VOLUME I OF III

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

DEC 10 2018

S.C. SUPREME COURT

Appeal from Richland County

Honorable Robert E. Hood, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL JUAN SMITH,

APPELLANT

APPELLATE CASE NO 2015-001905

RECORD ON APPEAL

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

WILLIAM M. BLITCH
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

PAGES 1-500

INDEX

INDEX i

TRIAL TRANSCRIPT DATED AUGUST 10-14, 2015 AND AUGUST 17, 2015 1

TESTIMONY (IN CAMERA)

TRACY THROWER
Direct Examination by Ms. Campbell 158
Cross-Examination by Ms. Zmroczek 166

THEODORE ROBERT MCLAUGHLIN
Direct Examination by Ms. Campbell 173
Cross-Examination by Ms. Zmroczek 176

EMMITT GILLIAM
Direct Examination by Ms. Campbell 177
Cross-Examination by Ms. Zmroczek 181
Redirect Examination by Ms. Campbell 182

OPENING STATEMENT BY MS. GARFIELD 213

OPENING STATEMENT BY MS. ZMROCZEK 221

TESTIMONY

KRISTIN STEEDLEY
Direct Examination by Ms. Campbell 225
Cross-Examination by Ms. Zmroczek 236
Redirect Examination by Ms. Campbell 237

ELLISON DEW
Direct Examination by Ms. Walker 242
Cross-Examination by Ms. Zmroczek 246

MARTHA CHILDRESS
Direct Examination by Ms. Garfield 249

BENJAMIN ARROWOOD
Direct Examination by Ms. Campbell 261
Cross-Examination by Ms. Zmroczek 275
Redirect Examination by Ms. Campbell 277
Recross-Examination by Ms. Zmroczek 278

CAREY SHEALY
Direct Examination by Ms. Garfield 279
Cross-Examination by Ms. Zmroczek 285
Redirect Examination by Ms. Garfield 286

DERRICK THORNTON
Direct Examination by Ms. Walker 287
Cross-Examination by Ms. Zmroczek 311
Redirect Examination by Ms. Walker 317

THEODORE MCLAUGHLIN
Direct Examination by Ms. Campbell 338
Cross-Examination by Ms. Zmroczek 355

MICHAEL PAINTER
Direct Examination by Ms. Garfield 362
Cross-Examination by Ms. Zmroczek 365
Redirect Examination by Ms. Garfield 370

GEORGE POTASH
Direct Examination by Ms. Campbell 370

RYAN ELLISON (IN CAMERA)
Direct Examination by Ms. Campbell 397
Cross-Examination by Ms. Zmroczek 402

GEORGE POTASH (CONTINUED)
Cross-Examination by Ms. Zmroczek 404
Redirect Examination by Ms. Campbell 417

RYAN ELLISON
Direct Examination by Ms. Campbell 418
Cross-Examination by Ms. Zmroczek 440

ASIA BETHEL
Direct Examination by Ms. Campbell 448
Cross-Examination by Ms. Zmroczek 468
Redirect Examination by Ms. Campbell 476

TAQAYYA WHITE
Direct Examination by Ms. Walker 482
Cross-Examination by Ms. Zmroczek 494
Redirect Examination by Ms. Walker 498

BYRON TUCKER
Direct Examination by Ms. Walker 500
Cross-Examination by Ms. Zmroczek 506
Redirect Examination by Ms. Walker....517

RUSSELL DAVIS
Direct Examination by Ms. Garfield....518
Cross-Examination by Ms. Zmroczek 525
Redirect Examination by Ms. Garfield 527

SHANTE BETHEL
Direct Examination by Ms. Walker 528
Cross-Examination by Ms. Zmroczek 544
Redirect Examination by Ms. Walker....552
Recross-Examination by Ms. Zmroczek....558

ROBERT STEPHEN SMITH, M.D. (IN CAMERA)
Direct Examination by Ms. Campbell 563
Cross-Examination by Ms. Zmroczek 567
Redirect Examination by Ms. Campbell....573
Recross-Examination by Ms. Zmroczek....574

ROBERT STEPHEN SMITH, M.D.
Direct Examination by Ms. Campbell 601
Cross-Examination by Ms. Zmroczek 630

DONNELL WOODARD
Direct Examination by Ms. Walker 638
Cross-Examination by Ms. Zmroczek 646
Redirect Examination by Ms. Walker....658
Recross-Examination by Ms. Zmroczek....659

ANNA ELMERS, M.D.
Direct Examination by Ms. Campbell 661

JENNIFER NATES
Direct Examination by Ms. Garfield....672

RUEBEN LEVY
Direct Examination by Ms. Garfield....683

TRACY THROWER
Direct Examination by Ms. Campbell 695
Cross-Examination by Ms. Zmroczek 728

Redirect Examination by Ms. Campbell 733

ROBERT WATERS
Direct Examination by Ms. Walker 734
Cross-Examination by Ms. Zmroczek 737
Redirect Examination by Ms. Walker 738

JIM TRUITT
Direct Examination by Ms. Garfield 740

EMMITT GILLIAM
Direct Examination by Ms. Campbell 744
Cross-Examination by Ms. Zmroczek 775

MICHAEL JUAN SMITH (IN CAMERA)
Examination by the Court 784

EMMITT GILLIAM (CONTINUED)
Cross-Examination by Ms. Zmroczek 790
Redirect Examination by Ms. Campbell 817
Recross-Examination by Ms. Zmorczek 821

BRIAN VANHOUTEN
Direct Examination by Ms. Garfield 822
Cross-Examination by Ms. Zmroczek 839
Redirect Examination by Ms. Garfield 854
Recross-Examination by Ms. Zmroczek 856

VINCE GOGGINS
Direct Examination by Ms. Walker 858
Cross-Examination by Ms. Zmroczek 863
Redirect Examination by Ms. Walker 865

JUANITA SMITH
Direct Examination by Ms. Zmroczek 880
Cross-Examination by Ms. Garfield 882

MICHAEL SMITH
Direct Examination by Ms. Zmroczek 885

CHRISTOPHER WATKINS
Direct Examination by Ms. Zmroczek 889
Cross-Examination by Ms. Campbell 904
Redirect Examination by Ms. Zmroczek 924
Recross-Examination by Ms. Campbell 927

MICHAEL JUAN SMITH
Direct Examination by Ms. Zmroczek 935
Cross-Examination by Ms. Campbell 940
Redirect Examination by Ms. Zmroczek 982
Recross-Examination by Ms. Cempbell 989

JOE WEST
Direct Examination by Ms. Zmroczek 994

CHRIS ROBINSON
Direct Examination by Ms. Zmroczek 999
Cross-Examination by Ms. Campbell 1011
Redirect Examination by Ms. Zmroczek 1032
Recross-Examination by Ms. Campbell 1035

CLOSING ARGUMENT BY MS. CAMPBELL 1063

CLOSING ARUMENT BY MS. ZMROCZEK 1090

CLOSING ARGUMENT BY MS. WALKER 1108

CHARGE ON THE LAW 1135

VERDICT 1170

SENTENCING 1187

INDICTMENTS 1190

COURT'S EXHIBIT NO. 5 (JURY NOTE) 1202

COURT'S EXHIBIT NO. 9 (JURY NOTE) 1203

CERTIFICATE OF COUNSEL 1204

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT: STATE'S EXHIBIT #50 (VIDEO), STATE'S EXHIBIT #58 (VIDEO), STATE'S EXHIBIT #59 (VIDEO), STATE'S EXHIBIT #60 (VIDEO), STATE'S EXHIBIT #63 (VIDEO), STATE'S EXHIBIT #64 (VIDEO), STATE'S EXHIBIT #65 (VIDEO), STATE'S EXHIBIT #70 (VIDEO), STATE'S EXHIBIT #74 (CD), STATE'S EXHIBIT #79 (PHOTO), STATE'S EXHIBIT #80 (PHOTO), STATE'S EXHIBIT #89 (JAIL PHONE CALLS), STATE'S EXHIBIT #101 (CD), DEFENDANT'S EXHIBIT #1 (PHOTO), DEFENDANT'S EXHIBIT #2 (PHOTO), DEFENDANT'S EXHIBIT #3 (PHOTO), DEFENDANT'S EXHIBIT #6 (VIDEO ENHANCEMENT), DEFENDANT'S EXHIBIT #21 (CD).

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND	)	2013-GS-40-8047
	)	2013-GS-40-8048
	)	2013-GS-40-8049
	)	2013-GS-40-8052
	)	2013-GS-40-8053
	)	2013-GS-40-8336
THE STATE OF SOUTH CAROLINA, PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
MICHAEL SMITH, DEFENDANT.	)	

August 10 - 14, 2015
August 17, 2015
Columbia, South Carolina

B E F O R E:

THE HONORABLE ROBERT E. HOOD, JUDGE.

A P P E A R A N C E S:

LUCK CAMPBELL, ESQ.
MEGHAN WALKER, ESQ.
DOLLY GARFIELD, ESQ.
Attorneys for the Plaintiff

AIMEE ZMROCZEK, ESQ.
BRIDGETTE BROWN, ESQ.
Attorneys for the Defendant

KAREN AMBROZIAK
Official Court Reporter

I N D E X

(PW) - Denotes Plaintiff's Witness
(DW) - Denotes Defense Witness

Page No.

August 10, 2015

Jury Qualifications..... 49
Jury Selection..... 135

August 11, 2015

(SW) TRACY THROWER (IC):
Direct Examination by Ms. Campbell..... 158
Cross-Examination by Ms. Zmroczek..... 166

(SW) THEODORE ROBERT MCLAUGHLIN (IC):
Direct Examination by Ms. Campbell..... 173
Cross-Examination by Ms. Zmroczek..... 176

(SW) EMMITT GILLIAM (IC):
Direct Examination by Ms. Campbell..... 177
Cross-Examination by Ms. Zmroczek..... 181
Redirect Examination by Ms. Campbell..... 182

Opening Remarks by the Court..... 203

Opening Statement by the State..... 213
Opening Statement by the Defense..... 221

(SW) KRISTIN STEEDLEY:
Direct Examination by Ms. Campbell..... 225
Cross-Examination by Ms. Zmroczek..... 236
Redirect Examination by Ms. Campbell..... 237

(SW) ELLISON DEW:
Direct Examination by Ms. Walker..... 242
Cross-Examination by Ms. Zmroczek..... 246

(SW) MARTHA CHILDRESS:
Direct Examination by Ms. Garfield..... 249

(SW) BENJAMIN ARROWOOD:
Direct Examination by Ms. Campbell..... 261
Cross-Examination by Ms. Zmroczek..... 275
Redirect Examination by Ms. Campbell..... 277
Recross-Examination by Ms. Zmroczek..... 278

Page No.

(SW) CAREY SHEALY:
Direct Examination by Ms. Garfield..... 279
Cross-Examination by Ms. Zmroczek..... 285
Redirect Examination by Ms. Garfield..... 286

(SW) DERRICK THORNTON:
Direct Examination by Ms. Walker..... 287
Cross-Examination by Ms. Zmroczek..... 311
Redirect Examination by Ms. Walker..... 317

August 12, 2015

(SW) THEODORE MCLAUGHLIN:
Direct Examination by Ms. Campbell..... 338
Cross-Examination by Ms. Zmroczek..... 355

(SW) MICHAEL PAINTER:
Direct Examination by Ms. Garfield..... 362
Cross-Examination by Ms. Zmroczek..... 365
Redirect Examination by Ms. Garfield..... 370

(SW) GEORGE POTASH:
Direct Examination by Ms. Campbell..... 370

(SW) RYAN ELLISON (IC):
Direct Examination by Ms. Campbell..... 397
Cross-Examination by Ms. Zmroczek..... 402

(SW) GEORGE POTASH (Continued):
Cross-Examination by Ms. Zmroczek..... 404
Redirect Examination by Ms. Campbell..... 417

(SW) RYAN ELLISON:
Direct Examination by Ms. Campbell..... 418
Cross-Examination by Ms. Zmroczek..... 440

(SW) ASIA BETHEL:
Direct Examination by Ms. Campbell..... 448
Cross-Examination by Ms. Zmroczek..... 468
Redirect Examination by Ms. Campbell..... 476

(SW) TAQAYYA WHITE:
Direct Examination by Ms. Walker..... 482
Cross-Examination by Ms. Zmroczek..... 494
Redirect Examination by Ms. Walker..... 498

Page No.

(SW) BYRON TUCKER:
Direct Examination by Ms. Walker..... 500
Cross-Examination by Ms. Zmroczek..... 506
Redirect Examination by Ms. Walker..... 517

(SW) RUSSELL DAVIS:
Direct Examination by Ms. Garfield..... 518
Cross-Examination by Ms. Zmroczek..... 525
Redirect Examination by Ms. Garfield..... 527

(SW) SHANTE BETHEL:
Direct Examination by Ms. Walker..... 528
Cross-Examination by Ms. Zmroczek..... 544
Redirect Examination by Ms. Walker..... 552
Recross-Examination by Ms. Zmroczek..... 558

THURSDAY, August 13, 2015

(SW) ROBERT STEPHEN SMITH, M.D. (IC):
Direct Examination by Ms. Campbell..... 563
Cross-Examination by Ms. Zmroczek..... 567
Redirect Examination by Ms. Campbell..... 573
Recross-Examination by Ms. Zmroczek..... 574

(SW) ROBERT STEPHEN SMITH, M.D.:
Direct Examination by Ms. Campbell..... 601
Cross-Examination by Ms. Zmroczek..... 630

(SW) DONNELL WOODARD:
Direct Examination by Ms. Walker..... 638
Cross-Examination by Ms. Zmroczek..... 646
Redirect Examination by Ms. Walker..... 658
Recross-Examination by Ms. Zmroczek..... 659

(SW) ANNA ELMERS, M.D.:
Direct Examination by Ms. Campbell..... 661

(SW) JENNIFER NATES:
Direct Examination by Ms. Garfield..... 672

(SW) RUEBEN LEVY:
Direct Examination by Ms. Garfield..... 683

(SW) TRACY THROWER:
Direct Examination by Ms. Campbell..... 695
Cross-Examination by Ms. Zmroczek..... 728
Redirect Examination by Ms. Campbell..... 733

Page No.

(SW) ROBERT WATERS:
Direct Examination by Ms. Walker..... 734
Cross-Examination by Ms. Zmroczek..... 737
Redirect Examination by Ms. Walker..... 738

(SW) JIM TRUITT:
Direct Examination by Ms. Garfield..... 740

(SW) EMMITT GILLIAM:
Direct Examination by Ms. Campbell..... 744
Cross-Examination by Ms. Zmroczek..... 775

MICHAEL JUAN SMITH (IC):
Examination by the Court..... 784

(SW) EMMITT GILLIAM (CONT):
Continued Cross-Examination by Ms. Zmroczek... 790

Friday, August 14, 2015

(SW) EMMITT GILLIAM:
Continued Cross-Examination by Ms. Zmroczek... 797
Redirect Examination by Ms. Campbell..... 817
Recross-Examination by Ms. Zmroczek..... 821

(SW) BRIAN VANHOUTEN:
Direct Examination by Ms. Garfield..... 822
Cross-Examination by Ms. Zmroczek..... 839
Redirect Examination by Ms. Garfield..... 854
Recross-Examination by Ms. Zmroczek..... 856

(SW) VINCE GOGGINS:
Direct Examination by Ms. Walker..... 858
Cross-Examination by Ms. Zmroczek..... 863
Redirect Examination by Ms. Walker..... 865

(DW) JUANITA SMITH:
Direct Examination by Ms. Zmroczek..... 880
Cross-Examination by Ms. Garfield..... 882

(DW) MICHAEL SMITH:
Direct Examination by Ms. Zmroczek..... 885

Page No.

(DW) CHRISTOPHER WATKINS:
Direct Examination by Ms. Zmroczek..... 889
Cross-Examination by Ms. Campbell..... 904
Redirect Examination by Ms. Zmroczek..... 924
Recross-Examination by Ms. Campbell..... 927

Monday, August 17, 2015

(DW) MICHAEL JUAN SMITH:
Examination by the Court..... 931
Direct Examination by Ms. Zmroczek..... 935
Cross-Examination by Ms. Campbell..... 940
Redirect Examination by Ms. Zmroczek..... 982
Recross-Examination by Ms. Campbell..... 989

(DW) JOE WEST:
Direct Examination by Ms. Zmroczek..... 994

(DW) CHRIS ROBINSON:
Direct Examination by Ms. Zmroczek..... 999
Cross-Examination by Ms. Campbell..... 1011
Redirect Examination by Ms. Zmroczek..... 1032
Recross-Examination by Ms. Campbell..... 1035

Closing Arguments by Ms. Campbell..... 1063
Closing Arguments by Ms. Zmroczek..... 1090
Closing Arguments by Ms. Walker..... 1108

Charge on the Law by the Court..... 1135

Verdict of the Jury..... 1170
Sentence of the Court..... 1187

Certificate of the Reporter..... 1189

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
	(State's Exhibits)		
1	Photo	225	384
2	Photo	225	384
3	Photo	225	384
4	Photo	225	384
5	Photo	225	384
6	Photo	225	384
7	Photo	225	384
8	Photo	225	384
9	Photo	225	384
10	Photo	225	384
11	Photo	225	384
12	Photo	225	384
13	Photo	225	384
14	Photo	225	384
15	Photo	225	384
16	Photo	225	384
17	Photo	225	384
18	Photo	225	384
19	Photo	385	386
20	Photo	385	386
21	Photo	385	386
22	Photo	385	386
23	Photo	385	386
24	Photo	385	386
25	Photo	383	384
26	Photo	383	384
27	Photo	383	384
28	Photo	383	384
29	Photo	383	384
30	Photo	383	384
31	Photo	383	384
32	Photo	383	384
33	Photo	383	384
34	Photo	383	384
35	Photo	383	384
36	Photo	383	384
37	Blood swab	380	380
38	Gun	346	347
39	Magazine	346	347
40	Live round	346	347
41	Shell casing	381	381
42	GSR Kit	376	377
43	GSR Kit	376	377
44	Blowup	384	385
45	Blowup	384	385

NO.	DESCRIPTION	ID.	EVD.
	(State's Exhibits - Continued)		
46	Blowup	384	385
47	Dash Cam Video	352	353
48	X-rays & Scans	620	620
49	Video	282	284
50	Video	282	284
51	Video	282	284
52	Video	282	284
53	Video	282	284
54	Video	282	284
55	Video	282	284
56	Video	282	284
57	Video	282	284
58	Video	282	284
59	Video	282	284
60	Video	282	284
61	Video	282	284
62	Video	282	284
63	Video	282	284
64	Video	282	284
65	Video	282	284
66	Video	282	284
67	Video	282	284
68	Video	282	284
69	Video	282	284
70	Video	282	284
71	Video	282	284
72	Video	282	284
73	Video	282	284
74	CD	310	310
75	Diagram	280	281
76	Folder with 6 photos	403	438
77	Gun paperwork	521	521
78	Facebook Photo	553	
79	Photo	553	553
80	Photo	553	553
81	Facebook page	556	944
82	CV of Dr. Smith	564	604
83	Qualification Statement	699	699
84	Clothing (Jacket)	766	768
85	Clothing (Pants)	766	768
86	Clothing (Shirt)	766	768
87	Clothing (Shoes)	766	768
88	Conviction Record	740	741
89	Jail Phone Calls	734	736
90	Blowup Map	770	770
91	Blowup Map	770	770

NO.	DESCRIPTION	ID.	EVD.
	(State's Exhibits - Continued)		
92	Blowup Map	770	770
93	Blowup Map	770	770
94	Blowup Map	770	770
95	Blowup Map	770	770
96	Still Photos	835	838
97	Still Photos	835	838
98	Still Photos	835	838
99	Still Photos	835	838
100	Advice of Rights	817	820
101	CD	827	828
102	Letter	884	990

NO.	DESCRIPTION	ID.	EVD.
	(Defendant's Exhibits)		
1	Photo	311	312
2	Photo	311	312
3	Photo	311	312
4	Photo	311	312
5	Photo	409	409
6	Video Enhancement	894	1167
7	Photo	561	811
8	Photo	561	811
9	Photo	561	811
10	Photo	561	811
11	Photo	561	811
12	Photo	561	811
13	Photo	561	811
14	Photo	561	811
15	Photo	561	811
16	Photo	561	811
17	Photo	561	811
18	Photo	561	811
19	Photo	561	811
20	Photo	561	
21	CD	894	895
22	Disk of Still Photos	996	
23	CV of Chris Robinson	1001	1002
24	X-rays	1002	1003
25	Chart	1004	1004
26	Map	1009	1010

10

NO.	DESCRIPTION	ID.	EVD.
	(Court's Exhibits)		
1	CV	158	
2	Note	238	
3	Note	238	
4	Note	238	
5	Note	578	
6	Case Law	1167	
7	Note	1168	
8	Note	1169	
9	Note	1169	
10	Jury Charge	1169	

All Exhibits were retained by the Clerk of Court for Richland County.

PROCEEDINGS

MONDAY, AUGUST 10, 2015

THE COURT: Okay. Where are my camera people? Okay. This is how this is going to work. You can't put any jurors on camera in any way, shape, or form. I'm going to do jury selection this afternoon. I would feel a little bit better if you weren't even in here for that just because I think it kind of freaks them out in my own opinion, but if we do anything after that, we'll, of course, let you back in.

Set up your camera either before trial or after trial or during a break or at lunch. I don't want anybody hauling any equipment in and out. I don't mind you going in and out. If you need to go out to call the office or whatever, that's perfectly fine, but please don't haul equipment in and out while the jury's in the room. That can become very distracting. And that's it. Thank you.

(Pause.)

THE COURT: Okay. We're on the record in the State of South Carolina vs. Michael Juan Smith, indictment numbers 2013-GS-40-8048, 8049, 8052, 8053, 8047, and 8336, charged with two counts of a weapons charge, possession of a firearm and unlawful carrying of a pistol, possession of a weapon during a violent crime, and attempted murder. Present for the State are Luck Campbell, Meghan Walker and

Dolly Garfield. Present for the Defense is Aimee Zmroczek and Bridgett Brown. And Mr. Smith is present.

Mr. Smith, good morning.

THE DEFENDANT: Good morning.

THE COURT: How are you?

THE DEFENDANT: I'm doing fine.

THE COURT: Good. Thank you for being here.

All right. Let's take up some -- we're going to pick a jury this afternoon. I assume that the jury selection process is going to be a little bit longer than normal just because of the pretrial publicity for this trial. I didn't want anybody to feel rushed or for the jurors to be hungry in us trying to get through some things. Let's take up a couple of issues that we need to prior to jury selection and go from there.

All right. Ms. Zmroczek.

MS. ZMROCZEK: Thank you. Your Honor, in lieu of filing the change of venue motion because, to be quite honest, if they didn't grant it, I don't see how we would even get it here, but, obviously, the pre-publicity is a concern for us as it was in the last case that we just tried in this very same courtroom, and I have filed two motions.

The first, Your Honor, is a motion to have attorney-conducted voir dire. I know that's something

that we typically don't do in this state. We're the only state left that does not do that to my knowledge. I have provided some extensive legal reasons for that, Your Honor, and I can put them on the record, but I asked that -- I filed all the motions, Your Honor. I would ask that they be made part of the record. But, certainly, we were requesting just a 30-minute opportunity to address the jurors outside of the Court's questioning.

If the Court is not inclined to do that, then we would ask, obviously, that you ask the submitted voir dire questions. And then as we did before in Stevenson because several of the people had said that they had heard about the case or had seen something about the case and we took them into the back room and we did an individual voir dire with them -- or the Court did.

So those are just, obviously, some of our concerns. The media coverage and the coverage with regards to what happened in the federal sentencing, some things that may have been said on the jail phone calls, all of that has given us cause for concern to get a fair trial on this.

THE COURT: Okay. Your motion for attorney-conducted voir dire is denied. I've read your brief. There's no South Carolina law and there's no precedent on doing that in a case of this nature in South Carolina, so your motion for attorney-conducted voir dire is denied.

Does the State have proposed voir dire that you want?

MS. CAMPBELL: Your Honor, based on what we anticipate you are going to charge as to what she has submitted, we would ask for reciprocal just as to does anyone knows the solicitors, you ask that question --

THE COURT: Right.

MS. CAMPBELL: -- or public defender's office. In addition, if you ask the question about victim of a violent crime. We would ask if they've been accused of a violent crime as well. And finally, Your Honor, the CAVE, SADD part, if you could just say prisoners' rights and/or innocence project.

THE COURT: Okay. So let's go through the Defense's voir dire. Number one is out, number two is out, number three is out, number four is out. Do you have any objection to number five?

MS. CAMPBELL: No, Your Honor.

THE COURT: Okay. Number five is in. I'm not asking number six. Number seven, the first question, any objection to that?

MS. CAMPBELL: Not the first part of it, Your Honor.

THE COURT: Okay. Number seven, I'll ask the first part of it. I'm not asking the follow-up questions. Number eight is out, number nine is fine. Number 10, I ask, number 11 I ask. Okay. Number 12, I will say

accused of along with that. Number 13 is fine. Number 14 is fine.

MS. CAMPBELL: Your Honor, if I could, just on number 13, isn't it the same as number nine?

THE COURT: Yeah, I thought I had seen it a couple times before.

MS. CAMPBELL: As is number 15?

THE COURT: Yeah. I'm going to say is there any of you connected to law enforcement?

MS. ZMROCZEK: That's fine.

THE COURT: What's your position on 16?

MS. CAMPBELL: Your Honor, I -- if she specifically wants to ask if any person has been confined to a wheelchair because of paraplegia, I don't have a problem with that, but I think just to say confined to a wheelchair, that could be anybody who had a broken leg or anything.

MS. ZMROCZEK: If you want to combine those two, Your Honor, that's fine.

THE COURT: So confined to a wheelchair because of what?

MS. ZMROCZEK: Paraplegia or quadriplegia.

THE COURT: Paraplegia or quadriplegia?

MS. ZMROCZEK: Yes, sir.

THE COURT: Is that okay?

16

MS. CAMPBELL: That's fine.

THE COURT: It's para or quadriplegia, correct?

MS. CAMPBELL: That's right.

THE COURT: Am I saying that, right?

(Pause.)

THE COURT: Okay. So number 17 would cover that. What's the deal with J.L. Mann High School?

MS. ZMROCZEK: It's where she graduated from, Your Honor.

THE COURT: Well, we're going to ask them if they know her.

MS. ZMROCZEK: Okay.

THE COURT: Nineteen is out. 20 is out. 21, what's your position on that, Ms. Campbell?

MS. CAMPBELL: Your Honor, I think if they -- the only relevance would be if they knew her. You're going to ask if they know her, so whether or not they attended school at the same time, I don't know how that would be relevant.

THE COURT: My guess is 21 is going to come out when I bring them in the back. I mean, your issue is if your kid was attending school there at that time, you went home and had a heart attack, right?

MS. ZMROCZEK: Exactly.

THE COURT: So I got that. I think when I pull them

back one at a time, when I say if they know anything about the case, certainly, this person would answer and then I can -- you know, if they say well, I had a kid there at the time. I mean, I'm not saying that's going to disqualify them --

MS. ZMROCZEK: Of course not.

THE COURT: -- but I think we can -- I can flesh that out a little bit when we get them back one on one.

MS. ZMROCZEK: And the reason I ask 20, Your Honor, is -- I can be more specific. And I guess, technically, it's covered in have you read anything, but just recently, I was at a function, actually, Thursday night and one of the law professors came up and he said, Oh, I just got the new alumni magazine. And, apparently, there's a whole article about the victim in this case and the changes with the University and the wheelchair and stuff like that.

THE COURT: Okay.

MS. ZMROCZEK: That's why I ask. Maybe I could be more narrow and say do you subscribe to the Alumni magazine.

THE COURT: And I think all that's -- I mean, we're going to get a bunch of people who respond more than likely.

MS. CAMPBELL: I mean, you're going to ask the question have you read or seen anything about it, that

18

would be included.

THE COURT: Okay.

MS. ZMROCZEK: Okay.

THE COURT: What's the Hunter Hayes concert?

MS. CAMPBELL: I have no idea. I think he was playing the same night and I think somebody --

THE COURT: I don't even know who that is for the record.

MS. ZMROCZEK: That's where she said that she was the night --

MS. CAMPBELL: Earlier, the night before.

MS. ZMROCZEK: Yeah.

THE COURT: Okay. What's that got to do with anything?

MS. ZMROCZEK: It's just that that's where she was, Your Honor. Our concern it that it's just juror identification. Like I said, she's been in the media, where she's been, what she's been doing, which is great and it's amazing what she has been doing. However, our concern is that the jurors will connect emotionally as opposed to focus on the legal facts.

THE COURT: Okay. I'm not asking anything about the Hunter Hayes concert.

So she threw out a pitch at the baseball game. Okay. I'm going to kind of group all that -- I'm going to give

them this broad question that says --

MS. CAMPBELL: I think that will cover it.

THE COURT: -- if you know anything about this case or you think you know anything about this case or whatever. And I'll kind of throw in fundraisers, websites, Facebook pages, baseball games, any kind of articles. I'm going to ask more of an all encompassing question just to try to get as many people to respond that have actually seen something.

MS. ZMROCZEK: All right.

THE COURT: Okay.

MS. ZMROCZEK: Oh, one other thing, Your Honor, too. Probably -- it will probably be more pertinent when we pick the jury, but I just thought about this the other day. On my phone -- I know that we don't allow them to have phones or look at news websites or social media or anything, but on my phone, I have like alerts, so if like WLTX or Fox has a news alert, it comes to my phone automatically.

So one of the things that I would ask you is that once the juror is picked if we could ask them. And they may have to get somebody to disable it if they have those text alerts. It may be something that -- it's inadvertent, but it just shows up on the phone.

THE COURT: Okay.

20

MS. ZMROCZEK: The only reason, it happened to me this morning with this case.

THE COURT: All right. We'll circle back to that.

MS. ZMROCZEK: Thank you.

THE COURT: Twenty-four, I ask. 25 is not relevant. 26, not relevant. 27, I'm not asking. 28 will obviously be asked. 29, I'm going to ask that. That's a fairly active association. I think that could be relevant in the selection of a juror. 30, I'm not going to ask. 31, I'm not going to ask. 32, I'm not going to ask. 33, I'm not going to ask. 34 will be in the all-encompassing question. What is the Carolina Ball in 35?

MS. ZMROCZEK: Another fund raiser.

THE COURT: Okay. That's a fund raiser that was had?

MS. ZMROCZEK: Correct.

THE COURT: All right. I'm going to ask fundraisers.

MS. ZMROCZEK: Okay.

THE COURT: I'm not going to name them specifically because there could be fundraisers that we don't even know about, so I'm --

MS. ZMROCZEK: I'm quite sure there are.

THE COURT: -- going to ask a broader question.

Thirty-six, I'm not going to ask. Okay. Was she a member of Zeta Tau Alpha?

MS. GARFIELD: Yes, sir.

THE COURT: Okay. I'll ask 37. 38 is fine. I think it will come in in the all-encompassing. 39 is fine. And then the rest of them, I'm not asking.

MS. ZMROCZEK: You are or are not?

THE COURT: I am not.

MS. ZMROCZEK: Could we get one question --

THE COURT: Is your client going to admit he's in a gang?

MS. ZMROCZEK: He may, Your Honor, yes.

MS. CAMPBELL: I'm sorry, I was distracted.

THE COURT: She wants me to ask gang questions because her client may admit that he's in a gang or was in a gang. I assume it's was in a gang, but I don't know.

MS. CAMPBELL: The only one we would object to is number 41 as far as the gangs. I'm just limiting this to the gang ones.

THE COURT: So you're okay with the 40 through 47 as long as I take out the dishonest or unbelievable?

MS. CAMPBELL: Couldn't we just do it in one question, though? This may involve gang activity, would that cause any juror not to be fair and impartial? Because I don't think under State vs. Adams and all those cases, you can ask 41.

THE COURT: That's the one --

MS. CAMPBELL: -- or 40.

THE COURT: -- you can't believe a cop over somebody else?

MS. CAMPBELL: Yes.

THE COURT: I mean, do you really want to go down that road?

MS. ZMROCZEK: If they want to limit it to this case may involve gang activity, then that's --

THE COURT: So this case may involve gang activity --

MS. ZMROCZEK: Would that affect your ability --

THE COURT: -- would that affect your ability to be fair and impartial.

MS. CAMPBELL: We're good with that.

THE COURT: Is that okay?

MS. CAMPBELL: That's fine.

MS. ZMROCZEK: And, Your Honor, I --

THE COURT: Hold on. Hold on. If I don't write it down, I won't remember it. So this case may involve gang activity, would that affect your ability to be fair and impartial. Is that okay?

Ms. Zmroczek.

MS. ZMROCZEK: Thank you. Your Honor --

THE COURT: Hold on. Is that okay?

MS. ZMROCZEK: Yes, sir.

MS. CAMPBELL: Yes, sir.

THE COURT: Okay. Good.

MS. ZMROCZEK: I've spoken with the family members --

THE COURT: Okay.

MS. ZMROCZEK: -- at length, including as late as 8:30 or 9:00 last night in my office. They are aware of that they are to speak with no one.

THE COURT: Okay.

MS. ZMROCZEK: Or to talk with no one.

THE COURT: Good.

MS. ZMROCZEK: And they are even going to kind of stay behind. Obviously, they want to be present, but they are going to be very mindful so we don't run into any potential situations like the last trial that we had. For jury -- well, I guess it won't matter now, but for jury selection, I guess you want them to sit up there?

THE COURT: Yes.

MS. ZMROCZEK: Okay. But otherwise, I just wanted the Court to know that they have been fully briefed on it.

THE COURT: Okay. Good. Great.

What else?

MS. CAMPBELL: We just ask those three reciprocal areas and that would be it.

MS. ZMROCZEK: And I believe --

THE COURT: Victim, accused --

MS. CAMPBELL: Victim, accused and innocent project and the prisoner's rights groups.

THE COURT: Yeah, yeah, yeah.

MS. CAMPBELL: And then, finally, the solicitor's office and the criminal defense attorneys and/or public defender's office.

THE COURT: Okay.

MS. ZMROCZEK: And I believe that there are three -- six, seven and eight on our Defendant's potential witness list are also on State's potential list, just to save some calling out of names.

THE COURT: Okay.

So the official charges I have in front of me are possession of a stolen pistol, which is indictment 2013-GS-40-8048; possession of a firearm by a person convicted of a violent felony, 8049; unlawful carrying of a pistol, 8052; possession of a weapon during the commission of a violent crime, 8053; attempted murder, 8047; unlawful possession of a weapon by a person convicted of a crime of violence, 8336; is that right?

MS. GARFIELD: It's violent crime and crime of violence.

THE COURT: Okay.

What else?

MS. ZMROCZEK: Your Honor, with regard to the indictments, I have a couple issues. The first issue is with regard to the last indictment that you just read.

We believe that since he has been -- not tried -- since he pled guilty to this charge in federal court and there are no additional elements required for the federal charge that he could not then or should not then be again tried in State Court.

THE COURT: Okay. Do you have some kind of law that says that?

MS. ZMROCZEK: I can look up the case law on double jeopardy, Your Honor.

MS. CAMPBELL: I believe Heath v. Alabama, Your Honor.

THE COURT: Okay. Which says what? It's a different entity, therefore --

MS. CAMPBELL: Separate entity, not double jeopardy.

THE COURT: Not double jeopardy.

MS. ZMROCZEK: And then lastly, Your Honor, there's some confusion -- or it seems that he's charged with unlawful carrying of a pistol by a person convicted of a violent crime and then also unlawful carrying of a pistol. We would just ask for clarification amongst the gun charges.

THE COURT: Okay. Well, I think the clarification is they're going forward on all the gun charges because they're all separate crimes based upon different statutes based upon different elements of the crime which would

26

apply to each.

MS. ZMROCZEK: The elements --

THE COURT: Is that right? I don't want to argue for you, but that's my assumption. The elements --

Go ahead.

MS. ZMROCZEK: The elements for the unlawful carrying, I guess my question is on what are they relying? Is it just that he was a convicted felon?

THE COURT: Well, I mean --

MS. ZMROCZEK: I'm just asking for clarity.

THE COURT: -- based upon the indictments, one is that he -- of course, I'm not saying that he did this. I'm saying these are allegations. One allegation is that he possessed a pistol that was stolen. One is that he unlawfully carried a pistol. One is that he possessed a pistol after he had been convicted of a violent crime -- or, no, that he possessed a pistol during the commission of a violent crime. One is that he possessed a pistol after being convicted of a burglary second degree violent. And one is that he possessed a pistol after he was convicted of a crime of violence.

What's the crime of violence?

MS. GARFIELD: Burglary.

THE COURT: How are those not the same, that's what I don't understand?

MS. GARFIELD: They're classified as a crime of violence as well as a violent crime. He was convicted of attempted burglary second degree, which would satisfy the crime of -- I'm sorry, crime of violence requirement. He's also convicted of burglary second degree violent, which would classify as a violate crime conviction.

THE COURT: You mean violent felony?

MS. GARFIELD: Yes, sir.

THE COURT: So he's got an attempted burglary second, which falls under crime of violence?

MS. GARFIELD: That's correct.

THE COURT: And then he has a burglary second, which falls under convicted of a violent felony?

MS. GARFIELD: That's correct.

THE COURT: And the crime of violence is 16-23-210 of the Code of Laws and the convicted of a violent felony and possessing a pistol is 16-23-500, section A, capital A; is that right?

MS. GARFIELD: Yes, sir.

THE COURT: Okay.

All right. I'm happy to hear from you on that, Ms. Zmroczek.

MS. ZMROCZEK: Your Honor, I think that they just provided the clarification that we needed. It wasn't clarified in the indictments, that's why we were asking --

28

THE COURT: Okay.

MS. ZMROCZEK: -- it's like they were just racking up the gun charges.

THE COURT: Okay. All right. So how are we going to deal with the elements of those in the burglary convictions in the State's case in chief?

MS. GARFIELD: Your Honor, we have Mr. Truitt under subpoena. He will be prepared to offer testimony to those convictions.

THE COURT: Okay.

MS. GARFIELD: He was going to come up with some sort of documentation that we could enter that didn't have anything do with sentencing or anything of that nature.

THE COURT: Okay.

Ms. Zmroczek.

MS. ZMROCZEK: And obviously, Your Honor, if my client gets on the stand, then we understand that he's opened up to being cross-examined on those. If I may at the break, Your Honor, converse with my client about maybe agreeing to some stipulations. Obviously, we feel like that would -- that's why we asked one of the questions in the voir dire about someone having a previous felony conviction.

THE COURT: Right.

MS. ZMROCZEK: We may be able to stipulate to that

conviction, Your Honor, if I may just ask for time to speak with him.

THE COURT: Okay.

MS. CAMPBELL: We don't think we're bound by her stipulation, however, it may be something we can agree to, we just don't know yet. But under the same case that --

THE COURT: The DUI case --

MS. CAMPBELL: The DUI case and the burglary first is two prior.

THE COURT: I assume there's some kind of limiting instruction that goes along with that?

MS. CAMPBELL: I could pull one for you.

MS. ZMROCZEK: There is, Your Honor.

THE COURT: Okay. See if you can find a limiting instruction. Y'all see if you can agree on how you want to deal with that.

MS. CAMPBELL: Okay.

THE COURT: Okay. What else?

MS. ZMROCZEK: Your Honor, I filed a motion to produce and compel. I was told on Friday that they have a doctor that's going to come in and say some things about the bullets. I had previously requested all the bench notes and everything from SLED and they provided me -- and they provided the former attorney with the CD of bench notes, but all of that bench note information dealt with

30

the gunshot residue.

I have no information -- I have a two-page SLED result saying that a fired shell casing matched the gun that Mr. Smith was found with. However, what I don't have is where that shell casing was located. I don't have any bench notes or any testing from that comparison. I did hire an expert and I advised them of the same and he is requesting that information. So I would ask that that be produced.

MS. GARFIELD: Your Honor, I know we requested it and I thought we gave it to her. Let me just check on that at the break. I'll be happy to provide that to Ms. Zmroczek.

THE COURT: Great.

What else?

MS. ZMROCZEK: I believe that on their witness list, they have a jailhouse informant. We ask that they produce any deals or discussions that they've had with him.

THE COURT: Okay.

MS. ZMROCZEK: And any other witness that -- I know there are several witnesses on their list that are facing charges, so we would ask --

THE COURT: Okay. You are under requirement to discuss any deals or any promises or any hope of leniency or reward that you made to anybody who is potentially testifying. Do you understand that?

MS. GARFIELD: Yes, sir.

THE COURT: Okay.

MS. ZMROCZEK: And as far as -- we have three other -- well, four other motions, Your Honor, that deal with specific facts of the case, and they may require some testimony, but we can get into those now. But they deal with --

THE COURT: Tell me who you think -- which motion you think you need testimony on.

MS. ZMROCZEK: The doctor, Dr. Smith, who claims that he can say what kind of bullet it's consistent with that's lodged in the victim's body.

THE COURT: What do you know about that, Ms. Garfield?

MS. GARFIELD: He did give a --

THE COURT: Is he a local doctor?

MS. GARFIELD: No. He's in Florida. He will not be here until Thursday morning. He's flying here Wednesday night.

THE COURT: So he is allegedly going to testify about something consistent with something?

MS. GARFIELD: With a large caliber.

THE COURT: Okay.

MS. GARFIELD: The bullet that's still in Ms. Childress's spine.

THE COURT: Okay. So no one is going to say anything in opening about the doctor is going to say the bullet they found in her spine --

MS. GARFIELD: No, sir.

THE COURT: I'm not talking about the firearms expert, I'm talking about the doctor expert.

MS. GARFIELD: Yes, sir.

THE COURT: We'll cross how far he can go and what he can say when he gets here.

MS. GARFIELD: Okay.

MS. ZMROCZEK: And I asked them to provide me with his CV, which I'm sure they will.

MS. GARFIELD: He e-mailed it, but we had some issues with our e-mail this morning. I'll check it.

THE COURT: So we're not going to say anything about what Dr. Smith is going to potentially tell the jury about whatever he viewed matching something, okay, until he gets here and we can flush that out and see how far he can take it.

MS. GARFIELD: That's fine.

MS. ZMROCZEK: And then we would ask the same with the forensic bullet -- SLED --

THE COURT: Tell me what the issue with that is.

MS. ZMROCZEK: Well, the issue is first, they say item four, which was a spent shell casing --

THE COURT: Okay.

MS. ZMROCZEK: -- was found. I don't know where that was found, so that's the first issue. I need to know who found it and where it was located.

THE COURT: Okay.

MS. ZMROCZEK: The second issue is they said that they tested that spent shell casing and did a comparison with the Glock, item five, that was found on Mr. Smith.

THE COURT: Okay.

MS. ZMROCZEK: So my issue is -- well, I take issue with that testing, but I need to see it first before I can even take any issue with it.

THE COURT: Need to see what?

MS. ZMROCZEK: I need to see the testing results. Not just the results, I need to see the actual testing so that I can give that to my expert.

(Pause.)

THE COURT: Did y'all get it resolved?

MS. ZMROCZEK: I think she is going to forward me the other report that I don't have and that may --

MS. CAMPBELL: You have the report. There's a drawing. We're going to forward everything again to make sure she's got it.

THE COURT: All right. Good.

What else?

34

MS. ZMROCZEK: And then just they provided me with some redacted phone calls, Your Honor. And I guess we can deal with this during the trial when we get to the relevance of them.

THE COURT: Okay.

MS. ZMROCZEK: But I think as far as --

THE COURT: So you're going to want testimony on the firearms expert issue?

MS. ZMROCZEK: If I can get them to -- if I can get these to him, which I will do at lunch, and then ask that we have a hearing on it. I don't know if that's something that they plan on saying in opening that we can wait.

THE COURT: Well, I'd like to do it tomorrow morning.

MS. CAMPBELL: We'll have him here.

MS. ZMROCZEK: And I'll know tomorrow morning.

MS. CAMPBELL: I'll be glad to have him here.

THE COURT: So the State's firearm expert needs to be here tomorrow morning so you can flesh out this argument that you filed about the science, for lack of a better term.

MS. ZMROCZEK: And I think that --

THE COURT: And there was a motion to compel. Is there anything else that you need?

MS. ZMROCZEK: I think they have -- or are going to provide me with everything that we were missing. We have

a motion to view the scene of the incident.

Your Honor, there are several -- there are several videos involved in this case that are really, really hard to see. And the State has shown me what portions of the videos they would like to use and I ask that they provide me -- they said they were going to highlight them or highlight certain areas. So I ask that they provide that to me beforehand. Of course, in return, I may have something that my expert will highlight for them. But I don't want to waste his time, energy and money if they're going to be highlighting the same thing. So I would ask if they could provide me with a copy of those highlights, I will then reciprocate the same.

MS. WALKER: They were not highlighted, Your Honor. The videos are going to be presented the way I showed you.

THE COURT: Okay.

MS. ZMROCZEK: So that's obviously changed. And I will still provide them --

THE COURT: Where are y'all on this view of the scene issue?

MS. CAMPBELL: I think, Your Honor, it might be a motion we would be making, so I don't know that we need take that up right now.

THE COURT: Well, logistically speaking, I'm not holding you to it, but do you think that's something that

36

you're going to ask for, too?

MS. CAMPBELL: It's a potential, yes, sir.

THE COURT: Is that something you want?

MS. ZMROCZEK: Yes.

THE COURT: Who can say the last time we went to a crime scene in Richland County?

When was it, Becky?

THE CLERK: A long time ago, Judge. A long time ago.

MS. CAMPBELL: It was the Waffle House on Two Notch Road.

THE COURT: We went to the crime scene in the Benedict College. Okay.

All right. Well, that's a big coordinated effort.

MS. CAMPBELL: That's a huge effort.

MS. ZMROCZEK: That's why I wanted to make the Court aware of it.

THE COURT: I'm glad you did. I mean, that's a big coordinated effort, so if we're going to do that, then -- I mean, if y'all are going to consent to it --

MS. CAMPBELL: Just let us talk over lunch.

THE COURT: Let me know. That's going to take some major coordination.

MS. CAMPBELL: Okay.

THE COURT: I don't know that I know enough about the case to make that decision from a legal perspective at

this point in time. I can hear something in the testimony and it could make complete and total sense to me. If they're going to consent to it, then I can go ahead and put things in line to do it. Does that make sense?

MS. ZMROCZEK: Yes. And I do have several witnesses. Obviously, it's going to depend on who they call and how their case is presented.

THE COURT: Right.

MS. ZMROCZEK: They have advised me that their expert will be here Thursday and I anticipate that that will be -- they anticipate that that will be one of their -- just for scheduling purposes, that will be one of their last witnesses.

THE COURT: Is that the doctor?

MS. CAMPBELL: Yes.

MS. ZMROCZEK: So I'm trying to plan my witnesses accordingly.

THE COURT: Okay. Good.

All right. What else?

MS. GARFIELD: Just to put on the record, Judge, I do have a copy of the crime scene investigator's report that was previously provided.

We'll also give you a copy of the diagram that was given to us digitally.

MS. ZMROCZEK: Okay. Thank you. I have the

38

pictures -- for whatever reason, the report wasn't attached, but I do have the pictures. So that now makes sense, Your Honor.

THE COURT: Okay.

MS. ZMROCZEK: And then I think maybe -- maybe when we're inquiring the jury, let them know it will last all week, if not -- I don't anticipate going into next week, but I don't know how long the State's witnesses will take.

THE COURT: Okay.

MS. GARFIELD: And my understanding is you are stipulating to chain of custody witnesses?

MS. ZMROCZEK: We are, Your Honor.

THE COURT: Good. Okay. The last time we did one of these, I pulled the jurors back in the jury room. I'm not opposed to doing that again. I think that's a little easier than sending all the jurors out of the courtroom and doing it in here.

MS. CAMPBELL: I thought it was very efficient.

THE COURT: Is that okay with you?

MS. ZMROCZEK: Yes, I thought --

THE COURT: For the record, y'all will be present so you can hear the information, but I think that's just an easier way than them sitting in here unless somebody has a major objection to that. I didn't ask last time, but I'm asking now.

MS. CAMPBELL: No, we would ask for that.

THE COURT: Is that okay with you?

MS. ZMROCZEK: Yes, absolutely. And I think that the way that it did -- it encouraged people to -- I think that -- to say that -- I think that the majority of people are going to have heard of this case. If they say they haven't, then my mind is completely blown. But I guess for them to understand that they're not in trouble and it's okay. I think they worked out very well the last time.

THE COURT: Okay. I'll do it that way again. Just sometimes when you're dealing with these more sensitive issues, it just -- trying to figure out a way to do it where people will provide you with the most information possible, so I'll try to breed that environment. For the benefit of both sides -- you know, for the benefit of both sides of this case having a fair trial, I'll followup as much as I can with each juror and try to get as much information out as possible so that everybody has good information upon which to make jury decisions.

What else, Ms. Zmroczek?

MS. ZMROCZEK: Lastly, Your Honor, Mr. Smith is in State custody right now even though he was sentenced federally. His federal sentence, obviously, cannot begin until he is transferred to federal custody.

40

With that being said, it's our -- just for the record, and you can inquire of my client of the same, but the last plea offer we received was 25 years consecutive to any federal sentence. And, Your Honor, I just wanted to make sure that that was still the offer and if that is still the offer to advise the Court that I have presented that offer to my client and he has rejected that offer.

THE COURT: Okay. So what's the official plea offer if there is one?

MS. GARFIELD: Your Honor, that was the official plea offer, 25 years. It's our understanding that --

THE COURT: Plead to everything or plead to --

MS. GARFIELD: At this point, it was an offering to plead to everything, 25 years. It's our understanding it has to be consecutive to federal time. There's not much --

THE COURT: Has anybody done that research?

MS. ZMROCZEK: I have, Your Honor. If he's bonded in federal custody, he can -- he can start it now. It would be -- if it was ordered to run concurrent, it would run concurrent, but he has to be in federal custody. He has to be transferred to federal custody. It was just done last month in one of Ms. McCullough's cases, actually. But I run into that frequently with federal cases. And I understand -- I wasn't involved --

41

THE COURT: I'm not saying what the plea offer is. The plea offer is consecutive.

MS. GARFIELD: Twenty-five years concurrent on all State charges, which our understanding it would have run consecutive to the sentence he's already received.

THE COURT: Okay. All right.

Mr. Smith, stand up. All right. Raise your right hand.

MICHAEL JUAN SMITH, after being duly sworn, testified as follows:

THE COURT: Okay. You can put your hand done. Stand up. Okay. So listen, the only person in the room that can make a decision whether or not you plead guilty is you. Does that make sense?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Your mama can't make you do it. I can't make you do it. Ms. Zmroczek can't make you do it. That's a right that belongs to you and only you. Does that make sense?

THE DEFENDANT: Yes, sir.

THE COURT: I am never going to pressure you or try to talk you into anything, but I do want to make sure before we start the trial that you understand what the plea offer is. Sometimes there's miscommunications or -- I have conversations with people all the time and they

42

think the plea offer is one thing and it's really something else completely. So the plea offer on your charge is to plead guilty as charged for --

Is it a negotiated 25 or is it a recommendation of 25?

MS. GARFIELD: It's negotiated.

THE COURT: It's negotiated 25 years. Of course, that would just be on the attempted murder charge because none of your other charges carry that much time. Does that make sense?

THE DEFENDANT: Yes, sir.

THE COURT: And for all those charges to run -- all the State charges to run concurrent to each other, okay, and that could be consecutive to your federal time, okay. Now, negotiated means this -- negotiated is an actual term of art. It has a meaning. Negotiated means if you did it and I agreed with it, I would have to give you that. I couldn't give you any more than 25 on the attempted murder, but I also couldn't give you any less. Does that make sense? That means the terms are negotiated. As I sit here, I would be bound by those terms or forced to follow those terms. Does that make sense?

THE DEFENDANT: Yes, sir.

THE COURT: So there would be no risk you got any more. There would also be no hope that you got any

43

better. The deal is what the deal is and that's what you would be. I couldn't give you any more, I couldn't give you any less. I'd have to give you that. Do you understand the terms and conditions of the plea agreement?

THE DEFENDANT: Yes, sir.

THE COURT: Have you and Ms. Zmroczek -- you don't need to tell me what you discussed, I'm just asking if you discussed it?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. All right. Thank you very much.

Does that plea offer have an expiration?

MS. GARFIELD: Not at this time, Judge.

THE COURT: All right.

So they can withdraw it whenever -- Mr. Smith, they can withdraw the plea offer whenever they want to. They're not bound by law to make you any plea offer, but, you know, at this point, there's no expiration, but they don't have to pull it if they don't want to.

MS. GARFIELD: Your Honor, part of my recitation with that is our victim is not here. We told her to be here a later time today. I just want to obviously consult with her.

THE COURT: All right.

MS. ZMROCZEK: I'm sorry. I just had one more motion, kind of logistic and strategic -- or logistically.

44

Your Honor, I understand that this courtroom or the witness box may not be ADA compliant and so I just -- when the victim does testify, I would ask that we be cognizant of making sure the jury is not in while the arrangements are made for her to be in the witness stand. I'm not trying to be insensitive, certainly, Your Honor. I just don't know --

MS. CAMPBELL: Your Honor, typically, in cases like this, we just let them sit in the wheelchair in front of the jury box.

THE COURT: Okay.

MS. CAMPBELL: I don't know how that would be offensive.

MS. ZMROCZEK: And that's -- I just logistically have no idea.

THE COURT: Okay. Yeah, I mean, I assume -- one of the big issues that I want to make sure is that we can hear her.

Does that microphone move, Becky, the one in front of you?

THE CLERK: Yes, sir.

THE COURT: Okay. Maybe we can just get that in a position where that can help her so that she can be heard. Of course, I don't know her and have never seen her in person. I want everybody to be able to hear her as I

45

would with every other witness.

MS. CAMPBELL: That's what we've done before, Judge. It's worked.

THE COURT: That's great.

Okay. Anything else?

MS. CAMPBELL: Nothing from the State.

MS. ZMROCZEK: Nothing from the Defense.

THE COURT: Okay. We'll start picking at two o'clock. Two o'clock.

MS. GARFIELD: May we approach real quick?

THE COURT: Sure.

(WHEREUPON, a bench conference was held.)

THE DEPUTY: Judge, he has a question. He wants to know if they can live stream the trial?

THE COURT: No.

(WHEREUPON, a lunch break was taken.)

THE COURT: Okay. Ready?

MS. CAMPBELL: Yes, we're ready.

MS. ZMROCZEK: We're ready, Your Honor. We were just talking about some of the logistics.

THE COURT: Okay. Bring in the panel.

(WHEREUPON, the jury panel was brought into the courtroom.)

THE BAILIFF: The jury is present, Your Honor.

THE COURT: Thank you very much.

46

Welcome back, ladies and gentlemen. You saw me this morning. You're back again. We are going to proceed to pick a jury in a trial.

Is the State ready to proceed?

MS. GARFIELD: Yes, Your Honor.

THE COURT: All right. Ms. Garfield, you may call your case.

MS. GARFIELD: Thank you, Your Honor. Fifth Circuit Solicitor's Office calls the State of South Carolina vs. Michael Juan Smith, indictment numbers 2013-GS-40-8047 for one count of attempted murder, 2013-GS-40-8053 for the charge of possession of a weapon during the commission of a violent crime, 2013-GS-40-8048 for the charge of possession of a stolen pistol, indictment number 2013-GS-40-8336 for the charge of unlawful possession of a weapon by a person convicted of a crime of violence, indictment number 2013-GS-40-8049 for the charge of possession of a firearm or ammunition by a person convicted of a violent felony, and indictment number 2013-GS-40-8052 for one count of unlawful carrying of a pistol.

THE COURT: Thank you, Ms. Garfield.

Ladies and gentlemen, the State has called its case. I'm going to read each of these indictments to you. The first indictment is for attempted murder. It states that

Michael Juan Smith did in Richland County on or about October the 13th of 2014, with the intent to kill attempt to kill Martha Katherine Childress with malice aforethought either expressed or implied in violation of the South Carolina code of laws.

The second indictment is for unlawful possession of a weapon by a person convicted of a crime of violence. It states that Michael Juan Smith did in Richland County on or about October the 13th of 2013, knowingly possess or acquire a pistol after having been convicted of a crime of violence as defined in the South Carolina Code of Laws.

The third indictment states that Michael Juan Smith did in Richland County on or about October the 13th of 2013, unlawfully possess a firearm or ammunition and has been convicted of a violent crime as defined under section 16-1-60, that is classified as a felony offense, to-wit: Burglary in the second degree violent, in violation of the South Carolina code of laws.

The next indictment states that Michael Juan Smith did in Richland County on or about October the 13th of 2013, possess a firearm or visibly display what appeared to be a firearm or visibly display a knife during the commission of or attempted commission of a violent crime in violation of the South Carolina Code of Laws.

The next indictment states that Michael Juan Smith

48

did in Richland County on or about October the 13th of 2013, carry about the person a pistol, such carrying not being authorized by law in violation of the South Carolina Code of Laws.

And the last indictment states that on or about October the 13th of 2013, Michael Juan Smith knowingly bought, sold, transported, pawned, received or possessed a stolen pistol or one from which the original serial number had been removed or obliterated in violation of the South Carolina Code of Laws.

Now, ladies and gentlemen, these indictments that I've just read to you and which I hold in my hand are not proof of anything. They are not evidence of anything. They are merely the documents that gives this Court the authority to hear this case. They should not be considered by you to be proof of anything or evidence of anything. They are simply the charging documents that allows this case to be called. These indictments are not proof of evidence or evidence, they are merely allegations. To these charges, the Defendant has pled not guilty and has requested a trial by jury and at this point, we will select that jury.

Now, ladies and gentlemen, let me say this before we start this process. And I usually -- I know I qualified you this morning. I usually say this statement at that

time and I forgot this morning, but I want to make sure that I tell you this now. It is absolutely essential and critical that you provide us with truthful and accurate information in response to these questions, okay. This case is very important as is every case that is called inside this courthouse. In every case that will be called this week, it is equally as important. But these lawyers and the parties in these cases use the information that you provide to make good decisions about who to put on the jury and who not to put on the jury. And it is a fundamental part of this working correctly that you provide us with completely truthful and accurate information. Okay. There are no wrong answers. We want you to provide us more information as opposed to less information so that everybody involved on both sides of the case can make a good decision about who to select for the jury and who not to. That is absolutely critical and essential.

If you would, please, stand and be sworn.

Madam Clerk, you may swear them.

(WHEREUPON, the jury venire was sworn.)

THE COURT: Thank you very much.

JURY QUALIFICATION

THE COURT: Okay. Ladies and gentlemen, I now have a series of questions to ask you and go over with you. As I

50

go through each question, if you will please stand to respond so we can collect the information from you. We will start with the introduction of the parties.

Ms. Garfield, you and your fellow solicitors may start first. If you'll please stand and introduce yourself.

MS. GARFIELD: Good afternoon, I'm Dolly Garfield. I'm a prosecutor here in Richland County.

MS. WALKER: Hi, I'm Meghan Walker. I'm also a prosecutor here in Richland County.

MS. CAMPBELL: My name is Luck Campbell. I'm also a prosecutor.

THE COURT: Thank you, ladies.

Is anybody related by blood or marriage, close personal friends with, have any connection to, business, personal, social or otherwise? Have you ever been represented by any of these lawyers or on the other side of a case by any of these lawyers or have any connection in any way, shape, or form to the Fifth Circuit Solicitor's Office? This is the office that encompasses both Richland and Kershaw Counties. If so, please stand.

All right. So this juror on the front row is Mr. Coble. This is Juror No. 49.

Mr. Coble, I believe your brother is employed by the solicitor's office; is that right?

PROSPECTIVE JUROR: That's right.

THE COURT: And is that Daniel Coble?

PROSPECTIVE JUROR: Yes.

THE COURT: Would that affect your ability to be fair and impartial in this case?

PROSPECTIVE JUROR: No.

THE COURT: Are you willing to base your decision solely off the evidence and the law?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: And will you do that?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Does Mr. Coble have any connection to this case? I mean, has he worked on it or anything like that or do we expect him to be a lawyer on the case, Ms. Garfield?

MS. GARFIELD: No, sir.

THE COURT: All right.

Thank you very much, Mr. Coble.

All right. Representative Finley, good afternoon.

PROSPECTIVE JUROR: Yes, sir. The solicitor and I in normal course of political business are friends and discuss various issues from funding to the prosecution of cases here in Richland County.

THE COURT: All right. Would that affect your ability to be fair and impartial in this case?

52

PROSPECTIVE JUROR: No, sir.

THE COURT: Are you willing to base your decision solely off the evidence and the law?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Will you do so?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Thank you, Mr. Finley.

All right. Ms. Zmroczek, if you would please stand up and, Ms. Brown, and introduce yourselves and your client, please.

MS. ZMROCZEK: Hi, My name is Aimee Zmroczek. I'm an attorney here in Columbia. I practice throughout the Midlands. This is my associate, Bridgett Brown.

THE DEFENDANT: I'm Michael Smith. I'm from Columbia, South Carolina.

THE COURT: Thank you very much.

Ladies and gentlemen, that's Ms. Zmroczek and Ms. Brown and Mr. Smith. Is anybody related by blood or marriage, close personal friends with, have any connection to, business, personal social, or otherwise to either one of these lawyers or Mr. Smith? Have you ever been represented by either one of the lawyers or anyone at their firm or been on the other side of a case from them? If so, please stand.

Okay. Yes, sir, what's your name?

PROSPECTIVE JUROR: James Davis.
THE COURT: Mr. Davis?
PROSPECTIVE JUROR: Yes, sir.
THE COURT: All right. That's Juror No. 60, James Davis.
Who do you know, Mr. Davis.
PROSPECTIVE JUROR: Michael Smith.
THE COURT: How do you know him?
PROSPECTIVE JUROR: We grew up together. Went to school, played football together.
THE COURT: Would that affect your ability to be fair and impartial in this case?
PROSPECTIVE JUROR: Yes, sir.
THE COURT: Okay. Have a seat in the back of the room next to the deputy.
Okay. What's your number, sir?
PROSPECTIVE JUROR: Thirty-one.
THE COURT: Juror No. 31, Mr. Bumgarner?
PROSPECTIVE JUROR: Yes, sir.
THE COURT: Who do you know, sir?
PROSPECTIVE JUROR: I know Ms. Brown.
THE COURT: How do you know her?
PROSPECTIVE JUROR: We have a few mutual friends who are both active musicians here in town.
THE COURT: Would that affect your ability to be fair

54

and impartial?

PROSPECTIVE JUROR: No, sir.

THE COURT: Are you willing to base your decision solely on the evidence and the law?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: And will you do that?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Thank you very much.

Anybody else?

(There was no response.)

THE COURT: The next thing I'm going to do is read a list of potential witnesses. Some of these names I will say twice just because of the way the lists are done. So here's what I want you to do. If you hear a name you know or it could be a person that you think you know, just make a mental note of it. Then at the end, I'll ask everybody to stand and we can go through how you know them.

Now, if you hear a name like John Smith and you say well, I know John Smith, but that's a pretty common name and you want some more identifying information about the individual to figure out if that's the John Smith that you know, just let us know and we can get that for you.

Now, I'm going to read a list of names. Just because all of these names are read does not mean that all of these witnesses will be called, but they certainly could

55

be, so err on the side of answering in the affirmative that you know the person if you do, in fact, know the person.

This is any kind of connection. Basically, if you know this person -- and I don't mean know in the we go to lunch everyday sense. I mean, if you know who they are, stand up and just let us know. There's no wrong answers. We're just gathering information.

If you are present in the courtroom and your name is called, if you will raise your hand or stand up just so everybody can identify who you are.

Martha Childress, Ellison Dew, Shante Bethel, Asia Bethel, Joseph Jones, Ryan Ellison.

Somebody is going to have to help me. Taqayya?

MS. GARFIELD: Yes, sir.

THE COURT: Taqayya White, a/k/a Tiffany Roper, Daquan Samuel, Byron Tucker, Donnell Woodard, Russell Davis, Carey Shealey, Rueben Levy, Michael Painter, Karen Heaps, Pam Johnson, Daniel Mayo, Jim Truitt with the Richland County Clerk of Court's Office, Special Agent Richard Brown with ATF, Investigator Brian VanHouten with ATF, Benjamin Arrowood with the Columbia Police Department, Officer Theodore McLaughlin with the Columbia Police Department, Captain Derrick Thornton with the Columbia Police Department.

56

Thank you, Captain.

Captain Allen Sharp with the Columbia Police Department, Sergeant Arthur Reese with the Columbia Police Department, Crime Scene Investigator George Potash with the Columbia Police Department, Investigator Valerie Moorer, M-o-o-r-e-r, with the Columbia Police Department, Investigator Emmitt Gilliam with the Columbia Police Department.

Thank you, Investigator.

Investigator Nole Dow with the Columbia Police Department, Officer Lance Crocker with the Columbia Police Department, Officer Brian Sutton with the Columbia Police Department, Shane Spraker or Spraker --

MS. GARFIELD: Spraker.

THE COURT: Spraker with the Columbia Police Department, Donna Martin with the Columbia Police Department, Sarah Johnson with the Richland County Sheriff's Department, Investigator Ryan --

Is that Galinski and it's just spelled wrong?

MS. GARFIELD: Yes, sir.

THE COURT: Okay. Investigator Ryan Galinski with the sheriff's department, Kristen Steedley with EMS, Corey Starnes with EMS, Dr. Robert Smith with Palmetto Richland Memorial Hospital.

How do you say that first name?

MS. GARFIELD: Let me see. Dr. -- I think we need to spell it, Judge.

THE COURT: Okay. Dr. Alejanciras Luis, A-l-e-j-a-n-c-i-r-a-s, last name Luis, L-u-i-s, with the Palmetto Richland Memorial Hospital, Dr. William Fry with Palmetto Richland Memorial, Dr. Anna Elmers with the Shepard Center, Laurie Nash with the Shepard Center, Kathy Grays with the Shepard Center, Dr. Melissa Richardson, Nikki Hughes with SLED, Joe West with SLED, Lieutenant Jennifer Nates with SLED, Seraphim --

MS. GARFIELD: Haftoglou.

THE COURT: -- Haftoglou with SLED, Lieutenant Tracy Thrower with SLED, Lieutenant David Byrum with the USC Police Department, Sergeant Daniel Alonzo with the USC Police Department, Sergeant Robert Waters with the Alvin S. Glenn Detention Center.

Juanita Smith, Michael Juan Smith, Jr., Michael Smith, Sr., Kevin Smith, Teara Hingleton, Shante Bethel, Asia Bethel, Ryan Ellisor, Brian --

Zwolck?

MS. GARFIELD: Zwolck, I believe.

THE COURT: -- Zwolck. I'm sorry. I apologize. For anybody's name I said wrong, I apologize -- with the Columbia Police Department. Christopher Robinson and Christopher Watkins.

58

Is anybody related by blood or marriage, close personal friends with, have any connection to, business, personal, social or otherwise to any of the names that I just read? If so, please stand.

Okay. Mr. Coble?

PROSPECTIVE JUROR: Is Tracy Thrower with SLED Keith Thrower?

MS. CAMPBELL: No.

MS. GARFIELD: I don't know.

THE COURT: Does anybody know?

THE DEPUTY: No, sir, two different ones.

THE COURT: Okay. We do not think they are. Okay. Thank you, Mr. Coble.

In the plaid shirt, what's your name, sir?

PROSPECTIVE JUROR: Thomas Mann.

THE COURT: Mr. Mann?

PROSPECTIVE JUROR: 170.

THE COURT: Hold on. We all have to find you, Mr. Mann.

All right. Juror No. 170, Mr. Mann.

Who do you know, Mr. Mann?

PROSPECTIVE JUROR: I know Captain Allen Sharp.

THE COURT: Would that affect your ability to be fair and impartial?

PROSPECTIVE JUROR: No, sir.

THE COURT: Are you willing to base your decision solely off the evidence and the law?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: And will you do that?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Thank you.

Yes, ma'am, in the red, what's your name?

PROSPECTIVE JUROR: Rosanne McCarthy, 175.

THE COURT: Ms. McCarthy?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay. 175.

Ms. McCarthy, who do you know?

PROSPECTIVE JUROR: Tracy Thrower. His daughter and my daughter go to school together.

THE COURT: Would that affect your ability to be fair and impartial?

PROSPECTIVE JUROR: No, sir.

THE COURT: Are you willing to base your decision solely off the evidence and the law?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: And will you do that?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Thank you, ma'am.

Mr. Finley, who all do you know?

PROSPECTIVE JUROR: It's less who I know, but know of

60

from previously at city council. And also public service, I've run across many of these officers. They are not close personal friends, but you said anyone you know.

THE COURT: That's exactly what I would want everyone to do, err on the side of providing us with too much information.

Would any of the relationships at whatever status they may be that you have with any of the potential witnesses affect your ability to be fair and impartial in this case?

PROSPECTIVE JUROR: No, sir, Your Honor.

THE COURT: Are you willing to base your decision solely off the evidence and the law?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: And will you do that?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Thank you.

Anybody else on knowing potential witnesses?

(There was no response.)

THE COURT: Okay. All right. Is this any member of the jury panel that has formed or expressed an opinion about any issue or matter involved in this case?

All right. Mr. Finley, I'm going to ask a general question at the end, so I will circle back around to that.

All right. Is there any member of the jury panel

61

aware of any bias or prejudice that you may have towards the State or the Defense?

(There was no response.)

THE COURT: Is there any member of the jury panel who is a member of or a contributor to any group which has as its primary concern the promotion of law enforcement or victim's rights or defendant's rights? This could include MADD, SADD, the Innocence Project, anything like that, anybody that is involved in those types of organizations on either side?

Yes, ma'am, what's your name?

PROSPECTIVE JUROR: It's Joanne Suggs.

THE COURT: Ms. Suggs?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Let everybody find you, Ms. Suggs. Hold on just one second.

PROSPECTIVE JUROR: 264.

THE COURT: Thank you, ma'am.

Ms. Suggs is Juror No. 264.

What are you a member of or contributor to?

PROSPECTIVE JUROR: MADD.

THE COURT: Would that affect your ability to be fair and impartial in this case?

PROSPECTIVE JUROR: I don't think so.

THE COURT: Are you willing to base your decision

62

solely off the evidence and the law?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: And will you do that?

PROSPECTIVE JUROR: I will.

THE COURT: Okay. Thank you.

Okay. I'm going to move on to some additional questions now.

All right. Has anybody ever served as a juror in state or federal or local court before? If so, please stand. Like did you actually make it on a jury? If so, just stand up with us.

Okay. What's your name, ma'am?

PROSPECTIVE JUROR: Deborah Anderson, No. 8.

THE COURT: Ms. Anderson. Let's see.

THE COURT: Okay. Were you on State, federal or local?

PROSPECTIVE JUROR: It was here.

THE COURT: State?

PROSPECTIVE JUROR: Yes.

THE COURT: All right. Thank you very much.

Yes, ma'am, what's your name?

PROSPECTIVE JUROR: Karen Alexander.

THE COURT: Ms. Alexander.

PROSPECTIVE JUROR: State.

THE COURT: All right. So this is Karen Alexander.

63

PROSPECTIVE JUROR: 319.

THE COURT: Juror No. 319. Thank you, Ms. Alexander. You thought you were getting out of it this morning when they couldn't find your number.

PROSPECTIVE JUROR: No, I didn't.

THE COURT: Yes, ma'am, what's your name?

PROSPECTIVE JUROR: Angela Booth Jackson, 141.

THE COURT: All right. Ms. Booth Jackson, let everybody find you, okay. Okay. And where were you a juror?

PROSPECTIVE JUROR: Local, here.

THE COURT: Local? Okay. Thank you, ma'am.

Yes, ma'am, what's your name?

MS. CAMPBELL: Latrell Harts, 121.

THE COURT: Okay. Thank you, ma'am. All right. Ms. Harts, where were you a juror?

PROSPECTIVE JUROR: State.

THE COURT: Where?

PROSPECTIVE JUROR: Here.

THE COURT: Here. Okay. Welcome back.

Yes, sir, what's your name?

PROSPECTIVE JUROR: Amos Stevenson, 258.

THE COURT: Juror No. 258, Mr. Stevenson.

Everybody got it, Amos Stevenson?

Where were you a juror, Mr. Stevenson?

64

PROSPECTIVE JUROR: Lexington County.

THE COURT: Lexington County. Thank you very much.

All right. Yes, sir, Mr. Mann, right?

PROSPECTIVE JUROR: Correct.

THE COURT: And where were you a juror, Mr. Mann?

PROSPECTIVE JUROR: Municipal.

THE COURT: Municipal court. Thank you very much.

All right. Yes, ma'am, in the black and white, what is your name?

PROSPECTIVE JUROR: Donna Woodall, 294.

THE COURT: Okay. Let everybody find you. Ms. Woodall, where were you a juror?

PROSPECTIVE JUROR: Civil case here.

THE COURT: Okay. Thank you.

Yes, sir, in the blue shirt, what is your name?

PROSPECTIVE JUROR: Gregory Croft, 54.

THE COURT: Mr. Croft. Okay. Juror No. 54.

And where were you a juror, Mr. Croft?

PROSPECTIVE JUROR: Civil case here.

THE COURT: Okay.

All right. Yes, ma'am, what's your name?

PROSPECTIVE JUROR: Patsy Moss, 195.

THE COURT: Okay. Ms. Moss, where were you a juror?

PROSPECTIVE JUROR: Here.

THE COURT: Thank you, ma'am. Okay.

65

Has anybody ever been a member of any grand jury, state or federal? Grand juries usually meet once a month for one to three days a month. You usually do that for between six months and one year. Anybody ever been on any grand jury?

(There was no response.)

THE COURT: Does anybody have any connection to law enforcement? And what I mean by connection, either you have a connection with law enforcement or you have a family member that is involved in law enforcement. This could be local, State, federal, county, military, anything like that.

Okay. Yes, ma'am, right here in the front row.

PROSPECTIVE JUROR: 282.

THE COURT: Ms. White. What's your connection?

PROSPECTIVE JUROR: My brother is retired from the Columbia Police Department.

THE COURT: Okay. Thank you, ma'am.

Yes, sir, what's your number?

PROSPECTIVE JUROR: 135, Jeff Holt.

THE COURT: All right. Mr. Holt, what's your connection?

PROSPECTIVE JUROR: My cousin is a U.S. Marshal.

THE COURT: Okay.

All right. Yes, ma'am, what's your name?

66

PROSPECTIVE JUROR: Emily Toler, 274.

THE COURT: Ms. Toler.

All right. Ms. Toler, what's your connection?

PROSPECTIVE JUROR: My husband is a retired police officer.

THE COURT: Okay. Thank you.

In the green and white, yes, ma'am, what's your name?

PROSPECTIVE JUROR: Laketra Wilson, 292.

THE COURT: Okay. Ms. Wilson.

Okay. What's your connection?

PROSPECTIVE JUROR: Military.

THE COURT: Thank you, ma'am.

PROSPECTIVE JUROR: Joe Farmer, Juror No. 83.

THE COURT: Okay. Mr. Farmer.

PROSPECTIVE JUROR: I do emergency management and in the process of that coordination, we work with many law enforcement folks.

THE COURT: Thank you.

Yes, ma'am. What's your number or name?

PROSPECTIVE JUROR: Wendy Ferguson, 86.

THE COURT: Ms. Ferguson.

Okay. What's your connection?

PROSPECTIVE JUROR: My brother-in-law is a sheriff in Mecklenburg County.

THE COURT: In Charlotte?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay.

PROSPECTIVE JUROR: And then my cousin is a police officer in Wake County.

THE COURT: Okay. Thank you, ma'am.

In the solid white shirt, yes, ma'am, what's your name?

PROSPECTIVE JUROR: Kyran Davis.

THE COURT: Ms. Davis.

PROSPECTIVE JUROR: My brother-in-law is a police officer and my cousin is retired Army and my grandfather is Army.

THE COURT: Thank you, ma'am.

Yes, ma'am, what's your name?

PROSPECTIVE JUROR: Tonie Wright.

THE COURT: Wright?

PROSPECTIVE JUROR: 297.

THE COURT: Thank you, ma'am. What's your connection?

PROSPECTIVE JUROR: My husband is retired ATF.

THE COURT: Okay. Thank you.

Yes, sir, tell me your name again.

PROSPECTIVE JUROR: Joshua Bumgarner, No. 31.

THE COURT: Okay. And what's your connection, Mr. Bumgarner?

68

PROSPECTIVE JUROR: My uncle is the county coordinator for the county.

THE COURT: Okay.

PROSPECTIVE JUROR: My mother is also retired from the detention center.

THE COURT: Okay. Great. Thank you very much.

Yes, sir, what's your name?

PROSPECTIVE JUROR: Lester Nelson, 197.

THE COURT: Mr. Nelson, what's your connection?

PROSPECTIVE JUROR: My son, he was a military police.

THE COURT: Okay. Thank you very much.

All right. Is any member of the jury panel related by blood or marriage or close personal friends with anyone that works at the Attorney General's Office, any other solicitor's office in the State or any other prosecuting office or any public defender's office? Do you have any connection to any prosecution or public defender's office other than those already stated?

Yes, sir, Mr. Finley?

PROSPECTIVE JUROR: Attorney General Wilson and I are...

THE COURT: Okay. Would that affect your ability to be fair and impartial in this case?

PROSPECTIVE JUROR: No, sir.

THE COURT: Thank you very much.

Anybody else?

THE COURT: All right. Has any member of the jury panel or any member of your family ever been confined to a wheelchair because of either paraplegia or quadriplegia?

(There was no response.)

THE COURT: Is there any member of the jury panel or a member of your family that is a member of the Five Points Association?

All right. Mr. Finley, you're a member of that association; is that correct?

PROSPECTIVE JUROR: Yes, sir. I've been a board member in the past.

THE COURT: Okay. Thank you very much.

Yes, sir, Mr. Bumgarner?

PROSPECTIVE JUROR: No. 31. I currently work at Bar None, which is a member of the Five Points Association. I've worked there for eight years.

THE COURT: Would that affect your ability to be fair and impartial?

PROSPECTIVE JUROR: It could, yes, sir.

THE COURT: All right. Have a seat in the back of the room next to the deputy.

Is any member of the jury panel or a member of your family a member of the Zeta Tau Alpha --

Did I say that right?

70

MS. GARFIELD: Yes, sir.

THE COURT: -- Sorority, including Alumni members? I'm sorry, I went to the Citadel. We didn't have fraternities, so...

(There was no response.)

THE COURT: Has any member of the jury panel or a member of your family to your knowledge ever used the hash tag pray for Martha?

(There was no response.)

THE COURT: Has anyone ever visited the website -- any member of the jury panel or a member of your family ever visited the website prayformartha.com?

PROSPECTIVE JUROR: Yes, sir, I think so just because of the association with Five Points.

THE COURT: Would that affect your ability to be fair and impartial?

PROSPECTIVE JUROR: No, sir.

THE COURT: Are you willing to base your decision solely off the evidence and the law?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay. Thank you very much.

Ladies and gentlemen, this case may involve gang activity. Would that information have any affect on your ability to be fair and impartial? If so, please stand.

(There was no response.)

71

THE COURT: Okay. I'm going to ask this last question kind of multi-faceted. One of the things that I will never be allowed to do in this trial is comment on what the facts are. If you actually make it onto my jury, I have a whole part of a presentation that I explain this to you. The jury is the judge of the facts and I am the judge of the law. Okay. Just common sense, the jury figures out what the facts are. I figure out what the law is. Okay. So during the trial, you will never hear me comment on or state anything about the facts of the case because that's kind of me stepping into your area if you actually make it on the jury, okay. So what I'm about to give you is a very brief factual recitation, okay.

You will never hear me do this in the trial, but I've got to give you some information so you can understand what case this is so we can determine what you know or what you don't know about the case. So just because I'm saying it right now, it's not proof of anything. It's not evidence of anything. These are allegations. Mr. Smith sits here presumed innocent and the burden of proof is upon the State to prove his guilt to each and every element of each and every crime beyond a reasonable doubt, but I have to give you some information so that you can process through and see what you know or what you don't know about this case.

72

If you know something about this case or if you've read something about this case, that's perfectly fine. There's nothing wrong that. No one is going to fault you for knowing what's going on. But we have to know that as the judge and as the attorneys to make good decisions about who to put on the case.

So as I give you kind of a little bit of information, I don't want you to say -- think that I'm telling you these are the facts and stop everything, the Judge just said that. I'm just giving you the basic allegations so that you can understand what case this is to see what connection, if any, you may have to the case.

Okay. So this case, the allegations are that on or about October the 13th of 2013, an incident occurred in the Five Points area of Columbia, you know, which is right near Shandon, right off USC campus. And anybody that's lived in Columbia for more than six months knows where Five Points is. The victim in the case is Ms. Childress, okay, who was a USC student at the time. There's been some news articles that have come out, both in the State newspaper and other print media and on the local television stations about the case.

Now, here is how encompassing I want this question to be. If you have read an article about this case or have seen it on the news -- in just a minute, not right now,

we're going to have you form a line. I'm going to question each of you individually outside the presence of anybody else. Now, it's going to take a little bit longer than normal, but that's what we need do to make sure that we have a fair and impartial jury.

You remember as you go through this, regardless of the side of the case, you would want to know that the 12 people sitting there are fair and impartial. They haven't made up their mind walking into that room and they're going to do the right thing as citizens in this community and be fair and impartial to both sides. So I'm going to question you individually.

I want any connection at all to this case. If you so much as saw the news one time, I want you to tell me. If you've been to fundraisers, if you've been to baseball games, if you've been to any kind of event for this incident or Ms. Childress or anything about this event, whatever it may be, you err on the side of telling me more information than less. Okay. Does that make sense?

Again, no one is going to be in trouble. This is just us gathering information so that we can make good decisions to try and seat a fair and impartial jury for the case. So there's nothing wrong with knowing about the case. We just want to know what you know, what you've heard, what you've seen, what you've experienced and

74

whether or not you can still be fair and impartial after knowing that information. That's the only thing that it is. You haven't done anything wrong. But I needed to give you some information so that you knew what case we were referring to.

The last question I'm going to ask before we form a line is if you have been -- you or a family member has been the victim of a violent crime or the accused or defendant in a violent crime, you will also need to get in that line so that I can question you individually. So that's victim of a violent crime or accused of or defendant in a violent crime case?

Anything else before I pull them back one at a time?

MS. ZMROCZEK: May we approach briefly?

THE COURT: Yes.

(WHEREUPON, a bench conference was held.)

THE COURT: All right. So if you think you know anything about this case, if you think you've heard anything about this case, you saw one news report and nothing else or have any connection to it or the violent crime question, I want you to form a line right here at the podium.

Mr. Dye, you'll be in charge of, and Mr. Tolbert, bringing them back. Okay. All right.

(WHEREUPON, the following questioning by the Court

75

took place in the jury room.)

THE DEPUTY: Forty-four.

THE COURT: Forty-four. Hey, how are you doing?

PROSPECTIVE JUROR: I'm good. How are you?

THE COURT: Good. Are you Ms. Chavis?

PROSPECTIVE JUROR: Yes, ma'am -- I mean, yes, sir.

THE COURT: And do you know about the case or are you answering the violent crime question?

PROSPECTIVE JUROR: I heard about the case on the news.

THE COURT: And what did you hear?

PROSPECTIVE JUROR: I really just heard a girl got shot in Five Points.

THE COURT: Okay. Is that recently you've heard that or in the past?

PROSPECTIVE JUROR: I think when it really first happened.

THE COURT: Okay. All right. Do you have any connection to her or anybody involved in the case at all?

PROSPECTIVE JUROR: No.

THE COURT: Do you know her?

PROSPECTIVE JUROR: No, I have no idea who she is.

THE COURT: Are you a student?

PROSPECTIVE JUROR: I'm a student at USC-Aiken.

THE COURT: Okay, but not USC here in Columbia?

76

PROSPECTIVE JUROR: No.

THE COURT: And would the fact that you read this news article affect your ability to be fair and impartial?

PROSPECTIVE JUROR: No, sir.

THE COURT: Are you willing to base your decision solely off the evidence and the law?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: And will you do that?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Thank you.

MS. ZMROCZEK: Judge, will you add they not talk about it when they go back out?

THE COURT: Yes.

MS. ZMROCZEK: Thank you. Sorry.

THE DEPUTY: Forty-nine.

THE COURT: Come on in, Mr. Coble. All right. What do you know about this case, Mr. Coble?

PROSPECTIVE JUROR: I heard it was a shooting in Five Points and that she got caught in the crossfire, but she wasn't the intended target. And then she went to Atlanta to get spinal surgery.

THE COURT: Right.

PROSPECTIVE JUROR: I think she was at a football game with the -- honored at half-time, I think.

THE COURT: Okay.

PROSPECTIVE JUROR: And I saw an article where she was with Steve Spurrier and some football players.

THE COURT: Okay. Have you ever attended any events for her or anything like that?

PROSPECTIVE JUROR: No, sir.

THE COURT: Do you know her?

PROSPECTIVE JUROR: No, sir.

THE COURT: Other than the witnesses you've already told us about, do you know any of the witnesses or anything like that?

PROSPECTIVE JUROR: No, sir.

THE COURT: What do you do?

PROSPECTIVE JUROR: I work for a tax firm at the Richland Mall. I basically --

THE COURT: What does your brother do?

PROSPECTIVE JUROR: This one?

THE COURT: Joking. Okay. All right. Would this affect your ability to be fair and impartial?

PROSPECTIVE JUROR: No, sir.

THE COURT: Are you willing to base your decision solely off the evidence and the law?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: And will you do that?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: And don't talk about it out there?

78

PROSPECTIVE JUROR: Okay.

THE COURT: Okay. Thank you.

THE DEPUTY: Judge, the Defendant has to go to the bathroom. He can't hold it.

THE COURT: Where can he go?

THE DEPUTY: I'll have to take him back downstairs.

THE COURT: Pull the jurors that are in the box in the hall. Tell all the other jurors to take a 10-minute break and go outside.

(WHEREUPON, a short break was taken.)

THE CLERK: 319.

THE COURT: Hey, how are you?

PROSPECTIVE JUROR: Good.

THE COURT: Do you want to answer the question about knowing the case or the violent crime?

PROSPECTIVE JUROR: Just knowing about the case.

THE COURT: Tell me what you know.

PROSPECTIVE JUROR: Just what was in the media when it first came out. I live in Columbia and not far from Five Points, so I know about it.

THE COURT: Have you attended any events or fundraisers --

PROSPECTIVE JUROR: No.

THE COURT: -- or liked any Facebook pages, anything like that?

PROSPECTIVE JUROR: I don't do Facebook, no.

THE COURT: Would this affect your ability to be fair and impartial in the case?

PROSPECTIVE JUROR: Not at all.

THE COURT: Are you willing to base your decision off the evidence and the law?

PROSPECTIVE JUROR: Most definitely.

THE COURT: And will you do that?

PROSPECTIVE JUROR: I will.

THE COURT: Do not discuss what you've discussed back here with anybody out there.

PROSPECTIVE JUROR: Okay.

THE COURT: Thank you.

PROSPECTIVE JUROR: Thank you.

THE CLERK: 192.

THE COURT: Hey, Mr. Morris, come on in and sit down. Make yourself at home. Which question do you want to answer, the violent crime or the news question?

PROSPECTIVE JUROR: The news question.

THE COURT: And what do you know about the case?

PROSPECTIVE JUROR: I just remember at the time listening to the local news reports --

THE COURT: Okay.

PROSPECTIVE JUROR: -- regarding the situation, the incident and just following the situation through the news

80

reports --

THE COURT: Okay.

PROSPECTIVE JUROR: -- with the victim and her recovery.

THE COURT: Okay. And have you been to any events or Facebook pages or anything like that?

PROSPECTIVE JUROR: No.

THE COURT: So you haven't attended anything for her?

PROSPECTIVE JUROR: No, sir.

THE COURT: Do you have any connection to her?

PROSPECTIVE JUROR: No, sir.

THE COURT: And anything that you know about the case outside of what you've heard on this news?

PROSPECTIVE JUROR: No, sir.

THE COURT: And would that affect your ability to be fair and impartial?

PROSPECTIVE JUROR: No, sir.

THE COURT: Are you willing to base your decision off the evidence and the law firm?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: And will you do that?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay. Don't discuss anything with the jurors outside, okay?

PROSPECTIVE JUROR: Okay.

THE COURT: Thank you.

PROSPECTIVE JUROR: Thank you.

THE COURT: Hi, Ms. Jones. Come on in, have a seat. Are you answering the question about the news media or about violent crime?

PROSPECTIVE JUROR: The news.

THE COURT: And tell me what you know about the case.

PROSPECTIVE JUROR: Basically, I just remember when it first happened.

THE COURT: Okay.

PROSPECTIVE JUROR: I've seen it in the news a couple times. I saw yesterday where they were going to select the jury this week, but other than that, I really don't know much about it.

THE COURT: Do you have any connection to Ms. Childress at all?

PROSPECTIVE JUROR: No.

THE COURT: Ever liked Facebook pages, been to fundraisers, anything like that?

PROSPECTIVE JUROR: No.

THE COURT: And what you've heard in the news, would that affect your ability to be fair and impartial?

PROSPECTIVE JUROR: No, sir.

THE COURT: Are you willing to base your decision off the evidence and the law?

82

PROSPECTIVE JUROR: Yes, sir.
THE COURT: And will you do that?
PROSPECTIVE JUROR: Yes, sir.
THE COURT: Okay. Don't discuss your answers back there with anybody else. Thank you.
THE CLERK: Seventy-four.
THE COURT: Hang on.
MS. BROWN: Just so y'all know, the bailiff just let everybody go who wasn't initially going speak to you. He told them they could go take a break. But it looks like some people who were initially going to talk to you went to take a break. So I don't think if you want to remind people when they get back in the room.
THE COURT: All right. Coming on in, sir.
PROSPECTIVE JUROR: Seventy-four.
THE COURT: Okay. Juror No. 74.
Have a seat. Have a seat. Mr. Dull?
PROSPECTIVE JUROR: Yes, sir.
THE COURT: Okay. Are you answering the news question or the violent crime question?
PROSPECTIVE JUROR: The news.
THE COURT: What have you heard about the case?
PROSPECTIVE JUROR: Just a little bit on the news here and there.
THE COURT: Have you been to any events for her or

attended any fundraisers or anything like that?

PROSPECTIVE JUROR: No, sir.

THE COURT: Do you have any connection to the case in any way, shape, or form?

PROSPECTIVE JUROR: No, sir.

THE COURT: Would what you've heard on the news affect your ability to be fair and impartial?

PROSPECTIVE JUROR: No, sir.

THE COURT: Are you willing to base your decision on the evidence and the law?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: And will you do that?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay. Thank you very much. You don't need to discuss anything about what you've seen with anybody else, okay?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Thank you.

THE CLERK: No. 92.

THE COURT: Come on in, sit down. Ms. Fowler?

PROSPECTIVE JUROR: Yes.

THE COURT: And are you answering the news question or the violent crime question?

PROSPECTIVE JUROR: The news.

THE COURT: Okay. Tell me what you know or what

84

you've heard about the case?

PROSPECTIVE JUROR: About the shooting, about her being paralyzed.

THE COURT: Okay.

PROSPECTIVE JUROR: About the guy -- I can't think of his name right now, but about him having a weapon because he was already -- let me see. He was already -- he's been charged anyway with something and he wasn't supposed to have a weapon anyway, so.

THE COURT: Okay. And when is the last time you heard something about the case?

PROSPECTIVE JUROR: This morning.

THE COURT: And have you attended any events for her or fundraisers?

PROSPECTIVE JURORS: No.

THE COURT: Or followed her on Facebook or anything like that?

PROSPECTIVE JUROR: No.

THE COURT: Okay. And what you've heard, would that affect your ability to be fair and impartial?

PROSPECTIVE JUROR: No.

THE COURT: Are you willing to base your decision off the evidence and the law?

PROSPECTIVE JUROR: Yes.

THE COURT: And will you do that?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay. Thank you.

PROSPECTIVE JUROR: Thank you.

THE CLERK: 135.

THE COURT: Hey, come on in, grab a seat. 135. You're Mr. Holt?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Good.

PROSPECTIVE JUROR: How are you?

THE COURT: Great. How are you?

PROSPECTIVE JUROR: Doing well.

THE COURT: All right. Are you answering the violent crime question or the news media question?

PROSPECTIVE JUROR: News media question.

THE COURT: Tell me what you know.

PROSPECTIVE JUROR: Some blurb on the news probably about a year ago.

THE COURT: Okay.

PROSPECTIVE JUROR: Probably a couple because it seemed like around that time a few things happened. So I don't know which one or what, but I vaguely remember something about a shooting or two in the Five Points area.

THE COURT: And have you been to any events for her or liked any Facebook pages or been to websites or anything like that?

86

PROSPECTIVE JUROR: Not that I even recall.

THE COURT: And what you've heard, would that affect your ability to be fair and impartial in the case?

PROSPECTIVE JUROR: No.

THE COURT: Are you willing to base your decision solely off the evidence and the law?

PROSPECTIVE JUROR: Yes.

THE COURT: And will you do that?

PROSPECTIVE JUROR: Yes.

THE COURT: Do not discuss your answers with anybody else?

PROSPECTIVE JUROR: All right.

THE COURT: Thank you.

PROSPECTIVE JUROR: Thank you.

THE CLERK: No. 8.

THE COURT: Hey.

PROSPECTIVE JUROR: Hi.

THE COURT: Tell me your name.

PROSPECTIVE JUROR: Deborah Anderson.

THE COURT: Okay. Why can't I find her?

THE CLERK: No. 8.

THE COURT: Got it. And which question are you answering, the violent crime or the news media question?

PROSPECTIVE JUROR: The news media.

THE COURT: And tell me what you know.

PROSPECTIVE JUROR: It didn't hit me until almost -- until you started your last speech who the victim was in this.

THE COURT: Okay.

PROSPECTIVE JUROR: I just know what I've heard on TV. She was waiting for a bus, was shot and she's paralyzed and coming back to school this year. I understand she's doing well.

THE COURT: Have you been to any events for her?

PROSPECTIVE JUROR: No.

THE COURT: Or online pages or attended anything where she was there and she was being honored or anything?

PROSPECTIVE JUROR: No.

THE COURT: And what you've heard, would that affect your ability to be fair and impartial?

PROSPECTIVE JUROR: No.

THE COURT: Are you willing to base your decision solely off the evidence and the law?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: And will you do so?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Great. Thank you. Don't discuss it with anybody, okay?

PROSPECTIVE JUROR: Got it.

THE CLERK: No. 282.

88

THE COURT: Okay. Ms. White. Okay. Are you answering the violent crime question or the news media question?

PROSPECTIVE JUROR: News media.

THE COURT: Okay. All right. Tell me what you know.

PROSPECTIVE JUROR: Well, only what I've seen on TV on the blurbs on the news.

THE COURT: Okay.

PROSPECTIVE JUROR: I do not read the newspaper.

THE COURT: Me either.

PROSPECTIVE JUROR: Well, number one, I don't want to know all the gruesome details of stuff, so --

THE COURT: Okay.

PROSPECTIVE JUROR: -- I just know the basics of what's been on the news.

THE COURT: Have you been to any events or fundraisers --

PROSPECTIVE JUROR: No.

THE COURT: -- or websites or anything like that?

PROSPECTIVE JUROR: No, not that I'm aware of. I go to USC footballs games and stuff like that. If they did something during a football game, I don't remember.

THE COURT: If they did, you don't even remember, okay. And would that affect your ability to be fair and impartial?

PROSPECTIVE JUROR: No.

THE COURT: Are you willing to base your decision on the evidence and the law?

PROSPECTIVE JUROR: Yes.

THE COURT: And will you do so?

PROSPECTIVE JUROR: Yes.

THE COURT: Thank you very much. Don't discuss your answers with anybody?

THE CLERK: No. 167.

THE COURT: Hey, how are you doing?

PROSPECTIVE JUROR: Fine. How are you?

THE COURT: Good. What's your name?

PROSPECTIVE JUROR: Kayla Major.

THE COURT: Ms. Major. Why can't I find her?

THE CLERK: She's on Page 1 towards the bottom.

THE COURT: All right. Ms. Major, are you answering the violent crime or the news media question?

PROSPECTIVE JUROR: Both.

THE COURT: Okay. Let's start with the violent crime. Is this you or a family member?

PROSPECTIVE JUROR: A family member.

THE COURT: And what's the relation?

PROSPECTIVE JUROR: Cousin.

THE COURT: Was he or she the defendant or the victim?

90

PROSPECTIVE JUROR: The defendant.
THE COURT: And what kind of case was it?
PROSPECTIVE JUROR: A murder trial.
THE COURT: And where was it?
PROSPECTIVE JUROR: Out of state, Indiana.
THE COURT: Okay. And the news media, what do you know about the case?
PROSPECTIVE JUROR: I have friends that go to USC.
THE COURT: Okay.
PROSPECTIVE JUROR: And they expressed to me that they knew victim.
THE COURT: Okay.
PROSPECTIVE JUROR: But other than that, I read an article online.
THE COURT: All right. Have you been to any events for her?
PROSPECTIVE JUROR: No, sir.
THE COURT: Or fundraisers?
PROSPECTIVE JUROR: No, sir.
THE COURT: Special things where she got honored or anything like that?
PROSPECTIVE JUROR: No, sir.
THE COURT: Are you friends with her?
PROSPECTIVE JUROR: No, sir.
THE COURT: Do you have any connection to her?

91

PROSPECTIVE JUROR: Not that I know of.

THE COURT: Facebook or I don't even know what all that stuff is?

PROSPECTIVE JUROR: No.

THE COURT: Any kind of social media connection to her or anything?

PROSPECTIVE JUROR: No.

THE COURT: And would this affect your ability to be fair and impartial, either that or the fact that your cousin was a defendant in a murder case?

PROSPECTIVE JUROR: No.

THE COURT: Are you willing to base your decision solely off the evidence and the law?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: And will you do that?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Don't discuss your answers with anybody else, okay?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: All right. Thank you, Ms. Major.

THE CLERK: 318.

THE COURT: Hey, have a seat. Come on in. Ms. White.

PROSPECTIVE JUROR: Yes.

THE COURT: Okay. Are you answering the news media

92

or the violent crime question?

PROSPECTIVE JUROR: Both.

THE COURT: Okay. Let's start with the violent crime. Is it you or a family member?

PROSPECTIVE JUROR: It was family. The whole family was involved.

THE COURT: Were y'all the victims or the defendants?

PROSPECTIVE JUROR: We were the victims.

THE COURT: What kind of case?

PROSPECTIVE JUROR: Drunk driver ran into the front of our mobile home.

THE COURT: Oh, I'm sorry.

PROSPECTIVE JUROR: Flipped his car over into the yard and just missed hitting two of my children.

THE COURT: Okay. And where was that?

PROSPECTIVE JUROR: This was in Pontiac, Elgin.

THE COURT: And how long ago was it?

PROSPECTIVE JUROR: About nine years ago.

THE COURT: Okay. Is that in Kershaw or Richland?

PROSPECTIVE JUROR: That's considered Richland.

THE COURT: And is that case still pending or has it been resolved?

PROSPECTIVE JUROR: We never got our day in court. I think he ran after he got out of jail.

THE COURT: So there was a bench warrant or something

like that. He never came to court?

PROSPECTIVE JUROR: Right. He was in jail. They let him out and we never saw him again.

THE COURT: And the news media question, have you heard anything about the case or do you know anything?

PROSPECTIVE JUROR: Saw it on the news.

THE COURT: Tell me what you know.

PROSPECTIVE JUROR: That there was an altercation down in Five Points, a shot was fired and Ms. Childress was hit, shot.

THE COURT: And do you have any connection to her?

PROSPECTIVE JUROR: No.

THE COURT: Or been to any events for her?

PROSPECTIVE JUROR: No.

THE COURT: Fundraisers, websites, anything like that?

PROSPECTIVE JUROR: No.

THE COURT: Do you know anything besides what you've heard in the news?

PROSPECTIVE JUROR: No, sir.

THE COURT: And what you have heard and the fact that your family was the victim of some form of a drunk driving case, would that affect your ability to be fair and impartial in this case?

PROSPECTIVE JUROR: No, sir.

94

THE COURT: Are you willing to base your decision solely off the evidence and the law?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: And will do you so?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Thank you. Don't discuss your answers here with anybody else.

PROSPECTIVE JUROR: Okay.

THE COURT: Thanks.

PROSPECTIVE JUROR: Thank you.

THE CLERK: 274.

THE COURT: Ms. Toler, how are you.

PROSPECTIVE JUROR: Great, how are you?

THE COURT: Good. Do you want to answer the news media question or the violent crime question?

PROSPECTIVE JUROR: News media.

THE COURT: Tell me what you know.

PROSPECTIVE JUROR: If my memory serves me correctly, I read about that she was -- you know, a stray bullet hit her in an accident downtown or a shooting in Five Points. I guess hit her spine and caused her to, you know, be in a wheelchair.

THE COURT: Okay. Do you have any connection to her or the case?

PROSPECTIVE JUROR: No.

95

THE COURT: Ever been to events or websites or fundraisers or anything like that?

PROSPECTIVE JUROR: No, sir.

THE COURT: And do you know anything besides what you've heard on the news?

PROSPECTIVE JUROR: I do not.

THE COURT: And can you -- based upon what you've heard on the news, can you be fair and impartial in the case?

PROSPECTIVE JUROR: Yes.

THE COURT: Can you base your decision off the evidence and the law?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: And will you do that?

PROSPECTIVE JUROR: I will.

THE COURT: Okay. Thank you, Mr. Toler.

PROSPECTIVE JUROR: Thank you.

THE CLERK: No. 12.

THE COURT: No. 12.

PROSPECTIVE JUROR: Hello.

THE COURT: Hey, how are you, Mr. Aucoin?

PROSPECTIVE JUROR: Good, how are you doing?

THE COURT: I knew who you were this morning even though Mr. Truitt didn't recognize you.

PROSPECTIVE JUROR: And pronounced it correctly, too.

96

THE COURT: That's right. There you go. Are you answering the violent crime question or the news media question?

PROSPECTIVE JUROR: Not so much either. I live in University Hill neighborhood.

THE COURT: Okay.

PROSPECTIVE JUROR: Which is between Capstone and Five Points. Despite that, we didn't hear a whole lot about it.

THE COURT: Do you have any connection to the case at all?

PROSPECTIVE JUROR: No.

THE COURT: You never covered the case or --

PROSPECTIVE JUROR: Never did.

THE COURT: -- worked on it or anything like that?

PROSPECTIVE JUROR: (Indicating in the negative.)

THE COURT: Do you have any connection to Ms. Childress or the Defendant at all?

PROSPECTIVE JUROR: None, no Facebook, no Twitter.

THE COURT: No fundraisers, no events?

PROSPECTIVE JUROR: No, nothing like that.

THE COURT: No any kind of thing that was going on?

PROSPECTIVE JUROR: Correct.

THE COURT: Okay. And nothing on the violent crime question?

PROSPECTIVE JUROR: Nothing on the violent crime.

THE COURT: And do you believe that you're able to be fair and impartial in this case?

PROSPECTIVE JUROR: I do.

THE COURT: And will you base your decision off the evidence and the law?

PROSPECTIVE JUROR: I will.

THE COURT: Okay. Thank you.

PROSPECTIVE JUROR: Okay. Thank you.

THE CLERK: 255.

THE COURT: Mr. Smith, come on in. How are you doing?

PROSPECTIVE JUROR: Good.

THE COURT: Are you answering the violent crime question or the news media question?

PROSPECTIVE JUROR: Both.

THE COURT: Okay. Let's start with the violent crime. Is it you or a family member?

PROSPECTIVE JUROR: Family member.

THE COURT: And are they the victim or the defendant?

PROSPECTIVE JUROR: Defendant.

THE COURT: And what's the relation?

PROSPECTIVE JUROR: Brother.

THE COURT: And what kind of charge?

PROSPECTIVE JUROR: It was an armed robbery charge --

98

THE COURT: Okay --

PROSPECTIVE JUROR: -- and a gun charge.

THE COURT: And what?

PROSPECTIVE JUROR: And a gun charge along with it.

THE COURT: And where was that?

PROSPECTIVE JUROR: That was in Wayne County in the State of Michigan.

THE COURT: How long ago was that?

PROSPECTIVE JUROR: It was -- I think it was it '95 or '96.

THE COURT: Okay. And tell me what you've heard about the case.

PROSPECTIVE JUROR: There was just a story on TV this morning as I was passing around.

THE COURT: Okay.

PROSPECTIVE JUROR: Going around the house.

THE COURT: That's it?

PROSPECTIVE JUROR: That was it.

THE COURT: And do you have any connection to anybody involved in the case?

PROSPECTIVE JUROR: No.

THE COURT: Have you ever been to any events for Ms. Childress or fundraisers or websites or Facebook or anything like that?

PROSPECTIVE JUROR: No, sir.

99

THE COURT: Okay. And based upon what you've heard on the news, do you believe you're able to be fair and impartial in the case?

PROSPECTIVE JUROR: Absolutely.

THE COURT: And are you willing to base your decision on the evidence and the law?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay. All right. Don't discuss your answers here with anybody else.

THE CLERK: 195.

THE COURT: Hello.

PROSPECTIVE JUROR: Hi, sir.

THE COURT: Come on in, grab a seat. Ms. Moss?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Are you answering the violent crime question or the news media question?

PROSPECTIVE JUROR: News media.

THE COURT: And tell me what you've heard about the case.

PROSPECTIVE JUROR: I live within about a mile of Five Points.

THE COURT: Okay.

PROSPECTIVE JUROR: And just aware of anything that goes on down there. Not too much knowledge of the case other than what my significant other tells me, and I did

100

see the picture in the paper Friday that this case was going to be going on today.

THE COURT: Okay. And do you have any connection to anybody involved in the case?

PROSPECTIVE JUROR: No, sir.

THE COURT: Have you been to any events or fundraisers or anything like that for the case?

PROSPECTIVE JUROR: No, sir.

THE COURT: And based upon what you've heard, would that affect your ability to be fair and impartial?

PROSPECTIVE JUROR: It might.

THE COURT: All right. Just have a seat in the back of the room.

THE CLERK: No. 21.

THE COURT: Mr. Boudreaux?

PROSPECTIVE JUROR: Yes.

THE COURT: Is this the news media or the violent crime question?

PROSPECTIVE JUROR: News media.

THE COURT: Okay. Tell me what you know.

PROSPECTIVE JUROR: I just remember hearing about it on the news, probably on TV, about a shooting in Five Points. That's about it.

THE COURT: Do you have any connection to the case?

PROSPECTIVE JUROR: No, sir.

THE COURT: Connection to anybody in the case?
PROSPECTIVE JUROR: No, sir.
THE COURT: Ever been to any kind of events or anything like that for Ms. Childress or anything?
PROSPECTIVE JUROR: No, sir.
THE COURT: Based upon what you've heard in the news, do you believe you're able to be fair and impartial?
PROSPECTIVE JUROR: Yes.
THE COURT: Will you base your decision solely off the evidence and the law?
PROSPECTIVE JUROR: Yes.
THE COURT: Okay. Don't discuss your answers here with anybody else?
PROSPECTIVE JUROR: Okay.
THE COURT: Thank you.
THE CLERK: No. 147.
THE COURT: Mr. Jeffords?
PROSPECTIVE JUROR: Yes, sir.
THE COURT: Hey, come on in, grab a seat.
PROSPECTIVE JUROR: All right.
THE COURT: Is this the news media or the violent crime question?
PROSPECTIVE JUROR: I recall the news media on this.
THE COURT: Okay.
PROSPECTIVE JUROR: She threw out a ceremonial first

102

pitch at one of the Carolina games, correct?

THE COURT: Yes.

PROSPECTIVE JUROR: Yeah, I remember that.

THE COURT: Were you there for that?

PROSPECTIVE JUROR: I was there.

THE COURT: Were you there for her or were you there for the game?

PROSPECTIVE JUROR: I was there for the game.

THE COURT: Did you go there thinking this was going to be -- Ms. Childress is going to throw out the ball, I've got to be there to see that or were you just at the baseball game?

PROSPECTIVE JUROR: No, I was at the baseball game with my son.

THE COURT: Any other connection to the case, fundraisers?

PROSPECTIVE JUROR: No, I just live downtown, so I'm aware of what's going on down in Five Points. It's just a bunch of mess.

THE COURT: And based upon what you've heard, would that affect your ability to be fair and impartial in the case?

PROSPECTIVE JUROR: No.

THE COURT: And are you willing to base your decision solely off the evidence and the law?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: And will you do that?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay. Thank you very much. Don't discuss your answers here with anybody else.

PROSPECTIVE JUROR: All right.

THE CLERK: No. 89.

THE COURT: Come on in, grab a seat.

PROSPECTIVE JUROR: What do you want me to tell you?

THE COURT: How much have you been to for her? This is Representative Kirkman Finley for the record.

PROSPECTIVE JUROR: I think we had a fundraiser for her at the store.

THE COURT: Okay.

PROSPECTIVE JUROR: You know, my restaurant is in Five Points.

THE COURT: Yeah.

PROSPECTIVE JUROR: I had a news conference on tightening up bonding.

THE COURT: I'm just going to excuse you from this case permanently. Do you have any objection to that?

PROSPECTIVE JUROR: No.

THE COURT: I mean, he's just too close, been involved in too much.

I'm just going to excuse you from this case.

104

PROSPECTIVE JUROR: Got it. Can I leave or do I needs to go sit back in there?

THE COURT: Becky, I'm going to excuse Mr. Finley, where do you want him to go?

THE CLERK: He can go sit in the back of the courtroom with the others. Is that all right?

THE COURT: That's fine.

PROSPECTIVE JUROR: Yep.

THE COURT: Thank you, Kirkman.

PROSPECTIVE JUROR: Thank you.

THE CLERK: No. 295.

THE COURT: Hey.

PROSPECTIVE JUROR: Hello.

THE COURT: 295, Ms. Worthy?

PROSPECTIVE JUROR: Yes.

THE COURT: Are you answering the violent crime or the news media question?

PROSPECTIVE JUROR: News media.

THE COURT: Okay. Tell me what you know.

PROSPECTIVE JUROR: I know that there was an incident in Five Points. As a result of the incident, Ms. Childress is now in a wheelchair. She wasn't able to go back to school for a while. She recently returned to USC.

THE COURT: Do you have any connection to anybody in

the case?

PROSPECTIVE JUROR: No.

THE COURT: Have you ever been to anything for her, fundraisers or anything like that?

PROSPECTIVE JUROR: No.

THE COURT: Facebook pages, websites?

PROSPECTIVE JUROR: No.

THE COURT: Would any of that affect your ability to be fair and impartial in the case?

PROSPECTIVE JUROR: It would not.

THE COURT: Are you willing to base your decision solely off the evidence and the law?

PROSPECTIVE JUROR: Yes.

THE COURT: And will you do that?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay. Don't discuss your answers here with anybody else?

PROSPECTIVE JUROR: Okay.

THE CLERK: No. 91.

THE COURT: Hey. What's your name?

PROSPECTIVE JUROR: David Fosnacht.

THE COURT: All right. Are you answering the violent crime or the news media question?

PROSPECTIVE JUROR: I guess the news media question.

THE COURT: All right. What do you need to tell me?

106

What do you know about the case?

PROSPECTIVE JUROR: I worked at Mooseheads the night of the incident. I was a bouncer there.

THE COURT: What is that?

PROSPECTIVE JUROR: It's a bar. I worked at a bar the night of the incident.

THE COURT: Where, in Five Points?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: You worked there that night?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Did you hear the shooting?

PERSPECTIVE JUROR: I heard the gunshot.

THE COURT: Okay. I'm going to excuse you from service in this case. Thank you very much.

THE CLERK: 164.

THE COURT: What's your number, sir?

PROSPECTIVE JUROR: 164.

THE COURT: Okay. Mr. Long, right?

PROSPECTIVE JUROR: Yeah.

THE COURT: Okay. Are you answering the violent crime or the news media question?

PROSPECTIVE JUROR: News media.

THE COURT: And what do you know about the case?

PROSPECTIVE JUROR: I don't remember a lot about it when it happened, but just the normal news media.

THE COURT: And would that affect your ability to be fair and impartial?

PROSPECTIVE JUROR: I don't think so.

THE COURT: Are you willing to base your decision solely off the evidence and the law?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Do you have any other connection to the case? Ever been to events or fundraisers, community meetings or anything like that?

PROSPECTIVE JUROR: Not related to that.

THE COURT: Thank you very much. Don't discuss your answers here with anybody.

THE CLERK: 208.

THE COURT: Ms. Patton?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Come on in. How are you?

PROSPECTIVE JUROR: Good. How are you?

THE COURT: Good. Are you answering the violent crime or the news media question?

PROSPECTIVE JUROR: News media.

THE COURT: Tell me what you know.

PROSPECTIVE JUROR: I've just seen it on Facebook and the news, them talking about it.

THE COURT: Do you know Ms. Childress?

PROSPECTIVE JUROR: I do not.

108

THE COURT: Are you friends with her on any kind of social media?

PROSPECTIVE JUROR: No, sir.

THE COURT: Where have you seen stuff on Facebook?

PROSPECTIVE JUROR: Friends have shared articles.

THE COURT: News articles?

PROSPECTIVE JUROR: Uh-huh, from like WIS and WLTX.

THE COURT: Have you ever been to any events for her?

PROSPECTIVE JUROR: I have not.

THE COURT: Are you a student?

PROSPECTIVE JUROR: I'm at Midlands Tech.

THE COURT: You're at Midlands Tech?

PROSPECTIVE JUROR: Yes.

THE COURT: Did you grow up in Columbia?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay. Would any of this affect your ability to be fair and impartial?

PROSPECTIVE JUROR: No, sir.

THE COURT: Are you willing to base your decision solely off the evidence and the law?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: And will you do that?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: All right. Thank you. Don't discuss your answers here with anybody, okay?

PROSPECTIVE JUROR: I will not.

THE CLERK: 205.

THE COURT: Hey, come on in and grab a seat. Ms. Patterson?

PROSPECTIVE JUROR: That is me.

THE COURT: Okay. Are you answering the violent crime question or the news media question?

PROSPECTIVE JUROR: Both.

THE COURT: Okay. Let's start with the violent crime. Is this you or a family member?

PROSPECTIVE JUROR: Family member.

THE COURT: And what's the relation?

PROSPECTIVE JUROR: Brother.

THE COURT: And victim or defendant?

PROSPECTIVE JUROR: Victim.

THE COURT: What kind of case?

PROSPECTIVE JUROR: Gang.

THE COURT: Murder, armed robbery, burglary?

PROSPECTIVE JUROR: Just beat.

THE COURT: A what?

PROSPECTIVE JUROR: Abused, beat.

THE COURT: A beating?

PROSPECTIVE JUROR: Yes. Yes.

THE COURT: Is that in Columbia or where?

PROSPECTIVE JUROR: It is in Columbia.

110

THE COURT: Is it pending or is it over?
PROSPECTIVE JUROR: It's over.
THE COURT: How long ago?
PROSPECTIVE JUROR: Maybe three years.
THE COURT: Okay. And what about the news media?
PROSPECTIVE JUROR: I read about the case, saw the case online.
THE COURT: Okay. Have you ever been to any events?
PROSPECTIVE JUROR: I have not.
THE COURT: Do you have any connection to either the Defendant or the victim?
PROSPECTIVE JUROR: I do not.
THE COURT: Have you been to any Facebook pages or websites or anything like that?
PROSPECTIVE JUROR: Yes, to view the case, like to read more about the case, yes.
THE COURT: And tell me what, news media sites or --
PROSPECTIVE JUROR: News media.
THE COURT: -- other sites?
PROSPECTIVE JUROR: News.
THE COURT: News media, okay. And based upon what you've learned and the fact that your brother was a victim in a gang beating, would that affect your ability to be fair and impartial?
PROSPECTIVE JUROR: Probably so.

THE COURT: All right. Just have a seat in the back of the room.

She's out.

THE DEPUTY: 303.

THE COURT: Hi. Come on in and grab a seat. Go ahead and sit down.

PROSPECTIVE JUROR: Well, no, I was saying I think I might know the guy, Michael Smith, outside. I couldn't see his face because there was a guy with a really big head in front of me. If he went to Columbia High at some point, I would have know him.

MS. ZMROCZEK: He didn't.

THE COURT: And what else, violent crime, any connection to a violent crime?

PROSPECTIVE JUROR: Yes.

THE COURT: You or a family member?

PROSPECTIVE JUROR: Well, not me, but a friend of the family -- well, multiple friends of the family.

THE COURT: Victims or defendants?

PROSPECTIVE JUROR: Victims.

THE COURT: What kind of cases?

PROSPECTIVE JUROR: Charleston shootings, Cynthia Herd, Charles Briggs, California arrow shooting.

THE COURT: Okay.

PROSPECTIVE JUROR: And Asia Butler boyfriend killed

112

her, then committed suicide.

THE COURT: I thought that was a witness?

MS. GARFIELD: No, that's Asia Bethel.

MS. CAMPBELL: Asia Butler was a USC student.

THE COURT: Have you heard anything about this case?

PROSPECTIVE JUROR: No.

THE COURT: You don't know anything about it at all?

PROSPECTIVE JUROR: Huh-uh, I don't watch TV.

THE COURT: And the information you just provided me, would that affect your ability to be fair and impartial in this case?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay. Have a seat in the back.

THE CLERK: 258.

THE COURT: Amos Stevenson.

PROSPECTIVE JUROR: Hey, how are y'all doing?

THE COURT: Come on in. Are you answering the violent crime or the news media question?

PROSPECTIVE JUROR: Let me see. You asked about the news media?

THE COURT: Yeah. Tell me what you know.

PROSPECTIVE JUROR: Let me just tell you a little bit about myself. I've been following the news and stuff, you know, ever since I was a teenager because I was involved in sports. So every night when the news comes on, I'm

going to listen at it, you know, look at it.

THE COURT: Okay.

PROSPECTIVE JUROR: Same thing, you know, with doing research on the computer. The only thing I know about this case is what the news reported.

THE COURT: And what's that?

PROSPECTIVE JUROR: That the incident happened in Five Points.

THE COURT: Okay.

PROSPECTIVE JUROR: And then I think something was on there last night about it, too.

THE COURT: Okay.

PROSPECTIVE JUROR: But I didn't equate that with this until I got in here and you give us a little briefing about the case.

THE COURT: All right. Would that affect your ability to be fair and impartial?

PROSPECTIVE JUROR: I don't know enough about it, you know, in advance.

THE COURT: You're not supposed to know anything about it.

PROSPECTIVE JUROR: Right. So no, I think I could be impartial.

THE COURT: And could you be fair?

PROSPECTIVE JUROR: Yes.

114

THE COURT: Would you follow my instructions?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: If I told you you can't watch the news, would you follow that?

PROSPECTIVE JUROR: If that's what you say.

THE COURT: That's what I would say.

PROSPECTIVE JUROR: Yes, sir.

THE COURT: You can't be on the computer. You can't be doing research. You can't be looking up stuff. You can't watch the news, can't read the newspaper, can't listen to the radio, nothing until the case is over. Could you do that?

PROSPECTIVE JUROR: Yes, sir. I understand that.

THE COURT: Would you be willing to follow my instructions?

PROSPECTIVE JUROR: Yes.

THE COURT: Would you be willing to base your decision off the evidence and the law?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Will you do that?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Thank you.

PROSPECTIVE JUROR: That's it?

THE COURT: Yeah. Don't discuss your answers with anybody.

PROSPECTIVE JUROR: I have arthritis. I can't walk too fast.

THE COURT: Thank you.

THE CLERK: 121.

PROSPECTIVE JUROR: Hi.

THE COURT: Hey, come on in, grab a seat. Make yourself at home.

PROSPECTIVE JUROR: Thank you.

THE COURT: Ms. Harts?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay. Are you answering the violent crime question or the news media question?

PROSPECTIVE JUROR: Quick question. Purse snatching, what is that considered?

THE COURT: Was it you?

PROSPECTIVE JUROR: Yeah.

THE COURT: And where was that?

PROSPECTIVE JUROR: It was in my home about four years ago, five years ago.

THE COURT: In Columbia?

PROSPECTIVE JUROR: Yes.

THE COURT: And what happened to the case?

PROSPECTIVE JUROR: He was found guilty without a court. He had to do service and pay back. It was two of us.

116

THE COURT: Okay.

PROSPECTIVE JUROR: But it's done.

THE COURT: Well, that's why I don't define violent because what could be violent to you couldn't to somebody else, so you were right to tell me.

PROSPECTIVE JUROR: Okay.

THE COURT: Have you heard anything about this case?

PROSPECTIVE JUROR: On the news and stuff.

THE COURT: Have you attended any events or --

PROSPECTIVE JUROR: No.

THE COURT: -- you have any connection to anybody in the case?

PROSPECTIVE JUROR: No.

THE COURT: No fundraisers or anything like that?

PROSPECTIVE JUROR: No. One more quick question.

THE COURT: Sure.

PROSPECTIVE JUROR: The people in the audience, are they part of the case? Because there's a lady out there, her face is familiar to me.

THE COURT: If I didn't read their name, then they may just be watching.

PROSPECTIVE JUROR: Okay. Then that's good. Okay.

THE COURT: But they wouldn't necessarily be witnesses.

PROSPECTIVE JUROR: Okay. Would any of that affect

your ability to be fair and impartial?

PROSPECTIVE JUROR: No.

THE COURT: Are you willing to base your decision solely off the evidence and the law?

PROSPECTIVE JUROR: Yes.

THE COURT: And will you do that?

PROSPECTIVE JUROR: Yes.

THE COURT: Thank you. Don't discuss your answers here with anybody.

PROSPECTIVE JUROR: Okay.

THE CLERK: No. 86.

THE COURT: All right. Ms. Ferguson?

PROSPECTIVE JUROR: Yes.

THE COURT: Come on in, have a seat.

PROSPECTIVE JUROR: Thanks.

THE COURT: Are you answering the news media question or the violent crime question?

PROSPECTIVE JUROR: Violent crime question.

THE COURT: You or a family member?

PROSPECTIVE JUROR: A family member.

THE COURT: Okay. And relation?

PROSPECTIVE JUROR: Cousin.

THE COURT: Okay. Victim or defendant?

PROSPECTIVE JUROR: Defendant.

THE COURT: What kind of case?

118

PROSPECTIVE JUROR: I'm sorry?
THE COURT: What kind of case was it?
PROSPECTIVE JUROR: What do you mean by that?
THE COURT: What was he charged with?
PROSPECTIVE JUROR: That I'm not sure about. That's why I wanted to talk to you about it.
THE COURT: Where was it?
PROSPECTIVE JUROR: California.
THE COURT: Did he go to prison?
PROSPECTIVE JUROR: He did.
THE COURT: Okay. Did you have any connection to that case?
PROSPECTIVE JUROR: No.
THE COURT: How long ago was it?
PROSPECTIVE JUROR: The connection I had, maybe about five years ago.
THE COURT: All right. Do you know anything about this case?
PROSPECTIVE JUROR: I know it involved -- it's fuzzy. It involved either him accused of driving a car and the person was either a paraplegic that was the victim or either became a paraplegic.
THE COURT: Okay.
PROSPECTIVE JUROR: Something around that.
THE COURT: Do you have any personal connection to

the case?

PROSPECTIVE JUROR: No.

THE COURT: Know any of the parties?

PROSPECTIVE JUROR: No.

THE COURT: Witnesses?

PROSPECTIVE JUROR: No.

THE COURT: Ever been to an event?

PROSPECTIVE JUROR: No.

THE COURT: Fundraiser?

PROSPECTIVE JUROR: No.

THE COURT: Facebook pages?

PROSPECTIVE JUROR: No.

THE COURT: None of that kind of stuff?

PROSPECTIVE JUROR: No.

THE COURT: Okay. Did you pick that information up from the news or where?

PROSPECTIVE JUROR: You had asked a question about the victim.

THE COURT: Right.

PROSPECTIVE JUROR: If you knew someone that was a victim of --

THE COURT: No. I'm talking about the information that you think you know about this case, where did you get that info --

PROSPECTIVE JUROR: What, my cousin?

120

THE COURT: No, no. The case that you're here for?

PROSPECTIVE JUROR: I don't know any information about this case.

THE COURT: Would that affect your ability to be fair and impartial?

PROSPECTIVE JUROR: No.

THE COURT: Are you willing to base your decision on the evidence and the law?

PROSPECTIVE JUROR: Yes.

THE COURT: And will you do so?

PROSPECTIVE JUROR: Yes.

THE COURT: Thank you, Your Honor. Don't discuss your answers with anybody else.

THE CLERK: 175.

THE COURT: Hey.

PROSPECTIVE JUROR: Hey.

THE COURT: What's your name?

PROSPECTIVE JUROR: Rosanne McCarthy.

MS. ZMROCZEK: I'm sorry, what number?

PROSPECTIVE JUROR: 175.

THE COURT: Okay. Are you answering the violent crime question or the news media question?

PROSPECTIVE JUROR: News media.

THE COURT: And tell me what you know about this case.

PROSPECTIVE JUROR: I just remember seeing it on television about a college student getting accidentally shot around one or two in the morning. And I remember -- I think they caught the shooter that night. I don't know, it's kind of fuzzy. It's been a couple of years.

THE COURT: Do you have any connection to the case?

PROSPECTIVE JUROR: No.

THE COURT: Do you know anybody involved?

PROSPECTIVE JUROR: No.

THE COURT: Or have any relationship with them?

PROSPECTIVE JUROR: No. I just remember feeling really bad for the girl.

THE COURT: Have you been to any events or anything like that?

PROSPECTIVE JUROR: No.

THE COURT: Fundraisers?

PROSPECTIVE JUROR: No.

THE COURT: Okay. And would what you know affect your ability to be fair and impartial?

PROSPECTIVE JUROR: No, sir.

THE COURT: Are you willing to be fair and impartial?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Are you willing to base your decision on what happens in the courtroom and the evidence and the law?

122

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay. Thank you very much. Don't discuss your answers with anybody else.

PROSPECTIVE JUROR: Okay.

THE COURT: Thank you.

THE CLERK: No. 311.

THE COURT: Hey.

PROSPECTIVE JUROR: Hello.

THE COURT: Ms. Paschal?

PROSPECTIVE JUROR: Yes.

THE COURT: Are you answering the news media question or the violent crime question?

PROSPECTIVE JUROR: The news media.

THE COURT: And tell me what you know.

PROSPECTIVE JUROR: I do remember seeing it on local news, but it's been so long ago, I don't remember all the details of it.

THE COURT: And do you have any connection to anybody in the case?

PROSPECTIVE JUROR: I do not.

THE COURT: Have you been to any kind of events or anything like that about the case?

PROSPECTIVE JUROR: No.

THE COURT: And based upon what you know, do you believe that you're able to be fair and impartial in this

case?

PROSPECTIVE JUROR: I do.

THE COURT: Base a decision on the evidence and the law firm and nothing more?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: And will you do that?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Thank you.

THE CLERK: No. 304.

THE COURT: Come on in. Mr. Desai?

PROSPECTIVE JUROR: Yes.

THE COURT: Are you answering the violent crime question or the news media question?

PROSPECTIVE JUROR: Both.

THE COURT: Okay. Let's start with violent crime. Is this you or a family member?

PROSPECTIVE JUROR: Myself.

THE COURT: And what kind of charge?

PROSPECTIVE JUROR: I've been --

THE COURT: Is it victim or defendant?

PROSPECTIVE JUROR: Victim.

THE COURT: Okay. And what kind of case?

PROSPECTIVE JUROR: I was held at gunpoint during a robbery at a motel which I manage.

THE COURT: How long ago was that?

124

PROSPECTIVE JUROR: It was about 10, 11 years ago.
THE COURT: Here in Columbia?
PROSPECTIVE JUROR: Yes, sir.
THE COURT: And what about news media?
PROSPECTIVE JUROR: News media, I have read about the case on WIS website.
THE COURT: Do you have any connection to anybody involved in the case?
PROSPECTIVE JUROR: No.
THE COURT: Have you been to any kind of events based upon the case?
PROSPECTIVE JUROR: No, sir.
THE COURT: Websites, anything like that?
PROSPECTIVE JUROR: Not specifically.
THE COURT: And taking your being a victim and the news media, would any of that affect your ability to be fair and impartial in this case?
PROSPECTIVE JUROR: Possibly, yes.
THE COURT: Okay. Just have a seat in the back of the room.
PROSPECTIVE JUROR: Okay.
THE CLERK: No. 141.
THE COURT: Hey, Ms. Jackson, how are you?
PROSPECTIVE JUROR: Good.
THE COURT: Are you answering the violent crime

question or the news media question?

PROSPECTIVE JUROR: The news media.

THE COURT: And tell me what you know.

PROSPECTIVE JUROR: Just briefly heard this morning on the news selecting a jury, Five Points, the lady that got shot. That's pretty much it.

THE COURT: Do you have any connection to anybody in the case?

PROSPECTIVE JUROR: No.

THE COURT: Would any of that affect your ability to be fair and impartial?

PROSPECTIVE JUROR: No.

THE COURT: Are you willing to base your decision off the evidence and the law?

PROSPECTIVE JUROR: Yes.

THE COURT: And will you do that?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay. Don't discuss your answers with anybody?

PROSPECTIVE JUROR: Okay.

THE COURT: Thank you.

PROSPECTIVE JUROR: All right.

THE CLERK: No. 297.

THE COURT: Hey. Come on in, grab a seat. 297, right?

126

PROSPECTIVE JUROR: Yes.
THE COURT: Okay. Ms. Wright.
PROSPECTIVE JUROR: Yes.
THE COURT: Are you answering the violent crime question or the news media?
PROSPECTIVE JUROR: News media.
THE COURT: Tell me what you know about the case.
PROSPECTIVE JUROR: Just that I remember hearing it on the news that a young lady got shot after attending a USC game, I believe.
THE COURT: Okay.
PROSPECTIVE JUROR: It occurred in Five Points and she was paralyzed.
THE COURT: Do you have any connection to anybody in the case?
PROSPECTIVE JUROR: No, sir.
THE COURT: Been to any fundraisers or events or web pages or anything like that for the case?
PROSPECTIVE JUROR: No, sir.
THE COURT: Can you take the information that you've heard and still be fair and impartial?
PROSPECTIVE JUROR: Yes.
THE COURT: Are you willing to do that?
PROSPECTIVE JUROR: Yes.
THE COURT: And can you base your decision off the

evidence and the law?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay. Thank you very much. Don't discuss your answers with anybody?

PROSPECTIVE JUROR: Okay. Thank you.

THE CLERK: No. 313.

THE COURT: Mr. Saine?

PROSPECTIVE JUROR: Right.

THE COURT: Come on in, grab a seat. Are you answering the violent crime or the news media question?

PROSPECTIVE JUROR: Both.

THE COURT: Okay. Let's start with the violent crime. Is this you or a family member?

PROSPECTIVE JUROR: Family member.

THE COURT: Relation?

PROSPECTIVE JUROR: Niece.

THE COURT: And victim or defendant?

PROSPECTIVE JUROR: Victim.

THE COURT: And what kind of case?

PROSPECTIVE JUROR: It was a robbery/mugging in the Five Points area, she and her boyfriend. It was around 2013 about the same time that the Martha Childress thing happened. I don't think anybody was hurt. I think they were just mugged.

THE COURT: Okay.

128

PROSPECTIVE JUROR: Well, actually, the boyfriend was hurt. And she tried to protect him and he warded her off and ran.

THE COURT: Was anybody arrested?

PROSPECTIVE JUROR: I don't know.

THE COURT: Okay. What do you know about this case?

PROSPECTIVE JUROR: Just saw it in the newspaper. I remember reading about Martha Childress, how brave she was and how she was recovering and there was a lot of support for her in the area.

THE COURT: Okay.

PROSPECTIVE JUROR: But I don't remember reading the details.

THE COURT: Have you been to any kind of events or Five Points events or football games or baseball games or anything like?

PROSPECTIVE JUROR: No.

THE COURT: Where she was being honored or anything like that?

PROSPECTIVE JUROR: No.

THE COURT: No fundraisers?

PROSPECTIVE JUROR: No.

THE COURT: Do you have any connection to the case?

PROSPECTIVE JUROR: No.

THE COURT: Would either the information you obtained

on the news or the information about your niece affect your ability to be fair and impartial in this case?

PROSPECTIVE JUROR: No, it wouldn't.

THE COURT: Are you willing to base your decision solely off the evidence and the law?

PROSPECTIVE JUROR: Yes.

THE COURT: And will you do that?

PROSPECTIVE JUROR: Yes.

THE COURT: Thank you very much.

THE CLERK: No. 244.

THE COURT: 244?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Hey, how are you doing?

PROSPECTIVE JUROR: Good.

THE COURT: Okay. Ms. Sellers?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay. Are you answering the violent crime question or the news media question?

PROSPECTIVE JUROR: The news media.

THE COURT: Tell me what you know.

PROSPECTIVE JUROR: I know that she was out at Five Points one night and that he was in gang activity and he accidentally shot her. And I just don't know if I can be impartial the way a juror needs to be because I've read about it so much in the paper.

130

THE COURT: All right. Just have a seat in the back of the room.

PROSPECTIVE JUROR: Okay. Thank you.

THE CLERK: No. 83.

THE COURT: Hey, come on in, Mr. Farmer.

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Are you answering the violent crime or the news media question?

PROSPECTIVE JUROR: The news media question.

THE COURT: Okay. Tell me what you know.

PROSPECTIVE JUROR: Well, I'm a public information director for my state agency and I watch the news three times a day.

THE COURT: Are you the one that turns the highways around so everybody can go the same way?

PROSPECTIVE JUROR: I'm the one to implements that once a decision is made by the governor.

THE COURT: Pretty exciting. Okay.

PROSPECTIVE JUROR: Can be very exciting. So as part of my job, I look at the news every day. And I do recall accounts of this incident. I don't recall the particulars of it, though.

THE COURT: Do you have any connection to the case?

PROSPECTIVE JUROR: No, no connection whatsoever.

THE COURT: Ever been to events or fundraisers,

websites, Facebook pages, anything like that?

PROSPECTIVE JUROR: I have not.

THE COURT: And based upon the news that you have heard, would that affect your ability to be fair and impartial?

PROSPECTIVE JUROR: No, sir, it would not.

THE COURT: Are you willing to base your decision solely off the evidence and the law?

PROSPECTIVE JUROR: I am.

THE COURT: And will you do so?

PROSPECTIVE JUROR: I will.

THE COURT: Okay. Thank you. Don't discuss what you've told me here with anybody else.

MS. ZMROCZEK: They can't read the news every day, is that going to --

THE COURT: Oh, do you -- I mean, if I tell you you can't read the news every day, are you going to be okay with your job?

PROSPECTIVE JUROR: Yes, sir, I'm fine with that.

THE COURT: Okay. Thank you.

PROSPECTIVE JUROR: Yes, sir.

THE CLERK: No. 170.

THE COURT: Hey, Mr. Mann, come on in.

PROSPECTIVE JUROR: Do I sit or stand?

THE COURT: You can sit down. Have a seat. Are you

132

answering the violent crime question or the news media question?

PROSPECTIVE JUROR: I think a little of both.

THE COURT: Okay. Well, let's start with the violent crime. Is this you or a family member?

PROSPECTIVE JUROR: Oh, I'm sorry, not -- no, just media.

THE COURT: Just media, okay. Tell me what you know.

PROSPECTIVE JUROR: Well, I live in Shandon and Five Points has always been my backyard. I've see the gang graffiti on things. I think Marcus Lattimore's grandmother said you can go to Carolina to play ball, but you can't go to Five Points because it's different country at night. It's wilder than a senior party at county hall.

THE COURT: Okay.

PROSPECTIVE JUROR: And yeah, I think I am predisposed to thinking that it's a violent place and that crimes are committed.

THE COURT: Okay. Have a seat in the back of the room.

THE CLERK: 264.

THE COURT: Tell me your number.

PROSPECTIVE JUROR: 264.

THE COURT: Okay. Just grab a seat.

PROSPECTIVE JUROR: On the positive side, I'm the

last one.

THE COURT: All right. Okay. Ms. Suggs?

PROSPECTIVE JUROR: Yes.

THE COURT: Are you answering the violent crime question or the news media question?

PROSPECTIVE JUROR: News media.

THE COURT: Okay. Tell me what you've heard.

PROSPECTIVE JUROR: Well, when it happened, I read it in the newspaper and saw it on the news. And then when I got up this morning, I read the newspaper and WIS had somebody out on the lawn talking about the fact --

THE COURT: Right. Right.

PROSPECTIVE JUROR: Didn't really thrill me. Oh, that one is coming up this week.

THE COURT: Do you have any connection to anybody in the case?

PROSPECTIVE JUROR: No.

THE COURT: Any involvement with anybody in the case?

PROSPECTIVE JUROR: No.

THE COURT: Ever been to fundraisers or events or web pages or anything like that?

PROSPECTIVE JUROR: No.

THE COURT: All right. And based upon what you've heard on the news, do you believe you're able to be fair and impartial?

134

PROSPECTIVE JUROR: Uh-huh.

THE COURT: Are you willing to base your decision solely off the evidence and the law?

PROSPECTIVE JUROR: I will.

THE COURT: And can you do that?

PROSPECTIVE JUROR: I can.

THE COURT: Okay. Thank you very much.

PROSPECTIVE JUROR: Thank you.

(WHEREUPON, a short break was taken.)

THE COURT: I promise you the jury selection does not normally take this long, but in the interest of being fair to everybody involved, it was important that we do that. We rarely have to do that in cases, but I wanted to make sure and all the parties agreed that that was the best way to do it.

I'm going to ask one final time for anybody that I have not excused, is there anybody who believes that they are incapable of being fair and impartial in this case? I will tell you that what all the attorneys want, what all the parties want is 12 people who can come in here, listen to the evidence, hear the law, apply the law to the facts of this case, reach a fair and just verdict without anybody to reward, without anybody to punish, free of any bias or prejudice towards anybody involved in the case on either side. If there's anybody who believes they are not

capable of doing that, please stand.

(There was no response.)

THE COURT: Okay. All right. We are ready to select a jury. This is how this will work. When your number is called or when your name is called, if you will grab your personal belongings and come forward and then you'll stand right here in the middle. The only thing I want you to state is your occupation. So if I was coming down front, I would come down and say my name is Robert Hood and I'm a judge. Okay. Then the State --

Yeah, it's five and five.

The State will get to strike and then the Defense will get to strike. Each side gets five strikes. And then we will move on to alternates. So if they say excuse you or please excuse the juror, you can return to the back of the room. If both sides say seat you or swear you, then you'll come right over here to the jury box.

We'll pick two alternates. Strikes are five and five, one and two on each alternate.

All right. Go ahead, Ms. Becky.

JURY SELECTION

THE CLERK: Thank you, Your Honor.

No. 186, Germaine Montgomery.

(Germaine Montgomery, a black female, came forward.)

THE COURT: Come on down. Stand right there and face

136

that way and state your occupation, please, Ms. Montgomery.

PROSPECTIVE JUROR: Germaine Montgomery, administrative assistant.

THE COURT: Thank you, Ms. Montgomery.

THE CLERK: What says the State?

MS. WALKER: Please present the juror.

THE CLERK: What says the Defense?

MS. ZMROCZEK: Please swear the juror.

THE CLERK: Have a seat in the jury box, please.

No. 74, Emily Toler.

(Emily Toler, a white female, came forward.)

PROSPECTIVE JUROR: Emily Toler. I'm a civil engineer.

THE CLERK: What says the State?

MS. WALKER: Please present the juror.

THE CLERK: What says the Defense?

MS. ZMROCZEK: Please swear the juror.

THE CLERK: Have a seat in the jury box, please.

THE BAILIFF: Watch your step, ma'am.

THE CLERK: No. 319, Karen Alexander.

(Karen Alexander, a white female, came forward.)

PROSPECTIVE JUROR: Hi. I work with the South Carolina Department of Employment and Work Force.

THE CLERK: What says the State?

MS. WALKER: Please present the juror.
THE CLERK: What says the Defense?
MS. ZMROCZEK: Please swear the juror.
THE CLERK: Have a seat in the jury box, please.
No. 7, Dana Anderson.
(Dana Anderson, a black female, came forward.)
PROSPECTIVE JUROR: Dana Anderson, I work at Wal-Mart.
THE CLERK: What says the State?
MS. WALKER: Please present the juror.
THE CLERK: What says the Defense?
MS. ZMROCZEK: Please swear the juror.
THE CLERK: Have a seat in the jury box, please.
No. 49, Laborde Coble.
(Laborde Coble, a white male, came forward.)
PROSPECTIVE JUROR: Laborde Coble. I work in taxes.
THE CLERK: What says the State?
MS. WALKER: Please present the juror.
THE CLERK: What says the Defense?
MS. ZMROCZEK: Please excuse the juror.
THE CLERK: Have a seat in the back of the courtroom.
No. 291, Vicki Williamson.
(Vicki Williamson, a white female, came forward.)
PROSPECTIVE JUROR: Vicky Williamson, currently unemployed.

138

THE CLERK: What says the State?
MS. WALKER: Please present the juror.
THE CLERK: What says the Defense?
MS. ZMROCZEK: Please seat the juror.
THE CLERK: Have a seat in the jury box, please.
No. 318, Betty White.
(Betty White, a black female, came forward.)
PROSPECTIVE JUROR: Stay-at-home mom.
THE CLERK: What says the State?
MS. WALKER: Please present the juror.
THE CLERK: What says the Defense?
MS. ZMROCZEK: Please seat the juror.
THE CLERK: Have a seat in the jury box.
No. 203, Phyllis Parks.
(Phyllis Parks, a black female, came forward.)
THE CLERK: What says the State?
MS. CAMPBELL: Please present the juror.
THE CLERK: What says the Defense?
MS. ZMROCZEK: Swear the juror.
THE CLERK: Have a seat in the jury box, please.
No. 36, Jasmine Butler.
(Jasmine Butler, a black female, came forward.)
PROSPECTIVE JUROR: Customer service, Blue Cross Blue Shield.
THE CLERK: What says the State?

MS. WALKER: Please present the juror.
THE CLERK: What says the Defense?
MS. ZMROCZEK: Please swear the juror.
THE CLERK: Have a seat in the jury box, please.
No. 83, Joseph Farmer.
(Joseph Farmer, a white male, came forward.)
PROSPECTIVE JUROR: Public affairs director.
THE CLERK: What says the State?
MS. ZMROCZEK: Please seat the juror.
THE CLERK: What says the Defense?
MS. ZMROCZEK: Please excuse this juror.
THE CLERK: Have a seat in the back of the courtroom, please.
No. 282, Jo White.
(Jo White, a white female, came forward.)
PROSPECTIVE JUROR: Jo White. I'm in crime investigation.
THE CLERK: What says the State?
MS. WALKER: Please present the juror.
THE CLERK: What says the Defense?
MS. ZMROCZEK: Please excuse this juror.
THE CLERK: Have a seat in the back of the courtroom, please.
No. 210, Lauren Pittard.
(Lauren Pittard, a white female, came forward.)

140

PROSPECTIVE JUROR: I'm a pediatric nurse and director for Daybreak.

THE CLERK: What says the State?

MS. WALKER: Please present the juror.

THE CLERK: What says the Defense?

MS. ZMROCZEK: Please seat the juror.

THE CLERK: Have a seat in the jury box, please.

No. 44, Shayla Chavis.

(Shayla Chavis, a black female, came forward.)

MS. ZMROCZEK: I'm sorry, what number?

THE COURT: 44.

PROSPECTIVE JUROR: Full time student.

THE CLERK: Can you speak up?

PROSPECTIVE JUROR: I'm a full time student.

THE CLERK: What says the State?

MS. WALKER: Please present the juror.

THE CLERK: What says the Defense?

MS. ZMROCZEK: Please seat the juror.

THE CLERK: Have a seat in the jury box, please.

No. 86, Wende Ferguson.

(Wende Ferguson, a black female, came forward.)

PROSPECTIVE JUROR: Higher education administrator.

THE CLERK: What says the State?

MS. WALKER: Please excuse the juror.

THE CLERK: Have a seat in the back of the courtroom,

please.

No. 74, Alan Dull.

(Alan Dull, a white male, came forward.)

PROSPECTIVE JUROR: Retired federal press.

THE CLERK: What says the State?

MS. WALKER: Please present the juror.

THE CLERK: What says the Defense?

MS. ZMROCZEK: Please swear the juror.

THE CLERK: Have a seat in the jury box.

No. 292, Laketra Wilson.

(Laketra Wilson, a black female, came forward.)

PROSPECTIVE JUROR: I'm Laketra Wilson. I work for the United States Congress.

THE CLERK: What says the State?

MS. WALKER: Please present the juror.

THE CLERK: What says the Defense?

MS. ZMROCZEK: Please seat the juror.

THE CLERK: Have a seat in the jury box, please.

THE COURT: All right. Two alternates, one and two on each.

No. 167, Kayla Major.

(Kayla Major, a black female, came forward.)

PROSPECTIVE JUROR: Full time student.

THE CLERK: What says the State?

MS. WALKER: Please excuse the juror.

142

THE CLERK: Have a seat in the back of the courtroom, please.

THE CLERK: No. 92, Lue Fowler.

(Lue Fowler, a black female, came forward.)

PROSPECTIVE JUROR: Unemployed.

THE CLERK: Does the State challenge for cause?

MS. WALKER: Please present the juror.

THE CLERK: What says the Defense?

MS. ZMROCZEK: Please seat the juror.

THE CLERK: Have a seat in the jury box, please.

No. 102, Earthalene Goodwin.

THE COURT: Strikes start over.

(Earthalene Goodwin, a black female, came forward.)

PROSPECTIVE JUROR: I'm hungry.

THE CLERK: What says the State?

MS. WALKER: Please excuse the juror.

THE CLERK: Have a seat in the back of the courtroom, please.

MS. ZMROCZEK: Judge, may we approach?

THE COURT: Right now?

MS. ZMROCZEK: I just -- did they excuse that juror?

THE COURT: Yes.

MS. ZMROCZEK: Okay. Well, I'll discuss it later.

THE CLERK: No. 287, Jill Williams.

(Jill Williams, a black female, came forward.)

PROSPECTIVE JUROR: Customer service rep.

THE CLERK: Does the State challenge for cause?

MS. WALKER: No, the State does not.

THE CLERK: What says the Defense?

MS. ZMROCZEK: Please swear the juror.

THE CLERK: Have a seat in the jury box.

THE COURT: All right. Any exceptions to the charge from the State -- I mean, any exceptions to the jury selection process from the State? I'm sorry.

MS. CAMPBELL: Beg the Court's indulgence.

(Pause.)

MS. WALKER: No objection from the State, Your Honor.

THE COURT: From the Defense?

MS. ZMROCZEK: No objection, Your Honor. I'm just asking for clarity. The strikes for alternates were one and two, correct?

THE COURT: For each alternate.

MS. ZMROCZEK: Okay. Thank you.

THE COURT: Your strikes start over once an alternate is selected.

MS. ZMROCZEK: Thank you. I have no objection.

THE COURT: All right, sir. So if you are in the audience, then you will not be selected for the trial of this case. Thank you very much for your service and your cooperation today. You will return back downstairs to the

144

jury assembly room. They will give you further instructions. Thank you.

Y'all approach real quick.

(WHEREUPON, a bench conference was held.)

THE COURT: Okay. So here is what we're going to do, I'm going to give you about five minutes worth of information and then you're going to be done for the day. You've had a very long day. You've been here since early this morning. Just give me about five minutes of your undivided attention and then I'm going to let you go for the night. Tomorrow morning, you can sleep in. We're going to start with you at 11:30. So you don't have to be here tomorrow until 11:30. I have some legal issues that I need to take up with the attorneys because this process took so long today I couldn't get to. So I'm going to excuse you for the night here in just a few moments. Then you'll come back at 11:30 tomorrow to actually begin the trial.

So here's -- well, first thing we're going to do is we're going to introduce everybody. This is Mr. Dye right here, he's one of our bailiffs. In the back is Mr. Tolbert, okay. Then in the very back is Mr. Brown --

THE BAILIFF: Burgess.

THE COURT: Burgess, Burgess, Brown, yeah, they all treat me the same. Mr. Burgess. I apologize. I'll hear

about that for at least a week that I got his name wrong. Hopefully, he didn't hear me. Okay. They will be your bailiffs for this week, and they will be responsible for you. They will take you in and out of the courtroom. They will show you how to come in and out of the building. They will take your cell phones. They will provide you with snacks. They will provide you with drinks. They will provide you with whatever information that you need to know. They've all been around a long time. You have a very good team of bailiffs this week and they will take very good care of you.

Now, seating. My alternates, you two young ladies will always be on the back row. So you can sit wherever you want to on the back row. That's up to you, but you have to be on the back row. Now, sometimes I go through a whole trial and I never have to seat an alternate. Sometimes I have to seat an alternate on the first day. So pay attention. You're just as important as everybody else. At any time, you could be called to come in and be a normal juror. So pay attention. You're in this just as much as anybody else.

Ms. Anderson, is that right?

THE JUROR: Alexander.

THE COURT: Alexander. Okay. Ms. Alexander, you're going to be the forelady of this jury. So when you come

146

in tomorrow, you're going to be seated right here. You don't get paid any extra and your vote doesn't count any more, but somebody has to be in charge in the jury room. Somebody has to be in charge with communicating with me. We call them the presiding juror.

So those are kind of the fundamentals. Anybody else can sit wherever they want to on these three rows.

Usually, Monday is the hottest day in the courthouse because they turn off the air conditioning all weekend. So more than likely, tomorrow, it will be colder, so if your want to bring a little jacket or you want to bring something to put over your shoulders, anything like that, just bring it. That's perfectly fine. You can leave something in the jury room, no one is going to be going in there, and bring it out when you need it. We want you to be as comfortable as possible in here, but us controlling the air is not the simplest thing in the world. We will do our best to get it to a very reasonable level.

Okay. The next thing, you're not allowed to have any contact with the lawyers, the parties or the witnesses in this case, okay. And I mean, no contact. You can't talk to them. They can't talk to you, okay. If anything I tell you during this trial, if you see it violated or you hear it or you participate in it, then you're responsible to send a note to me and tell me, okay.

Especially you, Madam Forelady, if you hear somebody did something with somebody, you all need to let me know that so I can address it at the appropriate time.

So when you come in tomorrow morning -- probably not tomorrow morning, but by the end of the week as you see lawyers in the hallway, you're going to feel like you know them and even an innocent good morning or hello seen by somebody else could be misconstrued. So no contact with the lawyers, the parties or the witnesses in this case in any way, shape, or form.

The next thing, you cannot do any research about this case. Okay. So I want you off the computer, off the news, off the print media, off the radio. I don't want you to have any outside information about this case.

Now, some of you that are seated up here have seen news accounts about this case. That is perfectly fine. You are to set that outside of your mind. You are going to base your decision in this case on what happens in this courtroom.

The evidence that comes from the witness stand, the exhibits, if any, which may be introduced and the law that I will give you at the conclusion of the case and your good common sense is all you're going to base your decision off of. Okay. It's not going to be a decision based off some kind of feeling or emotion. This is a

148

courtroom. This is serious. Okay. This isn't TV and it's not a movie. So we're going to base our decision off the evidence and the law which is what is required of you. So I don't want anything influencing you from the outside.

Let me give you an example. So upon leaving here, the majority of you are going to pick up your cell phone, right, and you're going to turn it on. And you're going to wonder how you made it the past two hours without your cell phone, right, because you use it so much. And you're going to call somebody or text somebody or check Facebook or check the news or something like that. Okay. You can tell people you are on a jury. You cannot tell people what case it is for. Okay. You're not going to allow anybody to talk to you or communicate with you. I don't want any outside influences coming into this jury, okay.

This case is very important. It's very important to both sides. This is their only day in court. So no Facebook, no Twitter, no Linked In, no any kind of social media that I don't even know what it is because I don't do that. You can't do it either. Okay. I want you to have no connection, no research, nothing about this case. Even if I say a word that you don't know what it means, don't go home and get out the dictionary and look it up. We're going to base our decisions on what happens in court and nothing more.

Okay. Now, one of these things -- I don't have one of these big fancy phones, okay. But these lawyers tell me that sometimes you can have a phone and it can give you an alert that something is going on in the news. Do y'all know what I'm talking about? Y'all have a smart phone? I want you to turn your news alerts off. There was a news alert about this case this morning saying there was going to be a jury selected. I don't want any outside influences affecting anybody or bothering anybody.

Now, let me make sure I've got the list here. 11:30 tomorrow is when you're supposed to be back.

Now, there are cameras in this courtroom. Right now, there are a lot of cameras in this courtroom and I'm not going to allow that many cameras to be in here. More than likely throughout this week unless something major in the State of South Carolina happens, there are going to be cameras in this courtroom. They are not allowed to put you on camera in any way, shape, or form, okay, in any way, shape, or form. If anybody puts one of my jurors on a camera, then I'm going to put them in jail, okay. So you are to have no fear about that and no worry about that.

This is America. They have a Constitutional right to report on what's going on in the courtroom. This is a free and public courtroom and we want access to that in

150

this country and I believe in that. I believe that is appropriate. However, they are not allowed to video you in any way, shape, or form and you should not be concerned about that at all. I've also told them that they either have to set up or take down before or after court starts or during a break. I don't want them disturbing you by loading equipment in and out.

Now, that is busy courthouse, okay. You will see all week people will come and go. Lawyers from the courthouse, lawyers coming up here to do something else. People will be popping in and out of court all week. That's normal. If you're in the middle of nowhere court, in a rural county, it's not normal, but up here, the courthouse is so big and there are so many employees that you will see people popping in and out. That's perfectly normal.

Okay. The last thing I'm going to tell you. And this is the most important. And I'm going to tell you this now and I'm going to tell you this throughout the entirety of this case, through to the very end, okay. Until you begin your deliberations -- and you will know when you begin your deliberations, all the testimony will be over, all the lawyers will have talked, and I will give you my final instruction and whatever exhibits are introduced will literally be in your jury room. Once all

of that happens, then you may discuss this case. Until then you are not allowed to discuss this case with anyone, including each other.

You can talk about the weather. You can talk about school starting. You can talk about what kind of year the Gamecocks or Clemson is going to have this year. You can talk about the presidential debates that they're having. I don't care what you talk about, but you're not allowed to talk about this case. I want everybody -- you're going to hear me say it so much you're going to think that judge is crazy. But I mean it. You're not allowed to talk about the case. You're not allowed to talk about a witness. You're not allowed to talk about something that happens. And you're not allowed to let anybody talk to you.

If somebody comes to you and says hey, let's talk about this case, you're to tell them no and you're to report them to me, okay. Because you're not allowed to make up your mind about the case until you've heard all of the evidence, listened to all of the arguments, heard what the law is in the case and then you begin your deliberations, okay. So you're not allowed to form an opinion about this case until you get into the jury room to deliberate at the end of the case.

So you can't talk about this with your family, your

152

wife, your husband, your boyfriend, your girlfriend, your kids, your mama, your employer, anybody, including each other. Y'all got to find somebody else to talk about until this case is over. Okay. You're not allowed to discuss the case. You're not allowed to comment about a witness. You're not allowed to comment about what you thought about something or what you saw or what you may have saw or anything like that. Okay. All right.

The last thing I want to do is tell you this is our court reporter, Ms. Ambroziak. She's with me in almost every trial. She's been a court reporter longer than I've even been a lawyer, so she knows exactly what she's doing and she takes down every word that is said.

So during the trial, if you hear me tell the attorneys to stop talking, it's because they're usually talking over each other or talking over a witness. She can only take one person down about a time. So I'll stop, time out, one person at a time so that we have a clear record of what happened.

Seated next to me is my law clerk. Her name is Carlin Senn. She graduated from law school last year, passed the Bar and spent her first year practicing with me. This is her last week with me. So you will see her going in and out of the courtroom working the entire time. Hopefully, she is still working on her last week. So she

will be here with us this week doing many different things.

Seated up front is Ms. Becky. She's from the clerk's office. She will be swearing witnesses in. That's just kind of so you know who everybody is.

So I want everybody to go home tonight, have a good night, get refreshed. Don't watch the news, don't read the newspaper, don't go online to do research about the case, don't listen to the radio if the news comes on. I want you to come back in here tomorrow at 11:30 ready to go.

Now, I do my best, and I mean this, to start on time. I really don't like starting late. It really frustrates me. But sometimes we have to, sometimes things are out of my control. So if I'm keeping you waiting, I'll send in a message hey, we're in the middle of something. We'll be with you as soon as we can. But I like to start on time so y'all try to be on time, too. Thank you very much. We'll see you tomorrow morning at 11:30. You can follow Mr. Tolbert better out the door.

(WHEREUPON, the jury left the courtroom at 4:24 p.m.)

THE COURT: Okay. Anything before we break at the end of the day?

MS. ZMROCZEK: No, sir. You said be here at 9:00?

154

THE COURT: 9:30. Let's start with pretrial at 9:30.

MS. GARFIELD: I did send Ms. Zmroczek an e-mail with requested CSI things that you requested. Here are copies, as well as CV of Dr. Smith.

THE COURT: All right. Where are all my camera people? Okay. Y'all all come up here.

Court's in recess until 9:30 tomorrow morning.

(WHEREUPON, Court was adjourned for the day to be reconvened on Tuesday, August 11, 2015.)

TUESDAY, AUGUST 11, 2015

THE COURT: Okay. We're back on the record in the State of South Carolina vs. Michael Smith. The prosecution is present. The Defendant and Defense counsel are present.

What pretrial do you want to take up first?

MS. ZMROCZEK: Your Honor, I believe that the one I have remaining -- well, actually, I believe that first the State did consent to the jury view. I don't know if they put that on the record yesterday.

MS. CAMPBELL: Your Honor, we would actually join in the motion.

THE COURT: Okay.

MS. CAMPBELL: That the jury go out there at the scene.

THE COURT: Okay.

MS. ZMROCZEK: Will that be done before or after the case in chief?

THE COURT: We'll talk about that.

MS. ZMROCZEK: Okay. Thank you.

And then, Your Honor, I believe the only other motion that I have right now barring the doctor's testimony is the admissibility of the ballistics testing.

THE COURT: Okay. And what about the jail call motion?

MS. ZMROCZEK: And the jail calls.

THE COURT: Is the firearms person here?

MS. CAMPBELL: The firearms person is here, Your Honor. There were statements made by her client after he was taken into custody. The first was a spontaneous utterance just not in response to any questioning. Then later, he was advised of his rights and gave a statement to Investigator Gilliam.

And I'm under the understanding that you are not challenging the voluntariness of any of that.

MS. ZMROCZEK: Actually, Your Honor, I believe that due to some new case law that just came down, the name escapes it without looking at it, but it was a very recent opinion on a PCR matter that said that they are to have a hearing regarding statements or identity could render someone ineffective. So I believe I'm -- it's probably

156

required. And since the officer is here, we're required to have that Jackson vs. Denno.

MS. CAMPBELL: That's fine. I just wanted to bring it up. I didn't want to gloss over that.

THE COURT: Whichever one you want to do first, I'm ready. Do you want to get the firearm examiner out?

MS. CAMPBELL: We can do that, Your Honor.

THE COURT: Okay.

MS. CAMPBELL: Specifically, Your Honor, as far as the firearms examiner, do you want us to go into the empirical background and all that or just --

THE COURT: I need to understand what the motion is first.

MS. CAMPBELL: She's handed me a written motion.

THE COURT: Yeah, I read that.

MS. CAMPBELL: I mean, that's very limited.

THE COURT: I'm not following what the argument is.

MS. CAMPBELL: I'm not either.

MS. ZMROCZEK: Okay. Your Honor, I will clarify. The argument is this, there was a shell casing, one shell casing found at the scene.

THE COURT: Okay.

MS. ZMROCZEK: And testing was done on it, fire pin testing to say that that shell casing was fired from the gun that Mr. Smith had.

157

THE COURT: Okay. So there was a shell casing found at the scene; is that right?

MS. ZMROCZEK: Correct.

THE COURT: Okay. And then at some point in time a gun was found on Mr. Smith?

MS. CAMPBELL: When he was apprehended right after the shooting.

THE COURT: So he's apprehended and there's a firearm in his possession?

MS. ZMROCZEK: Correct.

THE COURT: And I assume SLED has tested the shell casing and the firearm and the expert is going to say that firearm shot that shell casing?

MS. CAMPBELL: Correct.

THE COURT: Okay. All right. So go ahead.

MS. CAMPBELL: That's the extent of it.

MS. ZMROCZEK: So the motion, Your Honor, is that -- what my written motion reflected is this is not scientifically accepted testimony.

THE COURT: Okay.

MS. ZMROCZEK: And it's something that has not been proven reliable.

THE COURT: Okay.

MS. ZMROCZEK: And therefore, that's why we're challenging the testimony.

158

THE COURT: All right. Let's start with the firearms examiner and go through his or her qualifications and then kind of the science of it, for lack of a -- I don't know what the appropriate word is.

MS. CAMPBELL: May I make a Court's Exhibit of his CV?

THE COURT: You may.

Have you seen that, Ms. Zmroczek?

MS. ZMROCZEK: They did provide that to me this morning, Your Honor.

THE COURT: Okay.

(WHEREUPON, Court's Exhibit No. 1 was marked for identification only.)

MS. CAMPBELL: The State would call Tracy Thrower.

THE COURT: All right. Mr. Thrower, come on forward and be sworn please.

TRACY THROWER,

after being duly sworn, testified as follows:

THE CLERK: Have a seat in the witness stand, please. State your name for the record.

THE WITNESS: Tracy J. Thrower, T-H-R-O-W-E-R.

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q Lieutenant Thrower, where are you employed?

A South Carolina Law Enforcement Division, also known

as SLED.

Q What do you do there, sir?

A I am the supervisor of the firearm and tool mark department. I perform firearm and tool mark examinations, muzzle to target distance determinations for physical pellet patterns, general rifling characteristic examinations, tool mark examinations, serial number restorations, and other related examinations.

Q Can you tell this Court a little bit about your education and your training in the field of firearms and tool mark examinations?

A I have a Bachelor of Science degree from Winthrop University with a major in biology. I have attended the South Carolina Criminal Justice Academy. I completed the course of instruction in firearm and tool mark examination by SLED. This was a three-year mentorship-style course of instruction in which I had to perform extensive reading, extensive studying. I was given moot courts, practical problems, practical examinations. I had to assist examiners in preparing of their cases. I've had the opportunity to attend various armorer schools and manufacturer schools, professional seminars, conferences.

Upon completion of my training, I was tested. Passing my final examination, I was considered competent and allowed to work cases on my own.

Q And how long have you actually been working cases on your own after your three-year initial training period?

A Approximately 13 years.

Q And have you ever testified before in the courts as far as being an expert in firearms and tool mark?

A Yes, ma'am, I have.

Q Approximately how many times have you been qualified as an expert?

A Approximately 53.

Q Fifty-three. And have you testified before as far as your findings when comparing a shell casing found at a scene to a gun that was recovered?

A Yes, ma'am, I have.

Q And do you know how many times you've testified to that type of evidence?

A I believe all 53 of my testimonies have been in the field of firearms identification.

Q And further, you mentioned a little bit about your training. The CV that I have marked as Court's Exhibit No. 1, does that further talking about the extent of your training as far as you continue to be educated in the field?

A Yes, ma'am.

THE COURT: Ms. Campbell, the even-numbered pages are missing from the CV?

MS. GARFIELD: On the back.

THE COURT: I'm looking at the back. It's blank on my page.

MS. GARFIELD: I'll get you another one.

BY MS. CAMPBELL:

Q And that talks about the extent of your training in this field?

A Yes, ma'am.

Q And in your training and as recently -- how recently have you actually been educated or done some kind of education or presentation in the field of firearms examinations?

A Education, every couple of years, I go to the AFTE conference, which is the Association of Firearm and Tool Mark Examiners. That's probably the most recent. I've got a presentation later this year at a court reporter's conference.

Q So you remain current as far as the field of firearm examinations for the purposes of this case?

A Yes, ma'am.

Q And in your 53 times testifying as an expert, those were all in the field of firearms examination?

A Yes, ma'am.

Q In this case specifically, can you tell the judge what kind of --

MS. CAMPBELL: Your Honor, do you want me to qualify him as an expert?

THE COURT: Do you have any objection to his qualifications as an expert or is it just to the testing that he did?

MS. ZMROCZEK: Just to the testing, Your Honor.

THE COURT: Okay. I mean, he's qualified as an expert under the Rules of Evidence 701 and 702 -- 702, excuse me, and the standards, but you're not giving up your right to challenge the methodology or the science, whatever the appropriate word is.

MS. ZMROCZEK: Thank you.

THE COURT: Okay.

BY MS. CAMPBELL:

Q I want to turn your attention to the case we're here for today. Did you receive certain items of evidence in this case?

A Yes, ma'am.

Q What did you receive, sir?

A A Glock pistol and a fired cartridge case.

Q In addition to that, did you also receive some unfired cartridge cases?

A Yes, ma'am.

Q And was that 10 of those?

A Let me check my notes.

MS. ZMROCZEK: Your Honor, while he's looking for that, I am missing the even pages as well.

THE COURT: Okay.

MS. ZMROCZEK: Thank you.

THE WITNESS: Yes, ma'am. Ten unfired 40 Smith and Wesson caliber cartridges.

BY MS. CAMPBELL:

Q And in addition to that, I believe you mentioned one fired cartridge casing you received?

A One fired 40 Smith and Wesson caliber cartridge case.

Q And finally, you also received the gun in this case. What kind of gun was that?

A It was a Glock model 27 semiautomatic pistol, 40 Smith and Wesson caliber, serial number PGG217, with a magazine.

Q So all the ammunition and the fired cartridge casing and the gun were the same caliber?

A Yes, ma'am.

Q And that was a .40-caliber?

A Yes, ma'am.

Q Once you received these items, what, if any, testing did you do in this case?

A I opened the evidence. I documented it. I documented its packaging, looked for any trace material on the evidence. I then photographed all the evidence. I

filled out departmental worksheets documenting things like make, model, caliber, serial number, trigger pull, types of sights, what caliber it was, what caliber the cartridge case was.

I then test fired the firearm several times. I microscopically compared my test fired cartridge cases to each other and then I compared -- microscopically compared the evidence cartridge case to my test fired cartridge cases.

Q What conclusions were you able to come -- and I want to specifically just talk about as far as matching the guns and the ammunition. What conclusions were you able to come to in this case?

A In my opinion, the cartridge case was fired by that firearm to the extent that the likelihood another firearm could have fired it is so remote, it would be considered a practical impossibility.

Q So your conclusions were that the cartridge casing, the fired one, was received by that gun you received in evidence?

A Yes, ma'am.

Q Were you able to make any determinations as far as the 10 unfired Smith and Wesson cartridge casings?

A They were the correct caliber for use in that firearm.

Q But they had no markings that would enable you to make any further conclusions?
A I did not examine them for further markings. They were not fired.
Q Okay. But as far as the one fired Smith and Wesson cartridge case found at the scene compared to the gun that was submitted to you, the .40-caliber, that cartridge case in your opinion was fired by that gun?
A Yes, ma'am.
Q And is this an unusual conclusion for you to make?
A No, ma'am.
MS. CAMPBELL: Beg the Court's indulgence.
BY MS. CAMPBELL:
Q In your experience over the last however many years you've been doing this, is it unusual for you to either be able to say a cartridge case has been fired by a gun or to exclude it's been fired by a gun?
A No, ma'am.
Q Is that one of your primary duties?
A Yes, ma'am.
Q Is that what you testify to pretty much in court on a regular basis?
A Yes, ma'am.
Q In your field which you keep abreast of, are these normal conclusions that are come to?

A Yes, ma'am.

MS. CAMPBELL: Your Honor, I think for purposes of this hearing, I don't have anything else.

THE COURT: Okay. Thank you.

Cross-examination.

MS. ZMROCZEK: Thank you.

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q Good morning, Agent Thrower.

A Good morning.

Q You said that these are not unusual conclusions for you to come to?

A Correct.

Q Can you describe the methodology that you use to determine the tool markings that are specific to this gun?

A I'm sorry, can you repeat the question?

Q What's the methodology that you go through to determine that this casing was fired by this particular gun?

A The first thing I would do is look at the firearm itself and try to determine what I believe the method of manufacture is on the part that is causing the marking that I will be examining during my examination. And I evaluate that part for possible potential for subclass and individual characteristics. I also look at what the class

characteristics of that part is.

In this case, it would be the breech face and the firing pin aperture, specifically, the juncture of those two machine surfaces. Based on that, I make a -- I get an idea of how can I trust the markings that I'll be looking at. I then test fire the firearm and produce test specimens from that firearm so that I know how that firearm actually marks.

I then microscopically compare my test specimens to each other for the impressions or the scratches that may be present on my test specimens. I look at the specific ridges, peaks and furrows that are in the impression. I look at the spacial relationship of one peak or ridge to the next and the furrows in between for height and depth of these peaks, ridges and furrows. I look how each of these individual peaks and ridges compare to each other and how they form -- as they are combined, how they compare to each other, how they form a pattern. I then look for that same pattern on a second object. If I find that same pattern, I can then perform an opinion of common origin.

Q You said that you used a bullet -- you fired a bullet as a test specimen. Which bullet did you fire?

A I fired a cartridge case as a test specimen.

Q Which cartridge case?

A Or unfired cartridge. I believe in this case, I fired Winchester 180 grain jacket hollow points.

Q Why did you choose that bullet, that casing, that cartridge to fire?

A When I looked at the other evidence that was submitted, there were similar Winchester 180 grain jacket hollow points that were submitted. There was also, I believe, one Federal that was submitted. But the fired cartridge case in question was also a Winchester, so I wanted to make sure I was using the same ammunition that had potentially been collected at the scene.

Q And in your scientific determination, that was a Winchester hollow point?

A The cartridge case was a Winchester, yes, ma'am. And the unfired cartridges from the firearm were Winchester hollow points.

Q Okay. And you're familiar with the National Research Council and the National Academy of Sciences review of fire and tool mark testing, correct?

A Yes, ma'am.

Q You would agree with me that they describe a lack of general acceptance in the scientific community?

A That's what they describe, but I do not agree with the opinion.

Q You don't agree with the National Academy's opinion?

A No, ma'am.
Q And you would agree that the National Research Council for the National Academy of Sciences finds a problem with the fundamental assumptions of uniqueness and reproducibility of tool marks produced by firearms, correct?
A In that report, what they were talking about is they were looking at -- they were charged to look at the feasibility of an automated computer database to be able to find matches and whether it should be done on a nationwide scale. They were specifically charged to not look at the fundamental science behind firearm and tool mark identification.

However, they went outside of their purview and made this comment, which later Dr. Roth actually had to sign an affidavit stating that they went way beyond what they were charged to do and they had to retract the statement.
Q You would agree that firing one test round and comparing it is not a consistent basis to say that this particular firearm fired this particular casing?
A I fired multiple test rounds and compared all my test rounds to each other and then compared those test rounds to the cartridge case in question.
Q How many test rounds did you fire in this case?
A I believe I fired three.

Q And you did the side-by-side comparison on all three?
A Yes, ma'am.
Q Did you --
A The foundation -- why I believe I can do this, especially and specifically with a Glock pistol, is I have participated in a study where 10 consecutively made one after another Glock slides were test fired and was able to readily match cartridge cases individually to each of those slides. The markings that I am looking at, specifically in this case, is the juncture of the breech face and the firing pin aperture where two machine surfaces come together.

Throughout the research and studies, nobody has ever found where markings produced at that juncture of two separately independently made parts or machine surfaces show any subclass characteristics. That juncture provides individual characteristics.

Q So what I hear you saying is that a 40 Glock will make these same tool marks when it fires?
A A specific firearm or a specific Glock will normally produce individual marks that replicate at that location.
Q You did not do any test firing against other 40 caliber Glock pistols, did you?
A Not in this specific case, but as I stated, I have done this numerous times before and participated in a test

where they took 10 consecutively made slides and test fired them and then gave us samples from each of them and say which cartridge casing goes with which slides.

Q So it's my understanding that your testimony then is you can say with a reasonable degree of scientific certainty that this Glock fired a Winchester hollow point cartridge and left that casing that was found?

A Yes, ma'am.

MS. ZMROCZEK: I have no further questions, Your Honor.

THE COURT: Redirect?

MS. CAMPBELL: No, sir.

THE COURT: Thank you, Lieutenant. You may step down.

Any objection to him being excused for right now?

MS. ZMROCZEK: None, Your Honor.

THE COURT: Okay. Thank you very much. Have a good day.

Yes, ma'am.

MS. ZMROCZEK: Your Honor, we would -- I'm sorry. I didn't know if they had --

MS. GARFIELD: Oh, no.

MS. ZMROCZEK: Okay.

Your Honor, we would ask that the Court make a finding that this has not been scientifically accepted in

the community. And testifying over and over again to the same thing in a State Court without being challenged doesn't make it science, Your Honor. The reliability and the lack of consistency produced in this report would make his assumptions or his conclusions unreliable.

THE COURT: Okay.

Ms. Campbell?

MS. CAMPBELL: Your Honor, I don't know what she's talking about as far as his reliability. I mean, he's testified that the science in the field, this is how it's done. This is how he has done it. He's actually participated in testing himself which goes above and beyond what we normally have. I don't think it's traditionally how it's been done, Your Honor, but beyond that, all she's relying on is I believe just quoting parts of some study which has not been produced to challenge that, Your Honor. Of course, I believe this goes to the weight, not the admissibility. If she wants to cross him on these issues, she's more than welcome to.

THE COURT: All right. I'm going to find under Council and Daubert and the progeny that follows that this evidence is admissible. The witness is clearly an expert with more than 13 years of experience. He's been a supervisor in firearms and tool marks at the State Law Enforcement Division and has acquired the appropriate

training and teaching and education based upon an area that is outside of the normal realm of expertise, that the scientific methodology and the peer review and the consideration of general acceptance meets the standard and the rate of error. This is reliable evidence and it is relevant evidence. And I believe that it's probative value outweighs any prejudicial effect.

The fact that an article has come out by a group and is calling into question this standard of testing can be -- is proper cross-examination and will be allowed on cross-examination so they can discuss the science and the methodology behind it and reliability of it.

So the firearms expert, unless I hear something different in the testimony of the case, will be admitted.

Okay. Next? We can do the Denno or the jail calls.

MS. CAMPBELL: We can do the Denno real quick.

THE COURT: Okay.

MS. CAMPBELL: The State calls Officer McLaughlin.

THEODORE ROBERT McLAUGHLIN,

after being duly sworn, testified as follows:

THE CLERK: Thank you. Have a seat in the witness stand, please. State your full name for the record.

THE WITNESS: Officer Theodore Robert McLaughlin.

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q Officer McLaughlin, where are you employed?
A City of Columbia Police Department.
Q And right now, what are you doing?
A Right now, I've been mobilized to train soldiers as task force marshal for a year.
Q And that's taking place where?
A Right at Fort Jackson.
Q At Fort Jackson?
A Yes.
Q I want to turn your attention back to October the 13th of 2013, were you working that evening?
A I was.
Q And I want to turn your attention specifically to around 2:20 that morning. Where were you working?
A I was working the 600 block of Harden Street. I was standing on the corner of Harden and Devine.
Q At some point, did you hear what sounded like gunshots?
A I did.
Q And tell the Judge based on that what you did.
A I immediately ran in the direction of the fountain where I heard the shots coming from and saw a young black male dressed in light brown clothing running at me on the sidewalk. I stopped him. It looked like he had something heavy in his pocket.

Q At that point, did you recover anything from him?
A I did. I recovered a Glock 27.
Q A Glock 27?
A Yes. It was still warm to the touch.
Q And at that point, did you detain that person?
A I did.
Q And what, if anything, were you saying to him or did he say anything to you?
A I didn't say anything to him at that time, but he said -- his words were, I didn't mean to shoot.
Q And at that point, was that the extent of what he said to you?
A That's it.
Q Once you had him detained, did other investigators come to the scene that night?
A Yes.
Q At some point, was he turned over to the custody of Investigator Gilliam?
A He was.
Q At any point, did you ever question him?
A No, ma'am, I did not.
MS. CAMPBELL: Thank you, sir. I don't have anything further.
THE COURT: Cross?
MS. ZMROCZEK: Just briefly, Your Honor.

THE COURT: Yes, ma'am.

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q Officer McLaughlin, you testified that you heard shots?

A What's that?

Q You heard shots?

A I'm not sure if it was more than one or if it was echo, but yes.

Q But your testimony was shots, plural, correct?

A Correct.

Q And you testified that you saw Mr. Smith actually running towards you, correct?

A Correct.

Q And you stopped him and took the gun immediately?

A Correct.

Q Didn't ask him any questions?

A No questions.

Q He just said spontaneously, I didn't mean to shoot?

A Correct.

Q And said nothing further?

A Right.

MS. ZMROCZEK: Your Honor, we don't take issue with this statement.

THE COURT: Okay. Thank you. You may step down.

MS. CAMPBELL: The State would call Investigator Gilliam.

EMMITT GILLIAM,

after being duly sworn, testified as follows:

THE CLERK: Thank you. Have a seat in the witness stand, please. State your name for the record.

THE WITNESS: Investigator Emmitt Gilliam.

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q Investigator Gilliam, where are you employed?

A City of Columbia Police Department.

Q What do you do there, sir?

A I'm a major crimes investigator.

Q I want to turn your attention back to the early morning hours of October the 13th, 2013, were you working that morning?

A No, I wasn't. I was called in.

Q Were you called in?

A That's correct.

Q And where did you respond to?

A Around the 600 block of Harden Street.

Q When you got there, did you make contact with anyone that was in custody?

A Yes, I did.

Q Who did you make contact with?

A Michael Juan Smith.
Q And where was he when you found him?
A In the back of a patrol car.
Q At that point, did you get briefed on basically what had been going on that night?
A That is correct.
Q Once you had been briefed on that, did you make contact with Michael Smith yourself?
A Yes, I did.
Q And where did that take place?
A He was still in the back of the patrol car.
Q What was the purpose of you making contact with Michael Smith that morning?
A Advising him of his Miranda rights and see what happened if he wanted to talk us.
Q And prior to questioning him in any manner, did you, in fact, advise him of his Miranda rights?
A That's correct.
Q And can you tell the Court how that happened?
A What I did, I went in my pocket, pulled out my little card for Miranda rights and I read it to him verbatim as to what was on the card.
Q For the record, can you read into the record what you read him?
A Sure. It reads, you have the right to remain silent.

Anything you say can and will be used against you in a court of law. You have a right to speak to an attorney and have the attorney present during any questioning. If you cannot afford to hire one, one will be provided for you at the government expense. Knowing and understanding your rights as I explained them to you, are you willing to answer any questions -- answer my questions without a lawyer present.

Q And at that point, did he indicate whether or not he wanted to talk to you?

A Yes.

Q And he indicated that he did want to talk to you?

A Yes, he did.

Q And after that, did he, in fact, give you a version of events?

A That is correct.

Q At any time, either before or after you gave him his Miranda rights, did you promise him anything to make him talk?

A No.

Q Did he appear to be coherent enough to understand what you were saying?

A Yes.

Q At any time, did he invoke any of his rights?

A No, he didn't.

Q At any time, did he tell you he wanted a lawyer?
A No.
Q Did you deprive him of any creature comforts to make him talk to you?
A No.
Q Did you threaten him or force him in any way?
A No.
Q In fact, in your opinion as an investigator, was he wanting to tell you a story?
A He wanted to tell me a story, yes.
Q After being advised of his rights, did he do that?
A Yes, he did.
Q At any time during the time that you were with him -- approximately how long did you talk to him that night?
A Approximately between about three and five minutes.
Q At any time did he ever tell you he wanted a lawyer or didn't want to talk to you?
A No.
Q And while you were in his presence, did anyone threaten him or promise him anything to make him talk?
A No, ma'am.
Q Was he talking to you voluntarily in your opinion?
A Yes.
MS. CAMPBELL: Your Honor, I don't have anything further.

THE COURT: Cross-examination?

MS. ZMROCZEK: Well, Your Honor -- okay.

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q What statement did he give you?

A He gave me --

MS. CAMPBELL: Objection, Your Honor. I don't know --

THE COURT: What?

MS. CAMPBELL: The substance of the statement, I don't know is proper pretrial.

THE COURT: It's not even relevant in a Jackson vs. Denno hearing.

MS. ZMROCZEK: Okay.

BY MS. ZMROCZEK:

Q He was in a patrol car, correct?

A Yes.

Q Handcuffed?

A Yes.

Q Free to leave?

A No.

Q Typically, when you give Miranda rights, do you have suspects or Defendant, in this case, initial and sign a waiver of rights form?

A Usually, I do, but in this case, I responded from

home. When I got to the scene, I did not have a written, that's the reason that I wanted to advise him of his Miranda rights then.

Q And what time did this interview take place?

A I think it's around -- I'm not exactly sure, three something. I'm not exactly sure of the time off the top of my head.

Q And you said it was three to five minutes?

A Yes.

Q In the back of the patrol car?

A Yes, he was sitting in the back of the patrol car. I was standing at the window.

Q You said he appeared coherent?

A Yes.

Q Not under the influence of alcohol?

A Not to my knowledge.

Q Not under the influence of drugs?

A Not to my knowledge.

Q Was able to communicate with you clearly and freely?

A Yes.

MS. ZMROCZEK: No further questions at this time, Your Honor.

MS. CAMPBELL: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. CAMPBELL:

Q He appeared to understand his rights?
A Yes.
Q And you testified he wanted to talk to you?
A That is correct.
Q Later that morning, was he transported to headquarters?
A Yes, he was.
Q At that point, did you again advise him of his rights?
A I did.
Q At that point, did he invoke?
A Yes.
Q So he understood his rights?
A That's correct.

MS. CAMPBELL: Your Honor, we have nothing further.

THE COURT: Okay. Thank you.

MS. CAMPBELL: Of course, Your Honor, in front of the jury, we would not go into invoking any rights.

THE COURT: Right.

MS. CAMPBELL: The last part, just to clarify.

THE COURT: Yes. Right.

MS. ZMROCZEK: And I just wanted to make that clarification, Your Honor, because he did refuse later on. I want to make sure that didn't come out in front of the jury. Otherwise, I believe that his testimony is credible

and we don't take issue with that statement.

THE COURT: Okay. I find the Defendant wasn't -- the first statement to Investigator McLaughlin was a spontaneous statement not at the request of the police or based upon any police interrogation. The second statement given to Investigator Gilliam, he was clearly in custody at that time and was not free to leave. However, he was properly advised of his Miranda rights under Miranda vs. Arizona and its progeny all the way up through Dickerson. He knowingly, voluntarily and intelligently waived those rights without threat, coercion, force or promise and made a free and voluntary statement to the police after being properly advised of his Miranda rights. I will deem the statement -- both statements to be admissible.

Now, Investigator Gilliam, when he invokes later that morning, you're not going to be allowed to get into that on the stand.

THE WITNESS: Yes, sir.

THE COURT: Now, I'm not saying -- there could be an occasion when that happens, but I doubt it, so just don't go into that, okay?

MS. CAMPBELL: And we've advised him of that, Your Honor.

THE COURT: Okay. Great. Thank you.

Let's do -- what's next?

MS. ZMROCZEK: I believe the last thing, Your Honor, are the jail phone calls.

THE COURT: Okay.

MS. ZMROCZEK: What they have provided me was the actual calls -- well, all of the jail calls, which there are 1,000, as you can imagine, over 1,000 since he's been in two-and-a-half years. But they did select a few of those calls that they advised me they intended to play for the jury.

THE COURT: Okay.

MS. ZMROCZEK: And, of course, we would object to the hearsay that's involved. They did redact any references to probation or pardon or parole or any of his previous crimes.

Your Honor, what these very limited statements and phone calls, I can only assume, are going to be used for is to attack his character because immediately after his arrest, he used a bad word. He used a derogatory term towards the victim because at that time -- well, he can explain if he gets on the stand, Your Honor, but if and until he does get on the stand, I don't think that they can just play that statement to show that he had bad character or that he wasn't remorseful. And I believe that's what they intend to do so with these jail phone calls.

186

I'm sorry. Just further, the client understands and counsel agrees that if he gets on the stand, he's certainly subject to be asked if he made those statements and then impeached by them if he denies making those statements.

THE COURT: Right. Okay.

MS. CAMPBELL: Your Honor, we've actually narrowed it down to a couple calls. We are not attacking his character in any way shape or form. He makes statements like, The only thing I should be charged with is unlawful weapon. They know it wasn't supposed to go down like that. He talks about how he rubbed his hands inside his pockets to get rid of the GSR so the police couldn't detect it, things of that nature. It's not at all to attack his character. We have redacted copies of those to provide to the Court if you wanted to listen to them.

THE COURT: Okay.

MS. CAMPBELL: I think it would just make things clearer.

THE COURT: Okay.

MS. ZMROCZEK: If they would just advise me of which ones they want to use, Your Honor, we may be okay with it.

THE COURT: Okay.

MS. GARFIELD: Judge, we can just play them here in the courtroom.

THE COURT: Go for it.

(WHEREUPON, jail phone calls were played for the Court.)

MS. CAMPBELL: Your Honor, at this point, as Ms. Zmroczek said, there were hundreds of calls that were provided to the Defense. I did narrow it down to eight or nine that we were going to potentially use.

Your Honor, at this point, these are the two that I know we're going to use. I can provide your clerk a disc with all eight calls on it and if we were to change it in any way, she would be familiar with them and -- as far as introducing them. I just don't know how cross-examination is going to go and if any of those will become relevant. We could go ahead and provide those to the Court so we won't waste time later on.

THE COURT: Okay.

Go ahead.

MS. ZMROCZEK: Thank you. Your Honor, if I may address the calls individually. The first call that they intend to put forward, I would object to the whole first portion about talking about a lawyer and hiring Jack Swerling. That has no relevance and it doesn't make any fact more reliable or to be proven. If they -- it's my understanding that they intend to say that he -- if they want to start at the section where they start talking

188

about relevance and him putting his hand in his pocket, I'm okay with that part, but the entire phone call -- the first three minutes or four minutes of it were about calling a lawyer, which I would argue still falls under the auspice of Doyle V. Ohio. And whether or not -- who he's calling, it has no bearing or relevance on this case.

If they want to get into that part where he's talking about his hand and she said self-defense and things like that, that's -- I can understand that part of the call, but then it starts to go back to about calling a specific lawyer. So I would argue that they need to further redact that first phone call.

MS. CAMPBELL: Your Honor, I don't know how this violates Doyle V. Ohio or anything else. He's making a phone call to a third party. It's not his lawyer or anything like that. These are the statements he made. We feel like we did redact out any references in any of the calls to him being on probation, to violating his probation, to being on parole, to serving time for other crimes and all that. We feel like the redaction is sufficient and the rest of it should be admissible.

THE COURT: I didn't even understand what they said the first four minutes, so somebody needs to give me a recap.

MS. ZMROCZEK: It was very hard to hear. The parts

that I did hear were, Are you calling a lawyer? Yes, I'm calling Jack Swerling. Call a lawyer, call a lawyer, get me a good lawyer. That's the gist of what I heard.

THE COURT: What do y'all think he says?

MS. CAMPBELL: Your Honor, we think he says something -- he's talking to her about calling a lawyer at one point in part of that. The rest of it, they are having a general conversation. I can get a transcript done of it and provide it to the Court. We aren't getting into this today.

THE COURT: Okay. I just don't know why we need all that extra stuff. I'm going to tell, I mean, I didn't hear 95 percent of it. I heard it, but I didn't understand it.

MS. CAMPBELL: I understand. I can get someone started on a transcript.

THE COURT: Yeah, yeah, I mean, the parts that I heard that were relevant -- and I'm not saying they were the only ones because I didn't understand all of it, but when he's talking about the gunshot residue and they got the wrong charges and this should be the charge and -- I mean, those parts are clearly relevant and clearly statements, but the rest of it -- so much of it, I -- I mean, I heard it, but I couldn't really follow it.

MS. CAMPBELL: I can get it so that we can get that

to the Court.

THE COURT: Okay. Great.

MS. ZMROCZEK: Then the second call, Your Honor, I -- if it is relevant, I find that any statements being made about her condition or what he believes her condition to be are substantially more prejudicial.

THE COURT: Again, you're making the assumption that I heard it or that I understand it. So what is it you heard that causes you concern specifically?

MS. ZMROCZEK: Specifically, what I heard was her injuries, her mom not even crying. And that's all I heard from him and then I heard the girlfriend doing most of the talking. But the thing that concerned me with regard to the prejudicial nature of any statements that he made dealt with -- they were questioning the severity of her injuries and relating that the mom wasn't crying. I don't see how that's relevant to this case.

And even if it -- even if the Court finds that it was relevant, any statements regarding her condition, which are unknown to him, would be substantially -- under 403, substantially more prejudicial than probative.

THE COURT: So what in the second call is important to you?

MS. CAMPBELL: The entire call.

THE COURT: Okay. I can't --

MS. CAMPBELL: Can I -- if you give me until this afternoon, I can get transcripts done.

THE COURT: That's fine.

MS. CAMPBELL: Then we can all have a reference point.

THE COURT: Then I can read it and --

MS. CAMPBELL: I think that will make more sense.

THE COURT: All right. So we're not making any ruling on the phone calls until I can read what it is that they're actually saying. I heard parts of it, but not enough for me to coherently work my mind through what's what and what's not and whether it's 403 or not. Okay.

MS. ZMROCZEK: Thank you.

THE COURT: What else?

MS. ZMROCZEK: Lastly, Your Honor, I had requested copies of the 911 calls and -- because there were several calls made that evening. It's my understanding they were subpoenaed by the former public defender on this case and never provided. And it's my understanding that Ms. Garfield has represented to me that those calls are no longer in existence.

THE COURT: Okay.

MS. ZMROCZEK: What we would like, Your Honor, is for somebody to have to come from communications and explain why those calls were not or are not preserved. And the

192

relevance, Your Honor, goes to what, clearly, I've been asking the officers this morning. There were reports of shots fired, shots, and the number varied from anywhere between one and five.

And, Your Honor, that's important because obviously -- maybe I haven't made this clear, but Mr. Smith is asserting a self-defense case, and him shooting in response to somebody shooting at him is what makes those 911 calls relevant and, specifically, the number of shots that are referenced in those calls. And I'm not saying the State has destroyed them, I'm just saying --

THE COURT: Well, did you subpoena the people?

MS. ZMROCZEK: We subpoenaed them. They informed us that they had also been subpoenaed by the State and had turned anything and everything over to the State. What they turned over to the State was a printout, but not the actual calls.

THE COURT: Okay.

MS. GARFIELD: We have not subpoenaed any person to court.

MS. CAMPBELL: Has she subpoenaed them to court to testify?

MS. ZMROCZEK: I mean, I can do that. Yeah, I can issue a subpoena.

THE COURT: Okay. Good.

MS. ZMROCZEK: Okay. Thank you.

THE COURT: Subpoena them.

MS. ZMROCZEK: Thank you, Your Honor.

Then lastly, I was informed last night that they cannot -- they have attempted to put a witness under subpoena, Your Honor. It's the person who the police and the Defense believes fired the first shot. And, obviously, that's going to be the crux of our case. If they cannot produce that witness, if he can't be found, at the appropriate time, Your Honor, we would ask to have his statement -- his statements were audio recorded, and will be relevant in this case.

I mean, obviously, that's who --

THE COURT: What are you asking for?

MS. ZMROCZEK: We're asking that his testimony be allowed to be entered if they can't find him.

THE COURT: You mean his statements?

MS. ZMROCZEK: Correct, sorry, yes.

THE COURT: Okay.

MS. CAMPBELL: Your Honor, there is one witness that we did inform the Defense that we were attempting to find. We've actually made contact with a relative of his. She indicated that she had spoken to him, but he was scared to come back because of the gang situation in Columbia and feared retaliation.

194

We also had a member of ATF attempt to find a good address for him. They were unsuccessful. At this point, it's an ongoing trying to find him. We are still trying to find him, so this may be something we should take up at a later time if we are, in fact, not successful.

THE COURT: Okay.

MS. CAMPBELL: But we have been in contact with relatives, so we are hopeful.

THE COURT: What's your position if you don't find him?

MS. CAMPBELL: I would want to -- I just was informed that she was going to make this motion. She didn't tell me that this is -- I'd like to look at the law before I make a representation, Your Honor.

THE COURT: Okay.

MS. CAMPBELL: I just didn't know this was coming up this morning.

THE COURT: That's fine.

Okay. What else?

MS. ZMROCZEK: And, Your Honor, I apologize for the late motion. I literally found out at 6:45 last evening about this, so.

THE COURT: What did you find out last night at 6:45?

MS. ZMROCZEK: That they couldn't find him and that his mom relayed that he wasn't coming back because he was

scared.

THE COURT: I mean, you've known about the person and have the audio --

MS. CAMPBELL: And I was going to ask, too, if she's made any attempts to find them herself.

MS. ZMROCZEK: We have, Your Honor. I have my private investigator if it gets to that point to talk about how he --

THE COURT: Okay. All right.

MS. ZMROCZEK: Other than that, Your Honor, I don't believe we have any more motions.

THE COURT: Okay. Good.

Ms. Campbell, anything further?

MS. CAMPBELL: No, sir.

MS. GARFIELD: I have one thing, Your Honor. Just before we stopped yesterday, Ms. Zmroczek indicated to us she did not have the complete interviews from Mr. Samuel that she's just referenced as well as the in-car video. At this time, I'm providing copies.

THE COURT: Okay. Anything else before we break before the jury comes in?

MS. ZMROCZEK: Nothing from the Defense, Your Honor.

MS. CAMPBELL: Ms. Zmroczek indicated that she wants to use some photographs in her opening argument, Your Honor. We would object that they aren't admitted.

196

THE COURT: Okay. What about that?

MS. ZMROCZEK: Your Honor, I did advise them that I may want to use some photographs as demonstrative evidence.

MS. CAMPBELL: And we haven't --

THE COURT: Photographs of what?

MS. CAMPBELL: And we haven't been provided any photographs in our reciprocal. I don't know if these are photographs we provided to her or not.

MS. ZMROCZEK: They are still shots from the videos that they provided to us.

THE COURT: But they're not in evidence, so how are we going to use them?

MS. ZMROCZEK: I can take those out of my opening, Your Honor.

THE COURT: Okay. All right. 11:30, we'll start with openings at that time. Thank you very much.

MS. ZMROCZEK: Oh, Your Honor, as I did in the last case, there were two pages -- or a page and a quarter of witnesses. If the State can provide me with a rough outline of who they'll be calling from day to say so that I can be more prepared.

THE COURT: You have it.

MS. ZMROCZEK: Thank you.

THE COURT: All right. When we do this jury charge

-- or when I charge the jury, Mr. Dye, when they come back in, make sure that back door is locked, okay. I don't want people going in and out while I'm telling the beginning of the case.

Becky, don't forget to swear them.

Okay. All right. 11:30.

(WHEREUPON, a short break was taken.)

THE COURT: Ms. Campbell.

MS. CAMPBELL: Thank you, Your Honor. Just one more thing to bring to the Court's attention, I know you instructed the jury not to see any media or press that's going on in this case. However, Your Honor, it did come to my attention this morning that --

THE COURT: Hold on. Whose phone is that?

SECURITY GUARD: I was turning it off, Judge.

THE COURT: Thank you.

MS. CAMPBELL: That yesterday in the paper, basically, it was reported that Childress was hit by a stray bullet, Zmroczek said after court Monday, adding Smith was carrying a weapon to protect himself. He had been jumped in Five Points before, she said.

In addition to that, it did come to my attention that one of the reporters yesterday was also reporting that Mr. Smith said he was willing to plead guilty but not to plead to a charge of attempted murder.

198

Your Honor, the only thing we would be concerned with -- and I don't think the jurors are going to violate that, but just to minimize any kind of out-of-court interviews.

MS. ZMROCZEK: Your Honor, this was just brought to my attention. Certainly, I did not give any interviews. I was with Ms. Brown all afternoon talking to her about the case. I was approached about the spelling of my name and her name. Anything that Ms. Campbell has reported as to the stray bullet has been reported since -- it's been in the news report since before I was involved in this case. I did have a conversation in the courtroom that he would plead guilty to the gun charges and not the attempted murder.

Your Honor, it's not my habit, nor do I have the time to give interviews, but I will certainly make sure that I don't speak.

THE COURT: Who reported that she said something?

MS. CAMPBELL: I believe that it was the State newspaper.

THE COURT: Where is the article? I try not to read the news too much.

MS. CAMPBELL: I apologize, Your Honor. I believe this is the article on the front page of The State. The last paragraph is what I'm referring to.

(Pause.)

THE COURT: This article says that you told the news -- or that you said after court on Monday that he was -- that she, the victim, was hit by a stray bullet and that your client was carrying a weapon to protect himself because he had been jumped in Five Points before.

What about that?

MS. ZMROCZEK: Your Honor, anything that was reported in the news, I said in this courtroom. I mean, if we need to have the reporter ask if I gave an interview, I guess we can do that.

THE COURT: Well, I mean, you didn't make those statements to me in the courtroom.

MS. ZMROCZEK: No, but Ms. Brown and I have been discussing the case. I'm certain that after court -- she's been on vacation for two weeks and I've been trying to catch her up. Not two weeks, excuse me, a week.

The stray bullet, Your Honor, I do believe I said in court, but it was also -- that's been reported and that's been a concern of mine. I believe we even addressed it in voir dire.

THE COURT: So who did you make these statements to?

MS. ZMROCZEK: I don't particularly remember making those statements to anyone. If I made a statement, it was a conversation with my associate.

THE COURT: So the State newspaper reporter is just

200

making this up?

MS. ZMROCZEK: No, I'm certain that those statements were made after court. I don't recall making them to the reporter.

THE COURT: Who do you recall making them to?

MS. ZMROCZEK: Ms. Brown.

THE COURT: And where were you when you made these statements?

MS. ZMROCZEK: Likely in front of the elevator.

THE COURT: And why would you need to make those statements to Ms. Brown.

MS. ZMROCZEK: As I said, Your Honor, she has not been involved in the trial prep in this case. And to help her understand and develop our theory, I was explaining to her the issues surrounding the case.

Further, Your Honor, I was not aware that I was not under any gag order, but I certainly --

THE COURT: Well, there's the rules of professional conduct. You don't need a gag order to be under those.

MS. ZMROCZEK: Absolutely. I agree, Your Honor, which is why I would again say that the only time I was approached was to know the spelling of my name and the spelling of the first and last of Bridgett Brown's name.

Additionally, Your Honor, I believe that I received a police escort down to the first level yesterday, so I had

two county deputies with me as well, but not while I was talking.

THE COURT: All right. No lawyer in the case needs to be making any statement to the media about the facts or anything else. This case has enough media attention. It's not fair to any of the parties involved to have people commenting on the facts to the media.

Everybody got that?

MS. CAMPBELL: Yes, Your Honor.

MS. ZMROCZEK: Yes, Your Honor.

THE COURT: All right. Bring them in.

If you're going to stay in here during opening statements, then you better have your phone off. If your phone is not off and I hear it go off, I'm going to take it, number one.

Number two, this case is very important to all sides and worst thing that we can have -- we have enough distractions in this courtroom. You getting up and leaving and moving around while these lawyers are trying to talk to this jury and give it its attention is not fair to the lawyers. It's very distracting to me and I'm sitting up here. It's got to be distracting to the jurors. So if you're going to stay in here, make sure you stay in here and do not go anywhere.

When I give my opening charge, the back door will be

202

locked. Please be respectful of everybody involved in the case. I don't know whose this is, but I certainly don't want to it go off near me.

All right. Bring them in.

(WHEREUPON, the jury entered the courtroom at 11:41 a.m.)

THE BAILIFF: The jury is seated, Your Honor.

THE COURT: Thank you, Mr. Tolbert.

Good morning, ladies and gentlemen.

THE JURORS: Good morning.

THE COURT: Thank you very much for being on time. The first thing that we're going to do this morning is you're going to take an oath. I know that yesterday you took a couple of oaths. This oath that you're going to take this morning is completely different. This oath truly encompasses your duties and responsibilities in regard to this case.

Basically, what it says is you are agreeing and you are swearing an oath to be fair and impartial to both sides, to set aside any bias or prejudice that you may have towards anybody and to base this case and base your decision off the evidence that comes in from the witness stand and any exhibits which may be introduced and the law that I will give you at the end of the case.

So if you will please rise, the clerk will swear you

in.

THE CLERK: Madam Forelady, ladies and gentlemen, will you please raise your right hand to be sworn.

(WHEREUPON, the jury was sworn.)

THE COURT: All right. Thank you very much.

OPENING REMARKS BY THE COURT

THE COURT: Ladies and gentlemen, before we begin this trial, I thought it might be helpful to explain to you basically how a trial will proceed.

First, the State will be given an opportunity to make an opening statement. The opening statements that you will hear this morning are not evidence. They are simply outlines to help you understand what that party expects the evidence will show.

The Defendant may if he chooses present an opening statements, but he does not have to for reasons that I will explain shortly.

Following the opening statements, you will hear the testimony and the evidence in this case. This will consist of testimony from the State's witnesses as well as any physical exhibits which will be introduced into evidence.

Following the completion of the testimony, the attorneys will again have an opportunity to make what is called a closing statement or summation to you. This is

204

an opportunity for the attorneys to summarize their respective points of view. Again, these arguments are not evidence.

Following the closing statements by the attorneys, I will instruct you on the law of South Carolina as it pertains to the issues that have arisen in this case.

When I have completed my instructions to you, you will then be permitted to begin your deliberations in order to reach a verdict.

Ladies and gentlemen, you are now the jury of this case. And I want to take a few minutes to tell you something about your duty as jurors and to give you some instructions. At the end of the trial, I will give you more detailed instructions that will control your deliberations.

It is your duty to decide from the evidence what the facts are. I told you a little bit of this yesterday. You and you alone are the judges of the facts. You will hear the evidence, decide what the facts are and then apply those facts to the law that I will give you. That is how you will reach your verdict. In doing so, you must follow the law whether you agree with it or not.

The evidence will consist of the testimony of witnesses, documents or anything else that is received into evidence as an exhibit or any facts on which the

lawyers agree or which I tell you to accept.

You should not take anything that I say or do during the trial as indicating what I think of the evidence or what I think your verdict should be. The same law that makes you the judge of the facts makes me the judge of the law. You will not hear me comment on, or state, or make any kind of comment about the facts in the case. The facts are for you to decide and the law is for me to decide.

Now, this is a criminal case --

I need the indictments, Becky.

This is a criminal case brought by the State of South Carolina. And the State has charged the Defendant, Michael Juan Smith, with possession of a stolen pistol, attempted murder, unlawful possession of a weapon by a person convicted of a crime of violence, possession of a firearm or ammunition by a person convicted of a violent felony, possession of a weapon during the commission of a violent crime and unlawful carrying of a pistol.

I read each of these indictments to you yesterday. These indictments are not evidence of anything. They are simply the description of the charges made by the State against the Defendant.

To these charges, the Defendant has pled not guilty and he is presumed innocent unless and until proven guilty

206

beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt.

A defendant has the right not to testify and never has to prove his innocence or present any evidence at all. The burden of proof is always upon the State of South Carolina.

Some things that you will hear during this trial are not evidence, and you must not consider them as evidence. These are number one, the statements and the arguments of the attorneys are not evidence. Number two, the questions and the objections of the attorneys are not evidence. Number three, any testimony that I tell you to disregard. So at the end of something, if I sustain an objection and I tell you to disregard that testimony, you are required by your oath to disregard that information.

There are two types of evidence that you will hear during this trial, direct or circumstantial. Direct evidence is testimony by a witness about what that witness personally saw, heard or did. Circumstantial evidence is indirect evidence. It is proof of one or more facts from which one can find another fact. You are to consider both direct and circumstantial evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give any evidence that you hear.

Now, in this courtroom and throughout this trial, there are rules of evidence that control how evidence is admitted into the courtroom. Right here with me and will be with me all throughout this trial is my evidence book, okay. There are very specific rules of evidence which control in this courtroom as they do in every trial in the state.

Now, when a lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit may be received. If I sustain the objection, the question cannot be answered and the exhibit cannot be received.

Whenever I sustain an objection to a question or deny a motion to admit an exhibit into evidence, you must ignore the question or the existence of the exhibit, and you must not guess as to what the answer would have been or what the exhibit would have shown.

Sometimes it may be necessary for me to ask you to leave the courtroom while I discuss legal issues with the attorneys. This happens in every single trial. This will happen during this trial. A legal matter will come up that I need to take up outside of your presence and I will ask you to retire to your jury room, do not discuss the

208

case, do not let anyone discuss the case with you, keep an open mind and we'll see you back in just a few minutes, okay. That's going to happen.

When this occurs, you should not speculate about what we are discussing or why you were asked to leave the room. This is simply a procedure that the law requires when certain legal issues arise.

Now, there will also be occasions during this trial when I ask the attorneys to approach the bench so that I can discuss a legal issue with them in private. I will do this as often as possible so that you won't have to go in and out and in and out and back and forth.

So if that's happening, what I tell my juries to do is as the attorneys approach the bench is to stand up, stretch, talk amongst each other and it's a good time just to kind of get a stretch break and move around a little bit when that happens.

So when the attorneys approach, y'all just go ahead and stand up, talk amongst each other, whatever you want to do, just stay right there. Those conferences are usually shorter rather than longer, okay. That's perfectly fine.

Now, when this happens, don't think that anybody is trying to hide anything from you or keep anything from you. This is simply a procedure used by all lawyers and

by all courts to determine and decide legal questions that arise during a trial.

Now, in deciding this case, you will have to decide which witnesses to believe and which witnesses not to believe. You may believe everything a witness says, none of what a witness says or some of what a witness says.

In deciding what to believe, you can consider, but you are not limited to the following factors. What was that witness's ability to see, hear or know the things testified to? What was the quality of the witness's memory? What was the witness's demeanor while testifying? Does the witness have an interest in the outcome of the case or any motive, bias or prejudice? Was the witness contradicted by anything the witness said or wrote before the trial or by other evidence? How reasonable was the witness's testimony when considered in light of the evidence -- other evidence which you believe.

The bottom line is this, ladies and gentlemen. When you came into the courthouse this morning, we didn't ask you to check your common sense at the door. Just use your common sense. You judge people's credibility and believability every single day of your life. And just use the same consideration here in court.

Now, until I advise you that you are allowed to begin your deliberations, that is at the end of the trial, all

210

the testimony will be over, the lawyers will have made their closing arguments, and I will have given you a 30 to 45-minute closing on the law where I tell you what the law is in the case. You will then go back to your jury room. You will still not be allowed to talk about the case until all of the exhibits come into your room. So once all the exhibits are in the jury room at the very end of the case, that is the first time you will ever be allowed to talk about this case with anyone, okay, including each other.

So you are not allowed to talk about the case with each other. You're not allowed to let anybody talk to you. If somebody tries to talk to you about this case, you have a duty and an obligation to report it to me. You can't go back and comment about a witness. You can't go back and make some kind of statement. You have to talk about other things other than this case. You shouldn't be making up your mind about this case until you have heard all the evidence and heard the closing arguments and heard the law. That's when your mind should start processing through in this case.

So until I advise you to begin your deliberations, you must not -- let me say this again, you must not discuss this case in any way, shape, or form with anyone, including each other, your friends, your family members and anyone involved in the case. This includes

discussions face-to-face, by telephone, by e-mail, by text message, by blog, by Facebook, by Twitter, by Linked-In, by any other kind of social media that I don't even know what it is. Whatever it is, you can't discuss this case with anyone, period.

Now, you may not use a computer, a cell phone or any other type of electronic device that has communication capabilities at any time while you are in the courtroom or during your deliberations. During your breaks for meals or overnight, you may use these devices. However, you may not at any time use these devices to get information about this case or send information about this case.

This includes information about a party, a witness, an attorney or a court officer. You are not allowed to read, watch or listen to any type of news accounts about this case or do any research on any topic raised in this case or any topic that you think may be helpful in deciding the case or any testimony presented by any witness.

I give you this extreme example. If I have said a word this morning that you do not understand, you literally cannot go home tonight and open the dictionary and look it up. You can't go Google it. You can't go try to figure what it is. You can't ask your spouse what does that word mean. Okay. You're only allowed to base your

212

decision in this case on what happens in this courtroom, okay.

Now, during the trial do not read, listen to or watch any news reports about this case. This includes anything that may be in the newspaper or on the internet or the radio or the television. You must not consider anything that you have heard or read about the case outside the courtroom whether before or during the trial.

Once the case is submitted to you, you must discuss it only in the jury room and only with your fellow jurors. The attorneys and the parties in this case have been told they are not allowed to talk to you at all. So if they see you in the hallway and they do not even say hello, they are not being unfriendly. They are merely following my instructions.

It is important that you keep an open mind and not decide any issue in this case until all of the evidence has been presented, the parties have made their closing arguments and I have instructed you on the law in this case.

It is your responsibility to determine the guilt or the innocence of the Defendant and your verdict must be based solely on the evidence that is presented to you in this trial and on the law that I give you during and at the close of the trial.

Madam Forelady, it is your responsibility to preside in the jury room. You will be the presiding juror and you are the jury spokesperson here in court. It will also be your duty at the conclusion of the case to write the verdict, but I will give you further instructions about that at the conclusion of the case.

All right. Any exceptions to the opening charge from the State?

MS. GARFIELD: No, sir.

THE COURT: From the Defense?

MS. ZMROCZEK: No, sir.

THE COURT: Okay. Madam Solicitor.

MS. GARFIELD: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, ma'am.

OPENING STATEMENT FOR THE STATE

MS. GARFIELD: This is Martha Katherine Childress on October 13th, 2013. At the time, Martha was a young, 18-year-old college freshman, who with a childhood friend went to the Five Points district of our city. They walked there. She left in the back of an ambulance with internal injuries that were life threatening and a bullet lodged in her spine paralyzing her, fighting for her life.

Five Points, a part of history of the City of Columbia, formed about 100 years ago in the root of our

214

city that has brought hundreds of citizens, old and new, to make wonderful memories, celebrations, graduations, anniversaries. It brings old and new, men and women to come find a perfect gift in a store or have the perfect meal together. Five Points should be about memories, happy memories, laughter. It should not be about gunfire that leads to phone calls to a parent that no parent should ever have to answer.

See, the early morning hours of October 13th, 2013, the Defendant in this case, Michael Juan Smith, also chose go to Five Points. He went there by car with a group of his friends, Shante Bethel, Asia Bethel, Ryan Ellison and Taqayya White.

They parked their car on Harden Street, but Michael Smith, a person who has a past conviction for a crime of violence and a violent crime and he was prohibited from carrying a gun under the laws of South Carolina, chose to arm himself with a stolen Glock. He put it in his pocket because you never know what might happen.

This group of individuals then traveled down Harden Street walking towards an establishment called The Library. When they got to the corner of Harden Street and Greene, a group -- another group of individuals were crossing the street. And there were some sort of words exchanged between that group of individuals and the

Defendant. At that time, the Defendant took the gun out of his pocket and put it into the lower pocket of his jacket where he kept his hand firmly on it.

The group continued on to The Library establishment, but once they got there, they were denied admission. It was about 2:00 a.m. and most every establishment in Five Points was beginning to close. The group then turned around and began to walk towards the fountain. And the Defendant approached that same group of people. And the Defendant with his arm still in his jacket pocket, still armed, took that gun and fired at one of the individuals surrounded by many, many people in that Five Points area, one of those being Martha and her friend waiting on a cab.

The Defendant missed his target, but his intention to kill his target continued to travel with that bullet landing in Martha's side. At this time, Martha collapsed onto the cement. Her friend, Ellison, knowing immediately something was terribly wrong as her friend, Martha, cried out to her.

Shortly thereafter, law enforcement began to come. And as Marsha laid on the ground with her lungs filling with blood, Michael Smith began to run away still with the hand in the pocket holding the gun, still warm to the touch. He ran right into a law enforcement officer and he was detained. While he was being detained, Martha was

216

being treated by emergency medical personnel and being loaded into an ambulance.

Fortunately, Richland Memorial Hospital is very close to our Five Points area. When she arrived at the hospital, Martha was bleeding to death. She immediately underwent lifesaving surgery to treat traumatic injuries to her internal organs and a spinal cord injury. Martha will never walk again.

Ladies and gentlemen of the jury, the Defendant in this case, Michael Juan Smith, is charged with several offenses. He is charged with attempted murder. He is charged with several gun charges, possession of a weapon during the commission of a violent crime. That violent crime being attempted murder. He is also charged with possession of a weapon by a person convicted of a crime of violence, possession of a weapon by a person convicted of a violent crime, possession of a stolen gun and unlawful carrying of a pistol by a person who does not have a concealed weapons permit.

Like I was introduced to you yesterday, again, I am Dolly Garfield. I'm a prosecutor here in Richland County. In South Carolina, we refer to our prosecutors as solicitors, a term that was taken from our predecessors in England.

Seated at the table is Meghan Walker, also an

assistant solicitor, and senior assistant solicitor, Luck Campbell. It is our job for the next few days to prove to you that Mr. Smith committed these terrible actions leaving Martha struggling for her life and paralyzed.

It is our job to prove to you that Mr. Smith had that gun when he was illegally not supposed to have it. The burden is on the State, and it is our duty to prove this case to you, and we welcome that job to you, ladies and gentlemen. In this case in this courtroom, we will deliver to you.

Now, what are these offenses? Attempted murder is the intentional attempt to kill someone with malice. Although it's not disputed that he was trying to kill Martha, he was trying to kill someone, and that intent travels with the bullet.

He is also charged with several gun charges, and they are quite simple. You can't carry a gun in South Carolina if you don't have a permit. You are prohibited from carrying a gun if you have prior convictions for crimes of violence and violent crimes. You can't have a gun when you are trying to commit a violent crime. And nobody can possess a gun that is stolen.

Ladies and gentlemen, through the course of this trial, we will prove this case to you through many witnesses. The evidence in this case will come from this

218

witness stand. You will hear from law enforcement. You will hear from emergency medical personnel, as well as doctors. You will hear from Martha. You will hear from her friend. You will hear from ballistics experts, as well as trace experts.

Now, let me stop and just say to you that I'm sure many of you probably watch some sort of crime drama, whether it's CSI or Law & Order, even Scandal to some effect, all those cases, I just need to say this to you, I want you to keep in mind that those cases are not real. Those involve actors who are reading scripts, fictitious plots. While the issues may be the same that we see on a daily basis, they are not real. This courtroom is real. This is reality. You will hear from real police officers, real doctors, a real victim.

You will also hear from some witnesses that may not be the kind that you hang out with on a day-to-day basis. They may not be the person you see in a grocery store or you go to church activities with, but like all crime dramas, there is a director. And I submit to you, ladies and gentlemen, that the Defendant in this case is a director of the witnesses that you will see. He chose the witnesses to bring before you. This case is about the choices he made and the actions he made the early morning hours of October 13th, 2013.

With that being said and since he is the director and immediately when he was apprehended, he began to give different versions of what happened. I'll submit to you he gave versions trying to find a way to protect himself and to find himself not criminally responsible for those actions.

At first he said, I didn't mean to shoot. Later he changed the story a little bit and said somebody else was shooting at him and they dropped the gun, and he grabbed it and ran away. You'll also hear where he's talking on phone calls in the jail about how he tried to get rid of the gunshot residue evidence off of his hands by rubbing his hands into his pants pockets.

Ladies and gentlemen, as the judge told you just before I began to speak, you're going to have to check your cell phones when you go into the jury room, but don't check your common sense.

Now, everybody in this courtroom has a job to do. As the State, it's our job to present this case and to prove to you that Michael Smith intentionally shot that gun into that crowd intentionally trying to kill someone that night.

The Defense attorney has a job, too. It is her job to represent her client to the best of her ability. The Judge has a big job to do. He is the finder of fact. He

220

is also sort of like a referee for the lawyers, as he explained, as he has to determine what decisions of law should prevail. And ladies and gentlemen, you have a big job. You are the judge of the facts. I ask you to pay special attention to the facts and to the evidence that's presented, and I know you will because this is a case that happened in your community.

I am not asking you to judge the Defendant. It is not your job to forgive him. It is not your job to sentence him, but it's your job to listen to the facts and determine if a law in our state is broken.

Now, at this point in time in the trial and as it should be, the Defendant is presumed innocent. I like to think of him wearing like a cloak around his shoulders of innocence. But I submit to you, ladies and gentlemen, that after every witness leaves this stand and after every piece of evidence has been introduced, each time someone leaves, a small piece or a large piece may be ripped from that cloak. And at the conclusion of this case, the Defendant will be exposed to all of you for the shooter that he is.

We are all free to make choices, but we are not free from the consequences of our choices. Had it not been for the excellent and rapid medical care that Martha received, this jury may be sitting on a trial for her murder.

Ladies and gentlemen, when Martha fell to the ground, her friend, Ellison, heard her cries for help.

Seated at the counsel table is Michael Juan Smith. And at the conclusion of this trial, my colleagues will come before you, and they will ask you to send a cry for justice to the Defendant and find him guilty of possessing that stolen firearm when he wasn't supposed to have it and intentionally shooting into a crowd trying to kill someone leaving Martha to struggle for her life.

Thank you.

THE COURT: Thank you, Ms. Garfield.

Ms. Zmroczek.

MS. ZMROCZEK: May it please the Court?

THE COURT: Yes, ma'am.

OPENING STATEMENT BY THE DEFENSE

MS. ZMROCZEK: Shots fired. Oh, shit, he has a gun. Shots fired.

Ladies and gentlemen, Michael Juan Smith shot a gun in self-defense. He fired one shot.

The State told you about their burden and how Michael Smith will be exposed for the shooter that he is. They also told you that he admitted seconds after shooting, running to a police officer that he shot at them. Ladies and gentlemen, that is not in dispute.

There are many things that are in dispute. Whose

222

bullet is lodged in this poor, poor girl's spine? Nobody wants to be here today. Nobody. Certainly, Martha doesn't. Michael doesn't want Martha to have to be here today. In fact, he wrote a letter and told her that. His parents said that days after this incident.

Ladies and gentlemen, the reality is the Five Points that Ms. Garfield asked you to think about of happy memories, in this political culture and this political climate does not exist at 2:30 in the morning.

Please, please know Martha Childress did nothing wrong, and she is an absolute victim.

The State said that they were going to ask for justice. It's your job to determine who fired that bullet into this poor girl.

Five Points at 2:30 in the morning, two o'clock in the morning is not a safe and happy place. These individuals are gang members.

Michael Smith has not been jumped into a gang. He associates with gang members. Does that mean he can't act in self-defense? No. Does that mean he shouldn't have had a gun? Yes. In fact, the evidence will show that he pled guilty to that federally and is now facing the same charges in the state.

You'll get an opportunity to go to the scene. Many of you may have been past it several times. You'll see

the fountain. You'll see the area adjacent. You'll see the street corners where three gang members, one of whom was carrying a gun, targeted Michael Smith because of who he associates with. Please understand being associated with gang members is not an excuse, it's not tolerated, but it's certainly a reality.

You will hear how the last time Michael Smith was in Five Points, he was attacked. It didn't make the front page of the newspaper, didn't make any newspaper. He was beaten so badly that he couldn't go to work at Subway with his mama.

You will hear that that's why he had the gun. You will hear he fired one shot. You will hear from their experts what kind of bullet that was.

Ms. Garfield told you I have a duty to represent my client to the fullest. It's not my only duty. They referred to them as assistant solicitors. They're solicitors because of England. There is a reason that we formed this country. I have a duty to represent the Constitution and the laws of this state. And the laws of this State say if you're acting in self-defense, then that's not a crime.

He should not -- he is guilty of the gun possession. He already pled to that in federal court, I will tell you again, in his own words, but the reality is in this

224

courtroom, his life is different. It's easy to say he made choices. It's easy to say he's a violent criminal. It's easy to say that she's a victim because she is.

You ask the State to answer those questions for you. To answer the question of whose bullet is in there and does it matter? Yes. Who fired the first shot? Who are these three gang members, and why weren't they arrested?

Justice is not policing our community. Five Points isn't any safer today than it was two-and-a-half years ago. That doesn't make it okay. It's my fear -- it's my fear that sympathy, well deserved, for Martha Childress will change how you view the facts.

Judge Hood told you, and you agreed with him, we're going to listen to the facts, and we're going to apply the law. It's hard to be free from emotion, and it's hard to analyze the facts, and you made an oath to do that.

Ladies and gentlemen, all we're asking is that you listen to the evidence and the testimony that's presented, and then you apply the law free of emotion and that you do justice for Martha and you tell the government to arrest the person who put that bullet in her spine.

When it comes to the attempted murder charge, we'll be asking you to find Michael Smith not guilty.

THE COURT: Thank you, Ms. Zmroczek.

How long is your first witness?

MS. CAMPBELL: It's EMS.

(WHEREUPON, State's Exhibit Nos. 1 through 18 were marked for identification only.)

THE COURT: Okay. Let's go ahead and do that.

MS. CAMPBELL: Thank you.

THE COURT: Call you first witness.

MS. CAMPBELL: The State calls Kristen Steedley.

KRISTEN STEEDLEY,

after being duly sworn, testified as follows:

THE CLERK: Thank you. Have a seat in the witness stand, please. State your name for the record.

THE WITNESS: Sergeant Kristen Steedley.

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q Sergeant Steedley, where are you employed?

A Richland County EMS.

Q What do you do there, ma'am?

A I'm a senior paramedic.

Q Can you speak up just a little bit? I don't know why it's so hard to hear in this courtroom.

A I'm a senior paramedic.

Q Senior paramedic.

THE COURT: Hold on. Let me --

MS. CAMPBELL: Is it on?

(Pause.)

MS. CAMPBELL: She can just talk loud.

THE COURT: Come a little bit closer to the microphone for me. Okay. All the way to the back row, can you hear? Are you okay? Okay.

MS. CAMPBELL: If you'll just indicate.

THE COURT: If you get to the point where you can't hear, someone wave at me and we'll try to fix it, okay.

Thank you, Ms. Campbell. Go ahead.

MS. CAMPBELL: Thank you, Your Honor.

BY MS. CAMPBELL:

Q I'm sorry, you said you worked as a paramedic?

A Yes, ma'am, I'm a senior paramedic.

Q Can you tell this jury a little bit about your education and your training as a paramedic?

A I have extensive certifications in certain things. I've been trauma certified, advanced care life support certified. I'm also a nationally registered paramedic. I also hold some instructor level certifications.

Q Okay. You're going to have to talk a little louder because I can barely hear you.

A I'm a nationally registered paramedic. I hold several certifications in other things, including trauma and advanced care life support. I also hold some instructor level credentials.

Q And to work with EMS, are there different levels of,

say, for people that are actually employed at EMS?
A Yes, ma'am, there's three separate levels to be an EMT. The initial level is the entry level, which is the basic EMT. Basically, any nonlife threatening injuries or anything, they would take care of that patient. Then there's the second level is an intermediate level, which is basically kind of like a trauma tech. The only thing they really do is trauma-type things. And the advanced level is paramedic, which is what I am. We do all advanced levels of care.
Q So you are certified as an advanced level --
A Yes, ma'am.
Q -- of caregiver?
A Uh-huh.
Q And typically, when you all go out or respond to a 911 call, how many of you are there in a unit typically?
A There's two people to a unit. With Richland County, it's either two paramedics or it's a paramedic and a basic.
Q And I want to turn your attention back to the early morning hours of October the 13th of 2013. Were you working that day?
A Yes, ma'am.
Q Specifically, what shift were you working that night?
A At the time, I was on opposite rotation. I was on B

shift and I was working from 5:30 p.m. to 5:30 a.m.

Q At some point that morning, did you get a call to respond to the Five Points area?

A Yes, ma'am.

Q Approximately what time was it when that call came in according to your records?

A The call was received to dispatch at 0223 and then it was dispatched to the unit at 0226.

Q And we're going to talk about 0223 and 0226, that's military time?

A Yes, ma'am, that's for the morning.

Q But that would be a.m. just for people like me?

A Yes, ma'am.

Q So that would be the early morning hours?

A Yes, ma'am.

Q And where were you dispatched to go?

A We were dispatched to the Five Points area. It just says Five Points district.

Q And when you got to the Five Points area that morning, were you driving or was your partner driving?

A My partner was driving.

Q Were you going to be the primary caregiver when y'all got there that day?

A At the time, we were unsure.

Q When you came up into the Five Points area, did y'all

come down Harden Street?
A Yes, ma'am.
Q And, in fact, where were you, your headquarters, and how long did it take you to get there?
A We were initially at our headquarters, which is right at Hampton and Harden Street. We came down to -- it was in front of the fountain.
Q So that's literally less than five blocks?
A It was a two-minute response time.
Q Okay. Quick response time. When you got there, what did you observe?
A At the time, it was a large amount of people around. We were initially dispatched out for a laceration. However, once I got there and made contact with law enforcement, we weren't exactly sure as to what was going on and that's when I observed the patient on the ground.
Q And you just said it, but I want to repeat it. When you got there, was law enforcement already there where the patient was?
A I remember one officer being there.
Q Okay. Tell the jury what you observed when you got there.
A When we first initially arrived, there was huge a crowd around us in the area. There was an officer standing near the patient. There were cars also lined up

on the curb because we had difficulty getting our unit in. I observed the patient lying on the ground.

We were initially dispatched out for a laceration, so I was looking for a lacerated patient. And I didn't notice any blood around the patient, so at the time, we were trying to determine if that was the patient or not. And that's when law enforcement and I started to discuss.

Q Did you have a brief conversation with law enforcement in order to make sure that was who you were supposed to be there for?

A Yes, ma'am.

Q After that conversation, did you then proceed to treat the person you saw on the sidewalk?

A Yes, ma'am. It was kind of hard to determine exactly what was going on. When we initially found her, as I said, there was no blood around her. We were dispatched for a laceration, so we were trying to determine whether or not there might have been an additional patient and another officer may have called us to the same area. He did say that he had responded to her for a laceration. That's when I observed a small amount of blood on her arm.

Q Let me stop you there. You said you saw -- there was a -- with a laceration, typically, there's blood?

A Yes, ma'am.

Q And at this point when you're looking at her when you

first observed -- and who was the patient?
A Martha Childress.
Q Martha Childress. When you first observed her on the ground, you didn't see any apparent blood?
A No, ma'am.
Q So upon further inspection, you said you then found a small amount of blood?
A Yes, ma'am.
Q Where was that?
A It was on her arm. It was on her right arm.
Q Her right arm?
A Uh-huh.
Q Once you observed that, did you then proceed to treat her?
A I wiped the blood off. It was really light, pink-tinged blood. I wiped it off, didn't see anything up underneath it. I asked the officer where she had been cut at or if he knew. At the time, she was lying on the ground and she was having some difficulty breathing. I was trying to determine whether or not she was hyperventilating or if there was something else going on. That's when I asked the officer why they had been called down there.
Q You can't say what the officer said to you, but then did you -- you said you observed that she was having

trouble breathing?

A Yes, ma'am.

Q Was that significant to you?

A It was. Initially, I was unsure exactly what was going on because she appeared to be hyperventilating, which is similar to like if somebody is having an anxiety attack.

Q Uh-huh.

A But she was having labored breathing. So at the time, I was trying to determine whether it was something anxiety related or if there was something else more significant.

Q As you continued to observe her, did you notice anything else that caught your attention?

A Her legs were twitching.

Q Okay.

A Her lower extremities, the muscles in her thighs were -- they weren't moving, but they were almost like muscle spasms in the upper part of her thighs, but she wasn't able to move her legs and she said she couldn't feel her legs.

Q At that point, what did you do?

A At that point from what I had gathered from the officers, from what I had seen on her arm and then from the small bits and pieces, I went ahead and started

looking to see maybe if she had been shot. I noticed at that point I started -- she had a very flowy shirt on. I noticed a small hole in the side of her shirt. I cut around it. I noticed she had another hole in the tank top that was underneath it, cut it. And then I noticed a hole in her bra and cut it and that's when I found the gunshot.

Q And what did the gunshot -- how did it appear to be?

A It appeared to be -- it was about the size of a quarter. It was bubbling and there was no significant bleeding coming from it.

Q Is that unusual in your experience?

A Not for that location. For that location, that's very indicative of a gunshot wound to the chest in the lung cavity.

Q Once you found a gunshot wound on her side, did the trouble she was having breathing make more sense to you?

A Yes, ma'am.

Q Why is that?

A Because at that point in time, I determined that she had -- I was suspecting either hemothorax or tension pneumothorax.

Q Okay. You got to stop and explain. What's a --

A A hemopneumothorax is whenever somebody has had an injury to the chest and the lung basically fills up with blood. And a tension pneumonia thorax is when somebody

has sustained an injury into the portion where the lung is and the air builds up in the space and causes pressure on the lungs. You have to insert a needle to release the air so the person can breathe better.

At that point in time, considering I did not know where the bullet exited or if it had exited, which at that point, I was thinking it had not because I did not see any blood.

Q Okay.

A I went ahead and determined that she was a hemothorax and went ahead and treated her at the most appropriate level, which was the most serious.

Q At that point, did you think things were getting more urgent?

A Yep. Oh, yes, ma'am.

Q And as far as her vital signs and everything else, did you make any notes of anything that was significant in your findings?

A The main significant things that I did find on her, the only obvious injuries she had or where an actual injury occurred was the bullet wound up underneath her chest, and then she had the muscle spasms in her legs.

En route, she did start to have more trouble breathing. I had to address the wound appropriate on her chest. I tried to release some of the air. It didn't

really help with her breathing. Her oxygen SAT level did come up and her vitals stayed normal within -- while en route. However, I did call trauma alert and we had her to the hospital within 10 minutes.

Q Within 10 minutes?

A Ten to 12 minutes, yes, ma'am.

Q Was that important for you to get her there that quickly?

A Yes, ma'am.

Q Why is that?

A Because I had called 911 trauma alert on her. She needed help from the trauma team. She needed immediate care. It was a life threat.

Q What was her demeanor when she was down on the ground?

A She was crying and very anxious.

Q Did she know what had happened to her?

A No, ma'am. She just kept saying over and over again, What's wrong with me? What's wrong with me? I can't feel my legs. And then after I got her in the unit and we started to move towards the hospital, she was asking more and more questions. I was trying to get her to slow down talking because of the air she was taking in. I explained that I thought she had been shot and I thought her lungs were filling up with blood and I needed her to stop

talking.

Q And when she was talking about the legs, did she say anything else?

A She just said that she couldn't feel her legs and she couldn't move them.

Q Once you got her to the hospital, was she then rushed in to be treated by a trauma surgeon or trauma people?

A Yes, ma'am. When we have a trauma alert, it automatically activates the trauma team. There's two levels, a 911 and an 811. Martha qualified for the 911. So we took her up to bay one and there was a trauma team waiting on her on our arrival since I had advised them on the scene.

Q Because her wounds were life threatening?

A Yes, ma'am.

MS. CAMPBELL: Thank you. I don't have anything further.

THE COURT: Cross?

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q Good morning.

A Good morning.

Q How many -- can you tell the jury how many gunshot wounds you've treated or responded to in your tenure?

A A significant amount.

Q A significant amount?
A Yes, ma'am, a very significant amount.
Q You would agree with me that being shot with a .40-caliber hollow point is a gunshot wound that is pretty significant damage, correct?
A I'm not a forensics expert, but any gunshot wound, especially to the torso of the body, is very significant.
Q You were surprised that you couldn't find blood?
A No, ma'am, not after I determined the location of the wound.
Q It's important for people with potential spinal cord injuries not to be moved or jerked, correct?
A That's true.
Q When you arrived, you noted that there were -- that she was experiencing some twitching in her legs?
A Yes, ma'am.
Q Thank you.

MS. CAMPBELL: Just a couple questions.

REDIRECT EXAMINATION

BY MS. CAMPBELL:

Q When you got there, I asked you specifically about Martha, did anyone even know she had been shot?
A No, ma'am.

THE COURT: Thank you, ma'am. Have a nice day.

All right. Ladies and gentlemen, we're going to

break for lunch. It's about 12:40. We will start back at two o'clock. Do not discuss the case with anyone. Do not let anyone discuss the case with you. Keep an open mind. We'll see you back and ready to go at two o'clock.

Everyone remain seated while the jury is excused. Thank you very much.

(WHEREUPON, the jury left the courtroom at approximately 12:36 p.m.)

THE COURT: Okay. Anything before we break?

MS. ZMROCZEK: Your Honor, I would just ask -- I know we did this in the last media intensive trial, that every morning they be asked --

THE COURT: Okay.

MS. ZMROCZEK: -- if they had by happenstance viewed any interviews.

THE COURT: Okay.

MS. ZMROCZEK: Thank you.

THE COURT: Anything from the State?

MS. CAMPBELL: No, sir.

THE COURT: All right. Two o'clock.

(WHEREUPON, a lunch break was taken.)

(WHEREUPON, Court's Exhibit Nos. 2, 3 and 4 were marked for identification only.)

THE COURT: Okay. We're back on the record. We've got three notes. Note number one says, Where are the

snacks?

Have we taken care of that issue, Mr. Tolbert?

THE BAILIFF: It's taken care of, Your Honor.

THE COURT: Number two, Juror No. 203 wants to see me personally.

Court's Exhibit No. 4, juror note number three, says, While leaving for lunch, I was on the elevator alone. The Plaintiff and her entourage entered the same elevator. I immediately faced the elevator button, said nothing and no eye contact was made.

MS. ZMROCZEK: I'm sorry, who and her entourage?

THE COURT: The Plaintiff.

MS. ZMROCZEK: Okay.

THE COURT: I'm just reading it. So I'm going to go talk to the juror that wants to talk to me individually and then I'll let you know what's going on with that.

Anything else before I go do that?

MS. ZMROCZEK: Yes, Your Honor. This morning, I was provided the dash cam video from Officer McLaughlin's vehicle. However, it's provided to me in three different titles. I would ask that I be given just the unredacted dash cam with all the audio.

MS. WALKER: Your Honor, we received it in three different titles. There's nothing that we've redacted or taken away from, that's the way we received them. And

240

that's the way I went over it with Ms. Zmroczek last week when she and I went over all the videos in this case.

MS. ZMROCZEK: Your Honor, I'll just take that up with McLaughlin, I guess, when he testifies.

THE COURT: Do you have any other videos that you haven't turned over, Officer McLaughlin, if you're still present in the courtroom?

OFFICER MCLAUGHLIN: I'm still here, Your Honor. No.

THE COURT: Do you have any other version of it?

OFFICER MCLAUGHLIN: No, sir. It's not my dash cam, Your Honor. It's Sergeant Reese's.

THE COURT: Do you know if he has any other version of it?

OFFICER MCLAUGHLIN: Your Honor, when our dash cams are turned on, it records two minutes prior to -- or one to two minutes prior to when anything happens.

THE COURT: Okay.

OFFICER MCLAUGHLIN: So that's probably what happened.

THE COURT: But you don't know of any other copy of it that exists, is that a fair statement?

OFFICER MCLAUGHLIN: Yes.

THE COURT: All right. I'm going to go talk to this juror. Everybody stay put.

(WHEREUPON, a short break was taken.)

THE COURT: Okay. Her concern --

Where's Ms. Campbell? Oh, there she is.

The juror who wanted to speak with me, Becky from the clerk of court and my law clerk was present, her concern was where to park. That was it, so pretty simple. And I handled that issue. Literally, it was where do I park and I'm having trouble finding parking and getting in and out of the building. So we resolved that issue.

Okay. Anything else before I bring in the jury?

MS. ZMROCZEK: The third note, did it have a juror number on it?

THE COURT: Yes, 291.

MS. ZMROCZEK: 291?

THE COURT: Yes.

MS. ZMROCZEK: Thank you.

THE COURT: Okay. Anything else?

(There was no response.)

THE COURT: Bring them in.

(WHEREUPON, the jury entered the courtroom at 2:11 p.m.)

THE BAILIFF: The jury is seated.

THE COURT: Thank you very much.

The State may call their next witness.

MS. WALKER: Thank you, Your Honor. The State calls Ellison Dew.

242

THE COURT: Please come forward to be sworn.

ELLISON DEW,

after being duly sworn, testified as follows:

THE CLERK: Thank you. Have a seat in the witness stand, please.

THE BAILIFF: Watch your step.

THE CLERK: State your full name for the record.

THE WITNESS: Ellison Grace Dew.

DIRECT EXAMINATION

BY MS. WALKER:

Q Hi, Ellison.

A Hi.

Q How old are you?

A Twenty.

Q Where do you currently live?

A Greenville, South Carolina.

Q Are you in school?

A Yes.

Q Where are you in school?

A Clemson.

Q Do you know Martha Childress?

A Yes.

Q And how long have you known Martha?

A Since I was three.

Q Did y'all grow up together?

A Yes, ma'am.
Q Where did Martha go to college?
A South Carolina.
Q Are you nervous?
A No.
Q Okay. Despite you being at Clemson and her being at the University of South Carolina, did y'all maintain a close friendship?
A Yes, we did.
Q I want to take your attention back to October of 2013. Did you come down to Columbia to visit Martha at some point?
A Yes, I did.
Q And why were you coming to visit Martha?
A We were going to the fair and going to the Hunter Hayes concert.
Q In terms of hanging out that night, did y'all eventually go to Five Points?
A Yes, we did.
Q And while y'all were in Five Points --
MS. ZMROCZEK: If -- I'll wait until the question is finished, Your Honor. I'm sorry.
BY MS. WALKER:
Q Okay. And while y'all were in Five Points, were y'all by yourselves?

A No, we were with friends.
Q Where in Five Points did y'all -- I guess what were you doing while you were in Five Points?
A We went down there with some friends, hung out and went to Pita Pit to get food and then we left -- we were going to leave.
Q Did y'all drink while y'all were down there?
A Yes.
Q At that point in time, how old were you?
A Eighteen.
Q And when y'all were going to go leave Five Points, what was y'all's plan for leaving Five Points?
A We were going to get a cab and then go back to her apartment.
Q And was she staying on campus at that point?
A She stayed in West Quad.
Q West Quad dormitory?
A Yes.
Q While y'all were waiting for a cab, tell us what happened.
A Well, we were standing at the fountain and we had put our name down for one of the cabs there next to the fountain. And then we just heard -- I heard gunshots and then she fell down. And then --
Q Let me slow you down.

A Okay.
Q When you said you were putting your names down on a list, where was that?
A It's right in front of the fountain. There's just a bunch of cabs that line up to pick people up. You just put your name down on a list and they go down the list of people and they call your names out whenever they get to your name for your cab to get you, to take you.
Q Was it just you and Martha there at that point?
A Yes.
Q Now, when you said you heard gunshots, how many gunshots did you hear?
A About four or five.
Q Once you heard those gunshots, what happened to your friend?
A She fell down.
Q Did she say anything to you?
A She said she couldn't feel her legs and she was really scared.
Q At that point, did you realize what had happened to Martha?
A I mean, kind of. Not completely. I didn't like know for sure. I mean, she just fell. I kind of assumed at that point that a bullet had hit her.
Q Did you see her bleeding or anything at that point?

A No.
Q Once she fell, what did you do?
A I stood there with her and held her hand until the ambulance got there.
Q And once the ambulance arrived, tell us what happened next.
A They took her. And then I stayed to give statements and stuff like that to police. I stayed down there for a little bit longer, and then I got picked up and taken to the hospital to wait to see what had happened.
Q And at that point, you said -- that night, you gave statements to the police?
A Yes.
Q Do you remember who picked you up that night?
A Her stepdad.
Q Martha's stepdad?
A Yes.

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

Thank you, Ellison. I don't have any more questions for you. Please answer any questions the Defense attorney may have.

THE COURT: Thank you.

Cross?

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q Good afternoon.
A Hi.
Q You chose to go to Clemson?
A Yes, ma'am.
Q You came down for the fair?
A Yes.
Q And the Hunter Hayes concert?
A Uh-huh.
Q It ended at 11?
A Yes.
Q Tell the jury where y'all went after that.
A We went to Five Points and we were with some friends. And then we went to get food and then we were going to leave after that.
Q All right. Let's talk about Five Points. You grew up here?
A No, I'm from Greenville. I grew up in Greenville, South Carolina.
Q So you weren't familiar with the area?
A Yes.
Q You knew there were bars?
A Yes.
Q You had a fake ID?
A No, I didn't have one.
Q You were able to drink without a fake ID?

A Well, I didn't have my own, but I used someone else's.

Q We've all been 18. Did you go to any specific bars in Five Points or were you drinking somewhere else?

A Well, we did go to one bar.

Q Which bar was that?

A Kildare's.

Q Do you know which street that was on?

A I don't know.

Q You went to Pita Pit?

A Yes.

Q Walked through Five Points?

A A little bit.

Q Came down from the Pita Pit to put your name on the list?

A Yes.

Q It was crowded?

A Yes.

Q Lots of people?

A Yes.

Q About two o'clock in the morning?

A Yes.

Q You heard four to five gunshots?

A Yes.

Q And then your friend went down?

A Yes.
Q You did not see who fired those gunshots?
A No.
Q You told the police everything you saw that night?
A Yes.

MS. ZMROCZEK: Thank you for your testimony.

THE COURT: Ms. Walker.

MS. WALKER: I don't have anything further.

THE COURT: Thank you, ma'am. Have a nice day.

Call your next witness.

MS. GARFIELD: Your Honor, the State calls Martha Childress.

THE COURT: All right. Please come forward Ms. Childress and be sworn.

MARTHA CHILDRESS,

after being duly sworn, testified as follows:

THE CLERK: Thank you. You can just get up there and I can get the microphone for you.

MS. GARFIELD: Judge, could she just stay right down here?

THE COURT: Whatever is easier is fine with me.

THE CLERK: State your name for the record, please.

THE WITNESS: Martha Katherine Childress.

THE COURT: Thank you, Mr. Tolbert.

DIRECT EXAMINATION

BY MS. GARFIELD:

Q May I call you Martha?

A Yes.

Q Martha, are you nervous today?

A A little bit.

Q Have you ever testified before?

A No. I'm sorry.

Q It's okay.

A It's just really hard to relive this.

Q Take your time. Just take your time.

Martha, tell the Court how old you are.

A I'm 20.

Q And where are you from?

A I'm from Greenville, South Carolina.

Q And you're a student at Carolina?

A Yes, ma'am.

Q And when did you become a student at Carolina?

A My freshmen year when I was 18 years old.

Q And was that in August of 2013?

A Yes, ma'am.

Q Did you live on campus?

A I did. I lived on West Quad.

Q And if you'll share with the jury, they might not be familiar with USC campus. Can you share with them where West Quad is?

A Yes. I'm not the best with streets, so I'll try to give you a little bit of a map. It's pretty close to where the Strom Thurmond Wellness Center is, if you're familiar with that area. There's a whole clump of quad areas. So it's basically near where the Main Street area is. It's not too far from there.

Q Did you have a roommate?

A I did. I had four roommates. I was in an apartment-type setting.

Q But this was through the University?

A Yes, ma'am.

Q Were any of your roommates friends from back home?

A One of them was, yes, ma'am.

Q And the other two were strangers?

A Yes.

Q And you began your college career. What did you plan to study in at the time?

A I went to Carolina as a pre-international business major.

Q And what were you hoping to do with that?

A I wasn't quite sure as a lot of freshman are.

Q Did you also become involved in any extracurricular activities on campus?

A I did. I joined the sorority Zeta Tau Alpha and I was kind of fishing around with some other stuff. I

thought about doing some journalism things. I was involved in some journalism programs in high school, so I thought I might want to join the newspaper, but I had become a Zeta and I really loved doing that.

Q Are you still an pre-international business major?

A I'm not anymore. I switched my major to marketing and management.

Q Are you currently a student at the University of South Carolina?

A I am, yes.

Q What year are you -- what year, I guess, will you be beginning?

A I will be a second semester sophomore technically, but I like to say I'm a junior. That makes me feel a little bit older.

Q That won't last but for so long. Martha, I'm going to take you back to the weekend that we're all in court for, October 13th, 2013. Tell the jury about your relationship with Ellison.

A So I've known Ellison and her twin sister, Chandler, since we were three. We were in dance class together when we were little. And our moms are best friends, childhood best friends. So we've been friends our entire lives. And Ellison came down for the weekend to visit me. She's also a Zeta at Clemson, so we have this really special

bond with each other.

Q Had she come down that Saturday or the previous Friday?

A She had come down that Friday. I had actually been officially initiated that Saturday morning into Zeta, so I had officially become a member of my sorority that morning. So it was a really exciting day for me.

THE COURT: Okay. We've got to slow down.

THE WITNESS: Oh, sorry.

THE COURT: Okay. Ms. Ambroziak can only type so fast. And so when people read things or some people speak faster than others, Ms. Campbell, and so I will often tell witnesses and lawyers to slow down their speech so that we can make sure we have all the words taken down appropriately. So Ms. Childress, if you would, please slow down just a little bit for us.

THE COURT REPORTER: And if she could speak up a little bit.

THE COURT: And if you could speak up so the court reporter can hear you, okay?

THE WITNESS: Okay.

THE COURT: Go ahead, Ms. Garfield.

MS. GARFIELD: Thank you.

BY MS. GARFIELD:

Q Just a moment. Take your time. Okay?

A Uh-huh.
Q So Ellison had come down on Saturday?
A Yes.
Q And your plans were to go to the State Fair?
A Yes, ma'am.
Q And particularly, why were you going to the State Fair?
A We were going to the Hunter Hayes concert. He was performing there.
Q And how did you get to the State Fair?
A We had to call a cab.
Q And why did you call a cab?
A It was -- the State Fair grounds were pretty far away from where I was. We really didn't want to walk. It was just easier. We were willing to pay the money. And safer, too.
Q So you went to the concert?
A Yes, ma'am.
Q And who did you go to the concert with?
A I went with Ellison. And my roommate and her boyfriend rode in the cab with us. When we got to the concert, we went our separate ways and went back to my dorm together.
Q Who went back to the dorm with you?
A It was me, Ellison, my roommate and her boyfriend all

went back together.
Q And then how did you get back from the fair to your dorm?
A We had ended up walking back because we couldn't get a cab at that point in time.
Q Just too busy?
A It was way too busy. It was crowded. We tried, but no one would come for us. We felt we had a pretty strong boy with us, so we felt like we were safe enough. It probably wasn't the best decision looking back on it now, but it was what we had to work with.
Q And I guess being from Greenville, are there other students that were at Carolina that you knew from your high school?
A Yes, ma'am. A large majority of the kids from my school either went to Clemson or Carolina, so a lot of people from my hometown went here. So I -- I continuously run into people from high school here.
Q And did you and Ellison after you got back to your dormitory make plans to go visit any of those friends?
A Yes, ma'am, we did. We made plans to go visit two of our friends from high school who lived in Columbia Hall, which was across campus.
Q How did you get to Columbia Hall?
A We called a cab, ended up being able to get a cab, so

we called a cab and went across campus.

Q Okay. And then at that time once you were at Columbia Hall -- I'm going to stop for a moment. Can you explain to the jury to the best you can the relationship where Columbia Hall is to our Five Points area?

A So Columbia Hall is probably, I would say, just a few blocks away from Five Points. It's a walking distance. It's really not too far. I'm not the best with -- again, not the best with directions, but I would say it's a few blocks away. You could definitely walk there.

Q Is it beside the Capstone dormitory?

A Yes, ma'am.

Q And the Capstone dormitory is the one with the gold circle on top?

A Yes, ma'am, it is.

Q Once you got to Columbia Hall, did you and Ellison decide to go down to Five Points?

A We did, yes, ma'am, with some of our friends.

Q With some of your friends?

A Yes, ma'am, we had three friends with us.

Q And did all of you walk to Five Points at that time?

A Yes, ma'am, we all went down together.

Q And y'all were drinking?

A Yes, ma'am.

Q And you did go get something to eat?

A Yes, ma'am, we went to Pita Pit.
Q And after you ate, it was time to go?
A Yes.
Q And at that point, you and Ellison went to the fountain?
A Yes, ma'am. We went to the fountain because that is usually kind of the hub for all the cabs.
Q And you put your name on the list?
A Yes, ma'am. They have kind of a system where you give them your name, where you're going. They have it on a clipboard and they have a number and they'll call your name when there's a cab waiting for you.
Q And you were in line for the cab?
A Yes, ma'am.
Q Martha, share with the jury what happened next.
A So we had just put our names down for the cab, really, and we were standing around. All of a sudden, I heard this really loud noise. I'm really not sure what it was, and I just fell to the ground. And I wasn't sure why I had fallen. I just thought I tripped over something and, immediately, I couldn't feel my legs at all.
Q Did you cry out to Ellison?
A (Witness nodded.) I looked up at Ellison and I kind of held out my hand to her and said, Will you help me up? And I tried to move my legs and I couldn't. I just said,

Ellison, I can't feel my legs.

Q Did Ellison stay there with you?

A She did. She stayed with me the entire time. She held my hand.

Q And did an ambulance come?

A Yes, ma'am.

Q And there were other people surrounding you as well?

A Yes, ma'am, it was a pretty populated area, so there were a lot of people who gathered around just to -- obviously, there was a large noise and people wanted to see what happened. There were some people that were trying to help me out, which I'm incredibly appreciative of.

Q And once you got into the ambulance, Martha, what did you ask?

A I asked what had happened to me. I don't -- when I was still by the fountain, I was asking, you know, what happened, what had happened and no one was answering me because I don't think anyone at that point knew what happened. It was very chaotic and it was hard to tell. Finally, when I got into the ambulance, I just kind of screamed out what happened to me and the paramedics told me I was shot.

Q Do you remember what happened next, Martha?

A At that point, once that happened, I just remember my

breathing started to get really -- I really just couldn't breathe. I blacked out after that. I can't remember anything after that.

Q After you blacked out, what do you recall being your next move?

A I just vaguely remember being in the ICU in Columbia here. It's just very, very blurry memories being at the hospital. I know I was in the ICU for about a week. I couldn't sleep at all. I was in horrible pain. I was having nightmares. It was awful.

Q And how long do you recall -- do you know how long you were in ICU?

A For a week.

Q And that was at Palmetto Health Richland Memorial?

A Yes, ma'am.

Q And upon your release from Richland Memorial, where did you go?

A The Shepherd Center in Atlanta, Georgia.

Q And we won't go into everything, but can you just briefly explain to the jury what the Shepherd Center is?

A The Shepherd Center is a place for people with brain injuries and spinal cord injuries. It's a rehabilitation center. So they take you and they do physical therapy, occupational therapy. It just kind of encompasses all of that.

Q It's obvious Martha that you suffered a spinal cord injury. Did you suffer any other internal injuries?

A Yes, ma'am, the bullet had grazed my lung, so I have a nick in my lung. And I had to have my liver resected as well as my kidney. I believe it hit my kidney.

Q Did the bullet graze you before entering?

A Yes, ma'am. It grazed my arm, so I have a small little graze on my arm about yay big.

Q It grazed your arm before entering your body?

A Yes, ma'am, my right arm.

Q Martha, do you know the person who shot you?

A No, I do not.

Q Had you had any contact with him that night?

A No, ma'am.

MS. GARFIELD: Beg the Court's indulgence.

(Pause.)

MS. GARFIELD: Martha, thank you for being here today. Please answer any questions Ms. Zmroczek has.

THE COURT: All right.

Cross-examination?

MS. ZMROCZEK: Martha, thank you for testifying. I have no questions for you.

THE COURT: All right. Thank you, Ms. Childress.

The State may call their next witness.

MS. CAMPBELL: The State calls Officer Benjamin

Arrowood.

BENJAMIN ARROWOOD,

after being duly sworn, testified as follows:

THE CLERK: Thank you. Have a seat in the witness stand, please. State your name for the record.

THE WITNESS: Benjamin Arrowood.

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q Sir, where are you employed?

A Columbia Police Department.

Q What do you do there?

A I'm a patrolman there at the police department.

Q And where are you currently assigned?

A Currently assigned to north region.

Q What is the north region?

A North region is anything north of, pretty much, Elmwood, all the way up to Wilson Boulevard.

Q Towards Blythewood?

A Not that far. It stops right after North Main turns into Wilson Boulevard.

Q Back in October of 2013, what unit were you assigned to?

A I was in the south region. I was just on street patrol.

Q And south region, what area of the city does that

include?
A That's near the Five Points area. It goes out towards Garners Ferry, also, has parts of Forest Drive on it.
Q You said it's the Five Points area?
A Yes.
Q Are you familiar with the streets in Five Points?
A Yes.
Q Are you familiar with Harden Street?
A I am.
Q Where is Harden Street in relation to Five Points?
A Right in the middle of it.
Q Are you also familiar with Devine Street?
A I am.
Q Where does Devine Street come in as far as Five Points is concerned?
A It intersects with Harden Street a little bit further down, about the 600 block of Harden Street.
Q You've heard reference in this case to an area called the fountain?
A Yes, ma'am.
Q Can you describe it to the jury?
A It's about midway down through Five Points, the 700 block. It's a central gathering area. Of course, there's a fountain there. They typically have it -- it's

generally lit up with some lights as well.
Q So at night, they actually light it up with lights?
A Yes.
Q So you can see it. You said it's a gathering point, what did you mean by that?
A Once the bars close down, it's a taxi cab spot. And then even before that, people will go there and meet up there as a place of reference in order to try to meet up with other people.
Q And there's no admission to get in the area?
A No.
Q And it's not a restaurant or a bar, it's just an area?
A Right.
Q With a fountain?
A Right.
Q You mentioned that there was taxi cabs typically there at night. Is there a system that's actually set up down there for people to get taxi cabs?
A Yes. They'll either -- as other people have mentioned, they'll have them put their name down and they'll call it out depending on how busy they are. Sometimes, it's not that busy, then they'll be able to just remember who's there and assign them accordingly.
Q That evening, October the 13th in the early morning

hours, what shift were you working that day?
A I was on night shift. I was on C squad.
Q What does C squad mean for us?
A C squad -- patrol division is split up into four different squads, A, B, C and D. I was on C squad, just doing regular patrol. When Five Points gets pretty busy, officers that are assigned to or close to the Five Points area will generally help with patrol down there.
Q When you were patrolling that night, were you in an automobile or were you on foot?
A I was issued an automobile that I was using for regular parol, but when it got busier down there, we ended up parking the vehicle and were out on foot.
Q About what time was it that you started your foot patrol in the Five Points area?
A Probably sometime around midnight, going into 1:00 a.m. once it started to pick up.
Q And is that when Five Points typically -- and this was a Saturday night into a Sunday morning, I believe?
A Yes, ma'am.
Q And that's when traffic or -- it's busier?
A Yes.
Q Is that fair to say?
A Yes.
Q Is there any set time that the bars have to close

down there or anything like that that you know of?
A On Saturdays going into Sundays, it's 2:00 a.m.
Q That night when you were doing your patrol, did you have anyone with you?
A I did.
Q Who was with you?
A I was training somebody at the time, Officer Sutton.
Q Officer Sutton?
A Yes, ma'am.
Q And I want to turn your attention to shortly after 2:00 a.m. that morning. Were you and Officer Sutton doing a foot patrol?
A We had actually just gotten out with some people in the 700 block and ended up placing two individuals under arrest not in connection with anything that we're here for today. And we were making contact with the transport wagon in order to get the individuals transported down to the jail.
Q In fact, the transport wagon, it actually picks up individuals after you've made an arrest and transports them?
A Yes, it helps them.
Q You mentioned when this happened, you were at the 700 block, what street are we talking about?
A Harden Street.

Q And the 700 block of Harden Street, where is that in relation to the fountain?

A The fountain is at 700 block.

Q And the intersection right there at the fountain, what street goes on one side of the fountain when Harden -- when it T-bones right there, what street is that?

A You have one that's Greene Street and also have Saluda.

Q So it's actually at the corner of Greene Street and Harden, the fountain?

A Yes.

Q And then Saluda kind of runs behind it?

A Yes.

Q And kind of cuts off?

A Yes.

Q You had just made an unrelated arrest that night when what caught your attention?

A Some individuals that were out in the middle of the roadway and we ended up having to address them. They were grossly intoxicated.

Q And that was a separate event?

A That was a separate event.

Q After you dealt with that, what caught your attention next when you were around the 700 block?

A When we were down there with the transport wagon, we

were having them load up and we heard gunfire.
Q Could you tell which direction the gunfire was coming from?
A It sounded like it was coming down from closer towards the fountain, 700, possibly even the 600, but with it being in a city environment, when you hear gunshots, it tends to echo around.
Q When you say it tends to echo around, how many gunshots did you hear that night, do you know?
A Again, with it echoing, it's hard to tell, at least, two. But with the echo, it's hard to say exactly how many or where it comes from.
Q Once you heard gunshots or the echo of gunshots, what did you do?
A Immediately made sure that the prisoners we had were secured by the transport wagon and rushed towards the sound of the gunfire.
Q What did you find when you rushed towards the sound of the gunfire?
A I found Ms. Childress. She was actually laying on the ground.
Q At that point, did you know she had been shot?
A Not immediately. I saw her and her friend there. Her friend looked like she was attempting to help her up.
Q So at that point, you didn't know whether there was

any correlation with her being on the ground and the gunshots?

A Not at that point in time.

Q What did you do?

A We end up calling EMS out there for her. Regardless of what the issue was, she was lying on the ground, so she did need some type of medical attention.

Q Who actually placed the 911 call?

A We ended up calling it over the radio.

Q Over the radio?

A Yes, ma'am.

Q And did you actually stay there with her while you waited for EMS?

A For the most part. Immediately right after that, Officer McLaughlin said that he had one running down towards that direction. After EMS had been called --

Q How did you hear that? Was that over the radio --

A Over the radio.

Q -- or was he next to you?

A It was over the radio.

Q Was he further away from -- was he further down the street?

A Yes.

Q When he was further down the street, was he further down Harden Street, Greene Street or what street?

A Further down Harden Street.
Q And if you're looking at the fountain dead on and the fountain's in front of you, would that be to your left or to your right?
A It would be to the left closer to the 600 block.
Q Are you familiar with the restaurant called Yesterdays?
A Yes.
Q Is it towards that?
A Towards that, yes.
Q He said he had --
MS. ZMROCZEK: Objection, Your Honor, hearsay.
MS. CAMPBELL: It's not offered for the truth of the matter asserted, just showing what he did.
THE COURT: I didn't even hear the question.
MS. CAMPBELL: I started out with -- he's already testified that he said he had one detained, someone detained.
THE COURT: Overruled.
MS. CAMPBELL: That's the extent of it.
THE COURT: I'm sorry.
BY MS. CAMPBELL:
Q And at that point, was he asking for any kind of assistance or anything like that?
A I can't recall if he asked for assistance over the

radio, but due to the severity of what had happened and the immediate area of it, once Ms. Childress had EMS en route and my trainee was standing by with her and there were several other officers in the area, in that immediate area, I then rushed to go help Officer McLaughlin.

Q What did you see as you approached Officer McLaughlin and where was he?

A He was -- one of the businesses there, it used to be called Pops Pizza, it's been renamed to something else now, the entrance kind of indented a little bit towards the business, so it wasn't directly off onto the sidewalk, but it was still on the sidewalk area because the business was closed. Office McLaughlin had an individual that was placed up against the wall of the business right there and there was another individual that was circling around Officer McLaughlin.

Q And the person that he had -- that he was detaining, was he shorter or taller than the person that was circling around?

A Shorter.

Q So the taller person -- do you remember what color shirt the taller person was wearing?

A Not off the top of my head.

Q But the taller person you said was circling around and what was he doing?

A He was being very loud and boisterous, using profane language. I don't know what his actual intent was while he was doing that, but he was also grossly intoxicated at the time as well.

Q And how did you make the determination he was intoxicated?

A He had a high odor of an alcoholic beverage about his breath and person and was unsteady on his feet.

Q And based on the situation with Officer McLaughlin and the person he had in custody, what did you do about the second person?

A Ended up detaining him as well. There was a brief mention of a gun when I walked up to Officer McLaughlin. I went ahead and detained him as well as we were unsure of who exactly had a firearm and what the intent was for the other individual who was circling back behind Officer McLaughlin.

Q But at that point, had Officer McLaughlin already found the gun on the shorter person he detained? Do you know?

A This was within seconds of each other.

Q And just for the record, you weren't the one that found the gun on Michael Smith?

A No.

Q But you detained the second person?

A Yes.
Q Taller person. Once that person was also detained, was he, ultimately, placed under arrest as well?
A Yes, he was.
Q For what?
A Disorderly conduct and public drunkenness.
Q And was Mr. Smith, ultimately, arrested as well?
A Yes.
Q And was that Officer McLaughlin that handled that or you?
A Officer McLaughlin.
Q Did investigators come to the scene that night?
A They did.
Q And did you, yourself, make contact with additional witnesses that night?
A As many as I could.
Q Do you remember Miss Ellison Dew?
A I do.
Q You can't say what she said, but did she talk with you?
A Yes, she did.
Q Did you also make contact with a Michael Painter?
A Yes.
Q You can't say what he said, but did he also give you information that was useful?

A Yes.
Q Did you also become aware that there was video that was recovered that night?
A They had been picking up the cameras in Five Points to other events that were happening down there, so I was very aware that there was footage of everything that happens down there.
Q That night did you also assist in running the serial number from the gun through what's called NCIC?
A I did not call it in myself, Officer McLaughlin did, but I was next to him when it did happen.
Q As a result of that, was an additional charge of a stolen pistol given to Mr. Smith?
A It was.
Q And to be clear, the taller person that you arrested for disorderly conduct, were there any guns found on him?
A No.
Q So he was not armed when you detained him?
A No.
Q Did you also make contact with some additional young women that were with Mr. Smith that night?
A I did, the ones that claimed to be with him.
Q And were they actually interviewed, ultimately, by investigators or by you?
A I talked to them briefly and their information was

forwarded to investigators as well.

Q Did you also get information from the hospital as to the condition of Martha Childress?

A I did.

Q And did you put that in your report as well?

A I did.

Q Ultimately, did a crime scene investigator come down to photograph and collect evidence at the scene?

A Yes.

Q Were there any steps taken to try to preserve this area where all this happened that night?

A Yes. Especially with so much foot traffic that we had around there, we did the best that we could. We tried to block off the area and tried to get -- anybody who wasn't directly involved in it, we tried to get people out of it to maintain the integrity of the crime scene the best that we could.

Q How would you describe this area that night as far as traffic, how congested it was?

A The pedestrian traffic, extremely congested. I mean, there's a lot of people. It's right at the time all the bars dumped out to where they're closed. Then everybody is trying to get out to get a taxicab or get home.

Q And the cameras down there, they record from different angles what happened?

A Yes.

MS. CAMPBELL: Thank you, sir. I don't have anything else.

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q C squad?

A Yes, ma'am.

Q Short straw?

A Not really.

Q What were the shift hours?

A We worked 12-and-a-half hour shifts.

Q What time did you start?

A It was 1830, which would be 6:30, until seven o'clock in the morning.

Q You mentioned on direct that there were cameras because of other events happening, correct?

A Yes.

Q For some time, there had been problems in Five Points?

A Depending on what you're saying problems are.

MS. CAMPBELL: Objection, Your Honor, to this line of questioning and relevance to this case.

MS. ZMROCZEK: It deals with why the cameras were up there, Your Honor.

THE COURT: I'll allow a little bit.

BY MS. ZMROCZEK:

Q The cameras were installed to monitor the traffic and activities of the people at Five Points?

A Yes.

Q Lots of people go to Five Points?

A Yeah.

Q Lots of people that evening?

A Yes.

Q State Fair was going on?

A Yes.

Q Football game, even though it was an away game, Carolina won 52 to 7?

A I guess so. I don't follow football.

Q It's not a test. I'm a football fan. Lots of people celebrating?

A Right.

Q Lots of people drinking?

A Right.

Q Lots of students downtown?

A Yes.

Q Lots of people who weren't students downtown?

A Yes.

Q Lots of people in groups?

A Yes.

Q Lots of people who weren't students in groups?

A Right.
Q Lots of people who you knew to be gang members?
MS. CAMPBELL: Objection, Your Honor. How would he know?
MS. ZMROCZEK: If he doesn't --
THE COURT: If you don't know, then just say you don't know.
THE WITNESS: I wouldn't --
THE COURT: Don't speculate.
THE WITNESS: I wouldn't know directly until I made contact.
BY MS. ZMROCZEK:
Q Unrelated arrests for, I guess, two people that were in the street?
A Right.
Q And then you heard, at least, two shots?
A Right.
Q Don't know who fired those shots?
A I didn't see directly. I just heard the noise.
MS. ZMROCZEK: Thank you.
THE COURT: Ms. Campbell?
MS. CAMPBELL: Just one question.

REDIRECT EXAMINATION

BY MS. CAMPBELL:
Q You mentioned earlier that you weren't sure about how

many shots because of the echo?

A Right.

Q Explain that to the jury.

A Right. When you're in a downtown area -- a good way to explain this is, if you're ever driving downtown and you hear an ambulance and it's really hard to tell where it's coming from and you're stopped at the intersection. You may not even see the ambulance come through, but you definitely heard it. It bounces off the buildings around through the area. So what that does is it creates a little bit of a distortion. Sometimes you may hear an ambulance, you may think there's more than one ambulance, but then you may see one ambulance go by and the sound stops after that.

So with that being the example, it's hard to say where stuff directly comes from. You can get a general idea, but with the buildings down there, stuff can bounce off and it can make you get a different direction or it can make you think you heard more than one thing when really there was only one.

MS. CAMPBELL: Thank you.

MS. ZMROCZEK: I have one follow-up.

RECROSS-EXAMINATION

BY MS. ZMROCZEK:

Q You're trained to know the sounds of gunshots,

correct?

A Trained to what?

Q You're trained to recognize the sound of gunshots?

A Throughout my work experience, yes.

MS. ZMROCZEK: Thank you.

THE COURT: Thank you very much. Have a nice day. Call your next witness.

MS. GARFIELD: The State calls Carey Shealy.

CAREY SHEALY,

after being duly sworn, testified as follows:

THE CLERK: Thank you. Have a seat in the witness stand, please. State your name for the record. State your name, please.

THE WITNESS: Carey Shealy.

DIRECT EXAMINATION

BY MS. GARFIELD:

Q Mr. Shealy, good afternoon.

A How are you doing?

Q Could you please share with the jury what your business is?

A My business is installing security systems, surveillance systems, searching video, making video of incidents.

Q And do you work for the City of Columbia?

A Yes.

Q And how -- explain to the jury your relationship with your working for the City of Columbia?

A Well, we install cameras around for the City and we have other cameras from other customers. If there's a crime or something that we need to look into, we can search the video and make a copy of it and give it to them.

Q And this is through a contract with the City of Columbia?

A Yes.

Q Do you have those cameras through your business in the Five Points area?

A Yes.

MS. GARFIELD: Your Honor, at this time, I'd ask Mr. Shealey to step down. Stand up there so the court reporter can hear you.

(WHEREUPON, State's Exhibit No. 75 was marked for identification only.)

BY MS. GARFIELD:

Q Ms. Shealy, have you seen this exhibit before?

A Yes.

Q Will this help you explain to the jury where your cameras are?

A Sure.

Q This shows the jury where the cameras are in the Five

Points area specifically?
A Yes.
Q If you can just show the jury where those cameras are located.
A These marks here shows where the cameras are. It has a box with four cameras on it. It looks in every direction. So these are the ones right here.
Q And to orient the jury, can you show the jury where the fountain in the Five Points area is located on this diagram?
A Right here.
Q And all the dots reflect the different cameras?
MS. GARFIELD: Your Honor, may we introduce State's Exhibit 75 in evidence at this time?
MS. ZMROCZEK: Without objection.
THE COURT: State's Exhibit No. 75 without objection.
(WHEREUPON, State's Exhibit No. 75 was admitted into evidence.)
BY MS. GARFIELD:
Q Mr. Shealy, when this incident occurred, were you contacted by the Columbia Police Department?
A Yes.
Q And were you asked to take video footage from those camera angles?
A Yes.

Q Have you reviewed that video footage in preparation for court today?

A Yes.

(Whereupon, State's Exhibit Nos. 49 through 73 were marked for identification only.)

BY MS. GARFIELD:

Q I'm going to hand you what's been marked as State's Exhibit Nos. 49 through 73. Do you recognize these CDs or DVDs?

A Yes.

Q And what is recorded on these DVDs?

A Video from the area of the shooting in the area.

Q That you were asked to obtain from the Columbia Police Department?

A Yes, ma'am.

Q And you've reviewed those videos on these DVDs?

A Yes.

Q And has it been altered or edited in any way?

A No.

MS. GARFIELD: Your Honor, at this time, I'd like to introduce State's Exhibit Nos. 49 through 73 into evidence.

MS. ZMROCZEK: Your Honor, I hate to do this, but I haven't -- I'm assuming these are all of the cameras that have been provided to me, but just to be sure before I

don't object, I would like a chance to review them to see what the timeframes are.

THE COURT: Okay. Ladies and gentlemen, let's step back to your jury room. Do not discuss the case. Do not let anyone discuss the case with you. Keep an open mind. We'll be right back with you.

Everyone stay seated.

(WHEREUPON, the jury left the courtroom at 2:56 p.m.)

THE COURT: Are you going to have to pull all of those up on a computer?

MS. ZMROCZEK: Yes. I'm assuming -- I mean, as long as they're the full-time videos that were provided to me, Your Honor, I'm fine. If we wanted -- to save the Court's time and the jury's time while they're here, I'll go ahead and not object, but then I ask for an opportunity just to look at them after court this afternoon and if they need to be supplemented with -- if they're cut short -- I just want to make sure all the times that were provided to me are on here for the full amount of time.

MS. GARFIELD: Your Honor, we had Ms. Zmroczek in our office last week to review all the videos. They were on our TV. These are just the videos that have been downloaded to a DVD for purposes of introduction into evidence. We will actually be displaying the video she

has seen from our television to the jury. She is welcome to look at them at the conclusion of court today. This isn't going to go back to the jury until the conclusion of the case.

THE COURT: When are you planning on showing them?

MS. GARFIELD: Our next witness.

THE COURT: Okay.

MS. ZMROCZEK: And I'm okay with that, Your Honor.

THE COURT: Bring them back in.

(WHEREUPON, the jury entered the courtroom at 2:57 p.m.)

THE COURT: Okay. Some breaks are longer than others, so don't hold it against me, all right. I'm kidding. Don't hold it against anybody. Sometimes we have to do things, as I told you, that require legal questions and sending you out of the room. Sometimes it's three minutes and sometimes it's 30 minutes. So that's just part of it.

Ms. Garfield, you may continue.

State's Exhibit Nos. 49 through 73 admitted without objection.

(WHEREUPON, State's Exhibit Nos. 49 through 73 were admitted into evidence.)

MS. GARFIELD: Thank you, Your Honor.

BY MS. GARFIELD:

Q Mr. Shealy, you were specifically asked just to pull video from your cameras in the Five Points area?
A That's right.
Q Do you also through your contract with the City of Columbia have cameras throughout other areas of the City of Columbia?
A Yes.
Q Can you just share with the jury some of those areas?
A Well, Rosewood, Garners Ferry, Main Street.
Q Vista?
A Pardon?
Q Vista?
A Vista, yes, many places.
Q But, obviously, because of this particular case and what happened, you were asked to pull the footage just from there?
A Yes, ma'am.

MS. GARFIELD: Thank you, Mr. Shealey. Please answer any questions Ms. Zmroczek has.

THE COURT: All right. Cross-examination.

MS. ZMROCZEK: Thank you. Just briefly.

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q Mr. Shealy, how many cameras did you have in operation in 2013 in Five Points?

A I don't have an exact number. You know, we add cameras all the time, different areas, so I don't know exactly how many.

Q Do you get paid by the camera?

A Pardon?

Q Do you get paid by the camera or by the box?

A By the box.

Q Have you added boxes since 2013?

A Yes.

Q In the Five Points area?

A Yes.

Q And surrounding?

A Yes.

MS. ZMROCZEK: Thank you.

THE COURT: Redirect?

MS. GARFIELD: Just one question, Judge.

REDIRECT EXAMINATION

BY MS. GARFIELD:

Q Mr. Shealy, have you added boxes in other areas?

A Yes.

MS. GARFIELD: Thank you.

THE COURT: All right. Thank you very much. Have a nice day.

Call your next witness.

MS. WALKER: Thank you, Your Honor. The State calls

Captain Derrick Thornton.

DERRICK THORNTON,

after being duly sworn, testified as follows:

THE CLERK: Have a seat in the witness stand, please. State your name for the record. State your name, please.

THE WITNESS: Derrick Anthony Thornton.

DIRECT EXAMINATION

BY MS. WALKER:

Q Sir, where are you currently employed?

A City of Columbia Police Department.

MS. WALKER: Let me give them one second to get the television in place. Beg the Court's indulgence.

(Pause.)

THE COURT: Are we going to play videos?

MS. WALKER: Excuse me?

THE COURT: Are we going to play videos?

MS. WALKER: Yes, sir.

THE COURT: So one thing that's important is that everybody can see it. I can kind of adjust the lights a little bit as you like. We'll play with it when we get to that point. Y'all can tell me which way you like it better and that's the way we'll do it.

Go ahead.

MS. WALKER: Thank you, Your Honor.

BY MS. WALKER:

Q Where are you currently employed?
A City of Columbia Police Department.
Q What do you do for the police department?
A I'm a captain. I'm over our investigative division at the moment.
Q How long have you been with the police department?
A Thirty years.
Q How long have you been over the investigative division?
A Since March of this year.
Q Can you tell the jury a little bit about what some of your duties are as the captain over the investigative division of the Columbia Police Department?
A Right. Any major incidents, our investigative unit follows up on. The initial officer that responds to the scene, takes a report, documents any witnesses, anything that may assist us in the investigation. Once that initial report is done, it's forwarded to our investigative division for follow up. Our detective do the followup work to identify suspects and make arrests as appropriate.
Q In terms of the trial that we are here for this week, did you become involved in the investigation of that case?
A Yes. At the time, I was a road lieutenant -- excuse me, road captain, and I was the staff duty officer that

night.
Q And did you respond to Five Points?
A I did.
Q Can you tell the jury what, if anything, you observed while you were in Five Points?
A By the time I had gotten there, there were several officers already there. The shooting had already taken place. I do remember observing Ms. Childress laying on her back on the sidewalk and she was crying. I do recall her saying a couple times that she couldn't feel her legs.
Q As a part of the investigation, did the Columbia Police Department have videos from the Five Points area pulled?
A Not by the time I got there. They were in the process of pulling those.
Q And did those become important to the investigation of this particular shooting?
A Yes, they did.
Q Sir, if you could step down, I'd like for you to publish those videos to the jury.
MS. WALKER: Your Honor, may the witness step down?
THE COURT: Yes, ma'am.
Captain, I need you to keep your voice up so everybody can be hear you, okay?
THE WITNESS: Yes, sir.

BY MS. WALKER:

Q Captain, if you stand on this side, on the other side of the television. Okay.

MS. WALKER: May I have the easel, sir? Yes, sir. Thank you very much.

BY MS. WALKER:

Q If you can stand between those two things. Keep your voice up for me so that the court reporter can hear you.

A Okay.

Q Okay. And were you able to review a series of videos?

A Yes, I was.

Q Okay.

THE COURT: Hold on. Let's --

Does that help or hurt?

THE JURORS: Helps.

THE COURT: Everybody, okay? Y'all can see?

All right.

MS. WALKER: Okay. May I proceed, Your Honor?

THE COURT: Huh?

MS. WALKER: May I proceed?

THE COURT: Yeah, I'm going to walk back behind you. Go ahead.

BY MS. WALKER:

Q First, I want to point your attention to State's

Exhibit No. 59?

A I think it might be better if I go on that side so I'm not in people's way over here.

Q Okay. That's fine. If everybody would just be patient with me. Sometimes it takes a moment for the computer to actually pull up the video. And what area of Five Points are we looking at right now?

A This is Harden Street. The fountain is right here. The Exxon station is there. This is the gathering point that's been mentioned earlier where the taxis come. The taxis come on Harden Street here and they come on the Greene Street side as well.

Q And the jury will have the entire video back there for their review during deliberations, but for purposes of time, I'm going to go to specific points.

And will you just point out what was significant to you during the course of this investigation?

A Okay. This is the party that Mr. Smith is with, this individual, this individual, that individual. There's Mr. Smith there. You see -- can you stop that for a second?

Q Yes, sir.

A If you look at Mr. Smith walking by, you'll see it looks like something is heavy in his pocket of his coat there. Right there, you see it swinging. That's a heavy

object that could be a gun. A lot of times when we see people with a bulge in their pockets like that, that's one of the things we look for.

Q Okay.

A They were actually walking towards Greene Street in the direction would have been the 800 block of Harden.

Q Okay. If you'll step over to the map. The light is down. I'm not quite sure how well everybody will be able to see that.

A We probably need to cut the lights back on.

THE COURT: Hit the light on the right. Thank you.

BY MS. WALKER:

Q Can you just show the jury exactly which cameras we're looking at on this map?

A This is Harden Street. This is the fountain here. We would have been looking at the camera that was facing this way. This is -- again, this is the fountain. This is the Exxon station here. They're across the street coming from the King Park area across Harden Street here, onto Greene and turning up Harden Street.

Q Moving now to State's Exhibit No. 50. I'm going to show that angle as well as soon as it pulls up.

A Okay. This is Greene and Harden again. This is where the Grilled Teriyaki is. They're coming across the street this way towards the fountain.

Q Now, when you say they're, are you talking about -- you're talking about the other group of individuals at this point?
A Yes.
Q Hold on one second. Let's slow down so we don't -- If you'll take one step back so I can see this part right here. Take one step back, and then slow -- kind of slow down when we go through this so that the jury kind of understand what we're going through.
A These two individuals here are the two individuals that Mr. Smith had some type of confrontation with. Again, they're coming from the King Park area towards Greene and Harden. Again, that's Mr. Smith there. They exchanged words at this point.
Q Now, once they exchange words, tell me what, if anything, is significant to you about what Mr. Smith starts to do as he is watching them?
A He's going down into that pocket that was bulging. He's actually taking the gun out of that pocket and switching it to the other pocket.
Q And it's --
A If you look very close, you'll be able to see it.
Q Is there a camera angle where we can actually see the switch?
A Yes.

Q Okay. Let me get to that camera angle.

A This is the camera right there at Greene and Harden by the fountain.

Q Taking your attention to Exhibit No. 58?

A All right. This is Greene and Harden again. This is facing like you would be going towards The Library, the club that they ended up going to, up Greene Street towards Gervais.

Q Do me a favor, can you stand back on that other side so I can control the screen better?

A (The witness complied.)

Q You said this is Greene Street here?

A Greene and Harden. That's the party again coming up Greene Street getting ready to cross the street. See him switch the gun there. Can you back that up?

Q Hold on one second. Let me get my technical support.

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

Okay. Thank you. Thank you, ma'am. I appreciate that.

THE WITNESS: All right. He'll make the transfer from his left side here slipping the gun right here into his right pocket, right jacket pocket.

BY MS. WALKER:

Q Okay. And that was after seeing the guy in the black tee-shirt and the white tee-shirt?

A Yes.
Q Where is that hand right now?
A That hand is in his pocket. And throughout the video, you see his hand in that pocket the entire time. They're going up Harden Street to The Library, which is on the left side here. I think it's this building right here. Oh, sorry.
Q That's okay. There we go. Now, to State's Exhibit No. 53?
MS. ZMROCZEK: Fifty-three?
MS. WALKER: Yes, ma'am.
BY MS. WALKER:
Q This is the reverse angle of what we just saw?
A Exactly. That's the fountain. The camera is on the opposite side of the street.
Q This is the group?
A Uh-huh. They're getting ready to cross to come up toward The Library. Again, his hand is in his pocket the entire time.
Q And to State's Exhibit No. 49.
A Okay. This is the intersection of Greene and Harden on the opposite side. They'll be coming up on the camera this way, continuing to walk up Harden Street to The Library club there on the left.
Q Is this The Library?

A Yes, uh-huh. There they are.

Q And in terms of your view of the video, the white pants that this young lady has on, were those significant?

A Yes, that's his girlfriend at the time, Shante. And we were able to kind of follow her. Those white pants kind of stuck out a little bit, so we used that as a tracking tool.

And in a minute, they'll go into The Library. The two gentlemen didn't stay in there that long. They came out. I think they were denied entrance. They come out immediately and the two women stay inside.

Q Three women?

A Three women, I'm sorry.

Q No problem.

A They're coming back out now, hand still in the pocket, right pocket. They're going to walk down Harden Street and they're going to go off to the right and relieve themselves in a little alleyway there. And they're walking back towards the fountain.

Q Okay. Let me turn your attention, sir, to State's Exhibit No. 56.

A You can see them come from this way in the camera here shortly.

Q Here?

A Yeah. That's them and they'll go off in this little

alleyway to use the bathroom.
Q Do you know if bars in Five Points allow people in with weapons?
A No.
Q They do not?
A No. That law wasn't passed at that time.
Q And that was even people carrying them legally?
A No, not then.
Q Not at that point?
A Not at that point. That's Mr. Smith's associate. He should be coming out shortly. There they are. They walk back towards The Library and meet up with the young ladies. Again, his hand is in the right pocket. Okay. They gather here, and they start making their way across the street on the other side of Harden Street.
Q I take your attention back to Exhibit No. 53.
A Okay. It's Greene and Harden. Again, they're going to cross the street here back towards the fountain. That's them. You can see it's starting to get a little congested there at the fountain area. So they're going to walk through a crowd of people right next to the fountain there.
Q Let me take you to State's Exhibit No. 54, a closer view of that fountain.
A Again, this will be the camera that's right there on

the corner by the fountain.

Q That's the area we've been talking about?

A Yes. And there they go. They're walking towards the Exxon station down towards Devine Street. Exxon is there.

Q And to State's Exhibit No. 59.

A Okay. This is right by the fountain here. They're going to walk in this direction again towards the Exxon station. They're going to walk all the way through this crowd of people.

Q The victim in this case, what area is she standing in?

A She is standing right in here. She was actually one of these people right here. You can't tell, but she's standing right here. He has a brief conversation with an individual right here. They shake hands like they're acquaintances, and then they continue to walk in this direction.

Q Now, the taller young man that's with him, is he lying back a little bit?

A Yeah, that's him there. You'll see in a minute the two individuals that they had some words with earlier, they'll be coming from this direction.

Q In this hat right here?

A Exactly. It's hard to -- yeah, that hat, this individual, and it's another individual in a black shirt

that you can't see. That's him right there.
Q Okay. In a few seconds, we should see?
A Exactly. Now, can you stop for a second? Okay. This is right before the shooting. They exchanged some words with those two individuals. Those two individuals turn around and walked towards them. Then some more words are exchanged. Those individuals turn back around and are walking away before the shot is fired.
Q Let me go back.
A Yeah, a little bit more. White hat right there. They said something, he turns around, and then you see the shot when Ms. Childress falls.
Q And just -- there's a young man doing something in front of her?
A Yeah.
Q So that's -- is that around when the shots are fired?
A Exactly. This will give you a reference point. This individual makes like a gunshot motion that had nothing to do with it. Right before he does that, Ms. Childress is struck.
Q This young man and then these two young men?
A Exactly. That's one of the individuals. That's one of the individuals. The other one, he's wearing a white-collared shirt, he went across the street. See, he makes some kind of gesture towards them. He walks

through. He's looking, and then he'll stop. It looks like he's saying well, this looks more serious than I thought.

Q This young man, once he exits this camera, does he actually come back towards the scene later that night?

A Yes. Yes.

Q Okay. Go to Exhibit No. 69.

A Again, that's the individual that was with them also that ran across Harden Street to the other side. This is the individual in the black shirt that was with him. And again, the guy in the white hat. This is one of the officers who was working that night comes across the street to see what's going on.

Q And he's still in the area?

A Yes.

Q Turning now to State's Exhibit No. 50?

A Again, this is the corner of Greene and Harden by the fountain. Grilled Teriyaki is across the street. That's the individual in the white-collared shirt that runs away.

Q From the gunfire?

A From the gunfire. He goes across the street to that block of Harden Street and goes out of camera view.

Q Does he eventually come back?

A He eventually comes back a short time later.

Q Let's go to that at State's Exhibit No. 55.

When these people are returning back to the scene, is there a large police presence at that point --

A Yes --

Q -- when Ms. Childress went down?

A There were a number of officers there, EMS, fire.

Q This is after the shooting?

A This camera is on Greene Street. Here, this is showing down Greene Street towards the fountain.

Q Is this when officers start responding to Ms. Childress?

A Yes.

Q The white hat, the white tee-shirt?

A Yes.

Q Okay.

A Officers were running to the scene to assist.

Q And I guess this shows up now other areas?

A Yes.

Q And these two return back towards the incident?

A Towards the incident, yes.

Q And State's Exhibit No. 54?

A Greene and Harden again.

Q This is after the shooting?

A After the shooting.

Q And are law enforcement officers continuing to go towards the victim?

A Towards the victim. Officers were all over Five Points. They would be coming from different directions. There is our individual with a white hat. Again, he's standing in the area. He's not attempting to flee.

Q And once he goes across the street, does he eventually come back?

A He goes across the street. He eventually comes back basically in the same direction, back to Greene and Harden on the opposite side of the fountain.

Q Right here, he and the guy in the white collared shirt?

A Yes. In this area somewhere.

Q Right here?

A Yeah, that's both of them right there behind that. And they're getting ready to walk back across the street to the corner of Greene and Harden opposite the fountain.

Q Back in the direction where the police are?

A Back where the police are where the incident occurred.

Q Now, was there a video done that kind of does what we just did, but is edited?

A Yes.

Q This is Smith?

A That's part of the group. Again, this is before the shooting. You see the object in his pocket swinging back

and forth. The two individuals that exchanged words with crossing Harden Street. They exchanged words there.

Q That's when he started going in his pocket?

A Uh-huh. He is shifting the weapon from that pocket to his right coat pocket, to the outside of it. He reaches inside to get it out of the left side, puts it in this right outer pocket. You see the butt of the gun going into his pocket.

Q They've already been down to The Library and are coming back at this point?

A Coming back, yeah. You'll notice that other individual that was with him in the white shirt holds his shirt up. He didn't have a gun in his waistband or anything like that, any weapon that we could see on him through the crowd.

Q There is really no place to put it. You can see his boxers?

A Yeah. The taller individual is right here where Ms. Childress is. The two confrontational guys are coming up, white hat, white-collared shirt. They say something as they're passing. He turns around. He's looking at them. They're exchanging words.

Q That's the taller young man?

A The shorter one, too.

Q Okay.

A The one with the hat. And he goes back towards them. Then he's going to turn around. Watch this guy. When he does the gun move, that's when the shot fires. Again, he had turned around -- the guy in the white hat had turned around before that happened.

Q In addition to these cameras, are there other cameras both across the street and at the Exxon?

A Yes, there is one in front of Grilled Teriyaki.

Q I want to turn your attention to State's Exhibit No. 63. So Grilled Teriyaki is here?

A Yeah.

Q So I guess we're looking across that intersection?

A This is directly across from where the fountain is.

Q And coming in this direction towards the fountain right here. You mentioned earlier the white pants were important?

A Yes. Shante with the white pants on there, that helped us identify their group through all of the crowd from the different angles.

Q There was a -- do you see the very tall young man on this side?

A Uh-huh, you can.

Q Okay. Now, State's Exhibit 60. I'm sorry. After the shots are fired, at some point, you see the Defendant run away?

A Yes.
MS. ZMROCZEK: What number is this?
MS. WALKER: Sixty.
MS. ZMROCZEK: Sixty.
BY MS. WALKER:
Q Is this farther down Harden Street?
A Yes. I can't tell exactly where, but it's farther down Harden Street towards Devine. You see him running from this direction.
Q Who is this?
A That's Mr. Smith running by and that's his associate, the tall individual in the white shirt.
Q And now, State's Exhibit No. 70, the Exxon station that you mentioned earlier?
A Yes, across the street.
Q And so this is the fountain that you mentioned?
A Yes.
Q Okay. Again, the white pants that you used?
A Uh-huh. That's him. You see it much better there.
Q Do they stop at some point?
A Yes, they're stopped now.
Q And the crowd I guess that the argument was with, they are there?
A (Indicating).
Q Okay. At one point, you see one of them fall?

A Yes.
Q All right.
A And then everybody is running away after shots were fired. This is the same side the fountain is on. You'll see --
Q This is State's Exhibit No. 64?
A You'll see him run by.
Q It's blurry from this angle, but are those the white pants that you tracked?
A Yes.
Q You see him fall down?
A Uh-huh.
Q The position of that young man when he falls down, is that significant to you?
A Which gentleman?
Q The taller guy, the one in the white-collared shirt that fell down? At the time you viewed it, it wasn't?
A No, it wasn't.
Q Okay. This is -- I guess, are we across the street at the Exxon station over here?
A Yeah, Exxon station. Fountain would be over here. It's the little parking lot right next to Grilled Teriyaki.
MS. ZMROCZEK: What number?
MS. WALKER: Seventy.

THE WITNESS: Yeah.
BY MS. WALKER:
Q Is this the group that they were arguing with on this side of the street?
A Yeah. Yeah. They've already passed them and they turn around.
Q Okay.
A That's them. See, he turns around. Shots are fired. They run off.
Q State's Exhibit No. 68, is this --
A That's the Exxon video.
Q The fountain is here?
A Huh?
Q The fountain?
A Yes. The fountain is there. The video -- there's cameras in the parking lot of the Exxon.
Q Right there?
A Uh-huh.
Q Can you orient the jury for me?
A Yeah, this camera is somewhere mid-block in the 700 block. Exxon is here. It's strategically placed somewhere in that block, but it's just out of the parking lot at the Exxon, but it's on the same side of the street.
MS. ZMROCZEK: What number, sorry?
MS. WALKER: Sixty-five. I'm sorry.

MS. ZMROCZEK: It's okay.

THE WITNESS: They're running. Our suspect, Mr. Smith.

BY MS. WALKER:

Q His hand still in his pocket?

A His hand is still in the pocket.

Q Let me do that without stopping it.

A That's Ms. Shante.

Q And the other two ladies who were with her?

A Yes.

Q And we end on State's Exhibit No. 63. Those videos, are those the videos that you reviewed in this case?

A Yes.

MS. WALKER: You can take the witness stand.

THE COURT: How much longer are you going to be with this witness?

MS. WALKER: Finishing up right now, Your Honor.

THE COURT: Okay. Go ahead.

BY MS. WALKER:

Q And in terms of your involvement actually being on the scene that night, can you tell us what you did that night while you were on the scene?

A My job as the staff duty officer, we have personnel at the range of lieutenant and above that's responsible for the operations of the city every night. It was my

week of duty. When I responded, I ensured the evidence and the scene was preserved, adjust resources as need be because with that situation, it drew a lot of resources into Five Points. I reallocated some resources in other parts of the city and just made sure the scene was preserved until our investigators got there and our crime scene.

Q Was that the extent of your involvement in this case?

A Yes.

MS. WALKER: Thank you, Captain. I don't have any other questions for you.

THE COURT: Okay. We're going to take a break.

Captain, you are not allowed to discuss your testimony with anybody. You are allowed to leave the seat and use whatever facilities you need to. When we start back, if you'll be seated right there for cross-examination.

THE WITNESS: Yes, sir.

THE COURT: We've been going for about two hours, ladies and gentlemen. I think everybody needs a break. Do not discuss the case. Do not let anybody discuss the case with you in any way, shape, or form. Keep an open mind. We'll see you back in about 10, 15 minutes. Thank you very much.

Everyone remain seated.

310

(WHEREUPON, the jury left the courtroom at 3:59 p.m.)

THE COURT: Okay. Take about 10, 15 minutes and we'll start with cross.

(WHEREUPON, a short break was taken.)

(WHEREUPON, State's Exhibit No. 74 was marked for identification only.)

THE COURT: Okay. Bring them in.

MS. WALKER: Can I put one thing on the record? The edited video that was shown to the jury, that is Exhibit No. 74, I didn't put it into evidence. It's loaded onto the computer. I talked to Ms. Zmroczek about that over the break and she's fine with us moving that into evidence as soon as it gets burned to a disc.

THE COURT: Okay.

MS. ZMROCZEK: Thank you, Your Honor.

THE COURT: 74 without objection.

(WHEREUPON, State's Exhibit No. 74 was admitted into evidence.)

THE COURT: Bring them in.

(WHEREUPON, the jury entered the courtroom at 4:24 p.m.)

THE BAILIFF: The jury is seated, Your Honor.

THE COURT: Cross-examination?

MS. ZMROCZEK: Thank you. May it please the Court?

THE COURT: Yes, ma'am.

(WHEREUPON, Defendant's Exhibits No. 1 through 4 were marked for identification only.)

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q Good afternoon.

A Good afternoon.

Q You spent a significant amount of time explaining what you saw on the videos to the jury, correct?

A Yes.

Q You were not down at Five Points that evening?

A I was at the shooting.

Q When it happened?

A No, I wasn't there when it happened.

Q So when you testified that they were arguing back and forth, you actually don't know what they were saying, do you?

A No.

Q There's no audio on the tape?

A No.

Q When you say you see the gun fired, you actually can't see the gun fired, correct?

A I didn't say I saw the gun fired.

Q Okay. In fact, there's a question as to how many guns were out there?

A Not that I'm aware of.

Q Okay. I'm going to show you what's being marked for identification as Defense Exhibits 1 through 4, and ask if you recognize those as still shots from the videos we just showed.

A Yes. They appear to be right after the shooting. And the others appear to be of the other individuals that were there.

MS. ZMROCZEK: Your Honor, at this time, we move Defense 1 through 4 into evidence?

MS. WALKER: Thank you.

Without objection, Your Honor.

THE COURT: Defense 1 through 4 without objection.

(WHEREUPON, Defendant's Exhibit Nos. 1 through 4 were admitted into evidence.)

BY MS. ZMROCZEK:

Q I'm showing you Defense Exhibit 1.

A Uh-huh.

Q And it's time and date stamped at the top, correct?

A Yes.

Q And it says 0219 point 18 a.m.?

A I guess. I can't say it from here.

Q Okay. I'm sorry.

A Yeah, it looks like 1918 a.m., that's correct.

Q And this individual has been identified. Do you know

who this is?
A No, I don't.
Q Okay. But he has been identified as being in an altercation with Mr. Smith, correct?
A Words were exchanged. It appeared to be on the video.
Q Okay. Appeared to be on the video?
A Uh-huh.
Q And this is Ms. Childress on the ground?
A Yes, appears to be.
Q And this gentleman?
A I can't say who that is from there. The gentleman in the black shirt?
Q In the white shirt?
A In the white shirt, yes.
Q He was one of the people that was involved in the altercation?
A Right.
Q And appears to be making some sort of hand gesture or hand signals?
A Yes.
Q Defense Exhibit 2 would be much later, a few minutes after when the suspects who were in an altercation reunited in front of the camera that's closest to The Library?

A Looks like it.
Q And the other individual is holding his hands up as well, correct?
A Yes.
Q And these are all just still shots from the videos?
A The videos, yes.
Q Tell the jury what Defendant's Exhibit 3 is.
A That looks like the individual in the black shirt that was with the individual in the white hat and the white-collared shirt.
Q So there were three --
A Three.
Q Three individuals that were involved in the altercation with Mr. Smith?
A We didn't actually see on the video the individual in the white-collared shirt exchange words. We saw the words exchanged with that gentleman and the gentleman in the white hat and white shirt.
Q And this is immediately after the shooting after he walks past and he's at the corner getting ready to go to -- across Harden towards Grilled Teriyaki?
A Say that again.
Q He's at the corner?
A Right.
Q And about to go across to the right to Grilled

Teriyaki?
A It looks like it.
Q Towards Grilled Teriyaki?
A Yes.
Q And Defendant's Exhibit 4?
A This looks like the -- it's blurry. It looks like the individual in the white-collared shirt walking by after the shooting.
Q I'm going to hand this photo back to you and I'm going to ask you -- I know it's blurry because, obviously, it's a screen shot from the video. But as you're watching the video, are you looking -- you mentioned with Mr. Smith that you noticed a bulge?
A Yes.
Q Are you looking for items of evidence, for example, weapons that could be in waistbands as people are running from the shooting?
A Yeah, but we didn't -- I didn't see anything in the video that I saw that would indicate a bulge.
Q Okay.
A He did have his hand around his waist, but I didn't see anything that would indicate a bulge.
Q And as he's running by, would it indicate that there is something dark, could be his skin, could be a gun, could be a revolver?

A Could be anything.

Q You used these videos, relied on these videos to tell the story, correct?

A Yes.

Q And you want this jury to decide the facts based on an accurate and complete story?

A Yes.

Q And if they watch all of the videos, that would give them a better view than just having to focus in on Mr. Smith, correct?

A If they watched the whole video, is that what you're asking me?

Q It would give them -- I'm sorry. I don't mean to talk over you. It would give them -- it was a poor question. It would give them a complete view of what happened from about 2:09 when the cameras start until about 2:25 or so when the cameras end?

A If they viewed that, yes, it probably would.

Q And you would agree that would probably be a good overall comprehensive understanding of everyone's movements?

A With explanation. I don't think the jury would be able to just look at it on their own without some help.

Q And that help could be explained by people who were actually participating in the videos?

A Could be, yes.
Q All of this information I believe you stated was forwarded -- you are now head of investigations, correct?
A Yes.
Q At the time, you weren't? That wasn't your job?
A No.
Q So all of this information was handed over to people in investigations?
A Yes.
MS. ZMROCZEK: Thank you.
THE COURT: Redirect?
MS. WALKER: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. WALKER:
Q I think you were shown a series of photos -- let me pass those to the jury. Defense Exhibit No. 1, that was a young man standing on the fountain?
A What was the question, who is he?
Q You were shown this photo of a young man standing on the fountain?
A Yes.
Q Do you see anything in his hands?
A No, I don't. Looks like he's got his finger up.
Q State's [sic] Exhibit No. 2, the man with his arms extended in the air, do you see anything in his hands?

A I do not. Nothing in his hands. I don't see anything bulging from it.

Q And State's [sic] Exhibit No. 4 is a still shot, blurry, of a video we've already seen, right?

A Yes.

Q In terms of seeing his movements, would it help to actually see the video as opposed to a blurry picture?

A Yes. Because I can't make heads or tails of his hands or what he may have in them or --

Q Right.

A -- anything.

Q Okay.

A It's a blurry picture.

Q Let's go back to the video.

MS. WALKER: Thank y'all. I appreciate it. Thank you.

May the witness step down, Your Honor?

THE COURT: Yes, ma'am.

MS. WALKER: It's going to be State's Exhibit No. 60, Ms. Zmroczek.

Thank you, Your Honor. Sorry.

MS. ZMROCZEK: Thank you, Your Honor.

(WHEREUPON, the video was played for the jury.)

BY MS. WALKER:

Q Right here?

A Yes. I see nothing in his hands.

Q Try again. His hands is holding his pants?

A Yes, he pulls his shirt tail up and pulls his pants.

MS. WALKER: I don't have any further questions. Thank you, sir.

THE COURT: Recross?

MS. ZMROCZEK: None, Your Honor.

THE COURT: Okay. Thank you very much, Captain. You can step down.

THE WITNESS: Yes, sir.

THE COURT: All right. Ladies and gentlemen, we're going to stop here for the evening. Remember as I told you yesterday, you are not allowed to view any media, watch any media, anything like that in regards to this case. You will recall previously I instructed you in great detail that you must decide this case solely on the evidence that is presented in this courtroom.

Because we're about to take a break overnight, I am now reminding you of that warning. I want you to once again fully commit to each other, to the parties in this case, and to the Court that you will not use any kind of cell phone, smart phone, Blackberry, IPhone, Facebook, text message, Google, computer or any form -- tablet or any other form of communication to get or send or receive messages about this case, including with each other and

close friends and family.

Now, starting tomorrow, I will ask you each morning if anybody has viewed any media about this case or seen any media about this case. So I'm expecting you to follow those instructions.

I also want to go ahead and tell you that at some point during the trial we are going -- the parties have agreed and I have deemed it proper under the rules and the statutes that you are going to be allowed to go to the crime scene, okay. There are specific rules that will be in place for that. At some point in time over the next few days, you will be taken to the scene of the alleged crime.

While you are on your way to and from the scene and at the scene, you are not allowed to discuss this case with anyone, including your fellow jurors, and you are not allowed to ask any questions of the lawyers or anyone else who may be there. The bailiffs will be with you. There will be some deputies that are with you. I will be with you. My law clerk will be with you. You are not to ask any questions. No one is going to be allowed to answer any questions or anything else. You're simply going to be taken to the area where the alleged crime occurred and allowed to view that area in a secure setting and brought back. I'm not sure when that will be, but that's my

warning and instructions to you in regards to that.

Now, you are dismissed for this evening. As far as timing for the rest of the week, I usually -- I should have told you this in the beginning. I'm sorry. I forgot. I usually stop every day around fiveish. So like today, we're at a good stopping point and it's about 15 minutes early, I'll go ahead and stop. If they said we have one more witness or two more witness that will take 20 or 30 minutes, I may go ahead and push a little bit past.

The only time I envision you staying much later than that is if we're in a scenario where you're actually deliberating. We're doing closing arguments and charge on the law and you're beginning your deliberations, sometimes those run late into the evening. If anybody needed to take a break to make any phone call for any kind of arrangements, we could certainly handle that and take care of that, that's not an issue. That's really the only time I keep juries real late into the night. And that's only if they're telling me they want to keep working.

Some judges will keep you until two o'clock in the morning. I'm not going to keep you late into the night unless you're looking at me saying we want to stay. You know, we're moving towards a decision and we want to get it over with tonight. Of course, you all would be

322

involved in that decision. That won't be just my decision or me making you do something like that.

So be here tomorrow morning at 9:30 ready to go. Do not discuss the case with anybody. Do not do any research. Do not view any news about the case in any way, shape, or form. Do not let anyone discuss the case with you. Thank you for your service today. Keep an open mind and we'll see you back tomorrow morning at 9:30.

Everyone remain seated.

(WHEREUPON, the jury left the courtroom at 4:42 p.m.)

THE COURT: Okay. Anything from the State before we break?

MS. GARFIELD: No, sir.

THE COURT: Defense?

MS. ZMROCZEK: No, sir.

THE COURT: Okay. I want see the lawyers in the back hall. Give the jury five minutes to get out and meet me in the back hall.

Okay. 9:30 tomorrow morning.

(WHEREUPON, Court was adjourned for the day to be reconvened on Wednesday, August 12, 2015.)

WEDNESDAY, AUGUST 12, 2015

THE COURT: Is this everybody that's riding?

Okay. State your name for the record.

(There was no response).

THE DEPUTY: Oh, I'm sorry.

THE COURT: State your name for the record.

THE DEPUTY: John Doudoukjian.

THE DEPUTY: Keith Barefoot.

THE DEPUTY: Jacob Griffin.

THE DEPUTY: Phillip Lawson.

THE DEPUTY: Timothy Deshaun.

THE DEPUTY: Napoleon Tolbert.

THE DEPUTY: Jeff Kimbrough.

THE BAILIFF: Donald Dye.

THE BAILIFF: Arthur Burgess.

THE CLERK: Rebecca Stephens.

THE COURT: Okay. Raise your right hands.

Do you swear or affirm that you will take charge of this jury while they are absent from this court. You will not speak to them regarding this matter in any way, shape or form, nor will you allow anyone to speak to them regarding this matter. So help you God.

Go down the line and say I do.

DEPUTY DOUDOUKJIAN: I do.

DEPUTY BAREFOOT: I do.

DEPUTY GRIFFIN: I do.

DEPUTY LAWSON: I do.

DEPUTY DESHAUN: I do.

324

DEPUTY TOLBERT: I do.

DEPUTY KIMBROUGH: I do.

MR. DYE: I do.

MR. BURGESS: I do.

MS. STEPHENS: I do.

THE COURT: All right. So don't let -- I mean, we're going to be out there. I've already told them not to talk to you or ask you any questions. So I'm just going to tell the Forelady, when you're ready to go, just give me a sign and we'll ride.

(The jury went to the scene in Five Points.)

THE COURT: Ms. Campbell.

MS. CAMPBELL: May it please the Court, Your Honor. We're getting ready to get into some fact witnesses and we need take up the records.

THE COURT: Okay.

MS. CAMPBELL: I didn't know if you wanted to do that before we brought the jury in.

THE COURT: Yeah.

MS. CAMPBELL: We still have a couple of law enforcement, but I thought this would be a good time. And I would hand up -- I've already given the Defense a copy and I'll hand up to you a copy of the records. We can go over pending charges as well.

THE COURT: Okay. So who are we starting with?

MS. CAMPBELL: Your Honor, Russell Davis has no record.

Is there any dispute on that?

MS. ZMROCZEK: No.

MS. CAMPBELL: Rueben Levy, Your Honor, as far as what would be impeachable in the last 10 years is -- and we'll get to his pending charges in a minute. It's my reading that he has a grand larceny conviction from South Carolina in 2006, and then from Texas, he has a bank robbery conviction from 2005 as far as admissible impeachable.

And then moving on to Georgia, in the last 10 years -- I'm not showing any convictions in the last 10 years.

THE COURT: Okay.

MS. CAMPBELL: Moving on to Mr. Donnell Woodard.

THE COURT: Hold on. Woodard?

MS. CAMPBELL: Woodard.

THE COURT: I don't have one on Woodard.

MS. CAMPBELL: That would be a problem.

MS. ZMROCZEK: What about the robbery in the federal?

THE COURT: I thought that was like 1993 or something. I can't recall the exact date.

MS. CAMPBELL: And we gave you a list of his current pending charges in addition to what he has in the AG's

326

Office.

THE COURT: I show his federal conviction from 1997.

MS. CAMPBELL: That's outside the 10 years.

MS. ZMROCZEK: Sorry. I just got this and I'm trying to go through it.

MS. CAMPBELL: We'll skip order for a minute. Taqayya White, Your Honor, has no record.

THE COURT: Okay.

MS. CAMPBELL: Asia Bethel.

THE COURT: Is that different than Shante?

MS. CAMPBELL: Yes.

THE COURT: I don't have hers either.

MS. CAMPBELL: I'll hand it up, Your Honor. I'm showing that she has a burglary third conviction. And I need to ask her what happened on the shoplifting.

MS. ZMROCZEK: And, Your Honor, Taqayya White also goes by a different -- she presented with a different name.

MS. CAMPBELL: That's not her name, though. The fingerprints match this record.

MS. ZMROCZEK: I would still ask that they run her record under that name.

MS. CAMPBELL: We'll run a record under Tiffany Roper.

THE COURT: Okay. I'm looking at Asia Bethel,

burglary third from 2014.

MS. CAMPBELL: I'll checking on the shoplifting. It doesn't show a disposition.

THE COURT: Okay.

MS. CAMPBELL: I'll check with the public index --

THE COURT: Okay.

MS. CAMPBELL: -- for Asia Bethel's 2014 shoplifting.

THE COURT: Well, it couldn't be a third offense any way. She doesn't have enough prior property offenses.

MS. CAMPBELL: Okay.

You agree to that?

MS. ZMROCZEK: Yes.

MS. CAMPBELL: But the burglary third, we'll say is a misdemeanor.

THE COURT: Okay.

MS. CAMPBELL: Moving on to Shante.

THE COURT: Okay.

MS. CAMPBELL: She has a 2006 breach of peace, which I don't think is admissible. And she has pending a strong arm robbery and assault and battery first degree, burglary second degree and grand larceny.

THE COURT: Okay.

MS. CAMPBELL: And to check her Charlotte, North Carolina, she was found guilty of misdemeanor larceny. It looks like she was originally charged with a robbery.

328

THE COURT: Right.

MS. CAMPBELL: And it was pled to a larceny.

THE COURT: Okay.

MS. CAMPBELL: Ryan Ellison.

THE COURT: Is that Brian Tucker -- Byron Tucker?

MS. CAMPBELL: Byron Tucker has no record.

THE COURT: Okay.

MS. CAMPBELL: And then Ryan Ellison.

THE COURT: Okay. I don't have that one either.

MS. CAMPBELL: All he had was a disorderly conduct conviction with this.

THE COURT: I'm sorry, Ryan Ellison, R-Y-A-N.

Okay. And then Mr. Painter has no record?

MS. CAMPBELL: No record. Daquan Samuel has a conviction from 2012 for giving false information or false name to police. He also has a disorderly conduct, which I don't think would be admissible.

THE COURT: But I think giving false information probably would.

MS. CAMPBELL: Yes, sir.

THE COURT: Do you agree with that?

MS. CAMPBELL: I agree.

THE COURT: All right.

MS. CAMPBELL: And then as far as his out-of-state -- it looks like it was nolle prossed. I'm not showing any

convictions.

THE COURT: Okay.

MS. CAMPBELL: And then finally Donnell Woodard is the one you didn't have, correct?

THE COURT: I don't have any more.

MS. CAMPBELL: I'm sorry, Your Honor.

THE COURT: Thank you. All right. Mr. Woodard.

MS. CAMPBELL: It look like in 2011, he was convicted of grand larceny.

MS. ZMROCZEK: I agree with that.

MS. CAMPBELL: He has pending an assault and battery second degree.

THE COURT: Okay.

MS. CAMPBELL: And I think that's the extent of the ones we need to take up today.

THE COURT: Great.

MS. CAMPBELL: We're checking on Reuben Levy's pending charges.

Your Honor, the other thing I'd like to bring up at this time if I may, in opening argument, the Defense attorney referred to the fact that Mr. Smith had been convicted in federal court for these same charges.

THE COURT: Right.

MS. CAMPBELL: I don't know how that would be admissible as far as anything -- we didn't object. That

330

was a strategy on our part.

However, if she's planning on going into the fact that Mr. Smith was convicted for gun charges in federal court and received a 10-year sentence on this, which is what I anticipate she's trying, I would want to then be able to, Your Honor -- and I will hand up at this point a transcript of the plea and sentencing. I did inform Defense counsel I had these. Because they came from a court reporter, I was not able to provide it to her, but I did provide her with the actual information. She wanted to get a transcript of the plea and the sentencing. I gave her the court reporter's name when we got it. Your Honor, if you order me to, I'll be glad to give her a copy, but I don't think ethically I can give it to her without a court order.

THE COURT: Okay.

MS. CAMPBELL: If she wants to go into that with -- anticipating Mr. Smith takes the stand or she tries to get into it in some way, which I don't think she's allowed to by the rules, Your Honor, but further, if she does, I would just want to put the Court on notice, at that point, we would be then trying to explain that he was not convicted for any assault charges in federal court. And in addition to that, specifically, the judge made a finding that this was not a self-defense case.

MS. ZMROCZEK: Judge, first of all, the sentencing has nothing to do with anything. It is a -- I mean, it is a conviction on his record.

MS. CAMPBELL: We agree that --

MS. ZMROCZEK: For the gun charge only. And Your Honor, in their opening -- the only reason I said that is in their opening, Ms. Garfield said that they were not to -- it was not their job to worry about forgiving Mr. Smith or sentencing Mr. Smith.

MS. CAMPBELL: That's a correct statement of the law.

THE COURT: All of those are correct statements of the law.

MS. ZMROCZEK: I understand. And as is he has a conviction for a gun charge related to this case. That's all I said. I did not say he received a 10-year sentence.

THE COURT: No, you said he pled guilty to a federal gun charge and he is now facing the same charge in State court.

MS. ZMROCZEK: Yes.

THE COURT: Which is not a correct statement of the law or the facts. You said he -- I wrote it down.

MS. ZMROCZEK: Okay.

THE COURT: He is now facing these same charges in State court -- or here.

MS. ZMROCZEK: But -- I understand, but I don't think

332

that that somehow opens the door to a finding of self-defense.

THE COURT: Okay. Well, if it goes any further than he's got a gun charge in federal court --

MS. CAMPBELL: If he mentions it --

THE COURT: -- that he's been convicted of --

MS. CAMPBELL: I just wanted to put the Court on notice. And I'll be glad, if you order me to, to give her a copy of the transcript so she can understand where the judge specifically found that this is not a self-defense case.

THE COURT: I need a copy of the judgment and conviction from federal court, too. I don't have access to Pacer anymore.

MS. CAMPBELL: We'll get that for you.

THE COURT: Okay.

MS. CAMPBELL: Do you want me to give this to her?

THE COURT: Yes.

MS. ZMROCZEK: Okay. That's fine.

THE COURT: I mean, the fact that you have admitted in your opening statement that he has a federal gun charge related to this incident is what it is. I can't change that now. Anything beyond that that would normally be admissible is not going to be deemed appropriate and will be potentially deemed door opening to exactly what

happened in federal court.

MS. ZMROCZEK: Absolutely.

THE COURT: Anything else? Are we getting to jail calls today? Do you want to go through that now?

MS. CAMPBELL: Yes, Your Honor. Did you have an opportunity to review those?

THE COURT: I did.

MS. CAMPBELL: And I didn't notice any reference to Jack Swerling at all.

THE COURT: Okay. Jail call number one, the transcript that I've been given as jail call number one, I deem that that is completely and entirely relevant and admissible. It is not in violation of 403. Jail call number two, my question is -- I'm sorry, the pages aren't numbered. Who's got a transcript?

Do you have a transcript, Ms. Walker?

MS. WALKER: Yes, sir.

THE COURT: Go to Page 1, 2, 3, 4 -- you're on Page 4?

MS. WALKER: Yes, sir.

THE COURT: Midway down where it says, Girl, hold on, hold on. Do you see where I am?

MS. WALKER: Yes, sir.

THE COURT: Okay. From that point on forward, I don't see what any of that has to do with anything.

334

They're talking about a car battery, whether or not they have a warranty on it, a picture of a Bible, how fast the phone time runs. I just don't know why the rest of that's necessary.

MS. WALKER: The only reason it was left in, Your Honor, is because usually the only things we redact are things that are prejudicial or things that --

THE COURT: Right. Yeah, I think we can stop right there. Stop at, Hold on, hold on. I don't know that the rest of that is -- I didn't see anything that leads me -- I'm not saying I understand everything that's being said, but it looks like it's a conversation about a car battery and how fast the phone runs out at the jail.

MS. WALKER: Okay. Your Honor, at lunch, I can get with people at our office and have that redacted.

MS. ZMROCZEK: Your Honor, I would object to any transcript being read or given or provided to the jury.

THE COURT: You don't have to give them a transcript. I just needed it for my own clarification.

MS. CAMPBELL: Finally, State's Exhibit No. 74, we have a clean copy of that.

MS. ZMROCZEK: I may at the break, Your Honor, just look at it. I know what it is, but I just want to --

THE COURT: Okay.

MS. WALKER: The last thing, Your Honor, there was a

disk that you requested.

MS. ZMROCZEK: Yes.

MS. WALKER: And we've turned that over to her of some photographs. She had the thumbnail, but she wanted it on a disk, so we provided that this morning.

THE COURT: Okay.

MS. ZMROCZEK: And I handed them to my investigator to go print so that I could use them. I understand that that may be a witness this morning.

THE COURT: Okay. What else?

MS. CAMPBELL: The only other thing, Your Honor, is the Defense counsel has mentioned to Ms. Walker that she intends to introduce some video that we have not seen. We have renewed our reciprocal Rule 5 multiple times and we would renew it again.

MS. ZMROCZEK: Your Honor, I was waiting to see what disk they have. And now, because they entered a map that doesn't have the way the cameras are, my investigator is working on it. I was literally on the phone with him until 11:30 last night getting it done. And I told them that I would get that to them today.

THE COURT: Okay. Thank you.

Anything else?

MS. ZMROCZEK: It's all being generated from the discovery they gave.

336

THE COURT: Great. Okay.

All right. For the record, I took the jury to the crime scene this morning -- or the alleged crime scene this morning with notice to both the State and the Defense yesterday evening. This morning, I swore in all the deputies and Ms. Stephenson from the clerk of court's office and the three bailiffs who all accompanied the jury to the crime scene along with myself. I provided them with the oath that is given to constables when they take charge of a jury outside the presence and instructed them that they are not allowed to discuss the case or any matter related to the case with the jury in any way, shape, or form.

We all rode down there together. I was present. My law clerk was present and the jury. I told the Forelady when they got out of the vehicles when y'all are ready to go, just let me go. Spend as much time as you need, and I want you to take as much time as you need. There is no rush. And they -- both the State and the Defense were present for that. And when they told me they were ready to go, we loaded up the vans and came back and the whole thing went off without incident. Okay. But that all occurred this morning prior to court starting.

Okay. All right. Bring them in.

(WHEREUPON, the jury entered the courtroom at

approximately 10:56 a.m.)

THE BAILIFF: The jury panel is all present.

THE COURT: Thank you very much, Mr. Burgess.

All right. Ladies and gentlemen, two things I need to tell you. Number one, as you know, I took you to the alleged crime scene this morning. That was done with the consent of both parties. Both the State and the Defense agreed that that would be appropriate in this case. In the law, I believe there is a statute, if not a rule, directly on point that allows for it in certain circumstances. Both sides did request that and I agreed to that and consented to it and believe that based upon what I know about the case thus far that it could aid you in your case.

One thing that I do need to explain to you is that this alleged crime scene is not evidence. Okay. It's not evidence for you to consider like an exhibit or testimony. What it is, it's offered for you on behalf of both sides so that you can better understand the evidence. But going out there this morning is not itself evidence technically. It's simply for the purposes of helping you better understand the evidence. And thank you for your cooperation and work with us this morning and making that go off very easily.

Seated to my right today is Mr. Robey. He is my new

law clerk, which will be starting next week. So if you see him up here and he looks confused, that's why. I'm kidding.

Call your next witness.

MS. CAMPBELL: May it please the Court?

THE COURT: Yes, ma'am.

MS. CAMPBELL: The State calls Officer McLaughlin.

THE COURT: All right. Officer McLaughlin, please come forward and be sworn.

THEODORE MCLAUGHLIN,

after being duly sworn, testified as follows:

THE CLERK: Thank you. Have a seat in the witness stand, please. State your name for the record.

THE WITNESS: Officer Theodore McLaughlin.

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q Officer McLaughlin, where are you employed?

A I work for the City of Columbia Police Department.

Q And how long have you been employed there?

A Four years now.

Q Do you also have another job?

A I do. I'm a United States Army drill sergeant.

Q How long have you been in the military, sir?

A Twenty-three years.

Q Right now, are you doing some active duty?

A I am. I'm on one year orders training task force marshal.
Q Training who?
A The Navy.
Q Training the Navy?
A Yes.
Q The Army trains the Navy?
A Yes, we do.
Q Where are you stationed currently?
A Fort Jackson.
Q Back in October of 2013, were you working at the Columbia Police Department then?
A I was.
Q So you actually had a full career before you joined the police department; is that correct?
A Yes.
Q And you actually retired from the Army?
A No, I haven't.
Q You have not yet?
A No.
Q Are you familiar with the Five Points area?
A I am.
Q On October 13th, what shift were you working that day -- or that night?
A I worked for the Five Points team. It's a team of

officers that work in Five Points.

Q And what shift, what hours were you working that day?

A Six to six.

Q Six to six?

A Yes.

Q And in this case, would that be 6:00 p.m. on the 12th until 6:00 a.m. the next morning?

A Yes.

Q On the 13th. Tell this jury, working with the Five Points team of CPD, what did your duties include?

A Our duties include ensuring that the college students that come to Five Points are safe. We're assigned to a block. And my block of assignment that night was at the 600 block, which is between Devine Street and Blossom Street on Harden Street.

Q On Harden Street?

A Yes.

Q Between Devine Street and Blossom Street?

A Correct.

Q And you mentioned you ensure the safety of students. Do you ensure the safety of anyone that comes to Five Points?

A Yes, we do.

Q And there are older people, like me, that come to Five Points occasionally?

A Occasionally.
Q And then there are students as well?
A Yes.
Q And this weekend was actually -- was that an away game?
A Yes, that was an away game.
Q But were you aware of another situation going on in town that people had come after going to see the fair?
A There was a concert.
Q Okay. That night, as part of your duties, were you just patrolling the streets?
A I was. I'm on foot patrol down there.
Q Foot patrol?
A Yeah.
Q So you didn't have an automobile there that night?
A No, I did not.
Q And as you were walking through the streets, did something come to your attention sometime after 2:00 a.m. that morning?
A Yes, ma'am.
Q Tell the jury what happened.
A I was standing on the corner of Devine and Harden Street observing the students as they were crossing the street, because a lot of times, they'll cross the street without using the crosswalk or that sort of thing, when I

heard apparent gunshots coming from the fountain area.

Q From near the fountain area?

A Yes.

Q And you said you heard a pair?

A One or two.

Q And when you heard the gunshots, what, if anything, did you do?

A I immediately ran diagonally from my position on the corner of -- actually, on the east corner of Devine and Harden Street across the street to the mid-block of 700 block.

Q And where is the Exxon station in relation to that?

A It's probably 200 meters away.

Q And the fountain would be further away than the Exxon station from where you were?

A Yes.

Q And you were actually on the other side of the street from the Exxon station when you heard the shots?

A Correct.

Q As you're running, what are you trained to look for?

A Anything out of the ordinary. I saw a young man running in the sidewalk dodging other students or people on the sidewalk.

Q And specifically, did you observe anything about him that raised your suspicions?

A Yes, he had his right hand in his right coat pocket, and it looked like he was holding something from bouncing. It was a heavy object.

Q And in your training, are you trained to look for what the appearance of weapons may be?

A Yes, ma'am.

Q And as you observed him running and avoiding running into other people with his hand in his pocket like it was something bulging, what did you do?

A I immediately keyed in on him, and I caught him at a dead run right there in front of Pop's Pizza.

Q Pop's Pizza?

A Correct.

Q And that's what it was called back then?

A Yes.

Q Now, does it have a different name?

A It does.

Q What's that name?

A The name now is -- hold on. I have it wrote down, Rio's Pizza and Bagels.

Q So sometime between October of 2013 and now, it changed in Rio's Pizza?

A Correct.

Q And where did you actually intercept him? Where did you come into contact with him?

A Right in the doorway.
Q Right in the doorway?
A Correct.
Q And how is that doorway done?
A The doorway, it's a pocket-type of doorway. It's probably four feet deep.
Q Four feet deep?
A Right.
Q When you say pocket, does that mean it's indented in off the sidewalk?
A Correct.
Q Did you actually intercept him there in that area?
A Right. I actually -- when I put my hands on him, I took him off the sidewalk and put him in there.
Q And why was that?
A Basically, to keep us both safe.
Q And at that point, what, if anything, did you feel -- where did you reach for him? Where did you touch him?
A I caught him at the jacket front and his right pocket.
Q And were you focused on that pocket at that time?
A I was.
Q Did you actually feel to see if you felt anything in that pocket?
A I did.

Q From the outside?
A Yes.
Q And what did you feel?
A I felt a pistol in there.
Q And at that point, what did you do?
A I held him firmly against the wall and took the pistol out of the pocket.
Q The condition of the pistol when you took it, was his hand still on it?
A It was still on it.
Q But you took it from him?
A Correct.
Q How did you get from it him? Did you just reach in and grab it or what?
A I pulled his hand out and took the weapon away from him.
Q So the weapon was still in his hand when you took it?
A Correct.
Q At that point, how were you dressed?
A In my full police uniform.
Q So there's no question that you appeared as a police officer?
A Correct.
Q You have CPD, you have a badge, all that on?
A Correct.

Q As you took it from him, what, if anything, did you notice about the pistol itself?

A The pistol was still warm to the touch.

Q Was that significant to you?

A Yes.

Q At that point, did you detain this individual that you just got the gun from?

A I did.

Q And at that point, just having the pistol alone, was he in violation of the law?

A Yes, he was.

Q What kind of pistol was it?

A It was a Glock 27.

(WHEREUPON, State's Exhibit Nos. 38 through 40 were marked for identification only.)

BY MS. CAMPBELL:

Q I'm going to show you what's been marked as State's Exhibits 39, 40 and 38. First, I ask if you recognize these?

A I do.

THE COURT: All right. Officer McLaughlin, is that firearm unloaded and secured?

THE WITNESS: It is.

MS. CAMPBELL: It does have a gun lock, Your Honor.

THE COURT: Thank you, ma'am.

MS. CAMPBELL: Your Honor, at this time, we'd offer them into evidence.

THE COURT: Any objection?

MS. ZMROCZEK: Without objection, Your Honor.

THE COURT: All right. What numbers are they?

MS. CAMPBELL: State's 38, 39 and 40. It's the gun, the magazine and the ammunition that came from the gun.

THE COURT: State's 38, 39, and 40 admitted without objection.

MS. CAMPBELL: Thank you, Your Honor.

(WHEREUPON, State's Exhibit Nos. 38 through 40 were admitted into evidence.)

BY MS. CAMPBELL:

Q The gun -- and just for the jury's edification, can it fire in this condition?

A No, ma'am, it cannot.

Q Because of this gun lock we put on it? So everyone is safe is my question?

A Yes.

Q At that point, you mentioned -- and if you can stand up -- that he had it in his pocket and that you could observe it. Could you show the jury kind of how he had it when he was running when you first observed him?

A This jacket doesn't have pockets inside, but he was holding it like this as he was running.

Q And then you took it from him. And once you secured the weapon, what, if anything, did you do about getting other police officers as back up?

A I called on the radio that I had an armed suspect in custody.

Q At that point, you knew he was armed, but did you know if there was any ammunition actually in the gun?

A Yes. After I handcuffed him, I unloaded and secured the weapon.

Q And when you unloaded the weapon, was this the magazine, State's Exhibit 39, that was actually in this weapon?

A Yes.

Q And it was actually in it when you got it?

A Yes, it was. There was a round chambered.

Q There was a round chambered? Explain to the jury if there was a round chambered, what does that mean?

A That means there was a cartridge in the chamber. On the Glock, on the side, there's a little ejector pin. On the side of the ejector, if there's a round loaded, it will be sticking out like that.

Q And you observed that?

A Yes, I did.

Q And then you unloaded the gun itself?

A Yes, I did.

Q Once you unloaded it, how much rounds were left in the gun, do you recall?
A I believe there were 10 rounds.
Q Ten rounds. And that's what was in the gun --
A Correct.
Q -- when you got it? And it was still warm?
A Yes.
Q Once you got the gun later that morning, did you then -- did you keep it in your possession?
A Yes, I did.
Q Did you then submit it to the evidence room later?
A I did.
Q Once the Defendant was detained, the gun was secured, did investigators respond to the scene?
A Yes.
Q Specifically, did you make contact with a certain investigator in this case?
A Yes, Investigator Emmitt Gilliam.
Q Gilliam?
A Yes.
Q Is this him right here?
A Yes.
Q And he actually came out that night?
A He did.
Q At that point, did he make contact with the

Defendant?

A He did.

Q At any point -- let me back up a little bit. When you stopped the Defendant and secured the gun, as you were taking the gun from him, what, if anything, did he say to you?

A Without prompting, he said, I didn't mean to shoot.

Q I didn't mean to shoot?

A I didn't mean to shoot.

Q And that wasn't in response to you interrogating him or questioning him?

A No.

Q And that's as you were taking the gun from him?

A Yes -- actually, no, it wasn't. It was actually when I was holding him against the wall.

Q Okay. After you secured the gun?

A Before.

Q Before. Once Investigator Gilliam came to the actual scene, did he then make contact with the Defendant?

A He did.

Q Were you present when he was questioning the Defendant or advising him of his rights?

A Yes.

Q You don't go into what he said yet, but you were there when he was advised of his rights?

A I was.
Q At that point, did he choose to talk to Investigator Gilliam?
A He did.
Q Did he provide him with another version of what had happened?
A He did. I didn't hear the whole conversation.
Q And I'll get that from him. Where was the Defendant held prior to being transported to headquarters?
A In the back of a patrol car.
Q And is that standard?
A It is.
Q Was he handcuffed at that point?
A He was.
Q Was the back of the patrol car secured to protect him and to also protect others?
A It was.
Q Was he in there for a period of time by himself?
A He was.
Q And at that point, what, if anything, did you do as far as recording what was going on in that vehicle?
A I assured the recording was on. I believe I turned it on during the time he was sitting in the back.
Q In the back?
A Yes.

Q When you turn on the recording device in the car, tell the jury how that works.

A There's a button for recording anything that goes on inside or outside the car. You just have to push the record button.

Q Was that your patrol car that night?

A No.

Q Was it Investigator Gilliam's patrol car?

A No, it wasn't.

Q But you had the wherewithal to think to turn it on while he was back there by himself?

A Yes.

(WHEREUPON, State's Exhibit No. 47 was marked for identification only.)

BY MS. CAMPBELL:

Q I'm going to show you State's Exhibit No. 47. Was there a recording that was later downloaded of what happened when he was alone in the back of that car?

A Yes.

Q And when you first turn on the recording, tell the jury how that works. It is back up or what happens there?

A Right. On our cameras, if you press the -- either turn on the blue lights or press record, it drops back to minutes prior to when we touched the button.

Q Why is that?

A That's to ensure that whatever we saw that we needed to turn the camera on, it's recorded on tape.
Q So if you're making a traffic stop or something like that?
A That's correct.
Q But is the sound actually recorded in those first two minutes?
A No.
Q But the video is?
A The video is.
Q Then once it's turned on, from that moment forward, it's video and audio?
A Correct.
Q And that was done in this case?
A Yes.

MS. CAMPBELL: Your Honor, at this time, I'd offer State's Exhibit 47 into evidence.

MS. ZMROCZEK: Without objection.

THE COURT: State's Exhibit No. 47 admitted without objection.

(WHEREUPON, State's Exhibit No. 47 was admitted into evidence.)

BY MS. CAMPBELL:

Q And that night, who actually transported Michael Smith down to the Columbia Police Department headquarters?

A I did.

Q Did you do that in your car or in the car he was already in?

A The car that he was in.

Q At any time, did you further question him or ask him anything?

A No, I did not.

Q You've been in law enforcement for the Columbia Police Department for four years now?

A Four years.

Q Prior to that, did you have law enforcement experience?

A I did.

Q What is that, sir?

A Eight years with Aiken County and two years with Batesburg-Leesville.

MS. CAMPBELL: Beg the Court's indulgence.

BY MS. CAMPBELL:

Q The reason the camera was turned on was because he was alone in the car?

A Correct.

Q You mentioned earlier the fact that the gun was warm to the touch when you got it was significant to you?

A Yes.

Q And you have some experience with guns?

A I do.
Q Why is that significant?
A After a weapon has been fired, the barrel will be hot to the touch. Being that it was warm and I could feel it through my glove meant that it had been recently fired.
MS. CAMPBELL: Thank you, sir. I don't have anything further.
THE COURT: Cross?
MS. ZMROCZEK: May it please the Court?
THE COURT: Yes, ma'am.

CROSS-EXAMINATION

BY MS. ZMROCZEK:
Q Good morning, Officer McLaughlin.
A Good morning.
Q You were on foot patrol that night?
A Correct.
Q It was crowded?
A It was.
Q Noisy?
A It was.
Q You were on walking patrol?
A Correct.
Q The corner of Devine and Harden?
A Right.
Q You heard shots?

A Correct.
Q Multiple shots?
A It's possible, yes.
Q You went to the Academy?
A Correct.
Q You were trained in how to write reports?
A Correct.
Q You understand those reports need to be accurate?
A Yes.
Q Correct?
A Yes.
Q True?
A True, yes.
Q And you complete those reports right after you have contact with -- or right after you do something that is part of your job?
A Correct.
Q You did that in this case?
A Yes.
Q In that report, you wrote that you heard shots, multiple shots, just --
A Just the word shots, yes.
Q Shots, yes. You didn't say one or two?
A Right.
Q You didn't say a pair?

A Right.
Q You didn't enumerate?
A Yes.
Q You also said that -- and it was in quotes that Michael Thomas said, I'm sorry, I didn't mean to shoot. Is that what he said?
A Correct, yes.
Q Okay. I want to -- and this was immediately after the shots?
A Within 20 seconds.
Q So about 2:20, 2:22 in the morning or approximately. And at that point, you put him in the patrol car after you handcuffed him?
A I did.
Q And where was the patrol car?
A It was parked at the Exxon right next to the fountain.
Q Did somebody else drive the patrol car there?
A Yes.
Q And immediately, you put him in the patrol car?
A Within five minutes of handcuffing him.
Q Turned on the camera and let it run?
A I put him in the back. I don't think I turned the camera on right away.
Q Okay. On direct, I thought you said that you turned

it on when you put him in the back of the car for his safety?

A I did turn it on. I'm not sure of the timeframe between when I turned it on and put him in the car.

Q Because, in fact, he was in the back of that police car for almost two hours, wasn't he?

A I'm not sure.

Q You would agree with me that at some point you turned on the camera?

A Yes, I did turn on the camera.

Q And you've reviewed what's being marked and entered as State's Exhibit 47?

A Yes.

Q As you have the -- as it starts, Mr. Smith is outside of the car being photographed?

A Right.

Q But you don't know time that was?

A No.

Q But that was an accurate reflection of what is on the video?

A Yes.

Q Okay. Mr. Smith was respectful?

A Yes.

Q He asked to use the bathroom?

A He did.

Q Eight times?
A He did.
Q Respectfully said excuse me, didn't yell?
A Nope.
Q Didn't fight?
A Nope.
Q Transported without incident?
A Correct.
Q I want to talk lastly about you would agree that the in-car camera would provide us exactly what was said? It would pick up anything that was said between Mr. Smith and you or Investigator Gilliam or anyone that was speaking to him, correct?
A Correct.
Q In fact, CPD has a policy on recording interviews? CPD records interviews?
A As far as I know, they do.
Q As far as you know, they do. Audio record?
A Right. I'm not privy to that. We don't interview.
Q On Five Points patrol, that's not an area that you deal with?
A Right.
Q Okay. But at some point, you made the decision to turn the camera on?
A Correct.

Q But the camera wasn't turned on when he was being read his rights or questioned by Investigator Gilliam, was it?

A As far as I know, it was turned on, but I don't know. I didn't know that it wasn't turned on.

Q Have you reviewed?

A I reviewed that, yes, I did.

Q And is it on that?

A The interview is not on that.

Q Lastly, you took the gun out, and I believe that you demonstrated how he was holding it in his pocket?

A Correct.

Q But you couldn't see his hand in his pocket?

A His hand was in his pocket.

Q Right. But you, I believe, had your finger on the trigger or on the side, but you have no idea how he was holding it? It was just being held in his pocket?

A When I grabbed his hand, his hand was on the gun.

Q And then there were 10 unfired cartridges?

A Correct.

Q And there was one in the chamber?

A Correct.

Q This one was in the chamber?

A As far as I know, it was.

Q And the rest were in the magazine?

A Correct.
Q This one is different than these?
A Correct.
Q I want to just ask you to go back to your -- you understood that you actually met with Investigator Gilliam a few days later, and he recorded an interview with you? Do you recall that?
A No, I don't recall that.
Q Do you recall meeting with him?
A I do. And I wrote a statement.
Q You wrote a statement?
A Correct.
Q You weren't aware that it was also recorded?
A (Indicating).
Q That's fine.

MS. ZMROCZEK: I have no further questions, Your Honor.

MS. CAMPBELL: Nothing further, Your Honor.

THE COURT: Have a nice day.

Call your next witness.

MS. GARFIELD: Thank you, Your Honor. The State calls Michael Painter.

MICHAEL PAINTER,

after being duly sworn, testified as follows:

THE CLERK: Have a seat in the witness stand, please.

State your name for the record.

THE WITNESS: It's Michael Painter.

DIRECT EXAMINATION

BY MS. GARFIELD:

Q Mr. Painter, can you pull the microphone that's right in front of you up close to you? You're very soft spoken.

A I'm sorry. Is that better?

Q That's better. Mr. Painter, where do you live?

A Greenville, South Carolina.

Q And were you living in Greenville back in October of 2013?

A No, ma'am, I was living in Florence, South Carolina.

Q Florence?

A Yes, sir -- or yes, ma'am.

Q And you mentioned the Greenville area, are you familiar with the victim in this case, Martha Childress?

A No, ma'am.

Q You've never met her before today?

A No, ma'am.

Q Back in October of 2013, specifically, the weekend of October 12th, October 13th, did you have an occasion to come to Columbia?

A Yes, ma'am.

Q Can you just share with the jury why you were coming to Columbia?

A Me and a few guys came out -- to go out in Columbia.
Q Did you go to the Five Points area?
A Yes, ma'am.
Q Had you ever been to the Five Points area before?
A No, ma'am, that was the first time in Columbia.
Q I'm going to take you to the early morning hours, a little after 2:00 a.m. on October 13th, 2013. Were you around the fountain area?
A Yes, ma'am.
Q Did you have an occasion to see anyone wearing a tan jacket?
A Yes, ma'am, tan jacket and tan pants.
Q Just tell the jury what you saw.
A A black man in a tan jacket and tan pants was standing on the corner, two black males walked up to him. I didn't hear anything, but I saw a muzzle flash --

MS. ZMROCZEK: I'm sorry, I can't hear him, Your Honor.

THE COURT: You have to speak up.

THE WITNESS: Sorry, is that better?

MS. ZMROCZEK: Yes.

THE COURT: Yes.

BY MS. GARFIELD:

Q Thank you.
A Two black men walked up to him. I saw a muzzle blast

-- a muzzle flash and heard a pop, pop and took off. He was taking off while it was going off.

Q So you saw a muzzle flash?

A Yes, ma'am.

Q And who among those black men had the muzzle flash?

A It was the man in the tan.

Q Tan?

A Yes, ma'am.

Q Are you nervous today?

A Yes, ma'am.

Q Have you ever testified before?

A No.

Q Just take your time. Mr. Painter, you saw the muzzle flash. In what direction did you see the muzzle flash?

A Towards us and towards the fountain.

Q You were standing?

A On the corner in front of the fountain.

Q And the fountain is behind you?

A Yes, ma'am.

Q In which direction did you see the person run that had the muzzle flash?

A In the opposite direction down the street past the Exxon.

Q Away from the fountain?

A Yes, ma'am, away from it.

Q Did you see anyone else with a gun that night?
A No, ma'am.
MS. GARFIELD: Beg the Court's indulgence.
(Pause.)
BY MS. GARFIELD:
Q Mr. Painter, just to clarify, you're not familiar with Columbia?
A No, ma'am.
Q You're not familiar with the street names?
A No.
Q Do you know specifically where you were as far as the street names?
A I have no clue what the street names were.
Q But the fountain was behind you?
A The fountain was behind me, the Exxon was in front of me.
Q And the muzzle flash came towards you?
A Yes, ma'am.
MS. GARFIELD: Thank you, Mr. Painter. Please answer any questions Ms. Zmroczek has.
THE COURT: Yes, ma'am.
MS. ZMROCZEK: Thank you.

CROSS-EXAMINATION

BY MS. ZMROCZEK:
Q You thought you were nervous before. The only thing

I'm doing, Mr. Painter, is I am putting up --

MS. ZMROCZEK: And Your Honor, may the witness step down?

THE COURT: Sure.

You have to speak up real loud.

BY MS. ZMROCZEK:

Q Real loud. I'm showing you what is -- or having you look at what's State's Exhibit 75, okay?

A Yes, ma'am.

Q Does this area look familiar to you?

A Yes, ma'am, that's the fountain and that's the Exxon.

Q And this lady has to be able to take down everything you say. You can yell at me. It's okay. Everybody does.

All right. So this is the fountain and this is where you were --

A Yes, ma'am.

Q -- that evening?

A (Witness nods in the affirmative.)

Q And this is the Exxon?

A Yes, ma'am.

Q Okay. And this is the street that runs in between it. Okay. Now, show the jury if you can where you were standing.

A I was standing on the corner right in front of where the walk -- where it says to walk or not to walk, I was

standing right beside the pole.
Q Okay.
A Somewhere in there.
Q Okay. So you were standing right there. I'll write this down because I'm going to forget. Next to the walk pole?
A Yes, ma'am.
Q Okay.
A Right beside it.
Q And where did you see the person in the tan outfit?
A The man in the tan was standing right on the other side of the crosswalk, like he was going to walk across the street. The two black men walked from this way and confronted him. Both the black men in black were facing this way and the man in the tan was facing this way. I was standing about right here.
Q Okay. Go ahead and have a seat. Thank you for that. Be careful.
You answered my next question for me. The two black men that you said confronted him?
A Yes, ma'am.
Q What were they wearing?
A Black, black shirts. I guess jeans.
Q Okay. Was it a friendly -- I'm sorry. Was it a friendly confrontation?

MS. GARFIELD: Objection, Judge. That calls for speculation.

THE COURT: Sustained.

THE WITNESS: I did not hear --

THE COURT: Don't answer.

THE WITNESS: Sorry. I don't --

THE COURT: It's okay.

BY MS. ZMROCZEK:

Q You couldn't hear what they were saying?

A No, ma'am.

Q You were from Florence?

A I'm from Greenville.

Q But you were living in Florence at the time?

A Yes, ma'am.

Q Down for the fair?

A We were just going out.

Q Meeting friends?

A Yes, ma'am.

Q How long had you been at Five Points that evening?

A We had gone out earlier in the evening. We left probably 11:00, 12:00. Then we just walked around, hung out. I got separated from my friends, and I was walking back to their apartment.

Q Been drinking?

A A little bit.

Q One drink?
A A few.
Q A few. Three?
A Over the course of from 11:00 or 12:00 to close.
Q More than three?
A Not too much.
Q About three. Mixed drinks?
A No, ma'am, beer.
Q Okay. You had an occasion to write a statement that night, correct?
A Yes, ma'am.
Q Was that with this gentleman right here?
A Yes, ma'am.
Q He sat with you about 3:18 in the morning?
A Yes, ma'am.
Q And he gave you a piece of paper and you wrote your statement and you signed it, and he signed it?
A Yes, ma'am.
Q Were you sitting on the wall or were you standing?
A No, ma'am. I was waiting across the street standing next to the walk pole.

MS. ZMROCZEK: Thank you, Your Honor. I have no further questions.

MS. GARFIELD: Just a couple.

THE COURT: Yes, ma'am.

REDIRECT EXAMINATION

BY MS. GARFIELD:

Q You gave this statement with Investigator Gilliam?

A Yes, ma'am.

Q Did he come find you?

A No, ma'am.

Q You stayed there in Five Points?

A Yes, ma'am, I was talking to another officer right after the shooting.

Q You wanted to give the information you saw?

A Yes, yes.

MS. GARFIELD: Thank you, Your Honor.

THE COURT: Have a nice day.

Call your next witness.

MS. CAMPBELL: The State would call Investigator Potash.

GEORGE POTASH,

after being duly sworn, testified as follows:

THE CLERK: Thank you. Have a seat in the witness stand, please. State your name for the record.

THE WITNESS: My name is George Daniel Potash.

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q Sir, where are you employed?

A I'm currently employed with the City of Columbia

Police Department.

Q What do you do there, sir?

A I am currently assigned to the crime scene unit for the City of Columbia Police Department.

Q And being assigned to the crime scene unit, what does that mean?

A It's a specialized field. We're basically responsible for responding to incidents and providing evidentiary support for patrol units, investigators. We document and collect evidence and then assist in the disposition of that evidence.

Q Okay. So, basically, you go to the crime scene pretty much after the initial officers get there?

A Yes.

Q And then once you get there, you're responsible for photographing and collecting evidence?

A Yes, we are.

Q Do you do any of the testing yourself?

A Sometimes, yes, the majority of the time, no. Most of the time any testing is done at SLED.

Q At SLED. I want to turn your -- and do you have special training as far as to how to collect evidence to make sure it's collected properly, things of that nature?

A Yes, I do.

Q I want to turn your attention to the early morning

hours. Were you called out on the morning of October 13th, 2013?

A Yes, I was.

Q And what time were you actually notified to go to Five Points?

A From my report, I'm seeing I was notified at 0307 hours. That's about 3:07 in the morning.

Q When did you actually arrive at the scene that morning?

A 336 hours.

Q Prior to you getting there, was there any evidence that anyone made any attempts to secure the area before you got there?

A The patrol units try to control the traffic through the area if there's a lot of very heavy foot traffic. And that particular part of the area is kind of difficult to control. They had done a fairly good job with isolating as best they could. They had also located one shell casing and what appeared to be a blood stain and they had marked it with cones.

Q With cones?

A Yes.

Q When you say they marked it with cones, do they actually move the item or touch the item?

A No, if they -- I yell at them if they move anything.

Q This was potential evidence that had already been marked prior to you getting there?
A Yes.
Q What was the weather like that night?
A It was clear and warm in the evening, no rain, nothing like that.
Q And as far as this area, are there a significant number of street lights in the Five Points area for people walking at night?
A Yes, there's a fair number of streets lights. You still have -- you still do have some heavy shadowing just because of all the buildings and trees and everything. But there's a large number of street lights in the area, and they have an orange-yellow cast to them. So it presents a -- everything has kind of an orange-yellow look to it.
Q When you got there that night initially, was there a request made of you to collect what's known as gunshot residue kits?
A Yes, on arrival, Investigator Gilliam had made a request that I collect gunshot residue samples from two subjects.
Q Is there a certain time period you have to collect the kits on live people?
A Well, there's an absolute limit by SLED of six hours.

With gunshot residue, it's time sensitive. The body on a living person will actually absorb the residue. And based on the type of shell casing, the number of shots fired, it can actually be absorbed in as little as 15 minutes, half an hour or it can still be present six or eights hours later.

Q And at that point pursuant to the request that had been made, did you actually collect gunshot residue kits from two individuals?

A Yes, I did.

Q Who did you collect those gunshot residue kits from?

A The first gunshot residue test that I conducted was on a Michael Juan Smith, and that was completed on October 13th, 2013, at 0352 hours.

Q At 0352?

A Yes.

Q So that would be close to 4:00 a.m.?

A Yes.

Q Okay. And the second kit that you collected that morning, who was that on?

A The second was on a Rondo Ellison. And that was completed October 13, 2013, of the 0409 hours.

Q So you did the two of them. Do you take certain steps to make sure that the integrity of the evidence is collected correctly, that it's kept separate from each

other and things of that nature?

A Absolutely.

Q Explain that to the jury.

A The gunshot residue tests, they're prepackaged and they come in a sealed envelope. The manner in which I conduct the test is this. I'll take the envelope, the sealed envelope, and I will unseal it in the presence of the person that I'm conducting the test on.

Prior to that, I'll give them kind of an explanation of exactly how I'm conducting the test, which I'll go through in a second. But I'll unseal the envelope, remove the components. The components consist of currently four cylinders, four plastic cylinders. The top comes out. On that top, you have a carbon disk with a tacky adhesive, kind of like a tacky glue-like stuff.

The way the test is conducted is you put on the gloves that come in the kit. They're sterile gloves, no chance of contaminants. You take each cylinder. And they're labeled -- there's four cylinders. They're labeled left hand, right hand, front and back of hand.

So for the left front, I would take that cylinder, open it up and place the tacky material and just dot it on the hand for that particular side of the hand, for that particular hand and then I would close it back up. That actually seals that container.

I do that for each of those four continuers. That then goes in the kit. The kit is closed and there's actually a seal that is placed on that kit. I always make sure to seal those kits in front of the person that I take the kit from. I'm just one of those people I like people to see what I'm doing.

Q In this case with these two kits, was there any type of cross contamination or anything of that sort done when you did the front and the back of Mr. Smith's hands?

A No, each cylinder remains sealed and closed until it's actually used.

Q And as you did one, you would do it and then seal it and then go to the next?

A Yes.

Q To make sure it wasn't contaminated?

A Yes.

Q And the second person that you did, did you also do that in the same manner?

A Yes. You know, consistency is everything.

(WHEREUPON, State's Exhibit Nos. 42 and 43 were marked for identification only.)

BY MS. CAMPBELL:

Q Okay. I'm going to show you State's Exhibit 42 and 43. Do these look like the kits that were collected by you before the testing was done?

A Well, I can actually open them up. These are actually the SLED envelopes on the exterior. Yes. That's my handwriting and my seal on this one.

Q And that's State's Exhibit what? Let me just look at -- and that's on State's Exhibit 42?

A In fact, that particular kit is for -- this particular kit is for Michael Juan Smith.

Q Okay.

A Again, my handwriting and seal. And this is for a Ryan Ellison.

MS. CAMPBELL: Your Honor, at this time, we'd offer them into evidence.

MS. ZMROCZEK: Without objection.

THE COURT: State's Exhibit 42 and 43 without objection.

(WHEREUPON, State's Exhibit Nos. 42 and 43 were admitted into evidence.)

BY MS. CAMPBELL:

Q Once you collected those kits, did they remain in your possession until they were entered into evidence?

A Yes, they did.

Q And did anyone have an opportunity to tamper with them or alter them in any way?

A No. As soon as we take those kits -- in a case like this, I would immediately take them to my crime scene

vehicle and secure them under lock and key.

Q And when they were entered into evidence, they would have been sealed?

A Yes.

Q Okay. Once you had done that, did you then go and take some photographs of the scene?

A I did.

Q I'm going show you what's been marked as State's Exhibits --

MS. CAMPBELL: Beg the Court's indulgence.

BY MS. CAMPBELL:

Q -- one through 18 first. And just ask you first to look through these, make sure these fairly and accurately represent the scene as it was when you got there that night?

(Pause.)

A Yes.

Q Are those photographs you actually took that night?

A Yes.

Q And do they represent the area we've been talking about, the fountain area in front of the Exxon?

THE BAILIFF: Your Honor, we have a phone.

THE WITNESS: Yes. It would --

MS. CAMPBELL: Just --

THE COURT: Go ahead.

MS. CAMPBELL: Thank you, Your Honor. I'm sorry.

THE WITNESS: Yeah, the photographs cover both areas.

BY MS. CAMPBELL:

Q And in these photographs, you mentioned that there's some cones that marks your evidence?

A Yes.

Q Like in State's Exhibit No. 1, does that show those cones?

A That shows two cones. That particular location consisted of what appeared to be a blood stain on the bricks.

Q We're going to get to that in a minute, but I wanted to get all the evidence in first. Once you had photographed the scene area, you mentioned -- you just mentioned the blood stain. Was there other evidence you actually collected out there at the scene that night?

A Yes, there were two other pieces of evidence that I collected.

Q You mentioned the blood stain. What did you collect there?

A I actually took a sampling of the reddish stain. What I had done initially was I had conducted a field test for the presence of blood using a product known as Hemosticks. It's a technique that's taught by the Federal Bureau of Investigation.

Basically, it takes a small sample, places it on a small pad and there's a chemical reaction. If it turns a dark green, then it's positive for the possible presence of blood. Again, it's a field test and not definitive, but it indicates that it's something that I need to collect.

Q Okay. And in this case, even if it was the victim's blood, you still were going to collect it?

A Yes.

(WHEREUPON, State's Exhibit No. 37 was marked for identification only.)

BY MS. CAMPBELL:

Q I show you State's Exhibit No. 37. Is that what you collected that night?

A Yes, it is. It has my seal, my signature across the seal and the information is correct. It's also marked as biohazard.

MS. CAMPBELL: Your Honor, at this time, we would offer State's Exhibit 37?

MS. ZMROCZEK: Without objection.

THE COURT: State's 37 without objection.

(WHEREUPON, State's Exhibit No. 37 was admitted into evidence.)

BY MS. CAMPBELL:

Q Additionally, at the scene, in a different area from

where the blood stain was, did you -- when you got there, it was already marked. What did you observe?

A There was shell casing laying just off the sidewalk, in between the sidewalk and the street.

(WHEREUPON, State's Exhibit No. 41 was marked for identification only.)

BY MS. CAMPBELL:

Q And I'm going to show you State's Exhibits No. 41. Do you recognize that?

A Shell casing that was collected at the scene.

Q And where was that found, sir?

A It was found near the Exxon. There is a row of bushes and there's an open space in the bushes that people tend to travel through. And on that dirt area, the shell casing was actually laying on the dirt in between the sidewalk and the street.

MS. CAMPBELL: Your Honor, at this time, we would offer State's Exhibit 41 into evidence?

MS. ZMROCZEK: Without objection.

THE COURT: Forty-one without objection.

(WHEREUPON, State's Exhibit No. 41 was admitted into evidence.)

BY MS. CAMPBELL:

Q Was that the only shell casing that you found that night?

A Yes, it was.

Q Typically, in your experience, how does a shell casing get at a scene?

A Generally, shell casings are ejected from firearms.

Q And in this case, you just found one?

A Yes.

Q Does that indicate how many times were shot or just that you found one?

A It just indicates that I just found one. In shooting scenes, shell casings can travel. People can kick them. They can get caught up in the tread of tires. In fact, one of the things I do on a regular basis is when I respond to scenes, I check the tires of my own patrol cars because I don't know if somebody rolled over something or not.

Q Did you collect any projectiles or the actual bullet that comes out of a gun?

A At the scene, no.

Q Is that unusual?

A No. Actually, it's -- unless you know the trajectory of a round or it is low enough or close enough to be found, most of the time, when firearms are fired, you don't locate the projectiles.

Q In the area where you were at the crime scene that night, is it an open area?

A Fairly, yes.
Q While you were there at the scene that night, were you also asked to photograph a gun and its contents?
A Yes, ma'am. Yes, ma'am.
(WHEREUPON, State's Exhibit Nos. 25 through 36 were marked for identification only.)
BY MS. CAMPBELL:
Q I'm sorry. I didn't hear you. I'm going to show you State's Exhibit 25 through 36. First let me ask if you recognize those?
A These are photographs that I took at the scene at the request of Officer McLaughlin.
Q And what is in those photographs?
A Photos of a Glock 27 .40-caliber pistol, magazine and a number of rounds.
Q Okay. And where were those photographs -- where was the Glock actually located when you took the photographs?
A The pistol was actually located on the trunk of a patrol car.
Q Okay.
MS. CAMPBELL: Your Honor, at this time, we'd offer these into evidence.
MS. ZMROCZEK: I didn't hear you.
THE COURT: What are the numbers?
MS. CAMPBELL: Twenty-five through 36.

THE COURT: Any objection?

MS. ZMROCZEK: No objection. Sorry.

THE COURT: Great. Twenty-five through 36 admitted without objection.

(WHEREUPON, State's Exhibit Nos. 25 through 36 were admitted into evidence.)

MS. CAMPBELL: Your Honor, at this time, we would also offer into evidence State's Exhibits 1 through 18.

MS. ZMROCZEK: If I may just have a look at those.

THE COURT: Sure.

MS. CAMPBELL: These have been provided to the Defense. All of them.

MS. ZMROCZEK: Without objection, Your Honor.

THE COURT: State's Exhibits 1 through 18 admitted without objection.

(WHEREUPON, State's Exhibit Nos. 1 through 18 were admitted into evidence.)

(WHEREUPON, State's Exhibit Nos. 44 through 46 were marked for identification only.)

BY MS. CAMPBELL:

Q Did you also prepare some diagrams in this case which we've blown up?

A I utilized Google maps, which has become a standard tool in crime scene for scenes.

Q Okay. And I'm going to show you what's being marked

as State's Exhibit 44, 45 and 46. Do you recognize these?
A Yes, I do. Those are the maps that I provided your office.
Q Do these show the Five Points area we are referring to?
A Yes, they do.
MS. CAMPBELL: Your Honor, at this time, we'd offer them into evidence.
THE COURT: What number is it?
MS. CAMPBELL: Forty-four, 45, 46.
MS. ZMROCZEK: Without objection.
THE COURT: Thank you.
(WHEREUPON, State's Exhibit Nos. 44 through 46 were admitted into evidence.)
(WHEREUPON, State's Exhibit Nos. 19 through 24 were marked for identification only.)
BY MS. CAMPBELL:
Q Before I get you to come down, just one more thing. That night, were you also asked to photograph the appearance of Michael Smith while you were there?
A Yes, ma'am, I was.
Q And I want to show you State's Exhibit 19 through 23 first and then No. 24?
A Yes, ma'am.
Q And are those photographs you took that night?

A Yes, ma'am, they are.

MS. CAMPBELL: Your Honor, at this time, we'd offer State's Exhibits 19 through 24 into evidence.

MS. ZMROCZEK: Without objection.

THE COURT: Without objection.

(WHEREUPON, State's Exhibit Nos. 19 through 24 were admitted into evidence.)

MS. CAMPBELL: At this point, may the witness step down?

THE COURT: You can step down, Investigator. I ask just keep your voice up for me, please.

MS. CAMPBELL: Everybody can see.

THE COURT: Ladies and gentlemen, what we do is we keep a -- there's a record, but we also keep a separate list of what's admitted and what's not so that at the end of the trial when everything comes back to you, we know -- there will be times that numbers just get skipped for various different reasons, but we know exactly what's coming back and what's not. So we're just trying to make sure that record is accurate, that's all we're doing.

Go ahead, Ms. Campbell.

MS. CAMPBELL: Thank you, Your Honor.

BY MS. CAMPBELL:

Q First, I want show you State's Exhibit 19 since this is in my hand. What does this show?

A That shows one of the subjects that was at the scene that I conducted a gunshot residue test on.
Q Which subject does this show?
A I believe that's Michael Smith.
Q Michael Smith. State's Exhibit No. 19 shows him on the front?
A Yes, it does.
Q Did you then go a step further and photograph him --
A Yes.
Q -- in State's 20 and 21 from all sides?
A Yes. It's best practice to photograph on all sides.
Q And 22, what does that show?
A That shows him from the side.
Q In your experience, is it important to memorialize what a person may be wearing when identity may be an issue?
A Yes.
Q And then finally, State's Exhibit No. 23?
A That is a facial shot of the subject.
Q If you had noted any injuries or anything else to Mr. Smith, would you have photographed those as well?
A I would have photographed those.
Q Were any injuries indicated?
A No.
Q Finally, State's Exhibit No. 24, what is this?

A That is a driver's license that was presented to me by Officer McLaughlin for photographing.

Q From Mr. Smith?

A I do not know.

Q And this was provided to you to be photographed along with these photos?

A Along with a firearm, yes.

Q And State's Exhibit 24, what name is on that?

A The name on the driver's license is Sammy Hollis, Jr., or Sammy Junior Hollis.

MS. CAMPBELL: Your Honor, permission to publish?

THE COURT: Yes, ma'am.

MS. CAMPBELL: Thank you.

BY MS. CAMPBELL:

Q While you're standing there on that side, I want to show you State's Exhibit No. 44. I guess it goes this way. Where is Harden Street?

A This is Harden Street.

Q Let me give you a pointer so you can step back so they can see.

A Thank you. This is Harden Street.

Q And where is Greene Street?

A Greene Street is here. It's the far street.

Q And I believe where Devine comes in is not on this map, but where would that be?

A I believe Devine Street is -- I couldn't tell you.
Q And this shows Saluda Avenue as well?
A Yes.
Q Where is the fountain?
A The fountain is in this area here. It's a central area. You have trees surrounding the fountain.
Q And then the Exxon station?
A This would be the Exxon station and the Exxon station parking lot. There would be a sign over here.
Q Okay. And State's Exhibit No. 45, what area does that show?
A That shows the same area in Five Points.
Q Can you point out where the fountain is?
A This is the fountain here, and you have, of course, the walkways.
Q Uh-huh.
A And then you have the large trees and some of the bush areas.
Q The bush areas in front of the Exxon, there are two different areas?
A Yes, there are.
Q And can you point out to the jury what area it was that you found the shell casing?
A This was the area that was in question with the shell casing.

Q And, in fact, in State's Exhibit No. 46, did you actually mark the approximate areas --

A Yes --

Q -- where you found items of evidence in this case?

A -- I did. The shell casing would be here just off the sidewalk and the reddish stain on the bricks would be here.

Q And starting with State's Exhibit No. 1, in relation to this, where does this show? By the way, this has got police cars in it. This is how it was when you got there?

A Right. I document everything as I see it. Nobody is allowed to move anything. As best we can, we take it as we see it as we come to it, which means we may have police cars in the scene. It's all going to be documented as we see it.

Q And in this one, what area does this show where the two cones are?

A That's right in this area here.

Q What did you find where these two cones are in State's Exhibit No. 1?

A I found a reddish stain on the brickwork.

Q On the ground around or on the brickwork?

A Actually, it was on the bricks on the ground.

Q On the ground?

A Right. The sidewalk is actually paved with brick in

this area.
Q And you can see that actually in State's Exhibit No. 1. In State's Exhibit No. 2, what area does this show?
A This is from across the street. And this primarily shows this area here, Saluda Avenue, that area there.
Q And then in State's Exhibit No. 3, I see another cone?
A Yes, that would be where the shell casing was located.
Q Right there?
A And that would be -- that would be right in this area right here.
Q Right where on here?
A Right in this area here.
Q Was it actually on the sidewalk?
A Well, it was off of the sidewalk. There's a -- as I said, you have these areas here. You have this bush area here. And there was actually a dirt path running between the bushes a lot of people like to cut through. This is actually a driveway into the Exxon station. And the shell casing was actually located on the ground just off the sidewalk in between the bushes.
Q And I want move back to State's Exhibits No. 4 and 5. The two cones signify what evidence you've collected?

A The reddish stain.
Q And this is actually how it appeared when you got there?
A Yes.
Q And then did you also in State's Exhibits 6, 7 and 8 photograph the stain itself?
A The stain itself, yes. First with no markings, which is how the stain appears the first time. And then after that, I put a scale at the stain, actually, define the size of the stain.
Q Okay. That's State's Exhibits 8 and 9, the scale you're talking about?
A Yes. And the scale is also marked B-1. When I collect evidence, I'll generally use numbers for physical evidence. I will use an "L" for latent prints and I'll use a "B" to signify a biological sample.
Q Such as blood?
A Such as blood.
Q And then finally, State's Exhibit 10, there's a little stick there. What is that?
A Now, this is, as I was saying earlier, the Hemosticks. This is actually Hemosticks. This is showing the positive reaction from the sampling that I took from the stain.
Q Was that all the blood that you observed in that

area?
A Yes, it was.
Q Now, I want to move back to the area where you found the shell casing. In State's Exhibit 11, the cone is gone, but now, there's a number?
A Right. I had removed the cone for photography purposes. There are other -- as you're seeing the cone was already photographed as far as location.
Q Okay.
A So at that point, I wanted to remove the cone so I could be focused on the evidence itself.
Q In State's Exhibit 12, it's slightly closer as far as the shell casing where you found it?
A Yes.
Q And all these photographs are taken before you or anybody else moves any of this stuff?
A Exactly.
Q And then finally in State's Exhibits No. 15 -- excuse me, 13?
A This is the shell casing as it lies on the ground with the marker indicating the evidence number.
Q And then in State's Exhibits 14 and 15, what does this show?
A I'm indicating that this is actually item number one and then I am documenting the head stamp on the case.

That way, there's no mix up in what shell casing it is.

Q And then finally, looking down in State's Exhibit No. 18, what direction is this from?

A Okay. This direction is from farther down on the opposite side of the driveway from the Exxon station. I wanted to make sure that I documented this entire area here going down towards the fountain. Basically, what I did was it's just farther back to get more of the scene.

Q And during the course of your investigation -- and again, these areas show the approximate place where you found the shell casing and the blood?

A Yes.

Q Approximately how far is this from here to here, from the blood to the shell casing?

A Approximately 110 feet.

Q Thank you, sir. You can get back to the stand.

A (The witness resumes the witness stand.)

Q Thank you. The items that you collected that night, the gunshot residue kits, the shell casing, the blood, was it submitted into your evidence room?

A Yes, immediately after I cleared the scene.

Q And during the time period this evidence was in your custody, did anyone alter it or tamper with it in any way?

A No.

Q Was it sealed when it was submitted?

A Yes, it was.
Q Including the gunshot residue kits?
A Yes, I seal all my evidence at the scene.
MS. CAMPBELL: Thank you, sir. I don't have anything further.
THE COURT: Cross?
MS. ZMROCZEK: Your Honor, may we approach?
THE COURT: Sure.
Stand up, stretch your legs, talk amongst yourselves.
(WHEREUPON, a bench conference was held.)
THE BAILIFF: Your Honor, we need a break.
THE COURT: Okay. All right.
How long are you going to be, Ms. Zmroczek?
MS. ZMROCZEK: Probably 20 minutes.
THE COURT: Okay. Let's go ahead and break for lunch. It's about twelve o'clock. Do not discuss the case with anybody. Keep an open mind. Do not let anybody discuss the case with you. We'll see you back at 1:30. Okay. Thank you very much.
Everyone remain seated.
(WHEREUPON, the jury left the courtroom at 12:04 p.m.).
THE COURT: Okay. Investigator Potash, you're not allowed to discuss your testimony with anybody in any way, shape, or form. You are allowed to eat lunch or whatever

you'd like to do. Just be seated right there at 1:30 when we come back.

THE WITNESS: Thank you, Your Honor.

THE COURT: Anything before we break?

MS. WALKER: Nothing, Your Honor.

MS. ZMROCZEK: Nothing.

THE COURT: Thank you. 1:30.

(WHEREUPON, a lunch break was taken.)

THE COURT: Everybody ready?

MS. CAMPBELL: We're ready, Your Honor. The only thing we need to take up before Ryan Ellison testifies this afternoon is we need to do a short Biggers hearing.

THE COURT: Let's do it.

MS. CAMPBELL: Mr. Ellison.

THE COURT: Hang on just a moment, Investigator Potash. Step down while I do this witness, please. Don't go too far, though, okay?

THE WITNESS: Thank you.

THE BAILIFF: Watch your step.

RYAN ELLISON,

after being duly sworn, testified as follows:

THE CLERK: Have a seat in the witness stand, please.

THE BAILIFF: State your name.

THE WITNESS: Ryan Ellison.

THE COURT: Okay. Mr. Ellison.

Go ahead, Mr. Campbell.

MS. CAMPBELL: Thank you.

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q Mr. Ellison, how old are you?

A Nineteen.

Q Are you currently in school?

A Yes, ma'am.

Q Where do you go to school?

A Job Corp in Bamberg.

Q Job Corp in Bamberg. Do you know Michael Smith?

A No. I knew of him. I didn't know him.

Q Explain to the Judge when you say you knew of him, how did you know of him?

A I knew he was my cousin's boyfriend at the time.

Q Your cousin's boyfriend?

A Yes, ma'am.

Q And what's your cousin's name?

A Shante.

Q And that was her boyfriend?

A Yes, ma'am.

Q So had you seen him on more than one occasion?

A Rarely.

Q Rarely. But you had seen him before?

A Yes, ma'am.

Q And you knew that was your cousin's boyfriend?
A Yes, ma'am.
Q But you didn't know him by Michael Smith. You knew him by a different name, didn't you?
A Yes, ma'am.
Q What name did you know him by?
A Flame.
Q Flame?
A Yes, ma'am.
Q And was that the only name you knew?
A Yes, ma'am.
Q Okay. Did you end up meeting up with Shante and your other cousin, Asia, and another young woman, and Flame on the night in question here?
A Yes, ma'am.
Q And when did y'all meet up that night?
A Before we went.
Q To Five Points?
A Yes, ma'am.
Q Did you have an occasion to actually see his face that night? I know these are stupid questions.
A Yes, ma'am.
Q Did you see his face that night?
A Yes, ma'am.
Q Was anything obstructing your view?

A No, ma'am.
Q Did you get to look at him straight in the face on more than one occasion?
A Yes, ma'am.
Q In fact, in the video, it looks like the two of y'all were kind of together for a period of time down in Five Points?
A A good little minute.
Q Good little minute?
A We was walking in a group.
Q Walking in a group.

MS. ZMROCZEK: Your Honor, I'm sorry, I can't understand him.

THE COURT: He said good little minute, walking in a group.

MS. ZMROCZEK: Thank you.

THE COURT: Is that right?

THE WITNESS: Yes, sir.

THE COURT: Okay.

MS. CAMPBELL: Thanks.

BY MS. CAMPBELL:
Q And during that time, you knew it was Flame?
A Yes, ma'am.
Q And later that night, you actually got arrested as well, right?

A Yes, ma'am.
Q For what charge?
A Disorderly conduct.
Q But you saw Flame for a period of time of hours, minutes, how would you characterize it that night?
A You mean when we was at Five Points?
Q Yeah.
A Hours. We was there for at least an hour and some change.
Q So you got a good look at him is my question?
A Yes, ma'am.
Q And you knew it was your cousin's boyfriend?
A Yes, ma'am.
Q After this happened, did the police show you some photographs?
A Yes, ma'am.
Q And when they showed you the photographs -- I want to show you these six photographs. First, look through them.
MS. CAMPBELL: I'll mark them after the hearing, Your Honor.
BY MS. CAMPBELL:
Q Did you look through all the photographs when they showed them to you?
A Yes, ma'am.
Q Did anybody tell you who to pick?

A No, ma'am.
Q Did anybody kind of imply you needed to pick one?
A No, ma'am.
Q And, in fact, when you looked through of these six photographs, did you recognize anyone?
A Any other person?
Q No, did you recognize out of the six anyone?
A Yes, ma'am.
Q And here is your writing on this one. On the back, it's marked number five; is that right?
A Yes, ma'am.
Q And then that's your name and your signature?
A Signature.
Q And the date?
A Right.
Q Is what?
A 10/17/13.
Q And then again on the front of that same photograph?
A Same thing.
Q Who did you recognize this person to be, number five?
A Michael.
Q Michael?
A Yes, ma'am.
Q Who you knew as Flame?
A Yes, ma'am.

Q Was he the person with you in Five Points that night?
A Yes, ma'am.
Q The other guy? And nobody told you who to pick or anything like that?
A No, ma'am.
MS. CAMPBELL: I think that's all I have, Your Honor.
THE COURT: Yes, ma'am.
Do you have any questions?
MS. ZMROCZEK: Just briefly, Your Honor.

CROSS-EXAMINATION

BY MS. ZMROCZEK:
Q This is who you picked out, it's number five?
A Yes, ma'am.
Q What name did you tell the officer this was?
A I don't recall.
Q You don't recall?
A No, ma'am, but I remember the face.
Q You remember the face, but you didn't tell them the name?
A I don't recall. It was two years ago.
Q It was what?
A Two years ago.
Q Two years ago. Are you having trouble remembering things?
A Certain things. I remember a lot, though.

Q Okay.

MS. ZMROCZEK: Your Honor, I have no further questions at this point.

THE COURT: Okay. Any motions?

MS. ZMROCZEK: None, Your Honor.

THE COURT: Okay.

Thank you, Mr. Ellison. You're not excused from your subpoena.

Do you want him to stay here, Ms. Campbell?

MS. CAMPBELL: Yes, sir.

THE COURT: Stay here, but thank you very much.

MS. CAMPBELL: You can go back and sit behind me.

THE COURT: Investigator Potash, you may come back up. Thank you for your patience.

(WHEREUPON, State's Exhibit No. 76 was marked for identification only.)

THE COURT: I find that the photo lineup based upon the information provided by Mr. Ellison is admissible. There has been no motion short of me hearing something extraordinary from law enforcement about what happened, then the in-court identification would be proper.

THE COURT: Ms. Zmroczek.

MS. ZMROCZEK: Thank you, Your Honor. Just to make sure that the record is complete, identification is not an issue.

THE COURT: Okay.

MS. ZMROCZEK: Which is why we're not --

THE COURT: Sure. I understand that. I've got it. That makes sense.

MS. ZMROCZEK: Okay.

THE COURT: And I understand us going through that was to make sure the record is clear. All that is perfectly fine.

MS. ZMROCZEK: Thank you.

THE COURT: Okay. Everybody else ready?

Bring them in.

(WHEREUPON, the jury entered the courtroom at approximately 1:46 p.m.)

THE BAILIFF: The jury panel is all present, Your Honor.

THE COURT: Welcome back. Sorry about the delay. We were handling a legal issue that had to be done outside of your presence.

Cross-examination of Investigator Potash, please.

MS. ZMROCZEK: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, ma'am.

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q Good afternoon. You've been doing CSI, crime scene

investigation?
A Yes.
Q That's the unit you're on?
A Pardon?
Q That's your unit?
A Yes, ma'am, that's where I'm assigned.
Q For how long?
A I've been assigned to the unit for about three years now. Prior to that, I had been providing crime scene support to my squad in the region for several years prior to that.
Q And you talked about the importance of going to a scene and collecting potential evidence?
A Yes.
Q Preserving potential evidence?
A Yes.
Q Memorializing any evidence?
A Yes.
Q At the time -- you're generally called out to an incident right when it happens?
A Right.
Q Or very close thereafter?
A Right.
Q So you're not sure what is important?
A What we do is we try to take the information that

we're provided from as many parties as we can get it from and use that to try to identify what's important at the scene or, for that matter, even where the scene is.

Q And you did that in this case?

A As best I could, yes.

Q And I guess -- in fact, this jury is well aware that Five Points was very well staffed that evening with CPD officers?

A Right.

Q And the video cameras actually showed them immediately searching for evidence everywhere around the area?

A Right.

Q And it was actually one of those officers who put the cones down on the shell casing?

A Right.

Q But they didn't touch it?

A No.

Q Okay.

A To the best of my knowledge.

Q Sure. They better not have. I believe you said you would get them?

A Yes, ma'am.

Q The reason that you do that memorialization and collection is so that this jury can make the best

determination of what happened?
A Right. We want to make sure that what we present to the jury is what we found at the scene.
Q So let me talk about the gunshot residue for a moment.
A Sure.
Q You were called out -- excuse me. Who called you out?
A I received a phone call from my supervisor at the time. It was early morning. And at that point in time, the way we work is we don't have the staffing for 24 hours, seven days a week, so there's certain portions of the schedule where we're on call at. And I was given a phone call and notified to respond, which is why there was about a 20, 30-minute delay in my being called and my arriving.
Q And so your supervisor -- was your supervisor at the scene?
A No.
Q Okay. Y'all just had a chain of command?
A Yes, ma'am.
Q Okay. Perfect. And do you make the determination on who you do gunshot residue collection from?
A Generally, we do gunshot residue based on requests from investigators and the identification of parties

present.

Q Okay.

A I'm not going to grab somebody who's just walking down the sidewalk and just do gunshot residue. I don't even know if they are involved.

Q Typically, people that are detained at the scene?

A Yes.

Q And the investigator that was giving you those directions was this investigator right here, right?

A Yes. As I had noted in my report, that's Investigator Gilliam.

Q Investigator Gilliam. And there were actually three people in cuffs?

A I was not aware of anything more than these two.

Q Just these two? You weren't aware that Donnell Woodward was in cuffs as well?

A I do not know who Donnell Woodard is.

Q Okay. If someone had been detained and you arrived, I think you said, 20, 30 minutes?

A Uh-huh.

Q You could still have done a swab on anybody to collect that evidence, correct?

A If it's relevant to the investigation, yes.

Q Okay.

A If -- let's say in this case, we're investigating

this incident and they arrest somebody for disorderly conduct across the street, it's not going to be relevant, so, of course, I wouldn't conduct a test on them.

Q But what would be relevant is if they arrested somebody for disorderly conduct for screaming at someone who was detained in this case? Could be relevant?

A Again, I wasn't a party to any of that, so I wouldn't know.

(WHEREUPON, Defendant's Exhibit No. 5 was marked for identification only.)

BY MS. ZMROCZEK:

Q Okay. I want to talk about the photographs for a moment. I'm going to show you what's been marked as Defense Exhibit No. 5 --

A Sure.

Q -- and ask if you recognize that?

A Yes. It's a photograph of a shell casing.

MS. ZMROCZEK: Your Honor, at this time, we would move Defendant's Exhibit 5 into evidence?

MS. CAMPBELL: No objection.

THE COURT: Without objection.

(WHEREUPON, Defendant's Exhibit No. 5 was admitted into evidence.)

BY MS. ZMROCZEK:

Q And I believe that there are already some pictures,

but what you do when you take -- tell the jury what you do when you take pictures of important pieces of evidence.

A First what I'll do, as I did here and we've already seen, I take photographs of the scene and then -- it's almost like a funnel. You've take pictures wide angle and then you move closer and closer and closer.

In this case, we had photos of the scene itself showing the cone. Then we move down to the area. Then we have a number placed in the area. Then we move down where we can see the shell casing and the way it lay. Then finally, we ended up with a photo of the shell casing, the head stamp on the shell casing for detail.

Q So the detail that Defense Exhibit 5 would show would be some debris on the outside?

A Yes.

Q Okay.

A And the debris appeared consistent with the dirt that it was lying in.

Q Which would indicate that it probably wasn't moved?

A Yes.

Q Shell casings and their locations can help assist examiners, for example, ballistics examiners to know where someone was standing?

A They can give us a general idea, but the thing about shell casings is where a shell casing can end up when it's

ejected from a firearm can depend on everything from the power of the casing, down to the tension of the spring and the extractor and the ejector, the recoil spring in the firearm. It's very, very general.

Q And I believe on direct you testified that a shell casing is usually ejected -- when a cartridge or a bullet is ejected from the gun, the shell casing generally --

A Yes, when a firearm cycles, you're going to get an ejection of the shell casing usually.

Q However, if you're shooting a revolver, is that going to happen?

A Not unless they open up the cylinder and manually eject the shell casings.

Q So when you shoot a revolver, there would not be any shell casings?

A Not usually, no.

Q You collected the shell casing and submitted it for evidence?

A Yes.

Q Are you familiar with how bullets are loaded into a gun --

A Yes.

Q -- into a magazine? Sorry. I'm still learning the technology. Explain to the jury how that works.

A Generally, if you have a magazine, a round of

ammunition is taken and is inserted into the magazine. There's a spring underneath what's called a follower. That spring is compressed as each round is inserted.

Q So you -- for example, if you have a cartridge --

A Yes.

Q -- and the magazine, you have to touch it and then push it in and squeeze it and push it down until it gets in there? And I know I was doing that backwards, sorry.

A Generally, yeah, you're going to have physical contact with both the round of ammunition and the magazine.

Q So evidence such as shell casings and/or cartridges could provide some pretty good DNA or fingerprint evidence?

A Not a fired shell casing usually.

Q Not --

A It's actually very rare. There is one effective procedure for getting a fingerprint off of a fired shell casing. I think there's only one place in the nation that can do it. That's out in California. The British pioneered it and it's probably a few hundred thousand dollars worth of equipment and more PhDs than we have in Columbia.

Q But for the unfired ones, it would be easier?

A Yes.

Q And in this case, you knew that there were 10 unfired cartridges?
A Yes.
Q Whose job would that be to submit to DNA or fingerprint analysis?
A In this case, the firearm was actually taken off of a person by a patrol officer. The weapon was actually unloaded by a patrol officer. The rounds were removed from the magazine and handled by the patrol officer. In this case, to reduce chain of custody, the patrol officer was actually responsible for submitting the firearm and components into the property room. At that point, the investigator might speak with us and we would make a determination as to what could be done or what might need to be done in regard to any processing.
Q So you would just work at their direction generally?
A Generally, yes. We can give them information. We can explain concepts to them, but in regard to the case itself, there's a lot of information that I don't have and would never have on a case that would steer what is or is not done or would need to be done.

I'm very compartmentalized. I deal with evidence. I don't interview people. It's not like television where they have people interviewing and finding out information. I'm very limited on what I know as far as anything outside

of the evidence. We depend on the investigators to provide any information or ask us any questions or that we can relate any information to.

Q Lastly, I want to talk to you about just the timing issue. You indicated -- in your report, it's pretty detailed about what times you performed certain actions, correct?

A Yes.

Q And you used a camera to photograph the scene?

A Yes.

Q And you made sure that that camera was accurate to date and time for the picture taking?

A Sometimes with the cameras -- I think I know where you're going with this. In regards to generally there's an offset on time. It can be caused by something -- daylight savings time settings on cameras, sometimes they work and sometimes they don't. I have caught my camera several times where the daylight savings time offset was turned on in the camera, but actually did not register on the data.

Q Kind of where I'm going. Where I'm going is you took some pictures?

A Right.

Q And you took some pictures of Mr. Smith?

A Right.

Q And those have been entered into evidence?
A Right.
Q And you did that while he was at the police car?
A As the scene, yes.
Q With Investigator McLaughlin?
A Right.
Q Do you know what time that was?
A As far as taking photos of him, not offhand.
Q If I handed you the information from your camera, would that help refresh your recollection?
A I could probably look at it and see and give you an approximation.

MS. ZMROCZEK: Your Honor, may I approach?

THE COURT: Yes, ma'am.

THE WITNESS: Based on the other evidence.

Okay. It's showing 4:22 a.m. on the 13th, so I believe it would have been -- I believe it would have been a -- let me see. The last piece of evidence I have collected was 5:35.

BY MS. ZMROCZEK:
Q So it's probably correct?
A It's probably correct, yes.
Q So that --
A It's just sometimes we never know when the camera is going to register on the date and time as far as the

offset. And like I said, I have had a couple of cases where I've gone and checked my camera later and it wasn't registering the daylight savings time offset.

Q But in this case --

A In this case, it appears to be accurate, yes.

Q 4:22 appears to be accurate. I'm going to show you what is in evidence, which is the first part of the in-car camera. I believe it's 46 -- 47, State's 47?

A Okay.

MS. CAMPBELL: Your Honor, in order to publish this through him, he has to be familiar with it. I think she needs to set a foundation for that.

THE COURT: What is she trying to do?

MS. CAMPBELL: She's trying publish this document with this officer. We were going to publish it with a later office who's familiar with it.

THE COURT: Y'all approach.

(WHEREUPON, a bench conference was held.)

MS. ZMROCZEK: Actually, we're going to move on.

THE COURT: Sorry about that.

BY MS. ZMROCZEK:

Q When you were photographing Mr. Smith, were you speaking to him?

A I don't remember. I don't recall.

Q Would you have said --

A I would have been giving him directions as to turn. I don't know what else I might have said, if anything.
Q Probably just turn to the left, turn to the right?
A Generally.
Q And clicking your camera?
A Right.
Q You don't tell them to smile for these pictures, do you?
A Oh, no, ma'am. No, ma'am.
Q And this was, I believe, about 4:22 in the morning?
A Going on what you have on the metadata, I would probably say that would be accurate.
Q Okay. 4:22 time is approximately two hours after this incident. Are you familiar with that?
A Yeah, that would be about right. The time I have is 0219 as the incident time.

MS. ZMROCZEK: Thank you.

THE COURT: Ms. Campbell.

MS. CAMPBELL: Just a couple questions, Your Honor.

REDIRECT EXAMINATION

BY MS. CAMPBELL:

Q She asked you about the bullets that were in the gun?
A Yes, ma'am.
Q Does who may or may not have loaded that gun have anything to do with who's actually shooting that gun?

A No. I go to the range quite a bit, and I'll have loaded magazines and my dad will shoot my pistol.

Q And if the ammunition is on someone's person when it is found, even if we were to do DNA testing and find his DNA, the answer would be it was on him, of course?

A Yes.

MS. CAMPBELL: Thank you.

THE COURT: All right. Thank you, Investigator Potash. Have a nice day.

Call your next witness.

MS. CAMPBELL: The State called Ryan Ellison.

THE COURT: All right. Mr. Ellison, please come forward.

RYAN ELLISON,

after being duly sworn, testified as follows:

THE CLERK: Thank you. Have a seat in the witness stand, please. State your name for the record.

THE WITNESS: Ryan Ellison.

THE BAILIFF: Louder.

THE WITNESS: Ryan Ellison.

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q Okay. Mr. Ellison, are you a little nervous here today?

A Yes, ma'am.

Q Are you okay?
A Oh, yes, ma'am.
Q How old are you?
A Nineteen.
Q Do you live here in the Columbia area?
A Yes, ma'am.
Q You've don't have to say your address, but how long have you lived in the Columbia area?
A All my life.
Q Are you currently in school?
A Yes, ma'am.
Q What kind of school are you going to?
A Job Corp.
Q Where is the Job Corp?
A Bamberg.
Q What are you trying to learn at Job Corp?
A Doing forklift.
Q Forklift?
A Yes, ma'am.
Q So you're going to be a forklift driver?
A Yes, ma'am.
Q How much longer have you got in Job Corp?
A Five months.
Q Five more months?
A Four or five months.

Q And what's your position at Job Corp? What do you do?

A I play basketball. I'm a team captain and I'm a dorm leader.

Q You're a dorm leader?

A Yes, ma'am.

Q As a dorm leader, what do your responsibilities include?

A Making sure everything is on point and they know everything they need to know, you know what I'm saying.

Q Okay. Let me ask you this. Do you know Shante Bethel?

A Yes, ma'am.

Q How do you know Shante Bethel?

A That's my cousin.

Q Is she here in the courtroom?

A Yes, ma'am.

Q Can you point her out for the jury?

A Gray shirt.

Q In the gray shirt?

A Yes, ma'am.

Q Sitting about three rows back?

A Yes, ma'am.

Q Do you know Asia Bethel?

A Yes, ma'am.

Q And how do you know Asia?
A That's my cousin.
Q Is she and Shante sisters or are they cousins?
A Niece and aunt.
Q Niece and aunt?
A Yes, ma'am.
Q Okay. And is Asia here in the courtroom?
A Yes, ma'am.
Q Can you point her out?
A In the brown jacket.
Q Hiding her face?
A Yes, ma'am.
Q And you've known Shante and Asia for a long time?
A Yes, ma'am.
Q Do you also know another young lady named Ms. White, Taqayya?
A Taqayya.
Q Taqayya. I say it wrong every time. I'm sorry. Taqayya. How do you know Taqayya?
A Through Asia. I don't know her like that, but I know of her.
Q Know of her?
A Yes.
Q And then finally, do you know Michael Smith?
A I know of him. That was my cousin's boyfriend.

Q That was your cousin's boyfriend. Which cousin?
A Shante.
Q Shante's boyfriend?
A Yes, ma'am.
Q We're going to talk a little bit about what happened on October 2013, that night. Do you know why we're here?
A Yes, ma'am.
Q Prior to that night, had you ever seen him before?
A No, ma'am.
Q You hadn't really had a lot of interaction?
A No, ma'am.
Q Okay. But on that night, tell the jury how you ended up meeting up with Asia and Shante and everybody?
A Asia was going to college, so --
Q Can you slow down and talk a little bit louder?
A I said Asia was going to college.
Q Asia was going to college?
A Yes, ma'am. So I was going out with her.
Q And where was Asia going to college?
A State.
Q State?
A Yes, ma'am.
Q When was she supposed to leave for college, do you know?
A I'm not sure. It was a couple of days after the

night she was going to leave.
Q What night of the week was this that y'all got together, do you remember?
A No, ma'am.
Q Okay. But y'all were going out. Were you celebrating her going to college?
A Yes, ma'am, I guess you could say that.
Q But you just wanted to spend some time with her?
A Before she leaves, right.
Q Where did y'all meet up that night?
A I don't remember. A hotel.
Q A hotel?
A Yes, ma'am.
Q And do you know whose hotel room it was?
A No, ma'am.
Q How did you get there?
A I drove.
Q You drove?
A Yes, ma'am.
Q Your car?
A Yes, ma'am.
Q And were you by yourself when you went and met up with them?
A Yes, ma'am.
Q And who was there when you met up at the hotel?

A Asia, Shante, Michael and Taqayya.
Q Taqayya?
A Yes, ma'am.
Q And what were y'all doing in the hotel room?
A We weren't in the hotel, we was outside.
Q I'm sorry?
A We met them.
Q They were already outside?
A Yes, ma'am.
Q So you don't know who was staying in the hotel?
A No, ma'am.
Q When you met them, they were outside. And when you drove up in your car, tell the jury what happened.
A We went to Five Points.
Q And who was driving?
A I was the driver.
Q You were the driver?
A If I recall, yes, ma'am.
Q Were the other four people you've mentioned in the car with you?
A Yes, ma'am.
Q And when you got to Five Points, tell the jury what happened. Do you know what time of night it was when you got there?
A No, ma'am. I don't recall.

Q Was it after midnight?
A It was -- I think it was around 12.
Q Okay. You weren't looking at your watch that night?
A No, ma'am.
Q So it was late, is that fair?
A Yes, ma'am.
Q What you got there, what did y'all do?
A We've went to The Library, used the bathroom.
Q Where did y'all park that night, do you remember?
A No, ma'am. It was near the Exxon.
Q Near the Exxon?
A I remember that.
Q But was it further down from the Exxon?
A I think, yes, ma'am.
Q And once y'all got out of the car, where were y'all intending to go? What was your designation?
A To The Library.
Q The Library?
A Yes, ma'am.
Q What type of establishment is The Library? Did you know?
A I think it was like a -- I don't remember. It was like a little club.
Q Like a club?
A Yes, ma'am.

Q And whose idea was it to go to The Library, do you remember?
A I don't recall.
Q So y'all get down there, you drive down there and you get out of the car. And at this point, do you see anybody with a gun?
A No, ma'am. I never saw no guns the whole night.
Q The whole night?
A The whole night, I saw no guns.
Q So you didn't know Michael had a gun at that point?
A No, ma'am.
Q And when y'all were walking down -- once you got out of the car, where did you go?
A To The Library.
Q Did you have to cross any streets, do you remember, to get there?
A Yes, ma'am, I think the one by the fountain.
Q The one by the fountain?
A Yeah, we had to cross that one.
Q Once you got to The Library, what did y'all do?
A Well, it was like it was closing down. We asked to use the bathroom. They said we couldn't use the bathroom -- well, the dudes couldn't use the bathroom.
Q The dudes couldn't use the bathroom?
A Yes, ma'am.

Q But did Asia and Shante and Taqayya go inside?
A Yes, ma'am.
Q And were you and Mike doing at this point?
A We went to use the bathroom.
Q That night, did you call him Mike or did you call him a different name?
A Mike. Mike.
Q Do you remember testifying in pretrial what you called him?
A Pretrial? No, ma'am.
Q Just a few minutes ago. His name?
A Mike, Flame.
Q Flame. So that's what you called him?
A I think I called him Mike. I don't remember.
Q Don't remember?
A No, ma'am.
Q But he goes by Flame?
A Well, I guess.
Q Once you got to The Library and the girls went inside, where did y'all go?
A Behind the building to use the bathroom.
Q I'm sorry, I couldn't hear you?
A Behind the building to use the restroom or the bathroom.
Q Behind the building to use the restroom?

A Yes, ma'am.
Q Let me ask you this, were you drinking that night?
A No, ma'am, I don't recall.
Q You don't recall?
A No, ma'am.
Q Do you remember if anybody else was drinking?
A No, ma'am.
Q Once y'all went behind -- who all went behind the building with you?
A Well, I went my own separate way behind the building and I used the bathroom.
Q Did you see where Flame went?
A No, ma'am.
Q At some point, do y'all meet back up?
A We met back up with Asia and Shante and the other girl. They came out The Library.
Q So you're still on that side of Greene Street at that point?
A Yes, ma'am.
Q Where did y'all go next?
A Well, I saw some girls, so I was talking to the females over there and then they kept walking.
Q And where was that -- so y'all went back over Greene Street towards your -- where were you going towards?
A Back towards the car.

Q Okay. As you're going back towards the car, you said you stopped and you talked to who?
A Some females.
Q Some females?
A Yes, ma'am.
Q Why were you talking to some females?
A Just conversating.
Q And where were Mike or Flame and Shante and the rest of them at that point? Do you know?
A They was walking further up.
Q They were further up?
A Yeah.
Q Towards the Exxon?
A Towards the car.
Q Towards the car?
A Yes, ma'am.
Q When you were talking to the girls, where were you? Where were the girls?
A Near The Library.
Q Near The Library?
A On the other side of the street.
Q Are your familiar with the fountain?
A Is the fountain on the side where the Exxon is?
Q Uh-huh.
A Opposite side near The Library.

Q Okay.
A We was standing right there.
Q And they keep going, though?
A Yes, ma'am.
Q And you talked with the girls for a minute or two?
A Yes, ma'am.
Q Or do you know exactly?
A About a minute.
Q About a minute?
A Uh-huh, it was about a minute.
Q And then what do you do?
A I was walking back to catch back up with them because we was about to leave.
Q Were they stopped at that point?
A Did they stop?
Q (Nods in the affirmative.)
A No, they kept on. I was walking to catch back up with them. As I was walking to catch back up with them, I looked to my right and I saw these dudes was standing around in a circle. And I looked over there and I seen one of the dudes was holding his hands up.
Q Holding his hands up how?
A Like this (indicating).
Q Like this (indicating)?
A Yeah.

Q Okay. So you saw that?
A Yeah. So I felt like it was some animosity or some tension going on.
Q Did you hear anything?
A No, ma'am.
Q Did you --
A There was a lot of people talking and a lot of people moving --
Q There were a lot of people around?
A Yeah, a lot of people around.
Q To be fair?
A Unless you close, you can't really hear what nobody saying.
Q But all you saw was one guy with his hands up like this (indicating)?
A And then another dude, he was standing still. He was holding his shirt up. But I was on the opposite side, so I couldn't see what he was doing.
Q He was holding his shirt up?
A Yes, ma'am.
Q How was he holding his shirt up?
A Like this (indicating).
Q Like that (indicating)?
A Yeah. I couldn't see what he was doing. I was on the opposite side.

Q Let me ask you this. Have you had an opportunity to look at the video?

A Yes, ma'am.

Q In the video at one point, you're holding your shirt up like that?

A No, I was holding my shirt up with two hands.

Q With two hands?

A I guess I was stretching. I don't know what I was doing.

Q And to be clear, you didn't have a gun, did you?

A No, ma'am, absolutely not.

Q You holding your shirt up didn't mean that you wanted to fight anybody, did it?

A No, ma'am. If you look at the video when I'm holding my shirt up, I'm just standing there myself.

Q Just holding your shirt up?

A Yes, ma'am.

Q Okay. And you saw -- did you see any guns at that point?

A I saw no guns the whole night.

Q Not on the guy with the shirt up? Not on the guy with his hands up?

A I saw no guns the whole night.

Q What did you see or hear next?

A Well, I was walking to catch back up with them. As I

was walking, once I caught back up with them, I was a little farther going towards the car and I heard gunshots, so I ducked. I was in fear for my life, so I started running towards the car to leave.

Q So when you heard the gunshots, did you -- were they close to you? Could you tell?

A I don't recall. It happened in the snap of a finger. I just remember hearing gunshots.

Q Do you know how many you heard?

A I don't know. Two, three, maybe.

Q And it happened pretty fast?

A Yes, ma'am.

Q Like really fast?

A Real fast.

Q And you said you ducked?

A I ducked.

Q So were you trying to see who was shooting or you were you just trying to --

A No, I was worried about not getting shot. I'm a big target.

Q Yeah.

A I was worried about not getting shot.

Q And at that point, you started running?

A Right.

Q Did you see who was running in front of you?

A No, ma'am.

Q Did you see Michael Smith or Flame run faster than you?

A Yes, ma'am. I did see the officers stop him. Once the officers stopped him, I was walking. And I think he was a bar owner or something. He looked and he was like I think he got a gun, too. So that's why an officer came and put a gun in my face. I was getting upset. And they searched me or whatever. And I was basically saying like, If y'all ain't got me, ain't got no gun or nothing like that, why y'all still holding me? He was like, You're just being detained. I was calm for a second. Then they put the handcuffs on real tight, so I was just asking, Can you loosen the handcuffs? He was getting rude to me, so that's why I got disorderly conduct.

Q Okay. I was getting to that.

A Oh, yes, ma'am. I'm going to beat you to it. Tell my story.

Q Okay.

A Yes, ma'am.

Q Did anybody ask you to say anything but the truth here today?

A Everything true.

Q Everything's the truth?

A Yes, ma'am.

Q So you heard the shots and they were fast, right?
A Right.
Q And then you ducked and you ran?
A Right.
Q So you didn't see who actually shot?
A No, ma'am.
Q You said you saw them detain Mr. Smith?
A Yes, ma'am. A couple seconds after him, the police came and detained me.
Q At that point, did you see them take anything off his person?
A Taking what now?
Q Take anything from him?
A No, ma'am. Because right after he got detained, I was going through my own situation.
Q So it wasn't until after you were detained that you found out that Michael had a gun?
A I never found out that night.
Q Okay.
A I just was hearing what the investigators and police was telling me. We was in -- I was on the other side of the street and they took him on to the other side. So I was just arguing with them. I didn't know what else was going on.
Q And that night, you were actually arrested for

disorderly conduct?

A Yes, ma'am.

Q And you said you got mad?

A Yes, ma'am.

Q We don't need to get into that. That night, did the police talk to you?

A Did the police talk to me?

Q Uh-huh.

A As in?

Q As in asked you what had happened?

A Oh, yes, ma'am.

Q Did you briefly tell them what happened?

A Yes, ma'am. I told them the same thing I just told you.

Q And then later on a couple days later, did they come and take a statement from you?

A Yes, ma'am.

Q And again, you told them what happened, what you've told this jury today?

A Yes, ma'am, same story.

Q And then on the 17th, the day after they took a statement, did they show you some photographs?

A Yes, ma'am.

Q Do you remember them showing you some pictures?

A Yes, ma'am.

Q I'm going to show you what's being marked State's Exhibit No. 76. This folder has some pictures in it. Just look at it and see if you recognize those.
A Yes, ma'am. You showed them to me.
Q I showed them to you a little while ago?
A Yes, ma'am.
Q And those are the photos they showed you?
A Yes, ma'am.
Q And when they showed you these photos, did they tell you who to pick out?
A No, ma'am.
Q And when you looked through these six photos, did you recognize one person?
A Yeah, he was all over the news, all over everywhere.
Q Well, did you recognize him from seeing him that night or did you recognize him from the news?
A Well, originally, from just everywhere on the news.
Q And from seeing him that night?
A That, too. Yes, ma'am.
Q And when you looked through them, I believe --
MS. CAMPBELL: Your Honor, at this time, I would offer State's Exhibit 76 into evidence.
THE COURT: Objection?
MS. ZMROCZEK: Your Honor, I just -- identification is not an issue. I don't see what the relevance is to

offer them.

THE COURT: Okay. Overruled.

MS. CAMPBELL: Thank you.

THE COURT: State's Exhibit No. 76 over Defense's objection.

Those are the photos, right?

MS. CAMPBELL: Yes, sir.

THE COURT: Okay.

(WHEREUPON, State's Exhibit No. 76 was admitted into evidence.)

BY MS. CAMPBELL:

Q When they showed you these, you looked at them one at a time?

A Yes, ma'am.

Q When you looked through them, when you got to the fifth one, is that who you recognized?

A Yes, ma'am.

Q And did anybody tell you who to pick?

A No, ma'am.

Q But when you looked at them, this was -- on the back it's marked number five; is that correct?

A Correct.

Q And then they had you sign off that you recognized this person?

A Yes, ma'am.

Q Did you tell them that was the person you were with that night?
A Yes, ma'am.
Q And nobody influenced you in any way?
A No, ma'am.
Q Okay. And then you also, I think, signed and dated it on the back; is that correct?
A (Nods in the affirmative.)
Q That night, do you remember what you were wearing?
A No. I remember an Aeropostale shirt.
Q Aeropostale. Do you remember what color it was?
A I don't know.
Q Let me ask you this. You've seen the video?
A I did. Y'all showed me the other day, but I forgot.
Q And there are two men that are with Shante and Asia and Taqayya. Were you the tall one or the short one?
A Tall one.
Q So you're the really tall one?
A Yes, ma'am.
Q The person you were with that night when the shooting happened, do you see him here in the courtroom?
A Yes, ma'am.
Q Can you just point him out for the jury?
A Michael, Flame.
Q Michael, Flame?

A Michael.

Q Where is he sitting?

A At the defense table.

Q With his two lawyers?

A Yes.

MS. CAMPBELL: Your Honor, may the record reflect he's identified the Defendant.

THE COURT: Yes, ma'am.

MS. CAMPBELL: Thank you.

THE COURT: Cross.

MS. ZMROCZEK: Thank you.

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q Ryan, let's talk about the identification first, when they had you pick out Michael?

A Right.

Q And who had you pick out Michael?

A Mr. Gilliam.

Q Is he in the courtroom?

A Yes, ma'am.

Q Can you point him out?

A Right there.

Q Is he sitting next to the solicitor right here?

A Yes, ma'am.

MS. ZMROCZEK: Your Honor, I'd like the record to

reflect he pointed out Investigator Gilliam.

THE COURT: Okay.

BY MS. ZMROCZEK:

Q How many times did you meet with him?

A With Mr. Gilliam?

Q Yeah.

A Twice.

Q Two times?

A Yes.

Q When was the first time?

A In the solicitor's office or -- it was at the office.

Q When you wrote your statement, the first time when you wrote your statement?

A Yes, ma'am.

Q And they recorded that?

A Yes, ma'am.

Q And then the second time -- did he try to -- in fact, he tried to call you a few times to get you to come back and change a few things, didn't he?

A Change?

Q Or to clear up a few things in your statement?

A Clear up?

Q Do you recall him asking you to come back and you telling him you needed to ask your mama?

A No. I just remember him coming to my job.

Q He came to your job?
A Right.
Q Okay. Did you write a statement that day that he came to your job?
A No, ma'am. Just the only time I wrote it was when I went to the office.
Q You grew up in Columbia?
A Right.
Q Where?
A Irmo.
Q In Irmo?
A Yes, ma'am.
Q Do you have friends with nicknames?
A Friends with nicknames? Everybody has a nickname.
Q Everybody has nicknames, right?
A Yes, ma'am.
Q That's just common?
A Right. I got a nickname.
Q You do? What's your nickname?
A Rondo.
Q Rondo. It's common to know people by their nicknames and not their real name or their birth certificate names; isn't that right? That's normal, right?
A That's what they go by.
Q Yeah. And you met Michael that night, or Flame, as

Ms. Campbell likes to call him, Flame?
A We all met.
Q Y'all all met?
A Right.
Q And went down to Five Points to celebrate?
A Right.
Q It was warm?
A I don't recall.
Q You don't recall?
A It was a long time ago.
Q But you said you might have lifted your shirt up because you were stretching?
A Oh, yeah. Yeah, it probably was warm. I don't remember, but yeah.
Q I want to talk briefly about you saw these guys?
A Right.
Q And they were surrounding your friends?
A Surrounding my friends?
Q The guy with his hands up?
A Yeah.
Q His hands up were --
A They was walking -- they was further up by then.
Q They were what?
A They was further up. When he put his hands up?
Q Right.

A Yeah, they weren't near them about the time that happened. They was further up the road.

Q Okay. Explain that to the jury, what that means.

A He was putting his hands up and they were further, like near the Exxon, I guess. I don't know. They wasn't close too each other.

Q They weren't close to each other?

A Right.

Q But he was clearly targeting Michael?

A That direction.

Q That direction?

A I can't say who he was targeting.

Q But Michael was in that direction?

A That direction, yes, ma'am.

Q And then you saw another man who was lifting his shirt?

A I didn't see anything, but he was lifting --

Q Because you were behind him?

A I was on the opposite side. I was behind him on the opposite side.

Q So you couldn't see what --

A He lifted his right, I'm on his left, so I can't really see.

Q Can you stand up and kind of show the jury. I mean, you don't have to flash them, but you can just --

A He lifted his shirt. I was on the left side of him.
Q Okay.
A I couldn't see what he was lifting or what was under there.
Q You didn't get to see that?
A (Indicating in the negative.)
Q And then you heard gunshots?
A Right.
Q Today you said two or three?
A From assumption.
Q If you wrote three in your statement back right when it happened, would that probably be fresher in your memory at that time?
A Maybe. Then again, happened so fast, like I said, I maybe put three by assumption. I can't really say fact. I was just scared.
Q More than one?
A More than one.
Q And you were scared?
A Right.
Q And you ran?
A Yeah. I wasn't going to stand still.
Q And then somebody pointed to you and said you had a gun?
A Right.

Q Who pointed at you and said you had a gun?
A He was a bar owner. I don't know if -- a little after he pointed and once they detained me, he was behind me, taunting me and I was basically telling them -- that's what was making me more mad because he was basically like calling me names and stuff. I told them he was doing that and they didn't seem like they was concerned. So I was getting real upset, so I guess that's why I got that disorderly conduct.
Q What was the officer doing?
A Paying attention to me.
Q Pointing a gun at you?
A Oh, when it first happened, yeah, he pointed a gun in my face.
Q In your face?
A Yes, ma'am. Like when he first said this dude right here got a gun. And I was just walking like everybody else was. He just pointed me at the door and said I had a gun. The office put a gun in my face and telling me like --
Q You didn't have a gun?
A No, ma'am.
Q And they took you to jail?
A Right.
Q Do you remember how close you were standing to

Michael when you heard gunshots?
A No, ma'am. I know we was pretty close, but I don't remember how close.
Q Do you --
A We was all near each other because we was on the way to the car.
Q I'm showing you State's Exhibit 75. Do you remember where you were? Can you point out to the jury where you were?
A Near right in here.
Q Near right in here?
A Right here on the sidewalk, near that sidewalk.
Q Before or after the gas station?
A I can't remember. I know it was near the gas station.
Q And where were the guys standing?
A I don't know where.
Q The one that was lifting his shirt?
A We was up here. He was somewhere up here, up in here. That's the fountain, right?
Q That is?
A He was somewhere in here.
Q It was late?
A Yes, ma'am.
Q It was crowded?

A That's right.

Q And you were scared?

A Well, I heard a gunshot, yeah.

MS. ZMROCZEK: Thank you.

MS. CAMPBELL: Your Honor, I don't have anything further.

THE COURT: Have a nice day.

THE WITNESS: Appreciate it.

THE COURT: Call your next witness.

MS. CAMPBELL: The State calls Asia Bethel.

ASIA BETHEL,

after being duly sworn, testified as follows:

THE CLERK: Thank you. Have a seat in the witness stand, please. State your name for the record.

THE WITNESS: Asia Bethel.

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q Hey, Ms. Bethel.

A Hey.

Q How old are you?

A Twenty.

Q Do you live here in the Columbia area?

A Yeah.

Q How long have you lived in Columbia?

A My whole life.

Q Your whole life?
A Yes.
Q Do you know Shante Bethel?
A Yes.
Q How do you know Shante?
A That's my auntie.
Q That's your aunt?
A Yes.
Q Is she here in the courtroom today?
A Yes, ma'am.
Q Is she sitting right there in the middle?
A Uh-huh.
THE COURT: You have to say yes or no, okay?
THE WITNESS: Oh, yes, ma'am.
THE COURT: Thank you.
BY MS. CAMPBELL:
Q Where did you go to high school here in Columbia?
A C.A. Johnson.
Q Did you graduate?
A Yes, ma'am.
Q At some point, were you attending State?
A Yes, ma'am.
Q What year were you attending State?
A 2013.
Q 2013?

A Yes, ma'am.
Q And the young man that just testified, are you related to him?
A Yes, that's my cousin.
Q Your cousin.
A Yes, ma'am.
Q And you'll are pretty close?
A Yes.
Q Your Aunt Shante, did you know back in October of 2013 who she was dating?
A Yes.
Q And that was my term, who her boyfriend was?
A Yes.
Q And what was his name?
A Flame.
Q Flame?
A Yes, ma'am.
Q Is that what you called him?
A Yes, ma'am.
Q So if I use that term, I'm not trying to be derogatory, that's just what everybody called him?
A Yes.
Q Okay. Would you get together sometimes with Shante and her boyfriend and go out and do things?
A Yes.

Q I want to turn your attention to -- oh, are you working now?
A Yes.
Q In fact, you had to get off your job today to be here, didn't you?
A Yes.
Q Okay. What kind of work do you do?
A I'm a cashier at a Chinese place on North Main.
Q I'm sorry. You're very soft spoken. Speak up.
A I said I'm a cashier at a Chinese place on North Main.
Q On North Main?
A Yes, ma'am.
Q Are you currently in school?
A No, ma'am.
Q But you're planning to go back?
A Yes, ma'am.
Q I want to turn your attention back to that evening. Do you remember what day of the week it was that all this happened?
A It should have been a Saturday.
Q Saturday?
A It should have been.
Q Were you getting ready to go back to school?
A Yes. Because it should have been a Sunday that I was

going back.

Q When you got together -- how did you and Shante and everybody get together that night, can you tell the jury?

A You said how?

Q Uh-huh. How did y'all make plans? What did y'all do to meet up?

A Oh, we was just -- I don't know, what you mean how?

Q Well, where were you, how about that?

A Oh, okay. We were at the Country Inn on Piney Grove.

Q At the Country Inn on Piney Grove?

A Uh-huh.

Q Did somebody have a room there?

A Yes, ma'am.

Q Who had a room?

A I'm not sure who, but we was there.

Q You were there?

A Yes, ma'am.

Q So somebody had rented the room?

A Yes.

Q When y'all were in the room, what were y'all doing?

A Well, what Asia was doing, drinking.

Q Y'all were drinking?

A Yes.

Q Who all was in the room that night at the Country Inn? And where was that located?

A On Piney Grove. It wasn't just us. It was couple of people.
Q Who all was there, do you remember?
A I'm not sure like everybody.
Q Was Shante there, do you remember that?
A Yes.
Q Was Flame there?
A Yes.
Q Was -- is it Taqayya?
A Yes.
Q Was she there?
A Yes.
Q But your cousin, Ryan, was he there?
A No, he really didn't meet us until we was coming out the door.
Q So y'all were in the room drinking for a period of time; is that correct?
A Yes.
Q Were y'all listening to music or anything?
A Yeah.
Q Were you actually dancing that night?
A Yes.
Q Did you end up hurting yourself when you were dancing that night?
A I broke my heel.

Q You broke your heel?
A Yes, ma'am.
Q What kind of dancing were you doing?
A Twerking.
Q Is that why you ended up in bedroom slippers that night?
A Yes, ma'am.
Q Okay. Once y'all were in the room and you were there for a period of time, how did you get in touch with Ryan to meet up with him? Did you call him or do you remember?
A Yeah. We was already planning on going out.
Q Okay.
A Because I was going to school the next day.
Q You wanted to spend some time --
A Yeah, it was already a plan. The first plan was Jet instead of Five Points.
Q Was Jet Club?
A Yeah.
Q Did y'all ever go to the Jet Club that night?
A No.
Q Why not, do you remember?
A It was already shut down before we even left.
Q The hotel room?
A Uh-huh.
Q So y'all are leaving the hotel room and your cousin,

Ryan, shows up and meets y'all, right?
A Yes, ma'am.
Q Did y'all end making plans to go somewhere else?
A Once we had found out Jet was closed, yeah, we said we was going to The Library.
Q Did you actually go by the Jet first or did you find out?
A No, somebody called us and informed us that it was closed.
Q It was closed?
A Uh-huh.
Q So at that point, you readjusted your plans to go to Five Points?
A Yeah.
Q Where were you'll headed at Five Points?
A I had said something about the club Library.
Q The Library?
A Yes, ma'am.
Q You had been there before?
A Yes, ma'am.
Q And how old were you back then?
A I should have been like 18, 17 or 18, one of them.
Q 17 or 18?
A Yes, ma'am.
Q So it was you and -- how did y'all get there, to Five

Points that night?

A A car.

Q Whose car, do you remember?

A No, but I know my cousin was driving.

Q Your cousin was driving?

A Yes.

Q Was it the five of you in the car?

A Five?

Q Was it you?

A Okay. Yeah.

Q You, your cousin --

A Uh-huh.

Q -- your aunt, I'm sorry, Shante?

A I got it. It's fine.

Q Her boyfriend?

A Yeah.

Q Taqayya?

A Yes.

Q Is that right?

A Yeah.

Q When y'all get to Five Points, do you remember what area y'all parked in?

A Yeah. We was a little down from -- we wasn't directly in front of The Library because there was nowhere to park, so we had to come down the road a little bit.

Q Down the road a little bit?
A Yes, ma'am.
Q Were y'all parking on that same road where The Library was, just further down?
A Yes, ma'am.
Q Once y'all got there, where did y'all go once you got out of the car?
A Once we got out of the car, we headed towards The Library.
Q And were the five of you kind of walking together at that point?
A Yes, ma'am.
Q As you -- on the way to The Library, did you encounter anybody that tried to speak to you? Do you remember?
A Yeah. I mean, a couple of people tried to speak us. There were a couple of dudes trying to holler at you.
Q So there were a couple of dudes trying to holler at you?
A Yes, try to talk to me -- I mean us, yes.
Q And you encountered them on the way to The Library?
A Yes. At first, they was on the way and like, we kept walking not paying them no attention.
Q Do you remember exactly what they said?
A No, not -- I can't give you no exact.

Q But there was some exchange?
A Yes.
Q Okay. And at that point, did you ignore them or just what?
A No, we just kept walking because I had to use the restroom, so I knew for a fact I was trying to rush to go where I was going.
Q Did y'all proceed to go to The Library?
A Yeah, we kept going towards the Library.
Q Once you got to The Library, who all -- was it the same five people, all of you together?
A Yes, ma'am.
Q What did y'all do when you got to The Library club that night?
A Once we got there, we understand they was closed down, too. So we just asked can we use the restroom since it was closed down. So I went to go use the restroom.
Q Who all went you?
A Me, Taqayya and Shante.
Q The three of y'all?
A Yes, ma'am.
Q Did you know where Flame or your cousin, Ryan, went?
A No.
Q Once y'all had finished using the restroom, did y'all then get back out on the street?

A Yes, ma'am.
Q And did you ever meet back up with Flame or your cousin, Ryan?
A Yeah. Like when we was about to cross back, I noticed like they had gone, so I ended up crossing the street.
Q And what were you paying attention -- do you remember what you were paying attention to that night? You were just walking?
A Yeah, I was just walking when I noticed they was closed. We had already established that. We was about to go back home -- or go back to wherever we was going to go.
Q And in the video, there's one person that's got a cup in their hand, is that you?
A Yes.
Q Okay. As y'all crossed the street -- and at that point, did you know whether anybody in your -- at that point, did you know whether anybody in your crowd had a gun?
A No, ma'am.
Q Okay. Tell the jury what happened after you crossed back the street and went back in front of the fountain? Do you know where the fountain is?
A Uh-huh. Yes, ma'am.
Q Just tell them what happened.

A Okay. Once we walked past or whatever -- I mean, once we walked past, it was two dudes. And as a matter of fact, probably been three. But regardless of the fact, they was trying to talk us, but we didn't engage in whatever they was trying to talk about. So we kept walking, but I don't know if we heard -- well --

Q Do you remember what you said to the guys about money? They didn't have enough money?

A What, they looked broke? Yeah, I said they looked --

Q You said they looked broke?

A I kept walking.

Q Okay.

A Yeah, okay. So after that, we kept walking. I don't know if they -- well, I know for a fact it came out their mouth and called us a bitch, so I heard that.

THE COURT REPORTER: Will you slow down just a little bit?

THE WITNESS: Oh, yes, ma'am.

They called us out our name or whatever because we didn't want to talk to them.

BY MS. CAMPBELL:

Q Do you remember them showing you some money?

A No. They didn't show us no money or whatever, but they did call us out our name. I guess they was mad or that was their way. So after that, yeah, Flame asked was

--

THE COURT: Slow down.

THE WITNESS: Oh, Flame had asked --

BY MS. CAMPBELL:

Q Flame had asked -- so where was Flame when you were actually having this interaction with them? Was he further away from you at that point?

A Yeah, like he was more behind me at that point.

Q Okay. So then --

A I was in front of him. He was more behind me walking towards me.

Q Where was Shante?

A Right next to me.

Q Right next to you?

A Uh-huh.

Q And then he asked you what?

A He asked us was they calling us out our name.

Q Were they talking to you out your name?

A Yes, was they talking to us.

Q And did you and Shante have a conversation at that point?

A Yes, we just looked at each other like don't say nothing.

Q Don't say nothing?

A Yeah.

Q To Flame?
A Yeah. Like don't --
Q Why?
A Because that's her boyfriend. Like he going to -- you know, that's a dude calling his girl out her name.
Q And you didn't want to tell him because you thought he would get what?
A Yeah, get mad. So we already know he would probably have got mad or whatever, so instead of us letting him know --
Q So --
A -- we didn't say anything, but then the dudes was like if you --
Q Let me slow you down a little. You're really fast and I'm really fast, okay?
A I'm sorry. My bad. My bad.
Q No, it's no problem.
A Okay.
Q I don't mean to interrupt you, but you said both you and Shante decided not to say anything to him, right?
A Yeah.
Q And y'all never said anything to him, did you?
A No, but --
Q But who did say something?
A Yeah, my -- well, she ain't my cousin, but Taqayya

was like, yeah, they mad, they feel some type of way.
Q They feel some type of way?
A Yes.
Q And at that point, that was the information you didn't want to convey to Michael Smith?
A Uh-huh.
Q Or Flame?
A Yes.
Q Because you were worried about him getting what?
A Upset.
Q But Taqayya told him?
A Yeah.
Q Then what happened?
A Then I heard the dudes, they was like -- they was saying like if we was talking to them, like then they were like, what you going to do type. So I guess that's the part when he was pulling up his pants and then I saw one dude pull up his shirt. And when he pulled up his shirt, I saw a gun.
Q You saw a gun?
A Yeah.
Q At that point, what happened?
A At that point, I stopped paying attention or I think I was trying to talk to Taqayya or something like that. That's when I heard gunshots, so I ran.

Q So you saw the guy pull up his shirt?
A Yes.
Q And you saw a gun?
A Yes, ma'am.
Q And then you had a conversation with Taqayya?
A Yeah, like --
Q Because you --
A Well, I didn't have a conversation with her. I was trying to talk to her --
Q Talk to her --
A Yeah --
Q Because you said at that point, you weren't worried, you just turned around?
A Yes.
Q And then what did you hear?
A Gunshots.
Q Did you see who was shooting?
A No, sir -- I mean, no, ma'am.
Q Were the shots near you, could you tell?
A Not really.
Q You couldn't tell?
A No, ma'am.
Q And how many shots did you hear?
A I heard about two or three. It should have been like three, two or three.

Q Were you surprised when you actually heard gunshots?
A Yeah.
Q The dude where you said he pulled up his shirt and you say he had a gun, did you ever see him pull out a gun?
A I wasn't paying attention to him anymore to him, no, no, ma'am.
Q You didn't see him pull out a gun?
A I saw the gun, but I didn't see him like for a fact pull out the gun because I wasn't paying attention anymore.
Q Did you see Michael Smith pull out his gun?
A No, I didn't.
Q After you saw the guy pull up his shirt and you saw the gun, you turned because you were going to have a conversation with Taqayya?
A Yeah, I was looking towards so I could say something to her. I ended up running because I heard the gunshots.
Q When you heard the gunshots, what did you do?
A Duck and run.
Q And obviously, once the shots started, it happened pretty fast?
A Yes, ma'am.
Q And that night after you ran, what happened?
A Once I ran and I noticed there wasn't no more gunshots, that's when I noticed that they had my cousin in

handcuffs. They had Ryan in handcuffs.

Q Ryan in handcuffs?

A And because, like he said, the dude had said that he had a gun. So once I went over there, I was trying to let them know that he didn't have a gun.

Q So you went over there to let them know that Ryan didn't have a gun?

A Yeah.

Q And that's when you got upset?

A Yeah.

Q Because they had Ryan and they were saying he had a gun?

A Yeah.

MS. ZMROCZEK: Objection.

MS. CAMPBELL: I won't lead anymore. I'm sorry, Your Honor.

BY MS. CAMPBELL:

Q What were they saying?

A Oh, they was letting -- as a matter of fact, I heard the dude -- the Caucasian dude, he was telling them that he knew for a fact he saw him shoot and he had a gun. So I was trying to let them know like no, he wasn't or whatever and I knew for a fact he didn't have a gun.

So after that, they had him in handcuffs sitting down. They were telling us to get in the car, but I

refused to get in the car. And once I refused to get in the car, that's when they put me in handcuffs for disorderly conduct.

Q You were upset because your cousin, Ryan, was in handcuffs?

A Yes.

Q You weren't over there protecting Michael, were you?

A No, Michael wasn't -- they end up taking him away. I didn't even get to see him.

Q At what point did you become aware that Flame had a gun?

A Once we got to the jailhouse and they was telling us that he was in jail for that.

Q About three days later, did you make contact with the police or did they actually make contact with you?

A Yeah, they came all the way to Orangeburg.

Q They came to Orangeburg? And I think they took a statement that actually took place at S.C. State?

A Yes.

Q And you're telling them basically what you're telling this jury here?

A Yes.

Q And Asia, you've been convicted back in 2014 of grand larceny -- I'm sorry, burglary third degree?

A Yes, ma'am.

Q And then in 2015, a shoplifting?
A Yes, ma'am.
Q The person that you were with that night that you call Flame, do you see him in the courtroom?
A Yes.
Q Can you point him out for the jury?
A Right there.
Q What's he wearing?
A A white shirt with a tie, a black and white tie.
Q And where is he sitting?
A At the table with his two lawyers.
Q With his two lawyers?
A Yes.

MS. CAMPBELL: Your Honor, may the record reflect she has identified the Defendant?

THE COURT: All right.

Cross-examination?

MS. ZMROCZEK: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q Asia, I've got what is essentially a giant sticky note that I'm going to put right up here on the wall, okay?
A Uh-huh.
Q You saw a man lift up his shirt and show a gun?

A Yes, ma'am.
Q You saw a man lift up his shirt and show a gun that night in Five Points?
A Yes, ma'am.
Q That man who lifted up his shirt and showed a gun was not part of your group, was he?
A No, ma'am. I don't know him.
Q Describe him.
A He's African-American. He had on a black and white shirt. And I'm not going to say he was fat, but he was like -- he ain't -- he's not a small guy.
Q Okay.
A That's all I can say about him.
Q Was he with anybody or was he by himself?
A No, he was with other people.
Q How many other people?
A I really mainly saw him with one, but then again, he was with another guy, too.
Q Okay. In fact, you ended up going to jail with one of them?
A Uh-huh.
Q He got arrested that same night you did, right?
A Yes, ma'am.
Q We'll come back to that. So the first time that you told anybody that you saw this man in the black and white

shirt lift up his shirt and show a gun was October 13th, 2013?

A No.

Q That night, it was that morning?

A No, they didn't talk to me until they came to State.

Q Okay. So did you tell anything that night?

A No, because I end up going to jail and like that wasn't the case of what happened that night. Like nobody really asked me nothing.

Q Okay. So they came on maybe the 16th?

A I'm not sure when they came. I just know --

Q A few days later?

A Yeah, a full days later. They called me out of class -- no, they came to my dorm room with the investigators saying they wanted to question me about something that I knew about.

Q And which investigator would that be?

A It was him.

Q Investigator Gilliam?

A Yes.

Q And who else?

A And if I'm not mistaken, it was a lady, but I don't know her name.

Q A lady?

A Yeah.

Q Maybe Investigator Moorer?
A I'm not sure.
Q You don't remember her name? Okay. And on that day, did they make you write a statement?
A Yes.
Q And did they record your statement?
A Yes, they did.
Q On that day, you told Investigator Gilliam and another investigator that the guy in the black and white shirt --
A I didn't say a black and white shirt. I said it was either black or white -- no, as a matter of fact, I said black or blue.
Q Black or blue?
A I couldn't really tell because it was dark, that was my words.
Q Okay. Lifted his shirt and showed a gun?
A Yes.
Q And you don't know what type of gun it was, do you?
A No.
Q And you wrote that statement for him?
A Yes, ma'am.
Q And they recorded it?
A Yes, ma'am.
Q When is the next time you talked to anybody about

that?

A They only came to see me and talk to me one time.

Q One time?

A Yes, ma'am.

Q Okay. And have you met with the solicitor's office since then?

A Not until now.

Q Maybe on Monday?

A That probably was a Sunday.

Q Sunday?

A Yes, ma'am.

Q And --

A Yeah, I talked to them Sunday.

Q This past Sunday?

A Yes, ma'am.

Q So that would be August 9th. And who did you talk to?

A Ms. Meghan.

Q Ms. Meghan, the assistant solicitor?

A Yes.

Q Okay. What did you tell Ms. Meghan on Sunday?

A I told her the same thing I'm telling y'all now.

Q So you told her that a guy in a black or blue shirt lifted his shirt and showed a gun?

A Yes, ma'am.

Q The guy that was with -- we'll call him gun man?
A Okay.
Q You don't know any of their names?
A No. I don't know them.
Q But the man with the gun, did you ever see him after the gunshots?
A The man that was in black and white?
Q Right.
A No.
Q Did you ever see anybody else in their group?
A The dude with the white -- he had on a white and black shirt, too, but it was mainly white and it was a Nike shirt that said "Busting It" on it or something like that.
Q It was mainly a white shirt?
A Yes.
Q And he was an associate of gun man?
A Yes.
Q And you saw him because?
A He went to jail.
Q He went to jail?
A Uh-huh.
Q He got arrested because he was yelling at y'all?
A I'm not really sure why he got arrested because he got arrested on the other side of -- like it was the other

side of the street. But yeah, he wouldn't calm down, so yeah.

Q He would not calm down. I'm showing you State's Exhibit 75. Are you familiar with what it shows? Do you recognize that this is the fountain area?

A Okay. Yes.

Q Okay. Will you show the jury where you were standing when you saw gun man lift his shirt approximately?

A Okay. Because I can't tell you exactly, but if I'm not mistaken, it should have been more -- this the store? This the Exxon?

Q This is the Exxon right here. This is the side of the street. This is the fountain.

A He was parked like right here, somewhere around here.

Q Somewhere around here?

A Yeah, somewhere around here.

Q Okay.

A It was around here, yeah.

Q And Flame and Rondo, your cousin -- you call him Ryan or Rondo?

A Cousin.

Q Cousin. He -- were they together? Were they close that night when they -- when gun man lifted his shirt?

A I really can't tell you exactly where everybody was standing.

Q Okay. There were a lot of people around?
A Yeah. I can't really say exactly like I was standing here, she was standing here. I can't really tell you that. I don't know.
Q Okay. You were asked a lot of questions about afraid -- not wanting to tell Michael that these guys were disrespecting you?
A Uh-huh.
Q You have to say yes or no.
A Oh, yes, ma'am. I'm sorry, I'm sorry. Yes, ma'am.
Q The guys that were disrespecting you, were they gun man and the guy in the white shirt?
A Yes, ma'am.
Q And did you -- you weren't afraid that Michael was going to pull out a gun and shoot anybody?
A No, because I didn't know that he had a gun. If anything, I thought he was going to say something to them. It wasn't nothing about me being afraid about him shooting.
Q Yeah, you just thought he was going to say something to them?
A Yeah, if anything.
Q If anything?
A Yeah, if anything, he probably would have said something. I wouldn't have thought no shooting.

Q The only time shooting came to your mind is when gun man pulled --

A Yeah, when I saw that and when I heard the gunshots.

Q You said two or three, it happened so fast?

A Yes, ma'am.

MS. ZMROCZEK: Thank you.

MS. CAMPBELL: Just a couple questions.

THE COURT: Yes, ma'am. Sure.

REDIRECT EXAMINATION

BY MS. CAMPBELL:

Q How did you know Michael, Flame?

A We went to middle school together.

Q And, in fact, who introduced your aunt to Michael?

A Me.

Q So you and Michael go back a long way?

A Yeah.

MS. CAMPBELL: Thank you.

THE COURT: All right. Thank you very much. Have a good day.

THE WITNESS: You, too.

THE COURT: How long is the next one?

MS. WALKER: Probably about the same amount of time, Judge.

THE COURT: Okay. Let's take a break. Do not discuss the case. Do not let anyone discuss the case with

you. Keep an open mind. We'll see you back in about 15 minutes. Thank you very much.

Everyone remain seated.

(WHEREUPON, the jury left the courtroom at 3:01 p.m.)

THE COURT: Everybody listen up. Sit down. If you can't come into this courtroom and behave appropriately, somebody in a black uniform is going to take you downstairs.

If these bailiffs tell you to do something, you will do it. I don't care who you work for or what office it is. This is my courtroom, and you will do what they say.

If not, deputies, you take them into custody and put them in the holding cell and I'll determine when they come out.

If you want to be in here, behave like an adult. Otherwise, stay home.

Fifteen minutes.

(WHEREUPON, a short break was taken.)

THE COURT: All right. Everybody ready?

MS. WALKER: Your Honor, there is one issue that we have.

THE COURT: Okay.

MS. WALKER: Our next witness is in the courtroom. She's under subpoena. She's informed my office that she

478

doesn't want to testify because she has received threats from the Defendant's family.

THE COURT: Okay.

MS. ZMROCZEK: So I think if we call her, she may actually refuse to take the stand.

THE COURT: Where is she?

MS. WALKER: Ms. White.

THE COURT: Okay. Come on down here.

MS. ZMROCZEK: Your Honor, they advised me of this just a few minutes ago. Obviously, I -- the family is not that large. I'm sure the Court will inquire.

THE COURT: Is she next?

MS. WALKER: Yes, Your Honor.

THE COURT: Okay.

Come stand right here. What's your name?

MS. WHITE: Taqayya White.

THE COURT: Hey, how are you?

MS. WHITE: Fine.

THE COURT: Where are you from?

MS. WHITE: Columbia, South Carolina.

THE COURT: How old are you?

MS. WHITE: Nineteen.

THE COURT: Are you married?

MS. WHITE No.

THE COURT: You got any kids?

MS. WHITE: No.

THE COURT: Do you work?

MS. WHITE: Yes.

THE COURT: Where do you work?

MS. WHITE: At Ruby's Grocery Shop in Orangeburg.

THE COURT: All right. Do you understand you're under subpoena?

MS. WHITE: Yes.

THE COURT: Okay. Do you understand that you're required by law to be here?

MS. WHITE: Yes.

THE COURT: Okay. You got two choices on how you get on the witness stand, okay. Choice number one is you go voluntarily. Okay. You're going to be required to answer their questions that they ask you, both sides. Choice number two is I can take you into custody, put you in handcuffs and have the deputy walk you up into the stand. Which one do you want?

MS. WHITE: Voluntarily, I guess.

THE COURT: You're going to do it voluntarily? All right. Now, you need to answer everybody's questions on both sides when they ask questions. Speak up loud and clear where everybody can hear you.

MS. WHITE: Okay.

THE COURT: Ms. Zmroczek.

480

MS. ZMROCZEK: Yes, Your Honor. I have concerns that any allegations that she's been threatened by a family member, I think that would require a specific amount of proof if that's going to come out to the jury.

THE COURT: What do you plan on asking about that, Ms. Walker?

MS. WALKER: Your Honor, depending upon how her testimony goes, if there's a hesitance or reluctance on the witness's part to answer questions, I can ask her if she's scared. If she answers yes, I can ask why.

THE COURT: I think that's admissible. Yeah. She's a witness. She's available for cross-examination.

Do you have any questions about -- I don't want to put you in cuffs, do you understand that?

MS. WHITE: (There was no response.)

THE COURT: Yes or no?

MS. WHITE: Yes.

THE COURT: I mean, that's not going to make things go any easier, is that a fair statement for both of us?

MS. WHITE: Yes, sir.

THE COURT: You're under subpoena. The law says that you have to comply with the subpoena power of the Court. You'll be required to answer questions. Okay.

MS. WHITE: Okay.

THE COURT: Do you have any questions about it?

MS. WHITE: No.

THE COURT: Okay. Thank you very much. Just have a seat right there near the front. Okay.

Anything else?

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

THE COURT: Okay.

Ms. Zmroczek?

MS. ZMROCZEK: Nothing for the Defense.

THE COURT: Okay. Great.

(WHEREUPON, the jury entered the courtroom at 3:28 p.m.)

THE COURT: No one allowed in the courtroom with any phone, period, anymore.

Call your next witness.

THE BAILIFF: The jury panel is all seated, Your Honor.

THE COURT: All right. Thank you, Mr. Burgess.

Call your next witness.

MS. WALKER: Thank you, Your Honor. The State calls Ms. White to the stand.

THE CLERK: Place your left hand on the Bible, raise your right.

TAQAYYA WHITE,

after being duly sworn, testified as follows:

THE CLERK: Have a seat in the witness stand, please.

State your name for the record.

THE WITNESS: Taqayya White.

DIRECT EXAMINATION

BY MS. WALKER:

Q Taqayya?

A Taqayya.

Q Ms. White, how old are you?

A Nineteen.

Q Where do you live right now? You don't have to give me your address, just what town?

A Orangeburg.

Q Did you grow up in Orangeburg?

A No, Columbia.

Q You grew up in Columbia?

A Yes.

Q Do you know Asia Bethel?

A Yes.

Q What about Shante Bethel?

A Yes.

Q How do you know Asia and Shante Bethel?

A I practically grew up with Asia.

Q Okay. Do you know a guy by the name of Flame?

A Yes.

Q How do you know him?

A Tay's boyfriend, ex-boyfriend.

Q Speak up a little bit.
A Tay's boyfriend.
Q When you say Tay, you're talking about Shante Bethel?
A Yes, ma'am.
Q I want to take your attention back to October of 2013. Were you with in Five Points that group one night?
A Yes.
Q Who all was in that group?
A Me, Asia, Tay, Flame, Rondo.
Q Rondo, does he have another name that he goes by?
A Ryan.
Q Ryan. How did y'all end up all being together and in Five Points that night?
A We were supposed to go to a club. We were really supposed to go to the Vista, but we were going to The Library.
Q And was it Jet Night Life?
A I believe so.
Q And so I guess y'all decided not to go there and went to The Library in Five Points?
A Uh-huh.
Q Once y'all got to Five Points, do you remember who was driving that night? And if you don't, that's fine?
A No.
Q Do you remember where you parked?

A No.
Q Did y'all -- did the five of y'all all ride together?
A Yes.
Q Once y'all got to Five Points, tell the jury what y'all did?
A Well, we -- all the girls, we needed to use the restroom, so we went in the club to use the restroom. And we came out and we was walking and the guys was behind us and --
Q Okay. Slow down a little bit and talk into that microphone because it may be hard for some people to hear you. Like everybody, even in the back row of the jury box needs to be able to hear you, okay?
A All right.
Q All right. You said y'all got out and you needed to go to the bathroom?
A Yes.
Q Where were y'all going to go to the bathroom?
A We went to The Library to use the restroom.
Q Who all went into The Library when you went to use the restroom?
A Me, Asia and Tay.
Q You, Asia and Tay?
A Uh-huh.
Q Where were the boys that y'all were with?

A They waited for us at the door, but once we came out, they was gone.
Q Did you run into them again that night? Did you meet up with them?
A Yeah, like once we started walking, they followed behind us.
Q Okay. So I guess the three girls are together and the boys are a little bit behind y'all?
A Yes.
Q Where were y'all walking at that point?
A Back to the car.
Q Do you know that fountain in the Five Points area?
A By the gas station.
Q Okay. So were y'all on the other side of the fountain from The Library? Is that where the car was parked?
A No.
Q Okay. Where was the car parked in relationship to the fountain? Let me do this. I'm sorry. Let me show you State's Exhibit No. 75. This is the fountain and this is The Library. Which way is the car, if you can remember?
A The car is like towards that way.
Q Towards this way? Down in this area?
A No, like this way.

Q This way?
A Uh-huh.
Q Okay. And while you're walking back to the car, tell us what happened.
A When we was walking, these dudes approached us and like we were just looking like we weren't giving them no communication. So they got mad and started calling us names and stuff.
Q When you said that y'all wouldn't give them any communication, what were they saying to y'all?
A They were like, What's up, Shawty, at us.
Q What's up, Shawty, is that what you just said?
A Stuff like that, yeah.
Q And then you said they tried to talk to you like maybe they wanted to get your phone number or something?
A Yes.
Q Okay. Now, at that point in time, did you talk back to them?
A No, like we kept on moving, like we kept on going on. I guess they got mad because like we wouldn't stop and talk to them.
Q Why do you think they got mad?
A Because we wouldn't give them no communication.
Q But what makes you think they were mad, I guess? Did they do something?

A They started calling us bitches and stuff.
Q Okay. Do you remember anybody that was with you telling them that they were too broke for y'all to talk to them?
A Yeah. I remember that, but I don't remember who said it.
Q That's fine. It was a long time ago?
A Uh-huh.
Q Okay. And where were the two guys that were with y'all when y'all are talking to this group of boys?
A Like as the people had came towards us, we -- like our pace had stopped a little bit, so like the boys had caught up with us. Once we passed them, like they came towards us like, Was they talking to y'all and stuff like that? I was like, Yeah.
Q Who said were they talking to y'all?
A I think either Flame or Rondo.
Q Flame or Rondo?
A Like both of them.
Q I'm sorry, what did you say?
A I said like both of them. They was amped and were like, Were they talking to y'all.
Q When you say they were amped, what does amped mean?
A Like eager, like --
Q Like kind of agitated?

A Anxious.
Q Anxious. Okay. So when you say somebody is amped, that means that they're anxious about something?
A Yes.
Q Now, once they said were they talking to y'all, did anybody answer them?
A Yeah, me.
Q What did you say to them?
A Yes.
Q Tell us what happened next.
A I told them, I said, Yeah. They turned around, like the dude was right there, and they were talking, just like they were exchanging words.
Q Who was exchanging words?
A The dudes that was with us and the dudes that tried to holler at us.
Q Okay.
A And then the next thing you know, like the dude in the white shirt, he just started acting crazy, like he was about to pull out a gun, pulling up his shirt.
Q It was the dude in the white shirt who did it?
A Yeah.
Q Okay. And he starts -- he pulls up his shirt?
A Yeah, that's what I seen.
Q And once he pulled up his shirt, what did you see?

A It was dark. Like I really couldn't see nothing. He was dark himself.
Q So you didn't see anything?
A Yeah, like he was clutching like. I know what clutching means, like when somebody about to pull out a gun or something.
Q So the dude in the white shirt is the one that's clutching like he's about to pull out a gun?
A Yes.
Q What happened next?
A Like me and Asia started walking towards -- we started walking towards Tay because Tay never stopped. We started walking towards Tay.
Q And you're just kind of calmly walking?
A Yeah, like come on.
Q Okay. You see a guy. He's angry, agitated, he's clutching and you know what that means and you walk off?
A Uh-huh.
Q At that point in time, what happens?
A We heard gunshots and we started running.
Q Did you see who fired the gun?
A No.
Q Tell me one thing. Who is Tiffany Roper?
A An alias name that I gave on the scene.
Q An alias that you gave that night?

A Yes.
Q To whom did you give that alias?
A I believe Officer Gilliam.
Q And why did you give a fake name?
A Because I was scared. I was anxious. I felt like I was going to be an accessory to it.
Q You thought you were going to be an accessory at that point?
A Uh-huh.
MS. WALKER: Beg the Court's indulgence, Your Honor.
THE COURT: Yes, ma'am.
(Pause.)
Q Okay. So you think you're going to be an accessory. You give a fake name and then you give a version of events to the officers that night, right?
A Yes.
Q Was that version of events the truth?
A Yes.
Q Can I show you your statement and refresh your memory?
A Yes.
Q Okay. I'm going to --
MS. WALKER: Your Honor, may I approach the witness?
THE COURT: Yes, ma'am.
BY MS. WALKER:

Q So the version of events that Tiffany Roper gave that night. Was this version of events the truth?
A Yes. Because he was the first one I seen him with a gun.
Q That wasn't the question?
MS. ZMROCZEK: I couldn't hear, Your Honor, I'm sorry.
THE COURT: I couldn't hear either. I'm sorry.
MS. WALKER: She said yes.
BY MS. WALKER:
Q You said he was the first one you seen with a gun?
A Uh-huh.
Q But you just said that you didn't see anybody -- you didn't see a gun. You just saw somebody lift something up -- lift a shirt?
A Right.
Q So you did not see a gun that night?
A No.
Q So when you told them that you did see a gun that night, that wasn't the truth?
A I guess not.
Q Okay. Let's adjust away from Tiffany Roper and go to your actual name. And you gave another statement, I guess, like maybe a week later. Do you remember that?
A (There was no response).

THE COURT: Answer, please.

THE WITNESS: Yes.

THE COURT: Thank you, ma'am.

BY MS. WALKER:

Q Do you want to be here today?

A No.

Q Are you afraid?

A Yes.

Q Why are you afraid?

A Because I don't want to testify.

Q Why don't you want to testify?

A Because I feel uncomfortable, like my life is on the line.

Q Your life is on the line? Have you been threatened?

A Yes.

Q Who threatened you?

MS. ZMROCZEK: Objection, Your Honor.

THE COURT: Overruled.

THE WITNESS: I mean, I don't know who. It was just through Facebook, like text messages through my phone.

BY MS. WALKER:

Q Do you know if they were related to anybody in the courtroom?

A I mean, I'm pretty sure they was.

Q And who was that?

A Flame, like his family.
Q Okay. And then you gave that second statement with your real name. Was your mom with you when you gave that one?
A Yes.
Q In that statement, they ask you about whether or not you knew Michael had a gun that night -- or Flame, I'm sorry?
A Uh-huh.
Q Did you know whether or not Flame had a gun that night?
A No, I didn't know.
Q Did you see Flame shoot that night?
A No.
Q All right. Let's look at the statement, okay. You said you remember giving a statement and your mom was with you?
A Yeah.
Q When they asked you if you saw Michael Smith shoot his gun that night, what was your answer?
A Yes.
Q Did they ask you if anybody else shot a gun?
A No.
Q They didn't ask you that question?
A Yeah.

Q And what was your answer to that?
A No.
Q Did they ask you if you saw anybody else with a gun that night?
A No.
Q They did not ask you that question?
A No, you asked me and I'm answering the question.
Q So did you see anybody else with a gun that night?
A No.
Q Once you saw Flame shoot, what did you do?
A Run.
Q The person -- the only person you saw with a gun shooting that night, is he in the courtroom?
A Yes.
Q Will you point him out for me?
A Right there (indicating).
Q Sitting between the two attorneys?
A Yes.

MS. WALKER: Thank you, Ms. White. I don't have any further questions.

THE COURT: Cross?

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q Is it Ms. White or Ms. Roper?
A Ms. White.

Q Ms. White. You've been threatened by the police, haven't you?
A (There was no response).
Q They took out an arrest warrant for you, didn't they?
A No.
Q They didn't issue an arrest warrant for giving false information in October?
A Oh, yes, they have.
Q They have?
A Yes.
Q Because you wouldn't come talk to them, right?
A No. Because they wanted to know who I really was. I didn't know until my grandma told me that they was looking for me. And I went up there immediately.
Q So you haven't wanted to participate in this case from the beginning?
A Nope.
Q And the statement that you gave, the very first statement that you gave right after this happened, they didn't like, right?
A Right.
Q Because in that statement, you told them that a guy with braids had a gun?
A Uh-huh.
Q Yes?

A Yes.
Q I'm going to show you Defendant's Exhibit 3. Was that one of the guys harassing you that night?
A Uh-huh.
Q Yes?
A Yes, ma'am.
Q And did he have a gun?
A Huh-uh.
Q No?
THE COURT: Is that a no?
THE WITNESS: No.
THE COURT: Okay. Thank you.
BY MS. ZMROCZEK:
Q I'm showing you Defendant's Exhibit 2 and ask if the two gentlemen dressed in white were two of the gentlemen harassing you that night?
A Yes. The one with the black writing.
Q The black writing? This one right here?
A No, it was the one with the brown pants holding his hands up.
Q The one with the brown pants holding his hands up?
A Yes, ma'am.
Q He was the one that was harassing you?
A Yes.
Q And that's who you told the police had a gun?

A Yes.
Q They didn't like that answer, right?
A No.
Q So they issued an arrest warrant and they made you come down with your mama and give a statement that they wanted, right?
A Uh-huh.
THE COURT: Is that a yes?
THE WITNESS: Yes.
BY MS. ZMROCZEK:
Q You alluded that you've been threatened, but Michael Smith hasn't been threatening you?
A No.
Q Not at all?
A No.
Q Ms. White, were you scared of those guys that night?
A Was I scared of those guys? No.
Q Were they intimidating?
A No.
Q Were you scared of Flame that night?
A No.
Q You told the police you heard how many gunshots?
A Three or four.
Q Three or four. When you told the solicitor's office you didn't want to come in and testify today, did they ask

to see any of the threats that had been made to you?
A Yes.
Q Did you show them?
A I mean, no, they didn't ask to see them. They just asked who they were from.
Q They just asked who they were from, they didn't ask to see them?
A Yes.
Q Everything happened fast that night?
A Yes, ma'am.
Q You were young?
A Yes.
Q And you don't want to be involved in this case?
A No.
Q Do you even remember what happened that night?
A Not necessarily, not from point A to point Z.
MS. ZMROCZEK: Thank you.
MS. WALKER: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. WALKER:
Q There was a warrant taken out on you for false information, right?
A Yes.
Q And you had given false information and a false name to the police at that point, right?

A Yes, ma'am.
Q When your mother went with you -- your mother went with you to give the statement that you now say is the true and accurate version, right?
A Yes.
Q And in that statement, how many people had a gun that you saw that day?
A One.
Q And how many people shot that night?
A One, I guess.
MS. WALKER: Thank you, ma'am. I don't have any more questions.
THE COURT: All right. Thank you very much. Have a nice day.
Call your next witness.
MS. WALKER: Your Honor, the State calls Byron Tucker.
Your Honor, may she be released from her subpoena?
THE COURT: Any objection, Ms. Zmroczek?
MS. ZMROCZEK: Not at all.
THE COURT: Thank you, Ms. White. You are released from your subpoena. Thank you.
Is this Mr. Tucker, did you say?
MS. WALKER: Yes.
THE COURT: Thank you.

BYRON TUCKER,

after being duly sworn, testified as follows:

THE CLERK: Thank you. Have a seat in the witness stand, please. State your name for the record.

THE WITNESS: Henry Byron Tucker.

MS. WALKER: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. WALKER:

Q Mr. Tucker, can you tell me where you -- don't give me your address, but what town you currently live in?

A Fayetteville, North Carolina.

Q And do you work?

A Yes.

Q What do you do for a living?

A I drive a truck professionally.

Q Okay. How long have you been living in Fayetteville?

A Since about 2009.

Q Now, how long have you been driving trucks?

A Since 2013.

Q Do you know -- let me ask you this in terms of these pictures. This is Defense No. 3 that I'm showing you. Who's that in that picture?

A That's me.

Q And this taller guy in the white shirt in Defense Exhibit No. 2 with his back to the camera, do you know who