

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from York County
Honorable Paul M. Burch, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOHN ERNEST PERRY,

APPELLANT

APPELLATE CASE NO. 2017-002107

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS

3 COUNTY OF YORK

4 2016-GS-46-04182

5 State of South Carolina

6 vs.

7 John Ernest Perry, Jr.

8

9 York, South Carolina

10 September 18-21, 2017

11 Before the Honorable Paul M. Burch

12

13 APPEARANCES

14 For the State: Chris Epting, Jessica Holland

15 For the Defendant: Bill Nowiki

16

17 Reported by: Michael C. Watkins

18 Official Court Reporter

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PRETRIAL MOTIONS

1 we did the voir dire and we didn't have anybody stand up but we
2 are making that motion today. And also I don't want to bring
3 this up, but based on our jury pool I think we had five
4 African-Americans that were on there, so I don't think that's
5 totally fair for judicial purposes and would ask that Your
6 Honor grant the motion for a change of venue.

7 THE COURT: Based on the case that I'm well familiar with,
8 State v. Manning, and the principles espoused by the Supreme
9 Court in that and based on what happened with the voir dire in
10 this case I will have to respectfully deny that motion.

11 MR. NOWIKI: Thank you, Your Honor. The other motion
12 would be a Jackson v. Denno for the statements given by Mr.
13 Perry to law enforcement.

14 MR. EPTING: The State is ready, Your Honor.

15 THE COURT: Okay. We need to send some folks out or have
16 they already gone?

17 MR. EPTING: Your Honor, I believe we'll find a place for
18 them. Your Honor, the State's first witness in response to
19 counsel's motion will be Melissa Skipper-Wallace from SLED.

20 The witness, MELISSA SKIPPER WALLACE, was first duly
21 Sworn and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. EPTING:

24 Q Could you begin by stating your full name for the
25 record?

PRETRIAL MOTIONS

1 A Melissa Skipper Wallace.

2 Q Major Wallace, how are you employed?

3 A I'm employed by the South Carolina Law Enforcement
4 Division commonly known as SLED.

5 Q Were you involved in the arrest of John Ernest Perry,
6 Jr.?

7 A I was.

8 Q And at some point in your involvement in that
9 investigation did you speak to the defendant?

10 A I did.

11 Q Can you tell the Court the circumstances of speaking
12 with him?

13 A When Mr. Perry was arrested we had an ambulance standing
14 by for him, he was transported to Richland Memorial Hospital
15 down in Columbia, I rode in the ambulance with him as well as
16 another SLED agent. He was advised of his Miranda warnings
17 which he waived and we proceeded to interview him while we were
18 transporting him to the hospital and while he was at the
19 hospital.

20 Q Why was he being transported to the hospital?

21 A A gunshot wound to his lower left side.

22 Q And when had that gunshot wound, according to your
23 understanding at the time you spoke with him, taken place?

24 A During the encounter with Officer Taylor on June 22nd.

25 Q And you stated that you read Miranda rights to him.

PRETRIAL MOTIONS

1 A I did.

2 Q Did he appear to understand those rights as you read
3 them?

4 A He did, and he signed a waiver form.

5 MR. EPTING: Beg the Court's indulgence.

6 (Break in proceedings.)

7 MR. EPTING: May I approach the witness, Your Honor?

8 THE COURT: Yes, sir.

9 Q For the record I'm handing you what's been marked as
10 Court's Exhibit 1. Agent Wallace, what is Court's Exhibit
11 1?

12 A Court's Exhibit 1 is a copy of the signed and dated
13 Miranda waiver form by Mr. Perry.

14 Q And you say it's signed, it's signed by who?

15 A Mr. Perry.

16 Q And do you also sign that?

17 A I did witness it, yes, sir.

18 Q And he signed that in the back of the ambulance?

19 A He did.

20 Q After signing that did he agree to speak with you?

21 A He did.

22 Q Did he ever invoke his right to remain silent?

23 A No, he did not.

24 Q Did he ever invoke his right to have an attorney
25 present?

PRETRIAL MOTIONS

1 A No, he did not.

2 Q Were you clearly identified as a police officer?

3 A I was.

4 Q Did you have a side arm?

5 A I did.

6 Q Did you have a badge?

7 A I did.

8 Q In speaking with him, did he appear groggy or out of it
9 or anything like that?

10 A No, sir.

11 Q And again how many -- and when you delivered Miranda,
12 was it delivered by that form, by memory or some
13 combination?

14 A I read the form to him.

15 Q Did he read that form himself?

16 A He did.

17 Q And your testimony is that he appeared to understand
18 it?

19 A Yes, sir.

20 Q Did he appear intoxicated in any way?

21 A No, sir.

22 Q Did he appear mentally incapacitated in any way?

23 A No, sir.

24 Q And if you had to guess, how long was your conversation
25 in the back of the ambulance with the defendant?

PRETRIAL MOTIONS

1 A In the back of the ambulance, approximately 20 to 30
2 minutes maybe.

3 Q Okay. And what, if anything, did the defendant say to
4 you during that ride?

5 A He said that he was involved in the shooting with Officer
6 Taylor, that he had fired a weapon during that interaction and
7 that the officer had fired back at him and shot him in the
8 back.

9 Q Did he get more detail on how he fired that weapon?

10 A He did.

11 Q What did he say?

12 A He said that he had the handgun in his waistband, that he
13 couldn't get caught with it so when he went to jump the fence
14 he was trying to get rid of it and throw it away and it went
15 off and the officers proceeded to fire their weapons at him.

16 Q When you initially spoke to him in the back of the
17 ambulance what if anything did he say -- let me ask you
18 that, back up. Was the firearm found in the search of the
19 camper?

20 A Yes.

21 Q Was a picture of the firearm found in an earlier search
22 of his phone?

23 A Yes.

24 Q Did you ask him about that?

25 A I did.

PRETRIAL MOTIONS

1 Q What if anything did he tell you about those two
2 firearms?

3 A He said that the firearm in the photograph was not the
4 firearm that he had during the shooting.

5 Q Do you recall what firearm he said he used during the
6 shooting?

7 A He initially said it was a .32 automatic but later said it
8 was a .38.

9 Q When we say later, was that in the same conversation or
10 was that much later on?

11 A No. It's in the same conversation but I think it was
12 later at the hospital when he said it was a .38.

13 Q Did he explain to you how he had come to be in the
14 camper?

15 A Yes.

16 Q What if anything did he say?

17 A He said that he had contacted Mr. Larry Farmer after the
18 shooting, asked him to pick him up in Rock Hill, went and got
19 cleaned up at Mr. Farmer's house and later went to the camper
20 which also was Mr. Farmer's in Fairfield County.

21 Q And did he give you a timeline of that?

22 A It was the following day that they went to the camper in
23 Fairfield.

24 Q At some point in the back of the ambulance did he
25 reduce his statement to some type of written statement?

PRETRIAL MOTIONS

1 A That was done at the hospital.

2 MR. EPTING: May I approach the witness, Your Honor?

3 THE COURT: Yes.

4 Q For the record I'm handing Agent Wallace what has been
5 marked as Court's Exhibit 2. Do you recognize Court's
6 Exhibit 2, Agent?

7 A I do.

8 Q What is Court's Exhibit 2?

9 A Court's Exhibit 2 is a copy of the statement that I took
10 from Mr. Perry at the hospital.

11 Q Could you read that into the record.

12 A "I was going down Cherry Road and I turned onto Ebenezer,
13 a policeman turned and turned the blue lights on. I had some
14 old warrants with Rock Hill so I got out of the car and ran, I
15 jumped the gate the gun went off and he shot me. Then I
16 proceeded to run across Camden to Constitution until the next
17 day when I called my friend, he gave me a ride to the camp. I
18 asked S. A. Wallace to write my statement."

19 MR. EPTING: Your Honor, I ask that Court's 2 be entered
20 into the record as Court's 2.

21 MR. NOWIKI: No objection.

22 THE COURT: In without objection.

23 Q Was there parts of the statement he was willing to have
24 you write and sign and parts that he was not?

25 A Yes, sir.

PRETRIAL MOTIONS

1 Q What parts was he not willing to commit in that
2 statement?

3 A The description of the gun, more detail about the events
4 that happened that night, more detail about how he got down to
5 the camper.

6 Q And we say more detail, what kind of more detail?

7 A Description of the handgun, caliber of the handgun, who
8 took him to the camper, when exactly he went to the camper,
9 where he went before he went to the camper, a description of
10 how he said that the gun was in his possession, when it went
11 off. He said it was coming out of his waistband and in front
12 of him pointed towards his left when it went off. He even said
13 he didn't think that the officers would have been able to see
14 the muzzle blast based on their position to his.

15 Q Did he indicate what if anything the defendant -- did
16 the defendant indicate how he got away from the scene?

17 A He said he ran.

18 Q Did he tell you landmark locations that he ran by?

19 A He did.

20 Q Where are some of those location?

21 A He said that he ran across Camden, which is the street
22 just next to Ebenezer Avenue Extension. He said he also ran
23 across Camden. He initially told us that he threw the firearm
24 in a field behind the old Silver Dollar, and then ran through
25 Boyd Hill to Constitution, was picked up down on Constitution.

PRETRIAL MOTIONS

1 He said he was picked up on Constitution.

2 Q So he claimed he threw the firearm in a field as he was
3 running?

4 A He did.

5 Q And you said that was behind what's now known as The
6 Money, it might not have been known that, but a business off
7 of Cherry Road?

8 A Yes.

9 Q Were you able to find a field matching the description
10 of where the defendant said he threw said gun?

11 A Yes, sir.

12 Q What if anything did you do in your investigation into
13 it?

14 A I pulled up a Google Map on my I-phone, he pinpointed the
15 location where he said he threw it on that map. I took a
16 screen shot of that map, sent it to another investigator who
17 was in Rock Hill and asked him to go there and look for it, he
18 was not able to locate it. So subsequent to that I contacted
19 that same agent via Face Time, which is a video correspondence
20 on an I-phone, and Mr. Perry actually directed that agent to
21 where he said he threw the gun.

22 Q So Mr. Perry was a part of the conversation on Face
23 Time to try to find the gun that he said he threw in the
24 field?

25 A Yes, sir.

PRETRIAL MOTIONS

1 Q Was the gun ever located?

2 A The was located but not in the field.

3 Q Please elaborate on that.

4 A The gun was found in the camper when we located Mr. Perry
5 when he was arrested.

6 Q The one that he denied being the gun that he used?

7 A That's correct.

8 Q So this conversation is taking place from the ambulance
9 into the hospital all this time?

10 A Yes.

11 Q Approximately how long of a conversation are we talking
12 about here?

13 A Approximately an hour and a half.

14 Q At any time did he ask to use the restroom?

15 A No, sir.

16 Q Did he ask for you to leave him so he could be treated
17 or anything like that?

18 A No, sir.

19 Q Was he treated while you were in the room?

20 A He was.

21 Q What was the extent of his treatment?

22 A They checked his vitals, asked him questions. He was
23 taken out at one point for a CT scan, we observed the CT scan
24 in an adjoining room. I don't know any other procedures that
25 they did.

PRETRIAL MOTIONS

1 Q Did he ask for any food during this time?

2 A Not to my recollection.

3 Q Had he asked for food would you have denied him food?

4 A No.

5 Q Did he ask for water during this time?

6 A Not that I recall.

7 Q Had he asked for water would you have denied him water?

8 A No.

9 Q At any time in this did he request to remain silent?

10 A No, sir.

11 Q At any time during this conversation did he request to
12 have an attorney?

13 A No, sir.

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

15 (Break in proceedings.)

16 Q Did you have any other conversations with Mr. Perry?

17 A I did.

18 Q If you could, approximately when did you have the
19 second conversation with Mr. Perry?

20 A July 13th.

21 Q And where does this take place?

22 A In the York County Detention Center.

23 Q And how did that come to be?

24 A I approached Mr. Perry to potentially obtain a buccal swab
25 from him. I met with him in the jail, I again reviewed Miranda

PRETRIAL MOTIONS

1 with him, he again signed a Miranda waiver form, and he
2 again -- I'm sorry, he signed a consent to search form for a
3 buccal swab and I collected a buccal swab from him.

4 Q And was he read Miranda again at this point?

5 A He was.

6 Q And did he appear to understand the rights as he was
7 read them?

8 A Yes.

9 Q Did he consent to speak with you after having those
10 rights read?

11 A Yes.

12 Q Did he consent to the buccal swab?

13 A He did.

14 Q What if anything did he tell you at the York County
15 Detention Center relevant to this case?

16 A He told me the gun in the camper was the gun that he had
17 that night, and that the silver barrel extension was the piece
18 that he had thrown in the field that -- where he had directed
19 us to look.

20 Q And just so the record is clear, what does the gun that
21 you believed was used that night appear -- a general
22 description.

23 A It was a black semiautomatic handgun with an extended
24 magazine and a silver colored barrel extension.

25 Q The defendant admitted to you at the detention center

PRETRIAL MOTIONS

1 that was in fact the gun that he used?

2 A That's correct.

3 Q Did he say anything else relevant to this?

4 A If I can review my notes.

5 Q Did you make notes on this case that would refresh your
6 recollection?

7 A Yes, I did.

8 Q It has been approximately how long since you had
9 that -- since this conversation took place?

10 A Over a year.

11 MR. EPTING: Your Honor, with leave from the Court I would
12 ask that she be able to refresh her recollection with the notes
13 that she took in this case given the amount of time that's
14 passed.

15 THE COURT: No problem with me.

16 A Only thing he said is he didn't intend to shoot anyone.

17 Q Very good.

18 MR. EPTING: Beg the Court's indulgence.

19 (Break in proceedings.)

20 MR. EPTING: Agent, I have no further questions for you at
21 this time, please answer any questions that Mr. Nowiki may have
22 for you.

23 CROSS EXAMINATION

24 BY MR. NOWIKI:

25 Q Agent Wallace, you testified that -- well, let me go

PRETRIAL MOTIONS

1 MR. EPTING: Your Honor, that's all of the witnesses for
2 purposes of our Denno presentation, we're ready for whatever
3 motions that defense counsel may have.

4 MR. NOWIKI: Your Honor, it seems like everything was
5 covered fine so we're not going to contest it.

6 THE COURT: All right. Since there's no contradictory
7 evidence I don't have to deal with a whole lot. With that
8 said, Counsel, the Court does find it appears that these
9 statements were freely, voluntarily and intelligently given and
10 that there was no undue coercion or duress directed toward the
11 defendant, so they're admissible.

12 MR. EPTING: Thank you, Your Honor. I believe the defense
13 does have one final motion as far as testimony, a suppression
14 motion?

15 MR. NOWIKI: I think we're going to waive that and just
16 let it go for trial.

17 MR. EPTING: The State has no further matters pretrial, it
18 appears that the defense has no further matters pretrial, it
19 appears that we're done for the day.

20 THE COURT: Okay. Well, we had a pre-conference hearing
21 back in chambers and y'all related to me the offers and the
22 rejection of that and there's always room to continue the
23 negotiations --

24 MR. EPTING: Yes, Your Honor.

25 THE COURT: -- you've got plenty of time. All right.

PRETRIAL MOTIONS

1 We'll see you at 9:30 in the morning.

2 (Court recessed for the evening and resumed at 10:15

3 A.m. on Tuesday, September 19, 2017.)

4 THE COURT: Anything before we get the jury in here and
5 get to work?

6 MR. EPTING: Your Honor, we would like to place on the
7 record one or two matters, I believe the defense has something
8 they also would like to place on the record.

9 THE COURT: All right. Prior to the court taking the
10 bench there was some discussion amongst the State and the
11 defense, we discussed a possible straight-up plea to attempted
12 murder to the one count we're going to trial on, it's my
13 understanding -- and lifting the life notice, of course, the
14 defendant would have pled under North Carolina versus Alford,
15 it's my understanding that the defendant does not wish to do
16 that. After speaking with our elected solicitor we went back
17 to the defense and we floated across the table again under
18 Alford, again to the attempted murder, a potential cap of 20
19 where the State would have leave to seek up to 20 in a plea
20 situation, it's my understanding that the defendant has
21 rejected that offer as well. We would ask that the defendant
22 put that on the record as well.

23 MR. NOWIKI: Your Honor, I had spoken with Mr. Perry about
24 that and he has rejected the offers, I would like to have him
25 say that on the record.

PRETRIAL MOTIONS

1 THE COURT: Mr. Perry, do you understand --

2 THE DEFENDANT: Yes, sir.

3 THE COURT: -- the present situation with the offers?

4 THE DEFENDANT: Yes, sir, I do.

5 THE COURT: And do you want to discuss with your attorney
6 anything else about that?

7 THE DEFENDANT: No, sir, I want to go forward.

8 THE COURT: Okay. All right.

9 MR. EPTING: Nothing further from the State, Your Honor,
10 we're ready to begin this trial.

11 THE COURT: Well, let me ask him one thing, though. Mr.
12 Perry, your decision on this is being made freely, voluntarily
13 and, of course, intelligently by you, correct?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Nobody has threatened you or promised you
16 anything.

17 THE DEFENDANT: No, sir.

18 THE COURT: Okay. Yes, sir?

19 MR. EPTING: Nothing further from the State, we're ready,
20 Your Honor.

21 THE COURT: Yes, sir?

22 MR. NOWIKI: Your Honor, just one thing I would like to
23 put on the record, that I have advised Mr. Perry that I think
24 basically it would be in his best interest to do the plea based
25 on facts, evidence and so forth that we've discussed. Mr.

PRETRIAL MOTIONS

1 Perry has gone against that advice and we're going to proceed
2 with the trial and knowing that this is a potential life
3 without parole if he is convicted of what he's charged with.

4 THE COURT: All right. Well, normally I'm very reluctant
5 to get into these plea negotiations between the defense and the
6 State, but from what has been discussed with me up to this
7 point there are other options, possible lesser-included
8 offenses or whatever, y'all have thoroughly discussed that?

9 MR. NOWIKI: Yes, we have.

10 THE COURT: Okay.

11 THE DEFENDANT: Your Honor, can I say something?

12 THE COURT: Yes, sir.

13 THE DEFENDANT: No one ever come and told me anything --
14 they told me to go to the lesser-included with the jury once
15 they've ruled on the charge it can be determined that it would
16 be a lesser-included offense, but I've never had a plea for
17 anything but attempted murder.

18 MR. NOWIKI: Well, that's not true. There was an offer
19 that was presented for an assault and battery high and
20 aggravated nature.

21 THE DEFENDANT: Still attempted murder.

22 MR. NOWIKI: No, it's not.

23 MR. EPTING: That is correct, Your Honor. As a provision
24 of that since we were coming off the attempted murder we did
25 request the defendant to waive his rights to appeal on PCR,

PRETRIAL MOTIONS

1 it's my understanding that he rejected that in addition to all
2 offers made, ABHAN, of course, being a statutory
3 lesser-included of attempted murder, but still serious.

4 THE COURT: Well, certainly I was unaware of that. If you
5 need time to discuss the possibility along that angle now I'll
6 give you some more time.

7 MR. NOWIKI: Well, we have discussed that even if it's a
8 lesser and if the jury was to conclude it was an assault and
9 battery high and aggravated nature that it would still fall
10 within a serious and was still a most serious and violent and
11 he would still be subject to the life without parole.

12 THE COURT: Now, is he aware from your discussions that
13 even though there may be lesser-included offenses available
14 that that would not become a factor unless the evidence
15 justifies a lesser-included offense in the charge?

16 MR. NOWIKI: Yes, Your Honor.

17 THE COURT: So it's not a situation to where you
18 automatically get a charge, or a right we could say to a
19 lesser-included offense unless the evidence warrants it. So
20 it's not something that's automatic, Mr. Perry.

21 THE DEFENDANT: Yes, sir, I know.

22 THE COURT: Okay. With that said, need anymore time?

23 THE DEFENDANT: No, sir.

24 MR. NOWIKI: No, Your Honor.

25 THE COURT: Are y'all ready?

1 but everybody is different, so that will be up to you. If you
2 need to take a break let us know and we will take a recess, and
3 we'll try to do that every hour or so anyway. Please do not
4 fall asleep on me. That happens sometimes especially after
5 lunch, the folks that are used to taking a nap or if you are
6 like me and sometimes you eat too much at lunch, come back and
7 you can doze off, please do not do that to us. Let us know,
8 we'll get a cup of coffee or a Coca Cola, okay? If you see
9 that your neighbor is about to doze off, I would appreciate it
10 if you would nudge them, okay, and make sure they stay awake
11 and we'll take a break as soon as we can. That's basically the
12 outline of what I wanted to discuss with you. Any problems you
13 have let Mr. Foreman know and he'll let one of the bailiffs
14 know and we'll try to attend to it, they're here to assist you
15 in any way. I guess most common sense I can tell you about
16 serving on a jury is to listen, observe and use your common
17 sense, okay? All right. The State has the burden of proof so
18 they get to go first. Solicitor?

19 MS. HOLLAND: May it please the Court? Good morning.
20 We're here today to talk about something that happened on June
21 22nd of 2016, so a little over a year ago. In Rock Hill
22 Officer Dalton Taylor, sitting right here, was on patrol, he
23 was a new officer so he had another officer named Shaun Bailey
24 in the cruiser with him. They were patrolling the area on
25 Cherry Road near Winthrop's campus if you're familiar with Rock

OPENING STATEMENTS

1 Hill and they see someone make a turn without using a turn
2 signal. He initiates a traffic stop, which should be a very
3 minor traffic violation, not using your turn signal when you
4 turn. Little did he know at that point this was going to turn
5 into one of his greatest fears and a fear for most officers,
6 because John Perry was driving that car. When he tries to
7 initiate that traffic stop Mr. Perry makes two sharp turns
8 turning into an apartment complex, when he turns into the
9 apartment complex there's literally nowhere else to go, it's a
10 parking lot. He jumps out of the car, the car still is
11 running, the car is still in drive, he jumps out of the car,
12 runs, jumps over a chain linked fence into the backyard of a
13 neighboring property of houses, somebody's backyard. He runs
14 into that, Officer Dalton Taylor and Officer Shaun Bailey both
15 chase him, Mr. Perry runs into that yard and tries to run to
16 the far end of it and there's a privacy fence that he can't get
17 over. So at that point Mr. Perry pulls out a gun, Officer
18 Taylor is chasing him, he is trying to get over the same chain
19 link fence and falls, when Officer Taylor looks up Mr. Perry is
20 running towards him with a gun in his hand. Officer Taylor
21 stands up and at that point he begins to chase Mr. Perry who
22 turns around and fires a gun at him. Mr. Dalton Taylor returns
23 fire at that point chasing Mr. Perry and he runs into -- Mr.
24 Perry runs off into the residential area where this is, this is
25 Ebenezer Avenue Extension if you're familiar with Rock Hill, he

OPENING STATEMENTS

1 run into that area. Mr. Perry had actually been shot by
2 Officer Dalton right here in the side. Mr. Perry does not seek
3 medical attention, instead he runs. He runs first to a
4 friend's house, he then runs to the home of a man named Larry
5 Farmer. Mr. Farmer helps Mr. Perry clean up his wound with
6 household first aid items and Super Glue. Mr. Perry then flees
7 to Fairfield County in the lower part of the state. Mr. Farmer
8 assists him in going to a camper there on a hunting property.
9 As is with any officer involved shooting like this SLED is
10 called out. Rock Hill PD calls out the State Law Enforcement
11 Division to police them, to determine whether or not the shoot
12 was clean for the officer, whether or not he should have pulled
13 out his gun or fired his gun. SLED gets involved, they do the
14 investigation, and in the course of that investigation within a
15 couple of days they locate Mr. Perry in that camper in
16 Fairfield County, and in that camper they also locate the
17 weapon that Mr. Perry used to fire at Dalton Taylor on that
18 scene that night. Your question you have to answer is whether
19 or not John Perry committed the crime of attempted murder when
20 shot at Officer Dalton Taylor, that's the question have you to
21 answer. To be aided in that we will show you a lot of evidence
22 and you will hear from a lot of people. You will watch an
23 in-car video that allows you to see very little but hear a lot
24 of what goes on at the scene that night. You can hear guns
25 being fired. You will hear from a SLED expert who will tell

OPENING STATEMENTS

1 you we know the gun that was found with Mr. Perry in Fairfield
2 was the one that he shot with the shell casings. And then
3 you'll hear a statement that Mr. Perry gave himself. He admits
4 to being the person there, that he pulled out a gun, that he
5 ran from officers and that his gun was discharged that night.
6 The question will be how his gun is discharged probably,
7 whether or not he intended to shoot at Officer Taylor that
8 night, that will be the issue, and to help you with that we
9 have someone coming in named Kevin Duncan. Mr. Duncan is a man
10 who now lives in Texas who has flown back to South Carolina to
11 tell you what he saw that night. That apartment complex they
12 pulled into, Mr. Duncan lived in that apartment complex and was
13 looking out his window and saw what happened and saw Mr. Perry
14 shooting at Dalton Taylor. And then finally you will hear from
15 Dalton Taylor, he'll tell you what happened that night and how
16 Mr. Perry looked at him and fired a gun at him that night. So
17 thank you, we appreciate your attention.

18 THE COURT: Thank you, Solicitor. Counsel?

19 MR. NOWIKI: May it please the Court?

20 THE COURT: Yes, sir.

21 MR. NOWIKI: Ladies and gentlemen of the jury, my name is
22 Bill Nowiki, I'm an attorney and Mr. Perry is right there. Mr.
23 Perry is charged with attempted murder, and the evidence is
24 going to show that he did not commit that crime, he did not.
25 There was no intention or anything of shooting at an officer.

OPENING STATEMENTS

1 You're going to hear a lot of testimony today, probably see
2 videos, some documents, all of that kind of stuff and all of
3 that is considered to be evidence. When you go back to the
4 jury room you'll be able to see all of that evidence and also
5 remember the testimony. What I'm asking is that don't make any
6 decision right now, you know, wait until all of the evidence is
7 in and then make your decision. A lot of this is going to be
8 common sense, we all have it and -- well, at least most people
9 do, and you're going to figure this out that Mr. Perry did not
10 do what the State is saying that he did. Couple of other
11 things. Now, Mr. Perry has constitutional rights just like we
12 all do, he has the right to remain silent so he does not have
13 to testify. He has a right to a fair jury so he doesn't have
14 to -- well, basically the defense, we don't have to prove
15 anything, the burden is on the State and it's a hefty burden.
16 They have to prove what we call beyond a reasonable doubt. So
17 if there's any hesitation on your part when you're deliberating
18 then it should be not guilty, so I want you to remember that.
19 But the big thing is to listen to everything and then make your
20 decision and that's what we're asking. We will be starting the
21 trial soon, but I will have another opportunity to come back
22 and talk to you and at that time I'm going to ask for a verdict
23 of not guilty. Thank you.

24 THE COURT: Thank you, Counsel. You can call your first
25 witness.

DALTON TAYLOR - DIRECT

1 MR. EPTING: Thank you, Your Honor. May it please the
2 Court? The State calls Dalton Taylor to the stand.

3 The witness, DALTON TAYLOR, was first duly sworn and
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. EPTING:

7 Q Good morning, Officer.

8 A Morning.

9 Q Would you please for the record state your name?

10 A Dalton James Taylor.

11 Q And this is a stupid question given how you're dressed,
12 but what do you do for a living?

13 A I work with the Rock Hill Police Department.

14 Q How long have you been with the Rock Hill Police
15 Department?

16 A Since November 2nd of 2015.

17 Q And what are your duties with the Rock Hill Police
18 Department?

19 A As of right now I'm a street crimes officer focusing on
20 drug and gun violence.

21 Q How were you employed in June of last year?

22 A I was in field training with officers Shaun Bailey as a
23 patrol officer.

24 Q And if you could, what typical type of duties did that
25 involve at that time?

DALTON TAYLOR - DIRECT

1 A It can be anything from stopping a car to pulling a tree
2 out of the roadway and working a homicide, anything like that.

3 Q So it runs the full spectrum.

4 A Yes, sir.

5 Q I want to talk to you about an event that occurred in
6 June of last year. Do you recall June 22nd?

7 A Yes, sir.

8 Q If you would, tell the jury what happened that night.

9 A On June 22nd of 2016 myself and Officer Bailey were doing
10 routine patrol. I was in third phase of FTO which means I had
11 pretty much been a cop for 14 weeks. I wanted to practice
12 nighttime traffic stops because I had never worked on night
13 shift. It was on my second day with Officer Bailey and we were
14 driving up Cherry Road, I see that Mr. John Perry was driving a
15 vehicle make an improper turn from Oakland Avenue onto Cherry
16 Road without using a turn signal, when he did that we initiated
17 a traffic stop on him. He quickly turned down Ebenezer Avenue
18 Extension, he then turned into an apartment complex, when he
19 did that we initiated our lights. He decided to jump out of
20 the car without putting in drive and run. He jumped the fence,
21 I exited the vehicle, Officer Bailey went to the vehicle to
22 secure the vehicle, I continued to pursue John Perry. When I
23 pursued Mr. Perry he jumped the fence, I then jumped the fence,
24 I landed on all fours, Mr. Perry ran right past me. As he's
25 running past me I see him reaching into his waistband, he

DALTON TAYLOR - DIRECT

1 reaches into his waistband, pulls an unknown object at the time
2 out of his waistband, I hear the cocking noise of racking a
3 pistol. At that point he takes it, he takes the firearm, it's
4 a black firearm with an elongated silver barrel extender, he
5 takes that weapon and starts lowering it down and fires one
6 shot off. His body at that point is bladed towards me and he's
7 looking back at me to see how close I am, he then takes that
8 firearm and levels it off at me and fires another shot. At
9 that point I had already drawn my service weapon and I
10 proceeded to fire back at him. Unknown at the time I had
11 struck him one time in the side and he ran off into the woods.
12 I continued to follow him, and at that point when I lost sight
13 of him I took cover behind a civilian's car.

14 Q I want to go back to when he was pointing that gun at
15 you. Approximately how close were you from Mr. Perry when
16 he turned around and pointed the gun at you?

17 A Probably to me and I would say to that projector right
18 there if not a little bit closer.

19 Q If I walk to you, can you tell me when to stop if I'm
20 as close?

21 A Yes, sir.

22 Q (Solicitor starts walking toward witness.)

23 A About right there.

24 Q Was there anything obscuring his face that night?

25 A No, sir.

DALTON TAYLOR - DIRECT

1 Q Was the lighting sufficient that you could see his face
2 and his make?

3 A There was a street lamp right over the house right over
4 the driveway where he ran through.

5 Q And you motioned earlier but just so the record is
6 clear, do you see the person who shot at you that night here
7 in the courtroom today?

8 A Yes, sir, he's sitting right there.

9 MR. EPTING: I would ask that the record reflect that the
10 officer is pointing to the defendant, John Perry, seated at
11 defense counsel table.

12 Q You said he bladed his body and fired back at you.

13 A Correct.

14 MR. EPTING: Your Honor, could the witness have leave to
15 briefly come off the stand to demonstrate to the jury that
16 stance?

17 THE COURT: Sure.

18 Q And Officer Taylor, if you would, show the jury --
19 pretend I'm you.

20 A Okay.

21 Q How, if at all, does Mr. Perry blade his body?

22 A At first he's like this and he's lowering his arm and he
23 fires one shot off and then he takes a second shot and fires
24 right in my direction just like this.

25 Q Okay. All right. Take a seat, please.

DALTON TAYLOR - DIRECT

1 A (Witness complies.)

2 Q If you could, describe the weapon again for the jury.

3 A It was a black handgun with an small extended magazine,
4 and it also had a silver barrel extender.

5 Q And as a result of this incident, were you injured in
6 any way?

7 A I had a couple of scrapes on my knees and two splints on
8 both thumbs.

9 Q And at the time that this shooting took place when Mr.
10 Perry attempted to shoot you, where was Officer Bailey?

11 A As far as I know I never saw him until he came up after I
12 had taken cover at the car, the last time I saw him he was
13 running towards the vehicle I believe to make sure nobody was
14 still inside the vehicle.

15 Q But at the time of the shooting you didn't know where
16 he was?

17 A No idea.

18 MR. EPTING: Your Honor, permission to approach the
19 witness?

20 THE COURT: Yeah.

21 Q Officer Taylor, are you familiar with the area where
22 this occurred?

23 A Yes, sir.

24 Q Had it been part of your patrol leading up to this?

25 A Yes, sir.

DALTON TAYLOR - DIRECT

1 MR. EPTING: I'm handing Officer Taylor what's been marked
2 as State's Exhibit 3.

3 Q Officer Taylor, do you recognize State's Exhibit 3?

4 A Yes, sir.

5 Q What is State's Exhibit 3?

6 A It's Ebenezer Avenue Extension and right in the middle is
7 the house where the shooting took place.

8 Q Does it appear to be a fair and accurate depiction of
9 the way that area was depicted the night of June 22nd?

10 A Yes, sir.

11 THE COURT: Your Honor, at this time the State would
12 move -- seek to move State's Exhibit 3 into evidence and
13 publish it for the jury.

14 MR. NOWIKI: No objection.

15 THE COURT: In without objection.

16 (The aerial photo was received as State's 3.)

17 MR. EPTING: Your Honor, the State would seek to publish
18 State's Exhibit 3.

19 THE COURT: Okay.

20 MR. EPTING: Your Honor, we don't have a laser pointer at
21 this time, could we have the witness come down to demonstrate
22 using the aerial?

23 THE COURT: Yes, sir.

24 Q If you could, demonstrate first by what if any parking
25 lot was pulled into by Mr. Perry during the initial stop.

DALTON TAYLOR - DIRECT

1 A This one right here.

2 Q Walk the jury through that using the aerial as an
3 exhibit.

4 A We make the traffic stop, Mr. Perry drives down here, as
5 soon as he turns in we initiate our blue lights pretty much
6 telling him to stop. At that point he decided to accelerate
7 and right here there's a fence, I believe it's right there that
8 he actually -- he jumps out of the car, his car crashes into
9 that fence, he proceeds to jump over the chain link fence right
10 here. There was a black SUV parked right here, Mr. Perry runs
11 back towards that -- there's a eight foot privacy fence that
12 goes all the way around the property except for the chain link
13 fence on one side, he runs back there, I'm guessing he decides
14 he can't clear that one. At that point I jump over the fence,
15 land on all fours, Mr. Perry is right there, runs right past
16 me, and that's when I see him starting doing his gun motion and
17 blades his body and shoots towards me.

18 Q And I know it's a little bit high on the screen, but
19 can you demonstrate the area where the shooting occurred?

20 A Right about in here.

21 Q In that driveway area?

22 A Yes, sir. It's the beginning corner of the house closest
23 to Ebenezer Extension.

24 Q And which way are you running down that driveway?

25 A I'm running this way.

DALTON TAYLOR - DIRECT

1 Q And which way is Mr. Perry running?

2 A The same direction.

3 Q And that is when he turns over his shoulder and fires?

4 A Correct.

5 Q At some point do you cease returning fire?

6 A Yes, sir.

7 Q And why do you stop shooting?

8 A I stopped shooting because I realize there's houses back
9 here and I don't know if there's anybody inside the house or
10 vehicle or anything like that.

11 Q Did you know that you had hit Mr. Perry that night?

12 A I had no idea.

13 Q Did you have an idea that you might have?

14 A Yes, sir. When I got my final shot off, I think it was my
15 final shot, he began to limp, I didn't know if I had hit him or
16 what happened. As far as I know there was no blood on the
17 ground or anything like that.

18 Q If you would, please take your seat. What happens
19 after Mr. Perry gets away? Who was called on the scene?

20 A Pretty much all of our brass; Major Thompson, Chief Watts,
21 Captain Stinson, SLED was called, K-9 unit was called, SWAT
22 team was called. Pretty much the whole nine yards.

23 Q And do you stay on scene or do you go somewhere else?

24 A I was on scene for a little while and then I went back to
25 the Rock Hill Police Department where I had to surrender my

DALTON TAYLOR - DIRECT

1 weapon and do interviews and get issued a new weapon and
2 everything like that.

3 Q Did you make any phone calls that night?

4 A Yes.

5 Q To whom?

6 A My mom.

7 Q For what purpose?

8 A I was allowed to tell her that I had been in a shooting,
9 and it wasn't the best choice of words but I said, "Hey mom,
10 I've been in a shooting, I'm okay, I've got to go."

11 Q You stated that you were being trained by Officer
12 Bailey?

13 A Correct.

14 Q Were y'all in a patrol car that was equipped with a
15 video camera?

16 A Yes, sir.

17 Q And did that video camera produce a tape?

18 A Yes.

19 Q And is that commonly what's called an in-car video?

20 A Correct.

21 MR. EPTING: May I approach the witness, Your Honor?

22 THE COURT: Yes.

23 MR. EPTING: I am going to hand Officer Taylor what has
24 been marked as State's Exhibit 2.

25 Q Officer Taylor, do you recognize State's Exhibit 2?

DALTON TAYLOR - DIRECT

1 A Yes, sir. It's the in-car video from Officer Bailey's
2 patrol vehicle.

3 Q Have you reviewed a copy of State's Exhibit 2?

4 A Yes, sir.

5 Q Is it a fair and accurate depiction of what happened
6 that night?

7 A Yes, sir.

8 Q How do you know that State's 2 was the copy that you
9 reviewed?

10 A You reviewed it with me.

11 Q Is there any markings on this CD that allows you to
12 demonstrate?

13 A Yes, I signed it. It says State versus John Perry in-car,
14 which is Officer Bailey's in-car video. I have my signature as
15 well as Officer Bailey has his signature on it.

16 MR. EPTING: Your Honor, at this time the State would seek
17 to enter State's 2 into evidence and publish.

18 MR. NOWIKI: No objection.

19 THE COURT: In without objection.

20 (The video was received as State's 2.)

21 (At this time the video was played.)

22 Q Officer, while this is playing so the record is clear
23 if you need to interject something please raise your hand so
24 we can pause the tape so we don't have the tape playing over
25 any testimony that you may give.

DALTON TAYLOR - DIRECT

1 A Okay.

2 MR. EPTING: Beg the Court's indulgence.

3 THE COURT: Sure.

4 (Break in proceedings.)

5 Q While we're figuring that, who is driving this vehicle
6 while this occurs?

7 A I am.

8 Q And who was the passenger in the vehicle?

9 A Officer Bailey.

10 Q Does your video automatically record sound the entire
11 time you're driving?

12 A Yes. You said sound, I'm sorry?

13 Q Yes.

14 A No. For the first 30 seconds there is no sound, but as
15 soon as the blue lights come on or you activate your camera
16 manually then you have sound.

17 (At this time the video was played.)

18 Q You said in the beginning there's a delay.

19 A Yes, sir, 30 second delay.

20 Q What are we looking at here?

21 A This is me flipping around our patrol vehicle on John
22 Perry.

23 (The video continues to play.)

24 Q Who was that speaking to you on the scene?

25 A Officer Bailey.

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1 MR. EPTING: And the entirety of this is in, unless the
2 defense objects we'll not play that portion, it's in evidence
3 though in the interest of time.

4 Q Officer, you mentioned earlier that you handed over
5 your service weapon to SLED; is that correct?

6 A I believe I gave it to Sergeant Watson at the police
7 department if I remember correctly.

8 Q And you gave a description of the firearm that Mr.
9 Perry used.

10 A Correct.

11 MR. EPTING: May I approach the witness, Your Honor? I'm
12 handing the witness State's 1, 4, 5 and 6.

13 Q Officer, do you recognize all of those exhibits?

14 A Yes, sir.

15 Q Are they all fair and accurate depictions?

16 A Yes, sir.

17 Q If you would, please walk the jury through each one.

18 A The first one, Exhibit 1, is a picture of the firearm that
19 John Perry used against me. Exhibit Number 4 is my Glock 40
20 caliber service weapon. Exhibits 5 and 6 show my magazines
21 that are missing six rounds.

22 MR. EPTING: And, Your Honor, we ask that 1, 4, 5 and 6 be
23 admitted into evidence.

24 MR. NOWIKI: No objection.

25 THE COURT: In without objection.

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1 MR. EPTING: We ask to publish, Your Honor.

2 (The photos were received as State's 1, 4, 5 and 6.)

3 MR. EPTING: For the record, State's Exhibit 1 is on the
4 screen.

5 Q What are we looking at, Officer?

6 A That is the weapon that Mr. Perry used to fire at me.

7 Q And here?

8 A That is my service weapon.

9 Q And here?

10 A That is the magazine that came from my service weapon that
11 night.

12 Q Can you tell by looking at that picture, and we can
13 zoom in if need be, how many rounds are missing?

14 A There is five from the magazine.

15 Q And could you designate by number which rounds are
16 missing?

17 A 15, 14, 13, 12 and 11.

18 Q When you carry your service weapon are you keeping one
19 bullet in the chamber so to speak?

20 A Correct.

21 Q So how many of those shots that we heard on that video
22 could be accounted to your weapon?

23 A Six.

24 Q And this is a fair and accurate depiction of your
25 magazine as it appeared there?

DALTON TAYLOR - DIRECT

- 1 A Yes, sir.
- 2 Q Did Shaun Bailey discharge on the scene?
- 3 A No, sir.
- 4 MR. EPTING: Beg the Court's indulgence.
- 5 (Break in proceedings.)
- 6 Q Based upon what you saw that night your testimony was
- 7 that you were relatively close in distance to Mr. Perry; is
- 8 that correct?
- 9 A Yes, sir.
- 10 Q And that he fired once in this direction and once
- 11 straight at you?
- 12 A Correct, yes, sir.
- 13 Q Was that an accidental discharge in your opinion?
- 14 A No, sir.
- 15 Q Based on what you observed?
- 16 A Not at all.
- 17 Q Was that in your general direction or was that right at
- 18 you?
- 19 A It was right me.
- 20 Q In your opinion was he trying to shoot you when he shot
- 21 that weapon?
- 22 A Yes. He was trying to shoot me to get away.
- 23 Q And how did you feel?
- 24 A Scared.
- 25 MR. EPTING: No further questions, please answer any

DALTON TAYLOR - CROSS

1 questions that the defense counsel may have.

2 CROSS EXAMINATION

3 BY MR. NOWIKI:

4 Q Officer Taylor, you had testified that you've only
5 been -- at the time you were like 14 weeks?

6 A Around that area, yes, sir.

7 Q And so when did you graduate I guess from -- I guess --
8 is it the academy?

9 A If I remember correctly I think I graduated in May.

10 Q In May of.

11 A 2016.

12 Q 2016, okay.

13 A I'm sorry, it was March of 2016.

14 Q March of 2016. So you had been on about 14 weeks?

15 A Correct.

16 Q What kind of training did you go through up to the date
17 of this incident?

18 A We went through everything from defensive tactical
19 training to traffic stops to men with guns to practical
20 situations of clearing houses, shooting suspects, everything
21 like that.

22 Q Now, have you ever been in a situation like this
23 before?

24 A No, sir.

25 Q So this was your first time confronting somebody

DALTON TAYLOR - CROSS

1 allegedly with a gun?

2 A Right.

3 Q You testified that -- well, you were driving up -- I
4 shouldn't say driving up, you were driving on Cherry Road
5 towards Oakland Avenue?

6 A Towards Oakland Avenue.

7 Q Were there any vehicles in front of you?

8 A I don't believe so.

9 Q And then you testified that the person driving the
10 vehicle, the other one that was making a left turn, correct?

11 A Can you --

12 Q I'm sorry, the red sedan.

13 A We're talking about John Perry's red sedan?

14 Q Yes.

15 A Okay.

16 Q What I'm going to ask is that at the time that he was
17 making that left turn did you know who that individual was
18 in the vehicle?

19 A I had no idea.

20 Q Did you have a clean sight of whether or not he had a
21 left turn signal on or not?

22 A Yes, I had a very clean sight. Our eyes can see better
23 than our cameras can.

24 Q And then you said he made an improper turn.

25 A Correct.

DALTON TAYLOR - CROSS

1 Q Can you explain that?

2 A Improper turn pretty much states when you're making a left
3 hand turn and you have two lanes to turn into you're supposed
4 to turn in the utmost lane of travel, which for a left turn is
5 closest to the median which would have been his left lane, he
6 turned directly into the right lane.

7 Q So then you proceeded to turn on around, correct?

8 A Correct.

9 Q And pursue.

10 A We did not pursue him, no. We were going to initiate a
11 traffic stop.

12 Q Okay. So you were going to, but then he made a turn,
13 correct?

14 A Correct, he turned around on Ebenezer Avenue Extension.

15 Q And then you cut the blue light on?

16 A As he was turning into the apartment complex, yes.

17 Q And we saw the video so we know that the individual
18 that was in the vehicle ran.

19 A Correct.

20 Q We have a chain link fence where he ran towards?

21 A Are you talking about when he jumped the fence?

22 Q Yeah. Well, allegedly Mr. Perry ran towards the chain
23 link fence, correct?

24 A Correct.

25 Q And then you were the driver of your vehicle.

DALTON TAYLOR - CROSS

1 A Correct.

2 Q You get out and go chase Mr. Perry.

3 A Yes.

4 Q When you chase Mr. Perry which direction did you go
5 towards? And what I mean is if Mr. Perry jumped over the
6 fence, did you go directly behind him or were you going off
7 to the side?

8 A When Mr. Perry jumped the fence he ran back towards the
9 corner of the eight foot privacy fence, which pretty much would
10 be at the corner of that yard, and then I saw him go that way.
11 I had yet to jump the fence. He figured out that I guess he
12 couldn't make it over that fence. I then proceeded to jump the
13 fence, my pants leg got caught, caused me to fall on all fours,
14 at that point Mr. Perry ran right past me.

15 Q All right. And then -- okay. So when Mr. Perry ran
16 past you what happened?

17 A He ran past me.

18 Q That's it?

19 A He ran past me. As he ran past me I decided to -- I got
20 up, I see him make the motioning for his waistband, he draws an
21 unknown object out at the time, you could see the drawing
22 motion. He then cocks his firearm, presents it once in a
23 bladed position, fires one round, levels it off right in my
24 direction right at me and fires another shot.

25 Q All right. As a result of this being a shooting --

DALTON TAYLOR - CROSS

1 A Correct.

2 Q -- what is the policy for the police department as far
3 as it goes to you, because you did get investigated,
4 correct?

5 A Correct.

6 Q So at the time you had to give your weapon up?

7 A Right.

8 Q That was right on the scene.

9 A It was when we returned to the Rock Hill Police
10 Department.

11 Q So did you have the weapon in your possession until you
12 got to the police department?

13 A Yes.

14 Q Now, through the investigation you gave statements,
15 didn't you?

16 A Correct, yes, sir.

17 Q Do you remember the dates of the statements?

18 A I do not, no, sir. I remember giving one on the same date
19 as the shooting incident.

20 Q Okay. Do you remember giving a statement on June 23rd?

21 A Yes.

22 MR. NOWIKI: May I approach the witness?

23 Q Do you recognize that?

24 A Yes, sir.

25 Q And what is that?

DALTON TAYLOR - CROSS

1 A A statement I wrote about the incident.

2 Q Okay. Do you remember who you wrote that to -- I mean
3 the statement -- who requested the statement?

4 A SLED requested a statement as well as Rock Hill Police
5 Department requested a statement.

6 MR. NOWIKI: I would like to have this marked as -- just
7 for identification purposes as Defense Exhibit 1.

8 MR. EPTING: No objection. If he's going to read it -- if
9 he's going to publish it to the jury we would ask that it be
10 made a defense exhibit, we have no objection to that.

11 MR. NOWIKI: I just want to have it marked.

12 THE COURT: You can make it a Court's Exhibit but it's not
13 coming into evidence unless you request it to.

14 MR. NOWIKI: Okay.

15 (The statement was marked as Defendant's 1 for ID)

16 Q Do you remember what you put in the statement as far as
17 what went on July 23rd?

18 A Pretty much everything I just said was in the statement.

19 Q Okay. I know you testified that you heard a pistol
20 being cocked?

21 A Correct.

22 Q And then the individual then fired a shot in the air?

23 A Correct, in the motion of pretty much over my head in that
24 direction. It wasn't straight up in the air, it was in that
25 bladed position of motioning -- coming down in my direction.

DALTON TAYLOR - CROSS

- 1 Q Okay. Let me show you this fifth paragraph.
- 2 A Do you want me to read it out loud?
- 3 Q Well, no, the part -- I'm going to ask you a question.
- 4 Is it in there that the shot was fired in the air?
- 5 A / Correct, that is what I wrote.
- 6 Q Above, correct?
- 7 A What I meant at that point was it was in the motion of
- 8 coming down towards me.
- 9 Q But that's not what's in there.
- 10 A Correct.
- 11 Q Okay. There's no other -- I'll give this back to you.
- 12 Is there any other mention of another shot being fired
- 13 towards you by Mr. Perry?
- 14 A Yes, there is another mention of him firing another shot.
- 15 Q And what does it say about that?
- 16 A It says, "The suspect continued to run back towards to
- 17 Ebenezer Ave. The subject then bladed his body to where he was
- 18 looking directly at the house and turning his head and body
- 19 towards me. The suspect then raised the firearm again and
- 20 began to lower his arm with the weapon towards me, Officer
- 21 Taylor. The suspect fired another shot. At this point I
- 22 perceived a threat and the suspect in my mind had every
- 23 intention of doing whatever it would take to get away from me."
- 24 Q Okay. So when he allegedly lowered, you said he was
- 25 bringing the gun down according to this statement?

DALTON TAYLOR - CROSS

1 A Yes, in my direction.

2 Q So then if it was coming down it would have fired
3 downwards, correct?

4 A No. Like I said, he had the gun here, fired one shot, his
5 second shot stopped and fired the second shot.

6 Q Are you aware of how many shell casings -- well, first
7 of all -- let me go back.. The alleged weapon is a
8 9-millimeter, correct?

9 A I believe so, yes, sir.

10 Q Are you aware of how many shell casings from a
11 9-millimeter were found at the location?

12 MR. EPTING: Your Honor, I'm going to object, that is
13 hearsay, that will come out in the evidence later.

14 MR. NOWIKI: Well, if he's aware of it he can testify to
15 it.

16 THE COURT: I'll overrule the objection.

17 A Could you rephrase the question? I'm sorry.

18 Q Are you aware of how many shell casings from a
19 9-millimeter were located at the scene?

20 A I'm not sure.

21 Q All right. So when Mr. Perry you say was bringing the
22 gun down you said he bladed, right?

23 A Correct.

24 Q Okay. Was he shooting over his shoulder?

25 A (No. He bladed his body and the firearm right back at me

DALTON TAYLOR - CROSS

1 so he could see where he was shooting.

2 Q Okay. And again how far away were you from him?

3 A If you back up just a little bit, about somewhere in that
4 area right there.

5 Q And about how many feet?

6 A I would say five to seven maybe, I'm not the best with
7 measurements.

8 Q And you couldn't tell where Officer Bailey was?

9 A No, sir. My focus was on John Perry at that point.

10 Q And you may be able to answer this, through your
11 training I'm sure you went through situations similar to
12 this?

13 A Yes.

14 Q If you're going towards the suspect and you do have a
15 partner where is the partner supposed to go?

16 A It's different from situation to situation, there's really
17 no right answer.

18 Q In a situation like this?

19 A There is no right answer. If he would have followed right
20 behind me and had sympathy fire he could have shot me in the
21 back of the head.

22 Q And are you aware of the policy for using lethal force
23 from the Rock Hill Police Department?

24 A Yes, correct.

25 Q And you're testifying today that you perceived Mr.

DALTON TAYLOR - CROSS

1 Perry to be pointing the weapon at you with intent to kill
2 you.

3 A Yes, that is correct.

4 Q And I just want to clarify something. So when you
5 hopped the fence you fell.

6 A Correct. My pant legs got caught on the fence, my left
7 pants leg to be exact and I fell on all fours.

8 Q And that's when Mr. Perry ran towards you?

9 A He ran directly past me as I sat there on the ground on
10 all fours.

11 Q But he kept running, didn't he?

12 A He continued to run, yes.

13 Q And once he started running did you shoot again?

14 A Can you -- at what point? Can you rephrase that?

15 Q Well, when he was running down the driveway --

16 A Right.

17 Q -- he would have had his back towards you, correct?

18 A Correct.

19 Q Did you fire anymore shots?

20 A I fired the six shots that I shot when his body was in the
21 bladed position.

22 Q You did not fire when he was running.

23 A I was running and he was running, we were both running.

24 Q So you were both running and you fired shots.

25 A Correct, as well as he did.

DALTON TAYLOR - REDIRECT

1 Q Okay. Which means he would have had to -- it doesn't
2 make any sense. Even if he -- two shots, but if he is
3 running behind you what was he doing, shooting behind you?
4 Is he doing this? If he's running, right --

5 A Right.

6 Q -- and you're running and you're shooting, how is he
7 shooting?

8 A Like I explained, he bladed his body as he's running
9 forward looking back at me shooting at me.

10 Q How is he running at that time if he's blading his
11 body?

12 A You can still -- I can still run that way.

13 Q Okay.

14 MR. NOWIKI: One moment, Your Honor.

15 (Break in proceedings.)

16 MR. NOWIKI: No more questions, Your Honor.

17 MR. EPTING: Just one, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. EPTING:

20 Q Mr. Nowiki asked you if an investigation was opened
21 into you by SLED as a result of this use of force. Were you
22 cleared by that investigation?

23 A Yes.

24 MR. EPTING: No further questions.

25 THE COURT: Anything else?

ALLEN CANTEY - DIRECT

1 MR. NOWIKI: No, Your Honor.

2 MS. HOLLAND: Sir, you may step down.

3 MR. EPTING: State cause Allen Cantey.

4 The witness, ALLEN CANTEY, was first duly sworn and
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MS. HOLLAND:

8 Q Good morning.

9 A Good morning.

10 Q Will you state your name?

11 A Lewis Allen Cantey, Jr.

12 Q Can you spell your last name?

13 A C-a-n-t-e-y.

14 Q Where are you employed?

15 A Rock Hill Police Department.

16 Q And what is your rank?

17 A I am a sergeant.

18 Q For those of us that don't understand ranks, tell us
19 what that means?

20 A It is the first line of supervision.

21 Q So you're a supervisor.

22 A Yes, ma'am.

23 Q How long have you been at Rock Hill?

24 A Twenty-two years.

25 Q And you're a sergeant. Are you over a specific

ALLEN CANTEY - DIRECT

1 division?

2 A Over the persons side, which involves violent crimes of
3 the criminal investigation division.

4 Q So essentially you're over the detectives.

5 A Yes, ma'am.

6 Q Okay. And was that your position back on June 22nd of
7 last year?

8 A Yes, ma'am, I'd just been transferred at that time.

9 Q Did you respond to the scene of the crime that we are
10 here discussing today?

11 A Yes, ma'am, I did.

12 Q About what time did you arrive?

13 A Actually I arrived about -- got the call around 12:30 on
14 the 22nd and I arrived around 1:00 a.m. or so on the 23rd.

15 Q Okay. And -- so this is an officer involved shooting.

16 A That's correct.

17 Q Does Rock Hill PD typically involve SLED when this
18 happens?

19 A Yes, ma'am. On all officer involved shootings we contact
20 SLED.

21 Q Okay. I apologize. So this is the scene of the crime.
22 If you would lower the lights a little bit. For those
23 people -- there may be some people that aren't familiar with
24 Rock Hill, can you orient us as to where this is?

25 THE COURT: You can step down.

ALLEN CANTEY - DIRECT

1 A Kind of give you an idea, this area here is the Whitehorse
2 Restaurant if anyone is familiar with that at Camden Avenue.
3 The area down here would be Cherry Road and down around this
4 area here would be Winthrop University. Ebenezer -- or Park
5 Avenue and Ebenezer Avenue was here, Oakland Avenue would be
6 right -- the next street back up this direction.

7 Q And in this area, is this generally a residential area
8 once you turn onto Ebenezer Avenue Extension?

9 A Yes, it is.

10 Q You can return to your seat, thank you. Were you part
11 of the investigation in this case?

12 A Yes, ma'am, I was.

13 Q And what was your role?

14 A I was the supervisor over the investigation.

15 Q So did you basically just oversee the investigation
16 that was being done by other people?

17 A Yes, ma'am.

18 Q And through the investigation that night, were you guys
19 able to develop a suspect?

20 A Yes, ma'am, we were.

21 Q And who was that suspect?

22 A John Earnest Perry, Jr.

23 Q And where was Mr. Perry eventually located?

24 A I believe it was Fairfield County.

25 Q And the SLED investigation continued, correct, as well.

ALLEN CANTEY - DIRECT

1 as the Rock Hill PD investigation?

2 A That's correct.

3 Q Can you kind of explain how those two investigations go
4 on at the same time?

5 A Well, like I made a comment earlier, SLED is contacted an
6 all officer involved shootings. We basically have three
7 investigations going on at one time. We have the investigation
8 by the Rock Hill Police Department which is viewed as our
9 officer is the victim in the situation. SLED's investigation
10 is also a criminal investigation as ours is but is viewed as
11 our officer is the suspect until proven otherwise. And we also
12 have an administrative investigation that people otherwise call
13 IA, which is making sure that our officer followed all policies
14 and procedures at the time.

15 Q And so eventually as a result of that SLED
16 investigation, was Dalton Taylor cleared of wrongdoing?

17 A Yes, he was.

18 MS. HOLLAND: You can answer any questions Mr. Nowiki may
19 have.

20 MR. NOWIKI: No questions, Your Honor.

21 THE COURT: You may step down, Sergeant.

22 MS. HOLLAND: We would ask that Sergeant Cantey be
23 released, he's actually in the trial next door.

24 THE COURT: The witness can be excused.

25 MR. EPTING: Your Honor, the State's next witness is

JOHN GEORGE - DIRECT

1 Investigator John George.

2 The witness, JOHN GEORGE, was first duly sworn and

3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. EPTING:

6 Q Good morning, afternoon, wherever we are here.

7 A Close enough.

8 Q Would you please for the record state your name and

9 rank?

10 A It's John George, Sergeant.

11 Q And Sergeant, how were you -- what rank were you in in

12 June of 2016?

13 A I was a senior police officer with the Rock Hill Police

14 Department assigned to the forensics unit.

15 Q If you could, explain a little bit to the jury what the

16 forensic services unit is.

17 A Forensic services unit, or crime scene unit, we are crime

18 scenes from car break-ins all the way up to homicide scenes, we

19 would work for the police department.

20 Q Do you require specialized training to be a member of

21 that unit?

22 A Yes, sir.

23 Q Could you describe what type of training a FSU member

24 would receive?

25 A Fingerprint identification training, basic crime scene

JOHN GEORGE - DIRECT

1 training, shooting reconstruction, blood spatter

2 reconstruction, things of that nature.

3 Q Prior to being promoted, how long were you in the
4 forensic services unit?

5 A 14 years.

6 Q And during the course of your 14 years approximately
7 how many crime scenes did you process and investigate?

8 A Several thousand.

9 Q So in the thousands?

10 A Yes.

11 Q And how many of those crime scenes involved shooting of
12 handguns or firearms?

13 A Probably a few hundred.

14 Q Are you familiar with CSI effect?

15 A Yes.

16 Q Could you explain to the jury with the CSI effect is?

17 A CSI effect is since the TV show CSI came out, which is a
18 TV show, it seems that a lot of people think that what happens
19 on TV is exactly like what happens in real life. A lot of
20 things that they show on TV are made up or sensationalized for
21 TV, especially the speed of how things are done and it seems
22 like they find all of the evidence.

23 Q Is it common for the FSU to find all of the evidence on
24 most of the cases that you have investigated?

25 A No.

JOHN GEORGE - DIRECT

1 Q Is it common to find no forensic evidence on some of
2 the scenes -- on many of the scenes you guys investigated?

3 A Some scenes, yes.

4 Q Going back to your investigation, your many
5 investigation of crime scenes involving firearms having been
6 shot, in your experience is there any particular issues
7 surrounding the collection of shells, fired shells?

8 A Could you repeat that again?

9 Q I'm sorry, that question got convoluted. Do you as a
10 FSU investigator have particular problems on scenes where
11 shells are sought as the forensic evidence to be
12 investigated?

13 A Yes. There's a lot of times that we won't find all the
14 shell casings.

15 Q And briefly, are you trained in the usage of firearms
16 as a police officer in general?

17 A Yes.

18 Q Are you able to become more acquainted with that in
19 your role as a FSU investigator?

20 A Yes.

21 Q Could you briefly explain to the jury how a
22 semiautomatic handgun works as far as shells, bullets and
23 ejection?

24 A Yes. Basically with a semiautomatic handgun it has a
25 magazine that goes in, that what all the bullets are kept in,

JOHN GEORGE - DIRECT

1 unlike a revolver which has a cylinder thing that the bullets
2 go in. When the bullets are loaded into the magazine there's a
3 spring in there that when you push down on the bullets it
4 locks -- the spring pushes down. So when the gun is fired the
5 slide will slide back, another round will actually be put in
6 there and the other round that has just been fired will be
7 ejected out of the gun.

8 Q And your testimony was it's not uncommon to not find as
9 many shells as reported shots that were taken; is that
10 correct?

11 A Correct.

12 Q Why in your experience as a FSU investigator is that?

13 A It depends on the environment, especially in this case, an
14 outdoor scene, it can be lost in tall grass, it can be kicked,
15 it can be stepped on, also it can jam the gun. On a
16 semiautomatic gun we have had ones that have actually jammed
17 inside the gun in what lot of times is called the stove pipe
18 where it actually gets lodged in there and then the gun won't
19 fire again until it's cleared.

20 Q So if a cartridge gets jammed in a semiautomatic gun
21 that has been fired, where does that cartridge go?

22 A It's stuck in the gun until the operator actually clears
23 it out of there.

24 Q So if the person took the gun with them they took the
25 cartridge with them?

JOHN GEORGE - DIRECT

1 A Correct.

2 Q Is there actions that shooters can take that would
3 cause stove pipes or jammings to be more likely?

4 A Yes. And we've seen in our range during our weapons
5 qualifications, if you do not hold the gun firmly and let your
6 wrist kind of go back it's affecting the slide, how the slide
7 goes back and it will actually -- the round will actually stick
8 inside as the slide is coming back so the slide will not come
9 all of the way forward again to load another round in.

10 Q When you process a scene with firearms that have been
11 fired, what types of thing are you looking for?

12 A Holes, shell casings, not really sure what --

13 Q Are you familiar with the term projectile?

14 A Yes.

15 Q What is a projectile?

16 A A projectile is a fired bullet. So if you have a bullet
17 you have a cartridge casing which holds the powder in it and
18 the primer and then you also have a bullet on top and that's
19 what actually comes out of the gun, so you're looking for those
20 also besides the cartridge casings.

21 Q Is it common to find projectiles when you're searching
22 a scene where shots have been fired?

23 A In an outdoor scene like we're talking about it is harder
24 to find all the projectiles because, I mean, a projectile
25 without hitting anything can travel up to a mile or more

JOHN GEORGE - DIRECT

1. depending on what kind of round it is.

2. Q And I know we've been talking a lot about your training
3. and your experience in investigating these type scenes, did
4. you investigate the scene relevant to this case?

5. A I did assist in it.

6. Q Would you please tell the jury how you got there, what
7. you did on scene, all of those things?

8. A At the time I was actually working and I heard the call go
9. out of shots fired so I responded to the scene. The first
10. thing as they -- other officers were arriving, I went to the
11. suspect's vehicle, which was in the parking lot of the
12. apartment complex. Nobody had actually secured the vehicle yet
13. so I checked to make sure nobody else was in the vehicle,
14. reached inside because it was still running because it actually
15. rolled forward into the fence, took the keys out, saw a
16. cellphone lying there, also grabbed that and secured them in my
17. patrol vehicle.

18. Q And did you help process the scene to look for the
19. types things you would normally look at on a scene where
20. shots had been fired?

21. A Yes. We went to -- from the parking lot of where the
22. incident -- where the vehicle was, Sergeant Watson, which was
23. one of the supervisors working, told me that he had found two
24. shell casings that were in the driveway of the nextdoor
25. neighbor's house next door, and gradually looking down the

JOHN GEORGE - DIRECT

1 driveway I think we found three more at that present time. So
2 a total of five right in the beginning.

3 Q Approximately how long did it take you to find all of
4 the projectiles that y'all eventually found?

5 A By the time the crime seen from SLED, the State Law
6 Enforcement, came up we found two additional shell casings in
7 the driveway. So that was three hours, maybe four hours from
8 when the actual event occurred, I'm not sure of its exact time.

9 Q And is it uncommon for it to take that long?

10 A Yes.

11 Q Why did it take so long in this case?

12 A You know, you see -- a shell casings could be this big.
13 It's dark out at night, you're looking with flashlights, there
14 wasn't a lot of light in that driveway where the shell casings
15 were. The two that took the longest to find were actually in
16 the flower bed next to the house, so it's a lot harder to find
17 them when they're covered up with things or you have to look
18 around things.

19 Q Once you find a shell or a projectile or any other item
20 of interest, is there any other thing you do as a forensic
21 scene processor to preserve the scene?

22 A In this case what I did was once we did find the spent
23 shell casings that were in the driveway I put number cones
24 down. It's also so people don't walk through that area again
25 and kick them, plus it also marks for photographs or for

JOHN GEORGE - DIRECT

1 sketches where the items are in relationship to where the
2 incident happened at.

3 Q And was anyone assisting you on scene as far as helping
4 you process the scene?

5 A Yeah. Officer Proulx was also helping me with it. And
6 then once SLED's crime scene arrived on scene we also assisted
7 them with looking for more projectiles and also the spent shell
8 casings.

9 MR. EPTING: Beg the Court's indulgence.

10 (Break in proceedings.)

11 MR. EPTING: May I approach the witness, Your Honor?

12 THE COURT: Yes, sir.

13 MR. EPTING: I'm handing this witness what has been marked
14 as State's Exhibit 8 through 20.

15 Q Sergeant, if you would look through those, and once
16 you're done reviewing all of those look and let me know that
17 you're ready to proceed. Do you recognize State's Exhibit
18 8?

19 A You said A?

20 Q Eight, I'm sorry.

21 A It is a diagram of the area of the incident.

22 Q It's a fair and accurate depiction of the diagram of
23 how the incident that you investigated appeared that night?

24 A Correct.

25 Q The other pictures, without going through them one by

JOHN GEORGE - DIRECT

1 one, 9 through 20, are those fair and accurate depictions of
2 how the scene appeared that night?

3 A Yes, sir.

4 MR. EPTING: Your Honor, at this time the State would seek
5 to enter State's Exhibit 8 through 20 into evidence and publish
6 to the jury.

7 MR. NOWIKI: No objection, Your Honor.

8 THE COURT: In without objection.

9 (The photographs were received as State's 8-20.)

10 MR. EPTING: For the record we are putting State's Exhibit
11 8 on the projector.

12 Q And Sergeant, if you would, walk the jury through what
13 we have here. We have a laser pointer if that would assist.
14 If you would walk the jury through what we're looking at
15 here.

16 A Okay. Here is the apartment complex, here is the
17 suspect's vehicle. That is Officer Bailey's vehicle -- a
18 police vehicle, I believe. Here is Ebenezer Avenue. You have
19 the parking lot with parking spaces. There's a chain link
20 fence here, then you have the driveway to [REDACTED] Ebenezer Avenue
21 Extension. There was a Tahoe parked right here, a black one
22 that is the resident's vehicle. And then along here numbers
23 one through six are actually the spent shell casings that were
24 located in the driveway, and six and seven are actually in the
25 flower bed right there at the edge of the driveway.

JOHN GEORGE - DIRECT

1 Q Did you make this?

2 A No, I did not.

3 Q What is reference point two, RP2?

4 A The reference points, there's RP2 here, RP1 is here, or
5 one and then three. What a reference point is, when you're
6 doing measurements of the -- to do the diagram you would use
7 those as reference points to measure. So if you were using --
8 if you were measuring say to this number, call number one right
9 here, you would use reference point two and reference point one
10 and you triangulate it, that gives you a general where the
11 location of that item is so if you have to go back and
12 reconstruct it you can go back and reconstruct it.

13 Q And who laid those number cones there?

14 A I laid the number cones there.

15 Q If you could take your seat unless you have more to
16 explain about the diagram.

17 A No, sir.

18 Q Moving along to State's 9 through 20, what are we
19 looking at here?

20 A That is the front of the townhomes where the -- and then
21 the parking lot is right there also.

22 Q And here?

23 A That is the driveway that I believe it was [REDACTED] Ebenezer
24 Avenue Extension. Like I mentioned before, there's the black
25 Tahoe that is in the driveway and you can see the number cone

JOHN GEORGE - DIRECT.

1 right here that indicates the spent shell casings that were
2 located in the driveway along the edge.

3 Q And here?

4 A This is also from Ebenezer Avenue Extension, the parking
5 lot, the edge of the townhomes, Officer Bailey's Tahoe, and on
6 the other side -- in front of it is where you would have the
7 suspect's vehicle.

8 Q And here?

9 A That would be actually the front of my vehicle right here,
10 and then this is the suspect's vehicle and that was a
11 resident's vehicle that was parked right in front of their
12 apartment.

13 Q Was the suspect's vehicle properly parked?

14 A No.

15 Q Was it running when you arrived there?

16 A It was still running. I believe it had rolled all of the
17 way forward into the fence area right there.

18 Q And what are we looking at here?

19 A This would be -- that is the [REDACTED] Ebenezer Avenue
20 Extension. In the diagram that's the chain link fence that I'd
21 talked about where you can see the light right here, this is
22 the driveway, and I don't know if you can make out but that's
23 where the spent shell casings are and number cones are right
24 along in that area.

25 Q And here?

JOHN GEORGE - DIRECT

- 1 A That would be another angle. Here is your chain link
2 fence, again the driveway and then Ebenezer Avenue Extension is
3 out this way.
- 4 Q I'm directing your attention to the left hand of the
5 screen, you see kind of a glow, maybe a glare on the camera.
- 6 A Yes.
- 7 Q Do you know what that's from?
- 8 A Are you talking about right here or --
- 9 Q Correct.
- 10 A I'm not sure.
- 11 Q Let me rephrase it. Was reference point two a light?
- 12 A Yes. It is a light poll, it's a light that faces back
13 towards the actual parking lot but does light up a little bit
14 in that area also.
- 15 Q And here?
- 16 A This is looking from Ebenezer Avenue Extension, there is
17 the Tahoe again and that's the driveway with the number cones
18 where the spent shell casing was. And I believe that right
19 there is the light poll that's reference point two.
- 20 Q So seven total shells according to the diagram was
21 recovered; is that correct?
- 22 A Correct.
- 23 Q Do you recall the caliber of those shells?
- 24 A I believe it was six 40 caliber Hornady shells, and then a
25 9-millimeter shell also.

JOHN GEORGE - DIRECT

1 Q And when you say Hornady --

2 A That would be what we carry in our duty guns.

3 Q So six 40 caliber and one 9-millimeter shell.

4 A Yes.

5 Q And your testimony prior to was that sometimes the
6 shell counts that you find on the scene don't match the
7 shots reported fired; is that correct?

8 A Correct.

9 Q And what kind of things affect whether you're going to
10 find those shells?

11 A If it gets kicked and it might be stepped on, pushed down
12 into a flower bed, like some of the ones we found there. It
13 might also be actually jammed in the gun which we do see from
14 time to time also.

15 Q And here?

16 A That would just be a closer-up of the driveway with the
17 numbered cones.

18 Q And here?

19 A The same with the numbered cones going down just a little
20 bit closer up.

21 Q And here?

22 A That would be the flower bed where you can see number six,
23 that would be actually where the last two shell cases were
24 found, six, and I don't know, number seven there, but I think
25 it was right in that area too.

JOHN GEORGE - DIRECT

1 Q And this is a close-up of six?

2 A Yeah.

3 Q Can you point out from where you are?

4 A You can actually see the shell casing right there that was
5 in the grassy area right here.

6 MR. EPTING: Beg the Court's indulgence.

7 (Break in proceedings.)

8 MR. EPTING: That's all the questions I have for you at
9 this time, please answer anything the defense may have.

10 MR. NOWIKI: Please the court?

11 THE COURT: Yes, sir.

12 CROSS EXAMINATION

13 BY MR. NOWIKI:

14 Q Investigator John George, correct?

15 A Yes, sir.

16 Q And you've been doing -- or been with the forensic
17 services unit for how long?

18 A About 14 years.

19 Q Fourteen years? And you mentioned that sometimes you
20 don't find all of the evidence.

21 A Correct.

22 Q Especially like with scenes of this nature?

23 A Especially in outdoor scenes. It's harder to find things
24 than if you had say a shooting inside of a house, it's more
25 likely because everything is contained in there.

JOHN GEORGE - CROSS

1 Q All right. And you said that you found six 40
2 calibers?

3 A Six 40 and one 9-millimeter.

4 Q And I noticed from the video that it had appeared that
5 the shell casings were like going down like in a line.

6 A Yes, sir.

7 Q What would that be an indicator of?

8 A If you're moving and shooting, as you're shooting each
9 time you pulled the trigger the round is going to be ejected
10 up, ejected out of the gun, so as you're moving and shooting
11 it's going to come out, so that's why you would have a trail
12 like that.

13 Q And according to what we just saw there in the photo,
14 we have the -- there was a black SUV that was in the
15 parking --

16 A Correct.

17 Q -- or the driveway if you want to call it. In your
18 opinion was there a lot of space between the house and that
19 SUV?

20 A From the SUV and the --

21 Q To the place --

22 A It was about where the porch was, so there probably would
23 have been a four foot -- I'm not exactly sure exact numbers,
24 but probably about between there I would say three to four feet
25 between that and the porch, but you also had the flower bed

JOHN GEORGE - CROSS

1 there.

2 Q Uh-huh. Did you find any bullet holes anywhere?

3 A We did a more thorough search with SLED's crime scene.

4 There was actually a bullet hole across the street in a fence.

5 I believe there was one in a house that was across the street,
6 that was that night what we had located.

7 Q Do you have any idea where those came from?

8 A Wherever --

9 Q I mean, was it from this incident or could it have been
10 from another incident?

11 A I believe it would be from this incident, yes.

12 Q And that would have been across from the house where
13 the shell casings were --

14 A Yes.

15 Q -- were located?

16 A Yes.

17 Q And then you mentioned there was one found in a fence?

18 A There was one --

19 Q Was there one -- I'm sorry. Was there one in the
20 fence?

21 A Yes, across the street.

22 Q Was anything located in a tree or anything?

23 A I believe in looking at the diagram, I can't remember if
24 it was that night or later is when the one -- there was a tree
25 right by the driveway, there was a bullet hole found in that

JOHN GEORGE - CROSS

1 tree right there.

2 Q Were you able to determine what type of gun was used or
3 what kind of a bullet?

4 A I wasn't. The state law enforcement crime scene is the
5 one that collected all of the evidence out there so I didn't
6 have an opportunity to look at all of that.

7 Q And you had mentioned that RP2 from there, that was a
8 light that you put up or was that a light that was already
9 there?

10 A No, sir. It is a light poll that actually faces -- it's
11 one of the projections, the bigger lights almost like a street
12 light and it's actually facing the parking lot of the apartment
13 complex to light it up for the residents there so when they're
14 parking their vehicles it's not pitch black out there.

15 Q The area where you found the shell casings, how is the
16 lighting?

17 A It's -- some of the light is coming off of that light poll
18 enough to where it's coming back, but it is a dark area --
19 darker area over there.

20 Q And is the RP1, is that also a light?

21 A Since I did not do the diagram I am not positive, but I
22 believe it is a light poll that is out on the roadway, either a
23 light poll or a telephone poll out on the roadway.

24 Q As far as what you do for forensics, you just locate
25 the things -- or like the shell casings and stuff and

JOHN GEORGE - REDIRECT

1 analyze, correct?

2 A Yes. Since this was a joint investigation between the
3 state law enforcement, since it's an officer involved shooting,
4 state law enforcement would be called in to collect evidence
5 and also help process -- or process the crime scene and we
6 would assist them in that, that is the reason they would
7 collect everything. If it wasn't an officer involved shooting
8 then I would be the one that would collect all of the evidence
9 and analyze it.

10 Q But you don't have any idea how the shooting occurred.

11 A No, sir.

12 MR. NOWIKI: I think those are all of the questions I
13 have. Thank you.

14 MR. EPTING: Very briefly, Your Honor.

15 THE COURT: Yes.

16 REDIRECT EXAMINATION

17 BY MR. EPTING:

18 Q Mr. Nowiki asked you about the grouping of the shells
19 that you found.

20 A Yes.

21 Q And you mentioned earlier that how the gun is gripped
22 might affect whether it jams or not?

23 A Correct.

24 Q If the gun was loosely gripped say over the shoulder,
25 would that affect the grouping as well in your opinion?

JOHN GEORGE - REDIRECT

1 A The grouping or --

2 Q The grouping of the shells as they were found or not
3 found.

4 A It could.

5 MR. EPTING: Okay. That's all of the questions I have.

6 MR. NOWIKI: No other questions.

7 THE COURT: May this witness be excused?

8 MR. EPTING: We would ask the Court to excuse this
9 witness, Your Honor.

10 MR. NOWIKI: No objection, Your Honor.

11 THE COURT: Thank you, sir. All right, let's take ten
12 minutes, the jury may step back to their room and relax a few
13 minutes, stand at ease.

14 (The jury left the courtroom and a break was taken.)

15 (The jury returned to the courtroom.)

16 MS. HOLLAND: Your Honor, State calls Chris Proulx.

17 The witness, CHRISTINE PROULX, was first duly sworn
18 and testified as follows:

19 DIRECT EXAMINATION

20 BY MS. HOLLAND:

21 Q Can you state your name for the record?

22 A Christine Proulx.

23 Q Can you spell your last name?

24 A P-r-o-u-l-x.

25 Q And where are you employed?

CHRISTINE PROULX - DIRECT

1 A The York County Solicitor's Office.

2 Q So you work for the same office I do.

3 A Yes.

4 Q Where were you employed back in June of 2016?

5 A The Rock Hill Police Department.

6 Q And what do unit did you work in?

7 A I was in the forensic services unit.

8 Q And about how long did you work in forensics?

9 A A little less than a year I was in forensics.

10 Q Can you tell us what training you have in forensics?

11 A Yes. Just throughout my law enforcement career prior to
12 going into the forensics unit I was given pretty basic training
13 just on patrol, how to respond to calls like that. And then
14 when I went back into forensics I attended a basic crime scene
15 academy which consisted of training in crime scene photography,
16 legal issues and processing crime scenes, as well as actual
17 crime scene processing itself, as well as DNA training, blood
18 stain pattern analysis, courses and fingerprint analysis
19 training.

20 Q And on the night of June 22nd, were you called out to
21 this incident involving John Perry?

22 A Yes.

23 Q And describe the scene when you arrived, how many
24 people were there, what was going on.

25 A It was a pretty chaotic scene. There was multiple patrol

CHRISTINE PROULX - DIRECT

1 units there as well as other forensic investigator, there was
2 people everywhere.

3 Q Okay. And what did you do when you arrived?

4 A When I first arrived pretty much I was just responsible
5 for making sure that the scene was secure. I actually had a
6 ride along with me that night in the forensics unit so we were
7 doing the crime scene log, monitoring who was in and out of the
8 crime scene and things like that.

9 Q And tell the jury about scene contamination. What is
10 scene contamination.

11 A Scene contamination can pretty much be a wide variety of
12 things from people walking in and out of the scene and not
13 realizing that there's potential evidence there, they can be
14 leaving with evidence or bringing contaminants in. If the
15 scene is not cordoned off the public can simply walk in.
16 Again, if it is a chaotic seen people walking around, again,
17 not knowing where pieces of evidence are, you could be stepping
18 on it, kicking it, a wide variety of things, weather could
19 contaminate the scene, there's a lot of different factors.

20 Q And what do you as a forensics officer try to do to
21 prevent that?

22 A Again, we will cordon of the scene, we'll use crime scene
23 tape just to pretty much be a visual, "Hey, don't come past
24 this point if you're not entitled to be in the scene." We'll
25 also use number cones to put down and mark pieces of evidence

CHRISTINE PROULX - DIRECT

1 so we will know that it's there for photography purposes and
2 also evidence collection and things like that.

3 Q Tell us about the lighting in that area.

4 A If I remember it's pretty dark. It's a residential area,
5 so I believe the parking lot was lit up a little bit and then
6 there's a residence, which again, if I remember correctly it
7 was pretty dark that night.

8 Q Okay. So you're familiar with the scene of this crime
9 and the evidence that was taken from it?

10 A Yes.

11 Q I'm going to show you what's been marked State's
12 Exhibit Number 8. What do these numbers on the side of the
13 house indicate?

14 A Those are where number cones were placed.

15 Q And what are the purpose of number cones?

16 A Again, just to note where pieces of evidence are, and in
17 this case it was where spent shell casing were.

18 Q Okay. And spent shell casings just to make sure we're
19 clear, what are spent shell casings?

20 A If a firearm is discharged the spent shell casing of the
21 round is ejected out of the firearm.

22 Q Can shell casings in general be matched to a gun if we
23 have the gun to compare it to?

24 A Yes, I believe so.

25 Q And in your experience, can it be difficult to timely

CHRISTINE PROULX - DIRECT

1 recover shells from the scene?

2 A Yes, it can be.

3 Q Why?

4 A Again multiple factors. Scene contamination. Again, if
5 people are walking through the scene they can kick them without
6 realizing that they're there, and depending on the size of the
7 shell casing, they can be relatively small. If -- you know,
8 they can be driven over, stepped on, just again, weather can
9 move them or things like that. There's multiple factors in why
10 shell casings can be displaced in a scene.

11 Q So if someone was chasing someone that was discharging
12 a firearm, could they kick the shells?

13 A Yes, absolutely.

14 Q And so it's not uncommon for shells to be lost in a
15 crime scene.

16 A No.

17 Q So if ten shots are fired for example and you only
18 found five, that would not be uncommon.

19 A No.

20 MS. HOLLAND: Beg the Court's indulgence.

21 (Break in proceedings.)

22 MS. HOLLAND: That's all of the questions we have for Ms.
23 Proulx, answer any questions Mr. Nowiki may have.

24 CROSS EXAMINATION

25 BY MR. NOWIKI:

CHRISTINE PROULX - CROSS

1 Q I'm sorry, I didn't get your last name again.

2 A Proulx, P-r-o-u-l-x.

3 Q And you said you had been working for, was is it the
4 Rock Hill Police Department?

5 A Yes, sir.

6 Q Back then for about a year?

7 A No, sir. I was with the Rock Hill Police Department for
8 little less than six years, I was in the forensics unit for a
9 little less than a year.

10 Q And so you were there on the 22nd, the day of the
11 incident.

12 A Yes, sir.

13 Q What did you actually do at the scene?

14 A Again, my responsibility at that point because of the
15 nature of the incident was primarily just to maintain the
16 preservation of the scene for other law enforcement agency to
17 come in and do most of the investigation. So again, cordoning
18 off and just making sure to the full extent that all of the
19 evidence is preserved in the scene.

20 Q Were you the one in charge of putting up yellow tape?

21 A I'm going to be honest, sir, I cannot 100 percent recall
22 whether I personally put it up.

23 Q But it did get put up.

24 A Yes, sir.

25 Q And you mentioned about there are certain things like

CHRISTINE PROULX - CROSS

1 with people walking and so forth that could contaminate a
2 scene, correct?

3 A Uh-huh.

4 Q Now, in this particular scene, was it contaminated?

5 A Not to my knowledge, sir. We certainly tried to prevent
6 that, again, from cordoning off and putting number cones up, so
7 everything that we at first glance saw pertinent that it was
8 all well maintained.

9 Q So to your knowledge the scene was not tampered with.

10 A No, sir, to my knowledge it was not.

11 Q And again, you have as an example the solicitor used by
12 ten shots were fired, or how many -- whatever the example
13 was and you find six, okay, you said that's not uncommon,
14 right?

15 A Correct.

16 Q Okay. Well, you wouldn't be able to -- you say it's
17 uncommon, but if it's a shell casing, wouldn't the shell
18 casings pop out?

19 A Not necessarily.

20 Q And why would they not?

21 A If a firearm perhaps jammed when it's being shot or
22 anything like that.

23 Q Is there any evidence that any of the alleged weapons
24 that were used were jammed?

25 A I'm not sure about that, sir, I had nothing to do with the

CHRISTINE PROULX - CROSS

1 firearm.

2 Q You had nothing to do with that.

3 A No, sir.

4 Q So you don't know if they were jammed or not or --

5 A No, sir, I have no idea.

6 MR. NOWIKI: That's all the questions I have.

7 MS. HOLLAND: Your Honor, I just have a quick follow-up.

8 REDIRECT EXAMINATION

9 BY MS. HOLLAND:

10 Q And I apologize, I should have been clear about this.

11 Your role in forensics that night was to preserve the scene?

12 A Correct.

13 Q And why were you preserving the scene?

14 A Again, because of the nature of the call with an officer
15 involved shooting, with an officer from the agency that I
16 worked we would not primarily work that. Agents from South
17 Carolina Law Enforcement Division would come in and they would
18 work that scene.

19 Q So essentially you're trying to keep the scene clean
20 for SLED to come in.

21 A Yes that's correct.

22 Q And he asked you a question about scene contamination.
23 There are factors that can happen during the course of a
24 crime that could impact whether or not evidence can be
25 recovered, correct?

CHRISTINE PROULX - REDIRECT

1 A Yes.

2 Q For instance shells being kicked or --

3 A Yes.

4 MS. HOLLAND: Thank you. That's all of the questions I
5 have.

6 MR. NOWIKI: No other questions, Your Honor.

7 THE COURT: You may step down.

8 MR. EPTING: We ask that this witness be excused, Your
9 Honor.

10 MR. NOWIKI: No objection.

11 THE COURT: The witness is excused.

12 MS. HOLLAND: Your Honor, may we approach?

13 THE COURT: Yes.

14 (A bench conference was held.)

15 THE COURT: We're going to break for lunch now, ladies and
16 gentlemen of the jury, I need you back at 2:00 to resume the
17 trial at 2:00. Y'all certainly know more about the restaurants
18 and all in York, some of you may be close enough to home or
19 whatever, but y'all enjoy your lunch, we'll see you back here
20 at 2:00. Everybody else remain seated while the jury breaks
21 for lunch.

22 (The jury left the courtroom.)

23 THE COURT: I was just speak being with Mr. Bailiff, he
24 said the jury has requested that everybody speak up, we can't
25 turn the PA up, they're having a hard time hearing. So what I

BRUCE HAIRE - DIRECT

1 am going to do is we're going to ask that the ones that are
2 having a hard time hearing to sit on the front row, but
3 everybody tune it up just a little bit, okay? Are we ready?

4 MR. EPTING: State is ready, Your Honor.

5 MR. NOWIKI: Yes, Your Honor.

6 (The jury returned to the courtroom.)

7 THE COURT: Ladies and gentlemen, I have asked everyone to
8 please speak up for you, I understand that some of you are
9 having difficulty hearing. There's not a whole lot to do with
10 the PA system so I have asked everyone to kind of tune it up a
11 little bit. Solicitor?

12 MR. EPTING: Thank, Your Honor. May it please the Court?
13 The State's next witness is Bruce Haire.

14 The witness, BRUCE HAIRE, was first duly sworn and
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. EPTING:

18 Q Good afternoon.

19 A Good afternoon.

20 Q Could you please state your name for the record?

21 A Bruce Haire.

22 Q And how -- again, this is a stupid question, how are
23 you employed?

24 A I'm employed at the Rock Hill Police Department.

25 Q What position do you hold with the Rock Hill Police

BRUCE HAIRE - DIRECT

1 Department?

2 A I'm a sergeant on patrol.

3 Q Were you employed with the Rock Hill Police Department
4 in June of last year?

5 A Yes, I was.

6 Q Were you involved in the investigation centering on
7 John Ernest Perry, Jr.?

8 A Yes.

9 Q Would you please tell the jury your role in this
10 investigation?

11 A During that time I was assigned in the detective division,
12 I was working second shift on that night and I heard the call
13 go out -- well, it initially started officers were in a foot
14 chase, and then officer got on the radio said there was shots
15 fired, so I started to go toward the scene. As other officers
16 were getting there -- I wasn't one of the first one on the
17 scene so I immediately set up on a perimeter in a position to
18 try to hold a perimeter at the scene.

19 Q To your knowledge did the perimeter hold the suspect
20 in?

21 A No.

22 Q So no suspect was located that night, was that correct?

23 A Correct.

24 Q What was your next involvement in that investigation?

25 A My next involvement was after Mr. Perry was apprehended

BRUCE HAIRE - DIRECT

1 and then I interviewed Mr. Perry.

2 Q Okay. Let's talk about that. Approximately what date
3 did you interview Mr. Perry?

4 A I don't recall the date. It was -- I believe it was the
5 next day.

6 Q The next day after his arrest?

7 A Yes.

8 Q How did he come to be in Rock Hill Police Department?

9 A He was apprehended down in the Columbia area and
10 transported after he went to the hospital, and was cleared down
11 there, they brought him back to Rock Hill Police Department
12 where he was served with arrest warrants.

13 Q And he was treated and released at the hospital?

14 A Yes.

15 Q And then at that point you had a chance to speak with
16 him; is that correct?

17 A Yes.

18 Q Did you read him his Miranda rights?

19 A I did.

20 Q And if you would, what are Miranda rights for those
21 jurors that might not know?

22 A Miranda rights is something we typically read to somebody
23 that's in our custody and that we're getting ready to
24 interrogate or interview as to give them notice that they have
25 a right to an attorney, and if they wish to have an attorney

BRUCE HAIRE - DIRECT

1 present with them during the interview they can have that
2 opportunity.

3 Q Do you typically read those orally or do you read them
4 from a card or some hybrid?

5 A Orally.

6 Q And did you read them originally in this case?

7 A I did.

8 Q Where at the Rock Hill PD did you speak with the
9 defendant?

10 A In one of our interview rooms.

11 Q And approximately how big is that interview room?

12 A It's approximately eight by ten, ten by ten.

13 Q Were you -- did you identify yourself as a police
14 officer?

15 A Yes, I did.

16 Q Were you armed at the time you spoke with him?

17 A No.

18 Q Did you make him any promises to get him to speak with
19 you?

20 A No.

21 Q Did you make any threats to get him to speak to you?

22 A No.

23 Q Did he appear to understand the Miranda rights that you
24 read to him?

25 A Yes.

BRUCE HAIRE - DIRECT

1 Q After having heard those rights and understanding them,
2 did he agree to speak with you?

3 A Yes, he did.

4 Q Did he appear to understand the questions that you
5 posed to him?

6 A Yes.

7 Q Did he appear to give answers that appeared to be
8 cognizant and thoughtful?

9 A Yes.

10 Q Did you make some type of memorialization of the
11 conversation that you had with Mr. Perry, the defendant?

12 A It was audio taped.

13 MR. EPTING: For the record I'm handing Mr. Haire what has
14 been marked as State's Exhibit 7.

15 Q And you can take it out of the sleeve if you need to.
16 Do you recognize State's 7?

17 A I do.

18 Q What is State's 7?

19 A It is a DVD copy of the actual interview.

20 Q Okay. Have you reviewed a copy of that interview?

21 A Yes.

22 MR. EPTING: Your Honor, at this time the State would seek
23 to enter State's 7 into evidence and publish it.

24 MR. NOWIKI: No objection.

25 THE COURT: In without objection.

BRUCE HAIRE - DIRECT

1 (The DVD was received as State's 7.)

2 Q While this is booting up, if at anytime you need to
3 interject something or explain something that's being played
4 on this audio disc please just raise your hand and we will
5 pause it so that the record is clear and we won't have a
6 tape playing over somebody's testimony.

7 A Okay.

8 (The DVD was played.)

9 Q Officer, you referred to looking somewhere for a gun.
10 Could you clarify that right now?

11 A Yes. We were informed that he had dropped the gun that
12 was used in the incident in a field a couple of streets over
13 from where the incident happened. Myself, Sergeant Caskey and
14 a couple of folks from the forensics unit, there's a SLED
15 agent, we were searching that field for probably almost two
16 hours and never located the gun.

17 Q Was anything of evidence ever found in that field?

18 A No.

19 (The interview was played again.)

20 Q Officer Haire, was the gun later found -- the gun taken
21 from the camper later determined to be the gun used in the
22 incident?

23 A Yes.

24 (The audio interview was played again.)

25 Q Officer Haire, were the clothes he was wearing that

BRUCE HAIRE - DIRECT

1 night later located?

2 A Yes, they were.

3 Q Where were they located?

4 A I believe at Mr. Farmer's house.

5 Q And Mr. Farmer is the defendant's boss?

6 A Yes.

7 (The audio was played.)

8 Q Officer Haire, what store are you talking about?

9 A The convenient store sitting at the corner of Cherry and
10 Oakland.

11 Q Can you describe how you came to see that video?

12 A I believe Jake Green from our forensics unit recovered the
13 video from the store, and then when I arrived to work the next
14 day the video was already at the police department and that's
15 where I viewed it.

16 Q Was that pulled as part of your investigation to
17 identify the person that you ran?

18 A Yes.

19 Q Was it John Perry on the video?

20 A Yes.

21 Q What was he purchasing?

22 A Two bottles of Bud Light.

23 (The audio was played once again.)

24 Q Officer, does it go on, in fact, for some amount of
25 time after this?

BRUCE HAIRE - DIRECT

1 A Not too much longer, yes.

2 MR. EPTING: Your Honor, in the interest of time this is
3 in evidence, I don't believe the defense objects to us stopping
4 here so that we can move onto other questions.

5 MR. NOWIKI: No objection, Your Honor.

6 THE COURT: All right.

7 Q Officer Haire, the defendant mentioned that he was
8 blind; is that correct?

9 A Yes.

10 Q Was he driving that night?

11 A Yes.

12 Q He mentioned to you that he was treated from the
13 hospital and released; is that correct?

14 A Yes.

15 Q When he told you that he stayed that night by the
16 creek; is that correct?

17 A That's what he said, yes.

18 Q Did you later find out whether that was true or not?

19 A Yes.

20 Q Was it true?

21 A No.

22 Q Where did he stay that night after the shooting?

23 A At Mr. Farmer's house.

24 Q That's where he treated himself?

25 A Yes.

BRUCE HAIRE - DIRECT

1 Q Y'all searched the field; is that correct?

2 A Correct.

3 Q Was any weapon whatsoever or anything relevant to this
4 case found in that field?

5 A No.

6 Q The defendant told you he used a .38 in the course of
7 this crime; is that correct?

8 A Yes.

9 Q Did you later determine that to be correct or false?

10 A It was determined to be a 9-millimeter.

11 Q He told you that Larry Farmer dropped him off at the
12 creek, then later took him to the camper in Fairfield; is
13 that correct?

14 A He said Mr. Farmer dropped him off at the creek.

15 Q Is that what he said in the statement to you?

16 A I don't recall that part.

17 Q Okay.

18 MR. EPTING: Beg the Court's indulgence.

19 (Break in proceedings.)

20 MR. EPTING: I have no further questions for you at this
21 time, please answer any questions Mr. Nowiki may have for you.

22 CROSS EXAMINATION

23 BY MR. NOWIKI:

24 Q Is it Detective Haire? What is your title again?

25 A I'm currently a sergeant on patrol.

BRUCE HAIRE - DIRECT

1 Q And you did the interview with Mr. Perry, correct?

2 A Correct.

3 Q You go through about the gun that he said he dropped,
4 correct?

5 A Yes.

6 Q And y'all look for that gun in the field?

7 A Yes.

8 Q And nothing was found?

9 A Right.

10 Q In the interview you mentioned about two 9-millimeter
11 shell casings being located at this scene; is that correct?

12 A Yes.

13 Q Is that, in fact, what they did find was the two
14 9-millimeters?

15 A They found two 9-millimeters and .40 caliber rounds from
16 the officer's gun.

17 Q Do you know where they were located?

18 A Not exactly, I know somewhere in the path where they ran.

19 Q All right.

20 MR. NOWIKI: No other questions.

21 MR. EPTING: No further questions.

22 THE COURT: You may step down, thank you.

23 MR. EPTING: Your Honor, may this witness be released from
24 his subpoena?

25 MR. NOWIKI: No objection.

BRUCE HAIRE - CROSS

1 THE COURT: The witnesses is excused, thank you.

2 MS. HOLLAND: State calls Shaun Bailey.

3 The witness, SHAUN BAILEY, was first duly sworn and
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MS. HOLLAND:

7 Q Can you state your name for the record?

8 A Officer Shaun Bailey.

9 Q Where do you work?

10 A The Rock Hill Police Department.

11 Q How long have you been with Rock Hill?

12 A About seven years.

13 Q Were you working on the night of June 22nd of 2016?

14 A Yes, ma'am.

15 Q Who were you with that night?

16 A I was with Officer Dalton Taylor.

17 Q Why were you with Dalton Taylor?

18 A He was in the third phase of his field training program, I
19 was his training officer.

20 Q What does that involve that night? Were you basically
21 just riding around together?

22 A What we do in the field training program is the officer
23 attends the police academy, then they attend a 20 week program
24 on the job training. This was phase three for him, his third
25 set of six weeks, we were just in the midst of continuing that

SHAUN BAILEY - DIRECT

1 training program.

2 Q So you were in the traffic stop involving Mr. John
3 Perry?

4 A Yes, ma'am.

5 Q Where were you seated in the vehicle?

6 A I was in the front passenger seat.

7 Q Okay. And Officer Taylor was operating the vehicle?

8 A Yes, ma'am.

9 Q Tell us how the traffic stop was initiated.

10 A Well, we were driving northbound on Cherry Road just
11 trying to make sure that service calls were okay. When Officer
12 Taylor make an abrupt U-turn and he informed me that the
13 vehicle had made a turn and failed to use a turn signal so he
14 was going to pull it over. When he turned around to go
15 southbound on Cherry Road we got behind a little red car. The
16 car made an immediate quick right turn onto Ebenezer Extension.
17 While Officer Taylor was calling the stop out on the radio he
18 then made a quick right turn into an apartment complex while
19 Officer Taylor was engaging the blue lights.

20 Q Does that apartment, does it have a name off Ebenezer
21 Avenue?

22 A It doesn't have a name which I'm aware, I just know it's a
23 big brick building that has some apartments in it.

24 Q I'll show you what's been marked as State's Exhibit
25 Number 1..

SHAUN BAILEY - DIRECT

1 MS. HOLLAND: Can you dim the lights? And can he step
2 down, Your Honor?

3 A Yes.

4 Q Okay. Can you kind of point out to us where Cherry
5 Road -- I reckon it's cutoff.

6 A Cherry Road is down here in the bottom corner off of it
7 down the page.

8 Q Where is Ebenezer Avenue Extension?

9 A That's this right here.

10 Q Where is the parking lot you're talking about?

11 A The parking lot is this parking lot right here, this is
12 the big brick building.

13 Q What happened when you -- that's good, you can have a
14 seat there. And what happened when Mr. Perry pulled into
15 that parking lot?

16 A When the vehicle pulled into the parking lot it seemed
17 like it wanted to decelerate, it started to slow down very
18 quickly. The driver door opened very fast and he got out and
19 began to run back to the house right next door.

20 Q Did he put the car in park?

21 A The car continued to roll, it hit an object but it was an
22 object in the back of the parking lot.

23 Q So he got out of the car before the car was even in
24 park?

25 A Yes, ma'am.

SHAUN BAILEY - DIRECT

1 Q So you mentioned there was a chain link fence. Once he
2 crosses the chain link fence what happens?

3 A I began climbing the fence. When I got through to the
4 backyard there was a wooden fence on the opposite side of it,
5 it was about six feet tall. The defendant then stopped at the
6 fence, looked at it, it appeared to me he was debating whether
7 or not he could make it over the fence, then turned back to
8 the --

9 Q And he was digging in his waistband at that point?

10 A Yes, ma'am.

11 Q When he run back, is he running back in your direction?

12 A He's running kind of towards me but kind of towards the
13 driveway going back towards Ebenezer Avenue Extension.

14 Q So essentially he runs back down the driveway to
15 Ebenezer Avenue Extension, correct?

16 A Yes, ma'am. When he starts digging in his waistband I
17 come down off the fence, then I see him produce a black object
18 that I immediately see with a high capacity magazine on it.

19 Q I'm sorry, can you describe what the gun looked like?

20 A It was a black handgun, it had a very long magazine on it,
21 the magazine itself was probably about twice the size of the
22 grip of the gun which told me it was a high capacity magazine,
23 there was something that was off about the barrel. What Mr.
24 Perry did is he raised it up in the air and the gun began
25 firing twice, I noticed the muzzle flash was farther out, then

SHAUN BAILEY - DIRECT

1 what I would expect it to be with my experience in firearms
2 that told me there was some kind of barrel extender on the gun
3 as well.

4 Q Let's back up. For those of us who don't know anything
5 about guns, what is a barrel extension?

6 A It's a little piece, it allows the barrel to be longer, it
7 can increase accuracy of a projectile.

8 Q You mentioned a flash. If the gun does not have a
9 barrel extension, where would you expect to see a flash?

10 A I would expect to see it right in the slide and muzzle,
11 kind of in the same spot.

12 Q But by that flash you recognize there was some sort of
13 modification made to the gun?

14 A Yes, ma'am.

15 Q Describe what an extended magazine is.

16 A It's designed to hold much more ammunition than a standard
17 magazine. For example, our service weapons are designed to
18 hold 15 rounds in the magazines but you can actually buy
19 extension magazines that will extend well below the grip of a
20 gun, that way they can hold more rounds.

21 Q I'll show you what has been entered into evidence as
22 State's Exhibit Number 1. Does that look like the gun that
23 you would have seen?

24 A Yes, ma'am.

25 Q Okay. Thank you. So once he produces the gun tell me

SHAUN BAILEY - DIRECT

1 what happens.

2 A He fires twice in the air while running back towards the
3 driveway of the house, and so what I do is I stop, I draw my
4 service weapon, prepare to engage to see what steps I need to
5 take. Next as I'm gaining my sight alignment I see a light on
6 in the house in the room behind him, I believe it was a
7 bedroom, since I was in fear I would hit an innocent person I
8 did not discharge my weapon. He continued to run between the
9 SUV that was parked in the driveway and the house to go back
10 towards Ebenezer Avenue Extension.

11 Q I'm showing you what's been entered into evidence as
12 State's Exhibit Number 10. Is this the house and the SUV
13 you're referencing?

14 A Yes, ma'am.

15 Q So he would have ran between those two?

16 A Yes, ma'am.

17 Q Along where the number cones are?

18 A Yes, ma'am.

19 Q And where were you at that point?

20 A I was still on the side of the fence from the apartment
21 complex. Since I wasn't able to get over the fence I had
22 stayed where I was with my firearm in my hand. As he continued
23 to run back towards Ebenezer Avenue Extension towards that SUV
24 it looked to me like he was going to make a left hand turn so I
25 began to run back towards Ebenezer Avenue Extension. The fence

SHAUN BAILEY - DIRECT

1 that was around this apartment complex extended to go back
2 toward the front of Ebenezer Avenue Extension making a direct
3 path from my position to the road, I found a break in the fence
4 and attempted to cut him off.

5 Q When did you lose sight of him when you ran between the
6 house and the SUV?

7 A When he got to the front of the SUV where the hood is I
8 could only see him from about midchest up, that's when it
9 looked like he was going to make the left hand turn.

10 Q So at that point you didn't see him again?

11 A No.

12 Q Because at that point you ran back around that fence
13 and lost sight of him.

14 A I run back towards the fence, I turned to see if he is
15 indeed still coming the direction he was, I saw him and Officer
16 Taylor running the opposite direction from where I was.

17 Q While we're describing this and breaking this down, how
18 quickly did all of this happen?

19 A Two to three seconds.

20 Q So if you turn away or something you could have missed
21 part of it?

22 A Yes, ma'am.

23 Q And you fired no shots, correct?

24 A Correct.

25 Q How many shots did you hear?

SHAUN BAILEY - DIRECT

1 A I hear the two initial shots that I saw the defendant
2 take, then I turned to run back towards the opening of the
3 fence and I heard two more gunshots behind me.

4 Q Okay.

5 MS. HOLLAND: Beg the Court's indulgence.

6 (Break in proceedings.)

7 Q Where did you see the fire of the gun that was Mr.
8 Perry?

9 A He was in the backyard of the house that was next door to
10 the apartments, it was while he was running.

11 Q If we can show the aerial again so you could point it
12 out. I'm sorry to make you get up and down.

13 A That's okay.

14 Q If you could tell us where he was when he fired the gun
15 approximately.

16 A The two shots that I witnessed, he was in this backyard
17 right here, maybe about where the laser pointer is.

18 Q Can you show us the one that he tried to get over the
19 privacy fence?

20 A The chain link fence is right about here, the second fence
21 is about right here, it's a six foot wooden fence.

22 Q Where is that driveway that you referenced?

23 A The driveway is about right here.

24 MS. HOLLAND: Thank you very much, that's all of the
25 questions the State has, if you can answer any questions that

SHAUN BAILEY - DIRECT

1 the Mr. Nowiki has.

2 CROSS EXAMINATION

3 BY MR. NOWIKI:

4 Q Officer Daily, correct?

5 A Bailey.

6 Q Bailey, I'm sorry. How long had you been working for
7 the police department as of June 22nd?

8 A At that time it was coming up on six years.

9 Q And you were -- Dalton Taylor that was your partner, I
10 guess, would that be correct in saying that?

11 A He was my trainee at the time, yes.

12 Q So your responsibility was training him?

13 A Yes, sir.

14 Q But you didn't see the left hand turn allegedly made
15 improper by Mr. Perry?

16 A No, sir.

17 Q What were you doing at that time?

18 A I believe I was looking at the in-car computer trying to
19 make sure that the call volume was appropriate to stop cars.

20 Q And you're familiar with that area?

21 A Yes, sir.

22 Q So then -- so Dalton Taylor turns around and then goes
23 after Mr. Perry after he sees him allegedly make that
24 improper left turn, correct?

25 A Yes, sir.

SHAUN BAILEY - CROSS

1 Q And then is that when you see the car go to make that
2 right hand turn?

3 A I had asked Officer Taylor what violation he had, he told
4 me and the second we got turned around I laid eyes on the car,
5 he was maybe 200 to 300 feet from making the turn on Ebenezer
6 Extension.

7 Q And then he gets out, meaning Mr. Perry gets out of the
8 red sedan because it's still going forward, right? Let me
9 go back. Mr. Perry pulls into that parking lot, correct?

10 A Yes, sir.

11 Q And then you're right behind him?

12 A Yes, sir.

13 Q And then you see Mr. Perry get out of the car?

14 A Yes, sir.

15 Q And he runs?

16 A Yes, sir.

17 Q Did you see him hop the fence?

18 A Yes, sir.

19 Q And then you saw Dalton, or Officer Taylor go after Mr.
20 Perry?

21 A I was the first one out of the patrol car.

22 Q You were the first one out?

23 A Yes, sir.

24 Q So you were the first one to go after Mr. Perry?

25 A Yes, sir.

SHAUN BAILEY - CROSS

1 Q And you testified that you saw two shots in the air,
2 correct?

3 A Yes, sir.

4 Q From your vantage point you could see Mr. Perry?

5 A Yes, sir.

6 Q Then you testified that you heard about two more after
7 that?

8 A Yes, sir, as I was turning to try to cut him off.

9 Q You never discharged your weapon.

10 A No, sir.

11 Q And the gun you described you had indicated had the
12 extended barrel?

13 A Yes, sir.

14 Q And you were able to see that?

15 A I was able to tell that the muzzle flash wasn't where I
16 expected it to be. I didn't see the extension in and of
17 itself, but just the way pistols are designed I would expect
18 the muzzle flash to be much closer to the slide of the gun than
19 it was.

20 Q Okay. And that would be based on your experience
21 through law enforcement?

22 A Yes, sir.

23 MR. NOWIKI: No other questions.

24 MS. HOLLAND: We have no redirect, Your Honor.

25 THE COURT: You may step down, thank you.

KEVIN DUNCAN - DIRECT

1 MS. HOLLAND: We would ask that Officer Bailey be released
2 from his subpoena.

3 MR. NOWIKI: No objection, Your Honor.

4 THE COURT: The witness is excused.

5 MR. EPTING: The State would call Kevin Duncan to the
6 stand next.

7 The witness, KEVIN DUNCAN, was first duly sworn and
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. EPTING:

11 Q Good afternoon, Mr. Duncan.

12 A Good afternoon.

13 Q I know Mr. Duncan you speak with an accent.

14 A I do.

15 Q I also happen to speak with an accent, so if you do not
16 understand some of the things I'm asking you feel free to
17 tell me that you don't understand or rephrase or anything
18 like that, I hope you extend me the same courtesy.

19 A Yes, sir.

20 Q For the record, could you please state your full name?

21 A My name is Kevin Shaun Duncan.

22 Q Where are you from originally from, Mr. Duncan?

23 A From Ireland.

24 Q Where do you live now?

25 A I currently live in Houston, Texas.

KEVIN DUNCAN - DIRECT

- 1 Q What is your occupation in Houston Texas?
- 2 A I'm in mergers and acquisitions consulting in the oil, gas
- 3 and energy sector.
- 4 Q How long have you been so employed?
- 5 A Since January of this year.
- 6 Q Did you live in York County June 22nd of 2016?
- 7 A Yes, sir.
- 8 Q What were you doing in York County?
- 9 A I was studying at Winthrop University.
- 10 Q What were you studying in Winthrop?
- 11 A Accounting and financial planning.
- 12 Q Do you remember the street address of where you lived?
- 13 A [REDACTED]
- 14 Q And how did you get back to York County?
- 15 A I'm sorry --
- 16 Q How did you get back to York County from Houston?
- 17 A I flew back.
- 18 Q When did you fly in?
- 19 A Last night.
- 20 Q When are you flying out?
- 21 A Tonight.
- 22 Q Is there anywhere that you would rather be other than
- 23 right here in beautiful York County right now?
- 24 A I need to be in a management meeting right now, so --
- 25 Q And I apologize for in imposition. Do you know Dalton

KEVIN DUNCAN - DIRECT

1 Taylor?

2 A No, sir.

3 Q Have you ever laid eyes on him or know if he's in the
4 courtroom right now?

5 A No, sir.

6 Q Ever had a conversation with the man?

7 A No, sir.

8 Q Did you observe something that brings you here today in
9 York County missing work that occurred on June 22nd of 2016?

10 A Yes, sir.

11 Q If you would please tell the jury what you saw and/or
12 heard.

13 A Okay. I looked out the window that night, I saw a car, a
14 red car pull up and crashed in the fence at the end of our
15 parking lot and there was one man running from the car with two
16 police officers chasing him. When I saw the man had already
17 gotten over the fence dividing the parking lot with a
18 neighbor's yard and the police officers were in chase. The man
19 ran towards a fence, turned, doubled back, went down the side
20 of the neighboring house at which point he fired at the
21 officers and continued running across the street and an officer
22 fired back at that point.

23 Q And you said he fired at the officers. How many times
24 approximately did he fire at the officers?

25 A At least twice, maybe three times.

KEVIN DUNCAN - DIRECT

1 Q Do you have any doubt that he was firing at the
2 officers and not in the air?

3 A No, sir.

4 Q And you were viewing this from your upstairs bedroom
5 window; is that correct?

6 A Yes, sir.

7 Q Can you give this jury any kind of descriptors of the
8 parties involved, let's say face?

9 A A black male is all I would have got from the man running.

10 Q A black male was the police officer or the person
11 running?

12 A The person running.

13 Q And the police officers, were either of them black?

14 A I couldn't tell, I believe one of the officers was white.

15 Q Could you tell if the officer returned fire?

16 A I believe the officer did. I heard what sounded like
17 gunshots but I did not see a muzzle flash or anything of that
18 nature.

19 Q So you heard gunshots but didn't see a muzzle flash?

20 A No, sir.

21 Q So the officer that was returning fire, you see him; is
22 that correct?

23 A Yes, sir.

24 Q And the fellow that was running who was firing at
25 officers, you see him; is that correct?

KEVIN DUNCAN - DIRECT

1 A Yes, sir.

2 Q Do you see where the other police officer is?

3 A At the time when they were firing, no, sir.

4 Q Is there any light in that area where the shooting
5 happened?

6 A Yes. It's about -- it is pretty much right in the middle
7 of the house across the parking lot from me on this side of the
8 fence, on our side of the fence.

9 Q Was there anything obstructing your view when you saw
10 the fellow that was being chased firing at the police?

11 A No, sir.

12 Q If I showed you a picture of the apartment complex you
13 live in, could you identify which apartment?

14 A Yes.

15 Q Do you recognize this? What exhibit is this? This is
16 Exhibit 9. Do you recognize Exhibit 9?

17 A Yes, I do.

18 Q What is Exhibit 9?

19 A That's the apartment where I live.

20 MR. EPTING: May I approach the witness, Your Honor?

21 THE COURT: Yes.

22 Q I'll hand you a laser pointer. If you can highlight
23 for the jury the window that you're looking at this
24 incident, that window.

25 A (Witness complies.)

KEVIN DUNCAN - DIRECT

- 1 Q Okay. If you recognized an aerial of the area where
2 you lived at that time, do you think you would recognize it?
- 3 A Yes, sir.
- 4 Q State's Exhibit 3 is on the projector. Would it help
5 you if you could get closer?
- 6 THE COURT: You can step down.
- 7 Q Yes, sir, just point.
- 8 A (Witness complies.)
- 9 Q What were you pointing at there?
- 10 A That's where I lived.
- 11 Q Okay. And where did the car crash?
- 12 A The car was crashing in a wire fence.
- 13 Q You stated that the black male who was running from the
14 police ran through the yard?
- 15 A Yes, sir.
- 16 Q Can you show us the direction using the laser pointer?
- 17 A Yes, sir, he ran this way.
- 18 Q You doubled back where?
- 19 A Down this way.
- 20 Q Where did the shooting take place?
- 21 A He fired at the officer around this area.
- 22 Q Okay. Did you speak with officers that night?
- 23 A Yes, sir.
- 24 Q And you told them what happened?
- 25 A Yes, sir.

KEVIN DUNCAN - DIRECT

1 MR. EPTING: Beg the Court's indulgence.

2 (Break in proceedings.)

3 Q And are you aware or have you heard anyone else's
4 testimony in this case? Have you been sequestered the whole
5 time?

6 A Sorry, can you repeat the question?

7 Q Have you been sequestered this entire time?

8 A Yes.

9 MR. EPTING: That's all of the questions I have for you at
10 this time. Thank you, Mr. Duncan, please answer any questions
11 that the defense counsel may have for you on this case.

12 CROSS EXAMINATION

13 BY MR. NOWIKI:

14 Q Mr. Duncan, appreciate you being here today. Okay. So
15 you were living at the apartments on [REDACTED] Ebenezer Road at
16 the time of this incident?

17 A Yes, sir.

18 Q And I know -- what is your occupation?

19 A I'm in merger and acquisition consulting in the oil, gas
20 and energy sector.

21 Q And is that what you were studying at Winthrop or did
22 you have additional education?

23 A No, that's it, sir. I did get my CPA.

24 Q And you testified you did not know -- you don't know
25 who Dalton Taylor is.

KEVIN DUNCAN - CROSS

- 1 A No, sir.
- 2 Q And you did testify that you observed a red car --
- 3 A Yes, sir.
- 4 Q -- I guess, hit a fence?
- 5 A Yes, it was up against a wire fence.
- 6 Q A wire fence?
- 7 A Yes, sir.
- 8 Q And you saw a black male exit, or I should say run from
- 9 the vehicle?
- 10 A Yes. I didn't see him exiting the vehicle.
- 11 Q You just saw him run?
- 12 A Yes, running away from it.
- 13 Q And then you saw the police run after him?
- 14 A Yes, sir.
- 15 Q But you don't remember what direction?
- 16 A I remember the direction they're running. One officer had
- 17 gotten out and had went straight after the man running from the
- 18 car, and another officer had gotten out and went across the
- 19 parking lot towards kind of looking like he was trying to cut
- 20 him off.
- 21 Q So let me just get this straight, so did you see the
- 22 officers get out of their vehicle?
- 23 A I saw one of them, I didn't see a second officer getting
- 24 out of his vehicle.
- 25 Q Do you know what side of the officer's vehicle that

KEVIN DUNCAN - CROSS

1 individual -- that officer got out of?

2 A Which individual, which officer?

3 Q Well, which officer got out first, or what officer --

4 what side of the vehicle did you see the officer get out of?

5 A The driver's side.

6 Q The driver's side?

7 A Yes, sir.

8 Q All right. And then the black male you say hopped the
9 fence, correct?

10 A Yes, sir.

11 Q Went into that area back there is like a backyard?

12 A Yes.

13 Q Then you saw him go where?

14 A He was running behind the house towards like across the
15 backyard, at which point he stopped, turned, came back down the
16 side of the house.

17 Q Okay. And the area there is well lit or is it dark?

18 A Not in the backyard, but the area beside the house where
19 the shots were fired is relatively well lit.

20 Q That's relatively well lit?

21 A Yes, sir.

22 Q And you saw the officer that you saw go over the fence?

23 A Uh-huh.

24 Q You saw him go towards the driveway of that white
25 house, or where did you see him go?

KEVIN DUNCAN - CROSS

- 1 A He was following the man running from the --
- 2 Q He was following him, so was he behind him?
- 3 A Yes, sir.
- 4 Q Okay. So you're saying that the black male was in
- 5 front of that officer?
- 6 A Yes, sir.
- 7 Q So the black male was running down the driveway and
- 8 that's when you heard shots?
- 9 A Yes, sir. The person running away had shot over his
- 10 shoulder in the direction.
- 11 Q And did all of the shots sound the same?
- 12 A Yes, I couldn't tell the difference between --
- 13 Q You couldn't tell a difference?
- 14 A No, sir.
- 15 Q And do you remember any number of shots?
- 16 A As I said, I believed there was two to three shots first
- 17 and then afterwards there was at least one shot, yes.
- 18 Q And do you remember anything else from that night?
- 19 A Not particularly, no, sir.
- 20 Q Other than talking to law enforcement?
- 21 A Yes, sir.
- 22 Q Was anybody with you in your apartment?
- 23 A Yes. Well, my girlfriend was asleep.
- 24 Q She didn't see anything?
- 25 A No.

KEVIN DUNCAN - CROSS

1 Q Did she hear the gunshots, do you know?

2 A I can't tell you.

3 MR. NOWIKI: I think that's all of the questions I have,
4 thank you.

5 MR. EPTING: No further questions, Your Honor.

6 THE COURT: Sir, you may step down.

7 MR. EPTING: Can he be released from his subpoena, Your
8 Honor?

9 MR. NOWIKI: That's fine no objection.

10 THE COURT: You are excused, thank you, sir.

11 MR. EPTING: Your Honor, may we approach?

12 THE COURT: Sure.

13 (Bench conference was held.)

14 THE COURT: Ladies and gentlemen of the jury, we're going
15 to stop now. The next witnesses are tied up in another trial,
16 we can't get them here until in the morning so we will resume
17 at 9:30 in the morning. Please remember my instructions, no
18 independent research, don't let anybody contact you directly or
19 indirectly and we will see you at 9:30 in the morning. Avoid
20 any press coverage until this case is over.

21 (The jury left the courtroom.)

22 THE COURT: Okay. See you in the morning at 9:30.

23 (Court recessed for the afternoon and resumed on
24 Wednesday, September 20, 2017 at 9:30 a.m.)

25 THE COURT: Okay. We're ready, we'll bring the jury in

1 and we will poll them. Counsel doesn't have any objection to
2 me just generally polling from the bench; is that correct?

3 MR. EPTING: We don't have any objection to that, Your
4 Honor.

5 MR. NOWIKI: No objection.

6 (The jury returned to the courtroom.)

7 THE COURT: Mr. Foreman ladies and gentlemen, good
8 morning. Okay. We're ready to resume the trial. I do need to
9 do a quick poll of the jury. The question I have for the jury,
10 has any juror listened, observed or read any media coverage or
11 report concerning this case since the case was begun? If so,
12 raise your right hand.

13 THE JUROR: Oh no, no, sir, I have not.

14 THE COURT: All right. I will go over it one more time,
15 has any juror listened, observed or read any media report
16 concerning this case since the beginning of the case? Anything
17 else?

18 MR. EPTING: Nothing from the State, Your Honor.

19 MR. NOWIKI: Nothing from the defense.

20 THE COURT: Okay. We will move on to the next witness
21 then. Solicitor?

22 MS. HOLLAND: Thank you, Your Honor. The State calls
23 Jamie Johnson.

24 The witness, JAMIE JOHNSON, was first duly sworn and
25 testified as follows:

1 DIRECT EXAMINATION

2 BY MS. HOLLAND:

3 Q Can you state your name for the Court, please?

4 A Sure, Jamie Johnson.

5 Q And where were you employed on June 22nd of last year,
6 2016?

7 A The South Carolina Law Enforcement Division commonly known
8 as SLED.

9 Q And how long were you at SLED?

10 A Approximately five years.

11 Q And where are you at now?

12 A Right now I'm unemployed and I'll start with the Lexington
13 County Sheriff's Department in their crime scene unit on
14 Monday.

15 Q So we caught you switching jobs this week.

16 A Yes.

17 Q Okay. Were you involved in the investigation of this
18 case involving John Perry?

19 A Yes, I was.

20 Q And at that time what unit were you in with SLED again?

21 A The crime scene unit.

22 Q Okay. Over the course of your time with SLED and in
23 the crime scene unit, how many crime scenes do you think
24 you've processed?

25 A I would say probably approximately 250 crime scenes.

JAMIE JOHNSON - DIRECT

1 Q And how many specifically officer involved shootings
2 have you been involved in?

3 A At the time of this case it was close to 30.

4 Q And why was SLED called out in this case?

5 A We were requested by the Rock Hill Police Department due
6 to the fact that they were involved in an officer involved
7 shooting.

8 Q Okay. We heard yesterday from some people from Rock
9 Hill PD forensics. Would their role have been mainly just
10 to secure the scene until you got there?

11 A That's correct.

12 Q Okay. And how many officers were on scene when you
13 arrived approximately?

14 A I can remember probably I would say two or three. The
15 officers that were involved were not present at the scene when
16 we arrived.

17 Q Okay. So the officers that were involved in the actual
18 shooting had already left the scene.

19 A That's correct.

20 Q So just other Rock Hill PD investigators.

21 A Yes.

22 Q And had they already put up crime scene tape and put up
23 some number cards for you guys?

24 A They had put up the yellow crime scene barrier tape, and
25 also had an officer present to secure the scene, and they had

JAMIE JOHNSON - DIRECT

1 placed some yellow scene placards or markers to mark some
2 evidence that was already visible.

3 Q Okay. But they would not have taken anything into
4 evidence. Who would have taken things into evidence?

5 A We would have.

6 Q And what is the purpose of crime scene tape, what does
7 that --

8 A Could you repeat that?

9 Q What is the purpose of crime scene tape, why do we put
10 it up?

11 A Usually it's just a visual kind of barrier to let people
12 know this is a crime scene and sort of less of a physical
13 barrier since it is kind of fragile tape, mostly just a visual.

14 Q Is that to keep people from walking through the area?

15 A That's true, yes.

16 Q I'm going to hand you something that's already -- I'm
17 going to show you something that's already in evidence, this
18 is State's Exhibit Number 8. Can you tell us what this is?

19 A That is a completed crime scene sketch, one of a couple
20 that was prepared by myself and my partner at the time, Agent
21 Nick Sprouse. This is actually the first crime scene sketch
22 that shows what we call the initial scene at [REDACTED] Ebenezer
23 Avenue Extension.

24 Q And you created this?

25 A It was created by my trainee at the time who was Agent

JAMIE JOHNSON - DIRECT

1 Sprouse but under my supervision.

2 Q Okay. And we've talked a little bit about this, we see

3 RP1, RP2, RP3. What are those?

4 A RP stands for reference points, and those are fixed
5 objects that we use to take measurements for either items of
6 evidence or vehicles that are involved in a crime scene.

7 Q And does it assist with measuring?

8 A Yes, it does.

9 Q I want you to kind of -- we forgot our laser pointer
10 again so let me grab it. But can you kind of orient us as
11 to what is depicted on this, like the house, the cars and
12 everything outside?

13 A Sure. We have on the right hand side of this sketch the
14 townhomes area, it was in that parking lot that the initial
15 traffic stop occurred. We also have a Rock Hill PD police
16 vehicle that is parked there.

17 Q Okay. You can keep going.

18 A The vehicle that is on the top most side is going to be
19 Perry's vehicle, which was a Nissan Sentra, and his vehicle
20 actually struck a separate vehicle that was in that parking lot
21 which was a Nissan Altima. Towards the left hand side of the
22 sketch where it says [REDACTED] in large numbers, that's going to be
23 where the markers one through seven are located, and those
24 would be cartridge cases from the shooting.

25 Q Okay. So the box that says [REDACTED] Ebenezer Avenue

JAMIE JOHNSON - DIRECT

- 1 Extension is a house?
- 2 A That's correct, yes.
- 3 Q Let me ask you to step down just a moment and use the
- 4 laser pointer. And it's very hard to see the cars as you
- 5 can see, can you tell us which car -- they kind of for some
- 6 reason don't come out up here, if you could tell us which
- 7 ones the cars are. Which car is Mr. Perry's?
- 8 A That's going to be this one up here.
- 9 Q The dark colored car, that's the subject's vehicle?
- 10 A That's correct.
- 11 Q And which would have been the car that was struck?
- 12 A The car that was struck is the one that is right below it
- 13 and sort of off to the side, which is going to be this one
- 14 right here.
- 15 Q And where is the Rock Hill PD?
- 16 A That's going to be the bottom one right there.
- 17 Q And was there a vehicle parked in the driveway of [REDACTED]
- 18 Ebenezer Avenue Extension?
- 19 A There was. That one was just kind of there for visual
- 20 purposes, is wasn't involved in anything that we were
- 21 necessarily doing.
- 22 Q And what are the numbers --
- 23 A The numbers --
- 24 Q -- along the side of house.
- 25 A That are located right here?

JAMIE JOHNSON - DIRECT

1 Q Yes.

2 A Those are going to be numbers one through seven and those
3 are yellow markers or placards that were placed to mark
4 individual items of evidence.

5 Q You can have a seat. What were those items?

6 A One through seven are all cartridge casings.

7 Q Is another word for a cartridge case a shell, most
8 people call them shells?

9 A Yes.

10 Q And so on the scene that night when you arrived, did
11 you take photographs?

12 A Yes, I did.

13 Q Okay. And so you were familiar with the scene. Did
14 you walk through the scene?

15 A Yes, correct.

16 Q And also were you part of the searching of Mr. Perry's
17 vehicle?

18 A Yes, I was.

19 Q Okay. And was his vehicle looked through on the scene?

20 A It was that night.

21 Q I'm going to hand you what has been marked as State's
22 Exhibits 22 through 26. And can you look at these and tell
23 us what these are?

24 A Sure. Do you want me to identify each one individually?

25 Q Sure.

JAMIE JOHNSON - DIRECT

1 A State's Exhibit 23 is going to be Perry's vehicle, which
2 is the Nissan Sentra that's in the bottom photo right here.
3 State's Exhibit 22 is going to be two pieces of mail, both of
4 which bear Perry's name on the outside. State's Exhibit 25,
5 the bottom most photo, is the front side of that vehicle. And
6 State's Exhibit 24, the top picture has the front driver's side
7 and front passenger's side doors open, again, Perry's vehicle.
8 And the last one is State's Exhibit 26, which is another I
9 guess you would call it interior shot kind of the front
10 driver's side visor area of his vehicle.

11 Q Okay. Are those all a true and accurate depiction of
12 how Mr. Perry's car appeared that evening and its contents?

13 A That's correct, yes.

14 MS. HOLLAND: The State would ask to move State's Exhibits
15 22 through 26 into evidence.

16 MR. NOWIKI: No objection.

17 THE COURT: In without objection.

18 (The photos were received as State's 22-26.)

19 Q Tell us what this is. I know you just described it
20 but --

21 A These were two different pieces of mail that we had found
22 in our search of Perry's vehicle. One says John E. Perry, Jr.
23 on it, the other one says John Perry, Jr. And it's from the
24 clerk of court's office for York County.

25 Q So did that indicate to you who owned that car, is that

JAMIE JOHNSON - DIRECT

1 why you would have taken a picture of that?

2 A Yes. One of the things we were asked was to try to
3 identify people's names inside the vehicle, and these two
4 pieces of mail had photographs taken of them because names were
5 on the outside of the envelopes.

6 Q Thank you very much. Let's go to Exhibit 23. And what
7 is this?

8 A This is the final resting place of Perry's vehicle. After
9 he'd exited it it had moved somewhat forward and kind of was
10 stopped on the front end by a fence, so this is just the final
11 resting place of his vehicle.

12 Q Okay. Go to 24. Can you tell us what this is?

13 A An overall photograph again just of the final resting
14 place of his vehicle and both front the driver's side and front
15 passenger side doors are opened.

16 Q What is this?

17 A This is a photograph of the interior portion of the front
18 driver's side again of Perry's vehicle just showing the
19 contents inside.

20 Q I want you to clear something up for us, this came up
21 yesterday, this was never really explained. Discuss the
22 beer cans found in the car -- beer bottles found in the car.

23 A We found two Bud Light, those blue cans right there, one
24 that looks like it's in the center console area, we found two
25 of those that were sealed inside his vehicle.

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1 Q Were they still cold?

2 A To my recollection they were and still had condensation
3 that was --

4 Q What would that indicate to you if he still had cold
5 beer in the car?

6 A Someone recently had either purchased it or taken it out
7 of a fridge or it was somewhat fresh.

8 Q And we see those in the center of the photograph on the
9 bottom?

10 A That's correct.

11 Q Let's go to Exhibit 26, that will be the last one.
12 What is this a photo of?

13 A This is another interior photograph again of Perry's
14 vehicle, and this is kind of just showing more of the contents
15 inside the front driver's side and front passenger's side.

16 Q I can take those from you.

17 A Sure.

18 Q I want to talk a little bit about the shell casings
19 that are found at the scene. I believe you call them
20 cartridge cases, correct?

21 A That's correct.

22 Q And those are the ones we saw with the numbers on the
23 side of the diagram that had already been marked.

24 A Yes.

25 Q Okay. If people were chasing each other, would it be

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1 difficult or would you expect to see shells kind of
2 scattered about?

3 A I would.

4 Q And how difficult is it to collect shells or cartridge
5 cases from the scene?

6 A It is more difficult given the type of scene that you're
7 at, whether you're indoors or outdoors. Obviously if you have
8 an indoor scene your cartridge cases are going to be more
9 contained, whereas in an outdoor scene such as this, one,
10 you're not really sure where your area is that you're looking
11 for that could have cartridge cases.

12 Q So is it common not to find every single shell or
13 cartridge casings at the scene?

14 A We make every effort possible to find all cartridge cases
15 but it's not uncommon to not account for all of them.

16 Q And let's talk a little bit about a bullet for people
17 who don't understand guns. So you have a cartridge casing
18 that is left behind after you fire a gun, what about the
19 actual projectile that is projected?

20 A That is what normally we would call a bullet. We refer to
21 that, at least in crime scene, we refer to that as a projectile
22 but it's the actual bullet that is fired from the weapon,
23 travels through the air and eventually hits a target.

24 Q And sometimes can you collect projectiles?

25 A Yes, you can.

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1 Q And are those at times difficult to collect?

2 A Yes, they are.

3 Q And why is that?

4 A Again, sometimes if you have a scene that's contained you
5 kind of know where to look for them. With outdoor scenes they
6 can travel very great distances if they don't hit anything, and
7 a lot of them tend to go through intermediate objects and
8 penetrate different services that you may have to dig them out
9 of.

10 Q Okay. And so that night you went and you photographed
11 the scene. After that what was your next step you took in
12 this case?

13 A In reference -- do you mean the vehicle or just --

14 Q Well, in reference to the vehicle what was the next
15 thing you did? Did you search a house or anything like
16 that?

17 A After we had arrived on scene we were told that there was
18 a fence across from the [REDACTED] and also a house, both of which
19 had bullet holes from the shooting incident.

20 Q Okay. And did you take any other actions in relation
21 to Mr. Perry's vehicle?

22 A At the time we photographed it initially, which is the
23 first step that we do with all of the vehicles that we have on
24 scene. We performed the search and photographed anything that
25 had names on it with an attempt to establish an identity of who

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1 the owner of the vehicle was, we also used black powder and
2 processed the vehicle for latent prints.

3 Q And at that point in time Mr. Perry had fled the scene,
4 correct?

5 A That's correct.

6 Q At anytime did you go to a residence on Lennox Court in
7 Rock Hill?

8 A Yes, I did.

9 Q Can you tell us why you went there?

10 A I was notified by SLED Lead Case Agent Wallace that there
11 was some additional processing that needed to be done, this was
12 on June 24th. So the day after that we initially responded to
13 the scene I was told by her at that time that the house on
14 Lennox Court was one of the additional scenes that we needed to
15 process.

16 Q And who lives there?

17 A When we went there it was Larry Farmer and his wife.

18 Q And did you go to that residence? You believed that
19 Mr. Perry had been there at some point?

20 A We were told -- the reason that we were asked to process
21 that as an additional crime scene is we were told at the time
22 that Perry had been there and kind of attempted to clean
23 himself up from the shooting.

24 Q Okay. I'm going to hand you what's been marked as
25 State's Exhibits 27 through 37. And if you could look at

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1 these as well and tell us if you recognize them and what
2 they are.

3 A Sure. State's Exhibit 27, the top photograph, is going to
4 be an exterior photograph of the house at [REDACTED] Lennox Court.
5 The bottom photograph, which is State's Exhibit 28, is also an
6 exterior photograph which kind of shows this sidewalk area
7 that's right next to the house. State's Exhibit 29 and State's
8 30 are both photographs of one of the garbage cans that was on
9 the property at that residence. Top photo, State's Exhibit 29,
10 there's a pair -- later we found out that it was underwear, but
11 white clothing that appears to have some suspected blood stains
12 on it which is right there. The bottom most photo, State's
13 Exhibit 30, is a trash bag that was removed from the same trash
14 can and it appears to have some paper towels also with
15 suspected blood stains. And next to that paper towel is also
16 Acetaminophen pain reliever cardboard container. State's
17 Exhibit 31 is a white T-shirt with suspected blood stains that
18 was removed from the trash can. State's Exhibit 32 are two
19 brown wash cloths. It's difficult to see in the picture but
20 there are some darker stained areas which again, we thought
21 were suspected blood stains. State's Exhibit 33 is a pair of I
22 guess kind of compression short type material with suspected
23 blood stains, and that's going to be a closer-up shot of
24 State's Exhibit 29. State's Exhibit 34 is the interior of the
25 house at that location. This specifically is the living room

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1 area and on a coffee table is a first aid kit, a bottle of
2 hydrogen peroxide and a bottle of isopropyl alcohol. State's
3 Exhibit 35 is another photograph of the exterior of the
4 residence, this shows specifically a white cooler that is
5 outside. And State's Exhibit 36 is just a closer-up photograph
6 of that same white cooler. And the final picture is State's
7 Exhibit 36, which is the inside of the same white cooler, and
8 there's some red staining in the back which appeared to be some
9 diluted suspected blood stains. And there are two pieces of
10 clothing contained inside the white cooler.

11 Q Thank you very much. So State's Exhibits 27 through
12 37, are those all an accurate depiction of what the Farmer
13 home looked like, surrounding area and the contents on that
14 day?

15 A Yes, that's correct.

16 MS. HOLLAND: Your Honor, the State would ask to move
17 State's Exhibits 27 through 37 into evidence and to publish to
18 the jury.

19 MR. NOWIKI: No objection, Your Honor.

20 THE COURT: In evidence.

21 (The photographs were received as State's 27-37.)

22 Q Was Mr. Perry there when you arrived?

23 A He was not.

24 Q He was not. He'd already left there?

25 A That's correct.

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1 Q We're going to go through the exhibits so everybody can
2 see them a little bit bigger. And what is this?

3 A This is an exterior photograph of the house at [REDACTED] Lennox
4 Court which is where --

5 Q So this is the house Mr. Perry would have gone to to
6 get cleaned up.

7 A That's correct.

8 Q And what's this?

9 A That's again an exterior photograph of the side of the
10 house just kind of showing the sidewalk that goes around it and
11 just kind of the area outside of the house.

12 Q Okay. What is this?

13 A This is a photograph inside one of the trash cans that was
14 present on the property. Underneath one of the trash bags was
15 a piece of white clothing, that red stain to it we considered
16 to be suspected blood.

17 Q Let's go onto 30.

18 A Thirty is inside of the trash bag that was on top of the
19 clothing from the previous photo. Inside this trash bag at the
20 very bottom of the photo we have some white paper towel and
21 again that red stain that we considered to be suspected blood.

22 Q Okay. And 31, what is this?

23 A This is a T-shirt that was removed from the same trash
24 can, and as you can tell it's got extensive staining what we
25 would consider to be suspected blood stains.

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- 1 Q And that was indicating to you that Mr. Perry had been
2 there at some point?
- 3 A That's correct.
- 4 Q Let's go to 32.
- 5 A Again from the same trash can, two brown color wash
6 cloths, and you can kind of see there's some darker areas that
7 appear to be stained. Again, we thought that to be suspected
8 blood.
- 9 Q And the wash cloths themselves are dark and this is
10 just to show the dark stains.
- 11 A Correct.
- 12 Q Okay. And what are these? This is State's Exhibit 33.
- 13 A Thirty-three is a closer up photo of the white I guess
14 kind of bike shorts that were present in 29, State's Exhibit
15 29. That's just to show you the brand and also the suspected
16 blood stain at the top waistband area.
- 17 Q State's Exhibit 34?
- 18 A Thirty-four is the interior of that residence. This is I
19 guess kind of a side table or a coffee table in their living
20 room area, and on that top corner two bottles, one is a
21 hydrogen peroxide bottle, the other is a bottle of isopropyl
22 alcohol and one of the bottles is sitting on top of a first aid
23 kit.
- 24 Q Okay. So this is what he would have used to clean up?
- 25 A We believe so, yes.

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1 Q This is 35.

2 A Thirty-five is a white cooler that was sitting outside of
3 the residence in the driveway area.

4 Q Thirty-six. You get a little closer to the white
5 cooler.

6 A Yeah, same white cooler.

7 Q Thirty-seven?

8 A Thirty-seven is what's inside that same white cooler, you
9 can see on top there it looks like some blue jeans. Also in
10 that same cooler is a black long sleeved shirt and you can see
11 in the upper right hand corner that red discoloration we
12 believe to be suspected blood. Also it was diluted due to I
13 guess some of the excess water that was present inside the
14 cooler.

15 Q Okay. So these clothes, were the clothes actually
16 taken into evidence?

17 A Yes, they were.

18 Q And we're only entering pictures of those today, why is
19 that?

20 A The clothing from the garbage can, especially the clothing
21 from the cooler, had a very distinct odor, very unpleasant
22 odor, the clothes in the cooler and the garbage can. It was
23 probably 90 degrees out there and they'd been hanging out
24 either in the cooler or the garbage can for an extended period
25 of time.

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1 Q So essentially they smelled bad and we don't want to
2 put them in evidence.

3 A Correct.

4 Q Thank you. After leaving Lennox Court, did you search
5 a property in Fairfield County?

6 A Yes, I did.

7 Q Okay. Why did you go to the Fairfield County?

8 A While we were in the middle of processing the house on
9 Lennox Court we were advised that Perry had been taken into
10 custody in Fairfield County from a camper.

11 Q And let's kind of describe where that area is in
12 Fairfield County. I know I'm not familiar with Fairfield
13 County, just kind of describe it.

14 A That is -- the specific address is [REDACTED] in
15 Winnsboro. It kind of was just a camper on a remote rural
16 property kind of in the middle of nowhere. I remember we got
17 lost on the way to try to find it.

18 Q Is that an area where people used for hunting?

19 A It could be. I'm not real familiar with that area so I'm
20 not entirely sure what they do out in Winnsboro.

21 Q It's kind of in the middle of nowhere and nobody can
22 find you there.

23 A That's correct.

24 Q And did you search that camper that was found on scene?

25 A Yes, I did.

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1 Q Okay. I'm going to show you what has been marked as
2 State's Exhibits 38 through 50. Again, Exhibits 38 through
3 50, if you could look at those and tell us what those are.

4 A All right. State's Exhibit 38, top photo, is an exterior
5 photograph of the camper that was on Marsh Lane in Winnsboro.
6 And State's Exhibit 39 is just a closer view of the front door
7 to that camper. State's Exhibit 40 is a photograph of the
8 interior -- right when you walk into the front door of the
9 camper it's kind of a little make-shift bed area and bunch
10 eating type area towards the left of bed. State's Exhibit 41
11 is just a left most shot of the top photo, again, the bed area
12 as well as this bunk eating area. State's Exhibit 42 is
13 another shot of the bed and the bunk area. There looks to be a
14 little kind of what you would call a wooden storage container
15 with a cloth on it, some red stains that we considered to be
16 suspected blood stains. State's Exhibit 43 is the bed area
17 again that we've seen in the previous couple of photos.
18 There's a yellow blanket on top of the bed that has a red stain
19 on it that we also considered to be a suspected blood stain.
20 State's Exhibit 44 is if you're facing that bunk eating area
21 with the focus on the left most bottom bunk where you would say
22 sit. And State's Exhibit 45 is that same bunk area with the --
23 I guess the butt padding where you would sit removed, there was
24 a wooden plank underneath it. State's Exhibit 46 is when that
25 wooden blank was lifted up we had a handgun underneath that

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1 seating area. And State's Exhibit 47, again, it's just another
2 photograph showing the seat back of the bunk, the seat bottom
3 with the cushion with the wooden plank lifted up and the
4 handgun visible underneath it. State's Exhibit -- we'll do
5 State's Exhibit 49 first, the bottom most photo, this is the
6 gun that was found underneath that seating area in the bunk.
7 State's Exhibit 48 is the extended magazine that was found
8 inside that specific handgun. And State's Exhibit 50 is a
9 photograph specifically of the handgun with the extended
10 magazine removed.

11 Q Thank you very much. So 38 through 50, are those
12 accurate and true depictions of the camper that day and its
13 contents and the weapon that you recovered?

14 A Yes, they are.

15 MS. HOLLAND: The State would ask to move State's 38
16 through 50 into evidence.

17 MR. NOWIKI: No objection.

18 THE COURT: In without objection.

19 (The photos were received as State's 38-50.)

20 MS. HOLLAND: And publish to the jury?

21 THE COURT: Yes.

22 Q Tell us what this is.

23 A This is State's Exhibit 38, which is just an overall
24 photograph of the exterior of the camper showing the entrance,
25 the front door area.

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1 Q So it's nighttime by the time you get there?

2 A Nighttime, yeah.

3 Q Onto the next, 39?

4 A Same thing, just a closer-up shot of the entrance into the
5 camper and what's interior when you enter the door.

6 Q And we've seen you take a lot of pictures from the one
7 angle to the other, is that just to orient people as the
8 pictures progress through the camper?

9 A Yes. And just to try to show all the different angles and
10 as many details as possible for what it is that we're
11 photographing.

12 Q Okay. Thank you very much. This is State's Exhibit
13 40.

14 A Yes. 40 is right when you enter into that front door of
15 the camper, this is just kind of an overall of shot what's just
16 opposite the door which is going to be a bed area. You can see
17 there's a yellow blanket kind of towards the foot that's got a
18 suspected blood stain on it.

19 Q And Mr. Perry had been located at this location,
20 correct, by this time?

21 A That's correct.

22 Q Let's move onto State's Exhibit 41.

23 A 41 is just left of the previous photo. The bed is still
24 in there and you can see there's kind of an eating bunk area
25 built into the corner right there.

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- 1 Q Okay. And is that the area where you found the gun?
- 2 A That's correct.
- 3 Q Okay. Let's move onto State's Exhibit 42.
- 4 A Forty-two is again another picture of that same area you
5 can see a little bit better. Towards this side of the eating
6 table, kind of that wooden box that's on the ground, there's a
7 towel on it with some suspected blood stains on it as well.
- 8 Q And then 43?
- 9 A 43 is a shot back to the right of that bed area and again
10 another photograph of the yellow blanket with the suspected
11 blood stains.
- 12 Q Okay. Forty-four?
- 13 A Forty-four is a photograph of if you're facing that kind
14 of eat area with the bunk, it's going to be the left most bunk,
15 all the padding is intact in that photo.
- 16 Q Okay. And in the course of your search, would you
17 search inside areas like that and look for things you could
18 lift up?
- 19 A Oh, absolutely.
- 20 Q Let's go to 45.
- 21 A The same left most bunk, only the seat padding has been
22 removed and there's a wooden -- I guess wooden kind of board or
23 blank that's been placed over the seat bottom.
- 24 Q Forty-six?
- 25 A Forty-six is the photo when you lift up that wooden plank,

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1 it's kind of hollowed out in there and there is a handgun
2 that's inside the bunk area.

3 Q So upon searching it you find this laying there.

4 A Correct.

5 Q Forty-seven. We probably should have done this one
6 before, but is this just when the wood is lifted up?

7 A Yes.

8 Q Forty-eight?

9 A Forty-eight is the extended magazine. This is a photo of
10 it removed from the handgun at the time it was found to be
11 inside the handgun, and this is just a photograph of the
12 magazine itself.

13 Q So you removed the magazine from the gun.

14 A We did, yes. This is photograph of the gun underneath
15 that bunk area and you can see it still has the magazine still
16 inside the gun.

17 Q And 50?

18 A Fifty is just a photograph of the gun itself with the
19 magazine removed.

20 Q And when you found that gun, what did you do with it?

21 A We photographed it, which is the first thing that we do.
22 As you saw we just tried to photograph our way to it and then
23 photograph it as well with close-up photos, and what we would
24 do prior to packaging it is clear the weapon and make sure it's
25 safe.

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1 Q Clearing it and making sure it's not loaded?

2 A Correct.

3 Q And talk about how you package it and what you do to
4 take something into evidence.

5 A Specifically for that gun we would have ejected the
6 magazine and made sure that there weren't any rounds inside the
7 chamber and that would have been packaged inside a gun box for
8 transport back to the SLED forensics services laboratory.

9 Q And once something is taken into evidence SLED, it is
10 accessible for additional testing by additional units within
11 SLED?

12 A It can be if there is certain requests or assignments that
13 are made for that particular item of evidence.

14 Q For instance ballistics?

15 A Yes, firearm section.

16 Q I am going to hand you what has been marked as State's
17 Exhibit 52. And I want you to look at that and tell me if
18 you recognize that.

19 A I do recognize this. First I recognize the outer
20 packaging.

21 Q And what do you recognize on the outer packaging?

22 A The outer packaging has got -- all of our evidence has a
23 lab number, which in this case is L1608718 which corresponds to
24 this case. It also has an item number, this is item number 26
25 and the bar code for this particular item of evidence. Also on

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1 the exterior of the box is in my handwriting one Highpoint
2 model C9 9-millimeter Lugar, and one magazine with cartridges,
3 [REDACTED], which was the address of the camper, and the
4 serial number of the Highpoint.

5 Q Okay. And when you sign it, do you sign and date it
6 the date you put it into evidence?

7 A We initial and date, that's correct.

8 Q And if you see additional signatures and dates, what
9 would that signify?

10 A That would signify on the outer packaging that somebody
11 else has been inside the gun box and that would be for firearms
12 testing or latent prints, DNA, just corresponding to the
13 specific testing that's done on the item of evidence.

14 Q And there's a lot of yellow tape that says SLED, would
15 you have sealed that?

16 A Absolutely, yes.

17 Q Tell us what's inside.

18 A Inside is a handgun with the slide locked back, and I
19 guess the red lock that we put on it not too long ago.

20 MS. HOLLAND: Your Honor --

21 Q I'm sorry, go ahead. So there's a red item on it.
22 Tell us, what purpose does that serve?

23 A That is a gun lock just to ensure that the slide -- the
24 slide is locked back now but just to ensure that the slide
25 doesn't fall forward so that the gun can't be fired.

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1 Q To make sure nobody can fire it here today.

2 A That's correct.

3 Q Okay. And is there anything else in that box?

4 A There is also a heat sealed pouch with the extended
5 magazine and the rounds that were contained inside the extended
6 magazine.

7 Q Essentially you would have taken the rounds out of the
8 magazine and packaged them separately?

9 A When I packaged them the rounds were contained inside the
10 magazine so the gun and the magazine were separate. These
11 would have been taken out during the firearms analysis.

12 MR. EPTING: Your Honor, the State would ask to move
13 State's Exhibit 52 into evidence.

14 MR. NOWIKI: No objection, Your Honor.

15 THE COURT: Sheriff, just to follow protocol, would you
16 come around and doublecheck behind the agent and make sure that
17 it is secured with that lock?

18 (Break in proceedings.)

19 MS. HOLLAND: And since this is a gun we're not going to
20 pass it around so I want you to hold the gun up.

21 THE COURT: It's in without objection.

22 MS. HOLLAND: Thank you, Your Honor.

23 (The gun was received as State's 52.)

24 Q I see the red, is that the lock you're discussing?

25 A That's correct.

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- 1 Q And that would have been placed here today for court.
- 2 A Yes, it was.
- 3 Q And can you hold up the magazine and the rounds?
- 4 A (Witness complies.)
- 5 Q How many rounds are there and what color are they?
- 6 A There are six rounds, all of them are live rounds or
- 7 cartridges as we call them. Five of them have a cartridge case
- 8 or a casing around them and that would be silver in color and
- 9 one of them is gold in color.
- 10 Q And when you say live rounds, they're bullets that have
- 11 not yet been fired.
- 12 A That's correct.
- 13 Q And why are some bullets different colors, cartridges
- 14 why are they different colors?
- 15 A To be honest I don't know the answer to that. I just know
- 16 that there's different types of ammo and some of them have
- 17 different colored cartridge cases and some don't, it just
- 18 depends on the brand of ammo that you buy for a particular
- 19 weapon.
- 20 Q Okay. We want to go back and show you -- and I'm
- 21 sorry, let me take that from you. We want to discuss a
- 22 little bit Officer Taylor's gun. Were you there or did you
- 23 at some point see Officer Taylor's gun when the shooting
- 24 occurred?
- 25 A I did. That was the first thing that I collected when I

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1 arrived on scene.

2 Q We're going to show you what has been put into evidence
3 already as State's Exhibits 4 through 6. This is State's
4 Exhibit 4, it has already been in, can you tell us what this
5 is?

6 A That would be Officer Taylor's duty weapon that we had
7 collected. It was not collected from Officer Taylor himself
8 but from Major Michael Belk with the Rock Hill Police
9 Department. And that's a photograph of the officer's duty
10 weapon inside the gun box.

11 Q And this would be most of the senior staff members at
12 Rock Hill Police Department?

13 A That's correct.

14 Q And you say duty weapon. Is that the weapon provided
15 to him by Rock Hill PD?

16 A Yes, it is.

17 Q What is the purpose of taking a duty weapon from an
18 officer after he has discharged his firearm?

19 A That's our normal procedure whenever an officer has been
20 involved in an officer involved shooting, we take their duty
21 weapon or their weapon they've been issued by their department
22 and it is essentially an item of evidence that goes with us.
23 And we take it back and log it in as an item of evidence at the
24 SLED lab.

25 Q And is the purpose of that to see how many rounds were

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1 fired?

2 A We would normally do a round count on scene to see how
3 many rounds were fired, and then after that the officer's
4 weapon would go to our firearms department for examination.

5 Q Okay. I'll show you State's Exhibit 5. What is this?

6 A That is the magazine from Officer Taylor's weapon.

7 Q And essentially for those that don't understand guns,
8 that's the part that goes into the butt of the gun and holds
9 the bullets?

10 A Yes, that's correct.

11 Q And let's show State's Exhibit 6. Can you tell us how
12 many bullets were missing from Officer Taylor's gun?

13 A That magazine has ten unfired cartridges in it. I think
14 that magazine holds 15, so there would be five missing from the
15 magazine.

16 Q And then one additional if he had one in the chamber?

17 A Yes, and there would be a sixth from the chamber.

18 Q Okay. So essentially the magazine would be full, it
19 would hold 15 bullets, an additional bullet would be inside
20 the chamber making 16 total.

21 A That's correct, yes, ma'am.

22 Q And there were ten left.

23 A Yes.

24 MS. HOLLAND: Beg the Court's indulgence for just one
25 moment.

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1 (Break in proceedings.)

2 MS. HOLLAND: If you could answer any questions that Mr.
3 Nowiki may have.

4 CROSS EXAMINATION

5 BY MR. NOWIKI:

6 Q So you worked for the crime scene unit for SLED?

7 A I did, that's correct.

8 Q But you're not doing that right now, right?

9 A No.

10 Q But at the time of this incident on June 2nd you worked
11 for SLED as a crime scene investigator, correct?

12 A That's correct.

13 Q When did you arrive at the scene?

14 A We arrived on scene at 1:52 a.m. on June 23rd, 2016.

15 Q And are you aware of when this occurred?

16 A I believe it occurred at approximately 11:36 the previous
17 night, so it would be June 22nd.

18 Q So you would arrive approximately two hours, hour and a
19 half after this occurred?

20 A That's correct.

21 Q And you testified that the officers involved in this
22 incident were no longer on the scene.

23 A Correct.

24 Q Do you know when -- was it Belk who you're saying that
25 Taylor gave the gun to?

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- 1 A Major Michael Belk.
- 2 Q And do you know when that was, the timing?
- 3 A I have in my notes that Major Belk had taken possession of .
- 4 Officer Taylor's weapon at approximately 11:51 p.m.
- 5 Q Do you know where he got it from, like as far as the
- 6 location where he got it?
- 7 A I don't know specifically but I believe it to have been
- 8 from actually Officer Taylor.
- 9 Q Was that at the Rock Hill Police Department or was that
- 10 on scene?
- 11 A That I don't know.
- 12 Q Do you know anybody else who had any contact or touched
- 13 that gun of Officer Taylor?
- 14 A Not to my knowledge, no.
- 15 Q Was there anything that you have that is written like a
- 16 chain of custody for Officer Taylor's weapon?
- 17 A I do, I have a chain of custody for that specific weapon.
- 18 Q And does it indicate who had touched the weapon?
- 19 A The chain of the custody wouldn't, it was just signed over
- 20 from Major Belk to myself.
- 21 Q And then how many cartridges were there did you find?
- 22 A Do you mean inside --
- 23 Q I mean on the ground that were marked?
- 24 A Oh, seven cartridge cases.
- 25 Q Seven cartridge casings. And what were the casings

JAMIE JOHNSON - CROSS

1 that you found, I mean what caliber?

2 A Six of those were a Smith and Wesson .40 caliber and one
3 of those was a 9-millimeter Lugar.

4 Q Lugar, right?

5 A That's correct, Lugar.

6 Q Now, I know you had mentioned that the clothing that
7 you found had a bad odor, but was it ever tested as far as,
8 you know, the blood for DNA?

9 A I know that initially we had put -- let me just
10 doublecheck. Initially we had sent those to our evidence
11 processing section for them to test the suspected blood stains.

12 Q So do you know if there was any report that came back?

13 A There was a report and I believe -- I don't believe
14 everything that we sent to evidence processing ended up being
15 tested, that happened after evidence is out of my hands, but
16 there is an evidence processing DNA report.

17 Q Do you know what any conclusions were?

18 A I don't, no.

19 Q All right. Then you also went into the red sedan,
20 correct?

21 A That's correct.

22 Q And you found I guess the two envelopes that had Mr.
23 Perry's name on it?

24 A Yes.

25 Q Did you find any other -- I guess anything else as far

JAMIE JOHNSON - CROSS

1 as a driver's license, ID cards or any insurance cards,
2 anything like that in the vehicle?

3 A Pertaining to him or to any other individuals?

4 Q To anybody.

5 A We did. We found some other items inside the vehicle with
6 other names on them.

7 Q As far as Mr. Perry being the owner of the vehicle, is
8 he the owner of the vehicle?

9 A I don't know. I think at the time we believed that he was
10 the owner of the vehicle.

11 Q But we're not sure if he is or not.

12 A I didn't know at the time, no.

13 Q And you did I guess the black powder in the vehicle to
14 try to get fingerprints?

15 A That's correct.

16 Q Were there any fingerprints found?

17 A There was one area on the exterior front driver's side
18 above the door handle that a latent lift was taken.

19 Q Any results on that?

20 A That I believe our latent print unit had looked at and was
21 not suitable to be used.

22 Q And the gun that you found, that's the 9-millimeter
23 Lugar?

24 A From the camper?

25 Q From the camper, I'm sorry.

JAMIE JOHNSON - CROSS

1 A Yes, from the camper.

2 Q Was that ever tested for fingerprints?

3 A The initial request put on that were to be sent to our
4 latent print unit where they would swab it for DNA as well,
5 process it for latent prints before it would be sent to our
6 firearms department.

7 Q Any results coming back from that?

8 A I know there is a report but I'm not aware of the results
9 of that report.

10 Q All right. I want to go back to Officer Taylor's
11 weapon. It appears that from the -- the one with the
12 cartridge on officer -- I can't remember the exhibit number.
13 Okay. This is State's Exhibit 4, that is --

14 A That's Officer Taylor's.

15 Q -- Officer Taylor's?

16 A That's correct.

17 Q And then I believe this is State's Exhibit 5 and 6.
18 And that is Officer Taylor's magazine?

19 A That's correct.

20 Q Okay. So would you agree that he's missing one, two,
21 three, four, five, right?

22 A Yes.

23 Q And then he's missing the top one, right?

24 A I don't know -- this is why we always take the actual
25 cartridge out of the magazine as it is difficult to tell by

JAMIE JOHNSON - CROSS

1 looking just at the magazine and the numbers, so when we
2 actually took them out of the magazine there are ten cartridges
3 inside of the magazine.

4 Q Okay. But for this sake -- but you would agree that
5 there's no bullet in there.

6 A Well, I can't say that by looking at the picture. Like I
7 said, this is why we take them out to look at them and actually
8 count, because sometimes looking at the magazine is deceptive.

9 Q But you can tell that the ones on the bottom are
10 missing.

11 A It looks that way from the picture, yes.

12 Q Okay. But you can't tell if that's missing or not?

13 A Well, it makes sense for the bottom ones to be missing
14 since they are numbers 11 through 15, but the one that you're
15 referring to is number five.

16 Q Right. And then there would have been one in the
17 cartridge, I mean, one in the weapon, right?

18 A Inside the chamber, yes.

19 Q Well, there was a report done on the weapon that was
20 found in the camper. I mean, you had fingerprints done on
21 all of that?

22 A I believe there's a latent print report.

23 Q But we don't know what results or anything like that
24 from that.

25 A I'm not aware of the results from that, no.

JAMIE JOHNSON - REDIRECT

1 Q You're not aware of that. Okay. Now, going back to
2 the scene where this happened, the locations of the shell
3 casings, does that indicate based on the placement, does
4 that indicate there was a chase possibility?

5 A That's not something that I could tell from -- or that
6 anybody could really --

7 Q That's not something that you deal with?

8 A No.

9 Q You just deal with collecting and analyzing and things
10 like that?

11 A Correct.

12 Q Taking photographs?

13 A Yes.

14 MR. NOWIKI: One moment, Your Honor.

15 (Break in proceedings.)

16 MR. NOWIKI: No other questions.

17 MS. HOLLAND: Your Honor, I just have a couple of
18 followups.

19 REDIRECT EXAMINATION

20 BY MS. HOLLAND:

21 Q Let me show you State's Exhibit 6, I believe Mr. Nowiki
22 was pointing at. That's the magazine, I believe. Was he
23 referring to the holes?

24 A He was, yes.

25 Q And the holes allow you to see bullets.

JAMIE JOHNSON - REDIRECT

1 A Yes.

2 Q But at times is it difficult to see how many bullets
3 are left using only those holes?

4 A Yes, it is. There have been numerous scenes that I had
5 been to where looking at the hotels and the cartridges that we
6 ended up dumping out of the magazine are different, which is
7 why we always do a round count by taking the cartridges out of
8 the magazine and physically counting them.

9 Q And did you do that with Officer Taylor's weapon?

10 A Yes, we did.

11 Q And your roles as CSI, crime scenes investigation, is
12 to collect evidence. Do you actually test any evidence?

13 A We do not test the evidence, no.

14 Q So you would not know what happens to the evidence
15 after you collect it and turn it into evidence.

16 A No.

17 MS. HOLLAND: Thank you very much.

18 MR. NOWIKI: No other questions.

19 THE COURT: Step down, thank you.

20 MS. HOLLAND: We would ask that she be released from her
21 subpoena.

22 MR. NOWIKI: No objection.

23 THE COURT: Thank you, you're excused.

24 MR. EPTING: Please the Court, Your Honor? The next
25 witness for the State is Chad Smith.

JAMIE JOHNSON - REDIRECT

1 The witness, CHAD SMITH, was first duly sworn and
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. EPTING:

5 Q Good morning.

6 A Good morning.

7 Q Would you please state your full name for the record?

8 A It's Chad Smith, S-m-i-t-h.

9 Q And how are you employed Mr. Smith?

10 A I'm employed with the South Carolina Law Enforcement
11 Division, which is also known as SLED. Specifically I work in
12 the firearms department at SLED's forensic services laboratory
13 in Columbia.

14 Q And what duties does your occupation carry for SLED,
15 what are your typical day to day?

16 A My responsibilities include the examination of firearms,
17 ammunition, ammunition components. I also examine tool marks
18 made by tools such as bolt cutters, plyers, screw drivers,
19 things like that. I also do serial number restorations and
20 distance determination for shot pellets of shotguns.

21 Q Could you tell the jury what if any training or
22 education you've had to enable you to make those types of
23 examinations?

24 A I attended Clemson University where I earned a Bachelor of
25 Science Degree in Biological Sciences. Then I came on board

CHAD SMITH - DIRECT

1 with SLED in 2008 and began my training as a firearms examiner.
2 The training program lasts between three to five years, it's
3 supervised by the court qualified examiners of the firearms
4 department, it's an apprenticeship style program which we work
5 under the firearms examiners. It involves extensive reading,
6 studying, there's a lot of tests and practical exams given
7 during that period. I also attended various seminars and
8 classes on the subject. I was able to tour several firearm
9 manufacturing companies, and at the end of my training program
10 I received a comprehensive multipart examination which I
11 successfully passed and began to receive my own case work.

12 Q Approximately how many firearms examinations have you
13 made during your course of your career at SLED or otherwise?

14 A Individual examination would probably be in the thousands.

15 Q Have you ever been qualified as an expert in court
16 before?

17 A Yes, sir.

18 Q Approximately how many times?

19 A Thirty-six times.

20 MR. EPTING: Your Honor, based upon his training, his
21 education and his work experience we would seek to have this
22 expert qualified as an expert firearms and tool mark
23 examinations and comparisons.

24 MR. NOWIKI: No objection.

25 THE COURT: So qualified without objection.

CHAD SMITH - DIRECT

1 Q Can you briefly, if you can, Agent Smith, walk the jury
2 through how you go about examining firearms and making a
3 match from a suspected object to a suspected firearm?

4 A Well, the majority of what I do on a day to day basis is
5 try to determine if a specific ammunition component, such as a
6 bullet or cartridge case, is shot by a specific firearm. How
7 we're able to do this is during the manufacturing process of a
8 firearm the various parts that are being produced, the tools
9 and machinery that produce those parts, make microscopic marks
10 on those parts, it's just the tool mark wearing and interacting
11 with those parts as they're being produced. So when a firearm
12 is assembled and ready to be shipped out and a person buys it
13 and fires a cartridge in that firearm, the parts that come in
14 contact with either the cartridge case or the bullet therefore
15 impart those microscopic marks onto the bullet or a cartridge
16 case. So what we do is we can take the evidence, whether it be
17 a cartridge case or a bullet, and if we have a suspected
18 firearm we test fire that firearm so we're able to get -- or
19 test bullets and cartridge cases. We have a very expensive
20 piece of equipment called a comparison microscope, and it's
21 basically if you can imagine two microscopes, it's connected by
22 an optical bridge system. So we can manipulate each of those
23 samples simultaneously and try to match those marks, those
24 microscopic tool marks to try to determine if a bullet or
25 cartridge case were fired by that particular gun.

CHAD SMITH - DIRECT

1 Q If you would, briefly describe for this jury what
2 happens inside a handgun when the bullet is fired and how
3 those marks that you described to them might be made.

4 A Well, in a semiautomatic pistol you've got a magazine
5 which holds the cartridges. A cartridge is the unfired round
6 of ammunition and it's made up of several components. You've
7 got the cartridge case itself, which is the cylindrical piece,
8 and that's basically the container for all the other
9 components, it holds the gun powder, it holds the projectile.
10 In the bottom of that cartridge case you've got a primer. And
11 so a semiautomatic pistol you load the magazine with
12 cartridges, insert it into the pistol, and then you chamber a
13 round into the barrel of the gun, and when you press the
14 trigger the firing pin ignites that primer on the bottom of the
15 cartridge case which then causes the gun powder to basically
16 explode and the gas pressure forces the bullet down the barrel
17 and out towards the target. At the same time the empty
18 cartridge case is being pushed back against what's known as the
19 slide, which is the reciprocating top portion of the
20 semiautomatic pistol, it imparts marks onto the cartridge case
21 itself. So that's basically what happens, how a gun is being
22 marked and the fashion.

23 Q These marks that are being made by the firing process,
24 are they unique to each weapon that's fired?

25 A A lot of those marks can be individual in nature. During

CHAD SMITH - DIRECT

1 our training we look at thousands of different cartridge cases
2 and bullets known to be fired by the same gun and then against
3 cartridge cases and bullets that were fired by different guns
4 so we can try to look at similarities and differences so we can
5 try to exclude certain marks.

6 MR. EPTING: May I approach the witness, Your Honor?

7 Q Agent, I'm going to hand you what's been marked and
8 entered into evidence as State's 52. If you would, please
9 look at State's 52.

10 A Ladies and gentlemen, if this hasn't been said already,
11 this firearm is safe to handle. It has a cable trigger
12 guard -- not a trigger guard, but a cable going through the
13 barrel and out through the magazine and it cannot be loaded
14 with live ammunition.

15 Q Did you perform an examination or test on the items
16 contained within the box marked State's 52?

17 A Yes, sir. Fifty-two contains not only the firearm as well
18 as a magazine for the firearm that you put the cartridges in
19 and six unfired cartridges.

20 Q And did you compare -- well, let me ask you this first,
21 based upon your examination and the tests that you performed
22 on the gun in State's 52, were you presented with additional
23 objects to assist you or aide you in your comparison?

24 A Yes, sir. I received some other cartridge cases, fired
25 cartridge cases as well as several fired bullets along with

CHAD SMITH - DIRECT

1 another pistol, a different caliber from this gun, and they
2 were compared.

3 Q Okay. Let's go to the firearms. State's 52, the
4 9-millimeter, that was the one firearm you were provided; is
5 that correct?

6 A Yes, sir.

7 Q What was the caliber of the other firearm that you were
8 provided?

9 A It was a .40 Smith and Wesson caliber Glock.

10 Q And were you provided with cartridge casings or shells,
11 spent casings without projectile of the bullet inside them
12 that had already been fired?

13 A Yes, sir.

14 Q And did they request that you make a comparison using
15 test rounds to compare or exclude the .40 caliber pistol on
16 the one hand or the 9-millimeter pistol on the other hand?

17 A Correct.

18 Q Did you perform tests to come to that conclusion?

19 A Yes, sir.

20 Q And that test again just for clarity sake?

21 A Well, in the process of doing an examination, again, we
22 would test fire the firearm to collect bullets and cartridge
23 cases known to have been fired by a particular gun, and then we
24 use the comparison microscope to compare our tests to the
25 unknown, to the submitted firearm or submitted cartridge cases

CHAD SMITH - DIRECT

1 and bullets from the evidence.

2 Q Just so I'm clear you test fire live rounds using that
3 9-millimeter; is that correct?

4 A Yes, sir.

5 Q And then you compare that to the questioned spent
6 cartridge casings that you have been provided; is that
7 correct?

8 A Right.

9 Q And did you conduct that in this case?

10 A Yes, sir.

11 Q And is that using the expensive microscope that you
12 mentioned earlier?

13 A That's correct.

14 Q Did you come to a conclusion on whether the cartridge
15 case, the questioned case, was fired by the 9-millimeter in
16 State's 52?

17 A Yes, sir.

18 Q What was your conclusion?

19 A The fired 9-millimeter cartridge case that was submitted
20 was determined to be fired by this particular firearm.

21 Q And that was based upon the tool mark?

22 A Right, the microscopic comparisons of those tool marks.

23 Q Did you perform a similar examination with the .40
24 caliber pistol and the .40 caliber shells that were provided
25 to you?

CHAD SMITH - DIRECT

1 A Yes, sir.

2 Q Did you come to the conclusion whether those shells
3 were fired by that .40 caliber pistol submitted?

4 A I did. Those fired cartridge were fired by that
5 particular firearm.

6 Q Did you memorialize or annotate your conclusions into
7 some type of report?

8 A Yes, sir, I issued a formal report.

9 MR. EPTING: Beg the Court's indulgence.

10 (Break in proceedings.)

11 MR. EPTING: May I approach the witness, Your Honor?

12 THE COURT: Yes.

13 MR. EPTING: For the record I'm handing Agent Smith what
14 has been marked as State's Exhibit 51.

15 Q Do you recognize State's Exhibit 51?

16 A I'm just making sure that's a copy of this report. Yes.
17 This is a copy of my report that was issued.

18 MR. EPTING: Beg the Court's indulgence.

19 (Break in proceedings.)

20 Q And on your report do you indicate how many shells were
21 collected at the .40 caliber?

22 A Yes, sir. There were six .40 Smith and Wesson caliber
23 cartridge cases that were submitted.

24 Q And how many 9-millimeter?

25 A One.

CHAD SMITH - CROSS

1 Q Is that -- is State's -- is the report, I believe it's
2 State's 51, is that a fair and accurate copy of the report
3 that you made in reference to this case?

4 A Yes, sir.

5 MR. EPTING: Your Honor, at this time we would seek to
6 enter State's Exhibit 51 into evidence.

7 MR. NOWIKI: No objection.

8 THE COURT: In without objection.

9 (The report was received as State's 51.)

10 MR. EPTING: Agent, that's all of the questions I have for
11 you at this time, please any questions that Mr. Nowiki may have
12 for you, please.

13 CROSS EXAMINATION

14 BY MR. NOWIKI:

15 Q SLED Agent Smith, so you've been testing firearms for
16 how long?

17 A I've been with SLED for nine years in that capability.

18 Q And so you have examined according to your testimony
19 about 1,000?

20 A Well, when I consider each examination looking at
21 different areas, that's considered an individual examination.
22 So a cartridge casing or bullet could have multiple
23 examinations per piece of evidence.

24 Q As far as the 9-millimeter, and so you do -- what do
25 you do -- do you test fire it first?

CHAD SMITH - CROSS

1 A As far as --

2 Q As far as the examination goes, what's the first steps
3 you do?

4 A Well, the first step when we receive evidence would be to
5 photograph everything and do an inventory to make sure
6 everything that was submitted was actually submitted according
7 to the submission paperwork. After photographing all of the
8 evidence then we start going into the examinations of the
9 actual evidence itself, but to actually do a comparison we
10 would have to test fire the firearm and compare it to the fired
11 evidence.

12 Q And how many shots did you fire from the 9-millimeter?

13 A Four test fires.

14 Q And they all matched --

15 A Yes, sir.

16 Q -- to the 9-millimeter shell casings that you had
17 received in that --

18 A Well, we compare tests to each other first to look for the
19 similarities of the markings, then we compare those test fires
20 to the actual submitted evidence. So in my examinations we
21 just kind of note which test fire we used to make that actual
22 examination. But multiple tests could actually match, some may
23 look better than others.

24 Q So in this particular one that 9-millimeter does match.

25 A Correct.

CHAD SMITH - CROSS

1 Q And that matched -- and you determined that by like
2 inside where, the barrel or --

3 A No. For the cartridge case, the rear of the cartridge
4 case comes in contact with the breach face area, we're talking
5 about reciprocating part, the slide of the firearm itself. So
6 this here is the slide. When you fire a cartridge the rearward
7 pressure on the cartridge case with the bullet going out the
8 barrel, that gas pressure forces the slide to the rear and so
9 the breach face is in here. The breach face has a hole in it
10 where the firing pin protrudes, that's called the firing pin
11 aperture, so that imparts marks on the cartridge case when it's
12 being fired.

13 Q Okay. Would you be able to determine if a weapon had
14 jammed?

15 A Not unless there's a specific request to determine -- like
16 if there was a certain circumstance that the firearm was
17 malfunctioned, if that's some sort of claim. Other than just
18 test firing the gun during my testing, if it doesn't jam then
19 it's found to be in working order.

20 Q Okay. I want to go back to the 9-millimeter. Do you
21 have the report, is it up here? It's in evidence. Is that
22 the exhibit? And you have a copy, right?

23 A Yes, sir.

24 Q Item 26, it has a one Highpoint model --

25 A Right.

CHAD SMITH - CROSS.

1 Q -- semiautomatic pistol. Where is that -- why was
2 that -- was that tested?

3 A That's this. And it's listed on the slide the
4 manufacturer's information, the serial number is listed down
5 here.

6 Q Okay. And then you examined a fired bullet from --
7 without or -- had -- well, on the report item 31 says [REDACTED]
8 Ebenezer, and then item 33, one fired bullet from Camden
9 Avenue, correct?

10 A Correct.

11 Q And you determined based on your testing that those
12 came from the Glock --

13 A Correct.

14 Q -- that I'm assuming would be from Officer Taylor's
15 weapon, correct?

16 A Correct.

17 MR. NOWIKI: No further questions.

18 MR. EPTING: Nothing more from the State, Your Honor, of
19 this witness.

20 THE COURT: You may step down, thank you, sir. We'll take
21 a brief recess, take ten minutes.

22 (The jury left the courtroom and a break was taken.)

23 MR. EPTING: Chad Smith was under subpoena, I assume
24 there's no objection to letting him go.

25 MR. NOWIKI: No objection, Your Honor.

CHAD SMITH - CROSS

1 THE COURT: Thank you. I apologize for not asking.

2 MR. EPTING: Your Honor, the State's final witness will be
3 Melissa Wallace from SLED.

4 The witness, MELISSA WALLACE, was first sworn and
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. EPTING:

8 Q Would you please state your full name for the record?

9 A Melissa Skipper Wallace.

10 Q How are you employed?

11 A I'm employed by the South Carolina Law Enforcement
12 Division commonly known as SLED.

13 Q How long have you been with SLED?

14 A A little over 12 years.

15 Q And what is your rank?

16 A Special Agent.

17 Q And what are your duties?

18 A My duties within the -- I'm assigned to the Piedmont
19 Region within investigative services. We investigate all types
20 of crimes when requested by a local agency, generally it's some
21 type of conflict case, a lot of times it is an officer involved
22 shooting.

23 Q And are you the case agent on this case on SLED's part
24 of things?

25 A Yes, sir.

MELISSA WALLACE - DIRECT

1 Q Would it be fair to say if SLED did something on this
2 case if you were not directly involved you had your hands in
3 it directing people to do something at your direction?

4 A Yes, sir.

5 Q If you would -- and this is a sprawling case, is it
6 not?

7 A Yes.

8 Q Could you walk the jury through as a general timeline
9 from inception of your involvement in this, and SLED's
10 involvement in this, up until the defendant's arrest?

11 A Yes, sir. I was contacted by Captain Stinson with the
12 Rock Hill Police Department, it was close to midnight on the
13 22nd of June of last year. He advised me that they had been
14 involved in an officer involved shooting, he requested SLED's
15 services. I respond to the scene, I got there around 1:00 a.m.
16 on the 23rd. I met with some of the senior police officers
17 with Rock Hill Police Department and they updated me on the
18 status of the case. They stated that Officer Taylor had been
19 involved in a shooting --

20 MR. NOWIKI: Your Honor, I'll object, that's hearsay,
21 she's saying what somebody else is saying.

22 THE COURT: Yes. But we can allow the initiative into an
23 investigation.

24 MR. EPTING: We would argue it's to explain what steps she
25 took next.

MELISSA WALLACE - DIRECT

1 THE COURT: Right, go on. Try to avoid the hearsay.

2 MR. EPTING: Thank you, Your Honor.

3 A I learned Officer Taylor, who was a trainee at the time,
4 had been involved in a shooting. The other individual, the
5 civilian that was involved, had not been located at that point
6 and fled from the scene. Attempts were being made to locate
7 the subject. K-9 was being run in an attempt to locate the
8 subject who ran from the red Nissan. I obtained a search
9 warrant for the red Nissan so that when our crime scene arrived
10 they could execute a search of that vehicle. I later spoke
11 with Officer Taylor, Officer Bailey was interviewed as well.
12 One of the things that we noticed inside the red Nissan were
13 two beer bottles, they were aluminum can Bud Light beer
14 bottles, they had condensation on them and it made us suspect
15 that they were either recently purchased or had just come out
16 of some type of cold container. So the following morning
17 efforts were made to locate possibly a video inside a
18 convenience store to maybe identify the driver of the vehicle.

19 Q Was items recovered from the vehicle that indicated a
20 possible identity to the person who fled?

21 A There was paperwork found inside the car addressed to Mr.
22 Perry. There was a phone that was located inside the car as
23 well. The vehicle was not registered to Mr. Perry, it was
24 registered to somebody else.

25 Q Okay. And as a result of noticing those beers that

MELISSA WALLACE - DIRECT

1 were cold and condensation and all of that stuff, did law
2 enforcement attempt to get a video of nearby gas stations?

3 A They did.

4 Q Was a video obtained that was around that time?

5 A There was a video recovered from the Citgo that is at the
6 intersection of Cherry and Oakland.

7 Q And could you tell from the time stamp approximately
8 how close or far in time that was from when this incident
9 happened?

10 A It appeared to be relatively close in time. The time
11 stamp on the video was an hour off, so the recorded time on the
12 camera said something like 22:30 hours when Mr. Perry came to
13 the store and purchased the beer, and the actual time that the
14 stop was somewhere around 23:36 hours which is military time,
15 that would be 11:36 p.m.

16 Q And did you review a copy of that video?

17 A I did.

18 MR. EPTING: Beg the Court's indulgence.

19 (Break in proceedings.)

20 MR. EPTING: May I approach the witness, Your Honor?

21 THE COURT: Yes.

22 MR. EPTING: I am handing Agent Wallace what's been marked
23 as State's Exhibit 21. Agent, do you recognize State's Exhibit
24 21?

25 A I do.

MELISSA WALLACE - DIRECT

1 Q What is it?

2 A It is a DVD copy of the video from the Citgo.

3 Q Is it a fair and accurate depiction?

4 A It is.

5 MR. EPTING: Your Honor, at this time the State would seek
6 to enter State's 21 into evidence and publish.

7 MR. NOWIKI: No objection, Your Honor.

8 THE COURT: In without objection.

9 (The DVD was received as State's 21.)

10 Q While these are loading up what are looking for on
11 this?

12 A We are looking for a subject who matched the description
13 seen on the in-car camera of the driver fleeing the vehicle,
14 also of a subject who was purchasing those two beer bottles
15 which were the aluminum can Bud Lights.

16 Q Did you provide us of time stamps of the relevant
17 portions?

18 A Yes.

19 Q And what location is this -- you said it was a Citgo,
20 correct?

21 A That's a Citgo that's at the Cherry and Oakland, it sits
22 kind of opposite Winthrop's campus. This camera angle is
23 behind the register inside the store, and it actually captures
24 part of the store itself.

25 Q And for those not familiar with Rock Hill, how close is

MELISSA WALLACE - DIRECT

1 this to where the incident occurred?

2 A I think it's two blocks. This is actually the location
3 where Officer Taylor saw the improper turn.

4 Q What are we looking at here, Agent?

5 A Right there you see a gentleman with a white T-shirt, ball
6 cap on. He has placed the two aluminum Bud Light cans up on
7 the counter for purchase. And the time stamp is June 22nd,
8 2016, 22:35 hours, which again is the hour that's off on the
9 clock.

10 Q And again, your testimony was that the two blue Bud
11 Light bottles were found condensation inside the car?

12 A That's correct.

13 Q Is there another angle relevant to this case?

14 A There is. There's a camera angle outside the store.

15 Q And did you also provide us with time stamps for that?

16 A I did.

17 Q So at this point y'all have gotten the name from the
18 mail, a physical description, clothing; is that correct?

19 A Clothing description.

20 Q What are we looking for here?

21 A At the very beginning there was a glimpse of a red small
22 car pulling into the lot. You just saw a gentleman walk past
23 in front of the camera, he was wearing the same clothes as the
24 gentleman who purchased the beer at the counter. In several
25 minutes you will see him exit and go back to the red car and

MELISSA WALLACE - DIRECT

1 you will see the red car go across the screen leaving the
2 parking lot, and it's consistent with that same red Nissan
3 Sentra. There is the same gentleman, you can see he's leaving
4 the store.

5 Q What direction was that car ultimately traveling?

6 A It pulls towards Cherry Road. The road that you can see
7 directly in front of the gas pumps is Oakland.

8 Q So at this point in your investigation you feel that
9 you have a suspect with a name?

10 A Yes, sir.

11 Q And a physical description. You mentioned dogs were
12 called out to the scene, did those dogs track anywhere?

13 A They tracked somewhere over on Camden, they ultimately
14 were unsuccessful in locating Mr. Perry.

15 Q Did you obtain any further leads as to Mr. Mr. Perry's
16 whereabouts after he fled the scene of the shooting?

17 A I did.

18 Q What were those?

19 A That he was picked up by Mr. Farmer, carried to Mr.
20 Farmer's house, cleaned up and then carried down to the camper
21 in Fairfield County.

22 Q And again, who was Mr. Farmer?

23 A Mr. Farmer was somewhat his supervisor, his boss for his
24 job.

25 Q Okay. And your information was that the defendant went

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1 to that house, cleaned himself up and then went elsewhere?

2 A That's correct.

3 Q Did you learn where that elsewhere was?

4 A It was [REDACTED] in Winnsboro, which is in Fairfield
5 County.

6 Q Did you figure out who owned that property, or who
7 leased it?

8 A Yes, it was leased by Mr. Farmer and his wife.

9 Q And was there any property on there, a house or any
10 other property where a person can stay?

11 A It was just the camper.

12 Q And was that a hunting camper?

13 A It was pull-behind camper.

14 Q What step in your investigation did you take next now
15 that you had a lead on the defendant's whereabouts in
16 Fairfield?

17 A We contacted our fugitive team at SLED, they got together
18 our SWAT team, we went out to the location in Fairfield County
19 and apprehended Mr. Perry.

20 Q Could you describe how he was apprehended to the jury?

21 A I'm sorry?

22 Q Could you describe -- were you present when he was
23 apprehended?

24 A I was.

25 Q Can you describe how he was apprehended to the jury?

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1 A As we approached the camper Mr. Perry actually came out of
2 the door and sat down at a chair, he said he didn't want to be
3 shot again.

4 Q And was he taken into custody?

5 A He was.

6 Q Directly from the scene or otherwise?

7 A He was taken in custody there at the scene.

8 Q Okay. And then where he was he taken?

9 A We had an ambulance standing by because we believed that
10 he'd been shot at that point, so he was transported in the
11 ambulance to Richland Memorial Hospital in Columbia, South
12 Carolina.

13 Q Was he left alone in the ambulance as he drove to the
14 hospital?

15 A No. I rode with him and another SLED agent rode with him.

16 Q During that time did you speak with him at all?

17 A I did.

18 Q Prior to speaking with him, did you read him his
19 Miranda rights?

20 A Yes, I did.

21 Q And I believe we went over this but just for redundancy
22 sake I guess, what are Miranda rights?

23 A It's basically the advisement letting them know that
24 they're entitled to an attorney and they don't have to speak
25 with us if they don't choose to.

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1 Q Did you read them orally and have him respond or did
2 you do them some other way?

3 A We have a form, I read the form to Mr. Perry as he read
4 along.

5 Q And did he sign that form?

6 A He did.

7 Q What, if anything, did -- well, let me ask you this,
8 did you identify yourself as a police officer?

9 A I did.

10 Q Did you make any threats or promises to get him to
11 speak to you about the case?

12 A No, I didn't.

13 Q Approximately how long did you speak to him total with
14 the ambulance ride to the hospital?

15 A The ambulance ride to the hospital was around 20 minutes,
16 I continued speaking with him. Once we got to the hospital --
17 and he was at the hospital for about an hour and I was there
18 the entire time and we spoke the entire time.

19 Q He was at the hospital for an hour?

20 A Around an hour, yes, sir.

21 Q And then was he kept there overnight or what happened?

22 A He was released.

23 Q So he was treated for an hour and then released?

24 A That's correct.

25 Q While you were speaking with him, does he appear to

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1 understand your questions?

2 A He did.

3 Q Does he ever ask to not speak with you?

4 A No, sir.

5 Q Are the answers he's giving cognizant and
6 understandable?

7 A Yes, sir.

8 Q Tell this jury what he told you.

9 A He told me that he was involved in the shooting with the
10 police, that he had the gun, he ran because he had some unpaid
11 warrants. He was jumping what he called the gate and the gun
12 accidentally went off while he was trying to get it out of his
13 pants.

14 Q Did he describe to you how that gun went off or did he
15 just say?

16 A He described it as well as mannerism to corroborate that
17 description.

18 MR. EPTING: Your Honor, could the witness come off the
19 stand and show the mannerisms that the defendant made in his
20 conversation with her?

21 THE COURT: Yes.

22 Q If you could stand up. How did he say the gun went
23 off?

24 A He said as he was pulling it out of his pants, my finger
25 being the barrel and the thumb being the back strap of the gun,

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1 he said as he was pulling it out he had it like this when it
2 went off, in front of his waist pointed towards the left-hand
3 side of his body.

4 Q And where did he say that?

5 A As he was jumping the gate. I clarified what he meant by
6 the gate and that was the fence that separated the parking lot
7 and the house next door.

8 Q The parking lot and the house next door?

9 A That's correct.

10 Q Was that a chain linked fence?

11 A It was.

12 Q And he indicated -- did he indicate whether his back
13 was to officers or whether he was facing the officers?

14 A He said his back was to the officers.

15 Q Did you ask him questions about whether the officers
16 might have or have not seen the gun flash?

17 A I did. He said that he didn't think that it was even
18 possible for them to have seen a muzzle flash.

19 Q Did he describe the gun that he used that he said
20 accidentally went off?

21 A He did.

22 Q How did he describe that gun?

23 A Initially he described it as a .32 automatic black and
24 silver in color, he later said that it was a .38.

25 Q Were either of those guns recovered from the scene or

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1 any of the scenes?

2 A No, sir.

3 Q Were either of those cartridge cases recovered from the
4 scene?

5 A No, sir.

6 Q What else did he say to you?

7 A There was a photograph of the suspected handgun from his
8 phone, I asked him if that was the gun from his phone that he
9 had during the incident, he said no, it wasn't because he
10 described that as a Highpoint. He said that he ran across
11 Camden and he threw the gun in a field over near the concrete
12 plant, which is sort of off Richland Avenue, the next street
13 over from Camden Avenue.

14 Q If I can I would like to publish what's already entered,
15 into evidence as State's Exhibit 1. Do you recognize
16 State's Exhibit 1?

17 A Yes, I do.

18 Q And is that a picture that you showed him that he
19 denied was the gun used in this incident?

20 A I did not show him the picture, I described it to him as
21 being the picture from his phone.

22 Q And you said this picture is from his phone?

23 A That's correct.

24 Q Did you have involvement in recovering that picture
25 from his phone?

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1 A I did.

2 Q Tell the jury about that.

3 A The phone was left in the car, we recovered it from the
4 car. I later obtained a search warrant and we downloaded the
5 phone, which is essentially making a copy of all of the
6 contents of everything that's on the phone, and this was one of
7 the photographs that was on that phone.

8 Q So he described throwing what gun he had, which he
9 described to you as what kind of gun?

10 A A black and silver .38.

11 Q And he described throwing that where?

12 A In a field sort of in front of the concrete plant, which
13 is on Richland Avenue.

14 Q And did you send people out to try to recover this gun
15 if it were actually there?

16 A I did.

17 Q And how was that accomplished?

18 A I contacted Special Agent Owens with SLED, he stayed back
19 in Rock Hill and was doing some of the work up here, I
20 contacted him and advised him what Mr. Perry had told me so
21 that he could go to that area and look for that weapon. He
22 went to the area, called me back and stated that he couldn't
23 find it. I pulled up a map of the area on Google and had Mr.
24 Perry pinpoint the location where he said he threw that weapon
25 and left a little marker on that map. I took a screen shot of

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1 that map and forwarded that to Agent Owens. He continued to
2 look at the gun and called me back and told me that he still
3 could not find it. At that point we contacted each other on
4 our I-phones, which are SLED issued phones via Face Time, which
5 is a video communication app on the I-phone, and we actually
6 had Mr. Perry direct us to where he said he threw that weapon.

7 Q Was anything ever recovered from the field he directed
8 you to?

9 A No.

10 Q How long did y'all search in that field?

11 A I don't know.

12 Q Okay. Did Mr. Perry continue to describe his actions
13 and where he went from the scene that night?

14 A He did.

15 Q What did he tell you?

16 A He told me that after he threw the gun in the field there
17 near Richland Avenue that he proceeded through Boyd Hill, which
18 is neighborhood adjoining that street, over to Constitution to
19 a friend's house where he changed clothes and later
20 contacted -- or approached some man walking on Constitution,
21 borrowed his phone and called Mr. Farmer to come get him.

22 Q Did he tell you where he went from there?

23 A He said he went to Mr. Farmer's and cleaned up and Mr.
24 Farmer took him to the camper down in Fairfield County.

25 Q Okay. Did he tell you how long he planned to stay in

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1 the camper down in Fairfield?

2 A He said that he had asked them to come back on Sunday and
3 pick him up so that he could get his head right and recuperate
4 a little bit and turn himself in.

5 Q Anything else he told you about this case during the
6 course of the conversation from the ambulance to his hour in
7 the hospital before he's released to law enforcement
8 custody?

9 A Yes. He ultimately told me that the reason he ran is
10 because he had that gun, he said he knew he couldn't get caught
11 with a gun.

12 Q And was there any other conversation on that day
13 between you and him?

14 A No, sir.

15 Q Did you subsequently speak to him on a later date?

16 A I did.

17 Q And approximately how many days after?

18 A The initial interview was on June 24th, I spoke with him
19 again on July 13th, so two and a half weeks, maybe, to three
20 weeks.

21 Q Did you read him his Miranda rights prior to speaking
22 with him?

23 A I did.

24 Q Did he appear to understand those rights?

25 A He did.

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1 Q Did you read them from a card orally or form like
2 before?

3 A It was a duplicate copy of the same form, I read it to him
4 as he read it at the same time.

5 Q And did he agree to speak with you?

6 A He did.

7 Q And what, if anything, did he say to you during that
8 conversation?

9 A He agreed to provide a DNA standard, and he also said that
10 the gun that was used during the incident was the gun from the
11 camper, and that the barrel extension was the part that he had
12 thrown in the field on Richland Avenue.

13 Q But that barrel extender, was it ever recovered?

14 A No, sir.

15 Q But he admitted that that gun on the photo that was
16 recovered from the camper was the gun he used?

17 A That's correct.

18 Q You stated he provided a DNA sample; is that correct?

19 A That's correct.

20 Q Were you in the courtroom when Mr. Nowiki asked other
21 witnesses about reports being sent off?

22 A Yes.

23 Q The clothing that was recovered from the Farmer's
24 house, were you in the courtroom for that?

25 A I was.

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1 Q Was a sample taken and sent off to be tested from that
2 piece of clothing?

3 A The clothing was submitted, and according to the report
4 there was a sample collected once it was at the lab.

5 Q And what were the results of that report?

6 A If I can review the report?

7 Q Absolutely.

8 A According to the DNA report there were two cuttings from a
9 tank top, a swab from the Highpoint as well as swabs from the
10 head stamps of the cartridges and magazines from the Highpoint.
11 The head stamp on the cartridge is the part that has the
12 manufacturer's identification on it.

13 Q As far as the firearm pieces, the cartridges, the head
14 stamps and the firearm itself, was there any results that
15 they could claim would help us at all in this case?

16 A No, sir.

17 Q They were inconclusive?

18 A The report reads that it was a mixture of at least two
19 individuals on the handgun and a profile is not suitable for
20 comparison. On the magazine and cartridges it says it's a
21 possible mixture and due to limited information developed this
22 profile is not suitable for comparison.

23 Q And the tank top, the same deal?

24 A No, sir. Both cuttings from the tank top on the DNA
25 identified as matching the profile of John Perry Jr.

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1 Q So the clothing was a match to John Perry, the firearm
2 swabs were inconclusive.

3 A That's correct.

4 Q And jumping around a little bit here, were you in the
5 courtroom when they were talking about the bullet count on
6 Dalton Taylor's gun?

7 A Yes, sir.

8 Q Is it common protocol to do a bullet count on every
9 officer who is present whenever there's an officer involved
10 shooting?

11 A Yes.

12 Q Was a bullet count done on Shaun Bailey's gun?

13 A Yes, I did that.

14 Q Okay, you did that. Were there any bullets missing
15 from his gun?

16 A No.

17 MR. EPTING: Beg the Court's indulgence.

18 (Break in proceedings.)

19 MR. EPTING: Agent, that's all of the questions I have for
20 you at this time, please answer any questions Mr. Nowiki has
21 for you.

22 CROSS EXAMINATION

23 BY MR. NOWIKI:

24 Q Agent Wallace, you were the main investigator on this
25 for SLED?

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- 1 A Yes, sir.
- 2 Q And you had testified that you had spoken with Mr.
- 3 Perry while he was in the ambulance.
- 4 A That's correct.
- 5 Q And you read his Miranda rights to him.
- 6 A Yes, sir.
- 7 Q Well, when you -- let me go back a little bit. What
- 8 was the reason why he went in the ambulance?
- 9 A He had been shot.
- 10 Q And where was he shot?
- 11 A On the lower left side.
- 12 Q Would you be able to show where?
- 13 A I can show an approximation, yes, sir.
- 14 Q Okay.
- 15 A Can I stand?
- 16 Q Sure.
- 17 A It was approximately -- he had an injury here and an
- 18 injury about here.
- 19 Q And in your opinion he didn't seem to be under the
- 20 influence of anything that would hinder him from
- 21 understanding what you're saying to him?
- 22 A He seemed coherent.
- 23 Q And then you also continued on with speaking with him
- 24 while he was in the hospital?
- 25 A That's correct.

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1 Q You testified that you counted the bullets for Officer
2 Bailey, correct?

3 A Correct.

4 Q But you didn't do Officer Taylor's?

5 A No, I never saw his weapon.

6 Q You never saw that.

7 A No, sir.

8 Q And Mr. Perry, he indicated I believe you had said in
9 the statement with him was that he was running and the
10 police were going after him when gunshots were fired. Can
11 you explain that again?

12 A He said that he ran from the car and as he was jumping the
13 gate, which was the fence, he was trying to get rid of the gun,
14 throw it, it was in his waistband, it accidentally went off is
15 what he said, and officers proceeded to shoot him at that
16 point.

17 Q But Mr. Perry continued to run, correct?

18 A That's correct.

19 Q Did he tell you in what direction he was running?

20 A He said he ran across Ebenezer Avenue Extension, over to
21 Camden, and then ultimately through Boyd Hill to Constitution.

22 Q Now, as soon as he was running that would mean that he
23 would have his back towards the officer, correct?

24 A Depending on his movements, yes.

25 Q Would he have been a threat at that time to the

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1 officers?

2 A It depends on the situation.

3 Q If he had his back turned to the officer and the
4 officer shot, I mean he wouldn't be a threat, though, based
5 on that situation.

6 A Based on what you said at that point he would be
7 considered a fleeing felon.

8 Q Fleeing felon. Okay.

9 MR. NOWIKI: One moment, Your Honor.

10 THE COURT: Sure.

11 (Break in proceedings.)

12 MR. NOWIKI: That's all of the questions I have.

13 MR. EPTING: Briefly, Your Honor, briefly.

14 REDIRECT EXAMINATION

15 BY MR. EPTING:

16 Q Agent, if the officers knew that the defendant had a
17 gun in a residential area and he was fleeing and the gun had
18 gone off, would he be a threat as long as he had that gun?

19 A Yes, sir.

20 Q If he fired at officers multiple times and he continued
21 to have that gun and fled, would he still be a threat?

22 A Yes, sir.

23 Q Even if he was running?

24 A Yes, sir.

25 Q In a residential area?

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1 A Yes, sir.

2 Q Why?

3 A Fleeing felon is based on articulable facts. At that
4 point he had fired the weapon, and at that point he is an
5 immediate danger to both the officers and civilians in the
6 area.

7 MR. EPTING: Nothing further.

8 MR. NOWIKI: No redirect, or recross.

9 THE COURT: Thank you, you may step down.

10 MR. EPTING: Your Honor, the State rests.

11 MR. NOWIKI: Your Honor, I have a matter of law to take
12 up.

13 THE COURT: Ladies and gentlemen of the jury, if y'all
14 will step back to your room for a few minutes, I have to take
15 up a matter of law.

16 (The jury left the courtroom.)

17 THE COURT: The jury is out. Counsel?

18 MR. NOWIKI: Your Honor, defense the would make a motion
19 for a directed verdict at this time. Viewing the evidence in
20 both in the light for the prosecution we feel there is not
21 enough evidence, or really any evidence to show -- for an
22 attempted murder there has to be specific intent. And based on
23 what -- we have testimony that there is no specific intent
24 evidence and that the attempted murder should be dismissed.

25 THE COURT: Solicitor?

1 MR. EPTING: Your Honor, I believe particularly in the
2 light most favorable to the State there's ample evidence of
3 both malice, specifically intent to kill. Officer Dalton
4 Taylor testified that the defendant fired at least one shot
5 directly at him, that in his opinion it was a direct attempt to
6 injure or kill him. In addition to that Kevin Duncan testified
7 that from his vantage point he saw the defendant fire multiple
8 times in the direction of Officer Taylor identified as the
9 officer who fled from the driver's side. That in and of
10 itself, Your Honor, I believe creates sufficient jury question
11 to send to the jury and get beyond a directed verdict
12 particularly in the light most favorable to the State.

13 THE COURT: Based on the evidence that's been presented in
14 court as I understand it I'll have to deny the motion.

15 MR. NOWIKI: Thank you, Your Honor.

16 MR. EPTING: Your Honor, I believe -- no witness list was
17 given by the defense, I do not believe they intend to introduce
18 a case, I believe it would be wise at this point to have a
19 colloquy with the defendant about his right to exercise or not
20 exercise his right not to testify.

21 MR. NOWIKI: That's correct.

22 THE COURT: Mr. Perry?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: At this stage I'm going to talk with you about
25 your constitutional rights about self incrimination, which also

1 MR. EPTING: We would also inquire if Your Honor intends
2 to charge both the hesitate to act as well as the --

3 THE COURT: Well, that's standard Victor versus --

4 MR. EPTING: Yes, Your Honor, I apologize, I had a brain
5 blank.

6 MR. NOWIKI: As far as -- I need to go back to the
7 lesser-included. Is it just going to be the attempted murder,
8 ABHAN, assault and battery first degree?

9 THE COURT: The State said second and third.

10 MR. NOWIKI: Second and third?

11 MR. EPTING: I believe under the law they could find him
12 anywhere all of the way from the top down. It doesn't make
13 logical sense, but sometimes what the jury finds doesn't in our
14 state. I believe there's --

15 MR. NOWIKI: That's fine.

16 MR. EPTING: -- facts to substantiate all of those.

17 THE COURT: Do y'all want to work on the malicious one?

18 MR. EPTING: Certainly, Your Honor, if we could get that
19 to you some time around lunch.

20 THE COURT: If you can agree on it we won't have any
21 debate about that if y'all want to work on that. Okay. Well,
22 I think we were all expecting for this to go a little longer so
23 we will go ahead and let them have some lunch and move on.

24 MR. EPTING: And start back 2:00, or 1:30 perhaps.

25 THE COURT: Is 1:30 a problem? That will give y'all a

1 (The jury returned to the courtroom.)

2 THE COURT: Okay.

3 MR. EPTING: Please the Court? Defense counsel? Good
4 afternoon, ladies and gentlemen. After two and a half days
5 it's almost over. This is going to be your last opportunity to
6 have to listen to me talk and I know y'all are super excited
7 about that. This is my last chance to speak with you. After
8 I'm done, defense counsel, they'll get up and they will get
9 their chance to make their closing arguments, so this is my
10 last shot. What are we here today for? The burden is on the
11 State to prove this case to you beyond a reasonable doubt, the
12 burden is on the State. The defendant has pled not guilty,
13 requested a trial, we have given him that trial. You will be
14 instructed at the close of both of our closing arguments about
15 the law, about probably more of the law than you'll ever want
16 to hear about. But I would submit to you one of the most
17 important pieces of the law is what is proof beyond a
18 reasonable doubt? You'll be given several different
19 definitions. One of those definitions alluded to very briefly
20 by counsel in his opening statement is a reasonable doubt is
21 one that causes you to hesitate at that act. I believe defense
22 counsel said if you hesitate to act for even a moment then you
23 must find his client, not guilty. I submit to you that's not a
24 correct statement of law. An older attorney in our office who
25 has tried a lot of cases use to say that you will notice, he

CLOSING ARGUMENTS

1 tells the jurors, that there are chairs back in the jury room,
2 they're there for a reason. You're supposed to deliberate,
3 you're supposed to talk about the case, you're supposed to talk
4 about the evidence that was presented. Don't think because you
5 go back in there and you may have questions and you may need to
6 talk about things that you must find this man not guilty
7 because that's not the law. This is an important matter for
8 the State. We wouldn't take up your time and our witnesses'
9 time doing this if it wasn't important, it's an important
10 matter for the defense, it is important for everybody. We
11 would never expect you to make a split second decision on an
12 important matter. Talk about the case. If you've got doubts
13 share it, talk about the evidence, talk about the proof, but
14 don't think because you need to take that time to talk about it
15 to hesitate that that means have you to find him not guilty.
16 You'll hear other definitions of proof beyond a reasonable
17 doubt. Another one of them is proof sufficient to go beyond a
18 reasonable doubt, another is proof that leaves you firmly
19 convinced. After hearing all the evidence in this case, after
20 hearing from Dalton Taylor, after hearing from Kevin Duncan,
21 after hearing the forensics and the stuff that was found and
22 the video that was played, are you firmly convinced that the
23 defendant is guilty as charged? If that's the case then you
24 are duty bound to your oath as a juror to find him guilty as
25 charged. Your roles as jurors, this comes up all the time. I

CLOSING ARGUMENTS

1 often say y'all are like the umpires of the judicial system.
2 Your role is a very limited role but it's an important one.
3 You're masters of facts. You guys get to decide what happened
4 that night on June 22nd based upon the evidence that you heard,
5 that's the only role that you have to worry about. What we're
6 not here to do. You're not here to judge the defendant. Is he
7 a good man or a bad man, heaven, hell, all of those things are
8 way outside the scope of what we could ever do in a courtroom,
9 that's not what we're here to determine. Again, did the State
10 meet its burden based upon the evidence that you've heard
11 today? If you find him guilty that's the judge's province, the
12 judge decides what's appropriate at that point. Your role is
13 to find whether we've met our burden and proven the facts that
14 happened on June 22nd when the defendant shot a police officer.
15 What must we show? You've probably gathered over the course of
16 this case that a whole lot of facts in this case are not
17 necessarily in dispute. Multiple witnesses have testified,
18 you've seen this multiple times on the screen, the defendant
19 went down this road, pulled into this parking lot, crashed his
20 car and ran, that ain't in dispute. Y'all saw that with your
21 own eyes on the in-car video. Where did he go then? Well, he
22 fled from where he crashed into a neighbor's yard, got caught
23 up on a fence that was way too high for him to jump, doubled
24 back around, we know that from multiple testimonies. What the
25 defendant didn't know was that Dalton Taylor, being as young as

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1 he is and spry that he was actually able to jump that fence
2 quicker than perhaps Mr. Perry thought, and when Mr. Perry
3 turns around that corner he sees Dalton Taylor down on the
4 ground within grabbing distance. Not in dispute that Dalton
5 Taylor chased him in the yard and it is not in dispute that Mr.
6 Perry ran from the yard. Not in dispute that Mr. Perry had a
7 firearm in his possession. Not in dispute that that firearm
8 was this same firearm that is in evidence minus the barrel
9 extension that you saw in the picture from the defendant's
10 phone, and minus the extended magazine. Not in dispute that at
11 least one shot was fired. Not in dispute that officers fired
12 back after that shot was fired. Not in dispute that at some
13 point in that exchange of gun fire Mr. Perry was hit. Not in
14 dispute that he fled. Not in dispute that he was found several
15 counties over hiding in a camper with that same gun. You know
16 the timeline. He's pulled over, he runs, officers return fire
17 being the danger that he posed both to the officers and to the
18 neighborhood at large. Officers doing their job investigating
19 the various sources find cold beer in the car and they say,
20 "Where could he have possibly bought that cold beer?" They go
21 around to that local gas stations, go to the Citgo that's right
22 down the road from where this happened, get the video, sure
23 enough, man matching the description of the one who ran from
24 the car, wearing the same shirt, wearing the same hat, wearing
25 the same pants buying two Budweisers from that store, cold

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1 Budweisers there. They find mail with John Perry's name in the
2 car, they have their man. Unbeknownst to them immediately
3 after fleeing John Perry flees to a friend's house where Mr.
4 Perry's boss, Larry Farmer, picks him up, he stays the night
5 there. The defendant did not go to a hospital, he did not call
6 the police, he did not call the FBI, he did not call SLED. He
7 got out the hydrogen peroxide and Super Glue and a number of
8 other household items to try to repair the damage to himself,
9 past that he said he dumped some bloody clothes at Larry
10 Farmer's house. You saw the pictures of that bloody shirt,
11 those pants, all of those things dumped in the garbage that he
12 had gotten rid of, and from there cleans himself up, goes to a
13 rural hunting cabin to get his head right before he's
14 eventually going to turn himself in. The camper is stocked
15 with food, camper contained the firearm he used in this
16 incident. Camper where but for Larry Farmer telling police
17 where he was no one would have ever known where he was. His
18 pistol that he's so desperate to get rid of that it
19 accidentally goes off according to his version, he takes that
20 with him. He never gets rid of it, the police find it, we've
21 got it right here. He's arrested on scene at the camper, taken
22 by surprise. He speaks to Wallace, he speaks to Detective
23 Haire, he speaks to Wallace again, y'all heard those
24 statements. What did the testimony show? What proof have we
25 brought before you that the defendant attempted to murder

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1 Dalton Taylor that night? Well, Dalton Taylor testified right
2 here under oath, y'all got to look into his eyes and he told
3 you what happened. Kevin Duncan came from Houston. We all
4 know what's going on in Houston, came in Monday night on a red
5 eye flight, left Tuesday night on a red eye flight to tell you
6 what happened, to tell you what he saw from his window from a
7 year ago. You heard from the forensics, you heard from Shaun
8 Bailey who was also on scene, you heard from the investigation
9 his statements and parts of that which may be inconsistent with
10 the facts that we know. How many bullets were fired in this
11 case? In analyzing this case I submit to you that is an
12 important consideration because there are some knowns. I
13 submit to you we know how many bullets Shaun Bailey fired, the
14 answer to that, zero. How do we know that? SLED took his gun,
15 SLED took his magazines, not a shot missing. How many bullets
16 did Dalton Taylor fire? Well, we know that too. How do we
17 know that? Because SLED, when they come in during part of
18 their investigation, get his magazine, empty it out, what do
19 they say? Six rounds missing, ten rounds left. He has one in
20 the chamber and then five missing, six shells fired by him at
21 the scene too. You heard the video, it's a disturbing video to
22 listen to, but sometimes the truth is disturbing. Given what
23 we know, we know Dalton Taylor fired six shots, agreed upon I
24 would think. Count the shots.

25 (The video was played.)

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1 MR. EPTING: That's a portion of the video, not the entire
2 thing obviously, I submit to you eight shots. More than six,
3 if even an additional shot it was more than six, who fired that
4 shot? Not Shaun Bailey, not Kevin Duncan sitting up and
5 watching in his window, the defendant, the defendant. Six by
6 Dalton, the rest by the defendant. Kevin Duncan, I submit to
7 you there's no evidence that he fired a shot, he's not sitting
8 up there with a pistol joining in, has to be. Shaun Bailey
9 never fired, we know that because they did a round check. At
10 the close of this case the Judge is going to instruct you on
11 credibility. All of y'all, every single one of y'all came in
12 with the tools you need to decide this case, common sense. How
13 do you decide decisions on a daily basis? Common sense. You
14 take what facts you know, you see what facts are consistent
15 with other facts you know, you see which facts are inconsistent
16 with other facts you know and you make a decision, right?
17 Common sense. In this case Dalton's testimony was that he
18 closed in on the defendant and the defendant fire multiple
19 shots. What was his testimony? The defendant is running --
20 Dalton is getting up, defendant sees him, defendant says, "Oh
21 expletive," he gets up digging in his crotch, wheels around,
22 fires two to three shots, boom, boom. Dalton almost
23 immediately returns fire because that gun, he sees him digging
24 around getting that crazy looking gun that you saw the picture
25 of, this gun in his face, he sees him pull that and he returns

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1 fire relatively quickly. The defendant is shot in the side,
2 one in the air because he pulls a little too quick, a little
3 prematurely, and the other, what was Dalton's testimony? Right
4 at him. No doubt in Dalton Taylor's mind that he was firing at
5 him, right at him. That's testimony that you've heard. That's
6 one fact for you to consider right on top of this. Kevin
7 Duncan. What does he say? He says he sees an African-American
8 gentleman running. He hears squealing tires, he hears a crash,
9 he looks out his window and he sees blue lights. He sees one
10 officer, the driver's side officer who through the course of
11 testimony revealed to be Dalton Taylor, get out and chase this
12 guy, he's almost right up on him. He sees the defendant go to
13 that fence, double back, almost get caught by Dalton, and then
14 what does he say? Fires two to three shots over his shoulder
15 on the officer. He was asked on the stand, "Any doubt in your
16 mind he was firing at the officer?" No doubt. His vantage
17 point, second story window. Remember when I asked him if he
18 knew Dalton Taylor? The judge will tell you credibility. Does
19 anybody have a friend to reward or an enemy to punish? He
20 wouldn't know Dalton Taylor if they bumped into each other in
21 the street, no idea, never talked to the man, never seen him in
22 his life, no idea. No reason to come in here and tell a tail
23 for him. Heck, he didn't know John Perry. No reason to come
24 in here and try to bolster Dalton Taylor's testimony. I submit
25 to you he came in and he told exactly what he saw that night.

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1 And wouldn't you know it, coincidence of coincidences, it is
2 exactly what Dalton Taylor said happened, exactly. Another
3 thing we know, that gun fired that 9-millimeter round, that
4 9-millimeter cartridge casing that was found. How do we know
5 that? SLED expert came in, did some test fires, put them under
6 a microscope and said no doubt in his mind it's the same. He
7 did multiple test fires. Yep, they all matched, no doubt. No
8 doubt those rounds fired, those .40 caliber rounds were fired
9 by Dalton Taylor, again same deal, puts them under a
10 microscope, same deal, no doubt about that. And in addition to
11 that in his report you'll see -- and this is in evidence, item
12 one, two, three, four, five, six, he sequentially marked them
13 as items one through seven found here. Dalton Taylor says that
14 the defendant fired first. Where was that 9-millimeter round
15 found? Right there, right at the edge. Right where the
16 defendant saw Dalton Taylor laying down and said, "Oh my
17 goodness, I'm about to get caught, I better do something," and
18 began firing. Attempted murder, two elements to it. Did he
19 act with malice? Did he act with the intent to kill Officer
20 Taylor when he fired at him? We are not psychics, science has
21 not progressed to the point where we can read somebody's mind,
22 but I can submit to you, anybody in this room who has been a
23 parent can tell what's on their child's mind. How? By what
24 they do. You can tell what somebody is thinking, what they
25 intend to do, what's in their heart by what they do. What did

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1 the defendant do that night? What did he do afterwards? He
2 fled from a traffic stop from which he was armed, fired his
3 weapon multiple times, told multiple different versions of what
4 happened to officers, and we'll get to that a little bit later.
5 Officer Taylor and Kevin Duncan said he fired multiple times.
6 Even Shaun Bailey despite discrepancies in his testimony said
7 he fired multiple times because he saw the flash, although he
8 couldn't tell exactly where it was being fired. He fled.
9 Every parent, your child -- something bad has happened, your
10 child runs. What does that tell you? He did something wrong.
11 If you ask that child about it and he tells you a balled face
12 lie, what does that tell you? Probably did it. I love my
13 children but they lie to me all the time. He took it further,
14 he hid. What does that tell you? What does that tell you,
15 what was in his heart about what happened that night? Despite
16 his wounds -- and I'll be frank with you and I will submit to
17 you, I wish he would have never gotten shot, I wish nobody
18 would have gotten injured that night and this never happened,
19 but it did. He hid. Despite his injuries he hid. He didn't
20 go to the hospital, he didn't call the FBI, he didn't call
21 SLED, he didn't call anybody except for his boss to take him
22 somewhere to hide further. He fled to Fairfield continuing the
23 flight. He spoke to investigators but I would submit to you
24 that he lied repeatedly, some of that came out on the stand
25 with Bruce Haire, y'all heard that recorded conversation that

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1 seemed like it just would not end. Lied about the gun, lied
2 about a number of things and we'll get to that. The defendant
3 kept the gun. What does that tell you? Why was he running
4 that night? Two things, traffic tickets and the gun, he wanted
5 to get rid of it. He still had it with him days later in
6 Fairfield. Why? I submit to you he wanted to find out what he
7 did, what damage he caused and keep that thing close to him in
8 case he really needed to get rid of it, bury it, burn it, do
9 something with it. That gun that was the cause of all of his
10 problems, he kept it with him, took it to Larry Farmer's house,
11 took it to his friend's house, took it to Fairfield where
12 officers found it because unbeknownst to him Larry Farmer gave
13 him up. Flight. That is a relevant consideration. Common
14 sense. Why does someone flee? Going to the malice aspect of
15 this case, the judge will give you a long instruction on
16 malice. I've heard it described as an evil heart. It's also
17 described legally as acting with malignant recklessness of the
18 lives and safety of others. When he fired those shots at that
19 officer who was doing his job, when that traffic stop changed
20 from an ordinary traffic stop in the fraction of a second to a
21 fight for life and death, was the defendant acting with
22 malignant recklessness of the lives and safety of others? I
23 submit he was. Where was this area? Was this a country field
24 where no one lived but maybe a deer would get hit by an errant
25 bullet? No. This was a residential area that the defendant

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1 started a gun fight in. And furthermore if he shoots at
2 officers, what does he think officers are going to do? They're
3 going to shoot back. If that ain't malignant recklessness of
4 the lives and safety of others I don't know what is.
5 Credibility. Kevin Duncan. Again, beating a dead horse, Kevin
6 Duncan, what did he say? He said what he saw. Can't identify
7 the defendant from Adam, can't identify Dalton Taylor from
8 Adam. African-American gentleman chased by the driver of that
9 vehicle fires two shots, two to three I think is what he said,
10 directly at an officer. Why does a person fire two to three
11 shots directly at another person if not to kill them? And when
12 they're doing that are they not acting with malice? Not
13 because they are firing at another human being, but because
14 there are other kinds of human beings in that area. Who has a
15 reason to lie? We talked about this. Kevin Duncan. His
16 reward for what he saw was having to miss work, I think an
17 important business meeting, get bugged by me to come in here
18 and testify in this case, and then fly out that very night to
19 go back to work. If anybody had a reason to lie it would be
20 Kevin Duncan, but not to y'all, to me. His reason to lie would
21 be to get out of this thing and go about his life and go about
22 his work. If anybody had reason to lie it's Kevin Duncan to me
23 about what he saw, but he didn't, he came and he told you what
24 he saw. Dalton Taylor. What reason does Dalton Taylor have to
25 lie about about this case? Some of y'all may be saying, "Well,

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1 there's a SLED investigation so maybe something went haywire,
2 maybe he's got to stick to a story." I would submit to you
3 that if somebody wanted to come in here to crack a tail or a
4 narrative about what happened that day, they could come up with
5 a whole lot more damning narrative than what they did. "Shot
6 once in the air and shot other at me and didn't say a word."
7 If Dalton wanted to lie he could have said, "Yeah, that guy
8 said, 'I am going to kill you, die, die, die,' as he pulled the
9 trigger. He pulled the trigger a million times." But he
10 didn't. I submit to you that he told you what he remembered.
11 Common sense, common sense. You came in here with it, it's
12 going to be your best ally in deciding what to do in this case.
13 The defense gets to stand up after I'm done and give you their
14 closing arguments, unless I object to something that I think
15 shouldn't come in or is against the rules I don't get another
16 chance to address y'all so I have to kind of play defense. I
17 have to kind of anticipate what they might argue to you based
18 upon what I've heard him ask our witnesses during the course of
19 this trial. I've heard a lot of talk about cartridge cases and
20 shells and I've heard a lot of talk about Shaun Bailey's
21 testimony. He talked about what one of our officers was going
22 to say, that clear as day he saw this guy firing straight up in
23 the air. Well, let's start with these cartridge casings. I
24 know y'all probably felt like we were beating a dead horse, but
25 what did every forensic person who testified say? They never

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1 find all of the cartridge casings when they respond to a
2 shooting. Inside, yeah, they're probably going to find it
3 because that's enclosed, but out when people are running, when
4 things are being ejected from the gun in crazy places, when
5 people are kicking those rounds into other yards or into other
6 unexpected areas, or maybe into the street, they get caught in
7 the tire treads, they get caught in boot treads, they almost
8 never find all the cartridge casings. So I would submit to you
9 it would be not unusual to not find the two to three cartridge
10 casings in this case. Because prior to forensics arrival there
11 had been a whole lot of people trying to find the defendant who
12 had fled, tracking him with dogs, running around and making
13 sure that everyone was safe, or the gun jammed and that's why
14 there were only two to three shots and not a whole lot more in
15 that extended magazine and he took that around with him. They
16 found the shells that they found exactly where Dalton Taylor
17 said the gun fight started, and we have feasible explanations
18 on why they couldn't find the rest. You heard the CSI effect.
19 Jurors come in expecting us to do magic with what they have and
20 they said, "That's TV, that's fiction, we don't do that."
21 Every forensic evidence person said, "We don't ever always find
22 all of the shell, so why would we in this case?" Shaun Bailey
23 reported multiple shots. He did report in the air, but what
24 didn't he see? He didn't see the barrel of that gun. If I
25 recall his testimony he said he saw a flash, a flash kind of in

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1 the air, he didn't see the barrel. He's further on back so his
2 vantage point I would argue is a whole lot worse than of Dalton
3 Taylor who is staring down the barrel of that gun, or Kevin
4 Duncan who is on the second floor of a building and staring
5 from the top down without obstruction. Common sense. Why does
6 a person shoot at someone if not to kill them or harm them?
7 Seriously. Why does a person lie about what happened if not to
8 cover up that are own actions? Why does a person run if
9 they've done nothing wrong and not call the police and not go
10 to a hospital and not get some type of help if indeed they were
11 wronged that night? I submit to you, John Perry gave multiple
12 conflicting statements, he gave multiple falsehoods in speaking
13 with officers. Remember the statement? Initially they asked,
14 "Hey, was that picture of the gun that we showed you, is that
15 the one you used? No, I used a different gun." Maybe he's
16 hoping they'll stop looking. Maybe he's hoping that they
17 missed this gun when they searched the camper. Maybe he's
18 hoping that if they found it they won't test it because he's
19 sending them on a goose chase to go looking in a field for this
20 .38 or .32. We know now after testing after he knows that
21 we've got the gun and are going to test it, he admitted to
22 using the 9-millimeter. We have an expert who came and who
23 tested it and could tell us today beyond a scientific certainty
24 that's what he used. He said he threw the gun in the field,
25 threw the gun that he used in the shooting in a field. Does

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1 that look like a field to y'all? That's the camper where he
2 was hiding under that bench. He slept in the woods that night,
3 that's what he told Bruce Haire. We know that's not true
4 because he stayed with Larry Farmer, and we they that based
5 upon the other evidence we have and all of the little first aid
6 center set up in Larry Farmer's house. He threw his clothes in
7 the creek. Did he? Well, unless the creek is a trash can
8 behind Larry Farmer's house he didn't throw no clothes in no
9 creek, that's a lie. The gun fell off and went off one time as
10 he went over the fence, and he said the chain link fence, that
11 first fence. He's trying to get rid of it because that's one
12 of the main reasons he's running. And do you remember what
13 Skipper said? He was on the fence, he's pulling it out, he's
14 got his back turned to the officers and it goes off one time.
15 Multiple -- every eye witness said multiple shots fired and not
16 at that chain link fence, not where he jumped it, further on
17 down to the path where the gun fight occurred. I apologize for
18 the resolution of this, it showed up all trial long. This is
19 the chain link fence, this is the parking lot, this is the
20 defendant's car. I'm going to turn again to a portion of the
21 video, just a portion and I want you to ask yourself how long
22 it would take the defendant to get to that fence to sit atop
23 it, to try to get out that gun and get rid of it and accidentally
24 go off. Listen to the first gun shot.

25 (The video was played.)

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1 MR. EPTING: Unless he camped atop that fence for some
2 time and sat and watched officers chase him he's lying about
3 how that gun went off, it couldn't happen the way he said it.
4 And how do we know that? That's not just me throwing shade on
5 him, that's me applying his statement of how that gun went off
6 to the evidence that we have. That's what we do in this entire
7 case is to figure out who is telling the truth and who is
8 lying. If he's lying about that gun accidentally going off,
9 what does that say about what happened with Dalton Taylor?
10 What does that say about what Kevin Duncan says he saw? I
11 submit to you that he has to come up with some explanation on
12 how the gun went off because he can't say it didn't because he
13 knows he's being recorded. He just didn't come up with a good
14 one, ladies and gentlemen, unless he camped on top of that
15 fence and waited and waited and waited, and for some reason our
16 officers didn't reach him in 20 or 30 seconds it couldn't have
17 gone down the way he said it did. Remember where
18 Skipper-Wallace said she got this gun? Directly from the
19 defendant's cellphone, the one that he abandoned in his car, a
20 High Point 9-millimeter, extended capacity magazine with a
21 barrel extender. What did Kevin Duncan say? Weird looking
22 gun. What did Shaun Bailey say? Flashes come from the gun
23 where a flash shouldn't be because it's coming too far. What
24 did Dalton Taylor say? He's staring down the barrel of that
25 crazy looking gun as the defendant once fires in the air as

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1 he's bringing it down on him and draws down on him, that was at
2 the get-go. And what did we find? Everything we found except
3 for the extender. We find the gun, we find the extended
4 magazines which we found matched the shells, that was the gun
5 he had that night. Many different things could have happened
6 that night, ladies and gentlemen, many different things. What
7 happened if the defendant didn't run? Well, he would get his
8 ticket for not using his turn signal. The gun is dealt with,
9 maybe the defendant is arrested and maybe they'll write him a
10 ticket, none of us are here today. Dalton doesn't have to live
11 the rest of his life staring down the barrel of that gun, the
12 defendant doesn't have to get shot by police after he shoots at
13 them. Let's take it a little bit further, let's say he runs
14 but just doesn't shoot that gun. Dalton Taylor was closing in
15 on him, that was the testimony, might could have got him if the
16 defendant didn't pull out the gun and start shooting. They
17 catch him, he's arrested, not shot, or he gets away and they
18 eventually locate him because through the beers and the Citgo,
19 all of that stuff and none of us are here today. I submit to
20 you I wish the defendant never got shot, I wish we weren't here
21 today, but we are, and we're today because of the choices the
22 defendant made when he pulled out that gun and he shot at
23 police and he fled the scene. We're here today ultimately to
24 give the defendant his day in court, he's gotten it. You've
25 heard from multiple different eye witnesses who independently

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1 of each other give you a version of exactly what happened, and
2 that version is the defendant firing multiple rounds at police
3 in a residential area. We gave you attempted murder, we gave
4 intent to kill based upon his actions, we gave you malice based
5 upon his reckless disregard for the lives of people who lived
6 in that area, we gave you attempted murder. Proof beyond a
7 reasonable doubt, proof that leaves you firmly convinced that
8 he did what we said he did that night and that's shooting at
9 cops. We're here today for justice. You'll be charged
10 multiple lesser-included offenses, I would ask you not to give
11 him a discount for what he did that night, find him guilty of
12 what he's guilty of and that's attempted murder, that's
13 attempted murder as charged. We eagerly await your verdict in
14 this case.

15 MR. NOWIKI: May it please the Court? Solicitor? Well
16 ladies and gentlemen of the jury, you've heard the closing from
17 the solicitor and how nice of a picture they've painted for
18 you, and I have notes all over the place so I apologize,
19 generally I don't do this but I just wanted to make sure that I
20 covered everything. Let's start with Officer Taylor, okay?
21 Officer Taylor was on the job I guess for 14 weeks. He's new,
22 you know, never was in this type of situation before and this
23 happened quickly, so, you know, you look at that fact. And I'm
24 not saying that Dalton Taylor is a bad guy or anything, but if
25 a shooting occurred -- well, first of all he fell down. Now, a

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1 - shooting occurs, the only two people who know what was going on
2 was the defendant and Mr. Dalton Taylor. You know, Dalton
3 Taylor knows that if he uses excessive force that he will get
4 investigated, so -- and I'm going to use this as a comparison
5 almost like for a child like the solicitor did, was that two
6 kids get into a fight, one gets hurt really badly, they're
7 going to say they're the victim, they're the one -- they didn't
8 start it but that's -- in their mind that that's what their
9 concept is, similar to this situation. It happened so fast.
10 And, you know, Dalton Taylor, whether or not he got shot at or
11 there were shots in the air or whatever because there's so many
12 inconsistencies which I'll get to that, so regarding that
13 situation, you know, is that really what happened? I don't
14 know. You've got testimony from Officer Bailey about -- and
15 this is consistent with that gun, and he's been an officer for
16 I believe he mentioned at least six years -- he sees shots
17 fired in the air, and according to his opinion it seems like
18 there was an extended barrel and he sees two flashes, and he
19 even testified that he had clear sight. I'll just keep going
20 with witnesses. Because Kevin Duncan, granted he did come from
21 Houston, but that doesn't matter, he came here. Even though he
22 was upstairs in his apartment, it's kind of odd how he could
23 identify the defendant to the point that it was a black male,
24 but yet he could not tell whether or not -- or what color the
25 officers were. The other thing is he's saying that he saw

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1 shots being fired this way. Well, that doesn't make any sense,
2 because that means the officer was chasing Mr. Perry from
3 behind, so -- and I don't know whether or not Taylor had his
4 gun out or not, but the fact is he's the only one who says
5 that, you know, so there's so many inconsistencies. You are
6 the finder of the facts, you're the one that has to decide on
7 the credibility of the witnesses, it's just odd that nobody is
8 telling the same story, they're all different, everything is
9 different. The other thing -- well, there's a lot of other
10 things but there's a problem here. Agent Wallace testified
11 that she got Bailey's gun, okay? But she didn't have Dalton
12 Taylor's gun. I'm not saying that Dalton Taylor is a bad guy
13 or anything, but we heard Dalton Taylor say that he had his
14 weapon until he got to the Rock Hill Police Department. Why?
15 And then it was given to somebody by the name of Belk who
16 wasn't here, so what happened with that gun during that
17 timeframe? I'm just putting that out there, that's something
18 you need to think about. How many bullets were in his
19 magazine? Well, if you look at the -- and you'll get the
20 evidence, the photos, look for yourself. It sure looks as if
21 six is missing, and there's one -- and even Ms. Jamison (sic),
22 the SLED agent, indicated that there would be one in the
23 chamber. So if it's six and then you count one more that's
24 seven. There was also bullets that were found across the
25 street. There was one -- and that came from the -- I'm sorry,

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1 I can't remember his name, Chad Smith, when he analyzed the
2 weapon. And with that he also had two bullets from -- that
3 were found in the tree and in the house that's across the
4 street from where this happened, and most likely I believe he
5 testified that that was from a Glock, so that doesn't make any
6 sense either. You know, why are only six shell casings being
7 found? And then you have Detective Haire saying that there
8 were two 9-millimeter shell casings found. Well, where are
9 they? One is missing. If he said there were two, where is the
10 other one? I mean, that's a concern. You know, the fact
11 that -- and I hate that Mr. Perry got shot. And you heard in
12 his statement, it was played, and even by Agent Wallace who
13 said he had no intent on hurting the officer, trying to kill
14 him or anything. Because think of this, if Mr. Perry wanted to
15 hurt or, you know, try to kill Dalton, why didn't he unload his
16 gun right there and then? Why would he run away? That doesn't
17 make any sense. Should he have had a gun? No. But the thing
18 is is the attempted murder, and you'll hear this from the
19 Judge, speaks of specific intent, but that's where his
20 mindset -- if that was what he was going to do, that he was
21 going to seriously injure or shoot or intend to kill Officer
22 Dalton, and he didn't. Now, as far as the shots go, I have no
23 idea. We have -- like I said before, we've got two shots in
24 the air from the backyard, I've got -- I should not say not
25 we -- and then we have Kevin Duncan saying three -- no, he said

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1 the shot that came this way and then he heard I think he
2 said -- and I apologize, I know he didn't mention seven or
3 eight or whatever, he only mentioned like three or four, and
4 the same with Officer Bailey. So who's telling the truth? I
5 don't know, I have no idea. And that's the problem with this
6 is there's just too many inconsistencies. Officer Dalton is
7 going to be biased because he's got a lot to lose in this. Mr.
8 Perry, I'm going to admit, he made a mistake, you know, he said
9 he had a gun, now whether or not it was fired in the air, he
10 says it was falling out, regardless a shot was fired, you know,
11 and I submit to you that it was unintentional. He did not, he
12 did not shoot to kill or attempt to hurt or anything for
13 Officer Dalton, absolutely not. The other thing I wanted to
14 mention to you is the lighting. We have, I believe, Kevin
15 Duncan saying that it was well lit, and then we have
16 Investigator George who did the original markings said it was
17 dark by the driveway. And I believe her name is Proulx who
18 also stated that it was dark by the driveway but it was more
19 lit towards the side of the house, or I should say the -- I
20 guess that would be in the back of the driveway area to the
21 backyard. And there was an SUV that was parked there that
22 causes me concern too, especially with Kevin Duncan as far as
23 his vantage point of what he saw. And again, this happened in
24 a matter of seconds, it happened over a year ago, has anything
25 changed? I don't know, but it could. Again, you know, when

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1 somebody is in a mindset to be -- you know, they don't want to
2 be responsible, okay, or they've got something to lose, you
3 know, they might think to themselves that this is what really
4 happened when it didn't happen that way. That's the big thing
5 here. We have so many inconsistencies that I don't know, I'm
6 just going to leave it at that with the inconsistencies and
7 potential bias. We don't know about, you know, who fired what.
8 We don't even know about Officer Dalton's gun, I'm going to
9 bring that up again, that really causes concern. Why was
10 Bailey's gun taken -- pretty much taken right away and why
11 wasn't Dalton's gun taken right away? There's no testimony, no
12 evidence or whatever over the timing or anything. Even
13 Investigator Jamison (sic) she just signed it out to look at it
14 I believe or whatever, but who knows? Who knows? So there is
15 that timeframe. Was it manipulated with? Did somebody touch
16 it? What's going on? I don't know. I'm submitting to you --
17 and I know you've been here for this long, but I am submitting
18 to you that there is no way that Mr. Perry intended on hurting,
19 killing or doing anything to Dalton Taylor. Should he have
20 run? No. Should he have a gun? No. But just because of that
21 doesn't mean he intended to kill somebody. Did Dalton Taylor
22 overreact? I don't know, I hope not, but that's always a
23 possibility. I mean, you heard the number of shots and he only
24 got hit once. So I am going to leave you with that, this will
25 be the last time you'll hear from me. But again, Mr. Perry --

CLOSING ARGUMENTS

1 I can't help but just repeat myself, think about all of the
2 inconsistencies that are presented. Yeah, you can have all of
3 these photos. Sure, there is no dispute where he ran, what he
4 did afterwards, but that doesn't matter. What matters is at
5 the time the alleged gun went off what was the intent? So
6 again, my last comment, I know I've said this before, Mr. Perry
7 didn't have any intent on shooting or killing Officer Taylor
8 and I'm asking you to find him not guilty on the attempted
9 murder. Thank you.

10 THE COURT: Mr. Foreman, ladies and gentlemen of the jury,
11 the next phase of the case will be a charge of the law to you
12 from the Court, and it's probably going to take at least 30
13 minutes. Everybody okay? Do we need to take a restroom break?
14 Okay. If I can have your attention, please. I noticed that
15 you very patiently listened to the presentation of the evidence
16 in the case and I thank you for that, and I want to thank the
17 solicitor and counsel for their arguments and their
18 representation in this case. Now, my duty is as the trial
19 judge under the constitution of this state to charge and
20 instruct you the law applicable to this case and it's your duty
21 as jurors to accept and apply the law as I state it to you. As
22 jurors it is your exclusive duty to decide all the issues of
23 fact in this case and from that purpose to determine the
24 effect, the value and the weight of the evidence. Both the
25 State and the defendant have a right to expect that you will

JURY CHARGE

1 consciously consider and evaluate the evidence, and apply the
2 law of the case thereto to the end that both the State of South
3 Carolina and the defendant will receive and obtain a fair and
4 impartial trial in this case. When I use the word defendant I
5 refer to John Ernest Perry, Jr. In this indictment the
6 defendant is charged with the offense of attempted murder. The
7 indictment reads in part the defendant, John Ernest Perry, did
8 on or about June 22nd, 2016 in York County, South Carolina, did
9 unlawfully and with malice aforethought, either express or
10 implied and with the intent to kill attempted to kill Officer
11 Dalton Taylor. To the charge and to the indictment the
12 defendant entered a plea of not guilty. This plea of not
13 guilty by the defendant places the burden of proof on the State
14 to prove by evidence the guilt of the defendant beyond a
15 reasonable doubt before you, the jury, can find the defendant
16 guilty. A defendant is presumed in law innocent of the charge
17 contained in an indictment. It is a cardinal and fundamental
18 rule of the law of evidence that a defendant, irrespective of
19 the enormity of the charge against him, will always be presumed
20 innocent of the crime to which he is indicted unless and until
21 the guilt of the defendant has been proven by evidence that
22 satisfies you, the jury, of his guilt beyond a reasonable
23 doubt. The presumption of innocence is not a mere legal
24 theory, it's not just a legal phrase, the presumption of
25 innocence is a substantial right to which every accused is

JURY CHARGE

1 entitled. Our supreme court has declared that the presumption
2 of innocence is like a robe of righteousness placed about the
3 shoulders of a defendant, and it remains with him and assigns
4 him to that class of innocence until that presumptive robe of
5 righteousness has been stripped of that person by evidence
6 satisfying you, the jury, of the guilt of the defendant beyond
7 a reasonable doubt. The presumption of innocence accompanies a
8 defendant from the time of his arraignment and appearance in
9 court, and continues with the defendant throughout every stage
10 of the trial, and continues with the defendant after you retire
11 to the jury room to deliberate your verdict. The presumption
12 of innocence continues in existence to the benefit of the
13 defendant until you, the jury, reach the conclusion that the
14 State has proved the guilt of the defendant beyond a reasonable
15 doubt. The State is not required to prove the guilt of a
16 defendant beyond all doubt or beyond every doubt, but beyond a
17 reasonable doubt. Proof beyond a reasonable doubt is proof
18 that leaves you firmly convinced of the defendant's guilt.
19 There are very few things in this world that we know with
20 absolute certainty, and in criminal cases the law does not
21 require proof that overcomes every possible doubt. If based
22 upon your consideration of the evidence you are firmly
23 convinced that the defendant is guilty of the crime charged you
24 must find him guilty. If on the other hand you think there is
25 a possibility that he is not guilty, you must give him the

JURY CHARGE

1 benefit of the doubt and find him not guilty. I charge you
2 that the defendant is entitled to every reasonable doubt
3 arising in the case. If upon any issue of fact essential to a
4 conviction and a verdict of guilty you have that reasonable
5 doubt as to how that issue should be resolved, it would be your
6 duty to resolve that reasonable doubt in favor of the
7 defendant. A defendant is not required to prove his innocence
8 but the State is required in law to prove every essential
9 element of the offense charged against the defendant by
10 evidence which satisfies you, the jury, of the guilt of the
11 defendant beyond a reasonable doubt before you could convict
12 the defendant and find him guilty. If then upon the whole case
13 you have a reasonable doubt as to the guilt or the innocence of
14 the defendant he is entitled to that reasonable doubt and would
15 be entitled to an acquittal and a verdict of not guilty. But
16 on the other hand if upon the whole case you find that the
17 State has proved by evidence which satisfies you the jury of
18 the guilt of the defendant beyond a reasonable doubt, then in
19 such circumstances it would equally be your duty to convict the
20 defendant and find him guilty. I'm going to speak with you
21 about lesser-included offenses. If you find the defendant
22 guilty but you have a reasonable doubt as to whether the
23 defendant would be guilty of a greater crime charged or the
24 lesser crime charged, then you would resolve that reasonable
25 doubt in favor of the defendant and write a verdict of guilt

JURY CHARGE

1 only as to the lesser charged. But, of course, you could not
2 write a verdict of guilty to any charge unless it's to that
3 charge you find all elements of the charge have been proven by
4 the State beyond a reasonable doubt. There are many laws that
5 we have in our statutory code that have lesser-included
6 offenses, and that will sort of be self explanatory when I
7 charge you the law on the specific offenses. Now, ladies and
8 gentlemen, I have the indictment up here. I instruct you at
9 this time it's not evidence and cannot be considered by the
10 jury as evidence in the case. An indictment is just simply the
11 written formal instrument which contains the charge against the
12 defendant and it serves as a formal document by which the case
13 is processed into our court. During the trial each of us, you
14 and I, have certain duties to perform. As the trial judge it's
15 my responsibility to preside over the admissibility of the
16 evidence offered during the progress of this trial. You are to
17 consider only the competent evidence before you, and you are to
18 disregard and disabuse from your mind any testimony ordered
19 stricken from the record in this case during the progress of
20 this trial, if there be any, and you are only to consider only
21 the testimony which has been presented during the case from
22 this witness stand together with any exhibits admitted into the
23 record in this case and any stipulations of counsel made into
24 the record, if there be any. I have the additional duty to
25 charge you the applicable law in the case. As the presiding

JURY CHARGE

1 judge I am the sole judge of the law of the case and it's your
2 duty to accept and apply the law as I state it to you. If you
3 have a preconceived idea as to what the law is or what you
4 think you the law ought to be in the case and it should not
5 agree with what I tell you the law is, you are obligated under
6 your oath to abandon this preconception on your part because
7 you are sworn to accept the law precisely as I state it to you.
8 In every case tried in this court before a jury, the jury
9 becomes the sole and exclusive judge of the facts of the case.
10 You, the jury, are the judge of the facts in this case, the
11 Court is the judge of the law in this case. The constitution
12 of our state has declared that a trial judge shall not
13 intimate, state, comment upon or make any statement to a trial
14 jury about the facts in a case. Since you are the sole judge
15 of the facts you are not to infer from anything that I've said
16 during the progress of this trial in ruling upon the
17 admissibility of evidence or otherwise, or anything that I say
18 to you during the course of this charge that I have an opinion
19 about the facts in this case, that is a matter solely for you,
20 the jury, to determine. As jurors then it is your duty to
21 determine as I have stated to you the effect, the value and the
22 weight of the evidence presented during the course of the
23 trial. Necessarily then you must assess the credibility of the
24 witnesses who have testified in the case. Credibility is
25 simply a legalistic term which means believability. I charge

JURY CHARGE

1 you that in determining the question of credibility or
2 believability of witnesses you may believe one witness as
3 against several witnesses, or several witnesses as against one
4 witness. You may believe a part of the testimony of a witness
5 and reject the remaining part of the testimony of that same
6 witness. You may believe the testimony of a witness in its
7 entirety or reject the testimony of a witness in its entirety.
8 You may consider whether any witness has exhibited any
9 interest, any bias or any prejudice in the case, and you may
10 consider the demeanor of a witness and the appearance of a
11 witness upon the witness stand, and you may consider the
12 opportunity for knowledge concerning those things about which a
13 witness testified. And in doing so in exercising your mental
14 processes, the law simply requires that you exercise your good
15 judgment, your common sense, your sense of logic and reason and
16 your experiences in life, you then apply these attributes of
17 ability to the evidence and determine the weight of the
18 evidence, and to those state of facts as determined by you, the
19 jury, you take and apply the law as I state it to you and thus
20 arrive at a verdict in the case. Let me speak with you at this
21 time about the election of the defendant not to testify. I
22 emphasize to you that the election of a defendant in the trial
23 of a criminal case not to testify in his own behalf is not a
24 factor to be considered by you in any way in your deliberation
25 and your consideration on the question of the guilt or the

JURY CHARGE

1 innocence of the accused. It must not be considered by you in
2 any manner whatsoever against the defendant or mitigate against
3 him in any respect whatsoever. Under your oath then you are to
4 reach no inference and draw no conclusion whatsoever from the
5 fact that a defendant in a case did not himself testify. This
6 issue should not even be discussed in the jury room. Now, I'll
7 talk to you about expert witnesses. In considering the opinion
8 of expert witnesses that has been admitted in this case you
9 should consider the factual evidence first. An expert may base
10 his opinion upon the factual evidence presented at trial.
11 Alternatively the expert may base the opinion upon facts and
12 data not in evidence. You may consider the expert opinion if
13 you find that the testimony is based upon facts that are
14 reasonably relied upon by experts in that particular field.
15 You must consider expert testimony in the same manner as you do
16 any other testimony and give it such weight as you may believe
17 it to be entitled when considered with all of the other
18 evidence in the case. Such testimony is given for the purpose
19 of helping you understand the evidence and not for the purpose
20 of controlling your judgment. The value of it does not depend
21 upon the skill and the knowledge professed by the expert, but
22 rather upon the skill and knowledge he actually possesses. It
23 is for you to judge whether he or she possesses such knowledge.
24 In this regard you may consider his or her training,
25 experience, ability to communicate their ideas, the logic of

JURY CHARGE

1 their opinion, the factual support of their opinion and all
2 other factors was you would judge and weigh the testimony of
3 other witnesses. The value and effect of expert testimony is a
4 matter solely to be estimated by you, the jury. No mere
5 opinion of an expert can be accepted as in and of itself
6 truthful or reliable, but must be weighed by you and convince
7 your judgments beyond a reasonable doubt and with the same
8 force and effect as any other fact proven this case before you
9 can rely upon it as the basis of a conviction. You have heard
10 the testimony of a witness who has special knowledge, skill,
11 experience, training or education in a particular field and who
12 has given his or her opinion as an expert as to the matters in
13 which they are skilled. In determining the weight to be given
14 such opinion you should consider the qualifications and the
15 credibility of the expert and the reasons given for their
16 opinion. You are not bound by such opinion, give it the
17 weight, if any, to which you deem it entitled. Now to the
18 specific charge. As you heard me say, the bill of indictment
19 in the alleged offense is attempted murder. I read from you
20 section 16-3-29 of the Code of Laws of 1976 as amended, that is
21 the State of South Carolina Code of Law, it's entitled
22 attempted murder. A person who with intent to kill attempts to
23 kill another person with malice aforethought, either express or
24 implied, commits the offense of attempted murder. Malice. The
25 presence of malice is a required element of attempted murder.

JURY CHARGE

1 Malice is defined as being hatred or ill will. Malice in its
2 legal sense does not necessarily import ill will toward the
3 individual injured, but signifies rather a general malignant
4 recklessness of the lives and safety of others, or condition of
5 the mind which shows a heart regardless of social duty and
6 fatally bent on mischief. Malice is the wrongful intent to
7 injure another person, it indicates a wicked or depraved spirit
8 intent on doing wrong. Malice is a legal term implying
9 wickedness and excluding a just cause or excuse. It is the
10 doing of a wrongful act intentionally and without just cause or
11 excuse. The term malice indicates a form, purpose and design
12 to do a wrongful act under the circumstances that exclude any
13 legal right to do it. Malice may be either expressed or
14 implied. The words expressed or implied add nothing to the
15 meaning of the word malice. They do not imply different kinds
16 of malice, but merely the manner in which the only kind known
17 to the law may be shown to exist, that is either by positive
18 evidence or by inference. Expressed malice is when there is a
19 deliberate intention to unlawfully take the life of another.
20 Implied malice is when circumstances demonstrate a wanton or
21 reckless disregard for human life, or a reasonably prudent
22 person would have known that according to common experience
23 there was a plain and likelihood that death would have followed
24 the contemplated act. Now, as I explained to you under our law
25 the lesser-included offenses. I charge you section 16-3-600

JURY CHARGE

1 under our code of laws under C1, subsection C1, a person
2 commits the offense of assault and battery in the first degree
3 if the person unlawfully injures another person and the act
4 involves nonconsensual touching of the private parts of the
5 person either under or above clothing with lewd and lascivious
6 intent, or subsection II, occurred during the commission of a
7 robbery, burglary, kidnapping or theft, or under subsection B,
8 offers or attempts to injure another person with the present
9 ability to do so, and the act is accomplished by means likely
10 to produce death or great bodily injury. I charge you 16-3-600
11 E1 -- correction, D1, that's assault and battery in the second
12 degree. A person commits the offense of assault and battery in
13 the second degree if the person unlawfully injures another
14 person or offers or attempts to injure another person with the
15 present ability to do so and moderate bodily injury to another
16 results, or moderate bodily injury to another person could have
17 resulted. Now, 16-3-600, which is assault and battery in the
18 third degree. A person commits the offense of assault and
19 battery in the third degree if the person unlawfully injures
20 another person, or offers or attempts to injure another person
21 with the present ability to do so. Ladies and gentlemen, you
22 are not partisans or advocates for the State of South Carolina
23 or for the defendant, you don't serve as jurors to reward
24 friends or punish enemies, obviously such a perverted system of
25 justice would be intolerable in our society. You have been

JURY CHARGE

1 selected by both the State and the defendant as fair and
2 impartial jurors, it is your duty then by your joint
3 deliberations to determine the facts in this case giving the
4 defendant the benefit of every reasonable doubt on each and
5 every issue, then to the facts as you determine you then take
6 and apply the law which has been given to you by the Court and
7 thus arrive at a verdict, and when you have accomplished these
8 responsibilities you will have satisfied your oath as jurors
9 and you will have discharged your duty to the Court. I will
10 now instruct you in the forms of verdict in this case. Mr.
11 Foreman, counsel have helped me out here and they have printed
12 out for me a verdict form that you may use. I point out to you
13 at this time you're not to give any weight as to the numerical
14 order or placement of these possible verdicts, they have to be
15 put down in some form or fashion and don't give any weight as
16 to how they're listed or the order they're listed. Possible
17 verdicts, we the jury find John Ernest Perry, Jr. as to the
18 charge of attempted murder, guilty; as to the charge of assault
19 and battery first degree, guilty; as to the charge of assault
20 and battery second degree, guilty; as to the charge of assault
21 and battery third degree, guilty; or not guilty on any charged
22 offense, and there's not guilty. There is a check place beside
23 each possible verdict, Mr. Foreman. Whatever the verdict the
24 jury reaches it would be your duty to check that particular
25 single verdict whatever it may be, sign your name, date this

JURY CHARGE

1 form, knock on the door we will receive the verdict. So once
2 again, remember my instructions about lesser-included offenses,
3 you have to study the evidence as you find it and reach one of
4 these verdicts. If you have any problems knock and let the
5 bailiff know, we will try to address whatever issue you may
6 have if there be any. Mr. Foreman, once you begin your
7 deliberations should someone need a break, maybe a restroom,
8 cigarette, just some fresh air, whatever, let the bailiff know
9 but cease your deliberations until you have all 12 jurors back
10 in the room, okay? Now, the reason we have alternates,
11 obviously if a juror become incapacitated for any reason we
12 have alternates, they will not take part in the deliberations.
13 I need to speak with you, Mr. Foreman, this rarely happens but
14 should you initiate the deliberations back in the room and you
15 have a juror who refuses to deliberate, for example, you get
16 back there and somebody immediately says, "I'm not even taking
17 part in these deliberations, I refuse to even discuss it,"
18 immediately cease deliberations, notify the bailiff and that's
19 what an alternate juror is for also in those circumstances. It
20 rarely happens but it has happened, okay? Now, do not begin
21 your deliberations until I check in with the attorneys one last
22 time, and this verdict form along with the exhibits are sent
23 back to you. Once Madam Clerk and the bailiff and Mr. Court
24 Reporter accomplish that and they step back with the verdict
25 form and the exhibits then you may begin your deliberations but

JURY CHARGE

1 do not begin until that is accomplished. So Mr. Bailiff, I
2 need the 12 jurors to step back to the main jury room and if
3 the two alternates would remain with us in a separate room
4 please.

5 (The jury left the courtroom.)

6 THE COURT: Lady and gentlemen?

7 MR. EPTING: We have no exceptions.

8 THE COURT: Any exceptions?

9 MR. NOWIKI: I just have a concern. I know with the
10 assault and battery first what the law reads, my concern is the
11 jury could get confused as far as with the part that deals with
12 the nonconsensual touching and, you know, they may -- I don't
13 know if that's going to be an issue or not but it might. If
14 they're not familiar with the law it is confusing.

15 THE COURT: Well, you've got those ors in there.

16 MR. EPTING: The State's position, it was harmless because
17 Your Honor did subsequently apply the relevant portion of the
18 statute to the jury. We believe that would cure any
19 prejudicial effect of having read the earlier part.

20 THE COURT: Yeah. With the ors in there, if they have a
21 problem with it, they'll let us know, yeah. I don't see any
22 reason to really recharge on that but if it does become an
23 issue we will clarify it.

24 MR. EPTING: Judge, as far as -- if the jury should
25 request to have the video replayed, we do have a laptop that we

1 can provide them. In all candor to the Court it's kind of
2 unreliable and old and slow and it crashes. My preference, I
3 don't know what the defense's would be if they wish to hear the
4 video that they send the note and we could replay this in the
5 courtroom. I don't know if the Court's prefer -- how the Court
6 prefers to handle that situation should that request come
7 through.

8 THE COURT: Mr. Bailiff, when y'all deliver the verdict
9 sheet and the exhibits back there tell them if there's any
10 evidence they need to view again please let us know and we'll
11 take care in the courtroom.

12 MR. EPTING: Very good, Judge.

13 THE COURT: Will that do it?

14 (The jury began deliberations and returned with a
15 Request to re-hear testimony.)

16 THE COURT: Mr. Foreman, I'm in receipt of your request
17 and the court reporter has located that.

18 (The testimony was played.)

19 THE COURT: Anything for the record from the State or the
20 defense?

21 MR. EPTING: Nothing from the State, Your Honor.

22 MR. NOWIKI: Nothing from the defense, Your Honor.

23 THE COURT: Thank you, gentlemen, we will stand at ease.

24 (The jury resumed deliberations.)

25 THE COURT: All right. For the record the jury has

1 requested to be recharged on attempted murder, assault and
2 battery second and third.

3 (The jury returned to the courtroom.)

4 THE COURT: Mr. Foreman, I am in receipt of your request
5 to be recharged on the attempted murder and the various degrees
6 of assault and battery. Section 16-3-29 of the Code of Laws
7 1979 as amended, entitled attempted murder. A person with
8 intent to kill attempts to kill another person with malice
9 aforethought, either expressed or implied, commits the offense
10 of attempted murder. Malice. The presence of malice is a
11 required element of attempted murder. Malice is defined as
12 being hatred or ill will. Malice in its legal sense does not
13 necessarily import ill will toward the individual injured, but
14 signifies rather a general malignant recklessness of the lives
15 and safety of others, or a condition of the mind which shows a
16 heart regardless of social duty and fatally bent on mischief.
17 Malice is the wrongful intent to injure another person. It
18 indicates a wicked or depraved spirit intent on doing wrong.
19 Malice is a legal term implying wickedness and excluding a just
20 cause or excuse. It is the doing of a wrongful act
21 intentionally without just cause or excuse. The term malice
22 indicates a formed purpose and design to do a wrongful act
23 under the circumstances that exclude any legal right to do it.
24 Malice may be either expressed or implied. The words expressed
25 or implied add nothing to the meaning of the word malice. They

1 do not imply different kinds of malice, but merely a manner in
2 which the only kind known to the law may be shown to exist,
3 that is either by positive evidence or by inference. Expressed
4 malice is when there is a deliberate intention to unlawfully
5 take the life of another. Implied malice is when circumstances
6 demonstrate a wanton or reckless disregard for human life or a
7 reasonably prudent man would have known that according to
8 common experience there was a plain and strong likelihood that
9 death would follow the contemplated act. The offense of
10 assault and battery in the first degree. A person commits the
11 offense of assault and battery in the first degree if the
12 person unlawfully offers or attempts to injure another person
13 with the present ability to do so, and the act is accomplished
14 by means likely to produce death or great bodily injury.
15 Assault and battery in the second degree. A person commits the
16 offense of assault and battery in the second degree if the
17 person unlawfully injures another person, or offers or attempts
18 to injure another person with the present ability to do so, and
19 moderate bodily injury to another person results, or moderate
20 bodily injury to another person could have resulted. Assault
21 and battery in the third degree. A person commits the offense
22 of assault and battery in the third degree if the person
23 unlawfully injures another person, or offers or attempts to
24 injure another person with the present ability to do so. Okay.
25 (The jury left the courtroom.)

1 THE COURT: Anything for the record?

2 MR. EPTING: Nothing from the State, Your Honor.

3 MR. NOWIKI: Nothing from the defense.

4 (The jury resumed deliberations.)

5 (All attorneys agreed to send a copy of the charge of
6 Attempted murder and assault and battery in the first
7 Degree back to the jury.)

8 (The jury resumed deliberations.)

9 (The attorneys agreed to send back the charge on
10 Malice after receiving a note from the jury asking to
11 Receive a copy.)

12 (The jury resumed deliberations.)

13 THE COURT: For the record we made a Court's Exhibit from
14 the last inquiry by the jury and I'll read it into the record
15 so I can get comments back from counsel. "Is malice only
16 associated to the attempted murder or is malice also associated
17 to assault and battery?" And we all will be in agreement that
18 malice is not an element of the assault and battery charge, is
19 everybody in agreement there?

20 MR. EPTING: We agree with that, Your Honor.

21 MR. NOWIKI: Yes, Your Honor.

22 MR. EPTING: It's specifically charged in attempted
23 murder.

24 THE COURT: "What is meant by intent? It was not charged.

25 MR. EPTING: We're in agreement with that.

1 THE COURT: What saith counsel if I charge them the Blacks
2 Law intent?

3 MR. EPTING: Your Honor, what was the Blacks -- just so
4 we're clear what was the Blacks Law?

5 THE COURT: The state of mind accompanying an act,
6 especially a forbidden act. While motive is the inducement to
7 do some act, intent is the mental resolution or determination
8 to do it. When the intent to do an act that violates the law
9 exists motive becomes immaterial.

10 MR. EPTING: The State would agree with that definition
11 being charged to the jury.

12 MR. NOWIKI: I don't like the end of that with motive
13 being in there.

14 THE COURT: I see no problem leaving that last sentence
15 off.

16 MR. NOWIKI: Because that's almost implying that use of a
17 deadly weapon --

18 THE COURT: When the intent to do an act that violates the
19 law exists motive becomes immaterial. I don't see any need for
20 that.

21 MR. EPTING: The State's position -- under our theory of
22 the case the motive of why he was shooting the officers is not
23 an element of the case we have to prove and therefore charging
24 the jury that would not be prejudicial in any way to the
25 defendant. Motive versus -- intent to kill versus the motive

1 of why he intended to kill.

2 THE COURT: So you don't have any problem leaving that
3 last sentence off.

4 MR. EPTING: No, Your Honor. We would ask that it be left
5 in but we trust Your Honor's discretion. It says motive is
6 immaterial, which we think motive is immaterial under the
7 attempted murder statute, unless I heard -- unless I am
8 understanding that sentence wrong.

9 THE COURT: The state of mind accompanying an act,
10 especially a forbidden act. While motive is the inducement to
11 do some act intent is the mental resolution or the
12 determination to do it. When the intent to do an act that
13 violates the law exists motive becomes immaterial. You want
14 it, you don't want it.

15 MR. NOWIKI: Right.

16 THE COURT: I mean as far as the last sentence. So the
17 defense objects to the last sentence. I agree with the State,
18 motive becomes immaterial so we'll note your objection and
19 after I charge it be sure and preserve the record again on it,
20 okay?. All right, bring them in.

21 (The jury returned to the courtroom.)

22 THE COURT: All right, I'm in possession of your last
23 inquiry, Mr. Foreman. "Is malice only associated to attempted
24 murder or is malice also associated to assault and battery?"
25 The response to that is malice is not an element of the assault

1 and batteries that were charged. "What is meant by intent?
2 That was not charged." Since that inquiry has come in I charge
3 you from Blacks Law Dictionary. Intent. The state of mind
4 accompanying an act, especially a forbidden act. While motive
5 is the inducement to do some act, intent is the mental
6 resolution or determination to do it. When the intent to do an
7 act that violates the law exists motive becomes immaterial.
8 Okay? All right. It is now almost ten minutes after 6:00,
9 court will be operating, of course, tomorrow, so you know,
10 y'all may continue deliberations and go as long as you'd like,
11 but since the Court will be right back here open and operating
12 in the morning, Mr. Foreman, if the jury feels that they need
13 to retire for the night and come back and continue in the
14 morning that will be permissible. So at any point that you
15 want to discuss that with the jury you can let us know and we
16 will resume in the morning, but I will leave that up to y'all
17 to decide that, okay?

18 (The jury left the courtroom.)

19 THE COURT: Counsel?

20 MR. NOWIKI: Your Honor, I just to renew my objection to
21 the intent that you just read based on about the motive being
22 immaterial. Also my concern is that attempted murder with case
23 law out there saying that it is a specific intent crime, I
24 mean, in my opinion is what was read was more of a general
25 intent type of thing so that's my -- I'm objecting to the

1 charge.

2 THE COURT: Your objection is with the last sentence?

3 MR. NOWIKI: That's correct, Your Honor.

4 THE COURT: So noted. I will not -- based on what we've
5 already discussed I see no reason to recharge and adjust that
6 charge. But it is on the record.

7 (The jury resumed deliberations.

8 (The foreman alone returned to the jury room.)

9 THE COURT: We're back on the record. I received your
10 note, Mr. Foreman. Once the jury began deliberations the
11 alternates were relieved so I cannot put in an alternate, so if
12 you would continue your deliberations, please.

13 (The foreman of the jury returned to the jury room for
14 Deliberations.)

15 THE COURT: Anything for the record?

16 MR. EPTING: No exceptions from the State, Your Honor.

17 MR. NOWIKI: Nothing from the defense.

18 (The jury resumed deliberations and returned to the
19 Courtroom.)

20 THE COURT: Mr. Foreman, members of the jury, I will give
21 you an additional charge at this time, it has to do with the
22 problem of trying to reach a verdict. I have some very brief
23 comments I would like to make to you by way of this further
24 instruction on the matter of your being unable to reach a
25 verdict. As I've already told you, you are the sole judges of

1 the facts and the evidence in the case, and as the judge I have
2 always told you I am not permitted to even give you a hint as
3 to how I feel about the factual matter and certainly could give
4 you no hint about what verdict you ought to bring in this case.
5 It is my duty to state the law of the case to you as I have
6 done and it is your duty to bring in the verdict. But I can
7 say this, that when a matter is in dispute it's not always easy
8 for even two people to agree, and when 12 must agree it becomes
9 obviously correspondingly more difficult. But it is important
10 that litigation, and this is litigation, be ended if it may be
11 ended without a single one of you doing violence to your/
12 conscience. No juror is expected to give up an opinion based
13 on reasoning satisfactory to himself or herself merely for the
14 purpose of being in agreement, and I want certainly to be
15 understood on that. You are not called upon often to try
16 cases. There are over 40 circuit judges whose work it is to
17 try cases from day to day throughout the year in the State of
18 South Carolina. It is very unusual, almost unheard of, for a
19 jury to go out and promptly return with a verdict, this is what
20 will happen if a jury normally was in agreement to begin with.
21 At the same time we usually get a verdict. What that means is
22 that it is normal for jurors to disagree at first, but the fact
23 that we normally get a verdict also means that after reasonable
24 persons lay aside all extraneous matters and determine to
25 decide a case on the basis on the law and the evidence, they do

1 come to a common understanding and write a verdict. It has
2 never been intended that the verdict of a jury should be the
3 verdict of any one person. On the other hand the verdict of
4 the jury is the collective reasoning of all persons put
5 together, and that is why we have a jury so that we may have
6 the benefit of collective thought and collective reasoning. It
7 becomes your duty to tell the other judges how you feel about
8 the case and why you think as you do, and I'm sure y'all have
9 been doing that. On the other hand it becomes the other
10 jurors' duty to exchange views with you, and you should listen
11 to each other and give to the others thought such meaning as
12 you think it should have. And so to some degree it can be said
13 that jury service is a matter of give and take. If you do not
14 agree on a verdict, it does not mean that anybody wins, it just
15 means that at some future term of court before some other judge
16 perhaps that some other jury will sit where you are, the same
17 participants will come and the same lawyers probably will come
18 and they will ask basically the same questions, and presumably
19 and probably they will get much the same answers, and we will
20 go through the whole process again. And I have no reason now
21 to think that any other 12 citizens of York County will be more
22 capable of solving this controversy than you, so I'm going to
23 ask for you at this time to deliberate further and see if you
24 cannot write a verdict on this case. And I want to close this
25 part of this added charge by reminding again that while it is

1 important that litigation be ended, it should be ended in the
2 form of a verdict by no juror doing violence to their
3 conscience. No juror is expected to give up an opinion based
4 on reasoning satisfactory to himself or herself merely for the
5 purposes of being in agreement. Now, with that instruction I'm
6 going to ask that you retire to the jury room and continue to
7 deliberate. And once again, if you would prefer to return in
8 the morning you just need to let us know, Mr. Foreman.

9 (The jury left the courtroom and resumed
10 Deliberations.)

11 THE COURT: Counsel, y'all approach.

12 (A bench conference was held.)

13 THE COURT: They want to go home for the night.

14 (The jury returned to the courtroom.)

15 THE COURT: Mr. Foreman, I got your note. I just need to
16 get y'all back in here and let you know to be back by 10:00.
17 You can just go straight to the jury room and resume your
18 deliberations at that time, but make sure all 12 are back
19 present, Mr. Foreman. Once again, don't let anybody approach
20 you directly or indirectly about this case, do not even discuss
21 it with family members or anyone else, and also avoid any press
22 coverage until this case is completed, okay? I want everybody
23 else to remain seated while the jury departs for the evening,
24 y'all get a good night sleep, we'll see you in the morning at
25 10:00.

1 (The jury left the courtroom.)

2 THE COURT: Anything before we recess for the evening?

3 MR. EPTING: Nothing from the State, Your Honor.

4 THE COURT: Nothing from the defense.

5 (Court recessed for the evening and resumed on Friday,
6 September 21, 2017 10:00 when all jurors reported back
7 To the jury room and resumed deliberations.)

8 MR. EPTING: After consultation with our elected solicitor
9 we have been told to accept the verdict of whatever the jury
10 is.

11 MR. NOWIKI: Your Honor, I would object. I mean, we got
12 this thing worked out and we were in the process of filling out
13 the paperwork, it shouldn't be held against my client and this
14 has been worked out. We didn't have a chance to even present
15 anything as far as the plea.

16 THE COURT: Well, I have not accepted the plea. We were
17 in the process of doing that and the jury has sent word out
18 they've reached a verdict. This is not the first time it's
19 ever happened. So having not accepted the plea and it hasn't
20 been finalized then we will receive the jury. I will have to
21 overrule the objection on that and we will see what they say,
22 and then you can make a determination whether you want them
23 polled, what you want to do about that and then we'll take it
24 from there and see what transpires, okay?

25 MR. EPTING: Yes, Your Honor.

1 MR. NOWIKI: Yes, Your Honor.

2 THE COURT: Is everybody in that needs to be in on this
3 case?

4 MR. EPTING: From the State's side, yes, Your Honor.

5 THE COURT: From the defendant?

6 MR. NOWIKI: Yes, sir.

7 (The jury returned to the courtroom with a verdict.)

8 THE COURT: Good morning, ladies and gentlemen. Mr.
9 Foreman, has the jury reached a verdict?

10 THE JUROR: We have, Your Honor.

11 THE COURT: If you'll pass that up to Madam Clerk, she
12 will pass it up to me. Mr. Bailiff? All right. Let the
13 record reflect that it is signed and dated. Madam Clerk, you
14 may publish the verdict. You have the indictment, don't you?

15 THE CLERK: I do not.

16 (Break in proceedings.)

17 THE CLERK: In the State of South Carolina versus John
18 Ernest Perry, Jr. indictment 2016-GS-46-04183, we, the jury,
19 find John Ernest Perry, Jr. guilty to the charge of attempted
20 murder. Signed by the foreperson and dated today's date. If
21 this be your verdict so say you all by the raising of your
22 right hand. Let the record show all jurors affirmed this
23 verdict.

24 THE COURT: Anything further of the jury?

25 MR. EPTING: Nothing from the State, Your Honor.

JURY VERDICT

1 THE CLERK: Thank you.

2 THE COURT: Thank you, Madam Clerk. Anything further?

3 MR. EPTING: Nothing from the State, Your Honor.

4 THE COURT: As far as the jury.

5 MR. NOWIKI: Nothing from the defense.

6 THE COURT: Okay. Thank you.

7 (The jury was dismissed.)

8 MR. EPTING: Judge, at this time I believe it's
9 appropriate for the defense to renew all previous objections
10 and to make any necessary motions for a new trial.

11 THE COURT: Correct.

12 MR. NOWIKI: Your Honor, we need to renew all objections
13 and motions previously heard by the Court in this trial, also a
14 motion for a new trial based on insufficient evidence that was
15 presented to the jury that to where they could come to this
16 conclusion. There is just too many inconsistencies. And one
17 of my objections was the reading of the intent and due to the
18 fact that I don't think attempted murder was a specific intent
19 crime and I don't think the intent that was read into the
20 court -- or read for the jury covered that.

21 THE COURT: Okay.

22 MR. EPTING: Your Honor, for the reasons stated at
23 directed verdict -- at the directed verdict stage both at the
24 close of the State's case and the defense case we would stand
25 on those arguments and ask the Court to deny those requests.

SENTENCING HEARING

1 THE COURT: Any position about the intent?

2 MR. EPTING: Your Honor, we believe the charge that Your
3 Honor charged was at the jury's specific request as far as
4 intent and we believe that was proper as charged.

5 THE COURT: All right. I'll overrule the objections at
6 this time, and I'll deny the motions -- I'm sorry, I deny the
7 motions and I stand by my previous decisions on the objection
8 and the motion for a new trial is denied. Make sure we get all
9 of that straight on the record. Now, the Court is aware that
10 y'all were in negotiations about entering a plea concerning
11 this, it had not been accepted and the jury notified us that
12 they had reached a verdict, so therefore at this time before we
13 complete sentencing I will allow counsel to discuss the
14 mitigation issues before I actually hear any concerning the
15 disposition and the sentencing of this phase.

16 MR. EPTING: Your Honor, at this point given the
17 defendant's prior record and given that notice was served upon
18 the defendant, at this time and after consultation with the
19 elected solicitor in this circuit we believe we are staying
20 with the notice that was served, keeping the notice that was
21 served on the table. We are not lifting our request to impose
22 under 17-25-45, Your Honor, after consultation.

23 THE COURT: I understand. I just wanted you to know that
24 I would certainly give you time if there was anything y'all
25 needed to talk about.

SENTENCING HEARING

1 I'm faced with sentencing I will tell you I had grave concern
2 about this weapon that was used, an extended clip like that
3 with an extended barrel, that's a little -- stretching it a
4 little bit further than just mere self protection. And the
5 comment about a fair trial, I think everybody in the courtroom
6 will agree that the critical witness in this was a citizen that
7 I assume is a citizen of Ireland who was just a mere witness,
8 had no interest in this case, had no reason to have any bias,
9 prejudice, he got on that stand and he said what he saw. Okay.
10 I've already advised Mr. Perry of his appellate rights so as
11 everybody knows the sentence will be that John Ernest Perry,
12 Jr. be confined to the State Department of Corrections for the
13 period of his natural life.

14 (Break in proceedings.)

15 THE COURT: Back on the record in the Perry case.

16 MR. NOWIKI: Your Honor, I just want to put on the record
17 that Assistant Solicitor Chris Epting, myself and my client had
18 come to an agreement on a plea and we were in the process of
19 filling out the paperwork and presenting it to the Court and,
20 of course, it didn't -- it wasn't accepted, we didn't have that
21 hearing on that. I just wanted to have that on the record that
22 we did have an agreement before the jury rendered -- or had
23 their verdict.

24 THE COURT: All right. Solicitor?

25 MR. EPTING: Your Honor, I believe the sequence was we had

SENTENCING HEARING

1 a note, at that point we came to an agreement on a number. I
2 gave paperwork to defense counsel, he was signing Mr. Perry up
3 in the holding cell and we almost very quickly after that got a
4 note that the jury had reached a verdict at which time I
5 consulted with the elected solicitor and we came into the
6 courtroom to accept that verdict, but that the plea had not
7 been accepted and no consideration had been exchanged aside
8 from agreeing to a number and the verdict subsequently came in.

9 THE COURT: I certainly don't disagree with either of your
10 statements on that, I had not even gotten into the
11 voluntariness of accepting the plea when the notice of the
12 verdict had been reached. Of course, with that said obviously
13 the plea had not been accepted or sentence passed.

14 MR. EPTING: And Your Honor, we don't believe it was on
15 any fault of Mr. Nowiki, he did receive paperwork and
16 immediately went back and began to sign Mr. Perry up with the
17 plea waiver form and the sentencing sheet, it was by my
18 reflection very quickly after that that the verdict came in.

19 THE COURT: Thank you, gentlemen.

20 MR. EPTING: Thank you, Judge.

21 MR. NOWIKI: Thank you, Your Honor.

22 (End of trial proceedings.)

23

24

25

STATE OF SOUTH CAROLINA CERTIFIED TRUE COPY

INDICTMENT

COUNTY OF YORK

2017 SEP 28 PM 3:17

UB
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

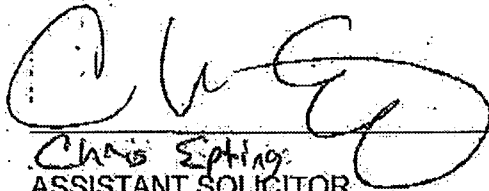
At a Court of General Sessions, convened on November 10, 2016, the Grand

Jurors of York County present upon their oath:

ATTEMPTED MURDER

The defendant, John Ernest Perry Jr, did on or about June 22, 2016, in York County, South Carolina, did unlawfully, with malice aforethought, either express or implied, and with the intent to kill, attempted to kill Officer Dalton Taylor. All in violation of 16-03-0029, *Code of Laws of South Carolina* (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Chris Epting
ASSISTANT SOLICITOR

WITNESSES

RHPD

Witnessing Officer: *Smith*

ARREST WARRANT NUMBER

2016A4620301318

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date: *11-10-16*
TRUE BILL

VERDICT

Guilty.

[Signature]

Sept. 21, 2017

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-46- *04183*

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

NOVEMBER 10, TERM 2016

THE STATE

VS.

JOHN ERNEST PERRY, JR

INDICTMENT FOR

ATTEMPTED MURDER

SC Code: § 16-03-0029
CDR Code: 3410

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

RECEIVED
OCT 20 2017
SC Court of Appeals

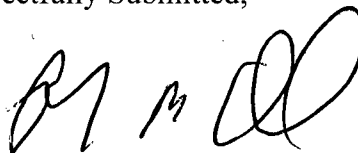
Oct. 23, 2017 4:13PM

No. 1403 P. 4

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 13th day of December, 2018.