement.

7 Q Thank you, ma'am.

8 MR. BARR: Nothing further -- Court's indulgence
9 just a second.

10 (A brief pause in the proceedings.)

11 MR. BARR: That's it.

12 THE COURT: Redirect?

13 MR. HIXSON: Just two.

14 REDIRECT-EXAMINATION

15 BY MR. HIXSON:

16 Q It got confusing with the first trip, second
17 trip, all of this, so let's see if you can straighten
18 me up. Let's talk about the sounds of the gunfire and
19 what you said the first trip. So let's clarify for a
20 second. The first trip is after the first fight, comes
21 back here; is that right?

22 A Correct.

23 Q And then you talk and say, Let it go, I think you
24 testified to that earlier, and then you go back up?

25 A Correct.

KRISTEN BLOOMER - REDIRECT EXAMINATION

1 Q At some point in time, you guys, Let's go get the
2 baby, second trip?

3 A Correct.

4 Q Michael says, I want to go?

5 A Correct.

6 Q Goes back up, but you see Antwuan Nelson here; is
7 that correct?

8 A Correct..

9 Q That is where the trunk happens?

10 A Correct.

11 Q And that is the time that Mr. Nelson says, Call
12 your boyfriend, and then, obviously, there is a third
13 trip down, and that is when you see Michael with a gun
14 coming down the third trip?

15 A Correct.

16 Q Now, you were standing here and Mr. Nelson is
17 holding a weapon and talking right here. Can Michael
18 see you standing there with Mr. Nelson from that
19 location with Mr. Nelson with an AR-15 standing beside
20 you, could he have seen you from there?

21 A He could have. I don't know if he did, but he
22 could have.

23 Q Just reference from where your person is, why he
24 noticed something changed, there is a weapon down here
25 with his girlfriend and Mr. Nelson is talking to her,

KRISTEN BLOOMER - REDIRECT EXAMINATION

1 is that when you say, He's here? I guess you testified
2 you don't remember?

3 A I don't remember. It is in my statement, but I
4 don't remember saying that.

5 Q I'll leave that alone. You said that a couple of
6 times.

7 Now, as it relates to the timing of the shot,
8 first trip, second trip, third trip. When Mr. Nelson
9 first goes down the steps and Michael goes down the
10 step, do you hear any gunshots at that moment?

11 A I didn't.

12 Q When is the first time you heard any gunshots?

13 A After the third trip, when I see him with the
14 shotgun and he's into the breezeway area.

15 Q So if there is a statement that Mr. Nelson goes
16 down the steps, following by Mr. Rogers, and he fires
17 at Mr. Nelson as he is running away, you didn't hear
18 gunfire at that moment in time?

19 A I didn't.

20 Q Now, as it relates to Mr. Barr's last question
21 about who struck first, you testified earlier that
22 Mr. Nelson did strike first, can you describe that
23 scene and that testimony in your statements, if that is
24 what you said in your statement?

25 A When we were standing in the kitchen?

KRISTEN BLOOMER - REDIRECT EXAMINATION

1 Q Yes.

2 A So we -- excuse me, not "we." They were standing
3 in the kitchen. I was on the couch. I heard arguing
4 literally like two, three sentences worth, but you
5 could tell it was more aggravated in nature. That is
6 when I stood up. I saw Mr. Nelson throw a punch at
7 Michael, knocking Michael into the stove and
8 refrigerator area, and they started scuffling more, and
9 that's when -- I can't say that's when the refrigerator
10 door handle got knocked off, but.

11 MR. HIXSON: Nothing further.

12 THE COURT: Mr. Barr?

13 MR. BARR: Nothing, Judge.

14 THE COURT: You may step down, thank you.

15 Mr. Hixson.

16 MS. WALTER: The State rests.

17 THE COURT: Very well. Ladies and gentlemen, as
18 you heard, the State has rested, that means the State
19 concluded its testimony. At this point in the case
20 there is matters I have to take up, so we'll give you
21 a break. Mr. Ropp, take them back into their jury
22 room, please.

23 (The jury exits at 2:31 p.m., and the
24 following is heard out of the presence of the jury.)

25 THE COURT: Let's take ten minutes.

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1 (A recess was taken.)

2 THE COURT: All right. Mr. Barr, I'll hear from
3 you.

4 MR. BARR: Your Honor, I have several witnesses
5 that have been subpoenaed.

6 THE COURT: Do you have any motions? The State
7 rests.

8 MR. BARR: Yes, sir, I guess we need to do that.

9 THE COURT: Yes, sir, that would be appropriate.

10 MR. BARR: Pardon me?

11 THE COURT: I said that would be appropriate.

12 MR. BARR: Yes, sir. Judge, the first thing we
13 would do is move for a directed verdict concerning the
14 offense of murder. The State alleged by way of an
15 indictment that the defendant did commit an unlawful
16 killing with malice aforethought. It would be the
17 defense's position that the State, with respect to
18 that offense, has failed to present any evidence on
19 the necessary elements of the offense of murder and,
20 therefore --

21 THE COURT: Specifically, what element do you
22 think they have failed on? There is certainly a
23 killing. Any killing --

24 MR. BARR: Well, I think they have to show that
25 it's an unlawful killing, and we believe that the

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1 defense has raised the issue of self-defense, and
2 that's --

3 THE COURT: How about mutual combat which negates
4 self-defense? Have you looked at the case of Douglas
5 -- State versus Graham? It is so similar to this
6 case.

7 MR. BARR: I think I've looked at that case, but
8 all the cases that deal with the issue of mutual
9 combat requires that there be some agreement between
10 the parties, if not specifically -- or at least by
11 conduct to fight. However, there is an exception made
12 where the defendant in this case would have engaged
13 simply for the purpose of self protection.

14 THE COURT: Well, let me refresh your memory on
15 Graham. Graham, the defendant and the victim
16 quarreled right here in Horry County, Horry County
17 case, quarreled.

18 MR. BARR: Yes, sir.

19 THE COURT: They parted, they met again outside
20 of the barber shop here.

21 MR. BARR: Is that Judge Floyd's case.

22 THE COURT: Yes. They quarreled again. The
23 victim had a gun. The defendant went home and got his
24 gun. They came back, met in the street and the
25 defendant killed the victim. Well, in that case

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1 Justice Ness -- or Judge Ness then, he later became of
2 course Chief Justice of the Supreme Court -- said that
3 the defendant quarreled with the deceased -- which we
4 have here -- he knew the deceased was armed, he placed
5 himself in a position in the street where an encounter
6 was to be expected, and both parties -- if we take the
7 evidence in the light most favorable even to you in
8 this matter -- fired at each other. You seem you are
9 suggesting that, they there were both there with guns.
10 That required the submission of mutual conduct. After
11 conviction, it went up on that issue. That case is
12 square on point with this particular case as any I
13 have known. I don't know how it could get closer.

14 Prior difficulty, both of them going and arming
15 themselves, going into an area where they knew they
16 could see each other and shooting it out. In that
17 case, the judge found it was appropriate to charge
18 mutual conduct as negating self-defense. He did
19 charge it. It went up after conviction, and the
20 Supreme Court affirmed. Now, isn't that case very
21 close to what we have now?

22 MR. BARR: I think it is close; however, I think
23 in this case where it is clear that -- at least thus
24 far from the evidence -- that the actions of the
25 defendant has only been in the nature of self

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1 protection.

2 THE COURT: I don't know. I think -- I'll hear
3 from you, Mr. Hixson, and let you tell me about it.

4 MR. HIXSON: Thank you, Your Honor. I'll start
5 with the initial conversation relating to the offense
6 of murder. Certainly it is an unlawful killing. It
7 wasn't lawfully justified and we can't establish that
8 as a matter of law unless we go to a stand-your-ground
9 situation, and we're not doing that. So there is no
10 question the defendant admitted he shot the victim.
11 The victim died as a result of a gunshot wound, that
12 is clearly in the record. The question is relating to
13 malice aforethought. One of the most interesting
14 parts of the presentation of the evidence from
15 Ms. Bloomer is the fact that after Mr. Rogers and
16 Bloomer went upstairs the second time, when there was
17 no confrontation in the parking lot, no one was there
18 in the parking lot, Mr. Nelson went to his vehicle,
19 walked past the front door of the vehicle, went to the
20 trunk of his vehicle, as the testimony by two police
21 officers says that no one was blocking his vehicle and
22 he could drive away. It was calm, according to the
23 testimony of Bloomer. It wasn't irate. It was tense,
24 but wasn't irate. There wasn't a position of
25 uncontrollable rage. He unlocked his trunk, got his

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1 weapon out of the trunk, walked towards Bloomer in a
2 non-threatening manner and told her, You go tell him
3 to get my stuff, call him. He's capable of cool
4 reflection and establishing what is going to happen
5 next. He is not confronted with a weapon at that time
6 or any force and wants to stay there to consummate the
7 business transaction that he had gotten there to go
8 forward.

9 Bring me my stuff, so he's asking the defendant
10 to come to the difficulty at that moment in time,
11 according to the testimony of Kristen Bloomer. We
12 believe that not only is that an offense of intent to
13 do harm, because he is not running, he is standing his
14 ground, if you want to call it that way. Not in a
15 legal sense, but it was, I'm not leaving. I'm not
16 scared enough to leave. I'm staying here and
17 finishing what I came here for.

18 There is no question that Mr. Nelson was aware of
19 the fact that Mr. Rogers was attempting to arm
20 himself, because Michael Rogers yelled, Give me my
21 gun. And most likely, although we're not in the mind
22 of the defendant, when he heard that, he left the
23 apartment, as most smart people would when you hear a
24 weapon may be pulled on you. He ran.

25 The evidence in the record is relating to him

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1 engaging in an unlawful conduct, being distribution of
2 a felony narcotic, and that brings on the entire fact
3 pattern.

4 THE COURT: Which would negate or could negate
5 self-defense.

6 MR. HIXSON: Yes. Certainly I believe it is an
7 appropriate argument for the jury to make. I don't
8 think Your Honor could rule as a matter of law.

9 THE COURT: No.

10 MR. HIXSON: But I think that is one of the
11 elements that the State has to disprove beyond a
12 reasonable doubt.

13 THE COURT: It is a jury question.

14 MR. HIXSON: Yes sir. As such, we believe --
15 let's be more concise. We believe we've touched on
16 every element as it relates to murder. I can answer
17 any other questions if Your Honor has them.

18 As it relates to the elements of possession with
19 intent to distribute cocaine base, SLED testified that
20 there are several cocaine-base drugs in the packet of
21 11 rocks and methylene. So methylene is not a
22 chargeable drugs, but it does go to intent to
23 distribute. How would he get there? Because of
24 Mr. Nelson's own statement, No, you will buy this.
25 You will buy it. I believe that is expressed intent

MOTIONS

1 to distribute narcotics.

2 The testimony of Ms. Cantey identified that
3 immediately upon hearing a gunshot being fired, a
4 young African-American male in black clothes with red
5 trim running down the alley --

6 THE COURT: Either a hoody or --

7 MR. HIXSON: She indicated a conflicting
8 statement. At one point she said she thought it was a
9 hoody, could have been hair, not sure. That is why we
10 put in a couple of witnesses that mentioned that at
11 the time of the incident Mr. Nelson had a different
12 hair style than he does today. We had that, and that
13 may explain the inconsistency of whether it is a dark
14 hoody, because it is clear from the photographs it is
15 a collared jacket, not a hoody.

16 But she said based on that, she saw the
17 individual attempt to jump or throw something over and
18 then ran back towards the direction of what is
19 established as Mr. Nelson's vehicle. Also, we know
20 there is a shell casing in the alleyway, a live rifle
21 round, which indicates -- and Ms. Bloomer said
22 Mr. Nelson was in that area walking towards where he
23 was right in that location, which is the same location
24 on the other side of the fence where the narcotics
25 were recovered from.

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1 The drugs, according to Roscoe and Officer
2 Harlow, that article dog detected something that was
3 not supposed to be there, that recently was put there,
4 all circumstantial evidence that Mr. Nelson was the
5 source of the drug. We know he was there for purposes
6 of selling that, and that is what we believe -- it
7 doesn't go to the admissibility, it is the
8 creditability of -- obviously Mr. Barr argued that
9 that was not Mr. Nelson's drugs, and that is fair, but
10 that issue should be in front of the jury.

11 THE COURT: The standard is whether or not there
12 is any evidence which a jury could reasonably convict.

13 MR. HIXSON: Yes, sir.

14 THE COURT: You agree, that is the standard?

15 MR. HIXSON: That's correct, Your Honor.

16 And the last little bit, we have direct evidence
17 and circumstantial evidence on murder, as well as
18 possession with intent to distribute.

19 The final offense, Your Honor, Item 49 is in
20 evidence, and that indicates that murder is a crime of
21 violence in the State of South Carolina. Mr. Nelson
22 admitted to possessing a weapon, and there is
23 substantial direct and circumstantial evidence that
24 Mr. Nelson was holding that black AR style rifle that
25 ultimately killed Mr. Rogers. So we believe that the

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1 motion should be properly denied, Your Honor.

2 THE COURT: Anything further, Mr. Barr?

3 MR. BARR: Judge, I think I already addressed the
4 issue of murder. Of course, again, as far as -- it is
5 clear from the evidence that there's no -- in terms of
6 the issue of identity, I mean, it has to be actual or
7 constructive possession. In this case, even from the
8 standpoint of circumstantial evidence, which is what
9 the Prosecution seems to be arguing, in terms of what
10 the witness claims -- first of all, she claims what
11 she believes to be a gun. This is what she claims,
12 that she thought that she saw the person scaling the
13 fence and attempting --

14 THE COURT: In fairness to the witness, didn't
15 she say she just saw -- first she thought it was a
16 gun, but couldn't tell, but just an object thrown over
17 the fence? Don't we have the photograph which shows
18 the discovery of this packet containing drugs that was
19 on the other side of the fence and in close proximity
20 to the area where the witness said she saw the person
21 fitting the Defendant's description immediately
22 following the shooting?

23 MR. HIXSON: Yes. Her statement specifically
24 stated she thought what she assumed was a handgun
25 because she had just heard gunshots. It was apparent

MOTIONS

1 that he appeared to be climbing over it or to get rid
2 of something. She said she sees something fall out of
3 his hand, can't tell if it was a gun or not, she just
4 assumed because she just heard shots. I believe that
5 is what the record reflects, but she clearly said she
6 thought it was a gun because she just heard shots.

7 THE COURT: And isn't her testimony corroborated
8 by the fact that there was an object that turns out to
9 be drugs right across the fence?

10 MR. HIXSON: Yes, sir, and there was no gun
11 recovered.

12 MR. BARR: Judge, that is fine. If it
13 actually -- and of course identity is always an
14 element of the offense. The only thing that that --
15 of course the issue of identity, as it results to PWID
16 is a separate element from the offense of actual or
17 constructive possession. It seems to me that she
18 indicates that it was a black male and the person --
19 and she described some clothing, and that is the only
20 thing that goes to the issue of identifying.

21 THE COURT: What about Ms. Bloomer's testimony
22 that they argued over a drug sale in her apartment,
23 that she later -- and correct me if I'm wrong, but I'm
24 recalling the testimony, my recollection is that the
25 defendant also made a statement to her that he wanted

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1 her to go up and get his stuff, drugs, out of the
2 apartment?

3 MR. HIXSON: Whether it is drugs or money. As
4 you recall, initially it was, You will buy it, meaning
5 I want the money. Stuff could be money or drugs.

6 THE COURT: And I recall it being "stuff" or,
7 "property" or whatever. I don't remember it being
8 specific. It was an implication. The standard is
9 whether there is any evidence, Mr. Barr --

10 MR. BARR: Yes, sir.

11 THE COURT: -- from which a jury could reasonably
12 convict. I find that this is a jury question, and I
13 would deny the motions for a directed verdict as to
14 all three charges, and it will go to the jury.

15 Now, Mr. Barr, let me ask you this. Do you plan
16 to put up a defense?

17 MR. BARR: Yes, sir.

18 THE COURT: In that regard, have you discussed
19 with your client, Mr. Nelson, whether or not he would
20 testify in this matter?

21 MR. BARR: Yes, sir. Judge, we've discussed that
22 issue. We've not reached a final decision.

23 THE COURT: I would not pressure him. He can
24 change his mind. He can do whatever he thinks is in
25 his best interest as the trial proceeds, of course,

ANTWUAN NELSON - EXAMINATION BY THE COURT

1 but since we have the jury out, I would like to
2 explain his rights to him concerning his testimony.
3 If you would, Mr. Nelson, please stand. Put him under
4 oath for his responses to me.

5 (ANTWUAN NELSON, having been duly sworn,
6 testified as follows:)

7 EXAMINATION

8 BY THE COURT:

9 Q You are Antwuan L. Nelson?

10 A Yes.

11 Q At this time I want to explain to you very
12 important rights that you have, and if you don't
13 understand anything I say, please let me know. If you
14 want me to explain it in more detail or in a different
15 fashion, I'll be happy to do so; do you understand?

16 A Yes.

17 Q I assume you discussed these matters with your
18 attorney, but I want to make sure that you understand
19 these rights. We've reached the stage in the trial
20 where you may present your defense, and you also have
21 the right to claim protection given to you by the
22 Fifth Amendment to the Constitution of the United
23 States, which, in part, says that no person shall be
24 compelled in any criminal case to be a witness against
25 himself. What that means is that you cannot be

ANTWUAN NELSON - EXAMINATION BY THE COURT

1 required to testify in this case. You certainly can if
2 you want to. You have the right to testify on your own
3 behalf; however, no one can make you testify. That is
4 a personal right you have, and no one can give it up,
5 not your attorney, not me, not Mr. Hixson, no one can
6 give that right up except you.

7 Now, if you decide to testify, you should
8 understand you will be subjected to the same rules
9 that govern other witnesses and you may be examined
10 and cross-examined on any relevant issue in this case.
11 In addition, if you have any convictions involving
12 dishonesty or false statements or for crimes
13 punishable by imprisonment more than one year, and I
14 determine that the probative value of admitting the
15 evidence outweighs its prejudicial effect to you, the
16 Solicitor, either Mr. Hixson or Ms. Walter, will be
17 able to introduce your record to attack your
18 creditability, your believability.

19 I do not know if you have any prior convictions
20 of any type. If you do, I would require the State to
21 tell me before you testify, and I would make a
22 determination of whether or not those particular
23 offenses could be used against you to attack your
24 believability. If you decide to testify -- your
25 decision must be freely, voluntarily and intelligently

ANTWUAN NELSON - EXAMINATION BY THE COURT

1 made with the knowledge of the protections given to
2 you, by the Fifth Amendment, and the consequences of
3 your decision to testify.

4 If you decide not to testify, I want you to
5 understand that the jurors cannot give that fact any
6 consideration, whatsoever, that being your decision
7 not to testify, and there is to be absolutely no
8 prejudice to you because you did not testify. I will
9 tell the jury in my charge -- if you do not testify --
10 that they may not use that against you in any way. I
11 will tell them that they may not even discuss it.

12 Now, it is left entirely up to you whether or not
13 to testify. Of course you can talk with your
14 attorney, family and friends, anyone else that might
15 give you good advice, but the final decision is
16 entirely up to you. Now, do you understand the
17 rights?

18 A Yes, Your Honor.

19 Q Do you have any questions for me about what I
20 have explained to you?

21 A No, Your Honor.

22 Q Mr. Barr tells me that you have discussed this,
23 but you have not made a decision. I want you to
24 understand you do not have to make a decision unless
25 such time as your attorney closes your defense, that is

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1 that he says he rests; do you understand?

2 A Yes, your Honor.

3 Q I'll ask you again for your -- before I close
4 your case or declare it closed, I'll ask if you want to
5 testify. I will explain these rights to you again if
6 you need me to, but do you understand them fully now?

7 A Yes, sir.

8 Q Okay. All right.

9 THE COURT: Thank you. Are we ready to proceed
10 with the defense?

11 MR. BARR: Judge, I followed up on the issue with
12 the one or two witnesses we have under subpoena,
13 neither which seem to be here.

14 THE COURT: Who are your witnesses?

15 MR. BARR: Pardon me?

16 THE COURT: Who are your witnesses and where are
17 they?

18 MR. BARR: Ms. Lillian Brockington, she is
19 presently in the hospital in Georgetown. The second
20 witness, Mr. Tom Davies, is here in Myrtle Beach
21 somewhere.

22 THE COURT: You served with him a subpoena, did
23 you not?

24 MR. BARR: Yes, sir.

25 THE COURT: Well, have you complied with

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1 Rule 7 -- I think it is Rule 7 -- by providing me with
2 an affidavit as to what they would testify to?

3 MR. BARR: We haven't done that. With respect to
4 Mr. Davis, I was anticipating that he would be here.

5 THE COURT: What do you want me to do? I assume
6 you were going to ask me to do something, but I
7 haven't heard it yet.

8 MR. BARR: What I would like to do is recess this
9 afternoon and get these people lined up for in the
10 morning.

11 THE COURT: You don't have any witness you could
12 call today?

13 MR. BARR: There is one other witness that I
14 intend to call, and that witness is here.

15 THE COURT: That is where?

16 MR. BARR: He's here.

17 THE COURT: Well, can you call that witness?

18 MR. BARR: Yes, sir.

19 THE COURT: All right. How about your defendant,
20 can he testify today?

21 MR. BARR: No, sir, your Honor. I think in terms
22 of presentation of our case --

23 THE COURT: Let me hear from the State.

24 MR. HIXSON: In what regard, Your Honor? I'm not
25 sure.

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1 THE COURT: He appears to be moving for an
2 adjournment.

3 MR. HIXSON: I believe I defer to the Court. It
4 is important for this man to get a defense. I want
5 the jury to decide with all of the information. I'm
6 not interested in -- at the same time, we've waited
7 three years for this, too. The family has been also.
8 I don't know what -- I don't get to know what he is
9 putting up, so I don't know.

10 THE COURT: Okay. How many witnesses then do you
11 intend to call? If you get them all here, how many do
12 you have? Two, the one here and then the defendant?

13 MR. BARR: Yes, sir.

14 THE COURT: Four? Four. Okay. Quite frankly, I
15 prefer to begin the defense in morning rather than do
16 one witness here and perhaps that witness -- I'll give
17 you until the morning, Mr. Barr. It is 3 o'clock now.
18 I will adjourn until in the morning, but be ready to
19 go at 9:30. Mr. Barr, Mr. Hixson, Ms. Walter, I want
20 to see you in chambers as we adjourn. Get the jury in
21 here.

22 MR. BARR: Before the jury comes in -- that's all
23 right.

24 (The jury enters at 3:12 p.m., and the
25 following is heard in the presence of the jury.)

THE COURT TO THE JURY

1 THE COURT: Ladies and gentlemen of the jury, we
2 have procedurally reached a point in the trial where
3 it is necessary for us to adjourn for the afternoon.
4 I think we can finish this up tomorrow, but we have
5 done all we can do with you. My option is to stay in
6 here and do things and leave you sitting back in that
7 room, or let you go home. Do we want to take a vote?
8 I didn't think you wanted to, so I'm going to let you
9 go home and ask you to be back in the morning, and in
10 the morning Bobby will have donuts from the Trestle;
11 won't you, Bobby?

12 MR. ROPP: I believe so.

13 THE COURT: Let's see what we can do about that.
14 Thank you. Let me ask you -- don't try to visit the
15 scene, don't Google, don't look up anything about this
16 case, and don't try to find information about the
17 lawyers or staff. Don't look me up on Facebook, it
18 would bore you to death. That would be improper. I
19 look forward to seeing you in the morning. Thank you.

20 (The jury exits at 3:14 p.m., and the
21 following is heard out of the presence of the jury.)

22 THE COURT: Okay. I would see Counsel in
23 chambers, okay. We're in recess until tomorrow
24 morning at 9:30.

25 (Whereupon, the proceedings for June 14, 2017

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1 concluded. The following was had on June 15, 2017 out
2 of the presence of the jury.)

3 THE COURT: Thank you. All right. Mr. Barr.

4 MR. BARR: Your Honor, I looked at Rule 7, and I
5 think we've pretty much outlined according to the
6 conditions of Rule 7, and the affidavit is a truthful
7 affidavit.

8 THE COURT: Why is it that you told me yesterday
9 that you didn't have Ms. Brockington's subpoena.

10 MR. BARR: No, sir, that was before when we first
11 started.

12 THE COURT: So you didn't have her subpoenaed
13 when this trial started?

14 MR. BARR: When the trial started I didn't have
15 her subpoenaed.

16 THE COURT: Who served her with a subpoena?

17 MR. BARR: Ms. Washington, her name is in the
18 affidavit -- service of subpoena at the hospital.

19 THE COURT: Who is Charlotte Washington?

20 MR. BARR: Charlotte Washington is the lady that
21 served the subpoena.

22 THE COURT: What?

23 MR. BARR: Served the subpoena.

24 THE COURT: It says she is inpatient -- what do
25 you want me to do?

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1 MR. BARR: Pardon me?

2 THE COURT: What do you want me to do, Mr. Barr?
3 We're three days into a trial and you want me to do
4 what?

5 MR. BARR: I'm asking to declare a mistrial. I
6 mean, if you look at the substance of her testimony.

7 THE COURT: What is she going to testify to?

8 MR. BARR: Pardon me?

9 THE COURT: I read her --

10 MR. BARR: Judge, I expect her to testify
11 consistent with the statement she gave police, and if
12 she does that, she'll say that the decedent came up to
13 her apartment, initially with the shotgun, looking for
14 Mr. Nelson, that he went back downstairs, that he
15 shot -- in fact, I think she said he shot twice,
16 Mr. Nelson shot.

17 THE COURT: Let me hear from you, Mr. Hixson.

18 MR. HIXSON: There is a lot to say, Your Honor.
19 I noted she wasn't an inpatient until the second day
20 of this trial, so it was the 13th, not Monday. The
21 subpoena wasn't served until after that time period,
22 and the problem is that the statement is entirely
23 inconsistent with Antwuan Nelson's testimony we heard
24 pretrial. The fact is that -- I understand why Mr.
25 Barr would want her here. Her apartment is where

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1 Antwuan Nelson was in and, of course, she has
2 substantial bias because she's married to Mr. Nelson's
3 cousin. And as such as I don't know what remedy we're
4 talking about here, but clearly --

5 THE COURT: He want to declare a mistrial to
6 start again.

7 MR. HIXSON: An unavailable witness is not legal
8 grounds for a mistrial. That is a fundamental
9 principle of law. Not putting in a defense that you
10 want to put in is not grounds for a mistrial. We did
11 specifically recess yesterday for purposes to
12 prepare, -- to give Mr. Barr an opportunity to prepare
13 for the defense, and we can't admit the testimony --

14 THE COURT: This is the fourth day. Not only do
15 you have notice of this case going, this is
16 essentially the fourth day of trial of this case.

17 MR. BARR: Your Honor, I think I approached the
18 Court the first day when I found out that she wasn't
19 here. She was going to be here voluntarily. When I
20 found she wasn't here, because she was going into the
21 hospital -- and of course I didn't know that at that
22 time, that she was going into the hospital, but I
23 did --

24 THE COURT: You said she was going into the
25 hospital.

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1 MR. BARR: Sir?

2 THE COURT: You said she was going into the
3 hospital.

4 MR. BARR: Judge, at that time I don't think they
5 actually took her into the hospital, but I wanted the
6 Court to know her status. So I think the -- this was
7 the very first day of court when I brought the matter
8 to the Court's attention, because she was supposed to
9 be here, but she wasn't. When I became concerned
10 about whether or not she could actually be here --
11 but, you know, Judge, from the substance of her
12 testimony, Your Honor, particularly considering the
13 status where we are as it relates to what the jury
14 will be charged, the issue with the mutual combatance
15 (sic), the issue of the voluntary manslaughter, taking
16 self-defense off the table, Judge, her testimony is
17 credible.

18 MR. HIXSON: Perhaps I'll flush out the record.
19 As it relates specifically to her statement, Your
20 Honor, the State's position also is it absolutely
21 supports the charge of mutual combat. There is
22 testimony in the record all day indicating that Mr. --
23 the victim took a shotgun down the very first trip.
24 Ms. Bloomer said she didn't see it, but saw him pull
25 it out of the pickup truck. So it was down there

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1 during the period of time when he was yelling up the
2 steps. So Mr. Barr could argue that Mr. Rogers armed
3 himself during that. There is no question that
4 Mr. Rogers had shotgun on him and loaded shells.

5 THE COURT: It is undisputed.

6 MR. HIXSON: Undisputed. And the only issue as
7 it relates to Ms. Brockington's presentation of the
8 facts is that she claims that the defendant -- or the
9 victim fired first. The problem with that statement
10 is, by her own admission, her window faces towards
11 37th Avenue North and cannot see the position where
12 the defendant was in the alleyway, cannot see it.
13 There is no possibility for perception. So I can
14 flush that out in addition to the shot count and
15 everything else to mitigate testimony.

16 What I am trying to say for the record and Court
17 of Appeals is that I do not believe there is a
18 substantial prejudice to his presentation of the facts
19 because he has evidence in the record to argue what
20 Ms. Brockington will be able to offer, and I'll be
21 able to show her testimony through bias. It is nearly
22 impossible and inconsistent -- it's internally
23 inconsistent on its own when she says I didn't see
24 anything, I just heard four shots.

25 In other words, it is not at an undue necessity

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1 that unfairly prejudices the defendant, even when the
2 witness is not enough --

3 MR. BARR: With all due respect, Counsel argues
4 issues that goes to the issue of creditability. Of
5 course Ms. Bloomer got on the witness stand, and her
6 testimony was pretty much totally contradictory to
7 what she previously stated in the statement given to
8 officer -- to the officer.

9 Now, as far as -- I believe in terms of the
10 creditability of Ms. Brockington, she is probably more
11 credible than any of the witnesses that actually
12 appeared in this court. I think the jury -- again,
13 the issue of the creditability is an issue for the
14 jury. There is key issues, such as who shot first,
15 whether or not in fact he had the gun. If I remember,
16 Ms. Bloomer consistently claims that when her
17 boyfriend went upstairs the first time, came out the
18 first time, he didn't have a gun. Well, this witness,
19 which I believe the jury will be able to see her
20 creditability, she said he went upstairs, came up to
21 her apartment looking for Mr. Nelson. He had a
22 shotgun with him.

23 Judge, you know, I don't know that we can second
24 guess what the jury is going to do with jury issues,
25 but I think that clearly -- the issue as far as the

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1 impact of --

2 THE COURT: All right. I'll take this under
3 advisement for a few minutes.

4 MR. BARR: Before you go, Your Honor -- I'll deal
5 with that when you get back.

6 (Court's Exhibit 2 marked.)

7 (A recess was taken.)

8 THE COURT: Mr. Barr, your motion for a
9 continuation is denied. I think it is most likely --
10 I mean your motion for a mistrial is denied. I will
11 not continue the case. According to this affidavit,
12 she was not served with a subpoena until, when,
13 Tuesday -- or Wednesday?

14 MR. BARR: I believe it was Tuesday, Judge.

15 THE COURT: After this case started. I was
16 provided with an affidavit this morning, and attached
17 to that appeared to be a transcript of
18 Ms. Brockington's statement that she gave to Detective
19 Quinn. You've had that statement for quite some time,
20 and you knew this case was scheduled for quite some
21 time, and now we're in the third, fourth day of it. I
22 looked at her statement, and what I can see here are
23 things that have been testified to. We've heard
24 testimony that the victim in this matter did arm
25 himself, did have a gun. We heard -- during your

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1 cross-examination that you have a witness -- in fact,
2 I issued you an order to pick up a witness yesterday,
3 who you say will testify that he actually shot the
4 shotgun. You obviously have that witness available
5 with you.

6 This case boils down to self-defense and mutual
7 combat. There is nothing I've seen in her statement
8 that cannot be confirmed or has not been confirmed or
9 is not in dispute in this. So I'm going to deny your
10 motion to postpone or continue this case, or to grant
11 a mistrial.

12 What else do you have?

13 MR. BARR: We're ready for the jury then.

14 THE COURT: Bring in the jury.

15 (The jury enters at 10:04 a.m., and the
16 following is heard in the presence of the jury.)

17 THE COURT: We have our jurors and alternates.
18 Call your witness.

19 MR. BARR: Kristen Bloomer.

20 MS. WALTER: I didn't hear you, Mr. Barr.

21 MR. BARR: Kristen Bloomer.

22 (KRISTEN BLOOMER, having been duly sworn,
23 testified as follows:)

24 THE WITNESS: Kristen Bloomer, B-L-O-O-M-E-R.

25 DIRECT EXAMINATION

DEFENDANT'S CASE - KRISTEN BLOOMER - DIRECT EXAMINATION

1 BY MR. BARR:

2 Q I have a couple of things that concern me, and I
3 want them straightened out. I believe you indicated or
4 did -- when your boyfriend came down the stairs the
5 first time, that is after Mr. Nelson had left your
6 apartment, you said he came -- he came downstairs, and
7 where did he go?

8 MR. HIXSON: Your Honor, I would object and
9 remind Counsel now this is his witness, which is his
10 direct examination.

11 THE COURT: You are entitled to cross.

12 MR. HIXSON: But he cannot lead.

13 THE COURT: There you go, Mr. Barr. You have
14 called her now. You are bound by the rules of direct
15 examination. Thank you.

16 MR. BARR: Yes, sir.

17 Q Where did he go?

18 A When he left the first time?

19 Q Yes, ma'am.

20 A Down to the front building.

21 Q And your boyfriend also went down there to the
22 front building?

23 A Correct.

24 Q And I think -- was your boyfriend down there
25 waiting on him?

DEFENDANT'S CASE - KRISTEN BLOOMER - DIRECT EXAMINATION

1 A I mean, as stated yesterday, he was down here and
2 yelling up the stairs to him.

3 Q You said in your statement given --

4 MR. HIXSON: Once again, he cannot lead his own
5 witness. That is why he got to cross-examine her for
6 an hour or so yesterday. He can only ask questions,
7 non-leading, because this is his witness.

8 MR. BARR: Your Honor, I'm not leading her.
9 She's my witness, but I can attack her creditability
10 just because she's' --

11 THE COURT: You are going to attack the
12 creditability of your witness?

13 MR. BARR: Yes, sir. I'm entitled to under the
14 Rules of Evidence.

15 THE COURT: I don't know about that.

16 MR. BARR: I can challenge creditability.

17 THE COURT: Take the jury out.

18 (The jury exits at 10:07 a.m., and the
19 following is heard out of the presence of the jury.)

20 THE COURT: You may be able to cross-examine her,
21 but you only can do so if the Court declares her as a
22 hostile witness, which you have not done.

23 MR. BARR: Judge, Rule 607, the creditability of
24 the witness may be attacked by any party, including
25 the witness' -- including the party calling the

DEFENDANT'S CASE - KRISTEN BLOOMER - DIRECT EXAMINATION

1 witness. 607.

2 MR. HIXSON: That is absolutely correct. The
3 difference here is we've had two hours plus of
4 attacking creditability that has exhausted
5 cross-examination and that's -- if the rules don't
6 stand for anything, it is a second bite of the apple
7 after time to reflect. You can call her, but you have
8 to abide by the rules of direct examination, not
9 leading her and not get a second bite of the apple
10 after you've had three hours. That is why it is
11 different.

12 THE COURT: I understand.

13 MR. HIXSON: Not to be difficult, Judge.

14 THE COURT: I'm going to let him examine her.
15 I'm going to give him latitude. Mr. Hemingway, bring
16 the jury back in.

17 MR. BARR: Thank you, sir.

18 (The jury enters at 10:10 a.m., and the
19 following is heard in the presence of the jury.)

20 THE COURT: We have everyone back. Mr. Barr, go
21 ahead.

22 Q So didn't you indicate in your statement that he
23 was out there waiting for him to come down?

24 A Correct. That is in my statement, and that is
25 also what I testified to yesterday.

DEFENDANT'S CASE - KRISTEN BLOOMER - DIRECT EXAMINATION

1 Q So, now, if he was waiting for him to come down,
2 you don't know why he was waiting, do you?

3 A I can't speak for him.

4 Q Pardon me?

5 A I cannot speak for the deceased.

6 Q Sorry?

7 A I cannot speak for the deceased as to his
8 intentions. I do know he was down there waiting for
9 him as he was yelling up to him.

10 Q So Michael was yelling up to Mr. Nelson?

11 A Correct, and I stated that yesterday.

12 Q He was yelling up -- so he knew where he was?

13 A I can't say he definitely knew where he was or
14 not. He may have had an idea, but where he was
15 standing, he was yelling up the stairs to him, whether
16 he was in there or not.

17 Q What was he yelling for, for him to come down?

18 A Correct.

19 Q He did not have a gun then?

20 A Correct.

21 Q Now, I believe you caught -- as Michael was
22 coming down the second time you heard a door; is that
23 correct?

24 A No, that would have been the third time, third
25 and final time.

DEFENDANT'S CASE - KRISTEN BLOOMER - DIRECT EXAMINATION

1 Q Third time you heard the door?

2 A Correct.

3 Q And this time you saw Michael with a gun?

4 A The third and final time, correct.

5 Q And up to that point, there had been no shooting?

6 A Not that I heard.

7 Q Now, if you would, please, ma'am, I'll let you
8 take a look at this. I think you said that after you
9 heard the door, the next thing you heard was you heard
10 him shoot him. Take a look at that.

11 MR. HIXSON: He has to ask her a question, and he
12 cannot lead her. So she has to -- she doesn't get to
13 read off of a transcript. She testifies --

14 THE COURT: Rephrase.

15 Q Did you hear him shoot him?

16 A Are you asking about in my statement?

17 Q Yes. I assume you are testifying truthfully
18 today, and according to your statement, you said you
19 heard Michael shoot at him?

20 A Correct, according to my statement.

21 Q Were you telling the truth then?

22 A I mean, I'm assuming so. It was a few hours
23 afterwards.

24 Q So then the first shot you heard is when you
25 heard Michael shoot at Mr. Nelson?

DEFENDANT'S CASE - KRISTEN BLOOMER - DIRECT EXAMINATION

1 A I can't necessarily say that. It's been three
2 years, so according to my statement, that is what I
3 said, but I can't tell you looking back now if that's
4 what happened. It's been three years. Can't say
5 whether....

6 Q Now, you also -- what position -- you told the
7 officer what position you were in when you heard the
8 first shot. Where were you -- where did you say you
9 were when you shot -- when he shot the first time?

10 A You are asking when I saw -- when I started
11 hearing shooting?

12 Q Yes, ma'am.

13 A I was kind of in the breezeway -- not really in
14 the breezeway, but in view of the breezeway.

15 Q I see. And is it true you said you heard another
16 shot; is that correct?

17 A I mean, after the initial I heard three or four
18 shots.

19 Q But you said you heard Michael shooting again,
20 didn't you?

21 A I don't believe that I said that.

22 Q Take a look at your statement.

23 A I'm not really understanding your question,
24 because in my statement, from what I'm reading, it is
25 saying that -- in my statement it says, The next thing

DEFENDANT'S CASE - KRISTEN BLOOMER - DIRECT EXAMINATION

1 I know I heard him shoot. I saw him do a duck-back to
2 avoid a shot or something like that back into the
3 alleyway, and that is when Jerome said -- that is when
4 Jerome said, You need to go up here, Kristen.

5 So I didn't say I saw a second shot. After the
6 first initial shot sound is when Jerome directed me to
7 go into there. So, no, in my statement it doesn't say
8 that. From what I'm reading in my statement it
9 doesn't say that I heard or saw him take a second shot
10 at all.

11 Q Question was: Where were you when the shots were
12 being exchanged; where were you then?

13 Your response was: The first time I was right
14 here and I saw one of Michael's shots. The last one I
15 was standing in the doorway of the little hallway
16 there. Everything got quiet, and for a few seconds
17 literally, that is when everything got quiet.

18 I believe that is what you said.

19 A Okay. So what was your question again? In here
20 it says, Where were you when the shots were being
21 exchanged. It doesn't say what I saw. It could be
22 what I saw or heard, and I said I initially was
23 standing with the first one, and then I heard the other
24 shots when I was in the doorway, which was not in view
25 of that breezeway, so I could not have seen the

DEFENDANT'S CASE - KRISTEN BLOOMER - DIRECT EXAMINATION
1 additional shots fired that I heard.

2 Q Didn't you say in your statement that you heard
3 Michael's second shot and it got quiet; isn't that what
4 you said in your statement?

5 A In my statement, I do not see that. If you can
6 read it and tell me where that is said, I can answer.

7 THE COURT: Mr. Barr, show her on the statement
8 and let her read it.

9 MR. BARR: Judge -- Your Honor, I showed her the
10 statement.

11 Q Here is your answer. Line 22, what does it say?
12 Would you read it, please?

13 A It says: The first time I was right here and I
14 saw one of Michael's shots.

15 Q Continue.

16 A And the last one I was standing in the doorway of
17 the little hallway here.

18 But let me say this. The question that I
19 answered was, Where were you when you heard the shots.
20 It doesn't say what I saw. And in my statement, I did
21 not say that I saw his first and saw his final shot.
22 The second part of that is what I heard, which is when
23 I was in the doorway.

24 MR. BARR: Thank you, ma'am. Thank you.

25 THE COURT: Mr. Hixson or Ms. Walter.

KRISTEN BLOOMER - CROSS-EXAMINATION

CROSS-EXAMINATION

1

2 BY MR. HIXSON:

3 Q Let's talk about this. I get to cross-examine
4 you, which is strange.

5 A Yes.

6 Q Go back to your initial testimony and explain in
7 your own words what you said. Narrow it back to this
8 shot in the alley. Tell us why -- you just testified
9 that you didn't know for sure whether Michael shot or
10 not, and now three or so years later you say you
11 believe Michael shot or you heard shots. Talk about
12 it.

13 A So, initially, when I was standing there and
14 heard gunshots, the only person I could see with a gun
15 was Michael. I cannot say for sure whether he shot
16 first or not. I couldn't see the defendant and where
17 he was, and with his weapon that I previously knew that
18 he had, because he approached me with it. I was
19 standing in that breezeway. I saw Michael peek out and
20 duck back against the side of the wall, and that is
21 when Jerome told me to go ahead and get into the
22 doorway, and we heard a few other shots.

23 Q What did you perceive to make you give a
24 statement to law enforcement that Michael Rogers shot?

25 A The gunshot sound.

KRISTEN BLOOMER - CROSS-EXAMINATION

1 Q The sound?

2 A The sound, and just seeing him peek out and duck
3 back.

4 Q Was he bringing it up to his shoulder?

5 A I honestly can't remember.

6 Q Did you see him squeeze the trigger and flash
7 come out of the barrel?

8 A No, not that I recall.

9 Q Did the shots sound inconsistent, one closer, one
10 further away?

11 A I don't necessarily know the different sounds
12 between different weapons. I know they were closer
13 together. It happened very quickly, within seconds of
14 each other.

15 Q Since I'm up here, let's run through the whole
16 thing again. Isn't it true that around 3:30 that
17 afternoon, roughly around that period of time, Michael
18 Rogers and Antwuan Nelson walk in your apartment for
19 the purpose of consummating a drug transaction, true?

20 A Correct.

21 Q And during the course of that, there was a
22 dispute between Antwuan Nelson and Michael Rogers.
23 Michael Rogers, is it true, he does not want to buy
24 crack cocaine, and Antwuan Rogers says, Yes, you will
25 buy this crack cocaine; isn't that true?

KRISTEN BLOOMER - CROSS-EXAMINATION

1 A Yes.

2 Q And isn't it true that based on that
3 confrontation it became heated, and Antwuan Nelson
4 began raising his voice in your apartment and an
5 invitee and he subsequently punches Michael Rogers to
6 the face, knocking him to the ground and knocking off
7 the handle to your refrigerator?

8 A Correct.

9 Q And during the course of the fight, isn't it true
10 that Michael Rogers is on the ground, Antwuan Nelson is
11 on top of him giving him his business as you are trying
12 to pull him off?

13 A I wasn't trying to pull him off. I stood there,
14 like froze.

15 Q And during the course of the scuffle, at some
16 point Michael Rogers says, Get me my gun, get me my
17 gun. Antwuan Nelson hears that and decides to break
18 off the physical altercation and goes downstairs in the
19 apartment?

20 A Correct, because I opened the front door.

21 Q And over the course of 45 or so minutes, with you
22 up in your apartment and Antwuan Nelson downstairs
23 beside the Crown Vic backed in a slot that could drive
24 any moment in time, he does not retreat or leave, does
25 he?

KRISTEN BLOOMER - CROSS-EXAMINATION

1 A Correct.

2 Q And so subsequent to that, a man that was
3 assaulted in his own apartment, Michael Rogers, he's
4 animated; isn't that true? And he goes downstairs and
5 he stands in front of where he believes Antwuan Nelson
6 to be?

7 A Correct.

8 Q And he stands there and says, Fight like a man,
9 you come down here and fight me like a man now?

10 A Correct.

11 MR. BARR: Your Honor -- Your Honor, I think even
12 on cross-examination he can --

13 THE COURT: Mr. Barr, you were cautioned. He has
14 the right to cross-examine.

15 MR. BARR: Judge.

16 MR. HIXSON: Your Honor, I'm specifically
17 referring to testimony she elicited yesterday.

18 THE COURT: I remember the testimony. I
19 understand.

20 Q (MR. HIXSON) And isn't it true you come
21 downstairs and you remove a quantity of crack cocaine
22 that you hadn't seen in the apartment, scales and a
23 razor blade, and you put it in the pickup truck
24 because you think the police are coming, and you don't
25 want to get arrested for drugs that are not yours in

KRISTEN BLOOMER - CROSS-EXAMINATION

1 your own house, if they come to investigate a fight;
2 isn't that true?

3 A Correct.

4 Q And after that, 10, 15 minutes go while we've
5 heard that Michael Rogers is waiting downstairs for
6 Antwuan Nelson to come down and fight like a man, and
7 to this point, no one has seen a gun yet, right?

8 A Correct.

9 Q It was at that time that you talked to Michael
10 Rogers and you say, Let it go, let's get our baby, let
11 it go, let it go, it's 4:15. So you already have 45
12 minutes or so. Has Michael Rogers been cooling off
13 during this period of time, calming down slowly, I
14 think was your testimony?

15 A Yes.

16 Q And so after that, you go back up to the steps,
17 and it is at that time you see Michael Rogers, isn't it
18 true, you see a shotgun out of that green truck, that
19 that is the first time you see it, and he takes it back
20 upstairs as you go upstairs?

21 A Correct.

22 Q And at that point in time, Michael Rogers is
23 retreating, leaving the situation, deescalating the
24 situation; isn't that true?

25 A Correct.

KRISTEN BLOOMER - CROSS-EXAMINATION

1 Q So now that brings us a little past 4:15, based
2 on your testimony I think. And so after 4:15 comes by,
3 you say, Let's go pick up the baby. You go downstairs,
4 Michael Rogers starts to go downstairs and he says, You
5 know what, I'm not going. I'm staying here. Isn't
6 that your testimony?

7 A That second time, we both went back downstairs.

8 Q Thank you for correcting me. At some point in
9 time, when you are at the back corner of the house,
10 corner of the side of the house, isn't it true that
11 Michael Rogers decides he's not going with you, and
12 goes back to the apartment a second time?

13 A Correct.

14 Q When he came down the second time and went back
15 up, was he carrying a shotgun? You testified that he
16 was not carrying a shotgun a second time?

17 A Right. What we're calling a second --

18 Q Clarify.

19 A After -- after the initial waiting period when he
20 was yelling up to the defendant, Come fight like a man,
21 come fight like a man. He grabbed the shotgun out of
22 the bed of his truck and went up to the apartment, that
23 is what I call the second time up to the apartment. So
24 then that second time back down, when we were going to
25 get in the truck to get my baby from daycare, he did

KRISTEN BLOOMER - CROSS-EXAMINATION

1 not have a shotgun or any weapon in his hands.

2 Q Okay. Thanks for clarifying that. So as you are
3 preparing to go to the green truck, that is when you
4 see Antwuan Nelson come out of the apartment and go to
5 the back of his red Crown Vic, pop the trunk lid and
6 retrieve what is identified as State's 29,
7 semi-automatic military assault weapon?

8 A Yeah, when Michael went up the third time.

9 Q He comes to you. I think your testimony was that
10 he was excited, but not agitated or enraged or heat of
11 passion?

12 A Correct.

13 Q And he approaches you, and you testified, Get
14 your cell phone, call your boyfriend and tell him to
15 come down here with my stuff. You testified he was not
16 threatening you with a weapon, not pointing it at you,
17 but he was asking you to go get him down here where he
18 had a weapon; isn't that true?

19 A Correct.

20 Q And I think you told him, My battery is out on my
21 cell phone, I can't call him, I'll get him -- or
22 something to that effect?

23 A Correct.

24 Q At that point in time, you walk around the side
25 of the building, and where you are standing, you

KRISTEN BLOOMER - CROSS-EXAMINATION

1 testified earlier, you could see up the side towards
2 the steps, so if Michael is coming this way, he could
3 have seen Antwuan Nelson standing there talking to you
4 with a weapon in his hand, which is the first time you
5 ever saw the AR on scene that day; isn't that correct?

6 A Correct.

7 Q Is it not true that you testified that you walked
8 around and that's the moment you see Michael coming
9 this way with the shotgun the third time?

10 A Correct.

11 Q And then in your own words, tell us the last
12 minutes once again.

13 A We kind of met almost, I say in position wise as
14 far as when he was walking into the breezeway, and I
15 walked up towards the breezeway. It is kind of hard to
16 show without the picture. But by the time --

17 Q I'll show you State's 1, if that helps you. The
18 jury can see.

19 A Yeah. Kind of to -- so when me and the defendant
20 was standing here and I walked away, I walked this way,
21 and as I made it to right here, which is where the
22 breezeway starts, is when I saw Michael come out of the
23 door and go behind the cars and into the breezeway. So
24 it was kind of a meeting, but not meeting. So, of
25 course, I looked down that way, and I saw Michael peek

KRISTEN BLOOMER - CROSS-EXAMINATION

1 out and duck back.

2 Q When you say peek out and duck back, which way is
3 he ducking or peeking?

4 A He's looking out this way and ducking back
5 against this building's wall. While seeing that, I
6 heard a gunshot, and then at that same moment his son
7 was telling me to get into that doorway of where the
8 building where I lived is at, and while going in there
9 and being in there, I heard about three more shots. It
10 was quick. It was over maybe like 10, 15 seconds after
11 the last shot I heard. I told Jerome we needed to go
12 out there that he could be hurt, could be laying on the
13 ground, could be bleeding for all we know. Jerome told
14 me, no, don't go out there. I said, yes, I'm going to
15 go. Jerome said, No, I'll go first. Jerome walked
16 out, made it to the breezeway area and just started
17 yelling.

18 Q Stop. Before you get there, we know what happens
19 next. You turn the corner and see Michael Rogers on
20 the ground?

21 A Correct.

22 Q Let's get away from that. Let me show you
23 State's 17. The jury has seen this before. It
24 reflects the potential bullets striking the wall right
25 there. Is that the area of the wall where you saw

KRISTEN BLOOMER - CROSS-EXAMINATION

1 Michael peeking around the corner? In other words, was
2 Michael Rogers standing in this area where the bullet
3 strike is in the wall? I'm sure a bigger picture would
4 help you.

5 A Yeah, because I don't know which....

6 Q Very good. I'll show you this, State's 16
7 already in evidence.

8 (Published to the jury.)

9 Q (MR. HIXSON) See if this helps a little bit
10 better. It is a further-out shot. It is easier to
11 see what we're talking about.

12 A Yes, that's the area.

13 Q So is it true that Michael Rogers was standing in
14 that area and that is the position you saw him as he
15 was peeking around?

16 A Correct.

17 MR. HIXSON: Beg the Court's indulgence.

18 (A brief pause in the proceedings.)

19 MR. HIXSON: Thank you. No further questions.

20 THE COURT: Redirect?

21 MR. BARR: No, sir.

22 THE COURT: You may step down. Thank you.

23 MR. BARR: Tom Davis.

24 (THOMAS DAVIS, having been duly sworn,
25 testified as follows:)

THOMAS DAVIS - DIRECT EXAMINATION

1 THE CLERK: Say your full name and spell first
2 and last for the Court.

3 THE WITNESS: Thomas William Davis, T-H-O-M-A-S,
4 D-A-V-I-S.

5 DIRECT-EXAMINATION

6 BY MR. BARR:

7 Q Thank you. Mr. Davis, if you would tell us about
8 yourself. Where do you live?

9 A I live in Myrtle Beach, about 62 years. I ran a
10 data processing company, worked with the county and
11 city for the first time back in '71. I bought
12 apartments around town and doing the data processing
13 for Horry County during those years. This is one of
14 the apartments that I bought on 37th Avenue, and my
15 wife owned Seaside Reality for about 45 years. She
16 passed away last year, but her name was Nancy Davis.
17 So my family grew up in Myrtle Beach, and that is about
18 it.

19 Q All right, sir. You own quite a bit of property
20 in Myrtle Beach?

21 A Yes, quite a bit.

22 Q And you have been sitting in the courtroom, and
23 of course you are probably familiar with -- do you own
24 property on 37th Avenue North?

25 A Yeah. I purchased several apartments there

THOMAS DAVIS - DIRECT EXAMINATION

1 probably 14 years ago or so at [REDACTED] 37th Avenue North,
2 apartment building which is on the eastern side of
3 where this took place.

4 Q On the eastern side?

5 A Ocean side.

6 Q All right. Can you take a look at this map for
7 one second? This is State's Exhibit No. 1. Take a
8 look at it for a second and get your bearings.

9 A That is my building on the right side, bottom
10 part of the picture. There are four apartments going
11 down the side, and three on the end.

12 Q I see. And tell me, if you would, did you have
13 an occasion to go out to your building during the time
14 this incident took place?

15 A Oh, yes.

16 Q Why did you go up there?

17 A Well, calls from my tenants, police cars all over
18 the place, shooting. So I went out there to see if
19 there was any damages to my apartment house and to talk
20 to one or two of the law enforcement officers, and that
21 is the purpose of me going outside there.

22 Q Did you talk to any of the law enforcement
23 officers that day?

24 A I did. I don't know his name, but one of the --

25 MS. WALTER: Objection. I just want to be sure

THOMAS DAVIS - DIRECT EXAMINATION

1 that we don't get into hearsay. I don't object to he
2 talking with someone, but not the content.

3 A I talked to a uniform City of Myrtle Beach Police
4 Officer about the damages to the Apartment No. 2's back
5 door on the windowpane. Let's say five or six of the
6 windowpanes were shot out.

7 Q No. 2?

8 A No. 2 in my building, [REDACTED].

9 Q I'll show you now what is State's Exhibit No. 23.
10 It is not a scaled diagram, but this is [REDACTED]. Is it
11 fair to say that your building would be on this side,
12 this is [REDACTED] here? Is your building next door?

13 A That's correct, that is [REDACTED].

14 Q And your building is on that side?

15 A On the side you are on.

16 Q Yes, sir. And the damage to your property, could
17 you describe where --

18 A I would say it is right in the neighborhood of
19 the -- first apartment would be along here, my second
20 apartment would be somewhere around here.

21 Q What kind of damage was it?

22 A About five windowpanes, shot several holes in the
23 wooden door.

24 Q Can you tell what kind of weapon caused it?

25 MS. WALTER: Objection. How would he know what

THOMAS DAVIS - DIRECT EXAMINATION

1 kind of weapon?

2 THE COURT: Let's have him describe.

3 Q (MR. BARR) Describe the damage.

4 A I've had several guns, and I've done a lot with
5 shooting in the ranges and in Conway. I do have a
6 shotgun. I don't know what kind of shotgun shot it.

7 MS. WALTER: Objection. I would ask that the
8 witness is limited to describing the damage.

9 THE COURT: I think he established a basis. He's
10 a hunter and did a lot of shooting. He can tell
11 whether it is a shotgun or rifle.

12 Q (MR. BARR) Tell us what kind of damage was done?

13 A Well, the damage in the glass panes was just
14 broken panes out. Can't tell what kind of bullets hit
15 the glass panes, but you can on the wood because you
16 have like BBs and rifles and .22s and so forth, holes
17 are much larger. These were like a No. 8 bird shot,
18 something like that. I'm not sure. I can't tell you
19 the exact number because I'm not that knowledgeable on
20 a shotgun shell.

21 Q You sound pretty good to me. No. 8 bird shot you
22 say?

23 A Buckshot.

24 Q You heard discussions with at least one
25 conversation with at least one officer with the Myrtle

THOMAS DAVIS - DIRECT EXAMINATION

1 Beach Police Department?

2 A At least one. He made an --

3 MS. WALTER: Objection.

4 A He made a statement.

5 MS. WALTER: Objection.

6 THE COURT: I don't mind him saying he has a
7 conversation.

8 MS. WALTER: But he's saying he stated.

9 THE COURT: Mr. Barr, you know the rule.

10 Q (MR. BARR) You had a conversation with a Myrtle
11 Beach Police Officer. As a result of that
12 conversation with the Myrtle Beach Police Department,
13 did you get your property damage fixed?

14 A No, I did not get any damages fixed, and as a
15 result of the conversation, I never filed a complaint
16 against anyone shooting my door, because I was told --

17 MS. WALTER: Objection.

18 THE COURT: All right. Don't respond.

19 A I never filed a complaint.

20 Q (MR. BARR) You didn't file a formal complaint?

21 A Just verbal.

22 Q But did you stand up and talk in person to some
23 officer with the Myrtle Beach Police Department about
24 the damage done to your door by a shotgun blast?

25 A That's correct. He just said --

THOMAS DAVIS - DIRECT EXAMINATION

1 MS. WALTER: Objection.

2 THE COURT: Mr. Davis, you can't say what someone
3 else said.

4 A All right. Well, I said --

5 MS. WALTER: No content of the conversation can
6 come in. The fact that there was a conversation is
7 fine. Mr. Barr should be well familiar with the rules
8 of evidence at this point.

9 MR. BARR: Your Honor, he can tell what he said.

10 MS. WALTER: No, he cannot. That is still an
11 out-of-court statement being offered for the truth of
12 the matter. That is classic --

13 THE COURT: I don't know. Send the jury out and
14 I'll find out whether it is proof of the matter.

15 (The jury exits at 10:40 a.m., and the
16 following is heard out of the presence of the jury.)

17 THE COURT: Mr. Davis, what were you about to
18 say, as a result of the conversation you said what?

19 THE WITNESS: As a result of the conversation, I
20 knew that I had no chances of collecting because, I
21 mean, the officer told me that the man that did this
22 was dead.

23 THE COURT: I understand that.

24 THE WITNESS: That was the total conversation.

25 THE COURT: Ms. Walter, is it offered for the

THOMAS DAVIS - DIRECT EXAMINATION

1 truth of the matter asserted, that is, that the man is
2 dead, or is it to explain why this man did not make a
3 claim?

4 MS. WALTER: Obviously being offered for the
5 truth of the -- the alleged truth that Mr. Rogers
6 fired the shotgun.

7 THE COURT: That is not disputed.

8 MS. WALTER: It is disputed that he fired the
9 shotgun.

10 THE COURT: He didn't say that Mr. Rogers shot
11 the shotgun.

12 MS. WALTER: If the witness is trying to say that
13 an officer told him that he wouldn't recover because
14 the person who fired the shotgun at that building was
15 dead, that is absolutely being offered for the truth
16 of the matter asserted, because Mr. Barr is trying to
17 get out something that did not happen, and that is
18 that the victim fired the shotgun. Any testimony
19 regarding --

20 THE COURT: Do you -- you don't know who fired
21 the shotgun, do you?

22 THE WITNESS: I have no idea who fired the
23 shotgun. I don't know the names of the people, the
24 victim or the defendant's. I saw the defendant's
25 picture on the paper I got, but I didn't know until

THOMAS DAVIS - DIRECT EXAMINATION

1 then what his name was.

2 THE COURT: Let's -- all right. I'm going to
3 exclude it. Just don't talk about any conversations
4 you may have had with anyone about it, just simply say
5 I didn't make a claim, and that is sufficient.

6 MR. HIXSON: One of the reasons is there is no
7 documentation or photographs, no CAD call-outs, so
8 there is no identification who this police officer is,
9 and that is part of --

10 MR. BARR: That is the police department's fault.

11 THE COURT: It is a matter of creditability.
12 Mr. Davis said I went to my apartment and there was
13 damage from what appeared to be a shotgun. I think
14 anyone can see whether it is a shotgun or rifle. He
15 said it is a shotgun, I'm familiar with it. There it
16 is, okay. We have it. Mr. Barr, that is it. What
17 else do you want out of this witness?

18 (A brief pause in the proceedings.)

19 THE COURT: Bring the jury in.

20 (The jury enters at 10:44 a.m., and the
21 following is heard in the presence of the jury.)

22 THE COURT: Everyone is in now. Mr. Barr,
23 proceed.

24 Q Mr. Davis, the person that you spoke with that
25 had the Myrtle Beach -- how long did you say you lived

THOMAS DAVIS - CROSS-EXAMINATION

1 in Myrtle Beach?

2 A Since '54.

3 Q I'm sure you are thoroughly familiar with the
4 uniform that Myrtle Beach police officers wear?

5 A Yes. I did the payroll for them for about 10
6 years.

7 Q Oh, you did. I see. And you are familiar with
8 their vehicles, and when you came out of your property,
9 you said you were concerned about the damage with a
10 gun. Do you have a recollection talking to one police
11 officer -- you said you reported the damage to him
12 orally, do you have a recollection of talking to more
13 than one?

14 A There are -- there were at least two standing
15 with me outside of the back door that was shot up, and
16 I communicated with one of the officers, but I don't
17 remember talking to the other, and I don't remember --
18 I never did hear the officer's name or didn't look at
19 his badge, because I knew I was at a deadened when he
20 said the guy was dead. I just --

21 MS. WALTER: Objection.

22 THE COURT: Strike that.

23 MR. BARR: Thank you, Mr. Davis. I have nothing
24 further.

25 CROSS-EXAMINATION

THOMAS DAVIS - CROSS-EXAMINATION

1 BY MS. WALTER:

2 Q Mr. Davis, can you tell me the name of either of
3 the police officers?

4 A The name of the police officer?

5 Q That you say you spoke to?

6 A He didn't give me his name. I didn't ask his
7 name, and I didn't read his shield.

8 Q Because you are familiar with the Myrtle Beach
9 Police Department uniforms, correct?

10 A Right.

11 Q You know that they all wear name plates, correct?

12 A Yeah.

13 Q So he wouldn't have to tell you his name, you are
14 saying that you never looked at his name plate?

15 A I think if I saw his name plate three years ago I
16 probably wouldn't remember. I just don't remember.

17 Q So you don't remember the name of either officer?

18 A If he told me I was going to get my money, I
19 would have --

20 Q Listen. Please do not tell us anything that
21 anyone said.

22 A I don't remember his name. I don't remember if
23 he gave me his name, but I have no recollection of his
24 name.

25 Q Okay. You did not file a police report?

THOMAS DAVIS - CROSS-EXAMINATION

- 1 A No.
- 2 Q Do you have pictures?
- 3 A No, I don't have any pictures.
- 4 Q Did you file an insurance claim?
- 5 A No, I didn't file an insurance claim.
- 6 Q Do you have any bills from any repairs you had to
7 make?
- 8 A If I did, they have gone in the trash now.
- 9 Q Did you speak with Mr. Barr prior to testifying
10 today?
- 11 A Did I say what?
- 12 Q Did you speak with Mr. Barr prior to testifying
13 today?
- 14 A No.
- 15 Q When you walked into this courtroom, did Mr. Barr
16 say to you let's step outside and talk?
- 17 A Right.
- 18 Q Did you step outside of the courtroom and speak
19 with Mr. Barr?
- 20 A Yes.
- 21 Q Did you speak with him about your testimony here
22 today?
- 23 A Did I speak about what?
- 24 Q Did you discuss your testimony, what you were
25 going to testify to when you spoke with Mr. Barr prior

THOMAS DAVIS - CROSS-EXAMINATION

1 to court?

2 A We discussed was I the man that owned the
3 apartment that was next door that had damage, and that
4 is the only thing we discussed. I mean, I was the man.
5 He never met me before.

6 Q So the entire conference that you had for the
7 approximately five to seven minutes outside with Mr.
8 Barr was, Are you the man that owns the building that
9 had damage? That is the entire conversation?

10 A Well, I'm sure in five to seven minutes he must
11 have said more than that.

12 Q Did he say anything about No. 8 buck shot, bird
13 shot?

14 A We talked about why I didn't show yesterday, and
15 it is because of the hospital and other problems I had.
16 I called the Solicitor's Office to explain, and they
17 said don't worry about it. We talked about why I
18 didn't come yesterday, and we talked about how the
19 judge wanted to send someone to get me.

20 Q So at some point -- my question is: Did you talk
21 about No. 8 bird shot?

22 A No. No. I never mentioned any type of bullet
23 shotgun shell or anything at all about what type of
24 ammunition or what type of gun, anything at all about
25 that.

THOMAS DAVIS - CROSS-EXAMINATION

1 Q Did Mr. Barr?

2 A Neither one of us did.

3 Q Never talked about it?

4 A No.

5 Q You had indicated that you are familiar with guns
6 and shotguns, right?

7 A I beg your pardon?

8 Q You told us that you are familiar with guns and
9 shotguns?

10 A Yeah. The different types of shotguns, different
11 gauges and the difference engages and pistols.

12 Q So can you tell us how many different gauges of
13 shotgun shot there could be?

14 A Well, I'm familiar with No. 8, No. 10, No. 12 and
15 buckshot. My daddy used to take me bird hunting, and
16 I've seen buckshot before. That's about all I know
17 about shotgun shells, you know, 8, 10 and 12, depending
18 what type, if you're going rabbit hunting or bird
19 hunting. I remember my grandfather used to say they
20 had something like salt to put in there to shoot
21 animals, or something like that, to scare them off.

22 Q There is about 20 different types; is that right?

23 A Probably are. I'm only familiar with about five.

24 Q And it just so happened that one of those five is
25 what you are saying caused the holes in your building?

THOMAS DAVIS - CROSS-EXAMINATION

1 A I didn't know what size shot it was. I couldn't
2 tell you whether it was 8, 10 or 12. I've shot 410s
3 and 10 gauge and 12 gauge and 20 gauge. As far as the
4 number of shots in a shotgun shell, I just know there
5 is bird shot and squirrel shot, deer shot and rabbit
6 shot, you know, like that. That is about it.

7 Q I want to clarify something you just said. I
8 believe you said I could not tell what size shot that
9 did that damage?

10 A No. No, I couldn't tell. I could not tell if my
11 life depended on it. I couldn't tell you if it was No.
12 8, No. 10 or No. 12. I just threw out No. 8 because I
13 knew it was small caliber.

14 Q But you don't know?

15 A No, I don't know.

16 Q When is the last time you had been to the
17 building prior to this date?

18 A Last time I did what to the building?

19 Q Prior to the date of the shooting, so before
20 January 27, 2014?

21 A The last time I went to the building before the
22 shooting?

23 Q Yes.

24 A God, I isn't know what day it was. I don't
25 remember. I don't even remember what month the

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1 shooting took place. I go there every month. I have
2 seven tenants there.

3 Q You don't remember when you had been there prior
4 to this?

5 A No, I don't remember when I went there prior to
6 it.

7 Q Okay. Thank you.

8 MR. BARR: Nothing further.

9 THE COURT: You may step down. Mr. Hixson.

10 MS. WALTER: Yes, Your Honor, he can be excused.

11 THE COURT: You are released from your subpoena.

12 MR. BARR: Defense rests.

13 THE COURT: Defense rests?

14 MR. BARR: Defense rests.

15 THE COURT: Mr. Ropp, will you take the jury out
16 for a moment?

17 (The jury exits at 10:52 p.m., and the
18 following is heard out of the presence of the jury.)

19 THE COURT: Mr. Nelson.

20 MR. BARR: Maybe we need to go back on the record
21 with the defendant as to the decision he made.

22 THE COURT: That is what I'm doing. Mr. Nelson,
23 I remind you that you are still under oath. On
24 yesterday, I explained to you your right to remain
25 silent, that it is your right not to testify. I want

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1 to reiterate that you have an absolute right to
2 testify in your case if you wish, and I think I
3 explained to you yesterday that you also had an
4 equally important right to remain silent, and that was
5 left entirely up to you. I explained to you the
6 consequences that might arise from you testifying. Do
7 you need for me to go over that again? Do you
8 remember what I told you, and have you had ample
9 opportunity to discuss this with your attorney?

10 MR. NELSON: Yes, Your Honor.

11 THE COURT: Now, your attorney tells me that you
12 have decided that you will not testify in this case;
13 is that correct?

14 MR. NELSON: That's right, Your Honor.

15 THE COURT: And that is certainly your right, and
16 you have a right not to testify. As I told you
17 yesterday, because you have exercised that right, I
18 will also -- when I charge the jury, charge them, that
19 they may not consider that in any way, whatsoever, and
20 that there is no prejudice to you because you did not
21 testify, that is your decision not to testify.

22 MR. NELSON: Yes, Your Honor.

23 THE COURT: Thank you, sir. Okay. Well, Mr.
24 Barr.

25 MR. BARR: Judge, we would at this point renew

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1 the motion for a directed verdict on the offense of
2 murder. We set forth our rationale to the motion,
3 that is the absence of evidence or lack of evidence in
4 our initial argument when we moved for directed
5 verdict after prosecution presented their case. I
6 think we did the same thing perhaps with the
7 possession of a weapon during a commission of a
8 violent crime and the possession with intent to
9 distribute cocaine. I don't -- the prosecution, in
10 our estimation, benefited by way of evidence that
11 would help as far as....

12 THE COURT: The standard is whether there is any
13 evidence.

14 MR. BARR: Yes, Judge.

15 THE COURT: Mr..Hixson.

16 MR. HIXSON: I would stand on our earlier
17 arguments just to refresh basically we have satisfied
18 all of the elements as it relates to murder, as it
19 relates to distributing crack cocaine or cocaine base,
20 and pcssession of a weapon during the commission of a
21 violent crime.

22 THE COURT: There is significant evidence that if
23 believed by the jury would support a verdict of guilty
24 to the offense of murder, and that it is the standard,
25 whether there is any evidence that was supported. It

MOTIONS

1 would fall that after a stipulation by counsel and the
2 State, that murder, as well as the lesser included
3 offense of voluntary manslaughter, would both be
4 considered violent crimes, and then followed by there
5 was evidence of possession of a firearm during the
6 commission of a violent crime, and of course there is
7 evidence that a person matching his description
8 immediately following a time when all of the evidence
9 would indicate that the defendant was present. I
10 don't think that is even disputed at all. First, a
11 person meeting his description drops something over
12 the fence. Shortly thereafter the K-9 comes and
13 locates what is identified as drugs. There is
14 evidence that, if believed, would identify it as drugs
15 in the immediate area on the other side of the fence.
16 We also had conversation from a witness concerning
17 drugs being in her house. I want to make sure that I
18 understand, those drugs were later recovered from the
19 truck also?

20 MR. HIXSON: Different drugs, Your Honor.

21 THE COURT: I understand it is different --
22 different -- different altogether.

23 MR. HIXSON: It is crack cocaine base, but that's
24 what --

25 THE COURT: I want to be clear. Is it the

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1 State's position that those drugs are attributable to
2 the defendant?

3 MR. HIXSON: That's correct. Ms. Bloomer
4 testified she never saw it before and she wanted it
5 out of her house, but circumstantially --

6 THE COURT: I want to make sure that I understood
7 you. Okay. At any rate --

8 MR. BARR: But, Judge, he is saying that drugs
9 found in Mr. Rogers' car?

10 THE COURT: Truck.

11 MR. BARR: Rogers' vehicle?

12 MR. HIXSON: Yes. It was brought out in
13 cross-examination that she recovered crack cocaine,
14 razor and scales in the green truck. Kristen Bloomer
15 testified that she put that in there because she
16 thought the police were coming. It was on the kitchen
17 table and she didn't see it prior to Antwuan Nelson
18 coming into the apartment. You can argue that it was
19 Michael Rogers' or Antwuan Nelsons', but
20 circumstantially --

21 THE COURT: I mean, it is still evidence,
22 circumstantial evidence is good evidence. Anyway, I
23 deny the motion for directed verdict.

24 Now, gentlemen, I have a charge pretty much
25 together. I would like to see you in chambers, make

JURY CHARGE CONFERENCE

1 sure we're all on the same page with that. I think
2 Elizabeth has it prepared. I'll go over it with you.
3 Come back and put in any additions, deletions or
4 changes that you request on it, and we'll go forward
5 from there, okay. At least for a few moments, I'll
6 see Counsel in chambers.

7 MR. BARR: Your Honor, upon the issue of the rule
8 to show was that was issued for Mr. --

9 THE COURT: Dismissing it.

10 (A recess was taken.)

11 THE COURT: I understand both of you have minor
12 objections. I would like to put those on the record
13 so I can essentially firm up my charge. I have gone
14 through my charge conference so you can know how I'll
15 charge the law to assist you in your closing
16 arguments.

17 THE COURT: Mr. Barr, I believe you had an issue;
18 is that correct?

19 MR. BARR: Yes, sir.

20 THE COURT: All right.

21 MR. BARR: My issue with the charge of mutual
22 combat, I believe that this case is -- or the facts
23 are clearly distinguishable from what we probably
24 would otherwise be, especially from the vicinity of
25 the Graham case. If I recall, I mentioned the Graham

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1 case in our initial conference because of Mr. Dewitt,
2 I believe, and Judge Floyd. In the --

3 THE COURT: Attorney Floyd at that time.

4 MR. BARR: Pardon me?

5 THE COURT: I believe it was Attorney Floyd at
6 that time.

7 MR. BARR: He was Attorney Floyd at that time.

8 THE COURT: Judge Ness.

9 MR. BARR: Judge, I think the situation here took
10 place -- and of course the parties got in an argument,
11 and after they got in the argument, then they resorted
12 several days later to obtain --

13 THE COURT: Wasn't it several days later, and
14 they just met just before?

15 MR. BARR: The shooting didn't take place
16 until.....

17 THE COURT: My understanding is that they had a
18 dispute, and I thought it was the same day, but that
19 really doesn't -- they had bad blood, some sort of
20 issue between them. They meet, and on that day, one
21 has a gun, the other doesn't. He goes and gets his
22 gun, comes back to where they are, and then the
23 shootout.

24 MR. BARR: Yeah. Well, see, Judge, in this case
25 the parties weren't -- I don't know it if we can

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1 show -- the evidence shows they were friends. They
2 apparently had some sort of relationship because they
3 were upstairs trying to accomplish a drug transaction
4 and had a misunderstanding. They were not enemies.

5 In the Graham case, there was actually bad blood
6 between the two individuals. But in this case, you
7 don't -- you don't have any of that. You have what
8 suddenly developed as an impasse in terms of the
9 transaction, and as a result of that sudden
10 development, they both resorted to -- out of a
11 reaction to taking possession of firearms and shooting
12 it out.

13 THE COURT: This is what Graham says: There was
14 ill will between the parties. They had threatened
15 each other, and it is inferable that they had armed
16 themselves to settle this disagreement at gun point
17 under these circumstances. The apparent willingness
18 of each to engage in an armed encounter with the other
19 sustained an inference that they were engaged in
20 mutual conduct at the time of the killing and required
21 that the issue be submitted to the jury for
22 determination.

23 MR. BARR: Of course in this case, Judge, there
24 was no ill will and of course --

25 THE COURT: What? Mr. Barr, they shot each

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1 other.

2 MR. BARR: Judge, see, that is the sudden
3 development. In Graham there was ill will that was
4 festering, brewing between them, but in this case
5 there was no ill will. They got into an issue, and of
6 course at that point then -- now as far as -- at some
7 point they didn't even know whether or not they both
8 were armed. I mean, in Graham they just, you know,
9 took to the weapons and they -- and as the case
10 says -- intend to fight, and that intention to fight
11 was manifested by the actions that they carried out.
12 Well, these parties did not intend to fight. I mean,
13 that is not what they intended to do. The fight came
14 along after they ran into an impasse, and then all of
15 a sudden they resorted to guns. But of course they
16 didn't -- at some point they didn't even know that
17 firearms had been entered into the whole picture.

18 THE COURT: Why did your client not retreat his
19 firearm?

20 MR. BARR: To protect himself, Judge.

21 THE COURT: From? From? From?

22 MR. BARR: Pardon me?

23 THE COURT: Protect himself from?

24 MR. BARR: From -- from the decedent. I mean
25 clearly the case says where he engages in resorting to

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1 this type of activity only to protect himself, then
2 mutual combat --

3 THE COURT: Do you not agree that there is
4 certainly evidence that these two men armed themselves
5 and placed themselves in a position to encounter each
6 other, and that is exactly what happened, and a
7 shooting followed?

8 MR. BARR: Well, Judge, we just for the record.

9 THE COURT: I got you.

10 MR. BARR: We oppose.

11 THE COURT: And I appreciate your efforts.

12 Mr. Hixson.

13 MR. HIXSON: I want to spend a little time on
14 this, and that is specifically to distinguish Graham
15 versus Taylor. In State versus Taylor, Taylor -- the
16 supreme court -- or our court, appellant courts, were
17 in support of the Graham, so Graham is still good law.

18 THE COURT: That is a 2013 case, wasn't it?

19 MR. HIXSON: Exactly right, Your Honor. In
20 Taylor, the Court tried to distinguish what a
21 preexisting difficulty is. So the facts that we have
22 in this case, there is no evidence of a preexisting
23 difficulty at the moment that Antwuan Nelson and
24 Michael Rogers walk into the apartment.

25 THE COURT: As was in Taylor. I mean, Murphy

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1 and, who was the victim -- I think Murphy was the
2 victim, wasn't he?

3 MR. HIXSON: I believe that is correct.

4 THE COURT: And Taylor -- other parties were
5 cutting down trees and Taylor goes over to Murphy's
6 house and takes exception to the way Murphy is
7 treating a female, and there was no evidence of any
8 prior difficulty between them.

9 MR. HIXSON: Exactly right. In Taylor -- and if
10 that happened in this case, mutual combat may not be
11 appropriate, but in Taylor a fist fight ensues based
12 on insults, start punching each other. During the
13 course of that same scuffle, that same thing, is where
14 the difficulty started. One grabs a knife, one arms
15 himself. They stab a person who loses his life. But
16 that disagreement was encapsulated in that moment of
17 time. There was no cooling off period. 45 minutes
18 didn't go by, and the State asserts why mutual combat
19 is appropriate. And Taylor is distinguished from -- I
20 mean this case is distinguished from Taylor is that at
21 that moment after the fight broke up, Antwuan Nelson
22 knew that Michael Rogers was getting his gun, Get my
23 gun, get my gun. Circumstantial evidence shows that
24 that is why he left the apartment. That is the
25 beginning of the difficulty at that moment in time, a

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1 willingness to engage in a fist fight.

2 THE COURT: And rather than leave the area, he
3 arms himself.

4 MR. HIXSON: Over 45 minutes of time while
5 Michael Rogers, based on the cross-examination, was
6 taking a shotgun around in a public place while
7 Antwuan Nelson has ample opportunity to leave. It is
8 important that this happens in a public location where
9 the armed encounter is likely to occur, that is in
10 Graham. If the shootout had occurred in that
11 apartment, in other words, if Nelson had grabbed his
12 gun while they are fighting each other and shooting,
13 we would say that that is that a Taylor case, but the
14 fact that he left because he knew he was arming
15 himself, that that is how this case is distinguished,
16 I believe, from Taylor. I think it sound reasoning as
17 it relates to mutual combat, Your Honor.

18 THE COURT: And, of course, I know that the State
19 had some question about charging self-defense. If we
20 look at Taylor, which you rely on, I think Taylor
21 cites -- I think gives support to my decision to
22 charge Burkhart, to charge self-defense in this
23 matter.

24 Anything further, gentlemen?

25 MR. HIXSON: Nothing from the State.

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1 MR. BARR: No, sir.

2 THE COURT: I would then reiterate that I will
3 charge the law of murder. I'll charge the law of
4 voluntarily manslaughter. I'll charge the law of
5 self-defense, and I'll charge the law of mutual combat
6 as it relates to self-defense, okay. Of course, I
7 don't think there is any questionable charge for
8 possession with intent to distribute crack cocaine and
9 not the marijuana, and we will not charge any
10 inference as to weight. I will charge possession of a
11 weapon during the commission of a violent crime, and I
12 will charge that the parties, by stipulation and
13 agreement, do not contest the fact that both murder
14 and voluntary manslaughter are crimes of violence,
15 okay.

16 All right. Mr. Palmer, can you bring the jury in
17 for me? State waiving opening?

18 MR. HIXSON: Glad you brought it up. In the old
19 days, we got last close. I'm not sure.

20 THE COURT: He put up witnesses.

21 MR. BARR: Unless they intend to do it
22 altogether, I think now under the law --

23 THE COURT: They can open as to the law alone,
24 but then they have final closing argument; isn't that
25 right, Mr. Barr?

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1 MR. BARR: Pardon me?

2 THE COURT: They may open on the law, you argue
3 and then they have closing argument.

4 MR. HIXSON: Would you like us to open on the
5 law, or just have one argument?

6 MR. BARR: One argument.

7 THE COURT: Then you would argue first, Mr. Barr.

8 MR. BARR: Judge, may we approach the bench?

9 THE COURT: Yeah.

10 (Whereupon, a bench conference was had.)

11 (Whereupon, the jury enters at 11:51 a.m., and
12 the following is had in the presence of the jury.)

13 THE COURT: Ladies and gentlemen, as you heard,
14 we concluded all of the evidence in this case. I took
15 a moment and discussed with these attorneys what I
16 will charge on the law, and I do that so that they
17 will know my view of the law, and of course I'm the
18 sole and exclusive judge of the law that you will
19 apply, but I always try to let the attorneys know in
20 advance what I will charge on the law so they know.

21 They have an opportunity now to present their
22 position in the case to you. The defense will go
23 first and will be followed by the State. Both the
24 defense and the State have an opportunity during their
25 closing remarks to comment on the evidence in the case

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1 as well as the law. But I caution you, that nothing
2 they say in their closing remarks can be considered as
3 evidence. Of course they can comment on the evidence,
4 but they cannot add anything to the evidence. The
5 only evidence -- and I'm sure these lawyers would not
6 do that, but the only evidence you may consider is the
7 evidence that you've heard from the witness stand, and
8 I will charge you fully on that at the end of the case
9 when I charge you on the law.

10 Also, their remarks concerning the law that I
11 will be charging is nothing more than their opinion.
12 You will be guided only on the law as I give it to you
13 at the end of the case during your deliberations.

14 Now, with that said, Mr. Barr, are you prepared?

15 MR. BARR: Yes, sir.

16 THE COURT: You may.

17 MR. BARR: Thank you, Judge. Your Honor, if it
18 please the Court, Solicitor, ladies and gentlemen.

19 You now have heard all of the evidence, and you
20 have been presented with all of the evidence that you
21 will be presented with in this case. After the
22 arguments of myself and -- I'm not sure who will be
23 going for the State of South Carolina, the
24 prosecution, but His Honor will charge you on what the
25 law is in this case, that is the law that is to be

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1 applied.

2 Now, initially when I spoke to you, I did an
3 introduction and I talked about something that didn't
4 seem to catch on too well, or at least grow roots, but
5 I spoke about the rules of the road. We've come to
6 that point now with respect to what His Honor will
7 tell you, he is going to give you a little bit of the
8 rules of the road, that is the law that you have to
9 apply to the facts of this case.

10 Now, of course one of the things he'll tell you
11 is when you go to your jury room and start your
12 deliberation, you will have to come back with a
13 verdict whereby you all agree, with the exception of
14 the alternates, they won't be deliberating, but all 12
15 primary jurors will all have to agree with respect to
16 a verdict. Of course once you reach that agreement,
17 then you'll come back with a verdict, which we like to
18 say speaks the truth based on the law and based on the
19 evidence.

20 Now, if you remember, I indicated to you that one
21 of my primary concerns -- and it is always a
22 concern -- when jurors are being selected as to
23 whether or not jurors are willing to be totally
24 objective; that is, whether you are willing to leave
25 all your subjectivity behind you and take your oath to

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1 be fair and impartial jurors and sit and listen to the
2 evidence and apply it to the law as His Honor gives it
3 to you, even if there is things about the law that you
4 may or may not disagree with.

5 Let me give you an example of what I'm talking
6 about. When we talk about, say, for instance,
7 distribution of drugs or possession with intent to
8 distribute, which in this case that is one of the
9 offenses that Mr. Nelson is charged with. Well, the
10 law in South Carolina as it relates to possession,
11 there is two kinds of possession, possession can be
12 either actual possession, which is to physically have
13 your hands on something, or constructive possession,
14 and of course constructive possession means when you
15 control the disposition of it, it is under your spirit
16 of influence. You may not be in actual possession of
17 it, but it is in your spirit of influence. It may be
18 right in front of you. But if you exercise dominion
19 and control over it. Now, some people may say, well,
20 that shouldn't be, but that is what the law says.
21 That is what the law says.

22 As you look at these cases, please remember if
23 you look at this case, each and every offense -- and
24 Mr. Nelson is charged with three -- each and every
25 offense legally has elements, and the elements of the

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1 component parts that make up the offense, if any one
2 of the elements that His Honor instructs you that
3 applies to a particular defense, if the prosecution
4 doesn't prove any one of the elements beyond a
5 reasonable doubt; that is, if you are not all
6 convinced that the prosecution has proven each
7 element -- not one or two -- say in the case of
8 self-defense that the prosecution has disproved --
9 disproved because, now, Antwuan Nelson does not have
10 to prove that he shot Mr. Rogers himself. He doesn't
11 have to prove that.

12 The law presumes -- even right now, the law
13 presumes he's innocent. The prosecution has to
14 disprove each and every of the four elements, and
15 we'll talk about the four elements a little bit later
16 on, but His Honor will charge you on what the elements
17 of self-defense are, and you'll have to decide whether
18 or not, based on the evidence or lack of evidence --
19 or lack of evidence, and in this case lack of evidence
20 can be important. Just as an issue, say, for
21 instance, creditability of witnesses. I'll get this
22 out of the way, because I may forget about it, and I'm
23 getting older. I may forget about it, and my mind
24 might leave me, and I might not get back to it, but
25 talk briefly about creditability of witnesses.

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1 In legal jargon, or legal arena, we refer to
2 credibility of witnesses. Your Honor will instruct
3 you as to your responsibilities as to what to believe
4 on the witness stand. Everyone on this witness stand,
5 either though they swear or affirm to tell the
6 truth -- let me tell you something, Holy Bible gets a
7 rough time sometimes because people swear and affirm
8 sometimes, and they don't always tell the truth.

9 Now, what do I mean? For whatever reason, it is
10 your prerogative, absolutely yours, totally yours to
11 decide who to believe that testified from this witness
12 stand in this case, how much or what they said they
13 believe, if any at all, or whatever -- whatever. The
14 credibility of witnesses is totally within the
15 providence of jurors because His Honor can't even
16 comment. That is up to you. The believability of the
17 witnesses.

18 What causes people to lie? Well, lots of things
19 cause people to lie. They may have a political
20 interest, economic interest, social or personal
21 interest. In this case, I think His Honor may give
22 you a charge on something we call "inconsistent
23 statements," that is when people make statements at
24 one point, and for whatever reason, later on they have
25 a different perspective on the same issue and even

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1 testify in court that, well, I don't remember like
2 that or -- or either, I don't remember at all. And of
3 course this is -- I'm not picking on anyone. Our job
4 is hard sometimes as defense lawyers, because
5 sometimes I'm looking at the 12 of you now and I don't
6 know how far I can go. I don't know you personally.
7 I don't want to offend anybody, but I have a client to
8 represent.

9 The defendant is charged with -- he's charged
10 with some very serious crimes. He's charged with --
11 first of all -- unlawfully killing a man with murder,
12 with malice aforethought. His Honor will instruct you
13 on the details of what the elements of this offense of
14 murder is, and then perhaps even more illuminate on
15 what each one of those elements are.

16 Back to the issue of creditability of witnesses
17 and what makes them change, what makes their memory go
18 bad. In this case, the girlfriend of the decedent,
19 Ms. Bloomer, got on the witness stand yesterday and
20 swore to tell the truth. Everything was going well as
21 long as she was under direct examination, but then
22 comes the defense lawyer, and her memory started
23 getting bad. It's been three years ago, it is a long
24 time.

25 Ladies and gentlemen, I'm not going to stand up

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1 here and patronize you. Ms. Bloomer had a problem
2 with memory because she wasn't telling the truth,
3 simple as that. What compels me to say that she
4 wasn't telling you the truth is my duty and
5 responsibility to my client to make sure that he gets
6 a fair and equitable, impartial representation in this
7 courtroom.

8 Now, I can sympathize with her for what has
9 happened to her boyfriend. I don't mind saying it was
10 something they shouldn't be doing in the first place.
11 That is hard to deal with. It is hard to accept.
12 Nobody wants to see anyone dead. But if in everyone's
13 life -- depending on what you do and how you carry
14 yourself, it becomes harvest time. It becomes harvest
15 time. And even for Mr. Nelson right now, it is
16 harvest time. I wouldn't want to be in his shoes.
17 Lord knows, but it is harvest time. You have to pay
18 the piper. When you do bad things, bad things happen
19 to you, but we want to make sure that punishment is
20 according to and equitable and based on what someone
21 has done. In other words, we don't want you to -- and
22 I don't want you to think that Mr. Nelson is guilty of
23 murder because he is guilty of drug dealing. Look,
24 those are different things. Punishment is even
25 different. Murder is one thing, drug dealing is

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1 another.

2 Now, as it relates to this issue of
3 creditability, notice we thought -- I called one
4 witness, and I'll tell you, I thank the gentleman for
5 coming in here. Ms. Walter gave him a little hard
6 time. She didn't want him to say too much, but quite
7 frankly, that man -- my goodness, he owned half of
8 Myrtle Beach. I mean, he doesn't care about the
9 nickels and dimes, but usually rich people, that is
10 how they get what they want. But he came in here and
11 told you the truth. See, prior to the time that he
12 came in here, this table right here, which is going to
13 come here and stand up here, I want you to listen to
14 them, want to show them the respect they deserve, but
15 I want you to remember what it is that you heard in
16 this courtroom on that witness stand and what you
17 heard from His Honor, and what these exhibits will
18 say, and I don't know they have a whole lot of
19 significance, quite frankly.

20 If you listen to the facts of this case, you have
21 a pretty good idea now of exactly what took place,
22 pretty good idea of what took place. As I said, this
23 table will have you believe that somehow -- where is
24 that shotgun? I'm not going to get the shotgun out,
25 because I'm not going to do what the Solicitor did at

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1 the beginning of the case and get you in some kind of
2 dramatic mood by taking the gun and flashing it in
3 front of you.

4 You've seen the shotgun enough, but notice this
5 shotgun didn't go to SLED. Well, there is nothing --
6 no evidentiary value in -- the shotgun had no
7 evidentiary value, so we didn't send it to SLED for --
8 the young lady that testified said, well, we couldn't
9 tell when the shotgun was fired last. It may be fired
10 a year ago, two years ago, one minute ago or whatever.
11 The Solicitor says, well, Mr. Nelson, the only one
12 doing the shooting. He murdered Mr. Rogers. He shot
13 him with an AK-47 (sic) -- well whatever assault
14 rifle.

15 Well, these guns, along with all of the shells
16 and ammunition, irrespective of how much he piled on
17 the counter or whatever -- I mean you can buy it from
18 Walmart, but now we're not concerned with how much
19 ammunition he had. I mean they may have a concern,
20 make some suggestion about something having to do --
21 but a whole bunch of people got shells now and carry
22 enough to be able to shoot, for whatever reason.

23 The law says, believe it or not, whether we like
24 it or not, the pendulum is swinging that way. I mean,
25 you have guns, walking around with guns in college. I

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1 don't know. I mean, it is an issue with both sides,
2 and there is usually two sides to every issue. But
3 usually it is not until something happens, something
4 dramatic of whether or not we're going too far this
5 way or too far this way. Same thing we do with drugs,
6 going too far this way, marijuana or smoking it, or
7 cocaine using it, whatever.

8 Mr. Rogers wasn't doing no shooting. He never
9 used a shotgun. He was a victim of a bad drug deal,
10 and Mr. Rogers -- Mr. Nelson (sic) wanted to shoot him
11 and get money or get drugs or -- everything that you
12 saw and you've heard based on what Antwuan Nelson has
13 done is what you heard when they got in an argument.
14 Antwuan Nelson -- when Mr. Rogers started to talk
15 about getting his gun, Rogers (sic) took off running
16 -- Antwuan Nelson. He ran to get his own gun.

17 Well, now, here is the kicker. I'm going to come
18 back to this in a second. Remember, the prosecution
19 would have had you believe -- if I didn't have Mr. --
20 thank the lord for Mr. Davis, who ain't got an axe to
21 grind, and like I said, he probably has more houses
22 and apartments than all of us together. He sat over
23 there and said, look, you know, you are dealing with
24 nickels and dimes, but somebody took a shotgun and
25 blew up the door on my apartment.

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1 You remember I asked Ms. Bloomer right here, I
2 asked her, When Antwuan Nelson ran out of the door and
3 your boyfriend ran down the stairs -- I even asked --
4 where is my glasses -- I asked Mr. -- he didn't
5 hesitate a second in finding this property on this
6 map. He probably knows where half the property is in
7 Myrtle Beach. I mean, that is how rich people are,
8 that is what they concentrate on. He is in the
9 business of buying houses and buying apartments and
10 making money. But you remember, I asked him where was
11 the damage to his building, and you remember it is
12 over here. It is over here. See, when Rogers came
13 down the stairs down here in this apartment, right
14 here -- now I'm going to -- I'm going -- I'm going to
15 do like Mr. Hixson. I thought I saw -- they make
16 sure -- they walk the line -- walking the line, ain't
17 that something, but I like it. Jurors are supposed to
18 see. But, now, right here, Ms. Bloomer told you her
19 apartment is up here on the second floor.

20 See, when Rogers came down here and when Antwuan
21 did turn this curve, boom. That is how he blew a hole
22 in the door over here. Here is the interesting thing.
23 These same people over here came up and asked you to
24 believe what they will tell you or what they are going
25 to argue to you or tried to persuade you to adopt

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1 their view of the evidence. Not only did you not see
2 a gun, but you didn't see one police officer who came
3 here and told you anything about any evidence
4 regarding that man's door. You would have thought
5 that maybe that is a different case. Well, it is not
6 a different case, it is the same. Why is it that, as
7 I said, Ms. Walter was very concerned that he wanted
8 to talk too much about who he talked to, any of the
9 police officers.

10 Because as I said -- where is Mr. Clothier? He
11 is the chief. He testified. I don't believe he
12 testified. But, notice, I don't have anything related
13 to the -- through the process of discovery. We have
14 what we call "discovery" where people present evidence
15 regarding evidence in the case. We have to exchange
16 certain things. There's not one shred, not one iota
17 dealing with anything with this door. That's
18 interesting, isn't it? You come to a crime scene and,
19 in fact, if you go back and look at what the officers
20 talked about, this is not even in the crime scene. It
21 is not even in the crime scene.

22 Now, is Mr. -- was Mr. Davis' testimony
23 believable? Ladies and gentlemen, you all have been
24 determining who and what to believe all your life.
25 You remember in my opening statement I asked only that

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1 you use your good commonsense to arrive at a verdict
2 in this case. You know when someone is giving you the
3 whole deal, or you know when someone is not telling
4 you the truth. I submit to you that Mr. Davis was
5 telling you the truth.

6 Now, notwithstanding the fact that Myrtle Beach's
7 finest, for whatever reason, chose not to include one
8 police report -- Mr. Davis' statement was oral, and he
9 didn't give us anything away. My God, you are
10 investigators. You are police officers. You ought to
11 have a report. Somebody ought to. Now, Ms. Walter
12 says, Do you know who you are -- you know, I like the
13 way he handled that, because I'll tell you something
14 else about rich people. That is how they accumulate
15 wealth, they know what they are doing.

16 Well, did you talk to Mr. Barr back in the room?
17 Ain't nothing I can tell that man. What kind of -- he
18 sat right there and said, listen, I've never seen the
19 man, never spoke about. What we talked about was we
20 talked about my door getting fixed, that is what he is
21 worried about. The thing about it is that nobody
22 mentioned anything about how that door got shot. How
23 the shotgun -- wasn't that gun, the same gun that
24 everyone had a hard time seeing that Mr. Rogers had
25 shooting at Antwuan Nelson.

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1 Now, Mr. Nelson, he got to his car, but he
2 sneaked around the car. If you notice, even
3 Ms. Bloomer admits, you know, he was stooping behind
4 -- what do you think he was stooping down for? He was
5 stooping down because when you look at where his car
6 is, here is where he is parked, and here is the man's
7 truck, and here is the alley where -- this is where
8 Mr. Rogers was, roaming around out here looking for
9 Mr. Nelson. I asked Ms. Bloomer, even this morning,
10 what was he downstairs for waiting? See, that man had
11 the gun. If he couldn't handle Antwuan Nelson
12 physically upstairs and asking for the gun then, he
13 wasn't down here waiting on him to come downstairs
14 without a gun. He had the gun then and he went
15 upstairs looking for him. He had the gun then.

16 Antwuan Nelson had no -- if he had came out here
17 and exposed himself -- even Ms. Bloomer testified that
18 he was looking around -- what do you think he's
19 looking for? He was trying to figure out where in the
20 world Mr. Rogers is. If he walked over here and got
21 into his car and exposed himself, it would be probably
22 a different scenario today. It would be a different
23 scenario.

24 Mr. Rogers was not playing with that shotgun.
25 Ms. Bloomer had to admit this morning -- she had in a

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1 statement when he shot a second time -- when he shot a
2 second time. See, when he shot a second time, that is
3 when we was shooting at Antwuan Nelson, because he was
4 looking at him down here in the alley trying to kill
5 him, and Antwuan Nelson defended himself and shot
6 back.

7 Now, ladies and gentlemen, Your Honor will
8 instruct you, and as I said in my opening remarks,
9 Antwuan Nelson shouldn't prove his innocence. He is
10 presumed to be innocent, and that presumption of
11 innocence remains with him even now at this point in
12 this trial. That presumption of innocence is only
13 removed when you decide that you have been convinced
14 by the evidence and weight of the evidence that the
15 prosecution has otherwise proved them guilty each and
16 every one of these offenses beyond a reasonable doubt.

17 Now, there is a couple of things that I want to
18 make sure that I mention to you before I sit down,
19 because I'm not going to stand up here a long time. I
20 think, and I know, and I've watched you all, you have
21 been very attentive to this case and you paid
22 attention. No one is going to sell you a bill of
23 goods about what transpired. I don't care what the
24 prosecution might say, they cannot change what
25 transpired in this courtroom. As I said, I certainly

CLOSING STATEMENT - MR. BARR

1 want you to pay attention and listen and be courteous,
2 but don't take a bill of goods. Don't take a bill of
3 goods.

4 Mr. Davis was the last person that came in here
5 and testified and probably told you more about this
6 case than anybody, because he was the one that
7 primarily -- up to this point, everybody is trying to
8 say, well, we ain't find no shell casings. Shell
9 casings, now you have 40 some people going around, and
10 guess what, if you remember, when Antwuan Nelson left
11 with Officer Garrett -- when he left with Officer
12 Garrett, the crowd was so hostile towards him and --
13 that he had to get him away, put handcuffs on him and
14 put him in a squad car and take him away. Several
15 officers said they were kind of getting rough, kind of
16 rowdy there. So they were all scattered around, all
17 around the apartment complex. I don't know where the
18 shotgun shell went to, I mean the one that was shot.
19 But, now, as I said, if Mr. Davis didn't come around,
20 the prosecution would have you believe Mr. Rogers
21 didn't do any shooting first, he had an empty gun. He
22 had shells in his pocket, and when he got shot, the
23 shells, some of them got -- shells jumped, went over
24 here, some of them went over there.

25 Well, I don't know what happened. I don't know

CLOSING STATEMENT - MR. BARR

1 how many gun shells he had in the chamber. I don't
2 know how they got scattered around, where they plan --
3 and I'll tell you what, while I'm thinking about it,
4 let me share something with you about professional
5 people, and I better be careful because some people
6 might say, well, as a lawyer I have to claim myself in
7 that category but professional people hate to admit
8 we're wrong. Common people admit they are wrong a
9 whole lot quicker than people. I can't remember the
10 lady's name, she's from SLED. Was she firearms or --
11 I can't remember, but, anyhow, what I tried to get her
12 to do is admit there is a poor investigation going on
13 when they didn't even take a sample of what they
14 thought was blood. You remember she tried to justify
15 it? Well, it looked like blood, and then she gave me
16 the long litany of why it wasn't important. Anyone
17 knows better than that. How are you going to have
18 blood at a crime scene and you can't even come to
19 court and say scientifically that is blood? It
20 doesn't work like that. But instead of saying, We
21 just missed that. No, we're trying to justify it.
22 Even when you are wrong, you are still right. Well,
23 you can't do that.

24 The truth of it is -- and I know you could see
25 that. You know better. You know better. But rather

CLOSING STATEMENT - MR. BARR

1 than saying I'm wrong and we don't have it and we
2 don't know whether it is Mr. Rogers' blood or not, it
3 is just not important that we know whether or not,
4 first of all, that that was blood. Yes, it is
5 important. You are a forensic experts. That is part
6 of the crime scene. You are supposed to get it.
7 Someone is supposed to collect it, take it to custody,
8 send it to be analyzed. That is the purpose of doing
9 it the right way, so that the results you get is based
10 on some true and not something that is perhaps not
11 true.

12 I'll tell you what -- and I know it shocked me
13 when Mr. Davis correctly called the No. 8 bird shots.
14 He said I didn't discuss that with him, but based on
15 what he saw, the damage done to his door, he knew
16 exactly what Mr. Rogers was shooting. He knew exactly
17 what -- and guess what -- where are those shells at?
18 They are somewhere over here. No. 8s. No. 8s. No.
19 8. Prosecution would have you believe that, well, I
20 guess No. 8s -- but that is what he shoots, and that
21 is why they tore up that man's door, because he was
22 shooting at this man over here.

23 As I said, there is a couple of things I don't
24 want to forget that I mentioned to you that I know His
25 Honor will tell you about. We already talked about

CLOSING STATEMENT - MR. BARR

1 that presumption of innocence. That presumption of
2 innocence is a strong presumption. It is a very
3 strong presumption. Let me tell you how strong it is.
4 Legally, if something were to happen in this courtroom
5 right now, Antwuan Nelson would be not guilty because
6 that presumption of innocence applies until such time
7 as you, the jury, armed with the law as His Honor
8 gives it to you, says he's guilty. The presumption of
9 innocence is a substantial right, but it's in our law.
10 It is one of the things that protects us, one of the
11 things that distinguishes us from some of these
12 societies where justice is so swift, Lord have mercy,
13 if you want to call it justice. Or in some cases
14 where people only taking certain positions that are
15 beneficial to them, they call it "just us," and you
16 know what I'm talking about now. I'm going back to
17 the credibility of Ms. Bloomer, who when I asked her
18 about her statement she said my memory was better back
19 then today. She hardly would admit that Antwuan
20 Nelson -- or that Mr. Rogers even did any shooting.
21 She didn't remember where she was.

22 Now, from her statement she had to admit that
23 that is what she said. If you remember, I asked Ms.
24 Bloomer, I said, Listen, in your statement you don't
25 deny that nowhere in your statement did you ever

CLOSING STATEMENT - MR. BARR

1 mention you and your boyfriend were getting ready to
2 go to the daycare center to take the child. No where
3 in your statement did you ever mention Antwuan Nelson
4 punching Mr. Rogers. No where in the statement did
5 she mention it, but yet today somehow Mr. Rogers was
6 down on him punching. Oh, Lord have mercy. Mr.
7 Rogers was getting -- Mr. Rogers wasn't going to go to
8 any daycare center with her, he was instead going
9 around that apartment complex with that shotgun trying
10 to find Antwuan Nelson, that is what he was doing. He
11 wasn't going to go to any -- and the reason she didn't
12 say it is because it didn't happen. Didn't happen.

13 Now, even you can understand why even today she
14 would come into this courtroom and tell you something
15 and it was not true. That is just the short and long
16 of it, as simple as that.

17 Reasonable doubt, the kind of doubt that would
18 cause a person to hesitate to act. That is not very
19 difficult to understand. He's going to explain it to
20 you in more detail, but a reasonable doubt is the kind
21 of doubt that would cause a person to hesitate. In
22 layman's terms we can understand that. That is the
23 kind of doubt -- in other words, when His Honor gives
24 you the law, even as to murder and as to manslaughter,
25 voluntary manslaughter or possession of a weapon

CLOSING STATEMENT - MR. BARR

1 during a violent crime, even drug distribution, and
2 I'll talk about drug distribution last, because quite
3 frankly, as I said, you are grown people, I'm not
4 going to spin -- you -- you -- you could see things.
5 I just simply ask you, is it fair to convict
6 someone for murder where all they have done is
7 distribute drugs? I'm not saying that that is right,
8 but let the punishment be to what the person has done.
9 It is unfortunate that this thing got out of hand, but
10 sometimes that is what happens when you do the wrong
11 thing and you engage in the wrong thing. Sometimes it
12 spills over.

13 Reasonable doubt, the kind of doubt that would
14 cause a person to hesitate to act. In other words, if
15 you get to your jury room and you have a discussion if
16 Antwuan Nelson murdered Mr. Rogers, shot and killed
17 Mr. Rogers with malice aforethought. Premeditation.
18 Premeditation. Not in the sense of ill will, but
19 premeditation. Guess what, I'm here to tell you --
20 irrespective of what Mr. Hixson may say -- this thing
21 happened in less than a hour, wasn't a whole lot of
22 chance for premeditation from the time they came
23 upstairs. I think Ms. Bloomer said 30 to 45 minutes.
24 Half of which Antwuan Nelson was hiding in the woman's
25 apartment. So this is not -- this was a spur of the

CLOSING STATEMENT - MR. BARR

1 moment thing where, really, it happened so fast, even
2 according to Ms. Bloomer, she was so excited -- it
3 came and went just like that. I mean, that is what
4 happened with her. This was no kind of thing where
5 someone had a period to do all kinds of cooling off.
6 What kind of cooling off do you do in less than an
7 hour? You can't do any cooling off. If you do a lot
8 of cooling off, cool off -- it must not have been
9 anything to cause you to be too upset to begin with.

10 Let me go on. The kind of doubt to cause a
11 person to hesitate to act. If you are indifferent --
12 and His Honor will tell you, if you are not firmly
13 convinced; in other words, if you think there is a
14 real possibility -- a real possibility that the
15 defendant could be innocent based on what has not been
16 proven, then His Honor will tell you you have to find
17 him not guilty. He'll tell you, and I'll leave it at
18 that. I won't go into more details about what is in
19 these boxes.

20 Go on the next thing. Circumstantial evidence, I
21 hate talking about circumstantial evidence because so
22 much of the prosecution case in this instance is based
23 on circumstantial evidence. Do you remember the lady
24 that testified when shots were fired at her house and
25 scared, shooting at her. Imagine sitting in your

CLOSING STATEMENT - MR. BARR

1 house and hear shots fired in your neighborhood and
2 shots are coming in your house, Lord have mercy. You
3 have to run from your own house.

4 Anyhow, she said I saw someone scaling the wall,
5 and they were either scaling the wall or attempting to
6 jump up and they dropped something over the wall, so I
7 told the police about it. She said the person I saw
8 had something dark on, same thing as Antwuan Nelson
9 had on, red trim, dreadlocks -- no, she didn't say
10 dreadlocks, somebody else talked about dreadlocks. He
11 had something on his head and ran back towards the
12 car. That, taken along with some other things, such
13 as running back towards the car, wasn't no one else
14 back there, she didn't get to see his face, if you
15 believe that all of that taken together -- and His
16 Honor will tell you it leaves to only one conclusion,
17 if you conclude that Antwuan Nelson -- if you believe
18 that. Simple as that. That is based on evidence. I
19 won't argue with that. You are not children, and I'm
20 not going to treat you that way.

21 Already talked about believability of witnesses.
22 Statement of defendant, you only have one statement
23 from the defendant in this case that I can think of,
24 very first statement he made to the officer. It was a
25 voluntary statement. I shot in self-defense. I shot

CLOSING STATEMENT - MR. BARR

1 him in self-defense. I shot him in self-defense.

2 Shot him in self-defense. Shooting at me.

3 Expert witnesses, Dr. Proctor. I had to let Dr.
4 Proctor know that he still looks good and remind him
5 of a case we were involved in years ago, a child that
6 drowned near Myrtle Beach, and no one knew what
7 happened. Dr. Proctor said -- testified to quite a
8 few things in terms of the evidentiary significance of
9 what he testified to -- to tell you the truth, I don't
10 even remember. I remember what I wanted to hear from
11 him, and that was Mr. Rogers based on the pathologic
12 report finding regarding drugs. Now, Scott said,
13 Well, doesn't that mean that the drugs were in the
14 system for awhile and broken themselves down and not
15 like he was using them that day, and I think
16 Dr. Proctor's response was something to the extent of
17 they had been metabolized.

18 Now, Ms. Bloomer said I keep drugs out of my
19 house. I know my husband liked to deal with them and
20 mess with them, I keep them out of my house. That is
21 why I took all the drugs out of the house and put
22 them -- put them in my husband's truck, because I
23 didn't want it to be found in my house, so I put them
24 in my husband's truck. Didn't give them to the
25 police, and certainly didn't give them to Antwuan

CLOSING STATEMENT - MR. BARR

1 Nelson. Prosecution said all the drugs, wherever they
2 are, in the man's truck, on the fence, all of the
3 drugs were Antwuan Nelson's drugs. Expert
4 witness-problem. A good man. Good man.

5 Defendant who testifies, His Honor will charge
6 you about a person's legal right not to testify, so I
7 won't talk about that.

8 Prior inconsistent statements, I won't talk about
9 that anymore because I think that you all have seen
10 how that works and understand how people can be
11 impeached when they say one thing, and said something
12 different yesterday, and the two things are
13 reconcilable, and you want to know -- well, you can be
14 impeached, and we saw that in the case of Mr. Bloomer
15 and, quite frankly, in terms of the testimony -- but,
16 ladies and gentlemen, you decide about creditability
17 as it relates to the prosecution of this case.

18 Murder: The unlawful killing of a person with
19 malice aforethought. Unlawful killing, as opposed to
20 manslaughter, which is a killing without malice
21 aforethought. Often said to be -- of course with
22 murder you have unlawful killing, which can't be a
23 lawful killing, can't be where you find, for instance,
24 say, you find self-defense, but we talked about it
25 earlier with malice aforethought, just total

CLOSING STATEMENT - MR. BARR

1 difference in the sense of ill will, no regard for
2 human life. I mean, you know, you formulate in your
3 mind I want him dead. I want him dead and you
4 concentrate on I want him dead.

5 Had a lady one time drive all the way from
6 Columbia with a butcher knife and came back 200 miles
7 for her husband, caught him cheating. She just wanted
8 him dead. Premeditation, murder. I intended it.
9 That didn't happen in this case. The one thing I know
10 for sure, that that did not happen in this case.
11 Antwuan Nelson may be involved in drugs, but not
12 murder. Not murder.

13 Sometimes you may have to do something that you
14 probably shouldn't do to get yourself out of a bad
15 situation, but Lord knows he's not a murderer.

16 Possession of a weapon during a violent crime, I
17 don't need to talk about that. His Honor, he'll talk
18 to you about all of these things, but I think that the
19 instructions that he gave you is so clear for me to
20 sit here and keep you from your lunch talking about
21 something extraordinary. I'm not going to do that,
22 because I don't think it is -- quite frankly, I don't
23 think it is fair to you, to any of us.

24 Voluntary manslaughter. Let me say this much.
25 If you find -- if you find in this case that Antwuan

CLOSING STATEMENT - MR. BARR

1 Nelson shot Mr. Rogers in the heat of the moment with
2 sufficient legal provocation, then His Honor will say
3 that the killing will constitute manslaughter. I
4 don't know that if someone shoots a shotgun or trying
5 to kill you with a shotgun, I do know that will
6 probably provoke most people to fire a fatal shot as
7 opposed to receiving the other end of a shotgun, and
8 I'll leave it right there.

9 Self-defense. His Honor will go over each one of
10 those. It is a defense that places murder on the
11 prosecution to prove the absence of self-defense.
12 With respect to each element of the offense, the
13 prosecution has to prove the absence -- say, for
14 instance, well, we do have stand-your-ground in a
15 situation where you invoke self-defense and you say I
16 didn't have any choice but to shoot him. In the
17 context of general self-defense, usually you're
18 required to retreat. You are required to run or stand
19 down or go somewhere or wherever as a part of your
20 defense, if it is reasonable for you to do so. If you
21 can do so without jeopardizing -- getting seriously
22 injured. If Antwuan stuck his head from behind the
23 car, stood up, stand up wherever Mr. Rogers was, he
24 probably was going to -- in terms of that question --
25 and as I said, His Honor will tell you, and of course

CLOSING STATEMENT - MR. BARR

1 Mr. Hixson will have a whole lot to say about it,
2 because having orchestrated the situation where the
3 shotgun blast in a man's house that the police doesn't
4 even acknowledge is evidence other than -- doesn't
5 even acknowledge it as part of a crime scene. No
6 physical evidence anywhere on the chart or anything
7 else showing a picture where the man's door -- where
8 it was shot. Why? Not even one. I take the same
9 position with respect to law enforcement. It should
10 have been here. It should have been here. Should
11 have been here from the very beginning along with all
12 of the other stuff, but they were just having you
13 believe that Antwuan Nelson was a drug dealer just out
14 there trying to extract money or drugs out of Mr.
15 Rogers, and after he couldn't do it, he killed him.
16 It wasn't that simple. No, it wasn't that simple.

17 Right to appearance, there is a simple one. His
18 Honor will instruct you on what that means, act or
19 appearance if -- listen, if Michael Rogers pointed
20 that shotgun at Mr. Rogers (sic) and reasonably
21 believed -- even if it had no shell in it, even if he
22 done shot all of it, and he believed he still had some
23 and he fired to keep from firing -- His Honor will
24 tell you that part.

25 I know you don't want to listen to me all day

CLOSING STATEMENT - MS. WALTER

1 long. You just want to sit through and go all the way
2 through and feast on the words of a lawyer. You don't
3 want to hurt my feelings. Well, I know better, so I'm
4 going to sit down now. My time is over, and I know
5 you will come back with a verdict based on the law and
6 evidence as you found it to be, come back with an
7 appropriate verdict which speaks the truth. Thank
8 you.

9 MS. WALTER: The first statement the defendant
10 made, No, you are going to buy these, and those words
11 were the beginning of the end of Mr. Rogers' life.
12 When Mike Rogers refused to buy the drugs that that
13 defendant brought into his apartment, the defendant
14 used the first weapon at his disposal, his fists. He
15 suckered punched Mr. Rogers and caused him to fall
16 back into the refrigerator and stove. He fell to the
17 ground, and the defendant got on top of him and
18 continued punching him, continued punching Mr. Rogers
19 in his own home. So being attacked in his home, Mr.
20 Rogers screams out, Honey, get the gun. But she
21 didn't get the gun. Michael Rogers didn't get the
22 gun. They tried to end this confrontation in a
23 non-violent manner. Open the front door, get the
24 defendant out of our home.

25 So the defendant runs down the stairs. Michael

CLOSING STATEMENT - MS. WALTER

1 Rogers, waits a minute, and he and Ms. Bloomer wait for
2 a minute or two trying to calm down, and then Michael
3 Rogers follows after him, empty handed. The
4 defendant -- if he at this point is scared of Mr.
5 Rogers -- had the perfect opportunity to run right to
6 his car, which was not blocked in any way, parked in
7 front of the building and just take off right then and
8 there. Instead, he runs up into that front building.
9 He is there for a half an hour, 45 minutes. Kicking
10 back, chilling, not worrying about a thing apparently.

11 Mr. Rogers is incensed, and rightfully so. He's
12 been beat in his own home. He stands at the foot of
13 the stairs again empty handed, Come down and fight
14 like a man. Come down and fight like a man with your
15 fists. And, yet, the defendant still hid in the
16 apartment. Ms. Bloomer is able to talk to Mr. Rogers
17 and calm him down. At that point, Michael Rogers
18 walks away. That is important for two reasons.

19 Number one, because Michael Rogers left. He was
20 no longer in front of that building. There was
21 nothing stopping the defendant from getting in his car
22 and driving away. Had he taken that simple act, that
23 simple step, we wouldn't be here today. Do you know
24 who would be here today? Michael Rogers. Instead,
25 having Michael Rogers and -- the other important thing

CLOSING STATEMENT - MS. WALTER

1 is Michael Rogers walked away. He didn't run so he
2 could get his gun and come back and hunt the defendant
3 down. He walked away, because at that point, he and
4 Ms. Bloomer had decided, okay, I'm calming down, it is
5 time to focus and go and pick my daughter up from
6 daycare.

7 So Michael Rogers walks away and around the
8 building. So instead of getting in his car, what did
9 the defendant do? Come downstairs again, walks past
10 the driver's door, goes to the trunk of his car and
11 takes the AR assault rifle out of a case that is in
12 his trunk, walks past his driver's door again and
13 walks up to Ms. Bloomer, who is standing there with
14 her phone that doesn't work, stands there while
15 holding an assault rifle saying, You tell your guy to
16 get down here and give me my stuff. Does that sound
17 like someone who is afraid for their life?

18 If he at that point is so convinced that Michael
19 Rogers is trying to kill him, is he going to stand
20 there and demand that Kristen Bloomer call him down?
21 It doesn't make sense. You heard Ms. Bloomer say that
22 based on where they were positioned, kind of at the
23 corner of the building, that it is very possible that
24 Michael Rogers, as he walked away, could look back and
25 see the defendant holding an assault rifle while

CLOSING STATEMENT - MS. WALTER

1 talking to his girlfriend.

2 Kristen Bloomer walks away, and again the
3 defendant has an opportunity to leave, and he doesn't
4 leave. Instead, he goes to the end of his car and he
5 looks down the alley and he fires three or four times.
6 Not a warning shot in the air like, okay, let's call
7 this off. Shoots three, four times. We know of three
8 shots because you have the strike mark on the wall in
9 that little breezeway where Michael Rogers was
10 protecting himself. You have the bullet that went
11 into Ms. Cantey's apartment, and then you have the
12 bullet that tore into Michael Rogers' neck causing
13 catastrophic damage.

14 Defense counsel said I don't know how the shotgun
15 shells got there, but you heard both from Dr. Proctor
16 about the damage that was done by that bullet, but
17 also from Officer Owens that when you take a round
18 like that to the neck, do you think you are going to
19 stand there and go, nope, can't let go of the shotgun?
20 He is shot in the neck, falls and everything he has in
21 his hands scatters.

22 Now, defense wants you to believe that that gave
23 others the opportunity to go around and pick up the
24 evidence that Michael Rogers had ever fired that
25 shotgun. You heard testimony that in order to eject

CLOSING STATEMENT - MS. WALTER

1 the spent shotgun shell from that shotgun, you have to
2 actually pump the shotgun. Do you think that that was
3 Michael Rogers' last action? He got shot in the neck
4 falling to the ground, Oop, hold on, better eject this
5 spent shell? That didn't happen. Do you think that
6 someone had time to scour the alley and find the
7 wadding that would have been there, however many
8 pellets. You heard Michelle McSpadden testify, there
9 would have been so many pellets, dozens of pellets
10 that it would be impossible for everyone to pick up
11 every last piece of evidence that would show that that
12 shotgun ever had been fired. There was no evidence
13 that it had been fired, because it was never fired.
14 There was no strike marks on the wall. No one can
15 take that away.

16 Let's engage in the defendant's fantasy world for
17 a minute and believe that little minions ran through
18 the alley picking up all the wadding and all the
19 little pellets, but there would have been strike marks
20 in the wall. Just as the defendant's bullet left a
21 strike mark in the wall where Michael Rogers' head had
22 been, had Michael Rogers fired that shotgun, there
23 would be strike marks and they would have been seen.

24 Mr. Davis, nice enough man, but let's remember
25 one thing, when he told you that there was damage to

CLOSING STATEMENT - MS. WALTER

1 his building, he didn't know when it occurred. That
2 certainly wasn't part of the questioning. I showed
3 up, there were police there, I had a conversation.
4 When did that damage occur? He hasn't been there for
5 a month prior. What evidence do we have that there
6 was damage? Yes, I did, and pardon me if you saw me
7 chuckle when he came up with No. 8 bird shot, but how
8 unusual is that, especially since he just finished his
9 testimony saying I have no idea what kind of
10 ammunition did that, no idea what kind of shotgun
11 caused that damage? If you remember, I said did you
12 talk to Mr. Barr prior to testifying? No. No, I
13 didn't. What about when you and Mr. Barr walked out
14 of the courtroom for about five to seven minutes? Oh,
15 yes. Yep. Yep, I did talk to him, but magically did
16 not talk about this No. 8 bird shell.

17 There simply is no evidence that you have seen
18 that that shotgun again was ever fired. It wasn't
19 loaded when they recovered it. There was not a single
20 spent shotgun shell on the ground. There was no
21 gunshot residue on the victim's hands. You know where
22 the gunshot residue was? On the defendant's hands,
23 because he's the only one that was firing a gun that
24 day. He is the one that fired a gun, and those
25 actions are what caused Michael Rogers' death.

CLOSING STATEMENT - MS. WALTER

1 Now, as you've heard, the defendant is charged
2 with three different crimes: Murder, possession of a
3 weapon during a violent crime and possession with
4 intent to deliver crack cocaine base or crack cocaine.
5 Let's start with that. There is no dispute -- sorry
6 Your Honor --

7 THE COURT: You need a break? I don't doubt that
8 one minute. I'm sorry.

9 MS. WALTER: No. No, I'm fine.

10 THE COURT: I would rather they be in a position
11 to pay attention. Let's let them go out and I'll let
12 you continue.

13 MS. WALTER: No problem.

14 THE COURT: I hate to break it, but.

15 (The jury exits at 12:59 p.m., and a recess is
16 taken.)

17 (Whereupon, the jury enters at 1:06 p.m., and
18 the following is had in the presence of the jury.)

19 THE COURT: Ms. Walter.

20 MS. WALTER: The defendant is charged with three
21 offenses: Murder, possession of a weapon during a
22 violent crime and possession with intent to distribute
23 crack cocaine or cocaine base. I'll start with that
24 one. One of the elements is established right off the
25 bat, the defendant intended to distribute drugs.

CLOSING STATEMENT - MS. WALTER

1 There is no dispute that he went up into the victim's
2 apartment and tried to sell drugs. For whatever
3 reason, Michael Rogers wasn't satisfied with the drugs
4 or price, but the defendant tried to sell him drugs,
5 that is the intent. It is cocaine base. You heard
6 Doug Robinson from SLED testify as to it was cocaine
7 base.

8 So all we're left with is this idea of
9 possession. State has to prove to you that at that
10 point during this situation, the defendant possessed
11 crack cocaine. Well, there is plenty of evidence that
12 the defendant possessed crack cocaine. First of all,
13 we have the drugs that Ms. Bloomer removed from her
14 apartment and placed into Michael Rogers' truck so the
15 police wouldn't find it. Even more telling is
16 Michelle Cantey's testimony. She is sitting on her
17 sofa, feet up relaxing after a long day of work
18 checking her E-mail when she called it a
19 reverberation, a bullet comes tearing into the wall of
20 her home. She gets up right away, looks down the
21 alley and she sees a black male wearing black clothes
22 with red trim trying to jump over the fence or scale
23 the fence. When he's not able to make it, he throws
24 something. Black clothes, red trim. She tells the
25 police, hey, I saw someone throw something over the

CLOSING STATEMENT - MS. WALTER

1 fence. Officer Harlow and Roscoe come and go out and,
2 lo and behold, right where she said it was thrown
3 Roscoe finds a balled up plastic wrap of drugs. So
4 that shows that the defendant was down that far in the
5 alley to throw the drugs.

6 We also know that he advanced down the alley,
7 because after he killed Michael Rogers, as Kristen
8 Bloomer was kneeling on the ground trying desperately
9 trying to stop the bleeding, the defendant advanced on
10 her with the rifle, and don't forget, Michelle
11 McSpadden found an unfired cartridge in the alley very
12 near where Mr. Rogers laid.

13 This reminded me of something else, Mr. Barr
14 wants to make some big issue about the fact that they
15 didn't test the blood on the ground. I hope I made my
16 point when I questioned Michelle McSpadden. Does that
17 make even a little bit of sense to you that you have a
18 guy shot in the neck, as Dr. Proctor said, severing
19 all sorts of veins and arteries. He said every time
20 the heart pumped, the blood would spew out. You have
21 Kristen Bloomer saying I was trying everything I could
22 to stop the blood. Officer Owens worked on Michael
23 Rogers right where there pool of red liquid was. What
24 do you think it is? Why would they have to test it?
25 That is a red herring. Don't follow the red herrings.

CLOSING STATEMENT - MS. WALTER

1 Keep your eyes on the ball and on the rules of the law
2 and the offenses charged here.

3 So we know that the defendant went down the
4 alley. We know that Ms. Canteley saw someone dressed
5 shockingly like the defendant trying to climb a wall
6 and throw something over the fence, and we know that
7 Roscoe found drugs right where that was. That is
8 called circumstantial evidence that the defendant
9 possessed those drugs, and we know for sure that he
10 intended to distribute them. So at this point you
11 should be firmly convinced that he is guilty of that
12 charge.

13 The second indictment is possession of a weapon
14 during a violent crime. Again, one of the elements we
15 can get rid of right away. There is no dispute that
16 the defendant had a weapon. An assault weapon
17 absolutely qualifies as a weapon. So it comes down to
18 whether this was during the commission of a violent
19 crime. So as long as you convict him of voluntary
20 manslaughter or murder, he is guilty of a weapon
21 during the commission of a violent crime.

22 Let's turn to murder and talk about voluntary
23 manslaughter first, because sometimes things strike me
24 as rather absurd, such as the fact that half an hour
25 to 45 minutes wouldn't be an adequate cooling off

CLOSING STATEMENT - MS. WALTER

1 period. There was no interaction between Michael
2 Rogers and the defendant for that half an hour to 45
3 minutes. You can have a cooling off period that is
4 far shorter than that, and certainly Michael Rogers
5 cooled down from the initial fight when the defendant
6 sucker punched him. So the defendant had an adequate
7 cooling-off period. So that is one way that voluntary
8 manslaughter is out the door.

9 You also have to look at if there was sufficient
10 provocation. There is no testimony from anyone that
11 Michael Rogers ever had a gun anywhere in sight of the
12 defendant. None. None, whatsoever. So how could he
13 have been sufficiently provoked to take an assault
14 rifle and fire it at a vital part of Michael Rogers'
15 body? So I submit that voluntary manslaughter should
16 be off the table.

17 Let's focus on murder. Murder is unlawful
18 killing of another with malice aforethought. Unlike
19 what Mr. Barr would have you believe, there is no
20 magic number, no magic amount of time in the law.
21 Okay, let's go, let's see how long it takes to get
22 malice aforethought. It can be formed in an instant,
23 formed in an amount of time it takes you to pull the
24 trigger. It can be either expressed, I want to kill
25 you, which we don't have here, or implied. It can be

CLOSING STATEMENT - MS. WALTER

1 implied by the fact that the defendant showed complete
2 and utter disregard for the value of life. He showed
3 that complete and utter disregard for life when he
4 took an assault rifle, which he fired four shots.
5 There was 16 more in a magazine. So he takes an
6 assault rifle loaded with 20 bullets and fires three
7 times down the alley striking Michael Rogers in the
8 throat. Think of the power of the bullets that make a
9 dent in the brick wall and travels the length of that
10 alley and through the wall of a building. Using a
11 weapon of that force on the vital part of Michael
12 Rogers' body, that shows malice.

13 You can also imply malice by the fact that the
14 defendant used a deadly weapon in the commission of
15 this crime.. That shows malice. If he had constrained
16 himself to a fist fight and maybe got in a lucky blow,
17 probably would have malice aforethought. But the
18 defendant brought a gun to a fist fight. He escalated
19 it, and by using a deadly weapon, that shows malice.

20 Now, the defense would have you believe that this
21 was self-defense, there is one problem with that right
22 away, and the Judge will tell you the defendant can't
23 be at fault -- we use these legal terms -- in bringing
24 about the difficulty. What that means is when the
25 defendant sucker punched Mr. Rogers, when the

CLOSING STATEMENT - MS. WALTER

1 defendant continued to fight Mr. Rogers in his
2 building, the fact that Mr. Rogers had not been seen
3 at that point with a gun, he was at fault. He brought
4 about the difficulty, and when you bring about the
5 difficulty, you do not get the benefit of
6 self-defense.

7 The Judge will also instruct you about mutual
8 combat, and that means when two people agree, and it
9 doesn't have to be a formal written agreement, but
10 when two people agree by words or action to involve
11 themselves in combat with deadly weapons, you don't
12 get the benefit of self-defense. Clearly, the
13 defendant, by bringing the gun into this fight, was
14 engaging in mutual combat, and because of that, he
15 does not get the benefit of self-defense. Plain and
16 simple, the defendant is guilty of the murder of
17 Michael Rogers, and there is no defense for that.

18 Mr. Barr talks about the rules of the road. I'll
19 give you a rule: Thou shalt not kill. He violated
20 that rule. He violated the rules of the road, and
21 when you violate a rule -- and I'll go back to
22 something else Mr. Barr said -- as a man sows, so
23 shall he reap. What did the defendant sow in this
24 case? He went into the victim's apartment, tried to
25 sell him drugs, became angry when the victim wouldn't

CLOSING STATEMENT - MS. WALTER

1 buy the drugs, assaults the victim in his own home,
2 and rather than leaving well enough alone, he hides
3 and waits until he has an opportunity to go down to
4 his trunk, pull out an assault rifle and kill Michael
5 Rogers in this half hour, 45 minutes.

6 Think back on the testimony. Think back on how
7 many different times, at least two or three different
8 times that the defendant had the ability to drive away
9 and prevent this from happening. He could have driven
10 away when he first ran out of the victim's apartment.
11 He could have driven away when he came down prior to
12 getting the gun and approaching Kristen Bloomer. He
13 could have driven away as he walked past his driver's
14 door and had to advance to the alley where he then
15 took aim at Michael Rogers and fired. There were so
16 many opportunities for the defendant to escape, don't
17 let this be one of them. Find him guilty of the
18 crimes he committed. Find him guilty of all of the
19 charges. Thank you.

20 THE COURT: Thank you.

21 (A brief pause in the proceedings.)

22 THE COURT: Do you know if the jury's lunch is
23 here yet.

24 DEPUTY ROY HEMINGWAY: Yeah, it is here.

25 THE COURT: I'm going to let them have lunch

JURY CHARGE

1 before I charge them. Thank you. We're at ease.

2 (The jury exits at 1:19 p.m., and the
3 following is heard out of the presence of the jury.)

4 THE COURT: Mr. Johnson, this parade of people in
5 and out of my court will not take place in my charge.
6 If you have to leave, you be out of here before my
7 charge starts. If anyone tries to bother to leave
8 this courtroom during my charge, immediately arrest
9 them. We have a holding cell downstairs, I'll deal
10 with them later. Thank you.

11 MS. WALTER: May I ask what time you'll have us
12 back?

13 THE COURT: I'm going to give the jury about a
14 half hour.

15 (A lunch recess was taken.)

16 (Court's Exhibit 1 marked.)

17 THE COURT: Mr. Johnson, no one leaves or enters.

18 (The jury enters at 1:55 p.m., and the
19 following is heard in the presence of the jury.)

20 THE COURT: Ladies and gentlemen, I'm about to
21 charge you on the a law. I may have mentioned to you
22 earlier that I do something that I'm not aware of any
23 other judge in the state that does this, but it is
24 appropriate, and the supreme court approved what I do.
25 I give you a transcript, a written copy, of my charge.

JURY CHARGE

1 In that regard, I have to read from it because I have
2 to give you a verbatim transcript of my charge, and I
3 do that because we bring you here from your daily
4 routines and jobs and expect you to understand
5 everything and just hear me shout off the law at the
6 end of the trial and then expect you to absorb some
7 rather complexed concepts in that charge. It is not
8 fair to you without giving you something to take with
9 you to refresh your memory, so that is why I do this;
10 however, I ask you to keep in mind that the charge is
11 given as a whole. You should not take one little part
12 of the charge and concentrate on that without giving
13 thought to other parts, because many of the parts of
14 this charge relate to and have a bearing on how you
15 will look at some of the other parts, so keep that in
16 mind through your deliberation process.

17 During this trial, you and I have certain duties
18 to perform. As a trial judge, it is my duty and
19 responsibility to reside over the trial of the case,
20 and I also have the duty to rule on admissibility of
21 evidence offered during the trial. You are to
22 consider only the competent evidence before you. If
23 there was any testimony ordered stricken from the
24 record in this case during this trial, you must
25 disregard that testimony. You are to consider only

JURY CHARGE

1 the testimony which has been presented from this
2 witness stand, any exhibits which have been made a
3 part of the record of this case and any stipulations,
4 agreements of counsel.

5 I have the additional duty to charge you the law
6 applicable to the case. As presiding judge, I am the
7 sole judge of the law in this case, and it is your
8 duty as jurors to accept and apply the law as I now
9 state it to you. If you already have any idea as to
10 what the law is or what the law ought to be, and it
11 does not agree with what I now tell you the law is,
12 you must abandon this idea, because you are sworn to
13 accept the law and apply the law exactly as I state it
14 to you. In every case tried in this court before a
15 jury, the jury becomes the soul and exclusive judge of
16 the facts in a case. A trial judge cannot intimate,
17 state, comment on or make any statement to a trial
18 jury about the facts in the case. Since you, the
19 jury, are the sole judges of the facts in this case,
20 you are not to infer from what I have said during the
21 progress of this trial in ruling on the admissibility
22 of evidence, or otherwise, or anything that I say to
23 you now during the course of this instruction to you
24 that I have any opinion about the facts in this case.
25 The law does not allow me to have an opinion about the

JURY CHARGE

1 facts in this case. This is a matter solely for you,
2 the jury, to determine as jurors. It is your duty to
3 determine the effect, value, weight and truth of the
4 evidence presented during the evidence of this trial.

5 The indictments in this case charge the Defendant
6 with murder, possession of a weapon during the
7 commission of a violent crime and possession with
8 intent to distribute cocaine base or crack cocaine. I
9 remind you that the fact that the Defendant was
10 arrested, charged and indicted in this case is not
11 evidence in the case and can't be considered by you as
12 evidence of guilt in this case, nor does it create any
13 presumption or inference of guilt. This document,
14 being the indictment, are simply the formal written
15 instruments which contain the charges made against the
16 Defendant. They are the formal documents which the
17 case is brought into the court. The indictments in
18 this case allege three different offenses against the
19 Defendant. The charges are: Indictment No. one,
20 murder. Indictment No. 2, possession of a weapon
21 during the commission of a violent crime. Indictment
22 3, possession with intent to distribute cocaine base
23 or crack cocaine.

24 Each indictment charges a separate and distinct
25 offense. You must decide each indictment separately

JURY CHARGE

1 on the evidence and the law applicable to it
2 unaffected by your decision as to any other
3 indictment. The Defendant may be convicted on any or
4 all of the offenses charged. You will be asked to
5 write a separate verdict of guilty or not guilty for
6 each indictment.

7 Now, the Defendant has pled not guilty to these
8 indictments, and that plea puts the burden on the
9 State to prove the Defendant guilty. A person charged
10 with committing a criminal offense in South Carolina
11 is never required to prove himself innocent. I charge
12 you that it is an important rule of the law that the
13 Defendant in a criminal case, no matter what the
14 seriousness of the charge may be, will always be
15 presumed to be innocent of the crime for which the
16 indictment issued unless guilt has been proved by
17 evidence satisfying you of that guilt beyond a
18 reasonable doubt. This presumption of innocence does
19 not end when you begin your deliberation, but it
20 accompanies the Defendant throughout the trial until
21 you reach a verdict of guilt based on the evidence
22 satisfying you of that guilt beyond a reasonable
23 doubt.

24 Now, the presumption of innocence is like a robe
25 of righteousness placed about the shoulders of the

JURY CHARGE

1 Defendant which remains with the Defendant until he
2 has been stripped -- until it has been stripped from
3 the Defendant by evidence satisfying you of the
4 Defendant's guilt beyond a reasonable doubt. The
5 presumption of innocence is not a mere legal theory.
6 It is not just a legal phrase. It is a substantial
7 right to which every Defendant is entitled unless you,
8 the jury, are satisfied from the evidence of the
9 Defendant's guilt beyond a reasonable doubt.

10 The State has the burden of proving the
11 Defendant, as I have said, guilty beyond a reasonable
12 doubt. Some of you may have served as jurors in civil
13 cases where you were told it is only necessary to
14 prove that a fact is more likely true than not true,
15 such as by the greater weight or a preponderance of
16 the evidence. In criminal cases, the State's proof
17 must be more powerful than that. It must be beyond a
18 reasonable doubt.

19 Proof beyond a reasonable doubt is proof that
20 leaves you firmly convinced of the Defendant's guilt.
21 There are very few things in this world that we know
22 with absolute certainty, and in criminal cases the law
23 does not require proof that overcomes every possible
24 doubt. If, based on your consideration of the
25 evidence, you are firmly convinced that the Defendant

JURY CHARGE

1 is guilty of the crime charged, you must find the
2 Defendant guilty. If, on the other hand, you think
3 there is a real possibility that the Defendant is not
4 guilty, you must give the Defendant the benefit of the
5 doubt and find him not guilty. What is a reasonable
6 doubt in the law? A reasonable doubt is the kind of
7 doubt that would cause a reasonable person to hesitate
8 to act.

9 Now, there are two types of evidence, which are
10 generally presented during a trial, direct evidence
11 and circumstantial evidence. Direct evidence directly
12 proves the existence of a fact and does not require
13 deduction. Circumstantial evidence is proof of a
14 chain of facts and circumstances indicating the
15 existence of a fact.

16 Crimes may be proved by circumstantial evidence.
17 The law makes no distinction between the weight or
18 value to be given either direct or circumstantial
19 evidence. However, to the extent the State relies on
20 circumstantial evidence, all of the circumstances must
21 be consistent with each other, and when taken
22 together, point conclusively to the guilt of the
23 accused beyond a reasonable doubt. If the
24 circumstances merely portray the Defendant's behavior
25 as suspicious, the proof has failed. The State has

JURY CHARGE

1 the burden of proving the Defendant guilty beyond a
2 reasonable doubt. This burden rests with the State
3 regardless whether the State relies on direct
4 evidence, circumstantial evidence or some combination
5 of the two.

6 Necessarily, you must determine the creditability
7 of witnesses who have testified in this case.
8 Creditability simply means believability. It becomes
9 your duty as jurors to analyze and to evaluate the
10 evidence and to determine which evidence convinces you
11 of its truth. In determining the believability of
12 witnesses who have testified in this case, you may
13 believe one witness over several witnesses, or several
14 witnesses over one witness. You may believe a part of
15 the testimony of a witness and reject of the remaining
16 part of that same witness. You may believe the
17 testimony of a witness in its entirety, or reject the
18 testimony of a witness in its entirety. You may
19 consider whether any witness has exhibited to you any
20 bias, prejudice or other motive in the case. You may
21 also consider the appearance and manner of a witness
22 while on the witness stand.

23 Now, a statement alleged to have been made by the
24 Defendant has been admitted into evidence in this
25 case. While the Court, I, have determined that the

JURY CHARGE

1 statement is admissible, I instruct you that you make
2 the ultimate decision whether or not the Defendant
3 made the statement. If the Defendant did make the
4 statement, you must determine whether the statement
5 was made by the Defendant voluntarily and of his own
6 free will. This means that the statement was not
7 caused by pressure, force, fear, threats, coercion or
8 intimidation or by hope or a promise of leniency or
9 reward of any kind. In determining whether a
10 statement was voluntary, you should consider both the
11 characteristics of the Defendant and the details of
12 the question. Some of the factors that you must
13 consider are the age of the Defendant, Defendant's
14 education or lack of education, Defendant's mental
15 ability or capacity, Defendant's IQ or intelligence,
16 Defendant's background and environment, place and
17 length of detention, nature of the questioning and the
18 advice or lack thereof to the Defendant of his
19 Constitutional rights including, but not limited to,
20 his right to remain silent, that any statement could
21 be used against him in a court of law, right to have
22 an attorney present, that he could -- that if he could
23 not afford a lawyer, one would be appointed to
24 represent him without any cost and he could stop
25 making a statement at any time.

JURY CHARGE

1 You must carefully consider all of the
2 surrounding circumstances before you can give any
3 weight to any alleged statement. The State has the
4 burden of proving beyond a reasonable doubt that the
5 alleged statement was voluntary. If you determine it
6 was, you may give the statement further consideration
7 that you deem proper. You must decide what weight, if
8 any, should be given to the alleged statement.

9 If you determine the statement was not the free
10 and voluntary statement of the defendant, you should
11 not consider the statement at all. The Rules of
12 Evidence ordinarily do not permit witnesses to testify
13 to opinions or conclusions. An exception to this rule
14 exists for witnesses we call "expert witnesses." A
15 witness who by education and experience has become
16 expert in some art, science, profession or calling may
17 state an opinion as to relevant and material matter in
18 which the witness claims to be an expert, and may also
19 state the reasons for the opinion. You should
20 consider any expert opinion received in evidence in
21 this case, and like any other evidence, give it the
22 weight you think it deserves. If you decide that the
23 opinion of an expert witness is not based on
24 sufficient education and experience, or if you
25 conclude that the reasons given in support of the

JURY CHARGE

1 opinion are not sound or that the opinion is
2 outweighed by other evidence, you may disregard the
3 opinion entirely.

4 An expert witness' testimony is to be given no
5 greater weight than that of other witnesses simply
6 because the witness is an expert. Further, you are
7 not required to accept an expert's opinion even though
8 it is not contradicted. I instruct you and emphasize
9 that the fact that the defendant did not testify is
10 not a factor to be considered by you in any way in
11 your deliberations and in your consideration of the
12 question of guilt or the innocence of the defendant.
13 It must not be considered by you in any manner,
14 whatsoever. A defendant has the Constitutional right
15 to remain silent, and the assertion of this right must
16 not be considered by you in your deliberations. I
17 repeat, under your oath, you are to draw no
18 conclusion, whatsoever, from the fact that the
19 defendant in this case did not testify. The fact that
20 this defendant did not testify should not even be
21 discussed in the jury room.

22 The burden of proof, as I stated to you, is on
23 the State. The defendant is not required to prove his
24 innocence and the burden of proof remains on the State
25 to prove guilt beyond a reasonable doubt. There has

JURY CHARGE

1 been evidence presented that witnesses have made prior
2 statements, which are not consistent with the witness'
3 present testimony. You may use this evidence to
4 decide whether to believe the witness. You may also
5 use evidence of the earlier contradictory statement to
6 determine the truth of those statements. It is up to
7 you to decide whether to believe the earlier
8 statements or the testimony given at trial. If a
9 witness is shown to have knowingly testified
10 untruthfully concerning any material matter, you may
11 consider this in determining whether to trust the
12 witness' testimony as to other matters. You may
13 reject all of the testimony of that witness, or give
14 all or part of the testimony the weight you think it
15 deserves.

16 Now, the defendant is charged with murder. The
17 State must prove beyond a reasonable doubt that the
18 defendant killed another person with malice
19 aforethought. Malice is hatred, ill will or hostility
20 towards another person. It is the intentional doing
21 of a wrongful act without just cause or excuse and
22 with the intent to inflict an injury or under
23 circumstances the law will -- from which the law will
24 infer an evil intent. Malice aforethought does not
25 require that malice exists for any particular time

JURY CHARGE

1 before the act is committed, but malice must exist in
2 the mind of the defendant just before and at the time
3 the act is committed. Therefore, there must be a
4 combination of the previous evil intent and the act.

5 Malice aforethought may be expressed or inferred.
6 These terms "expressed" and "inferred" do not mean
7 different kinds of malice, but merely the manner in
8 which malice may be shown to exist, that is either by
9 direct evidence or by inference from the facts and
10 circumstances which are proved. Expressed malice is
11 shown when a person speaks words which express hatred,
12 ill will for another or when a person prepared
13 beforehand to do the act which was later accomplished;
14 for example, lying in wait for a person or any other
15 acts of preparation going to show that the deed was
16 within the Defendant's mind would be expressed malice.
17 Malice may be inferred from conduct showing a total
18 disregard for human life. If you find that the State
19 failed to prove beyond a reasonable doubt that the
20 defendant committed murder, you may consider whether
21 the State has proved beyond a reasonable doubt that
22 the defendant committed voluntary manslaughter.

23 To prove voluntary manslaughter, the State must
24 prove beyond a reasonable doubt that the defendant
25 took the life of another in a sudden heat of passion

JURY CHARGE

1 based on sufficient legal provocation. Both heat of
2 passion and sufficient legal provocation must be
3 present at the time of the killing to constitute
4 voluntary manslaughter. Sudden heat of passion may,
5 for a time, affect a person's self control and
6 temporarily disturb a person's reason. The sudden
7 heat of passion must be the type that would make an
8 ordinary person unable to coolly reflect on his action
9 and would produce an uncontrollable impulse to do
10 violence.

11 Sufficient legal provocation must be the type
12 that would make a person of ordinary reason and
13 caution to become enraged and to lose control
14 temporarily. The provocation needed for voluntary
15 manslaughter must come from some act of or related to
16 the victim. Words alone, however vulgar or insulting,
17 are not enough to be legal provocation.

18 Where death is caused by the use of a deadly
19 weapon, the words must be accompanied by some overt,
20 threatening act which would have produced the heat of
21 passion. The exercise of a legal right, no matter how
22 offensive it is to another is never sufficient
23 provocation for volunteer manslaughter. If the heat
24 of passion had cooled, or if there was enough time
25 between the provocation, if any, and the killing for

JURY CHARGE

1 the passion of a reasonable person to cool, the
2 killing would not be voluntary manslaughter.

3 In deciding whether a reasonable person would
4 have had enough time to cool off, you should consider
5 the circumstances surrounding the killing. You may
6 consider the nature of the provocation, if any, the
7 Defendant's mental and physical state and the
8 circumstances and relationships between the parties.

9 The defendant has raised the defense of
10 self-defense. Self-defense is a complete defense, and
11 it is establish you must find the defendant not
12 guilty. The State has the burden of disproving
13 self-defense. If you have a reasonable doubt of the
14 Defendant's guilt after considering all of the
15 evidence, including the evidence of self-defense, then
16 you must find the defendant not guilty. On the other
17 hand, if you have no reasonable doubt of the
18 Defendant's guilt after considering all of the
19 evidence, including evidence of self-defense, then you
20 must find the defendant guilty.

21 The following elements are required to establish
22 self-defense. First, the defendant must be without
23 fault in bringing on the difficulty. If the
24 Defendant's conduct was the type which was reasonably
25 calculated to and did provoke a deadly assault, the

JURY CHARGE

1 defendant would be at fault in bringing on the
2 difficulty and would not be entitled to an acquittal
3 based on self-defense. If the defendant voluntarily
4 participated in mutual combat for purposes other than
5 protection, such as a preexisting dispute or
6 difficulty, the injury of the victim would not be
7 self-defense. This is true even if during the combat
8 the defendant feared death or serious bodily injury.
9 However, if before the injury is committed, the
10 defendant withdraws and tried to, in good faith, to
11 avoid further conflict either by words or acts makes
12 that fact known to the victim, mutual conduct would
13 not bar self-defense.

14 For mutual combat, there must be a mutual intent
15 and willingness to fight, this intent may be shown by
16 the acts and conduct of the parties and the
17 circumstances surrounding the combat.

18 The second element of self-defense is that the
19 defendant was actually in imminent danger of death or
20 serious bodily injury or that the defendant actually
21 believed he was in imminent danger of death or serious
22 bodily injury. If the defendant was actually in
23 imminent danger, it must be shown that the
24 circumstances would have warranted a person of
25 ordinary firmness and courage to strike the fatal blow

JURY CHARGE

1 to prevent death or serious injury.

2 If the defendant believed he was in imminent
3 danger of death or serious bodily danger, it must be
4 shown that a reasonably prudent person of ordinary
5 firmness and courage would have had the same belief.
6 In deciding whether the defendant actually was or
7 believed he was in imminent danger of death or serious
8 bodily injury, you should consider all of the facts
9 and circumstances surrounding the crime, including the
10 physical condition and characteristics of the
11 defendant and the victim.

12 The defendant does not have to show that he was
13 actually in danger. It was enough if the defendant
14 believed he was in imminent danger and a reasonably
15 prudent person of ordinary firmness and courage would
16 have had the same belief. The defendant has the right
17 to act on appearances even though the Defendant's
18 beliefs have been mistaken. It is for you to decide
19 whether the Defendant's fear of imminent danger of
20 death or serious bodily danger was reasonable and
21 would have been felt by an ordinary person in same
22 situation. The final element of self-defense is that
23 the Defendant had no other probable way to avoid the
24 danger of death or serious bodily injury than to act
25 as the Defendant did in this particular instance.

JURY CHARGE

1 The Defendant is charged with possession of a
2 weapon during a violent crime. The State must prove
3 beyond a reasonable doubt that the Defendant was in
4 possession of a firearm, or visibly displayed what
5 appeared to be a firearm, during the commission of a
6 violent crime. A firearm means any machinegun,
7 automatic rifle, revolver, pistol or any weapon which
8 will or is designed to or make readily to be converted
9 to expel a projectile.

10 In order to find the Defendant guilty of
11 possession of a weapon during the commission of a
12 violent crime, you must first find the Defendant
13 guilty of either committing a violent crime or
14 attempting to commit a violent crime. The State must
15 prove beyond a reasonable doubt that a weapon further
16 advanced or helped in the commission of the crime.
17 The State and the defense stipulate or agree that both
18 the murder and the offense of voluntary manslaughter
19 are violent crimes.

20 The Defendant is also charged with possession
21 with intent to distribute cocaine base or crack
22 cocaine. The State must prove beyond a reasonable
23 doubt that the Defendant posed cocaine base, crack
24 cocaine, with the intent to distribute. To prove
25 possession, the State must prove beyond a reasonable

JURY CHARGE

1 doubt that the Defendant had both the power and intent
2 to control the disposition or use of the cocaine base
3 or crack cocaine. Possession may be either actual or
4 constructive. Actual possession means that the
5 cocaine base or crack cocaine was at sometime in the
6 actual physical custody of the Defendant.

7 Constructive possession means that the Defendant
8 had dominion and control or the right to exercise
9 dominion or control over either the cocaine base
10 itself or the property which the cocaine base was
11 found. Mere presence at the scene where the drugs are
12 found is not enough to prove possession. Actual
13 knowledge of the presence of the cocaine base is
14 strong evidence of the Defendant's intent to control
15 his disposition or use. The Defendant's knowledge and
16 possession may be inferred when the substance is found
17 on the property in which the Defendant's -- on the
18 property under the Defendant's control; however, this
19 inference is simply an evidentiary fact to be taken
20 into consideration by you along with other evidence in
21 the case and to be given the weight you decide it
22 should have. Two or more persons may have joint
23 possession of a drug. The State must also prove
24 beyond a reasonable doubt that the Defendant intended
25 to distribute the cocaine base. "Distribute" means to

JURY CHARGE

1 deliver other than by administering or dispensing a
2 drug.

3 Intent may be shown by acts and conduct of the
4 Defendant and other circumstances from which you may
5 naturally and reasonably infer intent. In determining
6 whether the Defendant had the intent to distribute the
7 cocaine base, you may consider the circumstances
8 surrounding the Defendant's alleged possession. You
9 may consider the amount of the substance alleged to
10 have been possessed, the manner in which it was
11 allegedly possessed, the place where it was allegedly
12 possessed and other factors which you consider to be
13 important. You must find that the Defendant did not
14 intend to have the cocaine base solely for its use.

15 There is two possible verdicts which you may find
16 on each indictment in this case, guilty or not guilty.
17 There is no significance, whatsoever, to the order in
18 which I stated these possible verdicts, just simply
19 one has to be stated before the other. Ladies and
20 gentlemen, your verdict must be an unanimous one.
21 Madam forelady, I want you to go into your jury room
22 in a moment, and when the jury has reached the
23 verdict, write the verdict on the verdict form, which
24 I'll provide to you, and then you knock on the door
25 and inform the bailiff you've reached a verdict, and

JURY CHARGE

1 at that time I'll bring you back in into courtroom.

2 Now, before I send you in, let me remind you that
3 I'll take this charge here. I have it already marked
4 as my exhibit. We will send that in with you, but
5 before we leave the courtroom, let me talk to you a
6 little bit about the verdict form. Of course you can
7 approach your deliberations in any fashion you feel
8 appropriate. It is entirely up to you, the jury. I
9 prepared a verdict form which, at least my view, will
10 logically lead you through these charges and make it
11 easier for you to reach a verdict.

12 It starts with a statement that says, As to the
13 charge of murder, we, the jury, unanimously find the
14 Defendant -- and I say circle one, and it is "guilty"
15 or "not guilty." Again, it makes no difference which
16 one I put. I'm not suggesting any verdict. Under
17 that, there is a sentence, and it says if you found
18 the Defendant guilty of murder, do not consider the
19 lesser included offense of voluntary manslaughter and
20 go directly to the charge of possession of a firearm
21 during a violent crime.

22 If you found the Defendant not guilty of murder,
23 you may consider the charge of voluntary manslaughter.
24 Remember a moment ago I said that was a lesser
25 included, if the State didn't prove murder, you could

JURY CHARGE

1 consider the lesser included. And then I have as to
2 the charge of voluntary manslaughter, we the jury
3 unanimously find the Defendant -- and, again, you
4 could circle "guilty" or "not guilty." But as I said
5 in the earlier statement, if you find him guilty of
6 murder, you do not even consider manslaughter, because
7 you don't find -- can't find him guilty of both. If
8 you find him not guilty of murder, then you may
9 consider manslaughter. And as to manslaughter, you
10 may find him guilty or not guilty if you get to that
11 point.

12 Again, I'm not suggesting any verdict. I'm just
13 trying to help you by giving you a skeleton to go
14 through with this verdict form.

15 The next charge of possession of a firearm during
16 the commission of a violent crime, we, the jury,
17 unanimously find the Defendant -- and you circle one,
18 "guilty" or "not guilty." And then has to the
19 possession with intent to distribute cocaine base or
20 crack cocaine, we, the jury, unanimously find the
21 Defendant -- and there you circle "guilty" or "not
22 guilty." I just didn't -- I hope it will help you
23 understand he is charged with murder, you can find him
24 guilty or not guilty, either one.

25 If you find him guilty of murder, don't even

JURY CHARGE

1 consider manslaughter. You go straight to the next
2 charge, which is possession of a firearm during the
3 commission of a violent crime. If you find him not
4 guilty of murder, then you may consider voluntary
5 manslaughter, and may find him guilty or not guilty on
6 that charge. You must have found him guilty of either
7 murder or voluntary manslaughter in order to support a
8 finding that he would be guilty of possession of a
9 firearm during the commission of a violent crime. The
10 State and Mr. Barr have agreed that those are the two
11 charges that are violent crimes and would support that
12 finding.

13 Again, I am not suggesting any verdict, I'm just
14 trying to set out something that would maybe help you
15 logically follow through with your deliberations. I'm
16 going to send you in your jury room, and one of two
17 things will happen. I'll bring you back -- I don't
18 think I will because I've gone over the charges with
19 the attorneys. If I bring you back, I'll give you a
20 further charge. If I do not bring you back, I'll send
21 in all of the exhibits and the charge and the verdict
22 form. If I do that, if I have a bailiff deliver that
23 to you, that is your signal to begin your
24 deliberations.

25 All right, Mr. Ropp, if you will take this jury

JURY CHARGE

1 back in the jury room. Segregate the two alternates
2 for right now.

3 MR. ROPP: Yes, sir.

4 (Whereupon, the jury exits at 2:31 p.m., and the
5 following is had out of the presence of the jury.)

6 THE COURT: Anything other than what you placed
7 on the record, Mr. Hixson or Mr. Barr?

8 MR. HIXSON: No, sir.

9 MR. BARR: No, sir. No, sir.

10 THE COURT: Nothing further than what we
11 discussed? Let's get together and make sure we got
12 all of the exhibits.

13 MS. WALTER: And we have that done, Your Honor.

14 COURT REPORTER: Yes.

15 THE COURT: Ms. Dahl, here is my jury charge. I
16 think there is live ammunition, please leave that
17 here, don't send that into the jury. Mr. Hemingway,
18 look for any live ammunition.

19 MS. WALTER: That should be all of that.

20 THE COURT: If it is live, the jury can ask for
21 it. All right. We'll be at ease.

22 (A recess is taken and the jury starts
23 deliberations at 2:34 p.m.)

24 THE COURT: Ms. Smithson and Ms. Lewis, I'll
25 separate you from the jury right now because only 12

VERDICT

1 can deliberate. Mr. Palmer, make sure they are in
2 another jury room where they are comfortable and
3 plenty of refreshments. If you need anything, if
4 there is not a sheriff's deputy right there, walk in
5 the hallway and let us know. I'll ask you to stay
6 with us for an hour or so, or at least for the first
7 hour, and you may be released at that time. Thank
8 you. We're at ease.

9 (Whereupon, the jury starts deliberations.)

10 THE COURT: The jury has reached a verdict and,
11 of course, I don't know what the verdict is. I know
12 there is much interest in this case from both sides.
13 I will tell you all, this jury is going to come in and
14 it is going to be a verdict read. I will tolerate no
15 outbursts from anyone in front of this jury. If you
16 do not think you can contain yourselves, you need to
17 leave, because if you do so, Mr. Johnson, make sure
18 some of your staff arrest and remove anyone who makes
19 any outbursts or display of displeasure or joy or
20 anything else when this jury comes in. I'm not going
21 to tolerate it, all right. Anyone that needs to
22 leave, needs to leave now. I didn't see anyone
23 getting up. Okay. Mr. Palmer, bring in the jury.

24 (The jury enters at 5:16 p.m., and the
25 following is heard in the presence of the jury.)

VERDICT

1 THE COURT: All right. We have all of our
2 jury in. Madam forelady, have you reached a verdict?

3 FOREPERSON: Yes, Your Honor

4 THE COURT: Was it an unanimous verdict?

5 MR. FOREPERSON: Yes, Your Honor.

6 THE COURT: Give it to Mr. Ropp and, Mr. Ropp, if
7 you would deliver it to the clerk. May I see it,
8 madam clerk?

9 (A brief pause in the proceedings.)

10 THE COURT: Very well. Madam clerk, publish
11 the verdict, please.

12 THE CLERK: Indictment No. 2015-GS-26-00011,
13 the State of South Carolina versus Antwuan Levon
14 Nelson. As to the charge of murder, we, the jury,
15 unanimously find the Defendant not guilty.

16 As to the charge of voluntary manslaughter,
17 we, the jury, unanimously find the Defendant guilty.

18 As to the charge of possession of a firearm
19 during the commission of a violent crime, we the jury
20 unanimously find the defendant guilty.

21 As to the charge of possession with intent to
22 distribute cocaine base or crack cocaine, we the jury
23 unanimously find the defendant not guilty.

24 Signed by foreperson, Miranda Ray. Dated
25 June 15, 2017.

VERDICT

1 Ladies and gentlemen of the jury, if this is
2 your verdict, so signify by saying "I."

3 THE COURT: Was there any juror who did not
4 affirm that this was his verdict; please stand?

5 And there was no response to that. Mr. Barr, do
6 you have any request for polling?

7 MR. BARR: No, sir. No, sir.

8 THE COURT: Motions, Mr. Barr.

9 MR. BARR: If it please the Court. We
10 directly -- I move with respect to the manslaughter
11 conviction for a judgment verdict --

12 THE COURT: I think --

13 MR. BARR: And of course that would include the
14 corresponding possession --

15 THE COURT: Yes, I understand. Mr. Barr, there
16 is ample evidence to support this jury's verdict, but
17 I'll hear from you, Mr. Hixson or Ms. Walters, either
18 one of you.

19 MR. HIXSON: Apologize. As it relates to
20 Mr. Barr's motion?

21 THE COURT: Yes.

22 MR. HIXSON: There is substantial evidence in the
23 record that supports the conviction for murder and
24 voluntarily manslaughter. And the malice
25 aforethought, I assume, it makes voluntary

VERDICT

1 manslaughter appropriate.

2 THE COURT: Very well.

3 MR. HIXSON: Obviously, during the commission of
4 a violent crime commiserates, flows, from that.

5 THE COURT: Any reason we should not proceed with
6 sentencing?

7 MR. HIXSON: We're prepared to go forward.

8 THE COURT: I'll hear from you.

9 MR. HIXSON: Thank you. As it relates to
10 Mr. Nelson's criminal record, he does not have much to
11 speak of, as Your Honor is well aware of. He has
12 misdemeanor drug convictions, several drug arrests,
13 but nothing of a violent nature. I think Your Honor
14 is well aware of a federal indictment to distribution
15 of drugs out of Williamsburg County. Those are not
16 convictions. He is currently in the U.S. Marshals'
17 custody pending a trial on those drug charges in the
18 federal system. Make sure that I'm clear, those are
19 not convictions, I'm giving the nature of Mr. Nelson's
20 criminal history.

21 I have not had a chance to talk to the family who
22 would like to address the Court at the appropriate
23 time.

24 THE COURT: This is the appropriate time, if
25 anyone would like to.

VERDICT

1 MR. HIXSON: Beg the Court's indulgence for a
2 moment, Your Honor.

3 MS. WALTER: We do have a family member that
4 would like to speak.

5 THE COURT: I'll hear from him.

6 MS. WALTER: State your name and spell your first
7 and last.

8 VICTIM: Jordan Benson, J-O-R-D-A-N. This is
9 hard time for our family. I thank you guys spending
10 these days. In these three years without my uncle, he
11 has a daughter who will never know who her daddy was
12 because of senseless things, and I don't feel it is
13 fair to us or my grandmother. It was her last blood
14 son that died some years back, but I'm her grandson.
15 She has another grandson through the deceased, and my
16 aunt. Like I said, just want -- I don't think it is
17 fair. You should take no life. You should take no
18 life for that. I just don't see -- it is senseless,
19 and I don't feel that justice has been served, but.

20 THE COURT: Thank you.

21 MS. WALTER: State your full name and spell your
22 first and last.

23 VICTIM: Earline Bess, E-A-R-L-I-N-E, B-E-S-S,
24 Michael Rogers' mother. That was my baby son. I had
25 two sons. That is my last son. It is a hurtful

VERDICT

1 thing, but things happen, I understand that. It just
2 hurts so bad, but I'm thankful that it is over with.
3 I forgive him, you know. It is in God's hand. I just
4 -- I'm sorry (witness crying) -- it just hurts so bad.
5 I had two sons and two daughters. My two daughters
6 are back there, and my two sons are gone. I just love
7 my kids so much, and just to be gone in an instant, it
8 just hurts so bad. I thank you. I just thank you.

9 THE COURT: Yes, ma'am. Anything further from
10 the State?

11 MR. HIXSON: We believe voluntary manslaughter,
12 as you are well aware, sentencing is zero to 30, and
13 30 to life for murder. As it relates to the conduct
14 of Mr. Nelson, whether there was substantial heat of
15 passion or not, there was ample opportunity for
16 Mr. Nelson to get himself out of the situation. The
17 method and weapon that was used is absolutely
18 senseless, and we ask for the upper end of the
19 sentencing range. As your Honor knows, there is
20 consecutive sentencing as it relates to the possession
21 of a weapon after whatever sentence.

22 THE COURT: And I'll state for the record I'm
23 aware of the fact it could be concurrent or
24 consecutive, five years, and 30 on the....

25 MR. HIXSON: Correct, Your Honor.

VERDICT

1 THE COURT: I'll hear from the defense.

2 MR. BARR: Judge, I do intend to ask -- his
3 family, he has quite a few family members here. I'm
4 surveying to see who wants to say something, but I'll
5 get my piece out of the way. First of all, I thank
6 the Court and the jury for their consideration in this
7 case. I think the Court has been fair and the jury's
8 verdict is certainly a verdict that has been based on
9 the facts of the case as the law applies. Let me say
10 by way of mitigation that -- Scott Hixson mentioned a
11 criminal record, and I'm not aware of any criminal
12 record that he has, so this is the first time coming
13 to court.

14 I'm -- I'm -- and if it was not talking to a
15 judge, I would be concerned because prosecutors always
16 start talking about what someone has been arrested
17 for, and of course the simple fact that someone was
18 arrested for something and may have charges pending,
19 that is not a conviction. Of course I'm quite aware
20 of the federal charges that are now pending against
21 Mr. Nelson, and of course you know, Your Honor, you
22 are well aware that should Mr. Nelson find himself in
23 trouble with the feds, they'll require if he gets and
24 active sentence here, they will require that he does
25 that sentence before he even starts on any time. I'm

VERDICT

1 not suggesting there is time, but that will take care
2 of it. In terms of what we're here for today --

3 THE COURT: Let me ask before you go further, Mr.
4 Barr.

5 MR. BARR: Yes, sir.

6 THE COURT: The jury did not see the lengthy
7 statement that was given by your client. Of course I
8 did in the Jackson v. Denno hearing, determined the
9 voluntariness, but from my understanding, and from
10 remarks that you made during opening and closing, your
11 client doesn't dispute the fact that he was at
12 Mr. Rogers' residence for the purpose of consummating
13 a drug deal?

14 MR. BARR: Well, Judge, what actually happened,
15 he was in the parking lot when he was confronted by
16 Mr. Rogers and wanted Mr. Nelson's assistance in
17 helping him find some drugs.

18 THE COURT: So you are saying I did not hear him
19 say that he took drugs up there to sell and they got
20 in a fight over those drugs?

21 MR. BARR: You may have heard him say that
22 because he did take drugs upstairs at Mr. Rogers'
23 request.

24 THE COURT: Okay. All right. Anyway, go on.

25 MR. BARR: Of course, Judge, there is no question

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1 that they got into an argument about the -- about
2 drugs, and I don't think there is any question -- and
3 certainly the jury saw fit to give him the benefit of
4 the doubt when it came to manslaughter as opposed to
5 murder, because had Mr. Rogers not interjected guns
6 into this situation, then the guns would not have been
7 involved. He followed -- ran Mr. Nelson out of there.
8 Mr. Nelson went upstairs and hid up there for over 30
9 minutes.

10 THE COURT: Mr. Barr, is there anything more
11 frank than a young drug dealer driving around the
12 community with an assault weapon?

13 MR. BARR: In his trunk.

14 THE COURT: Doesn't matter where it is. You show
15 no concern for the community or people that you may be
16 distributing these drugs to, showed no concern for
17 them, and you show a readiness to take a life. Why
18 else was he riding around with that assault weapon?

19 MR. BARR: Judge, I guess it is the same reason
20 that 99 million people in this country buy weapons.
21 It seems like they like to shoot. As far as what he
22 did, I don't think that he should be punished. I hope
23 he's not punished -- I hope he's punished consistent
24 with what the blame worthiness he's got for what he
25 did. And, Judge, needless to say, we've talked about

VERDICT

1 this -- and let's put all the cards on the table. The
2 State said 25 years of murder and walk out of here,
3 and we didn't take it because we did not --

4 THE COURT: 25 years for murder because that is a
5 sentence on murder.

6 MR. BARR: 25 years on manslaughter. It says 25
7 years on manslaughter, and we didn't take it and went
8 to trial. We did that because, in terms of what he
9 had done, he didn't -- granted, he had his gun in his
10 trunk, but now he was driving an automobile that he
11 had to crank with a screwdriver. Mr. Rogers was going
12 around the parking lot looking for him, and his wife
13 helped find him. There he is. There he is.
14 Otherwise, they would have never -- they would have
15 never known. Mr. Rogers would not even know that he
16 came downstairs, but they pointed him out to him, and
17 he ran. Judge, the rest is history.

18 But be that as it may, Your Honor, I think --
19 Judge, quite frankly, I think 15 years is enough. I'm
20 asking the Court in the case that -- Graham case we
21 dealt with regarding the appeal, that was 12 years in
22 that case. Judge, this young man -- now we're
23 sympathetic towards -- a death is a terrible thing in
24 any situation, whether it is drugs or whatever, but
25 unfortunately, Judge, we have a situation in this

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1 country -- we have a lot of young people, for whatever
2 reason, and a lot has to do with education, but, Your
3 Honor, I practice law all over the Lowcountry, and I'm
4 at least familiar with sentencing, and most familiar
5 with some of the sentencing by particular judges, but,
6 Your Honor, I don't think that what we're asking for
7 is out of line with what most judges would sentence,
8 and I'm not telling you that that is what you have to
9 do, but for a manslaughter conviction that is a first
10 criminal offense. Certainly I don't condone selling
11 drugs. I don't condone that. And I don't condone
12 buying them. And I don't -- when it comes to
13 apportioning the blame between selling and buying,
14 this is not a situation where it deals -- limited
15 situation with just selling drugs. It deals with
16 someone that was ready to grab a weapon and introduce
17 a weapon into a situation, and it escalated. They
18 have been buying -- they smoked drugs, marijuana, over
19 there all the time, that is what they do when they go
20 over to that apartment. They do that all the time,
21 and these fellows usually get along, but it just
22 happened on this occasion that they had a fallout and
23 got in an argument.

24 But, Your Honor, I would implore the Court to
25 consider this young man still has some of his life in

VERDICT

1 front of him, and either way you go with a sentence or
2 conviction for something most serious, he'll do
3 85 percent before he even looks for parole.
4 85 percent of 15, Judge, that is over 12 years, Your
5 Honor. I would certainly ask the Court to consider a
6 sentence of no more than 15 years.

7 Your Honor, if any of his family members -- he
8 has his mother here. Do you want to say something?
9 Tell the Judge.

10 MS. GASKINS: I'm Brittany Gaskins. This is my
11 son, Antwuan Nelson. We're sorry what happened, but
12 please, please do not give him much time. I'm sorry
13 what happened. God knows I am sorry. But, please,
14 he's a good son and he always hang out over there. He
15 always hang out over there.

16 THE COURT: Why was he carrying an assault weapon
17 around for? If he wanted to visit his friends, what
18 was he doing -- what in the world would possess a
19 young man to take out an assault weapon and shoot
20 someone over, under the worse case scenario, an
21 insignificant amount? Does it say something about the
22 value he puts on human life?

23 MR. BARR: Judge, he was being shot at.

24 THE COURT: The other man was wrong, too. That
25 makes no difference. If he would have shot your

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1 client, we would be here prosecuting him. Yes, ma'am.
2 Thank you.

3 MR. HIXSON: I wanted to address one thing. I
4 don't want to relitigate the fact pattern here, but as
5 Your Honor is well aware, in the pretrial rulings
6 concerning the admissibility of his statement, he
7 repeatedly -- over an hour statement -- indicated he
8 never saw the victim with a gun, never saw the victim
9 with a gun.

10 THE COURT: That is what is in the statement.

11 MR. HIXSON: And maintained that to the end.

12 MR. BARR: He never saw him because he didn't
13 know where he was. He saw him when he came up the
14 alley, but prior to that time -- that is why he was
15 hiding out by the back of the car, because he didn't
16 know where he was.

17 THE COURT: Why did he get the gun out if he
18 didn't know where he was? He didn't know he had a
19 gun?

20 MR. BARR: Judge, Mr. Rogers went upstairs. The
21 witness that didn't testify today, who is in the
22 hospital, that would have come to court, she would
23 have testified when he came upstairs for the first
24 time -- when he came out of the apartment the first
25 time, he went straight to the apartment, went upstairs

VERDICT

1 looking for Mr. Rogers with the gun -- Mr. -- I mean
2 Mr. Nelson. Mr. Nelson happened by chance to have
3 gone in the apartment across the hall, as opposed to
4 the one he thought he was in. But he went up there
5 with the gun to shoot him, but it happened that he was
6 in another apartment.

7 THE COURT: That was some time earlier in the
8 day, wasn't it?

9 MR. BARR: That was immediately after the scuffle
10 in the apartment. Mr. Nelson stayed up there
11 approximately 30 minutes before he came back down.
12 When he came down, the girlfriend said, Oh, there he
13 is, he had to take off running again.

14 THE COURT: All right.

15 MR. BARR: Yes, sir.

16 THE COURT: Does your client want to say
17 anything?

18 MR. NELSON: Yes, Your Honor. First and
19 foremost, I'm very apologetic to what happened to your
20 family member. Mike was a cool guy, and I didn't want
21 that to happen. Yes, I tried to leave the scenario.
22 The real story is Kristen Bloomer was standing in
23 front of my car. The picture that they showed that
24 didn't have anything in front of it, that was after
25 the scene, two cars right there. When I first came

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1 down, Kristen was standing directly in front of my
2 car, and Mike was standing right there as well.
3 Another car pulled up. As soon as I come down the
4 steps, if I come down the steps, you could see my
5 first feet. Kristen Bloomer yelled out, There he
6 goes. There he goes. Mike ran past --

7 MR. HIXSON: I want you to keep going, but look
8 at the Court.

9 THE COURT: If you have something to tell me.

10 MR. NELSON: Your Honor, I'm not that bad guy
11 that this wording is trying to put out. Me riding
12 around with a rifle, for one, we're in a country town.
13 I had a friend of mine, who was in the military, me
14 and him went in the woods and did target practicing,
15 and couple target practicing. I liked the gun, and I
16 was always saying when I get an extra money, I'm going
17 to get me a gun. So I got the gun. The reason in
18 that time frame I had it in my trunk was I was staying
19 with my child's mother at the time, and at that time
20 we had a four-year-old son and one-year-old son. I
21 did not want to keep that gun in the house, because
22 the oldest boy plays with toy guns, and I didn't want
23 to provoke anything at the apartment complex that we
24 were staying at. That is why I kept it in my trunk,
25 because I didn't have another safekeeping than to keep

VERDICT

1 it in my trunk. That is why I went -- I knew it was
2 there. If I was stopped by officers, I told them I
3 have a rifle and gave the paperwork, but that is the
4 only reason why I ever rode with that gun. I didn't
5 want to leave it in the house and the little young man
6 find it and thought it was a water gun or something,
7 that is my whole purpose riding. I didn't ride just
8 to be some sort of bad boy or anything of that nature,
9 Your Honor. I got the likes of the gun from a friend,
10 because I never owned a gun before. We went somewhere
11 in the woods, shot it, he told me about it and I said
12 I want to get me one. He told me a rifle association
13 to join, and I was trying to be my gun collector type
14 of thing. But, you know, that situation led to this.
15 I would never, ever try to hunt nobody down, Oh, I got
16 me a gun, no. A lot of people didn't even know I had
17 that gun. It was always in my trunk, because it was
18 the only safekeepings for it.

19 MR. BARR: Judge, I don't want to beat a dead
20 horse, but I'm going to strike the last word. I think
21 it is significant that the gun had to be -- he had to
22 even put it together. The gun was dismantled in the
23 trunk.

24 THE COURT: I heard no testimony, just that he
25 had to put the clip in.

VERDICT

1 MR. BARR: Where is Officer Clothier?

2 THE COURT: Mr. Barr, this is sentencing. This
3 is sentencing.

4 MR. BARR: Yes, sir.

5 MR. NELSON: Yes, sir, Your Honor. The way the
6 gun was in the case, it was all clips. Every time I
7 go to a gun shop and I bought bullets or clip, I
8 always asked can I ride with this legally this way or
9 that way. If they said no, I would have discard that.
10 So they said you can ride with this, but don't have it
11 loaded, so I had it in the case and the case closed.
12 For it to be in my car, around that time, me staying
13 with my child's mother, she was my only closest family
14 member around Conway, so I have no other safekeeping
15 of keeping the gun. Plus, the apartment house, I
16 didn't want any problem happening with the kids, so I
17 kept it in my trunk.

18 THE COURT: Anything else?

19 MR. NELSON: I'm very apologetic for this whole
20 scenario. Mike was a good man. I never meant for
21 this to happen, and I honestly tried to leave the
22 situation, but I felt --

23 THE COURT: You had every opportunity to do that.

24 MR. NELSON: Your Honor, when I tried to leave,
25 Kristen was standing in front of my car. That is the

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1 first time I left. That is when I ran upstairs to
2 avoid everything. Whoever was downstairs told Mike I
3 was up there, because someone was saying, Yeah, he's
4 up there. Yeah, he'll come down. You'll show where
5 he is at. When I came down the second time, that is
6 when Kristen Bloomer was standing directly in front of
7 my car. That is when I ran to my car door, she said
8 -- no. When I came down, she said, There he goes.
9 There he goes. When he ran and that car pulled off --

10 THE COURT: The jury said you are guilty.

11 MR. NELSON: Yes, sir.

12 THE COURT: And I will not change it.

13 Mr. Nelson, do you want to tell me anything about you?

14 MR. NELSON: I'm a dad as well. Around that time
15 I had a one-year-old child, about to turn two, still
16 in diapers. I was going to school for welding. I was
17 trying to get my life on the right track, and I was.
18 I was going to do that so I could try to get a truck
19 and do a welding business. I was never, ever in
20 trouble. Last time I got into an altercation or fight
21 was like in seventh grade or sixth grade.

22 THE COURT: Why were you involved in the drug
23 business?

24 MR. NELSON: Your Honor, at that time I did it
25 because I didn't have no money and I wanted to get

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1 extra gas money or diapers for my son. I was going to
2 school out of pocket, but working part time with my
3 step-father. I don't have a history of selling drugs.
4 It was just that day, Your Honor. I'm just not that
5 bad guy.

6 THE COURT: Ms. Walter, you have something?

7 MS. WALTER: State wanted to note that -- as the
8 defendant admitted in his initial statement -- he did
9 have to -- even at the very least -- put the magazine
10 into the AR.

11 THE COURT: I'm very familiar with the AR-15 type
12 rifle. They are not disassemble. You pull the pin
13 and pop it open, at the most, it snaps back.

14 MS. WALTER: But the defendant had to insert the
15 magazine into the gun and cock it back to make it
16 ready, so that shows, in the State's mind,
17 premeditation, that that was not just a spur of the
18 moment, heat of passion accident.

19 THE COURT: All right. Mr. Barr, ready for
20 sentencing?

21 MR. BARR: Yes, sir.

22 THE COURT: Mr. Antwuan Nelson, on the charge of
23 voluntary manslaughter this Court sentences you to 25
24 years at the state penitentiary, State Department of
25 Corrections followed by a consecutive five-year term

VERDICT

1 for possession of a firearm during the commission of a
2 violent crime. Thank you very much.

3 Ladies and gentlemen of the jury, I want to thank
4 you for your service in this case. It's been a long
5 case, been a lot of testimony you heard. I can tell
6 by the verdict that you gave this defendant the
7 benefit of every doubt in this matter, and the
8 conviction that you make is the conviction that I
9 believe you don't have any alternative to do. When we
10 started, I told you that I would hope you would leave
11 this experience with a better understanding of our
12 legal system and how important it is to have our right
13 to be tried by a jury. I could not say this young man
14 was guilty, neither could Mr. Hixson, none of us
15 could. It came to you to do it. It is a hard
16 decision. It is always hard to judge other people,
17 but you have fulfilled your oath. You have done your
18 duty, and no one can criticize you for that. I thank
19 you for that.

20 I can't remember all of my jurors, but I'm all
21 over the county. You might find me at Lowe's or a
22 hardware store or somewhere, and if you do and
23 recognize me, please do stop and talk to me. Tell me
24 about your experience. I'm always glad to hear from
25 jurors. I'm very easy to approach. A lot of my judge

VERDICT

1 friends are scared to be approached by folks, but I'm
2 not. I welcome anyone who would like to speak to me.
3 Thank you for your service. You are released and your
4 service for this week has ended.

5 I would say this, you are not required to speak
6 to anyone about this case, you don't have to. If you
7 want to, you can. Now, you can tell your wives and
8 husbands and significant others all about it,
9 everything you thought about this case. You can
10 discuss it with anyone, or no one. If anyone
11 approaches you and you tell them you don't want to
12 talk about it and they persist, get their names and
13 bring it to my attention, and it will not happen
14 again, I promise you. Thank you.

15 Mr. Ropp, take them to gather their things and
16 make sure they are on their way.

17 (The jury exits at 5:45 p.m., and the case of
18 State vs. Antwuan Nelson concluded.)
19
20
21
22
23
24
25

VERDICT

CERTIFICATE OF REPORTER

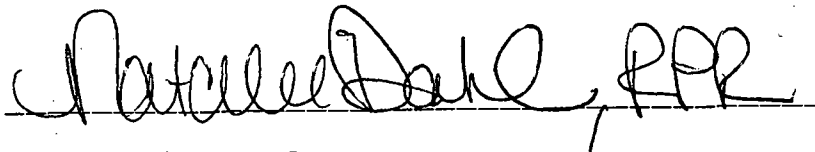
State of South Carolina)

County of Horry)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina, on the 12th through the 15th days of June, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 20, 2017



Natalie Dahl, RPR

Court Reporter

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

THE STATE,)

Plaintiff,)

vs.)

ANTWAUN L. NELSON,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS)

FIFTEENTH JUDICIAL CIRCUIT)

INDICTMENT NOS.: 2015GS2600011)

2015GS2600012 & 2015GS2600013)

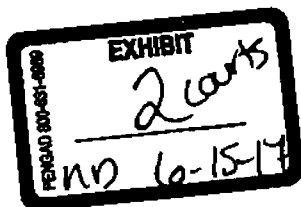
AFFIDAVIT

PERSONALLY APPEARED BEFORE ME UPON BEING DUL

SWORN, the affiant herein, attorney for this Defendant, South Carolina Bar No.: 543, states :
follows:

1. That the testimony at trial of Lillian Brockington cannot be attained though she is a material and indispensable witness. The Deponent is not intentionally delaying the proceedings, but do not believe he can safely try this case without the testimony of M Brockington.

2. Ms. Brockington was duly served with a Subpoena to appear in the Court proceedings on June 12th, 2017. The original Subpoena was delivered to Ms. Brockington at Georgetown Memorial Hospital where she is now an inpatient by Ms. Charlotte Washington. A copy of the Subpoena is attached, the original of which was delivered to Ms. Brockington. The Deponent has misplaced the Proof of Service, which he had in Court to deliver to the Trial Judge, but now cannot find it.



3. The Deponent believes that if the witness could attend a trial, she would testify consistent with her Pre-Trial Statement taken by Officers of the Myrtle Beach Police Department, a copy of which is attached.

4. Also attached is a copy of the Hospital's comments regarding the patient status.

5. The Deponent is informed and believes that Ms. Brockington suffers from sickle cell anemia, and is awaiting blood transfusion.

6. That this affidavit is not for purposes of delay

SWORN to me before this 15th
day of June, 2017

Quinnia Cooper
Notary Public for the State of S.C.
My Commission Expires: 07/16/2017

Charles David Barr, Esquire

1 Detective Quinn The time now is 6:34 p.m. on Monday, January
2 27, 2014, and we're on 37th Avenue North. I'm
3 Detective Quinn with the Myrtle Beach Police
4 Department. I'm speaking with Lillian
5 Brockington.

6 Lillian Brockington Yes.

7 (From this point forward questions will be posed
8 by Detective Quinn, and answers will be given by Lillian Brockington,
9 unless otherwise noted)

10 Q B-r-o-c-k-i-n-g-t-o-n.

11 A I-n-g-t-o-n, yes.

12 Q And you're in apartment [REDACTED]?

13 A Un, huh.

14 Q Okay what's your date of birth?

15 A [REDACTED].

16 Q And a phone number is [REDACTED]?

17 A Yes.

18 Q And how long have you lived there?

19 A About a couple of months.

20 Q Obviously we're here about this shooting incident
21 that happened earlier today. I understand you
22 witnessed some of it or you had some
23 involvement with it?

24 A Yes, but not involved.

25 Q Not involvement. I apologize, bad choice of

1 words. You were a witness to some of it?

2 A Yes, what I heard is when his cousin came down I
3 heard the guy that got shot go here we go babe,
4 here we go babe, and he got his gun and shot at
5 him.

6 Q Who got his gun. Start from the beginning. I'm a
7 little confused here. Who said what?

8 A The guy's girlfriend that got shot, here we go
9 babe, here we go babe, and the guy that got shot
10 got his gun and shot at the other guy that is in jail,
11 first.

12 Q So the guy who got shot you are saying shot first?

13 A Yes. Then he shot back and then he shot again
14 and then he shot back and that's when he got hit.

15 Q That's when he got hit. So how many shots do
16 you think you heard total?

17 A Four.

18 Q Four, four total, okay. Did I heard this right you
19 said that the guy who didn't get shot, went
20 upstairs and came back in or something like that?

21 A I don't know what happened earlier part of the
22 day but the guy that got shot ran upstairs to my
23 apartment and he was in my apartment with his
24 shotgun.

25 Q Oh, so the guy who got shot went looking for this

1 dude?

2 A Yes.

3 Q And that's apartment ■, are they lettered or
4 numbered?

5 A They are lettered, I mean numbers.

6 Q Numbers. I've got someone who was in [REDACTED]

7 A No, numbers. They are all numbers.

8 Q Okay.

9 A I was like what are you looking for, why are you
10 running up in my house with a shotgun, and he
11 was like where's Scrilla, where's Scrilla, and I
12 was like he ain't in here.

13 Q What did he call him?

14 A Scrilla.

15 Q Scrilla?

16 A Yes, and he came back downstairs and whenever
17 Scrilla came out where he was at, his girlfriend,
18 the guy that got shot, hollered here you go babe,
19 here you go babe, and the next thing I heard was a
20 shot fired at Scrilla and then Scrilla shot back at
21 him, and he must have missed and then shot again
22 that got shot, shot again, and then he shot again.

23 Q You saw this happen?

24 A I was in my window.

25 Q Okay.

- 1 A I was in my window.
- 2 Q So we're looking at the - - -
- 3 A Apartment ■.
- 4 Q And the one facing the street, right?
- 5 A Yes.
- 6 Q The one where the red car and the green truck are
- 7 parked, you remember ■ is that building?
- 8 A Yes.
- 9 Q Where is your window?
- 10 A The last window on the corner.
- 11 Q The one closest to us or furthest away?
- 12 A Furthest away.
- 13 Q So you were up on the second floor in that corner
- 14 looking right down at it.
- 15 A Yes.
- 16 Q When you saw him shoot, let's call him the victim
- 17 because he got hit, where did you see him
- 18 standing?
- 19 A He was in the back and that alley way.
- 20 Q All right.
- 21 A He was in the alley way shooting at him because
- 22 he was going to his car.
- 23 Q You were looking out the window that looks
- 24 towards the street?
- 25 A Yes.

- 1 Q Or the one - - -
- 2 A No, towards the street.
- 3 Q How could you see him?
- 4 A I didn't see him, I heard him. I didn't see him, I
- 5 heard him.
- 6 Q Got you. So you heard a shot in the alley way
- 7 first.
- 8 A Un-huh.
- 9 Q Before this guy shot.
- 10 A Un-huh.
- 11 Q What did you see him do, the guy at the red car.
- 12 A When the shot went off.
- 13 Q Yes.
- 14 A He ducked.
- 15 Q Did he have a gun in his hand?
- 16 A Yes, he did.
- 17 Q He already had the long gun in his hand?
- 18 A No, he was at his trunk when the dude was
- 19 shooting at him, he was getting his gun I guess to
- 20 shoot back. Once he got it together he shot back
- 21 and missed and then the other dude shot again,
- 22 and then he shot again.
- 23 Q Okay, so you are looking out and you never see
- 24 him going to his trunk or anything, he had the gun
- 25 in his hand when you looked down?

- 1 A Yes.
- 2 Q That's when you heard the first shot?
- 3 A Yes.
- 4 Q You heard one shot.
- 5 A Un-huh.
- 6 Q And she was yelling there he goes, here we go --
- 7 -
- 8 A No, before the shot went off she must have seen
- 9 the one that's locked up so she hollered here we
- 10 go babe, here we go babe. Then I heard the shot.
- 11 Then I looked and I see him shoot back and then I
- 12 heard another shot.
- 13 Q You are certain that the first shot came from the
- 14 alley way or could it have come from the - - -
- 15 A It came from the alley way because I was sitting
- 16 at the window all day.
- 17 Q And then what did you see the male at the red car
- 18 do after all the shots were fired. Where did he go,
- 19 which way did he go?
- 20 A I guess once the dude got hit, he wen to see was
- 21 he okay or something.
- 22 Q So you saw him go up the alley?
- 23 A Yes but there was no more shots because after
- 24 that I heard her hollering oh, my God, oh, my
- 25 God, and I came down and said is he breathing

1 and that was it. By the time I said was he
2 breathing, the cops were coming and made the
3 other dude get down and stuff.

4 Q Are you familiar with the neighbor who was shot,
5 do you know him? Have you ever talked to him or
6 hung out with him or anything at all?

7 A Just hi and bye.

8 Q All right. Did you ever see the other shooter
9 before, the other male?

10 A Yes because that's my husband's cousin.

11 Q That's your husband's cousin. I didn't realize that,
12 okay. We have his ID and we know who he is.
13 When you said the girlfriend was yelling, and
14 what did you say.

15 A There you go babe, there you go babe.

16 Q So meaning?

17 A She was telling him - - -

18 Q She was tracking him?

19 A Yes.

20 Q Where he was?

21 A Yes.

22 Q Okay, where did you hear her voice did it go from
23 inside the building or was it from outside ?

24 A Outside.

25 Q It was definitely outside?

1 A Yes.

2 Q Okay. Then how long did you stay at the window
3 after this all happened? You saw it all the way to
4 the cops pulled up?

5 A After I saw the Plaintiff go to the back I came
6 downstairs to see what happened to see if he got
7 hit or whatever and saw this man on the ground
8 and his girlfriend over him so I asked her is he
9 breathing because I'm a nurse.

10 Q Yes.

11 A I went and asked her was he breathing and she
12 said no, he wasn't breathing at that time. I don't
13 know if they revived him before he left or
14 whatever. I don't know.

15 Q I don't know what his status is right now. I think
16 they brought him back and hopefully it's still the
17 case. I don't know for sure.

18 A By that time I was coming back and the cops were
19 coming up and had the Plaintiff on the ground.

20 Q Okay. Anything I'm missing that maybe I should
21 have asked you that I didn't. Is there something
22 you still want to tell me that I need to know.

23 A No, that was it. That was all I heard and saw.

24 Q Okay. Did you hear anybody of the two males yell
25 or say anything. Did you hear any words out of

1 their mouths?

2 A No, I didn't hear no words. I just heard the shots,
3 I didn't hear no words from neither one of them.
4 After she hollered here we go, I just heard the
5 shot, and I heard another shot and I then I heard
6 another shot, and then I heard another shot, and
7 that was all the shots I heard.

8 Q Okay.

9 A That's when I found out he was on the ground
10 because I went to my back door to look and I was
11 like h, my God, he's on the ground.

12 Q Did you see where he was hit?

13 A In the neck.

14 Q In the neck, and I think that's when I saw my
15 husband's cousin over him saying come on, come
16 on, man like he was trying to help him up. He
17 really didn't want to shoot at him or whatever. He
18 was trying to get in his car to leave.

19 Q I think that's all the questions I have for you. Do
20 you have any questions for me that I can answer
21 for you?

22 A No. That's all I can say.

23 Q I appreciate your time.

24 A Thank you.

25 Q The end of the interview time is 6:44.

**TIDELANDS HEALTH****WORK/SCHOOL EXCUSE**DATE: 6-14-17PATIENT: Lillian Denise Brookington

was seen at:

Tidelands Waccamaw Community Hospital _____
4070 Highway 17 Bypass
Murrells Inlet, SC 29576

Tidelands Georgetown Memorial Hospital ☒
P.O. Box 421718
606 Black River Road
Georgetown, SC 29442

and may return to work / school on: _____

COMMENTS: Above listed person was admitted on
6/13/17 and will remain in hospital till
MD release.

Provider's signature: B. S. Williams

Patient Copy



MC-EXCU 7834

EXCU

WITNESSES

Jarrod Mackin Myrtle Beach Police Department

DOCKET NO. 2015-GS-26- 00011

The State of South Carolina

County of Horry

J. Scott Huckle

14H00478

COURT OF GENERAL SESSIONS

January, 2015 TERM

FILED
HORRY COUNTY

2015 JAN 27 AM 8:39

MELANIE HUGGINS-WARD
CLERK OF COURT

DATE RECEIVED FROM
GRAND JURY

ARREST WARRANT NUMBER

2014A2620600155

CDR: 0116 16-03-0010, 0020

DOA: 1/29/2014

THE STATE

VS.

Antwuan L Nelson

B/M

DOB:

SSN:

ATTORNEY: Charles D. Barr

ACTION OF GRAND JURY

TRUE BILL

Bob Harris

Foreperson of Grand Jury

Date: JAN 22 2015

VERDICT

Indictment for

Murder

ORIGINAL

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on January 22, 2015, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010, 0020

That Antwuan L Nelson did in Horry County, on or about January 27, 2014, willfully, feloniously, and intentionally kill the victim, Michael Rogers, with malice aforethought, either express or implied, by means of Shooting him with a rifle, and the victim did die as a proximate result thereof on or about January 27, 2014 in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

499
WITNESSES

Jarrod Mackin Myrtle Beach Police Department

DOCKET NO. 2015-GS-26-00012

The State of South Carolina

County of Horry

J. Scott Hicks

14H00478

COURT OF GENERAL SESSIONS

January, 2015 TERM

FILED
HORRY COUNTY

2015 JAN 27 AM 8:39

MELANIE HUGGINS-WARD
CLERK OF COURT

DATE RECEIVED FROM
GRAND JURY

ARREST WARRANT NUMBER

2014A2620600156

CDR: 0549 16-23-0490

DOA: 1/29/2014

THE STATE

vs.

Antwuan L Nelson

B/ M

DOB: [REDACTED]

SSN: [REDACTED]

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: JAN 29 2015

ATTORNEY: Charles D. Barr

VERDICT

**Indictment for
POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME**

ORIGINAL

Foreperson of Petit Jury
Date:

Jimmy A. Richardson, II, Solicitor

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on January 22, 2015, the Grand Jurors of Horry County present upon their oath:

**POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME**

CDR: 0549 16-23-0490

That Antwuan L Nelson did in Horry County, on or about January 27, 2014, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

501

WITNESSES

Jarrod Mackin Myrtle Beach Police Department

DOCKET NO. 2015-GS-26-00013

The State of South Carolina

County of Horry

J. Scott Hicks

14H00478

COURT OF GENERAL SESSIONS

January, 2015 TERM

FILED
HORRY COUNTY

2015 JAN 27 AM 8:39

MELANIE HUGGINS-WARD
CLERK OF COURT

DATE RECEIVED FROM

GRAND JURY

ARREST WARRANT NUMBER

2014A2620600159

CDR: 3014 44-53-0375 (B) (1)

DOA: 1/29/2014

THE STATE

VS.

Antwuan L Nelson

B/M

DOB:

SSN:

ATTORNEY: Charles D. Barr

ACTION OF GRAND JURY

TRUE BILL

Bob Harris

Foreperson of Grand Jury

Date: JAN 22 2015

VERDICT

Indictment for
POSSESSION WITH INTENT TO
DISTRIBUTE COCAINE BASE

ORIGINAL

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury

Date:

Trial Not Guilty
Lamy B. Hymen
Natalie Dahl
6/15/17

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT,

At a Court of General Sessions, convened on January 22, 2015, the Grand Jurors of Horry County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE

CDR: 3014 44-53-0375(B) (1)

That Antwuan L Nelson did in Horry County on or about January 27, 2014, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt, or conspire to distribute, dispense or deliver a quantity of Cocaine Base, a controlled substance under the provisions of Section 44-53-110, et seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-375(B), S. C. Code of Laws, 1976, as amended.

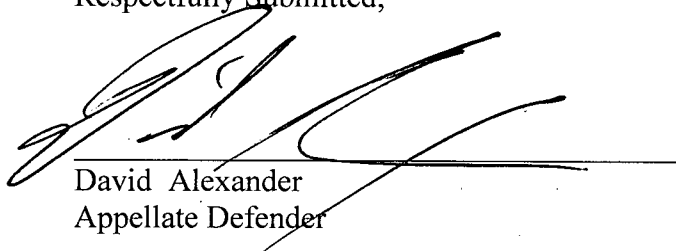
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

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 20th day of August, 2018.

RECEIVED
AUG 20 2018
SC Court of Appeals