

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES KEVIN BETHEL,

APPELLANT

APPELLATE CASE NO. 2013-002478

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT # 71 (Video)

STATE'S EXHIBIT # 157 (Video)

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2 County of Richland) Of General Sessions

3
4 Indictment No.: 2012-GS-40-5302
2012-GS-40-4975

5
6 State of South Carolina,)
7 Plaintiff.)
8 vs.) Partial
9) Transcript of Record
10 James Bethel,)
Defendant.)

11
12 November 4-5, 2013
13 Columbia, South Carolina

14 B E F O R E:

15 The Honorable Deadra Jefferson, Judge and a jury.

16
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1 reviewing my copy of the prior record, I don't see anything
2 that would be impeachable.

3 THE COURT: Okay. So you have that available --

4 MS. CAMPBELL: Yes, all his charges and
5 convictions.

6 MR. SHAFFER: That's correct.

7 THE COURT: All right. So we don't have any other
8 pretrial matters that we need to deal with, correct?

9 MR. SHAFFER: Your Honor, there is -- actually
10 there is one other thing.

11 THE COURT: Okay.

12 MR. SHAFFER: I'm relatively certain I have the
13 answer to this.

14 THE COURT: Okay.

15 MR. SHAFFER: I don't believe the State's going to
16 bring up any gang notice --

17 THE COURT: Any what?

18 MR. SHAFFER: There is some evidence of gang
19 affiliation on both sides of this.

20 THE COURT: Okay.

21 MR. SHAFFER: And I think that the State is going
22 to not bring that up and I think that --

23 MS. CAMPBELL: The only thing in reviewing the
24 statements that I noticed is one of the statements it was
25 mentioned that Mr. Bethel may have given some gang signs.

1 If you want, to make it clean, we'll be able to not to
2 mention that fact.

3 THE COURT: That probably would be prudent.

4 MR. SHAFFER: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 Anything else we need to take up before we adjourn
7 and begin in the morning?

8 MR. SHAFFER: No, Your Honor.

9 THE COURT: All right. Have a good afternoon. If
10 y'all could for me, please, pre-mark as many exhibits as
11 you can and get that list together with the court reporter
12 so that we're not piece milling exhibits. So if there's
13 anything y'all can agree to ahead of time, get with the
14 court reporter in the morning before we get started and
15 have those marked so that I can have, like for example
16 State's 1 through 25 admitted without objection and we
17 don't have to go through all that; and any defense exhibits
18 pre-marked as well.

19 MS. CAMPBELL: Yes, Your Honor.

20 MR. SHAFFER: Thank you Your Honor.

21 (WHEREUPON court was in recess until the following
22 morning.)

23 TUESDAY, NOVEMBER 5, 2013

24 THE COURT: Have you all finished pre-marking the
25 exhibits?

1 cognitive ability to understand what was being explained to
2 him. Based -- I'd stand by the Court's earlier ruling.

3 MR. SHAFFER: Thank you, Your Honor.

4 THE COURT: You're welcome.

5 MS. WALKER: May I put additional photos on the
6 record that Mr. Shaffer and I have already agreed to.

7 THE COURT: Sure. Put numbers to those.

8 MS. WALKER: Your Honor, they are going to be 78
9 through 156.

10 THE COURT: Is that correct, Mr. Shaffer?

11 MR. SHAFFER: I apologize, Your Honor?

12 THE COURT: That's okay. Numbers 78 through 156.

13 MS. WALKER: With the exception of ones that were
14 withdrawn.

15 MR. SHAFFER: Yes, Your Honor. I have no objection
16 other than the ones that were withdrawn.

17 THE COURT: Well, if they were withdrawn, they
18 don't matter.

19 THE COURT: So she said 78 through 156, I would
20 assume by virtue of the fact that those others have been
21 withdrawn and one has been marked for ID that would not be
22 inclusive to have numbers in without objection, correct?

23 MR. SHAFFER: Yes, Your Honor, that's correct.

24 THE COURT: All right.

25 MS. WALKER: And I think also, Lastly, Your Honor,

1 with regards to the chain of custody --

2 THE COURT: Uh-huh.

3 THE COURT: I think we agree to stipulate to, we
4 will stipulate to the chain with the exception of the
5 video, Your Honor, that depicts the incident. Everything
6 else has been stipulated to.

7 MR. SHAFFER: Other than the shell casings.
8 Because of the --

9 MS. WALKER: I'm not --

10 MR. SHAFFER: Your Honor, I don't have a problem
11 with the State's Exhibits, I have a problem with the shell
12 casings.

13 THE COURT: Okay. What are you all stipulating to
14 the chain then?

15 MR. SHAFFER: Outside of the video and outside of
16 the shell casings are the only two things that I did not
17 stipulate to the chain.

18 MS. WALKER: Your Honor, that would leave the
19 buccal swabs from the victim and defendant in this case, as
20 well as the swabs of the clothing from the clothes that the
21 defendant and victim were wearing that night. And that's
22 all I see that's on here.

23 THE COURT: Okay. Is there anything else we need
24 the take up before opening instructions as well as the
25 beginning of the trial?

1 MS. WALKER: Nothing from the State, Your Honor.

2 MR. SHAFFER: Nothing from the defense, Your Honor.

3 THE COURT: All right. Y'all bear with me just one
4 moment, I need to get something out of my chambers.

5 (WHEREUPON there was a pause in the proceedings.)

6 THE COURT: Is the State ready to proceed?

7 We need notebooks and either pens or pencils,
8 whatever.

9 (WHEREUPON the clerk went to get notebooks for the
10 jury.)

11 (WHEREUPON there was a pause in the proceedings.)

12 THE COURT: Are they getting the jury?

13 THE CLERK: You're ready?

14 THE COURT: Uh-huh.

15 THE CLERK: Mr. Dry, bring the jury.

16 THE COURT: Where do y'all want the foreperson to
17 sit?

18 THE BAILIFF: Right here.

19 Jurors are all present, Your Honor.

20 THE COURT: Thank you.

21 Madame Clerk, if you would swear the jury, please.

22 Ladies and gentlemen please stand and raise your
23 right hand to be sworn.

24 (WHEREUPON the jury was sworn at 10:37 p.m.)

25 THE CLERK: Thank you, you may take your seat.

1 form and writes out any questions you may have during
2 deliberations. That person does not have any greater vote
3 or voice than you do in this process and the selection of
4 the foreperson is completely random and to ensure that a
5 cross section of the community is represented in that
6 function. Again, it is purely administrative and that
7 person does not have any greater vote of voice than you do.

8 In order to preserve everyone's rights, I'm going
9 to give the parties an opportunity to take exception to
10 anything that the Court has said by way of opening
11 instruction.

12 Are there any exceptions from the State?

13 MS. WALKER: None from the State, Your Honor.

14 THE COURT: From the defense?

15 MR. SHAFFER: None, Your Honor.

16 THE COURT: Ladies and gentlemen, I would ask that
17 you give the attorneys your undivided attention. The State
18 may proceed when it's ready.

19 MR. SHELLENBERG: Thank you, Your Honor, may it
20 please the Court.

21 THE COURT: Give us a few minutes while we take
22 care of some things.

23 (WHEREUPON, there was a bench conference with the
24 clerk of court out of the hearing of the jury and the Court
25 Reporter.)

1 **THE CLERK:** We need to have our alternates in the
2 back row. That would be Juror No. 122 and 13. And the
3 other people come forward, please and take a seat. Thank
4 you.

5 **THE COURT:** Thank you all for accommodating us.
6 You may proceed.

7 **MR. SHELLENBERG:** Thank you, Your Honor, may it
8 please the Court?

9 **THE COURT:** Yes, sir.

10 **OPENING STATEMENTS**

11 **MR. SHELLENBERG:** Dwayne Franklin and Kendron Hope
12 were just trying to do their jobs. They were bouncers in a
13 strip club called Mr. Lucky's off . They were
14 trying to kick out James Bethel and the group that he was
15 with that night. And as Dwayne Franklin escorted the group
16 to the parking lot, James Bethel walked around behind him,
17 pulled a gun, pointed at the back of his head and murdered
18 him; and then tried to do the same to Kendron Hope. A man
19 is dead for doing his job. A family is left without that
20 son, who was simply trying to do his job.

21 Ladies and gentlemen, my name is J.J. Shellenberg,
22 along with the Assistant Solicitor's Luck Campbell and
23 Megan Walker. We represent the State of South Carolina.
24 It's our job to prosecute cases here in Richland County and
25 over in Kershaw County and that's why we're here today.

1 We're here because to have a senseless act of violence that
2 James Bethel did that night and he is charged with murder
3 of Dwayne Franklin and attempted murder of Kendron Hope.

4 Now, ladies and gentlemen, in the State of South
5 Carolina, murder is defined as the unlawful killing of any
6 human being with malice aforethought, whether express or
7 implied. Attempted murder is defined as with the intent to
8 kill, attempting to kill any human being with malice
9 aforethought whether express or implied. Murder and
10 attempted murder.

11 Now, the State has the burden to prove their case
12 beyond a reasonable doubt. Now, what does that mean? That
13 does not mean that we have to prove our case beyond all
14 doubt, just one that leaves you firmly convinced of the
15 defendant's guilt. And ladies and gentlemen, in this case,
16 it's a burden we welcome and it's a burden we will prove
17 because in this case, ladies and gentlemen, we know with
18 what happened. We know what happened that night because
19 the events that evening, the murder, was captured on the
20 video cameras at Mr. Lucky's and you'll get to see the
21 video.

22 You'll get to see James Bethel and the group he was
23 with arrive at Mr. Lucky's around one o'clock in the
24 morning and go inside. You'll get to see how throughout
25 the night, Mr. Bethel and the group he was with having

1 problems with bouncers. And bouncers attempt to kick the
2 group out multiple times, only to have them let back in.

3 And then finally on the video, you'll see around
4 3:30 in the morning, James Bethel and his group are kicked
5 out for good. You'll see it on the porch of Mr. Lucky's.
6 Mr. Bethel gets in an argument with some of the bouncers.
7 And then, ladies and gentlemen -- and I apologize for this,
8 but you are going to see a murder happen on video. You're
9 going to see Dwayne Franklin walk into the parking lot,
10 escorting this group out and as he has his back turned
11 towards James Bethel, James Bethel walks around, pulls out
12 a gun and murders him. And then attempts to do the same to
13 Kendron Hope.

14 Now, Kendron, was allowed to carry a gun and he
15 shot back at James Bethel and he hit James Bethel twice.
16 He hit him once in the shoulder and once in the back.
17 James ran to the neighboring apartment complex, the
18 , where he tried to knock on any
19 apartment door that would let him in and no one did. And
20 while that was happening, the police set up a perimeter
21 around . And they caught him,
22 sitting outside one of the apartments, bleeding.

23 And you're going to get to hear about the
24 statements James made to the police. He told police that
25 he was shot and robbed in the , at

1 least four miles away. But then the story changed. And he
2 said, no, I was actually robbed at the
3 and shot, where he was found. But he wasn't at Mr.
4 Lucky's that night.

5 Now, ladies and gentlemen, the evidence will show,
6 James Bethel was at Mr. Lucky's. You're going to hear up
7 here from many of the people that were there that night,
8 that interacted with James Bethel. You're going to hear
9 from the bouncers that had problems with James Bethel.
10 You're going to hear from Kendron Hope who was shot at by
11 James Bethel; and you're going to hear from Fred Simpkins,
12 who was one of the managers there that night. And David
13 Richardson, who was actually off, but was called in because
14 of these disturbances, who picked James Bethel out of a
15 photo lineup as the man who killed Dwayne Franklin. Now,
16 on top of that, ladies and gentlemen, you're going to get
17 to see the video that clearly shows James Bethel at the
18 club, that shows him walk out to the parking lot and it
19 shows him murder Dwayne Franklin and attempt to murder
20 Kendron Hope that night.

21 Now, ladies and gentlemen, at the end of this week,
22 the evidence will show and prove the events I've told you
23 about here today and we'll come back before you and we'll
24 ask that you hold James Bethel responsible for the
25 senseless violence that he caused the night of August 19th

1 and that you give justice to Kendron Hope and to the family
2 of Dwayne Franklin. And we're going to ask that you return
3 a verdict of guilty on the murder and attempted murder.

4 Thank you.

5 THE COURT: Mr. Shaffer, you may proceed.

6 MR. SHAFFER: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 MR. SHAFFER: Good morning everybody. My name is
9 Tristan Shaffer and I practice over in Lexington and today
10 I represent James Bethel. And I'm going to be really
11 brief, but I wanted to tell y'all one very important thing.
12 There's more to this case than meets the eyes. By that, I
13 mean literally, there's more to this case than what you're
14 going to be able to see on the video.

15 I know a lot of people whenever they heard of the
16 video, they were probably thinking to themselves, well then
17 why are we here if there's a video of him shooting
18 somebody. The reason you're here is that not all shootings
19 are murders.

20 What is murder? I made y'all a sign. Actually, I
21 had it from a while ago, but it's directly from the
22 statute. It says murder is the killing of any person with
23 malice aforethought.

24 Malice. That is what you're here to decide -- two
25 things really -- malice aforethought and whether or not the

1 shooting was lawful. That's what you're here to decide.
2 And that's what the video's not going to show you. And
3 what Mr. Shellenberg didn't mention to y'all, he's off
4 camera for about 45 seconds. Now you're going to hear a
5 lot of stories about what happened while he was off camera
6 for those 45 seconds. And I imagine that every single one
7 of those stories will be slightly different from each
8 other. Some of them might be very different from each
9 other. But what happened in those 45 seconds is why y'all
10 are here, to determine whether or not that shooting that is
11 captured on camera. James Bethel did shoot. That was
12 captured on camera -- whether or not it's a lawful shooting
13 and whether or not there was malice aforethought whenever
14 he shot...

15 Now, the judge told you earlier that nothing I say
16 is evidence and I'm not trying to say y'all need to listen
17 to me, just like you don't need to listen to the State and
18 believe everything that we're saying or believe our
19 theories, because our theories aren't evidence. Our
20 opinions aren't evidence. Lawyers' opinions are not
21 evidence in this case.

22 All the evidence is going to come from that stand
23 and no matter what theory the State has about the case, the
24 thing that they don't have is proof of that malice. They
25 don't have proof beyond a reasonable doubt. He mentioned

1 that. He said it's not beyond all doubt, but it's beyond
2 any reasonable doubt. He's right. It is a doubt which
3 will leave you firmly -- beyond a reasonable doubt
4 basically means you're firmly convinced of something.
5 You'll probably hear the judge say that a little bit later.
6 But we don't have a burden, okay? That's another point
7 that I need to make clear, is that we don't really have a
8 burden. We don't have any burden to prove anything to
9 y'all. The State has to prove what happened in those 45
10 seconds and whether or not there was malice. That's
11 important because if you look at the State's table, there's
12 three lawyers and probably two investigators. You look at
13 my table, it's me and James.

14 All right. That's a reason we don't have a burden,
15 because you can't expect us to be able to prove everything
16 that occurred that night. But the State's going to have to
17 explain to y'all where you're firmly convinced that there
18 was no malice -- or that there was malice; otherwise, he's
19 not guilty of murder.

20 Now, I said previously that there's going to be a
21 whole lot of different versions of the facts. And I want
22 y'all to listen closely to every single witness on that
23 stand. A lot of the witnesses will probably be called for
24 the sole purposes that the shooting happened and that James
25 shot him. There will be a lot of witnesses that say that.

1 But listen for that malice. See what the proof of the
2 actual malice is; not of the killing. There's a kind of
3 proof that the killing occurred, but look for proof of that
4 malice and look for proof of whether or not it was a lawful
5 killing. And you're going to hear something -- and I'm not
6 going to tell you what it is because I have a general rule
7 that I don't get into any specifics during the opening
8 statement -- but y'all are going to hear something and when
9 y'all do, you'll know why I say that there's no malice in
10 this case. And by the closing arguments, you'll know what
11 I'm talking about.

12 So in conclusion, I just say, keep an open mind
13 because, you know, the way our system is designed, the
14 State gets to go first. You don't get to hear my side of
15 the story first and it's unfair for y'all to make up your
16 mind. By the time I get to actually present our side of
17 the story because we all know there's two sides to every
18 story. And I want y'all to stay focused. Stay focused on
19 the stuff that's in dispute: Malice and whether or not
20 this was a lawful killing.

21 Thank you.

22 **THE COURT:** You may call your first witness.

23 **MR. SHELLENBERG:** State would call Officer Sheila
24 Aull.

25 ///

Sheila Aull - Direct Examination by Mr. Shellenberg

1 SHEILA AULL,
2 having been duly sworn, testified as follows:

3 THE CLERK: Have a seat in the witness box. State
4 your name for the record and spell it, please.

5 THE WITNESS: My name is Sheila Aull, S-h-e-i-l-a
6 A-u-l-l.

7 DIRECT EXAMINATION

8 BY MR. SHELLENBERG:

9 Q Investigator Aull, can you please tell the Court
10 what you do for a living?

11 A Well, I work for the Richland County Sheriff's
12 Department as a road deputy.

13 Q And how long have you been doing that?

14 A I've been doing it for ten, eleven years.

15 Q And were you employed by Richland County back on
16 August 12, 2012 -- or August 19, 2012? I apologize.

17 A Yes, sir.

18 Q What were you -- what was your duties then?

19 A I was a road deputy.

20 Q And were you working that night?

21 A Yes, I was.

22 Q Did you receive a call from Mr. Lucky's?

23 A Yes, I did.

24 Q And do you remember what that call was in reference
25 to?

Sheila Aull - Direct Examination by Mr. Shellenberg

1 A A call came out from dispatch in reference to
2 several shots be heard from -- coming from Mr. Lucky's
3 located off of .

4 Q And were you the first one to arrive?

5 A Yes, I was.

6 Q And where is Mr. Lucky's located?

7 A It's located off of .

8 Q Here in Richland County?

9 A That's correct.

10 Q Okay. When you arrived at the scene, could you
11 just describe to the jury a little bit what you saw?

12 A Well, also in the call that we got from dispatch,
13 it was also noted that there was one subject that was
14 done -- one subject hit. Whenever I arrived on scene, I
15 was the first one on the scene and when I arrived on scene,
16 there was a black male that was laying on his back in front
17 of Mr. Lucky's nightclub. He was unresponsive and he
18 started bleeding from the back of his head.

19 There was a large crowd around and several patrons
20 that had started pointing toward certain subjects near a
21 silver SUV stating that they knew who shot the subject.

22 Q Did you have a chance to speak with anyone in
23 particular?

24 A I talked to several subjects. I don't remember
25 their names except for the bouncer -- the bounce -- one of

Sheila Aull - Direct Examination by Mr. Shellenberg

1 the bouncers that I did talk to, which is the bouncer who
2 did shoot back at the subject that's in question.

3 Q And did he tell you what occurred that evening?

4 A Yes, he did.

5 Q And as the first deputy on the scene, what are your
6 duties?

7 A First responders are supposed to make sure that the
8 perimeter is secure and to make sure that all -- any type
9 of witnesses or anything like that gave any type of
10 statements or anything like that, make sure that the crime
11 scene is secure more than anything and that everyone is
12 safe and to get medical attention to those in need.

13 Q If I show you a copy of your incident record, would
14 that help you refresh your memory?

15 A Yes, it would.

16 MR. SHELLENBERG: Your Honor, may I approach?

17 THE COURT: You may.

18 BY MR. SHELLENBERG:

19 Q I'll let you look at that just one second.

20 A Okay.

21 Q So you did have a chance to speak to him. Do you
22 remember what you and the bouncer talked about and what his
23 name was?

24 A Yes, sir, it was the security bouncer, which was a
25 Mr. Kendron Hope and he had stated that --

Sheila Aull - Direct Examination by Mr. Shellenberg

1 MR. SHAFFER: Objection, Your Honor.

2 THE COURT: Basis?

3 MR. SHAFFER: Hearsay.

4 THE COURT: Sustained.

5 MR. SHELLENBERG: Yes, Your Honor.

6 BY MR. SHELLENBERG:

7 Q But you just had the chance to speak with Mr. Hope?

8 A Yes, I did.

9 Q Okay. I'm going to show you what has been marked
10 as State's 84. Do you recognize that?

11 A Yes, sir.

12 Q And what do you recognize it as?

13 A That's the area where Mr. Lucky's is located, along
14 with the , located off of .

15 Q All right. Your Honor, at this time, I'd move to
16 State's 84 into evidence?

17 THE COURT: I believe all of those have been
18 admitted without objection.

19 MR. SHELLENBERG: All right.

20 BY MR. SHELLENBERG:

21 Q Who else did you have a chance to speak with over
22 the course your investigation?

23 A I -- the assistant -- there were two, actually
24 three people that I ended up detaining because of the
25 patrons that were around who were pointing to the vehicle

Sheila Aull - Cross-Examination by Mr. Shaffer

1 with the people that were near that vehicle, that silver
2 vehicle, S"UV, stating that they had been involved, that
3 they know who the person was who shot him.

4 So I detained three subjects, two females and a
5 male subject. And I detained them and one of the females
6 were telling me that the male subject --

7 **MR. SHAFFER:** Objection, Your Honor.

8 **THE COURT:** Sustained, hearsay.

9 **BY MR. SHELLENBERG:**

10 Q Do you remember the names by any chance?

11 A I can't pronounce her name, Kashena, something like
12 that, Bethel and there was another -- all three of the last
13 names were Bethel.

14 Q Okay.

15 **MR. SHELLENBERG:** Beg the Court's indulgence.

16 (WHEREUPON there was a pause in the proceedings.)

17 **MR. SHELLENBERG:** No further questions. Thank you
18 investigator.

19 **THE COURT:** Any questions of this witness?

20 **MR. SHAFFER:** Just a few.

21 **CROSS-EXAMINATION**

22 **BY MR. SHAFFER:**

23 Q Deputy Aull, you said that there was a large crowd;
24 correct?

25 A That's correct.

Sheila Aull - Cross-Examination by Mr. Shaffer

1 Q How many people, would you think?

2 A I have no idea, maybe a hundred. Maybe.

3 Q Maybe a hundred? Certainly more than ten or
4 fifteen?

5 A Absolutely.

6 Q Okay. Do you work in that area? Is that is Region
7 Four?

8 A Yes, I do. That is considered Region Four.

9 Q Okay. And that's off of , right?

10 A That's correct.

11 Q Okay. Do y'all get a lot of calls from Lucky's?

12 A Periodically.

13 Q Just periodically.

14 A I can't say that we don't, but I can't say that we
15 get a whole lot of them, just it's periodically.

16 Q Okay.

17 MR. SHAFFER: No further questions.

18 THE COURT: Any redirect of the witness?

19 MR. SHELLENBERG: Nothing, Your Honor

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

22 MR. SHELLENBERG: None, Your Honor.

23 THE COURT: From the defense?

24 MR. SHAFFER: None, Your Honor.

25 THE COURT: Ma'am, you're excused.

Edward Simpkins - Direct Examination by Mr. Shellenberg

1 THE WITNESS: Thank you.

2 THE COURT: Call your next witness.

3 MR. SHELLENBERG: The State calls Edward Simpkins.

4 EDWARD SIMPKINS,

5 having been duly sworn, testified as follows:

6 THE CLERK: Have a seat in the witness box. State
7 your name for the record and spell it, please..

8 THE WITNESS: It's Edward Simpkins.

9 S-i-m-p-k-i-n-s.

10 THE COURT: Could we lower that microphone for a
11 moment, please. Thank you, sir.

12 You may proceed.

13 **DIRECT EXAMINATION**

14 BY MR. SHELLENBERG:

15 Q Mr. Simpkins, where are you employed?

16 A Mr. Lucky's.

17 Q And how long have you been employed there?

18 A About seven years.

19 Q So you were employed back on August 19th, 2012?

20 A Yes, sir.

21 Q And what are your duties there?

22 A Well, basically like the general manager there.

23 Q Do you have the ability to oversee the videos of
24 surveillance cameras?

25 A Yes, sir.

Edward Simpkins - Direct Examination by Mr. Shellenberg

1 Q Do you -- do you check them on a daily basis --
2 what -- like, what kind of loop do they run in or is
3 there --

4 A It's usually -- it records again after about a
5 week.

6 Q Okay. How many cameras do you have there?

7 A I believe seven or eight.

8 Q And were they in working order on the evening of
9 August 19th?

10 A Yes, sir.

11 Q And what do the cameras record?

12 A Where, the location --

13 Q Yeah?

14 A -- of the cameras?

15 Okay. We have one outside, one in the lobby and
16 the majority of them I would say is on the outside.

17 Q And were they in normal working condition August
18 19th, 2012?

19 A Yes, sir.

20 Q And were you working that evening?

21 A I actually was off, but I came up that night,

22 Q So you had a chance to observe some of the events
23 of the evening?

24 A Yes, sir.

25 Q I'm going to show you what's been marked as State's

Edward Simpkins - Direct Examination by Mr. Shellenberg

1 157. Do you recognize that?

2 A Yes, sir.

3 Q And what is it?

4 A I believe that's the video we gave to the
5 investigators that night.

6 Q Okay. Have you had an opportunity to view that
7 video?

8 A Yes, sir.

9 Q And does that video fairly and accurately depict
10 the events that took place that evening?

11 A Yes, sir. Yes.

12 Q I'm going to show you one other video. It's
13 State's 71. Did you have a chance to view that?

14 A Yes, sir, I did.

15 Q And has that video been altered in any way compared
16 to the other video?

17 A I think that's the one that was edited?

18 Q Yes, sir.

19 MR. SHELLENBERG: Your Honor, at this time, we'd
20 move State's 134 and State's -- or 157, I apologize and
21 State's 71 into evidence.

22 THE COURT: You said 157?

23 MR. SHELLENBERG: Yes, ma'am.

24 THE COURT: Any exemption to that --

25 MR. SHAFFER: Your Honor, before we --

Edward Simpkins - Direct Examination by Mr. Shellenberg

1 **THE COURT:** I just.

2 **THE COURT:** No speaking objections. Approach.

3 (WHEREUPON, there was a bench conference out of the
4 hearing of the jury and the Court Reporter.)

5 **THE COURT:** Marked and admitted subject to the
6 objection -- overruling of the objection goes to weight and
7 not admissibility. The authenticity of the videos having
8 been established as well as their chain of custody and the
9 the fact that they were kept in the ordinary course of
10 business.

11 You may proceed.

12 **MR. SHELLENBERG:** Your Honor, at this time, we'd
13 like the publish the edited version to the jury.

14 **THE COURT:** You may proceed.

15 **MR. SHELLENBERG:** Thank you.

16 **THE COURT:** And State's 159 is marked for ID only,
17 ma'am.

18 **THE COURT REPORTER:** 157?

19 **THE COURT:** 157, I'm sorry. Did I say 159?

20 **THE COURT REPORTER:** Yes, ma'am.

21 **THE COURT:** 157 will be marked for ID only -- well.

22 **MR. SHELLENBERG:** This one's the full video and
23 this one's the edited one.

24 (WHEREUPON there was discussion as to the marking
25 of the exhibits.)

Edward Simpkins - Direct Examination by Mr. Shellenberg

1 (WHEREUPON the video was set up for the Court and
2 the jurors to view.)

3 BY MR. SHELLENBERG:

4 Q (With video playing).

5 Now, what are we looking at right here?

6 A That's the outside camera at Mr. Lucky's or one of
7 the outside cameras at Mr. Lucky's.

8 Q Okay. And who are those two people down here? I
9 don't know if you know them by name or what their job is,
10 but who's standing down here on the left?

11 A That's one of the security officers.

12 Q Okay. And do you recognize this group coming in?

13 A Yes, sir. I don't know exactly everybody's name
14 that was in the group, but I believe that was the group
15 that had something to do with this situation, with the
16 shooting.

17 Q Okay. And now, where is this?

18 A That's right at the front door of Mr. Lucky's.

19 Q Okay. And now, can you tell us where we are now in
20 Mr. Lucky's?

21 A We are in the lobby of Mr. Lucky's now.

22 Q What's through that door? Is that into the club?

23 A Yes, sir.

24 Q Okay. And can you identify who that is in the gray
25 and black shirt?

Edward Simpkins - Direct Examination by Mr. Shellenberg

- 1 A Yes, sir.
- 2 Q And who is that?
- 3 A James Bethel.
- 4 Q Do you see the victim in the video right now?
- 5 A Yes, sir.
- 6 Q And which one is the victim?
- 7 A The dark-skinned guy the if long dreads.
- 8 Q Okay.
- 9 A With the black shirt on.
- 10 Q The black shirt and the braids?
- 11 A Yes, sir.
- 12 Q Okay. And where are they now?
- 13 A On the outside.
- 14 Q Okay.
- 15 A To the right of the building.
- 16 Q Okay. And this is back out front?
- 17 A Yes, sir.
- 18 Q Who is this in the plaid shirt?
- 19 A That's the other manager there.
- 20 Q And what's his name?
- 21 A Fred Simpkins.
- 22 Q Is this the victim right here with the braids that
- 23 you identified?
- 24 A Yes, sir.
- 25 Q And this is back in the side parking lot?

Edward Simpkins - Direct Examination by Mr. Shellenberg

1 A Yes, sir, to the right side.

2 Q Now, do you recognize the guy talking to your
3 brother right here?

4 A Yes, sir.

5 Q And who is that?

6 A Jamie Bellomy.

7 Q On the right, right here?

8 A Yes, sir.

9 Q All right. Now, is that James talking to the
10 victim right there?

11 A Yes, sir.

12 Q And this is where they're being thrown out?

13 MR. SHAFFER: Objection, Your Honor.

14 THE COURT: Sustained, lack of foundation.

15 (WHEREUPON the video was watched to the end.)

16 MR. SHELLENBERG: Anyone need a tissue? You all
17 right?

18 BY MR. SHELLENBERG:

19 Q I'm just going to ask you a few questions. What
20 time did you arrive at the club that night.

21 A I'm not exactly sure to be honest. I don't know
22 what exact time it was. It was like over in the evening.

23 Q And, what, if anything, did you observe that
24 evening?

25 A Specifically what I saw outside or from the whole

Edward Simpkins - Direct Examination by Mr. Shellenberg

1 evening?

2 Q I guess from when you got there until you got
3 outside. If you could just give us a...

4 A Basically I got there that evening and I was told
5 that we had some clowns that was in the building --

6 MR. SHAFFER: Objection, Your Honor. Hearsay.

7 THE COURT: You cannot say what someone else said.

8 Sustained.

9 BY MR. SHELLENBERG:

10 Q You can just go through what you --

11 A What I physically saw?

12 Okay. I arrived at the business, came inside. Saw
13 a couple of crowds that was a little rowdy. I began to try
14 to intervene and speak to one of the crowds.

15 Q Okay. You know --

16 A Yeah.

17 Q -- don't say what anyone --

18 A Yeah, I spoke to James Bethel that night. So...

19 Q Is he in the courtroom right now?

20 A Yes, sir.

21 Q Can you identify him?

22 A That one right there with the blue shirt and the
23 black tie on.

24 Q Sitting next to his attorney?

25 A Yes, sir.

Edward Simpkins - Cross-Examination by Mr. Shaffer

1 Q So I -- we was trying to keep down the confusion
2 and whatnot. I separated the -- Mr. James Bethel and his
3 group and the bouncer, Dwayne. We was sitting at the bar.
4 At that point, James Bethel and his group was leaving.
5 Apparently, I guess, he -- not James Bethel, but one of the
6 clients that was with him fought -- I saw him talking, so
7 that's when Dwayne got up and followed him out to the
8 business to make sure they was escorted out and we all
9 walked out to make sure they got escorted out.

10 And that's when all the commotion started. At that
11 time, Dwayne got to the parking lot and was then shot by
12 Mr. James Bethel here.

13 Q All right.

14 MR. SHELLENBERG: Beg the Court's indulgence.

15 THE COURT: Uh-huh.

16 MR. SHELLENBERG: No further questions, thank you.

17 THE COURT: Any questions for the witness?

18 MR. SHAFFER: Yes.

19 **CROSS-EXAMINATION**

20 BY MR. SHAFFER:

21 Q Mr. Simpkins, your brother is Frederick Simpkins,
22 right?

23 A Yes, sir.

24 Q Okay. That was the other manager in the plaid
25 shirt?

Edward Simpkins - Cross-Examination by Mr. Shaffer

- 1 A Yes, sir.
- 2 Q Okay. Just for the sake of keeping everyone
3 straight, would you mind if I called you Edward?
- 4 A Yeah, that's fine.
- 5 Q All right, Edward. I haven't spoken to you,
6 correct?
- 7 A No, sir.
- 8 Q Okay. You didn't give a statement that night, did
9 you?
- 10 A Could you repeat that question again?
- 11 Q You didn't give a statement to the police that
12 night?
- 13 A No, sir.
- 14 Q Okay. So because of that, I'm going to go through
15 a little bit of background information?
- 16 A Okay.
- 17 Q Now, you and your brother both manage the club,
18 right?
- 19 A Correct.
- 20 Q Okay. Y'all are the owners, right?
- 21 A No, sir, we're not the owners.
- 22 Q Okay. Who's the owner?
- 23 A It's actually my parents. My mother, basically.
- 24 Q Okay. But y'all manage it for her?
- 25 A Correct.

Edward Simpkins - Cross-Examination by Mr. Shaffer

1 Q Okay. How long has the club been there?

2 A I would estimate 17 or 18 years.

3 Q And you said that there was seven or eight cameras;
4 is that right?

5 A I believe so, yes, sir.

6 Q And just so I know, are all those cameras, do they
7 actually show video or are some of them blank?

8 A I believe all of them show video.

9 Q They all show video?

10 A Yes, sir.

11 Q Okay. And you -- your testimony was you provided a
12 copy of every one of the cameras to -- to the police,
13 right? Or a copy of the disk, right?

14 A Could you repeat that question from the beginning?

15 Q Did you pull out the -- I apologize. It was a hard
16 to understand question.

17 When you copied the disk -- you created that disk,
18 right?

19 A No. I did not.

20 Q Okay. Okay. I thought the testimony was you
21 handed the disk to the police. Did you give them the DVR
22 player?

23 A Can you clarify that question?

24 Q Okay. Your recording system all connects to a
25 digital video recorder, right?

Edward Simpkins - Cross-Examination by Mr. Shaffer

1 A That's correct.

2 Q Okay. And that's what you provided to the police?

3 A Correct.

4 Q Now, on some of those cameras, did they -- is there
5 a function where you can block out some of the cameras?

6 A No, sir, not that I know of.

7 Q Okay. Is there any explanation why some of the
8 camera's would be black? All black?

9 A Maybe bad weather; something got unplugged, or
10 knocked down could have been the case. I'm not sure.

11 Q Okay. Now, let's move onto something else.

12 I'm going to ask you to draw something. I'm going
13 to use that board instead of my own. I'm going to ask you
14 to draw sort of a rough diagram of the club to show where
15 the cameras are at and where they're facing, if you can do
16 that.

17 A I guess this would be considered the lobby area
18 right here. Over here, the door, front door.

19 Now, on this side part right here of the building,
20 there's a camera right there that was -- actually caught
21 the shooting --

22 Q Okay.

23 A -- in that area right there.

24 Q Could you put an arrow to show where it points?

25 A Into this wide area.

Edward Simpkins - Cross-Examination by Mr. Shaffer

1 Q Okay. So it shows --

2 A This a whole block right here.

3 Q Okay.

4 A It should be one, I believe, right in the front.
5 If you had -- the very front of the parking lot right
6 there.

7 Q Okay.

8 A And then the same thing on this side kind of keep
9 that whole area -- that's where that block is. That's the
10 parking lot right there. That camera's right there.

11 Let's see -- most of the rest of the cameras is
12 marked in the bar area at the bartenders, at the cash
13 register and I believe that's most of them right there.

14 Q Could you show us where the deck is?

15 A Oh, this would be the deck for the front door,
16 right there.

17 Q Okay. And the deck goes off to the side to get out
18 to the parking lot, right?

19 A Yes, sir.

20 Q Okay. Is there a ramp on there?

21 A Yes, sir.

22 Q Okay. So there's two cameras in the parking lot,
23 right?

24 A I would say three. Because there's one to the deck
25 side.

Edward Simpkins - Cross-Examination by Mr. Shaffer

1 Q Okay.

2 A One to the front side so you get the whole parking
3 lot, we can do the whole thing and then a third one right
4 here.

5 Q Does the ramp area have a camera?

6 A Yes, sir. This -- it's about right there. This
7 would be the ramp part right there. There's a camera right
8 there.

9 Q Okay. Does it show the whole ramp?

10 A It shows the majority of the ramp right there.

11 Q Okay.

12 MR. SHAFFER: Court's indulgence.

13 THE COURT: Uh-huh.

14 MR. SHAFFER: Your Honor I --

15 BY MR. SHAFFER:

16 Q I'm showing you State's Exhibit 157. The State's
17 under the impression that you did not admit. I thought you
18 did. If you're not admitting 157 --

19 THE COURT: Approach approach, please. Counsel
20 needs to approach.

21 (WHEREUPON, there was a bench conference out of the
22 hearing of the jury and the Court Reporter.)

23 THE COURT: Madame Forelady and ladies and
24 gentlemen, I have a brief matter of law to take up with the
25 attorneys. During this break, please do not discuss the

Edward Simpkins - Cross-Examination by Mr. Shaffer

1 case and please leave your notepads in your seats.

2 (WHEREUPON the jury left the courtroom at 11:52
3 a.m.)

4 THE COURT: All right. I need clarity. What is on
5 the original video? I assumed it was only being marked for
6 appellate purposes. I was going to mark it as a Court's
7 Exhibit so the Appellate Court can see exactly the clarity
8 of the video so that it could have a benchmark as to the
9 edited video. So what was edited out and is the time frame
10 accurate?

11 Sir, I need you to remain on the stand. Thank you.

12 THE WITNESS: I'm sorry.

13 THE COURT: That's okay. Don't apologize.

14 MR. SHELLENBERG: Your Honor, as far as we've
15 looked, the time frame is accurate in following James
16 Bethel that night as he appears. It was placed to make
17 sure that we followed his exact movements. The rest of the
18 video is mostly extraneous. You know, it's various --

19 THE COURT: What did you redact from the video?

20 MR. SHELLENBERG: We redacted any of the things
21 that happened prior to James Bethel arriving at the club,
22 the goings on -- them collecting money, random people
23 coming into the club. At a few different points, there's
24 naked strippers coming in and out that we didn't feel were
25 relevant: We strictly edited down to show James Bethel's

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1 night in the club in full. And we've also provided a copy
2 of the edited video to Mr. Shaffer. I know --

3 **THE COURT:** When did you provide it to him?

4 **MR. SHELLENBERG:** At least last night and I am -- I
5 believe we provided him a copy prior to this as well. I
6 can find you a --

7 **THE COURT:** I need to know when it was provided to
8 him prior to yesterday and --

9 **MR. SHELLENBERG:** I believe one of the cameras that
10 we didn't use anything from is just in the back room where
11 they collect money and it only shows the fan blowing,
12 things of that nature. We didn't deem to be relevant
13 towards the proceeding. We just...

14 **MR. SHAFFER:** Why do you see need to admit No. 157,
15 Mr. Shaffer?

16 **MR. SHAFFER:** Your Honor --

17 **THE COURT:** First let me ask a question. Did you
18 watch the video when they provided it to you? The edited
19 video.

20 **MR. SHAFFER:** No, Your Honor. I actually -- I got
21 a disk this morning. I guess they told me they were going
22 to provide it for me, get me a copy of it, but I honestly
23 do not believe I got a copy of it. And I'm not saying
24 there's any wrong doing.

25 **THE COURT:** So what's on there, you do not know?

Edward Simpkins - Cross-Examination by Mr. Shaffer

1 **MR. SHAFFER:** Your Honor, I try not to put myself
2 at odds with another attorney, Your Honor. And I don't
3 believe I actually received it. I know I did not review it
4 because I put the disk they gave me in my folder this
5 morning and reviewed that which was the 9-1-1 call. I know
6 I received a disk from them and I put it in my trial book.
7 It's right here. It's the 9-1-1 call. That's what I
8 reviewed. I thought that I had a copy of the video as well
9 with that, but I know it didn't come in this and I know I
10 didn't review it, Your Honor.

11 And I -- I can say that I have not seen the entire
12 video, otherwise, I would have objected because of the time
13 frame. The time frame on the video shows overlap and
14 essentially, Your Honor, I -- I have another problem with
15 the actual video as well because the video that was
16 provided to me in discovery has -- in the video files,
17 there's black-out camera's. He's saying all of the cameras
18 were functioning and shouldn't be blacked out. Your Honor,
19 if there is cameras that didn't show it, I didn't have a
20 chance to review that.

21 **THE COURT:** I'm sorry repeat that. Because that
22 didn't make sense to me what you just said.

23 **MR. SHAFFER:** Well, Your Honor, the way the video
24 file works -- it might be easier to show you versus
25 explaining.

Edward Simpkins - Cross-Examination by Mr. Shaffer

1 **THE COURT:** They're all pretty much the same. I've
2 been doing this a long time. You've watched a lot of
3 videos.

4 **MR. SHAFFER:** I understand. But -- there are eight
5 different cameras.

6 **THE COURT:** Uh-huh.

7 **MR. SHAFFER:** At least two and maybe three of the
8 cameras were blacked out. He's saying that it shouldn't
9 have been that way.

10 **THE COURT:** Uh-huh.

11 **MR. SHAFFER:** Which makes me wonder what exactly
12 were on the other cameras. That's why I was asking him to
13 explain because I literally did not know what was on the --
14 what the other cameras would show.

15 **THE COURT:** Uh-huh.

16 **MR. SHAFFER:** And I'm not sure exactly what
17 happened, but I would like a chance to review this, which
18 is State's Exhibit 157 to see if it was the same --

19 **THE COURT:** Did you not get a copy of it?

20 **MR. SHAFFER:** I got a copy, but my copy shows
21 blacked-out cameras and he's saying it shouldn't have been
22 like that.

23 **THE COURT:** Do you have any indication that what is
24 No. 157 is not what you gave to Mr. Shaffer?

25 **MR. SHELLENBERG:** Your Honor, that is -- the

Edward Simpkins - Cross-Examination by Mr. Shaffer

1 original copy that he had does have blacked-out cameras.
2 He testified that they should have been working. But
3 working or not, it could have been weather, it could have
4 been anything else, but it's his understanding.

5 **THE COURT:** We're going far afield as to why I
6 intended to have this in-camera discussion. Which is for
7 what purpose are you offering 157. How is it relevant or
8 germane? How does it make any issue of consequences to
9 this litigation more or less proper because I'm not going
10 to waste 40 minutes watching something that's irrelevant.
11 If it's of folks mingling, them taking money, them drinking
12 at the bar -- none of that's relevant to any issue of
13 consequence in this case.

14 **MR. SHAFFER:** Your Honor, I would reserve the right
15 to recall him then because I might want other parts of the
16 video introduced. I'd honestly like to sit down with their
17 copy and the other State's Exhibit and review both of them
18 together and find out if it includes everything that I
19 wanted it to include, Your Honor.

20 **MR. SHELLENBERG:** Your Honor, if it will -- if it
21 will move things along, we don't object to him entering the
22 entire video if he --

23 **THE COURT:** If we enter the entire video, it
24 becomes evidence and the jury can watch the entire video.
25 I'm the gatekeeper. The jury gets to see what's relevant,

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1 period.

2 MR. SHELLENBERG: Yes, ma'am, I understand.

3 THE COURT: It's not a fact-finding expedition. So
4 you all should have done this before trial.

5 MR. SHAFFER: Your Honor, I understand. The video
6 that they actually introduced, my understanding was it was
7 created this weekend. Am I right about that?

8 MR. SHELLENBERG: No.

9 MR. SHAFFER: Okay.

10 THE COURT: They said they gave it to you before
11 now.

12 MR. SHELLENBERG: It was created prior to the first
13 time this was supposed to go to trial.

14 MR. SHAFFER: I have not received it until at least
15 yesterday and I don't think I even received it yesterday,
16 Your Honor. But they're saying they provided it to me. I
17 know for a fact it was never -- I never heard of it before
18 Sunday afternoon whenever I talked to the solicitor over
19 the phone.

20 THE COURT: Did you get a copy of the full video?

21 MR. SHAFFER: Yes, Your Honor.

22 THE COURT: So then they redacted video should not
23 be a mystery to you then, correct.

24 MR. SHAFFER: Your Honor, the redacted video, the
25 only issue that I have with it is I would like to reserve

Edward Simpkins - Cross-Examination by Mr. Shaffer

1 the right to recall him to introduce other parts of the
2 full video if I think --

3 THE COURT: That wasn't my question. You said that
4 you had not seen it before, but you had the full video.
5 You've seen it before.

6 MR. SHAFFER: I've seen the parts --

7 THE COURT: My question was, are you saying that
8 this is not an accurate representation of what's on that
9 full video?

10 MR. SHAFFER: No, Your Honor. I'm not saying that.

11 THE COURT: All right. I need it to be clear.

12 MR. SHAFFER: Yes, ma'am. My only issue is that I
13 would probably want other parts of this in and I can't tell
14 you exactly what that is watching it one time without
15 looking over the other video. So I would just ask that he
16 stay under subpoena so that I can call him if I need --

17 THE COURT: I would assume the State has no
18 exception to that.

19 MR. SHELLENBERG: None, Your Honor.

20 THE COURT: All right. Can we move along then?

21 MR. SHAFFER: Yes, ma'am.

22 THE COURT: All right. Let's take a quick restroom
23 break and then we'll resume the witness's testimony.

24 Sir, you may go to restroom as well if you like,
25 but please do not discuss your testimony with anyone.

Edward Simpkins - Cross-Examination by Mr. Shaffer

1 We'll resume in five minutes.

2 (WHEREUPON a recess was observed.)

3 THE COURT: State ready to proceed?

4 MS. WALKER: Yes, Your Honor, I believe we are.

5 We're waiting on the defendant.

6 THE COURT: Oh, okay.

7 (WHEREUPON the defendant entered the courtroom.)

8 THE COURT: All right. Is the State ready to
9 proceed?

10 MR. SHELLENBERG: Yes, Your Honor.

11 THE COURT: Defense ready to proceed?

12 MR. SHAFFER: Yes, ma'am.

13 THE COURT: Let's bring in the jury.

14 And the full video is marked as a Court's Exhibit,
15 which was originally State's 157.

16 (WHEREUPON the jury entered the courtroom at at
17 12:13 p.m.

18 THE BAILIFF: The jurors are all present, Your
19 Honor.

20 THE COURT: Thank you.

21 Ladies and gentlemen, I hope you enjoyed your
22 break. We'll now resume the witness's testimony. You may
23 proceed.

24 You may proceed, Mr. Shaffer.

25 ///

Edward Simpkins - Cross-Examination by Mr. Shaffer

1 BY MR. SHAFFER:

2 Q Mr. Simpkins, how long have you been a manager at
3 Mr. Lucky's?

4 A I would say about seven years.

5 Q Okay. You ever get any complaints about your
6 security?

7 A Just normal stuff.

8 Q What do you mean by normal stuff?

9 A You always get complaints from clients about, you
10 know, a customer complain about having to pay to get in; or
11 not having their ID, stuff like that. There's a
12 confrontation between security.

13 Q Okay. And you hire outside security, right?

14 A We employ outside security, yes, sir.

15 Q And that's a contract, right?

16 A Yes, sir.

17 Q And that's with Black Ops Security?

18 A My mother employs them. I believe that's the name
19 that it was going by at that time.

20 Q Okay. Now, the outside security, they're not
21 actual employees of the club itself, right?

22 A I guess you can say that.

23 Q Okay. They're contracted through their company?

24 A Right.

25 Q Correct?

Edward Simpkins - Cross-Examination by Mr. Shaffer

1 A They just can't work for the business.

2 Q With the -- what are the duties of outside security
3 guards?

4 A Basically to make sure nobody's sitting in cars,
5 make sure if we do have somebody escorted to their car.
6 Basically just to patrol the parking lot, pretty much.

7 Q Okay. And there's also outside security -- Black
8 Ops Security at the door, right?

9 A It depends on the day.

10 Q Okay. But part -- on this day there was someone
11 from Black Ops Security at the door, right?

12 A Yes, sir.

13 Q And part of their job is was to check ID's, right?

14 A Yes, sir.

15 Q Okay. And pat people down?

16 A Yes, sir.

17 Q Okay. And that's part of what y'all agreed with
18 Black Ops Security when y'all contracted with them, right?

19 A Correct.

20 Q Okay. Is there a lot of crime that happens around
21 the club?

22 A No, sir.

23 Q Okay. Cops don't come out there a whole lot?

24 A At times we have -- they come out.

25 Q Okay.

Jaquelyn Richburg - Direct Examination by Mr. Shellenberg

1 MR. SHAFFER: No further questions.

2 THE COURT: Any redirect of the witness?

3 MR. SHELLENBERG: None, Your Honor.

4 THE COURT: Sir, you're excused, subject to being
5 recalled.

6 THE WITNESS: Thank you.

7 THE COURT: You may proceed.

8 MR. SHELLENBERG: State calls Jackie Richburg.

9 (The witness entered the courtroom.)

10 JACQUELYN RICHBURG,
11 having been duly sworn, testified as follows:

12 THE CLERK: Have a seat in the witness box. State
13 your name for the record and spell it for the record,
14 please.

15 THE WITNESS: Jacquelyn Richburg,
16 J-a-c-q-u-e-l-y-n, Richburg, R-i-c-h-b-u-r-g.

17 THE COURT: You may proceed.

18 MR. SHELLENBERG: Thank you, Your Honor.

19 **DIRECT EXAMINATION**

20 BY MR. SHELLENBERG:

21 Q Ms. Richburg, where are you employed?

22 A Columbia Richland 9-1-1 Communication Center.

23 Q And how long have you been employed there?

24 A Thirty-one years.

25 Q And what are your duties there?

Jaquelyn Richburg - Direct Examination by Mr. Shellenberg

1 A I'm the deputy director and so for now I collect
2 the Freedom of Information requests and I fulfill those
3 requests.

4 Q Are you familiar with how the 9-1-1 records are
5 kept?

6 A Yes.

7 Q And how are they kept?

8 A Every phone call, every radio traffic is recorded
9 and it's -- at all positions. And we keep that information
10 for ninety days.

11 Q And are these records kept in the ordinary course
12 of business?

13 A Yes.

14 Q I'm going to show you what's been marked as State's
15 72.

16 Do you recognize that?

17 A Yes.

18 Q And what is it?

19 A It's a CD disk that we make our recordings on.

20 Q Did you have a chance to listen to it before you
21 came to court today?

22 A Yes.

23 Q And do you recognize the name -- the voice on the
24 recording?

25 A Yes.

Jaquelyn Richburg - Direct Examination by Mr. Shellenberg

1 Q Do you by chance remember those names being heard?

2 A Yes, Martha Hunter.

3 Q Was this record -- I'm sorry. You said Martha
4 Hunter?

5 A Yes, she was the call -- taking this 9-1-1 call.

6 Q Okay. Okay. Very good. And was this created in
7 the normal course of business at 9-1-1?

8 A Yes.

9 Q And has this call been changed, altered in any way
10 since it's creation?

11 A No.

12 MR. SHELLENBERG: Your Honor, at this time we'd
13 move to have State's 72 admitted into evidence.

14 MR. SHAFFER: May we approach real quick?

15 (WHEREUPON, there was a bench conference out of the
16 hearing of the jury and the Court Reporter.)

17 MR. SHELLENBERG: Is this admitted into evidence,
18 Your Honor?

19 THE COURT: Mark it into evidence subject to the
20 objection.

21 MR. SHELLENBERG: Thank you, Your Honor.

22 THE COURT: You're welcome. It is an excited
23 utterance and the defense will have the opportunity to
24 cross-examine the witness.

25 You may proceed.

Trevor Holt - Direct Examination by Ms. Walker

1 **MR. SHELLENBERG:** Yes, Your Honor. I have no
2 further questions, thank you.

3 **THE COURT:** Any questions from the defense?

4 **MR. SHAFFER:** Nothing, Your Honor.

5 **THE COURT:** Any objection to the witness being
6 excused from the State?

7 **MR. SHELLENBERG:** None, Your Honor.

8 **THE COURT:** From the defense?

9 **MR. SHAFFER:** No, Your Honor.

10 **THE COURT:** Ma'am, you're excused.

11 Call your next witness.

12 **MS. WALKER:** State calls Investigator Trevor Holt.

13 **WITNESS NAME,**

14 having been duly sworn, testified as follows:

15 **THE CLERK:** Please have a seat in the witness box.

16 State your name for the record and spell it for the record.

17 **THE WITNESS:** Trevor Holt, H-o-l-t.

18 **DIRECT EXAMINATION**

19 **BY MS. WALKER:**

20 **Q** Good afternoon, sir. Where are you currently
21 employed?

22 **A** With the Richland County Sheriff's Department.

23 **Q** And how long have you been with the sheriff's
24 department?

25 **A** Eighteen years.

Trevor Holt - Direct Examination by Ms. Walker

1 Q What is it that you do at the sheriff's department?

2 A I am assigned to the Forensic Science Unit as a
3 crime scene investigator.

4 Q Can you tell us what a crime scene investigator
5 does?

6 A Sure, our primary disciplines are the
7 identification, collection and preservation of physical
8 evidence.

9 Q And how long have you been with the crime scene
10 unit?

11 A About the last five years.

12 Q Can you tell me what, if any, specialized training
13 you have in the field of crime scene investigation?

14 A Yes, ma'am. In addition to in-house competency
15 testing and yearly proficiency testing, I've also received
16 additional classes or courses, crime scene investigation, a
17 sixteen hour course, Care McClain and Associates; Blood
18 Pattern Analysis, 40 hour, Jerry Findley and Associates;
19 DNA Overview and Forensic Pathology, International
20 Association of Identification; Advanced Crime Scene
21 Photography Techniques, 16 hours, Karen McClain and
22 Associates; Advanced Blood Pattern Analysis, 40 hours,
23 Jerry Findley and Associates; Crime Scene Processing
24 Workshop, Institute of Police Technology and Management;
25 Fingerprint Recognition and Comparison, 40 hours, Scott

Trevor Holt - Direct Examination by Ms. Walker

1 Kline Criminal Justice Academy; Low and High-tech Equipment
2 used for searching for Clandestine Graves, International
3 Association of Identification; Forensic Anthropology and
4 Archeology, International Association of Identification;
5 Shooting Incident Documentation and Reconstruction,
6 International Association of Identification; Blood Pattern
7 Analysis, Bevel Gardener and Associates; Crime Scene
8 Reconstruction, Bevel Gardener and Associates; Ethics in
9 Forensic Science, West Virginia University.

10 I'm also a member of the International Association
11 of Identification and the South Carolina Division of
12 International association of identification. I'm also
13 certified as a crime scene investigator with the
14 International Association of Identification.

15 Q And have you been qualified as an expert before in
16 court?

17 A Yes, ma'am.

18 MS. WALKER: Your Honor, at this point, we offer
19 Investigator Trevor Holt as an expert in crime scene
20 investigation.

21 THE COURT: Any exceptions or questions?

22 MR. SHAFFER: None, Your Honor.

23 THE COURT: So admitted without objection.

24 You may proceed.

25 MS. WALKER: Thank you.

Trevor Holt - Direct Examination by Ms. Walker

1 BY MS. WALKER:

2 Q Sir, I want to point your attention back to August
3 of last year. Did you become involved in the investigation
4 of this case?

5 A I did, yes, ma'am.

6 Q And how did you become involved?

7 A I was the forensic unit on call for night shift on
8 August 19th, 2012.

9 Q And did you receive information concerning a murder
10 on ?

11 A I did. I was notified through our desk sargent by
12 phone call that a shooting incident had occurred, that one
13 individual was reported being shot in the head, you know,
14 responsive and transported and pronounced at the hospital.

15 Q And did you proceed to ?

16 A I did. My first stop would have been at
17 at the request of K9 specialist Warren
18 Cavanaugh. I responded to the incident location,
19 referenced possible suspect's clothing being found, located
20 while tracking the K9. I observed, photographed and
21 collected a pair of black jeans, two black shoes, which
22 were located in a drainage-run-off-type ditch. This ditch
23 was located off of and it ran between incident
24 location where Mr. Lucky's parking lot is at and the church
25 next door to Mr. Lucky's, which is .

Trevor Holt - Direct Examination by Ms. Walker

1 MS. WALKER: Your Honor, may the witness step down?

2 THE COURT: He may.

3 BY MS. WALKER:

4 Q Please step down. What we'll do is stand on this
5 side so your voice is going back toward the court reporter
6 and I'll stand over here.

7 A Okay.

8 Q I want to show you what's been marked and admitted
9 as State's Exhibit 84. Do you recognize this, sir?

10 A Yes, I do. It's an aerial view of the
11 area. I believe this would be I-20 here.
12 going towards Irmo and the City of Columbia would be
13 back in this direction.

14 Q And you said you first responded to a ditch?

15 A Correct. This would be -- well, this the
16 here.

17 Q Uh-huh.

18 A This would be the incident location, Mr. Lucky's.
19 This is the drainage-run-off-type ditch that's run between
20 Mr. Lucky's parking lot and the church parking lot located
21 next door.

22 Q And did you at some point in time go to Mr. Lucky's
23 parking lot?

24 A Correct.

25 Q And the ditch?

Trevor Holt - Direct Examination by Ms. Walker

1 A Yes.

2 Q The church parking lot?

3 A Yes.

4 Q And what -- as you were going to each of these
5 locations were you collecting and photographing evidence
6 evidence?

7 A Yes.

8 Q Okay. And where is this?

9 A This is the apartments. I don't know the name of
10 the apartments. I'm assuming it's
11 But it's -- I'd have to look up the address. But it's
12 , where I received information that
13 a possible suspect had been located in front of Apartment
14 .

15 Q And between -- is there a barrier between the
16 incident location and the church parking lot and the ditch
17 and here where you eventually -- where the clothing was
18 eventually found?

19 A There's a small fence that runs in the tree line
20 here. It's on the Mr. Lucky's side of the property of the
21 drainage ditch, so it would be the buildings, then a small
22 brush area, about a foot, foot-tall fence, then the
23 drainage ditch, and then the church parking lot. Behind
24 the church is a tall, I would guess 8-foot-tall,
25 chain-link-type fence.

Trevor Holt - Direct Examination by Ms. Walker

1 Q And you responded to all those locations?

2 A Yes.

3 Q Okay. Thank you sir, you can step back on the
4 witness stand.

5 (WHEREUPON the witness went back to the witness
6 stand.)

7 MS. WALKER: Beg the Court's indulgence, Your
8 Honor.

9 THE COURT: Uh-huh.

10 BY MS. WALKER:

11 Q Investigator, the first area that you responded to
12 was -- I'd like to show you what's been marked as State's
13 Exhibit 120 and 121, which have already been admitted into
14 evidence and ask you if you recognize those.

15 A Yes, ma'am.

16 Q And can you tell the jury what these are?

17 A Yes, ma'am, that's a photograph of the clothing
18 that was located while K9 was tracking in the
19 drainage-type-run-off ditch located between the church and
20 Mr. Lucky's.

21 Q And did you also collect that clothing?

22 A I did.

23 Q All right. After going to the the ditch, what area
24 did you respond to next?

25 A Once the clothing was collected from the actual

Trevor Holt - Direct Examination by Ms. Walker

1 ditch, I respond -- I went to the rear of the church
2 parking lot where some brownish-red stains were believed to
3 be possible blood was located. That was documented through
4 photographs. A swab was taken for DNA purposes. And once
5 clearing the church parking lot, after everything had been
6 collected, I responded to

7 Q And going back -- I'm sorry -- to the ditch.
8 State's Exhibit No. 69?

9 A Yes, this would be the black pants that was
10 collected from the ditch and the black Nike Air shoes,
11 right and left, that were collected from the ditch.

12 Q All right.

13 MS. WALKER: These have already been admitted into
14 evidence, Your Honor.

15 MR. SHAFFER: I wouldn't -- I don't think we've
16 actually admitted that --

17 MS. WALKER: State's 69, Your Honor.

18 THE COURT: Uh-huh.

19 MR. SHAFFER: 69, okay. Thank you, Your Honor.

20 THE COURT: You're welcome.

21 BY MS. WALKER:

22 Q You said those were collected from the ditch that
23 we just saw?

24 A Correct.

25 Q And as you went -- you went next to ?

Trevor Holt - Direct Examination by Ms. Walker

1 A Yes, ma'am.

2 Q Can you tell us the procedure you had for
3 collecting the clothing evidence we just discussed?

4 A Yes, ma'am. It's documented through photographs.
5 In this case with the clothing being saturated, it was
6 taken from the ditch, it was placed into plastic bags and
7 then once I returned to our main office on Two Notch Road,
8 the items were placed into a drying cabinet and allowed to
9 dry.

10 Q And is that always the same procedure?

11 A Yes, ma'am, we don't want to put anything wet into
12 evidence. It will mildew, contaminate. Any DNA on there
13 may become contaminated.

14 Q And as you proceeded to , what was the
15 purpose of going ?

16 A I received information that a possible suspect had
17 been located at Apartment -- or in front of Apartment ,
18 on . And that would be

19
20 Q And all these locations are here in Richland
21 County?

22 A Yes, ma'am.

23 Q And what did you observe upon arriving at
24 ?

25 A I observed that they had secured with

Trevor Holt - Direct Examination by Ms. Walker

1 crime scene tape and then started a crime scene log. I
2 observed and photographed and collected several articles of
3 clothing: A black shirt, black socks, black and red shorts,
4 a yellow-in-color ring. These were all located on then
5 front walkway, front steps of . These were
6 articles of clothing that had been cut and removed by EMS
7 in the method of treatment of the individual. I also
8 collected a swab of a brownish stain believed to be blood
9 that was found in the door frame of Apartment .

10 Q I want to show you first what has been marked
11 Exhibit 124. You recognize this?

12 A Yes, ma'am. That's the front of .

13 Q And is this the way it was when you observed it
14 that night?

15 A Yes, ma'am.

16 Q And can you tell us what we're looking at in this
17 area?

18 A This would be the front walkway, step area going up
19 to the main entrance door of .

20 Q And is this a closer view of that?

21 A Yes, ma'am.

22 Q And is this the clothing that you were describing?

23 A Yes, ma'am.

24 MS. WALKER: I think these have already been
25 admitted into evidence.

Trevor Holt - Direct Examination by Ms. Walker

1 THE COURT: What number is that, please?

2 MS. WALKER: It's State's Exhibit is 124 and 125.

3 THE COURT: Any exception?

4 MR. SHAFFER: None, Your Honor.

5 THE COURT: It's admitted without objection, you
6 may proceed.

7 (WHEREUPON State's Exhibits No. 124 and 125 were
8 entered into evidence.)

9 BY MS. WALKER:

10 Q This is the clothing that you said was cut off of
11 the suspect by EMS?

12 A Yes, ma'am.

13 Q And did you individually photograph each item of
14 clothing as well?

15 A Yes, ma'am. Those photographs depict the black
16 socks, the red and black shorts and black t-shirt and
17 yellow ring.

18 MS. WALKER: And it's State's Exhibit 126, 127,
19 128, and 129, Your Honor.

20 THE COURT: I believe those have already been
21 marked without objection.

22 BY MS. WALKER:

23 Q And 126 is what?

24 A Black socks.

25 Q 127?

Trevor Holt - Direct Examination by Ms. Walker

1 A A pair of black and red basketball-type shorts.

2 Q And 128 and 129?

3 A That would be a black t-shirt and a yellow-in-color
4 ring.

5 Q And you said you also went to a specific apartment
6 door number?

7 A Yes, ma'am. Door number in reference to a
8 brownish-colored stain believed to be blood. It was marked
9 as No. 1 and a swab was collected for DNA purposes.

10 Q And you photographed that as well?

11 A Yes, ma'am.

12 Q And that's in 130 and 131, 132 and 133. I'd like
13 to show you those pictures.

14 A Yes, ma'am.

15 Q And State's Exhibit 130?

16 A It's an overall view of Apartment , the front
17 door of it. The brown-reddish stain will be located on the
18 door frame next to the door handle.

19 Q And is that depicted in Marker 1 here

20 A Yes.

21 Q You said that was swabbed as well?

22 A Yes, ma'am.

23 Q Can you describe to the jury how you swab a
24 substance or a door?

25 A Sure. We have swabs that we carry with us.

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1 They're sterilized. They're individually wrapped
2 hermetically sealed. They've never been used. Once
3 they're open, if the item that we're swabbing is wet -- say
4 if it's blood, but it's still in a wet consistency, we just
5 take the swab, wipe it through the blood and we collect a
6 sample of it. That's then placed into a buccal swab box.
7 The information is filled out on the box with the case
8 number, who collected it, and date that it was collected,
9 and a description of where it was collected, and what it
10 was collected from. And that's then placed into evidence
11 and forwarded to the proper department which would be DNA
12 for analysis purposes.

13 In this case, the stain on the door, the
14 brownish-red stain was dry, so distilled water is used to
15 wet the cotton end of the applicator. A swab is then
16 rubbed against the stain to moisten it until the stain
17 moistened and the swab can begin to pick the stain up as a
18 wet stain.

19 Q And 131 and 133 -- what's 133 show?

20 A That is the stain on the door before it is marked
21 as Marker 1.

22 Q And 131 is the door that was marked?

23 A Just the numerical address of the door itself.

24 Q What are -- what, if anything else, did you do at
25 that apartment?

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1 A The clothing was bagged and collected, the swab was
2 collected. And that was the extent of Apartment of

3
4 Q And that would be the yellow ring, two black socks,
5 black shirt, and black and red shorts?

6 A Correct.

7 Q I want to show you State's Exhibit 68 and ask you
8 if you recognize that?

9 A Yes, ma'am. This is the box that contains a
10 yellow-in-color ring, two black socks, a black shirt, and
11 black and red shorts.

12 Q That we just saw pictures of?

13 A Yes. That were collected from the front of

14
15 MS. WALKER: Your Honor, at this point, we'd move
16 State's Exhibit 68 into evidence.

17 THE COURT: Any objection?

18 MR. SHAFFER: None, Your Honor.

19 THE COURT: Mark them in without objection.

20 (WHEREUPON State's Exhibit No. 68 was entered into
21 evidence.)

22 BY MS. WALKER:

23 Q And were those packaged and -- collected and
24 packaged in the same way as the items from the ditch?

25 A Yes, ma'am. These -- the clothing items -- some of

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1 them were saturated with blood. They were placed in drying
2 cabinets and allowed to dry also. Once they were dry,
3 further photography was done and after the photography was
4 completed, they were properly packaged and placed into
5 evidence for DNA purposes.

6 Q And did that conclude your processing of that
7 particular area?

8 A Yes, ma'am.

9 Q Where did you proceed after that, sir?

10 A I responded to the actual incident location of
11 Mr. Lucky's, which is

12 Q And what information -- when you are responding to
13 a crime scene to collect and process evidence, do you have
14 information going into a crime scene?

15 A Yes, I'm being briefed. The more information I can
16 have access to, the more relevance I can place on items I
17 find in the scene.

18 Q And as -- over the course of your investigation,
19 what, if any, information, are you gaining at that point?

20 A I was advised that following verbal arguments at
21 Lucky's, one of the security guards or bouncers had been
22 shot, reportedly in the back of the head. After the
23 security guard was shot, a second security guard gave chase
24 as the suspect fled the scene and the second security guard
25 fired several rounds at the suspect during the chase.

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1 Q And when you proceeded to that scene at Mr.
2 Lucky's, what was the first thing that you did there?

3 A I observed that the scene had been secured with
4 crime scene tape and the investigation had started. I was
5 briefed by responding units as to the information of the
6 victim that was transported to the hospital where he was
7 pronounced dead. I observed that there were several items
8 moved into the parking lot or into the driveway of the
9 parking lot marking the location of several fired cartridge
10 casings that the responding officers had grabbed and pulled
11 out into the parking lot to try to mark the shell casings
12 as they found them.

13 Some of these items were some chairs, a flower pot,
14 a yellow caution sign, traffic cones and they placed these
15 items over top or next to the fired shell casings so that
16 once they find them, they mark them and then I know exactly
17 where to go, what they found because they placed a marker
18 there. Those were then later remarked as Markers A through
19 J, L and M. And all of those were fired cartridge casings
20 of different makes and different calibers.

21 Q I want to show you State's Exhibit's 1 through 15,
22 as well as 78, and 79, and ask you if you recognize those.

23 A (Looking).

24 MR. SHAFFER: Your Honor, what were those numbers
25 again?

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1 THE COURT: 1 through 15, and 78, and 79.

2 MR. SHAFFER: Thanks, Your Honor.

3 MS. WALKER: Yes, Your Honor.

4 THE COURT: And those have already been marked in
5 without objection.

6 BY MS. WALKER:

7 Q You recognize those pictures?

8 A Yes, ma'am, these are overall photographs of the
9 front of the parking lot of Mr. Lucky's, depicting the
10 items that were used to mark the location of fired
11 cartridge casings that were located by responding units.

12 Q The chairs that we see in the pictures?

13 A Yes, ma'am.

14 Q And what's the purpose of placing the chairs over
15 the cartridge casings?

16 A It's to one, mark the location of the fired
17 cartridge casing that they found, but two, to keep them --
18 again, it's a parking lot, so they're trying to get
19 individuals that were visiting the club out of the scene
20 without damaging any evidence. So they're trying to direct
21 them around these chairs and different items through the
22 parking lot so they could get in their vehicles and get
23 them out of the parking lot.

24 Q And it helps protect them from being --

25 A Stepped on, ran over, picked up, carried off.

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1 Q And these -- the cones and the flower pot as well?

2 A Yes, ma'am.

3 Q All right. And there are -- are all these cones
4 and chairs and flower pots over items of evidence that were
5 important to you?

6 A The cones by the red car, yes. The cones further
7 in existence by the front of Mr. Lucky's were just cones
8 that the club used for people not to park there by the
9 ramp.

10 Q But the ones in the parking lot were important to
11 your investigation?

12 A Correct.

13 Q And 4 through 15, and 78, and 79, sir, these the
14 individual shell casings that were collected as opposed to
15 an overview?

16 A Right. This is a midrange-view showing that
17 there's a shell casing underneath the chair or underneath
18 the cone or next to the flower pot.

19 Q Also, sir, I want to show you 85 through 108 and
20 ask if you recognize those.

21 A Yes, ma'am.

22 Q And specifically, this area of 85, did that area
23 become important to you?

24 A Yes, ma'am. It's a brownish-red stain. It was
25 later marked as Marker K. A swab was collected from it.

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1 There was information provided to me that that was the
2 location where the victim collapsed after being shot.

3 Q This is this red stain right here?

4 A Yes, ma'am.

5 Q And did you also take closer up pictures of the
6 different shell casings that were collected?

7 A I did.

8 Q And that is State's Exhibit 88 through 108?

9 A Yes, ma'am.

10 Q Okay. The cone beside it, is that the cone that
11 would have been used to protect it before taking the
12 picture?

13 A Correct.

14 Q And did you collect all of those shell casings?

15 A Yes, ma'am. I believe there are twelve total that
16 were collected of different makes and calibers.

17 Q Do you know how many different makes there were?

18 A There were 10 Smith and Wesson, .40 caliber fired
19 cartridge casings and they were marked as A through J.
20 There was a CBC .380 auto fired cartridge casing that was
21 marked as L. And there was an RP .45 auto fired cartridge
22 casing that was marked as M.

23 Q Let me show you, sir, State's Exhibit 51 and 66 and
24 ask you if you recognize these?

25 A Yes, ma'am. 51 is the envelope where fired

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1 cartridge casings A through L, L and M were packaged. 66
2 I -- that would be the firearms envelope.

3 **MS. WALKER:** We've marked 66 for identification
4 purposes at this time. And at this point, Your Honor,
5 State would move to admit Exhibit 51 into evidence.

6 **THE COURT:** Any objection?

7 **MR. SHAFFER:** No objection, Your Honor.

8 **THE COURT:** Marked in without objection.

9 (WHEREUPON State's Exhibit No. 51 was entered into
10 evidence.)

11 **BY MS. WALKER:**

12 Q And 51 are the shell casings that you collected?

13 A Yes, ma'am.

14 Q That are depicted in the pictures that are being
15 passed around?

16 A Yes, ma'am.

17 Q And you also said that the brown-reddish stain in
18 the parking lot, did you swab that?

19 A Yes, I did.

20 Q And did you swab that using the manner that you
21 swabbed the door frame with?

22 A Correct. Yes, distilled water, a sterile cotton
23 swab, buccal swab box, identified, packaged, and placed
24 into evidence for DNA purposes.

25 Q Let me show you State's Exhibit 50 and 54 and ask

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1 if you recognize those.

2 Q Yes, 50 would be a swab of Marker 1, which was the
3 door frame at Apartment , of the brownish-red stain. 54
4 is a swab that was collected at Marker K, brownish-red
5 stain from the parking lot at .

6 Q And this is where you were told the victim
7 collapsed?

8 A Yes, ma'am.

9 MS. WALKER: At this point, the State would move to
10 admit 50 and 54 into evidence?

11 MR. SHAFFER: No objection.

12 THE COURT: Marked in then, without objection.

13 (WHEREUPON State's Exhibits No. 50 and 54 were
14 entered into evidence.)

15 BY MS. WALKER:

16 Q Continuing with the processing of the scene at Mr.
17 Lucky's, after you were able to identify the cartridge
18 casings, you collected those after photographing them, but
19 before that -- before photographing them, did you put
20 markers beside them?

21 A Yes, ma'am.

22 Q And what do the markers -- how are those useful to
23 you?

24 A The markers help to individually identify each item
25 of evidence. We have multiple shell casings like this. If

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1 I were to come in and run them off as ten different .40
2 caliber Smith and Wesson shell casings, it gets confusing
3 after that, but if I can actually say this was specific to
4 Marker B, which is just one of ten shell casings that was
5 collected, it helps identify just the certain items.

6 Q And State's Exhibit 33, does this show where you
7 put the markers down?

8 A Yes, ma'am.

9 Q And then after taking kind of an overview of the
10 markers, did you photograph each article individually?

11 A Yes, ma'am.

12 Q And I want to show you 33 through 45 -- I'm sorry
13 34 through 45.

14 A Yes, ma'am. These are overall photographs
15 depicting the placement of fired cartridge casings located
16 in the parking lot and then close up photographs of each
17 marker identifying the shell casing located next to it.

18 Q And specifically, H, I, and J, that are all
19 clustered there together?

20 A Yes.

21 Q Okay. Where in the parking lot -- do you remember
22 where in the parking lot those were?

23 A Those would be closest to where the brownish-red
24 stain was located in the parking lot.

25 Q This cluster of shell casings?

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1 A Yes.

2 Q And those were more spread out?

3 A Correct. They were grouped and then there was just
4 a line of them through the parking lot.

5 Q Okay. And H, I, J, is that kind of a moderate --
6 or a medium range view rather of that cluster?

7 A Yes, ma'am.

8 Q And that's State's Exhibit 39?

9 A Yes, ma'am.

10 Q And State's Exhibit 35 with markers B, C, and D, is
11 that -- where in the parking lot is that?

12 A This would be more back -- closer toward
13 , the exit of the actual parking lot.

14 Q And then you photographed each of these
15 individually?

16 A Correct.

17 Q And that's what the rest of these pictures are?

18 A Yes, ma'am.

19 Q And after collecting the shell casings and the --
20 after collecting the shell casings, did you do anything
21 else with them?

22 A Yes, ma'am, after the shell casings were collected
23 and packaged, they were taken back to Richland County
24 Sheriff's Department to the Forensic Science Unit where
25 they were secured in my personal locker, which is also

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1 secured behind locked doors in our laboratory. They were
2 then processed further in the evening -- later that
3 evening, they were processed in house with a method
4 referred to as cyanoacrylate or Super Glue fuming and
5 additional followup with black powder.

6 Q What is the purpose of the Super Glue and the black
7 powder?

8 A Super Glue and black powder are enhancement
9 techniques. We refer to prints as latent prints or
10 invisible prints. The majority of time, when you touch
11 something, you may or may not leave a fingerprint there.
12 During -- or using cyanoacrylate or Super Glue fuming, it
13 helps to enhance or make the latent invisible prints
14 visible to the naked eye. It's then followed up with the
15 use of black powder which is just ground graphite, which
16 even further enhances the rich detail of the fingerprint,
17 if it is on an item that we are processing.

18 Q Did you swab them at any time? The shell casings?

19 A I did. After the completion of cyanoacrylate
20 fuming or Super Glue fuming and black powder that met with
21 negative results, meaning no -- no latent prints or no
22 fingerprints were recovered from the shell casings that
23 were processed --

24 Q Let me ask you a question. In terms of processing
25 shell casings for fingerprints, is it uncommon to not find

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1 fingerprints on shell casings?

2 A It's not uncommon, no, ma'am.

3 Q Okay. Continue. I'm sorry to interrupt.

4 A Yes, ma'am, I collected four different swabs. I
5 collected swabs from the .40 caliber fired cartridge
6 casings marked as A, B, C, and D. I collected a swab from
7 .40 caliber cartridge casings marked as E, F, G, H, I, and
8 J. I collected a swab from RP .45 auto fired cartridge
9 casing that was marked as M. And I collected a swab from
10 CBC .380 auto fired cartridge casing that was marked as L.

11 Q Okay. Let me show you State's Exhibit 52 and ask
12 if you recognize that.

13 A Yes, ma'am, these were the swabs that were
14 collected from the fired cartridge casings.

15 MS. WALKER: At this time, Your Honor, the State
16 moves to admit Exhibit 52 into evidence.

17 MR. SHAFFER: No objection.

18 THE COURT: Mark it in without objection.

19 THE COURT REPORTER: What number is that?

20 THE COURT: What was that number, ma'am?

21 MS. WALKER: 52.

22 THE COURT: 52. Thank you.

23 MS. WALKER: Yes, ma'am.

24 (WHEREUPON State's Exhibit No. 52 was entered into
25 evidence.)

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1 THE COURT: And could Counsel approach, please.

2 MS. WALKER: Yes, ma'am.

3 (WHEREUPON, there was a bench conference out of the
4 hearing of the jury and the Court Reporter.)

5 THE COURT: Madame Forelady and ladies and
6 gentlemen, we're going to take advantage of this break in
7 testimony to take our lunch recess. During the break,
8 please do not discuss the case among yourselves or with
9 anyone else. Please don't have any contact with anyone in
10 or about the courthouse. You can return directly to your
11 jury room and we're going to resume at 2:15, which gives
12 you about an hour and 15 minutes for lunch.

13 Hope you have a good lunch recess. Leave your
14 notepads in your seats for me.

15 (WHEREUPON the jury left the courtroom at 1:02
16 p.m.)

17 THE COURT: All right. Is there anything we need
18 to do before we break for lunch from the State?

19 MS. WALKER: Nothing from the State, Your Honor.

20 THE COURT: From the defense?

21 MR. SHAFFER: Nothing, Your Honor.

22 THE COURT: Okay. We'll break for lunch.

23 Officer, if you would not discuss your testimony
24 with anyone during the recess.

25 THE WITNESS: Yes, ma'am.

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1 THE COURT: Have a good lunch, we'll resume at
2 2:15.

3 Please make sure the court reporter has all of the
4 exhibits.

5 (WHEREUPON a recess for lunch was observed.)

6 THE COURT: Madame Court Reporter, are you ready to
7 proceed?

8 THE COURT REPORTER: Yes, ma'am.

9 THE COURT: Is the State ready to proceed?

10 MS. WALKER: Yes, Your Honor.

11 THE COURT: Is the defense ready to proceed?

12 MR. SHAFFER: Yes, Your Honor.

13 THE COURT: All right. Who is the State's next
14 witness?

15 MS. WALKER: Your Honor, we were in the middle
16 of --

17 THE COURT: That's right.

18 If the witness will take the stand, please. I'll
19 remind you, you're still under oath.

20 Y'all can go ahead and get the jury.

21 (WHEREUPON the jury entered the courtroom at 2:24
22 p.m.)

23 THE COURT: Ladies and gentlemen, I hope y'all had
24 a pleasant lunch recess. We'll now resume with the
25 witness's testimony.

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1 You may proceed.

2 **MS. WALKER:** Thank you, Your Honor.

3 **THE COURT:** You're welcome.

4 BY MS. WALKER:

5 Q Sir, I think when we left off, we were discussing
6 the processing of the crime scene of Mr. Lucky's parking
7 lot?

8 A Correct.

9 Q And regarding the shell casings, was there a
10 particular vehicle that became important during the course
11 of your investigation?

12 A Yes, ma'am. I was advised by Sargent Faust there
13 was a silver Chevy Tahoe -- I'm sorry, Chevy Suburban
14 parked in the parking lot. And it was reported to me that
15 this was the vehicle that the suspect was utilizing for
16 transportation to and from the club that evening.

17 Q Let me show you State's Exhibit 134 through 136 and
18 ask if you recognize those.

19 A Yes, ma'am, this is photographs of the Chevy
20 Suburban that was parked in Mr. Lucky's parking lot.

21 **MS. WALKER:** I think these have already been
22 admitted into evidence, 134 through 136, Your Honor.

23 **THE COURT:** Yes those have been marked. They're
24 already in.

25 ///

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1 BY MS. WALKER:

2 Q And did you, in fact, photograph the Suburban?

3 A Yes, ma'am, I did.

4 Q Okay. And was there a significant -- did you
5 notice anything significant about the car?

6 A Yes, ma'am, the front passenger side tire was
7 deflated.

8 Q Was that consistent with information that you've
9 been given?

10 A Yes, ma'am, it was. Next to the flat tire was a
11 .45 caliber shell casing that was found. It was reported
12 to me that one of the security officers at the club shot
13 the tire of the vehicle out to prevent the vehicle from
14 leaving the scene.

15 Q And is that a close picture of that tire?

16 A Yes, ma'am.

17 Q And this shell casing was collected from that area?

18 A It was the .45 caliber auto, RP auto, Marker M.

19 Q Marker M?

20 A Yes.

21 Q What else, if anything, sir, did you do at that --
22 in that parking lot?

23 A The vehicle, once it was brought to my attention,
24 we had it towed from the -- from Mr. Lucky's parking lot to
25 the Richland County Sheriff's Department forensic garage.

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1 It was turned over to Master Deputy Little via chain of
2 custody. She followed the tow truck to the garage where it
3 was placed in the garage and secured for further
4 processing.

5 Q I also want to discuss with you -- going back to
6 the ditch where the clothing was collected, did you also
7 collect a sum of money from that area?

8 A From the pants pocket of the black jeans, yes,
9 ma'am, a large sum of U.S. currency was collected from the
10 pocket.

11 Q Do you remember how much money?

12 A \$1,500.24.

13 Q I'm going to show you State's Exhibit -- and that's
14 the black jeans that were in the ditch that have already
15 been admitted?

16 A Yes, ma'am.

17 Q Let me show you State's Exhibit 49 and ask if you
18 recognize that.

19 A Yes, ma'am. This is an envelope containing 70, \$20
20 bills from the pants pocket of black jeans, and one \$100
21 bill from the pocket of the pants of the jeans and 26 cents
22 in change.

23 MS. WALKER: Your Honor, at this point in time, the
24 State would attempt to introduce State's Exhibit 49 into
25 evidence.

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1 MR. SHAFFER: No objection.

2 THE COURT: State's 29.

3 MS. WALKER: 49, Your Honor.

4 THE COURT: Marked into evidence without objection.

5 BY MS. WALKER:

6 Q And as you're processing all those items, did you
7 also later go back and photograph them individually -- I
8 guess at headquarters or somewhere else?

9 A The money?

10 Q The money, the clothing, all the --

11 A Yes, ma'am, the clothing, the money -- all the
12 clothing, the shoes, and the cash were all additional
13 photographs were taken of that.

14 Q And I think -- and I'll go over this with you
15 momentarily, but did you say you responded to the church
16 parking lot as well?

17 A Yes, ma'am, that would have been the first location
18 I responded to.

19 Q In that church parking lot, where in conjunction to
20 the crime scene is that?

21 A The church parking lot sits next door to
22 Mr. Lucky's parking lot.

23 Q Let me show you State's Exhibit 109 and 110 and ask
24 if you recognize those.

25 A Yes, ma'am. 109 depicts the front of the church,

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1 looking back towards Mr. Lucky's and 110 is from the ditch
2 that divides the church and Mr. Lucky's, looking toward it
3 the front parking lot of the church.

4 Q This is the parking lot -- the church parking lot
5 that you responded to?

6 A Yes, ma'am.

7 MS. WALKER: I think 109 and 110 have already been
8 admitted into evidence?

9 THE COURT: They have without objection.

10 BY MS. WALKER:

11 Q This is the church parking lot that's adjacent to
12 Mr. Lucky's?

13 A Yes, yes, ma'am.

14 Q What, if anything significant, did you find in that
15 parking lot?

16 A There were several muddy footprints, which
17 contained little detail that lead from the area at or near
18 where the pants were recovered from the ditch through the
19 parking lot heading towards the rear of the church.

20 Q And did you photograph those footprints?

21 A Yes, ma'am, I did.

22 Q Let me show you what's been marked as State's
23 Exhibit 113 through 116, as well as State's Exhibit 156 and
24 ask you if you recognize these.

25 A Yes, ma'am.

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1 Q And those --

2 A These are -- 116 and 156 are overall photographs,
3 looking back towards the wooded area where the ditch and
4 the clothing were located. That would be markers A, B, and
5 C and then 116 is going -- looking back towards -- from the
6 ditch towards the church depicting Markers D through I.

7 Q And were you able to kind of look at the path that
8 those footprints followed?

9 A Yes, ma'am.

10 MS. WALKER: Your Honor, at this time -- well,
11 already admitted into evidence 116 -- 113 through 116 and
12 156.

13 THE COURT: Yes, ma'am. Those have already been
14 admitted without objection.

15 BY MS. WALKER:

16 Q And there's a path that you can see that these
17 muddy footprints follow?

18 A Yes, ma'am.

19 Q Going forward the ditch that you mentioned?

20 A Those were leading away from the ditch heading
21 towards the church.

22 Q I'm sorry, away from the ditch?

23 A Yes.

24 Q And then as you did with the shell casings, you
25 photographed the footprints individually?

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1 A Correct.

2 Q I want to turn your attention to, I guess, the
3 ditch area. Was there an area of that that became -- or a
4 tree that became significant in that area?

5 A Yes, ma'am, in the ditch itself where the clothing,
6 the jeans were located, there was a tree root on the side
7 of the ditch embankments. As you would come up out of the
8 ditch into the church parking lot, there was a tree root
9 there on the side which contained several brownish-red
10 stains believed to be blood. I photographed and collected
11 a swab of those stains. They were submitted for DNA
12 purposes.

13 Q Let me show you State's Exhibit's 117 through 119,
14 as well as Exhibit 122, sir, and ask if you recognize
15 those, please?

16 A Yes, ma'am. 122, would be myself standing in the
17 ditch looking directly at the tree root, depicting the
18 brownish-red stains on the tree root itself. 17, 18 and 19
19 are the dirt embankment at the rear of the church where
20 additional brownish-red stains were located. They were
21 also photographed and a swab was collected for DNA
22 purposes.

23 Q And on this picture, where would the blood be if
24 I'm pointing at it? Just put my finger where the blood is?

25 A Right here.

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1 Q Okay. My finger right there. The blood that you
2 found and swabbed?

3 A Yes, ma'am.

4 Q And then you took closer photographs of that?

5 A Yes, ma'am.

6 Q As depicted in State's Exhibit 118, 119, and 122.
7 You said you swabbed the area. Let me show you State's
8 Exhibit 53 and ask you if you recognize that.

9 A Yes, this is the swab that was collected from the
10 brownish-red stain and the tree root that was located in
11 the ditch. The swab was collected from a brownish-reddish
12 stain from the dirt embankment at the rear of the church.

13 MS. WALKER: At this point the State would move to
14 admit Exhibit 53 into evidence.

15 THE COURT: That's -- no, that's not.

16 MR. SHAFFER: No objection.

17 THE COURT: Mark it in without objection and that's
18 53.

19 (WHEREUPON State's Exhibit 53 was entered into
20 evidence.)

21 BY MS. WALKER:

22 Q After processing those scenes -- well, I'm sorry,
23 is that -- does your testimony as of right now go over what
24 you did at those different scenes that day?

25 A Yes, ma'am.

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1 Q And what did you do after the processing of those
2 scenes.

3 A The items collected that needed to be dried were
4 taken back and placed in drying cabinets and allowed to
5 dry. Items such as the shell casings were placed into
6 evidence in my locker where they were secured for further
7 processing until later that evening when they were actually
8 processed. The clothing, after it was dried, additional
9 photographs were taken of the clothing and any defects that
10 were noticed in the clothing was marked and photographed.

11 Q Okay. Let me show you State's Exhibit 144.

12 A Yes, ma'am.

13 Q These are --

14 A Those are the black socks that were recovered from
15 in front of of.

16 Q Okay.

17 MS. WALKER: This has already been admitted into
18 evidence.

19 BY MS. WALKER:

20 Q These were where?

21 A On the front walkway of on.

22 THE COURT: What number was that, again, please.

23 MS. WALKER: No. 144, Your Honor.

24 THE COURT: Okay.

25 ///

Trevor Holt - Direct Examination by Ms. Walker

1 BY MS. WALKER:

2 Q And 145 through 151.

3 A This is the black t-shirt that was recovered from
4 the front of -- the front walkway of of
5 depicting defects that were noted in the material.

6 Q And do you process to see what type of defect it is
7 or do you just photograph?

8 A I photographed the defects. Marked them and
9 photographed them. I cannot say as to what caused the
10 defect.

11 Q But these are holes?

12 A Yes, they're holes.

13 Q And the markers are --

14 A The markers depict the location to have defects.
15 They're marked one through four.

16 Q One and two on 151 and three and four on 146?

17 A Correct.

18 Q And did you also photograph each defect
19 individually?

20 A Yes, ma'am.

21 Q That's 154, and 150, 149, 148, and 147.

22 Continuing with the photographing of the clothing,
23 sir, I want to show you State's Exhibit's 139 through 141?

24 A Yes, ma'am, these show the black and red
25 basketball-type shorts that were recovered from the front

Trevor Holt - Direct Examination by Ms. Walker

1 walkway of , . Marker 5 depicts a
2 defect that was found in the side of the shorts, or on the
3 side of the shorts.

4 Q And then this area right here, what, if anything,
5 was significant about that?

6 A It's an NBA logo on the side of the shorts with a
7 brownish-red stain.

8 Q And that's Exhibit 139?

9 A Yes, ma'am.

10 Q And then you photographed the --

11 A The defect close up.

12 Q -- the defect close up. And that's Marker 5 on
13 State's Exhibit 140?

14 A Yes, ma'am.

15 Q Brownish-red stains, why take a picture of that
16 stain?

17 A A brownish-red stain in this case we know the
18 suspect was shot by the security guard. A brownish-red
19 stain would more than likely come back as a positive result
20 for blood or DNA and it's just depicted since I didn't
21 actually see the victim bleeding myself, it's depicted as a
22 brownish-red stain until an actual analysis can be
23 performed on it by our DNA section and to actually say that
24 it is blood.

25 Q And in State's Exhibit's 137 and 138?

Trevor Holt - Direct Examination by Ms. Walker

1 A So these are the jeans that were recovered from the
2 ditch and the defect that was found in the jeans.

3 Q And is this the defect you're speaking of on 138?

4 A Yes, ma'am.

5 Q And these were the jeans found in the ditch?

6 A Yes, ma'am.

7 Q And, sir, 142 and 143.

8 A These show the black Nike shoes that were recovered
9 from the drainage ditch.

10 Q The money that was collected from the pants pocket
11 of the jeans, did you photograph that as well?

12 A Yes, ma'am, I did.

13 Q I'm going to show you State's Exhibit's 153 through
14 155 and ask if you recognize that.

15 A Yes, ma'am.

16 Q Is that the money that was found in the ditch?

17 A Yes, ma'am, in rows of one through six and then
18 picked up with six through eleven and then eleven through
19 14 and then a single \$100 bill and the change.

20 Q So you had to take it in different --

21 A Correct.

22 Q Okay. Fourteen rows of \$20 bills?

23 A It would have been -- let's see.

24 Yes, ma'am fourteen rows of \$20 bills and then a
25 single row -- I'm sorry, the single \$100 bill.

Trevor Holt - Direct Examination by Ms. Walker

1 Q What was your next step in terms of the crime scene
2 investigation in this case?

3 A Final walk through of the scene was conducted.
4 Towards the rear of the building we attempted to retrace
5 the steps of the suspect and he fled to see if any
6 additional evidence was observed or located. I met with
7 negative results. All the evidence that was collected was
8 taken back. It was dried. Additional photography was
9 taken of it, it was then packaged, labeled, and placed into
10 evidence, forwarded to where it needed to go next for
11 further processing.

12 Q And --

13 MS. WALKER: Your Honor, may the witness step down?

14 THE COURT: Uh-huh.

15 BY MS. WALKER:

16 Q I know you went over the areas, areas that you
17 responded to earlier. Where was Mr. Lucky's?

18 A This would be Mr. Lucky's here.

19 A And what items did you collect from here.

20 A From Mr. Lucky's would have been the shell casings
21 and the swab of the brownish-red stain where the victim
22 fell.

23 Q And following the path in this area?

24 A This would be the drainage or run-off ditch located
25 between two plots and this would have been the black jeans,

Trevor Holt - Direct Examination by Ms. Walker

1 the black shoes and the jeans that contained the money.

2 And then continuing along that path?

3 A All right. This would have been the foot
4 impressions through the parking lot, the rear of the
5 church, the brownish-red stain on the dirt embankment would
6 have been found on this back corner back here and this is
7 the fence that divides the church from the apartment
8 complex.

9 Q Okay. And is this the last stop?

10 A This is actually the second stop.

11 Q This is the second stop, but the --

12 A For the suspect, this would have been the last
13 stop. This was where he was picked up and transported to
14 the hospital for treatment from there.

15 Q And what did you collect from this area?

16 A This would have been the black shirt, black socks,
17 black and red shorts, yellow ring, and swab from the door
18 frame of 714.

19 Q Thank you, sir. You may step back up to the
20 witness stand.

21 And, sir, does that conclude your investigation in
22 the case?

23 A Yes, ma'am.

24 MS. WALKER: Thanks.

25 Your Honor, I don't have any further questions.

Trevor Holt - Cross-Examination by Mr. Shaffer

1 THE COURT: Any cross-examination of the witness?

2 MR. SHAFFER: Yes, Your Honor.

3 THE COURT: You may proceed when you're ready.

4 MR. SHAFFER: Your Honor, if you don't mind, I'm
5 going to pull some of these exhibits.

6 CROSS-EXAMINATION

7 BY MR. SHAFFER:

8 Q How many crime scenes have you been to? A lot?

9 A Yes.

10 Q Okay. How long have you been doing this?

11 A Approximately five years.

12 Q Okay. Estimate hundreds?

13 A Yes.

14 Q What's the first thing you do whenever you get to a
15 crime scene?

16 A Try to obtain information, briefed on what took
17 place, overall documentation through photography.

18 Q Is the crime scene generally secure whenever you
19 get there?

20 A Depending on what type of crime scene it is.

21 Something to this extent then, yes, sir.

22 Q And they had secured this crime scene when you
23 arrived or before you had arrived?

24 A Yes, crime scene tape was up and the investigation
25 had already started when I arrived on scene.

Trevor Holt - Cross-Examination by Mr. Shaffer

1 Q Now, if you could tell us what -- was the crime
2 scene tape over both plots or where was that? What was
3 roped off?

4 A Mr. Lucky's parking lot and then in front of
5 of .

6 Q Okay. Was the church roped off?

7 A No, sir.

8 Q Okay. If you would, sir, I'm going to get you to
9 draw us a little bit closer diagram if that's possible.

10 What I want to know in this is at what point you
11 found the pants. Would you mind stepping down and drawing?

12 A I'm not quite sure of your question, at what point
13 I found them.

14 Q I'm sorry, what location did you find them --
15 relative to -- and I know it's not proportional with --
16 drawn to scale, but where exactly you found them. Because
17 with this, honestly, I couldn't see exactly where you were
18 pointing and I want to know where the pants were found in
19 relations to the building and the fence.

20 A I don't know if I could do anymore justice.
21 (Drawing).

22 I don't know -- it would have been about halfway
23 from the road to the back of the church parking lot.

24 Q Okay. And is there a fence?

25 A Back here?

Trevor Holt - Cross-Examination by Mr. Shaffer

1 Q Well, is there a fence that divides the two
2 properties?

3 A Yeah, there's like a little small three, four foot
4 fence --

5 Q Okay.

6 A -- that runs through the -- I guess this little
7 vacant area back here. This was just leaves and vines and
8 some small trees.

9 Q And if you could label where the -- where
10 is on that diagram.

11 A This would be Broad up here.

12 Q Okay.

13 A This is I-20.

14 Q And where is Mr. Lucky's in that diagram?

15 A Mr. Lucky's would be right up here somewhere.

16 Q All right. Could you show us where the footprints
17 went? The approximate path across the parking lot?

18 A .. Let's see, there was some type of utility trailers
19 back here. The sidewalk of the church. They came out,
20 kind of zigzag a little bit and then went back in this
21 direction.

22 Q Okay. And the fence in the backside of the
23 property, was it all fence, a barbed wire fence?

24 A The rear of the church parking lot?

25 Yeah, it was a fairly tall fence, plus it was up on

Trevor Holt - Cross-Examination by Mr. Shaffer

1 top of an embankment which put it even higher off of the
2 ground.

3 Q All right. Thank you very much, I appreciate that.

4 What time did you arrive at the scene?

5 A Which one?

6 A All right. At the -- at Mr. Lucky's parking lot.

7 A 7:17 -- 0717 is 7:17 a.m.

8 Q Okay. Were you the only crime scene person on the
9 scene?

10 A At that time, yes.

11 Q Okay. Were there other deputies there?

12 A At the scene?

13 Q Yes.

14 A Yes, there were several there, definitely.

15 Q Were any of them helping you look for evidence?

16 A At that time, they were on the outside perimeter of
17 the scene.

18 Q Okay. When you did your walk through, you said you
19 tried to retrace the path that he went; is that right?

20 A At the end once -- before we left the scene, we
21 walked the parking lot, down around the corner at the end
22 between and Mr. Lucky's parking lot and then
23 behind the businesses where the fence -- the fence, the
24 leaves and vines were located on Mr. Lucky's side of the
25 drainage ditch.

Franklyn Rainsford - Direct Examination by Mr. Shellenberg

1 Q Okay.

2 MR. SHAFFER: No further questions.

3 THE COURT: Any redirect of the witness?

4 MS. WALKER: None, Your Honor.

5 THE COURT: Any objection to the witness being
6 excused from the State?

7 MS. WALKER: None from the State.

8 THE COURT: From the defense?

9 MR. SHAFFER: None, Your Honor.

10 THE COURT: Please call your next witness.

11 MR. SHELLENBERG: State calls Investigator Franklyn
12 Rainsford.

13 FRANKLYN RAINSFORD,
14 having been duly sworn, testified as follows:

15 THE CLERK: Have a seat in the witness box. State
16 your name for the record and spell it for the record.

17 THE WITNESS: I'm investigator Franklin Rainsford,
18 that's F-r-a-n-k-l-y-n, R-a-i-n-s-f-o-r-d.

19 THE COURT: You may proceed.

20 DIRECT EXAMINATION

21 BY MR. SHELLENBERG:

22 Q Investigator Rainsford, where are you employed?

23 A With the Richland County Sheriff's Department.

24 Q And how long have you been employed there?

25 A In total five -- six years at this point.

Franklyn Rainsford - Direct Examination by Mr. Shellenberg

1 Q And what do you do up there?

2 A Now, I'm currently a crime scene investigator with
3 the Richland County Sheriff's Department.

4 Q And what does a being a crime scene investigator
5 entail?

6 A We're mainly task with locating, collecting and
7 preserving evidence found at crime scenes.

8 Q Did you have the occasion to get involved in the
9 shooting of Dwayne Franklin, the investigation into the
10 shooting of Dwayne Franklin?

11 A I did.

12 Q And did you respond to -- actually to his autopsy?

13 A I did.

14 Q You did? And what did you do at his autopsy?

15 A At the autopsy, I assisted Investigator Schroeder
16 at the autopsy and there I collected the postmortem prints
17 from the victim, Mr. Dwayne Franklin.

18 Q And how do you go about collecting those postmortem
19 prints?

20 A With fingerprint cards and with fingerprint ink.
21 We apply it to the palm and the fingerprints and then we --
22 using kind of a spoon apparatus, collect the palm and
23 fingerprints from the victim.

24 Q Is that standard procedure?

25 A It is.

Franklyn Rainsford - Direct Examination by Mr. Shellenberg

1 Q I want to show you State's Exhibit 61.

2 MR. SHAFFER: No objection.

3 BY MR. SHELLENBERG:

4 Q You recognize that?

5 A Yes, this would be the postmortem prints of
6 Franklin, Dwayne.

7 MR. SHELLENBERG: Your Honor, I'd move at this
8 time -- or at this time I'd move to have the print put into
9 evidence.

10 MR. SHAFFER: No objection, Your Honor.

11 THE COURT: Mark it into evidence without
12 objection.

13 MR. SHELLENBERG: Thank you.

14 (WHEREUPON State's Exhibit No. 61 was entered into
15 evidence.)

16 BY MR. SHELLENBERG:

17 Q Did you have any further involvement in the
18 investigation?

19 A Yes, a couple of days later, I was requested to
20 respond out to an apartment complex near the scene in
21 reference to possible bloodstains on the hallway.

22 Q What apartment complex was that?

23 A It's located at , which is
24 adjacent to . I can't remember the name of
25 the apartment complex at this time.

Franklyn Rainsford - Direct Examination by Mr. Shellenberg

1 Q Okay. And did you respond to a specific apartment?

2 A Yeah, referred to the hallway outside of
3 Apartment .

4 Q Okay. And why did they have you respond out there?

5 A The investigators observed two reddish-brown stains
6 going along the side of the hallway. They wanted me out
7 there to collect the swab of the stains to see if it tested
8 positive for blood.

9 Q And, if you would just walk us through how you go
10 about taking these -- collecting these stains.

11 A To collect a swab, we use a dry, clean sterile swab
12 that's been individually wrapped and sealed. And because
13 the stain was dry at this point, we wet it with distilled
14 water, that way it made it wet so when I rub it against the
15 stain it has picking up power. So it would pick up the
16 stain. The stains in question, I located three individual
17 stains. They were photographed prior to me collecting the
18 stains, A, B, and C.

19 Q Is there an -- I'm sorry to interrupt you.

20 A That's all right.

21 Q Is there a particular reason that you had -- you
22 would label them A, B, and C?

23 A Yeah, because it was going down the length of the
24 hallway, I observed three different possibly bloodstains.
25 So because they were separated, I individually labeled

Franklyn Rainsford - Direct Examination by Mr. Shellenberg

1 them.

2 Q And after you collected the stains, what did you do
3 with them?

4 A I swabbed the stains, then submitted them to our
5 evidence property room so they could be sent to our DNA lab
6 to be tested.

7 Q And is that standard procedure?

8 A It is.

9 Q I'm going to show you what's been marked as State's
10 60?

11 MR. SHAFFER: No objection.

12 THE COURT: Marked into evidence without objection.

13 (WHEREUPON State's Exhibit No. 60 was entered into
14 evidence.)

15 BY MR. SHELLENBERG:

16 Q Do you recognize that?

17 A Yes, this would be the swabs from stains A, B, and
18 C.

19 Q Thank you very much.

20 MS. CAMPBELL: Your Honor, we'd move to have
21 State's 60.

22 THE COURT: They've already been admitted without
23 objection.

24 MR. SHELLENBERG: Thank you, Your Honor.

25 THE COURT: You're welcome.

Franklin Rainsford - Cross-Examination by Mr. Shaffer

1 MR. SHELLENBERG: Your Honor -- excuse me.

2 BY MR. SHELLENBERG:

3 Q Investigator Rainsford, did you have any other
4 involvement in this investigation?

5 A Yes, after the autopsy, I responded back out to the
6 Lucky's parking lot and to the adjacent church to search
7 the area for any other possible clothing or weapons that
8 may have been used -- or projectiles because the original
9 accident occurred at night. We came back the next day when
10 there's more sunlight to do a more thorough search of the
11 area.

12 MR. SHELLENBERG: All right. Beg the Court's
13 indulgence.

14 THE COURT: Uh-huh.

15 MR. SHELLENBERG: No further questions,
16 Investigator, thank you for much.

17 THE COURT: Any questions for the witness?

18 MR. SHAFFER: Yes.

19 THE COURT: You may proceed.

20 CROSS-EXAMINATION

21 BY MR. SHAFFER:

22 Q When you go and search the area, during the
23 daylight, you looked around the area, right?

24 A Correct.

25 Q Did you find anything in the area?

Franklin Rainsford - Cross-Examination by Mr. Shaffer

1 A No, not at the time. It had recently rained at
2 that incident because the ditches and culverts were still
3 filled with water, so we had to look around in there and
4 then along the parking lots of both the church and Lucky's
5 parking lot.

6 Q Okay.

7 MR. SHAFFER: No further questions.

8 THE COURT: Any redirect?

9 MR. SHELLENBERG: Nothing further, Your Honor.

10 THE COURT: Any objection to the witness being
11 excused from the State.

12 MR. SHELLENBERG: Yes.

13 THE COURT: Any --

14 MR. SHELLENBERG: No .

15 THE COURT: Any objection from the defense?

16 MR. SHAFFER: None, Your Honor.

17 THE COURT: Sir, you're excused.

18 THE WITNESS: Thank you.

19 THE COURT: Proceed with your next witness.

20 MS. CAMPBELL: State would call Investigator Tim
21 Lee.

22 TIMOTHY LEE,

23 having been duly sworn, testified as follows:

24 THE CLERK: Have a seat in the witness box. State
25 your name for the record and spell it.

Timothy Lee - Direct Examination by Ms. Campbell

1 **THE WITNESS:** Timothy Lee. Timothy Lee,
2 T-i-m-o-t-h-y L-e-e, Richland County Sheriff's Department,
3 investigations.

4 **THE COURT:** Thank you.

5 **DIRECT EXAMINATION**

6 BY MS. CAMPBELL:

7 Q Investigator Lee, how long have you been in law
8 enforcement?

9 A Almost 19 years.

10 Q And how long have you been a crime scene
11 investigator?

12 A Six years.

13 Q What do your duties include as a crime scene
14 investigator?

15 A Responding to crime scenes, investigating and
16 collecting evidence, preserving, testifying in court.

17 Q Could you tell this jury a little bit about your
18 education and your training on crime scene.

19 A Since I have come to the crime scene unit, I've
20 gone almost 400 hours worth of courses. Some of the
21 courses include basic crime scene investigation, advanced
22 blood pattern analysis, advanced crime scene photography,
23 crime scene processing, basic blood pattern analysis, DNA
24 overview in forensic pathology, expert witness testimony,
25 fingerprint recognition, crime scene reconstruction,

Timothy Lee - Direct Examination by Ms. Campbell

1 forensic anthropology/archaeology, crime scene

2 reconstruction course, we just had another one here in

3 November. And also I've obtained my crime scene

4 certification through IBI last year.

5 Q And you've testified before as an expert in crime
6 scene investigations?

7 A I have, five times.

8 MS. CAMPBELL: Your Honor, at this time we would
9 ask he be qualified as an expert in crime scene
10 investigations.

11 MR. SHAFFER: No objection, no questions.

12 THE COURT: Admitted, no objection.

13 BY MS. CAMPBELL:

14 Q Investigator Lee, I want to turn your attention to
15 this case. Did you become involved in the early morning
16 hours in the investigation of this case?

17 A I did.

18 Q And did you actually respond to the scene that
19 morning?

20 A Yes, I did. And approximately what time was it
21 when you got to the scene.

22 A I arrived at the scene at 7:20 a.m. on August 19th,
23 2012.

24 Q Were any other crime scene investigators there when
25 you got there?

Timothy Lee - Direct Examination by Ms. Campbell

1 A Investigator Holt was on the scene.

2 Q And who was the primary, the lead crime scene
3 investigator that day?

4 A Holt was the primary.

5 Q Holt was the primary?

6 A That's correct.

7 Q So he collected the majority of the evidence there
8 at the scene?

9 A That's correct. I responded to assist and finish
10 up. He was just about done with the primary scene at

11

12 Q And the primary scene in this case is what
13 establishment?

14 A It's going to be Mr. Lucky's parking lot or the
15 parking lot area where Mr. Lucky's is located.

16 Q So if he'd gone to two other locations prior to
17 getting there, you just went to Mr. Lucky's?

18 A That's correct.

19 Q And when you got there you assisted him in doing, I
20 believe, some measurements in this case?

21 A That's correct. He had several items marked
22 through the parking lot. There were fired cartridge
23 casings and a reddish-brown stain. I assisted with trying
24 to make some measurements from the edge of the parking lot
25 sidewalk area to these articles and I wrote down the actual

Timothy Lee - Direct Examination by Ms. Campbell

1 measurements and assisted him on collecting those items.

2 Q And then those items were corrected by him?

3 A Yes.

4 Q And prior to them being collected they were also
5 photographed and marked, with the markers with the letters
6 on them?

7 A That's correct.

8 Q So these would accurately reflect where those items
9 were?

10 A Yes, ma'am.

11 Q While you were there, did you also collect evidence
12 from a certain person who had been held at the scene?

13 A That's correct. I was asked to collect a gunshot
14 residue kit from Ernest Bethel at the request of
15 Investigator Holdorf.

16 Q I'm going to show you what's been marked as State's
17 Exhibit 59. Do you recognize this?

18 A This appears be a gunshot residue kit. The
19 initials of J and S on it which I assume is SLED.

20 Q And the name associated with that kit would be?

21 A Ernest Bethel.

22 Q And that day when you collected gunshot residue
23 kits, tell the jury what you do and what the purpose of it
24 is?

25 A The purpose of a gunshot residue kit is to collect

Timothy Lee - Direct Examination by Ms. Campbell

1 any particles that are left on the hands whenever the gun
2 powder burns, it changes its composition and there are
3 certain particles that they look for at SLED. All we do as
4 crime scene investigators is we use sticky tabs and we
5 touch them on the hands, on the back, on the palms and we
6 send this onto SLED and they can look at them underneath
7 the microscope and see if there are items there or if there
8 are not items there.

9 There is a certain window that you need to collect
10 the stuff in. With gunshot residue, it's best under six
11 hours so that you don't have the chance of it getting
12 rubbed off by touching your clothes, washing your hands,
13 can sweating. There's all different possibilities of it
14 coming lose.

15 Q You mentioned there was a certain time period. How
16 would you describe gunshot residue as far as tracking
17 time --

18 A It's fragile. It can go away very easily depending
19 on what is done, what is touched and what the weather --
20 the way it was, we wanted to collect it as quick as
21 possible.

22 Q And you did that that morning?

23 A Yes.

24 Q For Mr. Ernest Bethel; is that correct?

25 A I did. I got a signed consent form from him and I

Timothy Lee - Direct Examination by Ms. Campbell

1 don't know if I have an exact time I collected it, the ones
2 I have him sign for consent, I collected it on the scene.

3 Q All right. And just to be clear, it's Mr. Ernest
4 Bethel, not the defendant, Mr. James Bethel?

5 A That's correct.

6 MS. CAMPBELL: Your Honor, at this time, I move
7 State's Exhibit 59 into evidence.

8 MR. SHAFFER: No objection.

9 THE COURT: Marked in without objection.

10 (WHEREUPON State's Exhibit No. 59 was entered into
11 evidence.)

12 BY MS. CAMPBELL:

13 Q Once you've collected the gunshot residue kit, do
14 you yourself do any of the testing?

15 A No. All we do is collect and submit it to our
16 evidence room and then it's transferred over to SLED.

17 Q Later that morning, did you return to headquarters
18 to do some further testing in this case?

19 A That's correct.

20 Q Can you tell the jury where you went and what type
21 of investigation you were doing?

22 A The silver Suburban that investigator Holt
23 described --

24 Q Uh-huh.

25 A Was towed to our forensic 's garage. And I --

Timothy Lee - Direct Examination by Ms. Campbell

1 MR. SHAFFER: May we approach?

2 (WHEREUPON, there was a bench conference out of the
3 hearing of the jury and the Court Reporter.)

4 THE COURT: You may proceed.

5 BY MS. CAMPBELL:

6 Q I apologize, Investigator.

7 A All right.

8 Q You returned where? I'm sorry.

9 A I cleared the scene about 9 -- I think it was about
10 9:25. And I responded back to headquarters. At 11:40
11 a.m., the same day, I received a signed consent form from
12 Anthony Bethel who was the owner of the silver Suburban
13 that Investigator Holt had already described. The vehicle
14 had been towed to our headquarters, placed in our
15 forensic's garage and I was asked to take a look at the
16 vehicle and do a search of the vehicle for any items of
17 value that were in there.

18 Q Okay. And were you aware of where this vehicle had
19 been towed from when it got to your garage? Where did it
20 come from?

21 A It came from Mr. Lucky's parking lot.

22 Q And again, that's the same place you took the
23 gunshot residue kit from whom?

24 A From Ernest Bethel.

25 Q Thank you.

Timothy Lee - Direct Examination by Ms. Campbell

1 Prior to searching that car, you received a consent
2 to search from whom?

3 A From the owner, Anthony Bethel.

4 Q When you first observed the vehicle on the
5 exterior, I want to talk about first. Did you notice
6 anything to the exterior of the vehicle?

7 A (Looking at report.) The only thing on the
8 exterior would have been a flat tire.

9 Q I'm going show you some items that are already in
10 evidence. Specifically the car we're referring to -- this
11 is State's Exhibit 25 and 26. Does that show the vehicle
12 we're talking about?

13 A Yes.

14 Q And that shows it actually where? Where was it
15 located when these photographs were taken?

16 A In our forensic's garage which is located behind
17 headquarters on Two Notch Road.

18 Q Prior to doing the search of the interior, were you
19 able to photograph the exterior?

20 A Correct. I took overall photographs of the
21 exterior of the vehicle and noted a flat passenger side
22 front tire.

23 Q And I show you State's Exhibit 29 and 30. Do you
24 recognize those?

25 A Yes.

Timothy Lee - Direct Examination by Ms. Campbell

1 Q And what do those show, sir?

2 A It's going to be a possible impact point in the
3 tire and the tire being flat.

4 Q And that's how it appeared when it got there?

5 A That's correct.

6 Q Let me --

7 A I was told it was also flat when it was on the
8 scene there.

9 Q Okay. And once you noticed that the tire was flat,
10 did you take any other measures to try to determine how the
11 tire became flat?

12 A I wanted to see if I could locate any projectile
13 inside the tire, so I removed the tire and actually cut the
14 tire off of the rim using a Saws All and I noticed the
15 perforation through the tire that was consistent with being
16 struck with a possible projectile but no projectile was
17 located in the vehicle, in the vehicle tire area.

18 Q So you were not able to locate a projectile in the
19 tire itself?

20 A No, I couldn't locate one.

21 Q And there were two different perforated holes in
22 the tire?

23 A There was one going through it that was a
24 possible -- you know, if that's it, it may have bounced
25 out.

Timothy Lee - Direct Examination by Ms. Campbell

1 Q Once you had completed your observations on the
2 exterior of the vehicle, did you observe the interior of
3 the vehicle?

4 A I did. The interior appeared to be cluttered with
5 a lot of personal effects.

6 Q Okay. Let's stop right there for a second.
7 Specifically, I want to focus on the thing you found in the
8 back seat in a pouch area.

9 I show you State's Exhibits No. 31 and 32. Does
10 that show generally the interior of this car? And I
11 apologize for my fumbling questions.

12 A That's correct. It's going to be the front
13 passenger area and the driver -- the back passenger area.

14 Q And on the passenger side behind the -- the front
15 passenger seat, in State's Exhibit No. 28, would you find
16 anything of significance there?

17 A Yes, there's a weapon that was in the pouch on the
18 back of that by the passenger seat.

19 Q And in this, can you actually see part of that
20 weapon?

21 A You can. You can see it.

22 Q Is that where I'm pointing?

23 A Yes, you can see it.

24 Q And what am I pointing to?

25 A It's the butt of the pistol.

Timothy Lee - Direct Examination by Ms. Campbell

1 Q And what type of pistol was that that was found
2 behind the passenger seat, front seat?

3 A It was a Bersa .380 auto.

4 Q What was its condition when you got it out of the
5 car?

6 A It was fully loaded.

7 Q Once you found the weapon, did you remove it from
8 the car?

9 A I did. Removed it from the car and photographed it
10 and made it safe. I removed one unfired cartridge from the
11 chamber and there was additional unfired cartridges in the
12 actual clip area.

13 Q Hold on one second here.

14 MS. CAMPBELL: Your Honor, may we approach?

15 THE COURT: Uh-huh.

16 MS. CAMPBELL: It's a matter of law.

17 (WHEREUPON, there was a bench conference out of the
18 hearing of the jury and the Court Reporter.)

19 MS. CAMPBELL: Beg the Court's indulgence.

20 THE COURT: Uh-huh.

21 MS. CAMPBELL: I apologize.

22 BY MS. CAMPBELL:

23 Q I'm going to show you what's been marked as State's
24 Exhibit No. 76. Do you recognize that?

25 A This is the box I placed the Bersa Auto, the clip

Timothy Lee - Direct Examination by Ms. Campbell

1 and unfired cartridge in. This is my evidence slip and my
2 initials on the back on the sale.

3 Q And again, is this the item that you collected that
4 day from that car?

5 A It is.

6 MS. CAMPBELL: Your Honor, at this time, we offer
7 State's Exhibit 76 into evidence.

8 MR. SHAFFER: No objection.

9 THE COURT: Mark it without objection.

10 (WHEREUPON State's Exhibit No. 76 was entered into
11 evidence.)

12 BY MS. CAMPBELL:

13 Q Opening 76, make sure this is the gun we are
14 talking about. And don't point it that way, please -- or
15 at anybody.

16 A That's the serial number that I placed in there as
17 correct.

18 Q That's the weapon -- and when you actually got this
19 weapon out of the car, how was the ammunition loaded?

20 A There were unfired cartridges in the clip and there
21 was one that was in the chamber as you would find in a
22 normal weapon.

23 Q All right. And how many unfired were in the clip?

24 A I never removed them from the clip. I only removed
25 the one in that chamber.

Timothy Lee - Direct Examination by Ms. Campbell

1 Q For safety purposes?

2 A That's correct.

3 Q I'm going to move onto the next thing you did in
4 this case, specifically with this same gun. Did you, once
5 you collected it, try to process it for any possible
6 fingerprints?

7 A That's correct. I took it into our lab and I used
8 cyanoacrylate fuming, Super Glue fuming, as Holt had
9 described on some of the items that he used and I processed
10 it for any prints and the results were negative on that.
11 No prints were developed. It's not uncommon on a weapon
12 and on projectiles to not get good ridge detail. You might
13 get a smudge or a smear, with it being slidden in and out
14 of hands, such as the back of the actual car seat, you can
15 remove that stuff, so I didn't get any good prints off of
16 it. It was swabbed for DNA and the DNA swab was submitted
17 to evidence for analysis as well.

18 Q But as far as you know, you didn't find any what's
19 called a usable print, you weren't able to do that?

20 A That's correct.

21 Q And, again, is that unusual?

22 A Not unusual, no.

23 Q And you threw out the term smudge or smear.

24 Explain that to the jury?

25 A A lot of times when an item is touched, it's

Timothy Lee - Direct Examination by Ms. Campbell

1 brushed or smeared. And the ridges don't stay. They'll
2 actually smear down, such as if you touch your glasses, you
3 won't leave a perfect print on your glasses.

4 Q And you actually processed that gun that same day?

5 A I believe I did. I think everything was handled
6 that day. Let me check my notes. (Looking)

7 Yeah, I processed that at 2:15 in the afternoon. I
8 completed it at 4:55.

9 Q Okay. And the swab that you actually took from the
10 gun, I show you State's Exhibit 58, you recognize that?

11 A Yes.

12 MS. CAMPBELL: Your Honor, at this time, I'd offer
13 State's Exhibit 58 into evidence.

14 THE COURT: Any objection?

15 MR. SHAFFER: No objection.

16 THE COURT: Marked into evidence without objection.

17 BY MS. CAMPBELL:

18 Q Finally, concerning that same day, did you actually
19 respond back to the scene?

20 A Yes.

21 Q And again, when I'm referring to the scene, where
22 am I referring to where you're going to?

23 A The area in Mr. Lucky's parking lot, the church
24 parking lot and the area surrounding that. Myself and
25 Investigator Rainsford and Investigator Schroeder went back

Timothy Lee - Cross-Examination by Mr. Shaffer

1 out there and we looked for any evidence that we could find
2 through the creek, the church parking lot and the main
3 parking lot area of Mr. Lucky's.

4 Q And were y'all able to find any additional evidence
5 during that search that afternoon?

6 A We did not, no.

7 Q Thank you sir.

8 THE COURT: Any questions for this witness?

9 MR. SHAFFER: Yes, Your Honor.

10 THE COURT: You may proceed.

11 CROSS-EXAMINATION

12 BY MR. SHAFFER:

13 Q Are you familiar with this weapon, the Bersa?

14 A The one that I collected from the vehicle?

15 Q Yes.

16 A I'm just familiar from collecting it and processing
17 it.

18 Q Okay.

19 A I don't know any history on it if that's what
20 you're asking.

21 Q Well, that's not exactly -- have you -- it's a
22 caliber .380, though, right?

23 A That's what it says, yes.

24 Q Okay. Did you do any tests other than fingerprint
25 analysis?

Shawn Schroeder - Direct Examination by Ms. Walker

1 A No.

2 MR. SHAFFER: No further questions.

3 THE COURT: Any redirect?

4 MS. CAMPBELL: No, ma'am.

5 THE COURT: Any objection to the witness being
6 excused from the State?

7 MS. CAMPBELL: None from the State, Your Honor.

8 THE COURT: From the defense?

9 THE COURT: Sir, you're excused.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 THE COURT: You may call your next witness.

13 MS. WALKER: State calls Investigator Shawn
14 Schroeder.

15 SHAWN SCHROEDER,
16 having been duly sworn, testified as follows:

17 THE CLERK: Have a seat in the witness box. State
18 your name for the record and spell it, please. Is.

19 THE WITNESS: Shawn Schroeder, Schroeder,
20 S-c-h-r-o-e-d-e-r.

21 **DIRECT EXAMINATION**

22 BY MS. WALKER:

23 Q Sir, where are you currently employed.

24 A Richland County Sheriff's Department.

25 Q And how long have you been with the sheriff's

Shawn Schroeder - Direct Examination by Ms. Walker

1 department?

2 A A little over six years.

3 Q What are your duties at the sheriff's department?

4 A Currently, I'm a crime scene investigator and a
5 latent print examiner.

6 Q And what does that entail?

7 A A crime scene investigator, portions involve
8 identifying, documenting, collecting, processing evidence
9 related to all types of crime. Also completing crime scene
10 sketches, attending autopsies.

11 Q And how long have you been a crime scene
12 investigator?

13 A I've been a crime scene investigator for three
14 years.

15 Q So that's what you were doing in August of last
16 year?

17 A Yes, ma'am.

18 Q And did you become involved in the investigation of
19 this case?

20 A Yes, I did.

21 Q In fact, you attended the autopsy of the victim in
22 this case?

23 A That's correct.

24 Q What -- what's the purpose of your attending the
25 autopsy?

Shawn Schroeder - Direct Examination by Ms. Walker

1 A The purpose of attending the autopsy is to document
2 the victim and also for collection of the evidence.

3 Q And when did you attend the autopsy in this case?

4 A I attended the autopsy August 19th of 2012.

5 Q And where was that?

6 A It's at the Richland County Ward at 5 Medical Park
7 Drive, here in Columbia, Richland County.

8 Q Can you tell me what you observed while you were
9 attending the autopsy?

10 A Sure. When I arrived on the scene in the morgue, I
11 met with Dr. Durso, who is the pathologist and also with
12 Coroner Knight. I observed the victim on a gurney in the
13 morgue, which is standard. I did observe the victim's
14 hands were bagged as well.

15 Q What is the purpose of bagging the victim's hands?

16 A As mentioned before, gunshot residue is generally
17 valuable on the back of the hands.

18 Q Okay. Continue. I'm sorry to interrupt.

19 A I also observed that the victim had an injury to
20 the left side of the back of his head.

21 Q You observed that injury to the left side of the
22 back of his head?

23 A Left side of the back of the head, that's correct.

24 Q And what did you do while you were at the autopsy?

25 A While there, I photographed that -- I photographed

Shawn Schroeder - Direct Examination by Ms. Walker

1 all parts of the body, actually, as well as specifically
2 the injury and other -- tattoos and other items related to
3 the victim.

4 Q And did you collect evidence?

5 A I did.

6 Q At the autopsy?

7 A Yes.

8 Q Let me show you what's been marked as State's
9 Exhibit's 55, 56 and 57. Starting with Exhibit 55, can you
10 tell me what this is?

11 A Sure. This is a projectile collected from Dr.
12 Durso.

13 Q And who is Dr. Durso?

14 A She is the forensic pathologist.

15 MS. WALKER: At this point in time, Your Honor, the
16 State moves to admit Exhibit 55 into evidence.

17 THE COURT: Any objection?

18 MR. SHAFFER: No objection.

19 THE COURT: Marked into evidence without objection.

20 (WHEREUPON State's Exhibit No. 55 was entered into
21 evidence.)

22 BY MS. WALKER:

23 Q This is a projectile?

24 A That's correct.

25 Q What exactly is a projectile?

Shawn Schroeder - Direct Examination by Ms. Walker

1 A A projectile is fired from a weapon. It's
2 basically a bullet.

3 Q And Exhibit 56?

4 A This is a buccal swab selected from Dwayne
5 Franklin.

6 Q The victim?

7 A The victim.

8 Q And can you tell me how you collected that buccal
9 swab from the victim?

10 A A buccal swab, as explained as the other swabs,
11 when you have a deceased victim, we'll just collect the
12 swab from inside of the cheek for buccal cells. It's a
13 really good test for DNA, for analysis.

14 Q And that's what you did in this case?

15 A That's correct.

16 MS. WALKER: At this point, Your Honor, the State
17 seeks to admit Exhibit 56 into evidence.

18 MR. SHAFFER: No objection.

19 THE COURT: Marked into evidence without objection.

20 (WHEREUPON State's Exhibit No. 56 was entered into
21 evidence.)

22 BY MS. WALKER:

23 Q And finally, State's Exhibit 57.

24 A This is a GSR, a gunshot residue kit, collected
25 from the victim.

Shawn Schroeder - Direct Examination by Ms. Walker

1 Q And how did you collect this kit?

2 A As described before, same way. There's sticky tabs
3 in the kit and we collect from the palms, the front of the
4 hands and the back of the hands for potential gunshot
5 residue.

6 Q You did that after removing the bags?

7 A Correct. After removing the bags.

8 Q And with these items, what did you do with them
9 after collecting them?

10 A After collecting them, I took them back to
11 headquarters at 5623 Two Notch Road and submitted them into
12 evidence for further analysis.

13 Q And is there a process that you do to ensure that
14 the items are packaged properly?

15 A Well, we always initial -- that's what you're
16 talking about?

17 Q Yes.

18 A Well, we always put our initials and the date on
19 the back so we know we were the last ones that touched the
20 items.

21 Q And you did that with these items?

22 A Yes.

23 Q Is that the extent of what you did while attending
24 the autopsy?

25 A I also had collected some standards, or some hair

Shawn Schroeder - Direct Examination by Ms. Walker

1 standards from different hairs and a black in color t-shirt
2 and a Sony cell.

3 Q That is sort of y'all's standard?

4 A To collect the standards, yes.

5 Q What, if anything else, did you do involved in this
6 investigation?

7 A In this investigation, I actually responded back
8 out to the scene, which Investigator Lee just mentioned it,
9 to search for additional evidence on the property, with
10 negative results.

11 Q Now what scene was that?

12 A That was at , at Mr. Lucky's.

13 Q You said negative results?

14 A Negative results.

15 Q Thank you, sir. I don't have any further
16 questions.

17 THE COURT: Any questions for this witness?

18 MR. SHAFFER: No, Your Honor.

19 THE COURT: Any objection to the witness being
20 excused from the State?

21 MS. WALKER: None from the State.

22 THE COURT: From the defense?

23 MR. SHAFFER: No, Your Honor.

24 THE COURT: Sir, you're excused.

25 THE COURT: State can call its about next witness.

Anna Cavanaugh - Direct Examination by Ms. Campbell

1 **MS. CAMPBELL:** Please the Court, the State calls
2 Lieutenant Cavanaugh.

3 **ANNA CAVANAUGH,**
4 having been duly sworn, testified as follows:

5 **THE CLERK:** Have a seat in the witness box. State
6 your full name for the record.

7 **THE WITNESS:** Anna Cavanaugh, C-a-v-a-n-a-u-g-h.

8 **THE COURT:** You may proceed.

9 **MS. CAMPBELL:** Thank you.

10 **DIRECT EXAMINATION**

11 **BY MS. CAMPBELL:**

12 **Q** Lieutenant, where are you employed?

13 **A** The Richland County Sheriff's Department.

14 **Q** What do you do there?

15 **A** I'm a lieutenant of the Crime Scene Latent Prints
16 section.

17 **Q** As a supervisor over the crime scene and latent
18 print section, what do your duties include?

19 **Q** My primary duties at this time are mainly
20 administrative. I'm mainly in charge of scheduling,
21 budgeting, incoming calls, procedures, and making sure
22 everything is maintained to our standards for
23 accreditation. In addition to that, I am also part of our
24 supervisor on-call rotation to assist on emergencies.

25 **Q** You mentioned that your laboratory -- you maintain

Anna Cavanaugh - Direct Examination by Ms. Campbell

1 accreditation. How is your laboratory accredited?

2 A We are accredited through ASCLD, basically ASCLD is
3 the accrediting body who will go into a laboratory and they
4 have a checklist with I believe over 150 standards that
5 must be met and we -- our forensic laboratory as a whole is
6 accredited. And specifically I believe to maintain that
7 accreditation, we are responsible for processing latent
8 prints.

9 Q And you mentioned you're a forensic laboratory as a
10 whole. You also have -- in addition to the crime scene
11 section and the latent print section, are there also
12 additional sections involved?

13 A There are. There's DNA toxicology, firearms.

14 Q And are all laboratories in South Carolina
15 accredited?

16 A They are not. We are the only crime scene section
17 in South Carolina that's accredited.

18 Q Sure. I'm going turn your attention back to April
19 (Sic) 19th. Did you become involved and assist in this
20 investigation?

21 A I did.

22 Q And what was your -- what did you do initially?

23 A I initially responded to the hospital and made
24 contact with Deputy Pinkney and was advised that the
25 subject -- the clothes had been collected from the subject.

Anna Cavanaugh - Direct Examination by Ms. Campbell

1 Q And when you saying subject, who are you referring
2 too?

3 A James Bethel.

4 Q James Bethel?

5 A Correct.

6 Q And he was located where?

7 A He was in room 252 at Richland Memorial Hospital.

8 Q And what was the purpose of you going and making
9 contact with Mr. Bethel when he was in the hospital that
10 day?

11 A As described previously, GSR is very fragile and
12 has to be collected during a certain time frame. So I
13 needed to make contact with him as soon as possible to get
14 him to collect that particular evidence.

15 Q What did you observe when you initially made
16 contact with him in Room 215 at the hospital?

17 A He was laying in a hospital bed and both of his
18 hands were bagged.

19 Q And what's the purpose of bagging his hands as they
20 were done in this case?

21 A To preserve any evidence that may be on the hands
22 that might get rubbed off or destroyed prior to us getting
23 there.

24 Q I want to show you State's Exhibits 16 through 21,
25 which have already been admitted. Do you recognize those?

Anna Cavanaugh - Direct Examination by Ms. Campbell

1 A Yes, these are all photographs of Mr. Bethel at the
2 hospital. Prior -- when I first got there with the bags on
3 the hands and also once the bags were removed.

4 Q Okay. Now, I'll state this first, you mentioned
5 that the hands were bagged. Is that shown here in State's
6 Exhibit 16?

7 A It is.

8 Q And those are the bags you were talking about that
9 were on his hands when you got there?

10 A Yes.

11 Q And that was done for what purpose?

12 A To preserve evidence on the hands.

13 Q Once you got there, what if anything did you do
14 with his hands?

15 A I removed the bags, collected them, and then
16 collected a GSR kit.

17 Q And again, we're talking about a GSR kit. How do
18 you go about collecting that?

19 A As described earlier, the kit contains a stub that
20 has a plastic top on it. We remove the top. There's an
21 adhesive sticky tab on the stub. There is one label for
22 the left palm and the back of the hand, and right palm and
23 back of the hand. So we collect the sticky tabs from each
24 section of the hand.

25 Q Once you collected that, what did you do with it?

Anna Cavanaugh - Direct Examination by Ms. Campbell

1 A I then transported it back to our headquarters,
2 packaged it, sealed it, initialled and dated it and then
3 submitted it to evidence to be transported to SLED for
4 analysis.

5 Q And was proper protocol done in this case?

6 A Yes.

7 Q I'm going to show you State's Exhibit's 64 and 62
8 and ask if you recognize those.

9 A 64 is the GSR kit I collected from James Bethel.
10 And 62 are the bags from the left and right hand.

11 Q The bags are depicted in State's Exhibit 16 that we
12 just showed the jury?

13 A Correct.

14 MS. CAMPBELL: Your Honor, at this time we'd offer
15 62 and 64 into evidence.

16 MR. SHAFFER: No objection.

17 THE COURT: Marked into evidence without objection.
18 (WHEREUPON State's Exhibit 62 and 64 were entered
19 into evidence.

20 MS. CAMPBELL: Thank you, Your Honor.

21 BY MS. CAMPBELL:

22 Q State's Exhibits No. 17 and 20, is that the person
23 that you photographed at the hospital that day?

24 A It is.

25 Q And State's Exhibit 18, 19 and 21, do those show

Anna Cavanaugh - Direct Examination by Ms. Campbell

1 his hands?

2 A They do.

3 Q Were you able to photograph the wounds he sustained
4 that day?

5 A I was not.

6 Q Why not?

7 A Because of his injuries and being able to move him
8 and the doctors advised not to try to mess with his
9 injuries that the time.

10 Q At that time?

11 A Uh-huh.

12 Q What time was it when you got there?

13 A I actually finally made contact with him at 5:56
14 a.m.

15 Q 5:56 a.m.?

16 A Correct.

17 Q Okay. Did you collect any other items while you
18 were there at the hospital?

19 A There was a bag that was said to contain his
20 belongings that I collected.

21 Q Okay. And specifically his belongings being what?

22 A His underwear.

23 Q His underwear?

24 A Uh-huh.

25 Q Later that day did you also collect another gunshot

Anna Cavanaugh - Direct Examination by Ms. Campbell

1 residue kit?

2 A I did. I made -- once I left Richland Memorial
3 Hospital, I went back to headquarters, made contact with
4 Sargent Faust and at his request, I collected a GSR kit
5 from Kendron Hope.

6 Q Kendron Hope?

7 A Correct.

8 Q Kendron Hope?

9 A Correct.

10 Q Around where did you actually put that kit? Where
11 were y'all at then?

12 A At our headquarters at 5623 Two Notch Road.

13 Q I show you State's Exhibit No. 63. Do you
14 recognize that?

15 A Yes, 63 is the GSR kit from Hope.

16 Q Without going through all the details, was it
17 properly collected as well?

18 A It was.

19 MS. CAMPBELL: Your Honor, at this time, we offer
20 State's Exhibit 63 into evidence.

21 THE COURT: Any objection?

22 MR. SHAFFER: No, Your Honor.

23 THE COURT: Mark it into evidence.

24 (WHEREUPON State's Exhibit 63 was entered into
25 evidence.)

Anna Cavanaugh - Direct Examination by Ms. Campbell

1 BY MS. CAMPBELL:

2 Q Later that day, did you also make contact with
3 Sargent Faust again about receiving certain evidence?

4 A I did. I contacted -- I made contact with him in
5 reference to a digital recorder that he had taken custody
6 of. He was actually in a conference room upstairs at
7 headquarters and had the potential of being in and out of
8 the room based on the investigation. So I took the
9 recorder from him, did a chain of custody and replaced it
10 secure in our laboratory until Investigator Metz could
11 arrive at headquarters to take custody of the recorder to
12 do an analysis with it.

13 Q And the order, you're referring to, that's the
14 recording with the video that's been referred to?

15 A It's the recorder that they took from Mr. Lucky's
16 that evening.

17 Q And finally, did you assist in making sure that the
18 vehicle towed from the scene, the Suburban --

19 A Yes, I did. At 9:15, I made contact with Deputy
20 Littles who had escorted and followed the vehicle from Mr.
21 Lucky's to headquarters and received the vehicle from her
22 and secured it into our garage.

23 Q Did you do that for processing it or did somebody
24 else do that?

25 A I did not, Investigator Lee.

Anna Cavanaugh - Cross-Examination by Mr. Shaffer

1 Q Investigator Lee?

2 A Yes.

3 Q He actually processed the vehicle?

4 A He did.

5 Q And is that the extent of your involvement?

6 A It is.

7 MS. CAMPBELL: Thank you, Your Honor. I have no
8 further questions.

9 THE COURT: Any questions of in witness?

10 CROSS-EXAMINATION

11 BY MR. SHAFFER:

12 Q Ms. -- -- what state was the defendant in whenever
13 you arrived at the hospital?

14 A He was laying in the bed. I think he would you
15 describe in and out, but I remember him holding his hands
16 together.

17 Q Okay. And what time was that?

18 A At 5:56.

19 Q In the morning?

20 A Yes, sir.

21 MR. SHAFFER: No further questions.

22 THE COURT: Any redirect of the witness?

23 MS. CAMPBELL: No, ma'am.

24 THE COURT: Any objection to the witness being
25 excused from the State?

David Richardson - Direct Examination by Ms. Walker

1 MS. CAMPBELL: None.

2 THE COURT: From the defense?

3 MR. SHAFFER: None, Your Honor.

4 THE COURT: Ma'am, you're excused.

5 MS. WALKER: We'd call David Richardson.

6 DAVID RICHARDSON,

7 having been duly sworn, testified as follows:

8 THE CLERK: Have a seat? The witness box. State
9 your name for the record and spell it, please.

10 THE WITNESS: David Richardson,
11 R-i-c-h-a-r-d-s-o-n.

12 THE COURT: You may proceed.

13 **DIRECT EXAMINATION**

14 BY MS. WALKER:

15 Q Sir, where do you live?

16 A

17 Q That's here in Columbia?

18 A Yes, ma'am.

19 Q How long have you lived here?

20 A Twenty-seven years.

21 Q You grew up here?

22 A Yeah.

23 Q Where did you go to high school?

24 A Columbia High School and Irmo High School.

25 Q When did you graduate or which high school did you

David Richardson - Direct Examination by Ms. Walker

- 1 graduate from?
- 2 A Columbia High School, 2006.
- 3 Q 2006? Where do you work?
- 4 A Currently I'm unemployed right now.
- 5 Q Where did you -- did you work back in August of
- 6 last year?
- 7 A Yes, ma'am.
- 8 Q Where did you work then?
- 9 A At Mr. Lucky's gentlemen's club.
- 10 Q What did you do at Mr. Lucky's?
- 11 A I was a security bouncer.
- 12 Q Did you know Dwayne Franklin?
- 13 A Yes, ma'am.
- 14 Q How did you know him?
- 15 A Good friend. More like a brother.
- 16 Q Were you close with him?
- 17 A Yes, ma'am.
- 18 Q Did you know his family?
- 19 A Yes, ma'am.
- 20 Q Who in his family did you know?
- 21 A His mom, his dad, and his kids.
- 22 Q How many kids did he have?
- 23 A Five.
- 24 Q Were you working on the night Dwayne was murdered?
- 25 A No, ma'am.

David Richardson - Direct Examination by Ms. Walker

1 Q Did you see him that night?

2 A Yes, ma'am.

3 Q Where did you see him?

4 A At Lucky's Gentlemen's Club.

5 Q Why did you go to Mr. Lucky's?

6 A He was calling me to come up there so me and a
7 friend of mine went up there.

8 Q Do you remember what time you got there?

9 A Maybe around 2:30, 2:45.

10 Q In the morning?

11 A Yes, ma'am.

12 Q Did Dwayne have a nickname?

13 A Yeah, Black.

14 Q Y'all called him Black?

15 A (Witness nodded head.)

16 Q Did you -- who was first person that you saw when
17 you got there, do you remember?

18 A When I first entered the club? I don't recall.

19 Q Did you see other security guards?

20 A Oh, yeah, other security guards, yeah. I saw
21 Kendrick, Will, and I don't recall the other security guy's
22 name.

23 Q Are there two different kind of groups providing
24 security for the club?

25 A Yes, ma'am, you've got your armed security, which

David Richardson - Direct Examination by Ms. Walker

1 is outside. You got the bouncers, which are inside.

2 Q Now you're saying there was armed security outside.

3 The bouncers that are inside, are they armed?

4 A No, no, no.

5 Q Did Black work inside or outside?

6 A Inside.

7 Q He's one of the unarmed security guys inside?

8 A Yes, ma'am.

9 Q Where was Black when you saw him?

10 A When I first entered the club, Black actually
11 approached me by the bar. So I first seen him at the bar.

12 Q Did you talk to him?

13 A Yeah.

14 Q Did you know if he was having trouble with any of
15 the customers inside that night?

16 A He was calling me for a couple of hours telling me
17 that there was some guys --

18 MR. SHAFFER: Objection, Your Honor.

19 THE COURT: Sustained. Hearsay.

20 BY MS. WALKER:

21 Q Don't tell me what he said. Did you become
22 concerned and go to the club?

23 A Yes.

24 Q And did he point out while you were in the club the
25 people that he'd been having trouble with that night?

David Richardson - Direct Examination by Ms. Walker

1 A Yes, ma'am.

2 Q Were they doing things that would generally get
3 people kicked out of Mr. Lucky's?

4 A Yes, ma'am.

5 Q And these people that he pointed at where were they
6 in the club when you first saw them?

7 A When I first saw them, there was a group in the
8 corner of the club.

9 Q Do you remember how much of them there were?

10 A Maybe about five.

11 Q And did you -- did you interact with any of them at
12 any point?

13 A No, ma'am, I didn't say anything to any one of
14 them.

15 Q Did you observe their interaction with other
16 people?

17 A Yes.

18 Q Tell me what you saw them doing?

19 A Bouncing around, you know, being belligerent, gang
20 signs, that's about it.

21 MR. SHAFFER: Objection, Your Honor.

22 THE COURT: Please approach.

23 (WHEREUPON, there was a bench conference out of the
24 hearing of the jury and the Court Reporter.)

25 THE COURT: You may proceed. Overruled.

David Richardson - Direct Examination by Ms. Walker

1 BY MS. WALKER:

2 Q So you observed all this?

3 A Yes, ma'am.

4 Q And are those types of things generally things that
5 will get you kicked out of Mr. Lucky's?

6 A Yes, ma'am.

7 Q What is -- are y'all trying to remain a certain
8 level of control in the environment?

9 A Yes, ma'am. Just making sure, you know, nobody
10 gets out of hand or gets too drunk and just make sure
11 everybody have a good time.

12 Q And from your perspective as being a bouncer in a
13 club, was the group out of hand?

14 A Yes, ma'am.

15 Q And it was time for them to go?

16 A Yes, ma'am.

17 Q Can you tell me how you saw Black interacting with
18 them?

19 A About twice, I seen some guys approach them trying
20 to talk to them, some of the guys of our group. And he was
21 just shrugging them off, like I don't want to talk to you.
22 Get off of me. You understand? That's about it.

23 Q Were they approaching him in a friendly manner --
24 were they approaching him in a friendly manner or could you
25 tell?

David Richardson - Direct Examination by Ms. Walker

1 A I couldn't really tell. They was just running up
2 on him real fast and he was like, "Look, back away, get
3 off, I don't want to talk to you."

4 Q So he didn't want to talk to the people?

5 A Huh-huh.

6 Q Did you see the defendant in the club that night?

7 A Yes, ma'am.

8 Q Did you ever see him interact with Black?

9 A No, ma'am. Not interaction, no, ma'am.

10 Q Did you see them in close proximity to one another?

11 A Yeah. They were close to each other, but I didn't
12 see any interactions --

13 Q Okay.

14 A -- between the two.

15 Q Okay. Did you see this group eventually get kicked
16 out of the club?

17 A Yes, ma'am.

18 Q Describe that to us?

19 A Well, the outside security actually had to come in
20 and escort them out.

21 Q What would cause outside security to come in as
22 opposed to the inside security escorting people out?

23 A Because they were too wild. There was -- they were
24 too wild.

25 Q So the unarmed security couldn't take them so y'all

David Richardson - Direct Examination by Ms. Walker

1 went and got the outside security?

2 A Yes, ma'am.

3 Q Continue.

4 A The outside security escorted them out. On their
5 way out Dwayne was sitting by the door, watching them go
6 out and before the last one came out, he kind of nudged
7 him, like (sound).

8 Q He nudged you or Dwayne?

9 A He nudged Dwayne.

10 Q He nudged Dwayne, okay.

11 A So that caused Dwayne to go out the door.

12 Q And did he -- did he -- is it y'all's procedure, I
13 guess to escort people to their cars to make sure they
14 actually leave when they're kicked out?

15 A Armed security, yes, ma'am.

16 Q Okay. And what was Black doing at this point or
17 what was he doing after you saw him get nudged?

18 A After I seen him get nudged, I seen him go out the
19 door, so I followed behind him to make sure, you know, he
20 wouldn't get jumped or anything like that.

21 Q That was a concern of yours?

22 A Yes, ma'am.

23 Q As you were following behind him, what were you
24 seeing?

25 A A lot of wild behavior, a lot of -- just a bunch of

David Richardson - Direct Examination by Ms. Walker

1 ruckus, everybody arguing. Then we got outside and just
2 more arguing. One of the --

3 Q People were kind of in an uproar, like excited
4 state?

5 A Yeah, yeah.

6 Q What kind of things were they saying?

7 A One of the guys was actually like, "Oh, I know
8 where you live at, you trying to beef with me. I know
9 where you live at."

10 And from him saying that, Dwayne was like "Oh, you
11 know where I live at, I'm right here, you know, if you want
12 to do something, I'm right here, I'm right here."

13 So that eventually led to him going off the a
14 balcony.

15 Q Who went off the balcony?

16 A Dwayne, I did, and the guy with the yellow shirt.
17 I don't know his name.

18 Q What -- how close were you to Dwayne while all this
19 was going on?

20 A I was fairly close. Maybe like an arm distance
21 away, maybe an arm and a half distance away.

22 Q And then someone in the group that was getting
23 kicked out told him that they knew where he lived?

24 A Yes.

25 Q What did you see next?

David Richardson - Direct Examination by Ms. Walker

1 A After we were on the ground, like I said, I was
2 down there to make sure, you know, he didn't get jumped or
3 anything. They were talking to each other. The next thing
4 I know I hear two gunshots. Pow pow. So...

5 Q Did you see the gunshots or did you just hear them?

6 A I just heard them. I didn't see them.

7 Q How many gunshots did you hear?

8 A Two at first.

9 Q At first?

10 A Uh-huh.

11 Q Let's stick with those gunshots. After you heard
12 those gunshots, what did you do?

13 A I glanced over to see Black. I see that he got hit
14 So I ducked my head and I started running behind the trash
15 can, but then I came back down to make sure Black was all
16 right, but he wasn't.

17 Q When you ran back to Black, where was he?

18 A On the ground.

19 Q Did you try to get his attention?

20 A Yeah, I was screaming his name, I was slapping him
21 in the face. I put my nose under his -- I mean my fingers
22 under his nose to see if he was still breathing, but there
23 was nothing.

24 Q There was nothing you could do at that point?

25 A (Witness shook head.)

David Richardson - Direct Examination by Ms. Walker

1 Q After you did that, what did you see or hear?

2 A More gunshots. And I looked up to see a person
3 running and one of the security guards shooting at him.

4 Q Could you tell where the person was running?

5 A Just out of the parking lot like -- I couldn't tell
6 exactly where he was running.

7 Q Running away from Mr. Lucky's?

8 A Yeah.

9 Q And then there was a security guard shooting --

10 A Chasing after him, yes, ma'am.

11 Q Chasing after him?

12 A Yeah.

13 Q And where were you?

14 A At which time?

15 Q While that was going -- while you saw that?

16 A I was, you know, back with Dwayne, you know, still
17 trying to see if I could revive him or see if he was okay.

18 Q At that point, could you tell where he'd been shot?

19 A No, ma'am.

20 Q The other people that had been kicked out with the
21 shooter, where were they?

22 A At first or after the gunshots?

23 Q Both times?

24 A At first, they were up on the balcony. The
25 security was holding them up there. After the gunshots,

David Richardson - Direct Examination by Ms. Walker

1 everybody just scattered.

2 Q Did you ever see them again?

3 A No, never.

4 Q Did you observe the group at any point near a car?

5 A Oh, yes. The guy in the yellow shirt, as I was
6 down, trying to revive Black or whatever, he came, tried to
7 let us in his car. You know, that caused us to stand up
8 because we thought he was just going to, you know, run us
9 right over. So we stood up like don't go nowhere, don't go
10 nowhere. And so that caused him to back up. It was him
11 and two females, I believe.

12 Q And they were trying to leave at that point?

13 A Yeah, they were trying to leave. One girl was
14 saying, "Oh, my brother's not a killer." She just kept
15 saying that.

16 Q You said her brother?

17 A Uh-huh.

18 Q After seeing that, what did you do?

19 A We ran to the car. I pulled the car -- the keys
20 out of the ignition so they wouldn't leave.

21 Q Do you know what kind of car it was?

22 A It was a Chevy Tahoe, I believe.

23 Q It was --

24 A Or a Suburban, I believe. Either -- tall --
25 Suburban. It was a big car.

David Richardson - Direct Examination by Ms. Walker

1 Q Okay. Did you ever go back inside the club that
2 night?

3 A Yes, ma'am.

4 Q And you stuck around?

5 A Yes, ma'am.

6 Q Did the sheriff's deputies respond?

7 A Yes, ma'am. They responded about, I'd say about
8 ten minutes, fifteen minutes later.

9 Q And did you talk to them?

10 A No, ma'am.

11 Q At that point you didn't talk to them?

12 A No, ma'am, it wasn't until the next day.

13 Q It was the next day that you spoke with them?

14 A (Witness nodded head.)

15 Q And did you give them a statement?

16 A Yes, ma'am.

17 Q And did they show you some pictures and ask you if
18 you could identify anyone?

19 A Yes, ma'am.

20 Q I want to show you what's been marked as State's
21 Exhibit 47 and ask if you recognize this.

22 A Yes, ma'am.

23 MS. WALKER: Your Honor, at this point, the State
24 would move to admit State's Exhibit 47 into evidence.

25 MR. SHAFFER: No objection.

David Richardson - Direct Examination by Ms. Walker

1 THE COURT: Admitted without objection.

2 BY MS. WALKER:

3 Q When they asked you to identify -- who did they ask
4 you to pick out of the photo lineup?

5 A Just anybody that I might have seen that night from
6 the club.

7 Q Okay. And when they asked you, did they tell you
8 who to pick?

9 A No, ma'am.

10 Q Did they suggest in any way who to pick?

11 A No, ma'am.

12 Q Did you, in fact, pick someone out?

13 A Yes, ma'am.

14 Q And which one did you pick out?

15 A The guy at the bottom left-hand corner.

16 Q And are those your initials?

17 A Yes, ma'am.

18 Q And did you date it and put a time on it?

19 A Yes, ma'am.

20 Q And this is someone you picked out as being at the
21 club that night?

22 A Yes, ma'am.

23 MS. WALKER: Beg the Court's indulgence, Your
24 Honor.

25 THE COURT: Yes, ma'am.

David Richardson - Cross-Examination by Mr. Shaffer

1 BY MS. WALKER:

2 Q That -- the person that you picked out of that
3 picture -- or that photo lineup, was he one of the people
4 that was kicked out that night?

5 A Yes, ma'am. And do you see him in the courtroom
6 today.

7 A Yes, ma'am. Can you point him out for me.

8 A The defendant in the blue shirt.

9 MS. WALKER: Your Honor, can the record reflect
10 that the witness has identified the defendant?

11 THE COURT: You may proceed.

12 MS. WALKER: Sir, I don't have any further
13 questions.

14 THE COURT: Any questions for the witness.

15 MR. SHAFFER: Yes, Your Honor.

16 THE COURT: You may proceed.

17 CROSS-EXAMINATION

18 BY MR. SHAFFER:

19 Q Mr. Richardson, how many people were with the
20 defendant that night?

21 A I believe about five.

22 Q Describe how they were dressed.

23 A One guy had on a yellow shirt, some shorts; one guy
24 had on a white shirt with a white polo hat and dreadlocks;
25 one guy had on a black shirt, black jeans; and I'm not

David Richardson - Cross-Examination by Mr. Shaffer

1 sure -- I'm not really sure of the rest of them.

2 Q Okay. Would you disagree with me if I told you
3 that the other one had a blue shirt and shorts?

4 A I don't remember seeing that.

5 Q Okay. When you got to the club, you said you saw
6 the group of people?

7 A Yeah.

8 Q Someone throwing what you described as gang signs
9 up. How do you know what a gang sign is?

10 A They have it -- you can go on the internet and see
11 gang signs.

12 Q Okay. So you've done Google searches for gang
13 signs?

14 A Sir?

15 Q You've done a Google search for a gang sign?

16 A No, sir. Just -- you can look on anything. They
17 got little DVD's, Hoodie DVD's or whatever you may have it
18 and you can watch those and they'll show you right.

19 Q Which one was throwing up gang signs?

20 A I don't recall which one it was.

21 Q But there were four people there, right?

22 A It was at least five, I believe.

23 Q At least five?

24 A (Witness nodded head.)

25 Q Okay. Now, just for a little background

David Richardson - Cross-Examination by Mr. Shaffer

1 information, how long have you -- did you say you knew
2 Black?

3 A Since about 2004.

4 Q So 2004 y'all were friends?

5 A Yes, sir.

6 Q Where did y'all first meet?

7 A At Irmo High School.

8 Q Okay. Y'all were friends there?

9 A (Witness nodded head.)

10 Q And you worked with him at the club, right?

11 A Yes.

12 Q You're inside security?

13 A Yes.

14 Q How many inside security people were working that
15 night?

16 A Two.

17 Q Who was that?

18 A Dwayne and I don't remember who the other inside
19 security was.

20 Q You sure it wasn't just one?

21 A Yeah, I'm pretty sure there was two of them.

22 Q Okay. And how many outside security people were
23 out there?

24 A At least three.

25 Q And the outside security people don't work for

David Richardson - Cross-Examination by Mr. Shaffer

1 Mr. Lucky's directly, right?

2 A Sir? Can you repeat that.

3 Q They work for a separate company, right?

4 A Yes, sir.

5 Q All right. Okay. And those three -- those outside
6 security people watch the parking lot, right?

7 A Yes, sir.

8 Q And they check ID's, right?

9 A Yes, sir.

10 Q And they even pat people down, right?

11 A Yes, sir.

12 Q All right. Let's go to where you said they are
13 being put out. Was Mr. Bethel in the club or was he in the
14 parking lot at this point?

15 A In the club.

16 Q He was in the club when they were being put out?

17 A Yeah. Right before they got put out or right
18 exactly when they were getting put out.

19 A Yeah, well, how much time elapsed -- go ahead and
20 explain your answer.

21 A He was -- he was in the club and got escorted out
22 of the club.

23 Q Okay. So he's escorted from the room out of the
24 club? From bar area --

25 A Yeah, from the inside of the club to the lobby, to

David Richardson - Cross-Examination by Mr. Shaffer

1 outside of the club.

2 Q Okay. So y'all escorted all the way from where the
3 bar is and everything else to the outside of the club?

4 A Yeah.

5 Q Okay. And one of the members in particular while
6 you were inside the club was causing more of a scene than
7 everyone else; is that right? Do you recall that?

8 A I don't recall that.

9 Q Okay. You don't recall the yellow shirt guy
10 causing a scene?

11 A Not until outside of the club.

12 Q Okay. So he wasn't causing any scene inside of the
13 club?

14 A Not that I recall.

15 Q Okay.

16 MR. SHAFFER: Court's indulgence.

17 (WHEREUPON there was a pause in the proceedings.)

18 BY MR. SHAFFER:

19 Q All right. Do you recall being in the lobby?

20 A Yes.

21 Q Okay. On your way out right before Black was shot?

22 A Uh-huh.

23 Q Do you recall someone saying, "Come on let's go in
24 their group?"

25 A Yeah, someone was saying it, but I don't know which

David Richardson - Cross-Examination by Mr. Shaffer

1 one it was.

2 Q You about don't recall which one it was. Okay.

3 And when you were on the porch, you followed them out onto
4 the porch, correct?

5 A Uh-huh.

6 Q Now, if you could, I'm going to get you to draw
7 something.

8 If you could, draw a diagram of the porch area and
9 the immediate parking lot and of the porch area at
10 Mr. Lucky's.

11 A The porch area, the balcony area?

12 Q The balcony area.

13 MS. WALKER: Your Honor, I think I just missed it.
14 What are they drawing this time?

15 MR. SHAFFER: The balcony area.

16 MS. WALKER: Okay, I'm sorry. Thank you.

17 BY MR. SHAFFER:

18 Q And what are you shading right there?

19 A This is the area you can stand on. That's a
20 walkway.

21 Q Okay. And that's a ramp?

22 A Yeah. Just a ramp that you walk down from the
23 door.

24 Q Okay.

25 THE COURT: Sir, I need you to speak up for me.

David Richardson - Cross-Examination by Mr. Shaffer

1 THE WITNESS: Oh, yeah, this would be where you
2 could stand at and this would be the walkway to the door.

3 BY MR. SHAFFER:

4 Q Could you point that out to the jury just so they
5 can see it?

6 A In this walkway. This is where you would be able
7 to stand.

8 Q Okay. And that square, that's the lobby, right?

9 A Yeah, this would be Mr. Lucky's.

10 Q Okay. And what's the door to the -- for where the
11 bar is at?

12 A In--

13 Q It's inside the lobby, can you indicate where the
14 the door at the bar is?

15 A There's another door soon as you walk in to the
16 left.

17 Q Are you familiar with the security cameras?

18 A Yes.

19 Q Okay. There's a security camera in the lobby,
20 right?

21 A Yes.

22 Q And that security camera is pointed toward the door
23 toward for the bar, right?

24 A Yeah, it covers the front door, the window where
25 you pay, and the entrance to the club.

David Richardson - Cross-Examination by Mr. Shaffer

1 Q Okay. And when you -- whenever you escorted them
2 out on the balcony, you said that it's outside security's
3 job to make sure they get in their car, right?

4 A Yes.

5 Q And the outside security -- well, tell me this,
6 how -- approximately how wide is that ramp going down to
7 the ground?

8 A Maybe about two people can walk down at once.

9 Q Okay. So it's not huge?

10 A No.

11 Q Okay. And whenever you initially came outside,
12 where were you at?

13 A When I first came out, I was standing off to the
14 side of the door. And I could only see the guys. I could
15 see a group of them here. And I was standing off to the
16 side.

17 Q Okay. And the group of them, did they all stay
18 together?

19 A For the most, part, yeah.

20 Q Okay. Where were they at -- they started down the
21 ramp, right?

22 A Well, a group of them were all here and only one
23 was going down the ramp.

24 Q Which one was going down the ramp?

25 A The guy with the yellow shirt.

David Richardson - Cross-Examination by Mr. Shaffer

1 Q The guy with the yellow shirt.

2 And so the other three were at the top of the ramp,
3 right? Or on the top of the balcony?

4 A The other four of them maybe?

5 Q Okay. The other four?

6 Okay. And they had some girls with them too,
7 right?

8 A They had two girls.

9 Q And did the girls come out before or after them?

10 A I believe they all came out at once.

11 Q Okay. And the guy in the yellow shirt went down
12 the ramp, right?

13 A Yes.

14 Q Did he go in the parking lot area?

15 A Yeah, he went down the ramp into the parking lot
16 area.

17 Q Okay. And you said somebody yelled, "I know where
18 you live."

19 Was that the guy in the yellow shirt?

20 A Yes.

21 Q Okay. So the guy in the yellow shirt yells to
22 black, "I know where you live," right?

23 A Uh-huh.

24 Q At this time was outside security spraying mace
25 down?

David Richardson - Cross-Examination by Mr. Shaffer

1 A I didn't see them spraying mace.

2 Q You didn't see them spraying mace?

3 A No, but someone said they sprayed mace. And it
4 wasn't at that exact time either. He was already on the
5 ground. He was already -- the guy in the yellow shirt was
6 already on the ground off of the balcony.

7 Q Okay. So the guy in the yellow shirt was off of
8 the balcony before they sprayed mace?

9 A (Witness nodded head.)

10 Q Was the rest of the group off the balcony before
11 they sprayed mace?

12 A No, they were still on the balcony.

13 Q Okay. Were they on the balcony or on the ramp?

14 A More like on the balcony getting ready to go down
15 the ramp.

16 Q Okay. Where was the outside security at when they
17 were spraying mace?

18 A I don't recall because I was -- I was going down --
19 I jumped over the balcony rail.

20 Q Okay. You jumped over the balcony rail. You were
21 following Black right?

22 A Yeah.

23 Q Black's your boy?

24 A Yes.

25 Q Okay and you wanted to make sure that he was safe;

David Richardson - Cross-Examination by Mr. Shaffer

1 right?

2 A Yes.

3 Q Okay. And where was Black whenever they yelled
4 out, "I know where you live"?

5 A We just made it out the door. The guy in the
6 yellow shirt, he made it to about right here and he came
7 out of the door, he just kept screaming that. And Black
8 was saying, "You know, you know where I live at, you going
9 to do something, I'm right here."

10 He just kept saying right here at the time. He was
11 talking and walking down at the same time.

12 Q Okay. And he said something about "If you know
13 where I live at, I'm right here," right?

14 A "You know where I live at, I'm right here."

15 Q Okay. Was that before or after he jumped over the
16 rail?

17 A That was before that.

18 Q Where did he jump over the rail at?

19 A Towards the end of the balcony.

20 Q So he jumped over the balcony onto the ground or
21 onto the ramp?

22 A Onto the ground.

23 Q Okay. At the end of the ramp?

24 A At the end of the ramp, uh-huh.

25 Q Is that right?

David Richardson - Cross-Examination by Mr. Shaffer

1 A Yes. Okay. So he says -- he jumps over the rail
2 and he followed at that point, right.

3 A Uh-huh.

4 Q And where are -- not the guy in the yellow shirt,
5 but the other three guys at this point?

6 A Those guys are still up in this area.

7 Q Okay. And Mr. Bethel was with them, right?

8 A Yes, sir.

9 Q Okay. So he jumps down with the guy in the yellow
10 shirt, right?

11 A Yes. How far away is the guy in the yellow shirt.

12 A Probably about two arms length away from each
13 other.

14 Q All right. So it looks like they're about to
15 fight, right?

16 A Yeah, more so then.

17 Q And you remember going down there just to make
18 sure --

19 A Yeah, just to make sure none of them jump in it.

20 Q Okay. Make sure nobody jumped?

21 A Uh-huh.

22 Q Because Black could hold his own I guess against
23 one person, right?

24 A Yeah.

25 Q He's bigger than the guy?

David Richardson - Cross-Examination by Mr. Shaffer

1 A Yeah.

2 Q So Black says -- what did he say -- he says -- he
3 jumps over the rail and then he says, "Is that what you
4 want?" I'm right here."

5 A Yeah.

6 Q Okay. At that point, you start going into the
7 parking lot, right.

8 A Yeah.

9 Q You turned your hat around backwards; right?

10 A Yes.

11 Q Just in case there was a fight?

12 A Yeah.

13 Q But you knew -- or just in case somebody was going
14 to jump in, right?

15 A Just in case, right. I just wanted to be ready.

16 Q Okay. And Black basically squares off with the guy
17 in the yellow right?

18 A They never squared up, it was just talking,
19 talking, talking. They were never in each other's face.
20 They stayed about two arms length away from each other.

21 Q Okay.

22 A Talking, talking, talking.

23 Q Where is private security during this time?

24 A Where's who?

25 Q The private security? Do you know?

David Richardson - Cross-Examination by Mr. Shaffer

1 A The armed security?

2 Q Yeah.

3 A I believe they're still up here with the rest of
4 that group.

5 Q And you said you got down to to bottom of the ramp
6 and you heard a gunshot -- two gunshots, right?

7 A Uh-huh.

8 Q That's what you're testifying to?

9 A Uh-huh.

10 Q Was it two or was it three?

11 A I heard two gunshots off -- just automatically, two
12 gunshots. After the two gunshots, I heard more gunshots.

13 Q Did you tell the police you heard two or three?

14 A I told them I heard two gunshots.

15 Q You sure about that?

16 A Yes.

17 Q You sure you didn't tell them you heard two or
18 three gunshots.

19 A Maybe. I don't recall. But I definitely remember
20 hearing two shots, definitely.

21 Q You definitely remember hearing two shots.

22 A The first shots were just two shots.

23 Q Would you have been lying to police?

24 A No.

25 MR. SHAFFER: Court's indulgence.

David Richardson - Cross-Examination by Mr. Shaffer

1 MS. WALKER: Your Honor, may the witness return to
2 the stand?

3 (WHEREUPON Defense Exhibit 1 was being marked for
4 identification.)

5 MR. SHAFFER: Yes, I apologize.

6 Your Honor, may I approach?

7 THE COURT: You may.

8 BY MR. SHAFFER:

9 Q I'm showing you what's been marked State's
10 Exhibit -- I mean Defense Exhibit 1 for purposes of
11 identification. I'll give you a chance to look over that.

12 Do you remember giving that statement to the
13 police?

14 A Yes.

15 Q Okay. If you could go to page 4 and if you could I
16 want the refresh your recollection based off of what you --
17 what you said when you said you're not sure if you told
18 them two, maybe three gunshots. If you could, read that
19 top line.

20 Does that refresh your recollection?

21 A You want me to read it?

22 Q You don't have to read it out loud, just read it to
23 yourself.

24 A Yes, I recall it.

25 Q Now that you have refreshed your recollection, you

David Richardson - Cross-Examination by Mr. Shaffer

1 recall telling the police that you met -- might have heard
2 three gunshots before Black fell?

3 A I don't --

4 THE COURT: Sir, could you lean up a little bit so
5 that you can speak into the microphone.

6 THE WITNESS: I don't remember exactly telling them
7 maybe three gunshots, but I might have.

8 BY MR. SHAFFER:

9 Q You don't remember telling them exactly?

10 A I don't remember telling them it was three shots
11 exactly.

12 Q Do you remember -- you remember that statement,
13 right?

14 A Yes, I do.

15 Q Okay. You remember reading that statement before
16 signing it, right?

17 A Yes.

18 Q You remember signing that statement?

19 A Yes.

20 Q Now, tell me this: Whenever you were at the bottom
21 of the ramp, you -- did you see the defendant come up
22 behind Black?

23 A No, sir. I didn't see it.

24 Q Okay. You didn't see the defendant?

25 A (Witness shook head.)

David Richardson - Redirect Examination by Ms. Walker

1 Q Okay. And you didn't see the pepper spray?

2 A No, I didn't see that.

3 MR. SHAFFER: Court's indulgence.

4 (WHEREUPON there was a pause in the proceedings.)

5 MR. SHAFFER: No further questions.

6 THE COURT: Any redirect of the witness?

7 MS. WALKER: Yes, ma'am.

8 REDIRECT EXAMINATION

9 BY MS. WALKER:

10 Q Do you still have the statement with you?

11 A Yes, ma'am.

12 Q Can you just read that line that he asked you to
13 read, would you just read it out loud?

14 A "That is when I heard two or maybe three gunshots."

15 Q So you heard two or three gunshots?

16 A (Witness nodded head.)

17 MS. WALKER: I don't have any further questions.

18 THE COURT: Any objection to the witness being
19 excused?

20 MR. SHAFFER: No, Your Honor.

21 MS. WALKER: None from the State, Your Honor.

22 THE COURT: Sir, you're excused.

23 Madame Forelady, ladies and gentlemen, I'm going to
24 take advantage of this break in testimony to take a
25 restroom break. During the break, please do not discuss

David Richardson - Redirect Examination by Ms. Walker

1 the case and please leave your note pads in your seats. If
2 you would go with your bailiff.

3 Everyone else remain seated until the jury gets
4 out.

5 (WHEREUPON the jury left the courtroom at 4:15
6 p.m.)

7 THE COURT: We'll be at ease for about five
8 minutes.

9 (WHEREUPON a recess was observed .)

10 THE COURT: Please bring us our jury.

11 THE BAILIFF: The jury is all present, Your Honor.

12 THE COURT: Ladies and gentlemen, I hope you
13 enjoyed your break. We'll now resume the testimony.
14 Please call your next witness.

15 MR. SHELLENBERG: State calls William Ingram.

16 THE COURT: I'm sorry, please repeat that.

17 MR. SHELLENBERG: State calls William Ingram.

18 WILLIAM INGRAM,

19 having been duly sworn, testified as follows:

20 THE CLERK: Have a seat in the witness box. State
21 your name for the record and spell it, please.

22 THE WITNESS: Yes, my name the William Ingram.

23 THE COURT: Spell your last name, please.

24 THE WITNESS: I-n-g-r-a-m.

25 THE COURT: You need to take your seat, sir.

William Ingram - Direct Examination by Mr. Shellenberg

1 You may proceed.

2 DIRECT EXAMINATION

3 BY MR. SHELLENBERG:

4 Q Good afternoon William.

5 A Good afternoon.

6 Q Where do you work, William?

7 A Black Ops Protection.

8 Q Were you working there back on August 12th -- or
9 August 19th, 2012?

10 A Yes.

11 Q What were you doing with them?

12 A I was the doorman at Lucky's Gentlemen's Club.

13 Q And approximately how many Black Ops employees did
14 you have working there at that time?

15 A It was four.

16 Q But it was not all of y'all were Black Ops. Some
17 of y'all were bouncers?

18 A Right.

19 Q Did you work with Dwayne Franklin?

20 A Repeat the question.

21 Q Did you work alongside Dwayne Franklin?

22 A Yes.

23 Q And how long did you know Dwayne Franklin for?

24 A Maybe a year.

25 Q I'm going to turn your attention back to that

William Ingram - Direct Examination by Mr. Shellenberg

1 evening of August 19th. Do you have a copy of your
2 statement?

3 A Yes, sir. Would that help refresh your memory.

4 A Yes, sir.

5 Q All right. What were your duties that evening?

6 A My duty is to pat down every customer that's
7 entering Lucky's Gentlemen's Club.

8 Q And did you come across a group that involved the
9 defendant that came into the club that night?

10 A Yes.

11 Q And did you have any run-ins with them throughout
12 the evening?

13 A Yes.

14 Q And without going into great detail about the
15 reasons why, could you just briefly describe what sort of
16 things you had.

17 A As in the group itself?

18 Q Yes, sir.

19 A The group came in. The defendant, he has, again,
20 black -- a dark shirt, black pants, black boots, came in
21 there with a liquor bottle.

22 Q Now -- I'm sorry. Let me stop you for a second.

23 A All right.

24 Q Is it normal that it would be allowed to come in
25 the strip club with a full liquor bottle?

William Ingram - Direct Examination by Mr. Shellenberg

1 A The only time you do that is by the acceptance of
2 the manager.

3 Q Did the manager allow him to come in with that
4 bottle?

5 A Yes.

6 Q Okay. And so throughout the night, were they
7 causing any more problems?

8 A They did.

9 Q Eventually, did it get to the point where they had
10 caused enough problems where they were being kicked out of
11 the club?

12 A Multiple times.

13 Q I'm talking about the final time at about 3:30 in
14 the morning?

15 A Yes, sir.

16 Q Can you describe for me a little bit about the
17 situation that occurs once you removed them from the club
18 and were on the porch at that point? And if you need to
19 review your notes, you can feel free to do that.

20 MR. SHAFFER: Your Honor, he hasn't said he has --

21 THE COURT: No speaking objections.

22 MR. SHAFFER: I apologize.

23 THE COURT: Is there an objection?

24 MR. SHAFFER: Yes, ma'am.

25 THE COURT: Please approach.

William Ingram - Direct Examination by Mr. Shellenberg

1 MR. SHAFFER: Okay. Thank you.

2 (WHEREUPON, there was a bench conference out of the
3 hearing of the jury and the Court Reporter.)

4 THE COURT: You may proceed.

5 BY MR. SHELLENBERG:

6 Q Do you remember the events that took place that
7 evening on the porch?

8 A Yes, sir.

9 Q Okay. Can you describe for the jury what happened
10 as you tried to kick that group out?

11 A Well, it was -- they was let out the club. I came
12 up behind them with a large group. We was pushing them
13 back as we was going down the walkway, the group that was
14 leaving the club was arguing back with the group getting
15 into a fight. So the bouncers --

16 Q I'm sorry can I stop you right there?

17 A Who --

18 Q Which bouncers were with you out there?

19 A It was Black.

20 Q And that's Dwayne Franklin?

21 A Right.

22 Q Okay. And any of the other ones out there with
23 you?

24 A No, huh-huh.

25 Q Okay. You can continue. And the group -- I'm

William Ingram - Direct Examination by Mr. Shellenberg

1 sorry the group was being kicked out was the group that had
2 the defendant with them?

3 A Yes, sir.

4 Q Okay.

5 A They was going down the balcony and one of the guys
6 that was with them that was leaving, was arguing back with
7 the group and was going back and forth. My captain had to
8 spray mace at one of the guys so they would keep going.

9 Q And which one is your captain?

10 A Kendron Hope.

11 Q Kendron Hope.

12 At the point that the mace was sprayed, do you know
13 where the defendant and where Dwayne Franklyn were at that
14 point?

15 A They was on the balcony.

16 Q They were on the balcony?

17 A Right.

18 Q Okay. Do you -- can you recall who got sprayed?

19 A It was a short guy, white shirt, khakis with a hat
20 and I don't know who the shooter was.

21 Q Can you recall again what the defendant had on that
22 evening?

23 A The defendant had on a dark blue Polo shirt, dark
24 blue jeans and Black Polo boots.

25 Q And approximately -- if you can remember -- how

William Ingram - Direct Examination by Mr. Shellenberg

1 much time elapsed between Mr. Hope macing the gentleman in
2 the white shirt and khaki shorts and the defendant shooting
3 Dwayne Franklin?

4 A Probably like five to seven seconds.

5 Q Five to seven seconds?

6 A Yes, sir.

7 Q If you saw the defendant would you recognize him?

8 A Yes, sir.

9 Q The man who shot Dwayne Franklin?

10 A Yes, sir.

11 Q Is he in the room today?

12 A Yes, sir.

13 Q Can you point him out, please?

14 A Right there on the left.

15 Q Sitting next to his attorney?

16 A Yes, sir.

17 MR. SHELLENBERG: Your Honor, will you let the
18 record reflect that the witness picked out the victim --

19 THE COURT: You may pro--

20 MR. SHELLENBERG: Or picked out the defendant, I'm
21 sorry.

22 THE COURT: Uh-huh. You may proceed.

23 MR. SHELLENBERG: No further questions.

24 THE COURT: Any questions for this witness?

25 MR. SHAFFER: Yes, Your Honor.

William Ingram - Cross-Examination by Mr. Shaffer

1 THE COURT: You may proceed.

2 CROSS-EXAMINATION

3 BY MR. SHAFFER:

4 Q Good afternoon, Mr. Ingram.

5 A How you doing?

6 Q Doing all right. How long have you worked with
7 Black Ops.

8 A For a year -- over a year.

9 Q What's your rank over there?

10 A Officer, no type rank.

11 Q All right. No rank. That night, you were outside
12 security, right?

13 A Yes, sir. You were at the door, right.

14 A Yes, sir.

15 Q Checking ID's?

16 A Yes, sir.

17 Q Patting people down?

18 A Yes, sir.

19 Q That's what y'all were contracted to do that night,
20 at least?

21 A Yes, sir.

22 Q Okay. So the guy who's checking ID's is you,
23 right?

24 A Yes, sir.

25 Q And you said sometimes management will override

William Ingram - Cross-Examination by Mr. Shaffer

1 people bringing in liquor, right?

2 A Right. And sometimes they'll override whether or
3 not you have to have an ID to get in, right.

4 A Right.

5 Q Okay and that happened at some point that evening,
6 right?

7 A (Witness nodded head.)

8 Q Okay. They let some girls in, right?

9 A Right.

10 Q That were under age?

11 A Right.

12 Q With this group, right?

13 A Right.

14 Q Okay. Because the management wanted to keep them
15 there.

16 A Apparently. I don't know that the time -- but
17 during that time everything was busy.

18 Q And during the video, did you -- did you greet the
19 defendant whenever he came up the ramp? Do you know him?

20 A No, I do not know him. I always greet customers.

21 Q Okay. But did you shake his hand sort of give him
22 a half of a hug?

23 A Yeah. But that's something -- yes.

24 Q Okay. And if you would, I'm going to get you to
25 draw a diagram of the porch area if you don't mind.

William Ingram - Cross-Examination by Mr. Shaffer

1 And can you mark the part that shows the ramp on
2 that.

3 A (Complying).

4 Q If you could let the jury see.

5 So the ramp comes down off of the porch, right?

6 A Right.

7 Q Where's the front door?

8 A The front door is right here.

9 Q Okay. Does the porch area continue on the side of
10 the building?

11 A No, it continued to the side about right here.

12 Q Okay. So it does continue on that side?

13 A Right.

14 Q Okay. Now, whenever the group came outside?

15 A Right.

16 Q You recall hearing someone saying, "Calm down, come
17 on let's go"?

18 A No.

19 Q No?

20 Now, you said one of the guys was arguing back with
21 Black. Was that the guy in the yellow shirt?

22 A Yes, sir.

23 Q Okay. And you can sit down. Well, actually one
24 more thing. While you're up there, at some point, Black
25 jumped over a rail, right?

William Ingram - Cross-Examination by Mr. Shaffer

1 A Right.

2 Q Where did he --

3 THE COURT: If you could speak up for me, please,
4 his back is to the court reporter and she's got to record
5 what you're saying.

6 THE WITNESS: Okay.

7 BY MR SHAFFER:

8 Q At some point Black jumped over a rail?

9 A Yes, sir.

10 Q Where was that at?

11 A He jumped on this side over here.

12 Q Okay. So he jumped off right there?

13 A Yes, sir. Okay. And does the video camera cover
14 that area.

15 A From what I could see, yeah.

16 Q Okay. So Black jumps over a rail. Who's he
17 jumping over for?

18 A He jumped over after one of the guys that was going
19 towards the car.

20 Q The guy in the yellow shirt?

21 A Yes, sir.

22 Q And the guy in the yellow shirt was the guy arguing
23 back at Black?

24 A Yes, sir.

25 Q You can have a seat.

William Ingram - Cross-Examination by Mr. Shaffer

1 When you said it was your Captain Kendron Hope that
2 sprayed the mace, right?

3 A Yes, sir.

4 Q Did anyone else spray the mace?

5 A No.

6 Q Are you right or left-handed?

7 A Right handed.

8 Q Were you armed that night?

9 A No, sir.

10 Q Okay. Did you have mace on you?

11 A No, sir.

12 Q You didn't have any mace on you?

13 A No, sir.

14 Q Did you have a utility belt on?

15 A No, jus my regular belt.

16 Q Okay. So your regular belt, did you have any
17 pockets in it?

18 A Yes, sir. My regular belt? No, sir.

19 Q Not the regular belt, but your utility belt does?

20 A Yes, sir.

21 Q And --

22 **MR. SHAFFER:** Court's indulgence.

23 Your Honor, I'm going to use the State's Exhibit at
24 this time to show him a part of it.

25 **THE COURT:** Proceed.

William Ingram - Cross-Examination by Mr. Shaffer

1 MR. SHAFFER: Thank you.

2 (WHEREUPON the attorneys were getting the video
3 ready to play again.)

4 BY MR. SHAFFER:

5 Q While they're setting that up, do you recall -- do
6 you recall if Kendron Hope is the only person who spayed
7 the crowd down?

8 A Yes, sir.

9 Q Okay. You're sure none of the officers did?

10 A No.

11 (WHEREUPON the video is playing.)

12 BY MR. SHAFFER:

13 Q Is this the balcony where you were at?

14 A Yes, sir.

15 Q Okay. Are you in that picture?

16 A Yes, sir.

17 MR. SHAFFER: Just for the record, I'm showing
18 camera six on State's Exhibit 71 at 335, Your Honor.

19 BY MR. SHAFFER:

20 Q Who's that in the hat?

21 A I do not know.

22 Q You don't know him?

23 A No, sir.

24 Q You sure? What's he doing?

25 A I don't know.

William Ingram - Cross-Examination by Mr. Shaffer

1 Q Are you not looking at him at that time?

2 A Everything was happening so fast. I didn't know --
3 I was pretty much trying to push everybody back.

4 Q You sure you don't have a utility belt on?

5 A I had my regular belt on.

6 Q Okay. And your regular belt wouldn't have pockets
7 right?

8 A My regular belt don't have any pockets.

9 Q So he's not grabbing something off of your belt?

10 A No.

11 Q Okay.

12 MR. SHAFFER: That's all, Your Honor -- well,
13 actually one more thing since I'm here.

14 BY MR. SHAFFER:

15 Q All right. Now, tell me when you see Black jump
16 off the balcony?

17 A I didn't see him jump off until I saw him walking.

18 Q Okay. Is it possible he could have jumped off on
19 the other side of the balcony?

20 A As far as on this end right here?

21 Q Toward the end of the ramp, yes.

22 A No. He jumped like from that side from the far end
23 down.

24 Q Okay.

25 A And he walked straight through.

William Ingram - Cross-Examination by Mr. Shaffer

1 Q Okay.

2 THE COURT: Are you done, Mr. Shaffer?

3 MR. SHAFFER: Yes, Your Honor.

4 (WHEREUPON the video was taken down.)

5 BY MR. SHAFFER:

6 Q Where was Mr. Hope -- well, tell me this: Where
7 was the crowd -- actually was there a lot of people who
8 came outside?

9 A Yes.

10 Q Okay. Where was the group that the defendant was
11 with? Where were they at?

12 A They came outside.

13 Q Where were they at on the ramp whenever the pepper
14 spray was sprayed?

15 A They was on the actual ramp going down.

16 Q About how far down?

17 A Kind of like somewhat in the middle, towards the
18 end of the ramp going down.

19 Q How many people were with them?

20 A That was with the defendant? There was one, about
21 four people. It was him, the dude in the yellow shirt and
22 two other people.

23 Q Were they all in the same area?

24 A Huh?

25 Q Were they all in the same area when the pepper

William Ingram - Cross-Examination by Mr. Shaffer

1 spray was sprayed?

2 A Yeah.

3 Q And that was about half way down the ramp?

4 A Yeah.

5 Q And there were people on the deck, right?

6 A Right.

7 Q You remember telling the police that some of the
8 people could have gotten a whiff of it?

9 A No.

10 Q You don't remember telling them that?

11 A No.

12 Q You remember talking to the police, right?

13 A Right.

14 Q And you remember saying that -- that some of the
15 mace flare up and some of the people got a taste of it?

16 A No.

17 Q You don't remember telling them that?

18 A No.

19 Q You have your statement up there, right?

20 A Right.

21 Q If you could, look at page 3, around the middle of
22 that statement and tell me if that refreshes your
23 recollection.

24 A Yeah. I don't know which one saw the mace flare up
25 and some of the people got a taste of it.

William Ingram - Cross-Examination by Mr. Shaffer

1 Q Okay. You wouldn't have been lying to the police
2 then, would you?

3 A No.

4 Q Okay. And your recollection is a little bit better
5 then than is it now, right?

6 A Right.

7 Q Okay. So you do recall now that I refreshed your
8 recollection telling the police that some of the people got
9 a taste of the mace?

10 A I honestly don't know. It happened so fast. It
11 happened so fast, So I can't recall much of it.

12 Q But you did sign that -- that paper saying that,
13 right? The statement?

14 A Yes, I did. Okay. And you recall saying that
15 Black jumped over the rail to confront him.

16 A Yes.

17 Q Okay. Now, generally it's outside security's job
18 when somebody gets kicked out to walk them to the car,
19 right?

20 A Right. It's not inside security's job, right.

21 A Right.

22 Q Okay.

23 MR. SHAFFER: Court's indulgence.

24 (WHEREUPON there was a pause in the proceedings.)

25 ///

William Ingram - Cross-Examination by Mr. Shaffer

1 BY MS. SHAFFER:

2 Q Do you carry pepper spray ever?

3 A As at work right now?

4 Q No. When you were there for Black Ops, did you
5 carry pepper spray?

6 A No just the case. The reason why is because I was
7 an unarmed officer. In this state, you cannot carry pepper
8 spray unless you're armed. I was also a doorman, so there
9 was no need for that.

10 Q Okay. So you didn't carry pepper spray at the
11 time?

12 A Right.

13 Q Okay.

14 MR. SHAFFER: Court's indulgence.

15 THE COURT: Uh-huh.

16 (WHEREUPON there was a pause in the proceedings.)

17 BY MR. SHAFFER:

18 Q Do you know who Clinton is?

19 A Yes, sir.

20 Q He works with you, right?

21 A Yes, sir.

22 Q He worked with you at that time?

23 A No, huh-huh.

24 Q Okay. So he wasn't there?

25 A He was there. He came up later.

William Ingram - Redirect Examination by Mr. Shellenberg

1 Q Okay. He came up later. How was he addressed?

2 A All black in his uniform.

3 Q Black hat?

4 A Yeah.

5 Q White L. on the --

6 A No, sir, just all black.

7 Q Okay. Could that have been him in that picture?

8 A I couldn't tell because there was so many people
9 coming out.

10 Q Okay. But when that person got close to you and
11 reached out their hand toward your belt, you looked at them
12 right?

13 A I looked at them, yes, I did. And he backed off.

14 Q You sure he didn't grab something off your belt?

15 A Positive.

16 Q Okay.

17 MR. SHAFFER: No further questions.

18 THE COURT: Any redirect of the witness?

19 MR. SHELLENBERG: Just quickly.

20 REDIRECT EXAMINATION

21

22 BY MR. SHELLENBERG:

23 Q Why would people have been maced at that point out
24 there?

25 A Because the people was provoking a fight against a

William Ingram - Redirect Examination by Mr. Shellenberg

1 bunch of group of people and they was told to get to your
2 car and they didn't want to move, so the only way to move
3 them was by macing them.

4 **MR. SHELLENBERG:** No further questions, thank you.

5 **THE COURT:** Any objection to the witness being
6 excused from the State?

7 **MR. SHELLENBERG:** No, Your Honor.

8 **THE COURT:** From the defense?

9 **MR. SHAFFER:** No, Your Honor.

10 **THE COURT:** Sir, you're excused.

11 Madame Forelady and ladies and gentlemen, we're
12 going to take advantage of this break in testimony to take
13 our evening recess. During the break, please do not
14 discuss the case in any manner whatsoever. Please do not
15 watch any media accounts about this case as well as doing
16 any research on the internet.

17 When you return to the courthouse in the morning,
18 please don't have any contact with anyone in or about the
19 courthouse. You'll return directly to your jury room and
20 we'll resume in the morning at 9:30. I hope you all have a
21 great evening. We'll see you in the morning. Please leave
22 your note pads in your seats, we'll secure them during the
23 recess.

24 **THE BAILIFF:** Everyone remain seated.

25 (WHEREUPON the jury left the courtroom at 4:59

1 p.m.)

2 THE COURT: Are there any witnesses that the State
3 has highlighted on its witness list that it does not plan
4 to call. At this time I you count twenty witnesses still
5 remaining. So we're going to have to move at a quicker
6 clip tomorrow.

7 MS. WALKER: Can you give me a moment to count,
8 Your Honor?

9 THE COURT: Uh-huh.

10 MS. WALKER: Your Honor, can we let you know first
11 thing in the morning so we can regroup and evaluate.

12 THE COURT: If you could. I'm not trying to
13 constrict you in any way, but I need to know how to plan.

14 MS. WALKER: Yes, Your Honor, I understand. Just
15 give us a moment to regroup.

16 THE COURT: Okay. Anything from the defense before
17 we break for the evening?

18 MR. SHAFFER: No, Your Honor.

19 THE COURT: All right. See y'all in the morning at
20 9:30.

21 MR. SHAFFER: Thank you, Your Honor.

22 MS. WALKER: Thank you, Your Honor.

23

24 * * * * * END OF PARTIAL TRANSCRIPT * * * * *

25

1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

3
4
5
6 I, THE UNDERSIGNED, Brenda J. Sigwald, Official
7 Court Reporter for the Fifth Judicial Circuit of the State
8 of South Carolina, do hereby certify that I reported the
9 proceedings in the captioned case in the Court of General
10 Sessions in and for the State of South Carolina on the 4th
11 and 5th days of November, 2013.

12 I FURTHER CERTIFY that the foregoing pages,
13 constitute a true, accurate, and partial transcript of said
14 hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 17th of May, 2014.

19
20
21
22
23
24
25

Brenda J. Sigwald

Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020.

State of South Carolina

Court of General Sessions

County of Richland

2012-GS-40-04975

2012-GS-40-05302

State of South Carolina

:

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-VS-

:

TRANSCRIPT OF RECORD

:

James Bethel

:

November 6 - 8, 2013

Columbia, South Carolina

B E F O R E:

The Honorable Deadra L. Jefferson, Judge, and
jury.

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Circuit Court Reporter

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Court reporter's note about exhibits: If there is no indication as to the page number where an exhibit was marked for identification or received in evidence, the reason is because the exhibit was marked and/or admitted the previous day by court reporter Brenda Sigwald.

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S-9	photograph		
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S-15	photograph		
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S-20	photograph		

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S-33	photograph		
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S-36	photograph		
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S-38	photograph		
S-39	photograph		
S-40	photograph		

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<u>No.</u>	<u>Description</u>	<u>ID.</u>	<u>EV.</u>
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S-44	photograph		
S-45	photograph		
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S-48	photographic line-up		133
S-49	photographic line-up		
S-50	swabs		
S-51	cartridge casings		
S-52	swabs		
S-53	swabs		
S-54	swabs		
S-55	projectile		
S-56	swab		
S-57	GSR - victim		253
S-58	swab		
S-59	GSR		
S-60	swabs		

I N D E X

<u>No.</u>	<u>Description</u>	<u>ID.</u>	<u>EV.</u>
S-61	prints of victim		
S-62	bags		
S-63	GSR of Kedron Hope		
S-64	GSR of James Bethel		
S-65	swab		253
S-66	cartridge casing		
S-67	.380 shell		94
S-68	James Bethel's clothes		
S-69	James Bethel's clothes		
S-70	mace		100
S-71	video		
S-72	9-1-1 call		
S-73	swab - James Bethel		253
S-74	test specimen		
S-75	Glock - Kedron Hope		200
S-76	.380 - victim		200
S-77	magazines		253
S-78	photograph		
S-79	photograph		
S-80	photograph		

I N D E X

<u>No.</u>	<u>Description</u>	<u>ID.</u>	<u>EV.</u>
S-81	photograph		
S-82	photograph		
S-83	photograph		
S-84	blow-up of photograph		
S-85	photograph		
S-86	photograph		
S-87	photograph		
S-88	photograph		
S-89	photograph		
S-90	photograph		
S-91	photograph		
S-92	photograph		
S-93	photograph		
S-94	photograph		
S-95	photograph		
S-96	photograph		
S-97	photograph		
S-98	photograph		
S-99	photograph		
S-100	photograph		

I N D E X

<u>No.</u>	<u>Description</u>	<u>ID.</u>	<u>EV.</u>
S-101	photograph		
S-102	photograph		
S-103	photograph		
S-104	photograph		
S-105	photograph		
S-106	photograph		
S-107	photograph		
S-108	photograph		
S-109	photograph		
S-110	photograph		
S-111	photograph		
S-112	photograph		
S-113	photograph		
S-114	photograph		
S-115	photograph		
S-116	photograph		
S-117	photograph		
S-118	photograph		
S-119	photograph		
S-120	photograph		

I N D E X

<u>No.</u>	<u>Description</u>	<u>ID.</u>	<u>EV.</u>
S-121	photograph		
S-122	photograph		
S-123	photograph		
S-124	photograph		
S-125	photograph		
S-126	photograph		
S-127	photograph		
S-128	photograph		
S-129	photograph		
S-130	photograph		
S-131	photograph		
S-132	photograph		
S-133	photograph		
S-134	photograph		
S-135	photograph		
S-136	photograph		
S-137	photograph		
S-138	photograph		
S-139	photograph		
S-140	photograph		

I N D E X

<u>No.</u>	<u>Description</u>	<u>ID.</u>	<u>EV.</u>
S-141	photograph		
S-142	photograph		
S-143	photograph		
S-144	photograph		
S-145	photograph		
S-146	photograph		
S-147	photograph		
S-148	photograph		
S-149	photograph		
S-150	photograph		
S-151	photograph		
S-152	photograph		
S-153	photograph		
S-154	photograph		
S-155	photograph		
S-156	photograph		
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S-159	Kedron Hope's license to carry a weapon		

I N D E X

<u>No.</u>	<u>Description</u>	<u>ID.</u>	<u>EV.</u>
S-160	sketch		90
S-161	license		
S-162	DNA board		175
D-1	statement of David Richardson		
D-2	photograph		
D-3	CD		
D-4	CD		153
D-5	photograph		
D-6	photograph		51

I N D E X

<u>No.</u>	<u>Description</u>	<u>ID.</u>	<u>EV.</u>
C-1	video (same as State's 157)		
C-2	(mis-numbering occurred, no exhibit marked)		
C-3	jury note	25	
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1 10:19 a.m.)

2 **The Court:** Good morning, ladies and gentlemen. I hope
3 that you all had a pleasant evening. We appreciate your
4 patience. We had some matters of law that we needed to
5 dispose of this morning that took a little of our time. So
6 please know we do not take your time for granted and we
7 appreciate your patience.

8 We're now going to resume with the State's presentation.
9 You may proceed.

10 **Ms. Walker:** Your Honor, the State calls Clinton Brown.

11 **The Court:** Sir, if you would come forward to be sworn.

12 Clinton Brown, after being duly sworn, testified as
13 follows:

14 **The Clerk:** Have a seat in the witness box. State your
15 name for the record and spell it, please.

16 **The Witness:** My name is Clinton Brown. C-L-I-N-T-O-N.
17 Last name Brown, B-R-O-W-N.

18 **The Court:** You may proceed.

19 Direct Examination

20 By Ms. Walker:

21 Q. Good morning, sir.

22 A. Good morning.

23 Q. Mr. Brown, where do you live?

24 A. , , South Carolina---

25 **Court Reporter:** Whoa, whoa, whoa, whoa, whoa.

25 Q. But in August of last year did you work for them?

1 A. That's correct.

2 Q. And were you -- were you providing security services at
3 Mr. Lucky's?

4 A. That's correct; on that night I did. I was called in to
5 work.

6 Q. Were you scheduled to work?

7 A. I was scheduled to work. I was called in due to the
8 large volume of patrons that were at Mr. Lucky's club.

9 Q. Do you remember -- do you remember when you got to Mr.
10 Lucky's?

11 A. I got there around 12, 12 in the morning.

12 Q. And---

13 A. Approximately at that time.

14 Q. And what point in time -- at 12:00 did you start working
15 or is that when you just arrived? Is there a process that
16 y'all go for -- do you check in or something like that?

17 A. When I got -- when I got to the club, I just -- I pulled
18 up. I parked my vehicle. I saw the site supervisor which
19 was Kedron and I talked---

20 Q. Slow down for me so everybody can understand you because
21 she's going to take down everything you say. Okay?

22 A. Okay.

23 Q. You saw the site supervisor?

24 A. Yes, which was Kedron.

25 Q. Kedron Hope?

1 A. Kedron Hope.

2 Q. And did you make -- did you talk to him?

3 A. I was talking to him before -- just getting an idea of
4 what was going on at the site at the time.

5 Q. And where were you assigned to be that night?

6 A. I was assigned at another location.

7 Q. When you got to Mr. Lucky's, were you assigned to a
8 specific area of the club?

9 A. Outside. I perform outside security. That's providing
10 security for the club, outside checking I.D.'s and doing
11 random searches.

12 Q. And where were you -- were you -- to my understanding
13 there's a deck there?

14 A. Yes, there's a deck area.

15 Q. And a parking lot?

16 A. And a parking lot area.

17 Q. And which area were you in most of the time?

18 A. I was in the parking lot area until -- until the
19 disturbance happened. Then I went to the deck area.

20 Q. You said until the disturbance?

21 A. Until a disturbance occurred. Then I proceeded to the
22 deck area.

23 Q. Did you see the victim in this case at any point that
24 night?

25 A. When he came out to the club.

1 Q. When he came out of the club?

2 A. When he came out of the club.

3 Q. And you said you saw a disturbance. Can you kind of
4 describe for us what you saw?

5 A. It was basically several people -- several individuals
6 coming out with a disturbance, making loud threats and making
7 just a disturbance in that area.

8 Q. And these were people who had been inside the club?

9 A. Yes, they would have been -- from what I observed, they
10 had been ejected from the club. So at that time I was trying
11 to go on to the balcony to gain control of the situation.

12 Q. So y'all needed more -- there was more security needed
13 to actually get them to leave the club?

14 A. There was -- yes, we needed more security at that time.

15 Q. Do you remember how many people were in that group that
16 was getting kicked out?

17 A. There was more than -- there was more than about ten
18 people. More than about ten people.

19 Q. There were a bunch of people that you were bringing out
20 at that time.

21 A. That was -- that the inside security was ejecting from
22 the club. There were several people.

23 Q. And when you heard the disturbance, where did you go?

24 A. I went on to the balcony to try to get everybody to move
25 down.

1 Q. And is it -- Your Honor, can we dim the lights so I can
2 play a portion of the video?

3 **The Court:** Uh-huh.

4 By Ms. Walker:

5 Q. You said you went on to the balcony.

6 A. That's correct.

7 Q. I want to play a portion of a video for you, and you.
8 tell me if you see yourself. Okay?

9 A. That's me coming to the crowd right there with that hat
10 on.

11 Q. That's you in the hat?

12 A. Yes, ma'am.

13 Q. And this is when you see the disturbance?

14 A. That's right there; yes, ma'am.

15 Q. And are these -- the other people, are these the ones.
16 that they were trying to eject?

17 A. Yes, ma'am, because everybody was coming out at the same
18 time.

19 Q. And what do you -- do you know who this is that you --
20 that you're touching right now?

21 A. That's Will.

22 Q. That's Will?

23 A. That's correct. That's another -- that's outside
24 security. That's Will. He just pats down..

25 Q. What did you say?

1 A. He pats down the individuals.

2 Q. When you say he's passing them down, can you kind of
3 describe for us what that means?

4 A. No, he pats down the---

5 Q. He pats them down.

6 A. He checks them, checking for weapons and such.

7 Q. Before they go in?

8 A. Before they enter the club.

9 Q. Okay. I understand. What are you doing right here when
10 you're touching him?

11 A. I'm attempting to retrieve his chemical ammunition.

12 Q. When you say chemical ammunition, what's that commonly
13 called?

14 A. O.C. spray which is mace.

15 Q. Mace? So right here you're trying to get mace from him?

16 A. That's correct.

17 Q. Did you get mace from him?

18 A. I did not.

19 Q. Why not?

20 A. Because it wasn't there.

21 Q. He didn't have any mace.

22 A. I could not retrieve it.

23 Q. And then from here, sir, where do you go?

24 A. I went back -- I went back down. I proceeded back down
25 to the ramp because I think there was a -- right there at

1 that time there was an altercation trying to come back up the
2 ramp, so I was attempting to push him back down.

3 Q. So there are -- there's the crowd behind you and then
4 there are people in front of you in an altercation.

5 A. That's correct, and there was still a disturbance on the
6 ramp area at -- on the balcony area as well.

7 Q. Did you see at that point the victim in this case?

8 A. I did not really -- I did not really see him at that
9 time.

10 Q. At that point.

11 A. At that point.

12 Q. When is the first time you saw him during all of these
13 altercations?

14 A. When he was going down -- when he went over the ramp.
15 When he went over the ramp.

16 Q. He went over the ramp?

17 A. He went over the ramp.

18 Q. Did anyone else go over the ramp?

19 A. Then I seen -- when I was on the balcony, going down the
20 balcony, I saw the individual go run across -- run over the
21 balcony and jump across the balcony and proceed into --
22 proceed into the parking lot area somewhere.

23 Q. So if I'm understanding this correctly, the victim jumps
24 over the balcony and then someone follows him over the
25 balcony.

1 A. No. That was -- the individual who was shot went -- was
2 already over the balcony and he proceeded -- and the
3 individual right there, you see that he jumps over the
4 balcony, and then after that I lost visual contact of the
5 individual, of the man.

6 Q. When he jumps over the balcony, where was Black?

7 A. He was already down there.

8 Q. He was -- when you say down there, what are you talking
9 about?

10 A. He was -- he was -- I guess he was in the parking lot
11 area because wherever I was at, I couldn't really see if he
12 was going to a car or if he was -- I couldn't see no more
13 after that, but I seen the individual run and jump over the
14 balcony.

15 Q. Here is my question: Who jumped over the balcony first?

16 A. Black.

17 Q. And then the individual that shot jumped over the
18 balcony.

19 A. That's correct.

20 Q. Okay. You said you lost sight of the shooter after he
21 jumped over the balcony?

22 A. That's correct.

23 Q. About how long did you lose sight of him?

24 A. It was about -- I give it about less than 30 seconds.
25 Less than 30 seconds.

1 Q. Did you see him again?

2 A. I saw him again. I saw him again standing right behind
3 that with his arm extended and discharge it -- and it
4 appeared that he had a weapon and I heard it discharge two --
5 two gunshots discharged.

6 **Ms. Walker:** Your Honor, may the witness step down?

7 **The Court:** He may.

8 By Ms. Walker:

9 Q. Will you step down this way? You said -- where was
10 Black facing? If this is -- if this is Mr. Lucky's on this
11 side, where is Black?

12 A. Right... Black was facing -- he was facing -- facing
13 the club area.

14 Q. Okay. And if I'm Black, the person who walks up behind
15 him, how close are they to him?

16 A. He was about this close from him.

17 Q. So pretty close?

18 A. Yes.

19 Q. And then what happens?

20 A. He discharged -- then he discharged -- he discharged it.
21 I was standing at least two -- like two feet from him, at
22 least two feet from him, and seen the whole reaction, like a
23 pow-pow. I froze. I was like: What's going on?

24 Q. Will you step back on the witness stand? And Black's
25 back was to the shooter when that happened.

1 A. His back was towards the entrance of the club.

2 Q. After you saw that, what happened? What did you do?

3 A. What did I do? I immediately went -- what I did after
4 that, I just went to the -- tried to secure the
5 (unintelligible word spoken) because some of the people that
6 was getting ejected from the club tried to -- tried to --
7 tried to exit the club, tried to -- tried to -- the parking
8 lot. So I tried to detain that area over there so they could
9 not leave.

10 Q. Did you see the shooter? Where -- what happened with
11 him after that?

12 A. At that time the shooter, him, was going -- was running
13 back towards -- was running back towards and
14 Kendrick and -- Kedron was discharging his weapon, tried to
15 subdue the subject to try to eliminate the threat.

16 Q. Trying -- you said trying to eliminate the threat?

17 A. Yes, because he done -- after that time he done
18 committed a felony. So, therefore, we were trying to gain
19 control of the incident -- of the situation by keeping --
20 keeping everything isolated because people was trying to
21 leave. People was trying to leave the club and such.

22 Q. And you said the people that were trying to leave that
23 you stopped from leaving were with the shooter.

24 A. I'm assuming they were, but I don't really know if it
25 was communicated.

1 Q. There were people who were trying to leave that you
2 stopped from leaving.

3 A. That's correct. And later on I found out that night
4 that they was with him.

5 Q. Okay. And after you stopped those people from leaving,
6 did you -- did police officers arrive or sheriff's deputies,
7 rather?

8 A. After they -- after we gained control of the situation
9 over there where the vehicle had stopped, I had went over
10 there in an attempt to induce C.P.R. on Black to try to
11 revive him.

12 Q. You went to---

13 A. I went to his aid to try to revive him by conducting
14 C.P.R. and checking his pulse, but he had no pulse. He was
15 unresponsive.

16 Q. There was nothing you could do?

17 A. There was nothing I could do.

18 Q. Did deputies eventually arrive?

19 A. They eventually arrived about -- approximately about --
20 about six minutes later.

21 Q. And did you give deputies -- did you give law
22 enforcement a statement in this case?

23 A. I did, ma'am.

24 Q. Thank you. And, sir, the person that you saw walk up
25 behind Black and shoot him, do you see him in the courtroom

1 today?

2 A. He's right there, sitting right with the blue shirt on
3 with the tie.

4 Q. Can you let -- Your Honor, may the record reflect that
5 the witness has identified the defendant?

6 **The Court:** Proceed.

7 **Ms. Walker:** No further questions.

8 **The Court:** You may proceed.

9 **Mr. Shaffer:** Thank you, Your Honor.

10 Cross-Examination

11 By Mr. Shaffer:

12 Q. All right. Mr. Brown, so what time did you get to the
13 club that night?

14 A. Approximately 12, 12 a.m. in the morning.

15 Q. 12 a.m. in the morning?

16 A. Approximately.

17 Q. Okay. And you were called in as additional outside
18 security for Black Ops; right?

19 A. That's correct.

20 Q. Okay. So the group that was with the defendant wasn't
21 there when you got there; right?

22 A. Excuse me?

23 Q. The group that was with the defendant wasn't there when
24 you got there; right?

25 A. I was outside security, so I wouldn't know---

1 Q. You wouldn't know.

2 A. ---who was inside the club.

3 Q. But you're sure you got there at 12; right?

4 A. Approximately.

5 Q. Okay. Now, as to Black Ops Security, your job, you
6 don't work directly for Lucky's; right?

7 A. I work for -- I'm a contractor, so I work for wherever
8 -- wherever I need to work at.

9 Q. And they basically contract y'all to pat down people and
10 check I.D.'s and things like that?

11 A. They got us to work security, to perform security
12 details.

13 Q. So that's part of the job; correct?

14 A. Yes.

15 Q. Okay. So you said that you went toward Clinton Brown
16 (verbatim).

17 A. Excuse me?

18 Q. When the disturbance occurred, when more than ten people
19 are getting kicked out, you said that you went back up the
20 ramp; right? We saw you on the video?

21 A. That's correct.

22 Q. You wore the hat with the white emblem on it?

23 A. That's correct.

24 Q. Okay. Do you know Clinton Brown -- I mean, not Clinton
25 Brown. Do you know William Ingram?

1 A. I don't know William Ingram. Who is that?

2 Q. Will?

3 A. Oh, I know Will.

4 Q. You do know Will?

5 A. Yes. I don't know his last name, but I know---

6 Q. Did you know him at that time?

7 A. Did I know Will at that time?

8 Q. Had you met him prior to that night?

9 A. Yes, he worked for Black Ops.

10 Q. And you would recognize him; right?

11 A. That's correct.

12 Q. And you would expect that he would recognize you; right?

13 A. That's correct.

14 Q. Okay. And you said you reached for some pepper spray;
15 correct?

16 A. I reached for chemical ammunition; I did.

17 Q. Okay. Which is -- a lot of times it's called pepper
18 spray, mace, O.C. spray.

19 A. Correct.

20 Q. And that's normally kept in what's called a utility
21 belt; right?

22 A. Yes.

23 Q. And it has a pouch on it for -- for it?

24 A. That's correct.

25 Q. Okay. And that's what you were reaching in. You were

1 reaching in the pouch; right?

2 A. That's correct.

3 Q. And you're saying that you did not get anything out of
4 the pouch?

5 A. I couldn't -- I couldn't retrieve it. I attempted to,
6 but I (unintelligible words spoken).

7 Q. Oh. But there was pepper spray that was getting used
8 that night; right?

9 A. There was.

10 Q. Who was using the pepper spray?

11 A. I believe it was Kendrick (verbatim).

12 Q. Huh?

13 A. Kendrick Hope. Kendrick Hope.

14 Q. Okay. He was the only one using pepper spray?

15 A. From my belief, yes.

16 Q. Okay. And did you see the entire scene? I mean, did
17 you know---

18 A. Specify scene.

19 Q. Would anyone else have been using pepper spray?

20 A. No, not supposed to.

21 Q. Not supposed to?

22 A. Other than security.

23 Q. Okay. But you can't say for certain.

24 A. No, I cannot.

25 Q. Okay. Where were you at whenever you saw -- where were

1 you at when you saw Black jump over the rail?

2 A. What you mean where was---

3 Q. I apologize.

4 A. Specify what you mean by that. Where was I at?

5 Q. Where were you located on the ramp? Were you on the
6 ramp? Were you on the deck? Where?

7 A. I was on the ramp area.

8 Q. Okay. You were on the ramp area. Approximately how
9 high up the ramp did you see him? How high up on the ramp
10 were you approximately? Midway? Top of the ramp? Bottom of
11 the ramp?

12 A. I was about halfway.

13 Q. About halfway?

14 A. (Witness nodded head up and down.)

15 Q. Okay. And Black was jumping over the rail; right?

16 A. Yes, he went over---

17 Q. In the---

18 A. Yes, he went over the railing.

19 Q. I'm going to show you what's been marked State's -- I
20 mean Defense Exhibit 6 for identification.

21 A. Okay.

22 Q. Are you familiar with Mr. Lucky's?

23 A. I am.

24 Q. Okay. Is that a fair and accurate depiction of Mr.
25 Lucky's?

1 A. It appears to be.

2 **Mr. Shaffer:** I move -- the defense would move Defense
3 Exhibit 6 into evidence.

4 **The Court:** Any objection? Show it to them, please.

5 **Ms. Campbell:** We've seen it.

6 **Ms. Walker:** None from the State, Your Honor.

7 **The Court:** Marked and admitted without objection.

8 (Defendant's Exhibit 6 was received in evidence.)

9 By Mr. Shaffer:

10 Q. Now, if you could, could you demonstrate, based off of
11 this, where Black jumped over the rail that night? Just
12 demonstrate to the jury. I know that it's small, but I
13 figure it's better than having you draw up on the board.

14 A. About in this area right in here.

15 Q. Could you stand up, please?

16 A. Sure. How are they going to see this? About this area
17 right up in here. Anywhere from this area. I can't be
18 precise, but it's within this area right here.

19 Q. So Black jumped over the rail at the end of the deck,
20 right, toward the parking lot, the closest to the parking
21 lot?

22 A. Within that area.

23 Q. Okay. And you said he jumped over the rail prior to --
24 to the defendant jumping over the rail. Where did the
25 defendant jump over the rail at?

1 A. The defendant -- the defendant jumped over it about this
2 area right here, anywhere between this area right here.

3 Q. Okay. So was he on the top deck or was he on the ramp
4 whenever he jumped over the rail?

5 A. Say what now?

6 Q. The defendant whenever -- when the defendant jumped over
7 the rail, was he on the top deck part or was he on the ramp
8 going down? Which rail did he jump over?

9 A. He was on -- he was in...

10 Q. He was over there.

11 A. Do me a favor.

12 Q. Yes, sir.

13 A. Specify what you're talking about was the deck, ramp,
14 and all that.

15 Q. I apologize. Is that the -- what I'm calling the deck I
16 think that y'all have been referring to as the balcony. Did
17 he jump over the balcony rail or was he on the ramp whenever
18 he jumped over the rail?

19 A. He jumped over the part with the most wood back there,
20 the most wood, that part right there. He came out between
21 that area right over there.

22 Q. And that's flat -- a flat surface. That's not a deck;
23 right?

24 A. It's flat.

25 Q. I mean, that's not a ramp; correct? Is that a flat

1 surface?

2 A. What's flat?

3 Q. Where he jumped---

4 A. You're confusing me now---

5 Q. ---over the rail.

6 A. It was flat. He jumped over -- he jumped over on the---

7 Q. Okay.

8 A. ---on the deck -- what y'all specified as a deck area
9 and he jumped over the rail which is -- he jumped over the
10 rail, which he landed on the ground surface, on the ground
11 level.

12 Q. Okay. So he jumped over the rail onto the ground; the
13 defendant did.

14 A. Yes.

15 Q. And Black did. Did both of them jump over the same
16 spot? That's what I'm wondering.

17 A. No.

18 Q. Okay.

19 A. One jumped over -- one jumped over -- one jumped over
20 about in this area. He was still on there before the area
21 turns into a V., before it turns into like a V. area, jumped
22 between that area right there.

23 Q. Okay. Approximately how far away were they, the two
24 areas where they jumped over?

25 A. Approximately two... I can't do all that.

1 Q. I'm going to show you the video that the State just...

2 Okay. All right. Can you identify the defendant in that
3 picture -- in the video?

4 A. It's unclear.

5 Q. How about---

6 A. He's standing right there with his hand like this right
7 here. It looks like he has a little ring on on his hand.

8 Q. So he has a ring -- a ring on his hand.

9 A. Right there. Yeah, right there, right beside the man
10 with the yellow shirt on behind William.

11 Q. And where did y'all just come from? Did y'all just come
12 from the ramp?

13 A. Where did who just come from?

14 Q. Is that not you coming up the ramp?

15 A. That's me right there.

16 Q. Okay. Did you just walk up a ramp?

17 A. I walked up the ramp.

18 Q. Okay. So that area is a ramp right there, the area you
19 just came from.

20 A. That's correct.

21 Q. Okay. Let me back this up just a little bit. All
22 right. Sir, I'd like you to keep your eye on the defendant.
23 Did he just go down the ramp?

24 A. Play it again.

25 Q. Okay. That's a ramp area, right, that he just walked

1 out?

2 A. I don't know what part he walked down because there's
3 like a park right there as well as an addition.

4 Q. Oh, okay. So there's a part in addition to that.

5 A. Yes.

6 Q. Okay.

7 A. This right here which can be seen right back here on the
8 display -- on the evidence thing. There's a park right back
9 over there as well.

10 Q. Okay. So he could have walked back over there.

11 A. Could have.

12 Q. Okay. Do you recall him coming back up the ramp at any
13 point?

14 A. The last time I seen -- well, I seen his -- I seen him
15 running across and jumping over -- jumping over the balcony,
16 jumping over the railing on to the ground. That's the last
17 time I seen him.

18 Q. Near this door right here; correct?

19 A. No, he came out that door right there---

20 Q. He came out right here.

21 A. Yes.

22 Q. And he went over to here.

23 A. And ran over there and jumped over the---

24 Q. Jumped over the ramp -- I mean, jumped over the railing
25 there.

1 A. Within that area, yes.

2 Q. And that's -- that's approximately or fairly close to
3 the area that Black jumped over.

4 A. Fairly.

5 Q. So he followed essentially the same path as Black to
6 some degree. Is that -- is that right?

7 A. That's about accurate.

8 Q. Okay. Court's indulgence one moment. Now,
9 approximately how far away do you think the gun was from his
10 head -- from Black's head? I apologize. Approximately how
11 far away do you think it was whenever it went off?

12 A. It was about -- about two -- about that far.

13 Q. Okay. So about two feet?

14 A. About -- no, about this close, not two feet.

15 Q. All right. Is that a foot and a half?

16 A. About a foot. Not even -- about a foot---

17 Q. Okay.

18 A. ---approximately. Approximately.

19 Q. Generally -- well, how many times had you worked at
20 Lucky's prior to this?

21 A. Excuse me?

22 Q. How many times had you worked at Mr. Lucky's prior to
23 this?

24 A. How many times? I worked over there over the course of
25 a year.

1 Q. Okay. And your job, Black Ops job, was outside
2 security; right?

3 A. That's correct.

4 Q. And whenever there was a disturbance, y'all were
5 supposed to walk people to their car; right?

6 A. That's correct.

7 Q. Okay. And inside security wasn't supposed to walk
8 people to their car; right?

9 A. They're not -- I don't know what their job -- I can't
10 speak to what their job description is.

11 Q. Okay. But generally they're not...

12 A. I don't know their job description.

13 Q. Okay. Generally y'all walked them to their car? Is
14 that right?

15 A. Most of the time, yes.

16 Q. Okay. When Black jumped over the rail, who was he
17 approaching? Where was he going? Was he approaching the
18 guy---

19 A. I don't know---

20 Q. ---in the yellow shirt?

21 A. I don't know who he was approaching. I don't know what
22 he was doing.

23 Q. Did you see the guy in the yellow shirt?

24 A. I saw him.

25 Q. Okay. Where was the guy in the yellow shirt at whenever

1 he jumped over the rail?

2 A. The guy with the yellow shirt? He was on the balcony --

3 I mean, on the -- he was on the ramp area.

4 Q. Okay. He was on the ramp area. He wasn't down in the
5 bottom?

6 A. Not at that time.

7 **Mr. Shaffer:** No further questions.

8 **The Court:** Any redirect?

9 **Ms. Walker:** No, Your Honor.

10 **The Court:** Any objection to the witness being excused?
11 From the State?

12 **Ms. Walker:** No, Your Honor.

13 **The Court:** From the defense?

14 **Mr. Shaffer:** None, Your Honor.

15 **The Court:** Sir, you're excused. You may call your next
16 witness.

17 **Ms. Campbell:** May it please the Court?

18 **The Court:** Yes, ma'am.

19 **Ms. Campbell:** The State calls Kedron Hope.

20 Kedron Hope, after being duly sworn, testified as
21 follows:

22 **The Clerk:** Have a seat in the witness box. State your
23 name for the record and spell your first and last name,
24 please.

25 **The Witness:** Kedron Hope. K-E-D-R-O-N. Last name

1 Hope, H-O-P-E.

2 **The Court:** You may proceed.

3 Direct Examination

4 By Ms. Campbell:

5 Q. Mr. Hope, where are you employed?

6 A. Black Ops Protective Services.

7 Q. How long have you been employed by them?

8 A. Approximately two years.

9 Q. As part of your employment, are you required to carry a
10 certain license?

11 A. Yes.

12 Q. And what license is that, sir?

13 A. I carry an armed license which would be a class three
14 law enforcement license.

15 **The Court:** Sir, I need you to speak directly into the
16 microphone.

17 **The Witness:** I said a class three armed security
18 license.

19 **The Court:** Thank you.

20 By Ms. Campbell:

21 Q. And is there any special training or requirements before
22 you can get that license?

23 A. Yes. You have to go through S.L.E.D. certifications and
24 classes.

25 Q. Did you do that in order to get your license?

1 A. Yes, I did, ma'am.

2 Q. Back in August of 2012, were you licensed by S.L.E.D.?

3 A. Yes, I was.

4 Q. I'm going to show you what's been marked as State's
5 Exhibit Number 158. Is this a copy of your license at the
6 time as well as your driver's license?

7 A. Yes, it is.

8 Q. Where are you from originally, sir?

9 A. From the State of Michigan.

10 Q. And how long have you been in the State of South
11 Carolina?

12 A. Two years.

13 Q. Is this a copy of the license that you held at the time
14 that this event occurred that we're getting ready to talk
15 about?

16 A. Correct.

17 **Ms. Campbell:** Your Honor, at this time I'd offer
18 State's Exhibit 158 into evidence.

19 **The Court:** Any objection?

20 **Mr. Shaffer:** No objection.

21 **The Court:** Marked and admitted without objection.

22 (State's Exhibit 158 was received in evidence.)

23 By Ms. Campbell:

24 Q. The date that this license expired -- that license was
25 what date on there?

1 A. Expires 12/29/2012.

2 Q. Since then, have you been licensed again by the State?

3 A. Yes, I have. We have to re-up every year.

4 Q. And I show you what's been marked as State's

5 Exhibit 159. What does that show?

6 A. My South Carolina license armed security card.

7 Q. That's your current license?

8 A. Correct.

9 **Ms. Campbell:** Your Honor, at this time we'd offer
10 State's Exhibit 159 into evidence.

11 **The Court:** Any objection?

12 **Mr. Shaffer:** I don't see how it's relevant
13 considering---

14 **The Court:** No speaking objections. Is the objection
15 relevance?

16 **Mr. Shaffer:** Yes, ma'am.

17 **The Court:** Approach, please.

18 (Whereupon, a bench conference was held.)

19 **The Court:** Madam Foreman, ladies and gentlemen, I have
20 a brief matter of law I need to take up with the attorneys.
21 During this break, please do not discuss the case and please
22 leave your notepads in your seats.

23 (Whereupon, the jury was excused from open court at
24 10:55 a.m.)

25 **The Court:** My clerk is getting you a copy.

1 **Mr. Shaffer:** Thank you, Your Honor.

2 (Pause in proceedings.)

3 **The Court:** For what purpose is the State offering the
4 document?

5 **Ms. Campbell:** Your Honor, after hearing his opening
6 argument based on what we anticipated---

7 **The Court:** I'm going to need y'all to speak up. This
8 is a cavernous room.

9 **Ms. Campbell:** I'm sorry.

10 **The Court:** It's very difficult for me to hear.

11 **Ms. Campbell:** Yes. We didn't know what his defense was
12 going to be. After listening to his opening argument, it
13 occurred to me last night that this would be germane as far
14 as what his abilities were at the time as far as whether or
15 not he can arrest someone, whether or not he can pursue
16 someone and, in fact, he has the same rights as a police
17 officer at that point.

18 Based on the opening argument, we think he's opened the
19 door to this as far as this is what his abilities were at the
20 time, and these are clearly enunciated on the back of his
21 current license.

22 **The Court:** What's the basis of the objection?

23 **Mr. Shaffer:** Your Honor, there is a Rule 5 objection
24 and 401 and 403. I have a document which I would like to
25 print off and send to you which is an e-mail from Meghan

1 Walker on July 19 saying this was not discoverable whenever I
2 asked for it.

3 **Ms. Campbell:** May I see that e-mail?

4 **The Court:** You asked specifically for his license?

5 **Mr. Shaffer:** I asked for everything that S.L.E.D. had
6 on his licensing.

7 **Ms. Campbell:** (Shook head from side to side.)

8 **The Court:** Is this not available to you?

9 **Mr. Shaffer:** No, Your Honor. I can't go to S.L.E.D.
10 and ask for it. I mean, it's within the State's...

11 **The Court:** Yeah.

12 **Ms. Campbell:** He can subpoena---

13 **The Court:** You can, under FOIA, request it; you sure
14 can..

15 **Mr. Shaffer:** Your Honor---

16 **The Court:** It's a public record. His license is a
17 public record. There's nothing to preclude you from
18 obtaining it.

19 **Mr. Shaffer:** The other thing is that, you know, under
20 Rule 5---

21 **The Court:** They're required to give it to you once it's
22 in their possession, and I require that they give it to you.
23 I'm past that point now because I really can't discern any
24 prejudice to you. You did argue it in your opening, so
25 clearly you contemplated it. And I assume your theory is

1 that this was like a shootout at the O.K. Corral and your
2 client was defending himself, but they're not similarly
3 situated to your client under their license, and you did open
4 the door.

5 **Mr. Shaffer:** Your Honor, involving opening the door, I
6 would like the State's position in what exactly opened the
7 door into it -- because I'm honestly unsure what I said that
8 would open the door into---

9 **The Court:** I think it's just -- I think it's the
10 defense posture. I don't know that a door had to be opened.
11 I think they're entitled to show what his authority was on
12 that evening in terms of returning fire or even being the
13 first person to have shot upon or to have done any sort of -
14 what's the word I'm looking for - police-type action or any
15 sort of what could be characterized as aggressive action
16 toward the defendant under these circumstances.

17 **Mr. Shaffer:** Your Honor, if I may---

18 **The Court:** I gave you an exact copy of that document.
19 I had my clerk make a copy.

20 **Mr. Shaffer:** Your Honor, this also was not in effect at
21 the time that -- the picture up there that they just admitted
22 without objection was in effect at the time that this
23 actually occurred. This -- this license was not.

24 **The Court:** Is there any difference between the two?

25 **Mr. Shaffer:** I don't know. I haven't seen it, Your

1 Honor.

2 **Ms. Campbell:** Your Honor, the only thing is when the
3 police copied his license, his current license - and I can
4 follow up with that question - they didn't copy the back
5 which has the same language that's on the back of his current
6 license. His card had the same language at the time.

7 **The Court:** I would assume he still has both of his
8 cards, doesn't he?

9 **The Witness:** Yes, I do. I have them with me today.

10 **Ms. Campbell:** I can just offer them. I'm sorry, Your
11 Honor; I didn't think about that.

12 **The Court:** I wouldn't imagine that the State had
13 changed how a license reads, have they? And it's pursuant to
14 a code, and the code hasn't changed.

15 **Ms. Campbell:** I can either make a copy of -- it's --
16 the language on the back is---

17 **The Court:** I think you need to show it to defense
18 counsel.

19 (Ms. Campbell complies.)

20 **The Court:** And I think what becomes relevant is the
21 license that was in effect at the time that this incident
22 took place, not the new license.

23 **Ms. Campbell:** Yes, ma'am.

24 **The Court:** So the new license will be marked for I.D.
25 only. Even if you want -- I don't see a reason to introduce

1 it at this point, but the license that was in effect at the
2 time is relevant. It is germane. It is probative and it is
3 admissible.

4 **Mr. Shaffer:** And, Your Honor, might I preserve all the
5 objections I made to this document for that one as well so we
6 don't have to reargue it again? I just want to make sure I'm
7 preserved for whatever they mark---

8 **The Court:** It's preserved.

9 **Mr. Shaffer:** Thank you.

10 **The Court:** I have ruled that his current license is
11 relevant. The scope of his authority is relevant.

12 **Mr. Shaffer:** It is.

13 **The Court:** And the license is admissible. It is -- it
14 is almost in essence -- it's the same as a driver's license.
15 It's almost like a business record. It's something that's
16 kept in the -- it's something that's required by the State of
17 South Carolina, and his license articulates the exact
18 language from the statute. It states it verbatim, based on
19 my review of the statute after I looked at the exhibit.

20 I agree with you that his current license is not
21 relevant. The license, however, that was in effect at the
22 time of this incident is relevant.

23 **Mr. Shaffer:** And, Your Honor, regarding the language --
24 you've ruled. I'm not arguing---

25 **The Court:** It's a statute, yeah.

1 **Mr. Shaffer:** I just -- I would just like to add that I
2 think that it's prejudicial to allow it to go back whenever
3 that's the only charge. That's the other part of my
4 argument. I didn't actually get it out, but that's the other
5 part of my argument. I'm not arguing---

6 **The Court:** How is it prejudicial?

7 **Mr. Shaffer:** It's prejudicial to have -- I think it's
8 highly prejudicial to have the only law that goes back there
9 saying that he had the right to fire. That's -- that's the
10 issues---

11 **The Court:** There's no difference between him saying it
12 and it being an exhibit; it's all evidence. So if I let him
13 testify to it, it's no different -- it becomes really
14 cumulative to some extent and I can't discern any prejudice
15 to your client. I've already ruled that it's more probative
16 than prejudicial.

17 **Mr. Shaffer:** Thank you, Your Honor.

18 **The Court:** It is relevant and it is germane to an issue
19 in this case which is -- it is misleading to a jury to allow
20 them to believe that your client and this gentleman were
21 similarly situated; they were not. He had the authority to
22 carry a gun. He had arrest powers, based on his license.

23 **Mr. Shaffer:** Your Honor, at the end of the trial
24 probably -- well, I'll save that for later, Your Honor.
25 Thank you.

1 **The Court:** No, no. If you've got something to say, you
2 say it now.

3 **Mr. Shaffer:** Well, I'm going to be requesting a charge
4 based off of that, if that's the case.

5 **The Court:** Well, then, you need to get it to me.

6 **Mr. Shaffer:** I will. I haven't actually come up with
7 the language. I didn't expect this to happen.

8 **The Court:** Yeah. But -- yeah, but you might want to do
9 it sooner than later because -- because I like -- I don't
10 like to take something at face value. I've got to research
11 it myself.

12 **Mr. Shaffer:** I understand.

13 **The Court:** No reflection on you.

14 **Mr. Shaffer:** I understand.

15 **The Court:** So I have to read it for myself, and I need
16 time to do that and I can't do that at the last minute. So
17 as soon as -- I know you've got a lot on your plate, but as
18 soon as you get a chance to get it to me, I appreciate it.

19 **Mr. Shaffer:** Yes, Your Honor.

20 **The Court:** Are we ready?

21 **Ms. Campbell:** Yes, sir -- yes, ma'am.

22 **The Court:** That's okay. I'm used to being called sir.
23 You can get the jury for me, please. I do it myself
24 sometimes. State ready? Defense ready?

25 **Ms. Campbell:** I think we need the defendant.

1 **The Court:** We do need the defendant, don't we? That
2 would be useful.

3 **Mr. Shaffer:** May we approach real quick?

4 **The Court:** Uh-huh.

5 (Whereupon, a bench conference was held.)

6 **The Court:** State ready to proceed?

7 **Ms. Campbell:** The State's ready.

8 **The Court:** Defense ready to proceed?

9 **Mr. Shaffer:** Yes, ma'am.

10 **The Court:** Please bring in the jury.

11 (Whereupon, the jury was brought into open court at
12 11:18 a.m.)

13 **The Court:** Thank you, ladies and gentlemen. We'll now
14 resume the witness's testimony. You may proceed.

15 **Ms. Campbell:** Thank you, Your Honor.

16 By Ms. Campbell:

17 Q. Mr. Hope, I want to show you what's been marked as
18 State's Exhibit 161. Is that the actual license that you
19 carried at the time?

20 A. Yes, it is, ma'am.

21 Q. And that's the same license that the front of it's
22 reflected in a copy here on 158?

23 A. Yes, it is.

24 **Ms. Campbell:** Your Honor, at this time we'd offer
25 State's Exhibit 161 into evidence.

1 **The Court:** Marked and admitted, subject to the
2 objection.

3 (State's Exhibit 161 was received evidence.)

4 By Ms. Campbell:

5 Q. On the back of this card, 161, does it contain certain
6 information?

7 A. Yes. It gives our rights as an armed S.L.E.D.
8 cardholder through S.L.E.D. and it lists what we can and
9 cannot do.

10 **Court Reporter:** I'm sorry. It lists?

11 **The Witness:** It lists what we can and cannot do.

12 **The Court:** I need you to speak up, please, sir, and I
13 need you to -- I know it's hard to hear. Thank you.

14 **The Witness:** It lists what we can do.

15 By Ms. Campbell:

16 Q. Okay. And does this certification give you certain
17 arrest powers?

18 A. Yes, it does, ma'am.

19 Q. And, in fact, are those arrest powers the same as, say,
20 a sheriff's deputy?

21 A. Correct, on the properties that we work.

22 Q. Being certified, are you also -- do you also have the
23 right to carry a weapon?

24 A. Yes, I do, ma'am.

25 Q. And did you have that right back on August the 19th of

1 last year?

2 A. Yes.

3 Q. Tell the jury where you were employed that night.

4 A. That night I was at -- , Mr.

5 Lucky's.

6 Q. And what were your hours that you were working that
7 night?

8 A. I came in and relieved my sergeant at 10:00, and I was
9 going to work until close.

10 Q. As part of -- you were working for a security company at
11 the time?

12 A. Correct.

13 Q. And what's the name of that security company?

14 A. Black Ops Protective Services.

15 Q. Were you the supervisor basically in charge of the
16 outside security that night?

17 A. I'm the supervisor in charge and I'm also the captain.

18 Q. The captain?

19 A. Correct.

20 Q. That was your rank?

21 A. That's my rank, yeah.

22 Q. On that night who all was working through Black Ops
23 Security?

24 A. Me and my -- one of my officers, Rodney White and then
25 later in the afternoon Mr. Brown, Clinton Brown.

1 Q. Clinton Brown?

2 A. Correct.

3 Q. That night -- and do you know a guy named Will?

4 A. Yes, Will Ingram is one of our employees, but we
5 subcontract him for -- we -- Black Ops is armed -- we
6 subcontract him as a doorman for Black or for Mr. Lucky's.

7 Q. For Mr. Lucky's?

8 A. Yes.

9 Q. But he was also employed with your agency that night as
10 well?

11 A. It depended on what their pay was, but, yes, he's an
12 employee of ours, unarmed, and it depends if they pay him or
13 if we pay him, depending on how the payroll is...

14 Q. You're a security company. What did your duties include
15 there at the club?

16 A. Armed security outside, patrolling the parking lot,
17 escorting people who had been kicked out out of the club.
18 There's a number of -- list of things we do.

19 Q. Are you aware of whether or not there were also some
20 employees that worked inside the club as bouncers?

21 A. Yes. That's employees of Mr. Lucky's.

22 Q. And did you know a man named Black?

23 A. GaWayne? Yes, I did.

24 Q. GaWayne? And how did you know him, sir?

25 A. I met him when I first showed up at Mr. Lucky's. He was

1 more or less the lead bouncer there, and I met him back in
2 February of 2012.

3 Q. On the night of August the 19th, was GaWayne working
4 inside the club that night?

5 A. Yes, he was.

6 Q. And turning your attention: As the night wore on after
7 midnight, were there some problems that developed?

8 A. Yes, there was.

9 Q. Can you explain that to the jury?

10 A. There was people that were coming in that didn't have
11 proper identification, and the capacity we worked that night,
12 we only did identifications. We didn't do the searches.
13 That was for doormen and bouncers. After that night,
14 officers just went through armed security only, but that
15 night like people without I.D.'s that were allowed to come
16 into the club and then people that were throughout the night
17 coming and going that were giving them problems, allowed to
18 walk in with a bottle of liquor, we would not allow as far as
19 security...

20 Q. You mentioned that security has changed since then. Now
21 y'all conduct all pat-downs?

22 A. Correct. All armed -- all pat-downs go through armed
23 security normally at Mr. Lucky's or any other of our sites.

24 Q. That night, however, were people allowed to go in and
25 out that weren't patted down?

1 A. Yes, if they -- if they were bypassed by the bouncers or
2 by management.

3 Q. Prior to that night, did you know the defendant?

4 A. The gentleman there? No, I've only seen him once prior
5 to that night, but I didn't know him or by name.

6 Q. You had seen him one time prior to that night?

7 A. Correct.

8 Q. And where had you seen him?

9 A. At the club, at Mr. Lucky's.

10 Q. And approximately how long before that had you seen him
11 on a prior occasion?

12 A. Two to three weeks maybe.

13 Q. That night did you know he was at the club?

14 A. No, I did not recognize him.

15 Q. As problems developed that night, tell the jury what you
16 observed.

17 A. There was a few incidents where I had to walk up on the
18 rail or the ramp because our issues---

19 Q. The ramp?

20 A. ---are inside and I was just waiting for either the
21 bouncers or the owners, the managers at the time, to tell me
22 either to escort the people out or let's see what their
23 resolve was. A few times they were brought -- people were
24 brought out, talked to, and then allowed back into the club.

25 Q. And was this the group that ultimately caused most of

1 the problems that night?

2 A. Correct.

3 Q. And approximately how many men were involved in that
4 group?

5 A. There was four.

6 Q. And did you know how many women were associated with the
7 group?

8 A. There were two ladies that came a little bit later in
9 the night.

10 Q. You mentioned that you observed them on multiple
11 occasions being talked to about their behavior?

12 A. Correct.

13 Q. And was the defendant one of those people that you later
14 picked out?

15 A. He could have been, but outside I only seen Will and
16 then GaWayne, and I've seen Fred talk to the people outside
17 the door because we don't go inside from the rail.

18 Q. Okay. Turning your attention: As the night wore on,
19 tell the jury what you saw about what happened that night.

20 A. From what part? From...

21 Q. Just what you saw.

22 A. What I saw? I seen people coming in and go out. The
23 management allowed one person to walk in with a bottle. I
24 stopped him and wouldn't allow him to come in, but the
25 manager allowed him to go in anyway. Apparently that's the

1 defendant here. Shortly after that, within an hour or so, I
2 was called. They were escorted out of the bar, and as they
3 walked out, the manager, which was Edward - only referred to
4 as E. - yelled my name as he exited the bar as he was exiting
5 these people out.

6 Normally they call me Detroit or Captain because I'm a
7 Captain or because I'm from Michigan, they call me Detroit.
8 My real name is Kedron and they never use that. But at this
9 time he yelled, "Kedron, these guys got to go." So when he
10 called, I come up the ramp. Me, Rodney White, and Mr. Brown,
11 Clinton, went up the ramp.

12 There was a lot of people coming out. There was two
13 different groups of people. We normally separate these
14 people, figure out who is threat or who is the problem,
15 separate them from the people who are trying to either attack
16 or remove them and then we'll usher them down and walk them
17 to their vehicle.

18 Q. What happened next?

19 A. There was some arguing between the bouncers and a couple
20 of patrons that were upset with the group that was leaving,
21 and we had separated them and I was following behind all of
22 them to make sure they got out, you know, get down to the
23 cars. Some of them were trying to climb back over the ramp,
24 like the defendant, and another two -- the other two guys
25 that I sprayed were trying to fight people over the ramp.

1 There was a barrier between the rail and the ramp or the
2 porch, and I had to spray one of the persons because I kept
3 telling him, "Let's go. Let's go. Let's get your vehicle."
4 They wouldn't go. They tried to fight, argue, and call
5 names. So I removed my pepper spray and sprayed two of the
6 people.

7 Q. And those two people were not the defendant.

8 A. No, it was not.

9 Q. And when you sprayed those two people, what was their
10 reaction?

11 A. The one guy went kind of down to the ground, holding his
12 face. The other guy kind of ran out, and I just kind of
13 helped those two down towards the...

14 Q. Do you remember what they were wearing?

15 A. Yes. The one I sprayed was a little short guy. I think
16 he had dreads, light-colored clothes like a white shirt,
17 khaki pants. The other one had camo shorts and I think a
18 blue shirt on with a hat.

19 Q. Did you also observe a guy, in addition to the
20 defendant, with a yellow shirt on out there that night?

21 A. Correct. He was already down the ramp, so it would have
22 been him. I seen the defendant on the rail kind of like over
23 the top of the rail closer towards the bottom. That's where
24 I believe he had came off to, and then I saw the two girls in
25 between him, the defendant, and the two guys I sprayed. So

1 it was -- the little short guy would have been closest to me,
2 the second guy with the hat, two women, and then the
3 defendant and then the guy in the yellow waiting already on
4 the ground.

5 Q. Did you hear any threats going back and forth that
6 night?

7 A. Yes, between the defendant and his group yelling at the
8 bouncers what they were going to do to them.

9 Q. And specifically do you remember what they were saying?

10 A. Not specifically from each other person but they were
11 making threats. I remember GaWayne saying, you know, "I'm
12 right here. I'm right here."

13 Q. Specifically, were the threats at GaWayne one of the
14 bouncers?

15 A. Yes.

16 Q. At some point did GaWayne end up in the parking lot?

17 A. Yes, he did.

18 Q. Did you ever have -- did you see how he got there or did
19 you just know he was there?

20 A. I seen how he got there.

21 Q. How did he get there?

22 A. He had climbed over the front of the balcony, the patio,
23 out towards the front of the parking lot.

24 Q. And at that point did you see where he went?

25 A. No. My other officer was down there.

1 Q. What happened next that you recall?

2 A. I was walking the two gentlemen down that I sprayed.
3 The girls that were in between us were mad because I had
4 sprayed them and said, "Let's go. Let's go. Let's get to
5 our vehicles." And as I got to the bottom of the ramp out by
6 the front of the building, that's when I seen the defendant
7 come out -- come around back behind GaWayne and shoot him in
8 the head.

9 Q. Did you see where the guy with the yellow shirt went?

10 A. Yeah. The one in the yellow shirt was standing in front
11 of us, directly in front of GaWayne and Mr. Richards.

12 Q. And exactly how did you see the defendant in this case
13 come up around GaWayne?

14 A. I was walking directly out and was kind of paying
15 attention to the two guys in front of me, but they were in my
16 peripheral, probably from the distance of here to the
17 lawyers' tables there, and as I was proceeding forward, I
18 seen him reach down like into his pants or -- and pull
19 something out, and when I seen him pull his hand up and put
20 it to his head, I seen the muzzle flash.

21 Q. And he shot him within inches of his head?

22 A. Yeah. He could have been closer, one foot to three foot
23 away.

24 Q. Specifically, where did he point the gun?

25 A. To the back of GaWayne's head.

1 Q. Was GaWayne armed?

2 A. No, he was not.

3 Q. Did GaWayne even see him come up?

4 A. No. He was talking to the gentleman in the yellow
5 jacket, telling him to go to his vehicle.

6 Q. What happened when GaWayne got shot in the back of the
7 head?

8 A. He dropped instantly.

9 Q. What happened next?

10 A. I drew my weapon.

11 Q. What did you do then?

12 A. I discharged it.

13 Q. At that point was the shooter still facing you?

14 A. Yes, he was. He actually fired at me two times. He
15 shot GaWayne multiple times, like he shot him in the head and
16 then shot him as he fell and then as he -- as I pulled my
17 weapon and drew on him, he turned and shot at me and I fired
18 upon him.

19 Q. Where did he go?

20 A. He started to turn and run directly away from me---

21 Q. What did you do---

22 A. ---straight up the parking lot. I followed him.

23 Q. Which direction did you go in?

24 A. I ran towards away from Mr. Lucky's -- the
25 front of Mr. Lucky's.

- 1 Q. How far ahead of you was the defendant?
- 2 A. Twenty-five yards.
- 3 Q. Were you able to keep sight of him?
- 4 A. Yes.
- 5 Q. You mentioned that you ran after him towards
- 6 ?
- 7 A. Correct.
- 8 Q. Which direction did he go then?
- 9 A. As he -- just as he got to , he turned
- 10 again and he fired two more rounds at me as -- before he
- 11 turned to go towards the church.
- 12 Q. Towards the church?
- 13 A. Correct.
- 14 Q. What did you do then?
- 15 A. I discharged my firearm.
- 16 Q. And did he have a reaction?
- 17 A. Yes.
- 18 Q. What did he do?
- 19 A. He fell.
- 20 Q. And at that point did you know whether or not you had
- 21 actually shot him?
- 22 A. I believe so.
- 23 Q. And, again, this is still in the parking lot there?
- 24 A. Correct.
- 25 Q. Did the defendant stay down?

1 A. No, he did not.

2 Q. What did he do?

3 A. He kind of picked himself up and I wouldn't say a crawl
4 but a walk and a hunch-over, cut around the side of the
5 building.

6 Q. Which direction did he go in?

7 A. He went towards the church which would have been away
8 from on .

9 Q. And did you still follow him?

10 A. Yes, I did.

11 Q. That night how many total times do you recall the
12 defendant firing his weapon?

13 A. I know he fired two or three rounds at GaWayne. I know
14 he fired two rounds at me closer to the building, and I know
15 he fired two rounds at me down at the corner of the building
16 when I -- when I discharged my weapon and when he fell. So a
17 total of seven -- seven times that I know of.

18 Q. Once you continued to follow him, where did he go?

19 A. He ran behind the building there called Food World.

20 Q. A building called what? I'm sorry?

21 A. Food World.

22 Q. Food World? Okay.

23 A. It's a restaurant business in that cul-de-sac.

24 Q. And did you continue to follow him?

25 A. Yes, I did.

1 Q. Where did he go?

2 A. He ran behind the building and there's a lot of bushes
3 and a ravine right there. He ran down that ravine into the
4 bushes.

5 Q. Is that near a fence?

6 A. Yes, there is a short fence, maybe three or four feet
7 high.

8 Q. Did you continue to follow him as he ran down the fence
9 line?

10 A. No. I stood at the end of the fence line, shining my
11 flashlight, and I couldn't see him. I could hear him
12 coughing and rustling around with the fence, and I was
13 telling him to come out and show his hands and he didn't.
14 And I yelled again and then I heard him rustling around some
15 more in the bushes, and I kind of came -- on the opposite
16 side of the fence is the church parking lot. There's no
17 vehicles in there. So I stepped to the other side and stood
18 behind the telephone pole that's at the corner of that ravine
19 so I can look down either in the church parking lot or down
20 into the -- behind the buildings and the bushes where I was
21 standing behind the telephone pole to give me adequate
22 coverage.

23 Q. And at this point were you able to still see him?

24 A. No, I heard him.

25 Q. Okay. And you mentioned this ravine area. Is that kind

1 of like a ditch area?

2 A. Yeah, it's a -- like a drench (verbatim) or like a creek
3 that runs the length of the building -- the buildings down
4 that cul-de-sac.

5 Q. Are you familiar with the apartment complex just
6 adjacent to that?

7 A. No. I'm not from this area. I know there's one there,
8 but I don't know what the name of the building complex is.

9 Q. But you know there is one there.

10 A. Yes, there is one.

11 Q. And did you see the defendant any more that night?

12 A. Yes, I did.

13 Q. And how did you see him again? Tell the jury how that
14 happened.

15 A. When I was standing there and I was yelling for him, I
16 called 9-1-1. They picked up on the phone, the 9-1-1 call.
17 I told them who I was and where I was at and what was
18 happening. When I was on the phone with 9-1-1, he had came
19 out like he was going to run across the parking lot in front
20 of the church, and I yelled, you know, to get on the ground.
21 "Get on the ground. Show me your hands." And he turned and
22 went towards the back of the church and ran between the
23 church and the box...

24 Q. Did you continue to try to follow him?

25 A. Yes, I did.

1 Q. And where did you follow him to?

2 A. I followed him to the opposite side of the church. I
3 stayed in the front of the church to cut him off as he went
4 around the back.

5 Q. Did you see him again?

6 A. Yes, I did.

7 Q. Tell the jury about that.

8 A. As he was exiting -- as I come around the side of the
9 church, there's some trees there and I used those trees as
10 protection as he was firing at me. And I was standing next
11 to the trees and I was on the phone with 9-1-1 the whole
12 time, and then that's when I seen him try to climb the fence.
13 He was holding on with one hand, his other hand down, and he
14 was sighing or making noise that, you know, he was physically
15 hurt and couldn't climb the fence. And then again on the
16 phone with 9-1-1 I yelled for him to get on the ground, show
17 me your hands, and he fell off the fence and then went back
18 behind the church and went underneath the fence to the
19 complex, apartment complex.

20 Q. Were you able to see him at that point?

21 A. No, I heard him -- I heard the fence. I ran down there.

22 Q. Yes, sir.

23 A. And I stood at the corner of the church and I looked
24 behind the church where he was climbing underneath the fence
25 and I seen him go underneath the fence. I heard him

1 coughing. And then I backed up a little ways. I tried to
2 get a -- I tried to go up a little hill because there's an
3 embankment. So if you're at the church, there's like an
4 eight-foot embankment, and I backed up the hill to look and
5 see him run across into the apartment complex. That's when I
6 stepped back towards the road maybe ten yards and I was
7 flashing because the police officers from Richland County
8 were pulling into Lucky's driveway and I was trying to flash
9 them.

10 Q. So you were trying to give get their attention?

11 A. Correct. I was relaying with 9-1-1 lady that I was
12 further down, that I had eyes on the suspect and that he was
13 crossed -- he had crossed the fence and he was in the briar
14 -- I didn't know the place at the time. He was in the
15 apartment complex behind the church.

16 Q. And at that point did deputies respond?

17 A. Yes, they did. Canine officer -- four or five cars
18 pulled into Lucky's. Richland County pulled into Lucky's,
19 and I flashed and flashed, and the next one was a canine
20 officer and he flew right up and stopped right where I was at
21 and, I mean, within five or ten seconds of me last seeing
22 him.

23 Q. And at that point did you give them information about
24 where you last saw him?

25 A. Correct.

1 Q. And that you thought he could be hurt?

2 A. Yes. We seen blood on the ground. I seen blood on the
3 ground where he fell off the fence and blood going behind the
4 church. So I told them he was hit and there's blood. I
5 said, "He's in the apartment complex." The canine officer
6 tried to get over the fence, but there was no way to get over
7 the fence other than climb it and he had a dog with him. He
8 had called for them to block the highway and to get police
9 officers into the apartment complex, that he was in there.

10 Q. And then at that point did you turn the investigation of
11 finding him over to the police?

12 A. I stayed with that officer until I returned to the front
13 of Mr. Lucky's.

14 Q. And were you there when he was actually captured?

15 A. No, I was not. I -- from the distance of maybe 150
16 yards from the far side of the church 'til I got back to the
17 front of Mr. Lucky's, the cul-de-sac there, and that's when
18 the police officers said they had caught him.

19 Q. At that point when you returned to Mr. Lucky's, did you
20 make contact with investigators?

21 A. Yes, I spoke with one of the female officers. She asked
22 me if I was the one that did the shooting and I said, "Yes, I
23 was the one that was shooting." I was a security officer who
24 did the shooting, and she says, "I need you to talk to an
25 investigator," and she brought me over to Mr. -- I think his

1 name was Faust, a little short guy that spoke earlier, and
2 then he told me to stay with him and then---

3 **Mr. Shaffer:** Objection.

4 **The Court:** Basis?

5 **Mr. Shaffer:** I thought he was going to go into hearsay.
6 Withdrawn.

7 **The Court:** Withdrawn. You may proceed.

8 **The Witness:** Faust told me to stay with him, not to do
9 anything and don't talk to anybody.

10 By Ms. Campbell:

11 Q. Okay. Later that night did you give a statement to the
12 police about what happened?

13 A. Yes. Faust told me to go with Mr. Tanner, Investigator
14 Tanner, to the Richland County headquarters or the police
15 station there to give my statement and to give me a -- where
16 they put the sticky stuff on your hands. I don't know what
17 that's called, but what the abbreviation for it is called...

18 Q. And where did that interview take place?

19 A. That took place at Richland County.

20 Q. And at that point did you also turn your gun over to
21 them?

22 A. Yes, they took my weapon, magazines, and my bullets.

23 Q. And they took a statement from you at 6:15 I believe
24 that morning?

25 A. Yeah, probably about 4:00, maybe 4:30. I was there

1 about 4:30 and I was there 'til about 8 in the morning, 8 or
2 9.

3 Q. During the time that you were giving them a statement,
4 did you also draw them a map of generally the area we talked
5 about that you just described to the jury?

6 A. Yes, I did. Yes, I did.

7 Q. And I show you State's Exhibit Number 160. Do you
8 recognize that?

9 A. Yes.

10 Q. Is that your handwriting?

11 A. Yes, it is.

12 Q. And did you draw that?

13 A. Yes, I did.

14 Q. And does this demonstrate generally the areas you're
15 talking about he went in?

16 A. Correct.

17 **Ms. Campbell:** Your Honor, at this time we'd offer
18 State's Exhibit Number 160 into evidence.

19 **Mr. Shaffer:** I actually object. I don't mind him
20 drawing it himself---

21 **The Court:** Approach. No speaking objections.

22 **Mr. Shaffer:** I'm sorry, Your Honor.

23 (Whereupon, a bench conference was held.)

24 **The Court:** The objection is withdrawn. You may
25 proceed.

1 **Ms. Campbell:** Thank you.

2 (State's Exhibit 160 was received in evidence.)

3 By Ms. Campbell:

4 Q. On this is a rough drawing of Mr. Lucky's up here?

5 A. Yep.

6 Q. And then you show how you went down this fence line in
7 the middle?

8 A. Or how he went down the fence line---

9 Q. How he went down the fence line?

10 A. ---and then I show another depiction of where I walked
11 to get---

12 Q. Is that up here?

13 A. Yep.

14 Q. Excuse me. Down here?

15 A. Yeah.

16 Q. The circles?

17 A. Yeah.

18 Q. The circles down here show the general area of where you
19 were walking?

20 A. Correct.

21 Q. But this is the fence line, the ditch that you referred
22 to. I'm sorry. Point it out for me.

23 A. This is the ditch here that runs the cul-de-sac.

24 Q. Uh-huh.

25 A. The ditch here that ran the cul-de-sac. This is the

1 church. He was back in these bushes here, come across this
2 ditch, ran across this parking lot, went between the Olaf
3 (phonetic) Box and the church, back around the back. I cut
4 across the front of the church. The trees were closer than
5 what is depicted here.

6 Q. Okay.

7 A. And I stood in front of the trees where I saw him try to
8 climb the fence here. Then I ran up on him to another tree
9 here which is about 10 or 15 yards. Then I yelled to him and
10 he fell, went back around the church. When I went ran up to
11 this corner of the church here, he went underneath the fence
12 halfway back behind the church.

13 Q. And that would be the apartment complex behind that.

14 A. Correct.

15 Q. You mentioned for at least part of this chase you were
16 on the phone with 9-1-1?

17 A. Yes.

18 Q. I show you what's been marked as State's Exhibit 72.
19 Have you had an opportunity to review this 9-1-1 tape?

20 A. No, I have not.

21 Q. But you did call 9-1-1 that night?

22 A. Yes, I did.

23 **Ms. Campbell:** Your Honor, permission to play the 9-1-1
24 tape?

25 **The Court:** Any objection?

1 **Mr. Shaffer:** No, Your Honor.

2 **The Court:** It's already in evidence. You may proceed.

3 **Mr. Shaffer:** Your Honor, that's subject to my previous
4 objection that it's already in evidence. I had objected
5 whenever it came in. May I approach?

6 **The Court:** Yes. Counsel approach, please.

7 **Ms. Campbell:** Yes, ma'am.

8 (Whereupon, a bench conference was held.)

9 **The Court:** You may proceed.

10 **Ms. Campbell:** Thank you, Your Honor.

11 (Whereupon, State's Exhibit 72 is played for the jury.)

12 By Ms. Campbell:

13 Q. Did that accurately reflect that call?

14 A. Yeah, it was pretty fast.

15 Q. Did you continue to cooperate with the police?

16 A. Yes, I did.

17 Q. In fact, did you go back to Mr. Lucky's on that Monday
18 the 20th?

19 A. Yes, I did.

20 Q. And what happened when you went back to the scene?

21 A. Well, we were standing there talking, me and a couple of
22 the security officers, a couple of workers, and it was in the
23 area where he fell. I was looking around the mud puddle
24 there and I found a shell casing.

25 Q. What area did you find the shell casing in?

1 A. It was closer to the garbage can. As you're coming out,
2 it would have been in the general area where Black or GaWayne
3 fell.

4 Q. Had conditions changed that exposed the shell casing
5 that wasn't apparent before?

6 A. Yes. There was a mud puddle there earlier with water,
7 standing water, and by this time it had receded. The mud
8 puddle was smaller, and the shell casing was still obvious.
9 It was within a foot of the garbage can.

10 Q. I show you State's Exhibit Number 67. How did you
11 collect the actual shell casing when you found it?

12 A. I made a call to Investigator Tanner, told him it was
13 there. He said, "Do not touch it." He said it will be
14 awhile before they can get an investigator out, and he asked
15 me if I had a bag, a Zip-lock freezer bag, which I had one in
16 the car. He told me to pick it up with a key and stick it
17 inside of the -- inside of the bag, but do not touch it with
18 bare hands. So I picked it up with one of with -- my car key
19 and put it inside the Zip-lock bag, and then he met me a
20 little bit later and picked the shell casing up.

21 Q. And you turned it over to him at that point?

22 A. Yes.

23 **Ms. Campbell:** Your Honor, at this time we'd offer
24 State's Exhibit Number 67 into evidence.

25 **Mr. Shaffer:** No objection, Your Honor.

1 **The Court:** Marked and admitted without objection.

2 (State's Exhibit 67 was received in evidence.)

3 | By Ms. Campbell:

4 Q. Did you continue to cooperate with the police?

5 | A. Yes.

6 Q. The person that shot GaWayne in the back of the head, do
7 you see him here in the courtroom?

8 | A. Yes, I do.

9 Q. Can you identify him for the jury?

10 A. He's the gentleman that's seated left of -- or to the
11 right of his attorney.

12 Q. What color shirt?

13 A. He's got a blue shirt.

14 **Ms. Campbell:** Your Honor, may the record reflect he
15 identified the defendant?

16 **The Court:** You may proceed.

17 **Ms. Campbell:** I don't have anything further.

18 **The Court:** You may proceed.

19 Cross-Examination

20 By Mr. Shaffer:

21 Q. All right. Well, I'm going to take this a little bit
22 chronologically. You're a supervisor at Black Ops Security;
23 correct?

24 | A. Correct.

25 Q. Okay. How long have you been working there?

1 A. For Black Ops?

2 Q. Yeah.

3 A. Since February of 2012.

4 Q. And that's when you came or -- you had a Michigan
5 license, I noticed. Are you originally from Detroit?

6 A. No, I'm from the Ann Arbor area---

7 Q. Okay.

8 A. ---which is about 30 miles from Detroit.

9 Q. Okay. And you came down here two years ago; right?

10 A. Correct.

11 Q. Now, does Black Ops Security -- does it have more than
12 -- is it primarily located at that club or is it a larger
13 security company?

14 A. Yes, it is. It's based out of South Carolina, Columbia.
15 It has an owner, chief, major, two captains, three
16 lieutenants, multiple sergeants, 124 employees. .

17 Q. Oh, really? Okay. So you're like third from the top
18 though; correct?

19 A. Yeah. I have all of Columbia, Rock Hill, Florence,
20 Myrtle Beach, and the southern part of the States.

21 Q. Okay. So you're not at Mr. Lucky's all the time; right?

22 A. No.

23 Q. Okay. And -- but that night you obviously were at Mr.
24 Lucky's?

25 A. Yes.

1 Q. And Will Ingram, he's one of your employees; right?

2 A. Correct.

3 Q. You said that sometimes y'all pay him and sometimes the
4 club does. Is he an employee of the club or an employee of
5 yours?

6 A. We pay him. It's just how we -- if he gets paid hourly,
7 then he's an employee of us. If they do -- pay like a
8 bouncer pay or a doorman pay, they'll pay us that during
9 payroll. So it's kind of a subcontract. So like that night
10 he was just doing pat-downs. He would be subcontracted.
11 Even though he's a Black Ops employee, he didn't get paid
12 hourly, like I said, we did. Say if I was out there and I
13 was getting paid \$20 an hour for being out there for -- you
14 know, per hour, Will would have got 50 or \$70 per night, so
15 it depends on how they pay him so...

16 Q. Okay. So that night he was working for the club as a
17 subcontractor basically?

18 A. Correct.

19 Q. Okay. But you're still his supervisor; right?

20 A. Correct.

21 Q. Okay. And that's why he -- that's why he wasn't armed,
22 right, because he was working at the door?

23 A. Correct.

24 Q. Is that right? Okay. So whenever he's working at the
25 club, are you his supervisor -- that night were you his

1 supervisor or not?

2 A. I had supervised the armed, so he would do whatever
3 management would want him to do as far as search and pat-
4 downs. Since he's unarmed, he can go inside the club and
5 assist the bouncers inside the club to bring people out.

6 Q. But y'all can't go inside.

7 A. We cannot go inside.

8 Q. All right. And you didn't go inside the club?

9 A. No, I did not go inside the club.

10 Q. Are you sure about that?

11 A. I can walk into the breezeway.

12 Q. Okay.

13 A. But there's a second door which goes into the club. I
14 don't go inside of the club where they are serving alcohol.
15 I have to stay outside. I can go into the breezeway where
16 the second -- the back door to the manager's office... I
17 can't go into the club or the establishment where they serve
18 alcohol.

19 Q. Okay. Well, that makes sense. I was wondering about
20 that because I noticed from the video, not the one -- well, I
21 noticed that you had probably went in and so -- in and out of
22 the lobby some.

23 A. Correct.

24 Q. Okay. So you had -- under your direct supervision that
25 night you had Rodney White, Clinton Brown, but you said

1 that -- I'm sorry. Mr. Ingram was working technically for
2 the club that night.

3 A. Correct. He would let me know if there was a problem:
4 Hey, there's a problem inside; we've got a person coming out.
5 But he would do whatever the manager - which in this case it
6 was Fred - whatever he needed him to do. If he needed him to
7 go inside the club and do something, he could do that. If he
8 needed him to sit there and do pat-downs or work the door, he
9 can do that, but as far as armed security, he stays on the
10 porch.

11 Q. Okay.

12 A. He wasn't armed security, so he would have to stay on
13 the porch.

14 Q. Okay. And so we heard from Ingram. We heard from
15 Clinton Brown, and now you said Mr. White. Is he still
16 working for you?

17 A. No, he does not work for us any longer.

18 Q. Have you ever talked to Mr. White recently?

19 A. I haven't seen Mr. White since the day he left.

20 Q. Okay. When did he leave?

21 A. Sometime in 2012, so the fall of 2012 after this
22 incident, maybe two or three months.

23 Q. But he was there that night, too; right?

24 A. Correct.

25 Q. Okay. And he was outside the club obviously; correct?

1 A. Correct.

2 Q. Did he have a belt on, a utility belt?

3 A. Yes. We were dressed -- we were dressed similar in the
4 uniform, and then we have a utility belt with our holsters,
5 chemical spray, handcuffs, ASP, taser, whatever we needed
6 that we were certified with.

7 Q. Okay. And the chemical spray you mentioned, what kind
8 of chemical spray do you use?

9 A. I use Sabre Red.

10 Q. And Sabre Red is a law enforcement chemical spray;
11 correct?

12 A. Correct.

13 Q. Okay. It's a very strong chemical spray; correct?

14 A. Correct.

15 Q. In fact, it's advertised as the strongest you can buy;
16 right?

17 A. I'm not sure about what the advertisement is.

18 Q. Okay. But it's the same kind you would buy at a law
19 enforcement supply company; right?

20 A. Correct. You have to have a law enforcement card to
21 purchase it from either Hallman's or a supplier which we have
22 a law enforcement card, class three, so we can pick it up at
23 Hallman's---

24 Q. So you can use your card to pick it up.

25 A. Correct.

1 Q. Okay. Court's indulgence.

2 **Ms. Campbell:** Your Honor, if he wants to use an exhibit
3 that we were getting ready to put in with another witness, we
4 have no problem with his entering this as a State's exhibit
5 at this time.

6 **Mr. Shaffer:** State's Exhibit 70.

7 **The Court:** Is it marked and admitted without objection?

8 **Mr. Shaffer:** Yes, Your Honor. We'll stipulate...'

9 Thank you.

10 (State's Exhibit 70 was received in evidence.)

11 By Mr. Shaffer:

12 Q. All right. Mr. Hope, I'm showing you State's
13 Exhibit 70. Is that the chemical spray you had that night or
14 does it appear to be the chemical spray---

15 A. Yes, the one they've got in evidence that Officer Tanner
16 took from me. Yeah, that's my chemical spray.

17 Q. Okay. Now, this is basically an aerosol can; right?

18 A. Correct. O.C., I believe.

19 Q. Okay. And it sprays out sort of in a mist; correct?

20 A. Actually it shoots out in a stream.

21 Q. Okay. And inside of that stream though is a mist;
22 correct? It's primarily focused, but it's not exact; right?

23 A. Actually they do have ones that are a mistifier
24 (phonetic), but that's a stream.

25 Q. Okay. So that's a stream, but it shoot -- whenever it

1 shoots out, how far does it shoot?

2 A. Eight, ten feet.

3 Q. Eight or ten feet. How big is the ramp at Mr. Lucky's?

4 A. It's probably the width of this from here to there and
5 it's about 10, 12 yards long.

6 Q. Okay. And are you telling me that -- well, it sprays
7 out eight to ten feet. Okay?

8 A. Uh-huh.

9 Q. How far are you generally away from somebody when you
10 pepper-spray them?

11 A. Pointblank.

12 Q. And you aim for their eyes; right?

13 A. No, I aim for their chest and I work up into the face.

14 Q. Okay. So you originally work the chest, and then you go
15 up to the face.

16 A. Correct.

17 Q. Why is that? Why do you aim for the chest?

18 A. To make sure -- to make -- to control my spray.

19 Q. Okay. To control your spray.

20 A. Correct.

21 Q. And why -- why is it necessary to -- why can't you just
22 control the spray at the head? I mean, why is it necessary
23 to go up?

24 A. One, you want to make sure your chemical ammunition is
25 working---

1 Q. Okay.

2 A. ---so when you spray it, you shoot off a red-colored and
3 it's a U.V. dye color spray, and it hits the chest and you
4 spray it upward towards the face. You try not to hit them in
5 the eye because it can damage the eyes, so you spray kind of
6 in the nose area for them to -- so they can cough.

7 Q. Okay. But it also has an agent in Sabre Red
8 particularly to blind somebody; right?

9 A. Correct.

10 Q. Okay. And that's what it's designed to do; right?

11 A. I'm not sure what it's designed to do. I'm just -- I
12 use it. I'm certified to use it.

13 Q. Okay. In the course of using it, you've seen people who
14 -- have you ever been hit with Sabre Red?

15 A. Yes. You have to be sprayed with Sabre Red or what
16 you're using before you can use it, so I had to get certified
17 with Sabre Red.

18 Q. Okay. And where do they spray whenever you have to get
19 hit with it?

20 A. They spray you in the chest and work their way up.

21 Q. Okay. Do they hit you in the eyes?

22 A. Yep.

23 Q. Does it cause you to involuntarily close your eyes?

24 A. Involuntary? Yes.

25 Q. Okay. And it causes you to have breathing problems,

1 correct, while -- or shortness of breath; correct?

2 A. Correct.

3 Q. And when you're spraying at pointblank range, what do
4 you mean by pointblank range?

5 A. Within -- I try to keep them close, I mean, unless
6 there's somebody fighting, like two people fighting. I get
7 as close as possible to the people and try to spray them only
8 because not only if -- if I spray it just out in the open,
9 I'll get it sprayed on me. If the wind is blowing in my
10 direction and I spray it, it's going to get back in my face.
11 So I want to keep it close, keep it contained to just the
12 person I'm spraying.

13 Q. Okay. So if the wind is blowing, it can -- it can get
14 back in your face?

15 A. Correct.

16 Q. Okay. So you probably wouldn't want to stand in a
17 breezy day and blow it into the wind or shoot it in the wind;
18 correct? I mean, you would get it back on you; right?

19 A. Correct.

20 Q. And, similarly, if there's somebody beside you and it's
21 a windy day, it might get on the person beside you; right?

22 A. Correct.

23 Q. It's possible.

24 A. Correct.

25 Q. You said you had sprayed it on two different people.

1 A. Yes.

2 Q. Which two people did you spray?

3 A. I sprayed the shorter gentleman with the lighter-colored
4 white shirt, khaki pants, and then the gentleman with the hat
5 on that had camouflage shorts.

6 Q. Okay. And did you spray both of them equally? I mean,
7 did you do the exact same procedure on both of them, chest to
8 face?

9 A. Did I press the button twice is what you're saying?

10 Q. No, no. I apologize. Did you use the same procedure
11 for both of them?

12 A. Correct.

13 Q. Okay. So you went up to them at pointblank range,
14 sprayed them in the chest and then went to the face.

15 A. Correct.

16 Q. On both of them.

17 A. Correct.

18 Q. Okay. So both of them probably got -- well, tell me
19 this: Did they both get evenly sprayed or did one get
20 sprayed more than the other? Do you know?

21 A. I couldn't tell you.

22 Q. Okay. And they were on the ramp at this time.

23 A. Correct. So was I and Clinton Brown who was standing
24 next to me.

25 Q. Okay. Where was Mr. White at?

1 A. White was down at the bottom of the ramp.

2 Q. Okay. And where was the person in the yellow shirt at?

3 A. He was already at the bottom of the ramp.

4 Q. Okay. And where was the defendant at at this time?

5 A. He was down by the garbage can at the ramp.

6 Q. So he was already by the garbage can at the end of the
7 ramp when you went up?

8 A. When I came down.

9 Q. Oh, when you came down. Okay. Which way were you
10 facing whenever you sprayed the pepper spray?

11 A. I was standing right next to the person. One was on the
12 rail, up on the rail, swinging over the top.

13 Q. Were you facing up the ramp or down the ramp?

14 A. Down the ramp.

15 Q. You were facing down the ramp. And that's for both of
16 them or just for one of them?

17 A. Both.

18 Q. Okay.

19 A. They were leaving.

20 Q. And you sprayed in the direction of down the ramp. Is
21 that correct?

22 A. I sprayed the two people, not the four people that were
23 on the ramp or five people that were on the ramp, just the
24 two.

25 Q. You just sprayed the two.

1 A. Correct.

2 Q. So it's not possible that some of the crowd got a taste
3 of the pepper spray; right?

4 A. If they did, it would have been the two females that
5 were standing in front of the two people I sprayed or my
6 partner, Clinton Brown, who was standing next to me.

7 Q. Okay. And they were -- the two females were at the top
8 of the ramp or were they at the bottom of the ramp?

9 A. They were halfway down.

10 Q. Okay. And the two people you sprayed were halfway down;
11 right?

12 A. They were towards the top. The closer half the --
13 closer to the top.

14 Q. So they were closer to the top.

15 A. Correct. The little guy was about head-height with the
16 ramp, so he had to be closer to the top of the ramp so he can
17 get up and try to swing over and fight with people.

18 Q. Okay. Tell me this: You said that the -- you're facing
19 down the ramp.

20 A. Correct.

21 Q. The females are behind you.

22 A. No, the females are in front of me.

23 Q. Okay. I thought you said they were at the top of the
24 ramp.

25 A. No, I said they're down about halfway---

1 Q. They were about halfway.

2 A. I get behind all the subjects that have to leave.

3 Q. Okay.

4 A. And the females were in the middle between the defendant
5 and the guy in the yellow shirt and the two people I sprayed.

6 So I was behind them ushering them down, telling them they

7 had to go. The two guys that were up at the top started to

8 fight. The females were arguing, too. I sprayed those two

9 guys. Once they seen that they were sprayed, everybody fell

10 in order off the ramp as you can see in the video.

11 Q. Okay. Where was Black whenever you sprayed the pepper
12 spray?

13 A. GaWayne was down 10 feet, 10 feet or so past the
14 dumpster.

15 Q. Okay.

16 A. In the middle of the parking lot. I wouldn't say middle
17 but closer to the ramp than the...

18 Q. All right. How far away was the defendant at that
19 point?

20 A. When I saw him?

21 Q. Or, no, when you sprayed the pepper spray.

22 A. He was probably within 10 feet of Black.

23 Q. Okay.

24 A. So about five yards. He was right by the garbage can.

25 **Mr. Shaffer:** Court's indulgence.

1 **The Court:** Uh-huh.

2 By Mr. Shaffer:

3 Q. You were at the top of the ramp -- well, and I'm sorry
4 to go back through this. I just want to coordinate it with
5 my notes. Where -- about how far down the ramp were you
6 whenever you sprayed the pepper spray?

7 **Ms. Campbell:** Objection, Your Honor. Asked and
8 answered several times.

9 **The Court:** I'm going to give him a little latitude.
10 Overruled. You may answer the question.

11 **The Witness:** I was 10 feet down from the top, as you
12 can see in the video when I start going down the ramp just
13 out of view of where the camera is.

14 By Mr. Shaffer:

15 Q. Okay. Did the defendant pass you at any point going
16 down the ramp?

17 A. He might have, as I was coming up or when he come across
18 -- when he was up on the ramp coming over.

19 Q. Okay. So either whenever you were on your way up or
20 when?

21 A. If I was -- I noticed the defendant on the ramp,
22 standing on the ramp towards the end. In the video it looks
23 like he went down the ramp, and then he was up on the ramp
24 when I turned and seen those other guys or were trying to
25 usher those other guys. He was on the ramp like he was

1 trying to climb up it, trying to get in somebody's face.

2 Q. Okay. So---

3 A. So I don't know if he went over and then came back,
4 because I was dealing with those people trying to usher them
5 down, but I did see him on the ramp further down at the end.

6 Q. Okay.

7 A. Closer to where Black went over the ramp at.

8 Q. Now, at some point Black jumps over the ramp; right?

9 A. Climbed.

10 Q. Climbed over the ramp?

11 A. Jumped would indicate -- insinuate that he climbed up
12 and jumped off. No, he climbed over and then climbed down.

13 Q. Okay. And that was at the end of the deck or balcony
14 area?

15 A. Yes. Yes, sir.

16 Q. Okay. So that would be approximately near where the
17 ramp leads off into the other ramp; right?

18 A. Correct, right below the camera.

19 Q. Okay. Okay. And you see the defendant and you said
20 that he reached down in his -- well, do you remember giving a
21 statement that he reached down in his crotch?

22 A. Correct.

23 Q. Okay.

24 A. Either crotch or he could have been -- the way they sag
25 their pants further down, he could have been reaching in the

1 pants pocket. It looked like -- it looked like he reached
2 into his crotch or pants pocket.

3 Q. Okay.

4 A. It was lower.

5 Q. But you told the police the gun must have been deep
6 inside his crotch; right?

7 A. Correct.

8 Q. Okay. So that was the day of; right?

9 A. That was within hours.

10 Q. Okay. And you remember telling police that -- that you
11 saw a muzzle flash and he fired four to six times; correct?

12 A. Correct.

13 Q. Okay. And that was at Black; right?

14 A. I think three -- two to three at Black and then two at
15 me.

16 Q. Okay.

17 A. As shown in the video.

18 Q. While he was -- while he was firing at you, he was --
19 you described it as him being -- him bounding backwards
20 facing you. Is that right?

21 A. Correct.

22 Q. So he shoots Black and then he backs up facing you,
23 firing the weapon; right?

24 A. Correct.

25 Q. Okay. And he fires at least twice at you.

1 A. Correct.

2 Q. And he fires at least two to three times at Black;
3 correct?

4 A. Correct.

5 Q. And then he takes off running; correct?

6 A. Correct.

7 Q. And at that point did you ever fire at him while he was
8 facing you?

9 A. I fired at him when he was turning away from me.

10 Q. Okay. So he was turning away and you started firing.

11 A. Correct.

12 Q. What kind of weapon do you carry?

13 A. I carry a Glock .40 caliber.

14 Q. Okay. That's the weapon you had at the time?

15 A. Correct.

16 Q. Okay. And that Glock .40 caliber, how many shots does
17 it carry?

18 A. Depends on what size magazine I have.

19 Q. What size magazine did you have in the gun at the time?

20 A. I think it was a ten-rounder.

21 Q. Okay. And did you have an extra magazine on you?

22 A. I carry a minimum of three, sometimes four magazines,
23 usually have that capacity.

24 Q. Each -- each with what?

25 A. Usually -- usually high-capacity.

1 Q. Usually high-capacity. What did you have on you that
2 night?

3 A. I had a ten-rounder in my gun---

4 Q. Okay.

5 A. ---because the magazines tend to break down quickly as
6 you're, you know, taking them apart or ejecting a round every
7 night and you discharge a weapon. So I use a cheaper ten-
8 round magazine in the weapon, and I carry my two high-
9 capacities or three high-capacities in my compartment on my
10 side.

11 Q. Okay. And the two or three high-capacities, how many
12 rounds do they carry?

13 A. I believe 15 rounds.

14 Q. Okay. And 15 rounds of 40 caliber; right?

15 A. Correct.

16 Q. How many times did you shoot that night?

17 A. I shot between -- I emptied one magazine and I think I
18 might have fired one more after I had emptied that magazine.

19 Q. Okay. And your testimony was that he fired -- he fired
20 - hold on a second - two to three times at Black and twice at
21 you; correct, when you were at the parking lot? And then he
22 took -- he was running; right?

23 A. I said that I saw a muzzle flash following -- follow
24 Black to the ground. The guy must have fired four to six
25 times.

1 Q. Okay. And you just testified that two or three of those
2 times were at Black; right?

3 A. Correct.

4 Q. And at least twice was at you; right?

5 A. Correct.

6 Q. Okay. And then you said that he took off running;
7 right?

8 A. Correct.

9 Q. At that point he turned and ran?

10 A. Correct.

11 Q. Okay. And then you returned fire at that point.

12 A. Correct.

13 Q. Okay. And you testified on direct that he continued to
14 fire. As you were chasing him out of the parking lot, you
15 shot him.

16 A. Correct.

17 Q. And then he went on to the road and continued to fire;
18 correct?

19 A. No, that's not what I said.

20 Q. Okay. Okay. I thought you said you had fired two times
21 -- or he continued to fire two times at you while you were on
22 the road. Is that right?

23 A. I said that he fired at Black, turned and fired at me,
24 and then took off running towards the exit of the parking
25 lot.

1 Q. Okay.

2 A. I fired multiple rounds in the parking lot, and before
3 he exited -- before he went around the building, he turned
4 and fired at me two more times---

5 Q. Okay.

6 A. ---is what I said.

7 Q. Okay. So that was -- that was closer to the road
8 though; right?

9 A. Yeah.

10 Q. Okay. So he fired at you two more times after that.
11 Then he goes around the back of Food World; right?

12 A. Well, actually I had fired back at him because he
13 stopped and gave me a non-moving target.

14 Q. Okay.

15 A. So after he fired two at me, I fired more at him. He
16 fell to the ground. Then he went around the corner behind
17 the Food World.

18 Q. Okay. Where were you or how far had you gotten whenever
19 he stopped?

20 A. I was within 15 yards.

21 Q. Okay. And he turned and went around Food World; right?

22 A. Correct.

23 Q. So he fired at you before turning to go around Food
24 World or after?

25 A. Before.

1 Q. Before going around Food World. When you go around Food
2 World, you follow him whenever he goes around Food World;
3 right? Well, actually you said went to the road; right?

4 A. I took the corner pretty -- I took the corner in a
5 defensive posture, gun first, look, see, and then I took wide
6 -- kind of went out towards the road. There's only maybe ten
7 yards between the end of Food World and the road; there's a
8 sidewalk in between there. So I went out towards the road
9 because I didn't know if he was waiting on the opposite side
10 of Food World to shoot me. So I had to take a defensive
11 posture and go around the corner.

12 Q. And Food World is -- is a separate business in that
13 parking lot? Is that right?

14 A. Correct. It's all one -- it's all 2605 with letters
15 indicating which building - A., B., C., D. to H. - which is
16 Lucky's Gentlemen's Club.

17 Q. All right. And whenever you actually make it around the
18 corner, you then turn another corner toward the back fence;
19 correct?

20 A. Correct.

21 Q. Okay. And you said that you saw him jump or you heard
22 him rustling in the bushes; correct?

23 A. Correct.

24 Q. And you heard his breath; correct?

25 A. I heard him breathing; correct.

1 Q. And at what point did you -- did you call 9-1-1 at that
2 point?

3 A. Correct.

4 Q. Okay. And then you saw him in the church parking lot;
5 right?

6 A. I saw him coming out of the ditch or the gully where the
7 water is, the drainage water, and I seen him try to run
8 across the parking lot towards the church.

9 Q. Okay. And are you on the phone with 9-1-1 at that
10 point?

11 A. Correct.

12 Q. Is he firing at you?

13 A. No, he's not.

14 Q. Are you firing at him?

15 A. No, I did not.

16 Q. Okay. And you went around the back of the church.

17 A. I went around from the front of the church when he went
18 around the back of the church.

19 Q. Okay. And at that point you said you saw him when after
20 that?

21 A. At the opposite side of the church I saw him trying to
22 climb the fence.

23 Q. You know the path he took; right?

24 A. Yes, I did.

25 Q. You never lost visual on him?

1 A. The only time I lost visual is when he went into the
2 bushes behind Food World and then exited into the church
3 parking lot and then when he went behind the church and
4 appeared on the other side and then when he went on the other
5 side of the fence into the apartments.

6 **Mr. Shaffer:** And -- I apologize. Court's indulgence.

7 **The Court:** Uh-huh.

8 By Mr. Shaffer:

9 Q. You told the police that was the path he took; correct?

10 A. Correct. I drew it for them.

11 Q. Going back to right before the shooting, are inside
12 security -- tell me this: Is inside security generally -- do
13 they generally walk people to the car whenever people get
14 kicked out?

15 A. No, they do not.

16 Q. But in this situation would you describe it as Black
17 escorting them to the car?

18 A. No, I did not -- I did not say that.

19 Q. You wouldn't say that?

20 A. No.

21 Q. Okay. He was going out there to fight somebody, wasn't
22 he?

23 A. I don't think that was his intentions.

24 Q. Okay. You don't think it was his intention whenever he
25 went over the rail to fight somebody?

1 A. I don't think that was his intentions.

2 Q. Okay. Do you recall hearing him say, "If this is what
3 you want, I'm right here"?

4 A. I don't recall that.

5 Q. You don't recall that, but you do recall him going off
6 the ramp; right?

7 A. Correct.

8 Q. Do you recall Mr. Richardson going off the ramp as well?

9 A. At some point he did because he was down there before I
10 got down to the bottom.

11 Q. And that's not actually off the ramp. That's over the
12 rail; correct?

13 A. Correct.

14 Q. How far up is that rail? How far off the ground is the
15 deck area?

16 A. It starts at about three feet at the beginning where you
17 see them start to go down and then it's about six foot eight
18 down at the bottom.

19 Q. Okay. And whenever he -- do you recall Mr. Richardson
20 at the bottom of the ramp -- I mean at the bottom whenever he
21 came back into the camera view in the parking lot?

22 A. Only from video. That night I remember ushering people
23 down and then the defendant and Black.

24 Q. Okay. Did you see -- did you keep a visual on the
25 suspect -- I mean a visual on the defendant from the time he

1 left the club all the way until the shooting?

2 A. I would have had multiple people to deal with. I
3 sprayed two people. I did observe him -- I did witness him
4 stand on the rail making threats or yelling at the people on
5 the porch, and then I seen him get down off the rail and then
6 down -- down to the garbage can.

7 Q. And you said that the video should show him firing two
8 to -- two to three times at Black, twice at you, and two more
9 times later on.

10 A. (Witness nodded head up and down.)

11 Q. All right. So we should see that on the video?

12 A. Correct.

13 **Mr. Shaffer:** Okay. Thank you very much.

14 **The Court:** Any redirect of the witness?

15 **Ms. Campbell:** Just a couple of questions.

16 **The Court:** You may proceed.

17 Redirect Examination

18 By Ms. Campbell:

19 Q. He asked you about Black and his actions. Who was the
20 aggressor that night?

21 A. The person in the yellow shirt.

22 Q. What was he doing, this defendant?

23 A. He was yelling a little bit. He was kind of -- from the
24 video I seen prior, they were arguing a little bit with
25 GaWayne, but he wasn't really the aggressor. The aggressor

1 was the one in the yellow shirt.

2 Q. And who was the person in the yellow shirt with that
3 night?

4 A. He was with the defendant.

5 Q. And if Mr. Bethel here had been scared or worried about
6 a fight and asked for your protection, would you have given
7 it to him?

8 A. That's what I'm there for.

9 **Ms. Campbell:** Thank you.

10 **The Court:** Any objection to the witness being excused?
11 From the State?

12 **Ms. Campbell:** None from the State, Your Honor.

13 **The Court:** From the defense?

14 **Mr. Shaffer:** Yes, Your Honor. I'd actually like one
15 recross question.

16 **The Court:** I'll give you latitude, limited to redirect.

17 **Mr. Shaffer:** Thank you.

18 **The Court:** You're welcome.

19 Recross Examination

20 By Mr. Shaffer:

21 Q. Did you have any conversations with the defendant prior
22 to him coming outside?

23 A. No.

24 **Mr. Shaffer:** Okay. Thank you.

25 **The Court:** Any further questions from the State?

1 **Ms. Campbell:** No, ma'am.

2 **The Court:** Any objection to the witness being excused?
3 From the State?

4 **Ms. Campbell:** None from the State, Your Honor.

5 **The Court:** From the defense?

6 **Mr. Shaffer:** None, Your Honor.

7 **The Court:** Sir, you're excused. Counsel, approach for
8 me, please.

9 (Whereupon, a bench conference was held.)

10 **The Court:** Call your next witness.

11 **Ms. Walker:** The State calls Frederick Simpkins. He's
12 sequestered, Your Honor. He'll be right in.

13 Frederick Simpkins, after being duly sworn,
14 testified as follows:

15 **The Clerk:** Have a seat in the witness box. State your
16 name for the record and spell it, please.

17 **The Witness:** Frederick Simpkins. S-I-M-P-K-I-N-S.

18 **The Court:** You may proceed.

19 **Ms. Walker:** Thank you.

20 Direct Examination

21 By Ms. Walker:

22 Q. Sir, where do you live?

23 A. I live on .

24 Q. Is that here in Columbia?

25 A. Yes, ma'am.

1 Q. How long have you lived in Columbia?

2 A. I've lived in Columbia all my life since I was five
3 years old. So I'm 26 right now, so about five -- I mean I'm
4 20 -- 20 plus years, ma'am.

5 Q. And where do you work?

6 A. I work at Mr. Lucky's Gentleman (verbatim) Club. I'm
7 the manager.

8 Q. Do you work there with your brother?

9 A. Yes, ma'am.

10 Q. And is that a business that your family owns?

11 A. Yes, ma'am.

12 Q. Did you know GaWayne Franklin?

13 A. Yes, ma'am.

14 Q. And how did you know him?

15 A. We had him -- actually, he was one of the bouncers at
16 the establishment.

17 Q. Did you know him as Black?

18 A. Yes, ma'am.

19 Q. And were you at Mr. Lucky's the night he was murdered?

20 A. Yes, ma'am.

21 Q. What time did you get to Mr. Lucky's?

22 A. I got there at 5 p.m. We open up at 5 p.m. every day
23 except for Sundays, so I always get there around 5 p.m.

24 Q. And what time -- do you remember what time Black got
25 there?

1 A. I'd say around 10 p.m: Around 10 p.m.

2 Q. And what was Black's role in terms of being a bouncer?
3 What was he supposed to do?

4 A. Basically he keep crowd control, basically making sure
5 that everybody's behaving accordingly to the rules of the
6 establishment. So basically all he's doing is basically
7 being there to make sure everybody is behaving -- behaving
8 well.

9 Q. And at some point that night was there an issue with a
10 group of people?

11 A. Yes, ma'am.

12 Q. And were you made aware of that issue?

13 A. Yes, ma'am.

14 Q. The group of people -- do you know how many people were
15 with the group that was causing all the trouble?

16 A. I recall about -- it was maybe about four guys, I
17 believe. I'm not exactly for sure how many it was, but I
18 remember four -- about -- at least about four of them guys.

19 Q. And there are security cameras at Mr. Lucky's; right?

20 A. Yes, ma'am..

21 Q. And they can capture different angles of inside and
22 outside the club.

23 A. Yes, ma'am.

24 Q. Now, when you were made aware of the issue with the
25 crowd, what, if anything, did you do?

1 A. Excuse me. Can you repeat?

2 Q. When you -- when they told you there was an issue with a
3 group of people---

4 A. Uh-huh.

5 Q. ---did you ever talk to those people?

6 A. Yes. Yes, ma'am.

7 Q. And what was the purpose of you talking to them?

8 A. Basically I was just trying to calm the situation down,
9 like basically I was just trying to be a mediator in the
10 situation, just trying to calm both sides of the situation
11 down and just trying to basically, you know, get everybody to
12 understand and just try to calm everybody down.

13 Q. And did you know what type of things they were doing to
14 cause trouble?

15 A. Not exactly because basically I was just -- I was let
16 known by Black -- you know, Black actually -- he just told me
17 that, you know, they was kind of getting a little rowdy, and
18 actually I had talked to the defendant actually and, you
19 know, I just talked to them, tried to calm everybody down or
20 whatever the situation may be, just -- you know, just trying
21 to calm everybody down. So I wasn't aware that it was
22 getting to that level because actually I was actually in the
23 office and plus I was kind of in the lobby area as you can
24 see on the video, so I was not---

25 Q. And were -- do you know how many chances this particular

1 group was given to actually calm down at---

2 **Mr. Shaffer:** Objection. Hearsay. Confrontation. May
3 we approach? Hearsay.

4 **The Court:** I first need to rehear the question. Please
5 restate the question.

6 **Ms. Walker:** Do you know how many chances that group had
7 to calm down?

8 **Mr. Shaffer:** Your Honor---

9 **The Witness:** It was multiple.

10 **Mr. Shaffer:** Objection.

11 **The Court:** Certainly. Please approach.

12 (Whereupon, a bench conference was held.)

13 By Ms. Walker:

14 Q. Did you -- did you see multiple interactions with that
15 group?

16 A. Yes, ma'am.

17 Q. How many interactions did you see where they were being
18 told to calm down?

19 A. It was over -- over -- at least over five times.

20 Q. So they were given five opportunities to adhere to the
21 club's rules.

22 A. Yes, ma'am.

23 Q. And at some point did it get to the point where they had
24 to be kicked out?

25 A. Actually it -- actually we was -- I was standing in the

1 lobby, and it actually got to that point right at the end of
2 the video actually. They was coming -- as they was being
3 ejected out of the facility, that was actually the part where
4 I actually seen that they was being dejected (verbatim) out
5 of the club because I had give the bouncers -- we give them
6 certain rules to go by. So basically they already know what
7 to do if a situation is getting too out of hand. So actually
8 they -- he was actually ejecting them out of the facility at
9 the time being, so...

10 Q. And did you see the defendant being ejected from the
11 facility?

12 A. No, ma'am. Actually we was talking.

13 Q. You were talking to who?

14 A. I was talking to the defendant when -- actually when
15 they was actually getting ejected out of the club, I was
16 actually engaging in a conversation with the defendant in the
17 lobby.

18 Q. In the lobby.

19 A. Yes.

20 Q. And at some point during that -- after you talked to the
21 defendant, did the defendant go talk to the victim?

22 A. Actually, that's when they had -- they got
23 confrontational with each other because he was actually
24 arguing not with the defendant but someone else that was
25 actually with the defendant and---

1 Q. When you say he, who are you talking about? When you
2 say he was arguing?

3 A. Yes. He was arguing with I guess one of the guys that
4 he was actually there with.

5 Q. Who is he?

6 A. The defendant. That's him.

7 Q. The defendant was arguing with?

8 A. Black.

9 Q. With Black.

10 A. Yes. Yes, ma'am.

11 Q. And this took place in the lobby?

12 A. Yes, ma'am.

13 Q. And at that point in time, once you see that, what did
14 you do?

15 A. Actually when -- actually when that -- when that actual
16 confrontation happened, that's when everyone came out at one
17 time. There was multiple people that actually entered the
18 lobby, so it was kind of confusing at the time being because
19 there was so many people that came into the lobby at the time
20 being and I'm just saying that Black was actually arguing
21 with one of the guys that he was ejecting out of the club,
22 and that's when the defendant actually joined in and started
23 -- you know, he started arguing also with Black also. And
24 then the next time -- then that's when everybody went
25 outside, and like I say, I actually stayed in the inside of

1 the facility because that's what we are taught to do
2 basically as -- stay inside the club, you know, once they --
3 if a situation occurs, I have to actually keep myself inside
4 because I'm the on-duty manager.

5 Q. Okay. And at some point did you -- were you ever able
6 to see what was going on on the deck after Black was able to
7 get this crowd outside?

8 A. No, ma'am.

9 Q. I want to point your attention to the screen and show
10 you... Is this you?

11 A. Yes, ma'am.

12 Q. And you said this is -- and is this the defendant you're
13 speaking to?

14 A. Yes, ma'am.

15 Q. And was this the crowd that you saw the defendant with
16 that night?

17 A. I seen some of them. Like I said, I was not for sure of
18 how many people that he was with---

19 Q. Let me stop you. You said that you saw an argument?

20 A. Yes, ma'am.

21 Q. Who is this that's in -- kind of in the victim's face
22 right now?

23 A. That is the defendant.

24 Q. And this is you on the corner observing this?

25 A. Yes, ma'am.

1 Q. And did you -- you said part of y'all's procedure is for
2 you to remain inside when this happens.

3 A. Yes, ma'am.

4 Q. Did you look out? This door is open right here?

5 A. Yes, ma'am.

6 Q. Were you looking outside to see what was going on?

7 A. Yes, ma'am, for a second, but like I say, that's part of
8 the procedure that the manager -- the on-duty manager must
9 stay in the inside of the facility.

10 Q. I understand, but during that period of time when you
11 could see what was going on outside---

12 A. Uh-huh.

13 Q. ---could you see the defendant?

14 A. Yes, ma'am.

15 Q. What was he doing?

16 A. They were still just -- they were just being very con --
17 you know, like confrontational. Basically it was --
18 everybody there was still kind of arguing on the balcony, and
19 that was the last thing I seen before the door had actually
20 closed.

21 Q. Let me ask you this. Do you remember giving a statement
22 to law enforcement in this case?

23 A. Yes, ma'am.

24 Q. Would that -- would observing that or reviewing that
25 statement help refresh your memory?

1 A. Yes, ma'am.

2 **Mr. Shaffer:** Your Honor, he didn't say he couldn't
3 remember it.

4 **The Court:** No speaking objections. Is there an
5 objection?

6 **Mr. Shaffer:** I apologize, Your Honor. May we approach,
7 please?

8 (Whereupon, a bench conference was held.)

9 **The Court:** You may continue.
10 By Ms. Walker:

11 Q. You said you could see part of what was -- did you say
12 you could see part of what was going on outside on the deck?

13 A. Yes, ma'am.

14 **Ms. Walker:** May I approach the witness, Your Honor?

15 **The Court:** You may.

16 By Ms. Walker:

17 Q. What did you tell the police you could see the guy in
18 the black tee shirt doing?

19 A. He was clutching on his side like he may have had the --
20 a weapon.

21 **Mr. Shaffer:** Objection, Your Honor. Hearsay, Your
22 Honor.

23 **The Court:** Well, it's not hearsay; it's his statement.
24 But it does need to be phrased appropriately so that he can
25 use the document to refresh his own recollection of what he

1 rationally perceived on the incident date.

2 By Ms. Walker:

3 Q. Does reviewing that refresh your memory?

4 A. Yes, ma'am.

5 Q. What did you see the defendant doing while he was
6 outside?

7 A. What he was actually doing, he was kind of clutching to
8 his -- like his left side like actually like he may have had
9 a weapon, and basically I was trying to almost kind of notify
10 them that -- to be alert. Well, actually at the same time it
11 was like to the point where -- like I say, I have to stay in
12 the inside. So I, you know, have to let the security
13 actually handle the situation, but I felt that something was
14 kind of -- it seemed kind of weird because he was kind of
15 clutching to his side.

16 Q. And you stayed inside after that.

17 A. Yes, ma'am.

18 Q. So was that the last time you saw the defendant?

19 A. Yes, ma'am.

20 Q. And was that the last time you saw Black alive?

21 A. Yes, ma'am.

22 Q. Did you speak -- you said you spoke with law enforcement
23 in this case.

24 A. Yes, ma'am.

25 Q. And did they show you a series of pictures and ask you

1 to pick someone out?

2 A. Yes, ma'am.

3 Q. I want to show you, if I may approach, what's been
4 marked as State's Exhibit 48?

5 **The Court:** You may.

6 By Ms. Walker:

7 Q. Do you recognize this?

8 A. Yes, ma'am.

9 Q. And what do you recognize this to be?

10 A. I recognize that to be the defendant; yes, ma'am.

11 Q. And when you picked him out of this line-up, did the
12 police tell you who to pick?

13 A. No, ma'am.

14 Q. And why did you -- why did you pick this person out?

15 A. Because when I seen him actually clutching for the
16 weapon actually also and I already had -- I already had an
17 idea because of the fact that I already observed that from
18 when they was getting into the confrontation.

19 Q. So this was the person who was in a confrontation and
20 clutching at his side.

21 A. Yes, ma'am.

22 Q. And what number is that?

23 A. That is number five.

24 **Ms. Walker:** Your Honor, we move State's Exhibit 48 into
25 evidence.

1 **The Court:** Any objection?

2 **Ms. Walker:** At this point---

3 **The Court:** Please show it to counsel.

4 **Mr. Shaffer:** We have no objection.

5 **The Court:** Marked and admitted without objection.

6 (State's Exhibit 48 was received in evidence.)

7 By Ms. Walker:

8 Q. The person that you saw in the confrontation with Black
9 and clutching at his side, do you see him here in the
10 courtroom?

11 A. Yes, ma'am.

12 Q. Can you identify him for me?

13 A. Yeah, sitting by his lawyer in the blue shirt with the
14 dark-colored tie, the defendant.

15 **Ms. Walker:** Your Honor, may the record reflect that
16 he's identified the defendant?

17 **The Court:** You may proceed.

18 **Ms. Walker:** No further questions.

19 **The Court:** You may proceed.

20 **Mr. Shaffer:** Your Honor, may we approach?

21 **The Court:** Uh-huh.

22 (Whereupon, a bench conference was held.)

23 **Mr. Shaffer:** Court's indulgence?

24 **The Court:** Uh-huh.

25

Cross-Examination

1 By Mr. Shaffer:

2 Q. So you're absolutely sure you didn't go back outside.

3 A. Before the confrontation, yes, I was -- I was outside
4 before the initial confrontation happened. Yes, I was
5 outside before the actual confrontation happened. Yes, I
6 was.
7

8 Q. So whenever they went down off the ramp, you weren't
9 outside to see everything?

10 A. No. No, I was not.

11 Q. Okay. Are you the man that we see in the video holding
12 the big sack of money?

13 A. I don't recall.

14 Q. You don't recall? Let's see if this video shows...
15 We'll show the video a little bit later. How about this?
16 Does your video machine work correctly?

17 A. Yes, sir.

18 Q. Does it record the entire event?

19 A. Yes, sir.

20 Q. Do you recall any reason why it would be off that night?

21 A. No, sir.

22 Q. So it should be a continuously -- for that entire
23 evening; correct?

24 A. Yes, sir.

25 Q. Okay. There's no reason that it should miss 30 minutes

1 or an hour.

2 A. No, sir.

3 Q. Okay. And you are the owner of this club; right?

4 A. No, sir. I'm a manager.

5 Q. Oh, you're the manager of this club.

6 A. Yes, sir.

7 Q. Your family is the owner; right?

8 A. Yes.

9 Q. Okay. How long have you been a manager?

10 A. I've been a manager for about four years, sir.

11 Q. Okay. What's your duties as a manager?

12 A. A manager -- actually what we do: We're in charge of
13 watching over the establishment, basically making sure
14 everything is running properly operational-wise and that's
15 about it, just making sure that it's being ran properly.

16 Q. Okay. Now, on the night in question you said that there
17 were five times where they told the group to calm down;
18 right?

19 A. Yes, sir.

20 Q. So five times they were told to calm down.

21 A. Yes, sir.

22 Q. That's the whole group; right?

23 A. Could you repeat that, sir?

24 Q. That was the whole group or was that individual people
25 in the group?

1 A. It was basically individual...

2 Q. The primary person getting called in was the guy in the
3 yellow shirt; right?

4 A. Can you say that again? Repeat that.

5 Q. Would you agree with me when I said the primary person
6 getting called down would be the guy in the yellow shirt?

7 A. Basically I was -- it was -- I was talking to the
8 defendant. Actually he was pretty calm and we actually --
9 there was a couple of confrontations in the club, but like I
10 say, it was manageable, like we talked about it and that's
11 why I thought that everything was kind of peaced out like
12 everything was okay because actually we talked about it. It
13 was different occasions that events kept happening, and I
14 just talked to the defendant. I was like, "Hey, man, just
15 tell your friends and everybody just to calm down. It's not
16 that serious," basically just trying to be a peacemaker out
17 of the situation because I didn't want -- just to keep the
18 situation from getting out of control. So actually I thought
19 it was -- you know, it was manageable.

20 Q. Okay.

21 A. It wasn't nothing out of the ordinary like to the point
22 where it was like, you know, to the point where it was out of
23 control.

24 Q. And the defendant was your contact in keeping that
25 manageable; right?

1 A. Yes, sir.

2 Q. He was sort of the person who helped keep that
3 manageable.

4 A. Yes, sir.

5 Q. Okay. So he was -- primarily in the night he was a
6 peacemaker; right? Helping you?

7 A. Like I say, actually like you can see in the video we
8 are actually -- me and the defendant and the other guy that
9 was with him was engaging in a conversation that was actually
10 a peaceful conversation. It was pretty pleasant. You know,
11 we was actually having a good conversation. So, you know, at
12 the same time I didn't understand -- I didn't see when it got
13 to that point where it blew up because actually it was very
14 manageable. Like I said, we were just talking. I talked to
15 him like, "Just calm down," and everything seemed, you know,
16 seemed okay. It seemed like everything was going pretty
17 good.

18 Q. Okay. And there was a prior incident where the guy in
19 the yellow shirt was told to leave, right, earlier in the
20 evening?

21 A. I don't recall.

22 Q. Okay. Okay. I'm going to show you part of the State's
23 exhibit. Is that you in that shirt right there?

24 A. Yes, sir.

25 Q. Let me back this up a little bit. All right. This is 2

1 in the morning. What time did this incident happen? Do you
2 recall?

3 A. I can't -- I don't recall the exact time, sir. I know
4 it was later on in the night.

5 Q. Around 3:30, 3:35. Would you disagree with me?

6 A. Around that time, right around that 3:00 hour, yes, sir.
7 You see, as you can see, we was engaging in a friendly
8 conversation, so that's why I just kind of -- you know,
9 that's why I say everything looked like it was pretty
10 peaceful.

11 Q. And that's at 1:00; right?

12 A. Like I said, I don't recall the exact times.

13 Q. Okay. Do you recall right around 2:00 this happening?

14 A. I don't recall any time in there.

15 Q. You don't recall it specifically?

16 A. No specifics times.

17 Q. All right. Right before y'all left, you had said you
18 had been talking to the defendant. How long had you been
19 talking to him?

20 A. We maybe engaged in a conversation -- I can't say an
21 exact time, sir, but we did engage in a conversation, as you
22 can see in the video, in the lobby. And like I said, it was
23 a very -- it was a pleasant conversation actually. We
24 actually -- you could actually see me exchanging -- we was
25 exchanging phone numbers, like it was a pleasant

1 conversation, but I can't tell you an exact time---

2 Q. Okay.

3 A. ---of how long it was.

4 Q. Was he -- was he planning on hiring or renting out the
5 club at some point? Do you recall that?

6 A. Yeah, we talked about that. He was talking about
7 actually having like a little get-together party and bringing
8 some friends and everything and we talked about that, and
9 that was -- that was basically what the conversation was
10 about.

11 Q. And he was spending a lot of money that night, wasn't
12 he?

13 A. Yeah, he spent some money. Yes.

14 Q. He had a big wad of money; right? Did you ever see it?

15 A. I didn't -- I didn't recall seeing the money.

16 Q. Okay. Now, do you recall when you said Black was in his
17 face or that he was in Black's face? I think that's what the
18 solicitor referred to it as. Do you recall that?

19 A. On the video actually, yes.

20 Q. Okay. Do you actually recall what was being said?

21 A. I can recall it basically due to my statement and
22 everything of that nature, but like I said, it has been a
23 minute, so I can't give you an exact time or anything of that
24 nature. Basically, like I'm saying, you know, if it's
25 written in a statement, that's what I said; yes, sir.

1 Q. Do you recall Black saying y'all are going to have to
2 make or y'all are going to make me have to kill y'all?

3 A. (Witness shook head from side to side.)

4 Q. You don't recall that?

5 A. I don't recall any of this.

6 Q. Okay. But you -- do you recall Black putting his finger
7 in the defendant's face?

8 A. I don't recall that either, sir.

9 Q. Okay. And you don't recall ever going back outside;
10 right?

11 A. Like I -- I don't recall that. I was outside before the
12 conversation.

13 Q. All right. And you're absolutely sure you didn't go
14 back outside.

15 **Ms. Walker:** Objection, Your Honor. Asked and answered.

16 **The Court:** Please repeat the question.

17 **Mr. Shaffer:** I asked him if he was absolutely sure he
18 didn't go back outside.

19 **The Court:** That has been asked and answered, but I'll
20 allow it this last time. Sir, you may answer the question.

21 **The Witness:** Basically like I don't -- I can't actually
22 recall it because it was awhile back, but like I said, if it
23 was in the video, yes, I guess if I did, but I don't know for
24 a fact because, like I said, it was so far back, sir. I
25 can't actually recall saying that, if I did go back out the

1 door, but I don't recall going back out the door after the
2 confrontation happened.

3 By Mr. Shaffer:

4 Q. Do you remember anyone being maced?

5 A. No, sir.

6 Q. Okay. Do you remember Black jumping over a rail?

7 A. No, sir.

8 Q. There's currently a Workers' Comp claim against the
9 club; right?

10 **Ms. Walker:** Objection, Your Honor.

11 **The Court:** Basis?

12 **Ms. Walker:** Relevance.

13 **The Court:** Please approach.

14 (Whereupon, a bench conference was held.)

15 **The Court:** Relevance. Sustained due to the strict
16 liability of the statute we discussed. You may proceed.

17 **Mr. Shaffer:** Thank you, Your Honor.

18 **The Court:** Uh-huh.

19 **Mr. Shaffer:** Court's indulgence.

20 By Mr. Shaffer:

21 Q. Do you recall the defendant telling his friends, "Come
22 on; let's go"?

23 A. I don't recall, sir.

24 Q. Okay. Do you recall anything that was said during that
25 confrontation that...

1 A. No, sir.

2 Q. Okay. Were you the only person wearing that outfit that
3 night?

4 A. You'd have to show me the outfit, sir.

5 Q. Okay. (Mr. Shaffer plays the video.) Are you the only
6 one dressed that way?

7 A. Yes, sir. That's me.

8 Q. Okay. Do you recall anyone else dressed like that?

9 A. No, sir.

10 **Mr. Shaffer:** Okay. No further questions.

11 **The Court:** Madam Forelady, ladies and gentlemen, we're
12 going to take advantage of this break in testimony to take
13 our luncheon recess. During this break, please do not
14 discuss the case in any manner whatsoever. When you return
15 to your jury room, please do not have any contact with anyone
16 in or about the courthouse as well as when you're exiting the
17 courthouse to go to lunch.

18 Please do not allow yourselves to be exposed to any
19 media coverage about this case. You'll come back directly to
20 your jury room at 2:15 at which time we'll resume testimony.
21 If you would go with the bailiffs, and please leave your
22 notepads in your seats.

23 (Whereupon, the jury was excused from open court to go
24 to lunch at 1:00 p.m.)

25 **The Court:** Now, there was some mention of a video. Did

1 y'all work that out?

2 **Mr. Shaffer:** The State has viewed it. It's part of the
3 original video they gave me. I actually have a Brady issue
4 as well, Your Honor.

5 **The Court:** I can't hear you.

6 **Mr. Shaffer:** I also have a Brady issue. Apparently
7 the---

8 **The Court:** He needs to remain on the stand. I need him
9 to remain on the stand for a moment. Yes, sir?

10 **Mr. Shaffer:** The witness just testified that he handed
11 over essentially a full copy. I didn't get a full -- full
12 evidence because of the fact that I had 45 minutes missing
13 out of the middle of it.

14 **Ms. Walker:** Your Honor---

15 **The Court:** Unless you have as an officer of the court
16 some good-faith basis to tell me that somehow the State has
17 hypothecated a video, I'm not really interested in
18 entertaining that. Technology is finicky. You never know
19 what happens when things are duplicated or otherwise. So I
20 suggest you get with the State. Y'all figure out what, in
21 fact, if anything happened to the video before we go down
22 that road.

23 Now, if there's something you just gave to them this
24 morning, they need to have the opportunity to review it.
25 We'll recall this witness after lunch, and then we'll deal

1 with that if, in fact, they have any objection to it. If
2 not, they may not have any objection to it and then you can
3 proceed and question the witness from that perspective and
4 we'll deal with that after lunch. But y'all talk about the
5 video and figure out what's going on with it because I don't
6 know what happened when it was duplicated or not (verbatim).

7 **Mr. Shaffer:** And, Your Honor, I apologize. I did try
8 to come in early to do this this morning. I wasn't able to
9 actually get with the State to do -- I had spoken with Mr.
10 Shellenberg to try to work this out---

11 **The Court:** Yeah, but they don't have to work their
12 schedule around yours.

13 **Mr. Shaffer:** I understand, Your Honor.

14 **The Court:** I'm sure they were just as busy as you were
15 this morning.

16 **Mr. Shaffer:** Yes, Your Honor. I understand.

17 **The Court:** Yeah. Yeah. So y'all work it out. We'll
18 talk about it after lunch. Sir, you may step down. Please
19 do not discuss your testimony with anyone, and I need you to
20 return at 2:15 in the event that we need to resume your
21 testimony. Okay?

22 **The Witness:** Okay. Yes, ma'am.

23 **The Court:** We'll be at ease until 2:15.

24 (Whereupon, a lunch break was taken.)

25 **The Court:** Is the State ready to proceed?

1 **Ms. Walker:** Yes, Your Honor.

2 **The Court:** Is the defense ready to proceed?

3 **Mr. Shaffer:** Your Honor, there's a matter that we need
4 to put on the record.

5 **The Court:** Which is?

6 **Mr. Shaffer:** Apparently the -- at least the bench
7 conferences for today were not on the record.

8 **The Court:** I made -- my law clerk made me aware of
9 that; we're going to correct it. But there's no requirement
10 that I record those conferences. There's no requirement that
11 I take argument on your objections. I do that for my
12 protection, recording bench conferences, not yours.

13 **Mr. Shaffer:** I understand, Your Honor. Some of the
14 objections were made at the bench.

15 **The Court:** I also ruled contemporaneously on every
16 objection and placed my basis for the ruling on the record.
17 That's why I do that as well.

18 **Mr. Shaffer:** Yes, Your Honor. I understand that. If I
19 could just -- and I don't know if the court reporter
20 yesterday would have done it or not, but I just -- one of
21 the---

22 **The Court:** She did.

23 **Mr. Shaffer:** Thank you. One of the arguments I had
24 made was based off of completeness for the video.

25 **The Court:** Everything that -- I've ruled on everything

1 contemporaneously. Your objections have been preserved.

2 **Mr. Shaffer:** Thank you, Your Honor.

3 **The Court:** I'm not going back and rearguing those---

4 **Mr. Shaffer:** I understand, Your Honor. I just

5 wanted---

6 **The Court:** But, again, the rules provide that when an
7 objection is made, the Court asks for the basis of the
8 objection. I'm only required to take argument to aid me in
9 making a decision, not to perfect your appeal. So you should
10 be able to succinctly state the grounds for your objection
11 and the Court makes a contemporaneous ruling at a time.

12 **Mr. Shaffer:** Thank you.

13 **The Court:** And I -- I take argument to accommodate
14 y'all, not to help me.

15 **Mr. Shaffer:** I understand. Your Honor, and the---

16 **The Court:** I'm listening. Did y'all talk about the
17 video at lunchtime to figure out what y'all wanted to do?

18 **Ms. Campbell:** Yes, Your Honor. He proposed two videos.
19 He then informed me that one of them -- one, we didn't
20 understand the relevance. It's not one he seeks to admit,
21 and the other one we have no problem with.

22 **The Court:** What are you seeking to introduce from the
23 video---

24 **Mr. Shaffer:** I wanted a clip from the original
25 full-length video. It shows the witness who is not in the

1 courtroom but the witness that was on the stand who
2 essentially was outside watching the whole thing right
3 before -- right during the shooting.

4 **The Court:** I'm sorry. I can't hear you.

5 **Mr. Shaffer:** He claims that he doesn't remember what
6 happened. It clearly shows him outside watching what
7 happened right until the point of the shooting and then going
8 back inside.

9 **The Court:** You're saying that the video shows this
10 particular witness outside prior to the shooting.

11 **Mr. Shaffer:** Yes, Your Honor, watching the entire
12 thing.

13 **The Court:** Does the video actually show that? Where is
14 it at so I can see it so -- because I don't want to take
15 y'all's word for what you say it says.

16 **Mr. Shaffer:** Yes, Your Honor. This is... This is
17 Defendant's Exhibit 4---

18 **The Court:** I can't see it.

19 **Mr. Shaffer:** I apologize.

20 **The Court:** I can't read it.

21 **Mr. Shaffer:** Do you want me to put it in?

22 **The Court:** Yeah. Yeah.

23 **Mr. Shaffer:** Thank you, Your Honor.

24 **The Court:** Did you make a redacted copy? Did you make
25 a redacted copy?

1 **Mr. Shaffer:** Your Honor, this is just one segment of
2 the entire copy that---

3 **The Court:** My question is: Are you saying that you --
4 let me see if I can make more clear what I'm asking. That's
5 not the whole video you have in your hand; right?

6 **Mr. Shaffer:** No, Your Honor. This is---

7 **The Court:** Those are just the selected portions that
8 you took off that you want to play.

9 **Mr. Shaffer:** No, Your Honor. This is one selected
10 portion that I wanted to play.

11 **The Court:** Okay. I thought you said there were two.

12 **Mr. Shaffer:** Yes, Your Honor. The other one is no
13 longer necessary.

14 **The Court:** Okay.

15 **Mr. Shaffer:** I probably will do some additional ones
16 later, Your Honor.

17 **The Court:** And have you talked about that with the
18 State already?

19 **Mr. Shaffer:** No, Your Honor, I have not, but it's also
20 their video. I mean, they've provided me with the video.

21 **The Court:** Again, the entire video is not relevant
22 unless the Court determines it is. Just because it was
23 turned over to you in discovery does not mean you get to play
24 the entire video. So what you need to do is you need to make
25 the State aware of the portions you intend to introduce so

1 that y'all can work through that because I'm not going to
2 stop and start every time we deal with these portions of this
3 video because this really should have been done in advance of
4 trial.

5 **Mr. Shaffer:** Thank you, Your Honor.

6 **The Court:** All right?

7 **Mr. Shaffer:** And I apologize -- I had really thought
8 that they were going to introduce the entire video up until
9 the day before trial. Okay. I might have it. It is
10 working.

11 (Mr. Shaffer plays a video clip for the Court.)

12 **Mr. Shaffer:** The shooting happens about two seconds
13 later, Your Honor.

14 **The Court:** What's the State's objection?

15 **Ms. Campbell:** We have no objection, Your Honor.

16 **The Court:** Okay.

17 **Mr. Shaffer:** Your Honor, there's one thing that I do
18 need to make the Court aware of.

19 **The Court:** What's that?

20 **Mr. Shaffer:** Over lunch we talked about the video.
21 Apparently the State was only able to pull off of the D.V.R.
22 portions of the video which lack -- that were -- there's
23 about an hour, hour and ten minutes, that is not on the video
24 during the time period that they were in the club that they
25 were not able to actually pull off of the video.

1 **The Court:** Okay.

2 **Mr. Shaffer:** I believe that that would make the -- I
3 hate to bring this up but the entire video relevant for the
4 purposes of -- if the State is saying that that's what they
5 had and that's what they turned over, we don't know what
6 happened during that time period before they actually turned
7 the D.V.R. over, Your Honor. We don't know what that video
8 shows. He says there's no reason why it shouldn't show the
9 entire thing.

10 **The Court:** That's something you argue to the jury.
11 That's a weight, not admissibility, issue. That's a
12 credibility issue. That's a, I guess for lack of a better
13 word, a taint kind of an issue, but it's not an admissibility
14 issue.

15 **Mr. Shaffer:** Thank you, Your Honor.

16 **The Court:** Because I don't know what it shows. It
17 might, as he indicated before, just show strippers going in
18 and out of the club. And the other portions show what was
19 going on -- I believe the testimony was they were trained at
20 the bar otherwise and that you have not presented anything to
21 me to convince me that those missing portions somehow make
22 inaccurate what we have seen on the video.

23 **Mr. Shaffer:** Yes, Your Honor. I understand. I'm just
24 saying that there might be something to hide whenever you
25 give a video---

1 **The Court:** That's why you argue that weight issue to
2 the jury. Might, kind of, sort of, should have. That's
3 not---

4 **Mr. Shaffer:** Yes, Your Honor.

5 **The Court:** ---in the ambit of admissibility. That's a
6 -- that's a weight issue---

7 **Mr. Shaffer:** Can I---

8 **The Court:** ---which you can argue to the jury.

9 **Mr. Shaffer:** But I can ask the police officer about the
10 fact that he was not given a D.V.R. that he could pull off
11 the entire---

12 **The Court:** You can ask the officer anything you want
13 to---

14 **Mr. Shaffer:** Thank you, Your Honor.

15 **The Court:** ---unless they object, and then I'll deal
16 with it then, but I'm not making any rulings in advance.

17 **Mr. Shaffer:** Thank you, Your Honor.

18 **The Court:** Are we ready to proceed?

19 **Ms. Walker:** The State's ready.

20 **The Court:** Is the defense ready to proceed?

21 **Mr. Shaffer:** Yes, Your Honor.

22 **The Court:** Please bring in the jury. The witness will
23 retake the stand. I'll remind you, sir, that you're still
24 under oath. Sir, if you'll come and retake the stand for me.
25 I'll remind you that you're still under oath.

1 (Witness Frederick Simpkins retakes the witness stand.
2 The jury is brought into open court at 2:36 p.m.)

3 **The Court:** Ladies and gentlemen, we appreciate your
4 patience as we had some matters of law we needed to dispose
5 of before resuming the testimony. We will now resume with
6 the cross-examination of the witness. You may proceed, Mr.
7 Shaffer.

8 Cross-Examination

9 By Mr. Shaffer:

10 Q. Mr. Simpkins, you had previously testified that you did
11 not recall seeing anything that happened after the argument
12 on the porch and you basically closed the door; right?

13 **The Court:** Mr. Shaffer, I need you to speak up for me,
14 please. I'm having difficulty hearing you.

15 **Mr. Shaffer:** I apologize.

16 **The Court:** That's okay.

17 By Mr. Shaffer:

18 Q. You had previously testified that after they were
19 arguing on the porch you didn't go back -- you didn't go
20 outside. You went back inside and didn't see any of the
21 fight that took place outside.

22 A. Actually like I -- it just refreshed my memory when I
23 just seen the video. So actually I did step outside for that
24 moment as you see in the video; yes, sir.

25 Q. Okay. Okay. So you did see the argument or the -- did

1 you see anyone get maced?

2 A. I seen just exactly what was in the video. Basically I
3 walked out. You see me. I actually had some ones that I was
4 putting into the register, taking to the register, and I
5 walked back inside the facility.

6 Q. Okay. And this is a -- the video that you just saw is a
7 true and accurate depiction of what occurred?

8 A. Yes.

9 Q. Okay.

10 **The Court:** I think it's already been marked and
11 admitted with---

12 **Mr. Shaffer:** I apologize, Your Honor. I didn't---

13 **The Court:** That's okay. You don't need to apologize.
14 Tell me what number it is.

15 **Mr. Shaffer:** It's Defense Exhibit 4.

16 **The Court:** Defense Number 4 is marked and admitted
17 without objection.

18 **Mr. Shaffer:** May I publish it?

19 **The Court:** Yes, sir, you may.

20 (Defendant's Exhibit 4 was received in evidence and was
21 played for the jury.)

22 By Mr. Shaffer:

23 Q. At this point are you watching from the inside?

24 A. At that time, just like on the video right there, you
25 can actually see me stepping out for that one period second

1 -- for that second and that was all, and I'm going back
2 inside the establishment.

3 Q. And that's you right there.

4 A. Yes, sir.

5 Q. Okay. And at what time indicated on the video did you
6 step away?

7 A. Can you repeat that question?

8 Q. At what time did you turn away from the action that was
9 going on outside?

10 A. I cannot accurately say that, say what times.

11 Q. Okay. But you wouldn't argue with the video, would you?

12 A. No, I wouldn't argue with the video.

13 Q. But do you recall seeing anyone get pepper sprayed?

14 A. No, sir, I don't recall.

15 Q. Okay. Do you recall telling the police that the
16 defendant snapped?

17 A. Oh, yes, sir.

18 Q. So he was calm and then he snapped?

19 A. Basically that's almost of a slang term of saying that
20 the behavior actually changed erratically, like basically
21 when we were standing in front of -- when we were standing in
22 the lobby and he was very calm and pleasant to when the
23 altercation began in the lobby, his behavior changed
24 dramatically. So that's what I meant by when I said snapped.

25 Q. Okay. Okay. I was just checking.

1 A. Okay.

2 **Mr. Shaffer:** No further questions.

3 **The Court:** Any redirect of the witness?

4 **Ms. Walker:** No, Your Honor.

5 **The Court:** Any objection to the witness being excused?

6 By the State?

7 **Ms. Walker:** None.

8 **The Court:** From the defense?

9 **Mr. Shaffer:** No, Your Honor.

10 **The Court:** Sir, you're excused. State, proceed.

11 **Mr. Shellenberg:** Thank you, Your Honor.

12 **The Court:** You're welcome.

13 **Mr. Shellenberg:** The State calls Christopher -- or
14 Deputy Christopher Pinckney.

15 Christopher Pinckney, after being duly sworn,
16 testified as follows:

17 **The Clerk:** Have a seat in the witness stand, please.
18 State your name for the record.

19 **The Witness:** Master Deputy Christopher Pinckney.

20 **The Court:** You may proceed. Sir, spell your last name
21 for the court reporter.

22 **The Witness:** P-I-N-C-K-N-E-Y.

23 **The Court:** You may proceed.
24
25

Direct Examination

By Mr. Shellenberg:

Q. Deputy Pinckney, who are you employed by?

A. Richland County Sheriff's Department.

Q. And what do you do for them?

A. I'm in the uniform patrol; I work the road.

Q. And how long have you been with the sheriff's department?

A. Five and a half years.

Q. So you were with the sheriff's department back on August 19th, 2012?

A. Yes, sir.

Q. And were you working that evening?

A. Yes, sir.

Q. And what were you doing?

A. I was working the road.

Q. And did you happen to get a call that evening?

A. Yes, sir. We had a call of shots fired^e in Region 4 which is off of _____, so I responded to that side of town to assist in the apprehension of the subject.

Q. You said assist in apprehending him. What did you do when you got out to the area?

A. When I responded to the area, they were on the radio saying they needed units to set the perimeter. So I responded to _____ and set a perimeter. I parked

1 my vehicle in there and remained stationary.

2 Q. And now when you say you set up a perimeter, just to
3 explain to laymen like me, how do y'all go about doing that?
4 Do you set it up around the exits or how does that work?

5 A. We set it up in the area we believe that the subject may
6 try to enter or exit from the area.

7 Q. And this is from the reports that you got that the
8 defendant from the shooting had fled to the

9 ?

10 A. Yes, that he left from the club on and fled
11 towards that direction.

12 Q. And did you -- did you get any other information about
13 any possible injuries that had been---

14 A. Yes, sir.

15 Q. ---received by---

16 A. Information came out that the subject has been -- had
17 been shot maybe one or two times and that he was probably
18 injured.

19 Q. And while you were set up in that perimeter, did you get
20 any information that led you to any certain apartments to
21 where he was actually located?

22 A. Yes. Dispatch came over the radio and said someone
23 contacted them in reference to a subject sitting in front of
24 the building that was bleeding heavily.

25 Q. And did you make contact with the subject at that point?

1 A. Yes. Me and Deputy Johnson responded to that area and
2 made contact with the subject sitting on the steps in front
3 of the .

4 Q. And just what kind of wounds did he appear to have?

5 A. There was -- appeared to be some type of wound or
6 something from his back. He was heavily bleeding from that
7 wound.

8 Q. And if you remember just what he was wearing at that
9 point...

10 A. Yes, he had on a black tee shirt, black-and-red gym
11 shorts, and black socks.

12 Q. Do you remember: Was he wearing shoes at all?

13 A. No, sir.

14 Q. Were you able to make an identification of who he was?

15 A. Based on the description that was given out, we detained
16 that subject because he matched the description. He didn't
17 have any I.D. on him, so I'm not sure if I asked him what his
18 name was or how I obtained that information, but he was
19 detained because he fit the description of the person.

20 Q. And after you detained him, what did you do next?

21 A. We waited on EMS.

22 Q. All right. Is the person that you detained in the
23 courtroom today?

24 A. Yes, sir.

25 Q. Can you point him out for the jury?

1 A. Yes, sir. (The witness points.)

2 **Mr. Shellenberg:** Your Honor, at this time I'd like the
3 record to reflect that the deputy pointed out the defendant.

4 **The Court:** You may proceed.

5 By Mr. Shellenberg:

6 Q. And did EMS transport him to the hospital?

7 A. Yes, sir.

8 **Mr. Shellenberg:** All right. No further questions.

9 Thank you.

10 **The Court:** Any cross-examination of the witness?

11 **Mr. Shaffer:** No, Your Honor.

12 **The Court:** Any objection to the witness being excused?

13 From the State?

14 **Mr. Shellenberg:** No, Your Honor.

15 **The Court:** From the defense?

16 **Mr. Shaffer:** No, Your Honor.

17 **The Court:** Sir, you're excused. Call your next
18 witness.

19 **Ms. Walker:** The State calls Jennifer Stoner.

20 Jennifer Stoner, after being duly sworn, testified
21 as follows:

22 **The Clerk:** Have a seat in the witness stand, please.
23 State your name for the record.

24 **The Witness:** Jennifer Stoner.
25

Direct Examination

By Ms. Walker:

Q. Good afternoon.

The Court: Please spell your last name for the court reporter.

The Witness: S-T-O-N-E-R.

The Court: Thank you. You may proceed.

Ms. Walker: Thank you, Your Honor.

The Court: You're welcome.

By Ms. Walker

Q. Ma'am, where are you currently employed?

A. I'm employed by the South Carolina Law Enforcement Division in the Trace Evidence Section of the forensic laboratory.

Q. And how long have you been employed with S.L.E.D.?

A. I've been employed with S.L.E.D. for 16 years.

Q. And you said the Trace Evidence Department?

A. Yes.

Q. How long have you been in that department?

A. Fifteen years.

Q. What exactly is trace evidence?

A. Trace evidence in our laboratory is many different types of evidence. We analyze gunshot residue, fire debris evidence, paint, fibers, glass, tape and adhesives, explosives, and just basic trace evidence.

1 Q. Can you tell us what sort of specialized training or
2 education you have in the Trace Evidence Department?

3 A. I have a Bachelor of Science degree in chemistry that I
4 received from California University of Pennsylvania. Upon
5 completion of my degree, I was hired by S.L.E.D. in the drug
6 analysis section, and I completed the Criminal Justice
7 Academy and the drug analysis training program.

8 After working for a year in that department, I
9 transferred to the Trace Evidence Section and began a three-
10 year training program there under the supervisor and the
11 senior analyst in the department. Through that training, I
12 received training on the instrumentation, the types of
13 analyses, the policies and procedures. I also received
14 outside training from the instrument vendors for which we had
15 instruments in the lab through different conferences, classes
16 put on by the F.B.I. and just different agencies.

17 Q. Have you been qualified as an expert before in the area
18 of trace evidence?

19 A. I have.

20 **Ms. Walker:** Your Honor, at this point we offer this
21 witness as an expert in trace evidence.

22 **The Court:** Any objection?

23 **Mr. Shaffer:** No objection, Your Honor.

24 **The Court:** So admitted without objection. You may
25 proceed.

1 By Ms. Walker:

2 Q. Specifically, you said one of the aspects of trace
3 evidence is gunshot residue?

4 A. Yes, it is.

5 Q. Can you explain what gunshot residue is?

6 A. Any time a firearm is discharged, there is a tiny
7 explosion that takes place, and all of the residue that exits
8 the gun is considered gunshot residue. It is comprised of
9 metallic particles from the primer, from the bullet, from the
10 cartridge, and from the weapon itself.

11 Q. And you said it's discharged from the firearm when the
12 weapon is fired.

13 A. During the firing of the weapon it's formed.

14 Q. It's formed. And the gunshot residue, you said that
15 there's a test for that?

16 A. There is.

17 Q. And how is the test for that gunshot residue conducted?

18 A. Can I show a demo kit?

19 Q. Yes. Let me show you what's been marked as State's
20 Exhibit 64. This is the gunshot residue kit from James
21 Bethel.

22 A. I have it here.

23 Q. Oh, you have---

24 A. I have a demo kit. Can I use that?

25 Q. Sure.

1 A. When they collect gunshot residue, gunshot residue kits
2 have to be collected within six hours of the shooting.

3 Q. And why is it that they have to be collected within six
4 hours?

5 A. It has been shown through studies that the gunshot
6 residue will not stay on a living person's hands more than
7 six hours after a shooting, and this occurs because once it's
8 deposited on your hands, anything you do to your hands will
9 remove it. So kind of you can liken it to when you bake and
10 you have flour on your hands. You can see the flour. You
11 can't see the gunshot residue, but it will be removed in the
12 same way: If you wash your hands, if you sweat, wash your
13 hands, put your hands in and out of your pocket, and your
14 body will naturally absorb that residue. So after six hours,
15 we have no expectation to see any gunshot residue on a living
16 person's hands.

17 Q. Actually, can I get you to do it with one of these since
18 this is already in evidence? Exhibit 64.

19 A. Uh-huh. Can I open it?

20 Q. Yes, ma'am. Do you need scissors?

21 A. No. This is what a G.S.R. kit looks like. We provide
22 these kits to the agencies throughout South Carolina. The
23 company we get them from is called Tritech. They're in North
24 Carolina. And we actually perform quality testing on these
25 kits for each lot before they're sent to us so that we know

1 there's no contamination issues on the kit prior to them
2 being used for collection.

3 The gunshot residue kit will consist of an
4 information sheet that gives us the suspect or victim's name,
5 the collecting officer's name, the time of the incident, and
6 the time of the collection so we can determine whether it was
7 collected within the correct timeframe. And these are called
8 particle lifts. In this case these are particle lifts from
9 James Bethel. Each of these are labeled for a different area
10 of the hand. There's a right palm, right back, left palm,
11 and left back, and those are the areas of the hand that we
12 collect these kits from.

13 I normally don't collect the kits. They're usually
14 collected in the field prior to being submitted to the
15 laboratory. But what they do is they take the top off, and
16 if you can see, there's a tiny round planchette in there.
17 It's carbon-coated. It has adhesive on it. It's kind of
18 like a Band-Aid adhesive, and they dab the area of the hand.
19 Once they're done collecting it, they put the lid on, put it
20 back in the kit and then submit it for analysis.

21 Q. And once you receive the kits, you analyze them for the
22 presence or absence of gunshot residue?

23 A. Yes.

24 Q. Can you tell the jury what the presence of gunshot
25 residue indicates?

1 A. If we find gunshot residue on a living person's hands,
2 we can say that six hours back from the time of the
3 collection of that kit they were actually -- would have fired
4 a firearm or were in the vicinity to the discharging of a
5 firearm or handled an item that had gunshot residue on it.

6 Q. And the absence of gunshot residue, does that indicate
7 that they necessarily didn't fire a firearm?

8 A. When we have an item that tests negative for the
9 presence of gunshot residue, it means I did not find any
10 gunshot residue, but since I don't know what happened to that
11 person's hands from the time of the suspected firing to the
12 collection, it could have been wiped off or it could have
13 been removed. So the absence of gunshot residue didn't mean
14 they did not fire a weapon. It only means I don't have any
15 evidence to support that they did because of the fragility of
16 the evidence.

17 Q. And with this case specifically, did you receive a
18 number of gunshot residue kits?

19 A. I did.

20 Q. And how many did you receive?

21 A. In this case I received four.

22 Q. And you have one with you up there?

23 A. Yes.

24 Q. And is that...

25 A. I have the kit, State's Exhibit 64, from James Bethel.

1 Q. And State's Exhibit 59, do you recognize that one?

2 A. State's Exhibit 59 is the outer packaging with the
3 G.S.R. kit inside from Ernest Bethel and---

4 Q. Does it have the S.L.E.D. insignia on it, the S.L.E.D.
5 tape?

6 A. Oh, yes. This is the tape that I sealed it...

7 Q. And State's Exhibit 57?

8 A. State's Exhibit 57 is S.L.E.D.'s item number six which
9 is a G.S.R. kit collected from the victim, Franklin GaWayne.

10 Q. And Exhibit 63.

11 A. 63 is S.L.E.D.'s item number nine in this case and it is
12 a G.S.R. kit from Kedron Hope.

13 Q. And I want to go over the results of each of those
14 analysis with you. The gunshot residue from GaWayne
15 Franklin, what was done with that?

16 A. I did not perform an analysis on this kit.

17 Q. Can you tell the jury why you didn't perform a gunshot
18 residue analysis on the victim's G.S.R. kit?

19 A. In the past we have performed analyses on victims,
20 suspects, and suicide victims and witnesses or elimination --
21 people for elimination purposes, but we have found that with
22 victim G.S.R. kits, since they are shot, we expect to find
23 gunshot residue on their hands. The question we were usually
24 asked was: Did the victim have a gun? It's not a question
25 we can answer. So we're trying to move our resources to

1 analyzing suspect G.S.R. kits and move away from doing victim
2 kits.

3 So in this case I did not analyze it because I wouldn't
4 be able to answer a question whether or not this person had a
5 gun. I expect to find gunshot residue on them, so testing it
6 wouldn't have added any information to the case.

7 Q. Let me ask you this: If you are in the vicinity of a
8 gun when it's fired, could you get gunshot residue on you?

9 A. Yes.

10 Q. Even if you're not the one who fired the gun?

11 A. Yes.

12 Q. The G.S.R. kit from Ernest Bethel, what were the results
13 of that?

14 A. On the G.S.R. kit for Ernest Bethel -- would you like me
15 to read the results?

16 Q. You can...

17 A. Or just...

18 Q. Just tell the jury what they were.

19 A. Okay. On the right palm of his hand I did not find any
20 indication of gunshot residue. I found no particles
21 consistent with gunshot residue.

22 Q. Okay. And the other three areas?

23 A. On the right back of his hand I found a non-round
24 particle that contained lead barium and antimony and I found
25 a round particle containing antimony. These particles are

1 considered consistent with gunshot residue and we find them
2 whenever we look for gunshot residue.

3 Q. That's the right back of the hand.

4 A. That was the back of the right hand.

5 Q. Okay. Can we move to the left palm?

6 A. On the left palm I found one round particle containing
7 lead which is consistent with -- it's associated with gunshot
8 residue.

9 Q. And the left back?

10 A. On the back of the left hand I found round particles
11 that were composed of antimony which is also considered
12 associated with gunshot residue.

13 Q. Is that three of the four areas that are tested?

14 A. Yes.

15 Q. And is that -- could that be consistent with someone in
16 the vicinity of a gunshot when it's fired?

17 A. Yes.

18 Q. I want to move to the defendant's G.S.R. kit, the G.S.R.
19 kit of James Bethel, Jr. Can you share with the jury what
20 your results were there?

21 A. On the kit that was submitted from James Kevin Bethel,
22 Jr., I did not find gunshot residue on any areas of the
23 hands.

24 Q. If the defendant was removing clothing and his hands
25 were brushing up against clothing, could that destroy the

1 G.S.R. that may have been on his hands?

2 A. Anything that comes into contact with your hands, after
3 gunshot residue is deposited on them, can remove it.

4 Q. Would clothing be consistent with that?

5 A. Yes.

6 Q. What about running through a creek? Would that -- could
7 that remove gunshot residue?

8 A. If water came in contact with the hands, yes.

9 Q. If someone is bleeding profusely and they're touching
10 the blood, could that destroy gunshot residue?

11 A. Yes. We have found that blood actually dissolves the
12 particles that we look for. So in cases where we have severe
13 amounts of blood on the hands, we tend to not find any
14 gunshot residue particles because they've been dissolved.

15 Q. And, finally, the gunshot residue kit from Kedron Hope,
16 was anything done with that kit?

17 A. No analysis was performed on this kit.

18 **Ms. Walker:** Beg the Court's indulgence.

19 **The Court:** Uh-huh.

20 **Ms. Walker:** No further questions. Thank you.

21 **The Court:** Any questions for the witness?

22 **Mr. Shaffer:** No, Your Honor.

23 **The Court:** Any objection to the witness being excused?
24 From the State?

25 **Ms. Walker:** No, Your Honor.

1 **The Court:** From the defense?

2 **Mr. Shaffer:** None, Your Honor.

3 **The Court:** Ma'am, you're excused.

4 **The Witness:** Thank you.

5 **The Court:** The State may proceed.

6 **Ms. Campbell:** The State calls Dr. Gray Amick.

7 Dr. Gray Amick, after being duly sworn, testified
8 as follows:

9 **The Clerk:** Have a seat in the witness stand, please.
10 State your name for the record.

11 **The Witness:** My name is Gray Amick, A-M-I-C-K.

12 **The Court:** You may proceed.

13 Direct Examination

14 By Ms. Campbell:

15 Q. Dr. Amick, where are you employed?

16 A. The Richland County Sheriff's Department.

17 Q. What do you do there, sir?

18 A. I supervise the Forensic D.N.A. Laboratory.

19 Q. And as supervisor over the Forensic D.N.A. Laboratory,
20 what do your duties include?

21 A. Include a lot of administrative stuff but also analyze
22 D.N.A. evidence and author reports.

23 Q. Can you tell this jury a little bit about your education
24 and your training in the field of D.N.A. analysis?

25 A. Yeah. I have a Bachelor of Science degree I got in 1989

1 and Ph.D. in biochemistry in 1993 from the University of
2 South Carolina. I was hired at that point by the South
3 Carolina Law Enforcement Division commonly known as S.L.E.D.
4 where I worked there for 11 years, six of those in the D.N.A.
5 laboratory. At that time in 2004 I was hired by Leon Lott to
6 start up the D.N.A. laboratory at Richland County, which we
7 did, and have been there ever since performing D.N.A.
8 analyses.

9 Q. Have you ever been qualified before as an expert in
10 D.N.A. analysis?

11 A. I have.

12 Q. Approximately how many times?

13 A. Over 75 times.

14 **Ms. Campbell:** Your Honor, at this time we'd offer him
15 as an expert in D.N.A. analysis..

16 **The Court:** Any objections or questions?

17 **Mr. Shaffer:** None, Your Honor.

18 **The Court:** So admitted without objection.

19 By Ms. Campbell:

20 Q. Doctor, in order to do a comparison of D.N.A. that may
21 be collected at a crime scene, you have to have what's known
22 as known standards?

23 A. You can do it with known standards or you can do it with
24 a database.

25 Q. Okay. And in this case were you provided with certain

1 known standards from certain people?

2 A. I was.

3 Q. And who did you get known standards from?

4 A. I got standards from a buccal swab which is a swab from
5 the mouth from GaWayne Franklin and from James Bethel. I
6 believe that's all.

7 Q. And in order -- you mentioned that it's a buccal swab
8 that's gotten from the mouth. What is actually done and how
9 is the D.N.A. collected so that you have a known standard
10 just as you have a known fingerprint in certain cases?

11 A. How is it collected?

12 Q. How is it collected and then how do you analyze it?

13 A. Well, the buccal swab is simply collected with a Q-tip
14 and swabbing the inside of your cheek, and that collects
15 cells that have D.N.A. on them. Evidence is collected in
16 many different ways by -- it could be investigators or
17 deputies or crime scene team members, and they'll do similar
18 things, take like Q-Tips, sterile Q-Tips, and collect what
19 they think would be evidence at a crime scene, whether it be
20 blood or tissue or clothing or any other items, and then they
21 bring those back to the sheriff's department and get
22 submitted to the laboratory for analysis.

23 Q. And you mentioned that in order to get a known standard,
24 a buccal swab is actually from the saliva inside your mouth?

25 A. That's right.

1 Q. And that has D.N.A. that you later analyze?

2 A. That's right. Whether it's blood or saliva or semen or
3 any other body fluid, it's going to have the same profile of
4 that individual.

5 Q. And body fluids are a good source for you to get D.N.A.
6 to do an analysis.

7 A. Yes.

8 Q. And there's also another way that D.N.A. may get
9 somewhere such as what's referred to commonly as touch
10 D.N.A.?

11 A. Yes. There is such a thing as touch D.N.A.

12 Q. And so if I walk up and touch this counter right here,
13 are you going to be able to swab it and necessarily get my
14 D.N.A.?

15 A. Not necessarily. I can swab it and attempt to get your
16 D.N.A. and I may or may not get your profile from that.

17 Q. What are the factors that go into that as to whether or
18 not, even if I come in contact with something, whether or not
19 my D.N.A. would be left there just as like with a
20 fingerprint?

21 A. Lots of different factors, environmental factors, the
22 actual surface that you've touched and the actual person who
23 touches it, whether they shed cells or have a propensity to
24 shed cells, whether they're sweating, whether they're nervous
25 and sweating or whether their skin is dry. Lots of factors

1 go into whether or not you would leave enough D.N.A. when you
2 touch something to get a profile.

3 Q. And when you touch something and D.N.A. is actually left
4 there, is it actually skin cells that are sloughing off or
5 whatever part touches it?

6 A. It can be, yes, skin cells.

7 Q. Typically? And so if you have body fluids at a scene,
8 is there a likelihood of you getting a result or being able
9 to get D.N.A. usually greater than if somebody has just
10 touched...

11 A. Yes. If you have body fluids that are collected at a
12 scene, like blood, then you should get a D.N.A. -- there
13 should be enough D.N.A. there to get a profile from.

14 Q. I want to turn your attention to this case. Were there
15 certain items that were submitted for you to do an analysis
16 on?

17 A. Yes.

18 Q. And in addition to the two known standards that you've
19 already mentioned to the jury, were there a number of
20 forensic samples - that means from the crime scene - or from
21 collections that were submitted as well?

22 A. Yes, there was.

23 Q. And did you prepare a report in this case?

24 A. I did.

25 Q. And I'm going to show you what's been marked -- and I've

1 shown this to the defense. Do you want to see it again?

2 **Mr. Shaffer:** No.

3 By Ms. Campbell:

4 Q. As State's Exhibit Number 162. Do you recognize this?

5 A. I do.

6 Q. And does this accurately reflect your findings in this
7 case?

8 A. I believe it does.

9 **Ms. Campbell:** Your Honor, at this time we'd offer 162
10 into evidence I believe without objection.

11 **Mr. Shaffer:** No objection.

12 **The Court:** Marked and admitted without objection,
13 State's 162.

14 (State's Exhibit 162 was received in evidence.)

15 **Ms. Campbell:** Your Honor, may the witness step down?

16 **The Court:** He may.

17 **Ms. Campbell:** Thank you.

18 By Ms. Campbell:

19 Q. You can come over on this side and talk loudly so the
20 court reporter can hear you. Here is a pointer. Basically
21 on here items 32 and 47 first -- and these numbers on the
22 side, how are these done?

23 A. Those are the item numbers given to each item from the
24 evidence department at the sheriff's department. So those
25 are our evidence item numbers.

1 Q. So those are some random numbers that are just assigned
2 for further identification down the road?

3 A. Right.

4 Q. And that's as it's logged into your evidence room.

5 A. That's correct.

6 Q. Okay. And items number 32 and 47, what are those items?

7 A. 32 and 47 are -- those are the two buccal swabs
8 mentioned before from GaWayne Franklin and James Bethel.

9 Q. One from GaWayne Franklin and the other from whom?

10 A. James Bethel.

11 Q. And in doing your testing, explain to the jury what type
12 of -- how you extract the D.N.A. and then how do you
13 ultimately amplify it and then do a comparison?

14 A. Well, it's a multistep process. So we will take that
15 Q-tip and cut part of it and purify the D.N.A. from that and
16 then basically use our instrumentation to try to develop a
17 D.N.A. profile from it or not, and if there's enough D.N.A.
18 from that Q-tip, we will either get a profile or some of a
19 profile or nothing at all.

20 Q. So if you have the known standard and have developed a
21 profile from that, can it later be compared to another
22 standard from, say, the crime scene from, say, blood from the
23 crime scene?

24 A. Yes.

25 Q. And is that, in fact, what you do?

1 A. That's exactly what we do.

2 Q. And in taking that, are you able to include or exclude
3 certain people as being possible donors of that sample?

4 A. Yes.

5 Q. Taking it one at a time, starting with item number one,
6 what was that item?

7 A. Item number one is the swab from a stained tree root.

8 Q. And the next column we have here indicates whether or
9 not you tested for blood?

10 A. Correct.

11 Q. And did you test every one of these items for blood?

12 A. No.

13 Q. Which ones would you have tested for blood typically?

14 A. The ones that look like they have blood on them.

15 Q. Okay.

16 A. I mean, it's not very complicated. If you look -- if
17 you see the blood visually, then we test for it.

18 Q. So the swab from the stain from the tree root, you
19 tested it for blood and what was the result of your
20 preliminary test just for the presence of blood?

21 A. That blood was indicated on those.

22 Q. Once you have that testing done, does that inhibit in
23 any way your ability to get D.N.A. results?

24 A. No, it does not.

25 Q. And did you go further and attempt to extract the D.N.A.

1 which is indicated in the next column?

2 A. I did.

3 Q. And when you attempted to extract D.N.A. from the swab
4 from the stain on the tree root that tested positive for
5 blood, what were you able to -- did you get any D.N.A.?

6 A. I did.

7 Q. And once you were able to extract that D.N.A. profile or
8 make it into a profile, what, if any, comparisons did you
9 make?

10 A. I -- well, I compared -- I would compare any D.N.A.
11 profile I got to the standards submitted in the case and
12 possibly to other items of evidence as well. In this case
13 that -- the blood from that item one matched James Bethel.

14 Q. Once you have what's known as an actual match, are there
15 a certain number of loci or places on the D.N.A. strand
16 itself that you look at?

17 A. Yes. The kits we use look at several different places
18 on the D.N.A. strand.

19 Q. And in this case was this a partial match or a full
20 match?

21 A. Well, we usually don't use that terminology. It either
22 matches or it doesn't.

23 Q. Okay. Well, in this case did it match or did it not?

24 A. It matched.

25 Q. And once you make a match, were you able to make further

1 calculations in this case?

2 A. I was.

3 Q. And what calculations are you able to make as far as
4 whether or not this would match anyone else's blood or
5 D.N.A.? Excuse me. I misspoke.

6 A. Let me -- it would probably be easy just to read it from
7 my report. Based on the genetic results obtained from item
8 one matching James Bethel, the frequency seen in the profile
9 of the Caucasian population is approximately 1 in 40
10 quadrillion and in the African-American approximately 1 in
11 6.5 quadrillion.

12 Q. So 6.5 quadrillion in the African-American population?

13 A. That's correct.

14 Q. And how many people are there actually on earth?

15 A. I think around seven billion.

16 Q. Seven billion?

17 A. Uh-huh.

18 Q. How many zeros is that?

19 A. A billion is nine zeros.

20 Q. And the number you found the possibility of it matching
21 someone else is one in how many?

22 A. 6.5 quadrillion.

23 Q. Okay. You have to help me. How many zeros?

24 A. That would be 14 more zeros.

25 Q. Did I put the commas right?

1 A. I can't see it. Yeah, it looks right.

2 Q. And in your opinion, the blood that was found from the
3 tree root, could it match anyone else?

4 A. No. In my opinion, James Bethel is the source of the
5 D.N.A. from the blood from that item.

6 Q. And with D.N.A. does -- is everyone's D.N.A. different?
7 Explain that to the jury.

8 A. Everyone's D.N.A. is unique except for identical twins.
9 So if you have an identical twin, you have the exact same
10 D.N.A. profile.

11 Q. But other than that, even if you're siblings, mother,
12 father, anything like that...

13 A. It would be different; correct.

14 Q. Going on to item number two, what were your results?
15 And this was the stain from where?

16 A. Dirt embankment.

17 Q. And you tested for blood?

18 A. Blood was indicated. D.N.A. was extracted and basically
19 the exact same result: It matched James Bethel.

20 Q. Again, in your opinion, whose blood was that?

21 A. In my opinion, James Bethel would be the source of the
22 D.N.A. in the blood from that item as well.

23 Q. Moving on to item number six which is the swab from the
24 stain in the parking lot, were you able to test for blood?

25 A. Yes.

1 Q. Were you able to---

2 A. Blood---

3 Q. I'm sorry.

4 A. Blood was indicated.

5 Q. And was D.N.A. extracted?

6 A. Yes, D.N.A. was extracted.

7 Q. And whose blood was that?

8 A. That item matched GaWayne Franklin.

9 Q. And based on the calculations you were able to do on the
10 -- your results, what are the chances of that being anyone
11 else's?

12 A. It would be the same wording, but it matched GaWayne
13 Franklin and the frequency of this is 1 in 2.4 quintillion.

14 Q. Is that bigger or smaller than quadrillion?

15 A. That's bigger.

16 Q. Moving on to item number 20 which is a swab from a .40
17 caliber Smith & Wesson fired casing?

18 A. Yes.

19 Q. The .40 caliber casings in this case, did you test for
20 the presence of blood?

21 A. No, I did not.

22 Q. Were you able to extract any D.N.A.?

23 A. No, I was not.

24 Q. And is this unusual when you're talking about shell
25 casings?

1 A. No, not shell casings. We very, very rarely get enough
2 D.N.A. from a shell casing to make a profile.

3 Q. Why is that?

4 A. It's probably because there just wasn't enough deposited
5 on that item. It could be -- it could be what it goes
6 through when it gets fired. You know, the heat of getting
7 fired could be part of it. I don't know the exact answer,
8 but my best answer would be there's probably not enough
9 D.N.A. there.

10 Q. Item number 21, the swab from the Smith & Wesson fired
11 casing?

12 A. The same result. No blood -- no blood was tested for,
13 but there was no D.N.A. extracted.

14 Q. Moving on to item number 22, the swab from the RP 45
15 auto casing.

16 A. The same result. Blood was not tested for and there was
17 no D.N.A. extracted.

18 Q. And then finally item number 23, swab from the CBC fired
19 cartridge casing.

20 A. Again, no blood tested for but no D.N.A. was extracted.

21 Q. So on none of the fired casings or cartridges, as
22 they're referred to, were you able to get any D.N.A.

23 A. That's correct.

24 Q. And, again, is that unusual?

25 A. No.

1 Q. Item number 25 was a swab from marker number one on a
2 door frame. Were you able to -- what were your results
3 there, sir?

4 A. There was no blood indicated there.

5 Q. And did you do any further testing?

6 A. No.

7 Q. Skipping down to items number 56 and 57, did you do any
8 analysis on those two items?

9 A. No, no analysis was performed on those items.

10 Q. Moving on, however, to item number 58 which was a black
11 shirt, tell me how the testing was done on that shirt.

12 A. This shirt -- those sub-items -- basically when we do
13 any clothing, we will sub-item those cuttings and that's what
14 we did with this shirt. We look at the item of evidence and
15 select areas from that item and make small cuttings from it
16 and test those.

17 Q. And in this case, taking them one at a time, will you
18 tell the jury what your results were?

19 A. They all matched James Bethel except for 58.5, and I got
20 no D.N.A. profile there.

21 Q. And is that unusual?

22 A. That is a bit unusual. It's probably a technical issue
23 with that item. So when I get blood positive and get D.N.A.,
24 I would expect to get a D.N.A. profile, but again we could
25 have had a technical issue with that sample.

1 Q. But as far as the other seven, excuse me, through 58.7
2 cuttings from the shirt, every one of them matched James
3 Bethel?

4 A. That's correct.

5 Q. And, again, the chances of it being anyone else are
6 what?

7 A. 1 in 6.5 quadrillion of the African-American population.

8 Q. Moving on to 54.8 which was -- it says -- described as
9 swab column?

10 A. Right. That actually is a scrape. So what we do on a
11 piece of clothing, if there's a question of ownership like
12 who was wearing it, we'll take the collar and we'll scrape it
13 with a scalpel and then we'll swab that and run that to see
14 if we can pick up skin cells from the shirt collar.

15 Q. So in that case did you even do any testing for blood?

16 A. No.

17 Q. However, were you able to extract D.N.A.?

18 A. Yes.

19 Q. And when you ran that, what results did you come up
20 with?

21 A. It was the same as the blood that was on that shirt:
22 That the swab or scrape from that collar matched James
23 Bethel.

24 Q. And moving on to item number 60 which is the black pants
25 from the ditch, were you able to do any testing on those?

1 A. Yes.

2 Q. And how was that testing performed on those pants? Do
3 you recall?

4 A. It would be the same type thing: Lay those clothing
5 items out on a table, look for any stains. If we don't find
6 any stains, then we're going to scrape and swab them for what
7 we call ownership so we can figure out who is wearing them.

8 Q. And are there certain areas that typically skin cells
9 may...

10 A. Yeah. On pants we probably do like the pockets where
11 you put your hands and then the waistbands.

12 Q. Uh-huh. And once you did those scrapings from the black
13 pants, were you able to get a result?

14 A. I did.

15 Q. Were you able to extract D.N.A.?

16 A. Yeah. Item 60 was a mixture. Let me tell you how it
17 reads. So the D.N.A. result developed from item 60 is a
18 mixture. The major profile matches James Bethel, and then it
19 gives the statistic again based on the results, the frequency
20 of seeing this profile in the population -- African-American
21 population is 1 in 333 trillion, and then the minor
22 contributor was too weak for match basis.

23 Q. What does that mean?

24 A. What that means is it was a mixture. That means there
25 was more than one individual found on that area that I

1 swabbed.

2 Q. How does that happen?

3 A. Well, it can happen pretty commonly. Clothing is not --
4 especially outer clothing is not very... I can walk up and
5 touch your clothing or somebody could hold your pants. I
6 mean, it's -- the same way you get touch D.N.A. on a surface,
7 you can get it on your clothing. So you can have other
8 peoples' D.N.A. on your clothing. But what this result is
9 saying is the major contributor, that is the main component
10 of that mixture, matched James Bethel and that the other
11 small amount of D.N.A. that I saw was a very, very small or
12 weak contributor.

13 Q. And the major contributor in this case, Mr. Bethel, what
14 were the odds of it being anyone else again?

15 A. In this case, based on the genetic results, the
16 frequency of seeing that profile is 1 in 333 trillion.

17 Q. 333 trillion?

18 A. Right.

19 Q. And there are seven billion on earth?

20 A. Right.

21 Q. And this is 333 trillion?

22 A. Trillion. Correct.

23 Q. So that's more zeros.

24 A. Right. It's more than a billion. It's different from
25 this number because it's a mixture and we don't have -- we

1 can't use every location for statistical calculation when
2 there's other D.N.A. present there. So based on how we
3 record things, the match is still the same, but the
4 statistical number can vary.

5 Q. But in your expert opinion who is the major contributor
6 of the D.N.A. that you found on those black pants?

7 A. In my opinion, James Bethel is the major contributor on
8 those pants.

9 Q. Moving onto item number 61, the black Nike Air shoes
10 that were found?

11 A. Yes.

12 Q. And, again, those were scraped as well?

13 A. Correct.

14 Q. And I believe you did the shoe separately?

15 A. Yes, left and right shoe. No blood was there and the
16 profile that we got was too weak to get any -- to make any
17 interpretation.

18 Q. And before you can come in and give an opinion, there
19 has to be a certain amount of D.N.A. there for you to give an
20 opinion?

21 A. Correct.

22 Q. And it simply wasn't enough.

23 A. That's true. Correct.

24 Q. And, finally, an Atlanta Braves hat, were both Mr.
25 Bethel and GaWayne Franklin -- were both of those

1 contributors?

2 A. Yeah. Again, that was a mixture, and instead of
3 including the individuals in this case, both of these people
4 were compared to the D.N.A. that I got from the hat and both
5 were found not to contribute to the mixture. They weren't on
6 the hat.

7 Q. And when you're doing your testing, you don't know what
8 relevance really any of these items may have to the case.

9 A. Rarely do I know anything about the items. I may have
10 talked to the investigator about what to run, but I usually
11 just describe them exactly like they're described when
12 they're submitted to evidence. So I usually don't know the
13 probative value. I may know who owns something because I --
14 if, say, this was the victim's shirt and it wasn't probative
15 to find the victim's blood on the victim's shirt, then I may
16 write the report different, but knowing some of that
17 information helps me write the report.

18 Q. Thank you, sir. Have a seat. Thank you. Would it be
19 fair to say, sir, that D.N.A. from both -- can it implicate a
20 person?

21 A. Yes, it can.

22 Q. And can it in some cases exonerate a person?

23 A. Yes, it can.

24 **Ms. Campbell:** Thank you. I don't have any further
25 questions.

1 **The Court:** Any questions for the witness?

2 **Mr. Shaffer:** Yes, Your Honor.

3 Cross-Examination

4 By Mr. Shaffer:

5 Q. All right. In item one, swab from the tree root, if
6 that was a swab of the defendant's blood wouldn't you expect
7 to find his D.N.A. on it?

8 A. I don't know whose blood it is when it's swabbed.

9 Q. Yeah, but if it was his blood, you would expect to find
10 his D.N.A., wouldn't you?

11 A. If it was his blood -- if -- that's kind of interesting.
12 I mean, I'm confused.

13 Q. I apologize. If I -- if I cut my hand right now and it
14 dripped on the floor and they swabbed it, they would be able
15 to find my D.N.A.; right?

16 A. I would expect---

17 Q. Okay.

18 A. I would expect that to be your D.N.A., yes.

19 Q. Similarly, with the victim's blood, if he had been
20 bleeding, that would be his blood; right? You would
21 expect---

22 A. In the same scenario, yes, I would -- if -- if you're
23 bleeding and I run this test on that blood, I would expect to
24 get your D.N.A. off of that blood.

25 Q. And the black pants from the ditch, okay, say I told you

1 those were James Bethel's pants, would you expect to find his
2 D.N.A. on them?

3 A. Those pants belonged to the person that it matched? Is
4 that what you're saying?

5 Q. (Nodded head up and down.)

6 A. I would expect -- I wouldn't be surprised to find the
7 owner's D.N.A. on their pants; correct.

8 Q. All right. The same with his shoes?

9 A. Shoes? Yeah, I would -- any clothing I would -- I would
10 expect -- I wouldn't be surprised to find that owner's D.N.A.
11 on there, but I also wouldn't be surprised to find other
12 D.N.A. as well.

13 Q. In this mixture you said the minor contributor is too
14 weak?

15 A. Correct.

16 Q. So you weren't able to determine who else's D.N.A. it
17 was.

18 A. That's correct.

19 Q. Could have been anyone at the club who touched him;
20 right?

21 A. That's correct.

22 Q. Okay. Based off of this, your analysis, can you tell me
23 what happened in the 45 seconds that the defendant was off
24 camera?

25 A. No, I cannot.

1 **Mr. Shaffer:** Okay. Thank you.

2 **The Court:** Any redirect of the witness?

3 **Ms. Campbell:** No, ma'am.

4 **The Court:** Any objection to the witness being excused?

5 From the State?

6 **Ms. Campbell:** None.

7 **The Court:** From the defense?

8 **Mr. Shaffer:** None, Your Honor.

9 **The Court:** Sir, you're excused. State, you may
10 proceed.

11 **Ms. Campbell:** The State would call Terry Gleason.

12 **The Court:** I'm sorry. I can't hear you.

13 **Ms. Campbell:** Terry Gleason. I apologize, Your Honor.

14 Terry Gleason, after being duly sworn, testified as
15 follows:

16 **The Clerk:** Have a seat in the witness stand, please.

17 State your name for the record.

18 **The Witness:** Terry Gleason.

19 **The Court:** Please spell your last name for the court
20 reporter.

21 **The Witness:** Sure. G-L-E-A-S-O-N.

22 **The Court:** You may proceed.

23 Direct Examination

24 By Ms. Campbell:

25 Q. Ma'am, where are you employed?

1 A. I work with the Richland County Sheriff's Department in
2 their forensics laboratory.

3 Q. What do you do there?

4 A. I'm a firearms and tool mark examiner.

5 Q. And as a firearms and tool mark examiner, what do your
6 duties include?

7 A. I examine firearms and ammunition components as well as
8 other tools and their markings for forensic evidence and
9 report those findings to the court.

10 Q. Can you tell this jury a little bit about your education
11 and your training?

12 A. I have a Bachelor of Arts in both Criminal Justice and
13 Psychology from the University of Georgia and a Master of
14 Science in Forensic Science from the University of New Haven.
15 In July of 1999 I joined the Georgia Bureau of Investigation
16 State Crime Lab in Atlanta, Georgia. At that time I
17 underwent an extensive two-year training program dealing
18 specifically with firearms and tool mark examination.

19 During those two years, in addition to receiving
20 certification from the state as an examiner, I also received
21 certification from the Federal Bureau of Investigation in
22 muzzle-to-target distance determination and from the Bureau
23 of Alcohol, Tobacco, and Firearms and serial number
24 restoration.

25 To date, I've logged over 3500 hours on the comparison

1 microscope. I've examined over 3,000 weapons and
2 approximately 950 actual firearm and tool mark cases. I'm
3 also a member of our professional organization which is the
4 Association of Firearm and Tool Mark Examiners.

5 Q. And have you been qualified before as an expert in
6 firearm and tool mark examination?

7 A. Yes, I have.

8 Q. And approximately how many times have you been qualified
9 in that?

10 A. Approximately 50 times here in the State of South
11 Carolina as well as the states of Georgia and Texas.

12 **Ms. Campbell:** Your Honor, at this time I'd offer her as
13 an expert in firearm and tool mark examination.

14 **The Court:** Any questions or objections?

15 **Mr. Shaffer:** No, Your Honor.

16 **The Court:** So admitted without objection. You may
17 proceed.

18 By Ms. Campbell:

19 Q. How do you go about -- or what kind of things can you --
20 we're going to specifically talk about firearms today.

21 A. Okay.

22 Q. Can you determine when certain pieces of evidence are
23 submitted to you, say, being a gun, a shell casing or a
24 projectile?

25 A. Okay. A lot of what we look at goes back to the

1 manufacturing process. So when a firearm is manufactured,
2 it's designed to have a set number of grooves that are either
3 cut or formed into the barrel. These grooves will have
4 either a right or a left-hand twist and they're known
5 collectively as rifling. Rifling is imparted to a barrel in
6 order that a bullet has spin. It's much like with a fulcrum
7 in football; you want a tight spiral. The manufacturers are
8 looking for the same type of action with the bullet.

9 So rifling is just one of many manufacturing processes
10 that the firearm goes through, and each of these processes
11 leaves behind microscopic imperfections in the form of nicks,
12 spurs and cuts, and that kind of creates a unique signature
13 much like a fingerprint for that firearm. So when the bullet
14 is fired down the barrel, it's imparted not only with the
15 rifling characteristics I was telling you about but also with
16 those imperfections.

17 And so when we get fired evidence, we're looking to see
18 where those imperfections are and if they're reproducing, and
19 once we determine that they're reproducing, we can take a
20 known -- if we have a firearm that's been submitted, we'll
21 test-fire it. We use water to test into so that we don't
22 impart any additional characteristics, and we can learn what
23 that particular firearm should look like.

24 Then we can take evidence - bullets or cartridge cases
25 from a scene - and compare them to our known from the firearm

1 and determine if those imperfections are present and
2 reproducing and, therefore, be able to tell you if that's the
3 firearm that was used.

4 Q. And I want to talk a little bit, before we start talking
5 about the actual tests in this case, about firearms
6 themselves, specifically handguns. Are there two different
7 types typically of a handgun?

8 A. There are. There are two types of handguns that we see
9 traditionally in the laboratory. One is a semiautomatic
10 firearm and one is a revolver. Both are designed to be fired
11 from the hand. The revolver gets its name from a revolving
12 cylinder at the rear of the firearm. It contains multiple
13 chambers in which the unfired cartridge is housed. When you
14 pull the trigger, that cylinder rotates, aligning one of the
15 cartridges with the barrel of the firearm, and as the trigger
16 is pulled, that cartridge is then fired.

17 What's unique about the revolver is that in order to --
18 it only holds a set number of unfired ammunition, and in
19 order to reload it, you would actually have to manually
20 extract the unfired cartridges or the fired cartridges and
21 load new ones. So you don't traditionally see cartridge
22 cases left at the scene.

23 With a semiautomatic firearm, the chamber - and there's
24 only one this time instead of multiple - is actually part of
25 the barrel. And as part of the firing sequence, the energy

1 that pushes the bullet down the barrel and the cartridge case
2 back also allows the slide to move rearward, and as the slide
3 moves rearward, the cartridge case is ejected upon firing.

4 So at crime scenes with a semiautomatic firearm, you would
5 expect to see cartridge cases.

6 Q. And with the revolver you were talking about, the
7 cartridge case itself is the part left after the bullet goes
8 through the gun?

9 A. Yes.

10 Q. And typically is that the type of gun like you see on
11 those old westerns with the cowboys that they spin around?

12 A. Yes.

13 Q. I'm being simplistic for me. And with a semiautomatic
14 handgun, however, typically the cartridge case may be
15 expelled as it's being shot?

16 A. That's correct.

17 Q. And can you tell when the -- if you don't have the gun,
18 can you tell exactly in which direction or how far the shell
19 casing may be expelled?

20 A. Not generally.

21 Q. As far as finding projectiles at a scene, that's the
22 part that comes out the end of the bullet?

23 A. Yes.

24 Q. That's intended to cause harm or upon impact?

25 A. Yes.

1 Q. Are you typically able to find many projectiles at a
2 crime scene that are recovered if there are multiple shots?

3 A. It would depend on the type of crime scene in question.
4 In an outdoor scene obviously there's going to be less
5 containment, so the projectile could go anywhere. If it's
6 stopped by a tree or a house and there's obvious damage, it
7 may give the investigators a place to go look and find them
8 or an inside scene might be easier to find it. But other
9 times if there's -- if there's nothing to stop the
10 projectile, it could go a mile or two without -- without
11 stopping somewhere, so it would be hard to find.

12 Q. And even in a case involving a semiautomatic handgun
13 where there are multiple guns shot - it's multiple shots -
14 depending on the area, are we necessarily going to be able to
15 recover every shell casing, just depending on how many people
16 are there and things of that nature? Explain that.

17 A. No. The cartridge cases, when they're ejected, tend to
18 find -- tend to follow a pattern depending on the firearm
19 itself, and if it were requested, we could take a firearm and
20 actually do what we call an ejection pattern testing and tell
21 you generally where we would expect the cartridge cases to
22 go. However, there's so much movement during the crime as
23 it's happening as well as emergency personnel responding that
24 frequently those cartridge cases can get kicked, moved
25 around, picked up in the sole of a shoe. So that pattern may

1 change just as a result of actions after the event.

2 Q. And even in areas where, say, there are a number of
3 people around or objects around, the shell casing may expel
4 in such a way that it never even hits the ground.

5 A. That's true.

6 Q. We also hear in certain cases about different caliber of
7 weapons. Can you explain that to the jury?

8 A. Caliber is very simply the diameter of the bullets that
9 that firearm is designed to fire. And so we have a class of
10 calibers. The .38 family class, there are multiple unique
11 calibers within each of those. So within the .38 caliber you
12 may have a .380, a nine millimeter, a .38 Special. Those are
13 all specific to a type of firearm that's chambered with
14 slight differences, but they all fall into a general diameter
15 caliber class and that's kind of the caliber grouping that
16 we're looking at.

17 Q. And when you recover shell casings and/or projectiles at
18 a scene, is the caliber -- can that indicate something or
19 help distinguish it from other shell casings at the scene?

20 A. Yes. Caliber is one of what we call class or grouping
21 characteristics. It lets us narrow down the type of firearm
22 for which we might be looking.

23 Q. And say if I have, say, a .45 caliber gun, can .22
24 caliber ammunition be used in that gun or can those be
25 interchanged?

1 A. Not with that specific example. A .22 would be too
2 small to ever fire... There are types of ammunition calibers
3 that can be interchanged, so it just depends more
4 specifically on the calibers in question.

5 Q. But typically when talking, you want .22 caliber
6 ammunition to go in a .22 caliber gun?

7 A. Yes. The firearm is designed for a specific caliber.

8 Q. In this case I want to talk about what was submitted for
9 your evaluation, and first I want to hand you what's been
10 marked as State's Exhibit Number 76. I ask you to look at
11 that.

12 A. (The witness complies.) I recognize and identify
13 State's Exhibit 76 as a Bersa model Firestorm .380 auto-
14 caliber pistol, serial number 788976, along with the
15 associated magazine which is what holds the cartridges, and
16 one unfired cartridge.

17 Q. And the next item I want you to look at is State's
18 Exhibit Number 75, and just don't show it to the jury yet
19 because I've got to enter it into evidence.

20 A. (Witness looks at the item.)

21 **Ms. Campbell:** Your Honor, may we approach?

22 **The Court:** (Nodded head up and down.)

23 (Whereupon, a bench conference was held.)

24 By Ms. Campbell:

25 Q. Do you recognize that?

1 A. I do. I recognize and identify State's Exhibit 75.

2 Would you like for me to describe or do you want to...

3 Q. No, let me get it entered into first... Your Honor, at
4 this time I believe with -- defense counsel does not object?

5 **The Court:** 75 and 76 are marked and admitted without
6 objection.

7 **Ms. Campbell:** Thank you.

8 **The Court:** You're welcome.

9 (State's Exhibits 75 and 76 were received in evidence.)

10 By Ms. Campbell:

11 Q. What is that, ma'am?

12 A. State's Exhibit 75 is a Glock semiautomatic pistol.
13 This one is a little unique in description in that the frame
14 in which it's designed is a .357 safe caliber with a serial
15 number of CSC-593-US. Glock offers an interchangeable barrel
16 option, so it actually has a .45 caliber barrel that is
17 assembled inside of it, and that item has a serial number
18 L-27561.

19 Q. And there was also various shell casings and one
20 projectile that were submitted in this case. I show you
21 State's Exhibit 55, 66, 67, and 51 and ask you to look at
22 those.

23 A. Do you have scissors?

24 Q. Yes, ma'am. Sorry.

25 A. (The witness looks at the item.) I recognize and

1 identify State's Exhibit 67 as one fired .380 auto-caliber
2 cartridge case.

3 Q. I'll just keep them separated by ammunition. This is a
4 .380?

5 A. Yes.

6 Q. Thank you.

7 A. (The witness looks at an item.) State's Exhibit 66
8 actually has two items. It has one fired .380 auto-caliber
9 cartridge case and one fired .45 auto-caliber cartridge case.

10 Q. Okay.

11 A. (The witness looks at an item.) State's Exhibit 51 is
12 10 fired .40 Smith & Wesson caliber cartridge cases, and
13 State's Exhibit 55 is a .380 auto-caliber metal-jacketed
14 bullet.

15 Q. Bullet?

16 A. Yes.

17 Q. And that's different from the shell casings that we've
18 been referring to?

19 A. Yes, it is.

20 Q. And specifically taking the .40 caliber ammunition that
21 you found first, I believe you said there were 10 shell
22 casings---

23 A. Yes---

24 Q. ---that were submitted?

25 A. That's correct.

1 Q. Were you able to make any comparisons to any of the guns
2 that were submitted in this case?

3 A. Yes. I compared all 10 of the .40 fired cartridge cases
4 to one another and also to test-fires from the .40 -- well,
5 the .357 safe pistol that had the .40 barrel inside of it and
6 I was able to identify those cartridge cases as having been
7 fired from that gun.

8 Q. And which gun is that, ma'am---

9 A. That is---

10 Q. ---of the two I handed you?

11 A. ---State's Exhibit 75.

12 Q. And the name up here that's indicated is what name?

13 A. Hope.

14 Q. Kedron?

15 A. Kedron Lee Hope.

16 Q. So State's Exhibit 75, the ones that were found in
17 State's Exhibit 51, those were definitely fired by that gun.

18 A. Yes, they were.

19 Q. And, again, do you go to the scene and collect any of
20 the evidence yourself?

21 A. No, I did not in this case.

22 Q. As far as the second gun that was submitted in this
23 case, were you able to match any of -- if it matches that
24 gun, it excludes any other; is that correct?

25 A. That's correct.

1 Q. Sorry. Were you able to match it to anyone?

2 A. No. The .380 semiautomatic gun that we had submitted
3 did not match any of the evidence on this case.

4 Q. So the .380 from the car did not match any.

5 A. That's correct.

6 Q. Finally, as far as what you were able to determine from
7 the remaining -- the one projectile or bullet that was
8 recovered from autopsy as well as the remaining evidence,
9 what, if anything, are you able to say about this?

10 A. Well, let's start with the .45 fired cartridge case. It
11 was not associated with any of the other items of evidence on
12 this case. Then we did have two .380 fired cartridge cases.

13 Q. Uh-huh.

14 **Mr. Shaffer:** Your Honor, can we approach?

15 **The Court:** Yes.

16 (Whereupon, a bench conference was held.)

17 **The Court:** You may proceed.

18 **Ms. Campbell:** Thank you, Your Honor.

19 **The Court:** You're welcome.

20 By Ms. Campbell:

21 Q. I'm sorry; I interrupted you. As far as the projectile
22 that was recovered from the autopsy, what were you able to
23 determine about it?

24 A. From the projectile or the bullet, the fired bullet from
25 autopsy, we were able to determine that it was a .380 auto-

1 caliber bullet, and based on class characteristics that are
2 present on that bullet we are able to provide a list of
3 firearms from which it may have been fired.

4 Q. And what type of firearm could have fired this
5 projectile?

6 A. A .380 auto-caliber firearm.

7 Q. And was any of the remaining ammunition that we're
8 talking about from .380's?

9 A. Yes. Two of the cartridge cases that were fired were
10 also .380 auto-caliber.

11 Q. So there was a .45 that was provided to you that was
12 eliminated as being at -- with anything else. On the two
13 fired .380's as well as the projectile, what, if any,
14 determinations were you able to make about those?

15 A. The two fired .380 caliber cartridge cases were fired
16 from one firearm, and the bullet is also -- we were able to
17 determine that it was fired from a .380 auto-caliber firearm.

18 Q. So the two shell casings you could definitely say were
19 fired by the same gun?

20 A. Yes.

21 Q. But that gun was never provided to you.

22 A. That's correct.

23 Q. For you to do any further matching. In a murder case is
24 it unusual for the police not to get the murder weapon?

25 A. No. We often do not have the firearm in question

1 provided to us---

2 Q. Why is that?

3 **Mr. Shaffer:** Objection. Speculative.

4 **The Court:** Approach, please.

5 (Whereupon, a bench conference was held.)

6 **The Court:** Rephrase the question.

7 **Ms. Campbell:** Thank you, Your Honor. In your
8 experience, when there's not the murder weapon recovered, why
9 is that?

10 **Mr. Shaffer:** Objection, Your Honor. Same objection.

11 **The Court:** You need to rephrase the question.

12 By Ms. Campbell:

13 Q. In your experience is it unusual not to recover the
14 murder weapon?

15 A. No, it's not.

16 Q. And were you able to do any further -- the projectile
17 that was recovered from autopsy, is it the same caliber as
18 the two .380's?

19 A. Yes, it is.

20 Q. And are you able to do any further comparison as far as
21 that goes with that?

22 A. No, we do not look at whether a bullet was contained
23 within a cartridge case. That's an examination. That's very
24 difficult to do. It's only done upon request and it's very
25 unsuccessful because during the firing process, any marks

1 that would have been left where the bullet was seated in the
2 cartridge case become obliterated by marks from firing in the
3 firearm. So we aren't able to look at a bullet and say that
4 it came from a particular cartridge case.

5 Q. Typically when a bullet is fired out the end of a gun,
6 can you say exactly how far it will go before it stops?

7 A. No.

8 Q. And, in fact, if nothing impedes its way, will it just
9 continue until it literally runs out of energy?

10 A. It runs out of energy, yes.

11 **Ms. Campbell:** Beg the Court's indulgence.

12 **The Court:** Uh-huh.

13 **Ms. Campbell:** Thank you, ma'am. That's all I have.

14 **The Court:** Any questions for the witness?

15 **Mr. Shaffer:** Yes, Your Honor.

16 Cross-Examination

17 By Mr. Shaffer:

18 Q. Good afternoon.

19 A. Good afternoon.

20 Q. Let's go back a little bit through your experience.

21 A. Okay.

22 Q. How long have you been doing this?

23 A. Almost 15 years.

24 Q. Okay. And I imagine in that time period you've had a
25 great deal of exposure to firearms; right?

1 A. Yes, I have.

2 Q. Okay. Do you know of any revolver that uses a .380 auto
3 cartridge?

4 A. I have not encountered any in casework. It's
5 traditionally a caliber designed to be fired from a
6 semiautomatic, but I would not say that there's not revolver.
7 Sometimes they -- manufacturers will come up with a unique
8 way of putting a semiautomatic caliber into a revolver.

9 Q. Okay. Most .380 auto cartridges, do they make a lot of
10 -- well, tell us this: What's the difference between a full
11 frame and a small-frame gun?

12 A. Frame size again is very dependent on the manufacturer
13 of the gun in question. A full frame is generally going to
14 be a larger frame. It will have a larger barrel, may have a
15 larger receiver or the back end where the working mechanism
16 is. Small-frame is like the name says. It will be put onto
17 a smaller frame, a smaller body in which the barrel is
18 housed.

19 Q. Were either of the pistols that you examined here --
20 were either of them a full frame?

21 A. A full frame?

22 Q. Yeah.

23 A. The Glock would have been a full frame.

24 Q. Okay. But the other one would probably not be
25 considered a full-frame weapon.

1 A. I would actually have to look. The Bersa does not
2 generally come in like a -- they're not designated in a long
3 or short.

4 Q. Okay. You came up with a list of possible firearms;
5 right?

6 A. Yes.

7 Q. How long is that list?

8 A. It is two pages.

9 Q. Okay. And on that list is there a Ruger LCP?

10 A. Yes, there is.

11 Q. Thank you. And can you describe a Ruger LCP to us?

12 A. Ruger LCP is a smaller-framed Ruger manufactured pistol.
13 Frequently it's used for concealment. It is a semiautomatic
14 pistol.

15 Q. Okay. So that means that when you pull the trigger one
16 time, it shoots one time.

17 A. Yes.

18 Q. And reloads itself.

19 A. That's what semiautomatic refers to, yes.

20 Q. Have you ever tested a Ruger LCP?

21 A. Yes, I have.

22 Q. Are you familiar with the weapon?

23 A. Relatively. I mean, I would have to -- it depends what
24 level of familiarity you would like with it.

25 Q. Are you familiar with how many rounds it holds?

1 A. No, not offhand. I'd have to actually look at the
2 magazine.

3 Q. Okay. Okay. Would you say 15 would be high?

4 A. Yes. For that -- for that frame of a firearm, yes.

5 Q. Would you say six would be reasonable?

6 A. Six is about -- if I had to take a guesstimate of what
7 that magazine would hold, it would be five or six.

8 Q. And by that, the magazine is the number of bullets it
9 can fire outside of the one possibly in the chamber but the
10 number of bullets it could fire before being emptied; right?

11 A. The magazine -- where we were talking about with the
12 revolver, the unfired cartridges are housed in a cylinder.
13 On a semiautomatic the unfired cartridges are held in a
14 magazine.

15 Q. Okay. And if a Ruger LCP is -- if it's fired -- and
16 could you explain the process of reloading itself?

17 A. Of the semiautomatic---

18 Q. Yeah.

19 A. ---firing process?

20 Q. Sure.

21 A. When a semiautomatic firearm is fired, you pull the
22 trigger. The firing pin is released and it strikes the
23 primer of the cartridge. The primer on the cartridge holds a
24 very explosive mixture that creates a spark when it's hit.
25 That spark travels up into the gun powder that's sitting in

1 the cartridge itself. That gun powder then burns and goes
2 very rapidly from a solid into a gas. That gas takes --
3 needs a much greater space to occupy than the solid gun
4 powder that -- before it was burning. So it creates a very
5 large amount of pressure, and that pressure is what pushes
6 the bullet out and down the barrel and the cartridge case
7 back against what we call the breech face of the firearm
8 which is just a supporting metal plate.

9 Well, that same pressure that's -- that's pushing the
10 bullet out of the cartridge case back also allows the slide
11 or the top mechanism that covers the barrel to push to the
12 rear, and during that process the fired cartridge case -- now
13 that the bullet has left it, there's a fired cartridge case
14 in the chamber. It's pulled rearward or extracted and then
15 it's ejected. Then the slide comes back forward, and if
16 there is an unfired cartridge in the magazine, it will strip
17 another unfired cartridge and place it into the chamber,
18 making it ready to be fired again by pulling the trigger.

19 Q. Okay. And the shell casing goes out of the gun.

20 A. Yes. If the firearm is functioning correctly, the shell
21 casing will be ejected out.

22 Q. And have you ever fired a weapon yourself?

23 A. Yes.

24 Q. Okay. Have you ever been to a gun range?

25 A. Yes, I have.

1 Q. Have you ever been to a dimly-lit gun range?

2 A. Yes.

3 Q. A lot of gun ranges are dimly-lit; right?

4 A. I'm sorry?

5 Q. A lot of them are not lit very bright; correct?

6 A. I guess that would be relative. That's not something

7 I---

8 Q. Okay. But you have been to a dimly-lit gun range.

9 A. Yes.

10 Q. Whenever you fire a weapon in a dark area, it generally
11 makes a flash; correct?

12 A. Yes. The burning that we talked about with the powder,
13 the gun powder, once it starts burning it's essentially a
14 fire, a contained fire, and that creates a muzzle flash as
15 well as some gaseous material.

16 **Mr. Shaffer:** Thank you very much. I have no further
17 questions.

18 **The Court:** Any redirect for the witness?

19 **Ms. Campbell:** Beg the Court's indulgence.

20 **The Court:** Uh-huh.

21 Redirect Examination

22 By Ms. Campbell:

23 Q. Did you ever get a Ruger LCP in this case?

24 A. No, I did not.

25 Q. So it was never recovered.

1 A. No.

2 **Ms. Campbell:** Thank you. I don't have anything
3 further.

4 **The Court:** Any objection to the witness being excused?
5 From the State?

6 **Ms. Campbell:** None.

7 **The Court:** From the defense?

8 **Mr. Shaffer:** None, Your Honor.

9 **The Court:** Ma'am, you're excused. Madam Forelady,
10 ladies and gentlemen, we're going to take advantage of this
11 break to give you a brief rest room break. During the break,
12 please do not discuss the case, and please leave your
13 notepads in your seats. If you would go with the bailiffs,
14 please.

15 (Whereupon, the jury was excused from open court at
16 3:57 p.m.)

17 **The Court:** We'll be at ease for about five minutes
18 until the jury is through using the rest room.

19 (Whereupon, a short break was taken.)

20 **The Court:** All right. We're ready to proceed with the
21 jury. Please have your next witness ready.

22 **Ms. Campbell:** She's ready.

23 **The Court:** She's in the courtroom? Okay.

24 (Whereupon, the jury was brought into open court.)

25 **The Court:** Ladies and gentlemen, we'll now resume

1 testimony. You may proceed.

2 **Ms. Campbell:** May it please the Court?

3 **The Court:** Yes, ma'am.

4 **Ms. Campbell:** The State would call Dr. Amy Durso.

5 Dr. Amy Durso, after being duly sworn, testified as
6 follows:

7 **The Clerk:** Have a seat in the witness box. State your
8 name for the record and spell it, please.

9 **The Witness:** My name is Dr. Amy Durso, D-U-R-S-O.

10 Direct Examination

11 By Ms. Campbell:

12 Q. Dr. Durso, where are you employed?

13 A. I'm a forensic pathologist employed by Professional
14 Pathology Services.

15 Q. And as a forensic pathologist, what do your duties
16 include?

17 A. I mainly perform autopsies which are examinations on
18 deceased people to determine how they died and to document
19 any injuries or illnesses.

20 Q. Can you tell this jury a little bit about your education
21 and your training in that field?

22 A. Sure. I obtained a Bachelor's degree in Psychology from
23 Emory University. I then went to the University of North
24 Carolina in Chapel Hill where I got my M.D., and after that I
25 spent four years at Wake Forest University doing training

1 specific for pathology, and after that I did a one-year
2 fellowship again at Wake Forest University specifically for
3 forensic pathology.

4 Q. What's the difference between forensic pathology and
5 just general pathology?

6 A. Well, general pathologists kind of do everything which
7 includes autopsies but also looking at things under the
8 microscope. Like if you have a biopsy from your skin, a
9 pathologist would look at that. A forensic pathologist deals
10 really only with deceased people, and basically what we do
11 are autopsies which is an examination of the outside and the
12 inside of the body to determine how someone died.

13 Q. And I believe you had specialized training in that
14 field?

15 A. I did.

16 Q. And are you board certified in that field?

17 A. Yes.

18 Q. And in order to get a board certification as a forensic
19 pathologist, is there additional testing and study that you
20 have to do?

21 A. Yes. Again, after my general pathology training, I did
22 an additional year just for forensics, and I sat for another
23 board examination specifically for the field of forensic
24 pathology.

25 Q. Have you been qualified before as an expert in forensic

1 pathology?

2 A. I have.

3 **Ms. Campbell:** Your Honor, at this time we'd offer her
4 as an expert in forensic pathology.

5 **The Court:** Any objections or questions?

6 **Mr. Shaffer:** No, Your Honor.

7 **The Court:** So admitted without objection.

8 By Ms. Campbell:

9 Q. I'm going to turn your attention to this case, Doctor.
10 Did you perform an autopsy in this case?

11 A. I did.

12 Q. When was that actually performed?

13 A. I performed an autopsy on GaWayne Franklin on August 19,
14 2012.

15 Q. August 19th?

16 A. Yes.

17 Q. And where did the autopsy actually take place?

18 A. In the morgue at Palmetto Health Richland Hospital.

19 Q. And in doing an autopsy as you did in this case,
20 generally tell the jury how you start an autopsy and how it
21 was done in this case.

22 A. We make sure we have the right person. I look at the
23 name on the outside of the body bag. Then we start with the
24 external examination. So basically we look on the outside of
25 the body, the front and the back, and we document anything

1 from hair color to the body length, the weight, and also
2 noting any identifying marks, tattoos, scars, and any
3 injuries as well, any evidence of medical intervention, if
4 someone was resuscitated, that sort of thing.

5 Q. Mr. Franklin, what was his height and weight?

6 A. He was 74 inches tall and weighed 308 pounds.

7 Q. And once you had done your external examination, did you
8 notice any obvious injuries to him?

9 A. Yes. He had a gunshot wound to the back of his head.

10 Q. Once you have made your external observations, do you
11 then go ahead and start performing the actual autopsy itself?

12 A. Yes.

13 Q. And, if necessary, are there also people there
14 photographing things if it becomes an issue later?

15 A. Yes. Usually, especially in homicide cases, not only is
16 there a representative from the coroner's office to take
17 pictures, but usually someone from the investigative agency
18 -- the sheriff's department or the police department usually
19 comes and takes pictures as well.

20 Q. Tell the jury how you went about doing this autopsy and
21 what your findings were.

22 A. So the actual autopsy involves making a large Y-shaped
23 incision. So we go from the shoulders to the sternum and
24 make another cut all the way down. We peel back the skin and
25 remove the front part of ribcage, and then we look at all the

1 organs in the body and then we remove them one by one, weigh
2 them, examine them, and just note any abnormalities, whether
3 it's an illness or an injury. And also we have to examine
4 the brain, so we peel back the scalp and we use a saw to
5 remove the top portion of the skull and then examine the
6 brain and remove the brain and weigh that and carefully
7 examine it.

8 And so in this individual we noticed a gunshot wound to
9 the back of the head. So I know it's hard to tell, but it
10 kind of went in the back of his head and we found -- we went
11 through his brain and we found the bullet or the projectile
12 just underneath the skull up on the side of the head, so...

13 Q. I'm going to back up just a little bit. You said what
14 first you do is you examine the internal organs in the body
15 itself?

16 A. Yes.

17 Q. And you look for any possible contributing cause---

18 A. Yes.

19 Q. ---or the cause of his death. And in this case when you
20 did your internal examination of Mr. Franklin, what were the
21 results of the internal examination of his body?

22 A. We didn't find anything that would have contributed to
23 his death as far as the major internal organs including the
24 heart, the lungs, the liver. There was nothing abnormal.

25 Q. And then you, I believe, indicated that you would have

1 done the examination of his head.

2 A. Yes.

3 Q. Including the removing of his skull to look at his
4 brain?

5 A. Yes.

6 Q. In determining -- as part of your duties as a forensic
7 pathologist, you also try to determine generally the
8 trajectory that the bullet actually takes in any case where a
9 bullet is---

10 A. Yes.

11 Q. And in this case were you able to determine whether
12 there was an entrance wound and/or an exit wound?

13 A. There was only an entrance wound in this case. There
14 was no exit wound.

15 Q. Is that unusual?

16 A. No, not at all.

17 Q. And you also mentioned that you were able to determine
18 the trajectory that the actual bullet took?

19 A. Right.

20 **Ms. Campbell:** And, Your Honor, may she step down?

21 **The Court:** Uh-huh. I just need her to speak toward the
22 court reporter as much as possible.

23 By Ms. Campbell:

24 Q. You can come over on this side so the court reporter has
25 a better chance... If you can show just on Ms. Walker

1 basically where the bullet would have entered and where the
2 projectile, which is the actual bullet in the brain, was
3 recovered.

4 A. So the bullet went in the back of the head in this area
5 over here, and then the projectile was found. Again, it did
6 not exit, so it was underneath the skull, underneath the bone
7 here up in this area. So it was going kind of upwards and
8 from left to right and back to front as well, so...

9 Q. Back to front as well?

10 A. Yes.

11 Q. So it would have been from the rear of the---

12 A. Right. So it's kind of going towards the front as well
13 as left to right and upwards.

14 Q. Okay. Thank you. You can step back up. Once you
15 determined the trajectory that the bullet took, what type of
16 injuries did this gunshot wound to the head cause?

17 A. So it caused -- so it obliterates the part of the brain
18 that it goes through. So it went through what's called the
19 cerebellum and part of the -- the main part of the brain. So
20 he would have immediately lost consciousness and that would
21 have caused death.

22 Q. Was there any way he could have survived this injury?

23 A. No.

24 Q. And you mentioned that he would have immediately lost
25 consciousness?

1 A. Yes.

2 Q. How would you characterize this bullet wound to the
3 head? There's no way to survive it? I'm sorry.

4 A. Right. Right. Fatal.

5 Q. As part of your duties also, do you also try to look to
6 see if there's the presence of any soot or stippling which
7 may indicate how far away the gun was when it was fired?

8 A. Yes, we always do that.

9 Q. What were your findings in this case, ma'am?

10 A. We didn't find any soot or stippling which are ways to
11 know how far away the gun -- the tip of the gun barrel was
12 from the person being shot at the time it was fired. So, you
13 know, soot is typically within a few inches of the gun, and
14 stippling is kind of when the gun powder comes out and it
15 kind of abrades the skin, kind of scrapes the skin. In this
16 case I did not list either of those, but I also noted that he
17 had very thick dreads in his hair, very thick hair. So even
18 if it was present, there is a good chance I might not have
19 found it.

20 Q. So were you able to determine any type of distance as to
21 whether or not this was a contact wound or a distance wound?

22 A. Well, it's not a contact wound. Contact wounds to the
23 head are very distinct in that the way the gun works with all
24 the gasses that come out. The head is such a tight and
25 closed space that when guns are pressed tightly against the

1 head, it usually causes a very large, irregular entrance
2 wound, and this was a small circle for the entrance wound.
3 So it's not a contact wound, but I can't tell you other than
4 that, if it was inches or feet, how far away the gun was.

5 Q. But would it be consistent with being anywhere from
6 inches to feet away from his head when the gun was fired?

7 A. Yes.

8 Q. And I believe in your report you talk about that this
9 was a terminal natural aspiration of blood. What does that
10 mean?

11 A. It means that, you know, after he lost consciousness he
12 took at least a few breaths because there was some blood down
13 into his lungs.

14 Q. Other than the gunshot wound, was there any other
15 contributing cause for this man's death?

16 A. No.

17 Q. And would this have been classified as a homicide?

18 A. Yes.

19 Q. Finally, as to your cause of death that you listed in
20 your autopsy report, what was that cause of death?

21 A. Gunshot wound to the head.

22 Q. You also get certain blood and/or tissue samples that
23 can be tested for toxicology?

24 A. Yes.

25 Q. And do you test for the presence of drugs?

1 A. Yeah. We send it -- I think it's typically sent to
2 S.L.E.D. and they test for the presence... They do a routine
3 drug screen and test for alcohol and drugs.

4 Q. And as far as alcohol is involved in this case, what was
5 his alcohol level?

6 A. His alcohol level was .071.

7 Q. So less than .08.

8 A. Yes.

9 Q. And, finally, was the drug screen positive or negative?

10 A. It was negative.

11 Q. Finally, I want to show you some photographs from the
12 autopsy.

13 **Mr. Shaffer:** Your Honor, may we approach?

14 **The Court:** Uh-huh.

15 (Whereupon, a bench conference was held.)

16 **Ms. Campbell:** I'm going to show you these.

17 **The Court:** Well, it's already come in, but don't
18 publish them.

19 **Ms. Campbell:** Yes, ma'am.

20 By Ms. Campbell:

21 Q. State's Exhibit Number 22, does that show just generally
22 the bullet wound?

23 A. Yes.

24 Q. And then State's Exhibit Number 23 and 24, is that the
25 projectile that was recovered in this case?

1 A. Yes.

2 Q. And then once you recover the projectile, do you turn
3 that over to law enforcement?

4 A. I do.

5 Q. So they would do any further testing on it.

6 A. Yes.

7 **Ms. Campbell:** Beg the Court's indulgence. Thank you.

8 No further questions.

9 **The Court:** Any questions for the witness?

10 **Mr. Shaffer:** Yes.

11 **The Court:** You may proceed.

12 **Mr. Shaffer:** Thank you, Your Honor.

13 **The Court:** You're welcome.

14 Cross-Examination

15 By Mr. Shaffer:

16 Q. You have mentioned stippling and soot.

17 A. Yes.

18 Q. And those are ways that in some cases you can tell how
19 far away the gun was whenever it was fired.

20 A. Right.

21 Q. Okay.

22 **The Court:** I need you to speak up for me, please.

23 **Mr. Shaffer:** I apologize, Your Honor.

24 By Mr. Shaffer:

25 Q. And you said that he had very thick hair.

1 A. Yes.

2 Q. Does hair always stop -- well, tell us about the
3 processing of soot and stippling.

4 A. So stippling is the gun powder actually scraping the
5 skin. So it's the actual scraping of the skin, so you kind
6 of see little tiny dots from red scrapes in the area around
7 the entrance wound. And soot is when -- you know, the actual
8 soot from the flame there. It actually comes out of the end
9 of the gun and deposits around the entrance wound. So
10 sometimes, you know, even if a gun is up close, if there's --
11 if there's something else that goes through really thick
12 clothing or extremely thick hair, you might not see it, and
13 so that's why I had to write that this was an indeterminate
14 range. So if I don't see it, it doesn't mean that it wasn't
15 that close; it just means that I can't tell.

16 Q. Okay. And you would write that any time it was in hair
17 and you didn't see stippling and soot?

18 A. Yes.

19 Q. Okay. Because hair always or just sometimes blocks?

20 A. Sometimes.

21 Q. Okay. So in a clean wound, for example, soot would
22 be -- how far away would soot be visible, generally?

23 A. Within a few inches---

24 Q. Okay.

25 A. So very close.

1 Q. When you mean---

2 A. Usually within an inch or two.

3 Q. An inch or two?

4 A. Yes.

5 Q. Okay. And stippling could be what? A foot? Three
6 feet?

7 A. Usually within one to three feet. It just depends on
8 the caliber of weapon.

9 Q. But in this, once again, you couldn't determine that---

10 A. I could not determine, no.

11 Q. But that doesn't mean that you know that it was close;
12 right?

13 A. I do not know.

14 Q. Okay. And what do you mean by contact wound?

15 A. A contact means the gun -- that the barrel of the gun,
16 the end of it, would be pressed up against the skin, and so
17 the only way for the gasses to come out would be to go into
18 the wound. So, again, that's the only thing I can say is
19 that it's not, you know, a hard contact wound with the end
20 pressed up against his head.

21 Q. Okay. So outside of that it could be, you know, five,
22 ten feet?

23 A. I cannot tell you.

24 Q. Three feet?

25 A. Could be.

1 Q. That's fair enough. And you said that the angle went in
2 low and was high. It's an upward direction; correct?

3 A. Yes.

4 **Mr. Shaffer:** Okay. No further questions.

5 **The Court:** Any redirect of the witness?

6 **Ms. Campbell:** Just a few questions.

7 Redirect Examination

8 By Ms. Campbell:

9 Q. And what your findings are is consistent with it being
10 as close as inches and as far away as feet.

11 A. Yes.

12 Q. Any in that range.

13 A. Any of them.

14 Q. You can't say.

15 A. I cannot say.

16 **Ms. Campbell:** Thank you, ma'am.

17 **The Court:** Any objection to the witness being excused?
18 From the State?

19 **Mr. Shaffer:** None.

20 **The Court:** From the defense?

21 **Mr. Shaffer:** None, Your Honor.

22 **The Court:** Doctor, you're excused. The State may call
23 its next witness.

24 **Ms. Walker:** The State calls Sergeant Scott Faust.

25 S. Scott Faust, after being duly sworn, testified

1 as follows:

2 **The Clerk:** Have a seat in the witness box. State your
3 name for the record and spell it, please.

4 **The Witness:** Steven Scott Faust, F-A-U-S-T.

5 **The Court:** You may proceed.

6 **Ms. Walker:** Thank you, Your Honor.

7 **The Court:** You're welcome.

8 Direct Examination

9 By Ms. Walker:

10 Q. Sir, where are you currently employed?

11 A. The Richland County Sheriff's Department.

12 Q. And how long have you been with the sheriff's
13 department?

14 A. Eighteen plus years.

15 Q. And what I guess department of the sheriff's department
16 do you work in?

17 A. I'm currently over the Special Victims Unit commonly
18 known as S.V.U. I've been over that the last five years come
19 January.

20 Q. And you are a sergeant?

21 A. I am a sergeant.

22 Q. As a sergeant, tell me: What do your duties entail at
23 the sheriff's department?

24 A. Currently being assigned over the Special Victims Unit,
25 I work sexual assaults, child abuse, missing persons,

1 runaway. I'm over those particular areas. I'm also a team
2 leader on an on-call shift which is basically from 3 in the
3 afternoon until 7 in the morning during the week, and on the
4 weekend starting from 3:30 Friday afternoon until 7, 7:30
5 Monday morning we have a team that answers any calls that
6 we're needed for.

7 Q. And when you're on call, are you supervising a unit at
8 that point in time?

9 A. That's correct, anywhere from four to five to six
10 people, investigators.

11 Q. And did you become involved in this murder
12 investigation?

13 A. I was -- on this particular weekend I was covering for a
14 co-sergeant, handling his shift for the weekend.

15 Q. And can you tell me how you first became aware of the
16 murder on ?

17 A. Approximately 4 a.m., August 19th, 2012, I was notified
18 by our desk sergeant. He's basically the center-point person
19 for any time investigations is notified and is needed on a
20 murder. A desk sergeant will be called, and then in return
21 they call the team leader of that shift. At that point I
22 responded to the scene at which is located
23 in Richland County.

24 Q. Upon arriving at the scene, what information, if any,
25 did you have to aid you in your investigation?

1 A. Right when we get there, the information comes from all
2 sources. I had deputies relaying information, stating that
3 they had a gunshot victim shot, did not appear that he was
4 going to make it. We also had a suspect that had fled the
5 scene that appeared to have been shot and they believed they
6 had had him in the area, and then a short time later I'd be
7 notified that they believed they had him in custody.

8 We had suspects that were in custody in patrol vehicles.
9 Deputies had taken three in custody in handcuffs for
10 detention. We had several witnesses. We had the crime
11 scene. We also had---

12 Q. When you say you had the crime scene, are you talking
13 about crime scene investigators?

14 A. They were then notified as to -- yes.

15 Q. Okay.

16 A. They were responding. They were calling, asking where
17 they were needed. So I basically get to the scene and start
18 coordinating where we need our manpower located.

19 Q. Those individuals that were detained on the scene, who
20 were they?

21 A. An Ernest Bethel, a Colecious Bethel, and S.B. ,
22 S.B.

23 Q. S.B. maybe?

24 A. S.B. .

25 Q. And Colosh (phonetic) -- were those three individuals

1 together?

2 A. Yes, they were related: Brothers and sisters.

3 Q. And how old were they? Do you know?

4 A. Ernest was 19 with a date of birth of .
5 Colecious was 21, , and S.B. was 16,

6 .

7 Q. At that point in time when you first made contact with
8 those three individuals, were you aware of what, if any,
9 relationship they may have had with the -- with the suspect
10 that y'all had in custody?

11 A. I was informed that they had -- were with the person who
12 fired the gun.

13 Q. And is information still coming in to you at that point
14 in time?

15 A. Yes.

16 Q. Were there a number of I guess bouncers and security
17 officers on the scene at that point?

18 A. Several.

19 Q. At some point did you call for an additional --
20 additional investigators to come to the scene?

21 A. Pretty much right when I got on the scene with the
22 amount of people that were being held, basically asking them
23 not to leave -- not to leave the scene so we can interview
24 them for any pertinent information. I called as many of my
25 team out as possible and to start interviewing people, asking

1 them what they saw, if they -- if there was anything
2 pertinent, then we would start taking statements or we would
3 get their information and tell them we'll follow up with them
4 at a later time.

5 Q. Can you tell me who those investigators were?

6 A. Investigator Holdorf, Investigator Rast, and
7 Investigator Tanner were the three I called out at that time,
8 just investigators, not including the lab. The lab notified
9 their on-call person and then they start pulling personnel,
10 but that's not my responsibility. I'm just responsible for
11 the investigators.

12 Q. While you were on the scene, did you become aware of the
13 status of the victim in this case?

14 A. Yes, that he had deceased or passed.

15 Q. And what about the suspect?

16 A. That he was located within the vicinity with a gunshot
17 wound and was transported to the hospital and I made sure
18 that deputies were following and maintained contact with him
19 to make sure that there was -- stayed within our eyeshot.

20 Q. And did you ever -- without telling me what they said,
21 did you ever have any conversations with any of the --

22 S.B. , Colecious or Ernest Bethel?

23 A. Yes.

24 Q. Were they cooperative with you?

25 A. In my opinion, no.

1 Q. Did additional -- I guess additional Bethels arrive on
2 the scene at some point?

3 A. That's correct, their parents and grandparents.

4 Q. And do you recall their names?

5 A. Yes. The father's name was Anthony, and I don't know
6 his wife's name. I spoke mostly with Anthony, the father.
7 She was -- she heard what I said, but I addressed Anthony.

8 Q. Did you inform them of what was going on?

9 A. I did. I explained to them the situation, that I felt
10 their children could be an asset. They could help us with
11 some information with who the shooter was, and I allowed them
12 to speak to their children.

13 Q. You said you -- did they, in fact, speak to the
14 children?

15 A. Yes.

16 Q. And did that change---

17 **Mr. Shaffer:** Objection. Relevance.

18 **The Court:** I haven't heard the whole question. Please
19 state the entire question.

20 **Ms. Walker:** Yes, Your Honor. You allowed the parents
21 to speak with the children?

22 **The Witness:** I did.

23 **The Court:** Wait. Approach.

24 **Mr. Shaffer:** Your Honor, it's a follow-up question to
25 that.

1 (Whereupon, a bench conference was held.)

2 **The Court:** The objection is withdrawn. You may
3 proceed.

4 By Ms. Walker:

5 Q. Once the parents made contact with the -- with S.B. ,
6 Colecious, and Ernest Bethel, did the children become
7 cooperative at that point?

8 A. No.

9 Q. There was a -- was there a car on the scene that became
10 of particular interest to you?

11 A. Yes.

12 Q. And how did that car become relevant?

13 A. I was informed -- one of the first things I was informed
14 then was that the people that were with the shooter were
15 trying to get in a vehicle and leave and that the vehicle was
16 prevented or stopped from leaving by a round being fired into
17 the tire.

18 Q. And did you inspect the car visually?

19 A. Yes.

20 Q. Was that consistent -- was the car's condition
21 consistent with what you were being informed?

22 A. That is correct.

23 Q. Did you make contact with the owner of that car?

24 A. I did. That was Anthony, the father of the children.

25 Q. And did you then -- did he give consent for you to

1 search that car?

2 A. Signed a consent.

3 Q. What did you do after that?

4 A. I notified our lab, and the deputies did a quick search
5 for any weapons. At that time I was notified---

6 **Mr. Shaffer:** Objection, Your Honor.

7 **The Court:** Basis?

8 **Mr. Shaffer:** May we approach?

9 **The Court:** Uh-huh.

10 (Whereupon, a bench conference was held.)

11 **Mr. Shaffer:** Withdrawn.

12 **The Court:** Thank you.

13 By Ms. Walker:

14 Q. The car was searched?

15 A. Yes.

16 Q. And you -- but the car wasn't searched by you.

17 A. It was not searched by me.

18 Q. It was searched by the lab.

19 A. That -- they would end up processing and officially
20 searching the vehicle.

21 Q. After -- was the car then towed away?

22 A. At some point it was.

23 Q. At some point the car was towed away. After the search
24 of the car, what did you do?

25 A. After the search of the vehicle, I continued to

1 interview witnesses and just maintain the scene. The suspect
2 we learned -- or tried to get updates on his condition and
3 tried to identify him. I then learned his last name.

4 Q. And did that become significant to you?

5 A. Yes.

6 Q. Why is that?

7 A. Because his last name was Bethel which was also the same
8 last name of the three detained individuals.

9 Q. Continue, sir.

10 A. At that point I felt it was significant that they may be
11 related. At that time we then started focusing in on the
12 named witnesses which would have been the security guards and
13 the bouncers. At that time, once I had that managed to where
14 we had them being transported to get statements, I had
15 Investigator Holdorf focusing on interviewing Ernest Bethel,
16 and then at that point I made it a point to get to the video
17 that was at the location at . I wanted to
18 -- I started from the outside and worked myself towards that
19 location and then made it my main goal at that point to
20 obtain the video or secure it.

21 Q. Did you, in fact, secure the video?

22 A. I did.

23 Q. And did you review the video?

24 A. I did review it on the scene.

25 Q. Did you see Ernest Bethel on the video?

1 A. Yes.

2 Q. What was he wearing?

3 A. Yellow shirt.

4 Q. You said you obtained that video.

5 A. I did go on and secure written consent from Ms. Sandra
6 Simpkins, and then at that point I went ahead and took
7 custody of the power cord and the actual digital recorder.

8 Q. And did that conclude your involvement in the actual
9 crime scene?

10 A. At that point I then went to our headquarters at 5623
11 Two Notch Road.

12 Q. And what was the purpose of going to headquarters at
13 that time?

14 A. To assist in interviewing the witnesses and taking
15 statements from them.

16 Q. What was the next step of your investigation, sir?

17 A. At that point we continued throughout the day. The next
18 significant thing would have been on August the 21st, the day
19 before I obtained a search warrant on the 20th for Kevin
20 Bethel, Jr.'s, D.N.A.

21 Q. Of this -- from whose D.N.A.?

22 A. For James Kevin Bethel Jr.'s.

23 Q. Okay. And what did you do with that?

24 A. At that point I went to his location at the hospital to
25 obtain it.

1 Q. Did you make contact with him?

2 A. I did.

3 Q. And when you -- where was he when you made contact with
4 him?

5 A. He was at the Palmetto Richland hospital.

6 Q. Was he in the lobby? Was he in a room?

7 A. He was in a room secured with a deputy stationed at the
8 room to make sure that he did not leave.

9 Q. And when you -- did you speak with him?

10 A. I entered the room, identified myself. I had
11 Investigator Rast with me and then explained what I was there
12 for.

13 Q. And what were you there for?

14 A. To execute a search warrant which is signed by a
15 magistrate allowing me to get two buccal swabs of his D.N.A.

16 Q. And when you explained to him why you were there, did he
17 seem to understand you?

18 A. Yes.

19 Q. Did he seem coherent?

20 A. Yes. He answered all the questions appropriately as
21 asked.

22 Q. And at some point did he begin to speak with you about
23 the events that transpired that night?

24 A. He did.

25 Q. What did he say?

1 A. He indicated that -- he started to say something and
2 then I stopped to -- because I was not there to talk to him,
3 so I wanted to stop him. If he wanted to say anything to me,
4 I was going to allow him to, but I wanted to advise him of
5 his rights.

6 Q. And how did you advise him of his rights?

7 A. I have a card that I keep. This has an I.D. identifying
8 me by my name, my handcuff key, a key pass to get into the
9 building at 5623 Two Notch Road, and on the very back it has
10 an advice of rights which I keep handy.

11 Q. And did you read those rights to him?

12 A. I did.

13 Q. Sir, what are those rights that you advised the
14 defendant of?

15 A. I stated and basically will read it to him as I will
16 read to y'all. I said, "You have the right to remain
17 silent," and then I look to make sure he's acknowledging that
18 he's aware of what I'm reading.

19 Q. And was he?

20 A. He was. "Anything you say can and will be used against
21 you in a court of law." Make sure that he's maintaining eye
22 contact and he's listening. "You have the right to talk to
23 an attorney and have him or her present with you while you're
24 being questioned. If you cannot afford an attorney, one will
25 be appointed to represent you before any questioning if you

1 want." If you decide to -- "if you decide at any time to
2 exercise these rights and not answer questions or make
3 statements" -- excuse me. "You can decide at any time to
4 exercise these rights and not answer any questions and make
5 statements. Do you understand these rights I have explained
6 to you?" And I wait for him to acknowledge that. In this --
7 in this particular case he acknowledged that particular case.

8 Q. Did he appear to you to understand what you were saying
9 to him?

10 A. Yes.

11 Q. Continue, sir.

12 A. And he was -- there was a maintain of conversation as if
13 it was us making eye contact. I was within three to
14 four feet of him. And then my last question was have you --
15 excuse me. "Having these rights in mind, do you wish to talk
16 to us now?" And he indicated he did.

17 Q. So he waived his rights?

18 A. He did.

19 Q. And at that point in time what -- what was y'all's
20 conversation?

21 A. He made the statement of -- he stated that he was robbed
22 and shot in Apple Valley. At that point I informed him that
23 I witnessed him on the video at the time of the shooting.

24 Q. Did he deny being at Mr. Lucky's?

25 A. He did deny -- at that point he denied being at Mr.

1 Lucky's.

2 Q. And are you familiar with that Apple Valley area?

3 A. Vaguely.

4 Q. Do you know if it's -- how far or how close it is to Mr.
5 Lucky's?

6 A. It is approximately three to four miles.

7 Q. Away from Mr. Lucky's?

8 A. It's a subdivision, yes.

9 Q. And you informed him that he was on video at that time.

10 A. I did.

11 Q. And I want to move your attention to the 22nd or -- I'm
12 sorry. Did that conclude your investigation with this case?

13 A. It concluded the conversation and then I went on to ask
14 if he would cooperate with the execution of the search
15 warrant.

16 Q. And did you get -- did he cooperate with the execution
17 of the search warrant?

18 A. He did. I read him the search warrant, left him a copy,
19 and we then obtained two buccal swabs of his D.N.A.

20 Q. The person you made contact with who denied even being
21 at Mr. Lucky's, do you see him in the courtroom?

22 A. I do.

23 Q. Can you point him out?

24 A. He's sitting at the table with his attorney in the blue
25 shirt and tie.

1 **Ms. Walker:** Your Honor, may the record reflect that the
2 witness has identified the defendant?

3 **The Court:** You may proceed.

4 **Ms. Walker:** No further questions.

5 **The Court:** Any questions for the witness?

6 **Mr. Shaffer:** Just a couple.

7 Cross-Examination

8 By Mr. Shaffer:

9 Q. Investigator Faust, you are -- I'm sorry.. Sergeant.

10 You're lead of the Special Victims Unit; right?

11 A. I am a supervisor over the Special Victims Unit.

12 Q. Okay. So you're not technically like the lead
13 investigator on this case; right?

14 A. I'm the lead -- I'm one of the initial responders. At
15 that point usually Major Stan Smith will coordinate the
16 investigation, but I am -- I am a supervisor over it that
17 kind of guides it during the initial portion of the event.

18 Q. Okay. And you said that who coordinates it? The major?

19 A. Major Stan Smith usually gets involved the following
20 day, is briefed on it, and then has input on it.

21 Q. Okay. And then does he assign other investigators to
22 it?

23 A. We all participate. The initial investigators typically
24 stay involved. This particular case would have been assigned
25 to Investigator Holdorf with several of us still continuing

1 to assist.

2 Q. Okay. So Holdorf I guess -- you said it's one
3 investigator's case. It would be his case?

4 A. He is technically assigned it, but he has a team that
5 continues to work with him which would have included myself
6 for several days.

7 Q. Okay. Now, you said on the scene you secured the
8 D.V.R.; right?

9 A. That's correct.

10 Q. Tell us about what the D.V.R. looked like.

11 A. It's a black box.

12 Q. Okay. Where was it located at?

13 A. Back in the office in the building.

14 Q. Okay. And it was located in the office. Could you
15 describe how to get to the office?

16 A. You enter the front door and you have to go around the
17 cabinet, then through a door and, if I'm not mistaken,
18 through another door.

19 Q. Okay. But is it off to your right or off to your left
20 when you come in?

21 A. I think there were several ways you could get there, but
22 I just know when I walked in the door, the bar portion where
23 the patrons would have gone would have been more to your left
24 and I kind of went straight back.

25 Q. Okay. So it's a place that you don't necessarily have

1 to go through the bar to get to; right?

2 A. I think there are probably several ways you could have
3 gotten there.

4 Q. Okay. Okay.

5 A. I was -- I was led there by the staff.

6 Q. And you said that you reviewed the video on the scene.
7 Did you -- how long did you -- or how much of the video did
8 you review on the scene?

9 A. We focused more on the exit of the door right before the
10 shooting and the shooting.

11 Q. Okay. So you didn't review three hours of video; right?

12 A. Not at -- not at that point, no.

13 Q. Okay.

14 A. We were more or less trying to identify who the people
15 involved in the shooting were.

16 Q. And you reviewed the D.V.R. -- I mean the video later;
17 correct?

18 A. That is correct.

19 Q. And you reviewed the video that was submitted as an
20 exhibit. I think it was State's 71.

21 A. I didn't see what was submitted to y'all, but I would
22 imagine I viewed what y'all witnessed.

23 **Mr. Shaffer:** Okay. Your Honor, at this time I'd like
24 to show the investigator the video.

25 **The Court:** Which number are you referring to?

1 **Mr. Shaffer:** 71, Your Honor.

2 **The Court:** Any exception from the State?

3 **Ms. Walker:** None from the State, Your Honor.

4 **The Court:** You may proceed.

5 **Mr. Shaffer:** Well, since it's almost 5:00, I would
6 actually---

7 **Ms. Campbell:** We'll be glad to---

8 **Mr. Shaffer:** That's okay. I'm not going to take 15
9 minutes to review it again.

10 **The Witness:** I have a good recollection of it.

11 By Mr. Shaffer:

12 Q. Okay. Would you say it's short -- the total time the
13 people were in the club is shorter or longer than 15 minutes?

14 A. Of the individuals in the club?

15 Q. Yeah.

16 A. Which -- specifically which individuals?

17 Q. James Bethel.

18 A. James Bethel was in there, but I don't remember the
19 exact time he was in there, but he had been in the
20 establishment for awhile, several hours.

21 Q. Okay. Did you analyze the D.V.R.?

22 A. Did I analyze it?

23 Q. Yeah.

24 A. No. That was Investigator Metz, our video technician.

25 Q. Okay. And he produced a disk for you; right?

1 A. Yes.

2 Q. Did you review it?

3 A. Yes.

4 Q. Did you notice there were gaps in time on the disk?

5 A. He pulled out portions.

6 Q. He pulled out portions. Did you ever see the other
7 portions?

8 A. What portions? I watched a lot of the---

9 Q. The portions that were taken out.

10 A. I watched a lot of the video, yes.

11 Q. Okay. You're saying he pulled out portions of the
12 video.

13 A. I watched the video. There were portions that were
14 significant dealing with Ernest and James, the defendant.
15 Those are the ones that I focused on. I watched their
16 behavior, what they did throughout the portions of when they
17 were in the establishment and as they exited right before the
18 shooting.

19 Q. Okay. And after Investigator Metz, the video
20 technician, pulled it off of the D.V.R. he made you a disk;
21 right?

22 A. That is correct. I would imagine that's what you were
23 referring to.

24 Q. And on that disk it doesn't show the entire video;
25 correct?

1 A. That is -- as far as I know, that's correct. I didn't
2 see what was put in, but that -- what he pulled for me would
3 have been focusing on the last few minutes right before the
4 shooting.

5 **Mr. Shaffer:** Okay. No further questions.

6 **The Court:** Any redirect?

7 **Ms. Walker:** None, Your Honor.

8 **The Court:** Any objection to the witness being excused?

9 **Ms. Walker:** None from the State.

10 **The Court:** From the defense?

11 **Mr. Shaffer:** No, Your Honor.

12 **The Court:** Sir, you're excused. Could counsel approach
13 for me, please?

14 (Whereupon, a bench conference was held.)

15 **The Court:** Ladies and gentlemen, Madam Forelady, we're
16 going to take advantage of this break in testimony to take
17 our evening recess. During the break, please do not discuss
18 the case in any manner whatsoever. Please do not have any
19 contact with anyone in or about the courthouse when you
20 return. Please do not discuss your jury service on any
21 social networking sites, and please do not watch any or
22 listen to any media accounts about this case, including
23 looking up anything on the internet.

24 We'll resume in the morning at 9:30. If you would come
25 directly to your jury room and please leave your notepads in

1 your seats. We'll secure them during the recess. Have a
2 good evening. We'll see you in the morning.

3 (Whereupon, the jury was excused from open court at
4 4:57 p.m.

5 **The Court:** It is my understanding -- no, they need to
6 remain seated; court has not been adjourned. It is my
7 understanding that the remaining witnesses left for the State
8 -- correct me if I'm inaccurate. You are not calling Susan
9 Giarro; correct?

10 **Ms. Campbell:** We do not anticipate that, Your Honor.

11 **The Court:** That then leaves remaining Investigator
12 Travis Holdorf, deputy -- well, I'm sorry. Brandon Rast,
13 Travis Holdorf. Is that accurate or am I missing someone?

14 **Ms. Campbell:** No, Your Honor. The only other ones that
15 possibly may -- and, I'm sorry. I thought it was highlighted
16 on your list. Rodney White is one lay witness that just had
17 some scheduling issues today.

18 **The Court:** Robbie White?

19 **Ms. Campbell:** Rodney White.

20 **The Court:** Rodney White. Okay.

21 **Ms. Campbell:** We may or may not put him up, just to put
22 the Court on notice.

23 **The Court:** Pardon me?

24 **Ms. Campbell:** We may or may not put him up, and then
25 the only other person would be, since it's become an issue

1 about the video, is Investigator Metz but all he did was
2 download the video. Brian Metz.

3 **The Court:** Is he on the second or the third page of
4 your list?

5 **Ms. Campbell:** I'm sorry, Your Honor.

6 **The Court:** Okay. Brian Metz.

7 **Ms. Campbell:** Thank you.

8 **The Court:** Okay. And do you still intend to call all
9 of your witnesses, Mr. Shaffer? That being Shanae (phonetic)
10 Bell, Linda Jones, Andrena Jenkins, and Andrena Jenkins
11 (verbatim).

12 **Mr. Shaffer:** Your Honor, we've planned to call
13 Albertus...

14 **The Court:** I can't hear you.

15 **Mr. Shaffer:** I'm sorry. Shanae, Curtis, and Andrena.

16 **The Court:** I don't see a Curtis on this list.

17 **Mr. Shaffer:** He's up there. Curtis -- Curtis is on the
18 State's witness list.

19 **The Court:** And the witness's last name?

20 **Mr. Shaffer:** Curtis Long.

21 **The Court:** Curtis Long?

22 **Mr. Shaffer:** Long. Yes, Your Honor.

23 **Ms. Campbell:** Your Honor, if he could just get us dates
24 of birth tonight so that we could go ahead and run those. It
25 would just help us as far as not holding the Court up.

1 **Mr. Shaffer:** I can -- I can go ahead and give you
2 Shanae's right now.

3 (An off-the-record discussion takes place between the
4 attorneys.)

5 **The Court:** It is my understanding that the State, if
6 the defendant decides to testify, does not have any record
7 that they would be seeking to introduce to impeach his
8 credibility; correct?

9 **Ms. Campbell:** Correct.

10 **The Court:** Sir, stand for me, please, and raise your
11 right hand to be sworn.

12 James K. Bethel, Jr., after being duly sworn,
13 testified as follows in camera:

14 Examination by the Court

15 Q. You can put your right hand down. Sir, state your full
16 name for the record.

17 A. James Bethel.

18 Q. Is your middle name Kevin?

19 A. Yes, ma'am.

20 Q. And are you a junior?

21 A. Yes, Your Honor.

22 Q. So your full name is James Kevin Bethel, Jr.?

23 A. Yes, Your Honor.

24 Q. Sir, in anticipation of the State completing their case,
25 we are soon reaching the stage of the trial where you will be

1 able to present your defense if you so desire, and I'm going
2 explain to you certain of your rights. If you do not
3 understand something that I say, please let me know or if you
4 need me to repeat something, please let me know. Do you
5 understand?

6 A. Yes, Your Honor.

7 Q. As I've indicated to you, we will soon reach the stage
8 of the trial where you may present your defense. You have
9 the right to claim the protections given to you by the Fifth
10 Amendment of the Constitution of the United States, and that
11 amendment reads in pertinent part - excuse me - that no
12 person shall be compelled in any criminal case to be a
13 witness against himself. Excuse me. I'm sorry. I've got a
14 frog in my throat.

15 This means that you cannot be required to testify in
16 this case. You have the right to testify on your own behalf.
17 However, no one can make you testify. This is a personal
18 right, and no one can waive this right except you. If you
19 decide to testify, you will be subject to the same rules that
20 govern other witnesses and you may be examined and cross-
21 examined on any relevant issue in this case.

22 In addition, if you have any convictions involving
23 dishonesty or false statement or for crimes punishable by
24 imprisonment for more than one year and this Court determines
25 that the probative value of admitting this evidence outweighs

1 its prejudicial effect to you, the solicitor will be able to
2 introduce your record to attack your credibility. If you
3 decide to testify, this decision on your part must be made
4 freely, voluntarily, and intelligently with knowledge of the
5 protections given to you by the Fifth Amendment of the United
6 States Constitution and the consequences of your decision to
7 testify.

8 If you decide not to testify, I will instruct the jury
9 that they cannot consider the fact that you did not testify
10 in any manner whatsoever, that it is not to be given any
11 consideration whatsoever, that there is to be no prejudice to
12 you because you did not testify. In fact, I will instruct
13 them that you have no burden in this case, that the State --
14 the burden remains on the State to prove your guilt beyond a
15 reasonable doubt and that the fact that you did not testify
16 should not be discussed in any manner whatsoever during jury
17 deliberations.

18 It is left entirely up to you whether or not you
19 testify. You may talk with your attorney, your family
20 members, your friends or anyone else, but the final decision
21 is yours entirely. Do you understand your rights as I have
22 just explained them to you?

23 A. Yes, Your Honor.

24 Q. Do you have any questions about what I've just explained
25 to you?

1 A. No, Your Honor.

2 Q. I'm going to give you over the evening recess the
3 opportunity to fully discuss the matter, now having been
4 advised of your rights, with your attorney. And prior to the
5 beginning of the presentation of your case, I will resume
6 asking some additional questions of you. Do you understand?

7 A. Yes, Your Honor.

8 **The Court:** You may take your seat. Is there anything
9 we need to take up before we adjourn for the evening? From
10 the State?

11 **Ms. Campbell:** No, Your Honor.

12 **The Court:** From the defense?

13 **Mr. Shaffer:** No, Your Honor.

14 **Ms. Walker:** No, Your Honor.

15 **The Court:** All right. Have a good evening. I'll see
16 you in the morning at 9:30.

17 **Ms. Campbell:** Thank you.

18 **The Court:** You're welcome.

19 (Whereupon, the trial concluded for the day at 5:05 p.m.
20 and resumed the following day, November 7, 2013, as follows.)

21 **The Court:** You may be seated. Is the State ready to
22 proceed?

23 **Ms. Walker:** Yes, Your Honor.

24 **The Court:** Is the defense ready to proceed?

25 **Mr. Shaffer:** Yes, Your Honor.

1 **Ms. Campbell:** Your Honor, one housekeeping matter just
2 to make things... There were several items that don't show
3 as having actually been entered that have been referred to.
4 I have reviewed these with Mr. Shaffer. I don't think he has
5 an objection to them.

6 **The Court:** What numbers are they?

7 **Ms. Campbell:** They are 65, 77, 57.

8 **The Court:** Wait one second.

9 **Ms. Campbell:** I'm sorry.

10 **The Court:** Go ahead.

11 **Ms. Campbell:** Thank you. It's 65, 77, 57, 73.

12 **The Court:** And those are admitted without objection;
13 correct?

14 **Mr. Shaffer:** Yes, Your Honor. That's correct.

15 **Ms. Campbell:** Thank you.

16 (State's Exhibits 57, 65, 73, and 77 were received in
17 evidence.)

18 **The Court:** Who is the State's next witness?

19 **Mr. Shellenberg:** Rodney White.

20 **The Court:** And then after him who is next?

21 **Ms. Campbell:** Investigator Holdorf.

22 **The Court:** Mr. Shaffer, do you have all your witnesses
23 here?

24 **Mr. Shaffer:** No, Your Honor. They should be here
25 within about 15 minutes, Your Honor.

1 **The Court:** Okay. Okay. Please bring in the jury.

2 (Whereupon, the jury was brought into open court at
3 9:44 a.m.)

4 **The Court:** As soon as we get your notebooks, we'll get
5 started.

6 (Pause in proceedings.)

7 **The Court:** Ladies and gentlemen, I hope y'all had a
8 pleasant and restful evening. We're now going to resume with
9 the presentation of the State's case. You may proceed.

10 **Mr. Shellenberg:** Thank you, Your Honor. May it please
11 the Court?

12 **The Court:** Yes, sir.

13 **Mr. Shellenberg:** The State calls Rodney White.

14 **The Court:** Sir, if you would come forward to be sworn.

15 Rodney White, after being duly sworn, testified as
16 follows:

17 **The Clerk:** Have a seat in the witness box. State your
18 name for the record and spell it, please.

19 **The Witness:** Rodney White. R-O-D-N-E-Y. W-H-I-T-E.

20 **The Court:** You may proceed.

21 **Mr. Shellenberg:** Thank you, Your Honor.

22 **The Court:** You're welcome.

23 Direct Examination

24 By Mr. Shellenberg:

25 Q. Good morning, Mr. White.

1 A. Good morning.

2 Q. What do you do for a living?

3 A. Change tires and do comedy and security.

4 Q. How long have you been doing security?

5 A. For about 10 years.

6 Q. Were you -- what company do you work for?

7 A. Right now Tactical Security out of Sumter..

8 Q. Were you ever employed by Black Ops Security?

9 A. I was.

10 Q. And were you employed by them in August of 2012?

11 A. I was.

12 Q. Let me direct your attention back to August 19th, 2012.

13 Were you working for Black Ops that evening?

14 A. I was.

15 Q. And where were you working?

16 A. At Mr. Lucky's, A Gentlemen's Club.

17 Q. And do you remember a disturbance that occurred that
18 night, a shooting?

19 A. Yes.

20 Q. If you would, can you explain to the jury where you --
21 where you were working that evening and what -- how it all
22 transpired?

23 A. Okay. They have two sets of security, unarmed and
24 armed. The armed security stays outside. We were outside
25 and a group of people came to the club, and because of their

1 attire they had on, we refused them entry and---

2 Q. Was the defendant one of the ones who was refused entry
3 because of his attire?

4 A. Yes.

5 Q. Okay. Continue.

6 A. Okay. We refused them entry and they were leaving, and
7 then the club owners allowed them to come in if they were
8 going to behave. So we let them in, and about maybe 10
9 minutes or so after being in they were being escorted out.

10 Q. Now, they were being escorted out 10 minutes after they
11 got there?

12 A. About 10 minutes or so.

13 Q. If I show you your statement, will that help you refresh
14 your memory?

15 A. Yes.

16 **Mr. Shaffer:** Objection. Foundation.

17 **The Court:** Overruled. He can use the statement to
18 refresh his memory, but he can't read directly from it. He
19 can read it to refresh his memory.

20 By Mr. Shellenberg:

21 Q. If you'll read these first few lines.

22 A. (The witness looks at the statement.) Okay.

23 Q. Does that help refresh your memory?

24 A. Yeah.

25 Q. Okay. And so what time was it that they were being

1 kicked out of the club?

2 A. About 3:30.

3 Q. About 3:30 in the morning? And where were you at the
4 point that they were being kicked out of the club?

5 A. I was outside like on the ramp.

6 Q. On the ramp? So you were in the parking lot security?

7 A. Yeah.

8 Q. Okay. And as the group was being kicked out, what did
9 you do at that point?

10 A. I wanted to make sure -- when they told them they had to
11 leave, I wanted to make sure that they were going to get in
12 their cars and leave. So I was like escorting them down the
13 ramp.

14 Q. So they -- they were causing enough trouble where they
15 needed the outside security to walk up and help get them out?

16 A. Yeah.

17 Q. And was the defendant in that group?

18 A. Yes, he was.

19 Q. And continue, please.

20 A. All right. And they started a commotion on the deck, so
21 I believe one of the officers sprayed them. Now, he was --
22 the defendant was already in the group that was walking down.

23 Q. Now, let me stop you right there. So you had already
24 been walking down the ramp---

25 A. Right.

1 Q. ---down to the porch at that point? And the defendant
2 was in your vicinity?

3 A. Yeah.

4 Q. When the mace was---

5 A. Yeah.

6 Q. ---sprayed?

7 A. The mace was sprayed on the deck. He wasn't on the
8 deck. He was on the ramp---

9 Q. Okay.

10 A. ---walking down.

11 Q. And did you smell, taste---

12 A. No.

13 Q. ---feel any of the mace?

14 A. No.

15 Q. And was the defendant in the same area as you at that
16 point?

17 A. He was.

18 Q. Okay. Will you please continue?

19 A. Okay. And so then the rest of them came around and the
20 guy that was shot, he went over the balcony and he was
21 confronting the group because they didn't seem like they
22 wanted to leave, and the defendant came from behind and shot
23 him in the head.

24 Q. Mr. Franklin was just trying to get the group to leave?

25 A. He was trying to get the group... Yeah, he wasn't even

1 talking to the defendant.

2 Q. And what did you do after the shooting?

3 A. After the shooting, he started running. The defendant
4 started running, and the other officer, Kedron, told him to
5 freeze, and he went after him and so the defendant returned
6 fire and so Kedron returned fire, and everybody was
7 scattering, trying to get to their vehicles, and I wanted to
8 make sure nobody went to their vehicles to pick up another
9 weapon or so.

10 Q. And how close were you to the shooting when it happened?

11 A. About 10 feet or so.

12 Q. And the man who shot GaWayne Franklin is the same man
13 that Kedron Hope chased out of the parking lot?

14 A. Right.

15 **Mr. Shellenberg:** Beg the Court's indulgence.

16 **The Court:** Uh-huh.

17 **Mr. Shellenberg:** No further questions, Your Honor.

18 **The Court:** Any questions for the witness?

19 **Mr. Shaffer:** Yes, Your Honor.

20 Cross-Examination

21 By Mr. Shaffer:

22 Q. All right, Mr. White. You said that Black, Black being
23 the guy who got shot -- did you know that was his nickname?

24 A. Yes.

25 Q. Black jumped over the rail to confront part of the

1 group; right?

2 A. Right.

3 Q. And that's when -- he did it to confront the group or
4 did he do it to escort them to the car?

5 A. I'm not sure.

6 Q. Okay. Is it common for inside security to escort people
7 to the car?

8 A. No.

9 Q. Okay. Was Black arguing back with the group as he was
10 either escorting them to the car or confronting the group?

11 A. There was shouting back and forth.

12 Q. Okay. And how many people were in the group?

13 A. Sixteen. Twenty.

14 Q. Okay. And there was -- you said that the defendant was
15 by you where when the mace was sprayed?

16 A. He was walking behind me when I was escorting -- a few
17 of them were coming down the ramp and a few of them weren't.

18 Q. Okay. And the mace got sprayed on the deck?

19 A. On the deck.

20 Q. Okay. Are you sure it didn't get sprayed on the ramp?

21 A. I didn't smell it or I didn't get any of it.

22 Q. Okay. Where were you at on the ramp when the mace got
23 sprayed?

24 A. Middle-ways walking down.

25 Q. Okay. But you know that -- that they were spraying

1 people on the deck; right?

2 A. They got sprayed on the deck. The mace was sprayed on
3 the deck.

4 Q. Okay.

5 A. I don't know who got hit or who didn't---

6 Q. Okay.

7 A. ---but the defendant didn't and I didn't.

8 Q. Okay. Okay. And you were middle-way down the ramp.

9 Who -- who was at the bottom of the ramp? Who was part of
10 the group that the guy who got shot, Black, was confronting?

11 A. Who was part of the group?

12 Q. Yeah. You said that he was confronting part of the
13 group. Who was he confronting? Could you describe that part
14 of the group?

15 A. The part that was still on the deck.

16 Q. Okay. Okay. I'm sorry. Black -- you said that Black
17 was confronting the part of the group on the deck?

18 A. There was shouting on the deck.

19 Q. Okay.

20 A. After the mace was sprayed, they all came off the deck,
21 and they like stood right down in front of the parking lot,
22 and Black came over the rail and he was confronting them.

23 Q. Okay. How many people was Black confronting
24 approximately?

25 A. Maybe 15.

1 Q. Okay. There were a lot of people out there; right?

2 A. That was a good bit of people out there.

3 **Mr. Shaffer:** Okay. No further questions.

4 **The Court:** Any redirect?

5 **Mr. Shellenberg:** No, Your Honor.

6 **The Court:** Any objection to the witness being excused?

7 From the State?

8 **Mr. Shellenberg:** No, Your Honor.

9 **The Court:** From the defense?

10 **Mr. Shaffer:** None, Your Honor.

11 **The Court:** If anyone has a cell phone on, pager or
12 other electronic device, it needs to be turned off, not on
13 silent, off. If it goes off again, the deputies will take it
14 and it will not be returned to you. You may proceed.

15 **Ms. Campbell:** Thank you, Your Honor. The State would
16 call Investigator Travis Holdorf.

17 Travis Holdorf, after being duly sworn, testified
18 as follows:

19 **The Clerk:** Have a seat in the witness box. State your
20 name for the record and spell your last name, please.

21 **The Witness:** Travis Holdorf, H-O-L-D-O-R-F.

22 **The Court:** You may proceed.

23 **Ms. Campbell:** Thank you, Your Honor.

24 **The Court:** You're welcome.

25

Direct Examination

By Ms. Campbell:

Q. Investigator Holdorf, where are you employed?

A. I'm employed with the Richland County Sheriff's Department.

Q. What do you do there, sir?

A. Currently I'm assigned to the Special Victims Unit. We do rape cases, child abuse cases every seven weeks when our team goes on call and it's primarily homicide investigations.

Q. And how long have you been in law enforcement?

A. Over 18 years now.

Q. And how long have you been working homicide cases?

A. '97, '98. You start working with someone. After you've worked so many, then you start getting more involved roles until you become a primary.

Q. So you've worked a lot of homicides.

A. I'd say probably in the neighborhood of 30.

Q. Did you become the lead investigator in this case?

A. I am.

Q. How did that occur?

A. My team was on call, our shift. I think there's five or six investigators that are on our shift. When there's a homicide, there's -- unless it's a pretty open-and-shut one, they'll assign it to someone to investigate and follow up on.

Q. How did you become aware of the homicide that occurred

1 on August the 19th in the early morning hours at Mr. Lucky's?

2 A. I was contacted by Sergeant Faust to respond out to Mr.
3 Lucky's.

4 Q. And, in fact, did you go there that evening?

5 A. I did.

6 Q. And upon arrival, were you briefed as to the situation?

7 A. Yes, ma'am. When you first get notified of a homicide,
8 there's a lot of information coming in at one time. The main
9 thing is trying to get witnesses to document who is there,
10 preserve the evidence. It really can be almost overwhelming
11 at first. We had two scenes: Not just at Mr. Lucky's but
12 . Sergeant Faust was already at Mr.
13 Lucky's, so I went to .

14 Q. And you've worked shootings at clubs before?

15 A. Yes, ma'am.

16 Q. And in your experience are they somewhat difficult or
17 can be?

18 A. Club shootings are probably one of the hardest ones to
19 work. You would think they would be the easiest because of
20 the number of people there, but there's a lot of people who
21 do not want to get involved. They don't want to cooperate
22 with what they've seen. They're just not what you want to
23 work because you're going to have to work out of them.

24 Q. Once you went to , did you make contact with
25 certain residents there?

1 A. I did. I went to . There were two boys
2 that were at the house at the time. Their father showed up,
3 and it's just to verify that they didn't have any connection
4 to Mr. Bethel, to see what they knew, why Mr. Bethel went to
5 their house. They signed a consent to search. We were able
6 to look through the house to verify what they were saying to
7 us. Showed us their phones. They were very cooperative.

8 Q. And, in fact, were you able to make any conclusion about
9 whether or not they were involved in this in any way?

10 A. I felt they had no involvement in this whatsoever other
11 than living there, having their door or windows knocked on.
12 Other than that, no, ma'am, there was no other involvement.

13 Q. Did you make any observations there, I mean, on the
14 exterior of 714?

15 A. Yes, ma'am. You could tell that EMS had been there, the
16 ambulance. They took their guns -- their gloves, not their
17 guns, their gloves and other things where they're trying to
18 administer first aid. There was a decent size pool of blood
19 still on the sidewalk. There was blood throughout the area.

20 Q. Once you had assessed the scene at 714, where did you
21 go?

22 A. After that, I returned to Mr. Lucky's.

23 Q. Who did you make contact with there at Mr. Lucky's?

24 A. The first person direct would have been Sergeant Faust
25 and then just kind of get a gauge of where he is, and then I

1 started talking to an Ernest Bethel.

2 Q. And when you first started talking to Mr. Ernest Bethel
3 there at the scene that night after the shooting, were you
4 actually given his real name?

5 A. No, he lied. He said Belton at first, and then later on
6 I found out it was Bethel, and unfortunately that's just not
7 uncommon for people to give you that information at first.

8 Q. While you were there on the scene, did you advise Mr.
9 Ernest Bethel of his rights?

10 A. Yes, ma'am.

11 Q. And you can't say what he said, but did he talk to you
12 there at the scene that night?

13 A. He did.

14 Q. While you were talking with Ernest Bethel - and again
15 you can't say what he said - did family members make contact
16 with you, from the victim?

17 A. They did and that is probably one of the harder parts.
18 I wanted to get the family members out of there. It's not a
19 place where they need to be talked to about what's going on.
20 There's not a whole lot of information that we know with any
21 degree of certainty that we can tell the family at that point
22 in time, and so you get their information. We have a victim
23 advocacy group, and you forward them to the victim advocacy
24 group so they can start the process.

25 Q. Okay. Did you continue to talk to Mr. Ernest Bethel

1 there on the scene in your car?

2 A. Yes, ma'am.

3 Q. And did you again advise him of his rights?

4 A. Yes, ma'am.

5 Q. You can't say what he said, but at this point in your
6 investigation did you know the identity of the shooter?

7 A. Yes, ma'am. I guess -- if I may, it's in the process of
8 talking to him -- information is steadily developing. You're
9 getting information from this person and from that person.
10 It's not just one person that's trying to tell you something.
11 You're getting it from deputies at the scene, from other
12 investigators who are at the scene. Other investigators are
13 coming on the scene, so you're trying to direct them on: All
14 right, we need to talk to these people over here. But, yes,
15 ma'am, during the course of talking to Ernest we learned of
16 J.J. or James Bethel's identity.

17 Q. That evening were statements also taken from other
18 people?

19 A. Yes. Ideally to take a statement, we want to get them
20 to our headquarters. That way they can be typed out. If you
21 tell me something one time, I want to make sure it's right.
22 It's easy to change a statement if I misunderstood something.
23 And then when they sign it, it's their statement. It's read
24 back to them or they read it. Both parties are -- they're
25 saying that it's correct. That's very important to us on

1 these type of investigations.

2 Q. There at the scene Mr. Ernest Bethel had been detained.

3 Is that correct?

4 A. (Witness nodded head up and down.)

5 Q. And were there any young women with him that night?

6 A. He had his two sisters with him. One was 16. And they
7 were both in the club.

8 Q. On that evening were you able to make contact with them
9 as well as Mr. Ernest Bethel?

10 A. We were. They did go to our headquarters and did give
11 written statements.

12 Q. Did you also get a statement from Mr. Kedron Hope that
13 night?

14 A. We did.

15 Q. At some point during the investigation - it's still at
16 that same night or I guess we're getting into the early
17 morning hours - did you become aware that there was a video
18 at the club?

19 A. Yes, there are several cameras that you can clearly see.
20 Not all areas of the club are recorded, but there were -- we
21 were made aware by the owners of the club that they had a
22 video.

23 Q. And that evening while you were there on the scene, did
24 you have an opportunity to review at least some of that
25 video?

1 A. Yes, we did.

2 Q. And what part of the video were you able to view there
3 that night?

4 A. The video, I think as has been testified to earlier,
5 records a whole bunch of information that would be outside
6 the scope of what we're looking at on this. We're looking at
7 what's pertinent to the shooting itself, the events leading
8 up to the shooting. That's what we were looking at.

9 Q. Specifically, were you actually able to or did the video
10 actually show the shooting in this case?

11 A. It does.

12 Q. And there in the shooting in this case on the video that
13 you reviewed, who all is right there next to Mr. GaWayne
14 Franklin when he is shot in the back of the head?

15 A. You can see James Bethel going up behind Mr. Franklin.
16 You can see Ernest keeping Mr. Franklin's attention in the
17 front.

18 Q. And what was the two of them, James Bethel and Ernest
19 Bethel -- what were they -- describe their clothing as you
20 saw in the video that night.

21 A. Ernest is wearing -- he's a large guy. He's wearing a
22 yellow shirt. James is dressed in dark; he's got a black
23 shirt, black pants.

24 Q. And of the two of them, who is the actual shooter?

25 A. James Bethel was the actual shooter.

1 Q. That day, later that morning, did you make any attempts
2 to make contact with the defendant in this case?

3 A. We did.

4 Q. And where did that take place, sir?

5 A. Myself and Investigator Rast went to the hospital---

6 Q. This is Investigator Rast right here?

7 A. That is correct. Yes, ma'am.

8 Q. Okay.

9 A. We went to the hospital to talk to James Bethel to get
10 his side of what happened.

11 Q. Specifically, what hospital did y'all go to?

12 A. Palmetto Richland Health (verbatim).

13 Q. And prior to talking to Mr. Bethel there at the hospital
14 -- and why was Mr. Bethel at the hospital?

15 A. Because he'd been shot.

16 Q. And where was he shot? Do you remember?

17 A. He was shot in the back in the shoulder area.

18 Q. In the shoulder area?

19 A. Yes, ma'am.

20 Q. And when you got to the hospital, did you actually make
21 contact with him?

22 A. We did.

23 Q. And at this point had he undergone any surgery or
24 anything at this point or anything of this sort?

25 A. He had not.

1 Q. When you made contact with him, what was his demeanor
2 like?

3 A. He was in a hospital bed. He was alert. His responses
4 made sense to what our questions were. I felt that he knew
5 and understood what was going on.

6 Q. And, of course, if medical personnel tells you not to
7 talk to someone, y'all don't do it.

8 A. Correct. Yes, ma'am.

9 Q. Did that happen in this case?

10 A. It did not.

11 Q. And, in fact, you were allowed to go in and talk to him.
12 Is that correct?

13 A. We did. Also, if you're talking to someone and they're
14 so medicated that they've falling asleep or they start
15 talking about something that has nothing to do with this -- I
16 mean, it's just your commonsense. You can tell if someone is
17 so medicated that they don't know what's going on.

18 Q. Prior to talking to Mr. Bethel, what, if anything, did
19 you do?

20 A. I advised him of his rights because he was in police
21 custody.

22 Q. He was in custody at that point?

23 A. Yes, ma'am.

24 Q. And I want to show you what's been marked as State's
25 Exhibit Number 46. Do you recognize that?

1 A. Yes, ma'am. This is our advice of rights form where we
2 put the person's name that we're talking to, where we're
3 talking to them at, who is talking to them which was myself
4 and Investigator Rast, the date, and then the time. And then
5 there's a series of rights that we go through, and as we go
6 through each one, I check them off, and then you have the
7 waiver, and they are signed in both places by Mr. James
8 Bethel.

9 Q. And that day is that the form you used with Mr. James
10 Bethel when advising him of his rights prior to asking him
11 any questions?

12 A. Yes, ma'am, it is.

13 **Ms. Campbell:** Your Honor, at this time we'd offer
14 State's Exhibit Number 46 into evidence.

15 **Mr. Shaffer:** No objection, Your Honor.

16 **The Court:** Marked and admitted without objection.

17 **Ms. Campbell:** Thank you.

18 (State's Exhibit 46 was received in evidence.)

19 By Ms. Campbell:

20 Q. Can you tell the jury exactly what rights you explained
21 to him and how you went through them that day to make sure he
22 understood his rights prior to making any statements?

23 A. Yes. Advisement of the rights. It's -- the rights are:
24 "Before we ask you any questions, you must understand your
25 rights. You have the right to remain silent. Anything you

1 say can be used against you in court. You have the right to
2 talk to a lawyer for advice before I ask you any questions
3 and to have a lawyer with you during any questioning. If you
4 cannot afford a lawyer, one will be appointed to you before
5 any questioning if you wish. If you decide to answer
6 questions now without an attorney present, you still have the
7 right to stop answering questions at any time. You also have
8 the right to stop answering questions at any time until you
9 talk to an attorney."

10 And we go into what the waiver is, and it says, "I have
11 read this statement of my rights and I understand what my
12 rights are. I'm willing to talk and answer questions. I
13 understand and know what I am doing. No promises have been
14 made to me, and no pressure or coercion of any kind has been
15 used against me."

16 I always ask them afterwards if they understand what
17 pressure and coercion is. If they say they do, then I don't
18 underline it. If they don't understand what pressure and
19 coercion is, then I'll underline under it and then explain to
20 them what pressure and coercion is.

21 Q. Did he appear to understand his rights?

22 A. He did.

23 Q. Did he respond in a coherent manner?

24 A. He did. Yes, ma'am.

25 Q. Did you promise him anything to make him talk to you?

1 A. No, ma'am.

2 Q. Did you threaten him in any way?

3 A. No, ma'am.

4 Q. Did you beat him?

5 A. No, ma'am.

6 Q. Was any force or any coercion used to make him talk to
7 you that day?

8 A. There was none.

9 Q. Once he had been advised of his rights, did he actually
10 acknowledge his rights on this form?

11 A. He does.

12 Q. By how?

13 A. He signs it.

14 Q. And you witnessed his actual signature?

15 A. Yes, ma'am.

16 Q. Once he had been advised of his rights and indicated
17 that he wanted to talk to you, what was the conversation?

18 A. I just asked an open-ended question: What happened?

19 Because there are multiple sides, you want to try to get as
20 much as information you can. He started out saying that he
21 was robbed and shot while at Apple Valley.

22 Q. He said he was robbed and shot while at Apple Valley?

23 A. Correct. That's a neighborhood off of

24 It's on the other side of

25 Q. And how far from Mr. Lucky's and the

1 is that approximately?

2 A. It's approximately four miles. I explained to him -- I
3 explained to him that he was found at .
4 Then he changed it to where he was shot and robbed at

5 .
6 Q. So when you told him he was found at

7 , that's when he said he was shot and robbed at

8 .
9 A. Yes.

10 Q. And that was the information he was telling you.

11 A. Yes. And, again, that's something that makes sense
12 along the lines of what we're talking about. I asked him
13 about what happened at Mr. Lucky's. He said he was not
14 there. I advised him that, "You're on video and seen on
15 video," and that was pretty much the extent of our
16 conversation.

17 Q. So the last thing he told you about Mr. Lucky's was he
18 was not there.

19 A. That is correct.

20 Q. That day did you go back out to the club in the
21 area?

22 A. Yes, we did. We went out there actually several times.
23 We had not recovered the gun that was the murder weapon or
24 that we felt was the murder weapon, so that becomes a very
25 big safety concern for us. I wouldn't want some kid walking

1 down the street getting a hold of it and thinking it was a
2 toy gun. So a very diligent effort was made to locate this
3 gun with it never being found and this was over several days.

4 Q. Is that unusual not to find the murder weapon?

5 A. It is not.

6 Q. In your experience?

7 A. No. Time, it hurts us as far as trying to recover a
8 murder weapon. It's not that hard to get rid of a gun.

9 Q. In this case also there was some additional shell
10 casings that were not recovered or projectiles. Is that
11 unusual?

12 A. No. You have people coming and going. When we first
13 arrive on a scene, it's just a mess. You've got a bunch of
14 people. You've got a bunch of people who don't want to be
15 there. They don't want to hang around. You've got cars
16 driving all around. It's unfortunately very common for us to
17 not be able to find all the shell casings, and that's not for
18 any reason other than it's a real-life situation. It's not a
19 lab. It's not a controlled area as much as you want to try
20 to control it.

21 Q. The next day did your investigation continue?

22 A. Yes, ma'am.

23 Q. That morning did you have a meeting with certain people
24 in your department?

25 A. We did. The sheriff's department is very large. The

1 next morning meaning the next business day meaning, well, the
2 Monday, Major Smith who is over all the homicides, if you
3 will, the lab, it's a chance for all of us to sit down to
4 make sure we're all on the same page, come up with what else
5 needs to be done, what else we should be doing to further
6 this investigation.

7 Q. Were any decisions made about charging in this case?

8 A. Yes. After the reviewing the video just -- if you view
9 the video in real-time, it's easy to miss certain details
10 that are very key. It's when you slow it down and you can
11 take it frame by frame that there was no question that we had
12 been lied to by Ernest. He ended up getting charged as well
13 as James Bethel in this homicide.

14 Q. That day did you make contact with a Mr. Frederick
15 Simpkins?

16 A. Yes, ma'am.

17 Q. And, again, were you continuing to try to find the gun?

18 A. Yes, ma'am. We have a whole team of people. You know,
19 something as mundane as just making phone calls to anyone who
20 -- we were able to get a phone number of -- asking: What did
21 you see? What do you know? I don't think in any homicide
22 case you could ever say, well, I have enough information; I
23 don't need to talk to you. If you were there, you might have
24 something and we want to talk to you. We wanted to find out
25 what you knew.

1 Q. On that day did you actually get warrants in this case?

2 A. Yes, ma'am. We got a warrant on Ernest Bethel.

3 Q. And?

4 A. James Bethel was obtained on the 19th.

5 Q. Okay. Turning your attention to August the 21st, what
6 happened that morning?

7 A. We tried to make arrangements for Ernest to turn himself
8 in. Again, with him not being the shooter, it afforded us a
9 little bit more longitude on how to handle the situation.
10 When he did not make his appointment, when he did not call,
11 we have a fugitives task force. I got them involved and they
12 were able to pick up Ernest and then bring him to
13 headquarters where an additional statement was taken.

14 Q. And you can't say what he said.

15 A. No, ma'am.

16 Q. That day as well, was Mr. James Bethel released from the
17 hospital?

18 A. I'm not a hundred percent what day he was released, but
19 when he was released he was in police custody and he would
20 have gone to the Alvin Glenn Detention Center. He wasn't in
21 the hospital but for a short time.

22 Q. And also on the 21st I believe was there an additional
23 statement not taken by you but by Sergeant Faust and
24 Investigator Rast from the defendant, Mr. Bethel, James
25 Bethel?

1 A. There was an additional statement obtained. We were
2 never able to get a written statement; it's verbal. They
3 went there for the purposes of obtaining a buccal swab for
4 his D.N.A. so that we would have his standard.

5 Q. And in that statement did he admit to being at Mr.
6 Lucky's?

7 A. He again denied being at Mr. Lucky's.

8 Q. Did you continue to take statements from certain people
9 in this case, not just you but other investigators?

10 A. Yes, we did. Anyone who we could identify as being
11 there to try to make phone calls that we felt had
12 something... Whether they saw something or knew something,
13 we wanted to get that documented.

14 Q. Were you able to ultimately take statements from all the
15 security guards in this case?

16 A. Yes, ma'am.

17 Q. They were cooperative?

18 A. They were.

19 Q. There's been some mention of the cameras in this video.
20 Were there cameras that show every part of the inside or
21 outside of this?

22 A. No. There are -- a lot of the inside is not recorded.
23 They have like the cash register and the bar area. The club
24 is -- it's an odd shape, if you will. There's like a V.I.P.
25 or a champagne room that's not recorded. There are many

1 areas inside the club itself that are not recorded. There
2 were also several cameras that were not recording or at least
3 when we were able to pull the recording device, there was
4 nothing there on that camera.

5 Q. In this case were you aware that certain information
6 from the recordings was -- your department got it and put it
7 on the disk actually.

8 A. Yes, ma'am, to preserve it. We weren't try -- we were
9 not trying to deprive Mr. Lucky's or the club of any of their
10 camera system. Those are pretty expensive. And if we have
11 the means to download whatever information we feel is
12 pertinent to this case, we try to do so. We're trying to do
13 it in a timely manner, just trying to work with them instead
14 of against them.

15 Q. And in this case, retrieving information from that video
16 recorder, were you able to actually get the chain of events
17 -- it was on camera as far as this group and who was there
18 that night.

19 A. Yes, ma'am. And, again, it would be impossible to get
20 everything. We went through it several times trying to make
21 sure we got all the information as it's related to this
22 incident and felt that we did get all of it.

23 Q. In reviewing the video, are you able to see who actually
24 came to the club with James Bethel that night?

25 A. Yes, ma'am.

1 Q. And what vehicle they were in?

2 A. Yes, ma'am.

3 Q. And who was that?

4 A. Ernest comes to the club with his two sisters, with
5 James Bethel. He had a Curtis Long and then a Troy Griffin.

6 Q. Were you able to determine the relationship between
7 James Bethel and Ernest Bethel?

8 A. They're cousins.

9 Q. I want to show you this diagram, State's Exhibit Number
10 84. There have been several places referred to on
11 as well as . Can you show the jury basically the
12 areas that have been referred to here?

13 A. I'm just trying to get my bearings on this one.

14 Q. That's all right.

15 A. All right. Here is going to be the

16 . You've got your I-26---

17 **Ms. Campbell:** Your Honor, may the witness step down?
18 I'm sorry.

19 **The Court:** Uh-huh. Make sure he talks toward the court
20 reporter.

21 **Ms. Campbell:** I will.

22 By Ms. Campbell:

23 Q. Go ahead, sir.

24 A. Okay. Right here is going to be I-20. I think I said
25 26 earlier. It's actually I-20. You've got

1 . You've got which is all
2 these apartments right here, and here is the club along with
3 the church.

4 Q. Okay. So these pins actually show the pertinent areas?

5 A. Yes, ma'am.

6 Q. During the course of the investigation, was there
7 certain clothing that was recovered that was pertinent?

8 A. The outside clothing that James Bethel was wearing was
9 recovered in the ditch which is going to be on the back side
10 of where this pin here is.

11 Q. The ditch area?

12 A. Yes, ma'am.

13 Q. And in your investigation is it unusual for someone to
14 try to change their appearance after...

15 A. No, it is not. It's pretty common actually.

16 Q. So this shows in general the areas we've been talking
17 about throughout this trial.

18 A. Yes, ma'am.

19 Q. Thank you, sir. And all those areas we've been talking
20 about, are they all here in Richland County?

21 A. They are.

22 Q. During the course of your investigation, were you able
23 to determine whether or not the victim in this case worked at
24 Mr. Lucky's?

25 A. He did. He worked as an unarmed bouncer. The security

1 there is armed; the bouncers are not.

2 Q. Was this his primary job?

3 A. He also worked at Zaxby's.

4 Q. As the lead investigator, did you also review the
5 evidence in this case as far as the shell casings that were
6 recovered?

7 A. Yes, ma'am.

8 Q. And primarily how many guns were shooting out there that
9 night?

10 A. You had three guns shooting. You had the .380 which is
11 what was used to kill Mr. Franklin.

12 Q. Was that ever recovered?

13 A. That was never recovered. You had the .40 that Kedron
14 Hope had that actually shot Mr. James Bethel. That was
15 recovered; it was turned in to us. You also had a .45 that
16 was used to shoot the tire out in the S.U.V. that Ernest
17 Bethel was in and that was also recovered.

18 Q. Were you able to determine who actually shot the tire
19 out?

20 A. Yes, ma'am. There was an Edward Simpkins -- is the one
21 who shot the tire out in the S.U.V.

22 **Ms. Campbell:** Your Honor, at this time if I could just
23 show just certain clips of the video and then I'll be done.

24 (Whereupon, State's Exhibit 71 began to be played for
25 the jury.)

1 By Ms. Campbell:

2 Q. The time period started here at the beginning of this as
3 far as the relevant admissible parts of this video is 1:00 in
4 the morning?

5 A. Yes, ma'am. That's the approximate time or very shortly
6 after when the group arrived to the club. You can see James
7 Bethel talking to Simpkins. Ernest is in the yellow shirt.

8 Q. Stop it. Does it pause? Okay. In this do you see the
9 people that we've been referring to throughout this trial?

10 A. Yes, ma'am. You can see most of the group there.

11 Q. And in the -- in describing the clothing, take them
12 basically one at a time.

13 A. All right. The person with their back turned to us, the
14 first person holding what appears to be a cell phone is Mr.
15 Simpkins. He's one of the managers.

16 Q. In the plaid shirt?

17 A. Yes, ma'am. Directly in front of him is going to be
18 James Bethel.

19 Q. The defendant?

20 A. The defendant. Dark-skinned. Behind him in the yellow
21 shirt is Ernest Bethel.

22 Q. Does he have anything on his head?

23 A. Yellow hat, yellow shirt. Behind him, the black male
24 with the white hat, is going to be Troy Griffin. The person
25 that you can see -- there's a dark shirt and then the girl

1 behind her is going to be one of Ernest's sisters.

2 Q. One of the girls that went with them that night?

3 A. Yes, ma'am.

4 Q. And what were their names again?

5 A. Colecious Bethel and S.B. . I think she's

6 been called S.B. once, but I think it's -- S.B.

7 (phonetic) is the correct...

8 Q. And, again, this is somewhat blurry up there, but when
9 you see it closer on a smaller screen, can you see the people
10 in a clearer fashion?

11 A. Yes, ma'am. It's not a high-definition video, but it's
12 clear enough where you can see what's going on and you can
13 see details. It's better than a lot of other videos we've
14 seen.

15 Q. At some point on this video - and I don't have to go
16 back and play it - but do you see the defendant, James
17 Bethel, actually leave from inside the club and go back out
18 later?

19 A. He does; yes, ma'am.

20 Q. And does he return with certain items in his hand?

21 A. Yes, ma'am.

22 Q. What is that?

23 A. He's got a bottle. I think they called it Croc
24 (phonetic) or something close to that.

25 Q. And when he returns, does he get patted down?

1 A. He does not.

2 Q. And in this video also do you see him having
3 conversations with Mr. Simpkins on at least more than one
4 occasion?

5 A. Yes, there are several.

6 Q. You're familiar with the pants that were recovered from
7 the ditch area---

8 A. Yes, ma'am.

9 Q. ---that Mr. Bethel had had on during the shooting?

10 A. Yes, ma'am.

11 Q. What was found in the pocket of those pants? Was there
12 any money?

13 A. There was a large sum of money.

14 Q. Approximately how much?

15 A. If I'm not mistaken, it was \$1500 or something in that
16 ballpark area.

17 Q. And during the course of your investigation, are you
18 aware of whether or not Ernest -- I mean James Bethel was
19 employed?

20 A. To my knowledge, he was not.

21 Q. Are you also able on this video to see the actual
22 shooting?

23 A. Yes, ma'am. Before the shooting also in the lobby area,
24 it's pretty telling when James actually gets in the face of
25 Mr. Franklin. He actually involves himself in this group

1 getting kicked out.

2 Q. And that's in the lobby area?

3 A. Yes, ma'am.

4 Q. And you actually see him confront Mr. Franklin.

5 A. He steps in front of---

6 **Mr. Shaffer:** Objection, Your Honor.

7 **The Court:** Basis?

8 **Mr. Shaffer:** Can I approach?

9 **The Court:** Yes, you may.

10 (Whereupon, a bench conference was held.)

11 **The Court:** Sustained.

12 By Ms. Campbell:

13 Q. Just let it roll. And, again, in this are you able to
14 identify some of the same people we've been referring to?

15 A. Yes, ma'am. You see James and Ernest and Troy walking
16 down the ramp now. Ernest's sisters are about to go down the
17 ramp or are at the foot of the ramp, if you will.

18 Q. Who do you first see here?

19 A. The first person you see is Mr. Simpkins.

20 Q. Mr. Simpkins?

21 A. I'm sorry. Mr. Franklin.

22 Q. Who is that next to him in the white?

23 A. It's his friend who was at the club that he testified to
24 earlier.

25 Q. Okay.

1 A. And if you blink, you can easily miss the shooting; it
2 happens that fast. But if you're able to slow it down, you
3 can see how they maneuver behind Mr. Franklin, and he's
4 pretty much just executed.

5 Q. And then in this video do you also see the direction
6 where Mr. Bethel ran off?

7 A. Yes, ma'am.

8 Q. And who follows him in this video?

9 A. Mr. Frederick Hope -- Kedron Hope. I'm sorry.

10 Q. And you also see some flashes. Do you actually see all
11 the gunfire or just some of it? Do you know?

12 A. You see some---

13 **Mr. Shaffer:** Objection, Your Honor.

14 **The Court:** Basis?

15 **Mr. Shaffer:** She's asking him an opinion, Your Honor.

16 **The Court:** No speaking objections.

17 **Mr. Shaffer:** Your Honor, may I approach?

18 **The Court:** Yes, you may approach.

19 (Whereupon, a bench conference was held.)

20 **The Court:** Sustained. Proceed.

21 By Ms. Campbell:

22 Q. After the shooting, in the direction where you see Mr.
23 Bethel go, are you able to see some flashes?

24 A. You are.

25 Q. That's all we can say.

1 A. Yes, ma'am.

2 Q. In this case Mr. Bethel was charged with what charges?

3 A. He was charged with murder and attempted murder.

4 Q. And murder was for whom?

5 A. For GaWayne Franklin.

6 Q. And the attempted murder?

7 A. Is Mr. Kedron Hope, the security officer whom he shot
8 at.

9 Q. The person that you spoke to who told you he wasn't at
10 Mr. Lucky's and that he got robbed that night, do you see him
11 here in the courtroom?

12 A. Yes, ma'am. James Bethel is at the defendant's table,
13 blue shirt, dark tie, black male.

14 **Ms. Campbell:** Your Honor, may the record reflect it's
15 the defendant?

16 **The Court:** You may proceed.

17 **Ms. Campbell:** Thank you. I don't have anything
18 further.

19 **The Court:** Any questions for the witness? Do you need
20 this here, Mr. Shaffer?

21 **Mr. Shaffer:** Your Honor, I probably will.

22 **The Court:** Do you want us to leave the lights down?

23 **Mr. Shaffer:** Yes. Thank you.

24 **The Court:** You're welcome.
25

Cross-Examination

By Mr. Shaffer:

Q. Investigator Holdorf, there's something I wanted to bring up over the last witness. How many people are -- is -- whenever -- when you see them going in the video, when you see Black going in the video, how many people was he confronting?

A. There's a number of people that he's escorting out.

Q. Okay. Is there 15 people?

A. It's a lobby full.

Q. Okay.

A. You've got---

Q. I'm talking about in the parking lot.

A. In the parking lot I wouldn't say that Black is confronting anyone. He's standing in the parking lot. He actually doesn't even see Mr. Bethel come up behind him.

Q. Okay. Well, let me ask you this. How many people were in the parking lot on the video?

A. On the video you can see -- it depends on which time exactly you're talking about. To start with, there's two. Then you can see Ernest come into view, and then you can see James come up behind him.

Q. But not 15; right?

A. Correct.

Q. Okay. Now, you said that you can see certain things

1 whenever you slow the video down.

2 A. Yes, sir. There are---

3 Q. Is this the video you reviewed?

4 A. I think that's a copy of the video we reviewed; yes,
5 sir.

6 Q. Can you slow it down for me?

7 A. You can hit the pause...

8 Q. Okay. So you were -- you were going through and hitting
9 pause every time?

10 A. Yes, sir.

11 Q. Okay. Was it in this format?

12 A. I don't -- I'm not familiar with the format that we're
13 talking about. I'm not an I.T. person. I usually have to
14 call for help to get my computer working if it's doing
15 something...

16 Q. What I'm wondering is: Was it on this type of a player
17 or did you have a button where you could go frame by frame on
18 it?

19 A. I know it was in the conference room that we have at
20 headquarters on a regular computer, if you will, to where we
21 were able to show frame by frame for my supervisors and also
22 the solicitor's office what we saw and what we thought was
23 important. How that was done, the format, I couldn't even
24 tell you the format that's in now. I know it's on a disk.

25 Q. Could one of y'all slow it down?

1 (An off-the-record discussion takes place between the
2 attorneys.)

3 By Mr. Shaffer:

4 Q. So you went through like this.

5 A. Real slow, yes, sir.

6 Q. Okay. And you said that you had gotten the D.V.R.;
7 right?

8 A. Sergeant Faust got the D.V.R.

9 Q. And y'all pulled sections off of it.

10 A. Yes, sir.

11 Q. And you put it on a disk like this; right?

12 A. Investigator Metz did; yes, sir.

13 **Mr. Shaffer:** And -- Court's indulgence.

14 (An off-the-record discussion takes place between the
15 attorneys.)

16 By Mr. Shaffer:

17 Q. I'm going to show you -- well, you're the lead
18 investigator on this case; right?

19 A. Yes, sir.

20 Q. And part of your job as the lead investigator is to look
21 through all the evidence; right?

22 A. Yes, sir.

23 Q. Okay. Do you recognize this disk?

24 A. It just says "video" on it.

25 Q. Okay. Well, do you -- do you remember making a disk?

1 A. I don't make the disks, sir. Anything done in
2 copy/paste, it's good luck.

3 Q. Okay. I understand that. I understand. I had to get
4 them to help me yesterday with some... Well, tell me this,
5 Investigator. You're saying that the video -- if I told you
6 that that was a larger copy of that video, would you disagree
7 with me?

8 A. I'd have no reason to disagree with you, sir.

9 Q. And you know that there was a larger copy created;
10 right?

11 A. Yes, sir.

12 Q. And from that y'all took snippets and put it on here;
13 right?

14 A. Yes, sir.

15 Q. Do you think---

16 **Ms. Campbell:** Objection, Your Honor.

17 **The Court:** Basis?

18 **Ms. Campbell:** Your ruling on admissibility.

19 **The Court:** Please approach.

20 (Whereupon, a bench conference was held.)

21 **The Court:** You may proceed. Overruled.

22 By Mr. Shaffer:

23 Q. And y'all took sections from that video and put it up
24 here; right?

25 A. Yes, sir.

1 Q. Sort of like a highlight reel?

2 A. If you will, yes, sir.

3 Q. Okay. But that video is not a complete copy of what's
4 on the D.V.R., is it?

5 A. No, sir.

6 Q. Okay. So the D.V.R. shows about an hour where y'all
7 didn't put it on that; right?

8 A. We recorded all the information that was pertinent to
9 what was going on that we could see. The D.V.R. had hours,
10 days worth of information. It would be too much to put on a
11 disk or two disks. We'd be here for days if we were going to
12 view all of that.

13 Q. Okay. So the pertinent information would be the
14 information that was on it while they were at the club;
15 right?

16 A. That we were able to find and see. Again, you cannot
17 see all the angles. You can't see everything that's going on
18 inside the club. You don't have everything that's going on.
19 If it's not in certain spots, we're not going to see it.

20 Q. I mean, that's fair enough, but you said the -- would
21 you agree or disagree that what happened while they were at
22 the club is pertinent?

23 A. If it's something you can see, yes, sir.

24 Q. Okay.

25 A. As far as the video. Otherwise, you have to rely upon

1 testimony from people who were there. There's nothing
2 that -- I'd love to have a video of everything. That's just
3 not possible.

4 Q. But on that video that you took that y'all made this
5 video from, there's over an hour missing; right?

6 A. If you say there are, I have no reason to doubt you. If
7 there is an hour missing or any part of the video missing,
8 it's something that we did not feel was -- they weren't seen.
9 We didn't have any information that we were putting on the
10 disk. There wasn't anything to -- I have nothing for or
11 against Mr. Lucky's or anyone else involved in this. I'm
12 just trying to get the facts. I'm trying to take a large sum
13 of information and put it in a file we can use. Is it
14 possible something got missed? Anything is a possibility.

15 Q. How long were they at the club?

16 A. I think they first arrive around 1. The incident
17 happens at 3 something, so you're talking two hours. They
18 also leave and come back several times.

19 Q. Okay. Did the entire group leave?

20 A. No, sir, not to my knowledge.

21 Q. Okay. I believe you testified that you can't copy
22 everything; is that right?

23 A. You can copy. You can copy a whole bunch of things.
24 What we were trying to do is get this into something that we
25 could work with. Anything that we felt was pertinent to them

1 coming or going or what we could see on the video, we tried
2 to record.

3 Q. How much does one of these cost?

4 A. I don't know. Pennies? A dollar?

5 Q. Okay. Do y'all have these at the sheriff's department?

6 A. We do.

7 Q. Lots of them; right?

8 A. We do.

9 Q. Okay. I'm showing him a blank C.D., Your Honor, just
10 for the record. So it's not too hard to copy stuff over to a
11 C.D.; right?

12 A. We have people who do that.

13 Q. Yeah.

14 A. It can be challenging.

15 Q. Well, have you -- okay. So it can be challenging, but
16 y'all are able to do it with two hours of it; right?

17 A. I'm not sure exactly how much time is on there. Again,
18 it's the information that we -- what we saw that was relevant
19 to the case.

20 Q. And you didn't preserve -- you didn't preserve the other
21 hour; right? If I told you there was an hour missing --
22 let's assume that for a little while.

23 A. If there's an hour missing, it's an hour that we didn't
24 see anything when we reviewed the video---

25 Q. Okay.

1 A. ---or when we relayed to our I.T. person---

2 Q. Is that your theory of the case? Is that what you were
3 going to say?

4 A. The theory of the case is what it is. You see Mr. James
5 Bethel go behind an unarmed person and execute him, sir---

6 Q. And I'm not---

7 A. ---without just cause or provocation. His back was
8 turned to him.

9 Q. I'm not---

10 A. That is the theory of the case, sir.

11 Q. I'm not asking what the theory of the case was. I'm
12 saying you didn't record---

13 A. You just asked me if that was the theory of the case.

14 Q. I apologize. What I was asking you was: You didn't
15 record anything that you didn't think comported with your
16 theory of the case; correct?

17 A. We didn't record anything that we didn't feel or that we
18 saw the defendants in the video (verbatim).

19 Q. Okay. How many people got in that club that night
20 without being patted down?

21 A. I don't know, sir.

22 Q. If you watched that video, would you be able to tell me?

23 A. Would not. That wasn't something I was looking at.

24 Q. Okay. So other people in that club could have been
25 armed; correct?

1 A. Yes, sir.

2 Q. Okay. It's a possibility.

3 A. Anything is a possibility.

4 Q. And, in fact, you had gotten some reports that people
5 were armed? Other people?

6 A. I'm not familiar with what you're talking about, sir.

7 Q. You reviewed all the evidence in this case; right?

8 A. There's a lot of evidence, sir.

9 Q. Okay. I understand. No, I completely understand that.
10 You reviewed statements from the cousins; correct? James
11 Bethel's cousins; right?

12 A. Yes, sir.

13 Q. Okay. And there was some evidence that other people
14 were armed; right?

15 A. If you can show me something to refresh. I'm not a
16 hundred percent certain.

17 **Mr. Shaffer:** Okay. Court's indulgence.

18 **The Court:** Uh-huh.

19 By Mr. Shaffer:

20 Q. I'm going to show you a statement that was taken. If
21 you could examine that and see if that refreshes your
22 recollection.

23 A. (The witness complies.) Okay.

24 Q. But y'all did have some indication that other people
25 were armed?

1 A. No, sir. That's a bit misleading. It's asking, if you
2 happen to read it -- but it's just basically asking about how
3 many shots did you hear and she basically says around 12,
4 that other people went out to their cars and got guns.
5 That's true. We have statements from the people who did
6 that. This was a very unusual event. They armed themselves.

7 Q. Okay. So eight or seven -- seven or eight people armed
8 themselves?

9 A. I'm not exactly sure how many people armed themselves,
10 but there's nothing in that statement that says there are
11 other people in the club with guns.

12 Q. Okay.

13 A. Or that she saw other people in the club with guns.

14 Q. That's fair enough. How many people do you know of that
15 had guns that night?

16 A. I want to say all the security.

17 Q. Okay. How many people pulled out guns that you know,
18 actually drew weapons?

19 A. I'd say maybe four. That's a ballpark. That's not
20 something I looked at to try to count up.

21 Q. I understand. List them out for us if you can, if you
22 can remember.

23 A. You have Kevin, Martin, Kedron Hope, and then the two
24 other security guys.

25 Q. Okay. Is that seven or eight?

1 A. That is not.

2 Q. Okay. And you had some indication that seven or eight
3 people had guns pulled out; right?

4 A. I had a statement from a person---

5 Q. Okay.

6 A. ---who was estimating.

7 Q. But you know -- you did -- and I apologize. I didn't
8 mean to cut you off.

9 A. I was going to say on an event that's not normal,
10 something that happens at the spur of the moment, it's hard
11 to get exact information, so you try to get an estimate.
12 That was her perception. I don't have anyone else saying
13 that was their perception also.

14 Q. Okay. You testified that you can never get too much
15 information in a homicide case; right?

16 A. No, sir, you cannot.

17 Q. Okay. And you analyze all that information; right?

18 A. We are human. You try to do the best you can.

19 Q. To follow up those leads?

20 A. At some point in time the investigation has to stop much
21 like it began. You do the best you can.

22 Q. Okay.

23 A. I don't think there's any -- ever any case where I can
24 say I've done absolutely everything that can be done on the
25 case. I try to do the best I can. I've had other people

1 review it and see if there's anything I may have missed.

2 We're human and it would be easy to miss something.

3 Q. Like an hour of the three hours that they were there?

4 A. If you say so, yes, sir.

5 Q. Okay. Okay. So when you were in that conference room
6 and you were going frame by frame in the video, you said at
7 that point you determined that there was something in that
8 video that made you believe that Ernest Bethel was
9 distracting him.

10 A. Yes, sir.

11 Q. Can you tell us what that is?

12 A. You can clearly see Mr. Franklin is looking at Ernest
13 Bethel. And because they're cousins, because of the totality
14 of the statements that were obtained, we felt that they were
15 acting in concert. They were working together, which is why
16 Ernest Bethel was charged along with James Bethel even though
17 Ernest Bethel was not the shooter.

18 Q. Okay. Show us the picture -- if you could, come down or
19 you can -- you can either do one of two things. You can tell
20 me when to stop or you can come down and press the button
21 yourself whenever you want it to stop. I want to see the
22 picture or the image that made you think that they were
23 acting in concert.

24 A. It would go upon the totality of what he had told us in
25 his first statement. What was again said on the second

1 statement is different.

2 Q. So it wasn't based off---

3 A. He wanted us in his first statement---

4 Q. It wasn't based off of the frame by frame; right?

5 A. The frame by frame helped us; yes, sir.

6 Q. Okay.

7 A. The frame by frame catches him in a lie.

8 Q. Okay. Now, when you -- when you took this statement,
9 when you went to the hospital, it was the morning of; right?

10 A. It's almost noon; it's 11 something.

11 Q. Okay. Where did you find him at?

12 A. I believe he was in Room 801. It's written on the
13 advice of rights form.

14 Q. Okay. And that's at Richland Memorial Hospital?

15 A. Yes, sir.

16 Q. And he had been shot twice in the back; right?

17 A. Yes, sir.

18 Q. Okay. And what was his condition? Was he handcuffed to
19 the bed?

20 A. I don't recall if he was handcuffed to the bed. It's
21 not uncommon for someone who is in police custody to be
22 handcuffed to the bed so they can't just leave. I have
23 nothing to say one way or the other, sir.

24 Q. Okay. And he was hooked up to machines?

25 A. I'm sure he was.

1 Q. Okay. Whenever you came in the room, was he sleeping or
2 awake?

3 A. I believe he was watching T.V. when we came in the room.
4 That's what I recall.

5 Q. Okay. Did he appear drowsy?

6 A. No, sir. I never -- at no time when we were talking to
7 him was he drowsing off or nodding off, become unconscious or
8 say anything that didn't make any type of sense to us as it's
9 related to this case. He actually was able to formulate and
10 change his story to try to get along with where he was.

11 Q. And he told you he'd been shot and robbed; correct?

12 A. Yes, sir.

13 Q. Okay. And he was shot. We know that; right?

14 A. Yes, sir.

15 Q. Okay. And there was \$1500 taken off of him; right?

16 A. I'm not sure the exact amount. It's whatever is in
17 evidence or has been---

18 Q. A large sum of cash?

19 A. Yes.

20 Q. Okay. And it was in his pants; right?

21 A. Yes, sir.

22 Q. And they were found in a ditch; correct?

23 A. Where he had run through, yes, sir.

24 Q. Okay. And that was after he had been shot.

25 A. I assume so since there was blood found there also; yes,

1 sir.

2 **Mr. Shaffer:** Okay. No further questions.

3 **The Court:** Any redirect?

4 **Ms. Campbell:** Yes, Your Honor.

5 **The Court:** Do you need the video?

6 **Ms. Campbell:** No, ma'am.

7 **The Court:** You may proceed.

8 **Ms. Campbell:** Thank you, Your Honor.

9 Redirect Examination

10 By Ms. Campbell:

11 Q. He asked you about the video and the part... During the
12 course of your investigation, did you become aware that Mr.
13 Bethel and/or some of his friends were all in areas where the
14 cameras showed inside the club for a period of time?

15 A. Yes, ma'am.

16 Q. And what part of the club was he in during that time
17 that wouldn't have shown up on any video; therefore, you
18 wouldn't have retrieved it?

19 A. The V.I.P. or champagne room.

20 Q. And what was he doing in the V.I.P. room or---

21 **Mr. Shaffer:** Objection, Your Honor. May we approach?

22 **The Court:** Proceed. I mean, approach.

23 (Whereupon, a bench conference was held.)

24 **The Court:** You may proceed. Sustained.

25 **Ms. Campbell:** Thank you.

1 By Ms. Campbell:

2 Q. And in retrieving the portions of the video which have
3 been entered into evidence, is that the parts that show what
4 these people were doing that night?

5 A. Yes, ma'am, that we saw on the video.

6 Q. Did you or anyone deliberately not retrieve anything
7 showing anything these people did that night?

8 A. Absolutely not. I've got nothing in this case to say
9 one thing or another. If I had any type of ties or
10 relationship or personal bias towards one party or the other,
11 then I wouldn't be allowed to work the case. I'd have to
12 excuse myself.

13 Q. As a police officer, are there any parts that you didn't
14 retrieve that showed other people with guns?

15 A. There was none.

16 Q. Would that have been pertinent to your case?

17 A. It would. Who else has guns? I have an interest on
18 people with guns in the street or our streets. Who is it?
19 Are they allowed to actually have a gun? I would certainly
20 want to know.

21 Q. And as far as what has been presented to this jury and
22 what's on these videos, does that show all the parts and what
23 these people did that night?

24 A. That we were able to see on the video, yes.

25 Q. He and his group.

1 A. Yes, ma'am.

2 **Ms. Campbell:** He's also referred to this video, Number
3 157. Your Honor, at this time we'd offer it into evidence.

4 **Mr. Shaffer:** No objection.

5 **The Court:** Mark and admitted without objection.

6 **Ms. Campbell:** Thank you.

7 **The Court:** You're welcome.

8 (State's Exhibit 157 was received in evidence.)

9 By Ms. Campbell:

10 Q. And does that show what's in the other video that's been
11 shown to the jury as well as some more?

12 A. A lot more, yes.

13 Q. He asked you about the cousins and their statements to
14 you---

15 A. Yes, ma'am.

16 Q. ---that you weren't able to go into before.

17 Specifically, he asked you about Colecious Bethel talking
18 about other guns; is that correct?

19 A. Yes, ma'am.

20 Q. At the bottom does she also talk about her cousin J.J.
21 in this statement?

22 A. Yes, ma'am, where he got the guns, that he had two.

23 Q. Actually I'll refer to S.B. .

24 A. Yes.

25 Q. And who does S.B. indicate who had the guns that

1 night?

2 **Mr. Shaffer:** Objection, Your Honor. May we approach?

3 **The Court:** Basis?

4 **Mr. Shaffer:** Confrontation in S.B. .

5 **The Court:** Sustained. While an officer can testify to
6 hearsay in the course of an investigation, in this instance
7 you're offering it for its truth, and he does have the right
8 to confront the witness.

9 **Ms. Campbell:** May I approach?

10 **The Court:** Sure.

11 (Whereupon, a bench conference was held.)

12 **The Court:** You may proceed. Timeframe only.

13 By Ms. Campbell:

14 Q. And they both gave statements to you?

15 A. They did.

16 Q. And you can't say what they said, but did they give you
17 information about the defendant?

18 A. They did.

19 Q. And prior to charging the defendant, was this -- you
20 can't say what's in the statements. Was this also
21 information you considered in charging him?

22 A. It is; yes, ma'am.

23 **Ms. Campbell:** No further questions.

24 **Mr. Shaffer:** Your Honor, may I ask just one question?

25 **The Court:** Limited only to redirect.

1 **Mr. Shaffer:** Yes, Your Honor.

2 Recross Examination

3 By Mr. Shaffer:

4 Q. Investigator, did you -- did you view the entire video
5 on the D.V.R.?

6 A. I did not. Myself, Sergeant Faust, and Investigator
7 Rast viewed it. I viewed as much as I could. It was a team
8 approach.

9 Q. Okay.

10 A. I can't tell you under oath on the stand that I viewed
11 everything; no, sir. I viewed a lot of it. I viewed quite a
12 bit of it. I can't tell you I viewed everything.

13 **Mr. Shaffer:** Okay. Thank you.

14 **The Court:** Any further questions from the State?

15 **Ms. Campbell:** No, ma'am.

16 **The Court:** Sir, you may step down. Madam Forelady,
17 ladies and gentlemen, I'm going to give you all a brief rest
18 room break. During the break, please do not discuss the
19 case, and please leave your notepads in your seats. If you
20 will go with the bailiff for me, please.

21 (Whereupon, the jury was excused from open court at
22 11:04 a.m.)

23 **The Court:** We'll be at ease for about five minutes.

24 (Whereupon, a short break was taken.)

25 **The Court:** You may be seated. Who is the State's next

1 witness?

2 **Ms. Walker:** Your Honor, the State has no more
3 witnesses.

4 **The Court:** The State rests?

5 **Ms. Walker:** Yes, Your Honor.

6 **The Court:** Are there any motions now that the State has
7 rested?

8 **Mr. Shaffer:** Yes, Your Honor.

9 **The Court:** You may proceed.

10 **Mr. Shaffer:** We move for a directed verdict.

11 **The Court:** I can barely hear you.

12 **Mr. Shaffer:** I apologize. We would move for a directed
13 verdict on both charges. Lack of malice.

14 **The Court:** Would the State like to respond?

15 **Ms. Walker:** Your Honor, taking the evidence in the
16 light most favorable to the State, there are multiple
17 witnesses who have come forward, including the bouncers and
18 security guards, that describe the defendant's behavior that
19 night on the video. It's been pointed out the aggression
20 that the defendant shows towards victim when the victim is
21 ushering people out and the defendant steps up beside him and
22 kind of gets in his face and pushes him back. He then walks
23 around behind him, Your Honor, and executes him. We would
24 ask that Your Honor deny the motion.

25 **The Court:** Anything further from the defense?

1 **Mr. Shaffer:** Nothing, Your Honor.

2 **The Court:** When considering a motion for a directed
3 verdict, the Court is concerned with the existence or
4 nonexistence of evidence and not its weight. The Court must
5 look at the evidence in the light most favorable to the State
6 and determine whether there exists direct or substantial
7 circumstantial evidence reasonably tending to prove the
8 defendant's guilt. The Court is not required to find that
9 the evidence infers guilt to the exclusion of any other
10 reasonable hypothesis.

11 The defendant is charged with murder and attempted
12 murder. The defense has made a motion for a directed verdict
13 based on an assertion that there is a lack of evidence of
14 malice. The Court finds that that argument is without merit
15 as there is direct and substantial circumstantial evidence
16 reasonably tending to prove the element of malice as well as
17 the defendant's guilt. Therefore, the motion for directed
18 verdict is denied.

19 **Mr. Shaffer:** Okay.

20 **The Court:** Now, sir, if you'd stand for me, please.
21 Raise your right hand for me, please.

22 James K. Bethel, Jr., after being duly sworn,
23 testified as follows in camera:

24 Examination by the Court

25 Q. State your full name for the record.

1 A. James Bethel.

2 Q. Mr. Bethel, do you remember on yesterday when I
3 discussed with you your constitutional rights?

4 A. Yes, Your Honor.

5 Q. And do you need to ask me any more questions about your
6 constitutional rights?

7 A. No, Your Honor.

8 Q. Have you discussed with your lawyer whether you should
9 or should not testify in this case?

10 A. Yes, Your Honor.

11 Q. And, sir, do you need to speak with him any further at
12 this time?

13 A. No, Your Honor.

14 Q. And, sir, do you wish to testify or do you wish not to
15 testify in this case?

16 A. I wish to testify, Your Honor.

17 Q. Okay. Now, you can take your seat, sir.

18 **The Court:** Mr. Shaffer, are you going to be calling
19 Shanae Bell?

20 **Mr. Shaffer:** Yes, Your Honor.

21 **The Court:** As well as Linda Jones?

22 **Mr. Shaffer:** Yes.

23 **The Court:** Andrena Jenkins?

24 **Mr. Shaffer:** Probably not, Your Honor.

25 **The Court:** Steven Takler?

1 **Mr. Shaffer:** No, Your Honor.

2 **The Court:** Edward Daniel?

3 **Mr. Shaffer:** No, Your Honor.

4 **The Court:** Curtis Long.

5 **Mr. Shaffer:** Yes, Your Honor.

6 **The Court:** Give me one moment. I left a jump drive in
7 my office that I need to get.

8 **Mr. Shaffer:** Okay.

9 **The Court:** Yes, sir?

10 **Mr. Shaffer:** Your Honor, may I approach on a
11 housekeeping matter?

12 **The Court:** Sure. Uh-huh.

13 **Mr. Shaffer:** Thank you.

14 (Whereupon, a bench conference was held.)

15 **The Court:** Okay. We'll be at ease for about
16 15 minutes.

17 (Whereupon, a short break was taken.)

18 **The Court:** You may be seated. Is the State ready to
19 proceed?

20 **Ms. Walker:** Yes, Your Honor.

21 **The Court:** Is the defense ready to proceed?

22 **Mr. Shaffer:** Yes, Your Honor.

23 **The Court:** All right. Who is the defense's first
24 witness?

25 **Mr. Shaffer:** Troy Griffin.

1 **The Court:** Troy?

2 **Mr. Shaffer:** Griffin.

3 **The Court:** Is he present?

4 **Mr. Shaffer:** I think he's being brought up.

5 **The Court:** Why don't we go ahead and have him situated
6 before the jury comes in?

7 **Ms. Walker:** Your Honor, I can't recall if -- I need to
8 rest on the record or I already---

9 **The Court:** You already did. Oh, I'm going to let you
10 rest in the presence of the jury, but I still don't want --
11 because I assume they have him shackled, and that's going to
12 take a little minute.

13 (Pause in proceedings. Troy Griffin is brought into the
14 courtroom and is seated in the witness box.)

15 **The Court:** You can bring in the jury.

16 (Whereupon, the jury was brought into open court at
17 12:04 p.m.)

18 **The Court:** Ladies and gentlemen, we appreciate your
19 patience. We had some matters of law we needed to dispose of
20 in the interest of time. The State may proceed.

21 **Ms. Walker:** Your Honor, at this time the State rests.

22 **The Court:** Thank you. The defense may proceed.

23 **Mr. Shaffer:** Thank you, Your Honor.

24 **The Court:** You're welcome.

25 **Mr. Shaffer:** The defense calls Troy Griffin.

1 **The Court:** Sir, if you would stand to be sworn.

2 Troy Griffin, after being duly sworn, testified as
3 follows:

4 **The Clerk:** State your name for the record and spell it,
5 please.

6 **The Witness:** Troy Griffin. T-R-O-Y. G-R-I-F-F-I-N.

7 **The Clerk:** Thank you.

8 **The Court:** You may proceed.

9 Direct Examination

10 By Mr. Shaffer:

11 Q. Good afternoon, Mr. Griffin. You're currently housed at
12 the department of corrections?

13 A. Yes, sir.

14 Q. Up in Bennettsville? Is that right?

15 A. Yes, sir.

16 Q. Where are you originally from?

17 A. Columbia, South Carolina.

18 Q. What part of Columbia?

19 A. Garners Ferry Road, Hopkins area.

20 Q. Okay. How far did you get in school?

21 A. Eleventh grade.

22 Q. Okay. Where were you at? What school?

23 A. Well, if you look on my record, it says Birchwood,
24 Birchwood High.

25 Q. Okay. Now, I'm going to draw your attention to the

1 night of the shooting. Were you with -- well, first of all,
2 do you know James Bethel?

3 A. Yes, sir.

4 Q. How long have you known him for?

5 A. Years now.

6 Q. Okay. Were you with him the night of the shooting?

7 A. Yes, sir.

8 Q. Now, are y'all friends?

9 A. Yes, sir.

10 Q. Okay. What were you wearing that night?

11 A. A Gamecocks hat, a white shirt, like some khaki shorts.

12 Q. Okay. So you were wearing a white shirt and khaki
13 shorts?

14 A. Yes, sir.

15 **Mr. Shaffer:** And, Your Honor, we probably don't need to
16 dim the lights or anything for this. I'm just going to get
17 him to identify himself hopefully.

18 **The Court:** Okay.

19 By Mr. Shaffer:

20 Q. Now, do you recognize yourself in that picture?

21 A. Yes, sir.

22 Q. And where are you located at?

23 A. At the door.

24 Q. Okay. And at the time did you have dreadlocks?

25 A. Yes, sir.

1 Q. Okay. Do you recall what time y'all got to the club
2 that night?

3 A. Honestly, no.

4 Q. You don't recall exactly?

5 A. Huh-uh.

6 Q. Now, you arrived with James Bethel; right?

7 A. Yes, sir.

8 Q. Where -- who was with you at that time?

9 A. Who all was in the car?

10 Q. Yeah, who all?

11 A. Me, James, Curtis, Ernest, and when we first arrived it
12 was just us four.

13 Q. Okay. And y'all went in the club; right?

14 A. Yes, sir.

15 Q. Okay. That night you had an encounter with -- with a
16 bouncer; correct?

17 A. Yes, sir.

18 Q. Do you recall his name?

19 A. He said his name is Black.

20 Q. Okay. He went by Black?

21 A. Yes, sir.

22 Q. Okay. Could you describe him, please?

23 A. Big, dark-skinned guy, dreads.

24 Q. Okay. And what was your first encounter with Black?

25 A. When he had pushed me.

- 1 Q. What do you mean whenever he pushed you?
- 2 A. When we was -- he just came up and just pushed me when
3 we was in the club.
- 4 Q. He came up and just pushed you?
- 5 A. Yes, sir.
- 6 Q. At what point was that? How long had y'all been at the
7 club?
- 8 A. I'd say we -- that was about like -- we were there 45 to
9 like an hour or something like that.
- 10 Q. Okay. So 45 minutes to an hour while you were at the
11 club? Now, had you been drinking that night?
- 12 A. Yes, sir.
- 13 Q. What were you drinking?
- 14 A. Ciroc.
- 15 Q. Okay. Had you had a lot to drink?
- 16 A. A good amount, yes, sir.
- 17 Q. Do you remember everything clearly?
- 18 A. I can't say clearly but I -- the majority of the stuff I
19 remember; yes, sir.
- 20 Q. Okay. Now, you said that your first encounter was Black
21 just came up and pushed you.
- 22 A. Yes, sir.
- 23 Q. Where were you at?
- 24 A. We was inside the club.
- 25 Q. Okay. Where the bar is?

1 A. Yes, sir.

2 Q. Okay. And did he give you any indication as to why he
3 pushed you?

4 A. No, sir.

5 Q. Did he say anything to you?

6 A. Basically like threats but as far as why he pushed his
7 stuff, no.

8 Q. Okay. Now, how big are you? How tall are you?

9 A. Like 5'4".

10 Q. Okay. And how much do you weigh?

11 A. 130.

12 Q. Okay. And Black was a good bit bigger than you; right?

13 A. Yes, sir.

14 Q. What happened after he pushed you?

15 A. Basically a big -- an argument. We was trying to figure
16 out what was going on, and the bouncers -- like the rest of
17 the bouncers, they just came around and like they was just --
18 just boosting up stuff just trying to -- you know, just
19 trying to fight really.

20 Q. Okay. And when you say they were boosting up stuff, I
21 mean, what do you -- what do you mean they were boosting up
22 stuff?

23 A. They was making the matters worsen than what it was.

24 Q. Okay. Did they ask y'all to leave at that point?

25 A. From the beginning they wanted us to leave, but the

1 owner told them we were spending money, so there wasn't no
2 need in us leaving but then---

3 Q. Okay. And could you describe the owner?

4 A. Brown-skinned, kind of chubby.

5 Q. Okay. Was he the guy standing at the door in that
6 picture that you just saw?

7 A. Yes, sir.

8 Q. Okay. He had a plaid shirt on?

9 A. Yes, sir.

10 Q. Okay. And he said not to leave because you were
11 spending money; right?

12 A. Yes, sir.

13 Q. Now, what happened -- so the first time you met with
14 Black, is that whenever he pushed you?

15 A. Yes, sir.

16 Q. Is that when the club owner told him not to?

17 A. No, he -- this was before -- no, the first time is when
18 he wanted us -- he wanted us to leave for some reason.
19 That's when the club owner told him - you know what I'm
20 saying - they're spending money. And after that, that's when
21 he came and pushed me.

22 Q. Okay. And so it was after the, you know, the first
23 incident---

24 A. Yes, sir.

25 Q. ---with the club owner. How many incidents were there

1 whenever you were told to leave?

2 A. I would say that was like two. It was like two.

3 Q. Okay. And the club owner -- well, let's get back to the
4 incident where he pushed you. What were you doing at the
5 time he pushed you?

6 A. I believe I was talking to James. We was talking at the
7 time.

8 Q. Okay. What happened after he pushed you?

9 A. Basically we was trying to see what was going on, why he
10 had pushed me and stuff. You know, I guess when the bouncer
11 seen when we was talking to him, that's when they all came
12 in.

13 Q. Was Ernest there?

14 A. Yes, sir.

15 Q. And where was Ernest at during this time?

16 A. When he -- after he pushed me, that's when Ernest walked
17 up.

18 Q. Okay. And what did Ernest do whenever he walked up?

19 A. He tugged Ernest, too, like when Ernest came to ask him
20 what was going on, he pushed him, too, but he didn't push him
21 as hard as he did me.

22 Q. Okay. How did Ernest respond to that?

23 A. The same. We just -- basically we just asked him what's
24 going on.

25 Q. Okay. What happened after that?

1 A. That's -- that's when we ended up in the hallway when we
2 was all in the hallway.

3 Q. Okay. And you were asked to leave. Did you have a
4 chance to observe the defendant in the hallway? I'm sorry.
5 Did you -- did you see J.J. in the hallway?

6 A. Yeah, J.J. was in the hallway still talking to the --
7 that's when he was in the hallway talking to the owner.

8 Q. Okay. And J.J. is James Bethel?

9 A. Yes, sir.

10 Q. Okay. And when -- how was he acting whenever -- was he
11 saying anything?

12 A. Who? J.J.?

13 Q. Yeah.

14 A. Well, he basically was -- because he's the one who got
15 us in the club in the first place so -- because he know the
16 man, I reckon. So he basically was the one that was calming
17 everything down though.

18 Q. Okay. So he was trying to calm everything down?

19 A. Yes, sir.

20 Q. How was Black acting in the hallway?

21 A. Yeah, he was out of control. He didn't want to say
22 nothing.

23 Q. Okay. What do you mean he was out of control?

24 A. Just like he just -- I don't know. The man just -- it's
25 like he had some type of grudge on his shoulder.

1 Q. Did he have -- did he threaten you?

2 A. Yeah, he threatened me.

3 Q. How did he threaten you?

4 A. Saying that he was going to beat us up and all this
5 other stuff.

6 Q. Okay. And did you observe Black talk to the defendant?

7 A. No, sir. He was -- they -- like we was trying to calm
8 everything down but, you know, there was so much like drama
9 going on I can't really too much say what they talked about
10 or not.

11 Q. Okay. And whenever you were out on the porch -- at some
12 point y'all moved to the porch; right?

13 A. Yes, sir.

14 Q. Okay. What happened out there?

15 A. One of the bouncers pepper-sprayed. He had pepper-
16 sprayed outside that door.

17 Q. He pepper-sprayed outside the door?

18 A. Yes, sir.

19 Q. Okay. Was that on the porch or was that while y'all
20 were on the ramp?

21 A. That was -- that was like -- because, you know, the
22 porch is right there by the ramp, so it was like all around
23 that little area.

24 Q. Okay. Where were you at when you -- you got pepper-
25 sprayed; right?

1 A. Yes, sir.

2 Q. Where were you at?

3 A. Probably like at the top of the -- at the top of the
4 ramp where the porch area is.

5 Q. Okay. And who was near you?

6 A. Curtis. J.J. was still out there talking to the owner,
7 and Ernest's sisters was up there and there was a -- and
8 whoever else was at the club.

9 Q. And where was Ernest at this time?

10 A. Ernest was -- he was -- Ernest was talking to Black.

11 Q. Okay.

12 A. Because -- yeah.

13 Q. But where was he at talking to Black?

14 A. They was at -- they was down on the ramp..

15 Q. Okay. So he was at the bottom of the ramp---

16 A. Yes, sir.

17 Q. ---at this point? Okay. And y'all were at the top of
18 the ramp.

19 A. Yes, sir.

20 Q. How far away was -- okay. I'm actually going to get you
21 to demonstrate this on the board. Your Honor, can he
22 actually -- well, I'll do it with another witness or, if you
23 wouldn't mind, I could actually assist him by drawing
24 something. Would y'all object?

25 **The Court:** That's fine. I would imagine the State has

1 no exception.

2 **Mr. Shaffer:** I'm just going to draw -- I'll show you
3 exactly what I want you to draw.

4 **Ms. Campbell:** Yeah.

5 **Mr. Shaffer:** Okay. Okay. Court's indulgence?

6 **The Court:** Uh-huh.

7 By Mr. Shaffer:

8 Q. Okay. Okay. This is the top of the ramp?

9 A. Uh-huh.

10 Q. And this is the ground. Okay? I'm going to go down
11 from the top to the bottom and I want you to tell me to stop
12 when I get to approximately the position you were at. Okay?

13 A. Talking about on the...

14 Q. On the ramp.

15 A. On the ramp? Right there.

16 Q. That was you.

17 A. Uh-huh.

18 Q. Okay. I'm going to do the same thing, and I want you to
19 tell me the position that Curtis was in.

20 A. All right. Right there.

21 Q. All right. And I'm going to do the same thing. I want
22 you to tell me the position James was at.

23 A. He was at the very top.

24 Q. He was at the very top.

25 A. Uh-huh.

1 Q. Okay. And where did the pepper spray come from? Do you
2 know the direction?

3 A. Not the direction - I don't know - but it was up at the
4 top though, but I don't know what direction it came from.

5 Q. Okay. And I'm going to do the same thing just for this
6 group. Tell me where Ernest was at.

7 A. Right there.

8 Q. Okay. So -- and you know that the pepper spray came
9 from the top of the ramp.

10 A. Yes, sir.

11 Q. Do you know approximately how far away James was?

12 A. I'd say he was about -- he was a good couple of feet
13 away.

14 Q. Okay. But he wasn't -- but he was behind you on the
15 ramp; right?

16 A. Yes, sir.

17 Q. All right. And you got pepper-sprayed; right?

18 A. Yes, sir.

19 Q. Could you describe how the pepper spray felt?

20 A. It was a burning sensation.

21 Q. Okay.

22 A. It burned.

23 Q. Okay. Could you see real well?

24 A. Not when it got on my eyes.

25 Q. Okay. Did it cause you to close your eyes?