

VOLUME II OF III

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Robert E. Hood, Circuit Court Judge

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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

MICHAEL JUAN SMITH,

APPELLANT

APPELLATE CASE NO 2015-001905

RECORD ON APPEAL

DAVID ALEXANDER
Appellate Defender

ALAN WILSON
Attorney General

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

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

ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

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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).

1 that was that night?

2 A Yes.

3 Q Who is that?

4 A My cousin.

5 Q What's his name?

6 A Daquan Samuel.

7 Q And this guy right here in the "Busting It" white
8 tee-shirt, who is that?

9 A That's our family friend, Donnell.

10 Q But this in State's Exhibit No. 3 was you that night?

11 A Yes.

12 THE COURT: Is that State's Exhibit No. 3?

13 MS. WALKER: I'm sorry, Your Honor, Defendant's
14 Exhibit No. 3. I apologize.

15 THE COURT: Okay. Thank you.

16 BY MS. WALKER:

17 Q How did y'all -- the three of y'all end up in Five
18 Points that night?

19 A Because my cousin and the other dude, they wanted to
20 go and holler at some girls. Basically, go and have sex
21 with a girl that night.

22 THE COURT: Can you define who the other dude is?

23 THE WITNESS: Donnell, they wanted to get with some
24 girls and have sex with them that night.

25 BY MS. WALKER:

1 Q So they were going to look for girls?

2 A Yes.

3 Q And what were y'all doing while y'all were in Five
4 Points, I guess, to achieve this goal?

5 A They were walking up and down the strip of Five
6 Points just messing around, just bumping into people. I
7 wasn't really feeling it. Just messing with people pretty
8 much.

9 Q Now, before you had -- before you even went to Five
10 Points with them that night, did you have a conversation
11 with them?

12 A Yes, I did.

13 Q And at that point in time, did you have your
14 commercial driver's license?

15 A No, I did not.

16 Q Were you in the process of trying to get it?

17 A Yes, I was.

18 Q And don't tell me what they said, but were you trying
19 to make sure that everybody was going to behave themselves
20 that night?

21 A Yes, I was. I asked them if they had any guns on
22 them. I told them I was not up for any drama. I don't
23 need that because I'm trying get my CDL. They said no and
24 they said they were going to behave. And at that point, I
25 got behind the wheel of the car.

Byron Tucker - Direct by Ms. Walker

1 Q So you drove to Five Points?

2 A Yes.

3 Q How long were y'all there that night?

4 A We weren't there that long. I'd say maybe 15, 20
5 minutes tops.

6 Q At some point, did you hear shots ring out in Five
7 Points?

8 A Yes.

9 Q Tell me what was happening in those moments right
10 before you heard the shots?

11 A Okay. Before the shots rang out, we were walking
12 back up Five Points towards the fountain.

13 Q Okay. Let me show you State's Exhibit No. 75. So
14 this is the fountain. You say y'all were walking back up?

15 A Yes.

16 Q Okay.

17 A At about the gas station.

18 Q Do you see that pointer right there?

19 MS. WALKER: Your Honor, may the witness step off the
20 stand?

21 THE COURT: Yes, sir.

22 Mr. Tucker, I'll need you to keep your voice up so
23 everybody can hear you, okay?

24 BY MS. WALKER:

25 Q You can step right here. Get on this side and speak

1 loudly so that the court reporter can hear what you say.

2 Just stand right here, okay?

3 A Okay.

4 Q So y'all were walking, you said, up Five Points?

5 A Yeah, we were coming back down the strip headed
6 towards the fountain. At about somewhere in this area
7 right here when we came back across the gas station, there
8 was a group of girls right there. My cousin -- Daquan and
9 Donnell, they tried to talk to the girls, okay.

10 I wasn't really into that. I was trying to keep
11 moving. All right. They wasn't hearing it. They wasn't
12 trying to feel it, okay. We were walking off and one of
13 the girls made a comment like, You ain't got enough money
14 to talk to us, to that effect. And when we got about
15 right here, my cousin was like, Oh, who ain't got no and
16 he reached in his pocket and pulled out like 20 or 60
17 bucks in 20s.

18 Q Okay.

19 A And at that point, they stopped and then he was -- he
20 was like, Oh, now y'all want to talk to us? Then it was
21 so quick, like he turned to walk back in our direction and
22 then that's when the first shot rang out. After the first
23 shot rang out, I looked back and I seen a bright light.
24 Then I got down and that's when the second shot came out.

25 After the second shot came out, there was two

Byron Tucker - Direct by Ms. Walker

1 officers that ran up in orange vests. When I was getting
2 up, they put me back on the ground. I got up and I walked
3 away. At that point, I did not know what had happened to
4 Martha.

5 Q Okay. Will you take the stand?

6 A (The witness complied.)

7 Q There's been some allegations made that you had a gun
8 that night?

9 A No, I did not have a gun in my possession at all,
10 period.

11 Q So you didn't shoot at anybody that night?

12 A I did not have a gun in my possession period, so I
13 could not shoot at anyone. I did not have a gun.

14 Q And then I guess have you seen parts of the video?

15 A Yes.

16 Q And you kind of walk away?

17 A With a smile.

18 Q Did you know at that point that she had been shot?

19 A No, I did not know that she had been shot. I did not
20 know Martha had been shot. I was thinking -- I was like I
21 can't believe he's really shooting at us.

22 Q Right.

23 A That's what was going through my mind.

24 Q Were you in shock, like surprised?

25 A Yeah, I was in shock. I thought it was funny. I was

1 like I can't believe he was really shooting at us. At
2 that point, I was like, he has really no regard for human
3 life.

4 MS. WALKER: I don't have any further questions.
5 Thank you, Mr. Tucker. Please answer any questions the
6 Defense attorney may have for you.

7 THE COURT: Cross?

8 CROSS-EXAMINATION

9 BY MS. ZMROCZEK:

10 Q I just want to make sure that we all heard what you
11 just said. I thought it was funny?

12 A Yes, that's what I said. But did you also hear the
13 last thing that I said? I said that I did not know that
14 she had been shot. I thought it was funny because I
15 didn't really think he was shooting at us.

16 Q I'm showing you Defendant's Exhibit 1. Who is that?

17 A Laying on the ground?

18 Q Nope. Where my finger is pointing?

19 A Donnell.

20 Q Donnell who?

21 A I don't know his last name.

22 Q You don't know his last name?

23 A No.

24 Q But that's who you were with that night?

25 A Yes.

1 Q And before you went out that night, you asked if he
2 had a gun?

3 A Yes.

4 Q I'm going to show you Defendant's Exhibit 2. Can you
5 identify where my finger is pointing who this person is?

6 A Yes, that's my cousin.

7 Q What's your cousin's name?

8 A Daquan.

9 Q Daquan what?

10 A Samuel.

11 Q What's he doing?

12 A It looks like he has his hands up.

13 Q Defendant's Exhibit 1, what's Donnell you don't know
14 his last name doing?

15 A It looks like he's flipping somebody the bird.

16 Q Okay. And Defendant's Exhibit 3?

17 A That's me.

18 Q That's you?

19 A Yes.

20 Q What were you wearing that night?

21 A I was wearing a pair of black and red Jordans. I was
22 wearing a pair of black pants. I was wearing a black
23 tee-shirt with "Watch Out for the Apple Bad Boys" written
24 on it in white letters. And I had red doo-rag on earlier
25 in the night.

1 Q You were interviewed?

2 A Yes.

3 Q You were interviewed by Investigator Gilliam?

4 A Yes.

5 Q And ATF Agent VanHouten?

6 A Yes.

7 Q Is he in the courtroom today?

8 A Yes.

9 Q Do you recall that interview?

10 A Yes.

11 Q Do you recall that interview was recorded?

12 A Yes.

13 Q Do you recall telling them that you -- it was only

14 your intention to go down to Five Points to make sure

15 nothing happened?

16 A Yes.

17 Q Do you recall telling them that Donnell Woodard was a

18 liar?

19 A Yes.

20 Q So you knew his name at that point?

21 A I did not know his last name, and I still do not know

22 his last name.

23 Q Okay.

24 A I just know his first name. Let me make that

25 perfectly clear. You're not going to twist my words.

1 Q You told them you knew Five Points was Blood
2 territory?

3 A Yes.

4 Q You told them Donnell was in a rival gang of Bloods?

5 A No. Donnell is not a Blood.

6 Q Right. You told them he was in a rival gang?

7 A Yes.

8 Q You told them that he was going to cause trouble?

9 A Yes.

10 Q You told them that he used a derogatory term for
11 Bloods?

12 A Earlier in the night before we got into Five Points.

13 Q What was that word?

14 A Slob.

15 Q What does that mean?

16 A It's a disrespect towards the Bloods.

17 Q How do you know that?

18 A Because I have associates and friends that are part
19 of gangs.

20 Q They got loud with you in that interview? They --
21 Investigator Gilliam, actually, he didn't do much of the
22 speaking, ATF Agent VanHouten got loud with you in that
23 interview?

24 A No, it was actually pretty cordial.

25 Q You thought your cousin was going to get arrested?

1 A No.

2 Q You weren't asked questions about your cousin?

3 A I was asked questions about my cousin.

4 Q Mr. Samuel?

5 A I was asked questions about him.

6 Q You were told that he was going to be put in federal
7 prison?

8 A No, I was not. Can I say what I was told?

9 Q Absolutely.

10 A Okay. This is how the interview went. We had
11 nothing to hide. They had been trying to contact us, but
12 the way they went about it, I did not like.

13 They had posted us over the news like we were gang
14 members, like I was a gang member. So what? I may dress
15 a certain way, but that doesn't mean that they portray me
16 like I was a criminal, which I'm not. I'm a law abiding
17 citizen.

18 So when they asked to speak with us, of course, I was
19 kind of reluctant not to kind of want to speak with them
20 because, of course, what happens when you come and speak
21 to somebody, they bring up charges, which they did not.
22 We had nothing to hide.

23 Q You considered it cordial when they said they saw
24 your cousin with a revolver?

25 A They never said to me that they saw my cousin with a

1 revolver.

2 Q You understand that this conversation was recorded?

3 A Yes, I understand.

4 Q Would it refresh your recollection to listen to that
5 conversation?

6 A I don't need to listen to the conversation because I
7 know what they told me.

8 Q Is it your testimony that it was never --

9 A Can I say what they told me?

10 THE COURT: You're allowed to explain your answer.
11 Yes, sir.

12 THE WITNESS: Okay. They told me -- they was asking
13 me about my cousin when he got up and ran, that he was
14 pulling out his shirt or something like that. They asked
15 him why he did that, to that effect. I was like, Oh, I
16 don't know. But they never said anything to me about him
17 having a gun. They were just like -- they couldn't figure
18 out for the life of them why he was pulling out his shirt
19 while he was running or before he ran or something like
20 that. I remember the interview. Don't try and play me.

21 MS. ZMROCZEK: Your Honor, at this time, I'd like to
22 refresh his memory with that portion of it to be played.

23 THE COURT: He has not asked for his memory to be
24 refreshed.

25 MS. ZMROCZEK: Okay. But what he has done, Your

1 Honor, is said that that was not said. He has denied that
2 statement was made.

3 THE COURT: And there are rules. Follow the rules of
4 evidence.

5 BY MS. ZMROCZEK:

6 Q They posted your picture on the internet?

7 A Yes, it was on the internet, WIS News 10, everything.

8 Q And that made you mad?

9 A Yes, that made me upset. They was portraying me like
10 I was a criminal. I'm not a criminal.

11 Q Is Donnell a criminal?

12 A Yes.

13 Q Not only did you ask if they had a gun, you asked if
14 they had any drugs?

15 A Yes.

16 Q You drove?

17 A Yes.

18 Q You parked the car?

19 A Yes.

20 Q Where did you park his car?

21 A It was like at some nursing home or something.

22 MS. ZMROCZEK: Your Honor, if he may step down?

23 THE COURT: Sure.

24 Keep your voice up, please.

25 BY MS. ZMROCZEK:

1 Q Tell the jury where you parked.

2 A It's not even on here. The only thing I know is I go
3 up, at that light I made a right and walked straight down.
4 The places where I was at was on the left.

5 Q You said straight down?

6 A To the right, right here. You come up, come up
7 across the street and go straight down. Like that nursing
8 home thing would be like on the left.

9 Q Okay. You may return.

10 A (The witness complied.)

11 Q You get to Five Points and you walk with your cousin
12 or you walk with Donnell?

13 A I was walking with both of them.

14 Q And then you said they went up and down the strip?

15 A Yes.

16 Q How do you define the strip?

17 A Like I was with them walking up and down the strip.
18 Like we got to some place and then turned around.

19 Q Up and down Harden Street?

20 A Yes.

21 Q And you were walking with them?

22 A Yes.

23 Q The whole time?

24 A Yes. I went to a gas station, came out, walked up a
25 little past that gas station and turned around.

1 Q You never spoke to any ladies?

2 A No, I did not. Donnell and Daquan did.

3 Q You told Investigator Gilliam and VanHouten that if
4 Donnell was disrespected, he was going to handle it?

5 A Yes.

6 Q And he did handle it. Yes?

7 A I wouldn't call being shot at by somebody handling
8 it.

9 Q So today, you know that they were shooting at you?

10 A I know they was shooting at us then.

11 Q Is that why you were laughing and smiling?

12 A No, I was laughing and smiling because I couldn't
13 believe that I was being shot at. I was like is this
14 serious? It's more of like a shock thing.

15 Q After the shooting, where did you go?

16 A I went back to the car.

17 Q Did you meet your cousin?

18 A No, no one was at the car.

19 Q How did your cousin get home?

20 A I walked back and I found my cousin. And when I
21 found my cousin, we walked back to the car, and then he
22 told me Donnell had been arrested.

23 Q So you --

24 A That's how I found out Donnell had been arrested. My
25 cousin told me.

1 Q So you walked back and found Mr. Samuel?

2 A Yes.

3 Q Where did you find him?

4 A I believe he was either walking up or he was at the
5 car.

6 Q So he was at the car and you were at the car?

7 A No, when I was coming back to the car -- I went to
8 the car the first time and then I walked back down.

9 Q Back down to where?

10 A To Five Points to see if I could find them. I could
11 not find them. Then I walked back up and that's when I
12 ran into my cousin.

13 Q Where did you look for them?

14 A Where we just were.

15 Q Which was where?

16 A I walked up that street, and then I came back down
17 this street right here. Then I walked back down that side
18 to see if I see him. I didn't see him, so I turned around
19 and went back to the car.

20 Q So if we watch those cameras, we're going to see you
21 walking down the street?

22 A Yes. You're going to see me leave after the initial
23 shooting and then you're going to see me come back after
24 the shooting. Then you're going to see me walk back up
25 again.

1 Q How much did you have to drink that night?

2 A I do not drink.

3 Q You did not have one drink?

4 A No, I did not.

5 Q How much did your cousin have to drink?

6 A It wasn't just my cousin. It was Daquan and Donnell.
7 They went and bought a case of beer. I can't remember, it
8 was a 12-pack or a 24-pack, but they drunk it.

9 Q The whole thing?

10 A I can't remember if they drunk the whole thing, but
11 I'm pretty sure they drunk the whole thing.

12 Q You were wearing that blue shirt?

13 A No, I was not wearing a blue shirt.

14 Q A black shirt?

15 A I was wearing a black shirt with white writing on it
16 that said, Watch out for the alphabet boys.

17 Q And you never had a conversation with Agent VanHouten
18 about a revolver?

19 A I told you to the effect of the conversation that he
20 asked me about that, something about my cousin tucking in
21 his shirt or something, pulling his shirt out, something
22 like that, before he ran.

23 Q You had to give ATF Agent VanHouten a reason to
24 explain to the federal attorney why you were smiling in
25 the camera. Yes?

Byron Tucker - Redirect by Ms. Walker

1 A I might have. I don't remember. Yeah, I'm pretty
2 sure I did.

3 Q You've never been arrested in this case?

4 A No, I've never been arrested. Check my record. My
5 record is clean.

6 MS. ZMROCZEK: Thank you, Mr. Tucker.

7 MS. WALKER: Just a couple questions.

8 REDIRECT EXAMINATION

9 BY MS. WALKER:

10 Q You're upset?

11 A A little bit.

12 Q Tell me why you're upset.

13 A I'm upset because she's trying to make me out to be a
14 liar.

15 Q And a gunman?

16 A Yes. And a criminal.

17 Q Are you any of those things?

18 A No, I'm not.

19 Q For the last time, did you have a gun with you in
20 Five Points that night?

21 A No, I did not.

22 MS. WALKER: Sir, I don't have any further questions
23 for you. Thank you for coming down here.

24 THE COURT: Any questions?

25 MS. ZMROCZEK: (Indicating in the negative.)

Russell Davis - Direct by Ms. Garfield

1 THE COURT: Thank you very much. Have a nice day.

2 MS. WALKER: Your Honor, may this witness be released
3 from his subpoena?

4 THE COURT: Any objection?

5 MS. ZMROCZEK: No, Your Honor.

6 THE COURT: Thank you. Have a great day, sir.
7 You're released from your subpoena.

8 Call your next witness.

9 MS. GARFIELD: State calls Russell Davis.

10 THE COURT: Please come forward and be sworn.

11 RUSSELL DAVIS,

12 after being duly sworn, testified as follows:

13 THE CLERK: Thank you. Have a seat in the witness
14 stand, please. State your name for the record.

15 THE WITNESS: Russell Davis.

16 DIRECT EXAMINATION

17 BY MS. GARFIELD:

18 Q Good afternoon, Mr. Davis?

19 A Hello.

20 Q Do you go by a nickname?

21 A Rusty.

22 Q May I call you Rusty?

23 A Yes, ma'am.

24 Q Rusty, where do you reside? Don't give your address,
25 but where do you live, what county?

Russell Davis - Direct by Ms. Garfield

1 A I live in Lexington County now.

2 Q Lexington County?

3 A Yes.

4 Q Where were you living back in 2013?

5 A Off of Broad River.

6 Q Specifically, I'm going to take you back to August of
7 2013. Where were you living?

8 A It was over in Irmo, right by Broad River and
9 Harbison Boulevard.

10 Q And specifically, August 19th, 2013, did you come
11 home to find anything unusual?

12 A Yes.

13 Q And please just share with the jury when you came
14 home, what did you find?

15 THE COURT: I'm sorry, I missed the date. Can you
16 ask that again, please?

17 MS. GARFIELD: Yes, sir. August 19th, 2013.

18 THE COURT: August 19th?

19 MS. GARFIELD: Yes, sir.

20 THE COURT: I'm sorry.

21 MS. GARFIELD: That's fine.

22 THE COURT: I'm sorry, sir. I apologize for
23 interrupting.

24 Go ahead.

25 THE WITNESS: I came home and everything was pretty

Russell Davis - Direct by Ms. Garfield

1 normal. I came into the house. I headed to the back of
2 the house to turn off the alarm that was going off. And
3 when I got about halfway across my living room, I realized
4 the window in my back door had been completely busted out.
5 I stopped and looked down the hallway. I could see that a
6 gun case -- my gun case was sitting in the hallway. So at
7 that time, I backed out of the house and called the
8 police.

9 BY MS. GARFIELD:

10 Q You called the police at that time?

11 A Correct.

12 Q Did you touch your gun case or anything of that
13 nature?

14 A I did not.

15 Q You did own a gun at that time?

16 A I did.

17 Q Please share with the jury how you came about
18 possessing that gun?

19 A I had gotten it from a friend. He needed a loan, so
20 he gave to it me. After that, he just eventually said do
21 you want to just keep the gun instead of me paying you
22 back.

23 Q And you had a concealed weapons permit?

24 A I didn't have a permit.

25 Q And it's lawful to have a gun in your home?

Russell Davis - Direct by Ms. Garfield

1 A Correct.

2 (WHEREUPON, State's Exhibit No. 77 was marked
3 for identification only.)

4 BY MS. GARFIELD:

5 Q I'm going to show you what's been marked as State's
6 Exhibit No. 77. Do you recognize that document?

7 A Yes.

8 Q Can you explain what that document is?

9 A This is the document that I had in my gun case that
10 showed the original proof of purchase that my friend had
11 made and it has all the gun numbers and everything. It's
12 what I kept for the registration.

13 Q And this is -- you provided this to the solicitor's
14 office; is that correct?

15 A Correct.

16 MS. GARFIELD: Your Honor, at this time, I'd like to
17 introduce State's Exhibit No. 77 into evidence.

18 MS. ZMROCZEK: Without objection.

19 THE COURT: Okay.

20 (WHEREUPON, State's Exhibit No. 77 was admitted
21 into evidence.)

22 BY MS. GARFIELD:

23 Q Now, I'm going to show you -- well, let me back up.
24 So law enforcement came?

25 A They did.

1 Q And they took a report?

2 A Yes.

3 Q Did they find anything else to be stolen?

4 A There was nothing else in the house stolen.

5 Q Specifically, tell the jury what was taken during
6 your burglary.

7 A I had a Glock 27 in the house. It was the only thing
8 that had been taken. That, and it had three clips and
9 those three clips were gone as well.

10 Q That was the only thing taken in your burglary?

11 A That was it.

12 Q I'm going to be hand you several pictures, State's
13 Exhibit Nos. 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35
14 and 36. Have you had an opportunity to review those
15 pictures?

16 A Yes, I reviewed them with you.

17 Q What are those photographs of?

18 A They are of the gun. It shows one of the casings,
19 some of the bullets. It has the clip, and it shows my gun
20 has well.

21 Q And that was the gun that was taken from your
22 burglary?

23 A That is.

24 Q And when the gun was taken, were the clips loaded?

25 A Yes, I kept them loaded at all times.

Russell Davis - Direct by Ms. Garfield

1 Q How many clips did you have?

2 A I had three total clips.

3 Q All three clips were kept loaded?

4 A All three.

5 Q And all three were stolen along with your gun?

6 A Correct.

7 Q What type of ammunition did you have those loaded
8 with?

9 A I had -- I believe one of them was a Remington hollow
10 point and one was a Federal ammunition.

11 Q Could it have been a Winchester?

12 A It could have, I'm not positive.

13 Q The ammunition that you see in those pictures, is
14 that consistent with the ammunition that you had loaded in
15 your gun when it was stolen or in the magazine when it was
16 stolen?

17 A Yes, absolutely.

18 MS. GARFIELD: Thank you.

19 THE COURT: Did those go in?

20 MS. GARFIELD: They're already in.

21 THE COURT: I'm sorry.

22 BY MS. GARFIELD:

23 Q I'm going to show you State's Exhibit No. 39 and --
24 what's been previously marked State's Exhibit No. 38 and
25 reflects the firearm and State's Exhibit No. 39, the

1 magazine. Do you recognize those?

2 A Yes.

3 Q And why do you recognize that?

4 A It's the type of gun that I had.

5 Q Are you familiar with where the serial number would
6 be located?

7 A There's several places. It's on the slide. There's
8 one on the backside of the butt. There's one on the -- I
9 believe the underside by the trigger. I think there's
10 three total.

11 Q I'm going to leave the firearm with you and also show
12 you the paperwork. Do you still have the paperwork?

13 A I handed it back to you.

14 Q Oh, there is. The paperwork that's been marked as
15 State's Exhibit No. 77, can you compare and see if that
16 paperwork matches this firearm?

17 A Yes. It's the same one.

18 Q Thank you. And your residence was in the Broad River
19 Road area?

20 A Correct.

21 Q Was that at the time Richland County?

22 A Yes.

23 Q But you now live in Lexington County?

24 A Correct.

25 Q Did you have any knowledge or any relationship with

1 the Defendant in this case, Michael Smith?

2 A No.

3 Q Nor any relationship with the victim?

4 A No.

5 Q And to your knowledge, was anyone ever apprehended
6 for the burglary of your home?

7 A Not that I know of.

8 MS. GARFIELD: Thank you so much, Mr. Davis. Please
9 answer any questions Ms. Zmroczek has for you.

10 MS. ZMROCZEK: Just briefly.

11 CROSS-EXAMINATION

12 BY MS. ZMROCZEK:

13 Q The gun was stolen from your home some time while you
14 were at work between 8:00 and 3:00 or 8:00 and 5:00?

15 A Somewhere around there.

16 Q And you called the police?

17 A Correct.

18 Q The perpetrator broke a window?

19 A Correct.

20 Q Touched several things. It was in a case?

21 A Correct.

22 Q Richland County came out and investigated?

23 A Yes.

24 Q Took DNA swabs?

25 A Uh-huh.

1 Q Took fingerprints?

2 A Yes.

3 Q And there's never been an arrest made?

4 A Not that I know of.

5 Q And you got the gun from a friend?

6 A Correct.

7 Q You loaded it with hollow point bullets?

8 A There were two different types. There was hollow
9 points and full metal jacket.

10 Q Nobody likes to testify and I hate to ask you to do
11 this, but it's real important everybody gets to hear you,
12 so just speak up a little bit.

13 A Right.

14 Q So there were hollow points and what else?

15 A It was full metal jacket I used at the target range
16 as well.

17 Q Tell the jury why you had some hollow points.

18 A Just when it makes contact -- I mean, it's a
19 self-defense weapon. I mean, if it makes contact, it does
20 what it's supposed to do.

21 Q It's a self-defense weapon and when it makes contact,
22 it does what it's supposed to do?

23 A Yes.

24 Q The hollow points are the bullets that mushroom out?

25 A That's correct.

Russell Davis - Redirect by Ms. Garfield

1 Q To do the most damage when they are shot?

2 A Correct.

3 MS. ZMROCZEK: Thank you, Mr. Davis.

4 THE WITNESS: No problem.

5 THE COURT: Ms. Garfield.

6 REDIRECT EXAMINATION

7 BY MS. GARFIELD:

8 Q Mr. Davis, are you aware that hollow point bullets
9 are designed to mushroom out, but do they always do?

10 A I don't know.

11 Q Because you're not an expert, right?

12 A No.

13 MS. GARFIELD: Thank you.

14 THE COURT: Okay. Thank you very much. Have a nice
15 day.

16 Call your next witness.

17 MS. WALKER: Your Honor, the State calls Shante
18 Bethel.

19 SHANTE BETHEL,

20 after being duly sworn, testified as follows:

21 THE CLERK: Have a seat in the witness stand. State
22 your name for the record.

23 THE WITNESS: Shante Bethel.

24 DIRECT EXAMINATION

25 BY MS. WALKER:

Shante Bethel - Direct by Ms. Walker

- 1 Q Ms. Bethel, how old are you?
- 2 A Thirty-two.
- 3 Q Where do you live?
- 4 A Columbia.
- 5 Q Have you lived here all your life?
- 6 A Yes.
- 7 Q Who do you live with?
- 8 A My mom and my kids.
- 9 Q How many kids do you have?
- 10 A Five.
- 11 Q Do you have one on the way?
- 12 A No.
- 13 Q No? Five children?
- 14 A Yeah.
- 15 Q At some point, were you dating Michael Smith?
- 16 A Yes.
- 17 Q When were you dating him?
- 18 A Back in 2013.
- 19 Q Okay. Did he go by a different name, a nickname?
- 20 A Flame.
- 21 Q Is it Flame or Flame -- I think it's Flame, the
- 22 Slugger. Are you familiar with that name?
- 23 A I never called him that. I called him Flame, but not
- 24 Slugger.
- 25 Q Were you familiar with the slugger part?

Shante Bethel - Direct by Ms. Walker

1 A Yeah.

2 Q Okay. How did you meet Flame?

3 A Through my niece and my cousin.

4 Q And back in October of 2013, how long had y'all been
5 dating?

6 A Almost a year.

7 Q And y'all got pretty close pretty fast, right?

8 A Yes.

9 Q In fact, you have his name tattooed on you?

10 A Yes.

11 Q Can you show the jury the Flame tattoo.

12 A (The witness complied.)

13 Q It's right there on your -- and do you have another
14 tattoo with his name on you?

15 A Yes, I do.

16 Q You don't have to show it, but do you have another
17 one?

18 A Yes, I do.

19 Q I want to take your attention back to the night that
20 this all happened. What had y'all been doing -- I guess,
21 what had you been doing that day?

22 A I went to the mall, and we was at a motel room.

23 Q And who was at this -- why were you at a motel room?

24 A We were just having like a little gathering.

25 Q A little get-together?

Shante Bethel - Direct by Ms. Walker

1 A Yes.

2 Q And who was at this get-together?

3 A Me, Michael, Asia, Taqayya, Rondo, and a couple more
4 people.

5 Q At some point in time, did y'all decide to leave that
6 hotel room?

7 A Yes.

8 Q And where were y'all going to go?

9 A We were on our way going to the fair, then we was
10 going to a club. We was going to another club. The club
11 was closed.

12 Q Okay. Do you remember the name of the club or what
13 part of town it was in?

14 A I think -- I'm not sure, but it was Jet.

15 Q Jet?

16 A Yes.

17 Q Okay. And once it was closed, where did y'all decide
18 to go?

19 A To Five Points.

20 Q Do you hang out in Five Points a lot?

21 A I never do. That was my first time.

22 Q This night was your first time?

23 A Yes.

24 Q Tell me what happens when y'all get there.

25 A When we get there, we would just walking around.

Shante Bethel - Direct by Ms. Walker

1 Then we made it up to The Library to go see if we could
2 get in. We went there. We couldn't get in because it was
3 closed. We stayed -- me and the girls stayed and was
4 using the restroom. The boys, they never came in.

5 Q Before y'all went to Five Points -- let me back up
6 just momentarily. Were y'all drinking that night?

7 A I didn't drink.

8 Q Did you see Michael drink?

9 A No.

10 Q You never saw him drink that night?

11 A No.

12 Q Did you see him take any drugs that night?

13 A Well, yeah.

14 Q So was the rest of the crowd drinking?

15 A Yes.

16 Q At that point in time, were y'all separated when you
17 were in The Library? Were you and Michael separated?

18 A Yes.

19 Q Before you actually make it to The Library, did you
20 become aware of the fact that Michael had a gun on him
21 that night?

22 A Yes.

23 Q Did that upset you?

24 A Yes.

25 Q Why did it upset you?

1 A It upset me, but at the same time, when I seen the
2 gun, my expression from me and him talking is that he had
3 got jumped in Five Points and that's why he had his gun.

4 Q Why were you upset that he had a gun with him that
5 night?

6 A I was just upset.

7 Q Is he supposed to have a gun with him?

8 A No.

9 Q Did you know he wasn't supposed to have a gun with
10 him?

11 A Yes.

12 Q And did you say anything to him about having that
13 gun? You don't have to tell me what you said, but did you
14 say anything to him about him having that gun?

15 A We had a conversation.

16 Q And at some point, did you actually see him move that
17 gun around that night?

18 A I just seen it in the pocket.

19 Q Which pocket?

20 A I think it's the right. The right.

21 Q On the outside?

22 A Yes.

23 Q And after y'all got separated at The Library, did
24 y'all meet back up?

25 A Yes.

1 Q And where were y'all when y'all met back up?

2 A We was walking -- like we left out The Library and we
3 met back up with them. We were just on the sidewalk.

4 Q And once y'all got back -- I guess y'all are across
5 the street from the fountain at that point, across Greene
6 Street?

7 A Yes.

8 Q What did y'all do once y'all met back up with the two
9 guys that y'all were with?

10 A We just continued to walk.

11 Q And in which direction are y'all walking?

12 A Straight ahead past --

13 Q Towards the fountain?

14 A Yes, past the fountain.

15 Q And as you pass the fountain, are all five of y'all
16 walking together or are the girls a little bit separate
17 from the boys?

18 A We were a little bit separate from the boys.

19 Q Tell me what happened as you were passing that
20 fountain.

21 A As we was passing, we seen a group of guys. There
22 was a group of three guys. They was basically trying to
23 talk to the girls and we -- well, we wasn't really giving
24 them no play. So they --

25 Q Okay. Slow down for me. When you say you weren't

1 giving them any play, explain that to me --

2 A We wasn't talking to them.

3 Q Okay. So y'all weren't responding to their words?

4 A Yes.

5 Q And what happened next?

6 A As we walked, they continued to -- we walked and then
7 I ran into them -- okay. Well, we walked and then we ran
8 into them again as we was walking again. So the guys was
9 making statements -- was making statements at us, and they
10 wasn't good statements because we didn't give them no
11 play. It was not really good statements. So we continued
12 to walk --

13 Q Did you hear anyone in your group tell them that they
14 didn't have enough money for y'all to talk to them?

15 A Yes, my niece.

16 Q And then they said things that weren't very nice
17 back?

18 A They did.

19 Q As that's going on, where's Flame?

20 A Walking.

21 Q Is he behind you or in front of you?

22 A Behind.

23 Q Behind you. Okay. Keep going. I'm sorry to
24 interrupt.

25 A Okay. Well, we seen them again. As I can remember

1 seeing them again, we were on the other side by -- we was
2 on the other side by the Exxon. They was over there near
3 the water, like the waterfall, they was right there, so we
4 were all facing each other then. So they was in front and
5 we was like on the other side. So the guy did something,
6 put his hands up, like put your hands up, not like trying
7 to put his hands up.

8 Q Like my hands are?

9 A It seemed like a beef --

10 Q Okay. Slow down. When you say beef, what do you
11 mean?

12 A Like saying what's up.

13 Q Like an argument?

14 A Like an argument, yeah.

15 Q Okay. Go ahead.

16 A So next thing you know, it was words between the
17 two -- like between the guys.

18 Q The guys that you were with?

19 A The guys we was with and the other guys.

20 Q Okay.

21 A And then the next thing I know, I seen a dude, the
22 dude in the white pull up his shirt, like he put his hand
23 inside like this. That's when I turned my head. From
24 there, I just heard shots.

25 Q Okay. Did you see who was shooting?

- 1 A I never saw no one shooting.
- 2 Q Did you ever see any of the other guys with a gun?
- 3 A No.
- 4 Q Who was the only person you saw with a gun that
- 5 night?
- 6 A I just -- Michael.
- 7 Q At that point, you said you turned your head when you
- 8 hear the shooting. Could you tell which direction the
- 9 shots were coming from?
- 10 A It was a lot of shots. I could not tell what
- 11 direction it was coming from and who it was coming from.
- 12 Q Okay. At that point in time once gunfire breaks out,
- 13 what do you do?
- 14 A I turned around and I walked.
- 15 Q Walked away?
- 16 A Yeah.
- 17 Q And did you see what Asia was doing at that point?
- 18 A She was behind me.
- 19 Q And what about Ms. White?
- 20 A I really didn't pay attention to her.
- 21 Q Okay. Did you see where Ryan was?
- 22 A He ran.
- 23 Q Ryan ran. And what about Flame?
- 24 A Ran.
- 25 Q He ran?

1 A Uh-huh.

2 Q They ran off and left y'all?

3 A They was gone before we even -- like before
4 everything -- nothing. They was already gone. Just
5 that's how it was, they was already gone.

6 Q Like shots were fired and then they hit it?

7 A I don't know. I can't say did they run when the
8 shots was -- before the shots, like after the shots was
9 fired, so I didn't see them.

10 Q Okay. At some point in time, did you catch back up
11 with them?

12 A Yes.

13 Q When you caught back up with them, where were they?

14 A Down there by another building and in handcuffs.

15 Q And when you saw them in handcuffs, did you say
16 anything to them? Not what you said, but did you try to
17 speak to them?

18 A I did.

19 Q And you gave a number of statements to law
20 enforcement, right?

21 A I did what now?

22 Q You gave multiple statements to law enforcement, more
23 than one?

24 A I only gave one.

25 Q You only gave one statement to law enforcement?

- 1 A At the scene, I did.
- 2 Q Okay. You gave one statement that night?
- 3 A Yeah.
- 4 Q The statement that you gave to law enforcement, did
- 5 they ask you if you saw Michael fire a gun that night?
- 6 A I don't remember.
- 7 Q Would showing you your statement refresh your memory?
- 8 A Uh-huh.
- 9 Q Okay. When they asked you if you saw Michael Smith
- 10 fire a gun that night, what was your answer?
- 11 A Yes.
- 12 Q When they asked you if you saw anybody else fire a
- 13 gun that night, what was your answer?
- 14 A Yes.
- 15 Q I'll show you your statement again.
- 16 A Oh.
- 17 Q What was your answer when you gave this statement to
- 18 law enforcement?
- 19 A No.
- 20 Q And then did you meet with law enforcement again?
- 21 A When I got locked up and came -- they came to get me.
- 22 Q Speaking of that, you have some pending charges in my
- 23 office, right?
- 24 A Yes.
- 25 Q I think there's a strong armed robbery?

1 A Yes.

2 Q Assault and battery in the first degree?

3 A Yes.

4 Q A burglary in the second degree?

5 A Yes.

6 Q And a larceny from that charge?

7 A Yes.

8 Q And you're represented by an attorney for those?

9 A Yes.

10 Q And he's here in the courtroom?

11 A Yes.

12 Q In other statements that you gave to police, were you
13 honest with them?

14 A Yes.

15 Q So in the statement where you said that you saw other
16 guys shoot at y'all, that was honest?

17 A No.

18 Q So you were dishonest with the police?

19 A Yes.

20 Q Why did you -- I guess why did you lie to the police
21 about what happened that night?

22 A The only reason why I said that someone shot is
23 because when I turned my head, that's when I heard
24 gunfire. Because the dude put his hand in his pants and
25 when I turned my head, that's when I heard gunfire.

1 Q Do you remember speaking with people from my office
2 about why you lied to police that night?

3 A Yes.

4 Q Do you remember telling people from my office that
5 you were trying to protect Michael because of
6 conversations that y'all had had?

7 A I said what?

8 Q That you were trying to protect Flame?

9 A Yes.

10 Q At some point before this shooting happened and when
11 y'all are exchanging words with that other group of guys,
12 did Flame ask you if they were talking to y'all?

13 A He never said -- no.

14 Q He never said, Are they talking to you?

15 A Yes.

16 Q He did say that. Okay. Did you tell him whether or
17 not they were talking to you?

18 A I never tell him, no.

19 Q And why didn't you tell him -- why didn't you tell
20 him what was going on at that point?

21 A I didn't think it was that serious to tell about
22 words.

23 Q Because it was just words?

24 A Yes.

25 Q And on the charges that you have pending in my

Shante Bethel - Direct by Ms. Walker

1 office, you have a strong armed robbery. Do you know how
2 much time that carries?

3 A Yes.

4 Q How much time?

5 A Up to like five or 10.

6 Q Would zero to 15 be more accurate?

7 A Yes. I don't know.

8 Q And then the assault and battery in the first degree,
9 do you know how much time that carries?

10 A No.

11 Q Does zero to 10 sound right?

12 A Yeah.

13 Q And then you have the other burglary. Does that also
14 carry up to 10 years?

15 A Yes.

16 Q Have you been promised anything in exchange for your
17 testimony here?

18 A No.

19 Q And in terms of the sole person you saw shoot a gun
20 that night, do you see him in the courtroom?

21 A Did I what now?

22 Q The one person you saw shoot a gun that night, do you
23 see him in the courtroom?

24 A Yes. Well, again, I can't say because I really
25 didn't.

Shante Bethel - Direct by Ms. Walker

1 Q Again you can't say because you really didn't?

2 A I can't say that I seen him fire a gun because I
3 didn't.

4 Q Did you tell the police you saw him fire a gun that
5 night?

6 A At the time, I did, but when I got asked the question
7 again, I stated I didn't see him shoot a gun because I
8 didn't see him shoot a gun.

9 Q So now -- so you saw him -- I'm trying to get the
10 version straight at this point. That night, you said you
11 saw him shoot a gun?

12 A That night, I said a lot of things and -- I said a
13 lot of things.

14 Q Okay. Including that you saw him shoot a gun?

15 A Yes.

16 Q And then later when you were talking to police, did
17 you say something about somebody else shooting a gun?

18 A Yes, I said that, too.

19 Q And that wasn't true?

20 A No.

21 Q And now, you're saying that you didn't see anybody
22 shoot a gun?

23 A I didn't.

24 Q And that's fine, but that's -- your testimony here
25 today is that you did not see anyone shoot a gun?

1 A That's correct.

2 Q Did you see the police officers pull the gun off of
3 him when he got arrested?

4 A Did I see the police officer pull the gun off -- I
5 seen the police had the gun -- whenever me and Asia walked
6 down the sidewalk, I seen the gun then in the officer's
7 hand when I seen him in handcuffs.

8 Q And at that point, that was the second time you had
9 seen that gun that night?

10 A Yep.

11 Q The person you saw with a gun that night, do you see
12 him in the courtroom?

13 A Yes.

14 Q Can you point him out for me?

15 A (Indicating).

16 Q And are y'all still -- are y'all still dating?

17 A No.

18 Q Do you have a bad relationship?

19 A A bad relationship?

20 Q Yeah.

21 A No.

22 Q In fact, you've been sitting right behind him for
23 most of the -- well, a couple rows behind him for most of
24 this trial, right?

25 A Yeah, I been sitting wherever I can sit at.

1 Q I understand.

2 A Yeah.

3 MS. WALKER: I don't have any further questions for
4 you.

5 THE WITNESS: Okay.

6 MS. WALKER: Thank you, Ms. Bethel.

7 THE COURT: Cross?

8 MS. ZMROCZEK: Your Honor, I imagine it's going to be
9 long. I can start it --

10 THE COURT: Start it.

11 MS. ZMROCZEK: -- or I can continue -- okay.

12 CROSS-EXAMINATION

13 BY MS. ZMROCZEK:

14 Q Ms. Bethel, you spoke with the police several times?

15 A Yes.

16 Q And wrote three statements?

17 A I don't know. Basically, I don't remember writing
18 three.

19 Q Let me ask it this way, every time that you spoke
20 with just the investigators, that would be Investigator
21 Gilliam and Investigator -- or ATF Agent VanHouten --

22 A Yes.

23 Q Every time you spoke with them, did they record your
24 interview?

25 A No.

1 Q That you knew of?

2 A I didn't know if I was being recorded or not.

3 Q Okay. Your testimony is you don't know who shot a
4 gun that night?

5 A I don't.

6 Q You testified on direct that Michael had gotten
7 jumped in Five Points?

8 A Yes.

9 Q What did you know about that?

10 A I know that he went to Five Points a while back and a
11 lot of people had jumped on him. He was really badly
12 injured.

13 Q You said that's why he had the gun that night?

14 A Yes.

15 Q When did he tell you that?

16 A He told me that while we was in Five Points that
17 night that that was the reason why he had the gun, and I
18 knew prior before that he was jumped.

19 Q Did he frequent Five Points?

20 A Ma'am?

21 Q Did he go there a lot?

22 A No.

23 Q Do you know how badly he was injured?

24 A He was injured bad enough that he couldn't go to
25 work. It was pretty serious.

1 Q You and I have spoke outside prior to the trial,
2 correct?

3 A Yes.

4 Q Have I ever threatened you?

5 A No, ma'am.

6 Q What have I told you every time?

7 A To get up here and tell the truth.

8 Q How many times have you met with the solicitor's
9 office?

10 A Two times.

11 Q What prompted you to start meeting with them again?

12 A To give the truth about what happened that night when
13 we was in Five Points.

14 Q And did you just come in?

15 A Yes, ma'am.

16 Q Or did they have you arrested?

17 A Oh, I was arrested. I was arrested.

18 Q Did they put you on an ankle monitor?

19 A Yes.

20 Q Do you still have that ankle monitor on?

21 A Yes.

22 Q Who monitors that?

23 A The courthouse.

24 Q This courthouse?

25 A Yes.

1 Q You met with the solicitor's office and investigators
2 on Monday?

3 A Yes.

4 Q Tell the jury what you told them on Monday about any
5 of the three gentlemen?

6 A Oh, I had stated to them that they was in a Folk
7 gang.

8 Q How would you know that?

9 A Because prior to me being affiliated with Folk a long
10 time ago, I recognized one of the dudes.

11 Q You used to be affiliated with a gang?

12 A Yes.

13 Q In fact, you've testified in this courtroom before?

14 A Yes, I have.

15 Q For the prosecution?

16 A Yes.

17 Q You know how serious gang members are?

18 A Yes.

19 Q Ms. Bethel, the first time you saw Michael with a gun
20 that night, were you standing at the corner of Harden and
21 Greene going towards The Library?

22 A Yes.

23 Q You were waiting to cross the street?

24 A Yes.

25 Q Michael was next to you?

- 1 A He was beside me, yes.
- 2 Q Somebody made a statement at that light?
- 3 A Yes.
- 4 Q Who was that person?
- 5 A One of the dudes out of the three dudes that got in
- 6 an argument.
- 7 Q Was it Defendant's Exhibit 3?
- 8 A No.
- 9 Q Was it the guy in the brown pants in Defendant's
- 10 Exhibit 2?
- 11 A (There was no response.)
- 12 Q Or was it the guy --
- 13 A That one right there.
- 14 Q That one?
- 15 A I'm sorry, the last one.
- 16 Q Defendant's Exhibit 1?
- 17 A Yes.
- 18 Q What was he doing with his hands?
- 19 A Making statements like throwing down Blood.
- 20 Q Like what?
- 21 A Throwing down Blood.
- 22 Q Does Michael have friends that are Bloods?
- 23 A Yes.
- 24 Q Lots of friends?
- 25 A Yes.

1 Q Family members?

2 A Yes.

3 Q What did the guy in the white say when he was at the
4 light?

5 A He made a -- he said something about a slob.

6 Q Do you know what that is?

7 A Yes.

8 Q What is that?

9 A Disrespect the Bloods.

10 Q And after he said that is when Michael moved the gun
11 into his right pocket?

12 A Correct.

13 Q Never took his hand out of his right pocket again?

14 A Never.

15 Q You said when they were -- right before you heard
16 shots -- how many shots did you hear?

17 A It was a lot of shots, about three to four shots.

18 Q It happened fast?

19 A It happened fast.

20 Q Before that happened, you said they were acting
21 beef-wise or they were acting like they had a beef?

22 A Yeah.

23 Q Who was acting that way?

24 A The one in the white shirt, the other white shirt and
25 him. The last one and the one in the white shirt.

1 Q So Defendant's Exhibit 1 and Defendant's Exhibit 2.
2 This guy in the white shirt and this guy raising his hands
3 in the white shirt?

4 A Yes, ma'am.

5 Q Were they saying threatening things?

6 A No, ma'am, just the disrespect.

7 Q Disrespect?

8 A (Nods in the affirmative.)

9 Q Which one of these guys did you say lifted their
10 shirt, Defendant's Exhibit 1 or Defendant's Exhibit 2?

11 A One with the white-collared shirt.

12 Q So two?

13 A Yeah.

14 Q Okay. You didn't see anything?

15 A No, ma'am.

16 Q But you did see him go for his shirt?

17 A Yes.

18 Q Which solicitor is prosecuting your case?

19 A Ms. Campbell.

20 Q Luck Campbell?

21 A Yes, ma'am.

22 Q When you were walking -- right before the shooting
23 when the group was leaving, y'all were walking, where were
24 you going?

25 A We was leaving to go home.

1 Q You dated Michael for how long?

2 A A year.

3 Q Was he an angry person?

4 A No.

5 Q Protective?

6 A Yeah, he's protective. He's protective, but -- yeah.

7 Q The one consistent thing that you said in all of your
8 statements to both the police and to the solicitor's
9 office is that you saw a dude put a hand in his pants?

10 A Correct.

11 Q And then you heard gunshots?

12 A I turned my head and I heard a bunch of gunshots,
13 yes.

14 Q Who did you tell -- let me rephrase that question.
15 Did you tell Investigator Gilliam that Michael had been
16 jumped in Five Points before?

17 A No, ma'am.

18 Q And the only time -- the first time you saw that gun
19 was after the word slob was uttered by the man in
20 Defendant's 1?

21 A Well, we was at the stop -- standing and stopped in
22 the street, yeah.

23 MS. ZMROCZEK: Thank you.

24 MS. WALKER: Thank you, Your Honor.

25 REDIRECT EXAMINATION

1 BY MS. WALKER:

2 Q The Defense attorney asked you if you had testified
3 in this very courtroom before, right?

4 A Right.

5 Q And you did testify in a gang case?

6 A Correct.

7 Q Two children got gunned down as they did their
8 homework on their front porch?

9 A Yes.

10 Q Innocent bystanders in gang violence?

11 A Yes.

12 Q And you testified in that case?

13 A Yes.

14 Q And what gang were you formerly associated with or a
15 member of?

16 A Folk.

17 Q And it's your testimony that disrespect against the
18 Bloods is what made Michael Smith take the gun from this
19 pocket to the outside pocket?

20 A It was just -- it wasn't just that. It was just the
21 language and everything that was going on, period.

22 Q The language was -- what was it? What was the word
23 that you used?

24 A It wasn't direct -- I don't want to say it was
25 directly the slob or --

1 Q Slob. You heard the word slob before he moved the
2 gun?

3 A Correct.

4 Q But he's, of course, not in a gang?

5 A No.

6 (WHEREUPON, State's Exhibit Nos. 78, 79 and 80
7 were marked for identification only.)

8 BY MS. WALKER:

9 Q Let me show you State's Exhibit 78, 79 and 80. Do
10 you recognize anyone in any of these pictures?

11 A Yes.

12 Q Who's this?

13 A That's his brother.

14 Q Okay. And who is this?

15 A That's Mike.

16 Q And who is this?

17 A That's Mike.

18 Q Okay.

19 MS. WALKER: Your Honor, at this point, the State
20 seeks to move Exhibit 79 and 80 into evidence.

21 MS. ZMROCZEK: Without objection.

22 THE COURT: Okay.

23 (WHEREUPON, State's Exhibit Nos. 79 and 80 were
24 admitted into evidence.)

25 BY MS. WALKER:

- 1 Q Is this Mike, Flame?
- 2 A Yes.
- 3 Q What's that hand sign, do you know?
- 4 A That's like a peace sign.
- 5 Q That's a peace sign, not a Bloods sign?
- 6 A No.
- 7 Q Right. And what about this one?
- 8 A I don't know.
- 9 Q You don't know this gang?
- 10 A I don't know what you basically showing me.
- 11 Q Okay. And that's him?
- 12 A I don't know all the signs.
- 13 Q That's fine. But that's him?
- 14 A Yes.
- 15 Q And he's not in a gang?
- 16 A Not that I know of, he's not.
- 17 Q Are you familiar with kind of the way gangs -- rules
- 18 that they have about words that they can use and can't
- 19 use?
- 20 A Yes.
- 21 Q Bloods, are there rules about whether or not they can
- 22 use C's when they're writing something down?
- 23 A Can they use what?
- 24 Q The letter C?
- 25 A They can't use the letter C?

1 Q Yeah. Like if a Blood was saying he was cool, would
2 he change -- would he use the word C -- would he use that
3 letter C?

4 A No.

5 MS. WALKER: Your Honor, beg the Court's indulgence?

6 THE COURT: Yes, ma'am.

7 BY MS. WALKER:

8 Q I want to show you -- do you remember the name on his
9 Facebook page at that point, on Flame's Facebook page?
10 Was it Flame or Flame, the Slugger?

11 A Flame, the Slugger.

12 Q Okay. I want to show you what's been marked as
13 State's Exhibit No. 81, which is from his Facebook page,
14 Flame, the Slugger.

15 A That right there, that's somebody else writing on his
16 page.

17 Q Well, what are they writing?

18 A Bulling.

19 Q Bulling with the dogs. What does bulling mean, do
20 you know? If you don't know, that's fine.

21 A I don't know what that means.

22 MS. WALKER: Your Honor, we'll mark this just for
23 identification purposes.

24 THE COURT: Okay. Is that 81?

25 MS. WALKER: 81, Your Honor.

1 (WHEREUPON, State's Exhibit No. 81 was marked
2 for identification only.)

3 BY MS. WALKER:

4 Q You said bulling?

5 A I said bulling.

6 MS. WALKER: Beg the Court's indulgence.

7 (Pause.)

8 BY MS. WALKER:

9 Q Have you met with Investigator Bryant from our
10 office?

11 A Yes.

12 Q And were you familiar with who she was before you
13 actually met with her?

14 A No. This is what happened. When I came back up from
15 the -- when they brought me back up from the jail, that's
16 when I met her. One of the associates told me who she
17 was, I never had like dealings with her.

18 Q You never heard of her name before?

19 A It don't ring a bell.

20 Q So you never actually said to her, Oh, I know exactly
21 who you are?

22 A From one of my cousin's situations, yes, but not
23 knowing her personally, no.

24 Q Right. I'm not saying you knew her personally before
25 that. To be clear, why were you arrested?

1 A Why was I arrested?

2 Q Recently.

3 A For a bench warrant for those charges that I have.

4 Q Did you miss a court appearance?

5 A I had got a letter sent to my address late -- I mean,
6 the same day of my court date. That's the reason why I
7 got a bench warrant.

8 Q Okay. Because you missed a court appearance? You're
9 saying you didn't know about it, but you missed a court
10 appearance?

11 A Yes.

12 Q And you remember having a conversation with
13 Ms. Bryant here about you formerly being a member of the
14 Folk and him being a Blood, but y'all could date anyway
15 because you were the queen of the Folk?

16 A What I said was that I was a Folk and if he was a
17 Blood, it didn't matter, we could still date.

18 Q Because you kind of run that show?

19 A But I never said that he was potentially a Blood.

20 Q May be a Blood?

21 A No, I said if he was -- she asked me a question and
22 my answer was that if I'm a Folk and I date a Blood that
23 we can date because it's no problem. It wouldn't be a
24 problem.

25 Q But you weren't talking about specifically Flame,

1 just any Blood you may be interested in?

2 A Just any Blood, yes.

3 MS. WALKER: I don't have any further questions,
4 Judge.

5 MS. ZMROCZEK: Just briefly, very briefly.

6 THE COURT: Okay.

7 RECROSS-EXAMINATION

8 BY MS. ZMROCZEK:

9 Q When did you miss that court appearance?

10 A Ma'am?

11 Q When did you miss that court appearance?

12 A A year ago.

13 Q So a bench warrant was issued a year ago?

14 A Yes, ma'am.

15 Q And when was it served?

16 A It was served to me a year after -- I was served June
17 the 1st.

18 Q Of this year?

19 A Yes, ma'am.

20 Q Right after this trial got set?

21 A Yes, ma'am.

22 Q And Michael has friends that are Bloods?

23 A Yes.

24 Q He may be a Blood?

25 A Maybe, I don't know.

1 Q She asked you on redirect about the innocent -- the
2 two innocent children that were gunned down?

3 A Yes.

4 Q By a Folk member?

5 A Yes.

6 Q Because they're violent?

7 A Yes.

8 Q And when they make threats, they mean it?

9 A Yes.

10 MS. ZMROCZEK: Thank you.

11 THE COURT: Have a nice day. Thank you very much.

12 How long is the next one?

13 MS. WALKER: Your Honor, he is potentially lengthy.

14 THE COURT: Lengthy?

15 MS. WALKER: Yes, Your Honor.

16 THE COURT: Okay.

17 We're going to stop here for the evening, ladies and
18 gentlemen. Thank you very much. You have put in a very
19 long day's worth of work --

20 Sit down.

21 Everybody has paid great attention. I appreciate you
22 doing that and staying with us all throughout the day.
23 You will recall previously that I instructed you in great
24 detail about what -- that you must decide this case solely
25 on the evidence presented in this courtroom.

1 Because we're about to take a break overnight, I'm
2 now reminding you of that warning. I want you to once
3 again fully commit to each other, to the parties in this
4 case, and to the Court that you will not use any type of
5 cell phone, smart phone, Blackberry, iPhone, Facebook,
6 text message, computer, tablet, Google or any other form
7 of communication to get, send or receive information about
8 this case even with close friends or family or with each
9 other, nor will you allow anyone to discuss this case with
10 you. Keep an open mind. You have not heard all the
11 testimony in this case. You have not heard the closing
12 arguments. You have not heard my charge to you on the
13 law. We will start tomorrow morning at 9:30.

14 Everyone remain seated while the jury is dismissed.
15 Thank you very much.

16 (WHEREUPON, the jury left the courtroom at 5:01
17 p.m.)

18 THE COURT: Okay. Anything I need to take up before
19 we break for the evening?

20 MS. ZMROCZEK: Nothing from the Defense, Your Honor.

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

22 THE COURT: Okay. 9:30, be ready to go. Thank you
23 very much.

24 (WHEREUPON, Court was adjourned for the day to
25 be reconvened on Thursday, August 13, 2015.)

1 THURSDAY, AUGUST 13, 2015

2 (WHEREUPON, Defendant's Exhibit Nos. 7 through 20
3 were marked for identification only.)

4 THE COURT: Okay. We're back on the record..

5 MS. CAMPBELL: Thank you, Your Honor. Just one
6 housekeeping matter. Vince Goggins is a potential witness
7 for us. He was left off the witness list. If you can
8 voir dire the jury.

9 THE COURT: I need the name.

10 MS. CAMPBELL: Vince Goggins.

11 THE COURT: How do I spell Goggins?

12 MS. CAMPBELL: G-O-G-G-I-N-S.

13 THE COURT: And where does he work?

14 MS. CAMPBELL: He is with the Richland County
15 Sheriff's Department.

16 THE COURT: Okay.

17 MS. CAMPBELL: And, Your Honor, I e-mailed last night
18 to Defense counsel copies of the conviction from court and
19 also the Fourth Circuit opinion.

20 THE COURT: Okay.

21 MS. CAMPBELL: But I've got a hard copy.

22 THE COURT: Did you e-mail me that?

23 MS. CAMPBELL: I've got a hard copy if I can just
24 hand up.

25 THE COURT: Yes, my e-mail is not coming through. If

1 you can hand me that, that will be great. Sometimes it
2 works and sometimes it doesn't in here.

3 MS. CAMPBELL: And, Your Honor, our next witness is
4 Dr. Smith. I believe Defense counsel has an issue as far
5 as him testifying about the bullet and its condition.

6 THE COURT: Okay. Do you want to proffer that
7 testimony?

8 MS. CAMPBELL: We can.

9 THE COURT: All right. Or, at least, just give me a
10 snapshot of what he plans on saying. You can see if she
11 needs to cross-examine him to make a legal argument.

12 MS. CAMPBELL: Dr. Smith, Your Honor, has 28 years
13 military experience. He has also lectured on ballistics,
14 bullets and things of that nature. Your Honor, I can put
15 him up and let him tell you.

16 THE COURT: Yeah.

17 Come on up, Doctor.

18 MS. CAMPBELL: Just to make the record clear.

19 THE COURT: Sure. That's fine.

20 ROBERT STEPHEN SMITH, M.D.,

21 after being duly sworn, testified as follows:

22 THE COURT: Have a seat. State your full name for
23 the record.

24 THE WITNESS: My name is Robert Stephen Smith. And
25 Stephen is spelled with a P-H instead of a V.

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q Dr. Smith, where are you currently employed?

A I'm at the University of Florida College of Medicine in the department of surgery.

Q What do you do there, sir?

A I am a surgeon on the trauma emergency general surgery, surgical critical care and acute care surgery services.

Q Can you tell the Judge a little bit about your education and your training in the medical field as well as the military?

A Sure. I attended medical school at the University of Arkansas where I grew up. After medical school, I performed a general surgery residency at the University of Kansas School of Medicine in Wichita. Following that, I performed a trauma critical care fellowship in Los Angeles at two hospitals, one, St. Mary's in Long Beach, and the other at the Martin Luther King Hospital in south central Los Angeles.

Q How long have you actually been performing surgeries in traumatic situations?

A I finished medical school in 1981 and through residency and subsequent to that since 1981.

Q And I want to show you a copy of what you provided to

Robert Stephen Smith, M.D. - Direct by Ms. Campbell

1 us. Is this a copy of CV?

2 A Yes, ma'am, it is.

3 MS. CAMPBELL: Your Honor, at this time, we'd mark it
4 as State's Exhibit 82.

5 (WHEREUPON, State's Exhibit No. 82 was marked
6 for identification only.)

7 MS. CAMPBELL: Your Honor, I'll just hand that up to
8 the Court.

9 THE COURT: Okay. Thank you.

10 BY MS. CAMPBELL:

11 Q Doctor, in addition to being a medical doctor, have
12 you also been employed by the military?

13 A Yes. I was active duty eight years in United States
14 Navy and another 20 or so years in the Reserves.

15 Q Twenty or so years in the Reserves?

16 A Yes.

17 Q During the course of your military training as well
18 as your medical training, are you familiar with --
19 unfortunately, are you familiar with bullets, ammunition
20 and things like that that cause trauma?

21 A I believe so, yes.

22 Q In your experience, have you become aware of
23 different types of ammunition and things of that nature?

24 A Yes.

25 Q And specifically in this case, have you had an

Robert Stephen Smith, M.D. - Direct by Ms. Campbell

1 opportunity to review the x-rays as well as the CT scans?

2 A Yes, I have.

3 Q And those are of Martha Childress?

4 A Yes.

5 Q And in that, are you able to have an opinion
6 regarding the approximate caliber or condition of this
7 bullet that's lodged in her spine?

8 A The approximate caliber and the condition of the
9 round, yes, I am.

10 Q And what is your opinion, Doctor, and the basis for
11 it?

12 A Well, the bullet appears to be in the range of a
13 .40-caliber 9mm handgun round. On examination of the
14 images, it appears to be a type of controlled expansion or
15 hollow point round.

16 Q And, in fact, can you illustrate that for the jury or
17 for the Judge if he asks you in a specific CT scan?

18 A Yes, some of the CT scan images are consistent with
19 that.

20 MS. CAMPBELL: And I don't know if you wanted to see
21 that, Judge?

22 THE COURT: I just want you to explain how you come
23 to that conclusion, that it's potentially a 40 Smith and
24 Wesson or a nine millimeter.

25 THE WITNESS: Based on the approximate size of the

1 round. And we, unfortunately, see a lot of these images
2 on x-ray in our trauma population. And on the CT images,
3 you can actually see deformation of the bullet which is
4 consistent with expansion of the round that's a
5 characteristic of a hollow point or a controlled expansion
6 type round.

7 THE COURT: Explain that a little bit more.

8 THE WITNESS: Okay. It mushrooms out a bit as it
9 travels through tissue.

10 THE COURT: Okay.

11 THE WITNESS: You can see that and it also fragments
12 to some degree in the spinal canal on the CT scan of that
13 area.

14 THE COURT: And then how are you making a size
15 determination?

16 THE WITNESS: Just based on my experience of seeing
17 lots of injured patients who have been wounded by handgun
18 rounds and knowing what the caliber was and comparing that
19 to the images present. I can't be absolutely certain that
20 this is a .40-caliber or 9mm round, but it's in that
21 range, certainly, based on x-ray images.

22 THE COURT: Okay.

23 Cross-examination?

24 MS. ZMROCZEK: Yes, Your Honor.

25 CROSS-EXAMINATION

1 BY MS. ZMROCZEK:

2 Q Doctor, you reviewed all of the x-rays and all of the
3 CTs?

4 A I have reviewed during Ms. Childress's hospital
5 course essentially all of the x-rays. I have not reviewed
6 all of the x-rays in preparation for this testimony.

7 Q You're familiar with one x-ray in particular that has
8 linear markings, it's magnified 2.5 times and it shows a
9 cartridge?

10 A There are a number of x-rays throughout the hundreds
11 of images that have linear markings that show the round,
12 so I'm not certain of which one you're specifically
13 referring to.

14 MS. ZMROCZEK: Your Honor, if I can --

15 MS. CAMPBELL: Your Honor, I did speak with Defense
16 counsel. She asked me how many x-rays or CT scans we have
17 on there. We have the ones that show the area in
18 question, which is her spinal cord. We did not include
19 the ones that show her lower limbs or her head. But if
20 she wants to review those to make sure that we have
21 everything she needs, we'll be glad to.

22 MS. ZMROCZEK: There's just one in particular that
23 I'd like to show him.

24 MS. CAMPBELL: That's fine.

25 THE COURT: Okay.

1 BY MS. ZMROCZEK:

2 Q Doctor, while we're pulling up this x-ray, you would
3 agree with me that magnification can distort size on
4 radiograph?

5 A I'm sorry, I couldn't quite hear you?

6 Q You would agree with me that magnification can
7 distort size on radiograph?

8 A Yes.

9 Q You would agree with me that these were magnified 2.5
10 times?

11 A Not all of the images were magnified 2.5 times.

12 Q Okay. We'll get to this one. Can you tell the Court
13 how many inches away the x-ray machine was?

14 A No. That's not my job position, the x-ray machine,
15 so I couldn't tell the Court how far the x-ray tube was
16 from the patient when the films were taken. Although in
17 the CT images, there's a fairly consistent distance inside
18 the CT tube, so to speak. So it's -- I guess the
19 answer is I couldn't tell you specifically, but it was a
20 standard distance.

21 Q And you would agree that size increases as the
22 distance from the film to the x-ray?

23 A Potentially, yes. There can be magnification based
24 on the position of the x-ray tube and the plate.

25 Q And, in fact, the medically accepted distance to

1 measure and even make an opinion on what a bullet is when
2 it's lodged in someone is 73 inches?

3 A I couldn't comment on that. I'm not a radiologist
4 and I have never heard that stated before.

5 Q And the opinions that you are intending to make, are
6 they to a reasonable degree of scientific or medical
7 certainty?

8 A I believe so, yes.

9 Q Can you define believe so?

10 A I have taken care of literally thousands of patients
11 with gunshot wounds. And the majority of these gunshot
12 wounds have been caused by handguns with commonly
13 available calibers of ammunition, with nine millimeter and
14 .40-caliber being some of the most common. So I've
15 literally seen thousands of x-rays of patients with
16 bullets that appeared on the x-ray.

17 And it's through that experience and, quite frankly,
18 I shoot a lot, so I know the size of a 9mm round or a
19 .40-caliber round or a .50-caliber round or a 223 round or
20 something like that. So it's based on those experiences
21 that I'm making my statements.

22 Q But what you can't determine is whether it's a
23 .40-caliber or a nine millimeter?

24 A I can't say that. That would only be determined by
25 examination of the bullet, which is still in

1 Ms. Childress.

2 MS. ZMROCZEK: Thank you. I don't need the x-ray,
3 Your Honor.

4 THE COURT: Okay.

5 MS. ZMROCZEK: Your Honor, at this point, we would
6 argue that his opinion that it could be a nine millimeter
7 or a .40-caliber would go to the ultimate question, which
8 is which gun shot. The only gun in evidence is a
9 .40-caliber. He cannot say at what distance these x-rays
10 were taken. He clearly said he's not an expert in
11 radiography. His testimony would be highly prejudicial.
12 Substantially more prejudicial than probative and it would
13 not tend to make a fact any more or less clear or
14 understandable for the jury.

15 THE COURT: Yes, ma'am.

16 MS. CAMPBELL: Your Honor, he's not giving an opinion
17 that this is the bullet that came from Michael Smith's gun
18 that night. He's just talking about in his experience,
19 having seen thousands of patients and his own personal
20 experience as well as to what this appears based upon his
21 professional experience with gunshots, which,
22 unfortunately, he does almost on a daily basis.

23 As far as how far the x-ray, of course, that all goes
24 to the weight not the admissibility. How far the machine
25 is, she can cross him on that. He's not going give an

1 ultimate opinion that this was a 40 or a nine. He's going
2 to say it's consistent with that caliber in his opinion
3 and in his expertise in dealing with these on a daily
4 basis.

5 In addition to that, he is going to show the jury the
6 actual x-rays and CT scans that would support or not
7 support what he's saying.

8 THE COURT: My issue is how is he scientifically
9 stating that? Because what I've heard at this point is
10 basically, I know it when I see it, which -- and I haven't
11 heard any articles, any lectures, any peer review
12 material, any qualifications as to being an expert in
13 ammunition or firearm or firearms training.

14 I don't dispute that he's seen thousand of gunshots
15 wounds, but he hasn't told me -- and I'll let you ask him
16 about this. I'm not opposed to that, but he hasn't told
17 me how he is medically and scientifically determining that
18 the bullet that is lodged in Ms. Childress's back is a
19 .40-caliber or a 9mm caliber other than I know it when I
20 see it. I mean, I can tell the difference between a
21 .50-caliber and a 22. Okay, got that.

22 THE WITNESS: Okay.

23 THE COURT: I understand the difference in the big
24 ones. Okay. There is a difference in a .50-caliber and a
25 22.

1 THE WITNESS: Sure.

2 THE COURT: But how do you determine a nine
3 millimeter versus a 380? A 380 is just a nine millimeter
4 short.

5 THE WITNESS: Sure.

6 THE COURT: So help me understand how you're coming
7 to that conclusion.

8 Excuse me, Ms. Campbell, I'm not trying to question
9 him for you.

10 MS. CAMPBELL: That's okay.

11 THE WITNESS: I can't say with certainty the exact
12 caliber of the round. I can say that it's consistent with
13 handgun rounds in the spectrum of injuries, not just the
14 appearance of a bullet, but the injury caused to the
15 liver, to the diaphragm, to the lung, to the chest wall,
16 it's consistent with a round in that caliber.

17 I can't say with absolute certainty and I don't think
18 anyone can say with absolute certainty without actual
19 examination of the round.

20 THE COURT: So how do you know it's not a .45?

21 THE WITNESS: It does not appear to have the same
22 configuration of a .45. The kinetic energy associated
23 with a .45-caliber round is significantly less --

24 THE COURT: Slower than the .40 --

25 THE WITNESS: Right, the muzzle velocity is in the

1 range of 650 to 850 feet per second. The .40-caliber
2 round generally has a muzzle velocity of 1100 to 1300 feet
3 per second. And the size of the bullet is different.

4 THE COURT: Right.

5 THE WITNESS: The .40-caliber round has a weight of a
6 bullet that's somewhere in the range of 130 to 150 grains.
7 That is significantly different than a .45.

8 THE COURT: Than a 130 grain hard ball 45?

9 THE WITNESS: Right.

10 THE COURT: All right. You can keep questioning.

11 REDIRECT EXAMINATION

12 BY MS. CAMPBELL:

13 Q And Doctor, you've been talking a little bit, do you
14 have some training and experience in ballistics
15 independent of your medical background?

16 A No, I don't. This is just from personal experience
17 and a professional interest in how gunshot wounds -- or
18 how bullets cause injuries that we see in our gunshot
19 wound patients.

20 Q But as far as the testimony here today on the
21 appearance of the bullet, the size of the bullet, you can
22 only say a range of what it is?

23 A Right.

24 Q Have you actually given lectures before in this area?

25 A Yes, actually, if you would like to look at my CV --

1 THE COURT: Well, I did, but there were 400 something
2 lectures, so I couldn't make them all --

3 THE WITNESS: There's --

4 THE COURT: Or articles.

5 THE WITNESS: There's a specific lecture called
6 Bullets, Blades and Bombs, which is an overview of the
7 kinetics of intentional injury. About half of that
8 lecture is identifying the types of terminal ballistic
9 injuries caused by common rounds that we see in gunshots.

10 THE COURT: Okay. Anything else?

11 THE WITNESS: I've given that lecture probably 20
12 time or so.

13 THE COURT: Okay. Ms. Campbell?

14 MS. CAMPBELL: No, sir.

15 THE COURT: Ms. Zmroczek, follow-up?

16 RECROSS-EXAMINATION

17 BY MS. ZMROCZEK:

18 Q Have you -- you've never received any formal
19 education or training in ballistics?

20 A No.

21 Q You've never been peer reviewed?

22 A In ballistics?

23 Q Right.

24 A No, but quite a few on gunshot wounds.

25 Q Tell the Court how many times you've been qualified

1 as an expert in ballistic testimony?

2 A I don't think I've ever been qualified in ballistics
3 testimony.

4 MS. ZMROCZEK: Your Honor, at this point, we would
5 argue that any opinion with consistency or not consistent
6 coming from a doctor when there's a specific round -- we
7 had very extensive pretrial with Agent Thrower. He said
8 that he can say with all of his training to a reasonable
9 degree of scientific certainty that that was a .40-caliber
10 Winchester 185 hollow point. The owner of the gun said
11 that's the hollow point that he owned.

12 THE COURT: I mean --

13 MS. ZMROCZEK: It goes to ultimate --

14 THE COURT: Whoa, whoa, whoa. Thrower wasn't talking
15 about the bullet in the body.

16 MS. ZMROCZEK: No, he was talking about the casing.

17 THE COURT: Right.

18 MS. ZMROCZEK: Right.

19 THE COURT: We're on two different planes.

20 MS. ZMROCZEK: I understand he was not talking about
21 the bullet. What he was talking about was the casing.

22 THE COURT: Sure.

23 MS. ZMROCZEK: Which was the cover of the bullet that
24 was shot from Mr. Smith's gun.

25 MS. CAMPBELL: Your Honor, we would limit his

1 testimony to the range of what the -- in his experience
2 and the range of what it is, the reason for his
3 background. He's already talked about the velocity and
4 everything else. He actually lectures on this. In
5 reality, we are not going to try to -- he is not going to
6 get up there and say oh, this is a .40-caliber and this is
7 the gun -- the bullet that came from Michael Smith's gun.

8 THE COURT: Tell me what you are comfortable saying
9 in regards to the bullet in Ms. Childress's back to a
10 reasonable degree of medical certainty.

11 THE WITNESS: I am comfortable in saying that it is a
12 handgun round or apparent handgun round in the range of,
13 you know, 9mm to .40-caliber, 380 and that is a controlled
14 expansion type of round based on the radiographic
15 appearance.

16 MS. CAMPBELL: And there's an actual radiograph where
17 he will show the actual, what he's talking about,
18 controlled expansion.

19 THE COURT: Right. The formation of the bullet --

20 THE WITNESS: Yes.

21 THE COURT: -- and how it deforms once it's inside
22 the body?

23 THE WITNESS: Yes, sir.

24 THE COURT: Is that what you mean by that?

25 THE WITNESS: Yes.

1 THE COURT: All right. Do you have another witness
2 while I process through this in my mind?

3 MS. CAMPBELL: They were late bringing two of our
4 witnesses. They aren't here yet. I've got two that are
5 supposed to be here at 10:00. Can I step out to see if
6 they're in the hall?

7 THE COURT: Okay.

8 Thank you, Dr. Smith. You can step down.

9 MS. CAMPBELL: Your Honor, if you can give us five
10 minutes.

11 THE COURT: Okay.

12 (Pause.)

13 MS. ZMROCZEK: Your Honor, I also have snapshots, and
14 I'll show Ms. Campbell, that I can e-mail the Court to
15 look at as well in making its determination.

16 MS. CAMPBELL: Snapshots of what?

17 MS. ZMROCZEK: I'll show you.

18 MS. CAMPBELL: We would rather look at the real
19 images.

20 And Judge, if you want us to, we can actually have
21 Dr. Smith show you the images and what he's talking about
22 specifically as far as the expansion. Would you like to
23 see them?

24 THE COURT: Not right now. Just let me read.

25 MS. CAMPBELL: Okay.

1 (Pause.)

2 MS. CAMPBELL: Your Honor, I don't want to interrupt.
3 We do have a witness here if you want to proceed.

4 THE COURT: Thank you. Give me just a moment,
5 please.

6 Okay. Let me see the lawyers in the back.

7 (Pause.)

8 (Whereupon, Court's Exhibit No. 5 was marked for
9 identification only.)

10 THE COURT: Okay. I questioned the jury about the
11 note that they sent concerning someone taking a picture.
12 My question to them was how have you learned about this
13 more than anything, and they -- a couple of them said they
14 thought they saw somebody take a picture of them and then
15 they heard me say no more cell phones in the courtroom.

16 I told them that I said no more cell phones in the
17 courtroom because I was aware that somebody had taken a
18 picture of me and that's when I ended the cell phones in
19 the courtroom except for law enforcement, media and
20 lawyers.

21 I said is anybody concerned about their safety, and
22 they said no. So they're fine.

23 MS. CAMPBELL: Okay. Judge, we were provided while
24 you were back doing that from the Defense the names of two
25 people that it could be.

1 THE COURT: Okay.

2 MS. CAMPBELL: Did you want us to investigate in that
3 matter?

4 THE COURT: Yes. I think somebody should call Chief
5 Keel. I want a SLED agent.

6 MS. ZMROCZEK: For the record, Your Honor, those
7 names were provided immediately upon my request. If you
8 check the jail phone calls and any family member phone
9 calls, you will see there is no, no connection.

10 THE COURT: That's fine.

11 MS. CAMPBELL: They are both documented Blood gang
12 members, which the Defendant is, too.

13 MS. ZMROCZEK: I mean, correspondence connection.

14 THE COURT: Okay. Hold on. I'm about to make a
15 decision on Dr. Smith so we can resolve this issue.

16 MS. CAMPBELL: Your Honor, Ms. Garfield is going to
17 step out and call Chief Keel.

18 THE COURT: Okay. Great.

19 (Pause.)

20 THE COURT: All right. Here is my issue with
21 Dr. Smith. My issue with Dr. Smith --

22 Somebody tap her.

23 MS. CAMPBELL: I'm sorry.

24 THE COURT: Here's my issue with Dr. Smith. My issue
25 with Dr. Smith is how does it fit under Council? Tell me

1 how the publication -- based upon the admissibility of
2 scientific evidence under Daubert and its progeny,
3 including Council, and the Ford case, which is -- the Ford
4 vs. Watson case, which has extended all that, where in the
5 publication and the peer review of the technique? Where
6 is the prior application of the method to the type of
7 evidence involved in the case? Where is the quality
8 control procedures used to ensure reliability? Where is
9 the consistency of the methods with the recognized
10 scientific laws and procedures?

11 I don't have an issue with it from a -- what's that
12 other case?

13 MS. CAMPBELL: You're talking about the Jones case?

14 THE COURT: Yeah. I mean, I believe he's an expert
15 from a medical perspective. I believe it could aid the
16 trier of fact in determining that. I don't have issues
17 with that line of cases. My line of cases is where is the
18 proffered testimony before this Court that this is proper
19 scientific evidence?

20 MS. CAMPBELL: Your Honor, we did make his CV part of
21 the record.

22 THE COURT: Right.

23 MS. CAMPBELL: As part of his medical training,
24 specifically in trauma surgery. And he talked about the
25 kinetics and velocity and y'all had an exchange about how

1 different size bullets travel differently. Based on his
2 experiencing as well as his training and I have would rely
3 on his CV as well as his testimony in the medical field
4 that this is part of what he has learned through his
5 medical training. Part of it being, I don't know if it's
6 physics or -- I'm not good with this stuff as far as --

7 THE COURT: My issue is not with him. My issue is
8 with where is --

9 I mean, Doctor, have you ever testified to this
10 before in a court as an expert, the size of a bullet?

11 THE WITNESS: Yes.

12 THE COURT: Okay. How many times?

13 THE WITNESS: I think once or twice.

14 THE COURT: And are there other doctors testifying to
15 this?

16 THE WITNESS: I expect it's done fairly commonly by
17 trauma surgeons in these types of proceedings.

18 THE COURT: Go ahead, Ms. Campbell.

19 MS. CAMPBELL: Again, Your Honor, I don't think
20 anybody is -- the bullet is still in Martha's spine.
21 Nobody is going to get up here and say that it matches to
22 the shell casing or to the gun. All we are going to say
23 is Doctor, in your experience and your training in this
24 field, is this bullet consistent with a range in between a
25 .22 and a .50, which would be the 380, nine millimeter.

1 THE COURT: Right. My question is where is the
2 science that has been tested that gets us there that meets
3 the Council standard?

4 MS. CAMPBELL: It's part of his medical training as
5 explained in his CV, which does meet that criteria.

6 THE COURT: I need to know specifically what it is.
7 I haven't heard anything about publications. I haven't
8 heard anything about peer review. I haven't heard about
9 prior application of the method. I haven't heard about
10 quality control procedures in place to ensure reliability.
11 I haven't heard about the consistency of the method with
12 recognized scientific laws and procedures. I haven't
13 heard any of that, which is all required under Council.

14 MS. CAMPBELL: Your Honor, we are going to qualify
15 him as a medical doctor, specifically with expertise as a
16 trauma surgeon is going to be his field.

17 MS. ZMROCZEK: And, Your Honor, we would stipulate to
18 that, but, obviously, that's not what we take issue with.

19 MS. CAMPBELL: And it's based on -- the same way a
20 pathologist testifies based on their training as to the
21 method and manner. Based on his training as a trauma
22 surgeon, it's important for him to understand everything
23 about how a bullets travels, the speed, the weight,
24 whether the impact is greater or lesser. I'm not being
25 very artful in how I'm saying this, but that's part of his

1 training as a medical doctor or a trauma surgeon.

2 I'm not saying that every doctor could come in here
3 and testify to this. I'm not saying that at all. But his
4 expertise and he has been doing that since 1981 is in the
5 medical field in trauma surgery. This is part of his
6 training and his experience as a trauma surgeon. And she
7 has stipulated that she does not dispute his
8 qualifications in that field.

9 THE COURT: I don't have an issue with his
10 qualifications. My issue isn't with Dr. Smith. My issue
11 is with how he's come to his conclusion, based upon what
12 scientific evidence.

13 MS. CAMPBELL: And he's removed thousands of bullets
14 from patients. And this is part of his experience in
15 reviewing CT scans and reviewing x-rays and removing
16 bullets in a large number of the cases. That's how he
17 comes to this. It's based on his total experience, but
18 most specifically, based on his training as a trauma
19 surgeon.

20 MS. ZMROCZEK: And, Your Honor, we think that would
21 be relevant if he were providing some sort of routine
22 method or consistency. I believe this is a nine
23 millimeter or a .38 and then removing the bullet and it's
24 a nine millimeter or a .38. There is no consistency.
25 There's no way to test what is required under Jones and

1 Council as far as the reliability. This is testimony
2 coming from an expert.

3 MS. CAMPBELL: She just conceded that he would be
4 able to make that decision based on what he saw.

5 MS. ZMROCZEK: No --

6 MS. CAMPBELL: She said it could be confirmed if it
7 were removed.

8 MS. ZMROCZEK: No, Your Honor. I want to make sure
9 that I'm not misspeaking. Had any of these things been in
10 place, had it been peer reviewed, had we had some sort of
11 method presented. In fact, Your Honor asked had this ever
12 been peer reviewed and he said no. I said the prior
13 application method, no. What sort of procedures or
14 policies? Well, I just know them. Certainly, that does
15 not rise to the level that's required by the case law in
16 this state.

17 THE COURT: Okay. So in Watson vs. Ford Motor
18 Company, the Supreme Court said I have to make three
19 determinations prior to admitting expert testimony under
20 Rule 702. First, I have to determine that the subject
21 matter is beyond the ordinary knowledge of the jury, thus
22 requiring an expert to explain the matter to the jury.
23 This is certainly way beyond the ordinary knowledge of the
24 jury and most everybody else in the courtroom for that
25 matter and would require an expert to explain the matter

1 to the jury.

2 Second, while Dr. Smith need not be a specialist in a
3 particular branch of the field, I must find that the
4 proper expert has, indeed, acquired the requisite
5 knowledge and skill to qualify as an expert in the
6 particular subject matter. There is no argument that he
7 is not an expert in this subject matter.

8 Finally, I must evaluate the substance of the
9 testimony and determine whether it is reliable based upon
10 State vs. Council.

11 So I'm past the first two elements of Watson. I
12 believe that the first two elements of Watson in the
13 admission of expert testimony under Rule 702 have been
14 satisfied. It's beyond the ordinary expertise of the jury
15 and the witness is qualified.

16 The third thing that I must analyze is whether or not
17 the substance of the testimony and then determine whether
18 it's reliable and then do a 403 analysis on it. That's
19 how I made it back to Council, which goes through the
20 requirements for the admission of scientific evidence,
21 which goes back to publications and peer review, prior
22 applications of the method, quality control procedure to
23 ensure reliability and the consistency of the method with
24 recognized scientific laws and procedures. Then I still
25 have to do a 403 analysis.

1 MS. ZMROCZEK: Your Honor, I also have an article
2 written by Dr. Riviello, R-I-V-I-E-L-L-O, a medical
3 doctor. It was written April 14th, 2015, addressing this
4 specific issue. I can forward it to both the Court and
5 the solicitor.

6 MS. CAMPBELL: Your Honor, you can find somebody to
7 say anything in an article.

8 Your Honor, if it would help the Court, we can narrow
9 it down even further. His expertise comes from his
10 training as a trauma surgeon. We think that this is
11 incorporated in his training as a trauma surgeon. This is
12 something he actually lectures on and has lectured on over
13 20 times as far as how a bullet enters, how it travels,
14 velocity, things of that nature, the size and caliber of a
15 bullet and the type of injury that results from that.

16 As you mentioned when you were talking to the doctor,
17 there's a big difference, of course, between a .22 and a
18 .50.

19 THE COURT: Right.

20 MS. CAMPBELL: If you would like us to limit it to
21 the fact that he would testify that in his experience that
22 this bullet, the size, the shape, the appearance and
23 everything would be greater than a .22 and less than a .50
24 and that the .40-caliber, 380, nine millimeters fall
25 within that range, we can do that if that would further

1 assure the Court that we aren't going beyond any
2 parameters. Clearly, Your Honor, he has also testified to
3 this information before in court and that other doctors as
4 well have done the same.

5 As far as peer review and all the qualifications as
6 far as his training as a trauma surgeon, I think the
7 Defense has conceded that and there is no question there.
8 This is part of that training. So to separate it out
9 simply puts a greater burden on it that --

10 THE COURT: Well, it says publications and peer
11 review of the technique. Not of the individual, of the
12 technique.

13 MS. CAMPBELL: His technique in surgery?

14 THE COURT: His technique of being able to look at it
15 and say that's a .40-caliber.

16 MS. ZMROCZEK: Well, Your Honor --

17 THE COURT: Stop talking.

18 His ability -- the technique at this point is he
19 looks at a scan and says that's a .40 or a nine
20 millimeter. That's the technique that's got to be
21 publicized, peer reviewed, prior application, quality
22 control procedure to ensure reliability and the
23 consistency of the method in regards to recognized
24 scientific laws and procedures.

25 MS. CAMPBELL: And again, Your Honor, that's

1 enveloped in his actual training as a trauma surgeon as
2 well as his experience as a trauma surgeon. We can get a
3 person who sells tires in here to come in and give expert
4 testimony about tire treads --

5 THE COURT: Right.

6 MS. CAMPBELL: -- that has no training other than
7 hey, I sell tires. That's been approved as far as, you
8 know, expert testimony. To separate this out like the
9 Defense wants to do that this is taking it a step further,
10 this is his training. This is his field. This is what he
11 does. He saves lives of people that are shot on a daily
12 basis. We aren't trying to make it specific.

13 And again, no one is going to get up here -- because
14 the bullet is still in Martha Childress's spine. No one
15 is going to get up here and say that's the bullet that was
16 fired from Michael Smith's gun.

17 THE COURT: Go ahead, Ms. Zmroczek.

18 MS. ZMROCZEK: If no one is going to get up there and
19 say it, then I don't understand the relevance of the
20 testimony, of that specific testimony. There's no dispute
21 that she was shot. There's no dispute that there's a
22 bullet.

23 THE COURT: So why don't you just stipulate the
24 bullet in her spine is between a .22-caliber and a
25 .50-caliber and we can avoid the whole entire thing and

1 that it's a hollow point.

2 MS. ZMROCZEK: I will not stipulate it's a hollow
3 point. I can't. I don't think he can say that.

4 MS. CAMPBELL: Well, he could describe to the jury
5 how the bullet appears and the splintering and the
6 mushrooming it did in the CT scan. He can definitely --
7 that's physical. That's in front of the jury.

8 MS. ZMROCZEK: Your Honor, he testified that he's not
9 an expert in radiology, radiographic policies and
10 procedures in order to be read to present that testimony
11 as expert testimony to the jury.

12 MS. CAMPBELL: This is information -- radiographs are
13 part of what he relied upon in making his determination of
14 how to proceed in surgery. There's no way she can limit
15 what he relied on in describing it to the jury as far as
16 how it mushroomed, which is not apparent in the x-rays,
17 but is readily apparent in the CT scans.

18 And Your Honor, she's also put me on notice that
19 she's hired some expert from Georgia that's going to come
20 up here and say that it's not a hollow point.

21 MS. ZMROCZEK: And Your Honor, I did that as a result
22 of the e-mail that I received on Friday at 6:45 saying
23 that this doctor was going to testify to this.

24 MS. CAMPBELL: But clearly within his experience, at
25 least, he can talk about the type of damage caused by a

1 hollow point bullet versus another type of bullet because
2 that's what he has to fix and that's important in his
3 determinations.

4 THE COURT: My issue is so much with the --

5 MS. CAMPBELL: The appearance of the bullet --

6 THE COURT: The appearance of the bullet as it is the
7 size of the bullet. The size of a bullet within a
8 specific range. I mean, you know... but I mean, just
9 using plain common sense, I mean, when I go to the range,
10 you know, I don't pick up the .45 and stick it in the .40.
11 I don't pick up the .38 and stick it in the .45. You
12 don't even pick up the nine millimeter and the .40 and mix
13 them up. While they're that close in size, there's a true
14 difference in the way they feel in your hand and the way
15 they look and the way they fit in the gun.

16 All right. Any other argument you want to make for
17 the record, Ms. Zmroczek?

18 MS. ZMROCZEK: Just that, Your Honor, under State v.
19 Jones, State V. Council that this testimony does not rise
20 to the level that's required.

21 Additionally, Your Honor, if this Court were to find
22 that it were, I still would argue the 403 analysis of the
23 substantial prejudicial effect over the probative value.
24 She listed off, at least, five or six different bullets.
25 To say that it falls within this vast range does not

1 assist the trier of fact.

2 THE COURT: That's why I don't understand why you
3 won't just stipulate to it.

4 MS. ZMROCZEK: I'll stipulate to that. I won't
5 stipulate it's a hollow point.

6 THE COURT: What will you stipulate to?

7 MS. ZMROCZEK: That it falls somewhere between the
8 range of a .22 and --

9 MS. CAMPBELL: Well, he actually said it wasn't a .45
10 either because of the way it entered the body, so it would
11 be between a .22 and a .45.

12 MS. ZMROCZEK: I'll stipulate to that, Your Honor,
13 but I will not stipulate that it's a hollow point.

14 THE COURT: Ms. Campbell.

15 MS. CAMPBELL: He has to be familiar with what type
16 of damage is caused by it specifically --

17 THE COURT: Whoa, whoa, stick with the stipulation
18 first.

19 MS. CAMPBELL: I'm good with it.

20 THE COURT: Okay.

21 MS. CAMPBELL: So he can just testify about -- he
22 understands that he can testify that in his opinion the
23 appearance of this bullet is somewhere between a .22 and a
24 .45.

25 That would be correct?

1 THE WITNESS: Correct.

2 MS. CAMPBELL: But it was never removed. I'm great
3 with that.

4 THE COURT: I'm going to let y'all question him. You
5 don't need to come back up here, but explain to me for the
6 purposes of the record how you can determine the
7 difference in the type of bullet, not size, but type of
8 bullet.

9 THE WITNESS: As far as?

10 THE COURT: Deformation.

11 THE WITNESS: Sure. It's apparent on the CT images
12 the type of deformation that occurred as the bullet passed
13 through the tissues.

14 THE COURT: How do you know that correlates to what
15 bullet or what style of bullet?

16 THE WITNESS: Well, the image shows that it expanded
17 and mushroomed to some degree. There's some
18 fragmentation. It's on the CT.

19 THE COURT: And how does look different than a full
20 metal jacket bullet?

21 THE WITNESS: That type of deformation is different
22 as it passes through tissue. A full metal jacket round
23 very frequently will pass through tissue without having
24 significant deformation.

25 THE COURT: I'm creating a record.

1 THE WITNESS: I understand.

2 THE COURT: I'm following you. I'm just creating a
3 record of what the testimony is or what the testimony
4 would be.

5 All right. Do you want to question him as to that,
6 Ms. Zmroczek?

7 MS. ZMROCZEK: Isn't -- yes, I do, Your Honor.

8 THE COURT: Okay. Good.

9 MS. ZMROCZEK: Isn't that also -- there are other
10 factors besides just what's inside. It also has to do
11 with how far away the bullet is, if it's aluminum or what
12 the type of metal is used?

13 THE WITNESS: Sure. It will make a difference. I
14 don't claim to have any expertise in external ballistics.
15 I'm just talking about internal ballistics, what happens
16 to the round as it actually passes through tissue.

17 MS. ZMROCZEK: But in order to say that you can --
18 what I expect you're going to say that it is a --

19 And I think Your Honor needs to see the radiographs
20 and the CT scans as well.

21 THE COURT: Okay.

22 MS. ZMROCZEK: I think they're not as clear as --

23 THE COURT: Pull them up.

24 MS. CAMPBELL: Your Honor, may the doctor come up so
25 he can tell you what he's talking about?

1 THE COURT: Sure. He doesn't have to take the
2 witness stand. He can just stand right there.

3 MS. CAMPBELL: Just pull it right there. Show it to
4 the Judge.

5 THE COURT: Go ahead and pull it up. I'm watching.

6 THE WITNESS: This is a series of CT scans. This is
7 the spine per the whole body's spinal canal. This is
8 actually air as the round passed through. This is
9 actually the round passing through the spine.

10 You can see --

11 THE COURT: So her back is to the right?

12 THE WITNESS: No, her back is here. This is the
13 sagittal section.

14 THE COURT: Got it.

15 THE WITNESS: So her front is here, her back is here,
16 her feet are here.

17 THE COURT: Got it.

18 THE WITNESS: Actually, you can see a pretty good
19 image of how far the bullet has mushroomed out as it
20 passed through tissue and entered the spine. That
21 particular image actually shows that it's mushroomed out
22 exactly as you would expect to see from a hollow point.

23 THE COURT: Okay.

24 THE WITNESS: You can see the flange coming out there
25 and the flange coming out there.

1 THE COURT: Okay.

2 MS. ZMROCZEK: Your Honor, there are additional --
3 can we pull up the other radiographs of just this area?
4 Actually, use that -- I'll try to find it.

5 THE COURT: Okay.

6 MS. ZMROCZEK: Your Honor, this radiograph obviously
7 shows the ammunition in her spine. The moving CT scan is
8 one that should -- obviously, the Court is familiar with
9 how a CT scan works generally. This is a still
10 radiograph. It's not moving. It doesn't change with the
11 timing and perception of it.

12 Your Honor, this clearly shows that there is a
13 projectile in her and it does not show the mushrooming or
14 the expanding size. This is my concern, if we have one
15 that may look like it and one that clearly does not.

16 THE COURT: Do you want to explain that?

17 THE WITNESS: Sure. This is an AP image posterior.
18 It's front to back basically.

19 THE COURT: Okay.

20 THE WITNESS: The bullets entered from this location.
21 Sorry, I touched the screen. I'm sorry.

22 THE COURT: That's okay.

23 THE WITNESS: It hit from this location and traveled
24 in a path like this. So the mushrooming would not be
25 apparent on this particular image, but it would be

1 apparent on the CT scan which shows sagittal scans going
2 from side to side. It's determined from the path of the
3 bullet and the location of the bullet in the spine.

4 THE COURT: Okay.

5 MS. ZMROCZEK: My concern, Your Honor, now is that
6 we're talking about trajectory because all of that to say
7 it entered and traveled a certain direction.

8 THE WITNESS: We just follow the wounds.

9 MS. CAMPBELL: He had to compare --

10 THE WITNESS: We had to --

11 THE COURT: Don't make legal arguments.

12 THE WITNESS: Sorry.

13 THE COURT: Go ahead.

14 THE WITNESS: I'll shut up.

15 MS. ZMROCZEK: These were the only images taken.

16 There are no still photographs. So if we had -- there's
17 been significant testimony about when she entered and hit
18 and the lack of blood. And I understand the argument is
19 that she bled internally. There are no photographs that
20 we can show of any entrance or exit wounds that are
21 typically used to assist in the trajectory. I mean,
22 obviously, we use them more -- we use that in persons who
23 are deceased and will use the stick and so people can
24 understand the trajectory.

25 To make this argument with this kind of scientific

1 testimony, which -- and I've done a quick search and I
2 have not found in any of the courts in the fourth circuits
3 that have accepted this as scientific expert testimony.

4 THE COURT: How can you determine entrance and --
5 entrance of the wound?

6 THE WITNESS: Sure. First anatomically --

7 THE COURT: Okay.

8 THE WITNESS: -- we identified the entrance wound up
9 here which fractured the 7th rib. Okay. She had a
10 hemopneumothorax indicating --

11 Can you get that away?

12 -- which entered into the chest. She had a four
13 centimeter laceration of her diaphragm into the liver,
14 which we had to repair, and it ended up in the spine.
15 It's just simply connecting point A to point B and seeing
16 the tissue damage between point A and point B.

17 THE COURT: And what did the EMS woman say?

18 MS. CAMPBELL: There was a hole in her side the size
19 of a quarter that was not bleeding much, but had bubbles
20 coming out of it.

21 THE COURT: Right.

22 MS. CAMPBELL: That was the entrance wound.

23 THE COURT: What else, Ms. Zmroczek?

24 MS. CAMPBELL: There is no exit wound.

25 THE COURT: Right.

1 Anything else, Ms. Zmroczek?

2 MS. ZMROCZEK: No, I don't have anything further.

3 THE COURT: All right. So we're going to do the
4 stipulation. I'm going to allow the doctor under Watson
5 vs. Ford Motor Company and State vs. Council to give his
6 opinion as to the deformation effect of the bullet inside
7 the body.

8 MS. ZMROCZEK: And, Your Honor --

9 THE COURT: And I think based upon the probative
10 value of it outweighs its prejudicial effect and the
11 Defense has made multiple arguments that this was a
12 self-defense case. They also made multiple arguments that
13 this was -- that there was another gun. They've also made
14 an argument that there was another shooter and has
15 consistently questioned every single witness on how many
16 shots were fired leaving one with the impression that
17 they're going to argue that their client wasn't the only
18 one that fired that night. So this is directly probative
19 and relevant in all four of the probative value outweighs
20 any potential prejudicial effect under 403. The doctor's
21 testimony will be limited to that.

22 Now, I'm not going to let him go on, Ms. Campbell,
23 for a long time. I'm going to let him go through all of
24 his qualifications and what he saw and everything, but I
25 want to keep his testimony on that very narrow format.

1 MS. CAMPBELL: I'll talk about and go through how he
2 compared it and traced the path and what his observations
3 are on the CT of how the bullet appeared.

4 THE COURT: Great.

5 MS. CAMPBELL: Your Honor, may we approach on that
6 other matter?

7 THE COURT: Sure.

8 (WHEREUPON, a bench conference was held.)

9 THE COURT: Okay. We'll start in about five minutes.
10 Thank you very much.

11 (WHEREUPON, a short break was taken.)

12 THE COURT: Yes, ma'am.

13 MS. CAMPBELL: Your Honor, just so I'm not violating
14 any of your orders, I want to make sure -- I know we're
15 stipulating to it, but can I ask if your opinion is it
16 between a .22 and a .45?

17 THE COURT: Yes.

18 Okay. Got everybody? One, two, three, one, two --

19 MS. WALKER: Three.

20 THE COURT: All right. Bring them in.

21 (WHEREUPON, the jury entered the courtroom at
22 10:50 a.m.)

23 THE BAILIFF: The jury is seated, Your Honor.

24 THE COURT: Thank you very much.

25 I apologize for the delay, ladies and gentlemen. I

1 take full and complete responsibility for that. Any time
2 there is a delay, I always accept the responsibility. As
3 I've told you before, there are things that come up which
4 I have to handle which are legal issues. I explained all
5 that to you before. I appreciate you being on time this
6 morning and being patient. Thank you very much.

7 You may call your next witness.

8 MS. CAMPBELL: May it please the Court?

9 THE COURT: Yes, ma'am.

10 MS. CAMPBELL: The State calls Dr. Smith.

11 THE COURT: All right. Please come forward,
12 Dr. Smith.

13 Becky, are you in here?

14 THE CLERK: I'm in here.

15 THE COURT: Okay. Thank you.

16 ROBERT STEPHEN SMITH, M.D.,

17 after being duly sworn, testified as follows:

18 THE CLERK: Have a seat in the witness stand, please.
19 State your name for the record.

20 THE WITNESS: Robert Stephen Smith.

21 DIRECT EXAMINATION

22 BY MS. CAMPBELL:

23 Q Dr. Smith, where are you currently employed?

24 A I'm at the University of Florida College of Medicine.
25 I'm professor of surgery.

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1 Q Professor of surgery?

2 A Yes.

3 Q And in addition to being professor of surgery, what
4 do your duties include there?

5 A My duties are 90 percent clinical. I take trauma
6 emergency, general surgery, surgical critical care call on
7 a regular basis.

8 Q Can you tell this jury a little bit about your
9 education and your training in the medical field?

10 A Sure. I graduated from the University of Arkansas
11 College of Medicine in 1981. I'm a native of Arkansas.
12 After that, I trained in general surgery at the University
13 of Kansas School of Medicine in Wichita. I then performed
14 a trauma critical care fellowship in Los Angeles at two
15 hospitals, one, St. Mary's Medical Center in Long Beach
16 and the other at the Martin Luther King hospital at south
17 central Los Angeles.

18 Q How long have you actually been performing surgeries
19 specifically as a trauma surgeon?

20 A Well, I entered general surgery residency as soon as
21 I completed medical school, so since 1981. And my
22 fellowship in trauma surgery per se where we gained
23 additional training in trauma surgery was in 1986 and
24 1987, so basically 1981.

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

1 Exhibit No. 82. Do you recognize this?

2 A Yes, this is my curriculum vitae.

3 Q Is this basically a summary of some of your training
4 and experience without having to go through all of it in
5 front of the jury?

6 A Yes. It's a summary of my work experience, my
7 training, the presentations that I've made at scientific
8 meetings and the publications I've generated.

9 Q For the record, have you been qualified before as an
10 expert as a trauma surgeon?

11 A Yes.

12 MS. CAMPBELL: Your Honor, at this time, we'd offer
13 him as an expert in trauma surgery and move State's
14 Exhibit No. 82 into evidence.

15 MS. ZMROCZEK: Your Honor, we stipulate to his
16 expertise and have advised Ms. Campbell that we have no
17 problem if he would like to go through every page of his
18 CV. We just don't feel that -- we would object to it
19 being entered into evidence.

20 THE COURT: If you stipulate to his qualifications,
21 what's the objection?

22 MS. ZMROCZEK: Your Honor, we'll withdraw the
23 objection.

24 THE COURT: Okay. Ladies and gentlemen, normally, a
25 person in a trial will not be allowed to give opinion

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1 testimony. When a person testifies, that person must
2 testify as to what he saw, heard, sensed by smell,
3 something like that. However, there is an exception in
4 the rules of evidence when someone is qualified because of
5 education or experience. They are permitted to give their
6 opinion in certain areas if the Court qualifies them in
7 that way.

8 This witness will be qualified in the area of trauma
9 surgery and he will be allowed to give opinion testimony
10 in that area. That does not mean that you must accept his
11 opinion, but it is evidence for you to use in any way that
12 you see fit and give it the weight of the credibility that
13 you believe is appropriate as you are required to do with
14 each and every witness that appears before you.

15 Yes, ma'am?

16 MS. ZMROCZEK: Again, Your Honor, at this time, I'd
17 like to preserve our prior objection.

18 THE COURT: Okay. That is noted for the record. It
19 is overruled.

20 Ms. Campbell, you may go forward.

21 State's Exhibit No. 82 is admitted without objection.

22 MS. CAMPBELL: Thank you, Your Honor.

23 (WHEREUPON, State's Exhibit No. 82 was admitted
24 into evidence.)

25 BY MS. CAMPBELL:

1 Q Doctor, I want to turn your attention, back in
2 October of 2013, where were you employed?

3 A I was employed at the University of South Carolina
4 School of Medicine. And as part of my duties, I took
5 trauma and general surgery, emergency, surgery critical
6 care call at Richland Memorial Hospital.

7 Q At Richland Memorial, so you were actually employed
8 by the University of South Carolina?

9 A Yes.

10 Q But you performed surgeries at Richland Memorial,
11 that's where they took place?

12 A Yes, ma'am, that's correct.

13 Q And part of your duties included teaching, I believe?

14 A Yes.

15 Q Specifically, though, a great deal of your duties
16 included trauma surgery?

17 A Yes, that's been the focus of my career.

18 Q I want to turn your attention to the early morning
19 hours of October the 13th of 2013. Did you come in
20 contact with a young woman named Martha Childress that
21 morning?

22 A Yes, I was the attending trauma surgeon on call that
23 evening. I was in-house at Richland Memorial when a
24 trauma activation was called and Ms. Childress was the
25 patient brought in that night.

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1 Q So you were the surgeon on call that everything?

2 A Yes, that's correct.

3 Q And you said you were in-house, so you were actually
4 there at the hospital?

5 A Yes, we stayed at the hospital 24/7 when we were on
6 trauma call.

7 Q Where did you first make contact with Martha
8 Childress that morning?

9 A In the trauma resuscitation bays. That's an area of
10 the emergency department.

11 Q It's part of the ER?

12 A Yes.

13 Q And when you made contact with her, what, if any,
14 information had you been provided?

15 A Sure. The paramedics had provided me a brief summary
16 of their impressions and findings. They said that she had
17 been brought in from the Five Points area. There was a
18 little bit of confusion regarding exactly what the
19 mechanism was, but she had fallen, was unable to move her
20 lower extremities. And there was some vague history of
21 potential gunshot wounds that had occurred in relation to
22 this event.

23 Q What was Ms. Childress's condition when you made
24 contact with her that night?

25 A Sure. Well, she was emotionally quite upset,

1 obviously. She had some difficulty in breathing and had
2 decreased breath sounds on the right side of her chest.
3 Her blood pressure was a bit on the low side on a couple
4 of the readings.

5 On examination, she was found to have a wound at
6 approximately the level of the 7th rib laterally, what we
7 would call the midclavicular line -- I'm sorry, the
8 mid-axillary line on the right side.

9 Q On the right side?

10 A Yes, on the right side. And this appeared to be
11 about half an inch in diameter.

12 Q And the 7th rib, when you're counting ribs, do you
13 count from the bottom or from the top?

14 A You count from the top.

15 Q Count from the top, so it would be the 7th rib down?

16 A Yes.

17 Q You mentioned that there was a hole?

18 A Yes.

19 Q How did it appear when you saw it initially?

20 A Well, it was circular defect. There was minimal
21 bleeding to the outside associated with the wound. There
22 was some bubbling of air, as I recall, coming out of the
23 wound.

24 Q Based upon your initial assessment, what, if
25 anything, did you do?

1 A Well, we did a number of things. First of all, we
2 did a very rapid, but complete history and physical
3 examination and performed an ultrasound examination, which
4 is standard for all our trauma patients. We did x-rays
5 and we determined very quickly that she had a
6 hemopneumothorax. And, basically, what that means is
7 there was blood and air in the chest in areas that it
8 shouldn't have been. It was outside of the normal
9 locations.

10 Q So basically, she had blood and air in her chest?

11 A Yes.

12 Q Would that be caused by trauma in the chest?

13 A Yes. The supposition at this point was -- our
14 assessment, rather, I should say, that this was secondary
15 to a penetrating wound that was evidenced by the circular
16 defect in the chest wall and then the findings that we
17 found on the other studies.

18 Q And based on your observations and your
19 determinations of what was going on with her, what, if
20 anything, did you think was necessary at that point?

21 A We wanted to make sure that we identified all of the
22 injuries if possible before proceeding with therapy. We
23 knew at that point that she required a tube to be placed
24 in her chest to evacuate the blood and to evacuate the air
25 to allow her to breath more easily and more normally.

1 That was done in the emergency department in the trauma
2 bays as soon as we could get the equipment. It was just
3 minutes really before that was placed.

4 THE COURT: Can y'all approach real quick?

5 (WHEREUPON, a bench conference was held.)

6 BY MS. CAMPBELL:

7 Q I'm sorry, Doctor. Where were we? We were talking
8 about -- you were talking about --

9 THE COURT: He had just said something about a tube
10 in the chest.

11 THE WITNESS: Yeah, we placed a chest tube to
12 evacuate the blood and the air that had accumulated in the
13 chest. Of course, the routine things were being done,
14 such as IVs being started and these sorts of things that
15 would be routine.

16 Q And you mentioned the chest tube. How was it
17 actually placed into the chest as it was done in this
18 case?

19 A An incision is made about an inch long. It's
20 generally placed between the ribs, and then an instrument
21 called a hemostat or clamp is then used to perforate the
22 chest cavity and spread the muscles apart. Then the chest
23 tube, which is about the size of a small garden hose, is
24 then placed into the chest cavity and it's secured in
25 place with sutures and then it's connected to a collection

1 or suction device to help remove the blood and air.

2 Q So the blood and air is actually sucked out of her
3 side?

4 A That is correct.

5 Q Once that was in place, was she able to breathe a
6 little easier?

7 A Yes, she was. Once that initial stabilization and
8 treatment was carried out, we elected to perform a CT
9 scan, CAT scan of her chest, abdomen and pelvis to better
10 delineate exactly what her injuries were.

11 Q And just for me for edification because I don't
12 understand this stuff so well, but the difference between
13 an x-ray and a CT or a CAT scan, can you explain that to
14 the jury?

15 A Sure. A plain x-ray is just a two -- it's a
16 two-dimensional image, if you will. It's like taking a
17 photograph. A CAT scan or CT scan actually stands for
18 computerized tomography. It allows you to get a
19 three-dimensional image of the structures of the body.

20 Q And is that important in you determining what, if
21 any, treatment Martha Childress needed that morning?

22 A It was very important in determining the subsequent
23 treatment that she required. The initial evaluation had
24 not identified an intraabdominal injury, an injury inside
25 the abdomen, if you will. A CT scan showed very clearly

1 that a bullet had passed from the region of the 7th rib
2 and that corresponded to the circular wound, which we
3 initially identified, into the chest on the right, down
4 through the diaphragm on the right and into the liver,
5 passing through the liver, causing what we described as a
6 Grade 4 liver laceration. There are five grades. She had
7 a Grade 4 laceration, which is serious. And then the
8 bullet, which was visible on both x-rays and CT scan,
9 passed into the spinal canal.

10 Q And you mentioned -- and we're talking now, the
11 bullet, had that been apparent or seen on the actual
12 initial imaging you did?

13 A The bullet is apparent on essentially all of the
14 radiographic images, including the initial ones, and,
15 also, obviously, on the CT scan.

16 Q And once you saw that there was a bullet -- and where
17 was it when you saw it?

18 A The bullet was literally in the middle of the spinal
19 canal at about the level of the 10th and 11th thoracic
20 vertebrae.

21 Q Thoracic vertebrae?

22 A Yes.

23 Q And you said it was lodged in the spine. Could you
24 determine once you did the CT scan what, if any, damage
25 had been done to the spine?

1 A It was very clear on the image that her spinal cord
2 had been transected by the bullet. This, of course,
3 produced the neurologic findings. She was unable to move
4 her lower extremities. She had no sensation below about
5 the level of her umbilicus, or her belly button.

6 Q Her what?

7 A Her belly button.

8 Q About from here down?

9 A Yes.

10 Q No sensation?

11 A No sensation.

12 Q No movement?

13 A No.

14 Q And once you had seen where the bullet landed, did
15 the history you had been given make more sense?

16 A Yes, it made perfect sense at that point.

17 Q You also mentioned that when you observed the wound
18 that it was not a lot of the blood, that you just saw some
19 bubbles and a small amount of blood from the wound. Is
20 that unusual in a gunshot wound such as this?

21 A No, it's very usual. The blood tends to accumulate
22 in the body cavities. In this particular instance, the
23 chest and to a smaller degree, the abdomen.

24 Q In addition, you also mentioned that the bullet was
25 lodged in the spinal cord and it transected the cord

1 itself?

2 A Yes.

3 Q What does that word mean for me?

4 A It means it was essentially cut, cut in half.

5 Q Severed?

6 A Severed.

7 Q And Doctor, in your opinion, was that done, the
8 severance or how it ended up in her spine done as the
9 bullet just went through her body?

10 A Yes.

11 Q If anyone had moved her in an attempt to help her
12 after that, did they make this any worse?

13 A No. The images actually showed very clearly that
14 there is minimal bony injury in the area of the thoracic
15 spine. In fact, this would be classified as a stable
16 fracture. There are essentially three columns of the
17 spine. Those are still all intact on her, but the bullet
18 actually passed into the spinal cord itself.

19 So moving her at that point would not have caused any
20 further damage to the spine. The spine was transected at
21 the time of impact.

22 Q And in fact, if Ms. Childress had been standing at
23 the time as the bullet entered her body and went into her
24 spine, if she had been standing, what would her ability to
25 stand -- I mean, how would that have been?

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1 A She would have immediately lost the ability to stand
2 because, again, she would have had no motor function, no
3 muscle strength and no sensation below that level. So she
4 would have fallen.

5 Q So if she literally just dropped to the ground, that
6 would be because at that point her spine was severed?

7 A Right. She wasn't able to provide nerve stimulation
8 to any of the muscles of the lower extremities from that
9 point on.

10 Q You mentioned injuries to different areas internally.
11 I believe there was a rib fracture of the 7th rib?

12 A Yes, ma'am.

13 Q What other injuries again did you note on the CT
14 scan?

15 A She had a wound that corresponded to the 7th rib
16 fracture. Again, there was blood and air within the chest
17 cavity on the right side. You could track the bullet down
18 and see that it had injured the lower aspect of the right
19 lung, had passed through the diaphragm, which is the
20 muscle that separates the chest from the abdomen, and it
21 passed through the liver in a fairly significant fashion
22 and then had impacted the spine itself.

23 Q And were any of these injuries life threatening?

24 A I put the injuries in two categories. Those that are
25 immediately life threatening and those that are

1 potentially life threatening later.

2 Q Okay.

3 A The immediately life threatening injury that was
4 found first was the hemopneumothorax. That could have
5 impaired her ability to breathe and ventilate herself,
6 oxygenate her body.

7 The second immediately life threatening injury was
8 the injury to the liver because the liver is a very well
9 perfused organ. It bleeds a lot when it's injured. She
10 was having a significant amount of bleeding from the liver
11 wound itself.

12 Either one of those could have caused death within a
13 few minutes or, perhaps, within an hour if she had not
14 received treatment.

15 The other injuries present, which was potentially
16 life threatening, included the injury to the diaphragm.
17 If diaphragmatic injuries are not repaired, then abdominal
18 contents can herniate up into the chest and cut off the
19 blood supply to those organs and can lead to
20 life-threatening situations later on. That could be years
21 down the road.

22 Then, finally, her spinal cord injury put her at risk
23 for a number of complications, which could have caused
24 death. These include blood clots developing in the leg
25 and breaking loose and going to the lungs, which is called

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1 a pulmonary embolus. That's a life-threatening situation.
2 Quite honestly, just the complications of being paralyzed
3 include skin breakdown and wounds that will frequently
4 become infected and these sorts of things, so I would
5 consider that a potentially life-threatening injury on
6 down the road.

7 Q To this day and the future?

8 A To this day and beyond.

9 Q You mentioned the liver lacerations, that there are
10 different grades of that and you mentioned that this was a
11 Grade 4?

12 A This was a Grade 4, yes.

13 Q And that was significant to you?

14 A Yes. Grade 1 and 2 injuries frequently will stop
15 bleeding on their own, even some Grade 3 injuries, but
16 Grade 4 injuries are quite severe. The highest grade
17 injury you can have is a Grade 5 injury. So based on the
18 grade of that injury and the other injuries which we
19 identified, particularly, the diaphragmatic laceration, we
20 made the decision to restore her abdomen to try to repair
21 those injuries.

22 Q Let me back up just a second. You mentioned that the
23 liver bleeds quite profusely. The diaphragm was bleeding?

24 A Yes.

25 Q And the path all along, she was basically filling up

1 with blood. Were y'all taking any steps that saved her
2 life as far as blood and IVs and things of that nature?

3 A She was receiving IV fluids to help maintain her
4 blood pressure. And through our interventions, we were
5 actually able to stop the bleeding very quickly, between
6 the chest tube and the exploration of her abdomen and the
7 repair of the liver injury.

8 Q That's what I'm getting at. Did you find it
9 necessary at that point to perform emergency surgery on
10 her?

11 A Yes, we did. We took her essentially directly from
12 the CT scanner to the operating room where we explored her
13 abdomen as an emergency and were able to stop the bleeding
14 from the liver and to repair her diaphragm at that time.

15 Q Can you tell the jury specifically what steps you had
16 to take as far as the surgery went and how that procedure
17 went?

18 A Sure. It's a little complicated, but I'll try. The
19 first thing that you do in a case like this is to pack all
20 the quadrants of the abdomen to stop the bleeding with
21 pressure. We did that. And then you remove the packing
22 sequentially to identify where the bleeding is coming
23 from. We identified it was coming from the liver
24 lacerations we had already seen on the CT scan.

25 And in addition to using like a cautery and some

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1 local techniques, we actually did something called a
2 mental pedicle. I'm sorry if it's a little complicated,
3 but we used part of her tissue that's associated with the
4 colon that is known to help stop bleeding, brought that up
5 into the defect in the liver and packed the liver with
6 this. That was successful in stopping her bleeding.

7 Q And in addition, did you also repair her diaphragm?

8 A Yes, we repaired that with sutures.

9 Q Did you remove the bullet from her spinal column?

10 A No, we didn't. There is really -- unless the bullet
11 is very obvious and very superficial, we try not to go
12 after a bullet because that creates more tissue trauma
13 than leaving the bullet in place.

14 In this particular case, it would have been
15 essentially impossible and certainly not in her interest
16 to open up the spine to retrieve the bullet. It would
17 have made no difference in her recovery, and we could have
18 caused potential injury to her.

19 Q Additional injury?

20 A Yes.

21 Q Do you recall exactly how long the surgery actually
22 took?

23 A I don't recall. I think it was a couple of hours.
24 One last procedure that we performed in her on the initial
25 operation, she had stabilized pretty nicely with our

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1 initial procedures, but we placed an inferior vena cava
2 filter in her. That was done to prevent any blood clots
3 that were formed in the lower extremities from going
4 upstream to the lung, which could potentially be a lethal
5 complication. We did that in that same procedure. The
6 whole thing took a couple of hours.

7 Q In fact, you did that in order to prevent her from
8 dying from blood clots going into her lungs?

9 A At a later time, yes.

10 Q Once the surgery was done, where did she go?

11 A She ultimately went to the ICU, the trauma ICU at
12 Richland Hospital. I believe there may have been some
13 time in the recovery room. I don't recall exactly. And
14 then after a stay of approximately a week in the ICU at
15 Richland, she went to the Shepard Center, the spinal cord
16 rehab center in Atlanta.

17 Q After about a week?

18 A After about a week.

19 Q During the time period that Ms. Childress was at
20 Richland Memorial, did you monitor her progress?

21 A Yes, we had a team of physicians and nurses taking
22 care of her. Since I had operated on her, I certainly
23 followed her care. There was also a team of physicians
24 assigned to the ICU that provided additional treatment
25 while she was there.

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1 Q Additionally, during the time she was in the
2 intensive care unit after she woke up a time later, she
3 experienced difficulty in sleeping and extreme pain. Is
4 that unusual?

5 A Well, she had pain associated with not only the
6 initial wounds, but from the procedures that we had
7 performed on her. She did have some difficulty with
8 sleeping. I think much of that was due to the
9 psychological stress associated with having these types of
10 injuries.

11 Q Being shot?

12 A Yes.

13 Q And Doctor, the CAT scans and the x-rays, did you
14 wait for a radiologist to read those or as part of your
15 training you read those and in an emergent situation, such
16 as this, you act upon them.

17 A We read radiographs, plain radiographs, x-rays and CT
18 scans all the time and make decisions, therapeutic
19 decisions based on our interpretation of the x-rays. We
20 certainly didn't wait for a radiologist to view or review
21 these films prior to taking Ms. Childress to the operating
22 room.

23 (WHEREUPON, State's Exhibit No. 48 was marked
24 for identification only.)

25 BY MS. CAMPBELL:

1 Q I'm going to show you State's Exhibit 48. Did you
2 review some x-rays and CT scans in anticipation of court
3 here today?

4 A Yes.

5 Q Are those some of the x-rays and CT scans taken of
6 Martha Childress during her stay at Richland Memorial
7 Hospital?

8 A Yes.

9 MS. CAMPBELL: Your Honor, at this time, I'd offer
10 State's Exhibit 48 into evidence?

11 MS. ZMROCZEK: Without objection, Your Honor.

12 THE COURT: State's 48 without objection.

13 (WHEREUPON, State's Exhibit No. 48 was admitted
14 into evidence.)

15 MS. CAMPBELL: Your Honor, permission publish to the
16 jury? We just need to move that big thing.

17 THE COURT: Okay.

18 MS. CAMPBELL: Your Honor, may the witness step down?

19 THE COURT: Yes, ma'am.

20 Doctor, please keep your voice up as you're away from
21 the microphone, okay?

22 THE WITNESS: Yes, sir.

23 THE COURT: Thank you.

24 You know where you're going?

25 MS. CAMPBELL: Yes, sir.

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1 THE COURT: Okay. I'm going to turn down the lights.
2 Try to keep your voice up, okay?

3 THE WITNESS: Sure.

4 BY MS. CAMPBELL:

5 Q Doctor, if you can come stand over on this side
6 because sometimes it's easier for the court reporter to
7 hear you.

8 A Sure.

9 MS. CAMPBELL: Can everyone hear?

10 THE JURORS: (All answered in the affirmative.)

11 BY MS. CAMPBELL:

12 Q If you stand a little bit over here. What is this,
13 Doctor?

14 A This is a CT scan of Ms. Childress's chest. And the
15 way that this is oriented, the CT scan allows you to look
16 at the anatomy, both in cross section front to back and
17 from side to side.

18 This particular image is a view of her chest that is
19 going from side to side.

20 Q And where would her head be? Show me where the spine
21 actually goes first.

22 A The head is up here and the spine and the neck would
23 be about there. This is the spine that goes through the
24 chest and then, finally, the spine down in the abdomen is
25 here. The heart is out here. That's actually the heart,

1 large blood vessel, the aorta associated with it. Her
2 back is here. So this is front, this is back, top,
3 bottom.

4 Q Okay. And what does this show -- were there a series
5 of CT scans memorialized?

6 A There are literally thousands of CT images. The CT
7 takes a different cut every centimeter, half centimeter.
8 In other words, every half an inch, quarter of an inch as
9 needed. You can scroll through these to give you a good
10 picture of the anatomy.

11 And as we scroll through -- scroll down, this shows
12 here about the 10th vertebrae, the thoracic vertebrae, the
13 first indication of the bullet. This is the vertebrae,
14 the front part of the bones of the spine, and this is the
15 back part of the bones of the spine. And this area
16 running right through the middle is actually the spinal
17 cord that provides the nerve stimulation, if you will, to
18 other parts of the body.

19 Now, this very bright area in the middle of the
20 spinal canal, that's the bullet within the spinal canal.

21 Q And we also mentioned that at first y'all took some
22 x-rays and stuff. Does the CT give you a lot more
23 information than the actual x-ray?

24 A Right. The CT scan really gives you a
25 three-dimensional image.

1 Q It's more of a 3-D thing?

2 A The plain films, it's like a snapshot. It just give
3 two-dimensional, so it's not nearly as accurate as the CT
4 scan.

5 Q Okay.

6 A If you could just scroll down a little bit further.
7 There you see the bullet, which has -- appears to have
8 been deformed as it passed through the tissue still in the
9 middle of the spinal canal. You can scroll down further.

10 Q You say it appears to be deformed. What does that
11 mean?

12 A It means that it's not maintaining its original
13 shape. And bullet design has a lot to do with this, but
14 bullets generally change as they strike bone or as they
15 strike tissue. And depending on the design of the bullet,
16 it can actually mushroom out.

17 If you can back one image. It appears to have
18 mushroomed out in that particular image. It's actually
19 much wider as it has spread through the tissue.

20 Q Doctor, as well as your medical training, do you also
21 have a military background?

22 A Yes, I do. I have eight years of active duty and 20
23 years of Reserve duty in the United States Navy.

24 Q And as part of your training and your expertise, do
25 you actually give lectures about what types of bullets

1 cause damage and how they progress through the body and
2 things of that nature?

3 A Yes. In relation to traumatic injuries, I do.

4 Q In this case, the mushrooming -- is that how you
5 described it?

6 A Yes.

7 Q Or the change in the shape of the bullet, is that
8 consistent with a certain type of ammunition?

9 A Well, much of the ammunition is designed to do that.
10 For example, something called a controlled expansion round
11 or a hollow point round is actually designed to assume
12 that shape as it passes through tissue.

13 And the reason for that is that when a bullet deforms
14 in this fashion, it's less likely to pass all the way
15 through. And by not passing all the way through, it
16 delivers all the energy in that bullet to the tissues. It
17 essentially spreads out and delivers that kinetic energy
18 -- that energy to the tissues rather than carrying that
19 energy on through.

20 Q Because it actually would cause more damage?

21 A It causes more damage.

22 Q And in this one, you can clearly see the mushrooming
23 here on the CT scan?

24 A You can see -- again, the bullet has traveled from
25 the backside, in other words, behind the TV towards us.

1 As it traveled through that path, it mushroomed out. So
2 you're actually seeing the flanges, if you will, of that
3 mushrooming here. The bullet would normally on end just
4 look like your thumb if it didn't mushroom out, but you
5 can see that it has deformed in that fashion, has spread
6 out as it passes through the tissue. Again, from that
7 direction towards the direction of the jury, if you will,
8 on its path.

9 Q You mentioned that it lodged itself in which
10 vertebrae?

11 A The 10th to 11th vertebrae. It actually involves --
12 both the 10 and 11 are right there.

13 Q Can you show --

14 Do you mind?

15 Show on her approximately where the 10th vertebrae
16 would be?

17 A It's --

18 Q I don't have a model.

19 A It's difficult to do with clothes on and I don't
20 necessarily --

21 Q Yeah. Approximately where down her back would this
22 be?

23 A Sure. It's about right here. And if you look at
24 where the entrance wound was, it would be about here --
25 and, of course, we're talking about the right side. It

1 would be right here and in the middle of her chest over
2 here. And then it passed with a slightly downward
3 trajectory, again, passing through the 7th rib, passing
4 through the chest wall, passing through the bottom part of
5 the lung, passing through the diaphragm and ending up
6 about right here.

7 Q And in doing the repairs internally that you did for
8 her that night, were you able to actually trace that to be
9 the path of the bullet?

10 A Yes. I think we could trace the trajectory of the
11 bullet very well by, essentially, just connecting Point A
12 to Point B, the entrance wound, the hole in the diaphragm,
13 the holes in the liver and where it impacted the spine.

14 Q Okay. And I also wanted to bring up in addition to
15 the CT scans, were there x-rays that are on here, x-rays
16 of the bullet?

17 A (Indicating.)

18 Q Does this actually show the same bullet we're talking
19 about, but from a different perspective?

20 A Right. This is the initial two-dimensional elements
21 taken really to position the CT scan. It's just like a
22 regular x-ray. Her head is up here. This is her chest.
23 This is her abdomen down here. This is the right side.
24 And this is the middle, if you will.

25 And if you look on this image, you can actually see a

1 couple of things. You can see some changes in the soft
2 tissue over here in the chest wall and a fractured -- I'm
3 sorry. Can you go back? I knew I was going to touch
4 that. You can see the fracture of the rib there and you
5 can see the bullet which has come to rest in the middle of
6 the spine.

7 Q And in this, are you able to see with the distinction
8 that you are in the CT the actual mushrooming as well?

9 A No, you can't see it because you're actually looking
10 at the bullet from a different plane. You're just looking
11 at it from front to back. When you actually see the
12 mushrooming is when we're looking at it from side to side.

13 Q Can you go back?

14 Again, scrolling through these, you were actually
15 able to --

16 A So if you imagine the body like this and you cut it
17 in slices from top to bottom, from left to right, this is
18 what the bullet looks like if you're looking at it from
19 left to right. That previous image you showed me, if you
20 go back to it, this is looking at the bullet from front to
21 back.

22 Q Okay. So if you look at it from the CT scan, it
23 gives you more information?

24 A Yes, much more information.

25 Q Which is important in making your determination as to

1 what treatments are involved?

2 A Yes.

3 Q In this one, there's no doubt that that's the
4 mushrooming you're talking about?

5 A I don't have any doubt that that's indicative of
6 mushrooming or deformation.

7 Q And over the course of your career, have you treated
8 a number of gunshot wounds?

9 A Unfortunately, probably thousands.

10 Q So you are familiar with them, with gunshots and the
11 damage they cause and how they appear?

12 A Yes.

13 Q In your opinion -- you aren't able to say for sure
14 what caliber this is, are you?

15 A No, the bullet is still in Ms. Childress. Really,
16 the only way to determine with absolute certainty the
17 caliber is to remove it and take a look at it. But that's
18 not really in her best interest to do that.

19 Q But would you agree there's been a stipulation this
20 bullet would appear to be between the size of a .22, which
21 is a small bullet, and a .45?

22 A Yes, it's in that range. I would think it's
23 somewhere in the middle of that range.

24 Q Okay. You can -- and there are a number of other
25 images on here as well that show the same thing, but these

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1 are the most --

2 A Yeah, those are the most important.

3 Q Okay.

4 THE COURT: Are you done with that?

5 MS. CAMPBELL: Yes. Thank you.

6 BY MS. CAMPBELL:

7 Q Doctor, as far as treatment or any injuries to
8 Martha, if she had been drinking that night, would that in
9 any way affect her condition or her treatment?

10 A No.

11 Q And Doctor, you now practice in Florida?

12 A Yes.

13 Q And you're still doing trauma surgery?

14 A Yes.

15 Q And we contacted you a couple of months ago maybe?

16 A I believe so.

17 Q And you basically just agreed to come up here without
18 a subpoena, just came because we asked you to?

19 A That's correct.

20 Q Doctor, but for the medical intervention that night,
21 luckily, by EMS recognizing what it was and by your
22 intervention as you mentioned earlier, would Martha
23 Childress have survived these injuries?

24 A I believe without -- I say I believe, but I'm certain
25 that without the appropriate interventions that were

1 provided to her that she would have died.

2 Q And because of the condition, she still has potential
3 for problems in the future?

4 A Yes, she does.

5 MS. CAMPBELL: Thank you, sir. Please answer any
6 questions Defense counsel has.

7 THE COURT: Cross?

8 MS. ZMROCZEK: Thank you. Briefly, Your Honor.

9 THE COURT: Yes, ma'am.

10 CROSS-EXAMINATION

11 BY MS. ZMROCZEK:

12 Q Good morning. You didn't know we were going to do
13 show and tell, did you?

14 A No.

15 Q How's your drawing?

16 A It's atrocious.

17 Q All right. Instead of drawing, would using a picture
18 be easier for you?

19 A An anatomic reference?

20 Q Certainly.

21 A Sure, it potentially would. I'm not kidding, I'm a
22 horrible artist.

23 MS. CAMPBELL: Your Honor, the Defense has just
24 provided me with some excerpt from Wikipedia, a free
25 encyclopedia.

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1 MS. ZMROCZEK: We're just interested in the picture.
2 We'll do it this way.

3 BY MS. ZMROCZEK:

4 Q I'll do the terrible drawing, how about that? When
5 Ms. Childress was brought to the hospital, she reported
6 that she was waiting for a cab in Five Points, heard shots
7 ring out?

8 A I'm not sure if she actually relayed that information
9 to us or if that information was provided by the EMS
10 personnel in the report that they give us.

11 Q Okay.

12 A That was essentially the story that we received, yes.

13 Q Okay. And then she was treated initially by Dr.
14 Ghing?

15 A He's one of the emergency medicine physicians. He's
16 a part of the trauma team. The entire trauma team,
17 including myself, was present in the trauma bay for her
18 initial treat.

19 Q Well, he talked about and he described the entrance
20 wound as the right side of the chest near the posterior
21 axillary line about halfway down?

22 A Right.

23 Q Now, this is when my bad drawing comes in. So this
24 is the chest. Do a side view, head. I told you mine is
25 worse.

1 A No, that's very similar to what I would be able to
2 do.

3 Q So this is the front. This is the back.

4 A Right.

5 Q Will you show the jury where the -- and you don't
6 even have to stand up, where the posterior axillary line
7 would be?

8 A Sure. It's just based on where your armpit is for
9 lack of a medical term. Posterior means the back,
10 anterior means the front. So you'll look at where the
11 axilla, or the armpit, is. And near the posterior
12 axillary line would be just at the back of that space, so
13 it would be about in here.

14 Q Okay. And about halfway down the thorax?

15 A Right.

16 Q So about halfway down?

17 A About in there. Again, this was documented by the
18 radiographs, which show the entrance site at the 7th rib,
19 which was fractured.

20 Q And she also had a scrape on her arm; is that
21 correct?

22 A I believe so, yeah.

23 Q All of that helps determine from what direction the
24 bullet would come?

25 A Well, again, you're talking about things that I truly

1 am not an expert in as far as external ballistics, but --

2 Q And, certainly, you're not saying that you're an
3 expert on internal ballistics. You're not a ballistics
4 expert, correct?

5 A No, I'm an expert in trauma surgery and the type of
6 damage caused to the tissue by a bullet passing through
7 the tissue. That, I think I'm an expert on.

8 So sure, you can surmise that the bullet came from
9 her right side based on the fact that it entered the right
10 side of the chest and traveled towards the midline.

11 Q And can you show the jury on yourself where the
12 injury was on her arm?

13 A Quite honestly, I don't remember because it didn't
14 enter into the critical decisions that we were making.

15 Q Okay.

16 A I would have to refer back to the medical records. I
17 don't think that was a significant injury, at least, at
18 the time as far as what we needed to do to provide
19 emergent care to her.

20 Q You said, looking at the bullet, it could range from
21 a .22 to a .45?

22 A That was the stipulation --

23 MS. CAMPBELL: Objection, Your Honor. We have a
24 matter of law.

25 THE COURT: Okay.

1 All right. Ladies and gentlemen. Step back to your
2 room. Do not discuss the case. Keep an open mind. We'll
3 be back with you in just a moment.

4 (WHEREUPON, the jury left the courtroom at 11:36
5 a.m.)

6 (WHEREUPON, testimony was read back to the Court
7 by the court reporter.)

8 MS. CAMPBELL: She just asked his opinion. She
9 opened the door to it, to what we've just been arguing
10 about all morning.

11 MS. ZMROCZEK: Your Honor, I was just going to have
12 him list the different calibers in between a .22 and a
13 .45. That's all.

14 MS. CAMPBELL: And I apologize, Your Honor, earlier,
15 I didn't realize you didn't realize he was her treating
16 physician.

17 THE COURT: If you can, what was her question?

18 THE COURT REPORTER: The last one or the whole series
19 I just read?

20 THE COURT: The one about the bullet.

21 (WHEREUPON, testimony was read back for the
22 Court by the court reporter.)

23 MS. CAMPBELL: Your Honor, I think it's a couple
24 before that about that was the stipulation.

25 THE COURT REPORTER: His answer to that was that was

Robert Stephen Smith, M.D. - Cross by Ms. Zmroczek

1 the stipulation.

2 THE COURT: Where are you going with that?

3 MS. ZMROCZEK: Just listing the possibilities.

4 That's all.

5 Your Honor, the jury may not know -- I know we have
6 one military juror, but we also have a lot of females on
7 there. And I may be judging because I'm a gun owner, but
8 I think that the stipulation should include what calibers
9 are included in that.

10 THE COURT: You've got to be kidding me?

11 MS. ZMROCZEK: No.

12 THE COURT: You stood right and told me that you
13 stipulated to something and now, you're standing right
14 here and telling me something completely different.

15 MS. ZMROCZEK: No, Your Honor, I'm just asking that
16 he clarify what that encompasses.

17 THE COURT: Oh, he can clarify it. He's allowed to
18 give his opinion.

19 Bring the jury back in.

20 She opened the door.

21 MS. ZMROCZEK: That's fine.

22 THE WITNESS: I understand.

23 (WHEREUPON, the jury entered the courtroom at
24 11:40 a.m.)

25 THE BAILIFF: The jurors are seated, Your Honor.

1 THE COURT: Go ahead.

2 MS. ZMROCZEK: Thank you.

3 BY MS. ZMROCZEK:

4 Q In fact, I believe you've said that you could even go
5 further and narrow that down to maybe different types of
6 bullets?

7 A Based on my experience, the size of the bullet on the
8 radiographs and the types of injuries that occurred, I
9 believe it was something in the range of a nine millimeter
10 or a .40-caliber round that was designed to have a
11 controlled expansion, if you will. Usually, this is
12 consist with a hollow point type round. That's my best
13 assessment of the type of round that this was.

14 Q Okay. And the posterior axillary line, you said,
15 would lean towards the back?

16 A The posterior axillary line is more towards the back
17 than from the front.

18 MS. ZMROCZEK: Thank you.

19 THE COURT: Redirect?

20 MS. CAMPBELL: No, sir.

21 THE COURT: Have a nice day, Doctor. Thank you very
22 much.

23 Call your next witness.

24 MS. WALKER: Thank you, Your Honor. The State calls
25 Donnell Woodard.

1 MS. CAMPBELL: Your Honor, may he be excused?

2 THE COURT: Any objection to the doctor being
3 excused?

4 MS. ZMROCZEK: Not at all.

5 THE COURT: Thank you, Doctor. You're excused from
6 your subpoena.

7 Woodard, Mr. Woodard, is that who you said?

8 MS. WALKER: Yes.

9 THE COURT: Okay. I'm sorry, I didn't hear you.

10 MS. WALKER: I'm sorry. I wasn't clear.

11 THE COURT: That's okay.

12 Come forward and be sworn, Mr. Woodard.

13 DONNELL WOODARD,

14 after being duly sworn, testified as follows:

15 THE CLERK: Have a seat in that witness stand,
16 please. State your name for the record.

17 THE WITNESS: My name is Donnell Woodard.

18 THE COURT: How do you spell your first name, sir?

19 THE WITNESS: D-O-N-N-E-L-L.

20 THE COURT: Thank you very much.

21 Go ahead, Ms. Walker.

22 MS. WALKER: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MS. WALKER:

25 Q Mr. Woodard, can you tell me -- you don't have to

1 give me your address, but can you tell me what city you
2 currently live in?

3 A Columbia.

4 Q Were you raised here?

5 A Yes, ma'am.

6 Q Do you know Byron Tucker?

7 A Yes, ma'am.

8 Q How do you know Byron Tucker?

9 A I know his parents through my parents. We grew up
10 together basically.

11 Q Family friends?

12 A Yes, ma'am.

13 Q You call yourselves cousins?

14 A Yes, ma'am, I have a -- I supposedly have a child by
15 one of his cousins, so that's how we go about calling each
16 other cousins.

17 Q Okay. And I want to show you a series of pictures,
18 okay. You tell me if you recognize anybody in these
19 pictures. This is Defense Exhibit No. 3?

20 A Okay. Yes, that's Byron.

21 Q That's Byron. Okay. And on Defense Exhibit No. 2,
22 the man in the "Busting It" tee-shirt right here?

23 A That's me.

24 Q That's you?

25 A Yes, ma'am.

Donnell Woodard - Direct by Ms. Walker

1 Q And this right here, do you remember who that was
2 with y'all?

3 A Daquan.

4 Q And how do you know Daquan?

5 A The same way I know Byron, just --

6 Q Growing up together?

7 A Growing up together.

8 Q And on State's Exhibit No. 2, this is you right there
9 in that "Busting It" tee-shirt?

10 A Yes, ma'am.

11 Q In terms of getting to Five Points on the night we're
12 here talking about?

13 A Uh-huh.

14 Q How did y'all end up going down to Five Points?

15 A Well, I was over at my cousin's house.

16 Q Which one? Was it one of these two cousins?

17 A No, it wasn't these two guys. It was --

18 Q Okay, you don't have to give me their name then. I'm
19 sorry. Go ahead.

20 A I was at his house. I had to go to work the next
21 day.

22 Q Where were you working at that point?

23 A McDonald's on Elmwood.

24 Q Okay.

25 A So Daquan gave me a call, asked me where the females

1 at, let's go out and have a time. So I agreed to it, told
2 him where to meet me at. And we got together, went by a
3 gas station, got some drinks, stopped by my uncle's house,
4 which is, you know, like down the street from the street
5 called McDuffie over there. We sat out there and drunk a
6 couple drinks and then headed to Five Points and started
7 walking around.

8 Q You said you went to the gas station and got drinks.
9 Was that beer or --

10 A It was beer.

11 Q Beer?

12 A Yes ma'am.

13 Q Okay. So y'all had some beer and then you went down
14 to Five Points?

15 A Yes, ma'am.

16 Q I think you said the purpose of that was to find
17 girls that night?

18 A Yes, ma'am.

19 Q Have you had an opportunity to review the videos from
20 Five Points that night?

21 A I've seen a few clips. I don't know if I've seen
22 everything.

23 Q Okay. That's fair. Once y'all got to Five Points,
24 was it still the three of you together?

25 A We was together for a minute and then one of us,

1 Byron, disappeared.

2 Q Okay.

3 A So I really don't know where he went.

4 Q Y'all kind of split up once you got down there?

5 A I mean, we was walking together and then, you know,
6 just one of us just seemed to drift off from the crowd.

7 So, I mean, I couldn't really tell you where he went, just
8 drifted off. We was looking for him, so.

9 Q How long were y'all down at Five Points that night if
10 you can recall?

11 A A few hours. I mean, I can't really say. We was
12 down there for a few hours.

13 Q Do you know the Defendant in this case?

14 A No, ma'am.

15 Q Before that night, had you ever seen him before?

16 A No.

17 Q Are you a member of any sort of gang?

18 A No, ma'am. I'm not affiliated at all.

19 Q Did you have a gun that night?

20 A No, ma'am.

21 Q Did anybody with you have a gun that night?

22 A No, ma'am.

23 Q At some point that night, did you hear shots ring out
24 in Five Points?

25 A Yes, ma'am, I heard shots.

1 Q Can you tell me what was going on right before you
2 heard those shots?

3 A I just seen a little group of females and I was
4 talking to them and I seen her like stop. I actually
5 thought she was going to talk with me or whatever, but she
6 didn't. So I turned around and looked again and I seen
7 her like still standing there. So, I mean, I was just
8 still trying to get her attention.

9 Q Did you -- once you saw the videos, did you see a
10 young lady in white pants?

11 A Yeah, I seen her when I had walked by. He was
12 smoking a cigarette and I seen her.

13 Q You saw that. Okay. So then you see this group of
14 females and you were trying to talk to them. Tell me what
15 happened when you were trying to talk to the group of
16 females.

17 A Well, right before the shots you was talking about, I
18 was just sitting there trying to talk to them, but I
19 didn't get too much of a response from them. So after
20 sitting there trying twice, I just messed around and ended
21 up turning around. A few minutes later, you know, I heard
22 the gunshots. Just ducked, you know, got a little upset,
23 checked on the girl that got shot. After that, I
24 proceeded to leave.

25 Q When you said you got upset, did you actually make

1 some gestures to the group that shot at you?

2 A Yeah, I did, because, you know, it was --

3 Q Is this -- I'm sorry, Defendant's Exhibit No. 1, is
4 this you making those gestures.

5 A Yeah, that's me standing right on top of that thing.

6 Q So you jumped up there and you make a ges -- what
7 gesture did you -- can you do to me what you did to them?

8 A I just threw my middle fingers up, you know.

9 Q The term throwing down Blood has been described as
10 what you did that night with your hands. Do you know what
11 that means?

12 A No. And I didn't. I seen myself clearly throw up
13 two middle fingers.

14 Q This is on Defense Exhibit No. 1. And after you make
15 that gesture and -- I guess at that point, were you -- how
16 were you feeling once you'd been shot at?

17 A I mean, like kind of nervous because it was behind
18 me, but at the same time upsetting because I was trying to
19 figure out who was shooting.

20 Q Did you see who shot that night?

21 A No, I didn't see who shot. It was just behind me.
22 It was just boom, boom, I just heard it, ducked, turned
23 around. I didn't see anybody shoot.

24 Q And Byron, did you see where he went after the
25 shooting started?

Donnell Woodard - Direct by Ms. Walker

1 A No, he was the one that walked off from us, you know,
2 but we was looking for him because he was the driver. So
3 I mean, I can't really say.

4 Q You didn't see where he went?

5 A No, I didn't really see where he went.

6 Q Okay. What about the other friend that you were with
7 that night, did you see where he went?

8 A He was kind of tagging along with me, you know.

9 Q Did he actually go down, too, once the shots were
10 fired, or do you know?

11 A You know, he ducked, but he started to take off a
12 little bit. He went ahead of me.

13 Q Okay. Now, once the shots were fired and you exited
14 that fountain area?

15 A Uh-huh.

16 Q Do you remember where you went?

17 A Yeah, I walked down the whole strip by the Pizza
18 parlor and all that. I walked straight down the strip.

19 Q Okay. And at some point, did you come into contact
20 with law enforcement that night?

21 A Yes, ma'am. I was locked up for disorderly conduct.

22 Q Do you remember what you were saying or doing when
23 you got locked up for disorderly conduct?

24 A Yeah, I was walking by and some female was saying
25 something, Oh, you was with them, too, something she said

1 slick.

2 Q When you say slick, you mean like a smart mouth?

3 A Just a smart remark. I didn't know what she was
4 talking about, so she upset me. So I started cussing at
5 her. The officer told me to go on, just go.

6 Q And then you got arrested for disorderly conduct for
7 cursing at one of the girls?

8 A Well, that's when he told me to go forward. When I
9 was going across the street, he thought I was still
10 babbling, so he came behind me and put me in handcuffs,
11 said disorderly conduct.

12 Q And so you were arrested that night?

13 A Yes, ma'am.

14 Q In terms of charges that you currently have pending
15 in my office, you have an assault and battery that's
16 pending in my office?

17 A Yes, ma'am.

18 Q And do you have a lawyer for that charge?

19 A Yes, I do.

20 Q Have you been promised anything from my office in
21 exchange for your testimony?

22 A No, ma'am.

23 Q And you have a conviction from 2011 for grand larceny
24 and 2015 for forgery. Does that sound, correct?

25 A Yeah, that's correct.

1 Q In terms of anyone having a gun or firing shots that
2 night, did anyone that you were in Five Points with that
3 night have a gun?

4 A No.

5 MS. WALKER: Thank you, sir. I don't have any
6 further questions. Please answer any questions the
7 Defense attorney may have for you.

8 THE COURT: Okay.

9 CROSS-EXAMINATION

10 BY MS. ZMROCZEK:

11 Q Mr. Woodard?

12 A Yes, ma'am.

13 Q You're cousins with Byron Tucker?

14 A Repeat that.

15 Q You're cousins with Byron Tucker?

16 A I just told her that we used the term cousin how we
17 grew up together.

18 Q So you --

19 A We're not blood related like kinfolk, but we grew up
20 together, so we use the term like that. And then I have a
21 baby allegedly by one of their cousins, so we just call
22 each other family.

23 Q Mr. Woodard, let's talk about October 13th, early
24 early -- excuse me, yeah, October 13th early, early, early
25 morning hours. Do you recall that night?

1 A No, ma'am.

2 Q You don't recall that night?

3 A No.

4 Q You don't recall walking up and down the strip that
5 you just testified about?

6 A I mean, I don't know the date on it.

7 Q Okay. Let's go back to the night that we're here
8 for?

9 A Okay.

10 Q Do you recall that night?

11 A Yes, ma'am.

12 Q You know there are cameras everywhere?

13 A Uh-huh.

14 Q I'm sorry. You have to say yes or no.

15 A Yes, ma'am.

16 Q Okay. So the first time that we see you, you and
17 your good buddy, Mr. Tucker, are walking from the Grilled
18 Teriyaki side of Harden Street towards the fountain,
19 correct?

20 A Yeah.

21 Q That's you and him, right?

22 A Pizza place you talked about right across the street?

23 Q Uh-huh.

24 A Yes, ma'am.

25 Q Okay. And then you meet up with who, Daquan?

1 A I would say I didn't see the rest of that video that
2 you talking about.

3 Q Okay.

4 A It didn't show that much.

5 MS. WALKER: I'm sorry.

6 MS. ZMROCZEK: That's okay.

7 Your Honor, may the witness step down?

8 THE COURT: Mr. Woodard, I'm going to let you step
9 down. I need you to keep your voice up so that everybody
10 can hear you and the court reporter can take down what you
11 say, okay?

12 THE WITNESS: Okay.

13 THE COURT: All right. Thank you.

14 MS. WALKER: Do you know which angle you want to
15 show?

16 MS. ZMROCZEK: The first one I'd like to show is
17 camera 61, government 61.

18 MS. WALKER: Is that the one where they're crossing
19 the street from Grilled Teriyaki?

20 MS. ZMROCZEK: This one is going down.

21 MS. WALKER: Okay. Do you want before or after or
22 when?

23 MS. ZMROCZEK: Start at the beginning.

24 THE COURT: Okay. Mr. Woodard, if you will go over
25 to that side.

1 THE WITNESS: Yes, sir.

2 THE COURT: Keep going. Keep going. There you go.

3 Okay.

4 Can everybody see?

5 THE JURORS: (All answered in the affirmative.)

6 THE COURT: Very good.

7 MS. ZMROCZEK: Your Honor, do you mind if we get the
8 lights?

9 THE COURT: Sure.

10 MS. ZMROCZEK: Thank you.

11 (WHEREUPON, the video was played for the jury.)

12 BY MS. ZMROCZEK:

13 Q Make sure the people behind you can see you,

14 Mr. Woodard. Okay. Do you see yourself and your friends?

15 A Right there in the back.

16 Q And that's all three of you, right?

17 A I know don't if that's all three of us.

18 Q That would be you, Mr. Tucker and Mr. Samuel?

19 A Yeah, okay. That's all three of us. I got you. I
20 see everybody.

21 Q And who is that?

22 A That was Daquan.

23 Q Daquan?

24 A That's Byron right there walking.

25 Q Okay. Is that you up there?

1 A Yeah, that was me just throwing the two middle
2 fingers, yes, ma'am.

3 Q You were mad?

4 A Yeah, I was upset.

5 Q If you don't mind moving back just a little bit so
6 they can see.

7 Is that you?

8 A Yes, ma'am. I'm standing right there.

9 Q Okay. And what are you looking at?

10 A I'm looking at the girl that's shot.

11 Q Okay. Going to get a closer look?

12 A Huh?

13 Q Are you going to get a closer look?

14 A No, her friend is panicking and saying that she
15 passed out at first and then she's saying she got shot.
16 So I'm just looking at what's going on. Just looking, you
17 know, as a concerned person.

18 MS. ZMROCZEK: Can you get from it facing the Harden
19 side?

20 MS. WALKER: Before or that after?

21 MS. ZMROCZEK: Yeah, actually, let's go -- change to
22 this one.

23 MS. WALKER: Okay.

24 BY MS. ZMROCZEK:

25 Q You recognize this street as the street that you were

1 walking up with Mr. Tucker when you first came in, right,
2 to Five Points?

3 A I mean, I thought -- you talking about when we first
4 entered Five Points?

5 Q Right.

6 A No, I don't think so. I think we came in by the bank
7 because I thought we parked in the neighborhood by the old
8 folks home and walked from down there. Came up from where
9 the bank is, past the CVS and then walked to Five Points
10 from back that way.

11 Q Who is this right there running?

12 A I mean, it look like Daquan.

13 Q Daquan?

14 A Yeah.

15 Q Still Daquan right here?

16 A Yeah.

17 Q Is that Daquan right here?

18 A Okay. Yes, ma'am.

19 Q Still Daquan right there, right?

20 A Yes.

21 Q Okay. After this happened, the three of y'all split
22 up?

23 A Me and Daquan walked down past the Exxon going to
24 look for Byron.

25 Q Okay. But this was before you walked to the Exxon,

1 right?

2 A I can't really say. I mean, it's been a long time
3 since this night happened. I just can't give you an
4 accurate answer. I mean...

5 Q We'll watch it and see.

6 MS. ZMROCZEK: If I can get --

7 MS. WALKER: Yeah.

8 MS. ZMROCZEK: That's okay. If I can show him still
9 shots.

10 (WHEREUPON, playing of the video was concluded.)

11 BY MS. ZMROCZEK:

12 Q All right. Have a seat, Mr. Woodard.

13 A (The witness complied.)

14 Q Let me ask you this, after you were very generous in
15 helping, then you go across the street back towards The
16 Library, do you remember that?

17 A I really don't. After the shot, I remember sitting
18 on that corner. I might have walked around. But I know
19 after that happened, I was looking for who I came with to
20 leave. That was my main thing.

21 Q And you met up with Mr. Samuel?

22 A Yeah, I met up with him.

23 Q And he was raising his hands after the gunshots --
24 he's raising his hands before the gunshots and then later
25 on at the trash can, he was raising his hands, right?

1 A (There was no response.)

2 Q You just don't remember?

3 A I really don't. I mean, you're showing me footage
4 and I can barely see what you're asking me. Like I said,
5 that night, I wasn't really concerned about all that extra
6 things. I mean, you're saying he threw his hands up. I
7 wasn't paying him attention to see him throwing his hands
8 up.

9 Q Okay.

10 A He wasn't in my eyesight and I wasn't looking like
11 next to me to see him throwing his hands up like you're
12 asking me. So I can't sit here and tell you yes, he did
13 that.

14 Q Are you currently in jail?

15 A Ma'am?

16 Q Are you currently in jail?

17 A Yes, ma'am.

18 Q But they let you dress out?

19 A Yes, ma'am.

20 Q Mr. Tucker didn't have a gun?

21 A No, he didn't.

22 Q Mr. Samuel didn't have a gun?

23 A No, he didn't.

24 Q Mr. Samuel didn't drop a gun?

25 A From what I know, no, ma'am, he did not.

1 Q From what you know?

2 A Yes, ma'am. You're asking me did he drop a gun. He
3 was with me the whole night as far as -- as you see him on
4 my side. He never dropped anything. So you're asking me
5 did he drop a gun. I didn't see him drop anything.

6 Q Did you see him drop a cigarette lighter?

7 A I didn't see him drop anything, ma'am.

8 Q Not even his hat?

9 A I didn't see him drop anything.

10 Q Do you remember telling Mr. Tucker when you got there
11 that that was --

12 MS. WALKER: Objection to hearsay, Your Honor.

13 THE COURT: What he said to Mr. Tucker wouldn't be
14 hearsay.

15 MS. WALKER: Oh, I'm sorry. I thought the question
16 was different. I apologize.

17 THE COURT: Go ahead.

18 BY MS. ZMROCZEK:

19 Q Do you remember telling Mr. Tucker when you got there
20 that this was Bloods territory?

21 A No, I didn't say nothing like that.

22 Q Do you remember having words with anyone as you
23 walked up to Five Points?

24 A As far as the people I might have seen out there that
25 I knew, I spoke with. Any disagreements, no, ma'am, I

1 didn't have any disagreements with anyone that night.

2 Q You just spoke with someone you recognized?

3 A Yeah, I spoke with familiar faces.

4 Q Okay. And just for purposes of identification,
5 through the whole evening, you had maybe little dreads?

6 A That was a doo-rag.

7 Q A doo-rag? And a white shirt?

8 A Yes.

9 Q And Mr. Samuel had on a long-sleeved white shirt and
10 brown pants?

11 A Yes.

12 Q And sometimes he wore a hat and sometimes he didn't?

13 A Yes.

14 Q And you had a hat that night?

15 A Yeah, I had a white hat on.

16 Q A Nicks hat, right?

17 A Yes.

18 Q And that's all you can remember?

19 A I mean, yes, ma'am. I gave my statement as soon as I
20 seen my face on the news and I knew what was going on. I
21 went down there and talked to them as quick as possible.
22 I mean...

23 Q Who did you give that statement to?

24 A I don't know the investigator's name. I just met up
25 with him on an off day. One day I had off work, I met up

1 with him, gave him a statement and went on about my day.

2 Q Was it one investigator or two?

3 A It was one. He met me up there by the hospital at
4 the Pizza Hut, picked me up, took me to that courthouse
5 like around the corner, went inside. I spoke with him and
6 him only.

7 Q And that was on, as best you recall, as soon as you
8 saw yourself on the news?

9 A Yes, ma'am. I know it probably was like maybe a week
10 or so later, probably. I don't really know the date on
11 it. I just know...

12 Q And how did you end up seeing yourself on the news?

13 A I was told I was on the news.

14 Q Who told you?

15 A A friend of mine I went to school with called my
16 phone and told me. So I called my probation officer and
17 asked her to call the investigator and figure out what was
18 going on, why my face was on the news. So she called me
19 back and said they just want to talk to you, go down there
20 and talk to them, so I did.

21 Q And you wrote a statement?

22 A Yes.

23 Q And you told him that you talked to a girl that you
24 had seen out with a tall guy?

25 A Say what?

1 Q You talked to the girl I seen around with the tall --
2 hanging around with the tall guy?

3 A Can I see what you're reading? What part is that?

4 THE COURT: What is he looking at?

5 THE WITNESS: The bottom of my statement, Your Honor.

6 MS. ZMROCZEK: His statement, Your Honor.

7 THE COURT: Is it his statement?

8 MS. ZMROCZEK: Yes, it's his statement.

9 THE WITNESS: Yes, ma'am. That's accurate. Yes,
10 ma'am.

11 THE COURT: Okay. He can see it. I just didn't know
12 what it was.

13 MS. ZMROCZEK: I'm sorry. I apologize.

14 THE WITNESS: Yeah. That's what I said.

15 BY MS. ZMROCZEK:

16 Q Is that -- so what's what you told him?

17 A Yeah.

18 Q And then you told him that you and the tall guy
19 talked?

20 A Yeah. We had a conversation because he got locked
21 up, if I'm correct. Yeah, he got locked up that night.

22 Q And you said you heard two shots?

23 A Yeah.

24 Q Not three?

25 A I heard two.

1 Q Just two.

2 MS. ZMROCZEK: Beg the Court's indulgence.

3 (Pause.)

4 BY MS. ZMROCZEK:

5 Q And I just want to make sure that I'm clear on your
6 testimony. You've didn't have any arguments with anybody
7 that night?

8 A No, ma'am, I did not.

9 MS. ZMROCZEK: Thank you.

10 THE COURT: Yes, ma'am.

11 MS. WALKER: Thank you, Your Honor.

12 REDIRECT EXAMINATION

13 BY MS. WALKER:

14 Q She ask you, I guess, some questions about what
15 happened after the shots were fired and whose hat fell and
16 what they picked up. Once the shots were fired, were you
17 looking -- were you kind of looking around to -- what were
18 you doing, I guess is my question, once the shots were
19 fired?

20 A Shots were fired, I got a little upset. I mean --

21 Q As soon as the shots were fired --

22 A I ducked. I moved away a little bit. And, you know,
23 I came back around where I seen -- where I heard the shots
24 being fired. I'm sitting on the wall, flipped two birds,
25 looking just to see who was doing the shooting. I don't

1 see anybody. So I'm just sitting right there just looking
2 around like who did it. Then I hear the girl over there
3 panicking about her friend, so that's when I went over
4 there to see what happened with the girl.

5 MS. WALKER: Thank you, Mr. Woodard. I don't have
6 any further questions.

7 MS. ZMROCZEK: Just one follow-up, Your Honor.

8 RE CROSS-EXAMINATION

9 BY MS. ZMROCZEK:

10 Q You said you were looking around. I'm showing you
11 Government's 75. Where were you and Mr. Tucker -- if this
12 is the fountain?

13 A Okay.

14 Q Sorry. Where were you and Mr. Tucker and Mr. Samuel
15 when you heard two shots?

16 A Can I stand up?

17 Q Sure.

18 THE COURT: Sure.

19 THE WITNESS: All right. So let me ask you a
20 question.

21 THE COURT: There's a pointer. You see that against
22 the wall? If you want to use that, Mr. Woodard, you can.

23 THE WITNESS: All right. So Exxon is right there,
24 right? We was like right -- we was like somewhere right
25 here.

1 BY MS. ZMROCZEK:

2 Q All three of you together?

3 A Yeah. Because when I seen the females, they was
4 right there on that corner and I was like in the middle
5 right there talking to them, which made me -- I didn't get
6 any conversation too much out of them, which made me turn
7 back around and go back up that way towards the fountain.

8 Q Were they ignoring y'all?

9 A You could call it that. I mean, you could call it
10 that.

11 Q Did that make Mr. Tucker mad?

12 A Who?

13 Q Mr. Tucker?

14 A Well, I was doing the talking towards the females, so
15 I don't understand how he could get upset when I was
16 trying to talk to the females.

17 Q Was Mr. Samuel trying to talk to the females?

18 A I was. No, ma'am. I was engaging in the
19 conversation. That was me.

20 MS. ZMROCZEK: Thank you, Your Honor.

21 THE COURT: All right. Thank you very much. Have a
22 nice day.

23 THE WITNESS: Thank you, sir.

24 THE COURT: Yes, sir.

25 THE WITNESS: Watch your step.

Anna Elmers, M.D. - Direct by Ms. Campbell

1 THE COURT: Let's go ahead and call the next witness.

2 MS. CAMPBELL: The State called Dr. Anna Elmers.

3 THE COURT: We're going to push forward until your
4 lunch gets here so you don't have to sit there and wait
5 too long.

6 ANNA ELMERS, M.D.,

7 after being duly sworn, testified as follows:

8 THE CLERK: Thank you. Have a seat in the witness
9 stand, please. State your name for the record.

10 THE WITNESS: Anna Elmers.

11 DIRECT EXAMINATION

12 BY MS. CAMPBELL:

13 Q Dr. Elmers, where are you employed?

14 A I'm employed at the Shepherd Center in Atlanta,
15 Georgia.

16 Q In Atlanta, Georgia?

17 A Yes.

18 Q What is the Shepherd Center?

19 A It's a catastrophic care hospital dealing in spinal
20 cord and brain injury.

21 Q Spinal cord and brain injury? If you could speak up
22 a little bit. It's just hard to hear with a lot of
23 commotion. Thank you. Can you tell this jury a little
24 bit about your education and your training?

25 A I got my medical degree at the George Washington

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1 University in Washington, D.C. And then I completed my
2 residency in physical medicine and rehabilitation at Emory
3 University where I was chief resident in my final year.
4 Following that, I joined the staff at the Shepherd Center
5 dealing in spinal cord and brain injury medicine and the
6 rehabilitation of that.

7 Q How long have you been at the Shepherd Center?

8 A I started there in 2006 as a resident and then came
9 onboard in 2009 as an attending physician.

10 Q And you've been a physician there ever since then?

11 A Yes, ma'am.

12 Q And what is your speciality, Doctor?

13 A I practice both spinal cord and brain injury.

14 MS. CAMPBELL: At this time, Your Honor, we would
15 offer her as an expert in physical rehabilitation
16 medicine.

17 Would that be fair?

18 THE WITNESS: Right, yes.

19 MS. ZMROCZEK: Without objection.

20 THE COURT: Say it again.

21 MS. CAMPBELL: Physical rehabilitation --

22 THE WITNESS: Physical -- I'm sorry, physical
23 medicine and rehabilitation.

24 MS. CAMPBELL: Oh, I got it wrong.

25 THE COURT: Okay.

Anna Elmers, M.D. - Direct by Ms. Campbell

1 All right. Ladies and gentlemen, as I told you
2 before, normally, a person is not allowed to give opinion
3 testimony. Normally, a person has to testify as to what
4 they saw, heard, sensed by smell or something of that
5 nature. However, there is an exception when someone is
6 qualified because of education or experience. That
7 witness will be permitted to give their opinion in certain
8 areas if the Court qualifies them in that way. This
9 witness will be qualified in the area of physical --

10 THE WITNESS: Medicine and rehabilitation.

11 THE COURT: Okay. Physical medicine and
12 rehabilitation. She will be allowed to give opinion
13 testimony in that area. That does not mean that you have
14 to accept her opinion, but it is evidence for you to use
15 in any way that you see fit and give it the weight and
16 credibility that you believe is appropriate as you are
17 required to do with each and every witness that appears
18 before you.

19 Ms. Campbell.

20 MS. CAMPBELL: Thank you.

21 BY MS. CAMPBELL:

22 Q Doctor, at the Shepherd Center, typically, are y'all
23 the ones that provide the critical care or the immediate
24 care when a person say suffers a gunshot wound?

25 A We do not. We get our patients from trauma centers,

1 such as Grady Hospital or MUSC out here. Once a patient
2 is stabilized and ready to transfer and start rehab, we'll
3 take them at that point. We have our own intensive care
4 unit, so we can take higher acuity patients, but they go
5 to Shepherd for rehab.

6 Q And are you familiar with Martha Childress?

7 A I am.

8 Q How did you meet Martha?

9 A Martha was admitted around October 21st and she was
10 admitted for rehabilitation for a spinal cord injury.

11 Q October 21st. Would that be of 2013?

12 A Yes, ma'am.

13 Q And when Martha initially was admitted into your
14 hospital, did you become her primary caretaker?

15 A I did.

16 Q Can you tell the jury why Martha was in your hospital
17 and what you were treating or what your goals were?

18 A Martha suffered a spinal cord injury. And so I
19 brought a model of the spine to explain what a spinal cord
20 injury is and then to explain what she would do at Shepard
21 and what the function -- or what the purpose of her being
22 at Shepard is.

23 MS. CAMPBELL: Your Honor, permission for her to step
24 down and using the spinal cord to demonstrate to the jury
25 what she's talking about.

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1 THE COURT: Sure.

2 Okay. You have to talk loud, Doctor.

3 THE WITNESS: Okay.

4 THE BAILIFF: Watch your step one more time.

5 THE WITNESS: This is a model of the spine. As y'all
6 are sitting now, your bottom is here, your head is up
7 here, back and front. These bones are divided into four
8 sections. Your neck area, called the cervical spine,
9 there's seven bones up here. Then your chest area, called
10 the thoracic spine, where there are 12 bones. Your lower
11 back, called the lumbar spine, where there are five bones.
12 And this area down here that fuses and ends in your
13 tailbone called the sacrum.

14 The bones fits together like shingles on a roof, one
15 on top of another. They do that to form a tunnel. And
16 that tunnel runs all the way down and houses the spinal
17 cord, which is an extension of the brain. The spinal cord
18 is very important because it takes messages from your
19 brain to your arms, your legs, your bowel, your bladder,
20 everything below that area.

21 You can think of it like an information super
22 highway. So if there's any damage to that information
23 super highway or any damage to the tunnel housing it that
24 impacts anywhere on the highway so to say, then you lose
25 function.

1 The kind of function that you're left with is very
2 much dependent on where the accident on this highway is.
3 So for example, if someone -- if there's an 18-car pile up
4 right around here in the lower back area, you would lose
5 function of all sensation and movement below that area, as
6 well as bowel and bladder function. So you wouldn't have
7 the reflex to tell you that you need to pee when your
8 bladder is full. Instead what you would have to do is
9 time your bladder program and at every four hours or six
10 hours, you would put a catheter into your bladder and
11 drain your bladder manually.

12 When it comes to the bowels, those also don't work
13 after a spinal cord injury. And so there's nothing that
14 tells you you have to have a bowel movement. So there's
15 different ways of managing that, but one of the ways is
16 after a meal, you basically have to go in and scoop the
17 stool out of the rectum. So that would be a way of
18 managing the bowel and bladder after a spinal cord injury.

19 You've also don't have sensation or movement after a
20 spinal cord injury. And so most people think well, what
21 exactly are they in rehab for if they're not going to walk
22 again. The truth is the importance of rehab is to teach
23 someone how to function with a spinal cord injury, you
24 know, using what they have left, how to get in and out of
25 bed using a board initially and then progressing to no

1 board. Also, how to manage their bowel and bladder, how
2 to get up steps, how to manage community settings, all of
3 those things are what would be involved in the rehab
4 setting.

5 Q Specifically in this case, Martha suffered an injury
6 to her spinal cord?

7 A She did.

8 Q And I believe it's been testified it was a
9 transection of her spinal cord?

10 A Yes.

11 Q That was I believe the 10th? I don't know the number
12 of the vertebrae.

13 A So let's counts up from here. Remember I said
14 there's five bones here. So we go five, four, three, two,
15 one. Those are your lumbar spine. Then if you go up, you
16 get 12 -- because there's 12 bones here, 12, 11, 10, nine,
17 eight. Hers was right around 11, 10, 11. So the bullet
18 actually lodged in the canal itself and is still there.
19 We were never able to remove it -- or they were never able
20 to remove it in the trauma setting.

21 Q Is that unusual?

22 A It's the first time I've seen one lodged in the cord.

23 Q In the cord itself?

24 A Right. So if you think about it, if you get into a
25 bad accident and you compromise this tunnel, so the 18-car

1 pileup that happens, and the bones break and whatnot,
2 there's usually surgery to remove the pressure from the
3 area. And then after that -- unfortunately, you're still
4 left with a spinal cord injury, but you have stability in
5 that area. In most gunshot wounds, there's no surgical
6 intervention. And the bullet did remain, so in her case,
7 the bullet is lodged in the canal still.

8 Q Because you said it's typical in gunshot wound cases?

9 A Often in gunshot wounds, there's no surgical
10 intervention.

11 Q Once Martha presented, can you talk specifically to
12 the jury -- and you can take the stand -- about your
13 treatment and her progress?

14 A (The witness resumes the witness stand.) So
15 initially after a spinal cord injury, there's different
16 things that we need to deal with, including blood
17 pressure, what happens when you first get up out of bed,
18 pain issues, the bowel, the bladder.

19 So when she first came to us, when she first got out
20 of bed, she became very dizzy in a wheelchair. So we
21 treated her for that. We added a patch to help her
22 acclimate to being in a wheelchair.

23 A lot of spinal cord injury patients have blood
24 pressure issues in the beginning because once they get up,
25 their legs don't pump anymore to get that blood back up to

1 their brains. And so needing medications to bring that
2 blood pressure up initially. And for a lot of people,
3 it's not long term. It's just the beginning part.

4 Then we started to teach her how to manage her bowel
5 and her bladder, how to do those intermittent
6 catheterizations, is what they're called, which is putting
7 the tube into your bladder and draining the urine out of
8 it. Unfortunately, that's something that's going to be
9 lifelong for her every four to six hours, including
10 setting a timer at night and waking up to do the draining.
11 We also taught her how to manage her bowels with what we
12 call rectal clears. So that's after a meal to remove the
13 stool.

14 Q And as she stayed at the Shepherd Center, is there
15 also some physical therapy involved in order to help her
16 adapt to using her arms and everything more?

17 A Right. So all of that is -- what I just talked
18 about, all of that is worked with in occupational therapy.
19 And physical therapy will teach her how to do transfers,
20 how to get out of bed, how to move her legs around in bed,
21 how to turn in bed because the bottom half of her body no
22 longer works.

23 Q And in this case with Martha's injury, is she
24 paralyzed?

25 A She is.

1 Q And again, you mentioned that the other procedures
2 will be with her for her lifetime?

3 A Right.

4 Q How long did Martha stay at Shepherd?

5 A I don't recall exactly, but I'm thinking between four
6 to six weeks.

7 Q And during that time, did she learn to adapt to her
8 new life?

9 A She did. During that time, I believe she also
10 suffered a burn to her thighs because the feedback -- you
11 know, you don't have sensation anymore. And I believe she
12 had a bag of popcorn, laid it on her leg and burned
13 herself. So even little things like that are things that
14 someone would have to watch out for.

15 Q And although she's no longer under the Shepherd
16 Center care, she continues to be under the care of a
17 doctor in her hometown or wherever?

18 A Yes. The other issue that spinal cord patients will
19 have are recurrent urinary tract infections. They are at
20 higher risk for overwhelming infection called sepsis.

21 MS. ZMROCZEK: Your Honor, at this point, I'm going
22 to object. I'm not quite sure how this is relevant.

23 MS. CAMPBELL: Your Honor, I think the fact that she
24 could have recurrent infections, that this injury could
25 still cost her her life.

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1 THE COURT: Okay. I'll let it go for a little bit.

2 MS. CAMPBELL: Thank you.

3 THE COURT: Overruled.

4 BY MS. CAMPBELL:

5 Q Go ahead.

6 A So she would be at higher risk for infections,
7 osteoporosis, you know, a lot of secondary complications.

8 Q Secondary complications that could be life
9 threatening?

10 A Right.

11 Q Doctor, you drove up here, I believe, yourself this
12 morning?

13 A I did.

14 Q At our request?

15 A I did.

16 Q And you need to leave right after your testimony
17 because you have to get back for what reason?

18 A I have a meeting at my children's school tonight.

19 MS. CAMPBELL: Okay. Thank you for coming.

20 THE WITNESS: Absolutely.

21 THE COURT: Cross?

22 MS. ZMROCZEK: I have no questions.

23 THE COURT: Have a nice day, Doctor. Thank you very
24 much.

25 THE WITNESS: Thank you.

1 THE COURT: Call your next witness.

2 MS. GARFIELD: Thank you, Your Honor. The State
3 called Lieutenant Jennifer Nates.

4 JENNIFER NATES,

5 after being duly sworn, testified as follows:

6 THE COURT: Thank you very much. Have a seat. State
7 your full name for the record, spell your last name.

8 THE WITNESS: It is Jennifer M. Nates, N-A-T-E-S.

9 DIRECT EXAMINATION

10 BY MS. GARFIELD:

11 Q Lieutenant Nates, where are you employed?

12 A I'm employed by the South Carolina Law Enforcement
13 Division in the trace evidence section of the forensic
14 laboratory.

15 Q And that is the State forensic laboratory in South
16 Carolina?

17 A It is.

18 Q And can you just explain to the jury what trace
19 evidence is?

20 A Trace evidence is a section in the laboratory that
21 performs several different types of analyses. We perform
22 gunshot residue, explosives analysis, paint analysis,
23 fiber analysis, glass analysis, arson analysis and general
24 trace, other general unknown identifications.

25 Q And Lieutenant, as it relates to this particular

1 case, can you explain to the jury what gunshot residue is?

2 A Gunshot residue is a category of testing that we
3 perform in which we are looking for any residue that is
4 expelled from a firearm when it is discharged.

5 In this case, we looked for particles, microscopic
6 particles that you can find on clothing and on people's
7 hands that came from the weapon during the discharge of
8 the weapon.

9 Q Lieutenant, please explain to the jury what your
10 background and training is to allow you to be qualified
11 for such testing.

12 A I have a Bachelor of Science degree in chemistry from
13 a state school in Pennsylvania. After I received my
14 degree, I interned at SLED in the trace section. And
15 following that internship, I was hired and worked in the
16 drug analysis section for a year.

17 After that year, I transferred into trace evidence
18 and began a three-year training program under the
19 lieutenant and other senior analysts. During that time, I
20 took different courses and classes dealing with the
21 instrumentation and the examinations that are performed in
22 the area of trace evidence.

23 Q Can you even take a stab or estimate at the number of
24 gunshot residue samples that you've been asked to test?

25 A We receive at least 1000 samples a year. I mean,

1 that's on the low end. During training, we analyze them
2 approximately for a full year, plus after training, you do
3 rotation. So I have done probably in excess of 5,000
4 samples of GSR.

5 Q Have you ever testified in court before?

6 A I have.

7 Q Have you ever been qualified as an expert in gunshot
8 residue?

9 A I have.

10 MS. GARFIELD: Your Honor, at this time, I would
11 offer Lieutenant Nates as an expert in gunshot residue
12 analysis?

13 THE COURT: Voir dire?

14 MS. ZMROCZEK: Without objection, Your Honor.

15 THE COURT: All right. Ladies and gentlemen, this
16 witness will be qualified as an expert in the area of
17 gunshot residue analysis. She will be allowed to give
18 opinion testimony in that area. That does not mean you
19 have to accept her opinion, but it is evidence for you to
20 use in any way that you see fit, give it the weight and
21 the credibility that you believe is appropriate as you are
22 required to do with each and every witness that appears
23 before you.

24 MS. GARFIELD: Thank you, Your Honor.

25 BY MS. GARFIELD:

Jennifer Nates - Direct by Ms. Garfield

1 Q Lieutenant Nates, in this particular case, were you
2 asked by the Columbia Police Department and ATF with the
3 federal government to do any gunshot residue analysis from
4 two subjects, Ryan Ellison and Michael Juan Smith?

5 A I was.

6 Q I'm going to hand you what's been marked as State's
7 Exhibits 42 and 43. Do you recognize these samples?

8 A This is actually the lab number that is assigned to
9 the case as it comes in the door. Because evidence can
10 come in at different times, so the first submission, they
11 are given a unique lab number. In this case, it's
12 L1313520. And this was item one and two, which were the
13 GSR kits that were submitted to me for analysis.

14 Q And Lieutenant, I'm just going to get you to kind of
15 backtrack a little bit as there's been testimony presented
16 from a crime scene investigator. Can you explain -- well
17 first, before I get there, explain how gunshot residue
18 forms.

19 A Gunshot residue is formed whenever the firing pin
20 hits the cartridge and the bullet is expelled from the
21 weapon. There's a primer in the cartridge that ignites
22 and it is a pressure high heat situation. And it forms
23 particulate matter, which has a round morphology or a
24 noncrystalline morphology that are composed of the
25 elements that are found in this primer. Which the ones

1 that we look for are barium, antimony and lead.

2 Q So that primer sort of balloons out once a gun is
3 fired?

4 A A cloud expels from the weapon that contains these
5 particles.

6 Q Okay. And specifically, how would law enforcement
7 collect a sample to be tested?

8 A We provide gunshot residue collection kits to the law
9 enforcement agencies. They are collection kits that have
10 four samples in them for the four areas of the hand. It
11 is a round -- it's about this big and it has an adhesive
12 substance on it. It's in a sealed container. They open
13 it up and they dab each area of the hand. They will dab
14 the right palm, the right back, the left palm and the left
15 back of the hand.

16 Q Being the four samples that will be contained?

17 A Yes.

18 Q And you were asked to do an analysis on such gunshot
19 residue on a subject by the name of Ryan Ellison?

20 A It was submitted as a GSR kit from Ryan Ellison is
21 what we read on the GSR submission sheet.

22 Q Ryan Ellison?

23 A Yes.

24 Q Yes. And you prepared a report to your findings?

25 A I did.

1 Q Can you explain to the jury once you analyzed that
2 gunshot residue kit from Ryan Ellison, what were your
3 findings?

4 A On the kit from Ryan Ellison, on the four areas of
5 the hand that we analyzed, on the right palm, the left
6 palm and the left back, I did not find any particles that
7 we considered consistent with gunshot residue. So those
8 three areas were negative.

9 On the back of the right hand, I found three
10 particles. One which is considered consistent with
11 gunshot residue, meaning it was a two-component particle
12 that has the elements present in gunshot residue. I also
13 found two particles of round lead, which can be associated
14 with gunshot residue.

15 Q And when you say associative of gunshot residue, what
16 in your expert opinion does that tell you?

17 A If a particle is associated with it?

18 Q Right, does it tell you if that person fired a gun or
19 was in the presence in a gun or like that?

20 A When we find particles on a person's hand that are
21 either consistent or associated or are gunshot residue, we
22 can say that person potentially handled something that had
23 gunshot residue on it, which could be a weapon or could be
24 something that it was deposited on. They could have fired
25 a weapon or they could have been near a weapon when it was

1 fired.

2 Q Are you able to distinguish between the two?

3 A I am not.

4 Q Specifically to Mr. Ellison's test, what are you able
5 to determine?

6 A I am only able to determine that I found three
7 particles on his hand and he may have been in the presence
8 of a weapon when it was fired or he could have handled
9 something.

10 Q Consistent with the presence of a weapon?

11 A Yes.

12 Q Or handled a weapon?

13 A Yes.

14 Q Were you also asked to analyze a sample taken from
15 Mr. Michael Juan Smith?

16 A I was. That was item number one that was submitted
17 to us for analysis.

18 Q And upon your analysis of those four samples that you
19 would have received in this kit, what was your results?

20 A On the four areas of his hands, which are the right
21 palm, right back, left palm and left back, I found gunshot
22 residue on each area.

23 Q And were you able to give an opinion as to the
24 quantity of gunshot residue?

25 A In this -- we do not quantitate the particles, but in

1 this case, I found a total of, I think 15 particles I
2 verified on his hands.

3 Q Are these particles large?

4 A No, they are not.

5 Q Are they able to be seen with the naked eye?

6 A You cannot. We have to use an instrument called a
7 scanning electron microscope, which is a very high
8 magnifying microscope that you use to look for these
9 particles.

10 Q And these 15 particles, those are consistent with
11 handling a firearm?

12 A They could be consistent with handling a firearm,
13 firing or being near a weapon when it was fired.

14 Q And these gunshot residue kits that law enforcement
15 does, is there any particular time limit they have to
16 perform the hands for analysis?

17 A Yes. Gunshot residue is considered fragile evidence.
18 If you fire a weapon, within six hours, we do not expect
19 to find anything on your hands after you have discharged
20 that weapon because the residue would be absorbed into
21 your hands. You can wash your hands and remove it, brush
22 your hands, put them in your pocket. Anything you touch
23 on your hands can remove that residue. So if a kit is
24 collected six hours after an incident, we do not analyze
25 them because we have no expectation to find anything

1 associated with that incident.

2 Q And are there factors that affect gunshot residue in
3 the collection process, such as sweating?

4 A Not during the collection process, but anything a
5 person will do prior to the collection can remove the
6 particles.

7 Q I'm sorry, that's what I meant. I apologize.
8 Particularly, if someone was to rub their hands inside
9 their pockets, would that affect how much gunshot residue
10 may be lifted in the samples?

11 A It could.

12 Q What is the consistency of the gunshot residue?

13 A Can you repeat that?

14 Q Would you compare it to the same sort of texture as
15 like baby powder?

16 A Probably baby powder or flour, it's very fine. You
17 can't see it, but it's a dusting that would be on your
18 hand.

19 Q Is there any way in your expert analysis able to
20 determine how many times a gun is fired?

21 A You cannot because once someone fires a weapon one,
22 two or three times, the residue will be deposited, but it
23 can be removed very quickly. So when you get to the point
24 where the kit is collected, you don't know what was
25 removed, so you cannot make a determination on whether

Jennifer Nates - Direct by Ms. Garfield

1 they fired multiple times.

2 MS. GARFIELD: Beg the Court's indulgence.

3 Thank you, Lieutenant. Please answer any questions
4 Defense counsel may have.

5 MS. ZMROCZEK: I have no questions, Your Honor.

6 THE COURT: Have a nice day.

7 THE WITNESS: Thank you.

8 THE COURT: All right. Ladies and gentlemen, we're
9 going to break for lunch. Once your food gets here, we'll
10 take about 45 minutes from that point forward, give you
11 time to eat, relax, stretch your legs. And we'll start
12 right back after that. Do not discuss the case. Do not
13 let anyone discuss the case with you. Keep an open mind
14 and enjoy your lunch. Thank you very much.

15 (WHEREUPON, the jury left the courtroom at 12:40
16 p.m.)

17 THE COURT: All right. Forty-five minutes.
18 Anything before we break?

19 MS. ZMROCZEK: Nothing from the Defense.

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

21 THE COURT: Okay. Forty-five minutes.

22 (WHEREUPON, a lunch break was taken.)

23 THE COURT: Everything good?

24 MS. GARFIELD: Yes, sir. The next witness is Mr.
25 Rueben Levy, who is present in the courtroom. He is

1 currently detained. I believe his prior record consist of
2 two prior grand larcenies and pending charges in our
3 office.

4 THE COURT: Is that right?

5 MS. ZMROCZEK: We have no problem with that, Your
6 Honor.

7 THE COURT: Okay. All right. Let's bring them in.

8 (WHEREUPON, the jury entered the courtroom at
9 approximately 1:44 p.m.)

10 THE BAILIFF: The jury is seated, Your Honor.

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

12 Ladies and gentlemen, I need to ask you -- there's
13 another potential witness whose name was not read to you
14 earlier. I just need to see if anybody has any connection
15 to this witness in any way, shape, or form, Captain Vince
16 Goggins, with a G, with the Richland County Sheriff's
17 Department?

18 (There was no response.)

19 THE COURT: Okay. Let the record reflect there is no
20 indication that anyone has any connection to him.

21 You may call your next witness.

22 MS. GARFIELD: Thank you, Your Honor. May it please
23 the Court. The State calls Mr. Rueben Levy.

24 THE BAILIFF: Place your left hand on the Bible and
25 face the clerk.

Rueben Levy - Direct by Ms. Garfield

1

RUEBEN LEVY,

2

after being duly sworn, testified as follows:

3

THE CLERK: Thank you. Have a seat in the witness

4

stand, please. State your name for the record.

5

THE WITNESS: Rueben Levy, Jr.

6

DIRECT EXAMINATION

7

BY MS. GARFIELD:

8

Q Mr. Levy, from your attire, are you currently in

9

jail?

10

A Yes, ma'am.

11

Q And before you were incarcerated, where did you live?

12

You don't have to give your address, but what vicinity did

13

you live?

14

A In metropolitan Columbia, in Lexington.

15

Q Do you want to pull that up closer to you. In the

16

Lexington area?

17

A Yes, ma'am.

18

Q Are you married?

19

A Yes, ma'am.

20

Q Do you have any children?

21

A Yes, ma'am.

22

Q And before you were incarcerated, what kind of work

23

did you do?

24

A Professional barber.

25

Q Barber?

1 A Yes, ma'am.

2 Q Mr. Levy, were you in jail back in February of 2014?

3 A Yes, ma'am.

4 Q Did you get to know an individual by the name of
5 Michael Juan Smith?

6 A Yes, ma'am.

7 Q Please just share with the jury how you got to know
8 him.

9 A We was housed in the same dormitory hotel unit at
10 Alvin S. Glenn Detention Center.

11 Q That's a particular dorm in the jail?

12 A Yes, ma'am.

13 Q Did you and Mr. Smith befriend each other?

14 A Yes, ma'am.

15 Q Explain to the jury how the two of you became
16 friends.

17 A Basically, just being in the common area, a lot of
18 guys spoke with me, just talk to me because I knew a
19 little bit about the law and just common knowledge about a
20 lot of different things, so a lot of guys would talk to
21 me. So Mr. Smith began speaking with me about various
22 things and just have general conversations in the dorm.

23 Q How old are you, Mr. Levy?

24 A I'm 43.

25 Q So you're considerably older than the Defendant?

Rueben Levy - Direct by Ms. Garfield

1 A Yes, ma'am.

2 Q So he would come to you and seek advice?

3 A Yes, ma'am.

4 Q Did he share personal things about himself with you?

5 A Personal as far as -- yes, pretty much. I would say
6 they were personal.

7 Q Did he share with you the facts of his case that led
8 him to be housed in jail?

9 A Yes, ma'am.

10 Q At this time, Mr. Levy, I would like you to share
11 with the jury the things that Mr. Smith in his own words
12 told you.

13 A Well, it started out Mr. Smith wanted to get a clear
14 understanding of how he could, you know, possibly defend
15 himself against the charges that he was arrested for. So
16 he came to me, asked me if we could sit down, we could
17 discuss his case and give me -- he wanted me to basically
18 give him my opinion about how he was to proceed.

19 One night in February, we ended up going to what's
20 called a common -- it's a common area in the jail where
21 you can have church, sit there and do legal work, things
22 of that nature. It's just a little basic room. We went
23 inside that room, just Mr. Smith and I, with the
24 permission of the COs. He started breaking down to me
25 exactly, you know, what happened. From there, he

1 explained to me how everything came to a head in Five
2 Points with the shooting.

3 Basically -- you want me to explain explicitly?

4 Q I want you to tell the jury exactly what he shared
5 with you in his words.

6 A He told me a lot. Basically, he told me everything
7 he did from the morning when he got up that morning until
8 he was arrested by Richland County Sheriff's shortly after
9 the shooting.

10 Q Beginning with the morning, just share with the jury.

11 A Okay. During the morning, he explained to me that he
12 started off his day basically drinking, then he took some
13 pills, him and his girlfriend. They ended up meeting with
14 more of his girlfriend's relatives. They ended up going
15 out, headed out to Five Points area later that evening.
16 Got out at Five Points.

17 What stuck out was that he had a firearm he said, but
18 he initially left the firearm inside of the car. He
19 actually went back to the car to retrieve the firearm
20 because of the fact that he had been in a gang altercation
21 sometime before in the Five Points area, in the club
22 district area of Five Points.

23 So he said -- he told me that he went back to get the
24 bun. I asked him, I said, Why did you go back to get the
25 gun? He said, Well, I went back to get the gun because

Rueben Levy - Direct by Ms. Garfield

1 somebody might pop off. I don't want to be caught out
2 here slipping and I'm not strapped. So basically, for
3 protection and retaliation if anything was to happen, he'd
4 be able to defend himself.

5 So he said they left, started walking around Five
6 Points. It was him, his girlfriend, and I think one of
7 his girlfriend's cousins, and maybe one or two other
8 individual females.

9 Q Did he mention his girlfriend's name?

10 A Shante.

11 Q Okay.

12 A And he said that while walking around in Five Points,
13 they were trying to determine what they wanted to do, if
14 they were going to go in a club or not. He ended up
15 saying that his girlfriend, her and her cousin decided
16 that they wanted to go in a particular club. So Mr. Smith
17 and the other individual that he was with, they didn't
18 want to go in the club, but the girls went in the club.
19 So they stayed outside walking around and --

20 Q And I'm sorry for interpreting you. Do you remember
21 the name of the club that he told you?

22 A No, ma'am, I don't.

23 Q Okay. Go ahead.

24 A But they went in a club. While Michael -- while
25 Mr. Smith and the other individual were outside walking

—Rueben Levy - Direct by Ms. Garfield—

1 around, they ended up -- the girls came back out. He said
2 to me at some point that his girlfriend was approached by
3 another individual, a guy. And the guy, I guess he made
4 an unwanted advance or whatever and she rebuffed him.

5 But nonetheless, you know, she brought it up to him.
6 She pointed out -- he explained to me that she also
7 pointed out the guys. They saw the guys behind a gas
8 station and they identified them in so many words. And
9 Mr. Smith stated that they were walking -- they started
10 walking down the sidewalk in Five Points and the guy
11 started following him is what he was saying. So he said
12 he felt, you know, threatened by them, by the fact that
13 they were walking down the same sidewalk that he was
14 walking down. They got the gentleman that was with him --
15 you know, he turned around -- Mr. Smith turned around. He
16 pulled out a gun and fired.

17 So at that point, everybody scattered. And
18 consequently, a bullet struck Ms. Childress. So at that
19 point, he is running. He said he actually ran into a
20 sheriff's deputy and said to the sheriff's deputy, They're
21 shooting over there. And the deputy asked -- you know,
22 frisked him down and found a weapon on him at that time
23 and arrested him.

24 Q Did he share with you how many times he fired the
25 gun?

Rueben Levy - Direct by Ms. Garfield

1 A I believe once or twice he fired the weapon from what
2 he told me, yes.

3 Q Did he make any comments to you about Ms. Childress
4 and the media coverage in the case?

5 A Yes, ma'am. One particular day we were in the
6 hotel -- and this is not long after his arrest. He
7 asked -- we were in the day room. They have televisions
8 in the day room where we're able to watch the news and
9 things of that nature. Mr. Smith made a very derogatory
10 comment regarding Martha Childress and the media attention
11 that she was receiving by saying, you know, the news is
12 acting like the fucking bitch got killed, like the white
13 bitch got killed. And that just kind of just struck me.
14 You know, it was very disheartening. In my opinion, it
15 showed a very deliberate lack of remorse, you know, for a
16 particular action. You know, it just struck me.

17 I have a daughter. She is college age, and she is in
18 college, you know. And I felt and I still feel as though,
19 you know, the Five Points district is a public area, and
20 my child could have been down there. Anyone else's child,
21 grandchild, niece could have been there and suffered the
22 same fate. So, I mean, remorse is definitely in order,
23 but none was exhibited. So it just struck me as very
24 disheartening.

25 Q After he gave you this information, Mr. Levy, what

1 (did you do?

2 A What I did, I actually wrote it down. I wrote the
3 information down that he gave me, and I mailed it in to
4 Solicitor Dolly Garfield with the Richland County
5 Solicitor's Office informing her of what Mr. Smith had
6 divulged to me. And some time shortly thereafter, I was
7 contacted by Richland County Solicitor's Office regarding
8 the letter that I sent in.

9 Q Mr. Levy, do you realize that I'm Ms. Garfield?

10 A Yes, ma'am.

11 Q But you and I have never talked about the facts in
12 this case, have we?

13 A No, ma'am. This is my first time speaking with you.

14 Q Did Mr. Smith at any time share with you any
15 information about his affiliation with a gang?

16 A Yes, ma'am, that's very common knowledge.

17 Q What did he share with you?

18 A Well, that he's a Blood gang member. He's a member
19 of the Blood gang.

20 Q And any information about Ms. Bethel that he was
21 with, his girlfriend?

22 A Yeah, that she was supposedly a member of the Folks
23 gang, street gang.

24 Q Mr. Levy, no disrespect, are you affiliated with any
25 sort of gang?

Rueben Levy - Direct by Ms. Garfield

1 A No, ma'am.

2 Q Now, Mr. Levy, obviously, you're in jail?

3 A Yes, ma'am.

4 Q And you have a prior record?

5 A Yes, ma'am.

6 Q You have probably two prior grand larcenies, I
7 believe?

8 A Yes, ma'am.

9 Q You've also recently or in the past pled guilty to a
10 strong arm robbery?

11 A Yes, ma'am.

12 Q As well as impersonating a police officer?

13 A Yes, ma'am.

14 Q Do you agree with me that strong arm robbery carries
15 up to 15 years?

16 A Yes, ma'am.

17 Q And impersonating a police officer carries up to one
18 year?

19 A Yes, ma'am.

20 Q And you actually pled to those charges before this
21 incident at Five Points even occurred?

22 A Yes, ma'am, long before.

23 Q Are you awaiting sentencing?

24 A Yes, ma'am.

25 Q And you also have a pending charge in my office as

1 well, right?

2 A Yes, ma'am.

3 Q And it's also another grand larceny, right?

4 A Yes, ma'am.

5 Q Have you been offered any promises in respect to your
6 sentence or case regarding your testimony today?

7 A No, ma'am.

8 Q Have you been promised anything?

9 A No, ma'am.

10 Q Why are you here today, Mr. Levy?

11 A Mainly, my prior statement. I have a daughter that's
12 18 years of age attending college here in the metropolitan
13 area. It could have been my daughter. I'm 43 years old.
14 I'm not 19, 21, 22, a youngster, have a state of mind that
15 oh, I just don't care. I do care because I have a child,
16 as I've said. It could have been my child.

17 Q Now, specifically back to what Mr. Smith was
18 characterizing as to Ms. Childress, do you remember
19 anything he said as far as intentions he wished on her?

20 A As far as his intentions?

21 Q If I show you the letter you sent me, would that help
22 refresh your memory?

23 A Yes, ma'am.

24 Q Because you wrote this contemporaneously when he told
25 you?

1 A Yes, ma'am.

2 Q So this would be more accurate as to what he said,
3 correct?

4 A Yes, ma'am.

5 MS. GARFIELD: May I approach, Your Honor?

6 THE COURT: Yes, ma'am.

7 BY MS. GARFIELD:

8 Q I just highlighted these two paragraphs. Since that
9 was fresher in your memory at the time that you wrote
10 that, can you just share with the jury what Mr. Smith said
11 to you concerning the victim and his thoughts of his case?

12 A Yeah. Yeah. It's -- you can pretty much
13 characterize it as being a don't care attitude. You have
14 an individual that's been paralyzed. Life has been
15 altered for this young lady for the rest of her life. On
16 the other hand, you have an individual that's allegedly
17 linked to a particular action that just basically doesn't
18 care. You know, that's the bottom line.

19 His intention and how he characterized it, he said,
20 basically, fuck that white bitch. That's a don't care
21 blatant attitude. There's just no other way to, you know,
22 put it plainly. Everyone is adults. There's just no
23 other way to put it plainly.

24 Q And in the next paragraph that you wrote back when
25 Mr. Smith talked you, does he talk about what he thinks is

1 going to happen to his case?

2 A Yeah, he pretty much felt that at the end of the day,
3 he would get five to seven years based upon assistance
4 from his girlfriend, Shante. She would give some
5 information to law enforcement that he believed and that
6 she believed would ultimately help him receive a lighter
7 sentence. Basically, in between five and seven years is
8 what he'll end up doing and he'd be back out.

9 MS. GARFIELD: Mr. Levy, thank you for coming today
10 and testifying.

11 THE WITNESS: Yes, ma'am.

12 MS. GARFIELD: Please answer any questions
13 Mr. Zmroczek may have. You can keep that in case you need
14 it.

15 THE COURT: Yes, ma'am.

16 MS. ZMROCZEK: I have no questions for this witness,
17 Your Honor.

18 THE COURT: Okay. Have a great day.

19 Call your next witness.

20 MS. CAMPBELL: The State calls Tracy Thrower.

21 THE COURT: Lieutenant, please come forward and be
22 sworn.

23 THE BAILIFF: Your Honor.

24 THE COURT: Oh, I'm sorry.

25 TRACY THROWER,

Tracy Thrower - Direct by Ms. Campbell

1 after being duly sworn, testified as follows:

2 THE COURT: Thank you very much. Have a seat and
3 state your full name for the record.

4 THE WITNESS: Tracy J. Thrower, T-H-R-O-W-E-R.

5 DIRECT EXAMINATION

6 BY MS. CAMPBELL:

7 Q Is it Lieutenant Thrower?

8 A Yes, ma'am.

9 Q Lieutenant Thrower, where are you employed?

10 A I'm employed by the South Carolina Law Enforcement
11 Division, also known as SLED.

12 Q How long have you worked at SLED?

13 A I am currently in my 17th year.

14 Q Can you tell this jury what do you do at SLED?

15 A I am the supervisor of the firearm and tool mark
16 department in the forensics laboratory. I perform firearm
17 -- I examine firearms and firearm-related evidence. I
18 examine tool marks and tool-mark related evidence. I
19 performed serial number restoration. I destroy weapons
20 for various police departments throughout the State. I
21 perform mullet to target distance determination for
22 physical pellet patterns, limited crime scene duties and
23 other physical and fracture file matches.

24 Q And the laboratory at SLED, is it accredited?

25 A Yes, ma'am, it is.

Tracy Thrower - Direct by Ms. Campbell

1 Q Can you tell the jury how you go about getting
2 accreditation, what steps y'all had to go through to get
3 that?

4 A We had to apply for accreditation. Some of the
5 requirements for accreditation is we have to have standard
6 operating procedures for each of the disciplines in which
7 we are going to apply. So we have to have standard
8 operating procedures. Everything that we do has to be
9 written down. We have to have almost like a recipe for
10 our analysis.

11 We have to have quality control mechanisms in place
12 such as all of our -- for every examination that's
13 performed and every report written, we have 100 percent
14 micro-verification for all of our analysis. For every
15 bullet or cartridge case that I look at, a second
16 court-qualified firearm examiner will look at it behind
17 me. We must both agree independently on the results
18 before a conclusion is rendered and a report rendered.

19 We have to undergo proficiency testing yearly. We
20 have an external accreditation team come in once every
21 four years and look over all of our information. We have
22 to have internal inspections annually where we go around
23 and inspect ourselves, other departments within the
24 building and make sure that everybody is performing the
25 work the way they claim they are in their standard

1 operating procedures.

2 There's just lots of different layers to make sure
3 that we are doing things very consistently and that we are
4 doing things consistently with the way that other
5 accredited laboratories perform work.

6 Q In that same vein, is every laboratory that performs
7 firearms analysis accredited in the same manner you are?

8 A Yes, ma'am.

9 Q They all are accredited or yours is accredited?

10 A Not all laboratories are accredited.

11 Q That's what I was getting at. Can you tell the jury
12 a little bit about your training or education in the field
13 of firearms examinations?

14 A I attended Winthrop University. I have a Bachelor of
15 Science degree with a major in biology. Completing that,
16 I joined SLED, I was hired. I went through the South
17 Carolina Criminal Justice Academy.

18 After that was completed, I began my course of
19 instruction in firearm and tool mark identification. This
20 was an mentorship-style training program that lasted
21 approximately three years. It was taught and monitored by
22 court-qualified firearm examiners.

23 During this three-year course of instruction, I had
24 to perform extensive reading and studying. I had to
25 assist examiners in preparing for their cases. I had to

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1 attend various schools, seminars, and professional
2 conferences dealing with the area of firearm
3 identification and the field of identification in general.
4 I was given written examinations, practical examinations,
5 moot courts.

6 Upon completing my course of instruction, I was given
7 a final exam. When I passed my final exam, I was allowed
8 to begin working cases on my own.

9 Since then, I have attended the Scientifically
10 Defensible Criteria for the Identification of Tool Mark
11 course taught by Murdock and Moran. I have attended the
12 Serial Number Restoration course, which is taught by the
13 Bureau of Alcohol, Tobacco and Firearms. And I've also
14 attended the Specialized Techniques and Firearm
15 Identification course, which is taught by the FBI.

16 Q And, in fact, in your capacity as lieutenant over the
17 firearms department at SLED, do you also train other
18 people -- or participate in the training of other people
19 for firearms examination?

20 A Yes, ma'am, I do.

21 Q In addition to that, do you often lecture as well
22 about firearms examination?

23 A I have given many presentations, yes, ma'am.

24 (WHEREUPON, State's Exhibit No. 83 was marked
25 for identification only.)

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1 BY MS. CAMPBELL:

2 Q I show you State's Exhibit No. 83, it's labeled
3 statement of qualifications. Is that a statement of, at
4 least, some of the training, education that you have?

5 A Yes, ma'am, this is my current statement of
6 qualifications.

7 MS. CAMPBELL: Your Honor, to expedite things, we
8 offer State's Exhibit 83 into evidence.

9 MS. ZMROCZEK: Without objection. We don't object to
10 his qualifications, Your Honor.

11 (WHEREUPON, State's Exhibit No. 83 was admitted
12 into evidence.)

13 THE COURT: All right. He'll be qualified as an
14 expert in the area of --

15 Tell me exactly what it's called.

16 THE WITNESS: Forensic firearm identification.

17 THE COURT: Forensic firearm identification. He will
18 be allowed to give opinion testimony in that area. It
19 does not mean you have to accept his opinion, but it is
20 for you to use as evidence as you see fit and judge the
21 weight and the credibility as you are required to do with
22 every witness that appears in front of you.

23 MS. CAMPBELL: Thank you, Your Honor.

24 BY MS. CAMPBELL:

25 Q And for the record, have you also been qualified

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1 before as an expert in the same field?

2 A Yes, ma'am, I have.

3 Q Approximately, how many times have you testified as
4 an expert in this field?

5 A I believe 53 times now.

6 Q I want to turn your attention to this case. When you
7 received the evidence in this case, and we'll get to what
8 it is in a second, was it all properly submitted?

9 A Yes, ma'am, it was.

10 Q And, in fact, if evidence is not properly sealed and
11 submitted for your review, you would either note that or
12 not test it at all; is that correct?

13 A That is correct.

14 Q And what evidence specifically did you receive?

15 A I believe in this case, I received a firearm, a Glock
16 pistol, a magazine with 10 unfired 40 Smith and Wesson
17 Caliber cartridges and one fired 40 Smith and Wesson
18 Caliber cartridge case.

19 MS. CAMPBELL: Your Honor, may I approach?

20 THE COURT: Yes, ma'am.

21 Ladies and gentlemen, step back to your jury room.

22 Do not discuss the case. We'll be right back with you.

23 This will be a short break. We just want to make sure we
24 have what we need. Thank you.

25 (WHEREUPON, the jury left the courtroom at 2:10

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1 p.m.)

2 THE COURT: Okay. We'll be at ease while they sort
3 this out.

4 (Pause.)

5 THE COURT: Okay. Bring them back in.

6 (WHEREUPON, the jury entered the courtroom at
7 approximately 2:12 p.m.)

8 THE COURT: All right. Sorry about that break,
9 ladies and gentlemen. We're ready to go.

10 You may continue, Ms. Campbell.

11 MS. CAMPBELL: Thank you, Your Honor. I appreciate
12 it. I apologize. I thought it was organized the last
13 time I looked at it.

14 BY MS. CAMPBELL:

15 Q I want to hand you certain items of evidence,
16 including State's Exhibit No. 40, State's Exhibit No. 41,
17 State's Exhibit Nos. 38 and 39, and first ask you if you
18 recognize those? Do you mind if I put that up here?

19 A State's Exhibit 41 is a fired 40 Smith and Wesson
20 caliber cartridge case. It's down here at the bottom. I
21 do recognize this. I scribed on it my case number, item
22 number and my initials. When I say scribed, with an
23 electric pencil, I engraved on it.

24 Q And when you do markings such as that, do you do that
25 before or after you examine the items?

1 A Typically, that's before.

2 Q Before?

3 A Well, I perform an initial visual examination through
4 a stereo microscope. I find the area near the web of the
5 cartridge case where it's thicker. It's less likely to
6 take the markings that I'll be using and I scribe there
7 after I've inspected it to make sure it's a good clean
8 area.

9 Q Just for the record, so it doesn't affect your
10 testing in any way?

11 A That's correct.

12 Q Okay.

13 A State's Exhibit 40 contains 10 unfired 40 Smith and
14 Wesson caliber cartridges. I just looked at these and
15 verified that they also bear my case number, item number
16 and initials. Okay. State's Exhibit 39 is a Glock brand
17 magazine. State's Exhibit 38 --

18 Ladies and gentlemen of the jury, before I handle
19 this, you can see there's a cable lock through it. It is
20 safe. It cannot fire.

21 This is a Glock model 27 Smith and Wesson 40-caliber
22 pistol bearing the serial number PGG217. It also bears my
23 case number, item number and initials.

24 Q Okay. Before we go any further, the gun that you're
25 holding in your hand, which is State's Exhibit No. 38, I

1 believe, you mentioned that it is what kind of gun?

2 A A Glock model 27 semiautomatic pistol.

3 Q And I want to talk a little bit about handguns in
4 general first and then get back to that. Basically, you
5 said it's a semiautomatic pistol?

6 A Yes, ma'am.

7 Q Is there another kind of pistol that shows up
8 sometimes for testing in your experience?

9 A There is another style of handgun commonly known as a
10 revolver.

11 Q That's what I was talking about. I don't always use
12 the right terminology.

13 A Yes, ma'am.

14 Q So they are semiautomatic handguns and then there are
15 revolvers; is that correct?

16 A To name a few, yes, ma'am.

17 Q To name a few. Can you tell the jury the difference
18 between the two?

19 A A semiautomatic pistol, basically, the way that this
20 firearm works is you load your ammunition in the magazine.
21 You place it in the top, push it in. You keep loading
22 more and more until it's full. This particular magazine
23 is designed to hold 13 cartridges. You then would take
24 the magazine and you would place it inside the magazine
25 well. Rack the slide. You now have one in the chamber.

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1 You can remove the magazine and place one more in the
2 magazine now to replace the one that is now in the
3 chamber.

4 When you pull the trigger, this firearm, it will
5 release the firing pin, which strikes the cartridge case,
6 igniting the primer. The primer ignites the gunpowder,
7 forms hot gases, which pushes the bullet down the barrel.
8 All those same pressures that are pushing the bullet down
9 the barrel are pushing equal but opposite pressure towards
10 the rear, which causes the slide to move back into this
11 position.

12 There is a hook in this slide called an extractor.
13 That hook pulls the fired cartridge case out of the
14 barrel, out of the chamber and the fired cartridge case
15 hits a post in here called an ejector. It throws the
16 fired cartridge case out of the gun. When the slide comes
17 fully to the rear, it is now under spring tension.
18 There's a large spring right here. That spring forces the
19 slide to come back forward. As it comes forward, the
20 bottom of the slide grabs the top of the next cartridge
21 case in the magazine and loads it into the barrel.

22 The slide goes fully forward, the barrel locks, the
23 trigger and the serial mechanism are now cocked. Another
24 separate pull of the trigger -- if the trigger is
25 released, it resets the sear. You pull the trigger a

1 second time, it will fire again. This process happens
2 over and over and over until either you stop pulling the
3 trigger or you run out of ammunition in the feed
4 mechanism. This will continue to happen as long as there
5 is ammunition in the feed mechanism and the trigger is
6 continued to be pulled with an independent pull of the
7 trigger for each shot fired.

8 A revolver, on the other hand, has a round cylinder
9 in this area. This round cylinder has numerous chambers
10 in it. Each chamber is designed to hold a separate round
11 of ammunition. It is designed to rotate around the
12 central axis. So each time the firearm is cocked and the
13 trigger is pulled, the next chamber rotates in front of
14 the firing mechanism. And the same firing mechanism will
15 fire each chamber successfully each time it is cocked and
16 the trigger is pulled.

17 The cartridge cases in a revolver remain in the
18 revolver until somebody opens the cylinder and manually
19 takes them out. Revolvers do not leave cartridge cases at
20 the scene typically. Semiautomatic pistols do.

21 Q Let me ask you this. You talked about how you loaded
22 it, that you load the magazine, in this case, that one
23 holds 13, and then you put it into the gun?

24 A Yes, ma'am.

25 Q Then when one is chambered, it will fire. If there's

1 not -- how do you actually chamber a round from the
2 magazine into the gun?

3 A Normally, the slide is in the forward position. It's
4 up here. You must take your hand and pull this slide to
5 the rear. That motion right there is what strips a piece
6 of ammunition out of the magazine and loads it into the
7 chamber.

8 Q But if I have a loaded magazine in there and there
9 wasn't one loaded in the chamber and I go to pull the
10 trigger, what happens?

11 A It goes click.

12 Q But will that mechanism then load one automatically?

13 A No, ma'am.

14 Q So you have to intentionally chamber one in order --
15 when you pull it out and pull the trigger, it will fire?

16 A Yes, ma'am, you have to load the first one. That's
17 one thing I forget and I left out. With a semiautomatic
18 pistol, it uses a portion of that energy of discharge.
19 Those gases that are pushing the bullet down the barrel
20 and pushing a cartridge case to the rear causing the slide
21 to come back. A portion of that energy of discharge is
22 what causes the slide mechanism to function.

23 Q And when you were referring to the revolver and the
24 round cylinder and everything, like I watch -- like in the
25 old westerns, is that the typical gun that they then spin

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1 and pull it to the side. You look it at and you see like
2 six bullets in it. Is that a typical revolver?

3 A Yes, ma'am.

4 Q Just for my help in orienting. And a gun -- you
5 mentioned that it actually throws the cartridge casing, is
6 that the correct term?

7 A Yes, ma'am.

8 Q Out of the gun? And then the bullet part or
9 whatever, the projectile or whatever goes out the front of
10 the gun?

11 A It comes out of this hole and travels towards the
12 target.

13 Q And in a crime scene even if there are multiple shots
14 in a semiautomatic, shell casings when they are
15 discharged, they're actually thrown out of the gun?

16 A Typically, yes, ma'am.

17 Q And depending on where it lands or if it lands on
18 somebody else or if it's kicked around, you may find one
19 or more there at the scene?

20 A Yes, ma'am.

21 Q Depending on foot traffic, different things, all
22 kinds of factors as far as --

23 A Cartridge cases I've seen, they get stuck in people's
24 shoes or boots. They get stuck in car tires. They get
25 hidden in shrubbery. There's a lot of places they can be.

1 Q Going back to this gun, when you initially received
2 this evidence in this case, tell the jury what the first
3 steps you were taking in your examination of this gun?

4 A Well, the first thing I would do is I would print out
5 a list of what evidence I had and the list of what the
6 requests were, what sort of analysis is being requested of
7 me. I would get the evidence and I would verify that the
8 evidence that they claim they submitted is what I actually
9 received. I would look at the evidence. I would see if I
10 could find any sort of trace material on it that needed to
11 be collected. You know, for instance if there happened to
12 be blood or anything else on the evidence, anything that I
13 needed to collect before I handle it and destroy that.

14 I would photograph the packaging as received. I
15 would photograph the evidence as received. You know,
16 documenting and creating that permanent record of how it
17 was as I received it. I would photograph the make, model,
18 serial number, caliber, whatever stampings may be on the
19 gun. Similar with the cartridge case, photographing the
20 head stamp, what manufacturer and what caliber the head
21 stamp claims the cartridge case is.

22 From there, I would go into filling out departmental
23 worksheets. We have worksheets with predefined parameters
24 for each type of evidence that I examine.

25 For a gun, it's a two-column, two-page worksheet in

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1 which I note everything from make, model, caliber, serial
2 number, what types of sites are on it, what type of
3 trigger pull it has, how many cartridges the magazine
4 holds. You name it. We got a lot of things we look up as
5 far as the firearm goes. Same thing with a fired
6 cartridge case, I would document that.

7 When looking at the ammunition, the fired cartridge
8 case and also the unfired ammunition, I would see what was
9 submitted. Looking specifically at the fired cartridge
10 case, I want to make sure I know what brand and caliber it
11 is. When I test fire the firearm, which is the next step,
12 I want to try to use the same ammunition that was used in
13 the crime. That's why I look at the fired cartridge case
14 and any unfired ammunition to see if I can get a hint at
15 what I should be using.

16 I then collect some ammunition from our reference
17 collection. I go into our bullet recovery room. Inside
18 the bullet recovery room is a stainless steel water tank
19 that's about three feet in diameter and about waist high.
20 There's a big tube that goes down through the floor, a big
21 piece of pipe. The bottom of it sits on the first floor.
22 It has a big cone at the bottom of and a little cup that
23 sits at the bottom of that cone with a chain on it. I
24 lower the lid on the tank. I place the gun through the
25 lid, little hole in the lid, and I can test fire into

1 water. Water slows the projectiles down to a safe speed.
2 When they get to a safe speed, they kind of bounce along
3 that cone and drop into my cup. I pull the cup up. Now,
4 I have test specimens. I have test bullets from the gun
5 showing me how that gun marks.

6 Likewise, I've got a paper bag, a grocery bag that we
7 sit on top of the tank. So all those cartridge cases are
8 being thrown out a gun are being thrown into a grocery
9 bag. That's where I get my test fired cartridge cases
10 from.

11 I then take those, I engrave them in the same way
12 with lab number, item number, my initials and the fact
13 that these are test specimens. Then I have my test
14 specimens for my comparison purposes.

15 Q In this case, you mentioned one of the first things
16 you do is check to see if there's any extraneous material
17 such as blood or anything that you need to collect. In
18 this case, was there anything like that that you needed to
19 get off the gun?

20 A No, ma'am.

21 Q Once you have examined the gun externally and
22 everything, at that point, do you also take steps to make
23 sure it's in working order?

24 A Yes, ma'am. As part of my documentation, we also
25 verify it's in working order. I identify what type of

1 safety mechanisms are in the gun and verify that the
2 safety mechanisms are also in working order.

3 Q That's just what I wanted to talk about next. Was
4 this gun in working order?

5 A Yes, ma'am, it was.

6 Q And you talked about the safety mechanisms. What's a
7 safety mechanism and were there any on this gun?

8 A A safety mechanism is a device that is designed to
9 prevent unintentional firing. By unintentional firing, I
10 mean firing without pulling the trigger. This firearm has
11 three automatic safeties that are built into it, into its
12 design. All three safeties function based on the trigger
13 being pulled. If that trigger is not pulled, the safeties
14 are turned on and they're engaged. You do not have any
15 external levers or buttons or anything else that you have
16 -- as a shooter that you have to do to turn a safety off
17 prior to firing. They all function by the pull of the
18 trigger.

19 The first safety is the trigger safety. You can see
20 this little lever right here in the center of the trigger.
21 It pivots in the middle and it's got a little piece that
22 sticks out and engages the frame. So unless you first put
23 your finger on that trigger and move that little lever out
24 of the way, the trigger can't be pulled. Okay. Trigger
25 safety.

1 The next one is a button that's up inside the slide
2 right here. It's called the firing pin safety. When the
3 trigger is pulled, part of the trigger bar actually pushes
4 that little button up and out of the way, which disengages
5 the firing pin safety. When the firing pin safety is
6 turned on, there's a block of metal that is in the way
7 that the firing pin can't move past. So movement of the
8 trigger actually turns that safety off, also.

9 The last safety is called a draw safety. There are
10 two -- there's a piece in here that moves backwards and
11 forwards. It sits on -- it's got two shoulders that stick
12 out kind of like a cross. It's called a cruciform. If
13 the trigger's not pulled, this piece is forward and those
14 shoulders are sitting on top of part of the frame. As you
15 pull the trigger back, it moves to the back. And as it
16 comes back, that part of the frame is no longer there. So
17 then that piece can actually fall which releases the
18 firing pin and allows it to fire.

19 So as long as the trigger is in the forward position,
20 there are three safeties that are automatically engaged
21 preventing it from firing.

22 Q So those would have to be disabled in order for the
23 gun to be fired?

24 A That is correct.

25 Q And that has to be done manually by whoever has the

1 gun?

2 A Yes, ma'am.

3 Q In addition to chambering a round to make it fire?

4 A Yes, ma'am.

5 Q There is also what -- a term you test for and I think
6 it's called trigger pull?

7 A Yes, ma'am.

8 Q Is that something that you did in this case, test for
9 trigger pull?

10 A Yes, ma'am.

11 Q What is that, sir?

12 A Trigger pull is basically we weigh how much pressure
13 has to be applied to the trigger to cause the firearm to
14 fire.

15 Q And now, I've heard the term hair trigger or
16 something like that before. What does that indicate?

17 A Typically, a hair trigger is referred to as an
18 extremely light trigger, typically, of a half pound or
19 less, where it would be very easy to fire the firearm by
20 just barely touching the trigger.

21 Q But in this case, when you tested it for the trigger
22 pull, what were your results?

23 A My results in this case, the trigger was
24 approximately seven-and-a-quarter to seven-and-a-half
25 pounds of pressure.

1 Q And is that in the normal range for a gun such as
2 this?

3 A Yes, ma'am, it is.

4 Q And in giving an example to the jury, what kind of
5 pressure are we talking about between seven and
6 eight pounds of pressure? How is a way to typify that?

7 A A way that you can probably understand it is a gallon
8 of milk weighs approximately 8 pounds. Now, think about
9 taking a gallon of milk and picking it up with one finger.
10 That is what it would feel like to pull the trigger on
11 this gun to make it fire.

12 Q So this one was well within the normal range and, in
13 fact, a fairly difficult trigger?

14 A It's in the realm of what they consider a double
15 action trigger, which is a heavier trigger pull.

16 Q You also mentioned that the cartridge case we
17 referred to -- and there was one submitted in this case;
18 is that correct?

19 A Correct.

20 Q Is ejected from the gun. In all semiautomatic
21 pistols, are they ejected in the same way or the same
22 side?

23 A They normally are ejected to the right. However,
24 they don't have to be. Some of them go straight up. I
25 have fired firearms that they're supposed to eject to the

1 right and somehow, occasionally, they will throw one to
2 the left. It also depends on how the gun is being held.
3 If the gun is being held up and down in a normal fashion,
4 then it goes where it's designed. But if you start
5 holding the gun sideways or pointing it up or pointing it
6 down, every different way that the gun can be held or
7 rotated changes where it's going to throw the cartridge
8 case.

9 Q In this gun, the one you tested, which direction did
10 it expel the cartridge casing?

11 A To the right.

12 Q And can you say does it always expel at the exact
13 same distance every time or does that vary depending
14 again?

15 A During my testing, it threw it about that far into my
16 paper bag. My paper bag stopped from it going any
17 further.

18 Q You mentioned that this was a .40-caliber?

19 A Yes, ma'am, 40 Smith and Wesson caliber.

20 Q But you also mentioned 27 about something. What were
21 you talking about there?

22 A This particular model is Glock subcompact model,
23 which is their smallest frame. The 27 simply refers to
24 the frame size and the caliber, the mixture.

25 Q Is this a gun that's used by certain agencies on a

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1 regular basis?

2 A Glock, in general, typically, is probably the police
3 agency. It's about the most widely adopted brand of
4 firearm for police to carry in the US.

5 Q And this is a Glock 27, that's the model?

6 A Yes, ma'am.

7 Q And then you mentioned it's a .40-caliber. Tell the
8 jury a little bit about what the caliber of bullet means
9 and the gun and how ammunition works between the two?

10 A Well, the caliber, basically, is defined by the
11 diameter of the bullet. It means on the outside of the
12 bullet, it's approximately .401 inches in diameter. The
13 40 Smith and Wesson caliber simply means that Smith and
14 Wesson designed the cartridge and it will have given -- it
15 will give an overall length, give a cartridge case length.
16 There will be a certain amount of pressure to achieve an
17 approximate velocity.

18 Once you have the cartridge you're going to fire, the
19 firearm is then designed around that cartridge. The
20 inside of the barrel is roughly the same diameter as the
21 outside of the bullet. The chamber and barrel will be
22 made to fit that cartridge.

23 Q And when we're talking about different calibers of
24 ammunition and guns, what's one of the smaller caliber
25 guns?

1 A Smaller caliber, typically, could be like a 22.

2 Q Twenty-two?

3 A Twenty-two caliber.

4 Q Twenty-five?

5 A Twenty-five.

6 Q And does the diameter of the bullet have anything to
7 do with the caliber number that's attached to it?

8 A Yeah, .22 means the caliber is going to be around
9 .22 inches in diameter.

10 Q And then with the 40, you said it's about what?

11 A Point 401.

12 Q And there's a 22, 25, 380 --

13 A 380, 38 Special, 9mm Luger, 40 Smith and Wesson, 500
14 Smith and Wesson, on up.

15 Q On up? And as far as the diameter of the bullet in a
16 40-caliber, is it similar to that of a nine millimeter?

17 A It is slightly larger. Your typical 9mm Luger will
18 have a bullet diameter of somewhere around .355 inches in
19 diameter. 40 is, once again, around .401.

20 Q Typically, in firearms, if I had say a .40-caliber
21 gun, can I put .22-caliber ammunition in it and have it
22 shoot?

23 A A .40-caliber gun, your typical .22 would fall right
24 down the barrel and out the other side.

25 Q So is it important to have the right caliber

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1 ammunition in order to make the gun work?

2 A Yes, ma'am.

3 Q In this case, you mentioned that you got the gun,
4 it's a .40-caliber gun. The live rounds, what I call
5 them, the --

6 A Unfired.

7 Q The unfired rounds that you received, how many of
8 those did you receive?

9 A I received 10.

10 Q And were they all the same make and brand?

11 A No, ma'am. I had nine that had the Federal head
12 stamp and one that had the Winchester head stamp.

13 Q But they were all .40-caliber?

14 A Yes, ma'am.

15 Q And as far as the fired cartridge case that was
16 collected at the scene that was submitted to you, what
17 brand and caliber was it?

18 A It was also a .40-caliber with a Winchester brand.

19 Q And did that match the majority of the evidence that
20 was presented to you?

21 A It matched -- it was the same construction and brand
22 as the one fired cartridge case I had received.

23 Q And how many of those unfired ones did you receive in
24 that brand?

25 A One.

1 Q One?

2 A Yes, ma'am.

3 Q There's been some talk about a hollow point bullet
4 versus some other kind of bullet. Can you explain the
5 difference to the jury?

6 A A hollow point bullet, essentially, in the nose of
7 the bullet has got a big hollow cavity. It's designed so
8 that when it strikes its target, basically, it peels back
9 and turns into a mushroom. So that it has a larger
10 diameter as it's going through the target so that it slows
11 down quicker trying to remain inside the target so that
12 the -- whatever it strikes gets the full impact of the
13 damage.

14 The other general style bullet that I received was a
15 full metal jacket, which simply means that there is no
16 hollow point. It's just got a casing, a metal casing that
17 surrounds the bullet.

18 Q And explain that to me. Is it going to cause more
19 damage for it to mushroom and stay inside a person than
20 for a through and through?

21 A Absolutely.

22 Q And the shell casing from the scene that you got, the
23 cartridge casing?

24 A Yes, ma'am.

25 Q What kind was it?

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1 A It was the Winchester brand.

2 Q And could you tell if it was a hollow point?

3 A That I could not tell.

4 Q But did it match any of the ammunition that was
5 submitted to you?

6 A One of the unfired cartridges was also a Winchester
7 brand cartridge or had the Winchester head stamp on the
8 cartridge casing.

9 Q Can you pick out in State's Exhibit 40 which one is
10 different from the others?

11 A I know it was in there.

12 Q This one right here?

13 A Yes, ma'am.

14 Q Again, when you're talking about a head stamp -- if
15 you could hand me the fired cartridge casing. When you
16 compared the head stamp on these two bullets -- I call
17 them bullets, that's not correct, is it?

18 A No, ma'am.

19 Q Sorry. On these two -- what are they called?

20 A Cartridge cases.

21 Q Cartridge cases, the spent one or fired one and the
22 unfired one, how did they compare?

23 A They both had the head stamp of Winchester 40 Smith
24 and Wesson.

25 Q And the one that came from State's Exhibit No. 40,

1 that's a hollow point?

2 A Yes, ma'am.

3 Q And the rest of the ammunition that was submitted
4 accompanying this gun, what brand was it?

5 A Federal.

6 Q And what type of bullets were those?

7 A It was a full metal jacket with the truncated or
8 flat-nose style bullet.

9 Q I also have State's Exhibit 40. Is this the other
10 one we talked about?

11 A Yes, ma'am.

12 Q But as far as what matched this one, it was the shell
13 casing from the scene?

14 A Yes, ma'am.

15 Q Once you had determined what all had been submitted
16 to you -- let me back up a little bit. You also mentioned
17 that there was a magazine, State's Exhibit No. 39?

18 A Thirty-nine.

19 Q Was this -- you mentioned that this magazine can hold
20 actually 13 rounds?

21 A Yes, ma'am.

22 Q And is this the magazine that was made for that gun?

23 A No, ma'am, it was not.

24 Q Explain to the jury how that one worked.

25 A This firearm is what they refer to as their

Tracy Thrower - Direct by Ms. Campbell

1 subcompact model. This is the one that they designed to
2 be conceal carry, so it's small. The magazine that Glock
3 designed for this gun only holds nine rounds. The next
4 size up in the same caliber is the Glock model 23. This
5 is a magazine designed for a Glock model 23. It holds 13
6 unfired cartridges. The next size above that, the full
7 size frame, is a Glock model 22. It holds 15 rounds, I
8 believe.

9 Q But this, State's Exhibit 39, can it work in that gun
10 that was submitted to you?

11 A It can work. It usually does work. I, myself, have
12 one of these and I have many times fired both of the other
13 style magazines in it. Glock does not recommend it due to
14 the size of this slide and the spring tension that they
15 have in here. Basically, what can happen is it requires a
16 stiffer spring inside the magazine to keep up with the
17 speed at which the short slide moves. So what can happen
18 is sometimes the firearm -- it can misfire, basically,
19 causing a cartridge to be lodged.

20 Q That's what I was going to say. When you say
21 misfire, it's kind of like a jam?

22 A Well not -- misfire is probably incorrect. It will
23 jam.

24 Q But in your testing with this, that magazine worked
25 with that gun?

1 A Yes, ma'am.

2 Q So there were no problems there?

3 A No, ma'am.

4 Q What, if any, further testing did you do in this
5 case, sir?

6 A Once I had my test specimens, I then took my test
7 specimens to my comparison microscope. A comparison
8 microscope is literally -- it's two microscopes that sit
9 side by side. They're connected by an ocular bridge. So
10 when I'm looking through my eye pieces, I'm actually
11 looking through two microscopes at the same time. I can
12 see what I'm looking at with a simple dividing line,
13 hairline down the middle. I can place two objects side by
14 side.

15 The first thing I do is I take my test specimens. I
16 put one test specimen on each side and I look at it. I
17 see what kind of markings are there. I see how the gun
18 marks. I start formulating what sort of pattern analysis
19 I'm going to use. I start deciding which markings I'm
20 going to use. Am I going to use the firing pin impression
21 or am I going to use the bridge face? Am I going to use
22 the firing pin aperture shear, the extractor, ejector,
23 chamber marks? There's a lot of markings that can be used
24 on a cartridge case. And I have to decide based on the
25 manufacturer of the firearm what is the most reliable mark

Tracy Thrower - Direct by Ms. Campbell

1 that I have to work with and that's where I start.

2 Typically, with Glock pistols, I start with the
3 firing pin aperture shear. So if I find those markings on
4 the first one, I start with a single line or scratch. I
5 look how tall it is. I look at the next one over. I see
6 how tall it is. I see the furrow in between the two
7 lines. I see the shape of the furrow between these two
8 scratches. I see how they compare to each other. And I
9 just keep adding lines to this. As I add lines, I start
10 seeing a pattern.

11 Once I have looked at this pattern, I then bring in
12 the second cartridge case and I start trying to line these
13 lines up. If I can find similar matching patterns between
14 the two images, then I can determine there was a common
15 origin. I can say that they were both fired by the same
16 firearm. I look to see how consistent a particular gun
17 may be marking.

18 Once I have done all this, I then take one of the
19 test fires off and I take the evidence and I start
20 comparing the evidence cartridge case to my test specimen
21 and start doing the same style analysis to see if I can
22 determine if they were fired by the same gun.

23 Q In this case specifically, starting either with the
24 live ammunition or with the spent shell -- or cartridge
25 casing, were you able to make any determinations?

Tracy Thrower - Direct by Ms. Campbell

1 A Yes, ma'am, I was.

2 Q Tell the jury what you found.

3 A That the -- I forget which State's Exhibit number it
4 is, that the fired cartridge case --

5 Q If I hand you this, State's Exhibit 41?

6 A Yes. I determined that State's Exhibit 41, this
7 fired cartridge case down here, had been fired by State's
8 Exhibit 38, this Glock pistol.

9 Q That was based on your training, your education?

10 A Yes, ma'am.

11 Q That's what you testify to all the time in court?

12 A Yes, ma'am. The similarities that I saw when I
13 looked through my microscope were so significant that in
14 my opinion, I believed that the likelihood another firearm
15 could have produced markings that similar is so remote, it
16 has to be considered a practical impossibility.

17 Q Finally, were your findings and your testing all
18 reviewed by another person independent of you in your
19 laboratory?

20 A Yes, ma'am. As part of our quality control, like I
21 said, every examination I perform, a second
22 court-qualified firearm examiner will come in and review
23 my case work and form their own independent conclusion.
24 We compare answers and then a report goes out.

25 Q When this gun is fired and the bullet comes out of

1 the end of it?

2 A Yes, ma'am.

3 Q Can the bullet unobstructed travel for a
4 significant --

5 A Yes, ma'am.

6 Q -- distance? Could it easily travel 110 feet?

7 A Yes, ma'am.

8 Q And, in fact --

9 A Much further.

10 Q When you say much further, three, four times as far,
11 at least?

12 A Easily. Depending on the angle or the trajectory
13 that the firearm is pointed at, the farther you point the
14 gun up until roughly around 37-and-a-half degrees, it will
15 cause the bullet to travel further and further. At that
16 point, it will go higher, but it falls closer.

17 Q Once it kind of loses its upward -- if it's pointed
18 up, it's upward speed, it just falls down, it doesn't have
19 the same impact as when it's in a straight line?

20 A Yes, ma'am, law of gravity.

21 Q And this one could easily travel a football field or
22 two further?

23 A Easily. I have personally fired my Glock model 27,
24 the same gun, at 100 yards and been able to strike my
25 target.

1 Q At any time when you tested this gun, did it
2 malfunction?

3 A No, ma'am.

4 Q I want to talk to you a little bit more about the
5 hollow point versus the mushrooming. Oh, and it's your
6 policy at SLED, do you -- is your testimony and your
7 expertise subject only to what's submitted to you for your
8 testing?

9 A Yes, ma'am. I only examine and testify to that
10 evidence I can place my hands on.

11 Q Okay. So no one asked you to review some x-rays you
12 had nothing do with?

13 A No, ma'am.

14 Q And that wouldn't be proper?

15 A No, ma'am. I have not been trained in examining
16 x-rays.

17 Q That would be left to the trauma surgeon?

18 A Absolutely.

19 Q As far as the unfired cartridges in this case, were
20 there any markings on those or would you expect to find
21 any you could relate specifically to this gun?

22 A There could be potentially some markings on them,
23 both from -- well, from being loaded into the magazine.
24 There's some metal feed lifts up here. Those could leave
25 possible markings on it. Many people will -- loading and

Tracy Thrower - Cross by Ms. Zmroczek

1 unloading the gun may cycle the cartridge case -- or
2 unfired cartridges in and out of the gun just loading or
3 unloading. So there may be some minor extractor or
4 ejector chamber marks on the unfired cartridge casing.

5 Q But in order to do the comparison you did between
6 State's Exhibit No. 38 and State's Exhibit 41, this is the
7 fired?

8 A That is the fired one, yes, ma'am.

9 Q And that's how you were able to make your
10 determination?

11 A Yes, ma'am.

12 Q And finally, your opinion as far as the comparison of
13 the spent casing from the scene to this gun?

14 A That the -- State's Exhibit 38, this Glock pistol, in
15 my opinion, fired State's Exhibit 41, the fired cartridge
16 casing.

17 MS. WALKER: Thank you. I don't have anything
18 further.

19 THE COURT: Yes, ma'am?

20 CROSS-EXAMINATION

21 BY MS. ZMROCZEK:

22 Q Good afternoon, Agent Thrower.

23 A Good afternoon.

24 Q Your testimony was that that Glock fired that?

25 A Cartridge casing?

1 Q Yes.

2 A In my opinion, yes, ma'am.

3 Q And you are an expert?

4 A Yes, ma'am.

5 Q And you've performed major tests as a forensic
6 firearm tool mark examiner?

7 A I'm sorry, say it again.

8 Q There are a lot of tests that you perform as a
9 forensic firearms and tool mark examiner?

10 A Yes, ma'am.

11 Q You can examine firearms?

12 A Yes, ma'am.

13 Q You can examine firearm-related evidence?

14 A Yes, ma'am.

15 Q You can conduct test firing?

16 A Yes, ma'am.

17 Q You can conduct test firing of weapons to determine
18 penetration?

19 A I do not test fire weapons and determine penetration,
20 no, ma'am.

21 Q Can you determine angle?

22 A I do not perform trajectory, no, ma'am.

23 Q It can be done?

24 A It can be done. That is typically handled by our
25 crime scene unit.

1 Q I'm sorry?

2 A That is typically handled by our crime scene unit.

3 Q Would they also determine a distance something was
4 fired or is that something you would do?

5 A The only distance that I perform is if there is a
6 shotgun used where we have a physical pellet pattern to
7 compare.

8 Q Otherwise, it would be the crime scene?

9 A At one time that was handled by trace evidence. I
10 don't think that's an examination we even perform anymore.

11 Q I want to discuss inertia discharge. You're familiar
12 with that?

13 A Inertia discharge, like dropping a firearm?

14 Q Dropping a firearm.

15 A Okay.

16 Q Dropping a firearm can make it go off?

17 A It can make some guns go off.

18 Q Some guns. Typically, semiautomatic guns?

19 A Typically.

20 Q I know it -- explain how that happens.

21 A Typically, what will happen is if there's a --
22 typically, we'll see it in a firearm that has a sear and a
23 firing pin, not a traditional hammer. The sear in some
24 cases is spring loaded. The sear is what holds the firing
25 pin in place, holds it in the cocked position. So you'll

1 have a firing pin that has a hook. If the firearm is
2 dropped, inertia can cause -- an object in motion stays in
3 motion, which can cause the sear to disengage which now
4 leaves this firing pin which has spring tension on it free
5 to move forward and strike the primer causing ignition.
6 That's typically how it happens.

7 However, the Glock pistol has two things going for
8 it. One, it's got a firing pin safety so that if the gun
9 was dropped, you still have this piece of metal in front
10 of the firing pin preventing it from moving forward. It
11 has what we call -- we talked about the drop safety. It
12 has -- basically, the sear is riding on these two
13 shoulders, so if it's dropped, it immediately contacts the
14 frame and it cannot go in that downward position to allow
15 firing pin release.

16 Additionally and finally, this is what is most
17 commonly referred to as a double action firearm.
18 Typically, we'll see the inertia firings or if a firearm
19 is dropped is when the firing pin is precocked. And a
20 Glock, it is not precocked. Actually pulling the trigger
21 cocks the firing pin and then releases it. So there's a
22 third way that does not happen with these style firearms.

23 Q But it does happen in some firearms?

24 A It can happen in some firearms, yes, ma'am.

25 Q And when that happens -- tell the jury what happens

1 when you fire a gun and it's dark out?

2 A Huh?

3 Q Tell the jury what they'll see.

4 A You would probably see the muzzle flash. You would
5 see a short ball of fire leave the end of the barrel.

6 Q And can that help determine what direction a gun is
7 fired?

8 A If somebody was watching and they see me facing this
9 direction and I'm the shooter and you see the ball of fire
10 going in that direction, I would think that would help
11 somebody. Just a ball of fire in general. You have to
12 put it in perspective to the surrounding objects and where
13 the shooter would be.

14 Q Okay. So if a shooter is behind the gun, typically,
15 you see the muzzle flash would be in front of the person?

16 A Typically.

17 Q Unless they're shooting themselves?

18 A Yes, ma'am.

19 Q Oh, I knew I had another question.

20 You were talking about hollow points. Ms. Campbell
21 asked you about hollow points?

22 A Yes, ma'am.

23 Q You found one here?

24 A Yes, ma'am.

25 Q There are also nine millimeter hollow points,

1 correct?

2 A Absolutely.

3 Q Winchester makes them?

4 A Yes, ma'am.

5 Q Federal?

6 A Yes, ma'am.

7 Q Nine millimeter hollow points, so they're common?

8 A Yes, ma'am.

9 MS. ZMROCZEK: Thank you. I have no further
10 questions.

11 REDIRECT EXAMINATION

12 BY MS. CAMPBELL:

13 Q She asked you about dropping the gun and it going off
14 accidentally?

15 A Yes, ma'am.

16 Q You mentioned that it can happen in some
17 semiautomatics?

18 A Yes, ma'am.

19 Q Is that usual?

20 A We don't see it very often.

21 Q Thank you. And you mentioned this in semiautomatics,
22 but it's very -- in revolvers, it's even more unusual or
23 it doesn't happen?

24 A Don't see it as much in revolvers. It's typically
25 semiautomatics.

1 MS. CAMPBELL: Thank you.

2 THE COURT: All right. Have a good day.

3 Call your next witness.

4 MS. WALKER: Your Honor, the State calls Sergeant
5 Robert Waters.

6 ROBERT WATERS,

7 after being duly sworn, testified as follows:

8 THE CLERK: Thank you. Have a seat in the witness
9 stand, please. State your name for the record.

10 THE WITNESS: Roberts Waters.

11 MS. WALKER: May it please the Court, Your Honor?

12 THE COURT: Yes, ma'am.

13 MS. WALKER: Thank you.

14 (WHEREUPON, State's Exhibit No. 89 was marked
15 for identification only.)

16 DIRECT EXAMINATION

17 BY MS. CAMPBELL:

18 Q Sir, can you tell us where you're currently employed?

19 A At the Alvin S. Glenn Detention Center.

20 Q And how long have you been employed by the detention
21 center?

22 A Fifteen years.

23 Q And what do you do over there?

24 A I work in professional standards, which is more or
25 less our investigations department.

1 Q And part of -- I guess while inmates are there, are
2 they allowed to make phone calls from the jail?

3 A Yes, they are.

4 Q Are those phone calls recorded?

5 A Yes, they are.

6 Q And part of your duties, do you come testify in court
7 about those phone calls from time to time?

8 A I do.

9 Q When those phone calls are recorded, can you or
10 anyone that works for you alter them in any way?

11 A No, ma'am.

12 Q Do y'all pull them and turn them over to whoever
13 requests them?

14 A Yes, ma'am.

15 Q As part of this trial, did we ask you to review
16 certain recorded phone calls from the jail and make sure
17 that they were, in fact, from Alvin S. Glenn?

18 A Yes, ma'am.

19 Q Did you have an opportunity to do that?

20 A Yes, ma'am.

21 Q In fact, this morning?

22 A Yes, ma'am.

23 Q There were two phone calls?

24 A Yes, ma'am.

25 MS. WALKER: Your Honor, at this point, the State

1 seeks to admit Exhibit 89 into evidence.

2 THE COURT: Exhibit what?

3 MS. WALKER: Eighty-nine.

4 THE COURT: Yes, ma'am.

5 MS. ZMROCZEK: Subject to my previous objection.

6 THE COURT: All right. Over Defense objection.

7 MS. WALKER: Thank you, Your Honor.

8 (WHEREUPON, State's Exhibit No. 89 was admitted
9 into evidence.)

10 MS. WALKER: Your Honor, permission to publish to the
11 jury?

12 THE COURT: Yes, ma'am. These are just the
13 recordings right, not videos?

14 MS. WALKER: Yes, Your Honor.

15 THE COURT: Okay.

16 MS. ZMROCZEK: And no transcripts.

17 THE COURT: All right.

18 (WHEREUPON, phone calls from Alvin S. Glenn
19 Detention Center were played for the jury.)

20 MS. WALKER: Thank you, Sergeant. I don't have any
21 further questions.

22 THE COURT: Cross-examination?

23 MS. ZMROCZEK: Briefly, Your Honor.

24 THE COURT: Okay.

25 CROSS-EXAMINATION

1 BY MS. ZMROCZEK:

2 Q Good afternoon.

3 A Good afternoon.

4 Q I'm not testing you, but October 13th, 2013, to
5 today's date, would you agree with me, it's 670 days?

6 A Yes.

7 Q Between the dates of December 13th, 2013, and
8 July 23rd, 2019, would it surprise you that Michael made
9 1,682 phone calls?

10 A Yes.

11 Q It would surprise you?

12 A Would it surprise me?

13 Q Yes.

14 A No.

15 Q And the primary purpose of recording jail phone calls
16 is for safety concerns, right?

17 A Yes, ma'am.

18 Q And solicitors can listen to jail phone calls 24/7?
19 They have access to listen to jail phone calls?

20 A The solicitors? Yes.

21 Q Defense attorneys don't? Defense attorneys do not,
22 correct?

23 A If -- no.

24 Q Primary purpose for jail safety or safety in general?

25 A Yes.

REDIRECT EXAMINATION

BY MS. WALKER:

Q Sir, defense attorneys can and do, as in this case, subpoena jail phone calls, right?

A They do.

Q And you will turn those over to defense attorneys just like you turn them over to me?

A That's true.

MS. WALKER: Thank you. I don't have any further questions.

THE COURT: Have a good day.

All right. Let's take a break. It's about 3:20. Let's take about a 10, 15-minute break. 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 in just a few minutes.

Everyone remain seated.

(WHEREUPON, the jury left the courtroom at 3:21 p.m.)

THE COURT: All right. Anything before we break?

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

THE COURT: Ms. Zmroczek?

MS. ZMROCZEK: Nothing.

THE COURT: Okay. 15-minute break.

MS. WALKER: Thank you, Judge.

1 (WHEREUPON, a short break was taken.)

2 MS. WALKER: Judge, may we approach?

3 THE COURT: Yes.

4 MS. WALKER: This is just a stipulation about chain.

5 THE COURT: All right. Everybody ready?

6 (Nods in the affirmative.)

7 THE COURT: Okay. Anything else?

8 MS. CAMPBELL: No, Your Honor. I was going to put up
9 Mr. Truitt and then publish the car video.

10 MS. ZMROCZEK: Oh, yeah, yeah. That's fine.

11 THE COURT: Okay.

12 MS. ZMROCZEK: I'm sorry. I just couldn't hear you.

13 THE COURT: When do you want me to read this?

14 MS. CAMPBELL: Whenever you want, I don't care.

15 MS. ZMROCZEK: Your Honor, we also stipulate that he
16 was roommates with Rueben Levy -- not roommates, but dorm
17 mates, too.

18 THE COURT: Okay.

19 MS. ZMROCZEK: Ms. Garfield asked me about that.
20 I'll draft something about that.

21 MS. GARFIELD: That's fine.

22 (WHEREUPON, State's Exhibit No. 88 was marked
23 for identification only.)

24 (WHEREUPON, the jury entered the courtroom at
25 3:52 p.m.)

1 THE BAILIFF: The jury is seated, Your Honor.

2 THE COURT: Okay. Thank you, Mr. Dye.

3 Welcome back, ladies and gentlemen.

4 You may call your next witness.

5 MS. GARFIELD: Thank you, Your Honor. The State
6 calls Jim Truitt.

7 JAMES TRUITT,

8 after being duly sworn, testified as follows:

9 THE CLERK: Thank you. Have a seat in the witness
10 stand, please. State your name for the record.

11 THE WITNESS: James Truitt, T-R-U-I-T-T.

12 DIRECT EXAMINATION

13 BY MS. GARFIELD:

14 Q Mr. Truitt, where are you employed?

15 A The Richland County Clerk of Court's office.

16 Q Is that here in this courthouse?

17 A Yes, ma'am.

18 Q And being with the clerk of court's office, you
19 maintain all records pertaining to judicial proceedings?

20 A We do.

21 Q Specifically, also, to criminal proceedings?

22 A We do.

23 Q Were you asked to bring a certified copy of the
24 convictions concerning Michael Juan Smith?

25 A I was.

1 Q I'm going to hand you what's been marked as State's
2 Exhibit 88. Are you familiar with this document?

3 A Yes. We created it.

4 MS. GARFIELD: Your Honor, at this time, I'd like to
5 introduce this document into evidence.

6 MS. ZMROCZEK: Without objection, Your Honor.

7 THE COURT: Okay. State's Exhibit 88 without
8 objection.

9 (WHEREUPON, State's Exhibit No. 88 was admitted
10 into evidence.)

11 BY MS. GARFIELD:

12 Q Mr. Truitt, for purposes of this hearing, can you
13 just please share with the jury the prior convictions
14 Mr. Smith has in this clerk of court's office?

15 A I will. We show that he pled guilty on March 12th,
16 2013, to indictment number 2012-GS-40-3433, an indictment
17 for burglary in the second degree violent. Also, on the
18 same day, March 12th, 2013, indictment number
19 2012-GS-40-3435, an indictment for grand larceny greater
20 than 2,000, but less than 10,000. Also, October 10th --
21 October 14th, 2010, indictment number 2010-GS-40-4112, an
22 indictment for attempted burglary second nonviolent.

23 Q Mr. Truitt, are you familiar that burglary second
24 violent conviction was considered a violent crime in the
25 State of South Carolina?

James Truitt - Direct by Ms. Garfield

1 A Yes, it is violent.

2 Q As well as the burglary second violent and the
3 attempted burglary second would be considered crimes of
4 violence in the State of South Carolina?

5 A Yes, ma'am.

6 MS. GARFIELD: Thank you, Mr. Truitt. No further
7 questions.

8 MS. ZMROCZEK: We have nothing, Your Honor.

9 THE COURT: Have a good day.

10 THE WITNESS: Thank you, sir.

11 THE COURT: Call your next witness.

12 MS. CAMPBELL: Your Honor, at this time, we'd ask
13 permission to publish State's Exhibit 47, which is the
14 in-car camera.

15 THE COURT: Is that going to be on there?

16 MS. CAMPBELL: Yes, sir.

17 THE COURT: Okay. While they're setting that up, I
18 want to read a stipulation to you, ladies and gentlemen.

19 Investigator Bryant, come on across. You can set it
20 up.

21 Sometimes during cases, the parties enter into a
22 stipulation. This is common. It happens in all different
23 kinds of cases. What you need to think of a stipulation
24 is as a fact that was agreed upon by both sides and no
25 other proof of this fact is necessary. So this is

1 something that both sides agree is a fact in the case.
2 Both sides have seen this stipulation and agreed to it.
3 I'm going to read to it you now.

4 Okay. Both the State and the Defense stipulate that
5 all of the evidence in this case was properly maintained
6 and handled and that the evidence was not altered or
7 tampered with in any way while in the custody and control
8 of the Columbia Police Department, the Alcohol, Tobacco
9 and Firearms Bureau, also known as ATF, and the State Law
10 Enforcement Division, also known as SLED, and that the
11 evidence in this case was properly submitted to SLED for
12 testing. There are no issues regarding the chain of
13 custody in this case.

14 Okay. All right. You're about ready to go,
15 Investigator Bryant?

16 THE INVESTIGATOR: I'm ready.

17 THE COURT: I'm going to turn down the lights. This
18 is State's Exhibit No.?

19 MS. CAMPBELL: Forty-seven.

20 THE COURT: Forty-seven that you're watching, ladies
21 and gentlemen.

22 (WHEREUPON, State's Exhibit No. 47, the dash cam
23 video, was played for the jury.)

24 MS. CAMPBELL: Your Honor, I think that's sufficient
25 as to what we wanted to show you.

Emmitt Gilliam - Direct by Ms. Campbell

1 THE COURT: Is that it?

2 MS. CAMPBELL: That's all we needed to publish unless
3 the Defense wants more.

4 THE COURT: Okay. All right. Call your next
5 witness.

6 MS. WALKER: The State calls Investigator Gilliam.

7 EMMITT GILLIAM,

8 after being duly sworn, testified as follows:

9 THE CLERK: State your name for the record.

10 THE WITNESS: Emmitt D. Gilliam.

11 DIRECT EXAMINATION

12 BY MS. CAMPBELL:

13 Q Investigator Gilliam, where are you employed?

14 A City of Columbia Police Department.

15 Q How long have you worked there, sir?

16 A I've been there almost -- over eight years.

17 Q Over eight years. How long have you been in law
18 enforcement?

19 A Over 20.

20 Q Prior to coming to the Columbia Police Department,
21 where did you work?

22 A Batesburg-Leesville Police Department.

23 Q Batesburg-Leesville?

24 A Yes.

25 Q And what is your current title with the police

1 department?

2 A I'm an investigator.

3 Q An investigator?

4 A Yes.

5 Q And how long have you been in investigations at the
6 Columbia Police Department?

7 A Three -- almost three-and-a-half years.

8 Q As an investigator with the Columbia Police
9 Department, tell this jury what your duties include.

10 A My duty is to investigate cases, incidents that occur
11 in the city, special violent crimes or any type of crimes
12 of violent -- excuse me, investigate crimes to make sure
13 we do the proper punishment for the person who commits the
14 crime.

15 Q And in your background, did you have some prior
16 experience in the military?

17 A Yes.

18 Q And what did you actually do for the military?

19 A I actually was part of the signal core communication
20 for 14 years. Seven years, I did equipment right
21 specialists, so 21 years total.

22 Q The 21 years total?

23 A That's correct.

24 Q And then you started your law enforcement career?

25 A Yes, ma'am.

1 Q And now you're with the Columbia Police Department?

2 A That's correct.

3 Q I want to turn your attention back to October the
4 13th of 2013. When did you become involved in this case,
5 sir?

6 A Around 2:30 a.m. that morning, I was called up by
7 Sergeant Peagram, and he gave me a brief incident of what
8 occurred down in the Five Points area.

9 Q Were you actually on call that night?

10 A Not really, no.

11 Q But you were called in anyway?

12 A Yes, I responded to that.

13 Q And once you got the call from Sergeant Peagram, who
14 is, I believe, your supervisor?

15 A That's correct.

16 Q Where did you proceed?

17 A Five Points area, 700 block of Harden Street.

18 Q Approximately what time was it when you got there
19 that morning, do you know?

20 A Roughly around 3:05 -- either 3:05 or 3:15 a.m.

21 Q When you got there, tell the jury what you observed.

22 A I observed a crime scene, crime scene officers on the
23 road doing photographs, a patrol unit with Mr. Smith in
24 the back of it and some -- his friend were standing over
25 there by the Exxon.

1 Q His friend, would that be Mr. Ellison?

2 A No, Mr. Ellison was sitting on the sidewalk on the
3 other side. He was detained at that time.

4 Q When you said his friend was sitting on the other
5 side, who was that?

6 A Excuse me, Mr. Ellison was sitting on the side of the
7 road with handcuffs on on the other side across the street
8 from the 600 block of Harden Street.. He was already
9 detained when I got there.

10 Q Had the victim already been transported when you got
11 there?

12 A Yes.

13 Q So when you got there, basically, you had Mr. Smith,
14 who was detained, and Mr. Ellison, who was detained?

15 A That is correct.

16 Q At that point, is that who you knew was involved as
17 far as the police work that had gone on before you got
18 there?

19 A Yes.

20 Q Once you got there, did you make contact in an
21 attempt to talk to anyone?

22 A Yes. Witnesses, as well as Mr. Smith.

23 Q What witnesses did you make contact with that night?
24 You can't say what they said to you, but you can just say
25 who you made contact with?

1 A I talk to Miss Dew, the victim's friend, Mr. Painter,
2 he was the witness that witnessed the shooting,
3 Ms. Bethel, Shante Bethel, I talked to her briefly, and as
4 well, I interviewed Mr. Smith, Michael Juan Smith.

5 Q I want to focus on that at this point. You said that
6 you interviewed Mr. Smith. Where did you actually make
7 contact with Mr. Smith that night?

8 A He was in the back of a patrol car sitting in the
9 Exxon gas station parking lot.

10 Q Once you made contact with him there, was this
11 shortly after you arrived at the scene?

12 A Yes.

13 Q And what was your purpose in attempting to talk to
14 him at that point?

15 A Get his side of what happened, what happened out
16 there.

17 Q And when you were sitting in the patrol car, were
18 y'all being recorded?

19 A I assumed we was being recorded at the beginning --

20 Q Was that your patrol car?

21 A No, it's not. I don't even drive a patrol car.

22 Q And you assumed you were being recorded?

23 A That's correct.

24 Q But, in fact, you were not?

25 A Yes.

1 Q But what, if anything, prior to questioning Mr. Smith
2 did you do?

3 A I advised him of my Miranda rights.

4 Q And what did you use to advise him of his rights?

5 A My little card in my pocket.

6 Q Do you carry that with you?

7 A Yes, ma'am.

8 Q Make sure you do it the same way every time?

9 A Yes, ma'am.

10 Q Are you getting your card?

11 A Yes, ma'am.

12 Q And where were you seated and where was Mr. Smith
13 seated as you advised him of his rights?

14 A Mr. Smith was seated in the back seat of a patrol car
15 and I was standing by the back passenger window.

16 Q Prior to questioning, go through the actual rights as
17 you advised them to Mr. Smith?

18 A Okay. You have a right to remain silent. Anything
19 you say can and will be used against you in a court of
20 law. You have the right to talk to an attorney. Excuse
21 me, you have the right to speak to an attorney and have an
22 attorney present during your questioning. If you cannot
23 afford to hire an attorney, one will be provided for you
24 at the government expense. Knowing and understanding your
25 rights as I have explained them to you, are you willing to

1 answer my questions without any attorney at this time.

2 Q Once you had gone through those rights with him, did
3 you ask him if, in fact, he understood his rights?

4 A Yes.

5 Q Did he indicate whether or not he understood his
6 rights?

7 A Yes, he did.

8 Q At any time, either before you gave the Miranda
9 rights, during the time you gave Miranda rights, or while
10 you were talking to him that night, did you threaten him
11 in any way?

12 A No, ma'am.

13 Q Did you promise him anything to make him talk to you?

14 A No, ma'am.

15 Q Did you beat him?

16 A No, ma'am.

17 Q Did you in any way threaten violence or do anything
18 to make him talk to you?

19 A No, ma'am.

20 Q In your experience as an investigator and a law
21 enforcement officer, did he appear to understand what you
22 were saying?

23 A Yes, ma'am.

24 Q Did he respond in a coherent manner?

25 A Yes, ma'am.

1 Q In fact, did he agree to talk to you?

2 A Yes, ma'am.

3 Q Can you go through specifically what questions you
4 asked him and what he told you once he had been advised of
5 his rights as he should and he agreed to talk to you?

6 A Yes. Mr. Michael Juan Smith stated to me after I
7 advised him of his Miranda rights, he said his
8 girlfriend -- his girl and a couple of cousins, niece,
9 friends were walking in front of him. Some guy approached
10 them, started hollering at them and started a conversation
11 asking was they talking to him disrespectfully. So at
12 that time, he saw one of the guys lift up his shirt and
13 pull out a gun. Saw him pull out a gun and shot at him
14 twice. And --

15 Q Okay. Let me slow you down a little bit because you
16 talk --

17 A Yes.

18 Q Everybody talks fast in this trial. One person -- he
19 said he was approached by some men he didn't know?

20 A That's correct.

21 Q And that they then were disrespecting him or the
22 girls with him?

23 A Yes.

24 Q And then what did one of them do according to Mr.
25 Smith?

1 A One of the guys lift up his shirt and pulled out a
2 gun and shot at him twice.

3 Q And shot at him twice?

4 A That's correct.

5 Q Was he specific about saying shot at him twice?

6 A Yes.

7 Q Once he said that he had been shot at twice, did he
8 indicate what the other person did with the gun?

9 A Yes, ma'am, he indicated that the guy dropped the gun
10 and he picked it up.

11 Q At that point, did he indicate what happened to the
12 person who had pulled up his shirt, pulled out a gun and
13 shot at him twice? Did he indicate where he went?

14 A No.

15 Q After he dropped the gun?

16 A No.

17 Q And again, he's indicating another person was doing
18 this to him?

19 A That's correct.

20 Q So his tory to you was he was the victim?

21 A Yes.

22 Q At that point, did you follow up with some questions?

23 A Yes, I did.

24 Q And specifically, did you ask him whether or not he
25 knew who he was -- the argument -- who he was arguing

1 with?

2 A Yes.

3 Q What did he answer to you?

4 A He said no, he didn't know who the guy was.

5 Q Following up on that, did you ask him some additional
6 questions?

7 A Yes, I did.

8 Q What else did you ask him?

9 A I asked him what direction was he standing. He
10 stated he was facing the fountain.

11 Q Okay. Now, who was facing the fountain? When you
12 say he, we have to differentiate?

13 A Michael said he was facing the fountain.

14 Q Mr. Smith said he was facing the fountain?

15 A Facing the fountain.

16 Q And where did he indicate he was standing?

17 A His back was to the Exxon station.

18 Q His back was to the Exxon station and he's facing the
19 fountain?

20 A That's correct.

21 Q Did he indicate whether the other person who was
22 shooting at him was?

23 A Yeah, he said right in front of him, about
24 three feet.

25 Q Right in front of him. So he indicated that he would

1 be here and that person would be between him and the
2 fountain?

3 A That is correct.

4 Q Did he indicate whether or not that person was facing
5 him when he was shooting at him?

6 A I think so, yes.

7 Q And specifically, did you ask him how far away was he
8 when he shot at him twice --

9 A Yes.

10 Q -- when he was facing him?

11 A Yes. He said three feet.

12 Q Three feet. Did you then ask him an additional
13 question about the shooting?

14 A Yes. I asked him if the guy was shooting at you and
15 he was facing -- the so-called suspect was facing the
16 Exxon, how come this young lady got hit that was behind
17 him. And he said, I don't know. I didn't shoot.

18 Q Did you also ask him how he missed being that close?

19 A Yes. He said he ducked.

20 Q Did you then follow up again on whether Mr. Smith
21 fired a weapon that evening?

22 A Yes.

23 Q What did he tell you?

24 A He didn't shoot.

25 Q And, in fact, what did he tell you about him?

1 A Excuse me?

2 Q Did he indicate that he was the one that was shot at?

3 A Yes, he indicated he was the one that was shot at.

4 Q Did you ask him anything about why he picked up the
5 gun?

6 A Yes, he just said he just picked it up and ran with
7 it.

8 Q And then finally, did you follow up again did he
9 shoot a gun?

10 A Yes.

11 Q What did he tell you again?

12 A I didn't shoot.

13 Q Once you had gotten that information from Mr. Smith,
14 did he then remain in the patrol car?

15 A Yes, he did.

16 Q And at some point in the investigation, you became
17 aware another officer came and actually checked and turned
18 the actual in-car video thing on that we just saw?

19 A Yes.

20 Q And in that video, I cut it off early, but it goes on
21 to show him actually being driven down to CPD
22 headquarters, doesn't it?

23 A Yes, it does.

24 Q And that was by Officer McLaughlin, I believe?

25 A Yes.

1 Q But in the car, it does show at one point he actually
2 starts talking about what happened that night?

3 A Yes.

4 Q Was that reiterated in what he had told you, they
5 dropped the gun and I picked it up?

6 A Yes, ma'am.

7 Q So that was the same story at that point that he had
8 told you?

9 A Yes.

10 Q At any point, did he tell you that he didn't mean to
11 shoot?

12 A No.

13 Q In fact, what did he tell you?

14 A He just said he didn't shoot.

15 Q Were other witnesses interviewed by other
16 investigators that night?

17 A Yes, ma'am.

18 Q Including a young woman named Tiffany Roper?

19 A Yes.

20 Q And at a later time, did you find out that the name
21 she had given you was, in fact, false?

22 A That is correct. Actually, during one of the
23 interviews with Ms. Bethel, Shante Bethel, she gave us her
24 real name. Actually, I pulled the DMV picture and had her
25 sign that is Ms. White's real -- I mean, Ms. White's alias

1 name was Tiffany Roper.

2 Q Okay. And that night, was the Defendant then
3 transported down to the Alvin S. Glenn Detention Center?

4 A Yes.

5 Q And later that night -- or I guess that morning, did
6 you then proceed to the hospital?

7 A Yes.

8 Q And what were you checking on at the hospital?

9 A To check the status of the victim, Ms. Childress.

10 Q And what day of the week was this?

11 A This is Sunday morning, early Sunday morning of the
12 13th.

13 Q So it would have been that Saturday night into that
14 Sunday morning?

15 A That is correct.

16 Q The next day, that Monday, did Ms. Bethel come back
17 into police headquarters?

18 A Yes, ma'am. I called and asked if she would come
19 back to talk to us.

20 Q And again, you can't say what she said, but did you
21 then interview her again?

22 A Yes, I did, because we had some follow-up questions
23 at the time.

24 Q And at this point, are you still gathering
25 information?

1 A Yes, ma'am.

2 Q And originally in this case, what was the Defendant
3 originally charged with?

4 A Assault and battery of a high and aggravated nature.

5 Q And at that point, did you have all the information?

6 A No, I didn't.

7 Q And, in fact, as part of it, is it unusual to go
8 ahead and charge and the charge can later be downgraded or
9 upgraded?

10 A Yes.

11 Q Depending on the circumstances and what your
12 investigation leads to?

13 A Yes.

14 Q The night before, just to be clear, you had
15 interviewed Mr. Painter?

16 A Yes.

17 Q And he was basically an independent person in this
18 whole thing?

19 A That is correct.

20 Q So did the information that Mr. Smith told you
21 contradict not only the information he said earlier, but
22 the information that you got from the witnesses?

23 A Yes.

24 Q I want to turn your attention to the 16th. Did you
25 have an opportunity to interview Mr. Ellison, Ryan Ellison

1 or Rondo Ellison?

2 A Yes, I did.

3 Q At that point, were you able to get a statement from
4 him?

5 A Yes. We got a statement from him.

6 Q Later that day, did you also review video that was
7 collected?

8 A Yes.

9 Q And in this case, the video that was collected was
10 from Five Points; is that correct?

11 A That is correct.

12 Q At the time, were y'all able to get all the relevant
13 cameras that reported to show everything?

14 A Pretty much, yes.

15 Q And since then, there have been more cameras added?

16 A Yes.

17 Q So say if somebody went to the Five Points area in
18 the last couple of days, there would be actually more
19 cameras there now than there were then?

20 A Yes.

21 Q But y'all were able to get whatever footage that
22 purported to show what you knew of?

23 A Yes, ma'am.

24 Q On the 18th of October, did you go back and
25 reinterview Ms. Bethel again?

1 A Yes, ma'am.

2 Q And why were y'all interviewing Ms. Bethel over and
3 over?

4 A The reason why, her statement was -- some things she
5 mentioned in her statement, we went through the video and
6 went back through it three or four times with different
7 angles of the camera. We didn't see certain persons she
8 said was with them. At that time, we just -- I wanted to
9 make sure we were right, we were looking at the right
10 thing.

11 Q Because you wanted to make sure you were doing your
12 job right?

13 A That's correct.

14 Q And at that point, you can't say what it was, did she
15 give you some additional information that was important to
16 your case?

17 A Yes.

18 Q On that day, did you also have the gunshot residue
19 kits that were taken from Mr. Smith and Mr. Ellison at the
20 scene transported to SLED for testing?

21 A Yes.

22 Q As well as the gun and the ammunition and the shell
23 casing that was recovered?

24 A That is correct.

25 Q That day, also, after reviewing the videos, did you

1 then decide or ask that certain photographs of certain
2 people in this case be released?

3 A Yes.

4 Q And what was the purpose in that?

5 A We didn't know the identification of the three
6 individuals, who they was, so we released it to the media
7 so we could find out who they were and get their side of
8 what happened out there.

9 Q Basically, the three individuals you're talking about
10 at this point are Mr. Tucker, Mr. Daquan Samuel and
11 Mr. Woodard?

12 A Yes.

13 Q You didn't know their names at the time?

14 A No, I didn't.

15 Q And the purpose in releasing that to the media was
16 just to see if you could get somebody to identify them?

17 A That is correct.

18 Q And it worked?

19 A Yes.

20 Q On the 21st of October, did y'all receive the lab
21 report and the results of the gunshot residue?

22 A Yes.

23 Q Was that also significant in your investigation?

24 A Yes, it was.

25 Q And that day, also, did you get contacted by some

1 people who were providing you information about the three
2 individuals whose pictures you had released?

3 A Yes.

4 Q And indicated that they wanted to cooperate?

5 A Yes.

6 Q Did you make contact with them?

7 A Yes, I did.

8 Q And did they agree to come and talk to you?

9 A Yes.

10 Q On the 22nd, did they come down and both talk to you?

11 A That is correct.

12 Q On October 23rd, were you able to determine what
13 Tiffany Roper's real name was?

14 A Yes, ma'am.

15 Q And at that point, were you -- did make attempts to
16 find her?

17 A We made attempts to find her. And after that, we
18 issued a warrant for her arrest for false information to
19 police.

20 Q At that point, was it important for you to talk to
21 her again?

22 A Yes.

23 Q Later, did you withdraw that warrant?

24 A Yes, I did.

25 Q Why was that, sir?

1 A Well, after we got -- we talked to the mother. The
2 mother agreed to bring her to the police department and
3 speak to us.

4 At that time, out of respect to the mother, I just
5 went ahead and withdrew the warrant because she said her
6 daughter was scared.

7 Q In fact, when you took a statement from her, she also
8 signed off on that, the mother signed as well?

9 A Yes.

10 Q Did you -- after talking to Ms. White, then try to
11 make contact with Ryan Ellison again?

12 A Yes, I did.

13 Q And did he end up coming down and talking to you
14 again?

15 A No, he said he had to talk to his mother before he
16 came -- he get back with me.

17 Q Then on October 25th, did you make contact with a
18 Mr. Woodard?

19 A Yes, he came into the police department.

20 Q And he came to the police department?

21 A Yes.

22 Q And was he able to give you a statement?

23 A Yes.

24 Q And then I believe some time in November, were you
25 contacted by the solicitor's office about the appropriate

1 level of charges?

2 A Yes, I was.

3 Q And that would be for the attempted murder?

4 A That is correct.

5 Q And then there were the four -- or five, excuse me,
6 gun charges?

7 A Yes.

8 Q In the videos in this case on the timestamps -- and
9 you reviewed a number of the videos?

10 A Yes, ma'am.

11 Q Are they all exactly the same time or are they off a
12 little?

13 A They're off a little. I think the one from the
14 Teriyaki Grill is off an hour. If I'm correct, because of
15 daylight savings time.

16 Q And this Five Points area, is that here in Richland
17 County?

18 A Yes, it is.

19 Q The Defendant at the time, did he indicate an address
20 where he was living?

21 A From his ID, I believe somewhere on Broad River,
22 Seminole Road. I'm not exactly sure of the address.

23 Q And that's off Broad River Road?

24 A That's correct.

25 Q There's been a question about -- you didn't know the

1 identity of the three people. Were you aware or did you
2 become aware that Donnell Woodward was actually arrested
3 for disorderly conduct later that night?

4 A No. I knew he was arrested for disorderly conduct,
5 but did not have any knowledge that he was a part of this
6 case.

7 Q Was that before you had a chance to review the video
8 and everything else?

9 A That's correct.

10 Q When did you actually become aware that he could be
11 involved in this case?

12 A I think it was like maybe a day or two later that he
13 was involved, but the whole problem was they didn't know
14 his name. In the log for the jail who was coming up for a
15 bond that morning, they didn't have his name on it.
16 Besides, I was looking for somebody with dreads instead of
17 short hair and a ball cap.

18 Q The Library club, it's been a little unclear, where
19 is it located in relation to this actual crime scene?

20 A The Library club is in the 800 block of Harden
21 Street.

22 Q And is it actually across Greene Street, but on
23 Harden Street from the fountain?

24 A Yes.

25 Q And what type of establishment was it?

1 A It was a hip hop club.

2 Q Is it still open?

3 A No.

4 Q In fact, was it shut down?

5 A Yes.

6 Q Did you also check to see whether this gun was
7 stolen?

8 A Yes, we did. We ran it through NCIC and it came back
9 stolen.

10 Q And that night, he was also charged with unlawful
11 possession of a weapon. Did he have a concealed weapons
12 permit?

13 A No, he did not.

14 Q The clothing that he was wearing that night, did
15 y'all make any attempts to collect it?

16 A Yes, we did.

17 Q And when was it actually collected, do you recall?

18 A That morning when he got to the county jail.

19 (WHEREUPON, State's Exhibit Nos. 84 through 87
20 were marked for identification only.)

21 BY MS. CAMPBELL:

22 Q I'm going to show you what's been mark as State's
23 Exhibit No. 87, first ask if you recognize that?

24 A That is Michael's shoes.

25 Q And State's Exhibit No. 86?

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1 A That is his shirt.

2 Q State's Exhibit No. 85?

3 A Pants.

4 Q And then finally, State's Exhibit 84?

5 A The jacket.

6 Q In fact, are those the clothes that were collected
7 from him and why did you collect them?

8 A Because we believed he was the shooter of the gun and
9 we believed that gunpowder residue was on his clothing as
10 well. So that's why we collected it.

11 Q First, you test his hands because that's more
12 probative?

13 A Yes.

14 Q But then if you hadn't gotten anything back, you
15 would have tested the clothes?

16 A Yell.

17 Q But in this case, the gunshot residue case came back
18 on his hands?

19 A Yes.

20 MS. CAMPBELL: Your Honor, at this time, we'd offer
21 State's Exhibits 84 through 87 into evidence.

22 MS. ZMROCZEK: Without objection, Your Honor.

23 (WHEREUPON, State's Exhibit Nos. 84 through 87
24 were admitted into evidence.)

25 BY MS. CAMPBELL:

1 Q And in the video, can you clearly see the Defendant
2 wearing this jacket?

3 A Yes.

4 Q And under this jacket, can you clearly see he's
5 wearing this shirt?

6 A Yes.

7 Q And the tags are still on these, but that's how they
8 were when you got them?

9 A Yes.

10 Q And then were these the pants that he was wearing
11 that night?

12 A Yes, ma'am. And again, this is the tag that was on
13 it.

14 Q There were also two phone calls that were entered
15 into evidence here today?

16 A Yes.

17 Q And they were published to the jury?

18 A Yes.

19 Q Were those significant to your investigation?

20 A Yes, ma'am.

21 Q Why?

22 A One where he talked about self-defense -- or his
23 girlfriend talked about it. He didn't talk about
24 self-defense. The only thing we should charge him with
25 was the unlawful carrying of a weapon. Then his

1 girlfriend, Shante Bethel, says self-defense.

2 And then another phone call where he says, talking to
3 an unknown person, and it was said, Nigger, you saw them
4 niggers down there. That's the reason you did it. I
5 might have the wording wrong, but, basically, Nigger, you
6 did that because of a nigger, you're a fool. He said that
7 twice. He said, Chill, chill. We on the phone.

8 Q So that was significant to you because he didn't want
9 to talk about it on the phone?

10 A That's correct.

11 Q The part about you only shot because you saw him?

12 A Right.

13 Q I won't say the rest of it. Was there also a part
14 talking about gunshot residue that was significant to you?

15 A That is correct. He said he was told by the public
16 defender to put in his hands in the pocket -- if you put
17 your hands in your pocket and rub them around, that will
18 take some of the evidence away. You can't get no
19 gunpowder on his hand.

20 Q Is that significant to you as part of your
21 investigation?

22 A Yes.

23 Q What does gunshot residue indicate?

24 A Yes, that he shot.

25 (WHEREUPON, State's Exhibit Nos. 90 through 95

1 were marked for identification only.)

2 BY MS. CAMPBELL:

3 Q I'm going to show you a number of blowups of the
4 area, State's Exhibit 90 through 95. Are these various --
5 actually, I Googled maps that also show the different
6 areas we're talking about?

7 A Yes, ma'am.

8 MS. CAMPBELL: Your Honor, at this time, we'd offer
9 them into evidence.

10 THE COURT: What numbers?

11 MS. CAMPBELL: Ninety through 95.

12 MS. ZMROCZEK: I can't -- I just haven't seen them.

13 No objection, Your Honor.

14 THE COURT: Okay.

15 (WHEREUPON, State's Exhibit Nos. 90 through 95
16 were admitted into evidence.)

17 MS. CAMPBELL: Your Honor, may the witness step down?

18 THE COURT: Sure.

19 BY MS. CAMPBELL:

20 Q If you'll come over on this side, and keep your voice
21 up if you don't mind. I'm going to show you State's
22 Exhibit No. 90. Is this an overhead view, just to help
23 orient everyone?

24 A Yes.

25 Q And what does this show, sir?

1 A The Harden area, Five Points area.

2 Q This is Harden Street here?

3 A That's correct.

4 Q Can you see the Exxon station?

5 A Yeah, right here.

6 Q Let me get you a pointer so you can show the jury.

7 A Right here.

8 Q Right here. And the area where a lot of this was
9 taking place was right in this area?

10 A That is correct.

11 Q And then the fountain where Martha Childress was
12 located is right here; is that correct?

13 A That's correct.

14 Q And then if you cross Greene Street, which is here,
15 and you go on down, where is the actual Library club?

16 A It's down here on the same side.

17 Q On the same side, but you cross Greene Street?

18 A That's correct.

19 Q There's also mention of -- and I will show you
20 State's Exhibit 91 -- where the Defendant was actually
21 apprehended that night. It was at a pizza place. Do you
22 see that on here?

23 A Yes, right here.

24 Q Right here. It's now called?

25 A Rio's Pizza and Bagels.

1 Q Because this is an old map. And at the time, they
2 said there was a slight indentation in an area there --

3 A Yes.

4 Q -- where he was apprehended?

5 A Yes.

6 Q So where is the Exxon and the fountain in relation to
7 where he was captured when he was running from the scene?

8 A The Exxon is right here and he was captured right up
9 in here in the doorway.

10 Q And this is the fountain here?

11 A That is correct.

12 MS. CAMPBELL: This is a street view of State's
13 Exhibit No. 92, Your Honor.

14 BY MS. CAMPBELL:

15 Q Looking down where?

16 A Looking southbound on Harden Street and here is the
17 Exxon gas station to your right over here.

18 Q So this --

19 A This is the fountain right here.

20 Q And this is the corner where you see the initial
21 exchange?

22 A Yes.

23 Q Between the two groups?

24 A Yes.

25 Q And if you were to cross the street and go this way,

1 that's where it took place?

2 A Yes.

3 Q State's Exhibit No. 93, is this the opposite view?

4 A Yes. This is the Exxon. It's heading northbound.

5 Q So if the altercation took place here, it would be
6 down here?

7 A That's correct.

8 Q And then the pizza place would be further up?

9 A Exactly, yes.

10 Q State's Exhibit No. 94. Again, is this an aerial
11 view?

12 A Yes.

13 Q Of just the Exxon?

14 A And the fountain.

15 Q Finally State's Exhibit No. 95, where would this view
16 come from?

17 A Across the street from the Teriyaki Grill facing
18 east. It was facing east -- I'm sorry, west.

19 Q And what is this?

20 A That is the Exxon and this is the fountain.

21 Q And that's the fountain back there?

22 A Yes.

23 Q And there is an actual street here. What is that
24 street?

25 A I'm not sure the name of that street. I think it's

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1 Saluda. I'm not sure.

2 Q And it kind of runs through?

3 A That's correct, back to Blossom.

4 Q You were able to interview pretty much all the
5 persons of interest in this case?

6 A Yes.

7 Q And based on your entire investigation, who was
8 charged in this case for this attempted murder?

9 A Michael Juan Smith.

10 Q Do you see him here in the courtroom?

11 A Yes, ma'am, seated at the Defense table.

12 Q And is he the person that said the other guy shot at
13 him, dropped the gun and then he picked it up?

14 A Yes, ma'am.

15 Q Can you point him out to the jury?

16 A (The witness indicated.)

17 Q What's he wearing?

18 A White shirt. I can't see the tie he has on.
19 Purple-looking tie.

20 MS. CAMPBELL: May the record reflect he has
21 identified the Defendant?

22 THE COURT: Cross-examination?

23 CROSS-EXAMINATION

24 BY MS. ZMROCZEK:

25 Q Investigator Gilliam?

1 A Yes, ma'am.

2 Q You're the lead investigator in this case?

3 A Yes, ma'am.

4 Q It's your job to tell this jury that you collected
5 and reviewed all the evidence, yes?

6 A Yes.

7 Q Let's start with the videos?

8 A Uh-huh.

9 Q How many videos did you view?

10 A It's hard to say. We wanted to make sure we had
11 every angle around that area. Some I didn't see, so we
12 called back to verify that every camera that was in that
13 600, 700 block -- correction, 600, 700, and 800 block of
14 Harden we got covered.

15 Q And what times did you request?

16 A I requested from, I think it was 1:45 to 3:00. I'm
17 not exactly sure what time.

18 Q And you received those?

19 A Yes.

20 Q And you personally reviewed each and every one of
21 them?

22 A Yes.

23 Q And some of them are hard to see?

24 A That is correct.

25 Q And tell the jury what you did to enhance those or to

1 help make a certain area more visible?

2 A What do you mean what I do to enhance? The only
3 thing I do is put it on a bigger screen TV on -- one on
4 each camera.

5 Q Okay. Didn't you send some of the videos to Joe West
6 at SLED to review?

7 A Yes.

8 Q When did you do that?

9 A I'm not exactly sure of the date, but I did send some
10 over there. I can't remember the date exactly.

11 Q And he did that for you?

12 A Yes, he did.

13 Q And he generated a report for you?

14 A Uh-huh.

15 Q Yes?

16 A Yes.

17 Q And you turned that report over to the solicitor's
18 office?

19 A That's correct.

20 Q And they turned it over to me?

21 A Yes.

22 Q Several, several, several disks?

23 A Yes.

24 Q One entitled suspect that fired first shot at ground?

25 A Uh-huh.

1 Q I'm sorry?

2 A I said uh-huh. Yes.

3 Q Okay. It contained one, two, three, four, five
4 photos?

5 A Uh-huh.

6 Q Who's depicted in those photos? Tell this jury.

7 A Who is what now?

8 Q Who is depicted in those photos as the suspect that
9 fired first shot?

10 A I need to see those pictures so I can tell you
11 because...

12 MS. ZMROCZEK: Your Honor, may I approach?

13 THE COURT: Sure.

14 THE WITNESS: These are the three witnesses. I
15 didn't say they were the ones that first shot.

16 BY MS. ZMROCZEK:

17 Q Can you read the title of them?

18 A Suspect that fired first shot.

19 Q I'm sorry?

20 A Suspect that fired the first shot. I didn't send
21 that.

22 Q You didn't send that to Joe West?

23 A No, ma'am. I hand delivered mine.

24 Q You don't know who generated this?

25 A I'm not exactly sure how that came about. I hand

1 delivered mine. I don't think I put down suspect that
2 fired the first shot because we -- by that time, we should
3 have already interviewed those three individuals. I can't
4 say 100 percent for sure. No, I didn't send that.

5 Q Would that be a question for Joe West?

6 A More than likely.

7 Q Okay. Who assisted you in the investigation in this
8 case?

9 A Who assisted me?

10 Q Yes.

11 A Pretty much couple guys in the department.

12 Investigator Dow, he also assisted me because he was out
13 there as well.

14 Q Anybody from ATF?

15 A Yes, Investigator Brian Vanhouten.

16 Q I want to go back to -- you were called out on the
17 early morning hours of the 13th, I think you said at 2:30?

18 A Yes.

19 Q And you told this jury about a statement that Michael
20 made to you?

21 A That is correct.

22 Q As an investigator for eight years and in the
23 military and prior to that, Batesburg-Leesville, you are
24 trained to recognize if someone is under the influence of
25 drugs or alcohol?

1 A Somewhat, yes. Yes.

2 Q And it's your testimony that Michael Smith was not
3 under the influence of drugs or alcohol?

4 A I couldn't smell it. He was coherent to me.

5 Q What other signs do you look for?

6 A He was sitting in the back of a patrol car. He
7 couldn't get up and walk around, ma'am.

8 Q Did you notice that his eyes were red?

9 A Didn't look red to me.

10 Q And you took out your card and you read him his
11 Miranda rights?

12 A Yes, ma'am.

13 Q And typically, you have a statement form where they
14 get to write out their statement?

15 A Uh-huh.

16 Q And they sign it?

17 A Yes.

18 Q And you also have an audio recorder?

19 A Not necessarily, ma'am. Audio recording is not
20 required.

21 Q Not required. You had one that night, though?

22 A No, ma'am. No, ma'am. When he got back to the
23 office, that's when I pulled my recorder because it was at
24 the office.

25 Q It's your testimony you did not have a recorder that

1 evening?

2 A I did not have a recorder that evening.

3 Q Okay.

4 A Only thing we had was the camcorder from the car.

5 Q Do you recall taking an interview statement with
6 Michael Painter Thompson?

7 A Yes.

8 Q Did you interview him that evening?

9 A Yes, I did interview him that morning, yes.

10 Q Did you interview him at 3:18 --

11 A Yes.

12 Q -- a.m.?

13 A Yes.

14 Q Sorry, that morning. Did he fill out a statement
15 form?

16 A Yes, he did.

17 Q And he signed it?

18 A Yes.

19 Q And you signed it?

20 A That's correct.

21 Q And you provided that to me through discovery?

22 A Uh-huh.

23 Q Let me see if I will can find it. You also provided
24 me with an audio recording of his statement?

25 A It might have been later, but I don't think I did one

1 then. If that's the case then, I know one of the guys
2 tried to set the camcorder up to take their statements
3 then.

4 Q Would it refresh your recollection to listen to the
5 recording?

6 A Yes, yes.

7 MS. ZMROCZEK: Your Honor, at this time, we would
8 like the witness to have an opportunity to listen to the
9 recording.

10 THE COURT: Okay. Whoa, whoa, whoa.

11 All right. Step back to your jury room. Do not
12 discuss the case. We'll be back with you in just a few
13 minutes.

14 (WHEREUPON, the jury left the courtroom at 4:56
15 p.m.)

16 THE COURT: All right. What is this?

17 MS. ZMROCZEK: It's an audio recording of the
18 interview that evening.

19 THE COURT: Okay. And what's your position on this?

20 MS. CAMPBELL: I'm more than happy for that to be
21 played for the jury.

22 THE COURT: Okay. I don't -- do y'all have some
23 agreement where she gets to use that thing every single
24 time she wants to?

25 MS. CAMPBELL: No, sir. We don't object to this one.

1 There may be other --

2 THE COURT: I'm talking about the TV.

3 MS. ZMROCZEK: I can bring my own.

4 THE COURT: Okay. All right. Bring them back in.

5 You can get it set up. Thank you.

6 MS. CAMPBELL: Your Honor, I would just ask that it
7 be played in its entirety.

8 THE COURT: Okay.

9 MS. CAMPBELL: Your Honor, one thing we might want to
10 take up while they're out, we specifically went through
11 and was very specific with this officer to make sure that
12 he did not mention the fact that he was transported down
13 to headquarters and at that point he was advised of his
14 rights and he invoked. The plan --

15 THE COURT: Hold on one second, Mr. Dye.

16 MS. CAMPBELL: She has now asked him why he didn't
17 take a written statement at that point. His plan was
18 after he was advised with the normal piece of paper and
19 everything was to take his written statement. I would
20 submit she's opened the door now to him invoking. I
21 just -- she can't give the inference that they didn't do
22 what they were supposed to, but then when they did, he
23 exercised his rights.

24 MS. ZMROCZEK: Your Honor, if I may?

25 THE COURT: Yes.

1 MS. ZMROCZEK: It's not an inference. I specifically
2 asked if he had a recorder and why he didn't record --

3 THE COURT: And you also asked where his statement
4 form was and that's how you were supposed to do it and all
5 of those questions.

6 MS. ZMROCZEK: Right. And he stated that he didn't
7 have those and they were at the office.

8 THE COURT: Right. So you've created the implication
9 in the jury's mind that he didn't do his job in regards to
10 properly documenting the interview that was taken from the
11 Defendant. When he took the Defendant to headquarters
12 later that day, the Defendant invoked, which can't come in
13 under Doyle vs. Ohio.

14 The two issues are contradictory with each other.
15 You've created an impression in the jury's mind that is
16 not factually accurate because of him attempting to assert
17 a Constitutional privilege, which he has the right to do.

18 So help me, how I'm supposed to explain that to the
19 jury while protecting your client's rights?

20 MS. ZMROCZEK: If I may have a moment to confer with
21 my client, Your Honor?

22 THE COURT: Sure.

23 MS. ZMROCZEK: Thank you.

24 (Pause.)

25 MS. ZMROCZEK: Your Honor, I have spoken with my

1 client, and he has agreed that the impeachment value is
2 more important than him being allowed to assert his
3 Constitutional rights to remain silent.

4 THE COURT: So you're okay with me getting -- or them
5 getting into the fact that he was taken to headquarters
6 and invoked?

7 MS. ZMROCZEK: Yes, that's what he said, Your Honor.

8 MS. CAMPBELL: I think for PCR purposes, we need to
9 inquire of the Defendant because this is bound to come up.

10 THE COURT: I mean, I don't even understand how he
11 made to it this point. The statement was admitted as
12 voluntary.

13 MS. CAMPBELL: Correct. And there was no dispute.

14 MS. ZMROCZEK: Your Honor, it goes to the integrity
15 of the investigation.

16 THE COURT: Okay. All right.

17 Mr. Smith, stand up for me. Raise your right hand.

18 MICHAEL JUAN SMITH,

19 after being duly sworn, testified as follows:

20 THE COURT: Okay. Do you understand what's going on
21 here.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. In your own words, explain what's
24 going on. There's no wrong answer. I just want to see
25 how --

1 THE DEFENDANT: Well, it's my understanding when I
2 was with the investigator and he didn't have the audio,
3 you know what I'm saying, and whatever he said -- like
4 whatever he said that I said, you know what I'm saying,
5 but when we got down to headquarters he tried to record
6 while revoking my rights.

7 THE COURT: All right, sir. Let me explain it in my
8 own words. Okay. Now, we're going to have to have a
9 conversation sometime tomorrow any way, but the way -- if
10 you don't understand me, just say Judge, that doesn't make
11 any sense to me.

12 THE DEFENDANT: Okay.

13 THE COURT: You're not going to bother me or I upset
14 me.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: I just want to make sure that you
17 understand what I'm saying and I understand what you're
18 saying. So throughout this process, you have a
19 Constitutional right to remain silent. Does that make
20 sense?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. No one can force you to take the
23 witness stand. No one is going to make you. I'm not
24 going to make you. Your lawyer is not going to make you.
25 That's a right that belongs to each and every single one

1 of us as American citizens. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. So my understanding -- now,
4 listen, the only thing I know about your case is what I've
5 heard in this courtroom, okay. So I haven't read all
6 these documents and all that kind of stuff. I'm just
7 hearing it as I go.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: So my understanding is that Investigator
10 Gilliam's testimony, somebody stop me if I'm wrong, is
11 that -- his testimony is that he had a conversation with
12 you in a patrol car the night/the morning -- in the early
13 morning hours. And I'm not saying he did or he didn't,
14 okay.

15 I was a criminal defense attorney longer than I was
16 anything else in my life, okay. I'm not saying he did
17 have that conversation. I'm just saying that's what he's
18 testifying to, okay?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And according to him, he didn't audio
21 record it or have you write it down and sign it, okay?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. And then his testimony is
24 also then later in that morning, he took you to
25 headquarters and attempted to get another statement from

1 you or to record the statement that you gave earlier and
2 you invoked. So he reread you your Miranda warnings, says
3 you have the right to remain silent, nothing you say can
4 be used against you. You know what I'm talking about,
5 right?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. And then at that point in time, I
8 don't know what you invoked. You either said I don't want
9 to talk or I want a lawyer or I'm not going to answer your
10 questions, but in some way, you said something that
11 triggered for him to stop talking to you. Does that make
12 sense?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. Now, again, I'm just saying that's
15 what his testimony would be, okay. I wasn't there. You
16 and he were there. Fair enough?

17 THE DEFENDANT: Yeah.

18 THE COURT: All right. So because you have a right
19 to remain silent, okay, all of us do, everybody in the
20 room does. Because you have a right to remain silent and
21 that cannot be used against you and the jury cannot
22 consider that against you unless you testify, of course,
23 then I would normally never let them say -- never let any
24 police officer say yeah, I tried to talk to Michael Smith
25 and he told me he wanted a lawyer or he didn't want to

1 talk, okay.

2 So there's this case done by the United States
3 Supreme Court called Doyle vs. Ohio that says the
4 prosecution cannot comment on or introduce evidence that a
5 criminal defendant invoked one of his Constitutional
6 rights to remain silent or said I want a lawyer or
7 something like that. Usually that's like capital A,
8 everybody stop, send the jury out of the room. You can't
9 talk about that, okay?

10 THE DEFENDANT: Okay.

11 THE COURT: Does that make sense?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You follow me so far?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. Now, Ms. Zmroczek is attempting to
16 impeach Investigator Gilliam on his investigation
17 techniques, for lack of a better term, and wants to get
18 into -- or has already gotten into the fact that he didn't
19 write down what you said in the car or that -- he didn't
20 even write it down that -- you didn't write it down. It
21 wasn't a written statement and he could have recorded it.
22 I assume that's what's going to come out, okay.

23 THE WITNESS: Yes, sir.

24 THE COURT: Okay. Now, the prosecution's argument is
25 well, that's not a fair statement. That's misleading the

1 jury because Investigator Gilliam did try to take that
2 information down so many hours later and you invoked,
3 which you have the right to do.

4 THE CLERK: Yes, sir.

5 THE COURT: Normally, I wouldn't let them hear that
6 at all. What Ms. Zmroczek is telling me is that you're
7 okay with the jury knowing that later that morning you
8 invoked your Constitutional rights in front of
9 Investigator Gilliam.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. Are you sure about that?

12 THE DEFENDANT: I'm sure.

13 THE COURT: Has anybody threatened you to make that
14 statement?

15 THE DEFENDANT: No, sir.

16 THE COURT: Forced you?

17 THE DEFENDANT: No, sir.

18 THE COURT: Promised you?

19 THE DEFENDANT: No, sir.

20 THE COURT: Coerced you?

21 THE DEFENDANT: No, sir.

22 THE COURT: Are you under the influence of any
23 alcohol or drugs?

24 THE DEFENDANT: No, sir.

25 THE COURT: Do you understand what you're doing?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you believe it's in your best
3 interest?

4 THE DEFENDANT: No, sir.

5 THE COURT: Do you have any questions for me? Do you
6 want to talk through it with me at all?

7 THE DEFENDANT: No, sir.

8 THE COURT: Are you sure?

9 THE DEFENDANT: I'm sure.

10 THE COURT: All right. Bring them back.

11 MS. CAMPBELL: Thank you.

12 (WHEREUPON, the jury entered the courtroom at
13 approximately 5:07 p.m.)

14 THE BAILIFF: The jury is present, Your Honor.

15 THE COURT: Okay.

16 Ms. Zmroczek, you may continue.

17 MS. ZMROCZEK: Thank you.

18 CONTINUED CROSS-EXAMINATION

19 BY MS. ZMROCZEK:

20 Q You said that hearing the statement -- recording
21 would refresh your recollection?

22 A I remember now.

23 Q Okay.

24 A I apologize to the jury. The reason why we didn't
25 audio record him is because we had -- when I came to talk

1 to him, I briefed the person in the car that I wanted to
2 do it on the camcorder, the car camera. That's the reason
3 why I didn't want to double record myself. Once I started
4 advising him of the rights and everything, I expected it
5 to be on the car camera. But once we got the car camera
6 down a couple days later, it was not there.

7 Q But you did have your recorder that evening?

8 A Yes, yes. That's my apology. I'm sorry for that.

9 MS. ZMROCZEK: Your Honor, we can move on.

10 Apparently --

11 THE COURT: Okay. Great. You're getting your
12 workout today.

13 THE INVESTIGATOR: Yes, sir.

14 THE COURT: Okay.

15 BY MS. ZMROCZEK:

16 Q You spoke with several witnesses?

17 A Yes.

18 Q Investigator Vanhouten spoke with those witnesses as
19 well?

20 A Yes.

21 Q He reviewed the videos with you?

22 A Yes.

23 Q You know what's on those videos?

24 A Pretty much.

25 Q You told witnesses that you were interviewing that

1 you saw what certain actions they were doing on videos?

2 A That's correct.

3 Q You told Mr. Tucker that you saw his cousin drop the
4 gun?

5 A I can't honestly say I said drop the gun. We were
6 trying to figure out where the light was coming from
7 because we thought that might have been shots fired. But
8 after we kept looking at it and looking at it, it's like
9 cars were passing by at a certain spot or whatever, that
10 light showed, that little flash.

11 MS. CAMPBELL: Your Honor, may we approach?

12 THE COURT: Yes, ma'am.

13 (WHEREUPON, a bench conference was held in the
14 presence of the jury, but outside of the hearing of the
15 jury.)

16 THE COURT: All right. Okay. All right. In the
17 interest of judicial economy, we're going to go ahead and
18 stop for the evening. I don't want -- I don't ever want
19 an attorney to feel constrained by your level of comfort
20 and/or my level of comfort. Okay. Does that make sense?
21 So I don't want -- and Ms. Zmroczek has and Mr. Smith has
22 an absolute Constitutional right to confront and
23 cross-examine this witness. And I don't want them to feel
24 constrained to shorten it because it's the end of the day
25 and we've been here and we've been going long, anything

1 like that. So I'm going to go ahead and stop.

2 Investigator Gilliam, you're not allowed to discuss
3 your testimony with anybody in any way, shape, or form.
4 Tomorrow morning, you need to be right here ready to go.

5 But that way, no one will feel like anybody has
6 hampered them or anything else. You all don't want to
7 make anybody feel like that and I don't either. So I
8 think that's the easiest thing to do. We can continue his
9 cross-examination in the morning. He won't discuss his
10 testimony with anybody.

11 Now, I'm about to release you for the evening. Do
12 not watch any media, news accounts, TV news, internet, do
13 any research, phones, Facebook, Twitter, anything like
14 that, anything about the case in any way, shape, or form
15 to get or send information. Do not discuss the case with
16 anyone. Do not let anyone discuss the case with you.
17 Keep an open mind. You still have not heard all the
18 testimony in this case. The lawyers haven't made their
19 closing arguments and I haven't told you what the law is
20 as it pertains to the issues in the case, so keep an open
21 mind.

22 Thank you for your hard work today. You've done a
23 very good job. We'll see you tomorrow morning. Let's
24 start at nine o'clock tomorrow morning.

25 Everyone remain seated while the jury is excused.

1 Thank you.

2 (WHEREUPON, the jury left the courtroom at
3 approximately 5:13 p.m.)

4 THE COURT: Okay.

5 MS. WALKER: Thank you, Your Honor.

6 THE COURT: Anything y'all want to take up?

7 MS. GARFIELD: Oh, I just -- we just need to talk
8 about scheduling.

9 THE COURT: All right. Come on up.

10 (WHEREUPON, Court was adjourned for the day to
11 be reconvened on Friday, August 14, 2015.)

12 FRIDAY, AUGUST 14, 2015

13 THE COURT: Good morning. Everybody ready to go?

14 MS. CAMPBELL: Your Honor, the only thing we'd ask
15 clarification for before she goes any further, as far as
16 going into the federal charges, what he was convicted of
17 over there or any of that, we would submit that is not
18 admissible with any witness and we would just ask for a
19 ruling from the Court.

20 THE COURT: Okay.

21 MS. ZMROCZEK: I thought we had discussed this
22 earlier and I had agreed and told them that I was not
23 going to discuss federal charges.

24 MS. CAMPBELL: Okay.

25 MS. ZMROCZEK: Your Honor, I do -- I know that this

1 trial has gone on a long time, and I'm trying to -- I
2 questioned two witnesses yesterday. I'm trying to move
3 this along, but at the same time, my client is certainly
4 entitled to his defense. They said they e-mailed me phone
5 calls yesterday, which I'm sure they did, but I didn't
6 receive them, so I asked them to put them on a disk and
7 give them to me. They said they were going to do that
8 this morning, so I will need an opportunity to listen to
9 those.

10 THE COURT: Okay.

11 MS. ZMROCZEK: I have an expert who's in Georgia
12 who's on standby that I just didn't want him -- I mean, he
13 has a job, so I didn't want him sitting around. I'm
14 trying to figure out logistically -- I can finish Monday
15 morning or I could -- I mean, or I can have him up here
16 and we could finish -- I could try to finish this
17 afternoon once I listen to these phone calls and things
18 like that. Either way, I don't think we'll be able to get
19 through charge and closing before the end of the day. I'm
20 just trying to figure out logistically where we're going
21 so that I know how to plan.

22 THE COURT: Where we're going is we're going to work
23 as hard as we possibly can today and we'll figure it out
24 later.

25 MS. CAMPBELL: Your Honor, I just wanted to hand to

1 the Court the e-mails where we sent the calls as soon as
2 we got them yesterday.

3 THE COURT: Okay.

4 MS. ZMROCZEK: Did you get me a copy?

5 MS. CAMPBELL: No. I'll get you a copy.

6 MS. ZMROCZEK: Again, I'm not saying they didn't
7 e-mail them to me, I'm just saying I did not receive them.

8 THE COURT: Okay. What else? Anything else?

9 MS. CAMPBELL: No.

10 MS. WALKER: No, sir.

11 THE COURT: Okay. All right. Do we need to wait on
12 Ms. Brown?

13 MS. ZMROCZEK: I left my computer at the office. She
14 is going to get that. Thank you.

15 THE COURT: Are they all good, Mr. Dye?

16 THE BAILIFF: They're still finishing up.

17 THE COURT: Okay. As soon as they're finished, you
18 can bring them in.

19 Court will be at ease until the jury is ready.

20 (Pause.)

21 THE BAILIFF: Bring them in?

22 THE COURT: Yes, sir. Thank you, Mr. Dye.

23 THE BAILIFF: Yes, sir.

24 (WHEREUPON, the jury entered the courtroom at
25 9:18 a.m.)

1 THE BAILIFF: The jury is seated, Your Honor.

2 THE COURT: Okay. Thank you.

3 Welcome back. Thank you for being on time. We're
4 ready to go. We are in the cross-examination of
5 Investigator Gilliam.

6 Ms. Zmroczek.

7 Thank you for being there and ready to go,
8 Investigator Gilliam.

9 Ms. Zmroczek, your turn.

10 MS. ZMROCZEK: Thank you, Your Honor.

11 CONTINUED CROSS-EXAMINATION

12 BY MS. ZMROCZEK:

13 Q Investigator Gilliam, yesterday, we were -- we were,
14 discussing some of the investigation that you did in this
15 case. I wanted to kind of pick up there if that's all
16 right, sir?

17 A That's fine.

18 Q You issued a search warrant to Facebook?

19 A Yes.

20 Q And you received information or pictures or things
21 like that, right?

22 A No, ma'am. Actually, what I did I put on there to
23 save to get a copy from them, but they said that I had
24 deleted it or whatever.

25 Q Okay.

1 A I initially went ahead and print screened everything
2 that they had on the Facebook page at the time.

3 Q Okay. So you were trying to investigate the
4 witnesses and the people with whom you spoke, right?

5 A Yes.

6 Q You spoke with Michael, my client?

7 A Yes.

8 Q And then later when you got to the station -- so he
9 had been sitting in the car for about two hours, were you
10 aware of that, or two-and-a-half hours?

11 A Ma'am, I don't know. When I got called out, I
12 arrived like 3:15. I went from interviewing every person
13 and going to the hospital and the coming back to
14 headquarters to do a follow-up interview.

15 Q But when you got there at 3:15, he was in the police
16 car?

17 A Yes.

18 Q Okay. And then we watched the video and we know what
19 time the investigator took the pictures?

20 A Yes.

21 Q And we know what time he arrived at headquarters?

22 A Uh-huh.

23 Q So about 5:15?

24 A Yes, ma'am.

25 Q And you returned to headquarters?

1 A Yes, ma'am.

2 Q And he said at that time, I don't want to talk to you
3 anymore, right?

4 A That's correct.

5 Q He just said, I just don't want to give any more
6 statements?

7 A Yes.

8 Q It was after five in the morning?

9 A Yes.

10 Q And people do that all the time, right?

11 A Yes.

12 Q In fact, sometimes people don't tell the truth all
13 the time at first, right?

14 A Yes.

15 Q Sometimes they're scared?

16 A Yes.

17 Q Sometimes they're drunk or high?

18 A I usually ask them or try to ask them have they had
19 any drugs or alcohol before I even try to have a
20 conversation with them.

21 Q Because that conversation probably wouldn't be
22 complete if they were, right?

23 A That's correct.

24 Q And sometimes they just don't remember things?

25 A That's true.

1 Q Sometimes they say that a person was wearing a white
2 shirt when they were wearing a black shirt?

3 A That can happen, yes.

4 Q People's memories are fallible?

5 A Yes.

6 Q Video cameras are not fallible?

7 A Yes.

8 Q I mean, obviously, they don't operate all the time,
9 but they can't change what's on the screen?

10 A That's correct.

11 Q What can be interpreted from that is different?

12 A Yes, it could.

13 Q You could see -- I could see somebody dropping a gun,
14 you could see them not dropping a gun, right?

15 A It's possible.

16 Q It's possible. So it's just how you want to
17 interpret it or how you can interpret it?

18 A Yes.

19 Q Okay. You followed and you made sure to notice and
20 look at everything Michael was doing on that video?

21 A That's correct.

22 Q And when you had these three persons of interest,
23 we'll call them, Mr. Tucker, Mr. Samuel and Mr. Woodard,
24 you printed some pictures of them and released them to the
25 media?

1 A Yes.

2 Q And you asked for information?

3 A Yes.

4 Q And that was earlier, three days or so after this
5 incident?

6 A That's probably right.

7 Q And Mr. Samuel and Mr. Tucker came in right at the
8 beginning -- right after that was released?

9 A Yes.

10 Q Mr. Woodard didn't come in until November?

11 A Actually, I contacted his probation officer.

12 Q Okay.

13 A Which ended up, he contacted him and then Mr. Woodard
14 called me. We was tied up on another attempted murder
15 case and I told him I would get back with him.

16 Q So y'all ended up getting back together?

17 A Yes.

18 Q Now, did you take handwritten notes? If I show
19 you -- did you take handwritten notes at the scene?

20 A Not really. Most of it was transferred to my
21 follow-up log.

22 Q Okay. So if there was some handwritten notes, you
23 don't know where they came from, on a Columbia Police
24 statement form?

25 A Possibility. That right there, I know about that,

1 but I don't remember why I did that.

2 Q These are your notes?

3 A Let me look at it again to make sure.

4 Q Certainly.

5 A It might go to the other case file. Yes, this one, I
6 was talking to Shante Bethel.

7 Q Okay.

8 A And we were looking at the video and I was asking her
9 can she describe or pick out individuals that -- the three
10 persons of interest.

11 Q Okay. So these were your -- trust me, if I don't
12 write it down, it didn't happen --

13 A I understand.

14 Q -- because I never remember anything. Lots of people
15 can attest to that.

16 So the notes that you wrote down said, Me and Michael
17 and Ryan drinking, Asia -- and I can't read the next one,
18 right? And dread, white shirt, dark something, tall,
19 carried 25 auto?

20 A Let me read that.

21 Q Your handwriting is about as good as mine as well.

22 A Carried a 25, yes.

23 Q Okay.

24 A I don't know where that came from.

25 Q Well, supposedly, this came from your notes, right?

- 1 A Yes, they did.
- 2 Q Okay.
- 3 A Twenty-five auto was never in the case.
- 4 Q Okay. Except for right here?
- 5 A Yes, I don't know why.
- 6 Q And then the next notes you have are short braid,
7 blue shirt, stocky, 40 or 45-caliber small, dark skin?
- 8 A Forty, 40-caliber small -- or 40, 45? Yeah, I do
9 have it there. I don't know why.
- 10 Q You knew that through your investigation that there
11 was a suggestion that there was more than one gun there
12 that night?
- 13 A Yes, from the witnesses.
- 14 Q Okay.
- 15 A They stated that they saw a gun.
- 16 Q You interviewed Daquan Samuel?
- 17 A Yes.
- 18 Q You recorded that interview?
- 19 A Yes.
- 20 Q He refused to sign his statement?
- 21 A Correct.
- 22 Q And Special Agent VanHouten came in and sat with you
23 on these interviews?
- 24 A Yes.
- 25 Q And he asked a lot of the questions?

1 A That is correct.

2 Q Okay. But you asked some questions, too?

3 A Yes.

4 Q And you asked questions to Ryan?

5 A Yes.

6 Q And you asked him to come back and clarify some of
7 his answers?

8 A That is correct.

9 Q And he didn't?

10 A That's correct. Do you want to know why?

11 Q You can certainly tell me.

12 A The reason why the GSR -- the gunshot residue came
13 back positive for him and I wanted to clear that up
14 because he said he didn't see it. He wasn't close enough
15 to it. That's what I wanted to clear up.

16 Q Okay.

17 A Because it came back positive GSR on his hands as
18 well.

19 Q And so the information that you had from your
20 investigation that night from the two witnesses who -- or
21 the one witness who had nothing to do with anything,
22 Mr. Thompson, he gave you some information that night?

23 A Mr. Painter?

24 Q I'm sorry. Mr. Painter. It's Thompson Painter,
25 right?

Emmitt Gilliam - Continued Cross by Ms. Zmroczek

1 A That's correct.

2 Q Okay. So he gave you some information that night?

3 A Yes.

4 Q And he -- so you were investigating and it was
5 important to your investigation to know where people were
6 standing?

7 A Yes.

8 Q Because at some point, I believe at 5:15 or so,
9 Mr. Potash articulated that he photographed and recovered
10 that shell casing?

11 A That's correct.

12 Q And I'm showing you -- if you can step down, it's
13 State's Exhibit 91. And you can stand here so she can
14 hear you. I'll move so you can stand right over here.
15 Yeah, actually, over there is fine. Wait, back here. I'm
16 kidding.

17 Can everyone see?

18 (Jurors nodded in the affirmative.)

19 MS. ZMROCZEK: All right. Good.

20 BY MS. ZMROCZEK:

21 Q So Mr. Thompson told you that he -- the person
22 shooting in the tan was standing by a fuel sign?

23 A You're talking about the Exxon?

24 Q Right.

25 MS. CAMPBELL: Objection, Your Honor, to anything Mr.

1 Painter said. It would be hearsay.

2 THE COURT: I thought she just said Mr. Thompson.

3 MS. CAMPBELL: She calls them both the same name.

4 MS. ZMROCZEK: I'm sorry. I'll rephrase the
5 question.

6 MS. CAMPBELL: We would object to any testimony.
7 She's already had the opportunity to cross Mr. Thompson or
8 Painter.

9 THE COURT: Sustained. That's hearsay.

10 MS. ZMROCZEK: Certainly. I'll ask the question
11 different.

12 BY MS. ZMROCZEK:

13 Q You were investigating where the individuals were
14 standing?

15 A That's correct.

16 Q Through the video?

17 A Yes.

18 Q And what you had learned through the course of your
19 investigation?

20 A Yes.

21 Q So where -- show this jury where Mr. -- where the
22 individuals were sitting when you interviewed them?

23 A What individuals are you talking about?

24 Q Mr. Thompson Painter, Painter Thompson.

25 A Mr. Painter said he was somewhere in this area right

1 here. If I'm correct -- I'd have to go back and really
2 listen to it again, but it's somewhere in this area over
3 here that he can be able to see Mr. Smith and the three
4 persons of interest.

5 Q So he -- if we can help orient the jury, where is the
6 Starbucks?

7 A Starbucks is back over here.

8 Q Okay. Or would it be right here?

9 MS. CAMPBELL: Objection, Your Honor, for her
10 pointing out to the witness where things are.

11 THE WITNESS: It would be hard for me to say, but
12 it's right back in here somewhere.

13 THE COURT: Sustained.

14 Stop. There was an objection. When there's an
15 objection, everybody stop talking.

16 The objection is sustained.

17 MS. ZMROCZEK: Okay.

18 THE COURT: The jury will disregard that testimony.
19 Move forward.

20 MS. ZMROCZEK: Thank you.

21 BY MS. ZMROCZEK:

22 Q Do you know where the Starbucks is?

23 A Yes.

24 Q Can you point it out on the map?

25 A Yes, if I can see it, yes.

1 Q So if we find another map so you can see it. You can
2 point to where the Exxon is?

3 A Right.

4 Q Point to where the Exxon is?

5 A Right here.

6 Q Mr. Painter was where?

7 A I'm saying somewhere up in here by the road.

8 Q Okay.

9 A I can't one hundred percent say.

10 Q And from the video, where were Mr. Samuels,
11 Mr. Thompson -- or Mr. Tucker and Mr. Woodard?

12 A In the roadway, like right here in between the
13 fountain -- they are part by the fountain and up in this
14 area.

15 Q And Mr. Smith and Mr. Ellison and Asia and Shante and
16 Ms. Rivers, Waters?

17 A On the -- I call it this side of -- the north side --
18 I'm sorry, south side of them facing towards the fountain.

19 Q Okay. In fact, there were other people that didn't
20 want to give you statements?

21 A When I got there, the only ones I know that want to
22 give statements were the ones that wanted to stay around.

23 Q That what?

24 A Only ones I knew that even want to give a statement
25 was the ones that would stay around. I didn't know

1 anybody else --

2 Q You mean the witness?

3 A I'm sorry, yes, the witnesses.

4 Q That's all right. But Ms. White, who you later
5 learned was Ms. Rivers, didn't want to give a statement?

6 A Who is Ms. Rivers?

7 Q I'm getting her name wrong.

8 A Ms. Roper?

9 Q Yes.

10 A Well, she gave a statement to Investigator Dow that
11 night and she gave a false name.

12 Q Okay.

13 A Once we started trying to investigate, doing the rap
14 sheets and everything, nothing came back. During one of
15 the interviews with Ms. Shante Bethel, I asked her about
16 Ms. Roper and she gave the right name. I pulled a picture
17 of her up, asked if that's her and she signed off on it.
18 That's when we knew her name was White and where she
19 attended school at.

20 Q And then went back to look at videos -- and we talked
21 about how you followed Mr. Smith, but when you learned
22 about Mr. Tucker and Mr. Samuel and Mr. Woodard, did you
23 go back and follow their movements that day?

24 A Yes, I did.

25 Q You did?

1 A Yes.

2 Q So you learned that after the shooting that
3 Mr. Samuel crosses back towards Grilled Teriyaki, crosses
4 back towards Poor House and stops at an area where there
5 are trash cans?

6 A Yes.

7 Q And he meets another individual who's wearing a dark
8 shirt?

9 A I'd have to see the video again, but he does meet
10 somebody, yes.

11 Q And that would have been important to your
12 investigation to investigate that, right?

13 A Yes.

14 Q I'm going to show you -- I know you didn't take these
15 pictures, but I'm going to ask if you recognize them?

16 A Okay.

17 Q Defendant's 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17,
18 18, and 19?

19 A Yes, ma'am, I do recognize them.

20 MS. ZMROCZEK: Thank you.

21 Your Honor, at this time, we would move these
22 exhibits into evidence.

23 MS. CAMPBELL: No objection.

24 THE COURT: Okay. Defendant's 7 through 19 admitted
25 without objection.

1 (WHEREUPON, Defendant's Exhibit Nos. 7 through
2 19 were admitted into evidence.)

3 BY MS. ZMROCZEK:

4 Q Okay. So from the videos, you're able to hit a
5 button and it will just capture an image, correct?

6 A Well, the cameras run 24 hours a day is my
7 understanding.

8 Q Right. And we can get the still shots from it?

9 A Yes.

10 Q And they run 24 hours, so --

11 A To the best of my knowledge, yes.

12 Q So you can call Mr. Shealey and he can give you the
13 times and the areas that you need to see?

14 A Yes.

15 Q And what we see on Defendant's 7 are Mr. Woodard and
16 Mr. Tucker walking together?

17 A I see it, yes.

18 Q And on Defendant's 8, we see Mr. Tucker smiling and
19 walking by the police, right?

20 A Yes.

21 Q Did you ask your police officers or the police
22 officers that were down there if they had knocked any
23 witnesses down that night?

24 A No, I did not. They were going towards where the
25 shot was fired. I believe at that time Officer McLaughlin

1 had a young man detained.

2 Q And you said shot was fired?

3 A Shot, shots. I wasn't there.

4 Q Okay. You did -- you would agree with me that you
5 have -- we have heard testimony that there have been a
6 different range of shots?

7 A Yes.

8 Q Okay. Defendant's 10, that would be -- it's blurry.

9 A Yes.

10 Q Right. I'll help orient you. That would be the Poor
11 House across the street --

12 MS. ZMROCZEK: Objection, Your Honor, to her
13 orienting him. I think he has to testify.

14 THE COURT: He has to testify to what he knows it is.

15 MS. ZMROCZEK: Okay.

16 THE COURT: Sustained.

17 MS. ZMROCZEK: Thank you.

18 BY MS. ZMROCZEK:

19 Q You don't know where that is?

20 A Not being that blurry, no.

21 Q Okay. Do you know where this is?

22 A Yes.

23 Q Okay. And this -- the cameras -- you got some of the
24 cameras that had the morning time pictures, right?

25 A That is correct.

1 Q Clearly, it's a lot less active in the morning?

2 A Yes.

3 Q Some of the pictures were color?

4 A Yes.

5 Q Some of the pictures were black and white?

6 A Yes.

7 Q Defendant's 18?

8 A Uh-huh.

9 Q Who does this depict?

10 A Mr. Samuel.

11 Q Mr. Samuel?

12 A Yes.

13 Q Okay. And when you were watching the video and
14 looking at stills and you knew -- or you had information
15 that maybe somebody else had a gun, did you -- did you
16 look to see if you could see anybody having a gun?

17 A Yes.

18 Q Okay. And you didn't see any?

19 A No, because my thing was when he was running past the
20 camera, he was holding his pants up. I wanted to make
21 sure. Like I said, me and Investigator VanHouten kept
22 looking at it and looking at it. And the way he was
23 holding his pants up, he couldn't have had a gun.

24 MS. ZMROCZEK: Your Honor, at this time, I'd like to
25 publish Defendant's 18.

1 THE COURT: Okay.

2 BY MS. ZMROCZEK:

3 Q When you were interviewing Mr. Tucker, you had told
4 him that you knew about gang territories?

5 A Yes.

6 Q And you knew that certain areas in Columbia where
7 people live and where people hang out are affiliated with
8 certain gang areas --

9 A Yes.

10 Q -- and gang territories?

11 A Yes.

12 Q And you told him you knew he was in a gang?

13 A Which one now? Mr. Who?

14 Q Mr. Tucker.

15 A I'm not exactly sure, but I know Mr. Woodard I asked
16 that.

17 Q You know Mr. Woodard?

18 A I don't know about Mr. Tucker. I'm not sure about
19 that one.

20 Q Okay. What about Mr. Samuel?

21 A I asked him that same question because he was
22 affiliated with Mr. Woodard and the area they came from.

23 Q Okay. Because friends can affiliate with friends
24 that are in gangs?

25 A Well, that, and, also, certain neighborhoods consider

1 themselves certain gangs. If you live there or you got
2 family there, they consider you part of that gang, yes.

3 Q Okay. You recall your interview with Mr. Tucker?

4 A Somewhat, yes.

5 Q You had to tell him to calm down?

6 A It's hard to say. I'd have to listen to that
7 conversation again.

8 Q You don't recall him raising his voice at you?

9 A Honestly, I can't say yeah neither to that because --

10 Q You knew that this trial was coming up this week,
11 right?

12 A Yes.

13 Q Okay. And did you go back and listen and prepare to
14 get ready?

15 A I listened to a lot of things. It's like this, my
16 voice goes up and down, too. So I might have did say
17 that. I'm not worried about that as much because most
18 folk when they have really nothing to do with something,
19 it does fluctuate up and down. You know, people does get
20 offensive when you accuse them of something that they
21 didn't do.

22 Q So people get offended when they get accused of
23 something they didn't do?

24 A Some do.

25 Q And some say things that are inappropriate when

1 they're accused of something they didn't do?

2 A It's possible.

3 Q You just said that, right?

4 A Yes.

5 Q And they might say things that they didn't mean, but
6 they were angry because they were accused of something
7 they didn't do?

8 A Yes.

9 Q You were the one who decided to -- what evidence
10 would be tested?

11 A Yes. As well as my CSI guy and also my supervisor.

12 Q Let me ask you this. Did you ever -- once you knew
13 where the shell casing was found and once you had seen the
14 videos, did you ever ask anybody to do any trajectory?

15 A Trajectory? I don't think so.

16 Q Okay. And you knew that the shell casing was found
17 in between the Harden Street and the sidewalk in the
18 grassy area?

19 A That's correct.

20 Q And that sidewalk, the same sidewalk where
21 Ms. Childress was standing?

22 A Uh-huh, yes.

23 Q And then you knew that the group of three that was in
24 the road, Mr. Tucker, Mr. Samuel and Mr. Woodard that was
25 in the road or in front of the fountain area, you knew

1 that they were not in the sidewalk. You know that they
2 were in the area?

3 A Yes.

4 Q Slightly behind where Ms. Childress was standing?

5 A Yes.

6 Q And let's be very clear, Ms. Childress is the
7 absolute victim in this case, isn't she?

8 A Yes.

9 Q And you wanted to do a thorough and accurate
10 investigation to make sure that she knows who put her in
11 that position?

12 A Yes, we did.

13 MS. ZMROCZEK: Thank you.

14 THE COURT: Yes, ma'am.

15 MS. CAMPBELL: Briefly, Your Honor.

16 (WHEREUPON, State's Exhibit No. 100 was marked
17 for identification only.)

18 REDIRECT EXAMINATION

19 BY MS. CAMPBELL:

20 Q She asked you about witnesses and some lie, some
21 forget, some don't know?

22 A Yes.

23 Q And that just happens. Do some witnesses lie to hide
24 the truth?

25 A Yes, they do.

1 Q And in this case when you were interviewing people,
2 whose statements changed? Which group of people's
3 statements changed when y'all interviewed them?

4 A The witnesses for Mr. Smith.

5 Q And that would be the Bethels?

6 A Both Bethels.

7 Q Both Bethels?

8 A And Ms. Roper.

9 Q Ms. White?

10 A Ms. White.

11 Q And Mr. Smith?

12 A Yes. Yes, he -- yes. His statement -- well,
13 actually, we have one statement from him what he said
14 happened.

15 Q Except what he told the officer when he first was
16 stopped?

17 A That's correct.

18 Q Which was different?

19 A Uh-huh.

20 Q And she asked about how when people are falsely
21 accused of something?

22 A Yes.

23 Q They say things they may not mean?

24 A Yes.

25 Q When you confronted Mr. Samuel, Mr. Tucker or

1 Mr. Woodard, did any of them say, and excuse my language,
2 F that white bitch?

3 MS. ZMROCZEK: Objection, hearsay.

4 THE COURT: Overruled.

5 THE WITNESS: It's overruled?

6 THE COURT: You can answer the question.

7 THE WITNESS: No, they did not.

8 BY MS. CAMPBELL:

9 Q The cameras that we're talking about, some are in
10 black and white, it looks like, and some are in color?

11 A That's correct.

12 Q And are some of the cameras, do they come -- are they
13 all the city's cameras or are some business's cameras?

14 A The business's cameras.

15 Q And when you spoke to Michael, how many -- when he
16 was in that car, how many shots specifically did he tell
17 you had been fired?

18 A Two.

19 Q And then she asked you about whether or not you took
20 a written statement from him?

21 A Yes.

22 Q And when you got him to headquarters, what did he do?
23 I'll show you what's been marked as State's Exhibit 100.

24 A He advised me he would not talk to me without an
25 attorney.

1 MS. CAMPBELL: Your Honor, at this time, we would
2 offer State's Exhibit No. 100 into evidence.

3 MS. ZMROCZEK: Without objection.

4 (WHEREUPON, State's Exhibit No. 100 was admitted
5 into evidence.)

6 BY MS. CAMPBELL:

7 Q And the photograph that she has published to the
8 jury, Defense Exhibit -- I may have the wrong one -- 18,
9 where she asked you about whether or not this was a gun.
10 You watched the video, is that correct?

11 A That's correct.

12 Q And is it a gun or is it his hand?

13 A It's his hand holding his pants up. We watched it
14 several times over and over and over.

15 Q And the best evidence in this case is not snapshots
16 from that, but the whole thing?

17 A That's correct.

18 MS. CAMPBELL: Thank you, sir. I don't have anything
19 else.

20 MS. ZMROCZEK: Just briefly, Your Honor.

21 THE COURT: Yes.

22 MS. ZMROCZEK: Thank you.

23 REXCROSS-EXAMINATION

24 BY MS. ZMROCZEK:

25 Q You would agree that when you slow a video down, it

1 would help -- if you watch it frame by frame, help you to
2 have a clear image?

3 A Yes.

4 Q Did you do that in this case?

5 A We slowed it down, yes, we did.

6 Q Okay. And she asked you whose statements had
7 changed, but you only interviewed Mr. Woodard, Mr. Tucker
8 and Mr. Samuel one time?

9 A That's correct.

10 Q In fact, Mr. Samuel left and refused to sign his
11 statement?

12 A That's true.

13 MS. ZMROCZEK: Okay.

14 THE COURT: Thank you very much. You may step down.
15 Call your next witness.

16 MS. GARFIELD: The State calls Brian VanHouten.

17 BRIAN VANHOUTEN,

18 after being duly sworn, testified as follows:

19 THE COURT: Thank you very much. Have a seat and
20 state your full name for the record.

21 THE WITNESS: My name is Brian VanHouten. It's
22 spelled V-A-N-H-O-U-T-E-N.

23 DIRECT EXAMINATION

24 BY MS. GARFIELD:

25 Q Agent VanHouten, can you please share with the jury

Brian VanHouten - Direct by Ms. Garfield

1 where you are employed?

2 A I work currently with the ATF Violent Crimes Task
3 Force here in the Columbia field office, which is located
4 in the Strom Thurmond building.

5 Q Just briefly explain to the jury what ATF is.

6 A It's the Bureau of Alcohol, Tobacco, Firearms and
7 Explosives. We're responsible for investigating persons
8 who are in possession of firearms, firearms trafficking
9 cases, NCICs referrals, firearms trafficking cases that
10 are used in the commission of crimes, drug trafficking
11 crimes, any kind of firearm-related offenses.

12 Q How long have you been employed with ATF?

13 A Seven years.

14 Q And previously before you were employed with ATF,
15 where did you work?

16 A I'm currently employed with the Columbia Police
17 Department for 15 years, but I've been assigned to the
18 federal task force for seven years.

19 Q Any law enforcement experience before that?

20 A No, ma'am.

21 Q What is your educational background?

22 A I have a four-year degree Bachelor of Science from
23 the University of Georgia and also have a minor in
24 business administration Associates Degree.

25 Q Are you from Columbia?

Brian VanHouten - Direct by Ms. Garfield

1 A No, I'm originally from Savannah, Georgia.

2 Q Thank you for all that information Agent VanHouten.
3 Specifically, what type of crimes with your employment
4 with ATF do you specifically investigate?

5 A Possession of firearms from prohibited persons.

6 Q And that is through a federal level offense?

7 A Yes, ma'am.

8 Q Are those different types of gun violations than the
9 state level?

10 A Yes.

11 Q And with your -- do you -- all over the state?

12 A All over the country. We have federal jurisdiction
13 over the entire country.

14 Q And specifically, what crimes do you work on?

15 A I work the specific crime in regards to possession of
16 firearm from prohibited persons.

17 Q Is that in the City of Columbia?

18 A That's ATF. It's federal offense.

19 Q Do you work on cases that occur in the City of
20 Columbia?

21 A Oh, I'm sorry, yes, ma'am, I do.

22 Q And because of that, did you have an interest in this
23 case that occurred in Five Points back on October 13th,
24 2013?

25 A Yes, ma'am.

Brian VanHouten - Direct by Ms. Garfield

1 Q As well as all cases that involve firearms?

2 A Yes, ma'am.

3 Q So did you become involved in the investigation of
4 the Defendant, Michael Juan Smith?

5 A Yes, ma'am.

6 Q And through that investigation, did you assist
7 Investigator Gilliam with some interviews?

8 A Yes, ma'am.

9 Q And do you recall the interviews that you assisted
10 in?

11 A I assisted Investigator Emmitt Gilliam with
12 interviews of Ms. Shante Bethel, Daquan Samuel and Byron
13 Henry Tucker.

14 Q Did you also have an opportunity to review several
15 videos that were collected?

16 A Yes, ma'am.

17 Q Did you have an opportunity to request and take the
18 firearms to our state laboratory for testing?

19 A Yes, ma'am.

20 Q And those were to be used, obviously, in criminal
21 proceedings?

22 A Yes, ma'am.

23 Q Now, specifically, with your assistance to
24 Investigator Gilliam, do you recall who you first
25 interviewed?

1 A I think Shante Bethel, then Daquan Samuel and last, I
2 think, was Mr. Tucker.

3 Q So you got information, obviously, from Ms. Bethel
4 before conducting further interviews?

5 A Yes, ma'am.

6 Q And then you went on to interview Mr. Samuel and
7 Mr. Tucker?

8 A Yes, ma'am.

9 Q And those were individuals that had been identified
10 from the still photos released to the media?

11 A Yes, ma'am.

12 Q Specifically, why did you want to interview them?

13 A Because of their potential involvement in the Five
14 Points shooting that happened on October the 13th of 2013.

15 Q And through the collection of evidence in this
16 investigation, had you received information there may have
17 been another firearm?

18 A I did.

19 Q Obviously, would that be important to an ATF
20 investigator?

21 A Yes.

22 Q Did you ask questions of Mr. Tucker and Mr. Samuel
23 pertaining to those accusations?

24 A I did.

25 Q And based on your investigation and your

Brian VanHouten - Direct by Ms. Garfield

1 interrogation of these individuals, was anyone else
2 charged with any type of gun crime in this case?

3 A All three were cleared of any criminal charges.

4 Q Now, specifically, to Mr. Samuel, have you assisted
5 in the preparation of this case?

6 A Yes, ma'am.

7 Q And with that, have you assisted the solicitor's
8 office in trying to locate particular witnesses?

9 A Yes, ma'am.

10 Q Have you helped the solicitor's office and the State
11 try to locate Mr. Samuel?

12 A Yes.

13 Q Please explain to the jury briefly the efforts that
14 have been made in trying to locate Mr. Samuel.

15 A Mr. Samuel is currently located in Lawrenceville,
16 Georgia. We have spoken to Ms. Pinkney, who identified
17 herself as his aunt. Mr. Samuel, as of today, has refused
18 to travel back to Columbia, South Carolina, to testify in
19 this trial fearful of gang retaliation. He's scared for
20 his safety.

21 Q And that's as of today, Friday, August 14th, 2015?

22 A Yes, ma'am.

23 Q Thank you. Now, Investigator VanHouten, even in the
24 middle of trial, are you still assisting in the
25 investigation of this case?

1 A Yes, ma'am.

2 Q And if new evidence -- and sometimes in trials,
3 evidence continues to be brought up even in the course of
4 the trial?

5 A Yes, ma'am.

6 Q Now, yesterday, the Defense provided a copy of a CD
7 of videos to the solicitor's office. Are you aware of
8 that?

9 A Yes, ma'am, I have viewed it.

10 MS. GARFIELD: Beg the court's indulgence.

11 (WHEREUPON, State's Exhibit No. 101 was marked
12 for identification only.)

13 BY MS. GARFIELD:

14 Q Now, this -- I'm going to hand you what's been marked
15 as State's Exhibit 101, which is a CD. Did you review
16 videos on that CD?

17 A Yes, ma'am, I did.

18 Q And that was a CD provided to the State from the
19 Defense?

20 A Yes, ma'am.

21 Q And these aren't new videos, are they?

22 A No, ma'am, they're not.

23 Q They're just different formats?

24 A Yes.

25 Q And you had an opportunity to review all these

1 videos?

2 A Yes.

3 Q And that would be important to you for what reason?

4 A Federal prosecution to articulate and eliminate any
5 potential additional suspects in this case.

6 Q To articulate, which would mean include
7 investigating?

8 A Correct.

9 Q As well as eliminate?

10 A Yes, ma'am.

11 MS. GARFIELD: Your Honor, at this time, I'd like to
12 introduce State's Exhibit No. 101 and permission to
13 publish portions to the jury?

14 MS. ZMROCZEK: Without objection.

15 MS. GARFIELD: Beg the Court just a minute to set up.

16 THE COURT: Yes, ma'am.

17 (WHEREUPON, State's Exhibit No. 101 was admitted
18 into evidence.)

19 BY MS. GARFIELD:

20 Q Agent VanHouten, before we view this video, you're
21 familiar with the cameras down in Five Points?

22 A Yes, ma'am.

23 Q And those videos obtained from the cameras in Five
24 Points as well as throughout our city and county are
25 useful in investigations?

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1 A Yes, ma'am.

2 Q And some of the cameras are in color?

3 A Some are in color and some are in black and white.

4 Q And what does the black and white signify to you?

5 A It will pick up brighter colors, markings like on the
6 side of your tennis shoes, the light hits it. It will
7 pick up lights of vehicles passing by. You'll see the
8 beam of the car lights. You'll see cameras flashing with
9 the new iPhones and all that kind of stuff. Just you'll
10 see a multitude of different flashes.

11 Q Sort of a night vision mode?

12 A Yes, ma'am.

13 MS. GARFIELD: Your Honor, at this time, I'd like to
14 ask permission for Agent VanHouten to step down.

15 THE COURT: Keep your voice up.

16 THE WITNESS: Yes, sir.

17 THE COURT: Thank you.

18 MS. GARFIELD: And if you want to grab the pointer on
19 your way.

20 (WHEREUPON, the video was played in open court
21 for the jury.)

22 BY MS. GARFIELD:

23 Q Agent VanHouten, this view that we're seeing, can you
24 just orient the jury as to where this is?

25 A This appears to be where the Exxon gas station is,

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1 which would be on the north side of Harden Street if
2 you're facing the Exxon gas station.

3 Q Okay. I'm going to ask you, as Ms. Walker is
4 assisting us, as it plays if you can identify persons of
5 interest in this video?

6 A Stop it.

7 This appears to be Mr. Daquan Samuel. I got mixed up
8 here when they switched. One of them is Mr. Woodard and
9 one of them is Mr. Tucker.

10 Q And particular, we're interested in Mr. Samuel for
11 purposes of this interrogation. Can you just explain to
12 the jury which one --

13 A Mr. Samuel is right here where the mouse is on the
14 taller gentlemen.

15 Q Do you recall what type of clothing he is wearing?

16 A I think it's a long-sleeved white shirt and pants.

17 Q Light-colored pants?

18 A I think so, yes. I think they're khaki pants.

19 MS. GARFIELD: Thank you, Ms. Walker. Please
20 proceed.

21 BY MS. GARFIELD:

22 Q Explain to the jury -- when you are viewing this
23 video for purposes of elimination or inclusion, please
24 explain to the jury what you found noticeable.

25 A Mr. Samuels's right hand, you see his hand is

1 actually in his front pants pocket. It is not outside of
2 his pants. It's in his pants pocket. He puts his hands
3 up and starts walking away from Mr. Smith.

4 Q And did you just see what looked like a spark, for
5 lack of better word, at the bottom of the screen?

6 A Yes, ma'am, I did.

7 Q I'm going to ask Ms. Walker to rewind that. If you
8 can just show the jury where to look when that spark
9 occurs.

10 A I would say within a foot of this gentleman's right
11 foot that's walking southbound on Harden Street. The
12 gentleman who's walking southbound was not affiliated at
13 all with the other three gentlemen. This gentleman right
14 here.

15 Q And the spark just occurred again?

16 A Yes.

17 Q And what does that spark signify to you, Agent?

18 A In my professional opinion, I think it's a hot amber
19 striking the concrete. If you view that video while it
20 was with another camera, you will see the same identical
21 flash. People who are smoking cigarettes, dropping them
22 on the ground, you will see the same identical flash that
23 you just saw right there.

24 Mr. Samuel does smoke cigarettes. In one of the
25 color videos, you can see Mr. Samuel with a cigarette,

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1 actually drops his lighter down and fumbles down to pick
2 up his -- what appears to be a lighter and then continues
3 to walk towards the fountain.

4 Q And you indicated that you do see video footage at
5 other times with Mr. Samuel smoking?

6 A Yes, a couple times. The one I'm referring to is
7 when he comes back across the street. I can't think of
8 that establishment that's right there on the corner. It
9 used to be a fruit drink place.

10 Q They change often?

11 A They change often. And you will see where he has a
12 cigarette in his left hand and he actually drops what
13 appears to be his lighter on the ground.

14 Q And we'll let Ms. Walker have a moment to set that
15 up.

16 A This is the wrong video. He drops his lighter over
17 here. If you get on this camera here, he drops his
18 lighter behind this white female who is waiting for a
19 taxicab.

20 Q And this appears to be right after the shooting has
21 occurred?

22 A Yes, ma'am.

23 Q Agent, is this the angle that you were --

24 A I need the camera that's right here. He has a
25 cigarette in his left hand and he drops the lighter behind

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1 that female right there. That's Mr. Tucker right here
2 rubbing his face.

3 Q Who is that guy over there in the white shirt?

4 A I don't know who that is.

5 Q It says Busting It?

6 A I don't know who that is.

7 Q You're not familiar with Mr. Woodard?

8 A I don't know who that is.

9 Q You never had an opportunity to interview
10 Mr. Woodard?

11 A No, ma'am. I'm not mistaken, this is Mr. Samuel.
12 Right here, he's got a cigarette -- it's hard to see from
13 a distance, but if you get on the right camera, he's got a
14 cigarette in his left hand. And you'll see him bend over
15 to pick up what appears to be a cigarette lighter. This
16 other camera is very close. You can clearly indicate it's
17 a cigarette in his left hand. And they're walking
18 southbound on Harden Street towards the fountain.

19 Q He appears to be lighting the cigarette?

20 A Yes, ma'am. And this would be Greene Street here
21 where this traffic is flowing. You see the cigarette in
22 his left hand.

23 Q What direction would he be walking back towards?

24 A He is walking southbound on Harden Street towards the
25 fountain.

1 Q And that would be where Ms. Childress is waiting for
2 medical attention?

3 A Yes, ma'am. You can see the cigarette lit right
4 there.

5 Q At that time, it's heavily populated with law
6 enforcement?

7 A Yes, ma'am.

8 Q And you see him holding the cigarette at this time?

9 A Yes, ma'am.

10 Q Thank you, Agent. Please have a seat.

11 A (The witness complies.)

12 (WHEREUPON, playing of the video in open court
13 was concluded.)

14 BY MS. GARFIELD:

15 Q Now, back during -- back during 2013 in your initial
16 investigation, had the spark come to your attention?

17 A Yes.

18 Q Was it of any significance in your investigation?

19 A No, ma'am.

20 Q And why is that?

21 A I was able to rule it out because I was able to view
22 other cameras from different angles. When you're able to
23 zoom in on the alleged flash across the street, it's very
24 consistent with a hot amber. I never saw any indication
25 that Mr. Samuel or Mr. Woodard or Mr. Tucker ever

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1 possessed a firearm on that night.

2 Q Do you see other people on the video with cigarettes?

3 A Yes, I do.

4 Q And do you see the same type of spark?

5 A Yes, ma'am.

6 (WHEREUPON, State's Exhibit Nos. 96 through 99
7 were marked for identification only.)

8 BY MS. GARFIELD:

9 Q Agent VanHouten, I'm going to show you four still
10 photographs, Exhibit Nos. 96, 97, 98 and 99. Have you had
11 an opportunity to review these?

12 A Yes, ma'am.

13 Q And what are those still photos taken from?

14 A This is a camera located, I think, in front of the
15 Grilled Teriyaki, which is directly across the street of
16 the shooting incident, and it's a black and white camera.

17 Q If you'll look at those first two photographs, are
18 those still photos from the video we just saw of
19 Mr. Samuel and the spark?

20 A Yes, ma'am.

21 Q And the next two photographs are two other pictures
22 of someone we do not know?

23 A That's correct.

24 Q Okay. Specifically --

25 MS. GARFIELD: At this time, Your Honor --

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1 If you'll step down one more time. I'm sorry.

2 I'm sorry, Mr. Dye.

3 BY MR. GARFIELD:

4 Q First, I'm going to address with the jury 98 and 99.

5 Are these two photographs taken in sequential order?

6 A Yes, ma'am, they are.

7 Q And just if you'll -- I'm sorry, I showed you the
8 wrong ones. Same question for 96 and 97. If you'll just
9 explain to the jury what you see in these two photographs
10 and their significance.

11 A This is the camera number one that I recently spoke
12 about located in front of, I think, the Grilled Teriyaki
13 restaurant. It is a black and white image.

14 Q If you'll just publish to the jury and show them what
15 you're talking about and where you believe Mr. Samuel is.

16 A Mr. Samuel I believe to be up here in the right-hand
17 corner.

18 Q I'm not sure everyone can see.

19 A Oh, I'm sorry. Right here on the top right-hand
20 corner.

21 Q Move over here.

22 A All right. You guys can see?

23 Q Over here. And I hand you State's Exhibit No. 97.

24 Is this a still photo of the next frame from the picture
25 you've just shown everyone?

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1 A Yes, ma'am, it is.

2 Q And again, you see the spark in that photograph?

3 A Yes, ma'am, I do.

4 Q Can you just point that out to the jury as well.

5 A (The witness complied.)

6 MS. ZMROCZEK: Your Honor, if they'd like to publish
7 it, that's fine, but I object to having the agent in the
8 jury box.

9 THE COURT: That's fine.

10 Publish it to the jury.

11 MS. GARFIELD: Yes, sir.

12 THE COURT: Pass it around and let them look at it.

13 MS. CAMPBELL: Yes, sir.

14 THE COURT: Ladies and gentlemen, all the exhibits
15 that are introduced into evidence will be back with you in
16 the jury room. I don't ever tell the attorneys that they
17 can't publish things, but don't be so focused on the
18 picture that you're not listening to what is still going
19 on. All these exhibits and things will be back with you
20 in the jury room during deliberations. You'll have an
21 opportunity to spend as long as you need to with them.

22 Just let them pass it around, please, Ms. Garfield.

23 MS. GARFIELD: Yes, sir. And in that note, Judge,
24 because I honestly can't remember, the State will move 96
25 through 99 into evidence if I haven't already done so.

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1 MS. ZMROCZEK: Without objection.

2 THE COURT: Okay. 96 through 99 admitted without
3 objection.

4 (WHEREUPON, State's Exhibit Nos. 96 through 99
5 were admitted into evidence.)

6 BY MS. GARFIELD:

7 Q Okay. Now, I'll do these a little differently. I'll
8 show you 98 and 99. These are also still photographs?

9 A Yes, ma'am, same camera.

10 Q And these was taken in sequential order?

11 A Yes, ma'am.

12 Q Within the same second?

13 A Yes, ma'am.

14 Q Do we know the individuals in these pictures?

15 A Do not.

16 Q In the first photograph, I'm going to direct your
17 attention to the male. What does he appear to be throwing
18 on the ground?

19 A A cigarette butt.

20 Q And the next frame, Exhibit 99, what do you see on
21 the ground?

22 A A flash.

23 MS. GARFIELD: Your Honor, at this time, I'd like to
24 publish these to the jury.

25 BY MS. GARFIELD:

1 Q You may take your seat.

2 A (The witness complied.)

3 MS. WALKER: Thank you, Agent VanHouten. Please
4 answer any questions the Defense may have.

5 CROSS-EXAMINATION

6 BY MS. ZMROCZEK:

7 Q Agent VanHouten?

8 A Yes, ma'am.

9 Q You had an opportunity to review the video that my
10 investigation put together?

11 A Yes.

12 Q It would be embarrassing if the State had arrested
13 the wrong person and charged them, correct?

14 A I didn't pursue any state charges on any of those, so

15 --

16 Q Okay.

17 A -- I'm not going to...

18 Q You told -- first you interviewed Ms. Bethel?

19 A Yes.

20 Q Then you interviewed Mr. Samuel?

21 A Yes.

22 Q Now the cigarette smoker? Yes?

23 A Yes.

24 Q And then you interviewed Mr. Tucker?

25 A Yes.

1 Q His cousin?

2 A I don't remember his affiliation with Mr. Samuel.

3 Q Okay. You don't remember telling Mr. Tucker, you
4 tell your cousin I know he was lying?

5 A Yes, I did.

6 Q You tell your cousin I looked him in the face and he
7 wouldn't even look at me?

8 A Yes, I did.

9 Q You tell your cousin the next time I see him, I'm
10 arresting him?

11 A That is correct.

12 Q You tell your cousin I know he had a gun and I saw
13 him drop it?

14 A I don't recall that.

15 Q You don't recall it? Would you like to hear your
16 interview?

17 A I just don't recall it.

18 Q Okay. Is it possible?

19 A It is possible. It is also an interrogation method
20 that I used to clear Mr. Woodard, Mr. Samuel, as well as
21 Mr. Tucker. Unfortunately, ma'am, in regards to getting
22 the truth out, sometimes you have to be untruthful in
23 regards to an interrogation.

24 Q So you didn't see him with a gun?

25 A Mr. Samuel, no, I did not. After reviewing the video

1 in my office -- because prior to that interview, I was not
2 privy to the videos. I obtained the videos about four
3 days later.

4 Q You don't recall saying I saw you on the video bend
5 down and pick it up.

6 A Ma'am, that was an interrogation.

7 Q So you were just lying?

8 A Yes, I was.

9 Q It just happened to be coincidental that he bent down
10 and picked something up?

11 A It's a method that I used to obtain the truth, Ms.
12 Zmroczek.

13 Q I understand your method, but how did your method
14 know that he bent down to put out a cigarette or pick
15 something up?

16 A Prior to this interview, we were briefed by our
17 command staff that a nonlaw enforcement official viewed
18 the camera and made a comment to them that he thought what
19 he saw was a firearm being possessed by one of the three
20 gentlemen.

21 Q So it's possible that people could think it's a
22 firearm?

23 A There is a possibility.

24 Q Just like it's possible that that flash could be
25 muzzle from a gun hitting the ground. It's possible?

1 A It's a possibility, but I ruled it out.

2 Q I understand that you ruled it out, but it's a
3 possibility?

4 A Sure, it's a possibility.

5 Q You've never been wrong?

6 A That's not true.

7 Q Okay.

8 A I'm married with three kids. As a matter of fact, I
9 have a five-week at home. So yes, I'm wrong. I lie to my
10 wife to get out of the house at times.

11 Q And that's okay if people lie to get out of things
12 they don't want to do?

13 A I wouldn't necessarily -- that's not true.

14 Q People don't lie?

15 A Oh, people lie.

16 Q And people lie to get out of things -- to get out of
17 trouble?

18 A Sure, there's a possibility.

19 Q And people lie to keep their family members out of
20 trouble?

21 A Sure.

22 Q And people lie to stay out of trouble?

23 A Sure.

24 Q People are fallible and that's okay? Fallible and
25 that's okay?

1 A Fallible.

2 Q I'm sorry.

3 A Yes.

4 Q I don't have a five-week-old at home and I probably
5 got the same amount of sleep.

6 So you threatened him with being arrested federally?

7 A No, ma'am. I was very direct and very stern and very
8 honest. If I was able to articulate that any of those
9 three people that I interviewed, yes, I was going to do a
10 criminal complaint and I was going to charge them with the
11 USC 1001, which is lying during a federal investigation.
12 I was prepared to take them into federal custody if I
13 could prove beyond a reasonable doubt they were being
14 untruthful. Is that a threat, no.

15 Q So if they would be untruthful about anything?

16 A In regards to this incident.

17 Q Okay. So in regards to this incident, Mr. Tucker
18 told you he didn't even know his last name, Mr. Woodard;
19 isn't that right?

20 A I would assume so. The only reason I say that is
21 because he had no real familiarity with Mr. Woodard. I
22 think he was -- Mr. Woodard and Mr. Samuel were friends
23 and Mr. Tucker was from North Carolina.

24 Q They didn't grow up together? Not cousins?

25 A I'm referring to Mr. Woodard.

1 Q Let's talk about Mr. Woodard then. Mr. Woodard --
2 you said, I know you're in a gang and he said, no, Mr.
3 Woodard's in a gang.

4 A No, Mr. Tucker told me that Mr. Woodard was in a
5 gang.

6 Q Okay.

7 A I never interviewed Mr. Woodard.

8 Q And you told Mr. Tucker that you saw his cousin
9 pulling out his shirt, his long-sleeved shirt in October,
10 right?

11 A I did.

12 Q And you told him that that didn't make any sense to
13 you?

14 A I did. I actually role played. You hear me huffing
15 and puffing. And I think I hit the wall three times.

16 Q Hit the wall three times?

17 A Yes, ma'am.

18 MS. ZMROCZEK: Can we see --

19 MS. WALKER: Which one?

20 MS. ZMROCZEK: We'll do the first one first.

21 MS. WALKER: Not a problem.

22 BY MS. ZMROCZEK:

23 Q You had the opportunity to review these videos, but
24 if you want to just step down, you can unless you can see
25 from there or have them memorized.

1 THE WITNESS: Your Honor, may I step down?

2 THE COURT: Sure. Just keep your voice up, please.

3 THE WITNESS: Yes, sir.

4 MS. ZMROCZEK: The first one first.

5 THE COURT: All right. Do you want the lights off?

6 MS. ZMROCZEK: Please.

7 THE COURT: Jury, do you want them off? Is it
8 helpful?

9 Are you ready to go?

10 MS. ZMROCZEK: Thank you, Your Honor.

11 THE COURT: Okay.

12 (WHEREUPON, videos were played in open court for
13 the jury.)

14 BY MS. ZMROCZEK:

15 Q Okay. These videos haven't been altered, they've
16 just been zoomed so that we can get a clearer view,
17 correct?

18 A Yes, ma'am. That was Mr. Samuel. This is
19 Mr. Tucker.

20 Q And he's got kind of a funny gate, a funny walk?

21 A Like me, yes.

22 Q And this is Mr. Woodard, we all know?

23 A I've never actually spoken to Mr. Woodard, so if you
24 tell me that is Mr. Woodard, then I would agree with you.

25 Q Okay.

1 A You're referring to this gentleman with the white
2 hat?

3 Q I am.

4 A Okay.

5 Q Now, we see the lights on the ground, right, the
6 police had flashlights?

7 A Yes, ma'am.

8 Q Because yesterday -- were you here yesterday for
9 Mr. Gilliam's testimony?

10 A No, I was not.

11 Q Okay.

12 A I had to pick up my daughter. It was meet and greet
13 with the teachers. I didn't want to make the wife mad.

14 Q The two --

15 MS. ZMROCZEK: We can go to the second one.

16 BY MS. ZMROCZEK:

17 Q The two people that were in the video in the red
18 shirt that Mr. Woodard talked to as he was crossing the
19 street, when Ms. Garfield was showing you that, you said
20 he didn't know those people?

21 A Are you referring to the Caucasian people?

22 Q No, no. The two African-Americans in the red shirts
23 and they were walking across the street, and Mr. Woodard
24 was walking across the street and stopped to talk to, you
25 can review the video, but he didn't know those people?

1 A Yeah, I have no knowledge of who they are.

2 Q Okay. So here's where you're saying now today that
3 this is a cigarette that was being thrown on the ground,
4 right?

5 A In my professional opinion, I think it is. If you
6 look at the video within six to 12 inches where the
7 alleged flash is -- typically, if somebody shoots a
8 firearm in my proximity, I make some kind of movement.
9 I'll jump, I will look around. You clearly look at the
10 video, there's no indication of that.

11 Q And that's if you know it's not going to be shot,
12 right? If you know somebody is going to shoot a gun, do
13 you still jump around?

14 A No.

15 Q Okay.

16 A But I would probably jump around if somebody shot a
17 gun six to 12 inches --

18 Q So we see some flashes up there?

19 A I'm sorry. I was looking at the jury.

20 Q I'm sorry.

21 A You see a multitude of different flashes on the
22 screen.

23 Q Okay.

24 A Silhouetting off the garage doors at the gas station,
25 which are glass, reflecting off of it. You've got flashes

1 up here. You've got all kinds of -- there's another
2 flash. There's a multitude of flashes happening
3 simultaneously on this video.

4 Q And Mr. Smith has now admitted to shooting a gun and
5 you see a flash with that, too, as well, right?

6 A It appears I see two muzzle flashes in the left-hand
7 corner in that video that you're referring to, yes.

8 Q But now, it's two muzzle flashes and not a reflection
9 off the glass.

10 A No, if you look at it, you can see -- right there,
11 see? There he goes running. You see boom, boom.

12 Q No, I don't see boom, boom, but --

13 A It's over and done with.

14 Q Right.

15 MS. ZMROCZEK: And go to the next one, please.

16 BY MS. ZMROCZEK:

17 Q These are Mr. Tucker, Mr. Samuel and Mr. Woodard?

18 A Correct. If you stop right there, this gentleman
19 here, who I have never identified, if you see the alleged
20 flash at the bottom of his feet, you don't see anything
21 silhouetting out of his right side pocket that would
22 indicate a firearm was even dropped. If you'll look at
23 the silhouettes of black and white because this is a black
24 and white camera, if he allegedly dropped a firearm or
25 possessed a firearm, you would see some form of a black

1 dot or something. You see Mr. Samuel, he has his hand in
2 his right pocket and you see the flash. And the flash is
3 within six to 12 inches of this tall gentleman.

4 Q And the flash within six to 12 inches of Mr. Smith is
5 nothing but a gun, right?

6 A Mr. Smith is up here.

7 Q Right.

8 A I'm referring to this gentleman.

9 Q I understand.

10 A That gentleman right there and the other gentleman
11 walking right next him. See, there's no looking around.
12 There's no indication that a firearm went off in their
13 proximity. And I don't know who that gentleman is.

14 Q But at this point, we know that a firearm has gone
15 off in their proximity because they've been shot at
16 supposedly?

17 A Not in the proximity of the gentleman that I pointed
18 out. We know the firearm was discharged over here in this
19 proximity where the Exxon gas station is.

20 Q But you didn't see him jump?

21 A See who jump? I saw people scattering around,
22 running.

23 Q Okay.

24 A And I saw Mr. Samuel fall over, grab his hat, put his
25 hat back on and run northbound on Harden Street.

1 Q You saw him run also to the -- where the garbage cans
2 are?

3 A I did. I did look at it. If you would play the
4 video. The trash cans, typically, you have to open it up
5 because the trash bins that are in question here have lids
6 on them. You will see that Mr. Samuel not one time -- if
7 you look at his right arm, left hand, you would never see
8 a trash bin lid ever opened.

9 Q What do you see him hand to Mr. Tucker?

10 A I don't know who that -- I don't see anybody hand
11 anything to anybody.

12 Q You didn't notice the guy with the walk in the white
13 and black shirt walk up to him?

14 A I'd have to -- we can go to it.

15 Q Okay.

16 A We can zoom in on it. I can go further in detail.

17 Q Thank you. You can have a seat.

18 A It's a little dark right there.

19 (Witness resumes the witness stand.)

20 MS. CAMPBELL: Are you finished?

21 MS. ZMROCZEK: Yes, I'm finished.

22 (WHEREUPON, the playing of the videos in open
23 court was concluded.)

24 BY MS. ZMROCZEK:

25 Q So -- so Agent VanHouten, just so this jury is clear,

1 the only flashes of gunfire come from Mr. Smith and the
2 other flashes can all be explained, right?

3 A Well, that's not true.

4 Q Okay.

5 A It's because the fact that Mr. Smith was caught with
6 possession of a firearm. That's why he was prosecuted
7 federally for that offense.

8 Q We're not going to discuss that. If you get rid of a
9 gun, then you can't be caught with it, right?

10 A Not necessarily. You have DNR, you've got
11 investigative methods to articulate and correlate
12 possession of a firearm.

13 Q Okay.

14 A You've got DNA on shell casings. You have DNA on
15 bullets.

16 Q But not in this case? No DNA on shell casings in
17 this case?

18 A That is correct to the best of my knowledge.

19 Q No DNA on bullets in this case?

20 A Correct.

21 Q Okay. I understand that you have been doing this for
22 a very long time, right?

23 A Yes, ma'am.

24 Q You testify in front of juries all the time and
25 you're very good at it?

- 1 A Yes, ma'am.
- 2 Q And you're very thorough?
- 3 A I try to be.
- 4 Q And Agent VanHouten, you would want people to ask
- 5 questions to make sure that people are doing the right
- 6 thing?
- 7 A Absolutely.
- 8 Q People make mistakes and that's okay?
- 9 A Yes.
- 10 Q Agent VanHouten, you saw Mr. Samuel return -- as
- 11 Ms. Childress is being loaded up, you saw him return right
- 12 there to where he dropped his cigarette?
- 13 A No. He dropped his cigarette on the opposite side of
- 14 the fountain where Ms. Childress was at.
- 15 Q You would agree he bent down to pick up his lighter
- 16 as he's walking where the bricks are on the fountain?
- 17 A No, ma'am. He's across the street, not by the
- 18 fountain --
- 19 Q Okay.
- 20 A -- of where he allegedly appears to pick up a
- 21 cigarette lighter.
- 22 Q And you see him walk back close to the fountain?
- 23 A I do.
- 24 Q Past Ms. Childress while she's being loaded up?
- 25 A And several law enforcement officers, yes.

1 Q And you see him looking around on the ground, right?

2 Or you see him looking around?

3 A I see him looking around, yeah.

4 Q You think he's looking for his lighter?

5 A I don't know what he's looking around for, maybe
6 females or maybe his two other --

7 Q But the answer is we don't know?

8 A We don't know. We don't know what he's looking for.

9 Q And then you see him looking in this bushes. Looking
10 for females possibly in the bushes?

11 A Once again, ma'am, I don't know what he's looking
12 for.

13 Q Okay. And today, we don't get to ask him because
14 he's terrified of gangs, not that he's terrified of being
15 arrested, right?

16 A That is what I was told.

17 Q So just to be clear, Agent VanHouten, you're not
18 saying that you can say it's a cigarette or a lighter or
19 anything for certain, right? You're just saying in your
20 opinion?

21 A You said a cigarette lighter?

22 Q That he dropped anything or that he dropped a
23 cigarette. You're just saying that's what your opinion
24 is?

25 A That is my professional opinion.

1 Q Okay.

2 MS. ZMROCZEK: No further questions, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. GARFIELD:

5 Q Agent VanHouten, you testified that you were aware of
6 the spark back in 2013?

7 A I was.

8 Q And as a result, did you question witnesses about
9 this?

10 A I did.

11 Q And as a result of the questioning, did any arrest
12 develop?

13 A No additional arrests were ever developed in the
14 course of this investigation.

15 Q You did review all the videos that Ms. Zmroczek
16 provided to the State yesterday?

17 A I did.

18 Q And I believe you testified on cross-examination that
19 those videos were somewhat not clear?

20 A Yes.

21 Q Because they had been altered in some fashion?

22 A They appeared to be zoomed in.

23 Q But when you are looking at that black and white
24 video and you see the spark from Mr. Samuel laying on the
25 ground, do you see him ducking?

1 A I do.

2 Q And why is he ducking at that point in time?

3 MS. ZMROCZEK: Objection, speculation, Your Honor.

4 THE COURT: Sustained.

5 BY MS. GARFIELD:

6 Q Do you see anyone else reacting after that spark is
7 on the ground?

8 A No.

9 Q Do you see anyone seem to be in a tizzy or anything
10 of that nature?

11 A No, ma'am.

12 Q All right, sir. Do you see anyone come behind
13 Mr. Samuel and pick anything up?

14 A No, ma'am.

15 Q Did you also review that same video in color?

16 A I have.

17 Q And any changes in your testimony?

18 A No, ma'am.

19 Q Is there any reason in your investigation that
20 Mr. Samuel should have been arrested?

21 A No, ma'am.

22 Q Ms. Zmroczek asked you people lie to get out of
23 trouble?

24 A Yes, ma'am.

25 Q Ms. Zmroczek asked you people lie to stay out of the

1 trouble?

2 A Yes, ma'am.

3 Q In the course of your investigation related to any
4 firearms violations by the federal government, who in this
5 case was charged?

6 A Mr. Michael Juan Smith.

7 Q Is he the only person?

8 A Yes, ma'am.

9 Q In the course of this investigation in your
10 assistance with Columbia Police Department, who in this
11 case was charged with state violations relating to gun
12 laws?

13 A Michael Juan Smith.

14 Q Is he the only person?

15 A Yes, ma'am.

16 MS. GARFIELD: Thank you.

17 THE WITNESS: You're welcome.

18 MS. ZMROCZEK: Just briefly, Your Honor.

19 RE CROSS-EXAMINATION

20 BY MS. ZMROCZEK:

21 Q Ms. Garfield asked you if you reviewed the same video
22 in color?

23 A I have.

24 Q There's a color video of the Exxon area?

25 A Not that one. I think she was referring to the other

1 cameras as well, other angles that I had viewed or actual
2 color videos I think were shown to the jurors.

3 Q Okay. I wanted to be clear on that.

4 A Yes, ma'am. From my knowledge, camera number one
5 that we used is black and white.

6 Q And so those cameras would also include -- there's a
7 camera that has a closer view of the garbage can area
8 where he dropped something and he meets up with Mr.
9 Woodard and throws up his hands?

10 A Yes, ma'am, there is. It's a color video.

11 Q It's a very clear color video?

12 A Yes, ma'am. It's on the traffic control device and
13 it's facing northbound on Harden Street.

14 Q And that was provided through discovery?

15 A I would assume so, yes, ma'am.

16 MS. ZMROCZEK: Thank you. I have no further
17 questions.

18 THE WITNESS: You're welcome.

19 THE COURT: All right. Thank you.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: Is the next one long or short?

22 MS. WALKER: Short.

23 THE COURT: Go ahead and call your next witness.

24 MS. WALKER: Your Honor, the State calls Captain
25 Vince Goggins to the stand.

Vince Goggins - Direct by Ms. Walker

1 THE COURT: Okay.

2 VINCENT GOGGINS,

3 after being duly sworn, testified as follows:

4 THE CLERK: Have a seat in the witness stand, please.
5 State your name for the record.

6 THE WITNESS: Vincent Goggins. That's G-O-G-G-I-N-S.

7 MS. WALKER: May it please the Court?

8 THE COURT: Yes, ma'am.

9 DIRECT EXAMINATION

10 BY MS. WALKER:

11 Q Sir, where are you currently employed?

12 A With the Richland County Sheriff's Department.

13 Q And how long have you been with the sheriff's
14 department?

15 A I've been with Richland County for a little over 12
16 years now.

17 Q And can you tell the jury what you do at the
18 sheriff's department?

19 A I am the current supervisor of the Midlands Gang Task
20 Force.

21 Q And what does the Midlands Gang Task Force do?

22 A Our primary job is criminal investigation, street
23 gangs, trends, intelligence. Anything to do with street
24 gangs in Richland County, that's what my position is for.

25 Q And how long have you been specifically with the gang

Vince Goggins - Direct by Ms. Walker

1 unit?

2 A I've been with the gang unit for a little over six
3 years now.

4 Q The Midlands Task Force, which different agencies are
5 involved with that?

6 A Currently, we have the University of South Carolina,
7 Columbia City Police Department and Richland County.

8 Q And you're in charge of that?

9 A Yes, ma'am.

10 Q In terms of police investigations, does law
11 enforcement keep what is referred to as a gang database?

12 A Yes, ma'am, we do.

13 Q And can you explain to the jury what a gang database
14 is?

15 A A gang database is a database that we use for officer
16 safety purposes. And what we do with that database is
17 based off of federal criteria. We're able to place gang
18 members in that database for officers' safety from across
19 the nation.

20 Q And in terms -- is there certain criteria an
21 individual must meet before they are placed in a gang
22 database?

23 A Yes, ma'am.

24 Q And what is that criteria?

25 A Several criteria. One is, of course, self-admission

1 to being in a street gang. If an individual is identified
2 with a criminal gang member by documented or reliable
3 informant, individuals that reside or frequent a
4 particular criminal gang group area and adopts their style
5 of dress, their use of hand signs and tattoos and
6 associate with known criminal gang members. An individual
7 is identified as a criminal gang member as corroborated by
8 an independent informant, an individual has been arrested
9 more than once and accompanied by identified criminal gang
10 members, and an individual that admits or self-admits to
11 being in a criminal street gang.

12 Q Were you aware that over the course of this trial
13 people -- I guess three young men have been accused of
14 being gang members?

15 A Yes.

16 Q Mr. Tucker, the young black man you see in Defense
17 Exhibit No. 3?

18 A Yes, ma'am.

19 Q Did you run him through the database for gang
20 members?

21 A Yes, ma'am.

22 Q Is he in any way associated with any gang?

23 A Not to our knowledge, no, ma'am.

24 Q These two individuals?

25 A Yes, ma'am.

1 Q Mr. Samuel -- I guess, who else did we ask you to run
2 through?

3 A Mr. Samuel and Mr. Woodard and neither were
4 documented gang members.

5 Q Is anybody in this case a documented gang member?

6 A Mr. Michael Juan Smith is a documented Blood gang
7 member.

8 Q In fact, was he a self-admitted gang member?

9 A Yes, ma'am, since the age of 15 years old.

10 Q I want to ask you about a series of pictures that are
11 in evidence and ask you if they are significant to you
12 from a gang -- for gang investigative purposes. State's
13 Exhibit No. 79 first, Mr. Smith. This hand sign, is that
14 significant to you?

15 A It is.

16 Q And how is this particular hand sign significant?

17 A That is a hand sign that is related to the Blood
18 street gang.

19 THE COURT: What exhibit number is that?

20 MS. WALKER: Seventy-nine, Your Honor.

21 THE COURT: Is that in evidence?

22 MS. WALKER: Yes, Your Honor.

23 THE COURT: Okay. Thank you.

24 BY MS. WALKER:

25 Q And State's Exhibit No. 80?

1 A Again, that is a hand sign that is related -- the
2 hand sign is stating that he's a Gangster Killer Blood.

3 Q The Gangster Killer Bloods?

4 A Yes, ma'am.

5 Q Who is this with -- do they go by GKB?

6 A GKB, or the new name for that organization is they
7 refer to themselves as G-Shine.

8 Q And who is this with that gang sign?

9 A That's Michael Juan Smith.

10 Q Is there a particular area of town that the Gangster
11 Killer Bloods dominate or are they kind of all over?

12 A Yeah, they're generally all over. That's one of the
13 larger gangs in the state or even on the east coast.

14 Q In terms of tattoos, are those significant in terms
15 of identifying gang members?

16 A Definitely.

17 Q Were you able to correlate any tattoos with the
18 Defendant in this case?

19 A He had a -- or at that time, that he was documented
20 as a street gang, he had a five-point crown, which is
21 significant to the Blood street gang. They identify with
22 the number five.

23 Q In fact, when they're writing at times, will they,
24 instead of S, use the number five?

25 A Yes, definitely. They will use the number five

1 instead of S's.

2 MS. WALKER: Thank you, Captain. I don't have any
3 further questions.

4 MS. ZMROCZEK: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. ZMROCZEK:

7 Q MOB, that's a tattoo that they have, right?

8 A It can be, yes, ma'am.

9 Q A lot of them have it?

10 A A lot of them -- well, several.

11 Q You said Gangster Killer Bloods, they'll all over.
12 That's not the only gang in this town, is it?

13 A No, ma'am, it's not.

14 Q In fact, there's another violent gang called the Folk
15 Nation, right?

16 A That's correct.

17 Q And when gangs are involved, things can get violent?

18 A Yes, ma'am.

19 Q Gang members shouldn't be given any Constitutional
20 rights?

21 A Everyone is allowed their Constitutional rights,
22 ma'am.

23 Q Everyone should?

24 A Yes, ma'am.

25 Q The activity -- you keep a gang website and you keep

1 what kind of activities that this individual is associated
2 with?

3 A We attempt to keep an updated website, that's
4 correct.

5 Q So you could see if they have weapons and narcotics
6 violations?

7 A Things of that nature.

8 Q Okay. You could see if they have assault violations?

9 A Yes, ma'am.

10 Q If they're violent in nature, if they have fighting
11 violations?

12 A If it was reported to my office, we would.

13 Q But in this case, Mr. Smith just had the burglary,
14 which he's already admitted to, the gun and the drugs,
15 right? There were no assault or knives or any violent --
16 physically violent, I understand they're legally termed as
17 violent, physically violent offenses, right?

18 A Gang members --

19 Q I'm just asking what was on your paper?

20 A Gang members are involved with white collar crimes
21 and homicides and everything in between, so --

22 Q And that's why you keep track?

23 A Yes, ma'am.

24 Q And that's not what you had on this paper?

25 A At the time, that's correct.

1 Q Has that changed?

2 A I'm not sure of the status at this time.

3 Q Okay. And when we're investigating crime, it's
4 important that we investigate the crime and punish the
5 right person, right?

6 A Yes, ma'am.

7 MS. ZMROCZEK: Thank you.

8 REDIRECT-EXAMINATION

9 BY MS. WALKER:

10 Q She asked you about whether or not -- and I didn't go
11 into this on direct, but she asked about whether or not
12 gang members assault people?

13 A Yes, ma'am.

14 Q Even if people aren't charged or convicted of
15 assaults, do y'all keep a list of assaults by prospective
16 gang members or a database of that?

17 A Yes, ma'am.

18 Q Do you have these on Michael Smith? Let me hand you
19 a portion of it.

20 A Yes, ma'am, these were pulled out of our database
21 from Richland County.

22 Q Just give me one second to go through all the others.

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

24 THE COURT: Yes, ma'am.

25 (Pause.)

1 BY MS. WALKER:

2 Q Let me ask you this while I'm looking through this.
3 In terms of -- do gangs have rank structures?

4 A Typically, they do. It depends on high level of a
5 structure the particular gang is. The Gangster Killer
6 Bloods is one of our more organized gangs in the State
7 along the east coast.

8 Q How do you gain rank in a gang?

9 A By committing violent crimes or crimes against other
10 gang members.

11 Q Additionally, more, I guess, assaults. You have
12 additional assaults from -- committed by Michael Juan
13 Smith?

14 A Yes, ma'am.

15 Q So it's not just, I guess, victimless burglaries?

16 A No, ma'am. We have several assaults and criminal
17 domestic violence from a young age until now.

18 MS. WALKER: Thank you, Captain.

19 THE COURT: Recross?

20 MS. ZMROCZEK: I have nothing further, Your Honor.

21 THE COURT: Thank you, Captain. Have a nice day.

22 All right, ladies and gentlemen, we're going to take
23 our morning break. Do not discuss the case. Do not let
24 anyone discuss the case with you. Keep an open mind.
25 We'll be back with you in about 10, 15 minutes.

1 Everyone remain seated. Remain seated.

2 (WHEREUPON, the jury left the courtroom at 10:48
3 a.m.)

4 THE COURT: Okay. Anything before we break?

5 MS. ZMROCZEK: No, Your Honor. They did give me the
6 jail calls on CD. I'd like to listen to those. They
7 mentioned a criminal domestic violence charge, I'll have
8 to go through and try to find that again because I don't
9 remember it. I just need to go find it. If they have it
10 -- if it's ready to them, if they'd just tell me where it
11 is, that would be great. Thank you.

12 THE COURT: Thank you. All right. Fifteen minutes.

13 (WHEREUPON, a short break was taken.)

14 MS. WALKER: Your Honor, the State will have no
15 further witnesses.

16 THE COURT: Okay. You could have told me that
17 before, Ms. Walker. I'm kidding. Calm down.

18 MS. WALKER: Okay. Okay.

19 MS. ZMROCZEK: If they need to rest, we're okay
20 with -- we understand what the directed verdict is going
21 to be, but if you want to bring the jury in so that they
22 can rest and, I guess, send them right back out.

23 MS. CAMPBELL: Unless we do the motions.

24 THE COURT: Why don't we just do the motions now.

25 MS. ZMROCZEK: That's what I was thinking.

1 THE COURT: So when the jury comes back in, is it the
2 State's intention to rest?

3 MS. WALKER: Yes, Your Honor.

4 THE COURT: Okay. Let's go ahead and make all the
5 motions now, and go from there.

6 MS. ZMROCZEK: Thank you, Your Honor. When the State
7 officially rests, Your Honor, which I know they haven't on
8 the record, we would move for a directed verdict on the
9 charges under Rule 19 regarding the lack of evidence about
10 the shooting, who was ultimately involved. And at this
11 point on these charges, we would for a directed verdict.

12 THE COURT: All right.

13 Response?

14 MS. GARFIELD: Your Honor, we believe that we have
15 provided ample evidence to go to the jury for them to
16 decide if the Defendant did shoot a gun intending to kill
17 someone. Unfortunately, that intention did follow to
18 Ms. Childress. There has been witnesses from both
19 Mr. Tucker and Mr. Woodard that explained they did not
20 have guns and that they were shot at by the Defendant as
21 well as Mr. Painter who sees the Defendant shoot at
22 someone not knowing who it was and did not see anyone else
23 with a gun. Obviously, you also heard from Ms. Childress
24 who did suffer life threatening injuries. And we believe
25 there's enough evidence to go to the jury to make a

1 determination.

2 THE COURT: Okay. Based upon Rule 19 of the South
3 Carolina Rules of Criminal Procedure and the standard
4 which I'm required to assess the case at this level, and
5 that is taking the evidence in the light most favorable to
6 the nonmoving party, considering the existence of the
7 evidence and not the weight of the evidence, I do rule
8 that a directed verdict is denied at this point in time.
9 There is sufficient evidence on all the charges, including
10 the firearm charges to go forward to the attempted murder.

11 My only question is about the possession of a stolen
12 pistol. I have heard no evidence that Mr. Smith possessed
13 the knowledge required for knowing that the pistol was
14 stolen. Where does that come from?

15 MS. CAMPBELL: Your Honor, I would also note in her
16 opening statement she said that he was guilty of all the
17 gun charges.

18 THE COURT: I heard what she said. The opening
19 statement is not evidence. My question is this, where is
20 the knowledge that Mr. Smith -- the State has proven the
21 mental element of whether or not Mr. Smith knew or should
22 have known that the firearm was stolen?

23 MS. CAMPBELL: Your Honor, Mr. Smith lived in the
24 Broad River area. This burglary took place in the Broad
25 River area. There's evidence that Mr. Smith had the gun,

1 that he took the gun that night knowing he wasn't supposed
2 to have the gun. That came from Shante Bethel.

3 In addition to that, there is evidence in the record,
4 Your Honor, I believe that Mr. Smith had the gun on him.
5 It was recovered from his person, Your Honor. At that
6 point, he said he didn't mean to shoot. He later said
7 that he picked it up from someone else.

8 So Your Honor, even in his second statement, he
9 admits that he took the gun from someone else.

10 MS. ZMROCZEK: If I may respond, Your Honor?

11 THE COURT: Not yet.

12 MS. ZMROCZEK: Okay.

13 THE COURT: Where is the indictment?

14 MS. CAMPBELL: I've got the indictment, Your Honor.
15 You need it?

16 THE COURT: I've got it. Thank you.

17 MS. CAMPBELL: Your Honor, I don't think there's any
18 question if I -- can I talk?

19 THE COURT: Just one second, please.

20 MS. CAMPBELL: Okay.

21 THE COURT: Okay.

22 MS. CAMPBELL: That he knowingly possessed the actual
23 weapon.

24 THE COURT: Yeah, but you have to prove that he knew
25 or should have known that it was stolen. The serial

1 number is not obliterated. There's no evidence that he
2 knew the firearm was stolen. There's no evidence -- I
3 mean, if someone is in possession of a firearm and the
4 serial number is obliterated, then they're in violation of
5 the statute.

6 There's no evidence in the record that he knew the
7 gun -- I'm not saying -- there's plenty of evidence in the
8 record for the directed verdict stage to show that he
9 possessed the firearm. I'm not disputing that. My issue
10 is you also have to prove that he knowingly -- that he
11 knew or should have known it was stolen. And there's no
12 evidence of that. Because usually -- I mean, I was
13 expecting him to say in one of his statements yeah, I knew
14 the gun was stolen. That's really the only way you can
15 prove it absent an obliterated serial number.

16 All right. I'm directing a verdict against the
17 possession of a stolen pistol charge. That will not go
18 forward to the jury.

19 MS. ZMROCZEK: Thank you, Your Honor.

20 THE COURT: All the other charges will.

21 MS. ZMROCZEK: Yes, Your Honor.

22 THE COURT: Are you ready to call your first witness?

23 I have to go through his rights with him.

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

1 MICHAEL JUAN SMITH,

2 after being duly sworn, testified as follows:

3 THE COURT: Okay. All right. Now, we had a
4 conversation yesterday, right? Do you remember that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. This conversation is going to go
7 the same way. If at any time you don't understand me or
8 you say, Judge, that doesn't make any sense or hey, I want
9 to talk to Ms. Zmroczek, I'm going to let you do any of
10 that you need to, okay?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: So just like yesterday, I want you to
13 communicate with me, I want you to feel free to
14 communicate with me and ask any questions that you may
15 have, okay?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And I say that to everybody because this
18 is a very important part of your case.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: At this time, I'm going to explain to you
21 some of your rights.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: If you do not understand anything that I
24 say, just let me know. If you want me to explain anything
25 in more detail, just let me know. I'm happy to do that.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand what I've said so far?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. Now, we've reached the stage of
5 the trial where you may present your defense. You have
6 the right to claim the protections that are given to you
7 by the 5th Amendment to the Constitution of the United
8 States.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: That amendment states in part that no
11 person shall be compelled in any criminal case to be a
12 witness against himself. Okay. We talked a little about
13 this yesterday. This is more fully explaining it, okay.

14 This means that you cannot be required to testify in
15 this case. You have the right to testify on your own
16 behalf. However, no one in this room or outside of this
17 room can make you testify. This is a personal right and
18 no one can waive this right except you. If you decide to
19 testify, you will be subject to the same rules that govern
20 other witnesses and you may be examined and cross-examined
21 on any relevant issue that involves -- in this case.

22 In addition, if you have convictions that involve
23 dishonesty or false statement or for crimes punishable by
24 imprisonment for more than one year, which we know that
25 you do, and I determine that the probative value of

1 admitting this evidence outweighs its prejudicial effect,
2 the solicitor will be able to introduce your criminal
3 record to attack your credibility. Do you understand
4 that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: If you decide to testify, this decision
7 on your part must be made freely, voluntarily and
8 intelligently with the knowledge and the protections given
9 to you by the 5th Amendment and the consequences of your
10 decision to testify.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: If you decide not to testify, you look at
13 me and say I don't want to testify, I will tell the jury
14 they cannot even give the fact that you did not testify
15 any consideration whatsoever in the jury room and that
16 there is to be absolutely no prejudice to you because you
17 did not testify.

18 This decision is left entirely up to you whether or
19 not you testify. You may talk with your lawyer, your
20 family or anyone else, but the final decision will be left
21 entirely up to you. Do you understand what I have
22 explained to you so far?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, what criminal history would you
25 attempt to introduce? The burglary -- go ahead.

1 MS. CAMPBELL: It would be the attempted burglary
2 second degree, I believe 2011. And then he had a burglary
3 second degree violent and larceny, I believe in 2000.

4 MS. ZMROCZEK: He pled, yeah, but it was -- the one
5 was -- it occurred in 2010 and one was 2011, but he pled
6 there.

7 MS. CAMPBELL: Right.

8 THE COURT: Is that a grand larceny?

9 MS. CAMPBELL: It is a grand larceny.

10 MS. ZMROCZEK: It is a grand larceny.

11 THE COURT: Is that the extent of the record that you
12 would attempt to introduce?

13 MS. CAMPBELL: Let me double check.

14 THE COURT: Okay.

15 MS. CAMPBELL: I'll make sure.

16 THE COURT: Do you have any questions for me about
17 what I've explained to you?

18 THE DEFENDANT: No, sir.

19 THE COURT: Now, I don't want to know what you've
20 discussed with your lawyer, but I want to know have you
21 actually discussed this with your lawyer?

22 THE DEFENDANT: Not yet. I'm going to discuss it
23 now.

24 THE COURT: Have you talked about it previously prior
25 to this moment?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You want more time to talk to her?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: That's perfectly fine. That wasn't a
5 trick question. You and her have talked about it before;
6 is that right?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. And you would like to talk to her
9 about it again before you make the final decision; is that
10 right?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: I'll give you that opportunity. That's
13 no problem. We're just going to double check your record,
14 okay?

15 THE DEFENDANT: Okay.

16 MS. CAMPBELL: Beg the Court's indulgence just to
17 make sure.

18 THE COURT: Yes, ma'am.

19 MS. CAMPBELL: Your Honor, the only other conviction
20 is the federal conviction and we are not going into that.

21 THE COURT: Okay. So the only criminal history they
22 intend on introducing against you if you decide to testify
23 is your burglary in the second degree violent conviction,
24 your attempted burglary second degree, and your grand
25 larceny. They're not going to go into your gun charge,

1 okay, your federal gun charge. Does that make sense?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right, sir. You can talk about it
4 with Ms. Zmroczek. Do y'all want to do that --

5 Do you have witnesses you can call prior to lunch?

6 MS. ZMROCZEK: I do have his mother and father.

7 THE COURT: Okay.

8 MS. ZMROCZEK: And then I understand that Mr. West is
9 available, but I just need to speak with him before -- if
10 I'm going to put him up, I just need to speak with him.

11 THE COURT: Okay.

12 MS. ZMROCZEK: So, at least, I have two before lunch,
13 Your Honor.

14 THE COURT: All right.

15 Yes, ma'am, Ms. Campbell?

16 MS. CAMPBELL: That's all.

17 THE COURT: All right, sir. Let's take about 10
18 minutes. You can talk to Mr. West, get your witnesses
19 lined up. When I bring the jury back in after the break,
20 the State can go ahead and rest and then you can call your
21 first witness.

22 Then you'll have the lunch hour to discuss with
23 Ms. Zmroczek whether or not you want to testify.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Does that make sense?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Will that give you enough time to discuss
3 it with her?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Everyone remain seated.
6 Let's take about five or 10 minutes, not too long.

7 Ms. Zmroczek can get regrouped and we'll come right back
8 in and start.

9 I need to read this stipulation before you rest about
10 the dorns.

11 MS. ZMROCZEK: The roommate, yes.

12 THE COURT: Okay.

13 (Pause.)

14 THE COURT: Okay. Everybody ready?

15 (There was no response.)

16 (WHEREUPON, the jury entered the courtroom at
17 11:30 a.m.)

18 THE BAILIFF: The jury is seated, Your Honor.

19 THE COURT: Thank you very much, Mr. Dye.

20 Welcome back, ladies and gentlemen. As I read a
21 stipulation to you yesterday and told you about the fact
22 that with a stipulation, this is a fact that is agreed
23 upon by both sides, no other proof or evidence is
24 necessary to establish this fact. I have another
25 stipulation to read to you today.

1 Both the State and the Defense in this case stipulate
2 that the Defendant, Michael Juan Smith, and the witness,
3 Rueben Levy, were previously housed together in the hotel
4 dormitory of the Alvin S. Glenn Detention Center. And
5 that is a stipulation by both sides.

6 The State may call its next witness.

7 MS. WALKER: Your Honor, at this time, the State of
8 South Carolina rests its case.

9 THE COURT: Thank you, Ms. Walker.

10 Ladies and gentlemen, the State of South Carolina has
11 rested its case in chief. Now, Mr. Smith will have an
12 opportunity to present a defense if he wants to. However,
13 he does not have to because he is presumed innocent and
14 the burden of proof in this case, as I told you in the
15 very beginning, rests with the prosecution.

16 Ms. Zmroczek, you may call your first witness if you
17 choose to do so.

18 MS. ZMROCZEK: Thank you, Your Honor. We would call
19 Juanita Smith to the stand.

20 THE COURT: Okay. Ms. Smith, please come forward and
21 be sworn.

22 THE BAILIFF: Place your left hand on the Bible,
23 raise your right hand.

24 JUANITA SMITH,

25 after being duly sworn, testified as follows:

1 THE CLERK: Thank you. Have a seat in the witness
2 stand, please.

3 THE BAILIFF: Watch your step.

4 THE CLERK: State your name for the record.

5 THE WITNESS: My name is Juanita Smith.

6 DIRECT EXAMINATION

7 BY MS. ZMROCZEK:

8 Q Ms. Smith, please tell the jury where you live.

9 A In Columbia, South Carolina.

10 Q In 2013, who was living with you?

11 A Me, my husband, which is Michael Smith, my son,
12 Michael Smith, and my son, Kevin Smith.

13 Q Anyone else?

14 A Oh, and my grandson.

15 Q Okay. I want to ask you about a specific incident,
16 and that incident involves whether or not you know of your
17 son, Michael Smith, ever getting beat up?

18 A Yes, ma'am.

19 Q Okay. Without saying what he said, how do you know
20 that he was beat up?

21 A Well, because I woke him up one Sunday morning. He
22 was supposed to be scheduled to work.

23 Q Where was that?

24 A At Subway with me.

25 Q Okay.

Juanita Smith - Direct by Ms. Zmroczek

1 A I was his manager. And he was supposed to come to
2 work that Sunday morning. I woke him up at about 7:30,
3 8:00. He went to the restroom. I woke him up, knock on
4 the door. He went in the restroom. He said, Ma, I'm
5 fixing to go --

6 Q Don't say what he said, just say what you saw?

7 A And I was downstairs making coffee and I just
8 happened to look at him and I see he had done got jumped
9 on.

10 Q How do you know that? What did you see?

11 A His entire face was swollen and he had two black
12 eyes. His lip was busted. His nose was swollen. That
13 was for one, too.

14 Q Do you know what he did the night before?

15 A He was at Five Points.

16 Q And that's all you know about the situation?

17 A That's all I know.

18 Q Okay. And you don't know the exact date this
19 happened?

20 A No, ma'am. No, ma'am.

21 Q Was it before or after this incident, before this
22 incident?

23 A Before this, yes.

24 MS. ZMROCZEK: Thank you, Ms. Smith. Please answer
25 any questions the State may have.

1 THE WITNESS: Okay.

2 CROSS-EXAMINATION

3 BY MS. GARFIELD:

4 Q So you saw your son's face badly swollen?

5 A Yes, ma'am.

6 Q Did he seek medical attention?

7 A No, ma'am.

8 Q Did you notify law enforcement?

9 A No, ma'am, I didn't.

10 Q Did anyone notify law enforcement?

11 A Not that I'm aware of.

12 Q Did your son notify law enforcement?

13 A Not that I'm aware of.

14 Q And he couldn't go to the Subway with you. Was he
15 working at the Subway --

16 A Yes, ma'am.

17 Q -- with you? You worked there as well?

18 A Yes, ma'am, I'm the manager.

19 Q You're the manager. And what Subway is that?

20 A Here in Columbia, South Carolina.

21 Q Where?

22 A Off of Broad River Road.

23 Q Specifically, do you know the address?

24 A Yes, ma'am.

25 Q What's the address?

Juanita Smith - Cross by Ms. Zmroczek

1 A 2700 Broad River Road.

2 Q I'm sorry, I couldn't hear you?

3 A 2700 Broad River Road.

4 Q And your testimony today he was working there at the
5 time?

6 A Yes, ma'am.

7 Q And approximately when was this?

8 A This was -- it couldn't have been no more than about
9 a couple of months before this whole incident.

10 Q A couple months before this incident. Summertime?

11 A Yeah.

12 MS. ZMROCZEK: Your Honor, they're asking her to
13 speculate. If she doesn't know.

14 THE COURT: If she doesn't know, she can say she
15 doesn't know.

16 Go ahead.

17 THE WITNESS: It could have been summertime. Spring.
18 I mean, I do know what happened this incident here, that
19 October. I just know that.

20 BY MS. GARFIELD:

21 Q But you're just not familiar with when this was?

22 A No, ma'am.

23 Q Was it in the same calendar year?

24 A Yes, ma'am. Yes, ma'am.

25 Q And Mr. Smith was living with you at the time?

Juanita Smith - Cross by Ms. Zmroczek

1 A Yes, ma'am.

2 Q And were you aware that he had a gun in the home?

3 A No, ma'am.

4 Q Were you aware that your son was in a gang?

5 A No, ma'am.

6 (WHEREUPON, State's Exhibit No. 102 was marked
7 for identification only.)

8 BY MS. GARFIELD:

9 Q I'm going to hand you what's been marked as State's
10 Exhibit No. 102 for identification. Do you recognize that
11 handwriting?

12 A Yes, ma'am. I think it's my son. I think it is.

13 Q You think it is?

14 A Yes, ma'am.

15 MS. GARFIELD: Thank you, Ms. Smith.

16 MS. ZMROCZEK: No further questions, Your Honor.

17 THE COURT: Thank you. You may step down.

18 THE WITNESS: Thank you.

19 THE COURT: Call your next witness.

20 MS. ZMROCZEK: Yes, Your Honor. We called Michael
21 Smith, Sr., or just Michael Smith.

22 THE COURT: Okay. Mr. Smith, please come forward and
23 be sworn.

24 MS. ZMROCZEK: And for the record, Your Honor, his
25 name is not Sr., just for clarification for this record.

1 THE COURT: Okay.

2 MICHAEL DARNELL SMITH,

3 after being duly sworn, testified as follows:

4 THE CLERK: Thank you. Have a seat in the witness
5 stand, please.

6 THE BAILIFF: Watch your step, sir.

7 THE CLERK: State your name for the record.

8 THE WITNESS: Michael Darnell Smith.

9 MS. ZMROCZEK: Thank you.

10 DIRECT EXAMINATION

11 BY MS. ZMROCZEK:

12 Q Mr. Smith, were you aware that your son got beat up?

13 A Oh, yeah.

14 Q Did you tell him to call the police?

15 A No.

16 Q Did you take him to the hospital?

17 A Nobody took him to the hospital.

18 Q And were the injuries bad enough?

19 A No, but his face was swollen up.

20 Q Okay. His face was swollen up?

21 A Yeah.

22 Q Okay. And that's what you saw with your own eyes?

23 A Yes, ma'am.

24 MS. ZMROCZEK: Thank you. I have no further
25 questions. Please answer any questions the State has.

1 MS. WALKER: Your Honor, we don't have any questions.

2 THE COURT: Have a nice day.

3 THE BAILIFF: Watch your step, sir.

4 THE COURT: All right. Call your next witness.

5 MS. ZMROCZEK: Your Honor, at this time, my next
6 witness will be here after lunch.

7 THE COURT: All right.

8 Ladies and gentlemen --

9 Where are we? What time did you tell them to be
10 here?

11 THE CLERK: It's probably going to be about 20, 30
12 minutes.

13 THE COURT: All right, ladies and gentlemen, we're
14 going to take our lunch break at this time. Your food is
15 probably not going to be here for a little while. We'll
16 call and see if they can't get it here a little bit
17 earlier. And then once you get your food, we'll start
18 back, you know, 20, 30 minutes after that.

19 Do not discuss the case. Do not let anyone discuss
20 the case with you. Keep an open mind and we'll see you
21 back here about 20 or 30 minutes after you get your food.

22 Thank you very much.

23 Everyone remain seated.

24 (WHEREUPON, the jury left the courtroom at 11:39
25 a.m.)

1 (WHEREUPON, a lunch break was taken.)

2 THE COURT: Okay. I questioned the jury on whether
3 or not they wanted to come back Monday or come back
4 tomorrow. They requested to come back Monday. There is
5 one alternate whose husband has some form of surgery on
6 Monday. I have told her that she can be excused. She is
7 an alternate, and that still leaves us with one alternate
8 in case something happens over the weekend.

9 Do you want to go ahead and excuse that alternate,
10 Mr. Dye?

11 THE BAILIFF: I got it.

12 THE COURT: Is your next witness ready or do you want
13 me to question your client?

14 MS. ZMROCZEK: If you want to question my client.

15 THE COURT: Let me speak to the alternate and we'll
16 do that. Everyone stay at ease.

17 (Pause.)

18 THE COURT: Okay. Mr. Smith, stand back up. You're
19 still under oath from earlier. Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Now, we had a conversation this morning
22 about your Constitutional right to testify and your
23 admissible prior record. Did you understand that
24 conversation?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You asked for more time to speak with
2 Ms. Zmroczek. Do you believe that I've given you enough
3 time to do that?

4 THE CLERK: More than enough.

5 THE COURT: Do you need anymore time to talk with her
6 or discuss anything with her, not about your case, but
7 whether or not you want to testify?

8 THE DEFENDANT: No, sir.

9 THE COURT: Do you wish to testify at this time?

10 THE DEFENDANT: No, sir.

11 THE COURT: Okay. Thank you very much. I will read
12 the jury a full instruction. It's probably a page to a
13 page-and-a-half long that goes through your right to
14 remain silent and the fact that you -- he's okay. The
15 fact that you have a right to remain silent and tell them
16 that they cannot use that in any way, shape, or form.
17 They can't even discuss it. They can't bring it up or
18 anything else in the jury room.

19 THE DEFENDANT: Okay.

20 THE COURT: Does that make sense?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Thank you very much.

23 Okay. Bring in the jury.

24 THE BAILIFF: Yes, Your Honor.

25 (WHEREUPON, the jury entered the courtroom at

1 12:58 p.m.)

2 THE BAILIFF: The jury is seated, Your Honor.

3 THE COURT: Okay. Thank you very much.

4 Ms. Zmroczek, you may call your next witness.

5 MS. ZMROCZEK: Thank you, Your Honor. Your Honor, we
6 call Christopher Watkins.

7 THE COURT: Okay. Come forward and be sworn.

8 CHRISTOPHER WATKINS,

9 after being duly sworn, testified as follows:

10 THE CLERK: Have a seat in the witness stand, please.
11 State your name for the record.

12 THE WITNESS: Christopher James Watkins.

13 DIRECT EXAMINATION

14 BY MS. ZMROCZEK:

15 Q Good afternoon, Mr. Watkins.

16 A Good afternoon.

17 Q Where do you work?

18 A I'm a private investigator with Stillinger
19 Investigations.

20 Q And how long have you been working there?

21 A I've been employed there since February of 2010.

22 Q Make sure you speak up so everybody in the back can
23 hear you as well. What is your job title there?

24 A I'm a private investigator and I specialize in
25 criminal defense investigations and digital forensic

1 investigations.

2 Q And when you say digital forensic investigations,
3 what does that mean?

4 A All right. So digital forensics is an applied
5 science. It's an area of forensic science that deals in
6 the securing and capturing and processing of digital
7 evidence that can be found on any kind of digital device,
8 whether it's computer, cell phone, security DVR.

9 Q And when you say applied science, have you had any --
10 what sort of training have you had?

11 A Okay. So my background is in the area of information
12 technology. I've taken various courses and computer
13 programming, video enhancement or video editing, general
14 computer studies. I was certified as a general computer
15 technician.

16 Q So when you say applied science, how is that
17 different than training?

18 A Okay. So because digital forensics is an area -- is
19 an applied science, it's an area that you would apply the
20 area of that science, which is information technology,
21 computer science, things of that nature.

22 Q And are you a member of any organizations?

23 A I am.

24 Q Which ones?

25 A It's the American Society of Digital Forensics and

1 E-Discovery.

2 Q And E-Discovery, tell the jury what that means.

3 A E-Discovery is similar to digital forensics, but it
4 encompasses information that is discoverable to be used in
5 litigation.

6 Q Okay. Are you available for consulting to any courts
7 or agencies?

8 A I am. I've been appointed by court judges here in
9 South Carolina as a -- listed as an independent expert.
10 I've also been qualified in federal court, circuit court
11 and family court here in South Carolina and I've testified
12 for the State and for the defense.

13 MS. ZMROCZEK: Your Honor, at this time, we'd ask
14 that he be qualified as an expert in digital forensics.

15 THE COURT: Voir dire?

16 MS. CAMPBELL: Your Honor, he also mentioned that he
17 specializes in criminal defense investigations; is that
18 correct? Did I hear that right?

19 THE WITNESS: Yes, ma'am.

20 MS. CAMPBELL: We would just that he be qualified in
21 that area as well.

22 THE COURT: Any objection?

23 MS. ZMROCZEK: None.

24 THE COURT: Okay, ladies and gentlemen, this witness
25 will be an expert in the area of digital forensics and

1 criminal defense investigations. He will be allowed to
2 give opinion testimony in that area. That does not mean
3 that you must accept the opinion, but it is evidence for
4 you to use in any way that you see fit. Give it the
5 weight and credibility you believe is appropriate as
6 you're required to do with each and every witness that
7 appears before you.

8 BY MS. ZMROCZEK:

9 Q Mr. Watkins, were you asked to -- what information
10 were you asked to look at in preparation for your
11 testimony?

12 A Specifically, I was asked to review the video on the
13 night of October 13th, 2013, in the Five Points area.

14 Q Did you rely on anything else besides those videos?

15 A The map of the area and any reports, things like
16 that.

17 Q And reports, do you mean statements?

18 A Yes.

19 Q What statements did you review? Did you review the
20 witness statements in this case?

21 A I did, yes.

22 Q And some of those were audio and some of those were
23 written?

24 A Correct.

25 Q What were you asked to do with the videos?

1 A Essentially, we were trying to -- I was tasked with
2 reviewing the video to try to either make any enhancements
3 or anything where we could actually see what happened as
4 the event unfolded, the incident unfolded to see if we
5 could identify whether there were any other potential
6 firearms involved, any other individuals involved, things
7 of that nature.

8 Q And you did that based on the information you were
9 given with the witness statements?

10 A Correct.

11 Q And the enhancement, now, does that change what's on
12 the video?

13 A No. When I talk about a video enhancement, an
14 example of this would be if we're looking at a video
15 that's zoomed out, I would try to zoom that in and make
16 that video in the background a little more visible.

17 Q And some of the videos were in color and black and
18 white -- and others were in black and white?

19 A Yes.

20 Q What happens when you zoom in as far as the quality?

21 A The quality of the video becomes a little bit
22 distorted as you zoom in, as the video becomes more
23 pixilated.

24 Q Does that change the images?

25 A It doesn't change anything. You just, essentially,

1 zoom into that area.

2 Q So anything that you have done has not changed what's
3 on the video?

4 A That's correct.

5 Q Did you create two -- well, three. One has been
6 admitted into evidence. But did you create two additional
7 exhibits to show?

8 A Yes.

9 (Whereupon, Defendant's Exhibit Nos. 6 and 21 were
10 marked for identification only.)

11 BY MS. ZMROCZEK:

12 Q I'm going to show you what's been marked for ID as
13 Defendant's 6 and Defendant's 21 and ask have you reviewed
14 what's on those?

15 A Yes.

16 Q And you provided them to the State as soon as you
17 finished them?

18 A That's correct.

19 Q And that was -- the last one was done yesterday,
20 correct?

21 A The last one -- I just turned one over this morning.

22 Q Okay. The actual DVD?

23 A The actual DVD.

24 Q Okay. The information was provided earlier?

25 A Correct, yes.

1 MS. ZMROCZEK: Your Honor, at this time, we would
2 move to admit Defendant's 6 and Defendant's 21.

3 MS. CAMPBELL: No objection, Your Honor. Defendant's
4 6 is already in evidence as a State's Exhibit.

5 THE COURT: Okay. Defendant's 21 admitted without
6 objection.

7 (Whereupon, Defendant's Exhibit No. 21 was
8 admitted into evidence.)

9 BY MS. ZMROCZEK:

10 Q In particular -- as she's moving this over -- were
11 you asked to -- you were provided in discovery a video
12 that followed Mr. Smith around Five Points through the
13 cameras, correct?

14 A Yes.

15 Q And were you asked to do the same thing for another
16 individual?

17 A I was, yes.

18 Q Who was that?

19 A That was Daquan Samuel.

20 Q And is that what Defendant's 6 is showing?

21 A Yes.

22 Q If you can step off the stand so I can ask you some
23 questions.

24 MS. ZMROCZEK: Your Honor, may he step off?

25 THE COURT: Sure.

1 MS. ZMROCZEK: Thank you.

2 BY MS. ZMROCZEK:

3 Q Make sure you keep your voice up so the jury can hear
4 you. Stand on this side.

5 A I'm going to need this.

6 Q What they're getting ready to see, how were you able
7 to follow Mr. Samuel through the different cameras?

8 A So what I did is I matched up kind of the times of
9 all the videos and went from anywhere I would see
10 Mr. Samuel, kind of go to the next camera in the area. I
11 was able to determine which camera angles were on each
12 location, say a street corner or on the side of building.
13 And when I would see him walk out of the view of one
14 camera, I would pick him up with a different camera.

15 Q Okay. So you had to spend some time coordinating the
16 cameras because they were -- because they weren't all the
17 exact time?

18 A Yes, some of the times were off on some of the
19 cameras as far as the time and date stamp, so I just had
20 to rely on cues from the videos showing where he's
21 walking.

22 (WHEREUPON, the video marked as Defendant's
23 Exhibit No. 6 was played in open court for the jury.)

24 THE WITNESS: Describe it?

25 BY MS. ZMROCZEK:

1 Q Yes, please.

2 A So here we have Mr. Smith and his group walking in
3 the direction that's consistent with his statement at the
4 time, he was leaving. And then we have -- they become
5 increasingly difficult to see as they move through the
6 crowd. Mr. Smith is here. And what we'll see after they
7 have crossed over to -- going down the sidewalk in front
8 of the Exxon, we see Mr. Samuel and his group approaching
9 that direction as well.

10 MS. ZMROCZEK: If you can stop. Stop it right here.

11 BY MS. ZMROCZEK:

12 Q And where is Ms. Childress in this video?

13 A Ms. Childress is right here.

14 Q Okay. And what direction is she facing?

15 A She is facing -- her back is turned to the camera
16 slightly, so she is facing out towards the road to the
17 right.

18 Q Okay. Thank you.

19 A So here, we see Mr. Samuel throwing up his hands. He
20 turns around, and we see Ms. Childress fall. We see him
21 bend down and pick something up.

22 Here is --

23 Can you pause it for a moment?

24 So this is backing up a little bit just to show the
25 same sequence of events just from a different angle. So

1 this is Mr. Samuel here in the white shirt. So he throws
2 up his hands, walks back, and then here we see a flash and
3 he's looking down.

4 Q And then when -- sorry.

5 A Picking something up. His hat drops, he picks that
6 up as well.

7 Q And when he picks something up, is he on the street
8 or is he on the bricks?

9 A He is on the sidewalk.

10 Q Thank you. And now did you slow it down?

11 A Yes. So this is another form of enhancement where we
12 slow down the video just to show frame by frame of a
13 subject matter in the video. Here we saw a flash. He's
14 bending down, picking something up. Hat drops, picks that
15 up.

16 Q Is there any way to see what he picks up?

17 A Can you pause for a minute? I'm sorry.

18 So because we're zooming in so far into this video,
19 which is, you know, a much larger video, we're zooming
20 into one portion of the video. What it does is it
21 distorts the video a little bit. See how it's a little
22 bit blurry. You can't really make out the details of say
23 the car or the building. And that's because you're
24 zooming into an actual picture, so we're not actually able
25 to use that camera to zoom in with the camera itself.

1 We're just utilizing what we have on the video. So
2 because of that, we would not be able to tell something as
3 small as a small object falling down to the ground what
4 exactly that is.

5 Q Thank you.

6 A You see the flash again. And this is actually the
7 edge of the video.

8 I'm sorry, could you back it up? Just a little bit
9 more. One other thing I wanted to point out. Right
10 there, that's good. That's actually forward. All right.
11 Maybe go back to about here. Right there. All right.

12 This camera angle also is from the right side of the
13 Grilled Teriyaki building in Five Points. The piece I'm
14 actually looking for is on the next, the next angle. Not
15 here, it would be after this piece. So here we have a
16 flash, and then in a moment, you also see here a flash.

17 Q Now, who is this?

18 A This is Mr. Samuel walking in the direction of the
19 camera. We see he's holding a black and gold object
20 consistent with the size of a small handgun. This is him
21 running across Harden Street, across Greene Street,
22 crossing in front of the Poor House. And then here, he
23 stops in front of a couple of trash cans and appears to
24 meet up with Mr. Tucker.

25 This angle is across the street. This is the corner

1 of Harden and Greene. Poor House would actually be over
2 here. And Mr. Tucker is coming from -- he's crossing the
3 street here.

4 Q That was not Mr. Tucker, was it?

5 A I'm sorry, what?

6 Q That wasn't Mr. Tucker?

7 A This is Mr. Samuel.

8 Q So it wasn't Mr. Tucker crossing the street?

9 A Did I say Mr. Tucker?

10 Q Yeah.

11 A I'm sorry. It's Mr. Samuel. We're viewing Mr.
12 Samuel here. He's wearing the white shirt.

13 Q And who is he speaking with?

14 A This is --

15 Q Is that Mr. Woodard?

16 A This is Mr. Woodard, yes. Here, he drops a small
17 object. It continues back toward -- here he's going to
18 continue back towards the area of the fountain.

19 Q Now, this is about how many minutes after?

20 A This is approximately nine to ten minutes after the
21 gunshots. Here, we see Mr. Samuel in the area looking
22 down and around. He sits down on the brick wall here,
23 looking around. He's looking down in the area of these
24 bushes here. Still looking in the area of the bushes
25 here. Appears to be conversing --

1 Q Are -- go ahead.

2 A I was just commenting he appears to be conversing
3 with someone here.

4 Q Does the number of CPD officers appear to be
5 increasing?

6 A Yes. Here we have Mr. Samuel walking away.

7 Q Is he wearing a hat?

8 A He is wearing a hat, yes.

9 Q All right.

10 A This is just him walking in front of that camera from
11 a different angle.

12 (WHEREUPON, the video admitted as Defendant's
13 Exhibit No. 6 was concluded.)

14 BY MS. ZMROCZEK:

15 Q And then you were also asked to create one more
16 video, and that was Defendant's Exhibit 21?

17 A Yes.

18 Q When you were creating these videos, did you --
19 obviously, you had -- the videos were given to you by me
20 through discovery, but did you go and look at the
21 locations of the cameras?

22 A I'm sorry?

23 Q Did you go look at the locations of the cameras?

24 A I did. I did go to the incident location and viewed
25 the angles or the source location for all this video, yes.

1 Q Was there some more cameras there now?

2 A There is more cameras put in place now than there
3 were during this time.

4 Q Explain to the jury what they'll be seeing.

5 A Now, we have four cameras synchronized. These three
6 quads here are actually from the same box. That would be
7 the corner -- basically, from the video you just saw,
8 that's from the corner of the Grilled Teriyaki. These two
9 videos down here, these two quads are actually the same
10 video. I just focused in on two different areas.

11 This one is focused on the area where we actually see
12 the shooting. This is the area in front of the fountain.
13 You see Ms. Childress here. She is also here. So in
14 these two videos, we are mostly focused on the actual
15 shots fired, whereas these two, we are focused on somewhat
16 of the events here and Ms. Childress actually falling
17 down.

18 Q Why do you make them in a group view?

19 A So that you can see that they are synchronized.

20 You can play it now. Thank you.

21 (WHEREUPON, video marked as Defendant's Exhibit
22 No. 21 was played in open court for the jury.)

23 Q Is her back still at the camera slightly?

24 A Yes. And it remains this way until she goes down.

25 So it will go off, and then it will play a slow motion

1 view of what you just saw.

2 Q Why did you do it in slow motion?

3 A So that you can focus on the timing between the flash
4 that you see on the ground and Ms. Childress flinching and
5 then falling down. So you can see up here Mr. Smith and
6 his group, and this is Mr. Samuel and his group here as
7 well.

8 Q They were following -- that one group was following
9 the other?

10 A Correct. They stop here. Mr. Samuel turns around,
11 throws up his arms, appears to be fumbling with his shirt.
12 Here, we see the flash and then .03 seconds later, you see
13 the flinch of Ms. Childress and then she goes down. And
14 then we actually have already seen the second flash on the
15 other side over here. The point being that you see
16 Ms. Childress flinch before you see the flash on the left
17 side of the screen.

18 Q Have a seat.

19 A (The witness complied.)

20 (WHEREUPON, the video marked as Defendant's
21 Exhibit No. 21 was concluded.)

22 BY MS. ZMROCZEK:

23 Q Approximately how many hours have you spent reviewing
24 these videos?

25 A You asked me how many hours I spent --

1 Q Hours, approximately?

2 A -- reviewing the video?

3 Q Let me ask you this. Were you careful in making sure
4 that the timing of the videos lined up?

5 A Well, the answer to your previous question, it's been
6 exhaustive hours reviewing the video. Each of these
7 videos is about an hour in length. There are 13 videos
8 that were found at the angle of the incident location.
9 And the flashes that you saw in the video just a moment
10 ago, that only takes up one frame. But one picture, one
11 image in a video and the video is made up of several
12 thousands of images, so this is one frame out of a hundred
13 thousand in one video.

14 MS. ZMROCZEK: Beg the Court's indulgence.

15 Thank you. I have no further questions. Please
16 answer any questions the State may have.

17 THE COURT: Yes, ma'am.

18 CROSS-EXAMINATION

19 BY MS. CAMPBELL:

20 Q Let me ask you this, sir. You're a private
21 investigator?

22 A Yes, ma'am.

23 Q You mentioned in your direct that you reviewed a
24 bunch of statements in this case?

25 A Statements, yes, ma'am.

1 Q That's important just to make sure you know what
2 you're reviewing?

3 A Yes, ma'am.

4 Q So from all the witnesses at CPD, all that
5 information was provided to you?

6 A Yes.

7 Q As well as the Defendant's own statements?

8 A Yes.

9 Q And all that's very important, including the
10 Defendant's statements; is it not?

11 A Everything, yes.

12 Q Do you remember when were you hired in this case?

13 A I don't have the date with me, but it was earlier
14 this year.

15 Q You don't have the date with you?

16 A I mean, the date that I received the case was
17 actually when it was with the public defender here. I
18 want to say it was maybe April.

19 Q Maybe April? Could it have been earlier than April?
20 You don't have that information with you?

21 A Not today.

22 Q You don't have -- let me ask you this. Do you bill
23 on an hourly rate?

24 A I do.

25 Q So how much have you billed so far in this case if

1 it's April, since April?

2 A I don't have the billing information with me today.

3 Q You knew you were coming to court for this case,
4 didn't you?

5 A Of course, yes.

6 Q And didn't they ask you to bring all your information
7 about this case?

8 A They didn't bring me -- they didn't ask me to bring
9 my entire file, no.

10 Q So you came to court to testify in this case about
11 your expertise we'll talk about and you didn't bring your
12 entire file?

13 A No, ma'am.

14 Q How many hours have you worked on this case?

15 A Probably over 50.

16 Q Probably over 50. And how much to you get paid an
17 hour?

18 A Where I work or how much is the funding approved?
19 Are were you talking about the funding? I'm an employee
20 at my office, Stillinger Investigations, so the contract
21 is with my company. So I get paid on a different rate.

22 Q Well, how much is your company -- isn't it your
23 company?

24 A It's not my company, no, ma'am.

25 Q How much is your company receiving for your services?

1 A The funding order was approved for 1500.

2 Q \$1,500?

3 A Yes.

4 Q And you started working on this we know, at least, in
5 April?

6 A I'm guessing.

7 Q Okay. And you reviewed the statements in this case?

8 A Yes.

9 Q And how many hours did that take you?

10 A I don't recall.

11 Q And you reviewed the videos in this case, and, in
12 fact, you created different videos from what was provided
13 by the State; is that correct?

14 A No, everything that I produced was already -- what is
15 the video that was received by the State?

16 Q But your videos are different?

17 A They're the same video.

18 Q But they've been changed you said?

19 A They've been enhanced.

20 Q Enhanced?

21 A Yes, ma'am.

22 Q I believe the words you used on direct examination
23 was that like when you do certain things like do close-ups
24 or slow down that they are -- it distorts it?

25 A So we're looking at the same video, we just zooming

1 in.

2 Q And on the video that was provided to you by the
3 State, there are timestamps on there, aren't there?

4 A There are, yes.

5 Q But in your little video you just showed the jury
6 where you said it's .03 seconds, the timestamps are
7 missing. Why is that?

8 A Because they're zooming into a specific location on
9 the actual video and the timestamp would be in a different
10 area of that video. I believe it was on the upper
11 left-hand corner of the main video. Where I'm zooming in
12 at, the time and date stamp is not in that area. If it
13 was in that area, we would see a very blown up time and
14 date stamp.

15 Q Yes or no, are the time stamps gone from those
16 videos?

17 A They're not included.

18 Q The ones that you say are synchronized?

19 A I'm sorry?

20 Q How did you go about synchronizing these to the point
21 that you can say it's .03 seconds from the time of the
22 flash until Martha was shot?

23 A So I use a video enhancements software that I'm able
24 to put the video into a view where I actually zoom in down
25 to a millisecond. And just based on the time after

1 synchronization, I'm able to say that it is .03 seconds
2 between the flash that is on the ground to Ms. Childress
3 flinching and falling down.

4 Q Would there be any reason when you look at this
5 video, if you review it a couple of times, like you see
6 somebody's head go across the bottom of it at one point in
7 three of the different videos, do you remember that?

8 A I did at the very end.

9 Q Uh-huh, at the end?

10 A Yes.

11 Q And that should be synchronized according to your
12 machinery, right?

13 A And it is.

14 Q But, in fact, if you look at the upper left-hand, the
15 head comes across afterwards?

16 A That's because it's in a different camera angle.

17 Q It's in a different camera angle?

18 A Yes, because you're looking at it slightly to the --
19 one camera is focused on the left, one camera is focused
20 on the right.

21 Q And as you look at things on the left, everything
22 appears to go slower, but then every time the car gets in
23 the right quadrant, it speeds up?

24 A So as I explained, on the bottom two video cameras,
25 it's from the exact same video. I'm just zooming in on

1 two different angles. So there's a place in between the
2 two video segments that you see that you're not seeing
3 because I'm not zoomed into that area. I'm zooming into
4 the left side of that video and to the right side of that
5 video.

6 Q And it's not because you need to speed up the portion
7 that shows the video with the flash in it so that you can
8 sync it with the part where Martha goes down, which is
9 going faster. That's not the reason?

10 A I'm not sure I understand the question.

11 Q I'm asking you, you didn't speed up the videos on the
12 left to get them to sync better for your -- your purpose
13 here --

14 A No, absolutely not.

15 Q -- is to work for her, right?

16 A My job is to assist in finding the truth. And I
17 present the truth as it exists.

18 Q Okay. So the fact that the ones on the left move
19 faster than the ones on the right is just how it is?

20 A I would encourage you to rewatch the video.

21 Q I would encourage you to, too.

22 MS. ZMROCZEK: Your Honor, was that a question?

23 THE COURT: No.

24 Disregard that statement, ladies and gentlemen.

25 BY MS. CAMPBELL:

1 Q Why -- in this thing, are you aware that some of the
2 cameras are black and white and some are in color?

3 A Yes, ma'am.

4 Q And the black and white ones, you talk about the
5 flash, are there other flashes that you see when you look
6 at all these videos?

7 A Yes. You'll see -- any reflective material, such as
8 a sign or a painted glass, you will see the reflection of
9 cars driving by.

10 Q It's just not a sign or a piece of glass, is it, it's
11 other things that reflect light; is that correct? Or do
12 you disagree with me?

13 A I suppose some things are reflective of light, sure.

14 Q And the program you're using that you say synced all
15 this, you're aware that ethically forensic examiners
16 aren't allowed to use that?

17 A I'm not.

18 Q You're not aware of that?

19 A I'm not aware of that and I don't understand it.

20 Q You also mentioned in your video -- you talked about
21 how you tracked Daquan Samuel throughout the whole videos
22 that you reviewed and you kind of put that in so the jury
23 could see it, Daquan Samuel that night?

24 A Yes.

25 Q But in your video, you don't show the part where he's

1 smoking that cigarette beforehand, do you?

2 A Which part is that?

3 Q Earlier in the video?

4 A There was an occasion where Mr. Samuel may have
5 smoked a cigarette.

6 Q Well, if it's important to talk about where Daquan
7 Samuel went that night, why is that not in your video that
8 you produced for this jury?

9 A You have to understand, this is a time sensitive
10 process, very exhaustive. The time that I put into this
11 to produce the videos that you was an extensive amount of
12 time.

13 Q From April until now?

14 A Not only that, but I'm also reviewing all the videos
15 that were provided to us. And again, as I mentioned
16 earlier, some of the videos time and date stamps are
17 incorrect to other time and date stamps to other videos.
18 Where we see the incident occurring at 2:19, in some
19 videos, it's occurring about 2:31.

20 Additionally, I also work -- this isn't the only case
21 that I have.

22 Q I understand.

23 A This isn't the only case that I work, so if I did
24 receive it in April, I haven't been focused primarily on
25 this case since the time that I received it.

1 Q But you mentioned your work in this has been
2 exhaustive, I think is the word you just used; is that
3 correct?

4 A That's correct.

5 Q And you put in a lot of hours and have done a lot and
6 worked on this video really hard over the last several,
7 four or five months?

8 A My focus became increasingly about two months ago.

9 Q Why is it then -- two months ago? Why is it then
10 that you didn't produce any video to the State, for this
11 jury until two days ago?

12 A So essentially, when I receive a request, I follow
13 through with that request and as we get new information or
14 as things progress in the case, I may have other
15 objectives that come up. And essentially, in a case like
16 this where we see something that -- the flash in the
17 video, of course, that sparks --

18 Q That's been there since day one?

19 A What's been there?

20 Q The flash in the video?

21 A Correct, but you have to understand, that's one frame
22 out of 100,000 just in that video, and I have to find that
23 -- or I had to find that.

24 Q And, in fact, in the statements you reviewed, the
25 officers questioned people about that flash, so you knew

1 about it?

2 A They questioned about the flash?

3 Q Uh-huh. Do you want to hear it?

4 A I don't think it's necessary that I hear it. You
5 have to understand that when I'm working a case, I'm not
6 going to be primarily focused on just one area of the
7 case.

8 Q I understand.

9 A There's many arms to a particular case.

10 Q And sometimes in the development of a defense or a
11 strategy, things change; is that correct? New information
12 may come forward?

13 A Exactly. I'm sure it's the same way for your side as
14 well.

15 Q And on Monday in her opening statement, the Defense
16 attorney said this case is about who shot first?

17 A Okay.

18 Q But you're now saying it's about somebody dropping a
19 gun and it going off accidentally?

20 A I'm only providing what I produced.

21 Q Did that develop this week and that's why it wasn't
22 produced until two days ago?

23 A I don't understand the question.

24 Q And you would admit to me, sometimes defenses just
25 don't work?

1 MS. ZMROCZEK: Objection, Your Honor.

2 THE COURT: He's an expert in criminal defense
3 investigations.

4 MS. ZMROCZEK: All right.

5 THE COURT: Overruled.

6 THE WITNESS: What do you mean by that question?

7 BY MS. CAMPBELL:

8 Q I'm asking you, you would agree with me in your
9 expertise as a criminal defense attorney that sometimes a
10 certain defense won't work and you need to fall back and
11 go for another one?

12 A Fall back and go for another what?

13 Q Defense.

14 A It depends on what facts are presented in the case
15 how you would be able to determine that.

16 Q Okay. You also mentioned that -- at first, you said
17 that you saw Daquan Samuel bend down and pick up
18 something. That was his hat, wasn't it?

19 A He picked up something and then his hat.

20 Q He picks up -- now you're saying he picks up
21 something else and then his hat?

22 A If you review the video, you will see that he bends
23 down. His hat falls after he bends down. He picks up the
24 hat last.

25 Q So he's not bending down to duck?

1 A He could be.

2 Q And you would agree with me, the flash is not in the
3 area where the hat is?

4 A Correct, but you understand that when you drop
5 things, they can move. They can slide.

6 Q So now the gun is jumping around?

7 A I'm only reporting what I see in the video.

8 Q And I notice in the video that you produced when you
9 slowed it down and things, there's kind of a glitch in it
10 where it freezes for a moment. Is there a reason for
11 that?

12 A No, it could be from the player itself. I'm not sure
13 that -- I haven't experienced that.

14 Q That wouldn't be to sync things?

15 A No. I would be happy to turn over all of my files in
16 which I put together to synchronize the videos so that the
17 State can view it.

18 Q Before court today, I asked you if you had any notes.
19 Do you remember that?

20 A I do, yeah.

21 Q Do you have notes in front of you?

22 A You asked if I had notes to turn over to the State.
23 My answer was no.

24 Q So am I not allowed to look at your notes from where
25 you worked on this case?

1 A (There was no response.)

2 Q You don't want me to see them?

3 A If --

4 MS. ZMROCZEK: Your Honor, may we approach, please?

5 THE COURT: Sure.

6 Stand up. Stretch your legs. Talk amongst
7 yourselves.

8 (WHEREUPON, a bench conference was held in the
9 presence of the jury, but outside the hearing of the
10 jury.)

11 THE COURT: All right. Here we go.

12 MS. CAMPBELL: Okay. I'll move on.

13 THE WITNESS: May I answer the previous question?

14 MS. CAMPBELL: I don't know that she wants you to.

15 THE WITNESS: Well, all of my notes and all my work
16 product would be confidential, attorney-work product.

17 BY MS. CAMPBELL:

18 Q Okay. What about your reports in this case? Have
19 you given me that?

20 A Yes, you just reviewed it.

21 Q The report?

22 A The video that I put together is the report.

23 Q Well, you've been doing this a long time. You would
24 agree that it's important to document what you do; is that
25 right?

1 A Everything is documented in the video project file,
2 so the software that I use, everything that I put together
3 is reflected in that.

4 Q Let me --

5 A There are no notes.

6 Q And you've testified before in this court?

7 A I have, yes.

8 Q In that case, I believe you generated a 20-page
9 written report?

10 A I did. And I don't get do that in every case,
11 unfortunately, because my time is very, very limited. I
12 have to be able to dedicate my time in different areas as
13 it's going to be effective.

14 Q And you do get compensated for that time, though,
15 right?

16 A I do. And that's why it's important, very important
17 for me to be effective in everything that I do.

18 Q In your work for the Defense?

19 A I'm sorry?

20 Q In your work for the defense?

21 A In my work for the defense? In my work for anything
22 that I do.

23 Q And as you mentioned, it's important to review all
24 statements by people; is that correct?

25 A Yes.

1 Q Well, did you have the opportunity to review a
2 statement made by Michael Smith in a phone call that's
3 been put into evidence?

4 A Possibly. I've reviewed so many things, I don't
5 know.

6 Q Do you remember --

7 A Additionally, when I'm given an assignment or given a
8 request, again, funding is limited. When I'm given an
9 objective, I'm supposed to direct my attention so that it
10 accomplishes that objective. So when you're working a
11 case that has thousands of pages of discovery, it may not
12 be part of the objective to review every single document.

13 Q You just testified it was very important for you to
14 review all the statements made by everybody. Michael
15 Smith's statements would certainly --

16 A I said that was important, yes.

17 Q Were you able to review the statement where he's
18 laughing and talking about they charged me with the wrong
19 charges. They ain't give me no attempted murder charge.
20 And he laughs?

21 A You're asking me if I reviewed it, yes.

22 Q Did you review that? Where he goes on to say he
23 needs to tell them boys in the city they gave me the wrong
24 F'ing, I won't use the word, charges?

25 A How does this relate what I've done with the video?

1 THE COURT: You get to answer the question. You're
2 an expert.

3 THE WITNESS: Okay. I'm sorry, say the question
4 again.

5 BY MS. CAMPBELL:

6 Q Did you review the fact that he says, laughing, he
7 needs to tell them boys in the city they gave me the wrong
8 F'ing charges?

9 A I remember seeing that.

10 Q And he's talking about it should be attempted murder?

11 A Okay.

12 Q And did you review the statement he made on
13 August the 8th of this year to Shante Bethel when using
14 another inmate's pin number for the jail that all she
15 needs to do is tell them that she's seen --

16 MS. ZMROCZEK: Objection, Your Honor. That was just
17 turned over last night, and he hasn't had the opportunity
18 to review that.

19 MS. CAMPBELL: I think I can ask him about the scope
20 of his investigation.

21 THE COURT: You can ask him the question.

22 BY MS. CAMPBELL:

23 Q And on August 8th, which would be how many days ago?

24 A Today is the 14th, so six.

25 Q Michael is on a phone call to Shante talking about --

1 telling Shante, you deal with Asia so she can get your man
2 home?

3 MS. ZMROCZEK: Your Honor, I would object. She first
4 needs to ask if he reviewed it. And if he did or
5 didn't -- if he did, then he can answer the question. If
6 he didn't, then he cannot answer the question.

7 THE COURT: She asked if he could review it, I
8 thought.

9 MS. CAMPBELL: I asked him --

10 THE COURT: Or if he had reviewed it.

11 MS. CAMPBELL: I'm asking would it would make a
12 difference in his investigation.

13 THE COURT: Overruled.

14 THE WITNESS: What was the statement again?

15 BY MS. CAMPBELL:

16 Q You want me to say it again?

17 A I'm sorry.

18 Q You deal with Asia so she can get your man home. All
19 she needs to do is tell them that she's seen the gun.

20 A Okay. I don't recall seeing that. I recall hearing
21 something about a gun, yes.

22 Q On that same day in another phone call talking to
23 Shante, Mr. Smith says, Tell them when you see me, flee
24 the scene. You hear the shots after me. See what I'm
25 saying. Were you aware of that statement?

1 A No. . We see in the video the flash that we see is
2 consistent with shots being fired before.

3 Q I'm just asking would this affect your investigation?

4 A I weigh all facts.

5 Q What --

6 A The video is the most helpful tool that we have in
7 this case. If we didn't have the video -- I mean, the
8 video is everything. It's got the truth right there.

9 Q Uh-huh, it does. Were you aware on that same day he
10 told Shante, I got this. I just need y'all to play
11 y'all's part. You've been talking to little A, meaning
12 Asia?

13 A Okay. I don't recall any of this.

14 Q Were you aware of a letter that's been referred to in
15 opening statement about how he apologized about what he
16 did, apologized to Martha Childress?

17 MS. ZMROCZEK: Objection, Your Honor. That's not in
18 evidence. Again, she has to ask if he's seen a letter and
19 if --

20 THE COURT: She said were you aware.

21 MS. ZMROCZEK: Right.

22 MS. CAMPBELL: Uh-huh.

23 MS. ZMROCZEK: And if he says no, then.

24 THE WITNESS: I don't recall.

25 BY MS. CAMPBELL:

1 Q Did you know that on that same day he talked about
2 how she told know me to write a letter. I done wrote the
3 letter already. Meaning his lawyer?

4 A I don't know.

5 Q Were you aware that he said also that he needed to
6 call under a different pin number, another inmate's pin
7 number so that we couldn't see his calls?

8 A I don't know that either.

9 Q And then finally, on the 8th, also, in another phone
10 call, he tells Shante, his former girlfriend, We're
11 getting married after this?

12 A You're asking if I heard that? I don't recall ever
13 hearing that.

14 Q And then he's talking about Ms. White, and he refers
15 to her as that bitch, a snitch?

16 A I don't know.

17 Q And then finally on the 12th, I believe the day
18 before this trial started, in a phone call to Shante, he
19 tells her, Remember, you ain't talked to me?

20 A You're asking if I heard that?

21 Q Did you ever -- would that make a difference in your
22 investigation?

23 A Again, I weigh all facts as they come.

24 Q And I was wrong, that was actually the day after she
25 testified when she said she didn't know him?

1 A Okay.

2 Q Or hang with him anymore. But it's important to have
3 all the information, do you agree?

4 A If we can get access to all of the information, yes.

5 Q But when people try to hide the information, it may
6 take us a while to get it?

7 A That applies for anybody.

8 MS. CAMPBELL: Beg the Court's indulgence.

9 BY MS. CAMPBELL:

10 Q And as far as access, you understand the Defense can
11 get access to all the phone calls just like we can?

12 A Appears to be, yes.

13 Q And if you need anything -- you aren't saying that
14 anybody withheld any information from you?

15 A I'm not saying that.

16 MS. CAMPBELL: Thank you. I don't have anything
17 further.

18 THE COURT: Redirect?

19 MS. ZMROCZEK: Yes. Thank you, Your Honor.

20 REDIRECT EXAMINATION

21 BY MS. ZMROCZEK:

22 Q She was asking you about phone calls and statements,
23 correct?

24 A Yes.

25 Q And you reviewed -- and interviews?

1 A Yes.

2 Q And you listened to the interviews where Agent
3 VanHouten was telling witnesses that he was going to put
4 their family members in jail?

5 A Yes.

6 Q And you remember the statements that Agent VanHouten,
7 -- you remember hearing the statements about Agent
8 VanHouten saying, I know we saw him with a gun?

9 A Yes, I remember that.

10 Q And you remember Agent VanHouten saying, We saw your
11 cousin drop a gun on the ground?

12 MS. CAMPBELL: Objection, Your Honor.

13 MS. ZMROCZEK: These are statements.

14 THE COURT: I don't even know what the objection is.

15 MS. CAMPBELL: Your Honor, as far as Agent VanHouten,
16 he has already been cross-examined and was available for
17 all this.

18 THE COURT: Okay. That objection overruled.

19 However, you need to stop leading.

20 MS. ZMROCZEK: Thank you. I will.

21 BY MS. ZMROCZEK:

22 Q Would it make a difference in your investigation if
23 State's witnesses changed facts?

24 A Yes.

25 Q Okay. Would it change what's on the video?

1 A No.

2 Q This enhanced quad video with the timing, you've done
3 this before in this courtroom before, right?

4 A Yes, and in other courtrooms.

5 Q Specifically, in this courtroom, which side used your
6 quad video in their trial?

7 A Originally, it was the State.

8 Q The State put you up?

9 A Yes.

10 Q Used your video that you created for the Defense?

11 A Yes.

12 Q Are you paid for your testimony?

13 A I'm not paid for my testimony.

14 Q What are you paid for?

15 A I get paid for the time spent working a case, and
16 this would count toward time spent on a case. But as far
17 as getting paid for the testimony, the answer is no.

18 Q And in the case that they put you up that you created
19 a 20-page report, did that have telephone records?

20 A Did it have what?

21 Q Telephone records that you had to review?

22 A It did have telephone records listed in it, yes.

23 Q Did you have any telephone records to review in this
24 case?

25 A I did not.

1 Q And since you testified for the Court and for the
2 State and for the Defense, would you ever misrepresent
3 testimony?

4 A Never.

5 Q And everything that you provided is available for the
6 State and SLED for them to review?

7 A Absolutely, we got it from them.

8 MS. ZMROCZEK: Thank you. I have no further
9 questions.

10 BY MS. CAMPBELL:

11 Q Just for the record, everything you provided was
12 provided in the last two days?

13 A Yes.

14 Q And the time before in the other case when you
15 provided the quad, the four screens?

16 A Yes.

17 Q There were time stamps on those, weren't they?

18 A There were. We were lucky enough to have the
19 timestamps and to be able to keep them in a video without
20 making enhancements that would move them.

21 MS. CAMPBELL: Thank you, sir.

22 THE COURT: Thank you very much.

23 All right. Y'all approach real quick.

24 Stand up. Stretch your legs.

25 (WHEREUPON, a bench conference was held in the

1 presence of the jury, but outside the hearing of the
2 jury).

3 THE COURT: All right. Ladies and gentlemen, due to
4 a scheduling issue with some witnesses, we are going to
5 have to break now for the day. I'm about to release you
6 for the weekend. You are to come back on Monday morning
7 and you are to be ready to go at 9:30 on Monday morning.

8 Now, as I've told you before, you will recall that I
9 instructed you in great detail that you must decide this
10 cases solely on the evidence presented in this courtroom.

11 Everybody needs to sit down, please.

12 Because we're about to be take a break, I'm now
13 reminding you of that warning. I want you to once again
14 fully commit to each other, to the parties in the case and
15 to the Court that you will not use any type of electronic
16 device to get any type of information or send information
17 or receive information about this case, read the news,
18 watch the news, listen to the radio, Google anything, put
19 anything on a blog, Twitter, Facebook or any kind of
20 social media, or anything that I don't even know what it
21 is, you can't do it. You're going to base your decision
22 in this case on what happens in this courtroom, the
23 evidence that is received, the exhibits that are
24 introduced.

25 While you have not heard from all the witnesses as

1 far as I know at this point in time, so you should not
2 have made up your mind about anything. You should be
3 keeping an open mind. Remember you do not begin the
4 deliberation process until all of the witnesses have
5 testified, all of the attorneys have had an opportunity to
6 make a closing argument, and I've told you what the law is
7 as it applies to this case. We are not that far along.

8 Now, for scheduling purposes, to the best of what I
9 know at this point in time, I would expect you to have
10 this case Monday, okay. So my goal will be that you are
11 in a setting Monday where you are deliberating. So as far
12 as scheduling for Monday night, if there's a night where
13 we could potentially go later on into the evening, Monday
14 night would be that night.

15 Now, some judges keep people until two o'clock in the
16 morning. I only keep people that late if they want to
17 stay that late, okay. But just for kind of your own
18 scheduling, if there's a night where we would go past the
19 5:30 or 6:00 hour, Monday night would more than likely be
20 that night. Just for your own scheduling. And once you
21 start deliberating, no one is going to bother you or
22 anything like that. I'm going to rely on y'all to tell
23 me, you know, what's going on as far as timing and whether
24 you're ready to go home for the evening or come back the
25 next day or that kind of thing.

1 All right. So do not discuss the case with anybody.
2 Do not allow anyone to discuss the case with you. Thank
3 you very much for your hard work this week. You have all
4 done an excellent job in staying awake, paying attention
5 and following the Court's instruction and being on time.
6 We will see you all Monday morning.

7 Everyone remain seated while the jury is excused.

8 (WHEREUPON, the jury left the courtroom at 1:57
9 p.m.)

10 THE COURT: Okay. What else do you want to talk
11 about this afternoon?

12 MS. CAMPBELL: Your Honor, could we go into a
13 charging conference?

14 THE COURT: Yes. All right. Charge conference in
15 about 15 minutes. I want to see Mr. Watkins in the back.
16 Thank you very much.

17 (WHEREUPON, court was adjourned for the day to
18 be reconvened on Monday, August 17, 2015.)

19 MONDAY, AUGUST 17, 2015

20 THE COURT: Okay. We're back on the record. Who wants
21 to start talking first? Was there anything we need to take
22 up before we bring in the jury?

23 MS. CAMPBELL: We're good.

24 MS. ZMROCZEK: Your Honor, the only thing I think we
25 need to take up is this weekend my client informed me that

1 he has decided to waive his Constitutional right to remain
2 silent and if you would like to redo the colloquy to him.

3 THE COURT: Okay. All right. Mr. Smith, stand up.
4 Raise your right hand.

5 MICHAEL JUAN SMITH,

6 after being duly sworn, testified as follows:

7 THE COURT: Okay. All right. At this time, I'm
8 going to explain some of your rights to you. If you do
9 not understand anything that I say, please just let me
10 know. If you want me to explain anything in more detail,
11 please just let me know that, too. Do you understand what
12 I've said so far?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: We've now reached the stage of the trial
15 where you may present your defense. You have the right to
16 claim the protections given to you by the 5th Amendment to
17 the Constitution of the United States of America. This
18 amendment says that no person shall be compelled in any
19 criminal case to be a witness against himself.

20 This means that you cannot be required to testify in
21 this case. You have the right to testify on your own
22 behalf. However, nobody can make you testify. This is a
23 personal right and no one can waive this right except you.
24 If you decide to testify, you will be subject to the same
25 rules that govern other witnesses, and you may be examined

1 and cross-examined on any relevant issue in this case.

2 In addition, if you have any convictions involving
3 dishonesty or false statement or for crimes punishable by
4 imprisonment for more than one year -- to my memory, you
5 have a conviction for burglary second degree violent,
6 attempted burglary in the second degree, and grand
7 larceny, that would all be admitted against you in
8 cross-examination, and I determine that the probative
9 value of admitting that evidence outweighs its prejudicial
10 effect, the solicitor will be able to introduce your
11 record to attack your credibility.

12 If you decide to testify, this decision on your part
13 must be made freely, voluntarily and intelligently with
14 the knowledge and the protections given to you by the 5th
15 Amendment and the consequences of your decision to
16 testify.

17 If you decide not to testify, I will instruct the
18 jurors that they cannot give the fact that you did not
19 testify any consideration whatsoever and that there is to
20 be absolutely no prejudice to you because you did not
21 testify. It is left entirely up to you whether or not you
22 testify. You may talk with your attorney, your family or
23 anyone else, but the final decision will be left up the
24 you. Do you understand what I have explained to you?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you have any questions about what I
2 have explained to you?

3 THE DEFENDANT: No, sir.

4 THE COURT: All right. Have you and Ms. Zmroczek
5 talked about this?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And has anybody forced you, threatened
8 you, promised you or coerced you to get you to make this
9 decision?

10 THE DEFENDANT: No, sir.

11 THE COURT: Are you making it freely and voluntarily?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Are you under the influence of any
14 alcohol or drugs?

15 THE DEFENDANT: No, sir.

16 THE COURT: And do you wish to testify at this time?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. Thank you very much.

19 THE DEFENDANT: You're welcome.

20 THE COURT: Anything else?

21 THE DEFENDANT: No, sir.

22 THE COURT: Thank you Mr. Smith.

23 Ms. Zmroczek?

24 MS. ZMROCZEK: Nothing from the Defense, Your Honor.

25 THE COURT: Bring them in.

1 MS. CAMPBELL: We may need to put him on the stand.
2 He's shackled.

3 THE COURT: Is he going to testify first?

4 MS. ZMROCZEK: Yes, sir.

5 THE COURT: Okay. Then go ahead and let him walk up
6 there.

7 (WHEREUPON, the Defendant took the witness
8 stand.)

9 THE COURT: You'll still have to be sworn in front of
10 the jury, okay?

11 THE DEFENDANT: Okay.

12 THE COURT: I don't want that to surprise you when it
13 happens --

14 THE DEFENDANT: Thank you.

15 THE COURT: -- but the clerk will still have to swear
16 you in.

17 THE DEFENDANT: Okay.

18 (WHEREUPON, the jury entered the courtroom at
19 9:45 a.m.)

20 THE BAILIFF: The jury is seated, Your Honor.

21 THE COURT: Okay. Thank you very much.

22 Welcome back, ladies and gentlemen. Thank you for
23 being on time. Has anybody watched any media, viewed any
24 media, read anything or done anything concerning this case
25 at all over the weekend?

Michael Juan Smith - Direct by Ms. Zmroczek

1 (WHEREUPON, all jurors answered in the
2 negative.)

3 THE COURT: Thank you very much.

4 Ms. Zmroczek, you may call your next witness.

5 MS. ZMROCZEK: Thank you, Your Honor. We call
6 Michael Smith.

7 THE COURT: All right. Mr. Smith, raise your right
8 hand.

9 MICHAEL JUAN SMITH,

10 after being duly sworn, testified as follows:

11 THE COURT: Okay. Thank you very much.

12 Ms. Zmroczek.

13 MS. ZMROCZEK: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MS. ZMROCZEK:

16 Q Mr. Smith, please tell the jury how old you are.

17 A I'm 22.

18 Q And make sure that you speak up because everybody
19 needs to be able to hear you.

20 A I'm 22.

21 Q Are you nervous?

22 A Yeah, a little.

23 Q Okay. Where do you live?

24 A Broad River, but I've been incarcerated for the last
25 two years right now.

Michael Juan Smith - Direct by Ms. Zmroczek

1 Q Okay. Michael, I want to talk about October 13th,
2 2013. Do you remember that day?

3 A Yes, ma'am.

4 Q Tell the jury why you had a gun.

5 A For protection.

6 Q For protection from what?

7 A From the last time I had an incident out there. I
8 was brutally hurt, and I had brought a gun next time. I
9 knew I was wrong, though. I wasn't supposed to have a
10 weapon in the first place, but I brought it for
11 protection.

12 MS. CAMPBELL: I'm sorry, Your Honor. I just can't
13 hear what he's saying.

14 THE WITNESS: I said I was brutally beaten before
15 prior to that, so I decided to bring a weapon the next
16 time. I admit it was wrong to bring a weapon, but that's
17 why I brought it, for protection.

18 BY MS. ZMROCZEK:

19 Q Do you recall when that was?

20 A No, ma'am. Not the exact date, no, ma'am.

21 Q Was it immediately before your --

22 A It wasn't immediately, but it was prior to it.

23 Q It was prior to it?

24 A Yes, ma'am, a couple months back.

25 Q Had you been in Five Points since then?

1 A No, ma'am.

2 Q Did anybody know that you had a gun?

3 A No, ma'am. I knew they would have threw a fit, so I
4 didn't let anyone know I had it.

5 Q I'm sorry?

6 A No, ma'am, nobody knew I had it.

7 Q When is the first time somebody knew?

8 A I'd say when the guys walked past me, they said some
9 words, and that's when I put it in my pocket. Then Shante
10 seen me with it and she cussed me out for having it.

11 Q You said that some guys walked by you and you moved
12 it into your pocket. What did they say to you?

13 A They said slob, so I already knew what the problem
14 was, so they already figured out I was a gang member. It
15 wasn't nothing but me and a group of girls. We was
16 leaving, so I turned around and that's when it happened.

17 Q So you knew what that meant when they said it to you?

18 A Yes, ma'am.

19 Q In the opening, I said you weren't jumped into a
20 gang, but are you gang member?

21 A No, ma'am, I was never initially beaten in, but I got
22 a lots of friends who is, a lot of friends.

23 Q You said that you were going to leave. Why were you
24 going to leave?

25 A Because I already seen there was a problem going on,

1 so I decided that we needed to head back home.

2 Q When was the next time you saw them?

3 A I'd say that's when we go -- before -- right in front
4 of our car before we got to our car. Then somebody said
5 they had a gun. The next thing I knew, I heard a shot.

6 Q The next thing you know what?

7 A I heard a shot and somebody screamed they had a gun.

8 Q What did you do when you heard a shot?

9 A I fired one shot back.

10 Q You fired one shot?

11 A Yes, ma'am.

12 Q When you were arrested, did you say some things on
13 the phone that night or right there after?

14 A Well, I said there's a group of guys shooting at us,
15 and I didn't mean to shoot.

16 Q Okay. I'm talking about after you'd been arrested
17 now and they heard your jail phone calls?

18 A Oh, yes, ma'am. I said some harsh words on the
19 phone. I didn't mean none of it, though. I was in the
20 heat of the moment. I made a lot of mistakes.

21 Q So you said those harsh words. Is that what you felt
22 about Ms. Childress?

23 A No, ma'am. I really didn't feel like that about her.
24 I didn't know, you know, until I seen her on TV and
25 honestly how bad her condition was. I did say some harsh

1 words, but I didn't mean it, though.

2 Q Have you written a letter to Ms. Childress?

3 A Yes, ma'am. I apologized for the condition she's in.
4 I'm not saying that I put her there, but I know it's hard
5 right now.

6 Q This jury has heard a lot of accusations about you
7 threatening witnesses. Is that something that you or your
8 family have done?

9 A No, ma'am. No, ma'am. I haven't had contact with
10 any of the witnesses, anybody that testified against me.
11 No, ma'am, I didn't send no threats, no, ma'am.

12 THE COURT REPORTER: I'm sorry, I didn't understand
13 what he said.

14 THE WITNESS: I said I sent no threats to anyone, me
15 or my family.

16 BY MS. ZMROCZEK:

17 Q Why did you fire when you heard shots?

18 A Because I was scared for my life. I was scared I was
19 going to get shot, so I returned a shot.

20 MS. ZMROCZEK: Beg the Court's indulgence.

21 (Pause.)

22 MS. ZMROCZEK: Mr. Smith, please answer any questions
23 the government may have for you.

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Cross-examination?

1 MS. CAMPBELL: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. CAMPBELL:

4 Q So your story now here today is that you heard a
5 shot?

6 A Yes, ma'am. There were shots fired at me.

7 Q And where were you standing when you heard the shot?

8 A I can't -- I don't know the streets apart.

9 Q Did you hear one shot or two shots?

10 A I heard more than one shot. It was multiple shots.

11 Q Multiple shots coming at you?

12 A Yes, ma'am.

13 Q To be sure, it wasn't just one shot, it was multiple
14 shots coming at you. And how did you know the shots were
15 coming at you?

16 A I had turned around prior to the altercation, so I
17 already knew what time it was, but I was leaving. I
18 turned around and somebody said they had a gun. I heard
19 multiple times when I turned around, so I pulled out my
20 weapon and fired and ran.

21 Q Could you tell who was shooting at you?

22 A No, ma'am. I couldn't really tell. But I know if I
23 see the video, I could point it out.

24 Q Because you've gone over the video with your lawyer,
25 I assume?

Michael Juan Smith - Cross by Ms. Campbell

1 A Yes, ma'am.

2 Q Over and over, right?

3 A Yes, ma'am. And I just went over it again the other
4 day and I can point it out.

5 Q Did you go over it over the weekend?

6 A No, ma'am.

7 Q But the other day, you did?

8 A Yes, ma'am.

9 Q And how did you know the shots were coming at you?

10 A It was an altercation me and the fellows got into,
11 and I seen -- it was the same exact dudes, same three
12 dudes.

13 Q And that altercation you just testified took place on
14 the street corner where you take the gun out and put it
15 in your pocket?

16 A No, ma'am, no.

17 Q You didn't --

18 A We walked a little further down when we were leaving
19 and that's when it happened.

20 Q Well, you didn't testify about any altercation, so
21 I'm a little at a loss for words. Where did the second
22 altercation take place?

23 A Well, the first altercation was like on the corner
24 when I was smoking a cigarette. You know, he said
25 something. That's when I switched the weapon to my right

1 pocket.

2 Q That's when he said slob?

3 A Yes, ma'am.

4 Q How far did he know you were a gang member?

5 A I don't know. I'm not a gang member, but that's what
6 I hang with. I guess they was out looking for trouble.

7 Q Was there anything you were wearing that said hi, I'm
8 a gang member?

9 A No, ma'am. I had on brown. Blood symbol is red.

10 Q Did you show them your tattoo that says you're a gang
11 member?

12 A No, ma'am. I had on a jacket that night.

13 Q What does your tattoo on your arm say or symbolize?

14 A It's just an M, an M with a crown on it.

15 Q And the crown, what does that mean to the Bloods?

16 A Yeah, that's a five-point crown symbol with the
17 number five.

18 Q The what five?

19 A The number five.

20 Q And that's significant to Bloods; is that correct?

21 A Yes, ma'am, but I had it way before then. I had this
22 since age 12.

23 Q You got your Blood tattoo at age 12?

24 A It's not a Blood tattoo, it was just my tattoo.

25 Q And when you were 15, you were proud to be a gang

1 member?

2 A No, ma'am. I was never initially beaten in. I got a
3 lot of friends that are gang members that I went to school
4 with.

5 Q Would you admit it's documented you're a
6 self-proclaimed gang member?

7 A As the database stated, yes, ma'am. To the State,
8 I'm a gang member, but I'm not. I'm not initiated.

9 Q So you're not officially a gang member according to
10 you?

11 A I'm not a gang member. I'm a friend of the Bloods.

12 Q Okay. Do you recognize State's Exhibit 79 and 80.
13 Is that your Facebook page?

14 A Yes, ma'am.

15 Q What are you doing there?

16 A I'm throwing up Broad River. That's how we throw up
17 Broad River.

18 Q Broad River?

19 A Yes, ma'am.

20 Q Those aren't gang symbols?

21 A No, ma'am.

22 Q Are you a member of the -- which one do you associate
23 with that you aren't a gang member of?

24 A Bloods, but that's Broad River I'm throwing up.

25 Q So those are gang symbols, you just aren't in it?

1 A No, those are not gang symbols right there. That's
2 Broad River, the side of town I'm from.

3 Q Can I have that back? Do you recognize State's
4 Exhibit No. 81, those people in there?

5 A Yes, ma'am.

6 Q Are they throwing gang signs on your Facebook?

7 A Yes, that's Broad River.

8 Q And that yourself Facebook page, right?

9 A Yes, ma'am.

10 MS. CAMPBELL: Your Honor, at this time, we would
11 offer State's Exhibit 81 into evidence?

12 MS. ZMROCZEK: Without objection.

13 THE COURT: Eighty-one without objection.

14 (WHEREUPON, State's Exhibit No. 81 was admitted
15 into evidence.)

16 BY MS. CAMPBELL:

17 Q So when you heard the shots, going back to what you
18 just testified to, were you facing the people?

19 A Yes, ma'am.

20 Q And were their backs to you at that point?

21 A I don't really know. It's -- I saw a flash and it
22 happened so fast.

23 Q So now you saw the flash?

24 A Yes, I seen the flash. It happened so fast.

25 Q How many flashes did you see?

1 A I didn't stay to look at it. I know I heard more
2 than one shot.

3 Q But you're sure about more than one shot?

4 A Yes, ma'am.

5 Q And they were coming towards you?

6 A Yes, ma'am.

7 Q At that point, luckily for you, you pulled your gun
8 out of the pocket, right?

9 A Yes, ma'am.

10 Q That happened to have a round in the chamber?

11 A No, ma'am. It wasn't one already in the chamber. I
12 had to cock it and put one in the chamber.

13 Q So your testimony is now that you had a gun -- well,
14 let me put it this way. You went to Five Points where you
15 had just been beaten up within two months of this?

16 A Yes, ma'am. I don't know the exact date, but I know
17 it was prior to that.

18 Q And you were beaten up so badly, I believe there was
19 testimony your face was swollen?

20 A Yes, ma'am.

21 Q Did they beat you with a gun or did they beat you
22 with a rock or what did they beat you with?

23 A Their hands.

24 Q How many of them were there?

25 A I can't really say, but there was more than five.

1 Q Where in Five Points did this take place?

2 A I don't know. I don't know the streets. I'm not
3 familiar with the streets.

4 Q Was it near where you were when this shooting
5 occurred on the 13th?

6 A No, ma'am. It wasn't right there.

7 Q Was it on Greene Street?

8 A I'm not sure of the streets, ma'am. I just know
9 where my incident happened on the October 13th.

10 Q Okay. But you can't tell this jury where your
11 incident happened a month or two prior to that?

12 A I don't know the exact streets.

13 Q Because it would be on video if it happened, right?

14 A Yes, ma'am.

15 Q And once you were beaten -- who all was with you that
16 night?

17 A It was me and a couple of friends.

18 Q Couple of friends. Do they have names?

19 A Yes, ma'am.

20 Q What are their names?

21 A Rodney.

22 Q Rodney who?

23 A Gallman.

24 Q Rodney Gallman?

25 A Yes, he was my driver. He drove me.

Michael Juan Smith - Cross by Ms. Campbell

1 Q Was anybody else with you that night?

2 A No, ma'am, just us two.

3 Q Did Rodney get beaten up, too?

4 A No, ma'am, he wasn't around at the time.

5 Q So you were by yourself in Five Points. About what
6 time of night was it?

7 A It was late.

8 Q And there's no way for you to go back and narrow down
9 the time period for us?

10 A No, ma'am.

11 Q How many of them were there that beat you?

12 A It was more than five.

13 Q More than five?

14 A Yes, ma'am. I don't know the exact number, but it
15 was more than five.

16 Q Were there other people around that weren't involved
17 in the fight?

18 A Yes, ma'am.

19 Q Did they run to get help for you?

20 A No, ma'am.

21 Q They just watched five individuals beat you in Five
22 Points?

23 A It was more than five individuals, but yes, ma'am,
24 they did.

25 Q Did this happen in the day or the night?

1 A Nighttime.

2 Q Was it before or after midnight?

3 A After.

4 Q Were you aware of how many police officers there are
5 in Five Points after midnight?

6 A Yes, ma'am, I was kind of surprised myself.

7 Q It's almost amazing that no one came to your aid.
8 How badly were you beaten? Were you able to walk
9 afterwards?

10 A Oh, yes, ma'am.

11 Q And once they beat you, did they say why they were
12 beating you?

13 A No, ma'am.

14 Q Was it because you were a slob?

15 A No, ma'am. I don't know why, ma'am. But I'm not in
16 a gang.

17 Q And once -- once they finished beating you, were you
18 able to stumble across the street and find the nearest
19 police officer?

20 A No, ma'am. My friend put me in a van and took me to
21 my mama's house immediately.

22 Q So now your friend is back there after you were
23 beaten?

24 A Yes, ma'am, I said we got split up, but he came back.
25 He seen me in the middle of the road laying down.

Michael Juan Smith - Cross by Ms. Campbell

1 Q So you're in the middle of the road in Five Points
2 sometime after midnight while there are police officers
3 literally every hundred yards?

4 A Yes, ma'am, but this particular --

5 Q And no one came to your aid?

6 A Ma'am, this particular night, there weren't as many
7 officers as there usually be, ma'am.

8 Q And when your friend saw you, Rodney, did he say oh,
9 my God and go and get the police?

10 A No.

11 Q Why would -- were these strangers that attacked you?

12 A Yes, ma'am, I don't know the fellows.

13 Q Why wouldn't you report it to the police?

14 A He just took me to my mother's house, that's it,
15 ma'am. I didn't go to the police. I should have, but I
16 didn't.

17 Q Did he, at least, take you to the hospital?

18 A No, ma'am. I hid in my room.

19 Q And you're beaten so badly that literally your face
20 is so swollen that it's readily visible. And you didn't
21 go to the hospital and you didn't call the police. Why
22 didn't you report it to the police?

23 A I just didn't call them, ma'am. I was supposed, but
24 I didn't call them.

25 Q And this happened on a date you can't recall in a

1 middle of a street where there are cameras. There were
2 police. There were other people out there. What about
3 strangers? Did you ask them for help?

4 A No, ma'am, no, ma'am. I still have wounds on my
5 teeth. They almost kicked my teeth out of my mouth.

6 Q But let's get real. So you knew that bad things --
7 if this is true, you were on notice that night that bad
8 things could happen to you in Five Points?

9 A I was aware, but I didn't come to start no trouble.
10 I just came with a group of girls, ma'am.

11 Q Well, your original plan, according to other people,
12 was not to go to Five Points, wasn't it?

13 A Yes, we were supposed to go to the fair, but, you
14 know, Asia wanted to go out to the club, The Library, but
15 it was closed by the time we got there.

16 Q But before that, y'all wanted to go to a different
17 club, Jet?

18 A We didn't go, ma'am.

19 Q You did go by and it was closed, right?

20 A Yes, ma'am.

21 Q So had you ever been beaten up at Jet before?

22 A Oh, no, ma'am.

23 Q And at that --

24 A I never went inside Jet.

25 Q I'm sorry, I don't mean to interrupt you. I

1 apologize.

2 A I never went inside Jet.

3 Q But y'all went there first and then once it was
4 closed, that's when y'all decided to go to Five Points,
5 right?

6 A Yes, ma'am.

7 Q What car were y'all in?

8 A A Hyundai Sonata.

9 Q Was it your car?

10 A No, ma'am, Shante's.

11 Q Shante's car?

12 A Yes, ma'am.

13 Q So why were you armed to go to Jet if there was no
14 threat there because you had to already have the gun?

15 A Yes, ma'am, I had it already.

16 Q But the plan was to go to Jet not Five Points at that
17 point?

18 A It was for protection.

19 Q Why did you need protection at Jet? You hadn't been
20 beaten up there, had you?

21 A No, ma'am, but things get dangerous at Jet as well.
22 I was with a group of girls, ma'am.

23 Q So you were going to take this group of girls into a
24 dangerous area, Jet, knowing it was dangerous, so
25 dangerous you had to arm yourself?

1 A Columbia is dangerous, ma'am.

2 Q So then they said they wanted to go to The Library
3 club, right?

4 A Yes, ma'am.

5 Q Right there in Five Points?

6 A Yes, ma'am.

7 Q But you knew that was a dangerous areas, even more
8 dangerous maybe than Jet because you hadn't been beaten up
9 at Jet?

10 A Yes, ma'am. I just came out there to have fun,
11 ma'am. If those three fellows weren't out there, we
12 wouldn't be in this courthouse right now.

13 Q Let's talk about what was going through your mind.
14 So when they said let's go to The Library, did you say to
15 them, we can't go to Five Points, it's after midnight.
16 It's dangerous. People get beaten for no reason down
17 there?

18 A No, ma'am. My intentions wasn't to get in no
19 trouble, ma'am.

20 Q But you had your gun and you just testified that you
21 needed your gun because you knew there could be trouble?

22 A Yes, ma'am.

23 Q So you willingly went to the trouble?

24 A No, ma'am. I shot after I was shot at, ma'am.

25 Q But you went there according to your own testimony

Michael Juan Smith - Cross by Ms. Campbell

1 knowing that there could be trouble. Let's talk about the
2 first time you encountered these three people. Had you
3 ever seen these three people before?

4 A No, ma'am.

5 Q And now your testimony is they walked by you on that
6 street corner as seen in those videos, right?

7 A Yes, ma'am.

8 Q And at that point, one of them or more looks at you
9 and says slob?

10 A Yes, ma'am.

11 Q And at that point, you were so scared and your
12 demeanor is apparent on video that you had to take your
13 gun out from inside your coat pocket and stick it to where
14 it was more handy, right?

15 A Yes, ma'am, so we could walk to the car safely.

16 Q But at that point, the three people go one direction
17 and y'all go another direction, right?

18 A No, ma'am. They followed behind us.

19 Q They followed behind you all the way to The Library?

20 A Yes, ma'am.

21 Q And at that point --

22 A After that indication, we was going straight to the
23 car. We had already been by The Library by that point.

24 Q No, sir. You encountered them before you go down --
25 across Greene Street and down towards The Library. That's

1 in the video.

2 A I know for a fact that they followed us behind the
3 car when I was going home -- they followed behind us on
4 the way to the car.

5 Q So the video is not, correct?

6 A I'm just saying -- the video show everything. The
7 video is the main part of this case, ma'am. I'm just
8 saying that we was leaving and if them guys wouldn't have
9 shot, we wouldn't be here right here this morning.

10 Q Okay. Can you talk a little bit louder so everybody
11 can hear you?

12 A I'm sorry.

13 Q Because it's not your fault we're here because you're
14 a victim, right?

15 A I wouldn't say I'm a victim.

16 Q Well, you were such a victim that you'd been beaten
17 there before, that you had to arm yourself to go to Jet
18 Nightlife or The Library because it's so dangerous in
19 Columbia that you then willingly go to Five Points that
20 you have an encounter on a street corner. When you got to
21 The Library, did you say hey, there's some dangerous
22 people out there. I'm scared for my life, do something?

23 A No, ma'am.

24 Q When you walked past all those police officers, did
25 you say something to them about how you were scared for

1 your life?

2 A No, ma'am, but I mean, I take responsibility for my
3 own actions, ma'am. I was wrong from the get-go for
4 having a gun.

5 Q And you were trying to protect the girls, right?

6 A Myself as well.

7 Q But they go in The Library and then you go around the
8 corner to some dumpsters because you couldn't go in The
9 Library, right, you were armed?

10 A Yes, ma'am.

11 Q So what were you doing around by the dumpsters,
12 around the corner?

13 A Using the restroom. And then we met back up with the
14 girls and then we was on our way leaving. That's when
15 they said they had a gun and I heard fired shots.

16 Q And at any point after you've had this encounter on
17 the corner, and it contradicts what everybody else said,
18 did you warn the girls that they were in danger?

19 A No, ma'am.

20 Q Did you warn Ryan Ellison that he was in danger?

21 A Oh, he already knew. He already knew. He's the one
22 that pointed me out to the guys.

23 Q And then you walked back across Greene Street?

24 A Yeah, we was on the way leaving, ma'am.

25 Q And when you were behind that trash can, you say you

1 were going to the bathroom?

2 A Yes, ma'am.

3 Q You weren't making sure you had one in the chamber?

4 A Oh, no, ma'am.

5 Q And then you walked down the street and you are on
6 high alert, right?

7 A Yes, ma'am.

8 Q Let me ask you this. What had you been drinking that
9 night, anything?

10 A Yes, ma'am, I was drinking.

11 Q Were you doing anything else?

12 A Yes, ma'am.

13 Q What?

14 A Smoking weed.

15 Q And as you're walking down the street on high alert
16 and you're keeping your hand in your pocket, right?

17 A Yes, ma'am.

18 Q As you pass police officers again, do you go to them
19 and go there's a problem? I'm worried for the safety of
20 not only myself, but these people with me?

21 A Oh, no, ma'am. I take full responsibility for my own
22 actions, ma'am. Like I say, I was wrong for having a gun.
23 I should have went to law enforcement from the get-go.

24 Q And did you walk right up to them where they were?
25 Was that smart?

Michael Juan Smith - Cross by Ms. Campbell

1 A Walk up to who?

2 Q To the three individuals -- of course, there were
3 only two that you encountered on the corner, now there are
4 three of them -- that you said you had a problem with?
5 You walked straight to them?

6 A No, I was leaving, ma'am. They followed behind me.

7 Q But then on the video, you stop and you actually turn
8 around?

9 A Well, the reason was shots were fired, ma'am.

10 Q Which direction did you fire your gun?

11 A (There was no response.)

12 Q Was it toward where they were standing if they're the
13 ones that shot you?

14 A Yes, ma'am, but I didn't aim in particular, though.

15 Q You weren't aiming anywhere in particular? You were
16 just shooting into the crowd?

17 A I didn't aim in the crowd, ma'am.

18 Q Well, you were facing back up towards Greene Street
19 and you admit that you shot one time?

20 A Yeah, I admit I shot one time.

21 Q After -- but you know they shot at you multiple
22 times?

23 A Yes, ma'am, one or two times.

24 Q And once you shot, what did you do?

25 A I ran.

- 1 Q And what happened when you ran?
- 2 A I ran into the officer on the corner.
- 3 Q That wasn't part of the plan?
- 4 A No, ma'am.
- 5 Q And when he actually stopped you, he took your gun?
- 6 A Yes, ma'am.
- 7 Q And at that point, what did you tell him?
- 8 A I told him two guys are shooting at me and I shot one
- 9 time, I didn't mean to shoot.
- 10 Q You said I didn't mean to shoot?
- 11 A Yes, ma'am.
- 12 Q But you didn't talk about the other guy shooting at
- 13 that point, did you?
- 14 A That's the first thing I told him, ma'am.
- 15 Q Well, let's talk about do you remember him taking you
- 16 into custody that night?
- 17 A Yes, ma'am.
- 18 Q And when they took you into custody, this
- 19 investigator came and talked to you, didn't he?
- 20 A Yes, ma'am.
- 21 Q And when he talked to you, he advised you of your
- 22 rights?
- 23 A No, ma'am.
- 24 Q Excuse me?
- 25 A No, ma'am.

1 Q He didn't advise you of your rights?

2 A No, ma'am.

3 Q So your testimony is he didn't advise you of your
4 rights. Well, did he question you?

5 A Yes, ma'am. He just told me the feds was going to
6 pick me gun up and put me in the car.

7 Q He just told you the feds are going to pick your gun
8 up?

9 A Yes, ma'am.

10 Q So the city officer on the night when this shooting
11 occurred, the only thing he told you was that the feds
12 were going to pick you up?

13 A Yes, ma'am.

14 Q What does that mean?

15 A He said they were going to get my case.

16 Q Do you remember talking to this officer and telling
17 him what happened?

18 A Yes, ma'am, I remember talking to him.

19 Q Do you remember telling him that the other guys fired
20 at you two times? And you were specific, twice?

21 A Yes, ma'am.

22 Q And that's what you told them?

23 A Yes, ma'am, one or two times.

24 Q And then they dropped their gun?

25 A Yes, ma'am.

1 Q And that then you picked up their gun or whoever's
2 gun this is now. Where did you get the gun?

3 A Bought it off the streets.

4 Q Off the streets?

5 A Yes, ma'am, I bought it.

6 Q You bought it?

7 A Yes, ma'am.

8 Q Did you know it was stolen?

9 A No, ma'am.

10 Q Do you remember talking to Rueben Levy in the jail?

11 A Yes, ma'am.

12 Q Do you remember telling him you knew it was stolen?

13 A No, ma'am. We had no real friendship. We just sat
14 on the rock together.

15 Q Do you remember telling this officer where you were
16 facing, how you were facing when you shot?

17 A No, ma'am.

18 Q When you were shot at, excuse me, I didn't mean to
19 misquote. This is your story. Why are you lying to him?

20 A Lying to who?

21 Q To this officer, this police officer? Finally,
22 you're safe. Don't you want to tell him everything?

23 A I wasn't lying to him.

24 Q Did the other people shoot at you twice and then drop
25 the gun and you picked it up?

Michael Juan Smith - Cross by Ms. Campbell

1 A They shot at me, ma'am.

2 Q Did they drop the gun and then that's the gun you
3 picked up?

4 A No, ma'am. I had my own weapon. They had their own
5 weapon.

6 Q And then later on while you're sitting in the car, do
7 you remember what you said?

8 A No, ma'am.

9 Q It's on video. First thing you say on that video --
10 and excuse my language, is Damn, man, and then the F word.
11 I am not trying do any time. Then you talk about the MF,
12 I won't use that term either, shoot at me. Do you
13 remember saying that? It's on the video.

14 A If it's on the video, I said it, ma'am.

15 Q Dropped his gun. Do you remember saying that?

16 A If it's on the video, ma'am.

17 Q I picked it up and hauled ass and now, I am getting
18 blamed. Do you remember saying that?

19 A If it's on the video, ma'am. I don't really remember
20 word for word.

21 Q Do you remember saying they said somebody got shot.
22 I didn't have -- I can't say that word, the S word to do
23 with that?

24 A I don't remember, ma'am. If it's on the video.

25 Q Do you remember saying then, This S ain't right?

Michael Juan Smith - Cross by Ms. Campbell

1 A If it's on the video, ma'am.

2 Q And do you remember saying, Man, for real, police
3 ain't bright around here, dog?

4 A No, ma'am. I don't remember saying nothing like
5 that, ma'am.

6 Q The only thing that happened, I picked that joint up
7 and run. Did you talk about they shot at me, and I shot
8 back in self-defense?

9 A They shot at me, ma'am.

10 Q I'm just asking did you say that that night?

11 A It was two years ago, ma'am. I don't remember word
12 for word.

13 Q And do you remember going down to the police station?

14 A Yes, ma'am, to use the restroom.

15 Q To use the restroom? Because it's on the video you
16 needed to use the restroom and they took you down to the
17 police station to use it, right?

18 A Yes, ma'am. I had to use the restroom real bad.

19 Q Once you got there and once you used the restroom, do
20 you remember talking to Investigator Gilliam again and he
21 was going to take your statement for you?

22 A He just took me to the county, ma'am.

23 Q You just told him what?

24 A He took me to the county, ma'am.

25 Q You didn't want to talk to him?

Michael Juan Smith - Cross by Ms. Campbell

1 A It wasn't that, ma'am. I was tired. I was drunk and
2 high. I needed some rest.

3 Q You were tired, you were --

4 A I was drunk and high.

5 Q You were drunk and high. But you have a clear memory
6 of what happened that?

7 A Ma'am?

8 Q You have a clear memory of what happened that night,
9 right?

10 A Oh, yes, ma'am. I know I was shot at, ma'am.

11 Q And you knew it was illegal for you to carry that
12 gun?

13 A Yes, ma'am.

14 Q But to be clear, according to your story here today
15 now -- and we'll get back to some of your other ones, you
16 intentionally shot that night because you thought you were
17 being shot at?

18 A No, I didn't thought. I know I was shot at, ma'am.

19 Q Did you intentionally shoot your gun? It wasn't an
20 accident or anything like that?

21 A I had it for protection, ma'am. I was initially shot
22 at, ma'am --

23 Q And in fact -- I'm sorry. I did not mean to
24 interrupt.

25 A It's okay.

- 1 Q I apologize. Go ahead.
- 2 A I was shot at, ma'am.
- 3 Q And at that point, according to you now, then you
- 4 took your gun out, right?
- 5 A Yes, ma'am.
- 6 Q And you actually had to chamber a round?
- 7 A Yes, ma'am.
- 8 Q In order to return fire?
- 9 A Yes, ma'am.
- 10 Q So you intentionally shot that gun?
- 11 A For my protection, ma'am.
- 12 Q Because you wanted to take out the person that was
- 13 shooting at you?
- 14 A No, it wasn't to take nobody out, ma'am.
- 15 Q Well, why else do you shoot a gun into the crowd?
- 16 A I didn't shoot in the crowd, ma'am.
- 17 Q What is your current relationship with Shante?
- 18 A Oh, we're friends.
- 19 Q You're friends?
- 20 A Yes, ma'am.
- 21 Q Do you remember talking to her on the phone about how
- 22 y'all were going to get married once this is all over?
- 23 A Oh, yes, ma'am.
- 24 Q When this trial is done?
- 25 A Yes, ma'am.

1 Q Is that more than friends?

2 A We're friends, ma'am.

3 Q You mentioned that you've been incarcerated. When
4 you're in the jail, do you get assigned a pin number or
5 something so you can make phone calls?

6 A Yes, ma'am, we all get our own pin number.

7 Q And when you make a phone call, you're supposed to
8 use your pin number, right?

9 A Yes, ma'am.

10 Q And you know those calls are recorded?

11 A Yes, ma'am.

12 Q In fact, initially, you were using your own pin
13 number, weren't you?

14 A Using mine and a friend's.

15 Q Who's Steven Wallace?

16 A That's my friend.

17 Q He's your friend?

18 A Yes, ma'am.

19 Q Is he a gang member?

20 A No, ma'am.

21 Q Is he in jail with you?

22 A Yes, ma'am.

23 Q And starting this summer, you decided that you needed
24 to use his pin number, didn't you?

25 A Yes, ma'am.

1 Q And why was it that you needed to use somebody else's
2 pin number for these recorded calls?

3 A I just wanted to use it, ma'am.

4 Q You just wanted to use it?

5 A Yes, ma'am.

6 Q It wasn't because you knew that your pin number would
7 be recorded and that the State could look at it?

8 A Well, I knew both of them were going to get recorded,
9 ma'am. Both of them are recorded, ma'am.

10 Q But you didn't know that Steven Wallace's trial was
11 coming up and the State would also be listening to his?

12 A Oh, yes, ma'am. He told me about his trial as well,
13 ma'am.

14 Q Let me talk about some of the phone calls starting
15 back right after you were arrested and you were booked in
16 jail. And you were originally charged with ABHAN, right?

17 A Yes, ma'am.

18 Q And then some gun charges?

19 A Yes, ma'am.

20 Q And that would have been on the morning of the 13th
21 that you were actually booked into jail, right?

22 A Yes, ma'am.

23 Q And then after that, you got your pin number and you
24 started making some phone calls?

25 A Oh, that was the pin number. It's a new thing now.

1 It's Pay-Tel now.

2 Q Okay. Do you remember making some calls on
3 October 15th? And you said you said some things because
4 you were just hot-headed or something, did you say? I
5 didn't want to misquote you.

6 A Yes, ma'am. I was two days in jail drying out, so I
7 was mad.

8 Q And you called Shante. Because that's who you called
9 mostly, isn't it?

10 A Yes, ma'am, at the time.

11 Q Do you remember on the 15th saying she's faking
12 paralysis?

13 A Yes, ma'am.

14 Q You told Shante, That girl ain't paralyzed. They
15 just white?

16 A Yes, ma'am, I said that. I said a lot of harsh
17 things, ma'am. I admit to it now, but I didn't mean none
18 of them.

19 Q Then on that same day on another phone call, you
20 talked to her and you were talking about family showing up
21 to court?

22 A Yes, ma'am. I admit to saying a lot of things,
23 ma'am.

24 Q And then you said, When they come to court, mug them?

25 A I said a lot of things, ma'am. I didn't mean them.

1 Q Like I want you to say something to the family. What
2 were you trying to do to the family?

3 A I don't really recall, but I know I said some wrong
4 things, ma'am.

5 Q Were you trying to intimidate the family in telling
6 them to come to court and mug them, stare them down?

7 A No, ma'am.

8 Q But that's what you said?

9 A I know I said a lot of things, but I didn't mean
10 them.

11 Q Let's talk about some more stuff you said. Again, in
12 a different phone call, She's not paralyzed. And then you
13 start laughing, and you talk about they're dumb. They got
14 the wrong charges.

15 Who are you talking about there?

16 A I said a lot of things, ma'am.

17 Q Well, who were you talking about there? You can
18 answer my question and then you can explain it, okay?

19 A Oh, I probably was talking about the police, ma'am.

20 Q You said, I'm glad it's the city?

21 A Oh, yes, ma'am. I said a lot of things, ma'am.

22 Q And then in another phone call, you talk about how
23 you're going to refer to yourself as Junior?

24 A Yes, ma'am, my family call me Junior.

25 Q What's your nickname?

1 A My nickname is Junior. My friends call me Flame.

2 Q Flame. Okay. So everybody calls you that, it's not
3 a derogatory term?

4 A Some call me Michael, some call me Mike, some call me
5 Junior, some call me Flame.

6 Q Okay. And you're talking to, I believe, Shante again
7 and you said, It's like we some amateurs at this -- the S
8 word?

9 A Yes, ma'am, I said that.

10 Q Okay. And then you're talking about the family again
11 being on TV?

12 A Yes, ma'am.

13 Q And you're laughing, talking about, Y'all should be
14 at the hospital if it's that damn serious?

15 A Yes, ma'am, I was young and childish at that age,
16 ma'am.

17 Q Well, it was 18 months ago. You're 22.

18 A It was 22 months ago, ma'am, two years ago. I've
19 learned a lot in two years, ma'am.

20 Q Then they start trying to talk to you about what
21 happened that night, and you say, Chill. You all on the
22 phone. Because you wanted to make sure they don't talk
23 about anything on the phone, right?

24 A Yes, ma'am.

25 Q Where somebody like me could listen?

1 A Yes, ma'am.

2 Q And then you talk about -- you said, They charged me
3 with the wrong charges. They ain't give me no attempted
4 murder charge?

5 A Yes, ma'am. Because at first, I thought they said it
6 was my gun that they found out there, ma'am, but it was a
7 shell casing. I really thought it was me at first, ma'am,
8 but I understand.

9 Q Because you think the appropriate charge should be
10 attempted murder, not just ABHAN?

11 A The person who did this crime, yes.

12 Q Then you go on to say, You need to tell them boys in
13 the city they gave me the wrong F'ing charge?

14 A Yes, ma'am, I said that.

15 Q Then in another phone call, you start laughing again
16 and talking about the evidence in the case. You talk
17 about how you rubbed your hands inside your pocket when
18 you were running so they weren't going to get any evidence
19 from that?

20 A Yes, ma'am. I said that, ma'am.

21 Q And I'm paraphrasing: Correct me if I paraphrase
22 wrong. You said all that, right?

23 A Yes, ma'am, I said everything you just said, ma'am.

24 Q And then this summer, you started using Steven
25 Wallace's pin number. Not to hide the calls, were you?

1 A Yes, ma'am, it was to hide it, that's why I used the
2 pin number, but I knew it was recorded as well.

3 Q But you know it now, right?

4 A Yes, ma'am.

5 Q And then on July 3rd, you're talking to Shante and
6 you're talking to her about what she needs to testify to,
7 right?

8 A Yes, ma'am.

9 Q You tell her, You need to plead the 5th. What's the
10 5th? What did you mean by that?

11 A Ma'am, I was just saying things, ma'am.

12 Q I'm just asking what it meant and then you can
13 explain it.

14 A I just said it.

15 Q To plead the 5th, does that mean to get up here and
16 not testify and say she would incriminate herself?

17 A I was just saying things, ma'am.

18 Q And then you tell her, You're supposed to say I did
19 not shoot?

20 A Yes, ma'am.

21 Q And then she starts talking more. You go, Wait a
22 minute, I'll write you a letter to get you straight. What
23 does that mean?

24 A Yes, ma'am, but she knew what she saw, ma'am. She
25 kept telling me on that same phone call that she didn't

1 see nothing, that she heard gunshots from both sides, but
2 she didn't know who shot.

3 Q Shante said a lot of different things, you know that?

4 A Yes, ma'am.

5 Q A whole lot of different things?

6 A Yes, ma'am.

7 Q Depending on the day of the week?

8 A Yes, ma'am.

9 Q Why did you tell her you will write her a letter to
10 get her straight? What does that mean?

11 A I was just going to write her a letter, ma'am.

12 Q Because the letters aren't monitored?

13 A No, ma'am.

14 Q We wouldn't have those. And then you tell her, You
15 need for all of them -- and you're talking about Shante,
16 Asia, Tiffany and Ryan need to be on the same page?

17 A Yes, ma'am, I said that.

18 Q So they needed to get their stories straight to help
19 you?

20 A It wasn't that, ma'am.

21 Q Well, you needed help?

22 A That's why I got my lawyer, ma'am.

23 Q And then that same day in a different phone call, you
24 tell her, Tell them after you see me shoot one time in the
25 air, you heard other shots. Why are you telling her that?

1 A Because there were shots fired at me, ma'am.

2 Q But you say you want her to tell them that after you
3 shot in the air once that then there were other shots. So
4 that was the story then?

5 A Yes, ma'am. There were shots fired at me, ma'am.

6 Q Then you tell her, I need you to meet with all of the
7 people now. I ain't going to say no names. You know who
8 to meet. Was Shante supposed to be getting your story
9 straight?

10 A No, ma'am.

11 Q But the next line is, All the people need to get
12 together and get prepared just in case. And the just in
13 case was in case you went to trial, right?

14 A No, ma'am. I knew I was going to trial originally.

15 Q Well, then why did you say all the people need get
16 together and get prepared just in case?

17 A I just saying things, ma'am.

18 Q And then your talk about Tiffany. Who is Tiffany?
19 Is that Ms. White?

20 A Yes, ma'am.

21 Q She goes by the name Tiffany?

22 A T-Boo. I didn't know her real name. I just called
23 her T-Boo.

24 Q And then you talk about how she broke and spit it
25 out. What does that mean?

1 A Huh?

2 Q What does it mean?

3 A Oh, that said she was telling on me.

4 Q She was telling on you?

5 A Yes, ma'am, me and the other guys.

6 Q Then you tell Shante, All I need is y'all to convince
7 these people I ain't the only one. I need you to say that
8 you shot in the air one time and ran and after that, you
9 heard multiple gunshots. So that's what you were going
10 with on July 3rd of this year?

11 A Yes, ma'am. I said a lot of things.

12 Q But that didn't work. So then last week,
13 August 8th -- what's the date today?

14 A I don't know.

15 Q Of this year, a week ago, again, whose pin are you
16 using?

17 A My homeboy's.

18 Q Your homeboy's?

19 A My friend's.

20 Q Stephen Wallace?

21 A Same one.

22 Q Okay. And you're talking to Shante. You say to
23 Shante, I'm trying to school you on something. And you
24 tell her to say you seen the mother -- MFs pull out
25 something?

1 A Yes, ma'am.

2 Q That's what you're telling her to say?

3 A No, ma'am. She already knew what she saw, ma'am.

4 She kept telling me she already knew what she seen.

5 Q Then you tell her, I'm going to get on the stand and
6 show you how to do this MF. You sit down and take notes.

7 I'm getting on the stand and I'm trying to get my ass
8 home. That's what you said?

9 A Yes, ma'am, if you heard it, I said that, ma'am.

10 Q And then in that same phone call, you tell her,
11 Anything you can do to help an N out, you do it?

12 A If you heard it, ma'am, I said it, ma'am.

13 Q And then another phone call, you're talking to
14 Shante. Who's me?

15 A Me.

16 Q (Nods in the affirmative.)

17 A I don't know.

18 Q Okay. And you tell her, If somebody gets up there
19 and says you were the only one shooting, then it's a done
20 deal. That's all I'm going to say?

21 A If you say I said that, I said it.

22 Q Did you say that or did Shante say that?

23 A I don't know which one said it.

24 Q But then you did say, Their whole demeanor is going
25 to change when they see a MF. Hard to tell on someone

1 when they looking in your face. What does that mean?

2 A Repeat that question, ma'am.

3 Q Were you talking about the witnesses when they'd have
4 to come face you, that it's hard to tell on someone when
5 they're looking at your face?

6 A Oh, no, ma'am. No, ma'am, I was just saying things,
7 ma'am.

8 Q They might be worried about what might happen to
9 them?

10 A No, ma'am. I never threatened anyone, ma'am. As a
11 matter of fact, I don't have no assault charges on me.

12 Q Then you tell Shante -- this is last week, or the
13 8th, whenever that is, within the last 10 days, I'm going
14 to call my mama off my number, that's your pin number, and
15 act like we don't like each other. Why was it important
16 for you to act like you and Shante weren't still together
17 in front of this jury?

18 A Ma'am, what she -- she said she wanted to do.

19 Q So that they would believe her more when she got up
20 and told whichever story y'all came up with?

21 A No, ma'am.

22 Q And then also in August of this year, you're talking
23 about the jury and how you're going to look at them. I'm
24 going to hit them with that innocent look, too. I'm
25 telling you.

1 A If it's on there, ma'am, I said it, ma'am, but I'm
2 innocent.

3 Q Then you talk about on that same day later on, We're
4 getting married after this, you and Shante. Then you tell
5 her to tell your mother to smuggle cigarettes in under the
6 soles of your shoes?

7 A I don't take my shoes back with me, ma'am.

8 Q You do for court?

9 A No, they stay on all the time. I have shower shoes
10 in the front.

11 Q Then you talk about -- you said you didn't threat.
12 You talk about if my brother get 30, I'm going to get 30
13 because I'm going to do something to somebody?

14 A I didn't say that, ma'am.

15 Q That wasn't a threat?

16 A I didn't say that, ma'am.

17 Q You did not say that one?

18 A Repeat. Can you repeat that?

19 Q If my brother get 30, I'm going to get 30 because I'm
20 going to do something to somebody. And then you go on to
21 say that -- the B word, a snitch?

22 A I'm talking about my brother getting 30 --

23 Q And you're talking about Ms. White?

24 A I didn't want to face the time, ma'am. My brother
25 been going through it.

1 Q That wasn't a threat?

2 A No, ma'am. I didn't say that, ma'am. I remember
3 that part about my brother getting 30.

4 Q Well, let's talk about another phone call that's in
5 August. I believe this is on August the 13th. You talk
6 about the S word. It's going to get real. Tell them when
7 you see me, flee the scene. You hear the shots after me.
8 See what I'm saying. Did you say that?

9 A If you're saying that, ma'am.

10 Q And then another phone call you talk about, She told
11 me to write a letter. I done wrote the letter already.
12 What letter is that?

13 A When I wrote the letter to Ms. Childress, ma'am.

14 Q To Ms. Childress?

15 A Yeah, I wrote the letter, ma'am.

16 Q Who told you to write the letter?

17 A I decided to write the letter, ma'am.

18 Q Why do you say, She told me to write a letter?

19 A It was somebody else, ma'am. I decided to write the
20 letter on my own.

21 Q Why do you say she told me to write the letter?

22 A I wrote the letter, ma'am.

23 Q And then you go on in that same phone call, you say,
24 Whenever you and sis fall down -- and you're talking about
25 the testimony, that's when I'm going to step in?

1 A Huh?

2 Q Did you say that?

3 A Can you repeat the question, ma'am?

4 Q Wherever you and sis fall down, that's where I'm
5 going to step in?

6 A I probably said that, but it didn't make sense,
7 ma'am.

8 Q And then you go on to say, This jury, I'm about to
9 get to them. I've got the gift of gab, too. I'm going to
10 show you how to talk.

11 A I said that, ma'am.

12 Q The things I'm about to say, I'm going to have them
13 confused. That would be them?

14 A Yes, ma'am, I said things, ma'am.

15 Q I got this. I just need y'all to play y'all part.
16 You been talking to little A. That's what you asked her.
17 Who's little A?

18 A Asia, ma'am.

19 Q And that's what you said about Asia. And when you
20 say I got this, you mean testifying to the jury?

21 A No, ma'am.

22 Q What did you mean?

23 A I'm going to get up here and tell the truth.

24 Q Then you talk about how we, meaning the solicitor's
25 office, listen to your calls so he needs to use somebody

1 else's line?

2 A Yes, ma'am.

3 Q And then you talk about -- when you're talking to
4 Shante, at 9:58 a.m. on August the 8th, you tell her, You
5 deal with Asia so she can get your man home. All she
6 needs to do is tell them that she seen the gun?

7 A Yes, ma'am. She repeated -- right after that phone
8 call -- before that phone call about Asia I told her to
9 tell a true story to you. Everything I said to Shante on
10 that phone, she gave me a reply back.

11 Q And then on August the 12th after Shante testified,
12 you told her, You ain't talked to me, right, but you did
13 good?

14 A Yes, ma'am.

15 Q And those are some of your phone calls?

16 A Yes, ma'am.

17 MS. CAMPBELL: Beg the Court's indulgence.

18 (Pause.)

19 BY MS. CAMPBELL:

20 Q Just to be clear, you said that you heard shots,
21 multiple shots, and that's when you pulled out your gun
22 and shot back at the people shooting at you?

23 A Ma'am, I -- ma'am, somebody told me they had a gun.
24 I turned around. That's when those shots were fired.

25 Q Well, that's different from what you testified to

1 earlier today?

2 A Somebody said they had gun. That's what happened,
3 ma'am. It's what the video shows you, ma'am.

4 Q And the video is clear?

5 A Yes, ma'am.

6 Q And you would agree with me that at the time you're
7 shooting, their back was to you, they walked away? Who
8 shot you? Who shot at you?

9 A I don't know which one, ma'am.

10 Q But you knew you had to shoot back, so who did you
11 shoot at?

12 A Oh, the three fellows, ma'am.

13 Q Any one of the three?

14 A Yes, ma'am. It was just one of the three.

15 Q And you talked about how you aren't in a gang?

16 A No, ma'am. I have lots of friends that's in a gang.

17 Q Because you said you weren't beat in?

18 A No, ma'am, I'm not in a gang, ma'am.

19 Q Tell the jury the other way you get in a gang, by
20 doing missions.

21 A Yes, you can do a mission, ma'am.

22 Q What's a mission?

23 A A mission could be anything, ma'am.

24 Q What?

25 A A mission could be anything.

Michael Juan Smith - Redirect by Ms. Zmroczek

1 Q Could it be committing a crime?

2 A No, not just crimes. They don't all go around
3 crimes. You can go to school for a mission.

4 Q But it can be a crime?

5 A Yes, ma'am.

6 Q Such as shooting at someone in Five Points?

7 A I wasn't there for no mission, ma'am. I was out
8 there for protection.

9 MS. CAMPBELL: Thank you. I don't have anything
10 further.

11 THE COURT: Redirect?

12 MS. ZMROCZEK: Thank you, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. ZMROCZEK:

15 Q Ms. Campbell or someone in her office has listened to
16 all 1700 phone calls that you've made, right? Somebody in
17 this office has?

18 MS. CAMPBELL: Objection, Your Honor. How would he
19 know?

20 BY MS. ZMROCZEK:

21 Q She just read you some, right?

22 A Yes, ma'am.

23 THE COURT: Sustained. The answer calls for
24 speculation.

25 BY MS. ZMROCZEK:

1 Q She didn't ask you about any of the phone calls where
2 you were asking about Ms. Childress, did she?

3 A No, ma'am.

4 Q Did she -- what are some of the other things that you
5 talked about on those phone calls?

6 A How I wish I could restore the incident time.

7 Q I'm sorry?

8 A How I could rewind the hands of time.

9 Q What are some of the other things?

10 A How bad I felt. You know, I'm sorry for what I felt
11 and the things I said about Ms. Childress.

12 Q She asked you about the letter, but she didn't show
13 it to the jury, did she?

14 A No, ma'am.

15 Q Did you write words with the letter C in those?

16 A Oh, yes, ma'am. Yes, ma'am.

17 Q Didn't leave those out of the letter?

18 A No, ma'am.

19 Q Safe to say that when you're in jail, you do and say
20 some pretty stupid things?

21 A Yes, ma'am. It's very frustrating in jail, ma'am.

22 Q You're frustrated?

23 A Yes, ma'am, in jail.

24 Q In fact, just last week, who did you ride over here
25 with from the jail?

Michael Juan Smith - Redirect by Ms. Zmroczek

1 A COs.

2 Q Who else? Any witnesses?

3 A Yes, ma'am.

4 Q Who was that?

5 A If you said his name, I'd know which one it is.

6 Q Is that Mr. Woodward?

7 MS. CAMPBELL: Objection, Your Honor, leading.

8 THE COURT: Sustained.

9 BY MS. ZMROCZEK:

10 Q Okay. You rode over here with a witness?

11 A Yes, ma'am, we was in the same van together.

12 Q So when you said make sure that Little A stays
13 straight, is it because people who didn't say what the
14 State said --

15 MS. CAMPBELL: Objection, Your Honor, to leading.

16 THE COURT: Sustained.

17 MS. ZMROCZEK: Rephrasing the question.

18 BY MS. ZMROCZEK:

19 Q Why do you think it was -- why did you say make sure
20 Little A stays straight?

21 A Make sure she was all right.

22 Q In fact, Shante didn't testify to any of the things
23 that you told her to say, did she?

24 A No, ma'am.

25 Q Up until somebody actually investigated the case, did

1 you think that you had shot Ms. Childress?

2 A Yes, ma'am.

3 Q Did you feel bad about that?

4 A Yes, ma'am. Knowing that I hurt somebody that's
5 really innocence, that had nothing do with the situation.
6 Yes, ma'am, I was hurt. I had a long two years, hurting
7 for two years.

8 Q Even if it shows you didn't shoot, do you still feel
9 badly?

10 A Yes, ma'am.

11 Q Tell this jury what kind of contact you've had with
12 the police and the City of Columbia, in particular?

13 MS. CAMPBELL: Objection, Your Honor. I have a
14 matter of law.

15 THE COURT: Okay. Ladies and gentlemen, step back to
16 your room. Do not discuss the case. Do not let anybody
17 discuss the case with you. We'll be back with you in a
18 few minutes. Keep an open mind.

19 Everybody remain seated while the jury is excused.

20 (WHEREUPON, the jury left the courtroom at 10:43
21 a.m.)

22 THE COURT: Okay. All right. What happened? Sorry,
23 I was dealing with the charges.

24 MS. CAMPBELL: The question was tell this jury what
25 kind of dealings you've had with the City of Columbia.

1 THE COURT: Okay.

2 MS. CAMPBELL: My concern is that he's already
3 testified he should have gone to the police, he didn't do
4 it. He hasn't said anything about any problems with the
5 City of Columbia. I guess I want to proffer. I don't
6 know if I'm objecting to it or not.

7 THE COURT: Okay. Go ahead and proffer it.

8 MS. ZMROCZEK: Your Honor, her question -- this is
9 simply in response to her question about why didn't you go
10 to the police.

11 THE COURT: Well, let's hear what he has to say.

12 BY MS. ZMROCZEK:

13 Q So what's been your -- what's been your experience
14 with the City of Columbia police?

15 A I'd say I probably encountered the City of
16 Columbia --

17 Q You have to speak up.

18 A I probably encountered the City of Columbia police
19 probably twice.

20 Q What was that?

21 THE COURT: Did you say you've encountered the City
22 police twice?

23 THE WITNESS: Yes, sir.

24 THE COURT: Now, listen, I want you to speak up.

25 THE WITNESS: Okay.

1 THE COURT: I mean, this is your opportunity to
2 testify, so everybody needs to be able to hear you and I
3 need to be able to hear you, also, okay? So just keep
4 your voice up for me, okay?

5 THE WITNESS: I said I encountered the City' of
6 Columbia Police at least twice. I don't really remember,
7 but it wasn't a lot.

8 BY MS. ZMROCZEK:

9 Q It was what?

10 A It wasn't a lot of times that I encountered the City
11 police.

12 MS. ZMROCZEK: Okay. That was the only question I
13 have, Your Honor.

14 THE COURT: Okay.

15 MS. CAMPBELL: I have no problem with that.

16 THE COURT: Okay. Do you want to see if they're --

17 MS. CAMPBELL: That's the extent of what it's going
18 to be, though?

19 MS. ZMROCZEK: Yeah.

20 MS. CAMPBELL: Okay.

21 THE COURT: Do you want to see if they want to come
22 back in or if they want to take a full morning break, Mr.
23 Tolbert, would you ask them?

24 THE BAILIFF: Yes.

25 THE COURT: Everybody just hang on for a second.

Michael Juan Smith - Redirect by Ms. Zmroczek

1 Let's figure that out.

2 (Pause.)

3 THE BAILIFF: They'd like to take a break.

4 THE COURT: Okay. Let's take about a 10-minute
5 break. We'll be back ready to go.

6 Mr. Smith, do not discuss your testimony with anybody
7 in any way, shape, or form. Do you understand that?

8 THE WITNESS: Yes, sir.

9 (WHEREUPON, a short break was taken.)

10 THE COURT: All right. Everybody ready?

11 MS. CAMPBELL: Yes, sir.

12 THE COURT: Okay. Bring them back in.

13 (WHEREUPON, the jury entered the courtroom at
14 10:59 a.m.)

15 THE BAILIFF: Jury is seated, Your Honor.

16 THE COURT: Okay. Welcome back. Thank you very
17 much.

18 Ms. Zmroczek, you may continue.

19 MS. ZMROCZEK: Thank you, Your Honor.

20 CONTINUED REDIRECT EXAMINATION

21 BY MS. ZMROCZEK:

22 Q My question before we broke was what was your
23 experience with the City police?

24 A Yeah, I ran into them a couple times, one or two
25 times. I'm not too familiar with the City.

1 Q Make sure you speak up.

2 A Yes, ma'am.

3 Q Michael, tell this jury why you shot your gun.

4 A Because I was fired at.

5 MS. ZMROCZEK: Thank you.

6 MS. CAMPBELL: Just a couple.

7 THE COURT: Yes, ma'am.

8 RECROSS-EXAMINATION

9 BY MS. CAMPBELL:

10 Q She asked you about the letter. When did you write
11 the letter?

12 A I don't remember the exact date.

13 Q Was it this year, last year?

14 A This year.

15 Q This year?

16 A Yes, ma'am.

17 Q I show you State's Exhibit 102. Do you recognize
18 that?

19 A Yes, ma'am.

20 Q Is that the letter you wrote?

21 A Let me see it again?

22 Q I'm sorry. Make sure.

23 MS. CAMPBELL: Your Honor, at this time, we'd offer
24 State's Exhibit 102 into evidence.

25 MS. ZMROCZEK: No objection.

1 THE COURT: 102, is that the right number?

2 MS. CAMPBELL: It's the one on here.

3 THE COURT: I heard two different things.

4 MS. CAMPBELL: I'm sorry, Your Honor.

5 THE COURT: It's okay. Without objection.

6 (WHEREUPON, State's Exhibit No. 102 was admitted
7 into evidence.)

8 BY MS. CAMPBELL:

9 Q And would you say you wrote this letter six months
10 ago, a year ago? Do you know?

11 A I wouldn't say six months ago, but I wrote it.

12 Q And at any time while Martha Childress was in the
13 hospital, did you write her a letter?

14 A No, ma'am.

15 Q At any time when Martha Childress was at the Shepard
16 Center, did you write her a letter?

17 A No, ma'am, but I prayed for her.

18 Q At any time when she was learning how to get in and
19 out of bed, did you send her a letter?

20 A I kept her in my prayers.

21 Q When did this letter appear for us, for the State, or
22 for Martha to read?

23 A Oh, I don't know the exact date, ma'am.

24 Q Did you know that it was handed to us last Monday,
25 the first day of your trial?

1 A Yes, ma'am.

2 Q That's when we got it?

3 A Yes, ma'am.

4 Q And in your phone call when you talked about she told
5 me to write it, who told you to write the letter?

6 A No, I wrote the letter of my own decision, ma'am.

7 Q Who is she you're referring to when you said she told
8 me to write the letter in the phone call that you admitted
9 you said?

10 A I've been having that in my heart to write her a
11 letter.

12 Q If you can answer my question, then you can explain
13 it. Who told you to write the letter?

14 A What, that letter to Ms. Childress?

15 Q To Ms. Childress. When you said that in the phone
16 call, who told you to write the letter?

17 MS. ZMROCZEK: Your Honor, I object to the --

18 THE WITNESS: I decided to write that letter on my
19 own.

20 MS. ZMROCZEK: She was pointing at me.

21 THE COURT: Okay. Don't point.

22 BY MS. CAMPBELL:

23 Q And why again did she ask you about the phone calls
24 did you feel the need to use Steven Wallace's pin number?

25 A Because I knew y'all was listening to my phone calls.

1 That's why.

2 Q So you didn't want us to hear about how you were
3 telling people what to say, what to do, threats, all that,
4 right?

5 A Yes, ma'am, but they didn't say what I told them to
6 say.

7 Q In fact, it almost worked. You know we didn't find
8 those until last Thursday during trial?

9 MS. ZMROCZEK: Objection, Your Honor.

10 MS. CAMPBELL: I'm asking if he knows that.

11 THE COURT: That's a fair question.

12 THE WITNESS: I don't know, ma'am.

13 BY MS. CAMPBELL:

14 Q She also asked you about that you talked about lots
15 of things on the phone calls?

16 A Yes, ma'am.

17 Q When you're talking to Shante, a significant amount
18 of the time, what are y'all talking about?

19 A About home.

20 Q Home?

21 A Yeah, home and the kids.

22 Q Home with the kids?

23 A Home and the kids.

24 Q Do you talk about wanting her to send you naked
25 pictures?

Michael Juan Smith - Recross by Ms. Campbell

1 A Yes, ma'am. Oh, that goes on a lot in jail.

2 Q Wanting her to put her -- it's a P word that means
3 vagina to the phone so you can hear it?

4 A Yes, ma'am.

5 Q Wanting to put three babies in Shante?

6 A Yes, ma'am.

7 Q That's a significant amount of what you talked about?

8 A Yes, ma'am.

9 Q Along with the other things that you admitted that I
10 went over earlier with you?

11 A Yes, ma'am.

12 MS. CAMPBELL: I don't have anything further.

13 THE COURT: Okay. Thank you very much.

14 All right. Ladies and gentlemen, I need you to step
15 out for one second. I have a matter of law I need take up
16 with the parties. We'll be right back with you. This
17 will not be a long break, less than two minutes. Do not
18 discuss the case and keep an open mind. Thank you very
19 much.

20 (WHEREUPON, the jury left the courtroom at 11:05
21 a.m.)

22 THE COURT: Okay. He can step down. That's all I
23 needed.

24 MS. ZMROCZEK: Thank you, Your Honor.

25 THE COURT: Okay. You can bring them back in.

Joe West - Direct by Ms. Zmroczek

1 (WHEREUPON, the jury entered the courtroom at
2 11:06 a.m.)

3 THE BAILIFF: The jury is seated, Your Honor.

4 THE COURT: Okay. Thank you very much. Welcome
5 back.

6 Call your next witness.

7 MS. ZMROCZEK: Thank you, Your Honor. We'd call Joe
8 West.

9 JOE WEST,

10 after being duly sworn, testified as follows:

11 THE CLERK: Thank you. Have a seat in the witness
12 stand, please. State your name for the record.

13 THE WITNESS: Joseph West.

14 DIRECT EXAMINATION

15 BY MS. ZMROCZEK:

16 Q Mr. West, please tell the jury where you work.

17 A I work at the State Law Enforcement Division, which
18 is more commonly known as SLED, and I'm assigned to the
19 technical services unit.

20 Q Tell them what technical services does.

21 A We do a variety of things in there. It's mostly, if
22 you will, an electronics unit. One of the reasons that
23 I'm here today is that the big focus we have in the unit
24 is video enhancement and video recovery and dealing with
25 digital evidence in a trial.

Joe West - Direct by Ms. Zmroczek

1 Q What kind of training have you received?

2 A I am certified from a private company that sells
3 forensics software to process digital images and digital
4 video and video of all natures, process images, pictures
5 and audio.

6 I've received training over the years through State
7 Law Enforcement, the Academy, agencies from the federal
8 government that deal with surveillance, issues of
9 electronics. I've been through numerous classes on camera
10 systems, how to set them up. Most of what we do with the
11 camera systems is set up of a covert nature. I have over
12 10 years experience dealing with camera systems and video
13 classes.

14 MS. ZMROCZEK: Your Honor, at this time, we'd like to
15 qualify him as an expert in technical services.

16 MS. GARFIELD: No objection.

17 THE COURT: Okay. Ladies and gentlemen, this witness
18 will be an expert in the area of --

19 What do you call it, Mr. West?

20 THE WITNESS: Technical services.

21 THE COURT: In the area of technical services. He
22 will be allowed to give opinion testimony in that area.
23 That does not mean that you must accept his opinion, but
24 it is evidence for you to use in any way that you see fit
25 and give it the weight and credibility that you believe is

1 appropriate as you are required to do with each and every
2 witness that appears before you.

3 Ms. Zmroczek?

4 MS. ZMROCZEK: Thank you.

5 BY MS. ZMROCZEK:

6 Q Agent West, so you said you process videos?

7 A Yes, ma'am.

8 Q So that's something that is done and is allowed to be
9 done to get a better picture or a clearer picture of
10 something that you see on video?

11 A Well, the word processing is not like you would think
12 if you were developing film. Essentially, our simple goal
13 is when video comes in from different agencies, we serve
14 city, county, state, federal agencies, they bring evidence
15 in. We may take that in the case of a video, place it on
16 our forensics system and capture still images or capture
17 certain portions of the video to play back in court.

18 Q Actually, in this case, too, you put together a video
19 for the government following Mr. Smith from camera to
20 camera, correct?

21 A No, ma'am.

22 (WHEREUPON, Defendant's Exhibit No. 22 was
23 marked for identification only.)

24 BY MS. ZMROCZEK:

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

Joe West - Direct by Ms. Zmroczek

1 Exhibit 22 and ask if you can recognize this?

2 A Yes, ma'am.

3 Q And is -- is it a copy of something that fairly and
4 accurately represents what it purports to be?

5 A I've seen this before. It's copy of somebody's work,
6 not mine.

7 Q Okay. Thank you.

8 MS. ZMROCZEK: Your Honor, at this time, we'd like to
9 move Defendant's Exhibit 22 in.

10 MS. GARFIELD: Judge, he testified it's not his. We
11 object to this.

12 THE COURT: Sustained.

13 MS. ZMROCZEK: Okay. I'll ask it this way.

14 BY MS. ZMROCZEK:

15 Q You were asked to review Defendant's Exhibit 22?

16 A Yes, ma'am.

17 Q Okay. You were asked to review it because it's a
18 disk that was turned over?

19 A That's what it was told to me, yes, ma'am.

20 Q And it was a disk that said suspect that fired first
21 shot at ground?

22 A That's what the document said, yes, ma'am.

23 Q And then there were pictures of Mr. Samuel that were
24 attached to that disk?

25 A I don't know the person's name, but there were some

Joe West - Direct by Ms. Zmroczek

1 subjects in the photographs.

2 Q And it's your testimony that you did not print this
3 disk?

4 A No, ma'am.

5 Q So where would it have been created?

6 A There are a variety of sources that the disk could
7 have come from. The predominant source of video in this
8 case came from the Columbia City security systems. We
9 have systems set up throughout the city. I believe it's a
10 private company. So I can't tell you where the disk came
11 from, ma'am.

12 Q So it would be either Mr. Shealey, who testified
13 earlier, or somebody from the City, an investigator from
14 the City?

15 A One of those people, ma'am.

16 Q Okay. But it's your testimony that you didn't create
17 this disk with the image and the still shots?

18 A No, ma'am.

19 MS. ZMROCZEK: No further questions.

20 THE COURT: Cross?

21 MS. GARFIELD: Nothing further.

22 THE COURT: Have a nice day.

23 THE WITNESS: Thank you.

24 THE COURT: Call your next witness.

25 MS. ZMROCZEK: Your Honor, at this time, we'd call

1 Chris Robinson.

2 CHRIS ROBINSON,

3 after being duly sworn, testified as follows:

4 THE CLERK: Thank you. Have a seat in the witness
5 stand, please. State your name for the record.

6 THE WITNESS: Chris Robinson.

7 DIRECT EXAMINATION

8 BY MS. ZMROCZEK:

9 Q Mr. Robinson, tell the jury where you work.

10 A I own my own company, Chris Robinson Forensics. I'm
11 a private forensic consultant.

12 Q And how long have you been doing that?

13 A My own company, I've had it for the past five years.

14 Q What did you do prior to that?

15 A I was the director of the crime lab for the City of
16 Atlanta Police Department where I held that position for
17 approximately two-and-a-half years.

18 Q What specialty or expertise did you have in the crime
19 lab?

20 A When I worked for the Georgia Bureau of
21 Investigations, where I worked there for 10 years, I was a
22 firearms examiner. I was certified in gunshot residue
23 analysis, firearms analysis, different crime scene
24 reconstruction, shooting reconstruction, gunshot wounds.

25 Q Is that entitled under the heading of ballistics?

1 A Yes, ma'am.

2 Q And what specializations do you have in that?

3 A Again, the certifications. Basically, when I began
4 my career -- I have a degree in chemistry from Berry
5 College in Rome, Georgia.

6 When I started my career at the GBI, we had to go
7 through a two-and-a-half-year course in firearms analysis,
8 gunshot residue analysis, the crime scenes, gunshot
9 wounds. I logged approximately 15,000 hours on the
10 comparison microscope. I've performed over 100,000
11 forensic examinations. I've completed eight armorers
12 courses, I've been to eight manufacturing plants and I've
13 currently worked on 7,000 actual cases. I'm a forensic
14 consultant for CNN, Headline News, Nancy Grace. I perform
15 seminars across the country for varying law enforcement
16 organizations.

17 Q Have you ever testified as an expert before in court?

18 A Yes, ma'am.

19 Q How many times?

20 A Five hundred ninety-eight today.

21 Q Okay. How many times for the prosecution?

22 A Five hundred twenty.

23 Q So how many times for the defense?

24 A Seventy-eight today.

25 MS. ZMROCZEK: Your Honor, at this time, we would