

20052

Volume I of IV

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

James R. Barber, III, Circuit Court Judge

THE STATE,

RESPONDENT,

NOV 16 2012

V.

SC Court of Appeals

ANTHONY HACKSHAW,

APPELLANT

Appellate Case No. 2010-177006

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

STATE'S EXHIBIT #69 (RECORDED STATEMENT OF TORRIAN GLEATON)

State of South Carolina

Court of General Sessions

County of Richland

2009-GS-40-6689 - 6691

2009-GS-40-6693

2009-GS-40-6696

The State of South Carolina

:

:

-VS-

:

TRANSCRIPT OF RECORD

:

Anthony Hackshaw

:

October 21, 2010

October 25 - November 1, 2010

Columbia, South Carolina

B E F O R E:

The Honorable James R. Barber, III, Judge, and
jury.

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Circuit Court Reporter

1 **The Court:** Good morning, y'all. Y'all be seated.
2 Okay. This is -- Ms. Shurling has just presented me a motion
3 in limine prohibiting the State from introducing hearsay
4 evidence. I will rule on that right now without argument.
5 If the objection is made, we will not allow hearsay to be
6 introduced unless it falls within one of the exceptions of
7 the rules or meets one of the rules. Any problem with that?

8 **Ms. McDuffie:** No, sir, Your Honor.

9 **The Court:** All right. Now, I don't know what y'all
10 intend to do; when I say y'all, the State. I got a motion
11 from Ms. Duffy -- I mean Ms. Cleary.

12 **Ms. Shurling:** Yes, Your Honor.

13 **The Court:** Apparently she represents somebody that has
14 some connection to this trial.

15 **Ms. Shurling:** My client's wife, Your Honor.

16 **The Court:** All right. Now, she's got some concerns
17 about whether y'all are going to try them together, and she
18 can't be here. I think she indicated she couldn't be here
19 this morning or something like that. Is that right?

20 **Ms. Shurling:** That's correct, Your Honor, and at the
21 time my office was informed that we'd already had this
22 scheduled for this morning.

23 **The Court:** Well, I understand. Well, she's not
24 concerned about it because I told her we would -- if that
25 became a -- anything that she was involved in, we've got the

1 day set aside, so we'll---

2 **Ms. Shurling:** Thank you, Your Honor.

3 **The Court:** We'll deal with that. But if y'all aren't
4 planning on trying them together, then that's not an issue
5 and she doesn't have to be here at all, I guess.

6 **Ms. McDuffie:** It's not an issue, and she doesn't have
7 to be here at all.

8 **The Court:** All right.

9 **Ms. Shurling:** Thank you, Your Honor. We have been
10 inquiring for sometime now whether the State intended to try
11 them jointly. I'm glad to hear a decision has been made.

12 **The Court:** Well, they had to -- they had to sleep on
13 it, and so they finally got well rested enough last night
14 that they're able to make that decision.

15 **Ms. McDuffie:** Your Honor, just for the record, we would
16 still require her client to be here on Monday and -- but we
17 do not intend to call the trial until...

18 **The Court:** How do y'all require her to be here? Have
19 y'all subpoenaed her?

20 **Ms. McDuffie:** She also has pending criminal charges and
21 we noticed her to be here on Monday, Your Honor.

22 **The Court:** All right. So we're knocking these things
23 out. I'm not sure what other motions we have in this case.
24 I know---

25 **Ms. Shurling:** There are five others.

1 **The Court:** ---we have the standard motions that we have
2 in most cases, the motions on discovery and all that stuff,
3 but what do we have here? All these motions are yours, Ms.
4 Shurling?

5 **Ms. Shurling:** They are, Your Honor.

6 **The Court:** All right. Someone tell me a little bit
7 about -- I know this is a murder case.

8 **Ms. Shurling:** May I give Your Honor some factual basis?

9 **The Court:** If you don't mind.

10 **Ms. Shurling:** Okay. On May 20th, 2009, at [REDACTED]
11 [REDACTED], an individual named Ellison Hudson who lived at the
12 residence with his father was in the back yard along with a
13 friend, Cleveland Joyner, and his girlfriend, Ebony Fogle.

14 **The Court:** Where is Juniper Street?

15 **Ms. Shurling:** Fairview, I believe.

16 **Ms. McDuffie:** It's in Greenview.

17 **Ms. Shurling:** Pardon me. Greenview.

18 **The Court:** All right.

19 **Ms. Shurling:** Your Honor, according to the initial
20 report, two individuals came up suddenly, one wearing black
21 and with a black hat and a second individual described only
22 vaguely as somewhat taller than the gentleman I will call
23 Black Hat and wearing a blue hoodie.

24 Initially Ellison Hudson did not identify either of the
25 perpetrators. After some further discussion with the chief

1 investigator, he came forward and said: Okay, I know who it
2 was or at least I know who the one that was chasing me was.
3 According to his version of the facts and---

4 **The Court:** All right. Well, these two people came into
5 the back yard. Right?

6 **Ms. Shurling:** I'm going to pick up from there, Your
7 Honor.

8 **The Court:** All right.

9 **Ms. Shurling:** According to his version of the facts
10 which is substantiated in large part by that given by his
11 friend, Cleveland Joyner, when the individuals approached,
12 Ellison Hudson, ever the gentleman, knocked his girlfriend to
13 the ground out of his way and ran. He was chased by the
14 gentleman in black. I'll refer to him as Black Hat.

15 The other gentleman in the blue hoodie was described as
16 veering off in the other direction. Initially Hudson, as I
17 said, gave a vague description and claimed he didn't know who
18 it was. A very short period later he says: Okay, you know,
19 I do know.

20 **The Court:** All right.

21 **Ms. Shurling:** It was -- it was---

22 **The Court:** Let's talk about---

23 **Ms. Shurling:** ---Jonathan---

24 **The Court:** ---what happened before we... I assume all
25 those statements were made after whatever happened.

1 **Ms. Shurling:** That's correct, Your Honor.

2 **The Court:** Well, tell me what happened and then
3 we'll...

4 **Ms. Shurling:** Okay. What happened, according to
5 Jonathan Bailey---

6 **The Court:** So you got Black Hat chasing Mr. Hudson.

7 **Ms. Shurling:** Black Hat is chasing Mr. Hudson.

8 **The Court:** You got Blue Hoodie. What is he doing?

9 **Ms. Shurling:** Blue Hoodie hides behind a shed in the
10 back yard.

11 **The Court:** All right. So he stays in the back yard
12 behind a shed supposedly.

13 **Ms. McDuffie:** That's not correct.

14 **The Court:** All right. Well, I'll let you fill in
15 the...

16 **Ms. Shurling:** He indicates that he initially grabbed a
17 .38 revolver which was on a table in the back yard where they
18 were washing a car.

19 **The Court:** He being who? Who grabbed the .38?

20 **Ms. Shurling:** Cleveland Joyner. Cleveland Joyner says:
21 As they approached shooting, I grabbed the gun that was on
22 the table and I went behind a shed there in the back yard,
23 that will be clearly prominent in the maps from the scene.
24 He also indicated that he fired shots in the blind.

25 **The Court:** All right. So you've got -- you've got Mr.

1 Hudson running with Black Hat after him. What is Mr. Joyner
2 doing?

3 Ms. Shurling: Mr. Joyner is---

4 The Court: He's in the back yard. He goes and he grabs
5 the gun and hides behind some shed.

6 Ms. Shurling: And according to his statement, he's
7 firing shots at---

8 The Court: All right. Then he starts shoot... Well, I
9 just want an overview.

10 Ms. Shurling: Yes, sir.

11 The Court: I don't really care about what he says she
12 says. So he jumps behind a shed and starts shooting.

13 Ms. Shurling: Correct, Your Honor.

14 The Court: All right. And Blue Hoodie is somewhere
15 behind the shed, too.

16 Ms. Shurling: No, sir, Your Honor. Blue Hoodie -- the
17 logical inference from both statements is that Blue Hoodie is
18 the one that shot and killed Ebony Fogle who was the
19 girlfriend that had been---

20 The Court: Knocked on the ground.

21 Ms. Shurling: ---in the yard.

22 The Court: All right. So the girlfriend gets killed.

23 Ms. Shurling: Correct.

24 The Court: Hudson gets away?

25 Ms. Shurling: Hudson gets away after the shots---

1 **The Court:** How about Joyner? What happens to him?
2 Does he get shot?

3 **Ms. Shurling:** Ebony Fogle, the girlfriend, is shot.

4 **The Court:** I know, but does Hudson get shot?

5 **Ms. Shurling:** She is shot multiple times, Your Honor,
6 at least one of which the autopsy reports indicates as a
7 close gunshot evidencing soot. The others are described as
8 distant, but as Your Honor knows in pathology that can be
9 anything over 18 inches.

10 **The Court:** Ms. Shurling, I don't -- I just want an
11 overview of what we have here.

12 **Ms. Shurling:** I'll cut to the chase, Your Honor.

13 **The Court:** Who gets shot---

14 **Ms. Shurling:** I apologize.

15 **The Court:** ---and who's charged with what?

16 **Ms. Shurling:** When the shots die down, Hudson and
17 Joyner come back and discover that Ebony Fogle has been
18 gravely wounded or is dead.

19 **The Court:** All right.

20 **Ms. Shurling:** They call law enforcement.

21 **The Court:** And what happens to Black Hat and Blue
22 Hoodie? They run off.

23 **Ms. Shurling:** They're gone.

24 **The Court:** All right.

25 **Ms. Shurling:** And initially Hudson reports vague

1 description---

2 **The Court:** So the police come. He gives a vague
3 description. Later on he changes his mind, says I can
4 identify somebody.

5 **Ms. Shurling:** Then he says: Okay, it was Jonathan
6 Bailey and I even know why Jonathan Bailey is after me. I
7 recently ratted on, gave information against, one of his gang
8 members, T.J. Johnson. T.J. Johnson had, in fact, been
9 involved in a shooting where he fired multiple shots into a
10 car driven by Ellison Hudson. So Hudson not only identifies
11 Jonathan Bailey but opines that he knows the motive.

12 Shortly thereafter, Your Honor, he is -- Hudson is
13 informed by law enforcement that it could not have been
14 Jonathan Bailey and that he, therefore, needs to think about
15 who else might have it in for him and who else it could have
16 been. In his audio statement, in the recorded oral
17 statement, he is asked -- he -- pardon me. He offers up the
18 name Bump, a nickname for my client, Anthony Hackshaw.

19 When he is challenged by Detective Reese as to why he
20 didn't name Bump to begin with, on the recorded oral
21 statement he says, "Because I didn't think it was no Bump. I
22 told y'all it was Bailey."

23 **The Court:** All right.

24 **Ms. Shurling:** But y'all say it can't be Bailey, so I
25 said it might have been Bump or words -- I'm paraphrasing.

1 By the time the statement is reduced to writing, he is then
2 saying that he is 90 to 95 percent certain that it was Bump
3 and that he knows that in part because the person shooting
4 him had a small tattoo on his left arm and Bump has a lot of
5 tattoos.

6 **The Court:** Okay. That gives me the overview of the
7 rest of it.

8 **Ms. Shurling:** Thank you, Your Honor.

9 **The Court:** Anything you want to add to that?

10 **Ms. McDuffie:** No, sir, Your Honor.

11 **The Court:** Other than Mr. Hudson didn't hide behind the
12 shed or something? Is that...

13 **Ms. McDuffie:** I -- the way -- the way Ms. Shurling
14 initially described it, she said one of the perpetrator hid
15 behind the shed and that's not -- we would allege that's not
16 correct, Your Honor.

17 **The Court:** All right. So -- I don't know about the---

18 **Ms. Shurling:** If I did, I misspoke. I thought I said
19 Cleveland Joyner hid behind the shed.

20 **The Court:** Yeah, Joyner. Okay.

21 **Ms. Shurling:** Thank you, Your Honor. If I may fill in
22 just briefly a few more facts that you need for the remainder
23 of these motions, I believe. In the discovery, it is
24 revealed that the reason law enforcement told Ellison Hudson
25 that it, quote, could not have been Jonathan Bailey is

1 because Bailey informed them that at the time of the killing
2 he was on a three-way phone call with his mother and a
3 detective from the Richland County Sheriff's Department
4 concerning an outstanding warrant.

5 There is a -- either an e-mail or a memo in the file
6 indicating that the solicitor's office was told that that had
7 been confirmed with the detective in Richland County. Bailey
8 also claimed that at the time he made that three-way call he
9 was at the residence of a girl named Kevae Dolphin. Kevae
10 Dolphin's home is approximately six miles from the scene of
11 the shooting. He claimed that he was there at Kevae
12 Dolphin's residence and that that could be proven because
13 Kevae Dolphin had a video camera at her place and they could
14 get the tapes.

15 The discovery reveals, Your Honor, that the telephone
16 call that was supposedly Mr. Bailey's alibi ended a full 34
17 minutes before the crime. In addition, most importantly,
18 Bailey claimed that the call had lasted for 30 minutes and
19 then at one point he says almost an hour. The records reveal
20 the call, in fact, lasted 14 minutes including the initial
21 set-up call and then the three-way portion. It's one minute
22 and 13 minutes. So at minimum you're talking about 20
23 minutes after the end of the phone call before the actual
24 shooting.

25 Law enforcement got the cell phone records for my client

1 and has made use in their case, or clearly intends to, of
2 some calls as they relate to his whereabouts and how his
3 whereabouts can be tracked by a cell phone tower.
4 Interestingly, although they have the cell phone record for
5 Jonathan Bailey's phone, they did not request cell tower
6 locator information for Mr. Bailey's phone although at the
7 time that Mr. Bailey was cut loose that information would
8 have been available.

9 I have been repeatedly asking for months about another
10 aspect of this case and that's that Kevae Dolphin, when she
11 was interviewed, claimed that she knew that Mr. Bailey
12 arrived at her house moments before noon on May 20th and left
13 at 3:00. She says he was dropped off there by someone else,
14 that he stayed there at the apartment with her and another
15 female identified only as Stephanie, and that he was picked
16 up at the scene by a gentleman named Quantarious Ford. That
17 will become important for a reason I'll tell Your Honor in a
18 moment.

19 She describes, as I said, a security camera. As I noted
20 earlier, Bailey claimed that it was actually equipped with a
21 recording device and that law enforcement could prove he was
22 telling the truth by the camera. I have repeatedly asked for
23 production of two things.

24 **The Court:** All right. Well, wait a minute. Are you
25 getting into some motions?

1 **Ms. Shurling:** No, sir, Your Honor. I'm---

2 **The Court:** Why don't we address this when we address
3 the motions?

4 **Ms. Shurling:** All right. Your Honor---

5 **The Court:** I have an overview of the case. I know now
6 that y'all -- your client has been accused of shooting and
7 killing this female person at the alleged scene.

8 **Ms. Shurling:** That's correct, Your Honor.

9 **The Court:** All right. And that's...

10 **Ms. Shurling:** Does Your Honor have any preference as to
11 which motion I present first?

12 **The Court:** I don't care. Do y'all have any...

13 **Ms. McDuffie:** No, sir, Your Honor.

14 **The Court:** How about let's talk about your renewed
15 discovery motion? How about that?

16 **Ms. Shurling:** Yes, sir, Your Honor. That's what I was
17 about to get into without announcing it.

18 **The Court:** What is it -- have y'all turned over
19 everything that you...

20 **Ms. McDuffie:** Yes, sir, Your Honor.

21 **The Court:** Do you have some information they haven't
22 turned something over, Ms. Shurling?

23 **Ms. Shurling:** No, sir, Your Honor. The problem is that
24 some of the discovery production demands we've made involve
25 things that are simple yes-or-no questions. For example,

1 Kevae Dolphin claims to have had a home security camera.
2 Bailey claims it was equipped with a recording device. Kevae
3 Dolphin claims a second female named Stephanie was there. I
4 have asked repeatedly whether law enforcement knows what
5 Stephanie's last name is. That's a yes-or-no question. I
6 have asked repeatedly whether Stephanie---

7 **The Court:** Wait a minute. Wait a minute. Y'all don't
8 have interrogatories in---

9 **Ms. Shurling:** I understand.

10 **The Court:** ---in criminal court. You know, Rule 5
11 discovery requires that they provide material that they have.

12 **Ms. Shurling:** I understand, Your Honor.

13 **The Court:** Which -- basically whatever is in their
14 file, they're required to produce. Tell me why they're
15 obligated to answer yes-or-no questions. If they don't have
16 it, they can't give it to you. If they have it---

17 **Ms. Shurling:** Your Honor---

18 **The Court:** ---they're obligated to give it to you.

19 **Ms. Shurling:** Sorry. I did not mean to speak over you,
20 Your Honor. Clearly if Kevae Dolphin claims that her version
21 of the facts can be corroborated by another witness, the
22 mysterious Stephanie, and that person has never even been
23 identified and law enforcement has made no attempt to find
24 her and interview her, then that is potential Brady material,
25 Your Honor. It would certainly go to the impeachment of

1 Kevae Dolphin and it would go to impeaching the credibility
2 or, rather, the reliability of the investigation---

3 **The Court:** Ms. Shurling, there's no way you can
4 obligate law enforcement to go out and conduct whatever
5 investigation you think they need to conduct and get whatever
6 statements they may need to get or... I mean, they---

7 **Ms. Shurling:** That was not my demand, Your Honor. All
8 I asked was to be told yes or no whether or not her identity
9 had ever been ascertained and whether or not she'd been
10 interviewed.

11 **The Court:** What's y'all's position about yes or no?

12 **Ms. McDuffie:** Your Honor, we have told Ms. Shurling as
13 recently as last night in an e-mail that Ms. Nicole Simpson
14 sent her that there's no further information to provide her
15 on these matters, that she has everything that we have that's
16 in law enforcement's possession, custody, and control. If
17 law enforcement -- I mean, there's nothing else we can tell
18 her about it other than what she has.

19 **The Court:** Well, can y'all -- do y'all want to give her
20 a yes or a no?

21 **Ms. McDuffie:** No.

22 **The Court:** What's the question? What's the question?

23 **Ms. McDuffie:** The answer is going to be: There's
24 nothing that we know that she does not have.

25 **The Court:** All right. Well, what's the question?

1 **Ms. Shurling:** The question is whether or not they have
2 inquired of law enforcement, whose file and information
3 they're likewise responsible for, whether or not the identity
4 of Stephanie, the last name, was ever determined. Yes or no.
5 Whether or not Stephanie was ever interviewed---

6 **The Court:** Y'all want to answer those questions?

7 **Ms. McDuffie:** Yes, we have specifically asked law
8 enforcement. No, there's no further information to provide
9 Ms. Shurling.

10 **The Court:** All right.

11 **Ms. Shurling:** Thank you. Additionally, Your Honor, I
12 had asked whether or not law enforcement had ascertained
13 whether there was, in fact, a recording device or a security
14 camera at Kevae Dolphin's home.

15 **The Court:** Do y'all want to answer that question?

16 **Ms. McDuffie:** Ms. Shurling has Kevin Reese's notes --
17 Kevin Reese's notes from his conversation with Ms. Dolphin,
18 and that's the extent of the information that law enforcement
19 possesses.

20 **The Court:** Can't tell you anything more than what
21 they've given you.

22 **Ms. Shurling:** Thank you, Your Honor.

23 **The Court:** What else?

24 **Ms. Shurling:** Additionally, Your Honor, I had asked and
25 -- for ballistics reports and information. I would tell the

1 Court that we have yesterday---

2 The Court: You've gotten all of it.

3 Ms. Shurling: Actually day before yesterday gotten
4 ballistics---

5 The Court: All right. What else have we got?

6 Ms. Shurling: We thank the State for that. May I have
7 a moment's indulgence?

8 The Court: Do y'all want to say, "You're welcome"?

9 Ms. McDuffie: Yes, Your Honor.

10 The Court: Is Ms. Campbell coming today or is this
11 just...

12 Ms. McDuffie: It's just me, Your Honor.

13 The Court: Well, how about that kid sitting next to
14 you? You don't include him in the...

15 Ms. McDuffie: He's here for moral support. Ms.
16 Campbell recently---

17 The Court: Well, what about the other kid that---

18 Ms. McDuffie: ---rescued some animals---

19 The Court: How about the other kid that's just walking
20 in? Where does she fit in on the---

21 Ms. McDuffie: She's trying the case---

22 The Court: ---scheme of things?

23 Ms. McDuffie: ---with us, Your Honor, but she has an
24 appointment at 10, so---

25 The Court: She's a little more than moral support

1 but---

2 Ms. McDuffie: Yes, sir, she's co-counsel.

3 The Court: ---not much, huh?

4 Ms. McDuffie: In this hearing only, Your Honor. The
5 trial is...

6 The Court: All right.

7 Ms. Shurling: Thank you, Your Honor.

8 The Court: Yes, ma'am.

9 Ms. Shurling: Your Honor, I would note for the record:
10 In all fairness I was told on a couple of these questions
11 yesterday by Ms. Simpson that---

12 The Court: Don't go, Ms. Simpson.

13 Ms. Shurling: That the answer to a couple of my
14 inquiries was no. I had asked that I be given that in
15 writing, and as of when I left my office yesterday I didn't
16 have it in writing, but she was kind enough to tell me---

17 The Court: Do you intend to give anything in writing?

18 Ms. McDuffie: Your Honor, she e-mailed that last night.

19 Ms. Simpson: Yes, Your Honor. That's correct.

20 Ms. Shurling: Thank you. I have not been to my office
21 this morning, Your Honor.

22 The Court: I'm telling you these -- these young ladies
23 are on top of things, you know. What else? Is that all the
24 discovery?

25 Ms. Shurling: Your Honor, we had asked whether or not

1 there were any interview notes available from Detective A.L.
2 Thomas. He was partnered with Reese in the investigation of
3 this case.

4 The Court: Have you given them all interview notes?

5 Ms. McDuffie: Investigator Thomas did not take any
6 interview notes.

7 The Court: But you've given them all the interview
8 notes that you may have.

9 Ms. McDuffie: Absolutely. Yes, sir, Your Honor.

10 The Court: All right. Well, if they ain't there, they
11 don't exist---

12 Ms. Shurling: Your Honor---

13 The Court: ---but she says there are no interview
14 notes.

15 Ms. Shurling: Your Honor, I have personally spoken with
16 A.L. Thomas concerning this matter---

17 The Court: And he says otherwise?

18 Ms. Shurling: And initially he said, "It wasn't my
19 case, it was Reese's, so he's the one that did everything."
20 Then I inquired -- I said---

21 The Court: Does he say he gave the interview notes?

22 Ms. Shurling: Yes.

23 The Court: All right.

24 Ms. Shurling: What he says, Your Honor---

25 The Court: Ms. McDuffie, would y'all inquire again just

1 to verify...

2 Ms. McDuffie: Yes, sir, Your Honor, we will.

3 The Court: All right. They will.

4 Ms. Shurling: If I might, just to be real fair for the
5 record, what he said, Your Honor, was that he would not have
6 been the main one taking notes since it was Reese's case but
7 that he would typically jot down a few things just for
8 himself but that Reese would do the report. I then said,
9 "Well, whatever few things you did jot down, did you put
10 those notes in the file?" And he said, "Oh, no." So I would
11 ask that the State inquire if he didn't put them in the file
12 where he would have put them.

13 The Court: Well, they can do that. Ms. McDuffie likes
14 to talk to him. She -- I assume you just sent somebody to
15 ask him?

16 Ms. McDuffie: We did.

17 Ms. Shurling: Thank you, Your Honor.

18 The Court: All right.

19 Ms. Shurling: Your Honor, I believe if I can have a
20 second to read -- I have just been handed Ms. Simpson's...
21 Well, one major issue in this case, Your Honor, is that two
22 days after the shooting an individual named Kenneth Goodwin
23 was arrested. Mr. Goodwin then offered up to a detective
24 that he had some information that his girlfriend had just
25 told him that she'd received a text that morning implicating

1 Q., A.K.A. Quantarious Ford, the person that Kevae Dolphin
2 said was with Bailey on May 20th in the killing.

3 There is an audiotape in the discovery, a C.D., I'm
4 sorry -- I'm a dinosaur... I'm still talking about tapes.
5 There's a C.D. on which there's a recorded conversation
6 between Detective Reese and Goodwin setting up a meeting with
7 Goodwin and the girlfriend. I had repeatedly asked why there
8 was no mention of such a meeting in any of Detective Reese's
9 reports or supplemental reports, and more importantly I asked
10 specifically whether that meeting ever took place---

11 The Court: Ms. Shurling, they don't have to answer
12 those questions. That's not part of the discovery under the
13 criminal rules. They have to give you what they have. All
14 of those items that you are inquiring about you may have to
15 address in the trial as to why they didn't do what they
16 should have done whenever they didn't do it.

17 Ms. Shurling: I understand, Your Honor.

18 The Court: But I don't think they have to answer you:
19 Why didn't you do this? They don't have to answer that
20 question.

21 Ms. Shurling: Your Honor, it would be our position that
22 that is true for any information that is not potentially
23 exculpatory---

24 The Court: They still don't have to---

25 Ms. Shurling: ---or impeachment matter.

1 **The Court:** They still don't have to answer your
2 question. The solicitor's office does not have to answer
3 your question. They have to provide you exculpatory
4 material. If it doesn't exist, they don't have to tell you
5 why they didn't do whatever they didn't do or why they did
6 what they did do.

7 **Ms. Shurling:** And, Your Honor, just for the record, it
8 is our position that where there are matters that would have
9 been clearly potentially exculpatory had they been pursued,
10 that whether or not they even bothered to pursue them is in
11 and of itself potential impeachment material and we would
12 have a right to it, whether it's oral or written.

13 **The Court:** All right. Well, you show me the case that
14 says they have to answer your questions, your
15 interrogatories, with respect to why they did or didn't
16 conduct the investigation the way that you think they should
17 or shouldn't have done it.

18 **Ms. Shurling:** No, sir, Your Honor, that's not what I
19 have asked for.

20 **The Court:** Well, you're asking that it's impeachable
21 because they didn't do whatever it is they didn't do. I
22 agree with you. That may be impeachable when you put that
23 witness on the stand but---

24 **Ms. Shurling:** For the record, Your Honor, I am not
25 asking them to explain themselves. I am merely asking them

1 to tell me yes or no whether it was done.

2 **The Court:** Do you want to answer that question?

3 **Ms. McDuffie:** Sure. Sure, Your Honor. She has the
4 audio C.D.'s of Kevin Reese's conversations with Mr. Goodwin.
5 That's the extent of the information that the State has..

6 **Ms. Shurling:** I'll move on. Your Honor, for the
7 record, attached---

8 **The Court:** Ms. Shurling?

9 **Ms. Shurling:** Yes, sir.

10 **The Court:** Everything you say here today is on the
11 record.

12 **Ms. Shurling:** I understand.

13 **The Court:** I assume you're here for more than just
14 putting it on the record. You're here to hopefully prevail
15 in whatever you're requesting to ask.

16 **Ms. Shurling:** Of course I am, Your Honor.

17 **The Court:** You don't need to say on everything we do,
18 "For the record."

19 **Ms. Shurling:** The point I was fixing to make, Your
20 Honor, is that attached to the motion is a comprehensive list
21 of all---

22 **The Court:** Now, which motion is this? The rule---

23 **Ms. Shurling:** The rule to show cause. Pardon me. The
24 motion to compel discovery or the renewed motion.

25 **The Court:** Motion to -- renewed motion to compel

1 discovery. All right.

2 Ms. Shurling: Yes, sir.

3 The Court: Attached is what?

4 Ms. Shurling: And there is a comprehensive list of the
5 matters that we have outstanding inquiries concerning.

6 The Court: Are you talking about those....

7 Ms. Shurling: The questions I've already put before the
8 Court and some additional ones, Your Honor. I would just
9 rely on this document to establish---

10 The Court: All right.

11 Ms. Shurling: ---the questions that have been asked.

12 The Court: Have you complied with all the rules of
13 discovery, both under Rule 5 and Brady?

14 Ms. McDuffie: Yes, sir, Your Honor, and we -- as new
15 information comes up, we have continued to disclose it to Ms.
16 Shurling and will continue to do that.

17 The Court: All right.

18 Ms. Shurling: Thank you, Your Honor.

19 The Court: All right.

20 Ms. Shurling: Your Honor, I believe it would be
21 appropriate next to take up the motion in limine to preclude
22 the State from introducing evidence of prior drug dealings
23 between Ellison Hudson -- alleged prior drug dealings between
24 Ellison Hudson and my client.

25 The Court: Wait a minute now. Hold on. Is that --

1 what is the motion? The motion to suppress?

2 **Ms. Shurling:** Motion in limine to exclude drug evidence
3 pursuant to Rules 403 and 404(b).

4 **The Court:** Hold on. Let me see if I can... All right.
5 Here it is. That's the last one. All right. Let's see
6 here. All right. What is it -- what is it you want to
7 exclude now?

8 **Ms. Shurling:** Your Honor---

9 **The Court:** Prior drug convictions or drug transactions?

10 **Ms. Shurling:** Drug transactions.

11 **The Court:** Do y'all intend to go into that?

12 **Ms. McDuffie:** Yes, sir, Your Honor.

13 **The Court:** All right. Tell me what it is you want.

14 **Ms. Shurling:** Thank you, Your Honor. I told the Court
15 that Ellison Hudson originally opined that Jonathan Bailey
16 was after him because of the shooting involving T.J. Johnson.
17 When he implicated Bump, my client, Anthony Hackshaw, he
18 likewise said that, you know, Bump would have been after him
19 because he had robbed him of some marijuana in an incident in
20 April, a month before.

21 **The Court:** Who had robbed? Bump had robbed?

22 **Ms. Shurling:** No, sir, Your Honor. Ellison Hudson
23 robbed---

24 **The Court:** Had robbed Bump.

25 **Ms. Shurling:** ---my client.

1 **The Court:** All right.

2 **Ms. Shurling:** Claims to have.

3 **The Court:** Right. I understand.

4 **Ms. Shurling:** And he also claims that the property that
5 was stolen was marijuana. I certainly understand the State's
6 right to pursue the question of the previous robbery as
7 falling under a motive exception to 404(b), but beyond that,
8 the nature and character of the property stolen offers no
9 additional probative value and is inherently prejudicial. So
10 we would ask that the State be limited to introducing
11 testimony from Ellison Hudson that he has admitted robbing
12 the defendant, not his claim that he robbed marijuana.

13 **The Court:** All right.

14 **Ms. Shurling:** In addition, there are numerous other
15 witnesses referred to in passim throughout the discovery that
16 claim to know my client as a result of some prior marijuana
17 deals, drug deals, with him. We would move to exclude any
18 reference to prior drug transactions.

19 **The Court:** All right. Why is it y'all need to bring up
20 the word marijuana?

21 **Ms. McDuffie:** Your Honor, we would argue that the --
22 Mr. Hudson knows the defendant because of prior drug
23 transactions. He had bought marijuana from the defendant in
24 the past. The fact that he knew the defendant had large
25 quantities of marijuana is the reason that he robbed the

1 defendant of marijuana. This is not a case where Mr. Hudson
2 walked up to someone he'd never met before on the street and,
3 you know, took his wallet. He robbed him for a specific
4 reason and that was for drugs, and that would be the State's
5 contention is that he, number one, under---

6 **The Court:** All right. Well, what you want in in this
7 case is the fact that they had a prior history which may not
8 have been a pleasant prior history, that a robbery had
9 occurred wherein the defendant was the victim of that
10 robbery.

11 **Ms. McDuffie:** Correct, and I think that---

12 **The Court:** So whether it was money or marijuana or
13 whatever the case may be, tell me how that really plays a
14 role in it.

15 **Ms. McDuffie:** Your Honor, the robbery -- under 404(b)
16 and Lyle, it goes to identity and it goes to motive. I mean,
17 this was the whole reason that we believe this occurred.
18 This is the way that Mr. Hudson knows Anthony Hackshaw.

19 **The Court:** So the only relationship they had, based on
20 your information, was one relating to drugs.

21 **Ms. McDuffie:** Absolutely. Yes, sir.

22 **The Court:** They had no -- but for marijuana, they never
23 would have known each other.

24 **Ms. McDuffie:** Correct, Your Honor, and that's the case
25 with -- numerous other witnesses all know him because they

1 had bought drugs from him prior. Your Honor, we are not --
2 we do not intend to go into, you know, a number of
3 transactions or bring it up over and over again, but the fact
4 that this is what this relationship is based on, I think it's
5 necessary to present an accurate presentation of the facts
6 for the jury, and just to characterize this as a robbery or a
7 random incident would be misleading to the jury.

8 It's also necessary because this is the way that Mr.
9 Ellison Hudson knows Anthony Hackshaw. He knows him because
10 of his prior drug dealings with him. We would argue under
11 404(b) that it goes to motive---

12 **The Court:** Can y'all hold on one second and let me -- I
13 need to get something, and my clerk can't find it.

14 **Ms. Shurling:** Thank you.

15 **The Court:** I'll be right back.

16 (Pause in proceedings.)

17 **The Court:** All right.

18 **Ms. Shurling:** Excuse me, Your Honor.

19 **The Court:** All right. I'm sorry. Ms. McDuffie, if
20 you'll...

21 **Ms. McDuffie:** Your Honor, we would just argue that
22 under 404(b) it requires that there must be a logical
23 relevance between acts in question and the purpose for the
24 introduction, and we believe that there's absolutely a very
25 strong logical relevance between what we're trying to

1 introduce and the acts in question, that but for this series
2 of events this would not have taken place. It goes to motive
3 and it goes to identity, Your Honor, and we believe that the
4 evidence is extremely probative and would pass the test under
5 a 403 analysis. We do not believe that the prejudicial value
6 is substantially outweighed by the probative nature of his
7 testimony, Your Honor.

8 **The Court:** All right.

9 **Ms. McDuffie:** Your Honor, we would also rely on State
10 v. Rice which is at 629 Southeastern Second 393. The case is
11 based on severance grounds, but, Your Honor, the facts are
12 very similar to the ones in the present case. In that case
13 evidence was allowed to come in that showed the relationship
14 between the victim and the defendant. It was largely based
15 on selling drugs. The State's theory as to motive for the
16 murder involved the drugs that the victim stole from the
17 defendant when he stole the defendant's car. All of that was
18 allowed to come in. The case was not decided on Lyle grounds
19 but, rather, on severance grounds, Your Honor. If I may
20 approach and hand the case up.

21 **The Court:** Sure. All right. Anything else, Ms.
22 Shurling?

23 **Ms. Shurling:** Yes, sir, Your Honor. Specifically---

24 **The Court:** I mean with respect to this.

25 **Ms. Shurling:** Yes, sir, with respect to this. Your

1 Honor, the exception under which this evidence would be
2 introduced, if allowed, would be to show other identity or
3 motive. Clearly on the facts of this case, Ellison Hudson
4 can testify that he had met Anthony Hackshaw on numerous
5 previous occasions and had had previous discussions with --
6 conversations with him.

7 He can testify that he robbed Anthony Hackshaw, thus
8 clearly asserting a motive for Mr. Hackshaw to have
9 supposedly wanted to come after him. There's absolutely
10 nothing additionally relevant or probative about the fact
11 that their previous conversations had to do with drugs or
12 that the character of the property stolen was drugs.

13 It's not only inherently prejudicial with regard to the
14 murder charges, Your Honor, but the State's also charging him
15 with possession with intent to distribute a small quantity of
16 marijuana found at his apartment during a subsequent search.
17 So he will, I am advised by Ms. Campbell, be on trial for
18 both the homicide charge and the assault charges but also
19 drug charges, and we would submit, Your Honor, clearly---

20 **The Court:** Are y'all going forward on a P.W.I.D.
21 marijuana charge?

22 **Ms. McDuffie:** No, sir, Your Honor. It's not indicted,
23 and I believe Ms. Shurling knows that.

24 **Ms. Shurling:** Your Honor, I have -- you know, I've
25 specifically been told by Luck Campbell that she was pursuing

1 the drug charges at the same time as the homicide.

2 The Court: Well, if they told you that, they're telling
3 you here today they're not.

4 Ms. McDuffie: It's not indicted.

5 The Court: All right.

6 Ms. Shurling: Even if they're not, Your Honor---

7 The Court: I know, but, you know...

8 Ms. Shurling: All the more reason -- you know, I just
9 think that the attempt to portray my client as someone more
10 likely to have committed this crime because of his
11 involvement in previous unindicted, untried drug transactions
12 is highly prejudicial and it isn't---

13 The Court: Well, I understand that. All right. I'll
14 take that under advisement and read her case and look at it,
15 and I'll let you know.

16 Ms. Shurling: Thank you. Your Honor, likewise -- a
17 moment's indulgence. Your Honor, if the State is firmly
18 committed to not try the drug charges along with the
19 homicide, then we would, of course, be withdrawing our motion
20 with regard to a motion in limine concerning the State being
21 allowed to go into his prior felony drug conviction for
22 impeachment purposes. It was going to be our position that
23 the State---

24 The Court: Because of the -- because of the drug
25 charges?

1 **Ms. Shurling:** Exactly, Your Honor.

2 **The Court:** All right. Well, they're not trying it, so
3 it's not...

4 **Ms. McDuffie:** Your Honor, I think under the case law
5 that that wouldn't come in anyway. I don't think it meets
6 the test. Unless the defendant opens the door, we do not
7 intend to offer that in any way.

8 **The Court:** All right. So they ain't introducing it
9 regardless unless y'all make an issue of it, Ms. Shurling.

10 **Ms. Shurling:** Thank you, Your Honor.

11 **The Court:** You're doing well here today.

12 **Ms. Shurling:** Your Honor, I am---

13 **The Court:** Let's talk about an alibi. That seems to be
14 the next motion, moving backwards according to how they were
15 filed.

16 **Ms. Shurling:** Yes, sir, Your Honor. We have filed
17 notice of alibi in this case.

18 **The Court:** All right. Any issue about that?

19 **Ms. McDuffie:** Slightly, Your Honor. Her motion said
20 the witnesses will alibi him shortly after the shooting. I
21 mean, in order for us to provide her with witnesses -- I
22 mean, I don't know when this alibi is supposed to have...

23 **The Court:** When does the alibi start?

24 **Ms. Shurling:** Your Honor, we---

25 **The Court:** What time was the alleged shooting? Well, I

1 guess it was a shooting but what---

2 Ms. McDuffie: 12:52, Your Honor.

3 The Court: 12:52.

4 Ms. McDuffie: 12:52 to 12:55 is when law enforcement
5 believes it happened. 9-1-1 was called at 12:58.

6 The Court: All right. And that's -- that's after
7 midnight? 12:50---

8 Ms. McDuffie: That's in the middle of the afternoon,
9 Your Honor.

10 The Court: Good God. All right. So when does your
11 alibi start?

12 Ms. Shurling: My client, Your Honor, had a therapy
13 session, an appointment for physical therapy, at Progressive
14 Physical Therapy in the Forest Acres area at 1:30. There is
15 a sign-in sheet in discovery wherein he appears to have
16 signed in at 1:00. There is additional evidence in the
17 discovery that would place his time of arrival at Progressive
18 Physical Therapy sometime after 1, but we do know that it was
19 sometime before 1:30 because his physical therapist
20 specifically remembers him arriving early that day and him
21 being able to take him early for his session and begin the
22 session somewhat early.

23 The Court: Is that helpful?

24 Ms. McDuffie: Somewhat, Your Honor. I mean, I believe
25 that she's saying that he arrived after 1 and before 1:30.

1 **The Court:** That's correct.

2 **Ms. McDuffie:** Thank you, Your Honor. We have nothing
3 further, and she has all of our...

4 **The Court:** Nothing -- knowing that, there's no issue on
5 the part of the State.

6 **Ms. McDuffie:** No, sir, Your Honor.

7 **The Court:** All right.

8 **Ms. McDuffie:** Although I would like to point out for
9 Your Honor that we were not served with this 10 days prior
10 that we requested in our reciprocal Rule 5 that was filed in
11 April.

12 **The Court:** But y'all are not going to make an issue of
13 it.

14 **Ms. McDuffie:** No, sir, Your Honor.

15 **The Court:** All right.

16 **Ms. Shurling:** Your Honor, the last motion is
17 potentially the most important in this case, and that's the
18 question of whether or not the defense will be permitted to
19 address third-party guilt. Your Honor, my motion is fairly
20 detailed---

21 **The Court:** That's this motion to suppress?

22 **Ms. Shurling:** Yes. No, sir, Your Honor. Motion to be
23 allowed to introduce evidence of third-party guilt.

24 **The Court:** I don't even see that.

25 **Ms. Shurling:** Your Honor, this may be as good a time as

1 any to point out there were---

2 **The Court:** I don't have a motion relating to third-
3 party guilt.

4 **Ms. Shurling:** Your Honor, with regard to all these
5 motions, in preparing for this hearing I discovered a number
6 of small problems with the motions, nothing terribly
7 substantive, but it required some slight amendment. They
8 were amended this morning. I have told Ms. McDuffie that
9 they don't make any additional claims other than I would --
10 there would be -- I had a telephone conversation with Nicole
11 Simpson in which she asked me whether I intended, if
12 permitted to go this route, to limit myself to evidence
13 adduced concerning Jonathan Bailey. I told her at that time
14 that while Jonathan Bailey's involvement in this case was
15 certainly the primary focus, that I would also seek to
16 introduce evidence concerning fellow gang members of Jonathan
17 Bailey who had been mentioned in connection with harming or
18 attempting to harm Ellison Hudson.

19 Your Honor, as my original motion and the amended motion
20 detail for the Court, sometime shortly after these --
21 actually, before these motions were filed but it's been in
22 the last couple of months, maybe three, the state grand jury
23 issued a large blanket conspiracy indictment alleging a
24 broad-spread gang conspiracy to commit acts of violence
25 against various individuals including witnesses in cases.

1 The members of the conspiracy are identified as members of
2 the Tree Top Piru set of the Bloods gang, Your Honor.

3 **The Court:** All right.

4 **Ms. Shurling:** And among those indicted is Jonathan
5 Bailey - the party originally identified by Ellison Hudson,
6 Quantarious Ford - the party mentioned as a person of
7 interest by Kenneth Goodwin and the person that Kevae Dolphin
8 says was with Jonathan Bailey on the day of the shooting,
9 T.J. Johnson who is the individual who is, in fact, charged
10 in this indictment with shooting up a car in which Ellison
11 Hudson was riding in a time period not long before this
12 killing took place.

13 Your Honor, so the scope of the statewide grand jury
14 indictment is that these members of this violent street gang,
15 this set, the Tree Top Piru, were combining together to
16 commit and conspiring to commit acts of violence against
17 various individuals including Ellison Hudson and we believe,
18 Your Honor -- I understand that the Supreme Court and Court
19 of Appeals have very narrowly---

20 **The Court:** Is this the same motion that Judge Manning
21 addressed yesterday?

22 **Ms. Shurling:** No, sir, Your Honor.

23 **The Court:** All right.

24 **Ms. Shurling:** Yesterday I was asking for the statewide
25 grand jury to be required to turn over any evidence in their

1 possession---

2 **The Court:** All right.

3 **Ms. Shurling:** ---relevant to acts of violence either
4 planned or perpetrated against Ellison Hudson.
5 Interestingly, it was represented to the Court that they had
6 nothing concerning any such actions. I asked for any
7 evidence concerning acts of violence planned or
8 perpetrated---

9 **The Court:** You don't need to go into that. That's not
10 part of this.

11 **Ms. Shurling:** Yes, sir. In this motion what I am
12 alleging is that, despite case law that certainly narrows the
13 circumstances under which you can get into evidence of third-
14 party guilt, this is perhaps the best case I have seen in a
15 long time for the introduction of evidence of third-party
16 guilt. This is not spurious accusations that somebody else
17 might have done it. This is not evidence which just merely
18 raises the suspicion that somebody else matches the
19 description of an assailant. This is a case where the only
20 eyewitness in the case has positively identified Ellison
21 Hudson and given as a motive---

22 **The Court:** Tell me what it is---

23 **Ms. Shurling:** Ellison Hudson has positively identified
24 Jonathan Bailey.

25 **The Court:** What are you asking for?

1 **Ms. Shurling:** I'm asking for permission in the course
2 of this trial to introduce evidence of third-party guilt as
3 part and parcel of our defense of Anthony Hackshaw.

4 **The Court:** And how do you intend to do that?

5 **Ms. Shurling:** By demonstrating---

6 **The Court:** You're going to ask the police officer when
7 he gets up to testify: Was Jonathan Bailey initially
8 identified as the perpetrator? Is that how you intend to do
9 it?

10 **Ms. Shurling:** Certainly part of it.

11 **The Court:** Y'all believe they can't ask that?

12 **Ms. McDuffie:** No, sir, Your Honor. We don't object
13 to the -- what I would object to is this notion of that -- of
14 Quantarious Ford, of the gang, of all these other random
15 things that I don't believe she can prove. I don't believe
16 she can meet the standard in terms of third-party guilt as to
17 all these other, you know, random things that she threw out
18 there with Jonathan Bailey. Yes, sir, we're not objecting to
19 that.

20 **The Court:** So you just want to get up in a general
21 blanket and say, "Well, it could have been anybody"?

22 **Ms. Shurling:** No, sir, Your Honor.

23 **The Court:** All right. So---

24 **Ms. Shurling:** And I wouldn't be allowed by the case law
25 to do that.

1 **The Court:** Well, I'm not sure what you're asking.

2 **Ms. Shurling:** Okay.

3 **The Court:** So Jonathan Bailey is not an issue.

4 **Ms. Shurling:** I'll be specific, Your Honor. Clearly we
5 want to inquire both of law enforcement and if they were to
6 put, as I'm sure they will, Ellison Hudson on the stand
7 questions concerning the accusation that Bailey was one of
8 the shooters in this case.

9 **The Court:** Well---

10 **Ms. Shurling:** I then---

11 **The Court:** That's not an issue. Let's---

12 **Ms. Shurling:** Then additionally, Your Honor, I would
13 want to be allowed to ask law enforcement about the reasons
14 why they have cut Jonathan Bailey loose and told Ellison
15 Hudson that it could not have been Jonathan Bailey and---

16 **The Court:** Have y'all got some objection to that?

17 **Ms. McDuffie:** No, sir, Your Honor.

18 **The Court:** All right. Jonathan Bailey is not an issue.
19 They've agreed that Jonathan Bailey can -- y'all can address
20 that with these police officers. Clearly it seems to be
21 relevant to this case. If he, in fact, got up and said it
22 was John Doe and the police said it couldn't have been John
23 Doe, had to be somebody else, I think you can go into that.
24 What else we got?

25 **Ms. Shurling:** Your Honor, I want to be able to ask Mr.

1 Hudson about his initial statement that the reason Jonathan
2 Bailey would be after him was because of him ratting on one
3 of Bailey's gang brothers, T.J. Johnson.

4 **The Court:** Jonathan Bailey is not an issue. You can
5 ask them anything about Mr. Bailey if it came out in the
6 course of this investigation.

7 **Ms. Shurling:** And then, Your Honor, I wish to be able
8 to cross-examine Investigator Reese as to why a lead
9 concerning Quantarious Ford's involvement in this case was
10 not pursued.

11 **Ms. McDuffie:** That we would object to, Your Honor. The
12 audio conversation that Kevin Reese had with an individual
13 named Kenneth Goodwin -- in the audio conversation, Your
14 Honor -- and I have a transcription if Your Honor would like
15 to see it for the purposes of this hearing. Kenneth Goodwin
16 says: I've heard rumors on the street that Quantarious Ford
17 was involved, and my girlfriend got a text message from some
18 unknown person that I happened to see that said that
19 Quantarious Ford was involved. And he had no personal
20 knowledge. He could not come into court and testify what was
21 in the audio recording. It's all hearsay, and Ms. Shurling
22 has already moved to exclude all that. So I would hope that
23 she would not try to introduce that during the trial as well,
24 Your Honor.

25 There is mere speculation, even based on that one

1 witness, Kenneth Goodwin, who says that it's all rumor that
2 he's heard that Quantarious Ford is involved in that. I
3 don't believe that Ms. Shurling can meet the standard
4 necessary in order to argue third-party guilt on that
5 individual, Your Honor.

6 **Ms. Shurling:** Your Honor, if the information about
7 Quantarious Ford was vague as the State represents, then they
8 would be accurate. However, in this case the investigative
9 report of Detective Bobbin (sic) and the previous Detective
10 Quinn, excuse me, Quinn, indicates that what Kenneth Goodwin
11 told them on May 22nd was that this morning my girlfriend got
12 a text message saying that Q. Was involved in the shooting.
13 That means that if they had followed through, ascertained the
14 girlfriend's identity and interviewed her---

15 **The Court:** How are you going to get that -- how are you
16 going to get that in that this morning somebody got a text
17 message saying that so-and-so -- I mean, how does that come
18 in?

19 **Ms. Shurling:** I would ask Investigator Reese if he was
20 given information by fellow law enforcement officers in the
21 City of Columbia Police Department that another individual
22 had been implicated in the crime, that if he had received a
23 tip through Goodwin whether he, in fact, had a telephone
24 conversation with Goodwin to set up a meeting with that
25 witness.

1 **The Court:** Well, Ms. Shurling, isn't that all hearsay?

2 **Ms. Shurling:** No, sir, Your Honor, because I -- Reese
3 is the one that had the conversation. I can ask Investigator
4 Reese -- I believe I should be allowed to---

5 **The Court:** But you're asking him to say: Didn't you
6 get a telephone call from somebody saying such and such?
7 You're asking him to testify as to hearsay.

8 **Ms. Shurling:** Your Honor, I can't think of a case off
9 the top of my head, but there are many, many of them. If I
10 ask him why he took a subsequent action, he can address that
11 without addressing hearsay. He can say: As a result of
12 information I received from other officers in the Columbia
13 Police Department, I---

14 **The Court:** Clearly he can say as a result of my
15 investigation I did such and such.

16 **Ms. Shurling:** And I set up a meeting with Kenneth
17 Goodwin and his girlfriend. And I can ask him: Did that
18 meeting take place? Why not? As recently -- this all
19 happened two days after the shooting. They're referring to
20 the tip---

21 **The Court:** As a result of information, did you -- did
22 you conduct an investigation? Yes. Any meeting -- I don't
23 -- how are you going to get in: Did you set one up with Joe
24 Blow? What meetings did you set up? What investigation --
25 what did your investigation show you? I think you clearly

1 can go into that. I don't think you can go into: Oh, yeah,
2 I got something and as a result I went and met with Joe Blow.

3 **Ms. Shurling:** Your Honor, all I'm asking to be allowed
4 to question him about is: Isn't it a fact that you -- that
5 in the course of your investigation you received information
6 from fellow Columbia Police Department officers concerning
7 information about Quantarious Ford being involved in this
8 shooting?

9 **The Court:** All right. Well, I'm not going to allow
10 that.

11 **Ms. Shurling:** Additionally, Your Honor, the State has
12 submitted---

13 **The Court:** You can ask him did he get information from
14 fellow police officers and if so -- you're not going to ask
15 him what that information is because that's hearsay.

16 **Ms. Shurling:** I'll be very careful how I ask it, Your
17 Honor.

18 **The Court:** And you can ask him: What did you do as a
19 result of any investi... I did nothing. I did -- whatever
20 he did to conduct his investigation. You clearly can go into
21 what he did or didn't do in his investigation.

22 **Ms. Shurling:** Your Honor, there's an audio recording of
23 Detective Reese in discovery very specifically setting up a
24 meeting with Goodwin and his girlfriend. That's not -- it's
25 firsthand conversation had by Detective Reese. May I please

1 ask him whether or not that meeting took place?

2 **The Court:** There's an audio? You know, a lot of stuff
3 you get in discovery is not admissible in trial.

4 **Ms. Shurling:** I certainly understand that, Your Honor.

5 **The Court:** All right. Well---

6 **Ms. Shurling:** But my point is it's not -- I'm not
7 relying on hearsay to tell Your Honor that Reese set up a
8 meeting with Goodwin and his girlfriend.

9 **The Court:** Did he meet with -- did he meet with them?

10 **Ms. Shurling:** I'm told today that they have no
11 information that he did, but I've been asking that question
12 for six months.

13 **The Court:** All right. Well, then you can't ask him did
14 he meet with them. He didn't meet with them.

15 **Ms. Shurling:** Your Honor, the State is also---

16 **The Court:** All right. Well, we're not going into that.

17 **Ms. Shurling:** If I may clarify a point.

18 **The Court:** Sure.

19 **Ms. Shurling:** Your Honor, the State has also suggested
20 that this was a mere spurious tip from the street from an
21 unidentified person. It was a text message allegedly
22 received by the girlfriend two days after the shooting. If
23 it had been followed up on swiftly, it certainly could have
24 been verified by ascertaining the source of the text. That
25 would have provided law enforcement with a method of

1 investigating where that tip came from and how reliable it
2 was. The individual who sent the text could have been
3 identified and they may have been in the possession of
4 information relevant to Quantarious's -- Quantarious Ford's
5 involvement in this case.

6 **The Court:** All right. Your point is taken.

7 **Ms. Shurling:** Thank you, Your Honor. So if I could get
8 clarification from the Court as to exactly what I am and am
9 not permitted to ask...

10 **The Court:** Well, I'm certainly not going to tell you
11 what you can and can't ask because I don't know what you may
12 or may not ask, but we're not going into did you meet with
13 Joe Blow or whoever it is. Who was it? Quantarious
14 somebody.

15 **Ms. Shurling:** Kenneth Goodwin.

16 **Ms. McDuffie:** Kenneth Goodwin, Your Honor.

17 **The Court:** Kenneth Goodwin and his girlfriend. They've
18 indicated they didn't meet with Kenneth Goodwin and his
19 girlfriend. Now, if you find out that they did, then you
20 bring that to my attention and we'll address that at the
21 time. You can ask him what he did in his investigation.

22 **Ms. Shurling:** Yes, sir, Your Honor.

23 **The Court:** As a result of your investigation, where did
24 you go from there? What did you do? I mean, you know, ask
25 him what he did. I think you have the right to know

1 everything he did in this investigation.

2 **Ms. Shurling:** Thank you, Your Honor. Respectfully, I
3 would object to not being permitted to inquire and I would at
4 the time of trial ask for a proffer on the record of the
5 questions I would seek to ask and the information it would
6 provide.

7 **The Court:** All right. Well, we certainly will allow
8 you that opportunity.

9 **Ms. Shurling:** Thank you, Your Honor.

10 **The Court:** Just remind me because I won't think of it
11 myself.

12 **Ms. Shurling:** I won't forget. And it may be that by
13 delicately phrasing questions I'll be able to get into that
14 area---

15 **The Court:** Maybe but we'll see what kind of objections
16 they make.

17 **Ms. Shurling:** And to note, Your Honor, our specific
18 objection is that we believe that the fact that law
19 enforcement did not follow up on other known leads concerning
20 persons allegedly connected with this killing, individuals
21 who have been connected to Jonathan Bailey, the first person
22 identified in this case, would be valuable impeachment
23 evidence and as such should be permitted. Thank you.

24 **The Court:** All right. Yes, ma'am.

25 **Ms. Shurling:** Your Honor, the last motion would be the

1 suppression motion.

2 **The Court:** All right. Hold on one second. Let me get
3 this motion. All right. If you would.

4 **Ms. Shurling:** Your Honor, a search warrant was executed
5 at my client's home---

6 **The Court:** All right.

7 **Ms. Shurling:** ---during which a relatively small
8 quantity of marijuana was found and a .40 caliber handgun
9 registered to my client's wife and co-defendant, Rosa
10 Grenald.

11 **The Court:** I'm sorry. The marijuana and a handgun
12 registered to your client's wife?

13 **Ms. Shurling:** My client's wife, yes, sir, Your Honor.
14 And along with the gun we believe was the paperwork
15 documenting his wife's purchase of the gun at a Shriners gun
16 show of some sort. I believe that that paperwork was in the
17 box when the gun was seized. Your Honor, the stated purpose
18 for the search was to look for evidence of the April robbery
19 of Anthony Hackshaw by Ellison Hudson.

20 **The Court:** What is it y'all object to that you want to
21 suppress? The drugs are not an issue any longer; right?
22 Because you're not pursuing any drug charge.

23 **Ms. McDuffie:** No, sir, Your Honor, and the only thing
24 that was a fruit of this search warrant that we're seeking to
25 introduce is a computer print-out in the defendant's home of

1 Ellison Hudson. We do not seek to introduce the gun at this
2 time unless there's some reason it becomes relevant.

3 **The Court:** All right. So the gun is not coming in.

4 **Ms. Shurling:** Your Honor, I have been previously
5 advised by I believe Ms. Campbell and I thought Ms. McDuffie
6 that they were going to seek to introduce evidence---

7 **The Court:** Well, Ms. Shurling---

8 **Ms. Shurling:** Yes, sir.

9 **The Court:** ---they have just told us they're not. If
10 they attempt to do it after having told us here today and
11 you've prepared based on representations they've made here
12 today, then we'll deal with it at that time, but right now
13 they're not going to -- they're not -- they're telling us
14 they're not going into the gun, so the gun is not an issue.
15 All right?

16 **Ms. Shurling:** No evidence of the gun or ballistic
17 testing done on the gun?

18 **Ms. McDuffie:** Your Honor, I believe -- unless Ms.
19 Shurling is going to -- and her client is going to say that
20 he was not present when the shootout at his apartment complex
21 happened and that he was not robbed by Ellison Hudson -- I
22 mean, I can't predict what -- I mean, unless that becomes an
23 issue in our case in chief, I don't see that.

24 **The Court:** They don't intend to do it. If you open the
25 door---

1 **Ms. Shurling:** I shall---

2 **The Court:** ---it may be an issue.

3 **Ms. Shurling:** Thank you. I believe, Your Honor, that
4 that covers the motions filed up to this juncture in this
5 case, Your Honor. I do not---

6 **The Court:** Are you intending to file more?

7 **Ms. Shurling:** I do not know of any additional motions
8 that will be filed at this time, Your Honor. If I decide
9 that such motions are necessary, I will get them filed as
10 quickly as possible and make the Court aware by e-mail that
11 they've been filed.

12 **The Court:** Well, if you do that by e-mail---

13 **Ms. Shurling:** Yes, sir.

14 **The Court:** ---which you probably know, based on your
15 experience with me, you better send it to her.

16 **Ms. Shurling:** I send everything to law clerks and
17 judges, Your Honor. And again, to be fair, I don't
18 anticipate---

19 **The Court:** Most of my e-mail time is now spent box
20 full, I believe.

21 **Ms. Shurling:** To be fair, Your Honor, I genuinely do
22 not anticipate at this time the necessity for any further
23 motions.

24 **The Court:** All right. Ms. McDuffie, what -- anything
25 from you? The only thing is: I've got to rule on this other

1 issue and I'll -- and you've given me a case. I'm going to
2 read that still.

3 **Ms. McDuffie:** On the search warrant issue, we still
4 seek to introduce the photograph taken from his home. I
5 believe her initial motion was to suppress the entire search
6 warrant for lack of probable cause. So I just want to be
7 clear that we are seeking to introduce the photograph.

8 **Ms. Shurling:** In that case, I need to address the
9 merits of the motion.

10 **The Court:** What is the photograph?

11 **Ms. McDuffie:** The photograph is of Ellison Hudson.

12 **The Court:** Oh, okay. All right.

13 **Ms. Shurling:** In that case, Your Honor, we need to go
14 over the motion.

15 **The Court:** All right.

16 **Ms. Shurling:** Your Honor, the affidavit used to support
17 the search warrant indicates that the purpose of the search
18 is to look for evidence of the robbery of Anthony Hackshaw by
19 Mr. Hudson in April. By the time this search warrant was
20 issued and the search was conducted, Ellison Hudson had
21 already fully confessed to this robbery. There was -- based
22 on the statement of Ellison Hudson, any case against Ellison
23 Hudson for armed robbery was fait accompli. He admittedly
24 did it---

25 **Court Reporter:** I'm sorry. It was what?

1 **Ms. Shurling:** ---and he continued to do it---

2 **The Court:** Whoa, whoa, whoa, whoa.

3 **Court Reporter:** I didn't understand what she said.

4 **The Court:** Fait accompli, the fact that it had already
5 been accomplished, completed. F-a-i-t a-c-o-m-p-l-i (sic)?
6 Is that how you...

7 **Ms. Shurling:** I believe that's correct, Your Honor.

8 **The Court:** Is that right, Marshall?

9 **Law Clerk:** (Nodded head up and down.)

10 **The Court:** Say something. Get on the record.

11 **Law Clerk:** Yes.

12 **The Court:** That's Marshall Newton, for the court.

13 **Ms. Shurling:** In addition, Your Honor, based on
14 evidence---

15 **The Court:** All right. So you're saying that once he
16 made a confession that was -- that case is over?

17 **Ms. Shurling:** There was no legitimate need for further
18 investigation, Your Honor. And more specifically, if you
19 read Ellison Hudson's account of the April incident, he
20 describes the entire thing as having taken place outside in
21 the breezeway area of the apartment. He never claims to have
22 set foot in the apartment. So it would be our position, Your
23 Honor, that the search warrant issued under the guise of
24 seeking evidence of a robbery---

25 **The Court:** All right. Well, tell me what y'all want to

1 say about this. With respect to the fact that Mr. Hudson had
2 already confessed, that does not stop me. I mean, I see on a
3 daily basis people giving confessions and recant those
4 confessions or defense counsel saying: Hey, why did you stop
5 the investigation at this point in time? So the fact---

6 Ms. Shurling: The second ground, Your Honor, addresses
7 the fact that---

8 The Court: How about -- tell me about what you want to
9 tell me about the...

10 Ms. Shurling: Your Honor -- I'm sorry. There was a
11 second ground for the motion.

12 The Court: Well, you just told me it was because the
13 robbery occurred outside.

14 Ms. Shurling: Additionally, Your Honor, we would assert
15 that the search warrant was stale, that the robbery---

16 The Court: How long was it?

17 Ms. Shurling: The robbery occurred in April. The very
18 day of the alleged robbery and the shootout with law
19 enforcement was at the home of Anthony Hackshaw. They had
20 plenty of time to get a warrant to search for---

21 The Court: Well, tell me what time it was. What's the
22 time frame between---

23 Ms. Shurling: From April 26th to -- 23rd to June 5th.

24 The Court: All right.

25 Ms. Shurling: And it's our position, Your Honor, that

1 the case law is clear that a request for a search warrant, in
2 order for it to provide adequate probable cause, must be
3 based on information sufficiently contemporaneous with the
4 request to give rise to probable cause to believe that
5 evidence of the crime will still exist. Law enforcement had
6 ample opportunity to get a warrant and search at a time more
7 contemporaneous with the crime. They didn't. They waited lo
8 those many months, weeks, to---

9 **The Court:** All right. What do you want to tell me?

10 **Ms. Shurling:** It's stale.

11 **Ms. McDuffie:** Your Honor, if I may hand up a copy of
12 the search warrant so that -- to put this in context. Your
13 Honor, addressing Ms. Shurling's first allegation that
14 there's not sufficient probable cause, we would absolutely
15 disagree. The statute 17-13-140 requires that the search
16 warrant be issued for property to be seized which has been
17 used in the commission of a criminal offense.

18 When law enforcement was originally called out to the
19 incident location at [REDACTED] on April 23rd,
20 2009, it was for a shootout. There was no -- there was no
21 evidence whatsoever that a robbery had taken place. There
22 was one witness who -- and they were actually called back
23 downstairs by a neighbor---

24 **The Court:** Wait a minute. Let's back up again. On --
25 what allegedly happened on April 23rd?

1 **Ms. McDuffie:** On April 23rd---

2 **The Court:** This is when the alleged robbery took place
3 between Mr. Hudson and the defendant.

4 **Ms. McDuffie:** Correct. On that day law enforcement was
5 called, not by Mr. Hackshaw but by one of his neighbors,
6 because a bullet went through her apartment and another
7 individual, Ms. Carmen Rodriguez---

8 **The Court:** So the only notice the police had was as a
9 result of a gun fight.

10 **Ms. McDuffie:** Absolutely, Your Honor.

11 **The Court:** All right. No -- no robbery.

12 **Ms. McDuffie:** Correct. There was one individual at the
13 apartment complex who stated to one of the officers that the
14 individual that he believed he saw shooting was standing up
15 in the third floor now. Officers made contact with that
16 person. That person was Anthony Hackshaw. He said that he
17 knew nothing about anything that was going on.

18 Your Honor, that's all the information that the police
19 had at that time about this incident. So, Your Honor, they
20 were investigating it as the discharging firearm and the
21 malicious injury to real property and the personal property
22 of Ms. Rodriguez. At that time that's all the information
23 they had.

24 On June the 4th Ellison Hudson is interviewed and
25 provides information that he went there to rob Anthony

1 Hackshaw. He robs Anthony Hackshaw. He leaves and Mr.
2 Hackshaw starts firing a gun. All of this is contained in
3 Investigator Gonzalez's affidavit for the search warrant.

4 Ms. Shurling says that the search warrant is for
5 evidence of a robbery. While he does -- investigator does --
6 Gonzalez does say I believe necessary to further
7 investigation into the robbery, the last line of the search
8 warrant is that they are looking for evidence of furtherance
9 of the crime, Your Honor.

10 In the search warrant he describes Ms. Rodriguez and the
11 other neighbor as victims. This is not -- I mean, this is
12 not a search warrant for the robbery. They went looking for
13 the gun that was used that caused the injury to these other
14 people as well. Your Honor, I believe the appropriate
15 standard is the totality of the circumstances, whether the
16 magistrate could find probable cause based on what was
17 contained in the affidavit. I believe that he absolutely
18 could, Your Honor, for the crimes of malicious injury and
19 also...

20 The Court: All right. Let me -- can y'all give me a
21 minute to look at this?

22 Ms. McDuffie: Sure.

23 The Court: All right. Go ahead. I've read the
24 affidavit.

25 Ms. Shurling: Your Honor---

1 **The Court:** Wait a minute. Let her -- I'm going to let
2 her finish. I interrupted her.

3 **Ms. Shurling:** I'm sorry.

4 **Ms. McDuffie:** In response to---

5 **Ms. Shurling:** Go ahead. I thought you were through. I
6 apologize.

7 **Ms. McDuffie:** In response to her argument on staleness,
8 the probable cause affidavit must state facts closely related
9 to the time of the issuance of the warrant as to justify the
10 finding of probable cause. The officers had some information
11 at the time. Your Honor, I would argue that they -- at the
12 time this incident happened they probably did have probable
13 cause to do a search of Mr. Hackshaw's home. They had one
14 witness saying that he believes he thought that this man was
15 a shooter but, I mean, wasn't sure. I don't think that that
16 alone would be enough.

17 It wasn't until June 4th when they got the statement
18 from Ellison Hudson, Ellison Hudson saying that it was
19 Anthony Hackshaw that was the shooter, that confirmed the
20 information that they already had prior that gave them the
21 probable cause. Your Honor, in State v. Corns and also in
22 State v. Beckham -- I'll hand those up at the appropriate
23 time, Your Honor.

24 State v. Beckham is a case where a year after a murder
25 occurred the police had a witness come in and say: I saw the

1 murder -- the defendant with a gun at the day of the murder.
2 The police then got a search warrant for the defendant's home
3 and found the gun. Your Honor, there they said that wasn't
4 stale. They specifically cited an eighth circuit Court of
5 Appeals case, United States v. Steeves, I believe, Your
6 Honor, which said that guns are something that people
7 normally keep in their homes, that this information wasn't
8 stale, and when the police learned of it they acted quickly,
9 just as in this case. The next day they got a search warrant
10 in this case, Your Honor, and went to the home and found
11 evidence of that crime.

12 Your Honor, we believe that the information is not
13 stale, that the magistrate did have -- the affidavit was
14 sufficient to find probable cause and that the police acted
15 on the magistrate's determination of probable cause in
16 executing the search warrant.

17 **The Court:** All right.

18 **Ms. Shurling:** Your Honor, ironically on April 23rd,
19 '09, the police were able to find a witness that claimed to
20 have seen shots being fired from the balcony of my client's
21 apartment. Therefore, while they didn't know about the claim
22 that an armed robbery had just taken place until June 6th,
23 they certainly had sufficient evidence to provide probable
24 cause for a search of that apartment based on a witness
25 supposedly witnessing an unlawful discharge of a firearm from

1 that location on that day.

2 They chose not to investigate the April incident based
3 on probable cause available to them at the time, and when
4 they did get a warrant to search my client's apartment, it
5 wasn't based on probable cause to believe he was involved in
6 the May 20th homicide. It was expressly based on the desire
7 to acquire additional evidence of guilt concerning the
8 robbery in April.

9 So they did have probable cause for a search at a time
10 more contemporaneous with the shootout, albeit in connection
11 with an unlawful discharge, not a known armed robbery, but
12 probable cause is probable cause. They could have searched
13 the apartment at that time and they didn't. Their stated
14 purpose for the search at this time was to get evidence of a
15 crime that had already been solved, but Your Honor I realize
16 has already ruled on that point. But it is our position that
17 because they did have probable cause for a search at a time
18 contemporaneous with the April incident and could have
19 searched at that time and chose not to, that waiting until
20 June to do it, Your Honor, the information was simply stale
21 and not sufficiently tied to the date of the original
22 incident. It was stale and we would ask that any fruit of
23 that search be suppressed.

24 **The Court:** All right. Well, I'm going to deny your
25 motion. I'm going to find that it's not stale. There was a

1 basis for issuing the warrant.

2 Ms. McDuffie: Thank you, Your Honor.

3 The Court: And they can introduce the photograph.
4 That's the only thing they intend to introduce unless y'all
5 open the door on something else, but the gun and the
6 marijuana will not be an issue.

7 Ms. Shurling: Thank you, Your Honor.

8 The Court: Is that it?

9 Ms. Shurling: Only to inquire. Your Honor has taken
10 under advisement on the motion with regard to third-party
11 guilt -- that's not the one you took under advisement.

12 The Court: I didn't take that under advisement. The
13 thing I took under advisement is the---

14 Ms. Shurling: 404(b).

15 The Court: ---marijuana.

16 Ms. Shurling: Yes, sir, Your Honor, and I would simply
17 inquire as to whether the motion as before the Court is
18 sufficient or whether the court would like to entertain a
19 bench brief on that issue.

20 The Court: I mean, I clearly understand what you're
21 saying. I mean, you're saying that the -- basically that
22 it's more prejudicial than probative -- substantially more
23 prejudicial than probative. They're saying that the only way
24 these fellows had any kind of contact with each other is
25 because of the marijuana and the deal. I don't see how it's

1 an issue either way. I mean, to me you're much more
2 prejudiced by a robbery than the word marijuana, and clearly
3 that can be introduced and...

4 **Ms. Shurling:** Well, that distinction is easy, Your
5 Honor. The robbery is something bad done by Hudson.

6 **The Court:** Well, still, I mean, you've got these folks
7 that are out there just -- they're prejudiced, too. I mean,
8 there's no doubt about it, but they -- I'll just have to look
9 at it. I don't see, if it's excluded, how the State is
10 particularly prejudiced by excluding it, but we'll see. I'll
11 let you know Monday morning. How about that?

12 **Ms. Shurling:** Thank you, Your Honor.

13 **Ms. McDuffie:** Your Honor, Ms. Shurling also filed a
14 motion about witness travel expenses which we have no comment
15 on and no position on.

16 **The Court:** Say that again. A witness about what?

17 **Ms. Shurling:** I had filed a motion with Judge Cooper as
18 the chief administrative judge for funding to get a witness
19 here from New Jersey.

20 **The Court:** All right. Well, so he's dealing with that.

21 **Ms. McDuffie:** Right. The only issue we have, Your
22 Honor, is that in it she talks about documentation that she
23 has or the witness has. Your Honor, we just filed a
24 reciprocal Rule 5 in April. We've received nothing from Ms.
25 Shurling in regards to that, so we would just renew it at

1 this time.

2 Ms. Shurling: And, Your Honor, I have been told that
3 the witness will bring with her documents that had been
4 provided to her by the---

5 The Court: So you don't have those documents?

6 Ms. Shurling: I do not, Your Honor. I have one
7 document that was provided to me in the last couple of days
8 by counsel for the co-defendant, but it was not, in my
9 estimation, sufficient to establish the point I need. So the
10 witness is bringing additional documentation---

11 The Court: Well---

12 Ms. Shurling: ---with her.

13 The Court: ---give her what they're entitled to.
14 Don't---

15 Ms. Shurling: I will, Your Honor.

16 The Court: All right. Anything else?

17 Ms. McDuffie: Nothing from the State, Your Honor.

18 Ms. Shurling: Nothing, Your Honor.

19 The Court: Ms. Simpson, anything from you?

20 Ms. Simpson: No, Your Honor.

21 The Court: Now that you've agreed to rejoin us, offer
22 something more than moral support that that---

23 Ms. Simpson: Yes, Your Honor.

24 The Court: ---young kid sitting next to you has
25 offered.

1 **Ms. McDuffie:** She's running the show next week.

2 **The Court:** All right. Well, I'm going to have to look
3 at this stuff on the marijuana and I'll let y'all know
4 Monday. Here is my intention. We don't have anything else
5 we've got to take up; right?

6 **Ms. McDuffie:** Your Honor, it's my understanding that
7 Jackson v. Denno and Neil v. Biggers are not going to be an
8 issue.

9 **The Court:** Is that correct?

10 **Ms. Shurling:** That's correct, Your Honor.

11 **The Court:** All right. I'm going to ask that -- I've
12 had some brief conversation with Ms. Shurling on the
13 telephone. I think I told y'all about that, trying to get
14 this motion -- these motions settled, and I had some brief
15 conversation with Ms. Campbell and Ms. McDuffie about my
16 conversation with you. And apparently y'all are going to get
17 together to get this thing moving, but Ms. Shurling had
18 indicated in the conversation that there's a possibility this
19 could go longer than one week. Do you still believe that to
20 be the case?

21 **Ms. Shurling:** Your Honor, I am hopeful that it can be
22 concluded in a week---

23 **The Court:** Well, I know.

24 **Ms. Shurling:** ---but I can't commit to the Court---

25 **The Court:** I'm not asking you to commit to anything.

1 We're not going to stop the trial because of -- if we happen
2 to go 'til Monday, but I'm just -- your best guess as an
3 experienced trial lawyer having gotten all the motions out...
4 We're going to pick first on Monday morning which I assume
5 will be sometime -- I don't know who is qualifying. I think
6 Judge Lee is not going to be here, so we might be able to get
7 a jury by -- start it by 11 and maybe we can do openings by
8 lunch, so...

9 **Ms. Shurling:** Your Honor, I have no better feel for it
10 today than I did when we spoke by phone. I believe there's a
11 good chance we can finish by Friday, but I'm not certain.

12 **The Court:** All right. Well, so do we need to work late
13 on Monday, Tuesday, Wednesday, and Thursday?

14 **Ms. McDuffie:** Your Honor, on our end we don't foresee
15 this taking longer than a week. I can't speak for defense
16 counsel.

17 **The Court:** How long do y'all anticipate your...

18 **Ms. McDuffie:** At the pace you normally keep us moving
19 at, I think we could be finished by, depending on the length
20 of cross-examination, Thursday morning.

21 **Ms. Shurling:** And, Your Honor, I anticipate having
22 approximately 10 witnesses. So I am concerned that if I
23 don't begin presentation of the defense until sometime say
24 midday Thursday that I would not have time to get through my
25 witnesses and, of course, charge conference and closing

1 arguments and deliberation by close of day Friday.

2 **The Court:** All right. When can you give me any charges
3 you want me to look at?

4 **Ms. Shurling:** Your Honor, we will be happy to have
5 those for the Court Monday or Tuesday.

6 **The Court:** Same with the State?

7 **Ms. McDuffie:** Your Honor, we -- normally just we're
8 fine with your standard charges. I don't know what the---

9 **The Court:** You don't know what mine are. I haven't
10 been in this court and tried a case in two years so...

11 **Ms. McDuffie:** We---

12 **The Court:** I may have changed everything. I might just
13 charge the civil charge.

14 **Ms. McDuffie:** I tried a murder case in front of you
15 four weeks ago, Your Honor.

16 **The Court:** That's all I seem to do anymore.

17 **Ms. Shurling:** And that, of course, Your Honor, is
18 always subject to being influenced by the evidence adduced at
19 trial.

20 **The Court:** Oh, I understand that, but, I mean, if
21 you've got something you want me to look at that you think
22 may be something that is -- I need to try and look into, the
23 sooner you give it to me the better.

24 **Ms. Shurling:** Thank you, Your Honor. We also may have
25 a handful of requests for voir dire. We will try to get

1 those to Your Honor sometime late tomorrow, probably will be
2 the earliest I'll be able to do so.

3 The Court: Well, you can do it -- Monday is fine.

4 Ms. Shurling: Thank you, Your Honor.

5 Ms. McDuffie: Your Honor, we'll have our voir dire to
6 you by Monday. There's nothing that's objectionable.

7 The Court: I assume y'all's is your standard just...

8 Ms. McDuffie: Yes, sir, Your Honor.

9 The Court: I give great voir dire on a criminal case.

10 Ms. Shurling: May I inquire as to whether Your Honor
11 plans to allow the jury to take notes?

12 The Court: Generally no. If there's some reason you
13 want me to consider that, I'll be happy to do so, but I---

14 Ms. Shurling: I would---

15 The Court: ---rarely allow that to happen.

16 Ms. Shurling: Thank you, Your Honor.

17 The Court: I have not -- I mean, I've done it in a

18 multi-week environmental-type case when they were dealing
19 with all kinds of chemicals and things like that in the
20 ground, and they couldn't spell anything that was in there,
21 so they really couldn't -- they quit doing it.

22 Ms. Shurling: Your Honor, we would move for the jury to
23 be allowed to take notes. On this particular -- in this
24 particular case there are multiple witness statements from
25 Mr. Hudson. The facts are complicated. There are numerous

1 witnesses from the scene and there will be---

2 **The Court:** Well, here's the problem with note-taking
3 that I can see, especially in a criminal case that is not an
4 exceptionally long case. One, my real concern is they write
5 something down wrong and then it's hard to get them to deal
6 with that in the jury room and, secondly, they get so
7 engrossed in writing it down they miss other parts of the
8 testimony.

9 It's kind of like -- I'm always bothered by, "Can I
10 publish this?" And juries are looking at some document and
11 some witness is up there giving some crucial piece of
12 evidence and they're... They never heard a thing about it,
13 and it concerns me in that regard.

14 **Ms. Shurling:** Your Honor, I would concur in that
15 concern. I would, in lieu of note-taking, ask that Your
16 Honor's general instruction include a provision that
17 indicates that if the jury has any question about any portion
18 of the testimony that they've heard that they may come back
19 and ask to have portions replayed.

20 **The Court:** Well, I might do that at the close, I mean,
21 when I give my -- probably won't do that pretrial
22 instructions.

23 **Ms. Shurling:** No, sir, Your Honor. I meant in your
24 concluding instructions.

25 **The Court:** I mean, I'll be happy to consider that. I

1 mean, that's---

2 Ms. Shurling: Thank you.

3 The Court: ---certainly reasonable. All right.

4 Ms. Shurling: Your Honor, I assume that there would be
5 a motion by the State. If not, I will make it for
6 sequestration of witnesses.

7 The Court: I don't have any idea whether the State is
8 going to make that motion.

9 Ms. McDuffie: Your Honor, we have no objection to that
10 in terms of lay witnesses. We would just ask that law
11 enforcement not be sequestered. We would ask that the
12 victims be allowed to stay in the courtroom and also our lead
13 investigators.

14 The Court: Wait a minute now. Let me back up here. So
15 what you want is all law enforcement officers to be able to
16 be in the courtroom.

17 Ms. McDuffie: Yes, sir, Your Honor, and---

18 The Court: All investigators be in the courtroom which
19 I assume fall under A.

20 Ms. McDuffie: I did not state that well, Your Honor.
21 We'd ask for all law enforcement. If Your Honor is not
22 inclined to do that, we would ask that our lead investigators
23 be allowed to stay in the courtroom.

24 The Court: Well, the victim -- I don't know who -- the
25 victim is the mother of the decedent or something like that?

1 I don't know. I mean, clearly y'all are entitled to have a
2 victim or victims.

3 **Ms. McDuffie:** Your Honor, the charges are murder and
4 two counts of AWIK against Ellison Hudson and Cleveland
5 Joyner. I don't foresee them being in here all week, but,
6 Your Honor, I believe Ellison Hudson---

7 **The Court:** Well, I think they're entitled to be here
8 and I'm not -- we're not going to keep all law enforcement
9 officers in here. Y'all can have your lead investigator and
10 he can sit in here, but that would be it.

11 **Ms. Shurling:** Your Honor, because of the critical
12 nature of Ellison Hudson's testimony and that of Cleveland
13 Joyner, I would ask that they be sequestered notwithstanding
14 their posture as victims.

15 **The Court:** All right. Well, I'm not going to do that.
16 If this were a case solely on an ABWIK -- is it an ABWIK?

17 **Ms. McDuffie:** AWIK, Your Honor.

18 **The Court:** I mean AWIK, that he would be allowed to be
19 in here. I mean, he's a victim and he's, I think -- clearly
20 he's allowed to be here, but I don't know... Maybe---

21 **Ms. Shurling:** Your Honor, I would---

22 **The Court:** Maybe you want him to be allowed to be in
23 here and he's not here part of the time. That gives you
24 something to talk about.

25 **Ms. Shurling:** Your Honor, I would also ask -- I

1 understand the State's position that they want -- I believe
2 she said her lead investigator, but it might have been
3 plural. Are you asking for more than one investigator to be
4 present?

5 **Ms. McDuffie:** Your Honor, the case was investigated by
6 A.L. Thomas and Kevin Reese. We would ask that they be
7 allowed to remain in the courtroom.

8 **The Court:** All right. Well, I'll probably do that.

9 **Ms. Shurling:** If Your Honor is inclined to do that, I
10 would ask that other law enforcement personnel be sequestered
11 if they're going to be witnesses.

12 **The Court:** I've already ruled that.

13 **Ms. Shurling:** I'm sorry; I didn't hear you. And I
14 would also ask Your Honor -- I have a private investigator
15 retained in this case, Dave MacDougall, who has been my lead
16 investigator. I would ask that he be allowed to be with me
17 throughout the trial. Pardon me. And additionally there's a
18 second investigator that has worked on this case with me---

19 **The Court:** Do y'all have any problem with the
20 investigator?

21 **Ms. Shurling:** So I would ask for both of them to be
22 with me.

23 **Ms. McDuffie:** No, sir.

24 **The Court:** We're going to balance this courtroom off
25 with bodies.

1 **Ms. Shurling:** Thank you, Your Honor.

2 **The Court:** All right. We'll have Mr. MacDougall. Who
3 is your other fellow?

4 **Ms. Shurling:** Your Honor, his name is Steve Denton. He
5 is a retired homicide detective who spent 18 and a half
6 years---

7 **The Court:** I know Mr. McDonald (sic). I don't know the
8 other fellow.

9 **Ms. Shurling:** Mr. Denton is a -- was the former head of
10 the homicide division of the Spartanburg County Sheriff's
11 Department.

12 **The Court:** Are you serious?

13 **Ms. Shurling:** Sir?

14 **The Court:** Are you serious?

15 **Ms. Shurling:** I'm sorry. Is he what?

16 **The Court:** Are you serious? You're bringing a---

17 **Ms. Shurling:** I'm serious.

18 **The Court:** ---Spartanburg deputy down here?

19 **Ms. Shurling:** He is no longer with the Spartanburg
20 County Sheriff's Department, Your Honor. As a matter of
21 fact, he's a recent graduate of the Charleston School of Law.
22 He's awaiting bar results. And in the time period waiting
23 for bar results, he has volunteered his services pro bono to
24 assist in the investigation of this case.

25 **The Court:** Well, that's a nice fellow.

1 Ms. Shurling: He is indeed and a very experienced one.

2 The Court: All right. Well, we'll look forward to this
3 on Monday.

4 Ms. McDuffie: Thank you, Your Honor.

5 The Court: All right. Ricardo, anything from you? You
6 want to earn your keep and say something?

7 Mr. Bunge: Not really.

8 The Court: Folks. Y'all have a nice weekend and---

9 Ms. McDuffie: You, too.

10 The Court: ---we'll see you Monday morning.

11 (Whereupon, the matter concluded and resumed Monday,
12 October 25, 2010, as follows:)

13 The Court: Thank y'all. Please be seated. Ms.
14 McDuffie, y'all got the indictments?

15 Ms. McDuffie: Yes, sir.

16 The Court: Ma'am?

17 Ms. McDuffie: Yes, sir. I'm getting it.

18 The Court: I just want something to talk with the jury
19 about.

20 (Whereupon, a bench conference was held.)

21 The Court: Do y'all have voir dire?

22 Ms. McDuffie: Yes, sir, I'm going to get it.

23 The Court: Did y'all have a jury -- I mean a witness
24 list?

25 Ms. Shurling: We do, Your Honor.

1 **The Court:** Do you have any---

2 **Ms. Campbell:** Your Honor, may we have a moment to maybe
3 look over the jury list once it's up here?

4 (Pause in proceedings.)

5 **The Court:** Good God almighty, we're going to scare this
6 jury off before we even get started. Are we going to use all
7 these witnesses? Any reason we've got to voir dire all these
8 witnesses?

9 **Ms. Campbell:** Your Honor, it's just our policy to put
10 the witnesses on there in case something comes up that we
11 don't anticipate.

12 **The Court:** Who is -- tell me -- tell me who...

13 **Ms. McDuffie:** Your Honor, the duplicates that I can --
14 off the top of my head are number 6, number 8---

15 **The Court:** Wait a minute. Babin? Sergeant Michael
16 Babin?

17 **Ms. McDuffie:** Babin, yes, sir.

18 **The Court:** All right.

19 **Ms. McDuffie:** Number 8.

20 **The Court:** Officer Norman Jenkins?

21 **Ms. McDuffie:** Yes, sir, Your Honor.

22 **The Court:** All right.

23 **Ms. McDuffie:** I believe number 9.

24 **The Court:** Investigator Gwyn?

25 **Ms. McDuffie:** Yes, sir. Number 12.

1 **The Court:** Aaron Johnson?

2 **Ms. McDuffie:** Yes, sir. 14, 15, 16, 17, and 18.

3 **The Court:** Wait a minute. Whitney Caruth.

4 **Ms. McDuffie:** Yes, sir.

5 **The Court:** Ila Simmons?

6 **Ms. McDuffie:** Ila, yes, sir.

7 **The Court:** Simons (sic). Who? 16, John Barron?

8 **Ms. McDuffie:** Yes, sir.

9 **The Court:** Terri Gleason?

10 **Ms. McDuffie:** Yes, sir.

11 **The Court:** Who else?

12 **Ms. McDuffie:** Number 18, Your Honor, Kevae Dolphin.

13 **The Court:** All right. How about 19?

14 **Ms. McDuffie:** Off the top of my head -- I can check,
15 Your Honor, on that.

16 **Ms. Shurling:** Your Honor, the only two potential
17 witnesses in our case that are not on the list are the two
18 investigators, Dave MacDougall and Steven Denton.

19 **The Court:** Wait a minute. They're not going to be able
20 to sit right there. What's Mr. MacDougall's middle initial?
21 Do you know?

22 **Ms. Shurling:** I don't know, sir.

23 **The Court:** And who is the other one?

24 **Ms. Shurling:** Steven Denton, D-e-n-t-o-n. He's from
25 Spartanburg, South Carolina.

1 The Court: All right. You just gave me the originals?

2 The Clerk: Yes, sir.

3 The Court: All right. Joanna?

4 Ms. McDuffie: Yes, sir.

5 The Court: Do you want these back? They gave me the
6 originals.

7 Ms. McDuffie: Sure.

8 The Court: Number 2 I'm not going to ask.

9 Ms. McDuffie: Of our proposed voir dire?

10 The Court: Right.

11 Ms. McDuffie: I don't---

12 The Court: Ma'am?

13 Ms. McDuffie: I don't have any proposed voir dire from
14 the defense, if there is any.

15 Ms. Shurling: Your Honor's usual voir dire is fine.

16 The Court: I don't have any. They trust me. Your
17 client is not here yet, huh?

18 Ms. Shurling: Your Honor, I don't have any objection to
19 the balance of the State's proposed voir dire questions.
20 However, if the Court is inclined to do number 5, I would ask
21 if your usual voir dire includes a question about membership
22 in organizations like C.A.V.E., victims' rights
23 organizations.

24 The Court: It does.

25 Ms. Shurling: I believe that that was part of your --

1 from my experience part of your usual voir dire.

2 **The Court:** Actually it's not. Have y'all had enough
3 time to look over the...

4 **Ms. Campbell:** If we could just have five more minutes,
5 Your Honor, we'll be ready.

6 (Whereupon, Mr. Hackshaw was brought into the
7 courtroom.)

8 **The Court:** All right. Jackie, let's bring us the jury
9 panel.

10 **Ms. Shurling:** Your Honor, my client was told he didn't
11 need to put his coat and tie on yet.

12 **The Court:** They've gone to get it.

13 **Ms. Shurling:** Thank you.

14 (Pause in proceedings. The jury panel was brought into
15 the courtroom.)

16 **The Court:** All right. Ladies and gentlemen, good
17 morning to you. I'm Judge Barber. I'm a circuit judge here
18 in the fifth judicial circuit, and I am holding general
19 sessions court this week, and general sessions is criminal
20 court. Of course, criminal court is where we resolve the
21 disputes that generally exist between the State and one of
22 its citizens or an individual wherein that person who is --
23 has been charged with one or more criminal offenses, that is
24 a defendant in the case, and we are getting ready to try a
25 case entitled the State versus Anthony Hackshaw.

1 Now, Mr. Hackshaw has been charged with four criminal
2 offenses and he has been indicted for those offenses, and I'm
3 going to tell you what they are. He's been indicted for the
4 offense of murder, and the indictment alleges that Mr.
5 Hackshaw did in Richland County on or about May 20, 2009,
6 feloniously, willfully, and with malice aforethought kill one
7 Ebony Fogle by means of a gunshot wound and that the victim
8 died as a proximate result thereof.

9 In addition, the defendant is charged with two offenses
10 of assault with intent to kill. He's been indicted on both
11 of those offenses, and one indictment alleges that Mr.
12 Hackshaw did in Richland County on or about May 20, 2009,
13 with malice aforethought commit an assault with intent to
14 kill upon the victim, Ellison Hudson.

15 The other assault with intent to kill charge states that
16 Mr. Hackshaw did in Richland County on or about May 20, 2009,
17 with malice aforethought commit an assault with intent to
18 kill upon the victim, Cleveland Joyner.

19 In addition, Mr. Hackshaw has been indicted for the
20 offense of use of a firearm during the commission of a
21 violent crime, and that indictment alleges that Mr. Hackshaw
22 did in Richland County on or about May 10, 2009, possess or
23 visibly display a firearm during the commission or attempted
24 commission of a violent crime, that crime being murder.

25 Now, ladies and gentlemen, to these charges the

1 defendant has entered a plea of not guilty which now brings
2 us here so that you, the jury in this case, can ultimately
3 listen to the facts in the case, determine what you -- listen
4 to the evidence, determine what you believe to be the facts,
5 apply the evidence, and ultimately render your verdict.

6 Now, ladies and gentlemen, the indictments in this case
7 are not evidence and they're not to be considered by you for
8 any purpose other than they are the document that has put
9 this defendant on notice of these respective charges. Before
10 we begin the trial and the selection of the jury, I have
11 certain questions that I want to ask you and I have certain
12 individuals that I would like to introduce you to.

13 The first thing I want to tell you, ladies and
14 gentlemen: In every criminal offense a defendant comes into
15 the courtroom presumed to be innocent and that presumption of
16 innocence will remain with this defendant throughout the
17 course of this trial on all these charges and will only
18 change if the jury, after hearing the evidence, determines,
19 in fact, that the defendant is guilty. You also need to
20 understand that in every instance when a defendant comes in
21 the courtroom, the burden of proving the defendant guilty of
22 each and every charge falls upon the State of South Carolina,
23 and the State must prove the defendant guilty and prove the
24 defendant guilty beyond a reasonable doubt as to each of the
25 charges. The defendant has no burden in any case whatsoever.

1 Now, let me introduce you to some individuals who may be
2 involved in this case as well as I will ask you some
3 questions. First, let me introduce you to Mr. Hackshaw. Mr.
4 Hackshaw, if you would please stand and face the jury.
5 Ladies and gentlemen, this is Mr. Anthony Hackshaw, and I
6 would inquire at this time: Is there any member of this jury
7 panel or any member of the jury panel's immediate family who
8 is related by blood or connected by marriage or either now or
9 in the past has had a close personal relationship with Mr.
10 Hackshaw or either now or in the past has had an employment
11 or a business relationship with Mr. Hackshaw? If so, please
12 stand. All right. Thank you. You may be seated.

13 Ladies and gentlemen, as is the case when most matters
14 come into court, the parties are represented by attorneys.
15 The State of South Carolina is represented by the solicitor's
16 office of the fifth judicial circuit. The solicitors who
17 will be trying this case on behalf of the State of South
18 Carolina are Ms. K. Luck Campbell, and Ms. Campbell is
19 standing right now. Ms. Joanna McDuffie, and this is Ms.
20 McDuffie. And Ms. Nicole M. Simpson. And they are all
21 members of the South Carolina bar licensed to practice in
22 South Carolina, and they are employed with the solicitor's
23 office of Richland County.

24 I would inquire at this time, ladies and gentlemen: Is
25 there any member of this jury panel or any member of the jury

1 panel's immediate family who is related by blood or connected
2 by marriage or either now or in the past has had a close
3 personal relationship with any of these solicitors or with
4 any solicitor in the fifth judicial circuit or either now or
5 in the past has had an employment or a business relationship
6 with any of the solicitors or with the solicitor's office of
7 the fifth judicial circuit? If so, please stand.

8 All right. Ladies and gentlemen, representing Mr.
9 Hackshaw are Ms. Tara Shurling - and this is Ms. Shurling -
10 and Mr. Jeremy Thompson, and they, too, are licensed to
11 practice in the state of South Carolina, and their offices
12 are in Columbia. I would inquire at this time: Is there any
13 member of this jury panel or any member of the jury panel's
14 immediate family who is related by blood or connected by
15 marriage or either now or in the past has had a close
16 personal relationship with Ms. Shurling or Mr. Thompson or
17 either now or in the past has had an employment or a business
18 relationship with either of these individuals or either now
19 or in the past been represented by Ms. Shurling or Mr.
20 Thompson? If so, please stand. Thank y'all.

21 Ladies and gentlemen, I now would like to read to you
22 the names of some potential witnesses who may testify in this
23 trial. Now, this is a lengthy list and it is highly unlikely
24 that all of these witnesses will testify, but they are
25 potential witnesses in the trial and I will make some inquiry

1 after I read you the names.

2 If any of these witnesses are in the courtroom, I would
3 ask that they please stand so that the jury can see who they
4 are. Mr. Ellison Hudson. Mr. Cleveland Joyner. Joann
5 Pickett. If any of them stand, I'll tell you, ladies and
6 gentlemen. Melissa Hudson. Ellison Hudson, Sr. Tyrone
7 Johnson. Sheldon McDowell. Jonathan Bailey. Mali, M-a-l-i,
8 Allen. Whitney Caruth. Kevae Dolphin. Brittany O'Neal.
9 Barbara Taylor. Sharitta Epps. There's Ms. Epps right
10 there, ladies and gentlemen.

11 **Ms. Taylor:** Taylor.

12 **The Court:** Pardon me?

13 **Ms. Taylor:** I'm Barbara Taylor.

14 **The Court:** Oh, I'm sorry, Barbara Taylor. Excuse me.
15 Sharitta Epps. Carmen Rodriguez. Kris Lowe. Samuel Nigi,
16 N-i-g-i. Shanelle Latimer, L-a-t-i-m-e-r. Rosa Grenald
17 Hackshaw. Nina Gordon. Karen Moore. Joseph Smith. Travis
18 Golston. Torrian Gleaton. Tarren Hughey. Angela Gunter.
19 Aaron Johnson. Zionde Harper. Shaquenda Evans. Angela
20 Scott. Joseph Price. Ruth Gold. Latise Totchenechia Irvin,
21 I-r-v-i-n. Clarence Tyler. Shandra Johnson. Latoya Joe.
22 Frankie Joyner. Tony Craft. Sheldon Boykin. Stephanie
23 McGowan. M. Myers, initial M. Captain Dodson of the
24 Columbia Police Department. Kurt Ward. Jay Bookert.

25 Dr. Clay Nichols. Dr. Bradley Marcus. Monica Goodwin

1 with U.C.I. Medical Affiliates. Officer William Littlejohn.
2 Lorraine Tracey. Sergeant Pickett. The apartment manager at
3 Wyndham Pointe, Brighton Hill. Investigator McCracken of the
4 Columbia Police Department. Brian Carroll of the Columbia
5 Police Department. Investigator Joe Gray of the Columbia
6 Police Department. D. Sharpe of the Columbia Police
7 Department.

8 Investigator A. Thomas of the Columbia Police
9 Department. Investigator W. Pegram of the Columbia Police
10 Department. Investigator N. Dow of the Columbia Police
11 Department. Investigator I. Menendez of the Columbia Police
12 Department. Officer P.J. Nelson of the Columbia Police
13 Department. Terri L. Gleason of the Richland County
14 Sheriff's Department. Sergeant Michael Babin of the Columbia
15 Police Department. Peter Currie of the Columbia Police
16 Department. Investigator Reese of the Columbia Police
17 Department. Sergeant Robinson of the Richland County
18 Sheriff's Department. Investigator Spears of the Richland
19 County Sheriff's Department. Lieutenant Thorton of the
20 Columbia Police Department.

21 Officer W. Odom of the Columbia Police Department.
22 Sergeant C. Clark of the Columbia Police Department. Officer
23 P. Lawson of the Columbia Police Department. M.P.O. Merrill
24 which I assume is a police officer with the Columbia Police
25 Department. Sergeant M. Kelly of the Columbia Police.

1 Department. Officer L. Walker of the Columbia Police
2 Department. Investigator L.C. Reeves of the Columbia Police
3 Department. Investigator Mahoney of the Columbia Police
4 Department.

5 S. Earp of the Richland County E.M.S. D. Tillison of
6 the Richland County E.M.S. Jane Powell of the Richland
7 County Coroner's Office. Deputy Jenkins of the Richland
8 County Sheriff's Department. Investigator W. Gonzalez of the
9 Richland County Sheriff's Department. Tara Kinney of the
10 Richland County Sheriff's Department. Investigator J.E.
11 White of the Richland County Sheriff's Department.

12 Captain Stan Smith of the Richland County Sheriff's
13 Department. Investigator Kerry Johnson of the Richland
14 County Sheriff's Department. Investigator Oates of the
15 Richland County Sheriff's Department. J.W. Tabor of the
16 Richland County Solicitor's Office. Investigator Brien Gwyn
17 of the Richland County Sheriff's Department.

18 Megan Mebane, M-e-b-a-n-e, Mebane, of the State Law
19 Enforcement Division. Agent Chris Johnson of S.L.E.D. Agent
20 Kim Bihn (sic), B-i-h-n (sic), of S.L.E.D. Agent Ricardo
21 Prince of S.L.E.D. Nicole Abrey. John Barron of the
22 Richland County Sheriff's Department. Kelly Cobia of the
23 State Law Enforcement Division. Jennifer Blair of 9-1-1.
24 Walter Rose of the Columbia Police Department. Patricia Weed
25 of the Richland County Sheriff's Department. Tena Goff with

1 the Richland County Sheriff's Department. Captain Brian
2 Redmond. Ila Simmons of the State Law Enforcement Division.
3 Lester (sic) McCarver. Paul Lomas. Kenneth Goodwin.
4 Lorraine Tracey. Marjorie White. Charlie Johnson. Tammy
5 Chahine, C-H-A-H-I-N-E. Amos Jones. Simone Thomas.

6 I would inquire at this time, ladies and gentlemen: Is
7 there any member of this jury panel or any member of the jury
8 panel's immediate family who is related by blood or connected
9 by marriage or either now or in the past has had a close
10 personal relationship with any of the individuals whose name
11 I just read to you or either now or in the past has had an
12 employment or a business relationship with any of those
13 individuals? If so, please stand. Yes, sir, your name.

14 **Juror Eleazer:** Officer Gravelyn.

15 **The Court:** Tell me your name, please.

16 **Juror Eleazer:** Cliff Eleazer.

17 **The Court:** All right, Mr. Eleazer.

18 **Juror Eleazer:** Mr. Gravelyn, Joe Gravelyn, with the
19 police department. He's done some security work for our
20 store at times.

21 **The Court:** Joe Gravelyn?

22 **Juror Eleazer:** Yes, sir.

23 **The Court:** This fellow right here?

24 **Juror Eleazer:** The one---

25 **The Court:** I didn't read his name.

1 Juror Eleazer: You said Joe Gravelyn.

2 The Court: No, sir. All right. Tell me your name.

3 Juror Shannon: Thomas Shannon.

4 The Court: Shannon?

5 Juror Shannon: Yes, sir.

6 The Court: All right. Mr. Shannon, what is it---

7 Juror Shannon: I apologize, Your Honor. I didn't
8 understand the second part of the question, but my wife had
9 previous employment with the -- she was a law clerk with the
10 solicitor's office about seven or eight years ago.

11 The Court: All right. Your wife was previously
12 employed as a law clerk with the Richland County Sheriff's
13 Department.

14 Juror Shannon: Yes, sir.

15 The Court: Now, the fact that your wife was previously
16 employed as a law clerk with the sheriff's -- I mean with the
17 solicitor's office, would that prevent you from listening to
18 the evidence in this case and based upon such evidence
19 rendering a fair and impartial verdict?

20 Juror Shannon: No, sir.

21 The Court: All right. Tell me your name again please,
22 sir, Mister...

23 Juror Eleazer: Eleazer.

24 The Court: Mr. Eleazer, even though I did not read Mr.
25 -- Deputy Gravlin's name, the fact that you know Deputy

1 Gravlin who happens to be seated here in the Richland County
2 Courthouse - he works at the courthouse - would that prevent
3 you from listening to the evidence in this case and based
4 upon such evidence rendering a fair and impartial verdict?

5 **Juror Eleazer:** No, sir.

6 **The Court:** All right. Okay. Ladies and gentlemen, I'm
7 going to ask this question and I'm going to ask if you have a
8 response if you will come down and meet with me in front of
9 the court reporter, and the lawyers -- a lawyer from the
10 solicitor and a lawyer from the defendant's table will come
11 up here and be with us. Ladies and gentlemen, has any member
12 of this jury panel or any member of the jury panel's
13 immediate family ever been a victim of a crime of violence?
14 If you have or a member of your family has, I would ask that
15 you come down and meet with me in front of the court reporter
16 down here and we'll talk. If you'll just line up right here
17 where our bailiff will reach greet you at the podium and...

18 **Juror:** Excuse me, Your Honor. Over the past ten years
19 or what?

20 **The Court:** I'd say in your whole life. You can come up
21 here.

22 (The following colloquies between the Court, each juror,
23 and an attorney from each side took place at the bench in the
24 hearing of the same and of the court reporter. Juror Turner
25 approaches the bench.)

1 **The Court:** Tell me your name, please.

2 **Juror Turner:** Angela Turner.

3 **The Court:** Ms. Turner, what is the situation?

4 **Juror Turner:** Criminal domestic violence with my
5 husband.

6 **The Court:** You have been a victim of C.D.V.?

7 **Juror Turner:** Yes.

8 **The Court:** The fact that you've been a victim of
9 C.D.V., would that prevent you from listening to the evidence
10 in this case and based upon such evidence rendering a fair
11 and impartial verdict?

12 **Juror Turner:** It might.

13 **The Court:** Tell me your name again.

14 **Juror Turner:** Angela Turner.

15 **The Court:** All right. Ms. Turner will be excused from
16 service from the jury. If you'll go all the way in the back.

17 (Juror Turner leaves the bench conference.)

18 **The Court:** All right. Yes, sir, you're next.

19 (Juror Jackson approaches the bench.)

20 **The Court:** Tell me your name, please.

21 **Juror Jackson:** Dan Jackson.

22 **The Court:** Tell me what your situation is.

23 **Juror Jackson:** About 12 years ago my uncle had stabbed
24 a woman two times.

25 **The Court:** The fact that your uncle committed that

1 offense, would that prevent you from listening to the
2 evidence in this case and based upon such evidence rendering
3 a fair and impartial verdict?

4 Juror Jackson: (Nodded head affirmatively.)

5 The Court: It would?

6 Juror Jackson: Uh-huh.

7 The Court: All right. We'll excuse you. If you'll go
8 all the way to the back.

9 (Juror Jackson leaves the bench conference.)

10 The Court: What was the name?

11 Ms. McDuffie: Number 122.

12 The Court: All right. Yes, ma'am?

13 (Juror McLamore approaches the bench.)

14 The Court: Good morning.

15 Juror McLamore: Good morning, Your Honor.

16 The Court: Tell me your name.

17 Juror McLamore: Earnestine McLamore.

18 The Court: Earnestine McLamore?

19 Juror McLamore: Uh-huh.

20 Ms. Shurling: Thank you, ma'am.

21 The Court: What's your situation?

22 Juror McLamore: My son, he was in Newberry County and
23 him and another guy got into it at his home.

24 The Court: So your son was involved with a crime of
25 violence?

1 **Juror McLamore:** (Nodded head up and down.)

2 **The Court:** The fact that your son had that experience,
3 would that prevent you from listening to the evidence in this
4 case and based upon such evidence rendering a fair and
5 impartial verdict?

6 **Juror McLamore:** No.

7 **The Court:** All right. Thank you, ma'am. If you'll
8 have a seat.

9 (Juror McLamore leaves the bench conference. Juror
10 Carter approaches the bench.)

11 **The Court:** Good morning. Tell me your name, please.

12 **Juror Carter:** Hosea Carter.

13 **The Court:** Mr. Carter, what is your situation?

14 **Juror Carter:** Well, my brother was murdered about two
15 years ago.

16 **The Court:** Your brother was the victim of a murder?

17 **Juror Carter:** (Nodded head affirmatively.)

18 **The Court:** The fact that he lost his life in a murder,
19 would that prevent you from listening to the evidence in this
20 case and based upon such evidence rendering a fair and
21 impartial verdict?

22 **Juror Carter:** No, sir.

23 **The Court:** All right. Thank you, sir. All right.
24 Thank y'all.

25 (Juror Carter left the bench conference, and the bench

1 conference concluded.)

2 **The Court:** All right. Ladies and gentlemen, does any
3 member of this jury panel or any member of the jury panel's
4 immediate family belong to or contribute to any organization
5 that supports prisoners rights or other organizations such as
6 that such as The Innocence Project, M.A.D.D., C.A.V.E.,
7 C.A.D.R.E., S.A.D.D., any organizations such as that? If so,
8 please stand.

9 Ladies and gentlemen, does any member of this jury panel
10 know of any reason that you cannot be fair and impartial to
11 both the State and the defendant in this matter? If you
12 believe you cannot, please stand at this time. Any member of
13 this -- yes, ma'am? Tell me your name.

14 **Juror Speaks:** Monica Speaks.

15 **The Court:** Speaks?

16 **Juror Speaks:** Uh-huh.

17 **The Court:** All right.

18 **Juror Speaks:** One of the victims---

19 **The Court:** Well, come on down here a moment.

20 (The following bench conference takes place in the
21 hearing of Juror Speaks, the Court, the attorneys, and the
22 court reporter.)

23 **The Court:** One of the victims---

24 **Juror Speaks:** You said Ebony Fogle. I'm the assistant
25 principal of Columbia High.

1 Court Reporter: I can't hear you.

2 The Court: She's the assistant principal of Columbia
3 High.

4 Juror Speaks: That's the school she attended. I was a
5 teacher at the time.

6 The Court: The fact that you were so associated with
7 Columbia High School when she was a student, would that
8 prevent you from listening to the evidence in this case and
9 based upon such evidence---

10 Juror Speaks: I hope not.

11 The Court: Pardon me?

12 Juror Speaks: I hope not.

13 The Court: Well, would it prevent you from being fair
14 and impartial? We can't hope. You're going -- if you think
15 it will, then you need to tell us.

16 Juror Speaks: Yes, sir.

17 The Court: It will?

18 Juror Speaks: No.

19 The Court: You can be fair and impartial?

20 Juror Speaks: I hope so. I believe so. I can. I just
21 needed to let you know.

22 The Court: All right. So you can be fair and
23 impartial?

24 Juror Speaks: Yes.

25 The Court: All right.

1 **Ms. Shurling:** Your Honor, may we inquire as to whether
2 she actually taught---

3 **Juror Speaks:** No, I did not teach her.

4 **The Court:** All right. You can have a seat.

5 (Juror Speaks leaves the bench conference, and the bench
6 conference concludes.)

7 **The Court:** Ladies and gentlemen, any member of this
8 jury panel know of any bias or prejudice that you have either
9 for or against the plaintiff or the defendant in this case?
10 If so, please stand. Ladies and gentlemen, at the end of
11 this case I'm going to charge you or instruct you as to the
12 law as it applies to this case. You are the fact finders in
13 the case. It's my responsibility to give you the law in the
14 case to apply to the facts. It is your obligation to accept
15 the law as I give it to you and apply it to the facts of the
16 case. Is there any member of this jury panel who believes
17 that you will not be able to follow my instructions and apply
18 the law as I give it to you to the facts as you determine
19 them to be? If you cannot follow my instructions, please
20 stand at this time.

21 All right. Any further inquiry from the State?

22 **Ms. Campbell:** Nothing from the State, Your Honor.

23 **The Court:** Anything from the defendant?

24 **Ms. Shurling:** Moment's indulgence. Nothing further,
25 Your Honor.

1 **The Court:** All right. Are y'all ready to go?

2 **Ms. Campbell:** (Nodded head up and down.)

3 **The Court:** Ready to go? Madam clerk?

4 **The Clerk:** Ladies and gentlemen of the jury panel, as I
5 call your name, please come to the microphone located here at
6 the center of the courtroom. At the microphone please just
7 state your name and state your place of occupation. Juror
8 number 22, David Bower. Please bring any personal items that
9 you may have with you.

10 **Juror Bower:** My name is David Bower. I'm an insurance
11 sales agent for Driver's Choice Insurance in Columbia.

12 **The Clerk:** What says the State?

13 **Ms. Campbell:** Please present the juror.

14 **The Clerk:** What says the defense?

15 **Ms. Shurling:** Please excuse this juror.

16 **The Clerk:** Please return to the back of the courtroom.
17 Juror number 116, Karina Horton.

18 **Juror Horton:** My name is Karina Horton. I'm on medical
19 leave from U.S.C. School of Medicine, and I currently manage
20 a doctor's office in West Columbia.

21 **The Clerk:** What says the State?

22 **Ms. Campbell:** Please present the juror.

23 **The Clerk:** What says the defense?

24 **Ms. Shurling:** Please excuse the juror.

25 **The Clerk:** Please return to the back of the courtroom.

1 Juror number 228, Clarence Ruff.

2 Juror Ruff: Clarence Ruff. I'm a self-employed
3 housekeeper. And what else am I supposed to...

4 The Clerk: What says the State?

5 Ms. Campbell: Please excuse the juror.

6 The Clerk: Please return to the back of the courtroom.
7 Number 87, Christopher Gaura.

8 Juror Gaura: Christopher Gaura, Lincare sales
9 representative.

10 The Clerk: What says the State?

11 Ms. Campbell: Please present the juror.

12 The Clerk: What says the defense?

13 Ms. Shurling: Present the juror.

14 The Clerk: Please have a seat in the jury box. Juror
15 number 131, Myron Johnson.

16 Juror Johnson: Myron Johnson. I'm a supervisor for
17 Triple A. Cooper Transportation.

18 The Clerk: What says the State?

19 Ms. Campbell: Please present the juror.

20 The Clerk: What says the defense?

21 Ms. Shurling: Present the juror.

22 The Clerk: Please have a seat in the jury box. Juror
23 number 257, Sharon Sweatt.

24 Juror Sweatt: I'm Sharon Sweatt. I'm self-employed. I
25 do court data research.

1 **The Clerk:** What says the State?

2 **Ms. Campbell:** Please present the juror.

3 **The Clerk:** What says the defense?

4 **Ms. Shurling:** Excuse the juror, please.

5 **The Clerk:** Please return to the back of the courtroom.

6 Juror number 297, Floyd Wilson.

7 **Juror Wilson:** Floyd Wilson, United States Postal
8 Service.

9 **The Clerk:** What says the State?

10 **Ms. Campbell:** Please present the juror.

11 **The Clerk:** What says the defense?

12 **Ms. Shurling:** Please present.

13 **The Clerk:** Please have a seat in the jury box. Juror
14 number 66, Paul Deneal.

15 **Juror Deneal:** Good morning. I'm Paul Deneal, retired
16 from Westinghouse. I worked there for 39 years.

17 **The Clerk:** What says the State?

18 **Ms. Campbell:** Please present the juror.

19 **The Clerk:** What says the defense?

20 **Ms. Shurling:** Present the juror, please.

21 **The Clerk:** Please have a seat in the jury box. Juror
22 number 44, Shirley Cheeseboro.

23 **Juror Cheeseboro:** I work for the Social Security
24 Administration as a service representative.

25 **The Clerk:** What says the State?

1 Ms. Campbell: Please present the juror.

2 The Clerk: What says the defense?

3 Ms. Shurling: Please excuse the juror.

4 The Clerk: Please return to the back of the courtroom.

5 Juror number 215, Robert Rabuck.

6 Juror Rabuck: I'm Robert Rabuck. I work for Wake
7 Forest Bank as vice president.

8 The Clerk: What says the State?

9 Ms. Campbell: Please present the juror.

10 The Clerk: What says the defense?

11 Ms. Shurling: Present the juror.

12 The Clerk: Please have a seat in the jury box. Juror
13 number 171, Earnestine McLamore.

14 Juror McLamore: I'm a custodian for district five.

15 The Clerk: What says the State?

16 Ms. Campbell: Please present the juror.

17 The Clerk: What says the defense?

18 Ms. Shurling: Present the juror, please.

19 The Clerk: Please have a seat in the jury box. Juror
20 154, Sarah Lofton.

21 Juror Lofton: I'm Sarah Lofton. I'm a homemaker and a
22 stay-at-home mom.

23 The Clerk: What says the State?

24 Ms. Campbell: Please present the juror.

25 The Clerk: What says the defense?

1 Ms. Shurling: Please excuse the juror.

2 The Clerk: Please return to the back of the courtroom.

3 Juror number 139, James Kelly.

4 Juror Kelly: James Kelly. I'm manage a vehicle repair
5 facility for Richland school district one.

6 The Clerk: What says the State?

7 Ms. Campbell: Please present the juror.

8 The Clerk: What says the defense?

9 Ms. Shurling: Please present.

10 The Clerk: Please have a seat in the jury box. Juror
11 number 239, Thomas Shannon.

12 Juror Shannon: Thomas Shannon. I'm a supply chain
13 consultant with Boxcar Central.

14 The Clerk: What says the State?

15 Ms. Campbell: Please present the juror.

16 The Clerk: What says the defense?

17 Ms. Shurling: Present the juror, please.

18 The Clerk: Please have a seat in the jury box. Juror
19 number 281, Tracey Washington. Your name and place of
20 occupation.

21 Juror Washington: Oh, Tracey Washington. Babysitter.

22 The Clerk: What says the State?

23 Ms. Campbell: Please excuse the juror.

24 The Clerk: Please return to the back of the courtroom.
25 Juror number 18, Thomas Bloomfield.

1 **Juror Bloomfield:** Good morning. Application analyst
2 for health and human services.

3 **The Clerk:** What says the State?

4 **Ms. Campbell:** Please present the juror.

5 **The Clerk:** What says the defense?

6 **Ms. Shurling:** Please present the juror.

7 **The Clerk:** Please have a seat in the jury box. Juror
8 number 191, Mark Murphy.

9 **Juror Murphy:** My name is Mark Murphy, and I'm the
10 president and the majority shareholder of Home Appreciation,
11 Incorporated, which is a small contractor business.

12 **The Clerk:** What says the State?

13 **Ms. Campbell:** Please present the juror.

14 **The Clerk:** What says the defense?

15 **Ms. Shurling:** Please present.

16 **The Clerk:** Please have a seat in the jury box. Juror
17 number 41, Hosea Carter.

18 **Juror Carter:** My name is Hosea Carter. I'm unemployed.

19 **The Clerk:** What says the State?

20 **Ms. Campbell:** Please excuse the juror.

21 **The Clerk:** Please return to the back of the courtroom.
22 Juror number 298, Maurice Wise.

23 **Juror Wise:** Maurice Wise, self-employed car sales.

24 **The Clerk:** What says the State?

25 **Ms. Campbell:** Please excuse the juror.

1 **The Clerk:** Please return to the back of the courtroom.
2 Juror number 67, Roosevelt Diamond.

3 **Juror Diamond:** Roosevelt Diamond, contract safety
4 manager.

5 **The Clerk:** What says the State?

6 **Ms. Campbell:** Please present the juror.

7 **The Clerk:** What says the defense?

8 **Ms. Shurling:** Please present.

9 **The Clerk:** Please have a seat in the jury box. Juror
10 number 25, Gloria Bradham.

11 **Juror Bradham:** I'm Gloria Bradham and I work for
12 Computer Sciences Corporations.

13 **The Clerk:** What says the State?

14 **Ms. Campbell:** Please present the juror.

15 **The Clerk:** What says the defense?

16 **Ms. Shurling:** Please excuse Ms. Bradham.

17 **The Clerk:** Please return to the back of the courtroom.
18 Juror number 104, Patricia Hardy.

19 **Juror Hardy:** I'm disabled.

20 **The Clerk:** What says the State?

21 **Ms. Campbell:** Please present the juror.

22 **The Clerk:** What says the defense?

23 **Ms. Shurling:** Please present Ms. Hardy.

24 **The Clerk:** Please have a seat in the jury box.

25 **The Court:** All right. We want two alternates. We'll

1 get two alternates, and they get two on each one and you get
2 one.

3 The Clerk: One and two? Juror number 285, Joseph
4 Whang.

5 Juror Whang: I'm a pastor.

6 The Clerk: What says the State?

7 Ms. Campbell: Please excuse the juror.

8 The Clerk: Please return to the back of the courtroom.
9 Juror 251, Yvette Steward.

10 Juror Steward: Southeastern Freight Lines.

11 The Clerk: Does the State challenge for cause?

12 Ms. Campbell: Please present the juror.

13 The Clerk: What says the defense?

14 Ms. Shurling: Please present.

15 The Clerk: Please have a seat in the jury box.

16 The Court: All right. Two and one again.

17 The Clerk: Juror number 271, Joseph Vitali.

18 Juror Vitali: Joseph Vitali. I work for SCANA.

19 The Clerk: What says the State?

20 Ms. Campbell: Please present the juror.

21 The Clerk: What says the defense?

22 Ms. Shurling: Please present.

23 The Clerk: Please have a seat in the jury box.

24 (Whereupon, the jury was impaneled at 12:36 p.m.)

25 The Court: All right. Anything from the State with

1 respect to the composition of the jury?

2 Ms. Campbell: Beg the court's indulgence. Nothing from
3 the State, Your Honor.

4 The Court: Anything from the defendant?

5 Ms. Shurling: A moment's indulgence, Your Honor.
6 Nothing, Your Honor.

7 The Court: All right.

8 (Whereupon, the jurors who were not impaneled were
9 excused from the courtroom.)

10 The Court: Okay. Ladies and gentlemen of the jury
11 panel, I'm going to take a few minutes and give you a little
12 bit of information, and then we're going to break for lunch.
13 I'm going to ask you to come back and we will start later on
14 this afternoon.

15 The first thing I want to tell you is this case very,
16 very, very important to both the State and to the defendant.
17 As you are aware, the defendant has been charged with a
18 number of offenses, all of which are very serious offenses.
19 We want to do everything we possibly can to make sure that
20 both the State and the defendant are given a fair and
21 impartial trial.

22 One of the ways I'm going to ask that you help me with
23 that is that you not discuss this case with each other or
24 with anyone else or you not do anything to make any inquiry
25 or investigation in this case at all. You certainly are

1 going to be able to discuss the case with each other when --
2 when you begin your deliberations after the trial has been
3 completed and you will be able to discuss this case with
4 anybody you want to discuss it with when your term on the
5 jury has expired. But at any time we take a break and you go
6 back into the jury room, be it a break for lunch or if I -- I
7 mean for -- just to give you a break or if I have to take up
8 some matters with the attorneys, do not discuss this case
9 with each other.

10 This case is probably going to last all week. I don't
11 think it's going to go beyond this week. Anything is
12 possible, but it's going to be a case that will probably take
13 all week. We're going to do everything we can to see that it
14 doesn't go beyond this week, and if it looks like it's going
15 on a little bit, we may work a little later in the evening
16 and start a little earlier in the morning so we can complete
17 the case this week if at all possible.

18 But when you go home at night, when you go to lunch, if
19 you have contact with family or friends or anybody, do not
20 discuss this case with anybody that you come in contact with.
21 The reason I ask you to do that, ladies and gentlemen, is if
22 you go back to the jury room at some point in time and y'all
23 start talking about the case and everybody has not put up all
24 the evidence that they wish to put up in this case or both
25 sides have not completed the presentation of the trial, then

1 you may begin to formulate some opinion about the case and
2 that's not fair to either the State or the defendant until
3 all of the -- everything has been offered that the parties
4 wish to offer in the matter.

5 When you go home at night and talk to your spouse or
6 your family or your friends or your children, I promise you
7 this: Even though they're not here, they'll have an opinion
8 about this matter and they'll offer that to you, and, again,
9 that may influence you in some way and we don't want to do
10 that. We want to make sure that this case is decided based
11 on the evidence that is offered here in the courtroom and the
12 law that you are given relating to this type of case. So do
13 not discuss the case with anybody at any time until you could
14 begin your deliberations. I will attempt to remind you each
15 and every time you leave the courtroom to not discuss the
16 matter.

17 Now, I don't want you to go get on the internet or go by
18 any location or anything like that in the case. Again, this
19 case has to be decided by the evidence that's produced here
20 in the courtroom, not on anything that you do on inquiry or
21 investigation on your own. So don't read anything in the
22 newspaper, if there's something in the newspaper. Don't
23 listen to anything on the radio or television. I don't
24 anticipate that to be the case, but don't do that, ladies and
25 gentlemen. Don't get on the computer. Don't make your own

1 investigation in the case.

2 Now, when we come back after lunch I'm going to spend a
3 little bit of time to tell you about this process in case
4 you've not served on a jury before or it's been some time
5 since you have served on a jury. One of the things I want to
6 do -- I know I've introduced you to a lot of names during the
7 course of the trial -- I mean during the course of our
8 selecting you here today. I really don't anticipate that
9 anywhere close to all those witnesses will be called, but
10 it's just out of an abundance of caution that anybody that
11 may have any knowledge about the case -- they're listed in
12 case it becomes necessary to call those witnesses, but as I
13 said, I anticipate the case will last during the -- during
14 the course of the week.

15 I've already told you two basic principles of our
16 criminal law system that you need to keep in mind throughout
17 the course of this trial and I'll remind you again: That is,
18 in every instance this defendant has come into this courtroom
19 presumed to be innocent, and that presumption will remain
20 with him throughout the course of the trial.

21 The other thing is the defendant has no burden
22 whatsoever to prove anything in this case. The burden of
23 proof falls upon the State of South Carolina, and they have
24 to prove this defendant guilty of each and every charge that
25 he has been charged with beyond a reasonable doubt. So you

1 need to keep those two basic principles in mind. I will
2 charge you at the end of the case the other principles of
3 laws that you need to understand so that you can apply them
4 to the facts when you reach your verdict in the case.

5 Now, ladies and gentlemen, the people that you're going
6 to have the most contact with during the course of this week
7 are our bailiffs. They're the ones that are going to show
8 you how to get from the courtroom to the jury room. They're
9 going to show you how to get from the jury room outside the
10 hallways back here or out front so that when you need to
11 leave you can leave. They're the ones that will help you
12 with any questions that come up. They'll get you
13 refreshments when we take breaks.

14 We have -- we are fortunate we have experienced, good
15 bailiffs in this case. I want to introduce you to them.
16 Where is -- are you working with me, Mr. Crumpton?

17 **Bailiff Crumpton:** Just today.

18 **The Court:** This is Mr. Crumpton in the back. He's -- I
19 don't know whose place you're taking. Mr. Dye is the
20 gentleman seated behind the jury box right here. And Mr.
21 Hollis is the gentleman seated in front of you. I guess
22 you're taking Mr. Whittle -- Mr. Whittle is one of our
23 bailiffs. He must not be here today. He will, I assume, be
24 here when we come in tomorrow.

25 You may have heard during the qualification this morning

1 talk about courts of record. A court of record, of course,
2 is where a record is being made, and a record is being made
3 in this case. This -- Daphne Helms is our court reporter.
4 She's going to take down everything that's said in this
5 courtroom, be it the lawyers or the witnesses or me, or if
6 you say anything, she'll get it down.

7 Mrs. Pendergrass is the young lady seated in front of me
8 that you have seen work with morning. She's the courtroom
9 administrator and she helped me with the jury, and she'll
10 help me during the course of the trial. The young lady
11 seated to my left is my law clerk, Marshall Newton, and she
12 helps in a number of ways both in this case and other matters
13 that I will be dealing with during the course of the week.

14 Now, when we come back I'm going to take a little bit of
15 time and explain to you this process as I've told you
16 earlier. I'm going to ask that y'all come back here about
17 2:15. I've got to take up a little bit -- a couple of
18 matters with the lawyers before we come back this afternoon,
19 so that will give me the time to do what I need to do with
20 these lawyers.

21 Again, do not discuss this case at all with anyone while
22 you're gone or with each other while you're gone. Mr. Dye,
23 if you'll take these ladies and gentlemen and show them where
24 the jury room is, how to get out and how to get back. Y'all
25 have a nice lunch, and we'll see you at 2:15.

1 (Whereupon, the jury was excused from open court to go
2 to lunch at 12:45 p.m.)

3 **The Court:** All right. I met with Ms. Shurling and Ms.
4 Campbell briefly before we came in here this morning and I
5 asked -- I've still got a motion under advisement and that
6 deals with the matter of what Ms. Shurling had moved that I
7 exclude any evidence or any reference to the robbery being
8 drug-related, I think, and I took that under advisement
9 following the arguments the other day, and I have told Ms.
10 Campbell that I need to get some additional information about
11 that if -- I know Ms. McDuffie had indicated that the sole
12 relationship of these parties all -- victims and alleged
13 victims and the defendant all arise out of having had drug
14 involvement in the past, and that was basis for their
15 thinking that they ought to be able to keep this information
16 in the trial. But I think I want something a little more
17 than that before we make a decision about that, so... And I
18 think you indicated you were prepared to offer some
19 information about that---

20 **Ms. Campbell:** Factual recitation, Your Honor, that
21 might make it a little bit clearer for the Court to make a
22 decision.

23 **The Court:** All right. If you could.

24 **Ms. Campbell:** Basically, Your Honor, the motive or the
25 State's position in this case for the motive for this murder

1 was retaliation from when approximately three weeks prior to
2 this the intended victim, who is actually one of the victims
3 in the A-W-I-K, not the person who was actually murdered in
4 this case -- they're all in the back yard together on the
5 date that this occurs. There's Ms. Ebony Fogle, Cleveland
6 Joyner, and Ellison Hudson. It is our contention that the
7 intended victim was Ellison Hudson.

8 The animus had risen between this defendant and Mr.
9 Hudson because approximately three weeks prior - and I'm just
10 using approximate dates, Your Honor - there had been an
11 incident where Ellison Hudson and a young man that he refers
12 to as Hot Boy -- he will be testifying, too. His name is
13 Sheldon McDowell. Went over to meet with the defendant who
14 they knew as Bump. The purpose of them going there that day
15 was supposedly to buy marijuana.

16 Once they got there, our evidence will show that at some
17 point Mr. Hudson pulled out a gun, basically robbed this
18 defendant at gunpoint of weed, what we refer to as exotic
19 weed. It was extremely valuable on the market. Actually the
20 testimony we would present would show that he presented the
21 gun. At that point this defendant, who is now charged with
22 murder, ran. They were able to get the bag that he dropped
23 when he was running from the scene once the gun was pulled on
24 him, and at that point they were able to recover the
25 marijuana. There will also be testimony from a Cleveland

1 Joyner that he heard from this defendant himself on at least
2 one occasion that he wanted -- and these aren't the exact
3 words, Your Honor, but basically there was -- he needed his
4 money or his weed back or he would come after him.

5 Subsequent to that, Your Honor, there's also going to be
6 testimony that on the date in question this defendant, it is
7 our allegation, came forward. Basically there were two
8 people there. We know the identity of one and that's this
9 defendant. They basically were chasing Mr. Ellison Hudson
10 through his back yard into other neighbors' yards and
11 everything, and the person that actually got hit in that was
12 Ms. Ebony Fogle. She was shot once, I believe, or at least
13 once or twice while standing, and then once she went down,
14 one of the two men there that day then basically did an
15 execution-style killing, shooting her I believe once in the
16 chest, in the actual heart, Your Honor, and then once in
17 another body area -- parts.

18 Subsequent to this, Your Honor, the police were able to
19 develop this defendant as a suspect. A lot of it was linked
20 to a car that was used during the shooting itself, the second
21 shooting, which resulted in this murder.

22 Subsequent to that, there are also going to be witnesses
23 that come forward that had given statements to police. One
24 of those was a friend of the defendant's, and he indicates
25 that this defendant admitted to him that he was involved in

1 the shooting that day and that he sprayed the back yard. But
2 more importantly there are two people that are witnesses -
3 Mr. Terran Hughey and Mr. Travis Golston - who were
4 incarcerated with this defendant, actually got to know him
5 while incarcerated, and subsequent to that he made statements
6 to each of them indicating that this was a retaliation for
7 the drugs.

8 Your Honor, specifically Mr. Hughey said a dude named E.
9 And a dude named Hot Boy said they were selling weed to him.
10 They called him one day and they ended up robbing him for
11 half a pound of weed, and he indicated that that was the
12 reason he sought retaliation, is further in his statement.
13 Again, in a statement to Mr. Golston he made similar
14 statements about the reasons for retaliating. Your Honor,
15 it's just -- and we aren't trying to get into the fact that
16 he was a drug dealer. All we're trying to get into as far as
17 that day -- we aren't going into past transactions, but
18 specifically this case simply cannot make any sense as far as
19 if you try to -- I mean, it's a -- it's a retaliation for
20 being robbed of his drugs.

21 It's street level. It's what they do on the street,
22 what happened in this case, and simply to say that this
23 person is just robbed of something or I believe is how they
24 want to kind of do it and then that based on that he would
25 have the motive to come back and do this, it's only in the

1 context of the actual drug involvement itself, and in this
2 case we're actually implicating the victims as much or more
3 or the intended victims as much or more than the defendant.

4 Basically they go there to rob him of marijuana, and
5 based on that -- the fact that they were successful in that
6 is when you will hear testimony -- you will even hear from
7 different witnesses as to how this defendant basically went
8 about planning on how to find out who E. Was, was known as E.
9 At the time. He was able to get him identified through a
10 friend, and he explains this in detail to the snitches that
11 then he went to the father's work and scouted him out, and he
12 was able to go to the home and scout out where they lived and
13 how this was planned, and this was all part of a revenge
14 plot.

15 I know that we aren't required to prove motive, but in
16 this case it's essential to understand, you know, the facts
17 in this case is that this was retaliation because they robbed
18 him of weed and that's the reason he's back there. It's a
19 very, very brutal crime in the middle of the day in broad
20 daylight.

21 Otherwise, I think if you try to just section out that
22 part, it doesn't make any sense in the big scheme of things.
23 And our position is that basically we would have just the
24 right to go into it just to the limited amount of what he was
25 robbing him of. Otherwise, for these witnesses to try to

1 testify and to try to redact out what's essential to their
2 testimony would be pretty -- in our position would be almost
3 impossible because it doesn't make any sense if he goes out
4 there and we're going to say he robbed him of a couple of
5 dollars and why are they there robbing him? It doesn't make
6 any sense unless you put it in the context of they robbed him
7 of his drugs.

8 Then the whole case comes together, Your Honor, and it
9 makes sense, and that would be the only reason we would be
10 offering this evidence. I think the jury has a right just to
11 see everything not in a vacuum and not to the point where it
12 no longer makes sense. I mean, I think we have a right to
13 prove the motive which in this case explains exactly why this
14 was so brutal in the middle of the day, multiple shots.
15 Actually they refer to it and the defendant actually in
16 telling some of these people says he sprayed the area which
17 would be consistent with the physical evidence that was
18 recovered as well as the brutal nature of the crime.

19 **The Court:** None of that would be affected by whether he
20 went and robbed him of \$10,000 or two pounds of marijuana. I
21 mean, everything else would be the same, wouldn't it?

22 **Ms. Campbell:** No, sir, we don't... I think based in
23 the drug background we think it makes a difference as to why
24 he would go to this extreme. You know, if the typical victim
25 gets robbed, they aren't going to go back and retaliate by

1 spraying multiple people in a back yard. It's when you get
2 into the fact that this is based over drugs it makes sense,
3 Your Honor. We feel like without it it doesn't make sense,
4 just to the extent that is---

5 **The Court:** Did these folks have any kind of
6 relationship prior to this?

7 **Ms. Campbell:** Yes. This defendant sold drugs, but we
8 aren't planning on going into that part, but this defendant
9 did sell drugs to our intended victim which would be how to
10 -- he robbed him. He went there -- our testimony would be he
11 went there that day for the purpose or we could, if you let
12 this in, for the purpose that day or purported purpose to buy
13 marijuana and he ended up robbing him of it.

14 **The Court:** So your position is the drug culture is a
15 different element than -- entity than somebody else robbing a
16 T.V. or stereo or cash or....

17 **Ms. Campbell:** Yes, sir. The brutal nature of this
18 crime - they shoot her when she's down on the ground - sends
19 a point---

20 **The Court:** That's what they did there. It's really not
21 relevant to what I'm trying to figure out. What do you want
22 to say?

23 **Ms. Shurling:** Your Honor, I think, with all due
24 respect, the respondent has virtually made my argument for
25 me. It's the State's desire to establish that my client is

1 more likely to be the person---

2 **The Court:** Well, I think the State's taking the
3 position in the drug world.

4 **Ms. Shurling:** I understand. That's precisely---

5 **The Court:** It's different than in the other world.

6 **Ms. Shurling:** Which means---

7 **The Court:** And that because it's a drug world and a
8 drug transaction and a drug robbery that that's why there are
9 people who would -- who would seek revenge because of all
10 that.

11 **Ms. Shurling:** And I understand their position, Your
12 Honor, but logically what they are saying is they want to
13 establish that my client is someone more likely to have
14 committed this brutal crime because he is a person who was
15 selling marijuana, and there's no additional probative value
16 to what was stolen.

17 I understand motive is not an essential element of
18 murder, but I also understand their right to establish
19 motive. However, they can establish motive by establishing
20 that Hudson on a previous occasion had robbed Mr. Hackshaw.
21 Beyond that, the nature of the property stolen -- that
22 evidence, Your Honor, is so much more potentially prejudicial
23 than it is probative that it needs to be kept out. And I
24 would note that the scope of our motion is such, Your Honor,
25 that we're not asking just---

1 **The Court:** Well, I'm aware of that. I know what you're
2 asking.

3 **Ms. Shurling:** We don't want any witnesses referencing
4 prior drug dealings with our client. The State is---

5 **The Court:** Do y'all intend to offer any evidence that
6 whatever relationship they -- between alleged victims, I
7 guess -- what did you say - Hudson - and this defendant was
8 really only because of drugs?

9 **Ms. Campbell:** That's the reality of it; yes, sir.

10 **The Court:** Well, I know what the reality is, but do you
11 intend to offer evidence---

12 **Ms. Campbell:** We intend to offer evidence that he went
13 there that day and he robbed him of drugs. If you have me
14 limit it---

15 **The Court:** I'm not asking you to limit anything. I'm
16 asking you to---

17 **Ms. Campbell:** Then, yes, sir, that would be our intent.

18 **Ms. Shurling:** And once again, Your Honor, our position
19 is that motive can clearly be established by entering
20 evidence of a fact of a robbery without the prejudicial
21 component of the nature of the property stolen.

22 **The Court:** All right. Okay. I'm going to -- I'm going
23 to allow you to do that.

24 **Ms. Campbell:** Okay.

25 **The Court:** Because I'm going to find that it's so

1 interrelated that their -- their position is that in order to
2 show why this all occurred, motive for -- that ultimately
3 resulted in the killing was because of the relationship that
4 existed between at least one of the assault victims and the
5 defendant and that it was a cocaine -- I mean a drug
6 relationship and it all arose out of the -- as a result. I
7 mean, this is what they're trying to show: As a result of
8 this robbery that took place where Mr. Hudson took some drugs
9 belonging to Mr. Hackshaw.

10 I'm going to find that it does -- that there probably is
11 a different situation in drug deals and things of that nature
12 that -- on the street that this would be probative and it's
13 not substantially outweighed by the prejudicial value.

14 **Ms. Shurling:** Your Honor, I would ask that other
15 witnesses other than Mr. Hudson be limited in their
16 presentation of testimony concerning prior drug dealings with
17 my client.

18 **The Court:** Well, you know, I'm not -- you know, if
19 whatever relationship these folks had really goes to a drug
20 relationship, I can't tell you at this point I'm going to
21 exclude other testimony relating to that drug relationship
22 because the drug relationship is the basis for allowing the
23 testimony about the robbery to come in. So I can't tell you
24 at this point in time that I'm going to do that. I think
25 what you'll have to do is if that, in fact, becomes an issue,

1 you object and we'll deal with it at that time so that I know
2 in what context that's being offered.

3 **Ms. Shurling:** So that I make myself clear, Your Honor,
4 I'm not talking about testimony coming from victims in this
5 case. There are a number of peripheral witnesses who have
6 given statements in this case that indicate that they know my
7 client by virtue of earlier drug dealings. Their testimony
8 would not be germane to motive. They're not related to
9 the---

10 **The Court:** Well, I think you're probably right, but,
11 again, I'm going to -- I mean, I think if you've got somebody
12 that gets up and talks about, yeah, I had a conversation with
13 your client and in that conversation he stated because this
14 drug deal went -- this robbery took place and then they go
15 on: Well, how do you know the defendant? Well, we've dealt
16 drugs together in the past. Well, that "we dealt drugs
17 together in the past" would not be appropriate and I would
18 not allow that in, but again I just -- I have determined that
19 the relationship relating to drugs is germane in this case
20 and I'm just going to have to deal with it on a---

21 **Ms. Shurling:** I understand, Your Honor. Again, I would
22 ask and I would certainly renew my motion before each
23 witness's testimony, but I would ask that the witnesses be
24 limited in precisely the manner Your Honor has just
25 described. Once it's out of their mouths, the bell has been

1 rung, and regardless of what curative instruction you give,
2 the harm has been done.

3 **The Court:** Well, Ms. Shurling, I've given the best
4 example I can and I think the solicitor has to -- has to take
5 that, but I can't presume their case and how it's going to
6 come out.

7 **Ms. Shurling:** Thank you, Your Honor.

8 **The Court:** I mean, if it's so egregious, then you'll be
9 able to move for whatever you'll want to move and we'll deal
10 with it at that time. I don't think we want to try this case
11 twice. So y'all understand? Let's not get into
12 relationships with other parties that... All right.
13 Anything else we need to take up?

14 **Ms. Campbell:** I don't think at this time, Your Honor.

15 **The Court:** All right. We will come back here at 2:15.

16 **Ms. Shurling:** Your Honor, I have one additional motion.
17 It has been mentioned this morning that it's the State's
18 position that my client was in possession of exotic
19 marijuana. We would move in limine for the State not to be
20 allowed to refer to the marijuana sold by my client as exotic
21 marijuana, some kind of super marijuana.

22 Unlike, for example, powder cocaine and crack cocaine
23 where there are recognized pharmaceutical standards for when
24 a drug has been converted from regular powder cocaine to
25 crack cocaine, there are no known pharmaceutical standards

1 for what is regular marijuana versus some kind of supposed
2 super marijuana, and we would ask that they be limited to
3 referring to the drug as marijuana.

4 **The Court:** All right. I don't know enough about it,
5 but if that's something that they're going to offer and some
6 basis in fact for that offer, then we'll have to deal with
7 it. They probably can get it in. I don't know what they're
8 going to do. Make your objection if that becomes...

9 **Ms. Shurling:** Thank you, Your Honor.

10 **The Court:** All right. Y'all have a good lunch and
11 we'll see you back here at 2:15. What time did I tell them?
12 Did I tell them 2:15?

13 (Whereupon, a lunch break was taken.)

14 **The Court:** Thank y'all. Please be seated if you would.
15 All right. Mr. Hollis, let's bring -- are you just
16 stretching or did you want to say something?

17 **Ms. Campbell:** I would like to just -- a couple of
18 things I thought that might expedite things for the afternoon
19 if I could bring them out now, Your Honor.

20 **The Court:** All right.

21 **Ms. Campbell:** Amongst the first 10 or 12 witnesses or
22 so, I went ahead and turned over rap sheets on two of those
23 witnesses. If we could just clarify their record and what
24 would be admissible and what pending charges those have, for
25 the record, Your Honor.

1 **The Court:** All right.

2 **Ms. Campbell:** The first one of those is Ellison Hudson.
3 I'm showing that from the year 2008 he has two convictions
4 for auto breaking.

5 **The Court:** That was when?

6 **Ms. Campbell:** 2008, Your Honor.

7 **The Court:** All right.

8 **Ms. Campbell:** Those would be admissible. I'm not
9 showing any other convictions. However, he does have a
10 pending obstruction of justice charge in our office. His
11 lawyer is here, Mr. Maye, and he will be testifying. He's
12 one of the victims or the intended victims in the case, and
13 he would be testifying this afternoon hopefully.

14 **The Court:** Maye or the other guy?

15 **Ms. Campbell:** The other guy.

16 **The Court:** We've had a lot of conversation with Maye.
17 I would like to have him under oath if I could.

18 **Ms. Campbell:** I'm sure you would, Your Honor.

19 **The Court:** All right. So you---

20 **Ms. Shurling:** Your Honor---

21 **The Court:** So you can go into those convictions?

22 **Ms. Shurling:** I believe that those two would be
23 admissible, Your Honor.

24 **The Court:** All right.

25 **Ms. Shurling:** In addition, Your Honor, it is my

1 understanding there's a reference in the discovery to Mr.
2 Hudson being given immunity for the armed robbery of my
3 client.

4 Ms. Campbell: That's true, Your Honor.

5 Ms. Shurling: Thank you.

6 Ms. Campbell: That would be the prior occasion two
7 weeks earlier than what we're referring to.

8 The Court: All right. You certainly can inquire about
9 that. So we've got two robberies -- I mean, two -- what did
10 you say? Auto breaking?

11 Ms. Campbell: Two auto breakings.

12 The Court: And a?

13 Ms. Campbell: A pending obstruction and immunity for
14 the armed robbery.

15 The Court: So y'all are not objecting to the
16 obstruction?

17 Ms. Campbell: That's a pending charge in our office
18 that arose out of this case actually, so we think she has the
19 right to get into that he's got that pending charge.

20 The Court: All right.

21 Ms. Campbell: Your Honor, also with him and part of his
22 testimony was at one point that part of his beef with this
23 defendant - and we don't want to go past what you've already
24 ruled on - was there was some counterfeit money that he
25 initially alleged this defendant paid him for some drug

1 dealings in the past. We were not going to get into that
2 unless you want to.

3 Ms. Shurling: Oh, I will.

4 Ms. Campbell: Okay. That clears that up. Your
5 Honor---

6 The Court: So you're going to bring it up.

7 Ms. Campbell: I'll bring it up. I didn't know if she
8 wanted -- I don't know if she wanted it in or not.

9 Ms. Shurling: Well, since your client has admitted he
10 lied about it, I think I should.

11 The Court: Well, I don't -- so you understand she's
12 going to address the issue.

13 Ms. Shurling: I understand.

14 The Court: Where she wasn't unless you were.

15 Ms. Shurling: I understand.

16 The Court: All right. What else?

17 Ms. Campbell: Your Honor, as far as the second witness
18 that may or may not be here this afternoon, it's a Cleveland
19 Joyner. He has, as far as impeachable offenses, a May of
20 2006 burglary in the second degree conviction, and I believe
21 that's the only thing that would be impeachable on him. Let
22 me make sure.

23 The Court: Is he represented?

24 Ms. Campbell: He is not represented, Your Honor. He
25 does not have any pending charges.

1 **The Court:** I didn't know if he was represented by...

2 You have him on the obstruction, Mr. Maye?

3 **Mr. Maye:** I have Mr. Hudson.

4 **The Court:** On the obstruction.

5 **Mr. Maye:** Yes, sir.

6 **The Court:** Did you have him on the armed robbery?

7 **Mr. Maye:** Had he been charged, yes, sir, I would have.

8 **The Court:** Okay. All right. Anything?

9 **Ms. Shurling:** Your Honor, there is evidence in the
10 discovery that Mr. Hudson was apparently involved in --
11 actually this is a matter I prefer to take up after we're
12 observing the sequestration of Mr. Hudson, please.

13 **Ms. Campbell:** He's the victim. He doesn't get
14 sequestered. He's a victim.

15 **Ms. Shurling:** Okay. Your Honor, there's some
16 information in the discovery that my client may not be the
17 only drug dealer that was robbed by Mr. Hudson. There's been
18 some suggestion in the testimony, in the statement rather, of
19 Mr. Joyner that there may have been multiple drug dealers
20 that were, in fact, robbed by Mr. Ellison Hudson, and I
21 anticipate questioning Mr. Joyner about his knowledge of
22 that. The State has taken the position that they should
23 be---

24 **The Court:** Wait a minute. Mr. Joyner being the
25 second---

1 **Ms. Shurling:** That's correct.

2 **The Court:** You're going to ask Mr. Joyner about Mr.
3 Hudson?

4 **Ms. Shurling:** About his knowledge, Your Honor, of prior
5 robberies of other drug dealers. It was the State's
6 position, Your Honor, that they should be allowed to get into
7 the fact that that was robbery for drugs because of the fact
8 that it established that my client, having had property
9 stolen that was drugs, made him more likely to have committed
10 this crime because of the drug culture and the fact that drug
11 dealers when they get their drugs stolen want vengeance and
12 will go after the people that rob them. Well, there's been
13 at least some indication from other witnesses in this case
14 that Mr. Hudson's robbed other drug dealers as well, and if
15 they're going to be allowed to try to set up the stage for my
16 client being a drug dealer out for vengeance, then I think we
17 should be allowed to establish that there may be other drug
18 dealers out there, indeed are, that would have the same
19 reason to try to harm Mr. Hudson.

20 **Ms. Campbell:** I believe this is the ruling you made
21 last week, Your Honor, on the third-party guilt issue. We've
22 conceded that anything having to do with Jonathan Bailey
23 would be -- I mean, you ruled it would be relevant.

24 **The Court:** I did. I did.

25 **Ms. Campbell:** We understand she can fully explore that

1 with---

2 **The Court:** Clearly it's third-party guilt.

3 **Ms. Shurling:** And, Your Honor, that was before the
4 State took the position that they should be allowed to
5 introduce the armed robbery.

6 **The Court:** All right. Well, I've already ruled.

7 **Ms. Shurling:** Thank you.

8 **The Court:** All right. Anything further?

9 **Ms. Campbell:** The only other thing, Your Honor, is I
10 had talked to Ms. Shurling on a number of occasions. She
11 indicates there are other documents and -- especially
12 pertaining to some alibi that she alleged in this case and we
13 have not received those documents, and I just want to make
14 sure that -- you know, I understand that she's been busy, but
15 we would like to have any kind of documentation, any evidence
16 she intends to offer beforehand, so that we don't unduly slow
17 the Court down.

18 **Ms. Shurling:** Your Honor---

19 **Ms. Campbell:** I think under the rules we're entitled to
20 it.

21 **The Court:** Y'all got some documents relating to the
22 alibi witness?

23 **Ms. Shurling:** There is only one document, Your Honor.
24 It is a computer printout from Progressive Physical Therapy
25 listing appointment times of all my client's previous

1 appointments. My associate is digging for that as we speak.

2 The Court: Are you listening to this, Ms. Campbell?

3 Ms. Campbell: Yes, sir, I am.

4 Ms. Shurling: Additionally, Your Honor---

5 The Court: All right. Get the phone.

6 Ms. Shurling: It's been provided by counsel for my
7 client's wife---

8 The Court: Wait. I'm sorry. Go ahead. I'm sorry.

9 Ms. Shurling: Additionally, I've been provided with a,
10 I believe, two-page document from counsel for my client's
11 wife concerning the auto loan agreement on the silver Honda
12 that would be much discussed in this case. We have those
13 records somewhere---

14 The Court: Wait a minute. A minute ago we were talking
15 about some document relating to your alibi witness, and you
16 said there's more than one page?

17 Ms. Campbell: I don't know what she's got, Your Honor.
18 She's never shown it to me.

19 The Court: You've never gotten anything.

20 Ms. Shurling: I told her specifically what it is, Your
21 Honor.

22 The Court: Well, give it to her.

23 Ms. Shurling: Here it is. We'll get a copy made and
24 hand it to you.

25 The Court: All right. Well, give it to her now. You

1 got a -- somebody go get a copy. Go to the clerk's office.
2 Tell them I asked them to make a copy.

3 **Ms. Campbell:** Just anything else they may be planning
4 on using, regardless of whether it has to do with alibi, we
5 would think we would be entitled to at least at this point to
6 look at it.

7 **The Court:** Well, you would. If they don't do it, then
8 they might not be able to use it.

9 **Ms. Campbell:** Okay. Thank you.

10 **Ms. Shurling:** And that's why I was explaining, Your
11 Honor, the only other document would be pertaining to the
12 fact of a loan agreement on the silver Honda that was past
13 due, and my associate is digging for that correspondence and
14 will provide them a copy of that shortly.

15 **The Court:** Mr. Thompson, find it. Go copy it and...

16 **Ms. Shurling:** Thank you, Your Honor.

17 **Mr. Thompson:** Will do, Judge.

18 **The Court:** Do it now. All right. Let's bring us the
19 jury in here, Mr. Hollis.

20 (Whereupon, the jury was brought into open court at 2:25
21 p.m.)

22 **The Court:** Okay. Madam clerk, you may swear the jury.

23 (Whereupon, the jury was sworn at 2:26 p.m.)

24 **The Court:** Ladies and gentlemen, again I'm going to
25 briefly tell you about this process in case you've not been

1 on a jury or it's been some time since you have. As I told
2 you earlier, Mr. Hackshaw has been charged with -- has been
3 indicted for four offenses. One is murder. The indictment
4 alleges that Mr. Hackshaw did in Richland County on or about
5 May 20, 2009, feloniously and willfully and with malice
6 aforethought kill one Ebony Fogle by means of a gunshot wound
7 and that the victim died as a proximate result thereof.

8 In addition, Mr. Hackshaw has been indicted for two
9 offenses of assault with intent to kill. The indictment says
10 that Mr. Hackshaw did in Richland County on or about May 10,
11 2009, with malice aforethought commit an assault with intent
12 to kill upon the victim, Ellison Hudson.

13 The other assault with intent to kill indictment states
14 that Mr. Hackshaw did in Richland County on or about May 20,
15 2009, with malice aforethought commit an assault with intent
16 to kill upon the victim, Cleveland Joyner.

17 Lastly, the fourth indictment states that Mr. Hackshaw
18 did in Richland County on or about May 20, 2009, possess or
19 visibly display a firearm during the commission or attempted
20 commission of violent crime, that crime being murder.

21 As I also told you, Mr. Hackshaw has entered a plea of
22 not guilty on all of these charges, and it's now up to the
23 State to attempt to prove the defendant guilty and prove him
24 guilty of each and every one of these offenses. They must
25 prove him guilty beyond a reasonable doubt.

1 Now, as I also told you, the indictments are notice
2 documents. They're not evidence. They're not to be
3 considered by you for any purpose other than they have put
4 the defendant on notice of these particular charges.

5 Now, the way a trial takes place, ladies and gentlemen:
6 The first thing that's going to happen in just a few minutes
7 is the lawyers are going to have an opportunity to get up and
8 talk to you. This is what we call an opening statement, and
9 the State will go first because the State has the burden of
10 proving the defendant guilty on all of these charges. The
11 State gets to go first throughout the course of the trial.

12 The opening statement is a chance for these lawyers to
13 tell you a little bit about what this case is about, what
14 they think will come in during the course of the trial. It's
15 an opportunity for them to introduce themselves to you as
16 well. It's a chance for them to give you some understanding
17 of what to look for during the unfolding of the presentation
18 of the evidence in the trial.

19 After the solicitor makes her opening statement, then
20 the defendant is given an opportunity to make an opening
21 statement as well. When both opening statements are
22 concluded, the state will go forward with the presentation of
23 the State's evidence. I would imagine that most of the
24 evidence of the State will come in by way of testimony from
25 witnesses. They will be put under oath. They'll get in this

1 witness box right here, and they'll tell you what information
2 they have about this case: They've seen something, heard
3 something, smelled something, felt something, tasted
4 something. They have some knowledge from one of their
5 senses, and they will tell you what that information is.

6 Other types of evidence that could come in are things
7 like photographs or documents. That type of evidence is
8 actually introduced. It is given an exhibit number and it
9 will go with you to the jury room so when you have your
10 deliberations you can review and examine those exhibits.
11 Testimony, ladies and gentlemen, will go with you in your
12 memory, so it is absolutely essential that you pay close
13 attention to what is being said here in the courthouse -- I
14 mean the courtroom.

15 If you don't understand something, you can't hear
16 someone, if you have some problem, let me know. Raise your
17 hand. Tell me in some way, and we'll make sure either the
18 witness or the lawyer or whoever it is speaks up or speaks
19 more clearly.

20 The third type of evidence that could come in is what we
21 call a stipulation. That's where the parties stipulate or
22 agree as to some fact or some matter. If there's a
23 stipulation, the lawyers will tell me and I will tell you and
24 you are to accept that fact as though it has been proven here
25 in the courtroom.

1 Now, after the solicitor has offered whatever evidence
2 the solicitor wishes to offer in this case, the defendant is
3 given an opportunity to put up whatever evidence the defense
4 wishes to offer. Now, ladies and gentlemen, as I told you
5 earlier, the defendant has no burden in this case. The
6 defendant doesn't have to do anything. The defendant may or
7 may not offer any evidence because the burden falls
8 completely upon the State to prove the State's case and to
9 prove it beyond a reasonable doubt. If the defendant
10 determines that the defendant wishes to offer evidence, I
11 assume it would be of a similar nature to the State's and
12 that is most of it will be testimony from witnesses from the
13 witness stand.

14 Now, after both sides have completed the presentation of
15 their evidence, ladies and gentlemen, then the lawyers are
16 given another opportunity to speak to you, and this is what
17 we call a closing argument. A closing argument is a chance
18 for these lawyers to review what they think came in during
19 the course of the trial, to point out to you what they think
20 you should seriously consider and discuss during the course
21 of your deliberations. It's a chance for these lawyers to
22 attempt to convince or persuade you as to why you should
23 return a verdict for their respective client. When both
24 sides have completed their closing arguments, then I will
25 charge you or instruct you as to the law. You will then

1 retire to the jury room and begin your deliberations,
2 hopefully resulting in your returning verdicts on all of
3 these charges.

4 Now, as I told earlier, ladies and gentlemen, your
5 responsibility in this case is that of the fact finders. You
6 are the sole fact finders in this case. Nobody else will
7 participate in that process but you. My role is different
8 from yours. I have two roles really. As in most events that
9 have -- they have rules and we have rules. We have rules how
10 a case is tried. We have rules of evidence and rules of
11 procedure, and it's my responsibility to see that the rules
12 are complied with during the course of the trial. My other
13 responsibility is to charge you or instruct you as to the law
14 so you can apply the law at the end of the case to the facts
15 as you determine them to be in returning your verdict.

16 Now, ladies and gentlemen, the lawyers in this case are
17 very, very important in the trial of the case. I want you to
18 listen very carefully to everything they tell you, but
19 understand this: Understand that what the lawyers tell you
20 is not evidence. They're advocates for their respective
21 clients: The solicitor for the State of South Carolina, Ms.
22 Shurling and Mr. Thompson for Mr. Hackshaw. They are here to
23 put before you what they think will be helpful to you in
24 ultimately determining the facts of the case and rendering
25 your verdict.

1 Now, as I told you, I expect this case to last a number
2 of days, probably through the end of the week. We're going
3 to do everything we can to move it as quickly as we can, but
4 we're not going to do anything we can -- I mean anything that
5 would jeopardize or hurt both the State's opportunity to put
6 up whatever evidence they wish to offer and Mr. Hackshaw an
7 opportunity to offer whatever Mr. Hackshaw wishes to offer.
8 So I think with that said, I'll ask: Ms. Solicitor, are
9 y'all prepared to go forward?

10 Ms. Simpson: We are, Your Honor.

11 The Court: Are you going to make the opening statement,
12 Ms. Simpson?

13 Ms. Simpson: I am, Your Honor.

14 The Court: All right. If you would please, ma'am.

15 Ms. Simpson: Thank you. May it please the Court? It's
16 said that revenge is a dish best served cold. Remember that,
17 members of the jury, because I submit to you that it is the
18 key to this case. I submit to you that because of the
19 defendant, Anthony Hackshaw's, desire for revenge, the
20 victim, Ebony Fogle, an innocent 18-year-old girl, was shot
21 and killed.

22 But it wasn't enough that Ebony had to die the wrong
23 place, wrong time. The defendant had to send a message, a
24 message to the intended target, Ellison Hudson, and perhaps
25 to anyone else who might cross him because Ebony wasn't just

1 hit by the spray of bullets that day because once she was
2 shot numerous times in the back and the buttocks, she would
3 fall to the ground, lying face up, where she would be
4 brutally shot at pointblank range in both the neck and the
5 breasts. A message.

6 Now, members of the jury, while we are here today
7 because of the defendant's actions on May the 20th of 2009,
8 to understand what happened we will not begin nor will we end
9 there. The evidence will show that the defendant and Ellison
10 Hudson, who you'll hear from today, had a prior what we might
11 call business relationship. Essentially, they dealt drugs to
12 one another with each being both a buyer and a seller. That
13 was the basis of their relationship, and we're not talking
14 nickel-and-dime bags here. We're talking hundreds of
15 thousands of dollars worth of marijuana.

16 But on April 23rd of 2009 everything changed because
17 Ellison Hudson had a plan, too. He was going to rob the
18 defendant, and I submit to you that the evidence will show
19 that on April 23rd of 2009 Ellison, who you'll hear referred
20 to throughout this trial as E., along with his friend Sheldon
21 McDowell A.K.A. Hot Boy, went over to the defendant's
22 apartment complex where he lived and under the guise of a
23 drug deal would proceed to rob the defendant.

24 Ellison and Sheldon would get out of the car, and the
25 defendant had a friend with him, and Ellison would pull out

1 his pistol, a .22 caliber, and point it. The defendant would
2 drop a bag containing a substantial amount of weed and go
3 running up the stairs. Sheldon would grab the weed and flee
4 to the car, Ellison not far behind, but by this time the
5 defendant on the balcony had his own gun and began firing
6 shots. Ellison returned fire and then fled in his car and
7 left.

8 Now, neighbors and witnesses to this incident called
9 9-1-1. Law enforcement arrived and they would begin to
10 investigate and interview the witnesses, and through their
11 investigation they would learn that the defendant was likely
12 involved. So they approached him to ask him about the
13 shooting. But when they did, the defendant would become
14 hostile and defensive and would deny any knowledge of the
15 shooting whatsoever, and I submit to you the evidence will
16 show that that's because the defendant was going to handle
17 his own business his own way. He was going to keep it in the
18 streets, and at that moment the plan for revenge was
19 conceived.

20 So here we are in the weeks prior to the May 20th, 2009,
21 incident, and during that time the evidence will show that
22 the defendant made threatening phone calls to Ellison Hudson:
23 Either give me my stuff or I'm going to get you. Give me my
24 stuff or I'm going to kill you. And the defendant would
25 relay that message to Cleveland Joyner, one of Ellison's

1 friends. Tell your friend to give me my stuff or I'm going
2 to get him. Ellison didn't give back any of the stuff. And
3 the defendant would further inquire to his own friend,
4 Torrian Gleaton, about Ellison: Did he know him, how to find
5 him.

6 Now, the evidence will show that the defendant kind of
7 let the incident ride, let stuff die down for a few weeks,
8 and during that time he would inquire as to Ellison's
9 whereabouts. And his efforts proved successful because he
10 was able to learn where Ellison's father worked and where
11 Ellison lived with his parents on Juniper Street.

12 So here we are, May 20th, 2009, at [REDACTED]
13 located in the Greenview area here in Richland County. The
14 time is the early morning or early afternoon hours, normally
15 a quiet time in this neighborhood. Ellison's parents are
16 away at work, and earlier in the morning you'll learn that
17 Ellison's girlfriend or a girl that he had been seeing,
18 Ebony, called him, wanted to show off her hair that she'd
19 just gotten done and wanted to see if Ellison would wash her
20 car.

21 So he told her to come on over, and he would invite
22 another friend, Cleveland Joyner. So they would all be over
23 there. Ebony would pull her car to the back of the yard, not
24 the front yard but the back, and they would all be hanging
25 out, Cleveland Joyner blowing up a blunt so that he and

1 Ellison could smoke. And on the table was Ellison's gun, a
2 .38 caliber revolver, and that gun, I submit to you, was on
3 that table for the very same reason that that car was pulled
4 to the back yard to be washed: Because Ellison was involved
5 with some pretty shady people and in some pretty shady stuff.

6 So they're just hanging out and all was fine. Then they
7 see a silver Honda drive slowly past. There's no stop sign
8 right there; it was just slowing down. They don't think a
9 whole lot about it and then it happens again, and at this
10 point Cleveland looks to Ellison: Who is that? It's
11 probably no one.

12 But just in case, Ellison grabs his gun and goes to the
13 front of the yard. He looks, doesn't see anyone. So he goes
14 to the back yard and says, "Oh, it's no one," and they
15 continue hanging out, Ellison washing the car. And in a
16 matter of minutes, not more than 20 minutes later, two black
17 males - I submit to you the defendant and his unknown
18 accomplice - come walking down Juniper Street in front of
19 Ellison's home and they're wearing dark clothing, a dark
20 hoodie, a baseball cap, and black shirt is how one of the
21 assailants would be described.

22 And evidence will show that the defendant had actually
23 left his apartment earlier that morning wearing clothing
24 matching that description. And so they proceed up through
25 the freestanding carport into the back yard, guns drawn.

1 Ellison: "Oh, shit, here they come," and he drops, pushes
2 Ebony out of the way. Shots are being fired. All this is
3 happening at once.

4 He yells to Cleveland, "Get the gun," which Cleveland
5 does, and Cleveland takes off running, too, both Cleveland
6 and Ellison leaving Ebony behind. More shots and Ebony
7 screams. At this point Ellison is being chased. More shots
8 and then finally silence.

9 Cleveland and Ellison returned to the home. Ebony is
10 dead. The defendant and his accomplice are gone. The silver
11 Honda is gone. The murder weapon is gone.

12 Now, neighbors have called 9-1-1 because of the shots in
13 that quiet neighborhood. Law enforcement arrives and they
14 speak with both Cleveland and Ellison, but their stories
15 aren't quite adding up, so they continue to question them
16 about what happened. And you'll learn here today that
17 Ellison eventually identifies a man by the name of Jonathan
18 Bailey as the shooter.

19 Now, I submit to you the evidence will show that
20 Jonathan Bailey was an easy out because in order to identify
21 the defendant, Anthony Hackshaw, Ellison would have to
22 implicate himself in an armed robbery and drug dealing. I
23 submit to you the evidence will show that Jonathan Bailey was
24 an easy out because he didn't personally know him. He was
25 just connected to some other people that Ellison had problems

1 with in the past. So why should he care? Self-preservation.

2 The problem is that law enforcement would interview
3 Jonathan Bailey, and Jonathan Bailey would have an alibi
4 which checked out because during the time of this incident,
5 which was just before 1:00, the evidence will show that
6 Jonathan Bailey was at his friend's house, Kevae Dolphin,
7 from about 12:20 to 3:00 in the afternoon.

8 You're going to hear from her today, and they were there
9 along with other friends during that time period. But that's
10 not all because during that time Jonathan Bailey was on a
11 three-way phone call with his mother and an officer with the
12 Richland County Sheriff's Department discussing an
13 outstanding bench warrant that he had. It was just a matter
14 of minutes before the incident occurs, and they're
15 approximately 14 minutes away. And the evidence will show
16 that Jonathan Bailey didn't drive and did not have access to
17 a silver Honda that day.

18 So here we are, and law enforcement confronts Ellison
19 with this information. Jonathan Bailey wasn't there that
20 day. Who would want you dead? And finally Ellison comes
21 clean and identifies the defendant, A.K.A. Bump, as the
22 shooter and implicates himself in the armed robbery of the
23 defendant just weeks prior.

24 So the investigation continues, and law enforcement --
25 they go out to where the defendant lived, and after talking

1 with neighbors and friends, they learned that the defendant
2 had access to a silver Honda because his wife, Rosa Grenald,
3 had gone months earlier to visit her sister in New Jersey and
4 returned in a silver Honda with New Jersey tags. But this
5 Honda will become very important, members of the jury,
6 because you're going to learn that directly after this
7 incident, they tried to cover up, to hide the Honda, to get
8 that Honda away from them.

9 The defendant's wife, Rosa, would go to her friend,
10 Shanelle Latimer, and say, "Why don't you watch my car, hold
11 my car? But whatever you do, do not drive it." And
12 fortunately Tony Craft, Shanelle's boyfriend, drove the car
13 and Rosa found out. So at that point she takes the car back.
14 Let me get it even farther away, and she goes to one of her
15 co-workers, Shaquenda Evans, who lives further out in the
16 country and says, "Why don't we swap cars for a bit? You
17 like my Honda. You can drive it, just for a couple of days."
18 And so they trade cars.

19 Now, Rosa ends up keeping the car much longer than
20 anticipated, but Ms. Evans never really questions it because
21 she'd seen the defendant driving it. Again, no questions,
22 didn't think much of it. Efforts to hide but that's not all
23 because you're going to hear that on the day of the incident,
24 members of the jury, Rosa was with a neighbor, Nina Gordon,
25 watching Nina's kids around the time that this occurred.

1 Nina would return home about 1:30, and she's going to tell
2 you about how Rosa received a call from the defendant who was
3 angry that Rosa was not home and told her, "Do not go home
4 until I tell you it's okay."

5 That's not all because the evidence will also show that
6 this defendant tried to create an alibi for himself using his
7 physical therapist and potentially his job because he worked
8 at Bryan Psychiatric, and you're going to hear how he signed
9 in at work that day at 7:30 and signed out at 3:00. The
10 problem is he did have a doctor's appointment that day at
11 1:30, but that's not noted on his work records. And you're
12 going to hear from the supervisor as well as an officer who
13 worked at the site that it was pretty easy for employees to
14 come and go as they pleased.

15 I submit to you the evidence will show that Anthony
16 Hackshaw left, and when he finally did make it to the
17 doctor's office -- and you're going to see this, the sign-in
18 sheet. Someone signed in before him at 1:09. Now, remember
19 his appointment was at 1:30. Now, if the defendant signed in
20 at 1:00, just around the time of this incident, and the
21 person after him signed in at 1:25 -- 1:00, how convenient?

22 The problem is that you are going to see cell phone
23 records, tower information, that make it impossible for the
24 defendant to be at the physical therapist's at 1:00. As a
25 matter of fact, the evidence will show that he didn't get

1 there until at least 1:22, giving him plenty of time.

2 But, again, we're not quite finished because officers on
3 June the 8th would execute a search warrant on the
4 defendant's home. Now, the defendant is not there. They
5 haven't located him yet, but through that search warrant
6 relevant to this case they recover a photograph of Ellison
7 Hudson. I submit to you because even though he missed, he
8 still had plans to take care of business.

9 So here we are, and on July the 10th the arrest warrants
10 are sworn out, but prior to that, just four days after the
11 execution of a search warrant on the defendant's home, a man
12 by the name of Aaron Johnson calls the apartment complex and
13 inquires about how to remove the defendant's things from the
14 apartment. Again, not the defendant, because he's not there.
15 So the arrest warrants are drawn up. Still no defendant.

16 As a matter of fact, a U-Haul was rented and his wife,
17 along with her mother, would come down and pack up the
18 belongings along with Aaron Johnson. Still no defendant. I
19 submit to you the evidence will show that he fled because he
20 knew that law enforcement was looking for him. So here we
21 are.

22 Finally the defendant turns himself in, and you'll learn
23 that while he was incarcerated he confessed to two other
24 inmates about this crime. And I ask that you look for the
25 details that only the perpetrator would know. But he not

1 only confessed to these fellow inmates but also to his
2 friend, Torrian Gleaton, who you'll hear from today.

3 Good afternoon, members of the jury. My name is Nicole
4 Simpson, and I along with my co-counsel, deputy solicitor
5 Luck Campbell and assistant solicitor Joanna McDuffie,
6 together we represent the State in this matter, and it's our
7 job -- as solicitors it is our job to prosecute all crimes
8 that occur here in Richland County. Now, in every criminal
9 case the defendant is presumed innocent until proven guilty,
10 and as the State, we bear the burden of proof in this case
11 just as we do in the prosecution of every criminal case, and
12 I can tell you that we welcome that burden here today.

13 Now, as a result of his actions on May the 20th of 2009,
14 the defendant, Anthony Hackshaw, has been charged with
15 murder, two counts of assault with intent to kill, and the
16 possession of a firearm during the commission of a violent
17 crime. Now, we must prove to you each of these elements
18 beyond a reasonable doubt.

19 Now, in South Carolina a person is guilty of murder if
20 he kills another with malice aforethought, either express or
21 implied. A person is guilty of assault with intent to kill
22 if he commits an unlawful act or attempts an unlawful act of
23 violent injury to another person with malice, accompanied by
24 the present ability to do so.

25 And with respect to possession of a firearm during the

1 commission of a violent crime, it's just what it says, and I
2 submit to you that murder is a violent crime. As I said
3 earlier, we must prove to you these elements beyond a
4 reasonable doubt.

5 So what is proof beyond a reasonable doubt? Well, I can
6 tell you that it is that proof that leaves you firmly
7 convinced of the defendant's guilt. Now, there are very few
8 things that we know in this world with absolute certainty,
9 and the law does not require the State to produce proof that
10 overcomes all doubt or every possible doubt but only that
11 doubt which is reasonable.

12 Members of the jury, the Honorable Judge Barber is the
13 judge of the law in this case, and he will instruct you on
14 the law as you are to apply it to the facts of this case. If
15 at any point there's a discrepancy between what His Honor
16 says and what any of the attorneys in this case say, you are
17 to follow his instructions and his rulings to you.

18 Now, with that said, you, members of the jury, are the
19 sole triers and finders of fact in this case, and what that
20 means is that each of you here today is wearing a black robe,
21 and individually and collectively you must decide and only
22 you can decide whether the defendant is guilty of the crimes
23 for which he has been charged.

24 Now, as the prosecution, it is our job to give you the
25 tools that you need to do your job, and we plan to do just

1 that through the evidence and testimony produced during this
2 trial. Now, some of that evidence will be physical evidence,
3 evidence that you can see, touch, and feel, but most of that
4 evidence is going to come from right here on this witness
5 stand, and you're going to hear from a lot of witnesses.

6 You're going to hear from eyewitnesses on the day of the
7 murder of Ebony Fogle. You're going to hear from law
8 enforcement who investigated these crimes. You're going to
9 hear from experts and forensic analysts who analyzed the
10 evidence in this case, and you're going to hear from friends,
11 neighbors, co-workers of the defendant, numerous people, and
12 I submit to you that through those witnesses you're going to
13 learn that the defendant had motive, that he had the
14 opportunity to commit this crime, that he attempted to cover
15 it up and fabricate an alibi and that he fled and that he
16 confessed.

17 Now, when each of these witnesses takes the stand, it
18 will be up to you to judge their credibility, and based on
19 your decision, you can believe some of what a witness says,
20 all of what a witness says or none of what a witness says,
21 but in making that determination we ask that you consider
22 several things. Judge that witness's demeanor on the stand.
23 Ask yourselves: Was that witness hesitant or forthright when
24 testifying? Is the testimony of the witness consistent? Is
25 it corroborated by other testimony or other evidence?

1 But I can tell you, members of the jury, that there will
2 be two very important witnesses who will not take this stand
3 and testify here today and that's human nature and common
4 sense, and while we ask that you check your prejudice and
5 your sympathies at the door, we expect that you will bring
6 what you know about human nature and use your common sense
7 when you decide this case. Now, it is said that truth is the
8 mother of justice, and it is your job, your duty, here today
9 to find the truth and to seek justice, and I submit to you
10 that after you've heard all the evidence there will be only
11 one just verdict, and at the close of this case my co-counsel
12 will come before you and she will ask you for a verdict that
13 the evidence will support and that the -- and that justice
14 will demand. She is going to ask that you find the
15 defendant, Anthony Hackshaw, guilty of murder, two counts of
16 assault with intent to kill, and the possession of a firearm
17 during the commission of a violent crime, guilty. Thank you.

18 **The Court:** Ms. Shurling?

19 **Ms. Shurling:** Good afternoon. You've already heard my
20 name. I'm Tara Shurling. I'm court-appointed counsel for
21 Anthony Hackshaw. That was quite an opening argument. I
22 enjoyed it very much. Ms. Simpson is a very talented young
23 lawyer. Unfortunately, she just told you about the case they
24 wish they had. The old saying close but we're not playing
25 horseshoes: Close, but we're not playing horseshoes.

1 Seated with me at counsel table is my associate, Jeremy
2 Thompson, of course the defendant, Anthony Hackshaw, and the
3 silver-headed gentleman is Dave MacDougall. Dave is an
4 investigator that's helped me put this case together for
5 trial.

6 I have been practicing law for more than 31 years. The
7 vast majority of my work has always been in the area of
8 criminal defense. I'm actually the only child of a father
9 who spent his entire career in law enforcement and a
10 homemaker mom. It's not much of a guess to know where I got
11 my love of criminal law: From my dad.

12 From both my parents I got a profound respect for the
13 judicial system. I can promise every one of you that if you
14 were ever charged with a crime, especially a serious one, you
15 wouldn't want to be anywhere but the United States of
16 America. That's a fact. But as a defense attorney my
17 greatest worry is that some of you may have walked in this
18 courtroom believing that if a person is charged with a
19 serious crime like murder, the State must know they did it.
20 That mindset is not only wrong; it's dangerous. It's
21 dangerous because it can cause you to fill in holes in the
22 case or, worse, to just excuse the -- overlook the holes in
23 every case because you assume they know he's guilty or they
24 wouldn't have him on trial.

25 His honor has already told you it's your job to evaluate

1 all the evidence, be the finders of fact and the judges of
2 the credibility of the witnesses, and ultimately to decide
3 whether Anthony Hackshaw is guilty or innocent beyond a
4 reasonable doubt. Now, I sat and listened with absolute
5 fascination at the State's argument. Like all good
6 arguments, it was peppered with things that are absolutely
7 true. This was a horrible crime, horrible. An innocent
8 young woman died needlessly, and with that I agree.
9 Horrible.

10 We don't know what order she was shot in, ladies and
11 gentlemen. It doesn't matter. She got shot in the front and
12 in the neck and then fell to the ground and was shot in the
13 back or vice versa. What difference does it make? It was
14 overkill. It was slaughter. It was an out-and-out
15 assassination. We don't deny that. But most of what you
16 heard the State put on your plate just now is a gross over-
17 statement of the evidence in this case. Gross overstatement.

18 It will be your job to be discerning listeners. Our
19 judicial system - I've already praised it - is good, but it
20 isn't infallible. Innocent people are convicted every day.
21 It happens and unfortunately, you know, it's not usually like
22 on T.V. where there's some crooked cop that's lying and
23 planting evidence and -- you know, those cases are generally
24 very rare. Maybe it's because I did have a cop as a father,
25 but I basically believe that most law enforcement officers

1 are hard-working civil servants that are expected to wear way
2 too many hats for way too little compensation.

3 But I will tell you that when innocent people are
4 convicted, it's not usually because of the phantom bad cop
5 who is running around planting gloves or whatever. It's
6 because a case wasn't adequately investigated. It's because
7 law enforcement either didn't have the time or the resources
8 or I've got to tell you more often it's because cops get
9 myopic. They get tunnel vision.

10 Once they've decided who they think did something, they
11 get like my granddaddy's mule with blinders on, and anything
12 they see that doesn't fit what they've already decided the
13 truth is, they ignore, and when they do that, innocent people
14 can get convicted. The only thing that really stands between
15 an innocent person and a wrongful conviction is you, hard-
16 working jurors, and in case I haven't said it yet - I don't
17 think I have - thank you for being here. My client is
18 grateful. I'm grateful. This great system of ours won't
19 work without good jurors, but it's your job to be discerning
20 listeners.

21 I already told you she just told you about the case they
22 wish they had. It's almost enough to make me angry because
23 so many of the little tiny pieces that were strewn together
24 to make that incredible necklace simply do not mean what
25 they're telling you they mean. They want you to believe that

1 because Ellison Hudson is a robber and a thief that you
2 should jump to the conclusion that my client out of some
3 vendetta is responsible for this killing, but remember what
4 else she said. Ellison Hudson was involved with a lot of
5 shady people doing a lot of shady things. Don't forget that:
6 A lot of shady people and a lot of shady things.

7 They want to brush off the fact that the only eyewitness
8 in this case, Ellison Hudson, who, by the way, did push his
9 girlfriend out of the way before he ran -- they want to make
10 short shrift of the fact that he positively identified
11 Jonathan Bailey as the shooter. Now, he didn't just identify
12 Jonathan Bailey. He said -- after repeated denials that he
13 had any idea who committed this crime, he said, "Okay, it was
14 Jonathan Bailey. And guess what? I even know why. He's
15 after me because I ratted on one of his homeboys."

16 Now, his homeboys happen to all be members of a violent
17 street gang. The evidence will show that Ellison Hudson had
18 given testimony and evidence or at least a statement against
19 a guy named T.J. Johnson who had already tried to kill
20 Ellison Hudson once and that T.J. Johnson and Jonathan Bailey
21 are in the same gang.

22 **Ms. Simpson:** Objection, Your Honor.

23 **The Court:** Ms. Shurling, let's stick to my prior
24 ruling.

25 **Ms. Shurling:** I'll move on, Your Honor. They also

1 don't want to tell you that when Mr. Hudson changed his story
2 from it being Jonathan Bailey to it being my client, it was
3 because the police came to him and said it could not be
4 Bailey. It could not be Bailey, so who else has it in for
5 you? Then he names my client.

6 But when they jump all over him for naming my client and
7 not telling them about my client first -- why didn't you tell
8 us it was Bump? That's my client's nickname. Because I
9 didn't think it was no Bump. But you say it couldn't be
10 Bailey. They don't want to tell you that. They don't want
11 to tell you that my client -- Anthony, stand up. My client
12 is about 5'7", maybe a buck sixty. Jonathan Bailey is 6'2"
13 and varying accounts hold him anywhere from 190 to as high as
14 260. He's mammoth.

15 My client -- you can't see very well today the way he's
16 dressed, but my client has an unusual physical characteristic
17 that I'll show you better later in this trial. I playfully
18 have called him my Romulan client. Some of y'all are old
19 enough to remember Star Trek. He's got these corded muscles
20 on the side of his neck. Have you ever seen a weight lifter
21 do like this and muscles stand out on the side of their neck,
22 but when they relax those muscles go back to normal?

23 His neck is like that all the time. I couldn't buy a
24 shirt big enough for his neck because of these mammoth cords
25 that stand out. Did Hudson say a word about that when he

1 first gave a description of the assailant? Not a word. They
2 don't want to tell you now starting out that Hudson said one
3 of the reasons he finally figured out that it was my client
4 is because the guy had a small tattoo on his left arm.

5 My client's tattooed from his neck to his fingers on
6 both arms. Massive, interwoven tattoos. Doesn't make much
7 sense, does it? Now, they want to make a huge, big deal out
8 of this silver Honda. You know, some witnesses referred to a
9 small gray car. Some said a silver Honda. I think I can
10 trust you as jurors to know in your everyday experience just
11 how common small silver Hondas are. By the time you throw in
12 small silver Kias, Hyundais, Toyota cars - I'm not a car
13 person, so I can't even name them all - that could be
14 mistaken for a silver Honda, that just doesn't prove very
15 much, ladies and gentlemen.

16 Now, I could keep us here for another 45 minutes.
17 Pardon me. One thing I'm going to tell you is that you'll
18 see me downing water a lot. I take antihistamines for
19 allergies and my mouth is about to stick together, so I'm
20 just going to... They want you to draw very negative
21 inferences from the fact that my client's wife had someone
22 supposedly hide this silver Honda because it had been used in
23 a homicide, but what they won't tell you that I'll show you
24 is that the car didn't belong to my client's wife. It
25 belonged to her sister and that on a recent trip home her

1 sister, who was getting behind on the payments on the car off
2 and on, was afraid of the repo man, asked her to switch cars
3 with her and take it home, and after she had already had it
4 here for a little while, the sister called and said some
5 angry family member that knew where Rosa lived was going to
6 tell the repo man where the car could be found. So Rosa went
7 and hid it somewhere so her sister's car couldn't get
8 repossessed, and we'll show you evidence to support that.

9 As I said, I could keep you here for another 45 minutes
10 in an opening argument, taking apart piece by piece that very
11 entertaining screenplay you just heard. But suffice it to
12 say that if you as jurors listen, really listen to every word
13 every witness says, you will reach your own conclusions that
14 the evidence simply doesn't prove what they've promised you,
15 promised you, stood here and told you it was going to prove.

16 We've got a great system and it's better than anybody
17 else's, but it's not perfect. The only way it works is if
18 y'all do your job seriously. Now, the judge has told you
19 that you're going to be the deciders of facts and the
20 credibility of witnesses. That last one is a big job, and if
21 you're like me and most people I know, when it comes to
22 deciding whether or not somebody is lying, their first
23 instinct is to rely on the gut.

24 I'm not going to tell you not to rely on human instincts
25 because I think they're a valuable tool, but I will ask you

1 to think about sometime in your life when someone you
2 trusted, someone you thought was honest, turned out to be
3 different, somebody you thought was telling the truth,
4 somebody you're going to know -- knew a whole lot better than
5 you're going to know some of these witnesses in this trial.
6 So I beg you not to just rely on your gut instincts. There
7 are other tools available to you.

8 How many statements has a witness given? What
9 intervening events have happened to make a witness keep
10 changing the story? What does a witness have to gain by
11 testifying? And by that I don't just mean do they have a
12 plea bargain to get favorable treatment in one of their cases
13 which is the case sometimes or what they hope to gain. What
14 are the relationships between the parties? Is there some
15 relationship between the person that's testifying and
16 somebody else that maybe they would rather see Anthony
17 Hackshaw take the fall for this?

18 Ask yourself who people know, what their relationships
19 are, and how that might be influencing their testimony. Are
20 their statements consistent? If they claim to have given
21 multiple statements because they just gave new ones because
22 they thought of more stuff, look and see how consistent they
23 are or aren't with each other. Listen to whether their
24 statements are consistent with the statements of other
25 witnesses and listen to whether or not their statements are

1 consistent with known facts. That's an important one, too.
2 And if you listen to all those things with a discerning ear,
3 then much of the testimony that's going to be presented to
4 you in this trial will not ring true.

5 The judge runs this courtroom. He's already told you
6 he's got to do it in accordance with the rules of court and
7 the law, and when the trial is over or at least the
8 presentation of evidence is over, he's going to give you a
9 jury instruction that will tell you all about as much of our
10 law as you need to apply to the facts that you've spent all
11 these days listening to to decide the case.

12 Once today already he has admonished you not to begin
13 discussing this case until you've heard everything. I can't
14 begin to tell you how important that is. Have you ever been
15 aware of a conflict between two people and you have occasion
16 to listen to one side and you think that sounds pretty good,
17 I think they're in the right, and then you hear the other
18 side and you're not so sure anymore? That's the way criminal
19 trials are. You've got to hear it all.

20 Now, the judge has already told you not to start talking
21 among yourselves. That's important. I'm going to ask that
22 you do something even harder. I'm going to ask you to try to
23 the extent humanly possible to not even start drawing firm
24 conclusions in your own mind until you've heard all the
25 evidence because the danger is, you see, that if you hear a

1 little bit of the evidence and you start reaching
2 conclusions, that can taint how effectively you listen to
3 everything else you hear after that point. So I beg you:
4 Try your very best to reserve judgment until you hear
5 everything.

6 This will not be like your usual murder trial, in my
7 experience anyway, and I've been doing criminal law for 31
8 years. In most murder trials there's very little doubt that
9 the defendant did it, whatever it is - stabbing, shooting,
10 poisoning, whatever physical act caused someone's death - or
11 that they willfully participated in an act with a
12 co-defendant who did it and, therefore, as His Honor will
13 tell you, they're equally guilty.

14 In trials like that, the only questions on your plate
15 are generally: Was it maybe self-defense? Could it have
16 been an accident? Or maybe is it an example of a lesser form
17 of homicide? Like in South Carolina we have murder and we
18 also have voluntary manslaughter. So in most murder cases
19 those are the kinds of issues you're dealing with. You will
20 not be dealing with any of those in this case. Ladies and
21 gentlemen, you have landed on the jury in a true whodunit.
22 This is a true whodunit.

23 Does the State have the evidence? Will they present to
24 you evidence that proves beyond a reasonable doubt that my
25 client is one of the two men that rushed up in that yard that

1 day and left that unfortunate girl bleeding on the ground to
2 die? That's your only job is to decide, but you've got to
3 listen to a lot of people before you get there.

4 Reasonable doubt is a tough term. It, by some peoples'
5 estimation, totally defies definition, but our Supreme Court
6 has approved one definition that I personally like and that's
7 that reasonable doubt may be described as a doubt that would
8 cause a reasonable person to hesitate to act. I submit to
9 you that after you listen to all of the evidence in this case
10 and it's time for you to discuss it among yourselves you will
11 be hesitant to convict my client.

12 I need to backtrack for a second. I forgot to ask you
13 to consider one other option. When you talk about the
14 credibility of the witnesses, it's pretty easy to assume that
15 I'm wanting you to decide whether people are being truthful
16 or whether they're lying. There's an in-between. Sometimes
17 people are just flat mistaken. Sometimes they think they
18 remember something accurately when they don't, and sometimes
19 their relationships with people involved in the case have
20 colored their memory just a tad. So it doesn't necessarily
21 have to be that you believe someone is willfully lying to
22 you. It can be that they're mistaken. Maybe they're lying
23 to themselves just a little bit.

24 When the case is over and you've heard everything, the
25 12 of you get to sit down and decide whether the State has

1 met their burden of proof beyond a reasonable doubt. I think
2 juries are wonderful. I've always wanted to serve on one,
3 always, but unfortunately just about ever since I was old
4 enough to be on one I was a lawyer, and every time I get
5 called I get struck. So I probably won't ever get to have
6 that privilege.

7 But to me it's almost akin to what happens after a
8 disaster, after 9/11 or a hurricane, when people, every walk
9 of life, all of a sudden come together and are working
10 together side by side and putting their differences aside and
11 they're putting into play their shared experiences and
12 knowledge and education for a common good. I think juries
13 are like that. The 12 of you will get back there and discuss
14 what you heard, what you think it means, who you believed,
15 who you didn't. If you didn't believe someone, you'll have a
16 chance to convince each other why you think that person isn't
17 credible. It goes on and on, but that's what your task will
18 be.

19 I'm confident that as this trial progresses two things
20 are going to happen: One, you're going to realize that that
21 very eloquent opening argument highlighted for you the case
22 the State wishes they had and doesn't prove anywhere near
23 what they want you to buy into believing it proves from the
24 start. I believe you'll hesitate to act because I think
25 you're all reasonable people, and when you've heard it all

1 you just won't be able to bring yourself to convict my
2 client.

3 You'll hesitate to find him guilty, and when you
4 reasonable 12 people hesitate to find him guilty, that is
5 reasonable doubt. And if you have a reasonable doubt, then
6 it's your sworn duty to acquit my client and let him go home
7 to his wife and baby daughter. Thank you.

8 **The Court:** Are you ready to call your first witness?

9 **Ms. McDuffie:** The State's ready, Your Honor. The State
10 would call Officer Brian Carroll.

11 Brian J. Carroll, after being duly sworn, testified
12 as follows:

13 **The Clerk:** Please have a seat and state your full name.

14 **The Witness:** Brian J. Carroll.

15 Direct Examination

16 By Ms. McDuffie:

17 Q. Officer Carroll, where are you currently employed?

18 A. City of Columbia Police Department.

19 Q. And what are your duties with the City of Columbia
20 Police Department?

21 A. Street officer.

22 Q. Please describe for the jury what a street officer does
23 for the City of Columbia Police Department.

24 A. Patrol the streets, routine calls, answer calls for the
25 public, traffic accidents, anything of a nature that a

1 citizen of Columbia may call for. We respond to it if it's
2 criminal in nature.

3 Q. And how long have you been with the City of Columbia
4 Police Department?

5 A. Four and a half years.

6 Q. And the duties you just described to the jury, were
7 those duties your duties on May the 20th, 2009?

8 A. They were.

9 Q. And what area of town -- do you have a specific area
10 you're assigned to or do you patrol the entire city?

11 A. Just the north region.

12 Q. And please tell the jury where the north region is.

13 A. It's Calhoun Street. North of Calhoun from the
14 centerline north is north region.

15 **Court Reporter:** I'm sorry. Could you repeat that?

16 **The Witness:** North region is Calhoun Street north up to
17 just past I-20..

18 By Ms. McDuffie:

19 Q. And is the Greenview neighborhood part of north region?

20 A. Yes, it is.

21 Q. And is the Greenview neighborhood in the City of
22 Columbia and Richland County?

23 A. Yes, it is.

24 Q. And did you have the occasion to respond to [REDACTED]
25 [REDACTED] on May the 20th of 2009?

1 A. I did.

2 Q. And what was that in reference to?

3 A. It was in reference to person or persons being shot at
4 that residence.

5 Q. And how do you respond to a call? Do you get dispatched
6 out?

7 A. We get dispatched through -- someone calls it in and
8 dispatch gives it to all the units.

9 Q. And so when you were responding to [REDACTED]
10 what information did you get?

11 A. Just that either one or more were shot and it was
12 unknown anything further.

13 Q. And what time were you dispatched to [REDACTED]
14 on May the 20th of 2009?

15 A. 1:01 p.m.

16 Q. 1:00? 1 p.m.?

17 A. Yes.

18 Q. And do you know what time the call came in to dispatch?

19 A. I'm not sure exactly.

20 Q. And when you arrived on the scene, please tell the jury
21 what you observed.

22 A. There were -- Mr. Joyner and Mr. Hudson were near the
23 side of the house with one officer, and that was Officer
24 Merrill. There was another officer, Lawson. She was in the
25 back yard near the victim and two E.M.T.'s.

1 Q. And other than Officer Merrill, Officer Lawson,
2 Cleveland Joyner, Ellison Hudson, and the E.M.T.'s, was
3 anybody else on the scene when you arrived?

4 A. No, ma'am.

5 Q. When you arrive at a crime scene, what's the first thing
6 you like to do?

7 A. 'Secure it, make sure everything -- everything -- there's
8 no more weapons, no more threats, so nobody else gets hurt.

9 Q. And how did -- in this case did you secure the crime
10 scene?

11 A. Yes, ma'am.

12 Q. And please tell the jury how you did that.

13 A. Just we talked to the witnesses, made sure they were not
14 armed, get a little bit of what's going on, make sure whoever
15 else is around, make sure nobody else comes in or out of the
16 scene so it doesn't get contaminated, nothing else happens to
17 the scene, doesn't get damaged or anything goes walking off
18 missing.

19 Q. And please tell the jury how a scene gets contaminated
20 and damaged.

21 A. Numerous people in and out of the crime scene. Anything
22 can go out with them, come in and contaminate that may be not
23 have been there before. Something could stick to their shoe
24 and leave that may be possibly evidence.

25 Q. And how do you secure a crime scene? Is there a method

1 or procedure you follow?

2 A. We tape it off with yellow police tape.

3 Q. And why is that done?

4 A. To set up a barrier as to who can go past the barrier
5 and who cannot go past the barrier.

6 Ms. McDuffie: Beg the court's indulgence.

7 Ms. Shurling: No objection, Your Honor.

8 By Ms. McDuffie:

9 Q. I show you State's exhibits 1 through 9 and ask you if
10 you recognize these and if they fairly and accurately depict
11 what you observed on May the 20th of 2009..

12 A. Yes, ma'am, they are.

13 Ms. McDuffie: Your Honor, at this time we'd offer
14 State's exhibits 1 through 9.

15 The Court: So admitted without objection.

16 (State's exhibits 1 through 9 were received in
17 evidence.)

18 By Ms. McDuffie:

19 Q. Please tell the jury what's depicted in State's exhibit
20 1.

21 A. Juniper Street at Moses Street.

22 Q. And where was the house located in relation to this
23 intersection?

24 A. Right at the corner.

25 Q. And State's exhibit 2?

1 A. That's the front of the residence.

2 Q. At [REDACTED]

3 A. That's correct.

4 Q. Which is in the City of Columbia, Richland County?

5 A. That's correct.

6 Q. State's exhibits 5 and 6, can you please tell the jury
7 what is depicted in these photographs?

8 A. The front of the residence, [REDACTED] and the front
9 door.

10 Q. And is there a crime scene tape in these photographs?

11 A. Yes, ma'am, on the left side -- right side of the
12 residence.

13 Q. And why was that done again?

14 A. To secure the scene and set up a perimeter to contain
15 everything within that perimeter.

16 Q. State's exhibits 3 and 4, could you please tell the jury
17 what's depicted in the photographs?

18 A. The side of the house and showing partial of the back.

19 Q. And on the side of the house, what is on the side of the
20 house?

21 A. Carport, car covering, awning.

22 Q. And you blocked the crime scene off from the carport and
23 then the entire back of the house?

24 A. Yes, ma'am.

25 Q. And State's exhibit 8 and 9, can you please tell the

1 jury what's depicted in these photographs?

2 A. The back yard.

3 Q. And what's in the back yard?

4 A. The victim's vehicle and the victim and Officer Lawson.

5 Q. And the victim's vehicle was in the back yard?

6 A. It was.

7 Q. And this is how you found it at shortly after 1:00 on
8 May the 20th, 2009?

9 A. Correct.

10 Q. And you said Officer Lawson was present at the scene?

11 A. She was.

12 Q. Along with two E.M.T.'s?

13 A. Two E.M.T.'s and another officer.

14 Q. And what were the E.M.T.'s doing when you arrived?

15 A. Standing near the victim in the back yard.

16 Q. And did you have a chance to observe the victim, Ms.
17 Ebony Fogle?

18 A. I did.

19 Q. Based on your observation of the victim, what was her
20 condition?

21 A. She appeared lifeless.

22 Q. Deceased?

23 A. Yes, ma'am.

24 Q. Did E.M.T.'s while you were there provide any further
25 medical treatment for Ms. Fogle?

1 A. Not when I arrived. They were standing there.

2 Q. When you arrived in the back yard, did you see other --
3 any other items of evidence that could be of potential
4 evidentiary value?

5 A. I saw several shell casings---

6 Q. And where were they?

7 A. ---in the vicinity of -- the vicinity of the body.

8 Q. And were they -- please describe for the jury how you
9 observed those shell casings.

10 A. They were laying in the grass. I don't know the
11 distance, but they were around the victim's body, not very
12 far at all.

13 Q. And when you arrived at the scene, was it not secured?

14 A. Not when I arrived, no.

15 Q. And people including officers, E.M.T.'s, had been in and
16 out?

17 A. Two officers, two E.M.T.'s, and the two victims were not
18 in the back yard when I arrived.

19 Q. They were on the side of the house?

20 A. They were on the side of the house with Officer Merrill.

21 Q. And were you aware whether or not those shell casings
22 could have been moved, destroyed, touched, tampered with in
23 any way?

24 A. I have no idea, ma'am.

25 Q. Were they moved, touched or destroyed or tampered with

1 while you were present on the scene?

2 A. Not while I was there.

3 Q. And after you arrived on the scene, was crime scene
4 called out?

5 A. They were.

6 Q. And also were investigators called out?

7 A. Yes, they were.

8 Q. And once investigators and crime scene arrive, what is
9 your duty at the scene?

10 A. Secure it and stand by with any evidence that may still
11 be there.

12 Q. Was your job to interview witnesses?

13 A. No.

14 Q. Whose job would that have been?

15 A. The investigators.

16 Q. And so your job was to secure the scene?

17 A. Yes, ma'am.

18 Q. And to make sure no one comes in or out?

19 A. That's correct.

20 Q. No evidence is tampered with in any way?

21 A. Yes, ma'am.

22 **Ms. McDuffie:** Beg the court's indulgence. No further
23 questions for this witness.

24 **The Court:** Anything, Ms. Shurling?

25 **Ms. Shurling:** Thank you.

Cross-Examination

2 By Ms. Shurling:

3 Q. Good afternoon, Officer Carroll.

4 A. Good afternoon, ma'am.

5 Q. I believe your incident report lists the gentleman in
6 the black clothing and the black hat as 5'10", 190 pounds.

7 Is that correct?

8 A. Yes, ma'am. That's what I was given.

9 Q. If you didn't interview witnesses, how did you get that
10 information?

11 A. We just asked for -- it's technically not an interview.

12 It's just basic information to try to get a clothing
13 description for the -- for the units that were en route or
14 maybe in the area to see if they were still in the area.

15 Q. So you may not have done a lengthy interview, but you
16 did talk to Mr. Hudson and Mr. Joyner.

17 A. I spoke to them. It was more of questioning, not an
18 interview.

19 Q. So you asked them questions about what the assailants
20 looked like.

21 A. Yes, ma'am.

22 Q. And they answered you.

23 A. They did.

24 Q. And you put those answers together with the information
25 for the radio broadcast that would go out so people could be

1 on the lookout for these assailants; right?

2 A. Yes, ma'am.

3 Q. What was the description given for the gentleman in the
4 blue hoodie?

5 A. Just five -- approximately 5'10", approximately 190. He
6 had a black hat, black shirt with a design on it, and dark
7 skin.

8 Q. Okay.

9 A. That was all I was given.

10 Q. The statements given by Mr. Hudson would later indicate
11 that there were two people, one wearing black clothing and a
12 black hat and a second individual wearing a blue hoodie.

13 Your incident report indicates that black hat was described
14 as 5'10", 190 pounds. Do you recall any physical description
15 being given at all for the second perpetrator described as
16 wearing a blue hoodie?

17 A. I heard later that there was a blue hoodie involved, but
18 I didn't know there was a second suspect at that time.

19 Q. And at that time did you ask any questions of Mr. Hudson
20 or Mr. Joyner about whether they had any weapons that were
21 involved in this incident?

22 A. No, ma'am, I did not.

23 Q. You had a law enforcement crew on the scene, E.M.S.
24 people on the scene. Correct?

25 A. Yes, ma'am.

1 Q. Isn't it normally part of your job securing the scene to
2 make sure there aren't any weapons around that could pose a
3 danger?

4 A. Officer Merrill, I believe, did all that before I got --
5 there were two officers on the scene prior to me arriving.

6 Q. So you were not the first responder.

7 A. No, ma'am.

8 Q. Okay. What was Mr. Hudson's demeanor when you arrived?

9 A. Shaken up. He appeared like he was, you know, traumatic
10 with what just happened.

11 Q. When you asked him for a description of the people that
12 came into the yard firing, did he tell you then that he knew
13 one of them?

14 A. No, not at that time.

15 Q. When he described black hat, did he mention any unusual
16 physical characteristics?

17 A. No, ma'am. He appeared shaken up. I didn't talk to him
18 that much, maybe just a matter of seconds to get a basic
19 description to get out to all the other units while they were
20 en route.

21 Ms. Shurling: Thank you. No further questions.

22 The Court: Anything, Ms. McDuffie?

23 Ms. McDuffie: No, sir. We'd ask this witness be
24 excused.

25 The Court: All right. Thank you, sir. You may step

1 down. Call your next witness.

2 Ms. Simpson: The State would call Ruth Gold.

3 The Court: Do y'all have any objection to Officer
4 Carroll being excused?

5 Ms. Shurling: None, Your Honor.

6 The Court: Does the State have any?

7 Ms. McDuffie: No, sir, Your Honor. The State would
8 have no objection.

9 The Court: All right, officer. If you'd -- you're
10 welcome to stay, but if you want to leave, you're free to do
11 so.

12 The Witness: Thank you, Your Honor.

13 The Court: Yes, sir.

14 Ruth J. Gold, after being duly sworn, testified as
15 follows:

16 The Clerk: Please have a seat and state your full name.

17 The Court: If you would.

18 Direct Examination

19 By Ms. Simpson:

20 Q. Good afternoon, Ms. Gold. Can you please introduce
21 yourself to the jury?

22 A. I'm Ruth Johnson Gold.

23 Q. And, Ms. Gold, how old are you?

24 A. I'm 75.

25 Q. And are you from Columbia?

1 A. I am.

2 Q. Are you married?

3 A. Yes, I am.

4 Q. And where are you currently living?

5 A. At [REDACTED].

6 Q. And how long would you say that you have lived there?

7 A. About 52 years.

8 Q. And so you were definitely living there back on May the
9 20th of 2009.

10 A. I was.

11 Q. And do you recall that day?

12 A. Yes, I do.

13 Q. And how is it that you're able to recall that day?

14 A. Well, I had just gotten from work and I was about to
15 type a memo. I was sitting at my desk and I was at the
16 computer and I kept hearing shots and shots, and I knew it
17 was unusual. So I got up and I looked at the clock, and then
18 I walked to the peephole in my door and I saw this guy
19 running up the street, and I thought, well, maybe something
20 is going wrong. So I picked up the phone and called 9-1-1,
21 and so that's -- by the time I walked back to look out the
22 window to see what direction he was running in and came back
23 to the door, I saw the cops and the -- city cops and the
24 sheriffs all around the place.

25 Q. And when you first heard the gun or the shots or just

1 heard the sounds, were you aware that they were gunshots?

2 A. I was. I was aware that they were gunshots because
3 there was too many of them. It just kept going.

4 Q. So it was a lot of shots.

5 A. It was a lot of shots.

6 Q. And you stated that you were on your computer. Do you
7 recall about what time this was?

8 A. It was between 12 and 12:30. It's somewhere between 12
9 and 12:30.

10 Q. So sometime before 1:00.

11 A. Oh, it was before 1. I never said -- I was trying to
12 complete a memo because I had to be somewhere at 1.

13 Q. Okay. And do you recognize the defendant at all?

14 A. (Witness shook head from side to side.) I couldn't tell
15 who it was running, but I just knew it was a guy running up
16 the street.

17 Q. Okay. So you weren't able to actually identify who it
18 was.

19 A. I wasn't able to actually identify who it was running up
20 the street.

21 Q. And can you tell us which direction you saw the person
22 running, if you recall?

23 A. He was running toward Farrow Road from Moses going up
24 Farrow Road -- toward Farrow Road.

25 Q. And, Ms. Gold, did you speak with anyone from law

1 enforcement about this case on that day?

2 A. Yes.

3 Q. Did any officers come and talk to you?

4 A. It was a lady that came and talked with me. I can't
5 remember what her name was, but it was a lady that came and
6 sat and talked with me about what I saw that day.

7 Q. And with respect to what you saw and what happened that
8 day, is that all you know? Is that all that you saw?

9 A. That's all I saw that day at the beginning, but I don't
10 know what happened, but there was a lot going on from there
11 until night, into the evening.

12 Q. With law enforcement and everything.

13 A. With law enforcement and all that, right.

14 Ms. Simpson: Thank you, Ms. Gold. No further
15 questions.

16 The Court: Anything, Ms. Shurling?

17 Cross-Examination

18 By Ms. Shurling:

19 Q. Good afternoon, Ms. Gold.

20 A. Good afternoon.

21 Q. When you first heard the shots, where in your house were
22 you?

23 A. I was in the -- what I call my study or den area on the
24 side where the -- my carport is. I was up on that area
25 nearest to the house that was -- had been shot.

1 Q. Is your home located directly across the street from the
2 Hudsons' home?

3 A. No. My home is located diagonally.

4 Q. So if I were facing the house -- if I was standing in
5 Mr. Hudson's front yard looking directly across the street,
6 your house would be to the right of the house directly across
7 the street?

8 A. My house is to the -- now, the house -- if you were
9 standing in his yard looking across the street---

10 Q. Yes, ma'am.

11 A. Okay. My house would be to the left of the house. I
12 would be next door to the house that---

13 Q. Across the street.

14 A. In front of -- across the street, right. Uh-huh.

15 Q. Okay. You indicated that you heard how many shots
16 approximately?

17 A. I can't -- it was a lot of them. I can't enumerate how
18 many there were, but there was a lot of shots.

19 Q. When you spoke with law enforcement, would it sound
20 familiar that you estimated eight to nine shots?

21 A. I can't remember. Somewhere in there. But eight to
22 nine or ten, whatever. I don't know.

23 Q. Yes, ma'am.

24 A. Yeah.

25 Q. Were they all fired in rapid succession without a break

1 or did you hear a few shots and then a break and more shots?

2 A. I heard a rapid succession and then I heard some more.

3 A rapid succession first and then I heard others. When I
4 heard the rapid succession, I thought -- I got up and then I
5 heard a few more.

6 Q. A few more.

7 A. Yes.

8 Q. So the majority of the gunfire, best of your
9 recollection, was at first.

10 A. Yes.

11 Q. And then there was a brief break---

12 A. And then some---

13 Q. ---followed by a few more shots but not as many as you
14 heard the first time.

15 A. That's right.

16 Q. Okay.

17 A. Uh-huh.

18 Q. Now, once you heard the gunfire, you went to your front
19 door and looked out the peephole? Is that correct?

20 A. It wasn't my front door. It was my carport, what I call
21 sort of the side door where I have the peephole.

22 Q. Yes, ma'am.

23 A. Uh-huh.

24 Q. And I believe you've indicated that you saw an
25 individual running down Juniper toward Farrow Road.

1 A. Correct.

2 Q. Can you describe that person for us?

3 A. I can't. All I know: He was wearing black. That's all
4 I can tell you. He was wearing something black.

5 Q. Did he have anything in his hand that you saw?

6 A. I couldn't tell. All I know: He was running. So all I
7 needed to do was call. So I went and got my phone and
8 called.

9 Q. Yes, ma'am. But you didn't see a gun in his hand.

10 A. I didn't look that closely.

11 Q. Okay.

12 A. Huh-uh.

13 Q. And I assume the answer would also be that you didn't
14 see a cell phone in his hand either.

15 A. No, I didn't see a cell phone either.

16 Q. Did you at any time during this event see a silver Honda
17 in the area?

18 A. I did not.

19 Q. Did you see anyone pick up the gentleman in black?

20 A. No, I did not.

21 Q. When you say he was wearing black, can you be any more
22 specific? Did it look like it was fitted or loose?

23 A. It looked like a black sweat hoodie sweat shirt he had
24 on was what it looked like to me.

25 Q. How about on the bottom?

1 A. I didn't -- I couldn't -- I don't recollect what the
2 bottom looked like.

3 Q. But it was all black.

4 A. I knew it was black.

5 Q. Yes, ma'am.

6 A. I know the top was black. I don't remember the---

7 Q. Did he have a hat on his head?

8 A. No.

9 Q. No hat?

10 A. No.

11 Q. How long did you keep looking out your window before you
12 went to use the phone?

13 A. When he ran out of sight. He ran across, and when he
14 got up to a certain point he went across a yard and went
15 across the next yard, and then after he passed the -- I guess
16 the one, two -- about the third house, he cut between the
17 houses and kept running, so... But I called before he was
18 out of sight because I had the cell phone -- I mean, my phone
19 in hand.

20 Q. So the two weren't mutually exclusive. You were calling
21 while you were looking.

22 A. Yeah. I dialed -- I had dialed and yes....

23 Q. Okay. Ms. Gold, thank you. I appreciate that.

24 A. Uh-huh.

25 Ms. Shurling: Nothing further.

1 **The Court:** Anything?

2 **Ms. Simpson:** Nothing further from the State.

3 **The Court:** All right. Thank you, ma'am. You may step
4 down. I tell you what. We're going to go ahead and take a
5 break for a few minutes. We've been in here about an hour
6 and a half. Ladies and gentlemen, I'm going to let you step
7 back to the jury room. We'll take a break for about 15
8 minutes or so. We'll have some refreshments. Please do not
9 discuss the case while you're back there, and we'll bring you
10 back in 15 minutes or so.

11 (Whereupon, the jury was excused from open court at 3:45
12 p.m.)

13 **The Court:** Who is your next witness?

14 **Ms. Simpson:** Zionde Harper, another neighbor.

15 **The Court:** These are short witnesses. When are you
16 going to get into Mr. Harper -- I mean Mr. Hudson?

17 **Ms. Simpson:** He will be...

18 **Ms. McDuffie:** Your Honor, we have---

19 **The Court:** Y'all got a bunch of short little witnesses
20 and then him?

21 **Ms. McDuffie:** Yes, sir.

22 **The Court:** All right. We're probably going to go until
23 about 6 tonight. All right. Y'all don't -- we'll come back
24 in a few minutes.

25 (Whereupon, a short break was taken.)

1 **The Court:** All right. Let's bring us the jury in if we
2 could. Have you got your next witness in the courtroom?

3 **Ms. McDuffie:** We'll get her, Your Honor.

4 (Whereupon, the jury was brought into open court at 4:05
5 p.m.)

6 **The Court:** All right. Did they find your witness?

7 **Ms. McDuffie:** Yes, sir, Your Honor.

8 **The Court:** Where is your witness?

9 **Ms. McDuffie:** (Indicates.)

10 **The Court:** Well, call her.

11 **Ms. Simpson:** The State calls Zionde Harper.

12 Zionde Harper, after being duly sworn, testified as
13 follows:

14 **The Clerk:** Please have a seat and state your first name
15 and spell it.

16 **Court Reporter:** Would you spell your first name?

17 **The Clerk:** And spell your first name.

18 **The Witness:** Zionde. Z-i-o-n-d-e. Harper.

19 H-a-r-p-e-r.

20 **Court Reporter:** Spell your first name again.

21 **The Witness:** Z-i-o-n-d-e.

22 **The Court:** Are you also known as Zionde?

23 **The Witness:** Zionde.

24 **The Court:** All right.

25

Direct Examination

By Ms. Simpson:

Q. Good afternoon, Ms. Harper. Can you please tell the jury how old you are?

A. 22.

The Court: Ma'am, you need to speak up because the jury has got to hear what you---

The Witness: 22.

By Ms. Simpson:

Q. And are you from Columbia?

A. I was born here.

Q. I'd like to turn your attention back to May the 20th of 2009. Where were you living at that time?

A. Here.

Q. Here? Do you remember the exact street that you were living on?

A. Isaac Street.

Q. Isaac Street? Is that located in the Greenview area?

A. Yes.

Q. Are you familiar with Juniper Street?

A. Yes.

Q. Now, looking to May 20th of 2009, do you recall that day?

A. Vaguely.

Q. Vaguely? And can you tell us how you're able to recall

1 that day?

2 A. I had just gotten home from school. It was about the
3 middle of the day, and I remember my mom went outside to put
4 some clothes in the dryer and just remember hearing gunshots
5 from the bathroom.

6 Q. So you were in the bathroom when you heard the shots?

7 A. Uh-huh.

8 Q. And what happened after---

9 **The Court:** Is that a yes?

10 **The Witness:** Yes.

11 By Ms. Simpson:

12 Q. And what happened after you heard the shots? What did
13 you do?

14 A. I looked out the window and I just saw two guys running
15 and one of them had a gun, and I left out of the bathroom to
16 go downstairs to see where my mom was.

17 Q. And with respect to the two guys running, do you recall
18 which one of the guys had the gun? Was it the one chasing or
19 the one running?

20 A. The one chasing.

21 Q. And with respect to what you observed, do you happen to
22 recall what they were wearing?

23 A. At the time I did. Now I really can't remember. I just
24 remember baggy clothes. I know one had on a hat, I think.

25 Q. Would it be fair to say that they were wearing or that

1 one -- the one with the gun was wearing black clothing or
2 dark clothing?

3 A. Yes.

4 Q. And do you recall at all what time you heard the shots
5 or you just know that it was sometime when you got back from
6 school?

7 A. It was sometime when I got back. I usually got out of
8 school around 12:30, so it was probably between then and 1:00
9 maybe.

10 Q. And is that -- did you actually recognize either of the
11 two guys who were running?

12 A. No, I never saw faces.

13 Q. And is that the extent of what you observed?

14 A. Yes.

15 Ms. Simpson: Nothing further.

16 The Court: Anything?

17 Cross-Examination

18 By Ms. Shurling:

19 Q. Yes, ma'am. Would you pronounce your name for me again?

20 A. Zionde.

21 Q. Zionde. Thank you. That's pretty.

22 A. Thank you.

23 Q. Ms. Harper, where were you in your home when you heard
24 the first gunshot?

25 A. In the bathroom.

1 Q. In the bathroom? Is that on the front or the back of
2 your house?

3 A. It's more towards the back of my house.

4 Q. Okay. And your house is on Isaac Street. Isaac Street
5 would run behind the back yard where this killing occurred;
6 right?

7 A. Right.

8 Q. Is your house immediately behind the home where this
9 happened?

10 A. No, it's diagonal to it.

11 Q. Diagonal.

12 A. Uh-huh.

13 Q. So your house would be immediately next door to the
14 house that was right behind the house where the killing
15 occurred.

16 A. Yes.

17 Q. Okay. You described hearing one gunshot followed by
18 several more shots in your initial interview with the police.
19 Is that accurate?

20 A. Yes.

21 Q. Are you sure that it was one shot or could it have been
22 a burst of shots that sounded like one shot?

23 A. I heard one, looked out the window, saw them running,
24 and then I heard more.

25 Q. Okay. Now, could you tell what direction the single

1 shot was coming from?

2 A. It sounded like it came from the side where they were
3 running from.

4 Q. The side where they were running from. Now, let's --
5 let's try to get that a little clearer for everybody. The
6 back yard has a fence, and along the side of the yard is
7 where Moses Street is; correct?

8 A. Right.

9 Q. Did the sound of the gunfire appear to be coming from
10 toward Moses?

11 A. Yes.

12 Q. Okay. And after the first shot you heard several more
13 shots. Is that right?

14 A. Yes.

15 Q. Did they sound -- and I realize you're not a ballistics
16 experts, but just listening, did they all sound the same or
17 was there any difference in the sound of the first shots from
18 the second shots?

19 A. The second set of shots sounded further away.

20 Q. Sounded further away?

21 A. Uh-huh. Like going away from Moses back towards
22 Benedict Street.

23 Q. Okay. But did the sound of the gunshot sound as though
24 it was the same gun firing all the shots or did it sound like
25 it could have been two different weapons?

1 A. I really can't tell you that.

2 Q. Okay.

3 A. I don't know.

4 Q. I don't think a lot of ladies could. Don't feel bad.

5 How long would you say there was between the first shot and
6 the second round of shots that you heard?

7 A. I would say less than three minutes.

8 Q. Less than three minutes?

9 A. Uh-huh.

10 Q. Do you think it could have been that long?

11 A. It could have been less than that, but I know it wasn't
12 a very long time.

13 Q. Well, let's start out in your bathroom towards the back
14 side of the house. When you heard the first shot, you looked
15 out your window.

16 A. Uh-huh.

17 Q. Looked out the bathroom window? Is that the window you
18 were looking out?

19 A. Yes.

20 Q. And by the time you reacted and looked out the window,
21 did you hear the other shots pretty quickly after you got to
22 the window?

23 A. No.

24 Q. No? Okay. And, again, that second barrage of shots
25 sounded like it was further away?

1 A. Yes.

2 Q. Okay. Now, let's talk about what you saw. You saw
3 someone running towards Farrow Road?

4 A. Yes.

5 Q. Now, were they running in the back yard? Where were
6 they running?

7 A. They were -- there's a gate in the back yard and they
8 were like on the other side of the gate. I saw them running
9 on the other side of the gate toward Farrow Road.

10 Q. Towards the back yard?

11 A. They were in the back yard.

12 Q. Right.

13 A. And they were running on the other side of the gate
14 that's in my back yard.

15 Q. Okay. So there's a gate between your yard and the house
16 next door to where Mr. Hudson lives?

17 A. The -- okay. The -- my house is diagonal to where
18 things took place. There's a gate that runs between my house
19 and the house behind my house next door to where the...

20 Q. Got it.

21 A. Right.

22 Q. And when you saw the individual wearing a white tee
23 shirt jump the fence, he was running like through that gate?

24 A. Yeah, like on the -- along the gate I would say.

25 Q. Okay.

1 A. Along the gate.

2 Q. And the person with the white tee shirt had dreadlocks
3 or braids?

4 A. Yes.

5 Q. The other individual you have described as a black male
6 in a black shirt and a black hat?

7 A. Yes.

8 Q. Can you remember what kind of shirt it was? Did you get
9 enough of a look at it to describe it?

10 A. No. I mean, it -- to me it just looked like a normal
11 black tee maybe. I don't really remember.

12 Q. Was it loose with the tail out or was it like a fitted
13 shirt?

14 A. I wouldn't say it was fitted, no.

15 Q. Okay. But you're sure the individual had a hat on.

16 A. Yes.

17 Q. What color was the hat?

18 A. It could have been black. I don't remember.

19 Q. Okay. Do you remember anything else distinctive about
20 that person, the one in black?

21 A. Not really, no.

22 Q. When you were looking out your bathroom window, can you
23 give me an estimate of how far you were from the people you
24 saw running?

25 A. Maybe 20 feet maybe.

1 Q. So not very far.

2 A. Right.

3 Q. Okay. And you haven't been able to identify anyone as
4 the person you saw running in black, have you?

5 A. No.

6 Q. Okay. Now, did you hear any screams?

7 A. I don't remember hearing any screaming, no.

8 Q. You didn't hear any screaming at all.

9 A. No.

10 Q. Okay. Black hat, as I'm going to call him -- black hat
11 was chasing the gentleman in the white tee shirt and the
12 dreads; correct?

13 A. Yes.

14 Q. Were they ever close enough together that you could tell
15 how they compared height-wise?

16 A. Not really because when I saw them running they were
17 kind of bent over, so I really couldn't tell.

18 Q. So you couldn't give us any kind of an idea of whether
19 one was shorter or taller.

20 A. No.

21 Q. You just don't know.

22 A. I don't know.

23 Q. Okay. Could you see where they went after they ran
24 through the yard where you saw them?

25 A. No, I couldn't see after that. After they ran past the

1 gate in the back yard, I didn't see them after that.

2 Q. Okay. Did you ever see anyone actually fire a shot?

3 A. No.

4 Q. Okay. Now, it's my understanding that you did describe
5 the one individual wearing black as having a gun in his hand?

6 A. Yes.

7 Q. Did you see the gun?

8 A. It looked like a silver gun. I didn't get a really good
9 look at what the gun looked like.

10 Q. Do you know the difference between a revolver and a
11 semiautomatic?

12 A. No idea.

13 Q. Okay. Well, it looked silver? Could you see anything
14 about the part where they were holding the gun? Could you
15 see the grips?

16 A. No, not really.

17 Q. How about the barrel? How long did the barrel look?

18 A. It looked to be kind of short maybe.

19 Q. Short?

20 A. Uh-huh.

21 Q. Did it look square-ish or round? Could you tell?

22 A. I really couldn't tell.

23 Ms. Shurling: Okay. A moment's indulgence, Your Honor.

24 Nothing further. Thank you.

25 The Court: Anything further?

1 Ms. Simpson: Nothing further from the State.

2 The Court: Thank you, ma'am. You may step down. Call
3 your next witness, please.

4 Ms. McDuffie: The State would call Pete Currie.

5 Ms. Shurling: Could you repeat that, Ms. McDuffie?

6 Ms. McDuffie: Pete Currie.

7 Ms. Shurling: Pete Currie.

8 Peter Currie, after being duly sworn, testified as
9 follows:

10 The Clerk: Please have a seat. State your full name
11 for the record.

12 The Witness: My name is Peter Currie.

13 Direct Examination

14 By Ms. McDuffie:

15 Q. Mr. Currie, are you currently employed?

16 A. No, ma'am. I'm retired from the Columbia Police
17 Department.

18 Q. And what were your duties with the Columbia Police
19 Department?

20 A. I spent 14 years in the crime scene unit.

21 Q. And when did you retire from the Columbia Police
22 Department?

23 A. February of this year.

24 Q. Please describe for the jury a little bit about your
25 educational background and training in the field of crime

1 scene analysis and investigation.

2 A. In crime scenes I attended numerous schools, fingerprint
3 schools, basic and F.B.I. advanced, other courses, I.D. tech
4 schools, photography schools, basic and advanced, even palm
5 scene school, basic and advanced F.B.I.

6 Q. And were you employed as a crime scene analyst at the
7 Columbia Police Department on May the 20th of 2009?

8 A. Yes, ma'am, I was.

9 Q. And did you respond to [REDACTED]

10 A. Yes, I did.

11 Q. And what was that in reference to?

12 A. It was in reference to a body in the back yard.

13 Q. And can you just tell the jury when you arrived -- when
14 you first arrive at a crime scene as a crime scene analyst,
15 what do you like to do or what's the first thing you like to
16 do?

17 A. The first thing: You try to photograph everything as it
18 is before you may step on something or something gets moved.
19 You want to get the scene as it is before it's destroyed by
20 anybody.

21 Q. And after you photograph the scene, what do you then
22 like to do?

23 A. Then you look for whatever evidence related to the
24 crime.

25 Q. And is that what you did in this case?

1 A. Yes, I did.

2 Q. And when you arrived on the scene, was the crime scene
3 secured?

4 A. Yes, ma'am, it was.

5 Q. And why is that important?

6 A. That's important to keep from, as I said, anybody
7 disturbing any evidence at the scene.

8 Q. And when you arrived at [REDACTED] was Ebony
9 Fogle's body still at the scene?

10 A. Yes, ma'am, it was.

11 Q. And you first photographed the scene?

12 A. Yes, ma'am.

13 Q. And then did you then notice any evidence at the scene?

14 A. Yes, I did.

15 Q. And please tell the jury what evidence you first noticed
16 at the scene.

17 A. Of course, the main thing I noticed were shell casings
18 around the body.

19 Q. I show you what's been marked as State's exhibits 10
20 through 19 and ask if you recognize those and if they're a
21 fair and accurate depiction of what you observed.

22 A. Yes, ma'am.

23 Ms. McDuffie: Your Honor, at this time we'd offer
24 State's exhibits 10 through 19.

25 Ms. Shurling: Without objection.

1 **The Court:** So admitted.

2 (State's exhibits 10 through 19 were received in
3 evidence.)

4 By Ms. McDuffie:

5 Q. Investigator Currie, if you could please tell the jury
6 what's depicted in State's exhibit 10.

7 A. Okay. Exhibit 10 shows the body and the area where the
8 shell casings were.

9 Q. And those yellow markers, what are they marking?

10 A. They're marking a shell casing for each number.

11 Q. And how many shell casings did you find at the scene?

12 A. I collected ten.

13 Q. State's exhibit 11, can you please tell the jury what's
14 depicted in that photograph?

15 A. That just shows number one from the other place and it
16 shows the shell casing.

17 Q. And describe for the jury: What is a shell casing and
18 how does one come to be left on a scene?

19 A. A shell casing that is -- is what is ejected, this being
20 an automatic, being ejected from a pistol after the
21 projectile leaves the gun.

22 Q. And do all guns eject shell casings?

23 A. No, ma'am.

24 Q. What kind of guns eject shell casings?

25 A. It would be an auto or semiautomatic pistol.

1 Q. And what kind of guns do not eject shell casings?

2 A. Revolvers.

3 Q. And where do the shell casings go and where do they stay
4 in a revolver?

5 A. They stay in the revolver. You have to remove them
6 manually.

7 Q. And so an automatic weapon will automatically eject?

8 A. Yes, they do.

9 Q. Tell the jury how that's done.

10 A. Well, the bullet goes into the chamber. The firing pin
11 hits the primer. It explodes the bullet which is called
12 expulsion which drives the projectile out, and the minute the
13 projectile comes out, it is injected by an injection pin out
14 normally to the right, depending what kind of right or left-
15 handed thumb -- it either comes out to the right or the left
16 of you.

17 Q. And can you get an ejection pattern or try and decide
18 where a suspect was standing based on where the shell casings
19 are?

20 A. You can.

21 Q. What are some variables that you need in order to
22 determine that?

23 A. Well, you need to know what kind of weapon you have.
24 Different shell casings will travel some shorter, some longer
25 distance. You need to see if it's a left or right-handed

1 weapon, and you can pretty much figure out where the
2 individual was standing when the weapon was fired.

3 Q. Does it also matter how the weapon was being held,
4 whether straight up or to the side? Could that make a
5 difference in where the shell casings eject?

6 A. It would make a difference.

7 Q. And the surface that the shell casings are ejected onto,
8 would that also make a difference or is it---

9 A. Sure. If a shell casing hits grass, it would pretty
10 much sink down into the grass. If it hits pavement or rock
11 or something like that, it may move a little further out.

12 Q. State's exhibits 13, 14, and 15, please describe for the
13 jury what's depicted in those.

14 A. Those are again shell casings.

15 Q. And you again found how many at the scene?

16 A. Ten.

17 Q. Showing you what's been marked as State's exhibit 20 and
18 asking you if you recognize that...

19 A. Yeah, those are the shell casings that I collected.

20 Ms. McDuffie: Your Honor, at this time we'd offer
21 State's exhibit 20 into evidence.

22 Ms. Shurling: No objection, Your Honor.

23 The Court: So admitted without objection.

24 (State's exhibit 20 was received in evidence.)

25 By Ms. McDuffie:

1 Q. Please describe for the jury what I'm holding up that's
2 contained in State's exhibit 20.

3 A. Okay. That is a spent round or a shell casing from a
4 nine millimeter---

5 Q. And these are what you found out at the scene?

6 A. Yes, those are what I found at the scene.

7 Q. Other than these ten shell casings, were you able to
8 locate at [REDACTED] any other shell casings?

9 A. No.

10 Q. I ask you if you recognize State's exhibit 33.

11 A. Yes, I do.

12 Q. And is this a fair and accurate depiction of [REDACTED]

13 [REDACTED]

14 A. Yes, it is.

15 Ms. McDuffie: Your Honor, at this time we'd offer
16 State's exhibit 33.

17 Ms. Shurling: Without objection, Your Honor.

18 The Court: So admitted.

19 (State's exhibit 33 was received in evidence.)

20 By Ms. McDuffie:

21 Q. Can you please describe for the jury what's depicted in
22 State's exhibit 33?

23 A. Okay. This is the resident at [REDACTED] This is the
24 back yard where the incident occurred.

25 Q. And can you please show the jury where the shell casings

1 were predominantly concentrated?

2 A. The body was approximately right here, and the shell
3 casings were around the body.

4 Q. Okay. And was there -- I'm sorry. Was there a vehicle
5 also in the yard?

6 A. Yes, ma'am. It was -- there's a gate right here. It
7 was close to the gate.

8 Q. And it was inside the yard, not out on the street?

9 A. It was inside the gate.

10 Q. And when you arrived on the scene, had any measures been
11 taken to ensure that no one was touching, kicking, or moving
12 the shell casings?

13 A. I'm sorry?

14 Q. When you arrived on the scene, had the shell casings --
15 had they been covered in any way or had the officers on the
16 scene done anything to ensure that no one was touching or
17 moving or---

18 A. No, ma'am, they weren't covered up, and if they were
19 touched, I do not know -- I would not know about it.

20 Q. Was it possible that E.M.S. or other officers could have
21 touched or manipulated them in some way?

22 A. It's possible a couple of close shell casings E.M. --
23 when E.M.S. comes to make sure -- to see if the individual is
24 still alive or dead, they could possibly, you know, walking
25 across one or kicking one.

1 Q. Did you find any items of further evidence at [REDACTED]

2 [REDACTED]?

3 A. No, ma'am.

4 Q. Did you then go to [REDACTED]?

5 A. Yes, ma'am, I did.

6 Q. What was that in reference to?

7 A. In reference to a door which appeared to have a bullet
8 hole in it and I think the glass shattered.

9 Q. Showing you State's exhibits 24 to 27, I ask you if you
10 recognize those.

11 A. Yes, ma'am.

12 Ms. McDuffie: Your Honor, at this time we'd offer
13 State's 24 to 27.

14 Ms. Shurling: Without objection, Your Honor.

15 The Court: So admitted.

16 (State's exhibits 24 through 27 were received in
17 evidence.)

18 By Ms. McDuffie:

19 Q. Can you please describe for the jury what's depicted in
20 State's exhibits 24 and 25?

21 A. That's the back yard of [REDACTED].

22 Q. And can you please describe for the jury the damage you
23 observed to this residence?

24 A. There was a -- to the best of my recollection, I think
25 the glass was broken out and a hole in the frame.

1 Q. And is that---

2 Court Reporter: A hole in the what?

3 The Witness: A hole in the frame, the door frame.

4 By Ms. McDuffie:

5 Q. Is that depicted in State's 26 and 27?

6 A. Correct.

7 Q. And did you locate any items of potential evidentiary
8 value here?

9 A. Yes, I did. I collected a partial projectile out of the
10 door frame.

11 Q. Showing you State's exhibit 31, is that the projectile
12 you recovered, the partial projectile?

13 A. I have to open this. Yes, ma'am.

14 Ms. McDuffie: Your Honor, at this time we'd offer
15 State's 31.

16 Ms. Shurling: Without objection.

17 The Court: So admitted.

18 (State's exhibit 31 was received in evidence.)

19 By Ms. McDuffie:

20 Q. After you finished processing the scene at [REDACTED] and at
21 [REDACTED], did you have occasion to make contact
22 with Ellison Hudson and Cleveland Joyner?

23 A. Yes, I did.

24 Q. And what was the purpose of you making contact with
25 Ellison Hudson and Cleveland Joyner?

1 A. It was my understanding they were present at the crime
2 scene. So anybody that is at a crime scene when we have a
3 shooting, we automatically administer gunshot residue kits on
4 that individual.

5 Q. And explain to the jury how you administer a gunshot
6 residue kit and what a gunshot residue kit is.

7 A. A gunshot residue kit, it usually consists of two items
8 in there. You have a capsule with a sticky surface on one
9 side that you put -- kind of swab the hands like to see --
10 what you're checking for is gun powder and primer residue.
11 You also have a clear liquid which is five percent nitric
12 acid and distilled water that you swab the hand with also,
13 which again it is for a gunshot residue primer or powder.

14 Q. And did you perform gunshot residue kits on Ellison
15 Hudson and Cleveland Joyner and then also on the deceased
16 victim, Ebony Fogle?

17 A. Yes, I did.

18 Q. Showing you State's exhibits 21 and 22 and 23, I ask if
19 you recognize those.

20 A. Yes, ma'am.

21 Ms. McDuffie: Your Honor, at this time we'd offer
22 State's 21, 22, and 23.

23 Ms. Shurling: No objection, Your Honor.

24 The Court: So admitted.

25 (State's exhibits 21 through 23 were received in

1 evidence.)

2 By Ms. McDuffie:

3 Q. The gunshot kit that you collected from Ebony Fogle,
4 where was that done?

5 A. I'm sorry?

6 Q. The deceased victim, Ebony Fogle?

7 A. At the scene.

8 Q. You collected that at the scene?

9 A. Yes, ma'am.

10 Q. And from Cleveland Joyner and Ellison Hudson?

11 A. Also at the scene.

12 Q. And after you collected those kits, did you maintain
13 that evidence in your possession until you ultimately turned
14 it in to the Columbia -- City of Columbia Police Department
15 property and evidence?

16 A. Yes, ma'am.

17 Q. And at some point it was later analyzed by S.L.E.D.?

18 A. Right.

19 Q. And you don't do that analysis in house?

20 A. No.

21 Q. The vehicle which you mentioned that was in the back
22 yard was the ride -- the vehicle of Ms. Ebony Fogle. Did you
23 have that towed back to the City of Columbia Police
24 Department?

25 A. Yes, ma'am.

1 Q. And why did you do that?

2 A. We pulled the vehicle to -- back to the city. We wanted
3 to process it for any kind of evidence, but the reason we
4 didn't do it there is to get a warrant before we did anything
5 to the vehicle.

6 Q. And pursuant to that warrant, did you process the
7 vehicle of Ebony Fogle?

8 A. Yes, I did.

9 Q. And I'm going to show you State's exhibits 28 through 30
10 and ask if you recognize that.

11 A. Yes, ma'am. That's the vehicle.

12 Ms. McDuffie: Your Honor, we'd offer State's 28 through
13 30.

14 Ms. Shurling: Without objection, Your Honor.

15 The Court: So admitted.

16 (State's exhibits 28 through 30 were received in
17 evidence.)

18 Q. When you're processing a vehicle, tell the jury what
19 you're looking for.

20 A. You process for different things. In this situation we
21 would be looking for possible fingerprints on the outside,
22 but we kind of noticed that the vehicle had just been washed
23 and it was negative on any prints on the outside. We also
24 went on the inside to see if there were any guns or
25 ammunition inside which also was negative on that.

1 Q. And State's exhibit 28, could you tell the jury what
2 that is?

3 A. That's the vehicle.

4 Q. And where is the vehicle located in this photograph?

5 A. It is in a secured area in -- at the Columbia
6 headquarters.

7 Q. And you also processed the inside of the vehicle,
8 State's 29 and 30?

9 A. Yes, ma'am.

10 Q. Was anything of evidentiary value found in her vehicle?

11 A. Was not.

12 Q. And you were searching for items of physical evidence
13 and also testing for fingerprints?

14 A. We did not check for fingerprints on the inside, only
15 for guns or -- guns or ammunition.

16 Q. But you did process the exterior of the vehicle?

17 A. Exterior.

18 Q. And that was with negative results?

19 A. That was with negative results.

20 Q. And after you processed the vehicle, was that the extent
21 of your involvement in this case?

22 A. Pretty much, yes, ma'am.

23 **Ms. McDuffie:** No further questions for this witness,
24 Your Honor.

25

Cross-Examination

1
2 By Ms. Shurling:

3 Q. Officer Currie, congratulations on your retirement.

4 A. Thank you.

5 Q. Did you search any of the adjacent yards for
6 projectiles?

7 A. Yes, we did. We -- there were a couple of rounds in the
8 same yard that hit a couple of trees and they ricocheted.
9 There's no telling. That bullet could have been two hundred
10 yards or two miles from there. Also, the back yard right
11 behind the location, it appeared a bullet went through a
12 piece of wooden fence. We were not able to do that. Did not
13 find anything. We did look.

14 Q. Again, did you examine any of the adjacent yards with
15 metal detectors to see if you could find shell casings?

16 A. We looked for -- in one of the yards right behind there
17 I did go in there with a metal detector, same as in the back
18 yard where the incident occurred; yes, ma'am.

19 Q. And how about the yard next door to [REDACTED]

20 A. No, ma'am.

21 Q. Or the yard catty-cornered -- the young lady who
22 testified earlier that she lived in the house on Isaac Street
23 catty-cornered from where the shooting location was, did
24 you---

25 A. No, ma'am, no metal detector. No metal detector. No,

1 ma'am.

2 Q. Okay. Were you aware that people at the crime scene had
3 reported that Mr. Hudson ran in that direction pursued by the
4 gentleman in black?

5 A. I don't believe so, not at that time.

6 Q. Nobody told you that.

7 A. Not at that time.

8 Q. Well---

9 A. I was one of the first people there. It was, I'm sure,
10 sometimes after some questions were answered.

11 Q. When did you find that out?

12 A. It must have been -- I'm going to say a day or so later.

13 Q. Once you found that out, did you go back and look in
14 those adjacent yards for additional shell casings?

15 A. I did go back - I think it was three days later - to go
16 back and look for projectiles.

17 Q. My question was: Once you found out that black hat had
18 chased Mr. Hudson in that direction, did you search any of
19 the adjacent yards---

20 A. No, ma'am.

21 Q. ---with a metal detector?

22 A. No, ma'am.

23 Q. Okay. Now, sometime later someone went back to [REDACTED]
24 [REDACTED] with a metal detector to look for slugs---

25 A. I did.

1 Q. You did, sir.

2 A. Yes, ma'am.

3 Q. Okay. So you used the metal detector to find slugs deep
4 in the ground at [REDACTED]

5 A. Yes, ma'am.

6 Q. But while you were there, you didn't use it to look for
7 slugs in adjacent areas.

8 A. No, ma'am.

9 Q. Okay. Now, the slug in the door at [REDACTED] how
10 badly was that damaged?

11 A. Pretty bad.

12 Q. Is there any way to tell what caliber it was?

13 A. I'm not sure. I'm not an expert in that field.

14 Q. Okay. So that -- that would be, as my daddy would say,
15 above your pay grade.

16 A. Yes, ma'am. Ballistics -- ballistics would have to
17 handle that.

18 Q. All right. Was there any way to tell how long the
19 projectile in the door at [REDACTED] had been there?

20 A. Not really. To a certain extent you can simply because
21 of the way the wood is split. There's no dirt. If a bullet
22 has been there for several days, you're going to find cobwebs
23 around it possibly. It looked like it had recently been
24 placed there.

25 Q. Okay. Now, let's talk about the G.S.R. test.

1 A. Yes, ma'am.

2 Q. Let me -- those have been admitted without objection,
3 and I'd like to take a look at them for a second. They
4 indicate they're dated and they indicate the name of the
5 individual who is being tested. I don't see a time on here.
6 Did you---

7 A. That's on the inside. On the inside there's a form you
8 fill out, and the time is all on the inside because there is
9 a time limit on the G.S.R. kit.

10 Q. Okay. So about what time did you get to the crime
11 scene?

12 A. Let's see. I'm going to say I probably got there no
13 later than 1:20, 1:30. I don't have the exact time, ma'am.

14 Q. And how long after you arrived did you do the G.S.R.
15 test?

16 A. I don't know. That would be on the -- again, that would
17 be on the paperwork in the G.S.R. kit.

18 Q. I'm not asking for an exact figure.

19 A. Oh, I would -- I would probably say maybe two -- no more
20 than two hours. Approximately an hour, two hours. We have a
21 six-hour limit.

22 Q. Do you know what Mr. Hudson and Mr. Joyner were doing
23 during that two hours?

24 A. They were detained. In other words, they were not under
25 arrest, but they could not leave.

1 Q. Okay. Where were they being detained?

2 A. They were right outside the crime scene. I think they
3 were in a couple of officers' vehicles, to the best of my
4 recollection.

5 Q. Okay. So you performed some of your other duties at the
6 crime scene before you took the G.S.R. tests.

7 A. I believe so; yes, ma'am.

8 Q. Okay. I want to look at these pictures for a second
9 with the cones on them, if you would give me a second. Each
10 of these photos show a shell casing and a little tent with a
11 number on it---

12 A. Yes, ma'am.

13 Q. ---identifying---

14 A. That's what---

15 Q. ---each shell casing you found. Correct?

16 A. Yes, ma'am.

17 Q. Is there a picture taken from a distance so that we can
18 see these cones in context?

19 A. Yes, ma'am.

20 Q. Well, let's look for that. That would be this one;
21 right?

22 A. Yes, ma'am.

23 Q. Okay. Now, this shows nine shell casings all within
24 very close proximity to the unfortunate victim; correct?

25 A. That's correct, ma'am.

1 Q. Okay. And you found no other shell casings in any other
2 part of this yard.

3 A. Well, actually I found ten there. I found one later on.
4 I just did not mark it when we photographed everything.

5 Q. Why not?

6 A. Because I had already moved the numbers, so I could not
7 relate it to start off with.

8 Q. Where did you find another shell casing?

9 A. I think it was behind one of the chairs. One of the
10 investigators or myself, we just found one more shell casing,
11 but we did not photograph it, but I did pick it up.

12 Q. You did pick it up.

13 A. Oh, yes, ma'am.

14 Q. So there's a number ten shell casing out there
15 somewhere?

16 A. Yes, ma'am. Well, it's not out there anymore.

17 Q. Where is it?

18 A. It's in that bag down here.

19 Q. Okay. So we know exactly where nine of them were, but
20 number ten you didn't bother to document.

21 A. That is correct, not with photography.

22 Q. You said that that one was found in close proximity to
23 one of the chairs---

24 A. I believe so, to the best of my recollection.

25 Q. Well, there are one, two, three, four chairs in this

1 picture. Do you remember which chair?

2 A. It was -- it would have been the one closest to the
3 body. If you'll let me see the picture, I'll show you.

4 Q. Certainly.

5 A. To the best of my recollection, that shell casing was
6 found somewhere along there. Somewhere along there. It may
7 have had a leaf or something over it. I don't know why we
8 didn't see it to start off with, but after we collected the
9 numbers and everything, we did find that extra shell casing.

10 Q. And it was the same day shortly after---

11 A. Oh, yes, ma'am, it was on the same day.

12 Q. A moment's indulgence, Your Honor. I am carefully
13 taking the casings out of State's exhibit number 20, and
14 there are, in fact, ten---

15 A. Yes, ma'am.

16 Q. ---in this bag. Right? Okay. Were you watching Mr.
17 Hudson and Mr. Joyner during the two hours before you did the
18 gunshot residue test?

19 A. No, ma'am.

20 Q. So you don't have any idea exactly what they were doing.

21 A. No, ma'am, I sure did not.

22 Q. Okay. Did you find the projectiles the day of the
23 shooting or did you come back and find them later? I'm not
24 talking about casings. I'm talking about the projectiles.

25 A. Correct. I did not find them at all, ma'am.

1 Q. Okay. And do you know when they were found?

2 A. Several days later S.L.E.D. went out with some more
3 sophisticated equipment that we do not have and they found
4 projectiles, several. I don't -- I don't even know how many
5 they found.

6 Q. Did you look with a metal detector?

7 A. Yes, ma'am.

8 Q. And S.L.E.D. used another kind of equipment more
9 sophisticated than a metal detector?

10 A. No. They have a metal detector, but it was about state
11 of the art which we do not have.

12 Q. Okay. Now, all the projectiles were found underneath
13 Ms. Fogle's body?

14 A. I don't know, ma'am. I wasn't there.

15 Q. You don't know?

16 A. No, ma'am. I was not there when they found them. I was
17 there at the very beginning when they came out there, and I
18 do not interfere with their work, and they did their work and
19 I left.

20 Q. So you were there when S.L.E.D. came to the scene, but
21 you didn't stay.

22 A. Correct.

23 Q. Why did you go?

24 A. We do not -- I would not interfere with S.L.E.D.'s work.
25 They do their own -- whatever they do. There was no need for

1 me to be there. I had other things to do.

2 Q. I understand that, sir. That was my question.

3 A. Okay.

4 Q. If you don't interfere with S.L.E.D. and you let them do
5 their job, why did you go at all?

6 A. I don't remember why I went there. Maybe I was called
7 there. I don't recall.

8 Q. And, again, this was several days after the shooting.

9 A. Yes, ma'am.

10 Q. You responded later in the day to a call at 330 West
11 Campanella Street?

12 A. Yes, ma'am.

13 Q. Do you recall that?

14 A. Yes, ma'am.

15 Q. What were you asked to do at that scene?

16 A. I was requested to fingerprint, dust for a fingerprint
17 at the storage doorknob, storage room doorknob.

18 Q. And why?

19 A. I don't know. I was just asked to do it. I don't know.
20 It's my understanding they thought maybe somebody from the
21 scene went by there and tried to hide inside the storage
22 room. I don't know. I think that's about the closest that I
23 remember.

24 Q. Okay. But in any event, your dusting of that doorknob
25 didn't yield any fingerprints, did it?

1 A. No, ma'am, it did not.

2 Ms. Shurling: Thank you. No further questions.

3 The Court: All right. Anything?

4 Ms. Shurling: A moment's indulgence, Your Honor..

5 The Court: Anything from this witness?

6 By Ms. Shurling:

7 Q. You said a moment ago that a couple of trees in the yard
8 got hit?

9 A. Yes, ma'am.

10 Q. And projectiles appeared to have bounced?

11 A. Appeared to me, yes, ma'am.

12 Q. Let's look. Are the trees in this picture?

13 A. Let me see. I'm sorry. Yes, ma'am. It's these trees
14 right back here.

15 Q. So not -- not these large prominent trees---

16 A. No, ma'am, they were smaller---

17 Q. ---to you.

18 A. They were smaller trees.

19 Q. Did you take a picture of the pockmarks on those trees?

20 A. I don't think so. No, ma'am.

21 Ms. Shurling: Thank you. No further questions.

22 The Court: All right. Thank you, sir. You may step
23 down.

24 Ms. McDuffie: Your Honor, may I ask the witness be
25 excused?

1 **The Court:** You're free to leave.

2 **Ms. Shurling:** No objection, Your Honor.

3 **The Court:** Call your next witness, please.

4 **Ms. McDuffie:** The State would call Kim Dinh.

5 Kim Dinh, after being duly sworn, testified as
6 follows:

7 **The Clerk:** Please have a seat and state your full name
8 for the record.

9 **The Witness:** My name is Kim Dinh, D-I-N-H.

10 Direct Examination

11 By Ms. McDuffie:

12 Q. Ms. Dinh, can you please tell the jury where you're
13 currently employed?

14 A. I am currently employed at the South Carolina Law
15 Enforcement Division commonly known as S.L.E.D.

16 Q. And what are your duties with S.L.E.D.?

17 A. I'm currently a special agent with the forensics
18 department and crime scene. Basically I respond to any
19 counties that need assistance with crime scene
20 reconstruction, footwear, tire wear, latent, and blood
21 pattern.

22 Q. And you work for S.L.E.D., but this is a City of
23 Columbia Police Department case?

24 A. Yes.

25 Q. And how did you get called out to this matter?

1 A. We got a call as an assisting agency. Basically they
2 just needed help with locating some fired projectiles that
3 were in the ground.

4 Q. And did you respond to [REDACTED]

5 A. Yes, I did.

6 Q. Do you recall what day that was?

7 A. I do not.

8 Q. Was it somewhere around May the 20th, 2009?

9 A. I know it was approximately a week and a half to two
10 weeks after the incident.

11 Q. And when you responded out there, what was it in
12 reference to or why did you respond?

13 A. It was a death investigation. Basically they just
14 needed assistance.

15 Q. And you were specifically looking for what?

16 A. Fired bullets within the ground.

17 Q. And those are also called projectiles?

18 A. Yes.

19 Q. And can you tell the jury what a projectile is?

20 A. Basically the components of a bullet is broken down to
21 three main parts. You have the cartridge case that holds the
22 bullet in which is actually called the cartridge. When it
23 separates, you have the cartridge case. The projectile is
24 actually the fired bullet, and then within the projectile,
25 the projectile is held within the copper jacket or the

1 jacket. Those are the three components -- three main
2 components, but within the cartridge case you also have gun
3 powder residue and a primer.

4 Q. And I'm going to show you State's exhibits 34 through 44
5 and ask if you recognize those images and if they're a fair
6 and accurate depiction of what you observed at [REDACTED]
7 [REDACTED].

8 A. Yes, they are.

9 Ms. McDuffie: Your Honor, at this time we'd offer
10 State's exhibits 34 through 44.

11 Ms. Shurling: Without objection, Your Honor.

12 The Court: So admitted.

13 (State's exhibits 34 through 44 were received in
14 evidence.)

15 By Ms. McDuffie:

16 Q. Could you please describe for the jury what's depicted
17 in State's exhibit 38?

18 A. This is a red shed. In front of the red shed there's a
19 table. In front of the table this is the approximate area
20 which I located the projectiles within the ground.

21 Q. And you -- how did you search for these projectiles or
22 how did you locate them?

23 A. I used a metal detector after I got a general area from
24 photographs from C.P.D. and also a diagram.

25 Q. And State's exhibit 39, could you please tell the jury

1 what's in that photograph?

2 A. That is another angle from the same area which I dug.

3 This is the table and that was the same red shed with the
4 picket fence in the back. This is the back yard.

5 Q. And State's exhibit 44, can you tell the jury what's
6 depicted in that photograph?

7 A. This is the same area, just more blown up.

8 Q. And that's where you found what?

9 A. This is where I found the fired projectiles.

10 Q. And State's exhibit 37, would you please tell the jury
11 what's depicted in that photo?

12 A. These are the projectiles I located in the ground.

13 Q. And that was at [REDACTED]

14 A. Yes, ma'am.

15 Q. Showing you State's exhibit 45, I ask if you recognize
16 that.

17 A. These are the fired projectiles from the ground.

18 Q. And how many projectiles did you find?

19 A. There are five.

20 Q. And that's what's contained in State's exhibit 45?

21 A. Yes, ma'am.

22 Ms. McDuffie: Your Honor, at this time we'd offer
23 State's exhibit 45.

24 Ms. Shurling: Without objection, Your Honor.

25 The Court: So admitted.

1 (State's exhibit 45 was received in evidence.)

2 By Ms. McDuffie:

3 Q. After you collected these five projectiles that you dug
4 up from the ground, what did you do with them?

5 A. I transferred them to the custody of the Columbia Police
6 Department. Because they were there on the scene, there was
7 no actual chain of custody done.

8 Q. And did you also document where you found these for
9 measurements?

10 A. I documented for them and a relationship on a hand-drawn
11 diagram.

12 Q. And was that hand-drawn diagram later typed up with the
13 measurements by the City of Columbia Police Department?

14 A. Yes, it was.

15 Q. Showing you State's exhibit 53, I ask you: Are those
16 the measurements you took?

17 A. I believe so, without looking at my rough sketch. I
18 think they do have a copy.

19 Q. Would it help to refresh your memory if I provided you
20 with a copy of your rough sketch?

21 A. Yes, ma'am.

22 Q. Do you remember if the measurements you took were
23 provided to the C.P.D.?

24 A. Yes, they were.

25 Q. And is this a fair and accurate depiction of what you

1 observed on -- at [REDACTED]

2 A. Yes, ma'am.

3 **Ms. McDuffie:** Your Honor, at this time we'd offer
4 State's exhibit 53.

5 **Ms. Shurling:** Your Honor, I think we need a little more
6 foundation before I can agree to admit that without
7 objection.

8 By Ms. McDuffie:

9 Q. And it would help to refresh your memory showing you the
10 diagram you drew?

11 A. Yes.

12 Q. And are these measurements the measurements that you
13 took at [REDACTED]

14 A. Yes, it is.

15 Q. And do they relate to where you found the projectiles?

16 A. Yes.

17 **Ms. McDuffie:** Your Honor, at this time we offer State's
18 exhibit 53.

19 **Ms. Shurling:** May I see your notes, please? No
20 objection with the understanding that it's not drawn to
21 scale, Your Honor, as reflected by her handwritten notes.

22 **The Court:** All right. So admitted.

23 (State's exhibit 53 was received in evidence.)

24 By Ms. McDuffie:

25 Q. Can you please tell the jury what's depicted in State's

1 exhibit 53?

2 A. Yes, ma'am. This is a house and this would be the main
3 road. There was also a side road. This is the back yard.
4 There's actually a picket fence that runs along this back
5 side. This small area right here is the area that I found
6 all five projectiles and relative to the house and to a tree
7 and to a shed.

8 Q. Did you search the entire back yard or just that one
9 area?

10 A. Just that one area.

11 Q. And you were provided with photographs from the scene
12 showing you which area to start your search in?

13 A. Yes, ma'am.

14 Q. And why is that done?

15 A. That's just a relative area. Since the back yard was
16 not a small area, I needed a general area to start working
17 with where I could find these projectiles. Normally they're
18 not going to move within the ground. So if I have a general
19 area where they are in the ground, I can start there.
20 They're superficial. Otherwise, I would be digging up the
21 back yard all day.

22 Q. And after you collected those five projectiles, you
23 turned them over to the City of Columbia Police Department?

24 A. Yes, ma'am.

25 **Ms. McDuffie:** Beg the court's indulgence. No further

1 questions.

2 The Court: Anything?

3 Ms. Shurling: Briefly.

4 Cross-Examination

5 By Ms. Shurling:

6 Q. Could you describe for us generally what your job
7 responsibilities are at S.L.E.D.?

8 A. Yes. I -- as I said earlier, I respond to 46 different
9 counties in the state in reference to assisting agencies with
10 homicides, suicides, burglary, robbery, death investigations,
11 crime scene reconstruction, blood pattern, footwear and tire
12 wear and latents.

13 Q. So you're basically a C.S.I. agent.

14 A. That's a common term.

15 Q. Okay.

16 A. We don't like that term.

17 Q. And you said that you were called to this scene, to the
18 best of your recollection, a week and a half after the
19 shooting?

20 A. It's approximately a week and a half to two weeks, in
21 that time frame. It wasn't the day of the incident.

22 Q. And you believe it could have been as long as two weeks
23 later.

24 A. It could have been.

25 Q. Okay. Could it have been longer than that?

1 A. I don't -- I don't believe so.

2 Q. Okay. You said you used a metal detector---

3 A. Yes, ma'am.

4 Q. ---to find these slugs?

5 A. The projectiles?

6 Q. The projectiles.

7 A. Yes, sir (sic).

8 Q. How deep in the ground were they?

9 A. They were no more than 46 inches within the ground.

10 Q. Can you explain to us what the difference would be
11 between S.L.E.D.'s metal detector and the metal detector that
12 was used by the City of Columbia Police Department?

13 A. I never saw their metal detector, so I could not tell
14 you the difference.

15 Q. What can you tell us about the metal detector that
16 S.L.E.D. uses?

17 A. It's just a generic Garrett metal detector. It was
18 originally designed by a guy who was just treasure hunting
19 and just kind of tweaked it and stuck the word forensics on
20 it and sold it to us.

21 Q. So this is not some super-duper nuclear metal detector
22 or---

23 A. It's just -- I guess you could call it a high-end metal
24 detector. I'm not an expert in metal detectors, so I really
25 couldn't tell you the quality of it. It's just a -- it was a

1 -- it was a metal detector that detected metal.

2 **Ms. Shurling:** Thank you. No further questions.

3 **The Court:** Thank you, ma'am. You may step down. Call
4 your next witness, please.

5 **Ms. Campbell:** May it please the Court? The State calls
6 Cleveland Joyner.

7 Cleveland Joyner, after being duly sworn, testified
8 as follows:

9 **The Clerk:** Please have a seat and state your full name
10 for the record.

11 **The Witness:** Cleveland Joyner.

12 Direct Examination

13 By Ms. Campbell:

14 Q. Mr. Joyner, how old are you?

15 A. Twenty-three.

16 Q. And do you work?

17 A. No, ma'am.

18 **The Court:** Mr. Joyner, let me get you to move up closer
19 to the mic and speak into the mic, please, sir.

20 By Ms. Campbell:

21 Q. Or you can pull it a little closer to you if you want
22 to. Okay. Do you work?

23 A. No, ma'am.

24 Q. Where do you live?

25 A. [REDACTED]

1 Q. Who do you live there with?

2 A. My mother.

3 Q. Are you married?

4 A. No, ma'am.

5 Q. Do you have any children?

6 A. Yes, ma'am.

7 Q. And how many children do you have?

8 A. One.

9 Q. How old is your child?

10 A. One.

11 Q. How long have you been living here in the Columbia area?

12 A. My whole life.

13 Q. Did you go to high school here?

14 A. Yes, ma'am.

15 Q. Where did you go to high school?

16 A. Richland Northeast.

17 Q. Did you graduate?

18 A. No, ma'am.

19 Q. Do you know a guy named Ellison Hudson?

20 A. Yes, ma'am.

21 Q. And tell the jury: How do you know Ellison Hudson?

22 A. Through school.

23 Q. Did he go to the same high school you did?

24 A. No, ma'am.

25 Q. But you met him through school?

1 A. Yes, ma'am.

2 Q. How long had you been knowing Ellison Hudson when this
3 happened?

4 A. About two years.

5 Q. What kind of things would you and Ellison do when y'all
6 got together?

7 A. Relax, probably smoke every now and then.

8 Q. And when you say smoke every now and then, what would
9 y'all smoke?

10 A. Weed.

11 Q. Weed?

12 A. (Witness nodded head affirmatively.)

13 Q. Is that what I know as marijuana?

14 A. Yes, ma'am.

15 Q. And that was kind of the thing y'all did when y'all hung
16 out together?

17 A. Yes, ma'am.

18 Q. Did you know where Ellison Hudson lived back in May of
19 last year?

20 A. Yes, ma'am.

21 Q. Where did he live?

22 A. Juniper Street.

23 Q. Did you go over to his house sometimes?

24 A. Yes, ma'am.

25 Q. And, in fact, when you went over to his house, what

1 types of things would you do over at his house?

2 A. Nothing much. Just really go pick him up.

3 Q. Prior to this occurring - we're going to get to May the
4 20th in a minute - had you ever met the defendant in this
5 case?

6 A. Yes, ma'am.

7 Q. And how had you met the defendant?

8 A. He lives in my girl---

9 Ms. Shurling: Objection, Your Honor.

10 The Witness: ---friend---

11 Ms. Shurling: Subject to my previous objection, I
12 believe the State may be about to get into an area that's---

13 The Court: All right. Overruled.

14 Ms. Campbell: Thank you, Your Honor.

15 By Ms. Campbell:

16 Q. I'm sorry. Go ahead.

17 A. He lives in my girlfriend's mother's neighborhood.

18 Q. In your girlfriend's mother's neighborhood.

19 A. Yes, ma'am.

20 Q. You had seen him in that neighborhood before?

21 A. Yes, ma'am.

22 Q. And had you actually -- did you know him by a nickname?

23 A. Yes, ma'am.

24 Q. And what nickname did you know Anthony Hackshaw by?

25 A. Bump.

1 Q. And prior to this all happening, did you even know his
2 real name?

3 A. No, ma'am.

4 Q. But had you seen him enough and knew him enough to know
5 him by name and sight?

6 A. Yes, ma'am.

7 Q. And had you actually had face-to-face conversations with
8 Bump?

9 A. Yes, ma'am.

10 Q. On more than one occasion?

11 A. Yes, ma'am.

12 Q. I want to turn your attention to the morning of May
13 the -- for the record, you're here under a subpoena. Right?

14 A. Yes, ma'am.

15 Q. You don't want to be here.

16 A. No, ma'am.

17 Q. On the morning of May the 20th of last year, did you get
18 a phone call?

19 A. Yes, ma'am.

20 Q. And as a result of that phone call, tell the jury what
21 you did.

22 A. Dropped my girlfriends (sic) off to work. Then I went
23 to Ellison's house.

24 Q. Where was your girlfriend working?

25 A. Belk's on Broad River.

1 Q. And how did you get to Ellison's house?

2 A. Drove.

3 Q. And what did you know Ellison as? What's his nickname?

4 A. E.

5 Q. So you drove over there?

6 A. Yes, ma'am.

7 Q. And do you know approximately what time of day it was
8 when you got over to Ellison's or E's house?

9 A. Maybe 11:30, 11:45, somewhere in that time.

10 Q. And you weren't looking at your watch, were you?

11 A. No, ma'am.

12 Q. So it's an estimate on your part?

13 A. Yes, ma'am.

14 Q. And when you got over there, was there a specific
15 purpose in you going over that day?

16 A. Yes, ma'am.

17 Q. What was your purpose?

18 A. To smoke.

19 Q. Smoke what?

20 A. Marijuana.

21 Q. And who was providing the marijuana that day?

22 A. Well, it was both of ours, but he just had it, so...

23 Q. So when you got over to Ellison's house, tell the jury
24 what you saw, what you observed.

25 A. He came out -- he was on the phone, came outside and

1 said he was about to wash a car.

2 Q. He was going to wash a car?

3 A. Yes, ma'am.

4 Q. And could you tell where the car was he was going to
5 wash?

6 A. No, ma'am. He wasn't near it.

7 Q. Okay. And then what happened?

8 A. Sat down, went to the back yard.

9 Q. Who all was in the back yard when you first got out
10 there?

11 A. Me -- nobody but just me and him.

12 Q. Just the two of you?

13 A. Yes, ma'am.

14 Q. And the back yard -- tell this jury -- Ellison's house,
15 how is it set up as far as the streets go?

16 A. His front yard, I guess that's his road. Then there's
17 the back road. Then there's the other road. So I really
18 don't know those roads. I just know his road.

19 Q. Do you know what would be referred to as a corner lot?

20 A. Yes, ma'am.

21 Q. Would his be a corner lot?

22 A. Yeah, like the house on the stop sign.

23 Q. There are two roads that come together right there, and
24 his house would be right there.

25 A. Yes, ma'am.

1 Q. And that day when you were -- if you pull in the front
2 of his house though, you can't see into the back yard until
3 you pull around the side.

4 A. Yes, ma'am.

5 Q. When y'all got out there that day and -- at first you
6 said there were only the two of you out there?

7 A. Yes, ma'am.

8 Q. Do you remember any kind of enclosure around the back
9 yard area?

10 A. Just the gate was closed and it was me and him back
11 there.

12 Q. Is there a general fence?

13 A. Yes, ma'am.

14 Q. Were there any outbuildings in the back yard that you
15 remember?

16 A. A shed.

17 Q. When y'all first got out there, it was just the two of
18 you. What did you do?

19 A. Put the table in the middle of the back yard.

20 Q. Then what happened?

21 A. We proceeded to smoke.

22 Q. And, again, it's just the two of you?

23 A. Yes, ma'am.

24 Q. Sometime shortly thereafter did somebody else show up?

25 A. Yes, ma'am.

1 Q. And who showed up?

2 A. Ebony.

3 Q. Ebony?

4 A. Yes, ma'am.

5 Q. And who is Ebony?

6 A. I guess that was his girlfriend.

7 Q. And had you ever met her before?

8 A. Once before.

9 Q. But you recognized her from meeting her on a prior
10 occasion?

11 A. Yes, ma'am.

12 Q. And when she got over there, did it become apparent when
13 he had been talking about washing a car whose car he was
14 going to wash?

15 A. Yes, ma'am.

16 Q. And whose car was he going to wash that day?

17 A. Ebony's.

18 Q. When Ebony got there, what did she do as far as what she
19 and the car did?

20 A. She pulled in his driveway, and then he told her to pull
21 around to the back.

22 Q. He told her to pull around to the back?

23 A. Yes, ma'am.

24 Q. And did she do that?

25 A. Yes, ma'am.

1 Q. Once the car was in the back yard, at this point who all
2 is back there with you?

3 A. Me, him, and her.

4 Q. What's Ellison doing?

5 A. Getting ready to wash her car. He just had rinsed it
6 off.

7 Q. You mentioned earlier that there was a table there in
8 the back yard. Do you remember anything significant being on
9 the table?

10 A. A gun.

11 Q. Whose gun was it?

12 A. I reckon his father's.

13 Q. It wasn't yours?

14 A. No, ma'am.

15 Q. You didn't bring the gun.

16 A. No, ma'am.

17 Q. Once Ebony is back there, what is she doing?

18 A. We was all just sitting at the table talking.

19 Q. And is Ellison washing the car?

20 A. No, not yet.

21 Q. And eventually what -- what happens next? Tell us.

22 A. We started smoking. Then a car drives by.

23 Q. A car drives by?

24 A. Yes, ma'am.

25 Q. And did you recognize what type of car that was?

- 1 A. Silver Honda.
- 2 Q. And why did you notice it?
- 3 A. Because I just never seen that car before.
- 4 Q. Were you nervous because y'all were back there smoking?
- 5 A. Yeah. It could have been the police.
- 6 Q. So you see the silver Honda drive by.
- 7 A. Yes, ma'am.
- 8 Q. And at that point what happens?
- 9 A. I asked him who was it and he said it was nobody.
- 10 Q. And who did you ask who it was?
- 11 A. Ellison.
- 12 Q. And Ellison told you it was nobody?
- 13 A. Yes, ma'am.
- 14 Q. And then what happened?
- 15 A. Nothing. Then we just started smoking. We was already
- 16 smoking. Then it drove by again, the same car.
- 17 Q. And you noticed it for the second time.
- 18 A. Yes, ma'am.
- 19 Q. And describe the car for the jury.
- 20 A. A silver two-door Honda.
- 21 Q. Had you ever seen the car before?
- 22 A. No, ma'am.
- 23 Q. What happened next?
- 24 A. He grabbed the gun. He walked to the front yard.
- 25 Q. Who grabbed the gun?

1 A. Ellison.

2 Q. And at this point why was he walking to the front yard,
3 as far as you were concerned?

4 A. Because it was the second time the car came by around
5 like a five-minute span.

6 Q. What happened next?

7 A. It was nobody. He came back. We were still smoking.
8 That's when he started washing the car.

9 Q. At that point where are you and Ebony?

10 A. In the back yard sitting at the table.

11 Q. What happens next?

12 A. We hear a car door close. So I asked him, "Who was
13 that?" And he said it was some people across the street from
14 him.

15 Q. And what happened?

16 A. About five minutes later that's when he screamed out,
17 "Get the gun." People came in the back yard shooting.

18 Q. Where were you sitting when he screamed out, "Get the
19 gun"?

20 A. At the table.

21 Q. Where was Ebony?

22 A. At the table.

23 Q. Where was he?

24 A. Running.

25 Q. Running?

1 A. Yes, ma'am.

2 Q. In which direction did he run in?

3 A. I'd say -- if this is the table, I'm sitting this way,
4 so he runs that way through his back yard like towards the
5 back of his back yard.

6 Q. Then what happens that you remember?

7 A. I heard the gunshots. I fell down, so I seen somebody
8 in a blue hoodie run past me chasing him. Then so I ran
9 behind the shed with the gun, and that's when I heard the
10 screaming and more shots.

11 Q. Let me back up for a minute. You said you fell down?

12 A. Yes, ma'am.

13 Q. What caused you to fall down?

14 A. The first shot. I thought I was shot, so I just fell
15 down and grabbed myself.

16 Q. And where -- was Ebony still in the back yard?

17 A. Yes, ma'am.

18 Q. At this point was Ellison still in the back yard?

19 A. Yes, ma'am.

20 Q. And could you tell what direction the shot was coming
21 from at that point?

22 A. Like from like when you walk through his back yard, like
23 as soon as you walk in his back yard like right by the car.

24 Q. Could you tell where the shot was -- where it was being
25 shot at?

1 A. I guess us. I don't know.

2 Q. You mentioned at that point -- at that point when you
3 heard the first gunshot, had you even seen anyone yet?

4 A. No, ma'am.

5 Q. You mentioned you fell down and then you saw someone.
6 What did the person you saw look like?

7 A. He was like tall and skinny and had on a dark blue
8 hoodie.

9 Q. When you say tall and skinny, about how tall?

10 A. About my height.

11 Q. How tall are you?

12 A. About 5'9", 5'10".

13 Q. And slim build?

14 A. Yes, ma'am.

15 Q. And he had on what?

16 A. A dark blue hoodie.

17 Q. And were you able to see his face or anything?

18 A. No, ma'am.

19 Q. Other than getting a general physical build, was that
20 all you were able to see?

21 A. Yes, ma'am.

22 Q. And where were you at this point?

23 A. When I seen him run by? Laying on the ground.

24 Q. At that point which direction was the person in the
25 hoodie going?

1 A. Following Ellison.

2 Q. At this point are there gunshots going off?

3 A. Yes, ma'am.

4 Q. And can you tell how many guns are being shot out there
5 that day?

6 A. No, ma'am.

7 Q. Can you tell if it's more than one?

8 A. After everybody was gone from out of the back yard,
9 that's when I heard another gun -- more gunshots being fired
10 in the back yard.

11 Q. Let me back up then. You go down on the ground. You
12 see a guy run by. You're hearing gunshots. What do you
13 next?

14 A. Get up and run behind the shed.

15 Q. And at that point what are you trying to do?

16 A. See what's going on, but there's nobody back there but
17 me.

18 Q. Where is the gun that was on the table?

19 A. With me in my hand.

20 Q. You grabbed the gun?

21 A. Yes, ma'am.

22 Q. When you got back behind the shed, what happened?

23 A. I was still hearing the gunshots. That's when I heard a
24 scream from Ebony and heard rapid gunfire.

25 Q. And could you tell where that was happening?

1 A. In the back yard.

2 Q. Could you see what was happening?

3 A. No, ma'am.

4 Q. And you said you heard a scream. Could you tell who was
5 screaming?

6 A. Ebony. Yes, ma'am.

7 Q. And do you know -- how many screams did you hear?

8 A. One.

9 Q. Did the scream come from the same general direction that
10 you heard the gunshots?

11 A. Yes, ma'am.

12 Q. But you couldn't see who was shooting?

13 A. No, ma'am.

14 Q. And you couldn't even see that Ebony was being shot.

15 A. No, ma'am.

16 Q. Did you stay behind the shed?

17 A. Yes, ma'am.

18 Q. Do you know how long you were back there?

19 A. Probably about three minutes.

20 Q. Did you still have the gun?

21 A. Yes, ma'am.

22 Q. After you'd been behind the shed with the gun for like
23 three minutes, what did you do?

24 A. I seen the person in the dark blue hoodie running down
25 the other side of the street, so that's when I fired at him.

1 Q. So you actually fired the gun you had?

2 A. Yes, ma'am.

3 Q. Do you remember what caliber gun it was you had?

4 A. A .38.

5 Q. After you saw him running down across the other side of
6 the street, did you see him any more?

7 A. No, ma'am.

8 Q. Did you ever see the second person that was out there?

9 A. No, ma'am.

10 Q. After you shot, what happened next? Were you still
11 behind the shed at that point---

12 A. Yes, ma'am.

13 Q. ---or had you moved?

14 A. Yes, ma'am. Then I hopped over the fence.

15 Q. Back into Ellison's yard or out of it?

16 A. No, out of it.

17 Q. And where were you going at that point?

18 A. (Witness shrugged shoulders.)

19 Q. Getting away?

20 A. Yes, ma'am.

21 Q. Where did you run?

22 A. Like into the -- directly into the next back yard. Then
23 I seen the silver Honda drive back down the road.

24 Q. Was it the same silver Honda?

25 A. Yes, ma'am.

1 Q. Could you tell how many people were in it at that point?

2 A. One.

3 Q. When you first saw the silver Honda, were you able to
4 tell how many people were in it?

5 A. Yes, ma'am.

6 Q. And how many people when you first saw it were in it?

7 A. One.

8 Q. That you saw.

9 A. Yes, ma'am.

10 Q. Could there have been a second one and you didn't see?

11 A. Could have been.

12 Q. So you're now in the neighbor's yard?

13 A. Yes, ma'am.

14 Q. Are you hiding?

15 A. No, I was just in the open.

16 Q. Then what happened?

17 A. I started screaming for Ellison and didn't see him. So
18 I hopped back into his yard, ran back. That's when I seen
19 Ebony down.

20 Q. Saw who down?

21 A. Ebony.

22 Q. Ebony?

23 A. Yes, ma'am.

24 Q. And where was she in the yard?

25 A. In the back yard.

1 Q. What was she lying near?

2 A. She was just -- like the table and like a couple of feet
3 away it was just her.

4 Q. What was her condition when you saw her?

5 A. She was just face down, so I knew she probably was dead.

6 Q. What happened next?

7 A. That's when I ran to the front yard and there was two
8 people in his front yard and they said they already had
9 called the police because they seen two people running --
10 walking through his front yard with guns.

11 Q. Okay. Then what happened?

12 A. I walked in his house, took the shells out of the gun,
13 put the gun under the couch, and when I was leaving out he
14 was coming in.

15 Q. And why did you take the shells out of the gun?

16 A. Because he said if anything ever happens just take the
17 shells out and throw them in the sewer, so that's what I was
18 going to do.

19 Q. And was it a revolver?

20 A. Yes, ma'am.

21 Q. Who told you to do that?

22 A. Ellison.

23 Q. When you met Ellison as he was coming in the house, what
24 happened?

25 A. He was just crying and saying that -- he was asking me

1 was she dead, and I kept telling him, yeah, she was dead.

2 Then we walked back to the back yard. Then he grabbed her

3 and was trying to wake her up. I kept telling him she was

4 dead.

5 Q. Then what happened?

6 A. That's when the police and stuff got there. Then I told

7 him -- he had some counterfeit. I told him he better get

8 that out of his house.

9 Q. Counterfeit?

10 A. Yes, ma'am.

11 Q. Counterfeit money?

12 A. (Witness nodded head up and down.)

13 Q. How did you know he had counterfeit money?

14 A. Because I had got some of it.

15 Q. Did you get rid of the shell casings?

16 A. I think I gave them to him.

17 Q. To Ellison?

18 A. Yes, ma'am.

19 Q. Do you know what happened to them?

20 A. No, ma'am.

21 Q. You were still there when the police came?

22 A. Yes, ma'am.

23 Q. And that day did you tell them about what had happened?

24 A. In the back yard? Yes, ma'am.

25 Q. Did they ask you some questions there at the scene?

1 A. Yes, ma'am.

2 Q. And do you remember them actually coming and taking like
3 samples from your hands?

4 A. Yes, ma'am.

5 Q. Prior to that, were you still in police custody once
6 they got there?

7 A. Yes, ma'am.

8 Q. And so they were keeping tabs on y'all.

9 A. Yes, ma'am.

10 Q. That day did y'all give -- did you give them a
11 statement?

12 A. Yes, ma'am.

13 Q. And at that point you had only seen one shooter; is that
14 correct?

15 A. Yes, ma'am.

16 Q. And what you told this jury is pretty much what you were
17 able to tell the police that day?

18 A. Yes, ma'am.

19 Q. And they even advised you of your rights that day prior
20 to taking a statement. Isn't that right?

21 A. Yes, ma'am.

22 Q. And you told them what you knew?

23 A. Yes, ma'am.

24 Q. Specifically, you gave them a description of the person
25 in the blue hoodie?

1 A. Yes, ma'am.

2 Q. But all you were able to say was general height, general
3 build, and the blue hoodie.

4 A. Yes, ma'am.

5 Q. Never got to see his face?

6 A. No, ma'am.

7 Q. And the car, did you tell them about the description of
8 the car?

9 A. Yes, ma'am.

10 Q. The police took, I believe, a statement from you that
11 day?

12 A. Yes, ma'am.

13 Q. And that would have been on the 20th?

14 A. Yes, ma'am.

15 Q. Around 8:00 that night?

16 A. Yes, ma'am.

17 Q. And you remember giving a three-page statement and
18 actually signing off on it; right?

19 A. Yes, ma'am.

20 Q. And although you've given more detail here today, that's
21 substantially what you told them?

22 A. Yes, ma'am.

23 Q. Later did you -- did the police make contact or did you
24 make contact with the police again?

25 A. I think they might have contacted me.

1 Q. And where did you meet up with them again on June the
2 3rd?

3 A. They came to my house.

4 Q. And that would have been a week or two later maybe?

5 A. Yes, ma'am.

6 Q. Does that sound about right?

7 A. Yes, ma'am.

8 Q. And on June the 3rd do you -- did the police ask you
9 some additional questions about who you thought might have
10 been involved in this?

11 A. Yes, ma'am.

12 Q. Did you give them information about a situation between
13 Ellison Hudson - you can't say what it was - but between
14 Ellison Hudson and Anthony or Bump?

15 A. Yes, ma'am.

16 Q. And who had related this information to you?

17 A. Ellison.

18 Q. Ellison?

19 A. Yes, ma'am.

20 Q. Were you there when the actual event, the robbery, two
21 to three weeks before happened?

22 A. No, ma'am.

23 Ms. Shurling: Your Honor, I'm sorry to interrupt, but
24 at this point I think I need to interject an ongoing
25 objection to the material covered in pretrial. Thank you.

1 The Court: All right.

2 Ms. Campbell: Thank you, Your Honor.

3 By Ms. Campbell:

4 Q. At that point did you give them the information that
5 Ellison -- you can't say what he said because that would be
6 hearsay, but did you tell the police about the information
7 you knew about what had happened two or three weeks before
8 the murder?

9 A. Yes, ma'am.

10 Q. In the two to three weeks between the time of the
11 robbery and the time of the murder, had you had any direct
12 contact with Bump?

13 A. Yes, ma'am.

14 Q. And did Bump actually relate a message for Ellison to
15 you?

16 A. Yes, ma'am.

17 Q. And what was it that Bump told you to tell Ellison?

18 A. That if he didn't give him his weed or his money that he
19 was coming for his head.

20 Q. That he was coming for his head?

21 A. Yes, ma'am.

22 Q. And how long before the murder did Bump tell you that?

23 A. I guess the next day after the robbery occurred.

24 Q. So that would have been within a few weeks of the actual
25 murder?

1 A. Yes, ma'am.

2 Q. Did he tell you who to tell it to?

3 A. He just told me to tell it to Ellison.

4 Q. Ellison. E?

5 A. Yes, ma'am.

6 Q. Because he knew you were Ellison's friend?

7 A. Yes, ma'am.

8 Q. Where were you when you saw him for him to tell you this
9 or Bump?

10 A. In his neighborhood.

11 Q. In his neighborhood?

12 A. Yes, ma'am.

13 Q. And that again is your girlfriend's mother's
14 neighborhood?

15 A. Yes, ma'am.

16 Q. Beg the court's indulgence. Just for clarification,
17 too, the person that you saw running in the blue hoodie, was
18 the hoodie pulled up over him?

19 A. Yes, ma'am.

20 Q. So you couldn't see their face at all.

21 A. No, ma'am.

22 Q. But the build was thin?

23 A. Yes, ma'am.

24 Q. And about your height.

25 A. Yes, ma'am.

1 Q. Back in I believe May of 2006, you were convicted of
2 burglary in the second degree?

3 A. Yes, ma'am.

4 Q. The person that you knew as Bump that gave you the
5 message to give to Ellison, do you see him here in the
6 courtroom?

7 A. Yes, ma'am.

8 Q. Can you point him out for the jury?

9 A. (The witness points.)

10 Q. Seated at the table?

11 A. Yes, ma'am.

12 Q. And what's he wearing?

13 A. A suit and tie.

14 Ms. Campbell: Your Honor, may the record reflect he's
15 identified the defendant?

16 The Court: All right. The record identifies.

17 Ms. Campbell: Thank you. I don't have anything
18 further.

19 The Court: All right.

20 Ms. Shurling: A moment's indulgence, Your Honor.

21 Cross-Examination

22 By Ms. Shurling:

23 Q. Mr. Joyner, you gave a statement to the police on May
24 20th, the day Ebony Fogle was killed, didn't you?

25 A. Yes, ma'am.

1 Q. And that was some -- about 15 months ago?

2 A. Probably.

3 Q. Would your memory be a lot clearer a couple of hours
4 after the incident or 15 months after the incident?

5 A. Fifteen minutes probably.

6 Q. Okay. On the day of the shooting you referred to seeing
7 a silver Honda, but not once did you refer to it as a two-
8 door, did you?

9 A. Yes, ma'am, I told the police it was a two-door silver
10 Honda.

11 Q. You told the police it was a two-door Honda?

12 A. Yes, two-door silver Honda.

13 Q. Well, let's cover another couple of things first. Did
14 you tell the police that you had seen one person in the Honda
15 when you first spotted it and two people later?

16 A. Yes, ma'am.

17 Q. You told them that.

18 A. Yes, ma'am.

19 Q. Okay. Well, did you tell the police anything about my
20 client having threatened Ellison Hudson?

21 A. No, ma'am, because when that happened they didn't ask me
22 about that. They just asked me about the incident that
23 happened that day in the back yard on May 20th.

24 Q. Now, Mr. Joyner, somebody just came into a yard, pistols
25 blazing, shot an innocent girl five times, and you want us to

1 believe that very recently my client had threatened the man
2 that lived at that house and it just didn't occur to you to
3 tell the police that?

4 A. No, ma'am. They didn't ask. They asked about the
5 incident that happened.

6 Q. Never occurred to you that it might be a good thing to
7 tell them that my client had threatened the man that lived in
8 that house.

9 A. No, ma'am.

10 Q. Tell me, Mr. Joyner: Why would a little silver Honda be
11 something to set your nerves on end sitting in that back yard
12 on May 20th, 2009?

13 A. Like I said, I never seen the car before and I've been
14 at his house numerous times.

15 Q. Is this an affluent neighborhood?

16 A. Yes, it's a violent neighborhood.

17 Q. It's a large neighborhood.

18 A. Yes, ma'am.

19 Q. A lot of big mansions in that area or are they pretty---

20 A. I wouldn't know.

21 Q. ---modest homes?

22 A. I wouldn't know.

23 Q. Pardon me?

24 A. I wouldn't know if there are big homes in that
25 neighborhood. I don't be in that neighborhood.

1 Q. The ones you saw were certainly not big homes, were
2 they?

3 A. Yes, ma'am.

4 Q. Were there a lot of small economy cars at houses in that
5 neighborhood?

6 A. I believe so.

7 Q. Would it be unusual to see a small silver economy car in
8 that neighborhood?

9 A. No, it wouldn't be unusual, but it's unusual they keep
10 driving around in a five-minute span, the same car.

11 Q. But you said you were alerted when you first saw it?

12 A. Yes, ma'am.

13 Q. You first saw it; you pointed it out.

14 A. Yes, ma'am, because we were smoking, yeah. We was back
15 there smoking.

16 Q. Did you alert Hudson every time you saw somebody drive
17 by?

18 A. No.

19 Q. Just when you saw the silver Honda?

20 A. Because that's the only car that drove by.

21 Q. Why don't you enlighten these nice people what a blunt
22 is?

23 A. Marijuana broke down into a cigar rolled up.

24 Q. So you've seen people smoke joints and cigarette rolling
25 papers, haven't you?

1 A. Yes, ma'am.

2 Q. Little teeny things, maybe about a fourth the size of a
3 cigarette?

4 A. (Witness nodded head up and down.)

5 Q. When you roll a blunt, you take a cigar and hollow out
6 the tobacco and pack it with marijuana, don't you?

7 A. Not necessarily you don't pack it. It all depends on
8 how you want to smoke it.

9 Q. Generally speaking, making a blunt results in a big fat
10 joint, doesn't it?

11 A. No, ma'am.

12 Q. You and Mr. Hudson were both pretty stoned, weren't you?

13 A. No, I wasn't pretty stoned.

14 Q. You weren't?

15 A. No, ma'am.

16 Q. You'd just finished smoking a blunt, just the two of
17 you. Right?

18 A. Yes, ma'am. There's a difference between high and
19 stoned. I might have been high or buzzed, but I wasn't
20 stoned so that I don't know what I was talking about.

21 Q. Well, you finished the whole blunt, didn't you?

22 A. Yes, ma'am. It was two people, so it's not like I'm
23 smoking it by myself, so I'm not going to be stoned.

24 Q. So you never said a word to the police about the car
25 being a two-door. You never said a word to the police about

1 my client supposedly having threatened Mr. Hudson; right?

2 A. (Witness shook head from side to side.)

3 Q. And when the police first got there, you lied about even
4 having a gun in that back yard, didn't you?

5 A. Yes, ma'am.

6 Q. Why?

7 A. Because I'm on probation.

8 Q. Well, it wasn't your gun, was it?

9 A. No.

10 Q. And according to your story, the shots that you fired
11 were only fired after people came up firing at y'all; right?

12 A. Yes, ma'am.

13 Q. I believe that's called self-defense, isn't it?

14 A. Yeah.

15 Q. So why would you hide a gun -- lie about it and hide a
16 gun that you had used in self-defense?

17 A. Because I'm on probation. I'm not supposed to be around
18 guns.

19 Q. But you were.

20 A. Yeah. It's not my house, so I can't control if he has a
21 gun or not.

22 Q. Well, you could have left, couldn't you?

23 A. Yeah, I could have.

24 Q. And according to your statement, you fired multiple
25 rounds in the blind. Isn't that correct?

1 A. Yes, behind the shed in the blind at a moving object.

2 Q. So you're behind a shed, can't see, holding a gun out
3 and just shooting---

4 A. No, I can't see behind me, but I can see into the street
5 where a person was running at. Yeah, I could -- I saw that.

6 Q. You weren't aiming at an individual that you could see
7 when you fired the gun, were you?

8 A. Yeah. He was -- he was running, so I fired at him while
9 he was running.

10 Q. Wasn't Mr. Hudson running, too?

11 A. I don't know where he ran to.

12 Q. You weren't concerned you had hit Mr. Hudson?

13 A. That wasn't him. He didn't have on no blue hoodie.

14 Q. In the almost two hours before someone swabbed your
15 hands for gunshot residue, did you put your hands in your
16 pocket at all?

17 A. I don't recall.

18 Q. Pardon?

19 A. I don't recall.

20 Q. You don't recall. But even two hours later you did have
21 positive gunshot residue on your hands; correct? You've been
22 told that?

23 A. Yes, ma'am.

24 Q. And you admit that you fired -- how many rounds would
25 you say fired?

1 A. Maybe four, three or four.

2 Q. Three or four?

3 A. Yes, ma'am.

4 Q. Well, how were there five empty shell casings?

5 A. Probably there was empty shell casings in there already.

6 Q. Okay. What kind of gun did Ebony Fogle have?

7 A. I didn't see her with no gun.

8 Q. Pardon?

9 A. I didn't see her with a gun.

10 Q. Are you aware that she had positive gunshot---

11 **Ms. Campbell:** Objection, Your Honor. May we approach?

12 By Ms. Shurling:

13 Q. We'll get into that at a later time. You're positive
14 Ebony Fogle did not have a gun.

15 A. To my knowledge, yes, ma'am.

16 Q. Why did you lie to the police about the counterfeit
17 money?

18 A. What did I lie to them about?

19 Q. Well, didn't you at one point say that Mr. Hudson had
20 gotten the counterfeit money from my client?

21 A. No, ma'am, that never was---

22 Q. Or that he had told you he'd gotten it from my client?

23 A. Not to my knowledge. I never told them anything like
24 that.

25 Q. Okay. Well, after the shooting and before law

1 enforcement got there, did you and Mr. Hudson put your little
2 heads together and decide how you were going to make up an
3 excuse for that counterfeit money?

4 A. No. I just told him to get it out of the house.

5 Q. Pardon?

6 A. I just told him to get it out of the house. So there
7 wasn't no heads being put together.

8 Q. Get it out of the house before the police got there.

9 A. Yeah, get that counterfeit money out of your house.
10 That's what I told him. It wasn't no plan, no plot. That
11 just came in my head because there was a dead body in his
12 back yard.

13 Q. Did he get rid of it before the police got there?

14 A. Obviously not because they found it in his house.

15 Q. Did you tell him to get rid of anything else in the
16 house---

17 A. No.

18 Q. ---before the police got there?

19 A. No, ma'am.

20 Q. In your statement given on 5/20/09 you say that you went
21 back in the house and put the gun in his room and the couch.
22 Do you recall that?

23 A. Yeah, I put it under the couch.

24 Q. You put it under the couch.

25 A. In his room.

1 Q. In his room.

2 A. Yes, ma'am.

3 Q. I thought you said earlier you gave it back to Mr.---

4 A. No, I said I gave him the shells.

5 Q. You gave him the shells.

6 A. Yes, ma'am. That's what I told you.

7 Q. So you took the shells out of the gun---

8 A. Yeah, I took the shells out of the gun and I was going
9 to put them in the sewer, which he came in the house and
10 said, "Give me the shells," so I gave him the shells. What
11 he did with them I don't know.

12 Q. And, again, your reason for taking the shells out of the
13 gun and hiding them separately?

14 A. Because I was instructed to do that. If anything
15 happened to take the shells out and throw them in the sewer.
16 So that's what I was going to do.

17 Q. If anything happened to take the shells out. Did he
18 tell you to hide them?

19 A. No. He said, "Throw them in the sewage," so that's what
20 I was going to do.

21 Q. So you say in your first statement May 20th -- you say
22 that you put the gun in his room and the couch.

23 A. In the couch.

24 Q. In the couch.

25 A. Yes, not "and the couch." In the couch.

1 Q. Well, weren't the shell casings found under a seat
2 cushion under the couch?

3 A. I wouldn't know. When I had the gun, I took the shells
4 out of the gun and gave him the shells. So what he did with
5 the shells I don't know.

6 Q. And you hid the gun under the sofa in the bedroom.

7 A. He has a couch in his room, so I put the gun in the
8 couch.

9 Q. Okay. Let's talk about the shots you heard. Where
10 exactly were you standing -- let's look at this diagram.
11 Ebony's car was somewhere in this area. Is that correct?

12 A. Yes, ma'am.

13 Q. Where were you?

14 A. When?

15 Q. When you heard the first shot ring out:

16 A. Sitting at the table.

17 Q. Sitting at the table.

18 A. In front of her car.

19 Q. And you grabbed the gun.

20 A. Yes, ma'am.

21 Q. And ran.

22 A. No. I fell on the ground.

23 Q. Fell on the ground---

24 A. Yes.

25 Q. Got up and ran.

1 A. Yes, ma'am, behind the shed which is right here.

2 Q. Okay. Now, there are actually two sheds there, aren't
3 there?

4 A. I don't know. I wouldn't -- I wouldn't know. I just
5 know there was a red shed and that's the shed I was behind.

6 Q. Well, you were in the yard, weren't you?

7 A. Yes, but I wasn't looking for two sheds.

8 Q. You didn't notice that there were two sheds---

9 A. No, because---

10 Q. ---in the back yard?

11 A. ---there was somebody getting shot in the back yard, so
12 I know I was behind a red shed which is right here.

13 Q. Okay. Were you just behind the shed or had you jumped
14 over the fence and you were behind the fence?

15 A. No, I was behind the shed.

16 Q. When did you jump over the fence?

17 A. After I fired my shots at the guy running down the
18 street. That's when I jumped into the fence.

19 Q. Okay. The guy you saw walking down the street is the
20 one---

21 A. He wasn't walking. He was running.

22 Q. Running down the street---

23 A. Yes, ma'am.

24 Q. Had on a blue hoodie?

25 A. Yes, ma'am.

1 Q. Was he chasing Hudson?

2 A. No, he was running by himself.

3 Q. And where did you see him running?

4 A. Let me see the diagram, please.

5 Q. The street next to the house is Moses Street; correct?

6 A. I wouldn't know.

7 Q. Okay. Well, let's look at the diagram then. This is
8 Juniper; correct?

9 The Court: Y'all need to turn that a little bit so that
10 the jury can see it. Some of them can't.

11 By Ms. Shurling:

12 Q. Is this the front of Hudson's house?

13 A. Yes, ma'am.

14 Q. And this is Juniper Street.

15 A. Yes, ma'am.

16 Q. You don't know the name of that street?

17 A. No, ma'am.

18 Q. And the street back behind here that would run roughly
19 parallel with Juniper, do you know what that's called?

20 A. Isaac.

21 Q. Isaac.

22 A. Yes, ma'am.

23 Q. Okay. Where did you see blue hoodie run?

24 A. Down this road.

25 Q. Back toward Juniper.

1 A. Yes, ma'am.

2 Q. Did you ever see blue hoodie get in the Honda?

3 A. No, ma'am.

4 Q. Did you see anybody get in the Honda?

5 A. No, ma'am.

6 Q. You can't testify here today whether anybody involved in
7 the shooting even got in a silver Honda, can you?

8 A. No, ma'am. No, ma'am.

9 Q. When did you come back to the back yard?

10 A. After I shot the gun, stayed in the back yard calling
11 for Ellison's name, didn't see him, so I hopped back over the
12 fence and went to his house.

13 Q. And, again, you're sure Ebony Fogle didn't have a gun.

14 A. To my knowledge, yes, ma'am.

15 Q. To your knowledge.

16 A. Yes, ma'am.

17 Q. From where you were, from the vantage point where you
18 were, could you see who came and stood over Ebony Fogle and
19 killed her?

20 A. No, ma'am.

21 Q. I thought you said you were right behind that fence and
22 that you could see blue hoodie running.

23 A. Yeah, when I was behind that shed, I seen the blue
24 hoodie. She was killed in the back yard, so that's not --
25 running down the street is not in the back yard. I'm facing

1 the street. I'm behind the shed facing the road, yeah. So
2 shots are being fired behind my back -- behind my back in the
3 back yard.

4 Q. Let's talk about the shots. When the shots first went
5 off, how many did you hear?

6 A. The first shot, I heard one..

7 Q. One. One shot.

8 A. Yes, ma'am.

9 Q. You fell to the ground.

10 A. Yes, ma'am.

11 Q. Got up, grabbed the gun, ran behind the shed.

12 A. Yes, ma'am.

13 Q. And you didn't jump the fence until after you fired all
14 the shots that you fired.

15 A. Yes, ma'am.

16 Q. If you were trying to get away, why didn't you jump over
17 the fence to begin with?

18 A. And run -- and run where?

19 Q. Pardon?

20 A. And run -- and go where?

21 Q. Well, the same place.

22 A. I don't know that -- I don't know that neighborhood. I
23 don't know that neighborhood.

24 Q. Okay. But a few seconds later when you had used up all
25 your bullets, you jumped over that fence; right?

1 A. Yes, and didn't go anywhere.

2 Q. All right. Do you know why -- rephrase. A moment's
3 indulgence, Your Honor. Mr. Joyner, you had indicated --
4 you've indicated that on May 20th right after the shooting it
5 just didn't occur to you to mention my client supposedly
6 sending a threatening message through you to Hudson. Is that
7 right?

8 A. Yes, ma'am.

9 Q. Well, on June 6th you talked to law enforcement again
10 for more than a half an hour, didn't you?

11 A. Yes, ma'am.

12 Q. You hadn't thought of it by then either?

13 A. What do you mean?

14 Q. Well, you didn't tell them on June 6th about my client
15 supposedly threatening your friend---

16 A. Because at that point in time I was---

17 Q. ---at this point either, did you?

18 **The Court:** Wait a minute. Don't talk over each other.
19 Go ahead. You can answer the question.

20 **The Witness:** At that point in time I didn't know that
21 that was pertaining to that, so that's why I didn't mention
22 it.

23 By Ms. Shurling:

24 Q. Well, you understood, did you not, that what the police
25 were doing was trying to find out exactly what that shooting

1 did pertain to?

2 A. No. They was asking us what happened in the back yard.
3 That's what they was asking me.

4 Q. I understand that. But at that point law enforcement is
5 trying to find out who committed this terrible crime; right?

6 A. I reckon so.

7 Q. And they want to know who did it and who had a motive to
8 do it; right?

9 A. I reckon.

10 Q. And you didn't think it might be important to tell them
11 that my client had supposedly threatened Mr. Hudson?

12 A. No, ma'am, because I didn't think it was pertaining to
13 that, so that's why I never said nothing about it.

14 Q. So you didn't tell about it on May 20th. You didn't
15 tell about it on June 6th. A moment, Your Honor. And by the
16 way, I misspoke. It was June 3rd, not June 6th. But you
17 didn't tell them on June 3rd either, did you?

18 A. I don't know the dates I was talking to them.

19 Q. Pardon?

20 A. I don't know any of the dates I was talking to them.

21 Q. You don't know the dates you were talking to them.

22 A. No, ma'am.

23 Q. Well, you gave two statements, one on May 20th and the
24 second one the beginning of June sometime. It's actually
25 dated June 3rd. Do you recall that?

1 A. It was sometime in June, but I don't know the exact
2 date. So if it's on there, then that's the date.

3 The Court: All right. Let's -- let's -- let's move on,
4 please.

5 By Ms. Shurling:

6 Q. Okay. If you were behind the shed, how could you see
7 blue hoodie running towards Juniper?

8 A. Just like I told you before, I was facing the road. He
9 was running down the road going towards Juniper Street.

10 Q. You're behind this shed.

11 A. Yes, facing the street and he was running down the
12 street going that way.

13 Q. So you saw him running---

14 A. Yes.

15 Q. ---along here.

16 A. Yes, ma'am.

17 Q. And you didn't see how he got here from here?

18 A. No, I didn't.

19 Q. Now, at this house there's a fence all the way around,
20 isn't there, almost except for the openings?

21 A. Yes, ma'am.

22 Q. And there is a small gate where the carport comes out
23 into the back yard.

24 A. Yes, ma'am.

25 Q. And then there's a drive opening with no gate just about

1 here where Ms. Fogle would have pulled her car in; right?

2 A. Yes, ma'am.

3 Q. When these two people first came up or one -- you said
4 you only saw one. When the person came up shooting, which
5 entrance did they use?

6 A. I guess they came from the carport way.

7 Q. Well, don't guess. You were there.

8 A. I wouldn't know. I didn't see them come in the yard. I
9 heard the shots when they was in the yard.

10 Q. You were right there at the table in that back yard and
11 you didn't notice somebody walking in that back yard?

12 A. No, because I was rolling up a blunt, a marijuana blunt,
13 so I wasn't looking at the gate to see if somebody was going
14 to walk in his back yard or not.

15 Q. Will you agree with me that this is a small back yard?

16 A. I don't know. What would you pertain to be a small back
17 yard?

18 Q. Well, let's look at pictures. I thought we had a shot
19 showing how much of the yard the car took up. I apologize.
20 We don't. That table was positioned -- the table you say you
21 were sitting at was positioned on the far side of where Ebony
22 Fogle's car was; right?

23 A. Yes, ma'am. When she pulled in, it was like the front
24 of the car. Then maybe a couple of steps over here was the
25 table.

1 Q. So you didn't see the person that fired the first shot.

2 A. No, ma'am.

3 Q. Heard the shot and dropped.

4 A. Yes, ma'am.

5 Q. Got up, ran behind the shed.

6 A. Yes, ma'am.

7 Q. Still didn't see the person.

8 A. As I was getting up, I seen the blue hoodie chasing
9 Ellison through his back yard.

10 Q. Oh, the blue hood.

11 A. Yeah, the blue hoodie.

12 Q. How long was it from the time you got up and ran behind
13 that red shed before you heard the cluster of shots?

14 A. Maybe a couple of seconds. I don't know. I wasn't
15 looking at a watch.

16 Q. Pardon?

17 A. Maybe a couple of seconds after---

18 Q. Not long at all.

19 A. No, not long.

20 Q. Okay. After you heard that barrage of shots, did you
21 hear more gunfire?

22 A. No, ma'am.

23 Q. So there was a single shot that sent you to your knees
24 when it first happened.

25 A. Yes, ma'am.

1 Q. A very brief break and a cluster of shots that you heard
2 right there in the back yard.

3 A. Yes, ma'am.

4 Q. Did those shots sound as though they were coming from
5 gunfire right there on top of you in the back yard?

6 A. Not really but I know it was in my area.

7 Q. In your area.

8 A. Yes, ma'am.

9 Q. They sounded close by.

10 A. In my area in the back yard. Of course by my area which
11 would be in front of the shed.

12 Q. Did you ever hear Ebony scream?

13 A. Yes, ma'am.

14 Q. When did she scream?

15 A. I don't know. She just screamed. I guess when she
16 screamed when she got shot.

17 Q. Well, between the first shot and the brief break and the
18 cluster of shots, when in that chronology did she scream?

19 After the first shot?

20 A. After the first shot.

21 Q. After the first shot but before the cluster of shots.

22 A. No, probably during the cluster of shots. I couldn't
23 tell you.

24 Q. Did she scream one time?

25 A. Yes, ma'am.

1 **The Court:** All right. Ms. Shurling, anything further?

2 **Ms. Shurling:** Yes.

3 **The Court:** All right. Well, let's...

4 By Ms. Shurling:

5 Q. In your June 3rd statement you indicate that Ellison
6 Hudson had on a previous occasion admitted to you having a
7 .22 caliber and a .40 caliber?

8 A. Ma'am?

9 Q. In your June 3rd statement you indicate that Ellison
10 Hudson had on a previous occasion admitted to you having a
11 .22 caliber gun and a .40 caliber; correct?

12 A. All I know was the .22 was in his possession, so I don't
13 know about the .40 caliber, the other gun. He never said the
14 other gun was in his possession.

15 Q. You don't know anything about him having a .40 caliber?

16 A. Yes, but I don't know if it was in his possession or
17 not. It was around, but I don't know if he actually had that
18 gun.

19 Q. A moment's indulgence. I'd like to get you to identify
20 something for me, please. Is this your handwriting?

21 A. Yes, ma'am.

22 Q. So you wrote out this statement.

23 A. Yes, ma'am.

24 Q. And at various places you made little changes and
25 initialed them---

1 A. Yes, ma'am.

2 Q. ---and so forth? And nowhere in this statement did you
3 say anything about seeing a two-door silver Honda.

4 A. I don't reckon. I don't know.

5 Q. One last thing I do want to clear up. You said the
6 first time you spotted the silver Honda when it frightened
7 you, you saw one person in the car?

8 A. Yes, the driver.

9 Q. The driver.

10 A. Yes.

11 Q. And later when you saw it again you think it had how
12 many people in it?

13 A. Maybe three because there was more than one body in the
14 car.

15 Q. Maybe how many?

16 A. Maybe three.

17 Q. Maybe three, but you don't know.

18 A. No.

19 Q. So maybe four, maybe five?

20 The Court: Ms. Shurling---

21 The Witness: Maybe five, maybe six.

22 Ms. Shurling: No further questions, Your Honor.

23 The Court: All right. Anything?

24 Ms. Campbell: Thank you, Your Honor. Just a couple.

25

Redirect Examination

2 By Ms. Campbell:

3 Q. She's asked you about your handwritten statement over
4 and over and over and about the silver Honda, and just to
5 expedite things I'm going to turn your attention to the
6 highlighted part. There on the first page of your written
7 statement that you gave on the evening of May the 20th of
8 2009 right after this happened, what's that say right there?

9 A. "Silver Honda drives by and I asked did he knew that car
10 and he said no."

11 Q. Okay. Next down -- four lines down, do you again tell
12 the police the night this happens about the -- what kind of
13 car?

14 A. "The silver Honda drives back past."

15 Q. Okay. And the next page I believe, once you're back in
16 the back yard after the shooting, you mentioned what kind of
17 car?

18 A. Silver Honda.

19 Q. And that's the information you gave them that night.

20 A. Yes, ma'am.

21 Q. And in this statement also do you talk about the
22 counterfeit money?

23 A. Yes, ma'am.

24 Q. Do you also talk about how you shot that night?

25 A. Yes, ma'am.

1 Q. So you weren't keeping any of that information from the
2 police that night, were you?

3 A. No, ma'am.

4 Q. And that's the statement you wrote out on that night.

5 A. Yes, ma'am.

6 Q. And, again, when they came back and talked to you at a
7 later time, you told them what information you could about
8 what was going on between Bump and Ellison.

9 A. Yes, ma'am.

10 The Court: Is that it?

11 By Ms. Campbell:

12 Q. Just for clarification, too, she asked you when the
13 first time that you saw this person with the blue hoodie --
14 where were you the first time you saw one of the people in
15 the back yard?

16 A. Laying down.

17 Q. And that was when you dropped down?

18 A. Yes, ma'am.

19 Q. And did you just see him again?

20 A. Only the time when he was running back past the house
21 going towards Juniper.

22 Q. And were you able to see clearly into Moses Street when
23 you were behind the shed, the red shed?

24 A. No, ma'am.

25 Q. Did you see the car go by, the silver Honda?

1 A. Yes, I was in the back yard. At that time that's when I
2 seen it drive by.

3 Ms. Campbell: I don't have anything.

4 The Court: Anything, Ms. Shurling?

5 Recross Examination

6 By Ms. Shurling:

7 Q. When did my client supposedly give you the message to
8 convey a threat to Ellison Hudson?

9 A. The day after the robbery or like a day later.

10 Q. So you knew about that on May 20th; correct?

11 A. Yes, ma'am.

12 Q. And you did not tell law enforcement, did you?

13 A. No, ma'am.

14 Q. So that was something important you knew and didn't tell
15 if, in fact, it happened. Right?

16 A. I reckon.

17 Q. And you claim you observed a two-door Honda. You
18 observed it that night; right? That day?

19 A. Which night?

20 Q. The day of the shooting.

21 A. Yes, ma'am.

22 Q. You observed a two-door Honda.

23 A. Silver.

24 Q. There's not a word in either one of your statements,
25 May 20th or June 3rd, about the car having two doors, is it?

1 A. Oh, well, I don't know. I didn't read the whole
2 statement.

3 Q. You signed them---

4 A. Yes, ma'am.

5 Q. ---didn't you?

6 **The Court:** Do you want to show it to him, Ms. Shurling?

7 By Ms. Shurling:

8 Q. You've previously identified this statement dated
9 May 20th; correct?

10 A. Yep, silver Honda.

11 Q. And Ms. Campbell just showed you every place in this
12 statement where you referred to a silver Honda. Right?

13 A. Yes, ma'am, three times.

14 Q. And did any one of those three references say anything
15 about it having two doors?

16 A. I don't know. I didn't read the whole -- the whole
17 thing when she showed it to me.

18 Q. Okay. Well... Excuse me. May I approach, Your Honor?

19 **The Court:** You may. You're already there.

20 By Ms. Shurling:

21 Q. Right here what does it say?

22 A. The silver Honda drove back past.

23 Q. Okay. And then moving along it says I saw the what?

24 A. The silver Honda.

25 Q. Where was the third reference to the silver Honda that

1 you identified a moment ago?

2 A. Go back.

3 Ms. Campbell: Your Honor, I'll be glad to---

4 Ms. Shurling: There it is.

5 Ms. Campbell: ---give her my copy if it will expedite
6 it.

7 By Ms. Shurling:

8 Q. Here it is. I said yeah what?

9 A. Silver Honda.

10 Q. Okay. So all three refer only to a silver Honda.

11 A. Yes, ma'am.

12 Q. And I'll give you a minute to look over this one. This
13 is your June 3rd statement. Is that your handwriting?

14 A. Yes, ma'am.

15 Q. Does it say anything in there about it being a two-door
16 Honda?

17 A. I don't even see anything about a Honda on here.

18 Q. Does it say anything about my client supposedly
19 threatening Ellison Hudson?

20 A. No, ma'am.

21 Ms. Shurling: Thank you. No further questions.

22 The Court: All right. Thank you. You may step down.

23 All right. Ladies and gentlemen, we're going to recess for
24 the evening. I'm going to ask that y'all be back here --

25 we're going to start at 9:00 in the morning. Most of y'all

1 are way too young to remember Vince Lombardi. He used to be
2 a football coach - he's deceased - but I operate under the
3 Vince Lombardi rule which means if we say we're going to
4 start at 9, you better be here before 9. Promptness is one
5 of my things that I like to make sure we do, so please be
6 here. We'll be ready to go at 9:00. We're going to move
7 this as fast as we can.

8 Again, I remind you: Do not discuss this case with
9 anyone while we're gone tonight. Don't get on the Internet.
10 Don't drive by Juniper Street. Don't do anything other than
11 go home, relax, have a nice evening, come back in the morning
12 nice and refreshed, and we will go back to work, and I thank
13 you for your service today and y'all have a nice evening.
14 See you tomorrow.

15 (Whereupon, the jury was excused from open court for the
16 day at 5:55 p.m.)

17 **The Court:** All right. Anything we need to take up?
18 Who are y'all starting with in the morning? Do you know or
19 is that a secret? Is that a trade secret?

20 **Ms. McDuffie:** No, Your Honor. Probably Mr. Hudson.

21 **The Court:** Okay.

22 **Ms. McDuffie:** We have nothing further from the State at
23 this time, Your Honor.

24 **The Court:** All right. Anything from y'all?

25 **Ms. Shurling:** Nothing, Your Honor.

1 **The Court:** Okay. Y'all remember the Vince Lombardi
2 rule.

3 **Ms. Shurling:** Yes, sir.

4 **The Court:** All right. Thank y'all.

5 (Whereupon, the trial concluded for the day at 5:55 p.m.
6 and resumed the following day, October 26, 2010, as follows.)

7 **The Court:** All right. Good morning, y'all. Please be
8 seated if you would. All right. Are we ready to go.

9 **Ms. Campbell:** Yes, Your Honor. They're just getting
10 the victims in. I'm sorry. I didn't realize how...

11 **The Court:** Are you ready to go?

12 **Ms. Shurling:** Yes, sir. Mr. Thompson is running an
13 errand. He should be here any second.

14 **The Court:** Well, we can start without him.

15 **Ms. Shurling:** Certainly, sir.

16 **The Court:** Your client is well represented, as long as
17 you're here.

18 **Ms. Shurling:** That's right.

19 **The Court:** Yes, ma'am?

20 **Ms. McDuffie:** Your Honor, I have shown the defense
21 counsel -- or Ms. Shurling's co-counsel and the courtroom
22 deputies. We have a firearm in the courtroom, and the
23 courtroom deputies have---

24 **The Court:** Wait a minute. You're like my daughter.
25 You talk so fast; I could never understand what she says.

1 **Ms. McDuffie:** I'm sorry, Your Honor. We have a firearm
2 in the courtroom. The courtroom deputies have checked the
3 firearm. The firearm is secured and is not fireable in its
4 present condition.

5 **The Court:** Does it have a lock on it?

6 **Ms. McDuffie:** Yes, sir, Your Honor. There's a zip tie
7 through the barrel of the gun---

8 **The Court:** All right.

9 **Ms. McDuffie:** ---and opposing counsel has had the
10 opportunity to inspect it as well, Your Honor.

11 **The Court:** You made sure it's locked.

12 **Ms. McDuffie:** Mr. Thompson did and so did the courtroom
13 officer, Your Honor.

14 **Officer:** It's all secure, sir.

15 **The Court:** All right. Good. Thank you.

16 **Ms. Shurling:** And I assume that's the .38 and not the
17 .40.

18 **Ms. McDuffie:** That's correct.

19 **Ms. Shurling:** Thank you.

20 **The Court:** All right. Mr. Dye, let's bring the jury in
21 if we could.

22 (Whereupon, the jury was brought into open court at 9:05
23 a.m.)

24 **The Court:** All right. Good morning, ladies and
25 gentlemen. Nice to see you this morning, and before we begin

1 I've got a couple of questions I want to ask you. Did
2 anybody have any conversation about this case since we left
3 yesterday or were you approached by anyone since we left
4 yesterday to talk about the case?

5 (All jurors respond in the negative.)

6 **The Court:** All right. Anybody make any of their own
7 independent inquiry or investigation about the case since we
8 left? No computers? Reviews of any type? All right. Good.

9 Ladies and gentlemen, as you recall when we broke
10 yesterday afternoon, we had -- the State's in the process of
11 putting up its case in chief. We had completed one -- one
12 witness at 10 'til six or so and recessed for the day. I
13 call on the State to call your next witness if you would,
14 please.

15 **Ms. Campbell:** May it please the Court?

16 **The Court:** Yes, ma'am.

17 **Ms. Campbell:** The State calls Ellison Hudson.

18 Ellison Hudson, after being duly sworn, testified
19 as follows:

20 **The Clerk:** Please have a seat and state your full name
21 for the record.

22 **The Witness:** Ellison Hudson.

23 Direct Examination

24 By Ms. Campbell:

25 Q. Mr. Hudson, how old are you?

1 A. Twenty-two.

2 Q. And you live here in Columbia?

3 A. Yes, ma'am.

4 Q. And how long have you been living in the Columbia area?

5 A. About nine, ten years now.

6 Q. Where are you from originally?

7 A. Darlington, South Carolina.

8 Q. Darlington?

9 A. Yes, ma'am.

10 Q. And who do you live with here in Columbia?

11 A. Well, I was staying with my mother and---

12 Q. With your mother?

13 A. ---my father at the time. Yes, ma'am.

14 Q. And back in May of last year, is that when you were
15 staying with your mom and dad?

16 A. Yes, ma'am.

17 Q. And what was that address where y'all were staying last
18 -- May of last year?

19 A. [REDACTED]

20 Q. Back in May of last year, were you working?

21 A. No, ma'am, I wasn't.

22 Q. Did you go to high school here?

23 A. Yes, ma'am.

24 Q. And how far did you go in high school?

25 A. I went to the twelfth grade. I graduated.

1 Q. You graduated?

2 A. Yes, ma'am.

3 Q. What high school did you graduate from?

4 A. Spring Valley.

5 Q. Do you know Cleveland Joyner?

6 A. Yes, ma'am.

7 Q. And how do you know Cleveland Joyner?

8 A. He's a friend through mutual friends. That's how I met
9 him.

10 Q. He was a friend of yours?

11 A. Yes, ma'am.

12 Q. And do you know a guy that you know by the name of Hot
13 Boy?

14 A. Yes, ma'am.

15 Q. And what's Hot Boy's real name? Do you know?

16 A. Sheldon.

17 Q. Sheldon?

18 A. Yes, ma'am.

19 Q. And how do you know Sheldon?

20 A. I went to school with him. He went to school with me,
21 and I know him through friends, too.

22 Q. You knew him through friends?

23 A. Yes, ma'am.

24 Q. And did you say he went to school with you? I'm sorry.

25 It's hard to hear in here.

1 A. Yes, ma'am, he went to school with me.

2 Q. Thank you for speaking up. Ebony Fogle?

3 A. Yes, ma'am.

4 Q. Did you know her?

5 A. Yes, ma'am.

6 Q. And how did you know Ebony?

7 A. We was friends, talking. You know, we wasn't dating
8 but, you know, we was talking.

9 Q. She was a friend of yours?

10 A. Yes, ma'am.

11 Q. I want to turn your attention back to May the 20th of
12 last year. Were you at your house that morning on Juniper
13 Street?

14 A. Yes, ma'am, I was.

15 Q. And what were you doing that morning?

16 A. Well, actually I was waiting on Cleve to come to the
17 house and -- Cleveland.

18 Q. Cleveland?

19 A. Yes, ma'am, and also during that time when I had talked
20 to him, Ebony had called me.

21 Q. Now, let me back up for a minute. Why was Cleveland
22 coming to your house that morning?

23 A. We were going to smoke.

24 Q. What were y'all going to smoke?

25 A. Weed.

1 Q. Weed?

2 A. Marijuana.

3 Q. Marijuana?

4 A. Yes, ma'am.

5 Q. And had y'all had some phone calls back and forth about
6 that or at least a phone call?

7 A. Yes, ma'am.

8 Q. And the plan was for him to come over your house,
9 according to what you knew.

10 A. Yes, ma'am.

11 Q. And you mentioned just a second ago something about you
12 got a phone call from somebody else. Who was that?

13 A. That was Ebony.

14 Q. And did you have a phone conversation with Ebony?

15 A. Yes, ma'am, I did.

16 Q. Without saying what she said to you, as a result of that
17 phone conversation, what did you expect to happen?

18 A. She was just coming to the house for me to wash her
19 truck for her real fast and show me her hair that she had got
20 done before she go to bike week.

21 Q. The plan was for her to come over that morning.

22 A. Yes, ma'am.

23 Q. And do you remember approximately what time it was when
24 Cleveland showed up?

25 A. It could have been about 12:00.

1 Q. You don't know---

2 A. No.

3 Q. ---because you weren't looking at your watch.

4 A. No, ma'am, I wasn't.

5 Q. But was it getting towards lunch time?

6 A. Yes, ma'am, it was.

7 Q. And when Cleveland got there, was Ebony there yet?

8 A. No, she wasn't there yet.

9 Q. When Cleveland got there, tell this jury what y'all did.

10 A. Well, he got there. We proceeded to smoke a marijuana
11 blunt, and I was waiting on Ebony to come so I can wash her
12 truck for her real fast and show me her hair.

13 Q. Where were y'all smoking the blunt?

14 A. In the back yard.

15 Q. In the back yard?

16 A. Yes, ma'am, we was.

17 Q. And is there an area in the back yard where there's a
18 seating area?

19 A. Yes, ma'am. There was like a little picnic table
20 outside.

21 Q. A little table?

22 A. Yes, ma'am.

23 Q. And is that where y'all were sitting?

24 **The Court:** Excuse me. Excuse me just a... Mr. Hudson,
25 if you'll not quite get so close to that mic, we won't have

1 that feedback. If you'll stay back a little bit---

2 **The Witness:** All right.

3 **The Court:** Thank you.

4 By Ms. Campbell:

5 Q. It's hard to get it just right.

6 A. Okay.

7 Q. Is that where y'all were sitting?

8 A. Yes, ma'am.

9 Q. And at first who all was in the back yard?

10 A. Just me and Cleve.

11 Q. And did anybody else show up?

12 A. Yes, ma'am.

13 Q. And who showed up?

14 A. Ebony.

15 Q. And when she got there, what did y'all do?

16 A. She pulled the car in the front, but I was already in
17 the back yard so I told her to pull it -- the truck in the
18 back yard so I can wash the truck for her real fast.

19 **Ms. Shurling:** Your Honor, I hate to interrupt, but I'm
20 concerned that the jury can't hear him. I'm having
21 difficulty over here.

22 **The Court:** You need to speak up. Can y'all hear?

23 By Ms. Campbell:

24 Q. Okay. And you pulled the truck into the back?

25 A. Yes, ma'am.

1 Q. And then what did you proceed to do?

2 A. I handed Cleve, you know, a little bit of marijuana for
3 him to -- to roll it up and smoke, you know, push it down and
4 then smoke.

5 Q. So he was supposed to roll up the marijuana?

6 A. Yes, ma'am.

7 Q. So you could smoke it.

8 A. Yes, ma'am.

9 Q. And what were you doing?

10 A. In between that time while he was doing that, I was just
11 grabbing the stuff so I could wash her truck for her real
12 fast.

13 Q. You were grabbing the stuff to wash the truck?

14 A. Yes, ma'am.

15 Q. And did you, in fact, start washing the truck?

16 A. Yes, ma'am.

17 Q. Was there anything on the table that you had brought out
18 there that morning?

19 A. Yes, ma'am.

20 Q. And what would you -- what had you put on the table that
21 morning?

22 A. A .38 revolver.

23 Q. And whose gun was that?

24 A. It was registered to my mother.

25 Q. Your mother?

1 A. My mother, yes, ma'am.

2 Q. And why did you put the .38 revolver on the table in the
3 back yard of your house that morning?

4 A. Just because I was already cautious before just because
5 I had had numerous people that done shot at my house, you
6 know, so it really wasn't no telling -- I was just being
7 paranoid. I just brought it out there just because.

8 Q. Okay. Who was seated at the table while you were
9 washing the car?

10 A. Ebony and Cleve.

11 Q. What happened next?

12 A. I just know that we were sitting down, you know. He was
13 rolling the blunt while I was washing the car.

14 Q. You're going to have to speak up a little.

15 A. He was rolling the blunt. You know, I was washing the
16 car. You know, we were just, you know, talking. We was
17 joking, you know, as I was washing the car. So I see a
18 little silver car had passed by.

19 Q. A silver car?

20 A. Yes, ma'am, a silver Honda.

21 Q. And what road did you see it on first?

22 A. Moses on the side street.

23 Q. On the side street. Okay.

24 A. Uh-huh. I see the car. The first thing -- it's early.

25 It's about 12 something. I see the car pass by. As it's

1 passing by, it's kind of creeping, but there's also a stop
2 sign right there on the corner, but it's still kind of
3 driving slow.

4 Q. Driving kind of slow?

5 A. Uh-huh. So I look at the car. I looked at the car and
6 I could see like an image, you know, of a hat on and it was
7 like mirror tint. That's all I saw. I knew---

8 Court Reporter: I'm sorry. Looks like what?

9 The Witness: Mirror tint, like silver mirror tint on
10 the window---

11 By Ms. Campbell:

12 Q. The windows---

13 A. Yeah.

14 Q. ---were tinted?

15 A. Yes, ma'am.

16 Q. So was it hard to see inside the car?

17 A. Yes, ma'am, but I could see the hat---

18 Q. But that's how it appeared to you?

19 A. Yes, ma'am. So when I seen the car pass by, you know, I
20 looked and it turned the corner, so I didn't think nothing of
21 it. I kept washing the car.

22 Q. So you kept washing the car.

23 A. Yes, ma'am.

24 Q. What happened next?

25 A. So the car rode past again. When the car rode past

1 again, I had looked again. You know, it wasn't right. You
2 know, it's early, but, you know, the car -- as far as cars be
3 riding by the house like that, you know -- like I said
4 before, someone had shot at my house just maybe like a week
5 before that when my father was standing outside.

6 Q. Well, what were y'all doing out there that morning
7 besides washing the car?

8 A. Smoking. That was it.

9 Q. Okay. So you noticed the car again.

10 A. Yes, ma'am.

11 Q. What happens next?

12 A. So when I noticed the car this time, the second time, I
13 went ahead and stopped washing the car. I walked to the
14 table. I grabbed the gun.

15 Q. You grabbed the gun.

16 A. Yes, ma'am.

17 Q. Where did you go?

18 A. I walked to the front of the yard to see if I seen the
19 car or see what was going on. I didn't see anything, but I
20 know the neighbors like -- because I heard a door close, but
21 it was the neighbors across the street from me. They was
22 just getting home. So when I noticed that, I looked to see.
23 It was nothing, you know. I didn't see the silver car or
24 nothing like that. I went back to the car -- I mean, went
25 back in the back yard. I put the gun back on the table and

1 got back to -- started back washing the car again.

2 Q. So you're back to washing the car.

3 A. Yes, ma'am.

4 Q. The gun is back on the table.

5 A. Yes, ma'am.

6 Q. And how far away are you from approximately washing the
7 car from the table?

8 A. Maybe from here to that table right there.

9 Q. From here to that table?

10 A. Yes, ma'am.

11 Q. Okay. As you're washing the car, what do you notice
12 next?

13 The Court: That would be about 20 feet?

14 Ms. Campbell: I'm not good with... Yes, sir.

15 The Court: All right. Approximately 20 -- I just want
16 the record to reflect.

17 Ms. Campbell: Thank you.

18 The Witness: So by the time I, you know, sat the gun
19 back down on the table and I started back washing the car, I
20 wasn't really thinking nothing of it, but I don't know what
21 it was, like I guess it was my instinct. I just kind of like
22 glanced behind my shoulder, look over my shoulder, and as I
23 looked I could see two people walking.

24 Q. Coming from what?

25 A. Walking from like in front of -- on the front of Juniper

1 Street from my house like coming from the top of Farrow Road
2 coming down, but they was coming across my yard though and---

3 Q. They were coming across your yard?

4 A. Yes, ma'am, like up under the carport. See, there was
5 like two separate carports and then there's like a little --
6 a side little carport, a separate one itself.

7 Q. Let me show you what's been marked as State's exhibit
8 number 33.

9 A. Uh-huh.

10 Q. Does that show an overview of your house?

11 A. Yes. Yes, ma'am, it does.

12 Q. And can you point out to the jury approximately where
13 you first saw them walking?

14 A. I was standing---

15 **The Court:** Speak up, please.

16 **The Witness:** Okay. Well, the truck was maybe like
17 right -- the truck was parked maybe like right here. The
18 table was like right here from where it was at, where they
19 were sitting at. It was like on the corner. And when I
20 glanced, I could see them. They was already in -- they was
21 already up in this part right here walking, so when---

22 By Ms. Campbell:

23 Q. And this part, it shows a roof right here---

24 A. Yeah, that's a separate carport. That's not---

25 Q. It's a carport, so you can see underneath it.

1 A. Yes, ma'am, because see there's two carports right here
2 and there's a separate one right here. So I seen the two
3 people walking right there. When I seen them look, I kind of
4 glanced and you know---

5 Q. Which direction are they walking towards?

6 A. Walking towards -- like coming towards this right here.

7 Q. Comings towards where you are?

8 A. Yes, ma'am. So....

9 Q. When you glanced back and saw those people walking
10 towards your back yard, what happens?

11 A. Well, if you could have kept the image up, I could have
12 shown you. It's like a fence. It was like a wooden wall
13 like they connected where our fence is at. You know, that's
14 our gate---

15 Q. Your home---

16 A. A privacy gate.

17 Q. Look again at State's 33.

18 A. See, like all this is fence right here. This is the
19 opening of the fence, and then this right here is the fence
20 and there's like a little -- another door that, you know, you
21 can just walk right on to our carport. There's like a brown
22 wooden privacy gate that's right here so you can't really
23 see, but once I seen them come across, this caught me. This
24 caught me, so I couldn't see them during that little quick
25 second. So as I'm still leaning down -- because I'm leaning

1 down washing the car, but I just looked over and that's when
2 I saw, you know, cats walking -- I saw the people walking up
3 on the carport. So I looked and I looked again and I see
4 them come in front of the gate and that's -- whenever I'm
5 looking down and looking up, I done seen a pistol.

6 Q. Okay. So you see two people.

7 A. Yes, ma'am.

8 Q. And then as they keep coming around, you see one with a
9 pistol or two with a pistol?

10 A. I just saw just one. I just saw one gun. I ain't even
11 looked at them, to be honest, like I ain't stared at both of
12 them to see, but I saw the gun in his hand.

13 Q. In his hand?

14 A. Yeah.

15 Q. And at that point what do you do?

16 A. When I see the gun, I cursed. I was like, "Oh, shit,"
17 or whatnot. I was like, "Oh, shit. Grab the tool."

18 Q. What did you say?

19 A. "Grab the tool."

20 Q. "Grab the tool?"

21 A. Yeah, the pistol.

22 Q. And that means the gun that you had?

23 A. Yes, ma'am. Yes, ma'am.

24 Q. And who are you saying that to?

25 A. I was telling that to Cleve. You know, he was close.

1 Q. He was close.

2 A. Yes, ma'am.

3 Q. The two people that you saw when you first looked up,
4 what did they look like?

5 A. For one, like from the distance the best -- well, not
6 the best -- the best time of me seeing them was when they
7 walked between the carport, and I just saw one guy with a
8 hoodie on and then I saw the other cap. He had a hat on with
9 a little black little shirt on, like looked little tight kind
10 of, you know, little short-sleeved shirt, but that was it. I
11 ain't even checked out -- I think he might have had on black
12 pants, but I'm really not too sure, but I know he had, you
13 know, the black shirt, black hat on, and I saw a tattoo.

14 Q. And were the two of them walking together or could you
15 tell?

16 A. Yeah, they was walking together.

17 Q. And as they proceeded towards you in the back yard and
18 you saw the pistol, are they in the back yard at this point?

19 A. No, ma'am, they're not. They're coming. They're close
20 to the gate though. They came -- a couple of steps more,
21 they're going to be in my back yard.

22 Q. And that's when you tell Cleveland to grab the tool.

23 A. Yes, ma'am.

24 Q. Then what happens?

25 A. Right when said, "Oh, shit. Grab the tool," I just hear

1 bom, bom, bom. I just hear shots going off.

2 Q. Shots?

3 A. Yeah, I hear shots going off. I hear shots going off.

4 I run. I'm running in towards Cleveland in Ebony's

5 direction. See, her back is toward -- her back was towards,

6 you know, the car. He was facing the car, you know, because,

7 see, they couldn't see -- they couldn't see the two people

8 running up because the car was blocking them. You know, me

9 washing the---

10 Q. So they couldn't see what you were seeing.

11 A. Yeah, they couldn't see that. So when I said, "Oh,

12 shit. Grab the tool," and then run past them, I push Ebony

13 out of the way.

14 Q. Why did you push her out of the way?

15 A. Because I know it was nobody coming for her, you know.

16 I knew, if anything, it was for me. She wasn't even the type

17 of female to even be like that, you know, nothing like that.

18 So that wasn't even an option.

19 Q. So you knew they were coming for you.

20 A. Yes, ma'am.

21 Q. And you pushed her out of the way?

22 A. Yes, ma'am, and proceeded to keep running.

23 Q. And which direction did you run?

24 A. I kept running in my back yard towards the fence. When

25 I run towards the fence, I still hear shots going off. I can

1 hear shots whistling past me. I jump across the fence. When
2 I jumped across the fence, there was a guy running behind me.
3 I couldn't really tell what it was. When I jumped the fence,
4 I fell, but there's like little bushes that's, you know, all
5 up on the fence and whatnot, so I could see, you know,
6 running -- foot -- somebody coming towards me.

7 Q. Could you tell which one it was?

8 A. No, I couldn't tell which one it was. So I jumped that
9 fence. When I jumped that fence, I jumped the fence -- well,
10 I jumped the fence right beside me to our neighbor next door
11 to me. I jumped their fence behind their house.

12 Q. Okay. I'm going to show you State's exhibit number 33
13 again. The whole yard is not on there. Which fence did you
14 jump first?

15 A. I jumped this fence right here. I jumped over here.

16 Q. Into that yard?

17 A. Yes, ma'am.

18 Q. And then where did you run from there?

19 A. I jumped from over there -- I still hear the shots, so I
20 jumped from this fence. I jumped and went through their
21 yard. I went through their yard. You know, I was running.
22 I still could hear shots though.

23 Q. Are you running towards Isaac Street?

24 A. Yes, ma'am.

25 Q. And is someone still behind you or can you tell?

1 A. Once I jumped the second fence into the neighbor's yard
2 behind them and I kept running, I didn't even look back. I
3 couldn't even tell you if he was still behind me or not.

4 Q. Do you know exactly how many shots you heard that day?

5 A. No, ma'am. It was a lot though.

6 Q. Could you tell what direction they were coming from?

7 A. They was coming from my house.

8 Q. Your house?

9 A. Uh-huh.

10 Q. Did someone continue to follow you after you jumped the
11 second fence?

12 A. From -- you mean when I jumped that second fence? I
13 couldn't really -- I can't say if he jumped that fence behind
14 me to keep coming. I just know I kept running because I kept
15 hearing shots.

16 Q. And where did you go? Where did you keep running?

17 A. I just ran through and went -- ran through Isaac Street.
18 Like once I cut and I was on Isaac Street, I ran across and I
19 was fixing to go through somebody else's yard, but I stopped
20 and I just was like behind somebody's house kind of sort of
21 looking at the street. That's when I noticed the -- but I
22 still hear shots going on this whole time, and I see a silver
23 car come back down that road, come on Isaac Street.

24 Q. And was it the same silver car that you saw earlier?
25 Could you tell?

1 A. Yes, ma'am, it was. Yeah, it was. Yes, ma'am.

2 Q. Are you still hiding behind the house?

3 A. Yes, ma'am.

4 Q. And which direction was it going on Isaac Street?

5 A. It was going down Isaac Street like coming from Farrow
6 Road going down.

7 Q. What happened next?

8 A. I just -- when I seen the car pass by, you know, I
9 looked to see whether it was going ahead to stop, but it was
10 riding slow. So I maybe waited about a minute or so, walked
11 back to the street, you know, because I ain't hear no -- I
12 don't hear no more shots now.

13 Q. And up until this point, to the point where you get
14 across Isaac Street, does all this happen pretty fast?

15 A. Yeah, real fast.

16 Q. So after you are behind the house and you see the car go
17 by, then you wait for a period of time?

18 A. Yes, ma'am.

19 Q. And why are you waiting?

20 A. To make sure the coast is clear and all.

21 Q. The coast is clear?

22 A. Yeah.

23 Q. And at this point are you hearing any more shots?

24 A. No, ma'am, I don't.

25 Q. What happens next?

1 A. Then I hear shots. I hear like a couple more shots go
2 on and I hear a couple more shots. I stop for a second and
3 back -- back up towards, you know, the yard that I just left
4 from, backed up for a second, and I just said -- you know,
5 I'm going to go ahead and walk to the house. So I stayed
6 walking in the middle of Isaac Street. I walked down, turned
7 on to Moses Street, and when I turned on Moses Street I saw
8 like two neighbors standing outside and whatnot like by my
9 gate. They wasn't in my yard. They were like across the
10 street. They was looking and whatnot. So as I am come in --
11 coming down the road, I go into the back yard or whatnot and
12 saw what I saw, you know.

13 Q. So you go back into the back yard off of Moses Street?

14 A. Yes, ma'am.

15 Q. And you say you saw what you saw. What did you see?

16 A. I saw Ebony.

17 Q. And where was Ebony?

18 A. She was laying down.

19 Q. On the ground?

20 A. Yes, ma'am.

21 Q. What did you do when you saw her on the ground?

22 A. I went to her and I rolled her over, you know, so I
23 could see. I rolled her over---

24 Q. You rolled her over.

25 A. ---you know, to see what was going on, you know, but she

1 wasn't responding, you know. She didn't move or nothing, and
2 I saw there was blood on her. So when I seen that, I'm shook
3 up, you know. So I -- I rolled her over and she wasn't
4 responding. I ran -- I ran and I moved over, you know,
5 because she was like laying on her side. I rolled her over.
6 I ran in the house real fast. When I ran in the house,
7 Cleveland was already in the house.

8 Q. Cleveland was already in the house?

9 A. Yes, ma'am.

10 Q. And when you got back to your back yard that day, was
11 Ebony the only one in the back yard?

12 A. Yes, ma'am.

13 Q. So after you tried to get her -- she didn't respond.

14 A. (Witness shook head from side to side.)

15 Q. You then ran into the house, and Cleveland was in there?

16 A. Yes, ma'am.

17 Q. And what happened then?

18 A. I got the gun from him and---

19 Q. Why did you get the gun from him?

20 A. Because I knew it wasn't his gun. I know the police was
21 on the way coming and I was scared. It was my mother's gun.
22 You know, I really ain't -- wasn't thinking at the time. It
23 just was out of instinct, I guess. You know, as far as me
24 trying to hide it, I just was scared.

25 Q. So did you hide the gun?

1 A. Yes, ma'am.

2 Q. Where did you hide it?

3 A. I hid the gun in my mother's room like at the headboard
4 like behind something type thing, like behind the headboard
5 where the headboard is.

6 Q. Had you shot that gun that day?

7 A. No, ma'am, I didn't.

8 Q. Did you know Cleveland had shot the gun that day?

9 A. Yes, ma'am, I did.

10 Q. Did Cleveland give you anything else besides the gun
11 itself?

12 A. Bullets.

13 Q. The casings?

14 A. Yes, ma'am, the shells.

15 Q. And what did you do with those?

16 A. I put them in the couch in the living room.

17 Q. When you got inside and you gave the gun and you hid
18 that, had he already gotten the shells out of the gun by the
19 time you got there?

20 A. Yes, ma'am.

21 Q. Then what happened?

22 A. By the time I did that and I hid the gun, I went back
23 outside. When I went back outside, I went to go pick Ebony
24 up, you know. I picked her up.

25 Q. You picked her up?

1 A. Yes, ma'am, but by the time--

2 Q. Why did you pick her up?

3 A. Just because, you know, I picked her up, you know. I
4 don't know what I was thinking. I just wasn't thinking. I
5 just wanted to pick her up, do something, you know, to see if
6 she was all right even though I knew she wasn't even
7 responding. It was too late for that.

8 Q. Did you call anyone?

9 A. I think I had called my father. I called my father,
10 told him he needed to hurry up and come to the house right
11 now.

12 Q. And do you know where your father was that morning --
13 that afternoon actually when you called him?

14 A. Yeah, he was at work.

15 Q. Where does he work?

16 A. Best Buy.

17 Q. Which Best Buy?

18 A. Two Notch.

19 Q. Did you call the police?

20 A. I could have. I could. I don't know. I couldn't even
21 remember, to be honest, if I called the police or not.

22 Q. Do you know whether or not your neighbors had called the
23 police?

24 A. I think, yeah, they already had called the police.

25 Q. And did you know that that day?

1 A. Yes, ma'am, because when I first went -- when I was
2 going back to the house, they was already saying that they
3 already had called the police.

4 Q. Did the police come?

5 A. Yes, ma'am.

6 Q. Did E.M.S. come?

7 A. Yes, ma'am.

8 Q. When the police came that day, did you talk to them?

9 A. Yes, ma'am.

10 Q. And did you tell them what had happened that day?

11 A. Yes, ma'am, I did.

12 Q. I want to show you what's been marked - and it has been
13 cleared by the Court - as State's exhibit number 56. Do you
14 recognize this?

15 A. Yes, ma'am, I do.

16 Q. And what is this?

17 A. That's that .38.

18 Q. The gun that you had on the table that day?

19 A. Yes, ma'am.

20 Q. The one that Cleveland gave you after the shooting?

21 A. Yes, ma'am.

22 Q. The one you hid.

23 A. Yes, ma'am.

24 Ms. Campbell: Your Honor, at this time we'd offer
25 State's exhibit number 56.

1 **Ms. Shurling:** No objection, Your Honor.

2 **The Court:** So admitted.

3 (State's exhibit 56 was received in evidence.)

4 By Ms. Campbell:

5 Q. And have you also had the opportunity to look at these
6 shell casings in State's exhibit 57?

7 A. Yes, ma'am.

8 Q. And are these the shell casings you hid that day?

9 A. Yes, ma'am.

10 Q. Prior to the police getting there.

11 A. Yes, ma'am.

12 **Ms. Campbell:** Your Honor, at this time we'd offer
13 State's exhibit 57.

14 **Ms. Shurling:** No problem. No objection.

15 **The Court:** So admitted.

16 (State's exhibit 57 was received in evidence.)

17 By Ms. Campbell:

18 Q. After the police got there, did they find the gun?

19 A. Not right offhand they didn't.

20 Q. But who showed them the gun that day?

21 A. I did.

22 Q. And, in fact, Investigator Reese -- you talked to him
23 and you showed him where the gun was?

24 A. Yes, ma'am.

25 Q. And where the shell casings were?

1 A. Yes, ma'am. I'm not for sure if I showed him where the
2 shell casings was at. I know I showed him the gun though.

3 Q. But did you tell him?

4 A. About the shell----

5 Q. Do you remember about the shell casings?

6 A. No, ma'am.

7 Q. Did they find them that day?

8 A. Yes, ma'am, they did.

9 Q. During the time period when you were out there and you
10 looked up and saw the two individuals, did you get a good
11 look at them?

12 A. One of them I did get a good look at---

13 Q. And which one? The one in the hoodie or the one in the
14 black?

15 A. The one in the black.

16 Q. That evening did Investigator Reese and the Columbia
17 Police Department -- did they talk to you further about what
18 had happened?

19 A. Yes, ma'am.

20 Q. Did they want to know who had been the shooter?

21 A. Yes, ma'am.

22 Q. And did you tell them the truth?

23 A. No, I lied.

24 Q. Why?

25 A. To be honest, I was scared, nervous at the same time. I

1 wanted revenge, you know, because I just know it wasn't
2 right.

3 Q. You wanted revenge on who?

4 A. That guy right there (pointing).

5 Q. So you blamed someone who had nothing to do with it?

6 A. Yeah. Yes, ma'am.

7 Q. And who did you pick to blame? How did you come up with
8 him?

9 A. Just because previous incidents that I had with plenty
10 of people shooting at my house. You know, once -- I guess
11 once people finds out where I stays at, then, you know, he
12 had cahoots -- he was a part of what was going on during the
13 time, you know, but I was just mad, you know. Like I say, I
14 just wanted revenge. I---

15 Q. Who did you tell them did it? Who did you say you saw
16 was the shooter or one of the shooters?

17 A. I said I had an idea that it could have been Bailey, but
18 it wasn't him.

19 Q. And you just picked him?

20 A. Yes, ma'am.

21 Q. Because you wanted to handle things yourself.

22 A. Yes, ma'am.

23 Q. In fact, you told them you were positive it was Jonathan
24 Bailey, didn't you?

25 A. Yeah, I did say that.

1 Q. And that's what you told them on the evening of the 20th
2 when this happened.

3 A. Yes, ma'am. I said I had an idea, you know, it could
4 have been -- it could have been him but---

5 Q. You even described like a tattoo on his arm.

6 A. Yeah, I described tattoos. Tattoos.

7 Q. And we'll go back to that.

8 A. I said tattoos.

9 Q. Three days later did the police get back in touch with
10 you?

11 A. Yes, ma'am.

12 Q. And at this point were you aware that anyone had been
13 arrested in this case?

14 A. I knew that they probably was looking for him but...

15 Q. They were looking for Bailey?

16 A. Uh-huh.

17 Q. Based on what you told them.

18 A. Yes, ma'am.

19 Q. When they talked to you again on the 23rd---

20 A. Uh-huh.

21 Q. ---did you tell them more of the truth about who did it?

22 A. No, ma'am, I didn't.

23 Q. And the part that you lied about was not about what had
24 happened. Was it about who had done it?

25 A. Yes, ma'am.

1 Q. Had you told them about the car that you'd seen the day
2 it happened on the 20th? Did you tell them about the silver
3 Honda or silver car? I'm sorry.

4 A. Yes, ma'am.

5 Q. Did you tell them the events as they happened on the
6 20th? Did you tell them all that part?

7 A. Yes, ma'am.

8 Q. But what was the part you lied about?

9 A. Who I saw. Who I saw.

10 Q. Then they talked to you on the 23rd, and at that point
11 what name came up on the 23rd?

12 A. Anthony Hackshaw.

13 Q. What did you know him by?

14 A. Bump.

15 Q. Bump?

16 A. Yes, ma'am.

17 Q. And, again, you met with Investigator Reese?

18 A. Yes, ma'am.

19 Q. And did you explain to him his involvement and how you
20 knew him?

21 A. I don't know if it was 23rd but---

22 Q. Okay. Leave the dates out because I don't want to
23 confuse you on dates. At some point did you talk to the
24 police officers about who had shot you?

25 A. Yes, ma'am.

1 Q. And at this point did you identify or did you tell them
2 about a situation between you and Bump?

3 A. Yes, ma'am.

4 Q. And what was it over?

5 **Ms. Shurling:** Objection, Your Honor. At this point I'm
6 going to -- this portion of the testimony is subject to my
7 previous objections.

8 **The Court:** All right. Objection noted. I've
9 previously ruled.

10 **Ms. Campbell:** Thank you.

11 **The Witness:** Could you repeat that?

12 By Ms. Campbell:

13 Q. What was -- what was your relationship about?

14 A. Drugs.

15 Q. So not to confuse you, you talked to the police again on
16 June the 4th. Is that correct? Or later?

17 A. Yes, ma'am. Yes, ma'am.

18 Q. And I believe to the sheriff's deputies. Is that
19 correct?

20 A. Yes, ma'am. They came and got me from Alvin S. Glenn.

21 Q. And at that point did you come clean about an incident
22 that had happened about two or two and a half weeks before
23 this shooting, this murder?

24 A. Yes, ma'am, I did.

25 Q. And what had happened that ultimately led to this murder

1 between you and Bump?

2 A. A drug deal gone bad.

3 Q. Let's be more specific.

4 A. Basically a robbery.

5 Q. And who was the robber?

6 A. You could say I was the robber.

7 Q. And who was the victim of the robbery?

8 A. Bump. Anthony Hackshaw.

9 Q. Hackshaw?

10 A. Uh-huh.

11 Q. And at that point you knew him as Bump?

12 A. Yes, ma'am.

13 Q. Did you know his real name as well?

14 A. That's all I knew him as.

15 Q. Bump?

16 A. Yes, ma'am.

17 Q. But you had been able to give police on prior occasions
18 information about his identity. Is that correct?

19 A. Yes, ma'am.

20 Q. And when you finally talked to the police, did you tell
21 them about the incident where you were robbing Bump?

22 A. Yes, ma'am, I did.

23 Q. Tell the jury what you did.

24 A. I went to go see him one day, you know, to get some weed
25 from him.

1 Q. Whoa, whoa, whoa. You're mumbling.

2 A. To go buy some weed.

3 Q. You went to buy some weed?

4 A. Yes, ma'am.

5 Q. From whom?

6 A. Bump.

7 Q. Okay. And where did you go to do that?

8 A. I'm guessing that was at his house or apartments. I
9 forgot the name of them, but it's off of Parklane.

10 Q. It's off of Parklane?

11 A. Yes, ma'am.

12 Q. In an apartment complex?

13 A. Yes, ma'am, a little gated...

14 Q. And who was with you that day?

15 A. Me and a friend of mine, Sheldon.

16 Q. Sheldon? What's Sheldon's nickname?

17 A. Hot Boy.

18 Q. Hot Boy? And when you went to the apartment complex,
19 how had you set it up so you'd meet Bump?

20 A. Well, originally I was going to buy weed from him.

21 Q. That was what you told him?

22 A. Yes, ma'am. That's what I was going to do actually.

23 It's a situation -- I'm going to tell you about it but---

24 Q. Yeah, you tell me.

25 A. I went to go get some weed from him. When I walked back

1 that way back to the apartment by myself, I told him -- I was
2 like, "My homeboy, you know, he wants to go half with my
3 weed." So he's fixing to come back to (unintelligible words
4 spoken).

5 Q. Wait, wait, wait. I can't understand you.

6 A. I asked him could my homeboy come back there, too,
7 because we was going to half it---

8 Q. Can your homeboy come back there, too?

9 A. Uh-huh.

10 Q. And so you went and met with Bump first?

11 A. Yes, ma'am.

12 Q. Where did that take place? Inside or outside?

13 A. Outside.

14 Q. In this apartment complex?

15 A. Yes, ma'am, on the stairwell in the back.

16 Q. Okay. And how much weed were you planning on buying?

17 A. I was originally going to get like maybe two ounces or
18 something like that.

19 Q. Two ounces?

20 A. Yeah.

21 Q. How much is two ounces worth?

22 A. Like a thousand dollars.

23 Q. A thousand dollars?

24 A. Yes, ma'am.

25 Q. And you went back and talked to him first?

1 A. Yes, ma'am.

2 Q. And at that point where was Sheldon or Hot Boy?

3 A. He was still in the car.

4 Q. And then what happened?

5 A. I told him to come back there, too, or whatnot with me,
6 you know, so we can, you know, get what we was coming to get.
7 By the time I went to the back of the apartment complex to
8 get him, I turned back around and there was another guy
9 there.

10 Q. Another guy?

11 A. Yes, ma'am.

12 Q. With Bump?

13 A. Uh-huh.

14 Q. Did you know the second guy---

15 **The Court:** You need to say yes or---

16 **The Witness:** No, ma'am. Sir?

17 **The Court:** Don't say uh-huh. Say yes or no, whatever
18 the answer.

19 **The Witness:** Yes, sir. I didn't know who the other guy
20 was.

21 By Ms. Campbell:

22 Q. And where were Bump and this other guy standing when you
23 went to the front of the complex?

24 A. They were standing back at the stairwell.

25 Q. Did he come outside from an apartment or what?

1 A. I think he came out from an apartment.

2 Q. He just appeared.

3 A. Yes, ma'am.

4 Q. And at that point you went to get Sheldon.

5 A. No. By that time I was already going to get him. Yeah,
6 I was coming back from telling him to come on, too, with me.

7 Q. And was he with you?

8 A. He was right behind me walking.

9 Q. And at that point as you're approaching back to where
10 you left Bump, you see another guy.

11 A. Yes, ma'am.

12 Q. Then what happens?

13 A. I still went back there, went in my pocket, started
14 counting up my money or whatnot. I just glanced over at the
15 other guy who was with Bump. I glanced over. I saw a pistol
16 on his hip. When I seen the pistol on his hip, you know, it
17 was just me and, you know, as far as what I'm doing, you
18 know, as far as selling drugs and, you know, stuff like that,
19 as far as having the gun, you know, I'm just -- I ain't
20 trying -- I wasn't trying to get him to rob me. I wouldn't
21 have pulled my gun on him if I felt like he wasn't. I mean,
22 I done dealt with plenty of people who---

23 **Court Reporter:** I'm sorry. Whoa, whoa, whoa.

24 By Ms. Campbell:

25 Q. Slow down. Just slow down a little bit.

1 A. Okay.

2 Q. Okay. You see a gun on his hip.

3 A. Yes, ma'am.

4 Q. The guy you don't know.

5 A. Yes, ma'am.

6 Q. And where is Bump standing in relation to him?

7 A. He's standing on the stairwell.

8 Q. And at that point you do what?

9 A. I stop counting my money.

10 Q. You stopped counting your money?

11 A. Uh-huh, and I pulled my gun.

12 Q. Where had you -- you brought your gun with you that day?

13 A. Yes, ma'am.

14 Q. Which gun is this?

15 A. This is a .22.

16 Q. And where did you keep your .22 that you brought with
17 you to do your drug deal that day?

18 A. On my hip.

19 Q. And why had you brought a gun with you that day?

20 A. Just because, I mean, doing -- like I say, doing what I
21 was doing---

22 **Court Reporter:** If you could pull back from the mic and
23 speak up.

24 By Ms. Campbell:

25 Q. It's hard to get it just right.

1 A. Like I say, doing what I was doing and, you know, as far
2 as selling drugs, I just wasn't trying to, you know, get
3 robbed, to be honest with you.

4 Q. Well, you ended up robbing somebody else.

5 A. Keep it for -- keep it for protection. Yes, ma'am,
6 that's what it ended up being.

7 Q. So when you pulled your gun, what did you do with it?

8 A. I pulled -- I pulled my gun on the guy who had the gun
9 on his hip.

10 Q. But he didn't have the gun in his hand.

11 A. No, huh-uh. He had it on -- like I saw -- like he -- it
12 was a shirt. He was in -- like up under his shirt. I
13 wouldn't have even saw it unless his shirt was up. It was
14 up.

15 Q. And at the point that you pull out your gun, what
16 happens and what do you do?

17 A. Well, as soon as I pulled my gun out, I pointed it --
18 pointed it straight to the guy who had the gun on him. When
19 I pulled the gun on him, he acted like he was trying to
20 reach, but he fell on the side of the building like where the
21 apartment is at behind the building, so I kept my gun on him.
22 Well, during that time---

23 Q. Who fell?

24 A. The guy who had the gun on him who was with---

25 Q. He backed up?

1 A. Yes, ma'am.

2 Q. And fell?

3 A. Yes, ma'am.

4 Q. Why did he back up?

5 A. I guess he was trying to reach for his gun, but I was
6 rushing him at the same time because I knew he had a gun on
7 him.

8 Q. Okay.

9 A. He fell or whatnot. I kept my gun on him. I kept my
10 gun on him. I looked back over, and I saw the Bump guy
11 running upstairs and he throws the bookbag -- he just throws
12 the bookbag back.

13 Q. He throws the bookbag.

14 A. Yes, ma'am.

15 Q. And when he threw the bookbag, what did you do?

16 A. My friend caught the bookbag with the weed in it.

17 Q. Sheldon?

18 A. Yes, ma'am.

19 Q. He got the bookbag.

20 A. Yes, ma'am.

21 Q. What did y'all do then?

22 A. By that time when he threw the bookbag back, I knew that
23 Bump was going to go get a gun. I knew that before -- I know
24 that just because of maybe like a day or two before that that
25 I had went to go deal with him, he had just asked me did I

1 have some nine bullets, you know, and I was like -- I was
2 like, "Hell no. I don't even rock like that." That's what
3 my words was to him as far as, you know, me dealing with
4 him---

5 Q. So you thought he was going to get a gun. You've got
6 his bookbag at this point or Sheldon does.

7 A. Yes, ma'am.

8 Q. You've got the gun.

9 A. Uh-huh.

10 Q. What then happens?

11 A. Sheldon already ran -- you know, ran back to the car.
12 By that time I still had my gun on the other guy, but I was
13 backing up. I ran to -- you know, ran to the car. By the
14 time I jump in the car, you know, he was fumbling, you know,
15 trying to get the key to put in the ignition or whatnot. He
16 was -- the key dropped.

17 Bump, he come out on the stairwell. You know, he's up
18 on the top floor like on the first floor, but he just walked
19 to the front. When he walked to the front, you know, I see
20 the gun and I see him getting ready to point his gun. When
21 he pointed his gun, he fired. When he shot at me, I fired
22 back at him, you know. We started shooting. We was shooting
23 back and forth at each other while we was still---

24 Q. In an apartment complex.

25 A. Yes, ma'am, while the car was still parked at the time.

1 By the time he put the car in drive, we still were shooting
2 -- well, he -- you know, he was shooting because I ain't
3 never got -- there was only like five or six bullets in the
4 .22 revolver. So he was still shooting at the car. I shot
5 back at him a couple of times. We were stuck at the gate,
6 you know, for it to open up. He's still shooting or whatnot
7 at the car. He never hit the car or nothing like that.

8 Q. He never hit the car?

9 A. Yes, ma'am.

10 Q. Whose car was it?

11 A. It was a female's car.

12 Q. It wasn't your car.

13 A. No, ma'am.

14 Q. And does the gate open up for you?

15 A. Yes, ma'am.

16 Q. And do you leave?

17 A. Yes, ma'am.

18 Q. And at this point you've got his backpack.

19 A. Yes, ma'am.

20 Q. Which you took at gunpoint.

21 A. Yes, ma'am.

22 Q. And then you leave the complex with that. Did you know
23 what was in the backpack?

24 A. Yes, ma'am.

25 Q. What?

1 A. It was weed. Marijuana.

2 Q. How much?

3 A. Maybe like seven, eight ounces.

4 Q. Is that a lot?

5 A. Yeah, somewhat. Yes, ma'am.

6 Q. Well, if two ounces is worth a thousand...

7 A. Uh-huh. About \$3,000.

8 Q. Did you take the weed back to Bump and tell him you
9 didn't mean to rob him?

10 A. No, ma'am, I didn't.

11 Q. Did you talk to weed -- to Bump, excuse me, any more
12 after that?

13 A. Yes, ma'am, I did.

14 Q. What was nature of that conversation?

15 A. He was basically like, you know, bring it back. Bring
16 the shit back. He want my head type thing, you know.

17 Q. That's what he was saying to you?

18 A. Yes, ma'am.

19 Q. Did you take his stuff back?

20 A. No, ma'am.

21 Q. What did you do with the weed?

22 A. I kept it. I sold it.

23 Q. And that last conversation with the police, by that time
24 had they been able to get Bump's real name?

25 A. Yes, ma'am.

1 Q. And did they show you some photographs?

2 A. Yes, ma'am.

3 Q. And in those photographs was there a picture of the
4 person that you knew as Bump?

5 A. Yes, ma'am.

6 Q. And when the police showed you those photographs, what
7 did you tell them?

8 A. That that was him.

9 Q. That was him?

10 A. Yes, ma'am.

11 Q. When you meant that was him, that was who?

12 A. That was Anthony Hackshaw.

13 Q. Is that the person that you saw -- one of the two guys?

14 A. Yes, ma'am.

15 Q. When Ebony got murdered?

16 A. Yes, ma'am.

17 Q. Why did you lie to the police?

18 A. I guess stupid, you know. Like I said, I was nervous
19 for my family. You know, the men knew where I stayed at.
20 They ran across my yard. You know, that's where my family
21 sleep at.

22 **Court Reporter:** I can't understand you.

23 **The Witness:** I said that's where my family sleep at.
24 That's where my family sleep at, you know. That's -- you
25 know, that's my home, you know, and I'm threatened for my

1 life and my family's life and---

2 By Ms. Campbell:

3 Q. When you accused Jonathan Bailey, how were you going to
4 handle it by accusing the wrong person?

5 A. I was going to try to find my own justice.

6 Q. Why didn't you?

7 A. I couldn't find him.

8 Q. You mentioned some tattoos that you observed. When you
9 saw the guy in the black hat---

10 A. Yes, ma'am.

11 Q. ---what tattoos did you observe?

12 A. It was like a bunch of tattoos like planes, something
13 like that, over his arm. I think there was -- it might have
14 been his left arm, too. All I saw like was planes and -- but
15 there was tattoos and I know -- I know it would be just
16 because I can't even see that good and being from that
17 distance, you know, I could see that -- that whole -- that
18 man's arm.

19 Q. Now, back in 2008 you were convicted of two counts of
20 auto breaking?

21 A. Yes, ma'am.

22 Q. And right now you are currently charged with obstruction
23 of justice in this case.

24 A. Yes, ma'am.

25 Q. And that's pending?

1 A. Yes, ma'am.

2 Q. And have you been promised anything in order for you to
3 get up here and testify today?

4 A. No, ma'am, I wasn't.

5 Q. On your obstruction of justice charge I believe you're
6 facing up to 10 years?

7 A. Yes, ma'am.

8 Q. And has anybody from my office or anybody told you you
9 were going to get any kind of deal?

10 A. No, ma'am.

11 Q. Were you ever charged with the robbery of Anthony
12 Hackshaw?

13 A. No, ma'am, I wasn't.

14 Q. What did the police tell you about that?

15 A. During that time they was just saying it's deeper than
16 that. It's not -- they're not even worried about no weed.
17 They're worried about, you know, the victim, Ebony.

18 Q. They wanted the truth?

19 A. Yes, ma'am.

20 Q. So you never got charged with that.

21 A. No, I didn't.

22 Q. And just for the record, the first time you talked to
23 the police you told them the truth about what happened?

24 A. Yes, ma'am.

25 Q. What part did you lie about?

1 A. I lied about who I saw.

2 Q. Who you saw?

3 A. Yes.

4 Q. And the second time you talked to the police you told
5 them about Bump?

6 A. Yes, ma'am.

7 Q. But you didn't tell them about the prior robbery until
8 the third time.

9 A. Yes, ma'am.

10 Q. The person that you know as Bump, the person that you
11 saw that day, the person you robbed of his drugs---

12 A. Yes, ma'am.

13 Q. ---is he here in the courtroom?

14 A. Yes, ma'am.

15 Q. Can you point him out for the jury?

16 A. Right there.

17 Q. What's he wearing?

18 A. That suit right there that---

19 Q. Is he sitting with his lawyers?

20 A. Yeah, in the middle.

21 Ms. Campbell: Your Honor, may the record reflect he's
22 identified the defendant?

23 The Court: The record will reflect he's identified Mr.
24 Hackshaw.

25 Ms. Campbell: I don't have anything further, Your

1 Honor.

2 The Court: All right. Ms. Shurling?

3 Ms. Shurling: Thank you.

4 Cross-Examination

5 By Ms. Shurling:

6 Q. Mr. Hudson, how many times did you talk to the police on
7 May 20th, the day of the shooting?

8 A. Once.

9 Q. Once?

10 A. I mean, when I went down they talked to me a little bit
11 at the house when the incident first happened, then at the
12 station.

13 Q. So you talked to the police at the scene of the shooting
14 and then you talked to them at the police department.

15 A. Yes, ma'am.

16 Q. So that's twice; right?

17 A. Yes, ma'am.

18 Q. Okay. And when you first talked to the police, you
19 denied knowing who was responsible for the shooting; right?

20 A. Yes, ma'am.

21 Q. You gave them just a vague description of who had come
22 up in the yard; right?

23 A. No, I didn't give them a vague description. The
24 description that I gave was correct. As far as what I saw
25 and the description of the clothes and all that, that was

1 correct.

2 Q. Well, let's talk about what you did describe. You
3 described someone wearing a black hat and black shirt.

4 A. Uh-huh. Correct.

5 Q. And low-cut hair.

6 A. He had a hat on.

7 **Court Reporter:** I didn't understand you.

8 **The Witness:** He's got a hat on.

9 By Ms. Shurling:

10 Q. All right. You also described the individual -- well,
11 you described seeing a new silver Honda; right?

12 A. Correct.

13 Q. What else did you say about the Honda?

14 A. It had tint.

15 Q. Pardon?

16 A. It had tint on the windows, and I forgot the tags but...

17 Q. Well, when you described it to the police, you described
18 it as a new silver Honda with a hatchback, did you not?

19 A. Correct.

20 Q. A hatchback Honda. How many doors did it have?

21 A. I think it was like a two-door.

22 Q. Pardon?

23 A. Two-door.

24 Q. Did you tell the police that?

25 A. I think so; yes, ma'am. If I'm correct, I believe I did

1 say that. I don't know if I said two doors, but I know I
2 said it was a silver Honda.

3 Q. Is this your handwriting?

4 A. Yes, ma'am, it is.

5 Q. Can you identify this as the statement you signed on
6 May 20th?

7 A. Yes, ma'am. This is it. That's it.

8 Q. Did you say anything in here about it having two doors?

9 A. I didn't even read this, but I'm not too sure if I said
10 two doors or not.

11 Q. You didn't read your statement before---

12 A. I mean, I read -- I have read my statement, but I didn't
13 pay no attention, you know, or nothing like that, but I read
14 my statement. You know, I know what I wrote, and what I
15 wrote was correct. Now, as far as me remembering if I put it
16 down two doors or four doors, I can't really say. There was
17 a lot going on at the time, so I can't really say what it
18 was.

19 Q. Well, you've talked to the police quite a few times
20 about this incident since May 20th, haven't you?

21 A. Yes, ma'am.

22 Q. And this is the first time you've ever said it had two
23 doors, isn't it?

24 A. I'm not really sure if I said it or not, two doors or
25 four doors. I can't -- I can't say if I said it or not.

1 Q. Okay. So you're not sure whether it was a two-door or
2 four-door.

3 A. I believe it was a two-door Honda.

4 Q. But you're not sure.

5 A. I'm pretty sure it was a two-door Honda. I was close
6 enough to the car to see it when it passed by.

7 Q. Okay. Well, you're under oath and you just said a
8 moment ago that you're not sure whether it was a two-door or
9 four-door. Is that true?

10 A. Well, I know it was a two-door. It was a two-door
11 silver Honda. I know because it was that close to me when it
12 passed by. I saw it twice. I wasn't -- you know, I saw it
13 pass by my house during that time period with me doing what I
14 was doing.

15 Q. Okay. How many people did you see in the car when it
16 passed by?

17 A. During that time the only thing I saw was -- I didn't
18 even see the driver, but I saw the passenger because I saw
19 like a hat on his head. I could see good just because of the
20 image behind the tint, but, you know, I just saw like the
21 bill of the hat as they be riding. You know, I mean, he
22 looked -- they're looking at me. That's what made me want to
23 walk to the front yard again to see what was going on.

24 Q. Okay. What was so unusual about a silver Honda driving
25 around in your neighbor at lunchtime?

1 A. It ain't that unusual, but for that time period and for
2 what five -- about a 10-minute span for the car to ride past
3 my house like that twice, creeping like I seen people that
4 shot at my house before, so I'm already -- I was already
5 paranoid anyway, you know. That's just what it was.

6 Q. How many times has your house been shot up?

7 A. I don't know. I guess somebody -- twice or something
8 like that. Maybe twice. Once? Twice? You know, sometimes
9 -- you know, it happened one time. My mother made an
10 incident or whatnot. The second time -- you know, they ain't
11 do nothing the first time, so there wasn't really no -- ain't
12 nobody called the police the second time. They ain't do no
13 damage.

14 Q. They didn't do no damage?

15 A. I mean, as far as shooting up the house, there wasn't
16 nothing going on. No windows were busted. Ain't nobody seen
17 nothing. It was dark time and nobody's telling.

18 Q. So somebody is shooting at your house again which is no
19 big deal?

20 A. Yeah, it's a big deal, but, you know, it's a -- but, I
21 mean, if you don't know nothing and you haven't seen nothing
22 and nobody is not saying nothing, the only thing you can say
23 is somebody shot at your house.

24 Q. Okay. Now, on May 20th when you finally decided to come
25 clean, you told the police that you recognized black hat as

1 John Bailey; correct?

2 A. Yeah, I said that. Yeah. Yeah, I said that.

3 Q. And you said you were positive it was John Bailey,
4 didn't you?

5 A. Yeah, I said that. I said I was lying, too.

6 Q. You said you were positive it was John Bailey and you
7 even told the police you knew why John Bailey would be after
8 you, didn't you?

9 A. Yeah.

10 Q. What reason did you give the police for why John Bailey
11 would be after you?

12 A. Just because I had -- I had homeboy problems. I done
13 had, I guess, a beef with his homie. He's a -- you know, his
14 homeboys or whatnot. So, you know, there was people shooting
15 at my house, you know, threatening, calling my phone or
16 whatnot, snitch this, snitch that. You know what I'm saying?
17 So you know...

18 Q. You were a little more specific about it than that,
19 weren't you?

20 A. What's that? Yeah. Somebody, you know -- a dude -- a
21 guy shot at my house before---

22 Q. Mr. Hudson, if you could stop for a second.

23 A. Uh-huh.

24 Q. I'm not trying to be insulting, but it's very important
25 for this jury to understand you.

1 A. I understand that.

2 Q. Slow down a little bit and speak clearly so that you can
3 be understood, please.

4 A. Go ahead.

5 Q. You were very specific with law enforcement, weren't
6 you, about why Jonathan Bailey would be after you?

7 A. Yes, ma'am.

8 Q. And what did you tell the cops?

9 A. That he wanted -- basically he was looking for me
10 because a friend of his got locked up behind shooting from
11 hitting my mother's car one day or whatnot, so I guess they
12 were trying to say I snitched -- I snitched on them or I
13 snitched on him, you know. So that's basically what it was
14 about, you know.

15 Q. You told them a little bit more than that, too, didn't
16 you?

17 A. As far as the beef, yeah. I had a beef -- I had a beef
18 with friends of his and all that stuff. You know what I
19 mean? They knew about that as far as what was going on
20 between me and him. Yeah, I had a beef with his friends, you
21 know. And it's like you're beefing with one of them; you
22 might as well say you got a beef with all of them. You know
23 what I mean? Nobody is going to like you.

24 Q. You told the police that Jonathan Bailey would have been
25 after you because you had snitched?

1 A. Yeah, he say I snitched on his friend.

2 Q. Pardon?

3 A. He say I snitched on his friend.

4 Q. His friend. What's his friend's name?

5 A. Might have been like Tyrone? Something like Tyrone?

6 Q. And you said that you knew Jonathan Bailey how?

7 A. I forgot exactly how I said I know him, but I just -- I
8 knew of him in the streets, you know. I hear about his name
9 a lot and all that. I ain't known him personally; he didn't
10 know me like that.

11 Q. Isn't it a fact that you told the police you knew him to
12 be a member of the Tree Top Piru set of the blood's gang?

13 A. I mean, yeah, that's true.

14 Q. And the young man that you told on for shooting up your
15 mother's car -- you were in the car when it was shot up, by
16 the way, weren't you?

17 A. No, I was standing outside of the car in my yard.

18 Q. You were in close proximity to those bullets, weren't
19 you?

20 A. I was close, yeah.

21 Q. And the young man that you identified as shooting was
22 also a member of the Tree Top Piru.

23 A. Yeah. I said -- I said I never even saw it. I just
24 seen the car, a Maxima. I never even saw who it was.

25 Q. Pardon?

1 A. I told the police, yeah, he shot at my house -- I mean,
2 shot at the car. I never seen his face. I saw the car. I
3 never seen him. I thought it was the passenger shooting.

4 Q. In your statement that you gave on May 20th did you or
5 did you not tell the police that Jonathan Bailey would be
6 after you because he thought you snitched about T.J. shooting
7 up my mom's house and car?

8 A. Yeah, I said that.

9 Q. And also somebody shooting up D-Boy's house.

10 A. Yeah. There was a lot of people trying to say I did a
11 shooting. They're trying to say that I shot up, I guess, the
12 man -- the D-Boy -- his house.

13 Q. Okay. Speak up, Mr. Hudson. Who is D-Boy?

14 A. I guess that's their homeboy.

15 Q. You have identified him as being more than just a
16 homeboy, haven't you?

17 A. That's their homeboy. That's their homie guy, whatever
18 that organization is called.

19 Q. Pardon?

20 A. I said I guess he's the big homie, however, that
21 organization goes, you know. He could be the---

22 **Court Reporter:** I didn't understand you.

23 **The Witness:** I said he's like a -- I guess he's a big
24 homie.

25 By Ms. Shurling:

1 Q. Okay. Well, in your statement---

2 A. Do whatever -- huh?

3 Q. In your statement you had a clearer description of it,
4 didn't you?

5 A. I can't really say. Yeah, I was lying. I was lying.

6 Q. Okay. You described him as the head leader of Tree Top,
7 didn't you?

8 A. I said, yeah, I think he is.

9 Q. Yes, you did?

10 A. Yeah, I think he is the -- I think he is.

11 Q. And in that statement you were asked if you were a gang
12 member---

13 **Ms. Campbell:** Objection, Your Honor. May we approach?

14 (Whereupon, a bench conference was held.)

15 By Ms. Shurling:

16 Q. In your May 20th statement did you tell the police that
17 you used to be a gang member?

18 A. Correct.

19 Q. But at the time on May 20th you described yourself as
20 just now hanging out with Bloods, Crypts, and Folks; right?

21 A. I be in -- I hang with all of them. Regardless of what
22 I was, I hang with them all. They was my homeboys. It
23 wasn't nothing like that. I deal with a lot of them.
24 There's just certain ones I don't deal with.

25 Q. Well, when you were in a gang which gang were you in?

1 A. I was a crypt.

2 Q. You were a crypt?

3 A. Yeah, I was a crypt.

4 Q. Do a lot of people get out of gangs?

5 A. No. Yeah, if you can try to -- you can try to set
6 yourself aside from it, but it ain't never happen like that.

7 Q. Well---

8 A. I mean, people respect what you do as far as your
9 decisions, you know, but once you're out, you're out, you
10 know.

11 Q. Well, do members of these gangs socialize with each
12 other?

13 A. Some do... Some do. I mean, as far as this little bit,
14 it ain't always about that (unintelligible words spoken).
15 It's about money.

16 Q. Well, let's back up just a little bit. When this first
17 happened, you told the police that the guy you really got a
18 look at was the one with the black hat and the black shirt;
19 right?

20 A. Correct.

21 Q. And it's your testimony here today that you recognized
22 that person that day as my client, Anthony Hackshaw.

23 A. Yeah, that's him. That was him. He was the guy.

24 Q. Let's be clear. You're not saying that at some time in
25 the future you decided that's who it was. You're claiming

1 that on May 20th you knew it was Anthony Hackshaw.

2 A. Yeah, I did.

3 Q. And you had no problem lying to the police and blaming
4 an innocent man.

5 A. You could say that.

6 Q. Well, did you tell the police Jonathan Bailey did it?

7 A. Like I said, I dealt with them -- I told them I never
8 seen his face. I never said I seen Bailey's face. I said
9 I've got an idea it could have been him, but I never said I
10 actually saw his face.

11 Q. You never told the police you were positive it was
12 Jonathan Bailey.

13 A. Look, when I got interrogated and all that stuff, man, I
14 said maybe it could have been (unintelligible words spoken).
15 At one point it was like -- but I ain't basically put that
16 gun in the man's hand. You know what I mean? Because I
17 wasn't -- I wasn't going to leave.

18 Court Reporter: I didn't understand you.

19 By Ms. Shurling:

20 Q. Please answer my question. Did you or did you not tell
21 the police that you were sure it was Jonathan Bailey?

22 A. Yeah, I said that.

23 Q. You said it.

24 A. Yeah. Correct.

25 Q. And today you're claiming you knew at the time that you

1 were blaming an innocent man. He didn't do it. That's your
2 story.

3 A. Yes, ma'am.

4 Q. That's this version of the truth.

5 A. That's the truth. Yeah, I lied; I said that. Like I
6 said, I wanted revenge. I felt like that, you know, that
7 wasn't supposed to happen to her. That wasn't her -- that
8 was my responsibility. That was supposed to happen to me, I
9 felt like, so -- and being that it happened to her, I felt
10 like that was what I was going to do.

11 Q. You were going to kill two birds with one stone, weren't
12 you? Is that what you're saying?

13 A. I mean, if that's what you call it. I won't say...

14 Q. Okay. When you eventually changed your story and
15 claimed it was my client, Anthony Hackshaw, what reasons did
16 you give the police for now knowing that it was Mr. Hackshaw,
17 Bump, as you call him?

18 A. They was already finding that out themselves. They was
19 doing their own investigation. They came to me. They knew
20 what was going on and who it was. You know, like I said, I
21 didn't want to tell and say what was going on and put myself
22 in a predicament or get myself locked up just because of the
23 greed of me and this man shooting at each other. You know
24 what I'm saying? And the whole robbery. So I was just
25 trying to kill all that and get my full---

1 Q. Mr. Hudson, let me remind you that your interviews with
2 the police were taped.

3 A. Yeah, I understand that.

4 Q. Are you claiming that the police told you they already
5 knew it was Hackshaw before you just agreed with them?

6 A. I mean -- I mean, when they came to me, they was
7 basically saying that -- what about the Anthony Hackshaw guy?
8 We heard about your robbery. Yeah, and I admitted to it.
9 Yeah, I robbed him. That's what it was. I told the police
10 -- I told the police exactly what the story was.

11 Q. Ah, so the police suggested the name Hackshaw to you.

12 A. Yes, ma'am, but they basically knew though.

13 Q. Pardon?

14 A. They basically knew though. When I went down to Alvin
15 S. Glenn -- I mean, when I went down to Richland County, they
16 already had pictures of my homeboy. They already had
17 pictures of a girl who supposedly - you know what I'm saying
18 - who called it in, that stuff there. I didn't ever tell the
19 police I didn't know nothing about it. So I already knew
20 that they knew what it was.

21 Q. Mr. Hudson, you're telling us today under oath that the
22 police told -- already knew it was Hackshaw and said what
23 about that Hackshaw guy.

24 A. No. They was just asking me what was going -- you know,
25 as far as them hearing about it. When the incident happened,

1 people talked. People was already talking about -- my father
2 don't even know nothing about what's going on in the street
3 and he could tell me -- and he tell me that this man is
4 looking for me. You know what I'm saying? He---

5 Q. And they asked you---

6 A. He already know.

7 Q. And they asked you about Anthony Hackshaw.

8 A. They asked me what about him, what do I -- what's my
9 dealing with Anthony Hackshaw and I admitted, yeah---

10 Q. Before you named him as one of the shooters on May 20th.
11 Yes or no, Mr. Hudson?

12 A. Yes, ma'am.

13 Q. Thank you. Now, when you eventually decided to tell
14 them about this incident on May 23rd -- which, by the way,
15 was almost a month earlier, not two and a half weeks; right?

16 A. What?

17 Q. April 23rd is almost a month earlier than May 20th,
18 isn't it?

19 A. I can't even -- are you talking about when the incident
20 happened between me and him?

21 Q. Pardon?

22 A. Are you talking about the incident between me and---

23 Q. Yes.

24 A. I can't even say when it was, if it was that long a
25 period. I don't know about April. I believe it was May.

1 Q. Well, if law enforcement's documents indicate that it
2 was reported on April 23rd, you don't dispute that, do you?

3 A. Oh, well, yeah, that's correct then, if you say it's the
4 23rd.

5 Q. Okay. So in this ever evolving story of yours, when you
6 first told law enforcement about the thing in April, you
7 didn't tell them you robbed Hackshaw, did you?

8 A. No, ma'am, I didn't.

9 Q. You lied again, didn't you?

10 A. Trying to cover up myself.

11 Q. You told them---

12 A. Like I say, I didn't want to get myself -- I wasn't
13 trying to get myself locked up. During that time I just
14 wasn't thinking and I just didn't say nothing.

15 Q. I think we see that, but on April -- the incident on
16 April 23rd when you finally talked about it, you claimed that
17 you were just driving by when you got shot at, didn't you?

18 A. Yes, ma'am. Yes, ma'am.

19 Q. When you first told the police about having a thing with
20 my client on April 23rd, you lied.

21 A. Yes, ma'am.

22 Q. Assuming the story today is true. You lied and said
23 just drove by and got shot at. Isn't that true?

24 A. Yeah, and the story that I'm telling here is the truth.

25 Q. Now, a little while ago you said when my client asked

1 you if you had nine bullets you said you didn't roll like
2 that. Is that how you said it?

3 A. Yeah, that's exactly what I said.

4 Q. Well, let's review, shall we? You were using a .38 at
5 the scene registered to your mother; correct?

6 A. Correct.

7 Q. You admit to having a .22 in your possession that you
8 used when you robbed my client; correct?

9 A. Correct.

10 Q. And in the statement you finally gave, you also admitted
11 having a .40 caliber gun under the seat of the car that day,
12 didn't you?

13 A. Yes, ma'am.

14 Q. But you don't roll like that.

15 A. That's what I told him.

16 Q. You referred to that .38 as a tool?

17 A. Yes, ma'am.

18 Q. As in tool of the trade?

19 A. I don't -- I guess so, if that's what you want to say.

20 Q. Why else would you call it a tool?

21 A. Because it's called a tool. That's a tool.

22 Q. A tool.

23 A. Uh-huh.

24 Q. T-O-O-L?

25 A. T-O-O-L, yeah.

1 Q. Tool. That's what I thought you said.

2 A. Uh-huh.

3 Q. All right. Let's go back to May 20th and what happened
4 at the scene. You're washing the car on the far side by the
5 table; is that correct? When you first saw someone entering
6 the yard, you're claiming you were washing the car on the far
7 side next to the table, not the house. Is that correct?

8 A. My back was toward the house.

9 Q. Your back was toward the house.

10 A. Uh-huh.

11 Q. So you were washing---

12 A. I was washing the driver's side.

13 Q. The driver's side.

14 A. Correct.

15 Q. And you glanced over your shoulder and saw people
16 running through your yard---

17 A. They wasn't -- they wasn't even running. They was
18 walking.

19 Q. Walking.

20 A. Uh-huh.

21 Q. Walking through your yard parallel with Juniper Street.

22 A. Yes, ma'am. They was coming down -- they was coming
23 down---

24 Q. Have you got x-ray vision?

25 A. They was coming down Farrow Road, like coming down from

1 that way from the top of Farrow Road to Juniper.

2 Q. Oh, I understand that. Let's look at the picture.

3 Shall we?

4 A. Uh-huh. We sure can.

5 Q. Ebony's car was pulled up right about here almost to
6 that little tree, wasn't it?

7 A. No, it wasn't even that. No.

8 Q. Where was it?

9 A. Right here. That car was parked right back here.

10 Q. Okay.

11 A. My back was right here. The truck is right here, water
12 hose, pump right there. I'm washing the car with my back
13 towards this part.

14 Q. And just so we're clear, this is Juniper.

15 A. This is Juniper Street, yeah.

16 Q. And you saw these people walking through the yard along
17 Juniper.

18 A. Yeah.

19 Q. From here.

20 A. No. No. I seen them walking here, walking through
21 here. This is my yard, too. They walked up under my
22 carport.

23 Q. Well you said you could see them walking along Juniper
24 Street.

25 A. This is Juniper Street. They're coming from Juniper

1 Street. They're on Juniper Street. That's the direction
2 they're coming from.

3 Q. They're coming this way.

4 A. Yes, but they're walking through my yard this way.

5 Q. And you could see them.

6 A. I'm right here. I spotted them when they was like right
7 there.

8 Q. So you didn't see them on Juniper Street. You saw them
9 along Moses Street.

10 A. Yeah. Okay. That's -- yeah, that's correct. That's
11 exactly what I saw.

12 Q. Did they come in that little gate by the carport---

13 A. No, they came this way---

14 Q. ---or that opening right there?

15 A. That big opening right there. That's where they came in
16 at.

17 Q. How far would you say it was between that opening and
18 where you were on the car?

19 A. How far?

20 Q. Uh-huh.

21 A. 20, 25 -- about 25 feet. 20, 25 feet. Well, from --
22 from here -- yeah, about from here about 20 feet.

23 Q. 25 feet?

24 A. Uh-huh. I ain't good with -- I ain't good with
25 measurements like that, but I know...

1 Q. And you looked over your shoulder for just a few
2 seconds?

3 A. Correct.

4 Q. And you shoved your girlfriend to the ground?

5 A. I pushed her out of the way. I didn't really shove her
6 to the ground. Yeah, I pushed her out of the way though.

7 Q. She was in your way from running, wasn't she?

8 A. No, she was -- I was getting her out of the way because
9 of the gunfire. That's what I was doing.

10 Q. Okay. You didn't say that in your statement, did you?

11 A. Yeah, I didn't say that. I probably was nervous, just,
12 you know, a lot going on at the time, so I really wasn't
13 thinking about it. It was more than that. I ain't never
14 been around nothing like that or just witnessed somebody
15 getting killed in front of me like that. So that will kind
16 of damage you, you know.

17 Q. You ain't never been around nothing like that. Really?

18 A. I ain't never seen nobody get - you know what I'm saying
19 - to get killed like that. You know what I'm saying? And
20 that was my responsibility. You know, that's how I feel.

21 Q. Well, let's go back to a couple of things you said on
22 direct. You said you were afraid for your family, your
23 family's safety; right?

24 A. Yes, ma'am.

25 Q. And yet you were hanging out, by your own account, with

1 Bloods, Crypts, Folk Nation; correct?

2 A. Yes, ma'am.

3 Q. Carrying guns. Yes?

4 A. Yes, ma'am.

5 Q. Robbing people?

6 A. No, I wasn't going to rob them. That wasn't what I was
7 about. It wasn't nothing like that. It just -- it happened
8 like that. It ended up turning into a robbery.

9 Q. Well, let's go back to your original -- well, it wasn't
10 quite your original. I think it was maybe your third or
11 fourth statement when you finally said that you knew who --
12 your third or fourth conversation with the police, rather.

13 Let me stay clear between conversations and written
14 statements. When you finally said that it was Jonathan
15 Bailey and that you knew why Bailey was after you, it was
16 because T.J. had fired a gun at you and hit your mama's car;
17 right?

18 A. Supposedly, yes, ma'am.

19 Q. Pardon?

20 A. Yes, ma'am.

21 Q. Why was T.J. mad at you?

22 A. I don't know, just a beef. Beef. I mean, that's it. A
23 beef with one is a beef with all.

24 Q. Pardon?

25 A. Like I said, if you've got a beef with one cat, you've

1 got a beef with a lot. You know, you've got a beef with all
2 of them. You ain't got to worry about one. You've got to --
3 you've got to worry about them all.

4 Q. If you've got to worry about one, you've got to worry
5 about them all?

6 A. Correct.

7 Q. What had you done to T.J. or any of his friends that
8 would be bad enough that they'd be trying to kill you?

9 A. Nothing. Got a homeboy killed.

10 Q. Pardon?

11 A. Nothing because (unintelligible words spoken.)

12 **Court Reporter:** I'm sorry. I didn't understand.

13 **The Witness:** I said nothing -- just something
14 (unintelligible words spoken) between, you know, a guy when
15 they bring him and whatnot and that's just how the whole
16 situation escalates. Ain't nobody going to fight or nothing
17 like that. So I guess that's what they do. I don't know.
18 Shoot.

19 **Ms. Shurling:** Your Honor, would you please instruct the
20 witness to at least try to speak clearly enough?

21 **The Witness:** I am speaking -- I'm sorry I keep messing
22 up, but I---

23 **The Court:** Ms. Shurling, he's been talking this way the
24 whole time. Just slow down.

25 **The Witness:** I'm sorry. I'll slow it up.

1 By Ms. Shurling:

2 Q. Pardon?

3 A. I said I'll slow up when I talk.

4 Q. Thank you very much.

5 A. Yes, ma'am.

6 Q. What made you decide to change your story and tell the
7 police that it wasn't Bailey, that it was my client, Anthony
8 Hackshaw?

9 A. For one, I was already locked up. I was in Alvin S.
10 Glenn being charged with, you know, obstruction of justice.

11 **Court Reporter:** Back off the microphone and repeat what
12 you just said.

13 **The Witness:** Like I said, I'd been in Alvin S. Glenn
14 for maybe a couple of weeks now. I knew I wasn't going to be
15 able to get to -- I knew I wasn't going to be able to touch
16 him now. I mean, they came to me, I mean, not really came to
17 me, but they said - you know what I'm saying - his name came
18 up. I told them what happened, told them truth, and, you
19 know, that's how it went from there. I wasn't -- I can't say
20 on, you know... Could you repeat what you just said?

21 By Ms. Shurling:

22 Q. Pardon?

23 A. What you just said? What was that -- the last part of
24 that question so I can answer it -- finish answering it?

25 Q. Why did you change your story from it being Bailey to it

1 being my client, Anthony Hackshaw?

2 A. Well, I knew I wasn't going to be able to touch him. I
3 wasn't going to be able to get to him. I know that. I'm
4 locked up in jail. I wasn't going to get out. I had a
5 \$75,000 bond, for one, and then just a burden on my heart I
6 just felt, you know, it wasn't -- it was deeper than that.
7 It was deeper than that.

8 Q. You were locked up for what?

9 A. Obstruction for lying -- for I guess lying or holding --
10 or holding what I know back, but it was for lying though.

11 Q. You were locked up for lying before you told them you
12 lied?

13 A. No. I got -- they locked me up for lying when they find
14 out I was lying.

15 Q. But are you telling us they locked you up for lying
16 before you told them you were lying?

17 A. Yes, ma'am. Like I said, I lied from just the person
18 because, like I say, I wanted revenge, you know, and that's
19 what my mind frame was on, you know. How do you say it? I
20 talked to my grandfather. You know, he's a preacher and
21 whatnot and---

22 Q. Okay. But just so it's---

23 **Ms. Campbell:** Objection, Your Honor. I think he has a
24 right to finish his answer.

25 **The Court:** He does. He does.

1 **Ms. Shurling:** Your Honor -- Your Honor, I would ask
2 that he not be allowed to give a narrative---

3 **The Court:** Ms. Shurling, he does. Pardon me?

4 **Ms. Shurling:** I would ask that he not be allowed to
5 testify in a narrative.

6 **The Court:** I'm going to allow him to explain his
7 answer.

8 **The Witness:** I spoke to my grandfather. You know, he's
9 a Christian, you know. I talked to him. You know, he talked
10 to me and whatnot. He felt like -- you know, I told him my
11 situation, and he told me that I got to get that -- you know,
12 get that burden off me. You know, it's more than about me,
13 you know. If it was about me, that's something different,
14 but it's not. It's about Ebony. You know, a female lost her
15 life. She wasn't but 18. You know, she ain't have nothing
16 to do with nothing, you know, what was going on. She didn't
17 have no clue. She didn't get down like this, you know, and
18 for her -- for that to happen to her and for her to cut her
19 family short, you know, of her life, you know, I felt like it
20 was -- it ain't nothing but right for me to do what I'm
21 supposed to do and that is to tell the truth and tell what
22 happened.

23 **Ms. Shurling:** A moment's indulgence, Your Honor.

24 **The Court:** All right. While you take that moment,
25 we're going to take a break. Ladies and gentlemen, I'll let

1 you step back to the jury room. We'll take a break for about
2 15 minutes or so. Please do not discuss the case or talk
3 about it in any way while you're back there, and we'll bring
4 you back in a few minutes.

5 (Whereupon, the jury was excused from open court at
6 10:28 a.m.)

7 **The Court:** Everybody stay seated until the -- and stay
8 quiet until the jury leaves the courtroom. All right. Mr.
9 Hudson, I'm going to let you step down, but I'm going to ask
10 that you not discuss your testimony with anybody while we're
11 on break. Okay?

12 **The Witness:** Okay.

13 **The Court:** The State or the defense or anybody else.
14 All right? All right. We'll stand in recess for about 15
15 minutes or so.

16 (Whereupon, a short break was taken.)

17 **The Court:** All right, ladies and gentlemen. All right.
18 Let's bring us a jury in if we could, Mr. Dye.

19 (Whereupon, the jury was brought into open court at
20 10:50 a.m.)

21 **The Court:** Ms. Shurling?

22 By Ms. Shurling:

23 Q. Mr. Hudson, tell me what a blunt is.

24 A. A cigar. Break it down. Break the guts -- take the
25 guts out of the cigar and put weed in it.

1 Q. Where does the---

2 A. That's what a blunt is.

3 Q. Where does the nickname come from?

4 A. What? Blunt?

5 Q. Uh-huh.

6 A. I don't know. I just know that that's what it is,
7 blunt. It's always been around for the longest.

8 Q. Have you ever seen one of these?

9 A. Yes, that's a cigar. That's a Philly.

10 Q. A Philly what?

11 A. That's a Philly blunt.

12 Q. A Philly blunt cigar. Is this the kind of cigar you use
13 to make a blunt?

14 A. It's a swisher, but, yeah.

15 **Court Reporter:** I'm sorry. Repeat that.

16 **The Witness:** Swisher, but, yeah.

17 By Ms. Shurling:

18 Q. Same size?

19 A. No, small. That's a mini.

20 Q. Pardon?

21 A. A little mini swisher. It's half that size, real small.

22 Q. Okay. Well, for purposes of illustration, when you
23 unwrap one of these and you've got a cigar---

24 A. Uh-huh.

25 Q. ---you take the tobacco out of it?

1 A. Yeah, you split it.

2 Q. You split it? With what?

3 A. You do it with your hand or you can do it with a knife
4 or whatever.

5 Q. A little knife, a little razor blade, something?

6 A. Yeah.

7 Q. Okay. And dump the pipe tobacco or the cigar tobacco
8 out?

9 A. Uh-huh.

10 Q. And then you fill it up with marijuana.

11 A. Yeah, but it ain't going to be the same size as that,
12 not unless you -- you'd have to put a lot of weed in it.

13 Q. Well, a swisher is about half this size?

14 A. Uh-huh.

15 Q. Half this size is---

16 **The Court:** You need to---

17 **Ms. Shurling:** ---a lot of weed.

18 **The Court:** Excuse me.

19 **The Witness:** I mean, as far as---

20 **The Court:** Excuse me. Excuse me. You need to say yes
21 or no. Uh-huh. Huh-uh. Because she's got to take it down.
22 If you say uh-huh, she might get it confused. If you say
23 yes, she knows what you mean.

24 **The Witness:** Okay.

25 **The Court:** If you say no, she knows what you mean.

1 **The Witness:** I got you.

2 **The Court:** All right. Thank you.

3 By Ms. Shurling:

4 Q. And, Mr. Hudson, I promise I'm going to give you your
5 chance -- the judge is going to make me let you answer my
6 questions.

7 A. Uh-huh.

8 Q. But you shouldn't start talking until I quit talking.

9 **The Court:** Just ask him questions. You don't need to
10 lecture.

11 By Ms. Shurling:

12 Q. You said a swisher is about half this size?

13 A. Yeah, same length, but it ain't that big.

14 Q. And I believe a moment ago you said about half this
15 size.

16 A. I mean as far as -- I'm saying half that size as far
17 as---

18 Q. Diameter?

19 A. Yeah, diameter. It's smaller.

20 Q. That's still a lot of weed, isn't it?

21 A. It depends on what you put in there. You put whatever
22 you want to put in there.

23 Q. Okay. Well, the day in question, you and Cleveland had
24 smoked a whole blunt, hadn't you?

25 A. Correct.

1 Q. And you had asked him to roll another one about the time
2 this incident started breaking loose.

3 A. Correct.

4 Q. Would you describe yourself as high at the time this
5 happened?

6 A. Yeah, I was high. I mean, not high enough -- I ain't
7 high 'til I don't know what's going on. That's weed.

8 Q. Pardon?

9 A. That's weed. I'm not going to be high 'til I don't know
10 what's going on.

11 Q. Well, how does marijuana affect you, Mr. Hudson?

12 A. How does it affect me?

13 Q. Uh-huh.

14 A. I don't know. It makes me want to get the munchies,
15 want to eat, you know, chill. I mean, high, you know, a
16 buzz. I can't tell you what the feeling feels like but, you
17 know, high.

18 Q. High.

19 A. Uh-huh.

20 Q. Okay. So you admit you were high when all this
21 happened.

22 A. Correct.

23 Q. Now, you've said awhile ago that you were concerned for
24 your family's safety. Is that right?

25 A. Yes, ma'am.

1 Q. So according to you, you fingered a member of a violent
2 street gang.

3 A. That wasn't because I was high.

4 Q. Pardon?

5 A. That wasn't because I was high. I wasn't too high for
6 that.

7 Q. I didn't say it was because you were high, but you've
8 admitted that you fingered a member of a violent street gang.

9 A. Uh-huh. Yes.

10 Q. Yes?

11 A. Yes.

12 Q. And you now admit you were deliberately lying when you
13 did it, you say.

14 A. Correct.

15 Q. And I believe you said something -- and I'm
16 paraphrasing. If I get it wrong, you correct me. You mess
17 with one or you get into it with one, you got to deal with
18 all of them. Didn't you say that?

19 A. I sure did. Correct.

20 Q. So if you were so concerned about your family, weren't
21 you worried that lying on one of their members would put your
22 family in grave danger?

23 A. Yes, but at the time I wasn't thinking about -- I wasn't
24 even thinking about it. I just, you know, just said it. I
25 wasn't thinking about the consequences.

1 Q. You weren't that worried about your family, were you?

2 A. Yeah, I was very worried. If a person runs up, you
3 know, at your house and stuff like that, it got me worried.

4 Q. Now, I want to get back to what you said a little while
5 ago. You said that you got locked up and put in jail because
6 you lied to the police about the identity of the shooter that
7 you recognized; right?

8 A. I believe so. I'm thinking that's what I -- yeah. Yes.
9 Yes, ma'am. That's correct.

10 Q. Now, let's go back to the 20th. And I know that this is
11 painful for you, but let's go back through it. When the
12 police came and you talked to them at the scene, you lied to
13 them about having a weapon, didn't you?

14 A. Correct. I did lie.

15 Q. And you continued to lie to them until Cleveland Joyner
16 told the police about you having a gun at the house; right?

17 A. Correct. I wasn't trying to get him -- put him in this
18 situation more than what he was already in. So, yes, I did
19 lie.

20 Q. Okay. So you were worried about your family. Now
21 you're worried about Mr. Joyner.

22 A.. That's my family. I'm worried about my family, yeah.
23 That's my friend, too. That's why I'm worrying about him,
24 too.

25 Q. Got it.

1 A. It wasn't -- it wasn't his house. That was at my house,
2 you know, so I feel like anything that was being brought upon
3 anybody should have been brought to me.

4 Q. Okay. But you didn't tell the police about the gun at
5 the house until Cleveland Joyner had already given it up.

6 Correct?

7 A. Correct.

8 Q. All right. Now, on the day of this shooting when poor
9 Ebony Fogle is laying on the ground not cold yet, you're in
10 the house hiding your gun, aren't you?

11 A. Correct.

12 Q. Why did you take the bullets out -- pardon me. Joyner
13 took the bullets out; right?

14 A. Correct.

15 Q. But you heard his testimony yesterday. He said you told
16 him to. Right?

17 A. Correct.

18 Q. Why would you tell him to take the spent shell casings
19 out of a revolver?

20 A. That gun was not registered. That gun was registered to
21 my mother. I felt -- I just -- you know, because I was
22 nervous having a gun that I used. She didn't know that I
23 knew where it was at, you know, at the time, and I was just
24 really trying to just get rid of what I had, you know, get
25 rid of the bullets.

1 Q. But what was the purpose in taking the spent shell
2 casings out and hiding them under the sofa cushion and hiding
3 the gun under the headboard?

4 A. What was the reason why?

5 Q. Yeah. What was the reason?

6 A. Like I said, I was just -- the gun wasn't mine. You
7 know what I'm saying? It wasn't mine. It was registered to
8 my mother. He fired the gun. Now, if I was the one that
9 fired the gun, I would have said yeah -- I would have told
10 them off the top that, yeah, I was the one that fired the
11 gun. He was at my house. He's on probation just as well as
12 I'm on probation.

13 So with me lying to them and telling them that I didn't
14 know about the gun, I was just trying to protect him, Cleve,
15 and just keep him out of the whole gun situation. That's why
16 when they asked me about a gun, the G.S.R. thing
17 (unintelligible words spoken), I denied it just because I
18 knew that I didn't fire any weapon, but at the same time I
19 didn't want to get him, you know, in the predicament that
20 he's in now.

21 Q. Okay. Well, you lied about the gun, but you knew if
22 they found the gun the jig was up. They'd be---

23 A. Yeah, I told them. I told them.

24 Q. Joyner told them.

25 A. He told them he had the gun. Yeah, there was a weapon,

1 and I told them -- they asked me where it was at and I took
2 them right in the house and showed them exactly where it was
3 at.

4 Q. I understand. I'm talking about the time you hid it.
5 At the time you hid it, you knew that if they found the
6 revolver back behind the headboard on your mama's bed, they'd
7 know you'd been lying about the gun; right?

8 A. Correct.

9 Q. How would that situation conceivably have been one bit
10 better or worse if spent shell casings had been in it?

11 A. You're right though. It wouldn't have been better or
12 worse, but at the time when it was already out I didn't know
13 -- you know, it was all going so fast, you know. By the time
14 I even knew that, the police was already at my house.

15 Q. Okay. The police were already at your house---

16 A. I mean, I'm saying like by the time I put the gun and
17 hid it and put it up and I ran back and went back out -- ran
18 back out the door back in the back yard where Ebony was at,
19 that's when the police pulled up.

20 Q. The police was already at your house?

21 A. I just said when I came back out of the house and I went
22 in the back yard -- went back there again -- because he was
23 already in the house. Cleve was already in the house.

24 Q. But the police weren't there when you hid the gun.

25 A. No, they wasn't there when I hid the gun. By the time I

1 walked back out the door and went in the back yard, they was
2 pulling up.

3 Q. When you were running around hiding things, you knew
4 they were on the way, didn't you?

5 A. Yeah. Yeah.

6 Q. Okay.

7 A. I just...

8 Q. You know a little bit about guns, don't you, Mr. Hudson?

9 A. Yeah. Yes, ma'am.

10 Q. All right. You've used a .38, a .22, and a .40; right?

11 A. Yes, ma'am.

12 Q. When the police trace guns, what part of a gun are they
13 tracing from? Do you know?

14 A. Well, I guess the chamber? The chamber of the gun. I
15 watch T.V. I mean, I see what they do, so I can't really
16 say. I don't know. That's all I know. What I see on T.V.,
17 what they say is what I see.

18 Q. And they can match one spent shell casing to another
19 spent shell casing, can't they?

20 A. Yes, ma'am.

21 Q. Okay. Let's move on to something else. In the brief
22 moments between when the neighbors started calling, you
23 didn't call the police, did you?

24 A. No, ma'am, I didn't. The lady already said she would
25 call -- she already had called the police.

1 Q. So a little while ago on direct when you said you didn't
2 know whether or not you had called the police, that was a
3 lie, too, wasn't it?

4 A. No, that wasn't a lie. The lady said -- I tell you
5 there was people that were standing outside already. There
6 was people at my house already by the time I got back to my
7 house from the shooting, and the lady was already on the
8 phone right there.

9 Q. So if these jurors recall your being directed asked
10 whether or not you called the police and you answering---

11 A. I wasn't too sure if I did or not call the police, but I
12 know I called my father and told him to come home, that
13 something happened, that you need to come to the house, to
14 come home.

15 Q. Okay. So now you're going back to you're not too sure?

16 A. As far as me what? Calling the police?

17 Q. The police.

18 A. Yeah, I wasn't too sure -- I wasn't too sure about me
19 calling the police or nothing. I knew they was on the way
20 coming though.

21 Q. Now we're back to not too sure.

22 The Court: Let's move on.

23 Ms. Shurling: Okay.

24 By Ms. Shurling:

25 Q. Mr. Hudson, at the time you first saw the people walk up

1 in the yard, you and your friend, Mr. Joyner, have both said
2 that he was getting ready to roll another blunt; right?

3 A. Correct.

4 Q. The police didn't find any weed at your house, did they?

5 A. I don't know. I wasn't -- I guess not. They ain't
6 never said nothing to me about finding no weed---

7 **Court Reporter:** I'm sorry. Can you repeat that?

8 **The Witness:** I said I guess not. They never said
9 nothing to me about finding no weed. Did they find the
10 cigar? Because it should have been right there by the table.
11 That's where he was sitting at. That's where we was at.

12 Q. Well, in the time period between your friend getting
13 shot and the police coming, did you get rid of the weed?

14 A. I wasn't even thinking about that. That's weed.

15 Q. You were thinking about hiding the gun but not the weed.

16 A. Yes, ma'am, I was.

17 Q. Okay. Well, now your buddy, Mr. Joyner, also asked you
18 what you were going to do about the counterfeit money, didn't
19 he?

20 A. Yes. Yes. He told me to get rid of it, but like I
21 said, I didn't even do that. My mind was somewhere else at
22 the time.

23 Q. You didn't have a chance to get rid of it, did you?

24 A. No, I probably didn't have a chance to get rid of it.

25 Q. Okay. Now, you know possession of counterfeit money is

1 illegal, don't you?

2 A. I do know that.

3 Q. And you had a lot of it, didn't you?

4 A. Yeah, I guess so. Yes, ma'am.

5 Q. And when you found out, according to you, that it was
6 counterfeit, you kept it, didn't you?

7 A. Yes, ma'am.

8 Q. Have you been charged with possession of counterfeit
9 money by either the State or the feds?

10 A. No, ma'am.

11 Q. When you first talked to the police on May 23rd, you
12 still weren't telling them about robbing Anthony Hackshaw,
13 were you?

14 A. No, ma'am, I didn't. I didn't want to put -- I wasn't
15 trying to put myself into that situation that I was lying.

16 Q. I understand, but when you eventually did tell them, you
17 claimed the reason you robbed Bump was because he had given
18 you counterfeit money. Isn't that what you told the police?

19 A. Yes, ma'am.

20 Q. When did you finally admit to the prosecutors you were
21 lying about that?

22 A. You said when?

23 Q. When.

24 A. I can't remember exactly when did I tell them that it
25 was. It was recent though.

1 Q. Pardon?

2 A. It was recent. It was recent, me telling them that the
3 counterfeit---

4 Q. Recent. Very recent, wasn't it?

5 A. Yeah.

6 Q. Like within the last week or so?

7 A. Yeah, I guess when I came up here and when I talked to
8 my lawyer and all that stuff. Yeah, I told them that. I
9 didn't want to -- I was -- like I said, I didn't -- it was
10 already bad from jump street regardless of what, you know,
11 you could say and I was just lying and I just put it all into
12 one - you know what I'm saying - as far as the counterfeit
13 just because I was, like I said, trying to get myself from
14 that situation.

15 Q. I think I understand now.

16 A. But once I realized -- and like I say, once I realized
17 that and I talked to my grandfather, there wasn't no need for
18 me to lie. There wasn't no need for me to lie. It was
19 something deeper than that. Whatever is coming towards me,
20 then I'll have to accept that, but it ain't -- it was deeper
21 than that. It was deeper than me. You know what I'm saying?

22 Q. Okay. Let's go into that a little bit. You said that
23 you decided to get your revenge against Bump - that might not
24 have been the words you used, but that's what you said in so
25 many words against Bump - for giving you counterfeit money by

1 robbing him; right?

2 A. Say that again.

3 Q. You told the police you decided to pay back Bump for
4 giving you counterfeit money by robbing him. Correct?

5 A. Correct.

6 Q. Would you agree that that tends to indicate that you
7 planned to rob him?

8 A. Yeah.

9 Q. But of course---

10 A. I did.

11 Q. You lied about that, too?

12 A. I mean, as far as me going to rob him, yeah, I did say
13 that. That's what I was going for, but I had money. I had
14 real money. I was counting out real money. It wasn't no
15 counterfeit. There was nothing -- no fake nothing about none
16 of that.

17 Q. I understand, but you told the police---

18 A. Yeah, I did say that.

19 Q. So we're clear: You planned to rob Bump to get him back
20 for giving you counterfeit money. So you planned to rob him;
21 correct? That's what you told the police.

22 A. Yeah, but at the same time still I -- at the time it was
23 something -- it was something going on good, you know, so I
24 wasn't really pressed. I was going -- you know, I was going
25 to do that, but it ain't no -- it wasn't even supposed to go

1 down like that though.

2 Q. But you were planning on wanting to rob him. Correct?

3 A. Yeah, you could say that.

4 Q. You went there to rob him, not to buy weed.

5 A. No, I went there to buy weed from him. I got -- like I
6 said, I was counting out real money. There wasn't nothing
7 counterfeit about nothing that was going on. Yeah, he got
8 me, you know. At one time I said that. That's what I said,
9 but that wasn't what it was though, you know.

10 Q. So you---

11 A. So, yeah, I went to go get weed from him. I wasn't
12 planning on robbing him then, but, yeah, eventually I
13 probably would. More than likely, yeah, I was going to do
14 that.

15 Q. You knew you were going to rob him.

16 A. Not then, not at the incident, not during that time, but
17 I did --- yeah, I planned on that though, to be honest with
18 you.

19 Q. Okay. In your statement when you told the police about
20 this and you claimed that you pulled your weapon and robbed
21 him because of something the other fellow did -- right?

22 A. Yeah, the other fellow had a gun on his hip on his---

23 Q. That's not what you told the police, is it? Didn't you
24 say he put his hand in his pocket?

25 A. Yeah. Like I said, that's what -- that's how I saw the

1 gun from him because by his shirt -- by his pocket, that's
2 where I saw the gun.

3 Q. Did you say in your statement that you saw a gun?

4 A. I don't -- I'm really not too sure, but I should have if
5 I didn't. I don't know, but I saw a gun.

6 Q. Okay. Now, when you told the police on May 20th that it
7 was Jonathan Bailey, one of the ways you identified him was
8 that he had a little tattoo on his left arm. Is that correct
9 or not?

10 A. I don't know if I said a little -- I don't know if I
11 said a little tattoo, but I saw a tattoo. Like I said, I
12 can't even see that good. I was supposed to wear glasses. I
13 don't never wear them, but he was kind of -- that far from me
14 and me seeing his arm and his tattoo, it was big enough to
15 know it wasn't no little tattoo. It was big.

16 Q. Well -- and earlier in your direct testimony I think you
17 said it wasn't just a tattoo. It was tattoos. Is that
18 correct?

19 A. Yes. Yeah, he got tattoos.

20 Q. Then why when you were interviewed by the police did you
21 tell them that you had saw a little tattoo on his left arm?

22 A. I don't know why I said little, but I saw tattoos. I
23 saw tattoos.

24 Q. Okay. It's your testimony that you decided to clear
25 things up and tell the truth because you talked to your

1 grandfather? Is that who you said?

2 A. Yeah. He's a preacher. You know, he's good. You know,
3 I talked to him about it. I talk to him when I need a word,
4 and he gave me what I needed to do hear. He told me what I
5 needed to hear.

6 Q. It wasn't because the police told you that it couldn't
7 have been Bailey?

8 A. No, not really. No, ma'am.

9 Q. Your Honor, at this time I would like to ask that a
10 portion of the audiotape of his interview be played. He's
11 denied that his reason was being told that it could not have
12 been my client. I think I'm entitled to impeach him with his
13 prior inconsistent statement.

14 A. From me saying what now?

15 Ms. Campbell: Show me what it is. I may be able to
16 stipulate to it.

17 Ms. Shurling: Sure. One moment, please. On the
18 audiotape of the---

19 The Court: Just show it to her.

20 Ms. Shurling: ---interview on October 23---

21 Ms. Campbell: Just show me.

22 The Court: Just show it to her.

23 Ms. Shurling: 29-30. 29-minute/30-second mark.

24 (An off-the-record discussion takes place between Ms.
25 Campbell and Ms. Shurling.)

1 **The Court:** Ladies and gentlemen, let me let you step
2 back to the jury room a minute while I take this matter up.
3 Please don't discuss the case while you're there. We'll
4 bring you right back.

5 (Whereupon, the jury was excused from open court at
6 11:14 a.m.)

7 **Ms. Shurling:** Your Honor, at approximately the
8 30-minute mark in the audiotape of the May 23rd statement he
9 says he didn't even -- he did not think about the Bump dude
10 because he didn't - you know what I'm saying - he didn't --
11 he don't know nothing about me. But then going on over to
12 the 31-30 mark when -- actually, let's start at the 31-minute
13 mark.

14 When Investigator Reese asked him why he didn't tell
15 them it was Bump, he says, "Because I ain't think it was
16 Bump. I didn't. I didn't think it was no Bump." "What
17 makes you think it's Bump now?" "Because like I say --
18 because like I -- somebody was like, shit, I -- you don't
19 know because like y'all say -- y'all say Bailey wasn't the
20 right person and I don't -- I don't, like I said..."

21 **The Court:** What is it -- what did you say? You might
22 stipulate to what?

23 **Ms. Shurling:** No, sir, I won't stipulate.

24 **The Court:** All right. Well, we're not playing the
25 tape. If you want to show him a transcript and ask him if

1 that refreshes his memory and talk to him about it, you
2 certainly can---

3 **Ms. Shurling:** Your Honor, there is no official
4 transcript of this tape.

5 **The Court:** What have you got there?

6 **Ms. Shurling:** My associate, Jeremy Thompson,
7 transcribed it unofficially in my law firm. We were provided
8 in discovery the audiotape. That's all the State provided
9 us.

10 **Ms. Campbell:** No, sir.

11 **Ms. Shurling:** You did not provide us a transcript.

12 **The Court:** Talk to me, Ms. Shurling.

13 **Ms. Shurling:** We did not get a transcription of the
14 audiotape.

15 **The Court:** Well, there may not be one.

16 **Ms. Shurling:** And more than one---

17 **The Court:** Is there a transcription?

18 **Ms. Campbell:** Yes, Your Honor. There was a transcript
19 that was offered to her, and she informed us she had her own
20 transcript is my understanding from Ms. McDuffie.

21 **Ms. Shurling:** That is not accurate, Your Honor.

22 **The Court:** Where is the transcription?

23 **Ms. Campbell:** It's a transcript that was generated by
24 law enforcement to our office. Here is a copy -- this is the
25 May 23rd statement; correct?

1 **Ms. Shurling:** The May 23rd statement, but, Your Honor,
2 we were never provided a transcript in discovery.

3 **The Court:** Well, they claim they offered it to you and
4 you turned it down.

5 **Ms. Shurling:** Well, I will tell you as an Officer of
6 the court that isn't true. I informed---

7 **The Court:** So you think -- you think she's telling me
8 as an officer of the court a lie? She's going to tell me the
9 same thing, so---

10 **Ms. Shurling:** Your Honor, I was -- I informed Ms.
11 Campbell---

12 **The Court:** Look, I'm not getting in the middle of
13 whether she said -- they say they did; you say they didn't.
14 So that's where it is. Do y'all have a problem with playing
15 the transcript -- I mean a portion with...

16 **Ms. Campbell:** I just think it could be easier done if
17 she wants to use the transcript.

18 **Ms. Shurling:** Your Honor---

19 **The Court:** Well, if you've got the transcript. I've
20 been told there is no transcript. Somebody actually typed
21 verbatim the language of the tape?

22 **Ms. Campbell:** I haven't had an opportunity to review
23 her transcript and compare it to the actual tape itself, so I
24 don't know what her transcript says.

25 **The Court:** I didn't ask whether hers... I said did

1 somebody actually type verbatim the transcript?

2 Ms. McDuffie: Your Honor, we paid to send it out to a
3 transcription -- a transcriptionist and they typed it up.

4 Ms. Shurling---

5 The Court: So the answer is yes.

6 Ms. McDuffie: Yes, sir.

7 The Court: Okay. So you have something that was typed
8 up by a professional transcriber.

9 Ms. McDuffie: Correct.

10 The Court: All right. And show it to Ms. -- let Ms.
11 Shurling look at it and see where it is.

12 Ms. Shurling: Is that person a court-certified court
13 reporter?

14 Ms. McDuffie: Your Honor, it's through CompuScripts. I
15 could not answer the question whether or not they're court
16 certified.

17 Ms. Shurling: And, Your Honor---

18 The Court: Look at it, Ms. Shurling.

19 Ms. Shurling: Your Honor, may I make my objection for
20 the record?

21 The Court: Not until you look at it.

22 Ms. Shurling: Your Honor, the black and white---

23 The Court: Didn't I just tell you what to do?

24 (Ms. Shurling looks at the transcript.)

25 Ms. Shurling: Your Honor, I can't possibly, as I stand

1 here, go over this transcript and verify its accuracy, but
2 even if I could, there is relevance to this man's tone of
3 voice, his posture, the certainty with which he speaks to law
4 enforcement when he's being interviewed.

5 **The Court:** Ms. Shurling---

6 **Ms. Shurling:** All those are matters that are
7 relevant---

8 **The Court:** Did you look where I asked you to look, that
9 portion of the transcript that you say---

10 **Ms. Shurling:** I can't -- my transcript is time-dated
11 every 30 seconds. This one is not. So I have no way...

12 **The Court:** You can't figure out where it is that that's
13 in the transcript. Maybe the lawyer in your office who typed
14 it can.

15 **Ms. Shurling:** For the record, I would object to the
16 transcript being used if it is not prepared by a certified
17 court reporter who has issued a certification of the accuracy
18 of the transcript, number one. Number two, I believe there
19 is very distinct relevance to both the tone of voice, the
20 delivery and the method of speech used by Mr. Hudson when he
21 was speaking to law enforcement that cannot be gleaned from a
22 black-and-white record, and for that reason this jury needs
23 to hear the actual audiotape and the---

24 **The Court:** All right. You've made your point. I'll
25 decide what the jury hears. Did you look and see what the

1 transcript says? Have you listened to the tape?

2 Ms. Shurling: Yes, sir.

3 The Court: So you know what the tape says.

4 Ms. Shurling: I know what the tape says.

5 The Court: All right. So you'll know whether the
6 transcript is accurate.

7 Ms. Shurling: Your Honor, I can't stand here and tell
8 you verbatim whether a transcript that is---

9 The Court: Ms. Shurling---

10 Ms. Shurling: ---many pages---

11 The Court: ---if you look -- if you look -- we're not
12 putting the whole transcript in. You just want to make one
13 point as to what he told the police officers about one thing.
14 Right? Isn't that what you asked---

15 Ms. Shurling: There are several portions of this
16 transcript I want in the record of the audio of the
17 interview.

18 The Court: All right. So now you've enlarged what it
19 is you asked for earlier.

20 Ms. Shurling: No, sir. I've already mentioned three
21 sections.

22 The Court: You asked the Court to play -- for you to be
23 allowed to play one portion of a transcript relating to what
24 he said with respect to Bump or Mr. Hackshaw to the police.

25 Ms. Shurling: One at a time, Your Honor. I didn't say

1 I was---

2 The Court: You didn't tell me, "I've got three things I
3 want to play on this tape."

4 Ms. Shurling: Your Honor, I did not represent to the
5 Court that I---

6 The Court: I'm not saying you represented anything, Ms.
7 Shurling. I've asked you to do one thing and that is to find
8 on the tape where it is you say that you're attempting to
9 impeach this witness about what he told in his statement that
10 he's now saying that he didn't do or doesn't know whether he
11 did. I don't know what he's saying.

12 Ms. Shurling: Well, I can tell one thing right now.

13 The Court: I feel confident that's the case.

14 Ms. Shurling: My transcript says, "And what makes you
15 think now that it's Bump?" And we have transcribed, "Y'all
16 say Bailey wasn't the right person." I don't -- I don't --
17 like I said, their transcript says, "I don't know because,
18 like I say, I say Bailey wasn't the right person."

19 The Court: So what does the -- what does the tape say?

20 Ms. Shurling: "Y'all say Bailey wasn't the right
21 person."

22 The Court: You know that.

23 Ms. Shurling: Yes, sir, I do know it.

24 The Court: Is that what the tape says?

25 Ms. Campbell: I'll be happy to get it. I didn't know

1 this was going to be issue, so I would have to review the
2 tape. This was a transcript that was done that we sent out
3 and had done independently, not by anyone from our office or
4 from her office.

5 **The Court:** All right. Have you got any.... What do you
6 want to tell me?

7 **Ms. Campbell:** Judge, just as far as before any
8 extrinsic evidence of anything I think would be admissible to
9 be played in the court, I believe under Rule 613(b) she would
10 have to be advised actually the substance of the statement,
11 the time and place it was allegedly made, the person to whom
12 it was made, and then given the opportunity to explain or
13 deny. If he doesn't admit then that he made that
14 inconsistent statement, at that point then extrinsic evidence
15 would be admissible.

16 **Ms. Shurling:** And I believe he's already done that. I
17 asked him about the May 23rd interview. He knows it was
18 conducted by Investigator Reese, and he claims that he
19 changed his story because grandpa gave him a sermon and that
20 it wasn't because he was told by law enforcement that it
21 couldn't be Bailey.

22 **The Court:** All right. Well, we'll ask him again and
23 then he can say what he's going to say, and if he says what
24 you say then -- where is the tape?

25 **Ms. Campbell:** I believe they have the tape.

1 **The Court:** You've got the tape where it is that you
2 want this...

3 **Mr. MacDougall:** I have it ready to go.

4 **The Court:** On this one particular spot.

5 **Mr. MacDougall:** Uh-huh. Yes, sir.

6 **The Court:** All right. Let's bring the jury in, ask him
7 again, Ms. Shurling, and we'll go from there.

8 **Ms. Shurling:** Your Honor, before the jury comes in, I
9 would like to say for the record that if he changes his story
10 now I would like for the Court to listen to madam court
11 reporter's transcription of what he said moments ago when he
12 vehemently denied changing his story because law enforcement
13 told him it wasn't Bailey.

14 **The Court:** What is it you want me to do after that?

15 **Ms. Shurling:** I believe once he's already denied it in
16 front of the jury, I have laid the foundation for them to
17 hear out of his own mouth why he says he did change his
18 story.

19 **The Court:** All right. Bring the jury in.

20 (Whereupon, the jury was brought into open court at
21 11:25 a.m.)

22 **The Court:** All right. Ms. Shurling, do you want to ask
23 this witness...

24 By Ms. Shurling:

25 Q. Mr. Hudson, a few moments ago I asked you why you

1 changed your story from it being Bailey to it being my
2 client. What did you say?

3 A. Repeat that question. What you just asked?

4 Q. A few moments ago I asked you why you changed your story
5 from it being Jonathan Bailey to it being my client, Anthony
6 Hackshaw. What was your answer?

7 A. I said because they already -- they already knew
8 basically about the incident. See, I didn't never know that
9 they knew, you know, or find out about the incident the whole
10 -- me and the Bump guy with the shooting, with the shootout,
11 you know. I never even said nothing about that, but once
12 they knew about that and they knew what, you know, what I
13 did, that's when I told them, you know, the truth, you know.

14 Like I say, I was trying -- I wanted revenge, you know,
15 and they come now that -- now that they know what happened,
16 you know, I just had no need for all that. I just had to go
17 ahead and tell the truth and also, you know, just like I say
18 from me talking to my grandfather, you know, he just told me
19 it ain't -- it ain't about you. You can't be thinking like
20 that. It's not about you. It's about that young lady and
21 her family, you know.

22 Q. When Investigator Reese asked you why you didn't tell
23 them it was Bump to begin with, what did you say?

24 A. Because I said I didn't think that he knew nothing about
25 me. He had never known nothing about me. I feel -- like I

1 say, as far as me and him, you know, dealing with each other,
2 he ain't know nothing about me besides E. That's all he knew
3 about---

4 Court Reporter: I'm sorry. Besides what?

5 The Witness: Besides my nickname, E. Besides E.
6 That's all he knew me by.

7 By Ms. Shurling:

8 Q. Didn't you tell them you didn't say it was Bump because
9 you didn't think it was no Bump?

10 A. Yeah, I did say that. Yeah, I did. I did say that, but
11 it was -- like I said, I wanted revenge. I felt like what he
12 did to her, that should have happened -- that needed to
13 happen to him. That's how I feel about the situation.

14 That's a young lady, you know. It was a young lady. You
15 know what I'm saying? He ain't have to do that.

16 Q. I asked you earlier if it wasn't true that the reason
17 you changed your story was that law enforcement told you it
18 could not have been Bailey, and you said that wasn't true,
19 didn't you?

20 A. I knew it wasn't Bailey.

21 Q. You knew it wasn't true?

22 A. I knew it wasn't Bailey.

23 Q. Did you or did you not tell the police that the reason
24 you didn't say it was Bump is because you didn't think it
25 wasn't no Bump and -- but y'all say it couldn't have been

1 Bailey, so that's why I'm now changing my story. You didn't
2 tell the police that?

3 A. I can't really recollect. I know that I told the police
4 when they came to me and said what they said, I told them I
5 knew it wasn't Bailey from jump street, for one. Like I
6 said, I wanted revenge and I was trying to get to him.

7 Q. On May 23rd when you were questioned by law enforcement
8 about why you didn't name Bump to begin with, didn't you say,
9 "Because I didn't think it was no Bump, but y'all said it
10 couldn't be Bailey."

11 A. I knew it was him. I knew it was Bump. I lied.

12 Q. Your Honor, I submit I have laid the foundation.

13 A. Go ahead.

14 Q. I would ask at this time---

15 **The Court:** Did you say that or did you not say that?

16 **The Witness:** I didn't. I don't think I -- I don't
17 remember. I can't -- say that again.

18 **The Court:** All right. Play that portion of his tape.

19 **The Witness:** Play the tape.

20 **Ms. Shurling:** Thank you.

21 **The Court:** Have you got speakers?

22 **Mr. MacDougall:** I'm afraid not.

23 **The Court:** How are we going to...

24 **Mr. MacDougall:** If I bring it over close enough to the
25 jury, they should be able to hear it.

1 (Pause in proceedings while the tape is set up to be
2 played. Whereupon, a tape is played for the jury.)

3 Ms. Shurling: Your Honor, could the Court inquire as to
4 whether anyone on the jury needs for it to be replayed?

5 The Witness: I want it replayed.

6 The Court: Could y'all hear it?

7 Ms. Shurling: Could you hear it?

8 The Court: Don't talk to the jury, Ms. Shurling.

9 Ms. Shurling: I'm sorry.

10 The Court: All right. Thank you, Mr. MacDougall.
11 Proceed.

12 By Ms. Shurling:

13 Q. That was your voice, wasn't it, Mr. Hudson?

14 A. Sure was.

15 Q. And I assume you're not going to argue with your own
16 voice, are you?

17 A. No.

18 Q. No.

19 A. But I -- but, yeah, like I said, I -- yeah, I lied as
20 far as me -- like I said, I didn't say nothing about him
21 because I felt like I wanted to take it in my own hands. I
22 didn't speak on that.

23 Q. So even---

24 A. But I knew it was him.

25 Q. Even having heard your own voice, you still deny that

1 you said, "Y'all say Bailey wasn't the right person"?

2 A. Yeah, but I knew it was not him. I know it was not no
3 Bailey. I mean, he's not -- it ain't hip to be talking about
4 running up, you know, killing somebody like that.

5 Q. And you did say, "I ain't think it was no Bump."

6 A. Yeah, I said that.

7 Q. Okay. Now, I believe I heard you testify earlier---

8 A. You didn't know that---

9 Q. I believe I heard you testify earlier that after this
10 event on April 23rd you got threatening phone calls from my
11 client?

12 A. Yeah, I got threatening phone calls. I even -- I even
13 called his phone after the incident happened. I called his
14 phone a couple of days after that.

15 Q. Did you or did you not tell us that after the April 23rd
16 incident my client called you threatening you?

17 A. Yeah, plenty of times. Plenty of times. It wasn't just
18 me. He's going through people, telling me what, you know,
19 he's going to do. He's looking for me.

20 Q. Well, on May 23rd isn't it true that you told
21 Investigator Reese that the next time I ever talked -- pardon
22 me. "Yeah, since that shooting that day," referencing back
23 to April 23rd, "the next time I ever talked to him again was
24 yesterday."

25 A. After April 23rd he called my phone with those threats.

1 I didn't talk to him for awhile and then the incident
2 happened. Maybe -- might have been the next day I called his
3 phone, the same phone number again.

4 Q. My question, Mr. Hudson---

5 A. Uh-huh.

6 Q. Did you or did you not tell Investigator Reese that
7 since that shooting that day, the next time I ever talked to
8 him again was yesterday?

9 A. Did they know about the robbery then?

10 Q. Yes. You were telling them about the robbery.

11 A. Well, I don't remember me saying that I didn't talk to
12 him because I talked to him several times. They should have
13 phone records, too. They had my phone number and they had
14 his phone number also, too. Yeah, he called my phone plenty
15 of times, plenty of times, not two or three. Five, six,
16 seven, eight, nine, ten phone calls, different numbers,
17 calling from his phone different numbers, threatening me what
18 he's going to do to me, laughing, calling my phone laughing.
19 He wanted my head.

20 Q. Then why did you tell the police on May 23rd that since
21 that shooting that day, the next time I ever talked to him
22 again was yesterday?

23 A. To be honest with you, I couldn't even say why I said
24 that, you know. I couldn't even -- I don't know. I wasn't
25 thinking clearly. I was not thinking clearly, but I know and

1 the phone records -- they should have that. He was called my
2 phone.

3 **Ms. Shurling:** A moment's indulgence. Your Honor, at
4 this time I would move to introduce another portion of the
5 tape.

6 **The Court:** What has he -- what has he denied that you
7 want to...

8 **Ms. Shurling:** He denies lying to the police about
9 having---

10 **The Court:** I've never heard him deny anything about
11 lying. I've heard him admit that he lied from the beginning,
12 but what portion of the tape do you want to play?

13 **Ms. Shurling:** Perhaps I misunderstood his answer.

14 By Ms. Shurling:

15 Q. Mr. Hudson, are you admitting telling the police that
16 you had not talked to my client since the April incident
17 until the day of the shooting or the day before the - excuse
18 me - that since the April incident that you didn't talk to
19 him again until May 22nd?

20 A. I don't really recall if I said it or not. I can't
21 really say, but I have talked to him. I talked to him.

22 Q. Your Honor, it's only a short section---

23 A. I don't know if -- I don't know -- as far as me and him
24 -- me saying that, I can't really say. I don't know if I --
25 what was going on or whatnot, but if I -- I know if I told

1 them that I haven't talked to him any, they already knew
2 about the incident. I know that I would have said that he
3 called my phone or he would have been calling my phone. I
4 didn't --- you know what I'm saying? If I missed that, I
5 didn't mean to. That wasn't what it was. I was just
6 probably talking fast, but that man called my phone. He was
7 threatening my phone. He was calling my phone.

8 **The Court:** All right. Play the tape.

9 (Whereupon, a portion of a tape was played for the
10 jury.)

11 **The Court:** Thank you.

12 **The Witness:** That was my voice. I said that.

13 **Ms. Shurling:** Mr. MacDougall, go a little further,
14 please. Keep going.

15 **Mr. MacDougall:** That's the only segment I have.

16 **Ms. Shurling:** Okay. A moment's indulgence. This won't
17 take but a moment, Your Honor.

18 (Pause in proceedings.)

19 **The Court:** All right. Let's proceed, Ms. Shurling.

20 **Ms. Shurling:** Your Honor, I believe he's gotten to the
21 point...

22 **The Court:** All right. Ask your next question.

23 By Ms. Shurling:

24 Q. After the portion of the tape that you've just heard,
25 Investigator Reese asked you again how many days had it been

1 since y'all talked, and you then told him, "The next time I
2 ever talked to him again was yesterday again," didn't you?

3 A. If that's what the tape says, yes, ma'am, that's what I
4 said, but that wasn't true.

5 Q. You were lying again?

6 A. No, I wasn't lying. I probably was speaking too fast or
7 talking and not knowing what was going on, but if I know that
8 I said and they already knew about me in this robbery, what's
9 the difference for me to lie and not tell them now that,
10 yeah, he's been calling my phone? It ain't going to make no
11 difference now with him calling my phone.

12 Q. So you've got---

13 A. If they already -- if they already know it, if they
14 already had what they had and they knew - you know what I'm
15 saying - if they already had his name, yeah, I said what I
16 said and told them about the robbery. Yeah, I would have
17 told them about him calling my phone. I probably was just
18 talking fast or something like that and not - you know what
19 I'm saying - not paying attention to what I was saying but
20 just talking quick, but I talked to him. He know he talked
21 to me.

22 Q. So twice in a row in direct response to questions you
23 say, "Since that shooting that day, I haven't talked to him
24 until yesterday."

25 A. Yes, that's what I said.

1 Q. And my question is: That was a lie, according to you
2 today?

3 A. It was a lie, but like I said, it wasn't no intention of
4 -- of me intentionally lying. Like I say, I'm talking too
5 fast and probably just getting it out quick, but he called my
6 phone numerous times. He know he talked to me. I ain't---

7 Q. Mr. Hudson, do you lie so much that if you get started
8 talking fast lies just fall out of your mouth?

9 A. What? No. No, ma'am.

10 Q. Okay. How tall is Jonathan Bailey?

11 A. I don't know. Tall.

12 Q. You don't know?

13 A. He's tall. Taller than me.

14 Q. You don't know how tall Bailey is?

15 A. He's tall. He's tall. I don't know exactly... He's
16 six, seven -- seven feet -- all that -- I don't know all
17 that. He's tall though.

18 Q. He's not only tall. He's big, isn't he?

19 A. Yeah.

20 Q. About as big as Investigator Thomas over there?

21 A. No. Who him?

22 Q. Yes.

23 A. No, he's not that -- he probably might be his height,
24 might be weight-size, but no.

25 Q. In one of your statements to the police you said my

1 client had - and be clear: This is your words, not mine - an
2 ass load of tattoos. Right?

3 A. Yeah.

4 Q. Now, earlier today you've testified to these folks that
5 when you first told the police about the perpetrator, you
6 told the truth as you knew it about the description. You
7 just didn't name names; right?

8 A. Yes.

9 Q. Did you say anything about the perpetrator having an ass
10 load of tattoos?

11 A. No, I said he had a tattoo, you know, a tattoo.

12 Q. A small little tattoo on the left arm. That's what you
13 said, isn't it?

14 A. Yeah, I said it was a little tattoo. Like I said, I
15 can't see that good and he was about, like I said, 20 feet
16 from me, 25 feet, however, whatever, but I saw his arm. I
17 can't see that good. So if I know I've seen that tattoo, I
18 know who the tat -- the shit was right -- sorry about that,
19 but it was right there though. I seen the tattoo. It was
20 him.

21 Q. Well, let's talk about that for a minute. You said --
22 you've said about three or four times now that you can't see
23 that good? Is that correct?

24 A. I can see good enough. I can see good enough. As far
25 as like reading words and all that stuff, no, I can't see all

1 that from a distance...

2 Q. Well, didn't you say earlier you're supposed to wear
3 glasses---

4 A. Yeah, I'm supposed to do.

5 Q. ---and you don't?

6 A. I'm supposed to. Yeah, I said that.

7 Q. And---

8 A. That's not going to stop me from seeing what I saw.

9 Q. Well, doctors don't generally prescribe glasses unless
10 you need them, do they?

11 A. Yeah, you're right about that. I ain't -- I ain't
12 blind.

13 Q. I understand. So you don't have trouble reading things
14 that are real close up?

15 A. No. Yeah, I don't have a problem with that.

16 Q. It's stuff---

17 A. Seeing stuff from a distance I can't see that good.

18 Q. Pardon?

19 A. Yeah, seeing something -- seeing something from a
20 distance, yeah, I can't read that.

21 Q. So you have trouble seeing things from a distance?

22 A. No, not too bad, but I can't -- like I said, words.
23 Words but...

24 Q. Well, you can't read signs from a distance?

25 A. What you mean? Like what kind of signs? Yeah, I can

1 read signs. A stop sign and all that, coming up to it, yeah,
2 I can see all that.

3 Q. A stop sign is big red very specific-shaped thing
4 though, isn't it, Mr. Hudson?

5 A. Correct.

6 Q. You're saying you have trouble reading something from a
7 distance.

8 Ms. Campbell: Objection, Your Honor. I think this has
9 been asked and answered.

10 The Court: It has been. He says he has trouble reading
11 words. Let's move on.

12 By Ms. Shurling:

13 Q. What else do you have trouble seeing from a distance?

14 A. I don't got trouble seeing nothing else from a distance.

15 Q. Have you ever told anybody until today that you have a
16 vision problem?

17 A. I probably would have said before that I can't see. I
18 wear glasses. I probably did say that.

19 Q. Anywhere in the about five or six conversations you had
20 with law enforcement, did you tell them you have a vision
21 impairment---

22 A. I ain't---

23 Q. ---and need glasses?

24 A. Like I said, I'm not really too sure. I could have said
25 it. I don't know. I got glasses. I don't wear them.

1 Q. When you are representing yourself to be an eyewitness
2 in a murder case, did you not think that might be important?

3 A. It wasn't important because you're talking about his
4 tattoos. You're talking about me seeing his tattoos that
5 good. I know that I saw him.

6 Q. You couldn't see his tattoos that good.

7 A. No, but I saw tattoos. I saw what I saw. I know I seen
8 some on his left arm. Like I said, it happened fast. I just
9 stared the man down. When I looked and saw him running, I
10 saw -- when I'm looking down and looking up towards the man,
11 I see a gun. Tag. Oh, shit. Grab the tool.

12 Q. In one of your statements you refer to my client as
13 having - again your words, not mine - fat ass little neck,
14 didn't you?

15 A. Yeah.

16 Q. It's not just a big neck, is it?

17 A. It's something.

18 Q. Kind of a strange-looking neck, isn't it?

19 A. Yeah.

20 Q. My client has big muscles along the side of his neck,
21 doesn't he?

22 A. Yeah.

23 Q. Very distinctive looking, aren't they?

24 A. Yeah.

25 Q. Did you mention anything about that in your description?

1 A. I don't -- I don't think so, no. I don't know. No, I
2 doubt it. I don't know. Me saying about his neck? No,
3 probably not, probably didn't say nothing about his big neck.

4 Q. Now, earlier you said you were locked up because you
5 lied to the police, you think, about the identity of the
6 perpetrator. Right?

7 A. Correct.

8 Q. Isn't the truth that you were locked up for lying to the
9 police about having a gun?

10 A. I guess so; yes, ma'am.

11 Q. What about Ebony Fogle? Did she have a gun that day?

12 A. No, she did not. She don't associate -- she don't deal
13 with nothing like that as far as guns, nothing like that.
14 That's not how she gets down.

15 **Court Reporter:** I'm sorry. Repeat the last statement.

16 **The Witness:** I said as far as guns and knives, you
17 know, she wasn't that type of female.

18 By Ms. Shurling:

19 Q. So you're denying that Ebony Fogle had a gun that day.

20 A. Yes, I'm denying. She did not have a gun, no weapon, no
21 nothing.

22 Q. And if she had G.S.R. on her---

23 **Ms. Campbell:** Objection, Your Honor.

24 **The Court:** Sustained.

25 **Ms. Campbell:** It's not what his knowledge is.

1 **Ms. Shurling:** A moment's indulgence, Your Honor.

2 By Ms. Shurling:

3 Q. Mr. Hudson, I'm almost through.

4 A. What?

5 Q. I said I'm almost through. You've admitted giving
6 multiple statements to law enforcement; right?

7 A. Yes, ma'am.

8 Q. And you've actually talked to them far more times than
9 there are written statements; right?

10 A. Once, I think. Yeah, once like I guess after the
11 incident happened they came to my grandfather's house and...

12 Q. Let me rephrase my question. You admit you lied to them
13 about a gun being at the house.

14 A. Yes, I did.

15 Q. You lied to them about the counterfeit money.

16 A. Yes, I did.

17 Q. You lied to them about it being Bailey, according to
18 you. Correct?

19 A. Yes. Yes. Correct.

20 Q. You lied to them about what happened on April 23rd when
21 you said you just drove by. Correct?

22 A. Correct.

23 Q. When you finally admitted the robbery, you lied about
24 why you did it. You claimed it was in retaliation for the
25 counterfeit money; right?

1 A. Correct.

2 Q. How is anybody supposed to know when you're telling the
3 truth, Mr. Hudson?

4 A. I understand that people, you know, will have their
5 opinions as far as me and my statements that I have given
6 and, yeah, I did lie. Like I said before, I did lie and I
7 felt like I was going to take the situation into my hands,
8 you know. He -- you know, I know what he did. He know he
9 did it and he know what I saw---

10 Q. Okay.

11 A. ---you know.

12 Q. There's one more area I've got to cover with you.
13 Between when you first told about the April incident and said
14 it was just driving by when you got shot at and then you
15 admitted that it was an armed robbery, when in there were you
16 promised immunity for armed robbery?

17 A. I wasn't promised until I guess after saying what I said
18 -- after I say what I said. It wasn't -- like I say, they
19 said it wasn't nothing to do with that that was going on.
20 They're worrying about Ebony.

21 Q. I'm sorry. Can you repeat that answer?

22 A. I said that when I talked with them and they talked with
23 me, I didn't get no deal. Then once I talked to the
24 investigators and I said what I said and I admitted to what I
25 did, told them the exact story and I took a polygraph test on

1 it whether or not, you know, whether I was telling truth or
2 not about the incident. I have no reason to lie. Yeah, I
3 was lying at the beginning. I was nervous then and just felt
4 like I was going to do something myself, but it was deeper
5 than that. It's deeper than that. I feel like and I know
6 they feel like they -- the family want justice for what
7 happened---

8 **Ms. Shurling:** Your Honor---

9 **The Witness:** ---and me not telling them, that's...

10 **Ms. Shurling:** I'm sorry to interrupt you, Mr. Hudson,
11 but, Your Honor, at this point I would ask counsel for the
12 prosecution to approach -- approach the bench with me,
13 please.

14 **The Court:** All right. Well, ladies and gentlemen, I'm
15 going to let you step back to the jury room. Please don't
16 discuss the case while you're back there.

17 (Whereupon, the jury was excused from open court at
18 11:55 a.m.).

19 **Ms. Shurling:** Your Honor, Mr. Hudson has just said in
20 the presence of the jury that he took a polygraph.

21 **The Court:** I'm aware of that.

22 **Ms. Shurling:** It isn't entirely clear when he's
23 claiming he took one, but the only polygraph I've been
24 provided a report from was not one that he passed.

25 **The Court:** What is it you want me to do?

1 **Ms. Shurling:** At this point, Your Honor, I think I
2 should be allowed to ask him whether or not it's true that he
3 didn't pass that polygraph.

4 **The Witness:** From my understanding, I passed it. I
5 passed enough evidence to note that what I was saying was
6 correct, was the truth.

7 **Ms. Shurling:** Your Honor, I can pass up the polygraph
8 report to you, and he did not pass it.

9 **The Court:** Well, he didn't say he passed it.

10 **Ms. Shurling:** I'm sorry. Could you repeat what you---

11 **The Court:** He said he took a polygraph. I don't know
12 how much---

13 **Ms. Shurling:** I thought just now---

14 **The Witness:** I said I wasn't sure if I passed it or
15 not, but I know that---

16 **The Court:** Hold on. Hold on, Mr. Hudson. What's the
17 deal? How many polygraphs did he take?

18 **Ms. Campbell:** Your Honor, I believe he took one
19 polygraph, and the results were - my understanding - is
20 inconclusive. So it's not that he failed or passed, but at
21 this point all that's in front of the jury is that -- a
22 mention of he took one, not whether he failed or passed it.

23 **Ms. Shurling:** And Your Honor knows that if the jury
24 hears that he took a polygraph, they are going to assume that
25 the State would not put him up as a witness if he failed one,

1 and so their assumption is going to be that he passed it.

2 **The Court:** I don't know why they would assume that the
3 State wouldn't put him up as a witness because he might have
4 flunked it. I've seen witnesses the State's put up all the
5 time that haven't passed polygraphs.

6 **Ms. Shurling:** Your Honor, my objection for the record
7 would be that the jury could clearly infer---

8 **The Court:** Look---

9 **Ms. Shurling:** ---that he passed.

10 **The Court:** Do y'all have an objection to asking whether
11 it was inconclusive?

12 **Ms. Campbell:** I don't know that he knows the results,
13 Your Honor, based on his answer a minute ago, I mean, and we
14 would object to that, yes.

15 **The Witness:** I didn't get the results.

16 **The Court:** Well, how does he know? He thinks he's
17 passed it. He didn't testify as to that. So what is it you
18 want to do with him?

19 **Ms. Shurling:** I want to ask him whether or not he
20 passed the polygraph test.

21 **The Witness:** I wasn't sure. I'm not sure.

22 **The Court:** All right. He says he doesn't know.

23 **Ms. Shurling:** Your Honor, my only other choice is to
24 move for a mistrial.

25 **The Court:** Ms. Shurling, you asked these questions.

1 **Ms. Shurling:** I did not ask him about the polygraph,
2 Your Honor.

3 **The Court:** You asked him why does anybody believe you?
4 What is it -- when is it that they agreed to give you
5 immunity?

6 **Ms. Shurling:** None of those---

7 **The Court:** He's testified after I gave them all this
8 information, after I took a polygraph, they agreed to give
9 him immunity. That's the extent of it. He didn't say
10 whether he passed it or didn't pass it. I'll be happy to
11 give them an instruction that they -- a polygraph is not
12 relevant in this trial and they are not to infer anything
13 about what he did or didn't do in terms of a polygraph.

14 **Ms. Shurling:** Your Honor, I asked him how---

15 **The Court:** So you want to ask him did he pass it.

16 **Ms. Shurling:** I want to ask him if he even knows what
17 the results were. How is that?

18 **The Court:** All right. You want to ask him that?

19 **The Witness:** I said I don't know. I said I'm not sure.

20 **Ms. Shurling:** You'll say you don't know?

21 **The Witness:** I'm not sure. I don't know.

22 **Ms. Shurling:** Your Honor, that doesn't really cure the
23 harm, unfortunately.

24 **The Court:** Then what do you want to ask him?

25 **Ms. Shurling:** I want -- he has now been made aware that

1 the results were inconclusive. May I ask him: Do you now
2 know whether or not you passed that polygraph?

3 **The Witness:** I know now that I didn't---

4 **The Court:** Shush. I'm going to let you ask him if he
5 knows whether he passed the polygraph or not, and when he
6 says, "I don't know," that's going to end it.

7 **Ms. Shurling:** Your Honor, if he simply says, "I don't
8 know," then it leaves room for an inference in the mind of
9 the jury that the State---

10 **The Court:** Well, do you want him to say, "I do know"?

11 **Ms. Shurling:** No, sir, Your Honor. I want to be able
12 to ask him -- he does now know whether he passed it.

13 **The Court:** Because -- because somebody in this argument
14 has said it's inconclusive, he's now supposed to get up and
15 testify as to that?

16 **Ms. Shurling:** I can hand you the polygraph report, Your
17 Honor.

18 **The Court:** Ms. Shurling, we're not in the midst of a
19 trial trying to educate witnesses as to testimony as to what
20 you want or what they want. You can do what you want in this
21 case. You can ask him whether he knows whether he passed the
22 polygraph or didn't pass the polygraph. He can answer that
23 question. Then we're moving on.

24 **Ms. Shurling:** Your Honor, I need a moment to confer
25 with my client.

1 **The Court:** No, you don't.

2 **Ms. Shurling:** Your Honor, I believe that---

3 **The Court:** You can confer until the jury gets in here.

4 Bring the jury in, please.

5 (Whereupon, the jury was brought into open court at
6 12:00 p.m.)

7 **The Court:** All right. Ms. Shurling?

8 By Ms. Shurling:

9 Q. Mr. Hudson, back up for just a moment. You mentioned --
10 you were talking rather quickly, but you mentioned that you
11 had taken a polygraph. Is that correct?

12 A. Correct.

13 Q. Do you even know whether or not you passed it?

14 A. I don't know.

15 Q. Okay. Mr. Hudson, you've been given immunity for armed
16 robbery; correct?

17 A. Yes, ma'am.

18 Q. You have not been charged with possession of counterfeit
19 money. Is that correct?

20 A. That's correct.

21 Q. You have not been charged for lying to the police about
22 the incident in April either, have you?

23 A. Correct.

24 Q. You haven't been charged with possession of marijuana,
25 have you?

1 A. They found marijuana?

2 Q. You admitted not only to having it, but you claim you
3 stole and possessed several ounces of it at some point that
4 you took from my client.

5 A. Yeah, but I don't -- I didn't have it no more. That was
6 -- that was gone.

7 **Court Reporter:** I'm sorry. Repeat that.

8 **The Witness:** I said I didn't have it anymore. That was
9 gone. I mean...

10 By Ms. Shurling:

11 Q. Well, you had some more at the house that you had hadn't
12 smoked because Joyner was getting ready to roll another
13 blunt; right?

14 A. Yeah, I guess that fell -- that which fell on the
15 ground; he already had the -- he already had that. That's
16 what he was in the process of doing.

17 Q. You don't know what happened to the rest of that pot.

18 A. No, I don't.

19 Q. Okay. And you have never been charged with any kind of
20 assault charge arising out of the shooting, have you?

21 A. No, ma'am.

22 Q. And the only thing that you've been charged with is
23 obstruction of justice.

24 A. Yes, ma'am.

25 **Ms. Shurling:** No further questions.

1 **The Court:** Anything, Ms. Campbell?

2 **Ms. Campbell:** Yes, sir, briefly.

3 Redirect Examination

4 By Ms. Campbell:

5 Q. Ms. Shurling referred to various statements, but you
6 didn't have the luxury -- you met with the police on three
7 different occasions. Is that correct?

8 A. Uh-huh.

9 Q. I want to show you a copy of the written statement as
10 well as a transcript---

11 A. Uh-huh.

12 Q. ---of this statement.

13 A. Uh-huh.

14 Q. What's the date on those statements, that first
15 statement you gave?

16 A. The 20th.

17 Q. Of what month?

18 A. May.

19 **Ms. Shurling:** Your Honor, I'm sorry but I have an
20 objection. I think Your Honor would prefer that we hear it
21 outside the presence of the jury.

22 **The Court:** Step up here, please.

23 (Whereupon, a bench conference was held.)

24 **The Court:** Ask the question.

25 **Ms. Campbell:** Thank you.

1 **Ms. Shurling:** Your Honor, for the record---

2 **The Court:** You object.

3 **Ms. Shurling:** I object to him being allowed to refresh
4 his recollection with a transcript that is not an official
5 certified transcript.

6 **The Court:** All right. Overruled.

7 **Ms. Campbell:** Thank you.

8 By Ms. Campbell:

9 Q. And in that first statement on May the 20th, so we're
10 straight and not confusing anybody, what did you tell them
11 that was the truth?

12 A. Talking about from my first statement?

13 Q. Yes, sir.

14 A. I -- basically I had lied and---

15 **Court Reporter:** Repeat that.

16 **The Witness:** I lied and said that I saw somebody else
17 and it wasn't who I thought -- who I said it was.

18 By Ms. Campbell:

19 Q. But as far as what happened, did you tell them the
20 truth?

21 A. Yeah, I told them everything.

22 Q. And what did you lie about?

23 A. Just who it was.

24 Q. That it was Jonathan Bailey?

25 A. Yeah.

1 Q. And she asked you some particulars - and it's been
2 awhile - about that you never put in your statement when you
3 talked to the police that very day it happened about whether
4 or not you pushed Ebony out of the way.

5 A. Uh-huh.

6 Q. I'm referring to your written statement that you made on
7 May the 20th.

8 A. Yeah.

9 Q. Is it in there that you put in you pushed Ebony out of
10 the way?

11 A. Yeah.

12 Q. And in your recorded statement is it in there that you
13 pushed her out of the way?

14 A. Yes.

15 Q. So you gave them that information that day.

16 A. Uh-huh.

17 Q. And what you lied about - and you admitted this - was
18 that it was Jonathan Bailey and not the person you knew as
19 Bump.

20 A. Yes, ma'am.

21 Q. And then there was some confusion because the next
22 statement -- and I'll show you a transcript.

23 A. Uh-huh.

24 Q. What's the date on that statement that you gave to the
25 police?

1 A. That's the 23rd.

2 Q. Of what month?

3 A. May.

4 Q. And she said that you didn't identify Bump or anything
5 in that. I refer to the second page. What was the question
6 that was asked to you by police officers then about who you
7 had problems with?

8 A. What was the name of the person that you told me
9 about---

10 Q. You've got to speak so we can hear you.

11 A. What is the name of -- the person's name that you told
12 me about? Bump and Bailey.

13 Q. Bump and Bailey. So in the first minute of that
14 conversation you identified whom?

15 A. Bump.

16 Q. Further in that conversation that you had, did they ask
17 you if you knew Bump's real name?

18 A. Yes.

19 Q. And what were you able to tell them about whether or not
20 you knew Bump's real name?

21 A. I didn't know it. That's all I know about him is Bump.

22 Q. And as far as in that statement though, did you also
23 give a description of Bump?

24 A. Yes.

25 Q. And in that description did you talk about tattoos?

1 A. Yes.

2 Q. So you did tell them about that.

3 A. Uh-huh.

4 Q. And in that description did you talk about his neck?

5 A. Oh, I did say he had a fat-ass neck.

6 Q. So you did tell them that.

7 A. Yes, ma'am.

8 Q. And the part that you lied about on that occasion was
9 what?

10 A. You're talking about the part I did what now?

11 Q. Did you admit to the robbery at that point?

12 A. Yes, ma'am.

13 Q. Or did you just admit to a shooting?

14 A. I don't know if I -- I think it might have just been the
15 shooting then.

16 Q. So you lied about the robbery?

17 A. Yeah.

18 Q. And in that one is when you actually talked about the
19 counterfeit money.

20 A. Yes, ma'am.

21 Q. Not the last one.

22 A. Yes, ma'am.

23 Q. And then the last statement that you gave to the police
24 -- I show you that. Do you recognize that?

25 A. Yes.

1 Q. What's the date on that one?

2 A. That's... Oh, the 4th of June.

3 Q. June the 4th?

4 A. Uh-huh.

5 Q. She asked you specifics about that statement

6 specifically, and in this statement you tell the truth about
7 the robbery?

8 A. Yes, ma'am.

9 Q. And she asked you about all these phone calls. In this
10 statement what do you tell them about the phone calls? If
11 you'll refer to, to refresh your memory, this page.

12 A. Yeah. I said, yeah, he made about five phone calls to
13 my phone.

14 Q. So you did tell them about all those things, and those
15 are to illustrate a few points. She asked you about Jonathan
16 Bailey, why you would point a finger at him. He was in a
17 gang, too?

18 A. Yeah.

19 Q. Did they ask you anything about Bump's affiliation with
20 gangs?

21 A. Umm...

22 Q. Do you want to refresh your memory?

23 A. Yeah, because I ain't too sure what they were saying.

24 Q. Referring to the statement from May the 23rd, they asked
25 you if he was a gang member?

1 A. Supposedly.

2 Q. And what gang was he in?

3 A. Supposedly be a Blood.

4 Q. So you gave them all that information.

5 A. Ma'am?

6 Q. You gave them that information, but you admit you lied
7 to them the first time.

8 A. Yes, ma'am.

9 Q. And you admit you lied to them about the actual robbery.

10 A. Yes, ma'am.

11 Q. And you didn't tell them the truth about the robbery and
12 the phone calls until---

13 A. Yes, ma'am.

14 **Ms. Campbell:** Thank you.

15 **The Court:** All right. Ms. Shurling?

16 Recross Examination

17 By Ms. Shurling:

18 Q. Mr. Hudson, what I asked you about was on May 23rd when
19 you first talked to the police you didn't tell them about
20 robbing Hackshaw, did you?

21 A. On what date now?

22 Q. When you first told the police about your altercation
23 with my client in April, you didn't claim that there had been
24 a robbery, did you?

25 A. Yeah, I never said nothing about it.

1 Q. And you didn't admit to the police until sometime in the
2 last couple of weeks that you lied about getting counterfeit
3 money from my client.

4 A. Yeah, I lied about the counterfeit. Yeah.

5 Q. And you didn't admit until recently that you lied when
6 you said that's why you robbed him. Correct?

7 A. Correct.

8 Q. But according to you, by the time you made your last
9 statement, on June 4th you were telling the whole truth?

10 A. The whole truth.

11 Q. Except the part about the counterfeit money.

12 A. Yes. Why? Because it was counterfeit money. I already
13 -- the counterfeit money, that's---

14 Court Reporter: I'm sorry. Repeat that.

15 The Witness: I said, yeah, I lied about the counterfeit
16 money. Like I said, when it first jumped up I did -- you know
17 what I'm saying - said it all was into one, but there was two
18 separate incidents. Yeah, I lied about that.

19 By Ms. Shurling:

20 Q. Because it was something that would get you in trouble.

21 A. Yes. Correct.

22 Q. Okay. Now, the part about you shoving Ebony---

23 A. Uh-huh.

24 Q. What I asked you was that here today you're saying you
25 shoved her to safety.

1 A. I pushed her out of the way, yeah. She was right there.

2 Q. But in your actual statements to law enforcement you
3 said you went to run and she was in the way and you shoved
4 her and she fell to the ground, didn't you?

5 A. No, I don't -- I don't think I said nothing about
6 shoving her to no ground. If anything, I pushed her out of
7 the way. It was going -- it happened so fast. She ain't --
8 she ain't -- you know, know when the shots are going off and
9 I'm running towards her, she's still sitting down. When I
10 pushed her, I guess I -- I think I hit Cleve, too, or knocked
11 him, run into Cleve or however, but he fell, too. He fell.

12 Now, when I pushed her out of the way, I never looked -
13 you know what I'm saying - looked back. I know that she was
14 close enough to when I pushed, the shed -- the shed was right
15 there. You know what I'm saying? I know that eventually
16 they come behind me, so I kept moving.

17 Q. I hand you your May 20th, 2009 statement, that you've
18 already identified. Isn't it true that it says you took off
19 running, pushed Ebony out of the way, and hopped the fence?

20 A. Uh-huh. That's correct. I just said that.

21 Q. Pushed her out of the way.

22 A. Yeah, pushed her out of the way.

23 Q. Thank you. Now -- but everything else, except for the
24 counterfeit money, in your June 4th statement is the truth?

25 Ms. Campbell: Objection, Your Honor. She's

1 mischaracterizing that statement. That's not in there.

2 **The Court:** What's the question?

3 **Ms. Shurling:** A moment's indulgence, Your Honor. My
4 apologies. I'll rephrase.

5 By Ms. Shurling:

6 Q. In your interviews with the police on May 23rd and in
7 June, you were telling them you robbed Bump because he gave
8 you counterfeit money; right?

9 A. Correct.

10 Q. And you didn't admit that was a lie 'til here real
11 recently; right?

12 A. Correct.

13 Q. But what you told the police on June 4th of last year
14 about what happened on April 23rd and then what happened on
15 May 20th is the absolute truth?

16 A. The what statement? The last statement I made?

17 Q. The June 4th statement.

18 A. Yeah. That's correct.

19 Q. Everything you say in here is true.

20 A. Yeah, besides the counterfeit.

21 Q. Does that include the part when you say you're 90 to 95
22 percent sure that it was Bump?

23 A. I know it was him. I'm 100 percent sure it was him.

24 Q. That's not what you said on June 4th. You said---

25 A. Yeah, I said 90 to 95 percent. Uh-huh. But I'm sure

1 that was him. I know that was him.

2 Q. So on June 4th when you said, "I'm 90 to 95 percent sure
3 it was Bump," that's not true?

4 A. Yeah, that's -- I mean, yeah, that's true, but I know
5 that was him though. I know that was him.

6 Q. So it's true that you were only 90 to 95 percent sure---

7 A. I say 95. I knew that was him though.

8 Q. Why would you say you were only 90, 95 percent sure if
9 you were positive?

10 A. Because just off the scrape I didn't really -- I saw
11 him---

12 **Court Reporter:** I'm sorry. Because of what?

13 **The Witness:** I mean, I seen him. I know that was him.
14 I just -- it just wasn't -- I don't know. I don't know why I
15 said 90, 95 percent. I don't know, but I seen him. I know
16 what I saw. I saw who ran up in my back yard trying to kill
17 me and whoever was else back there.

18 By Ms. Shurling:

19 Q. From the time you looked over your shoulder and saw
20 someone coming 'til the time you turned back and hopped the
21 fence, how long do you say passed? Seconds?

22 A. Seconds. Seconds, because when they started walking up
23 on the carport -- like I said, there's like a little wooden
24 fence, so they're going to kind of -- once you walk through
25 that, that's going to block you for a second. At the same

1 time when -- as I seen them blocked, I'm still in the same
2 position that I was though looking. When I looked and once
3 they stepped on around from the fence to where the opening in
4 the fence is at, right there I'm looking down and I'm looking
5 down and I'm looking up. That's the man I seen with the
6 pistol and all that, you know.

7 Q. And as soon as you saw the gun, you shoved Ebony out of
8 the way.

9 A. No.

10 Q. And hauled booty, didn't you?

11 A. Once I seen -- yeah, once I seen them running back up in
12 my back yard -- because, see, they didn't -- they didn't
13 start -- I guess they didn't start running until I said, "Oh,
14 shit." Then I just stopped what I was doing. I'm saying,
15 "Grab the gun." Right when I said, "Grab the gun," that's
16 when shots started going off.

17 Q. So for a few seconds, scared to death and in a panic,
18 stoned or at least high, you saw someone. Right?

19 A. Yeah, I was high. I wasn't stoned, but I was -- I was
20 able to know -- see who I saw. I wasn't that impaired to not
21 know what was going on.

22 Q. I repeat: For a few seconds, high and scared to death,
23 you saw somebody. Isn't that accurate?

24 A. I saw Bump.

25 **Ms. Shurling:** So you say. No further questions.

1 **The Court:** All right. Thank you. You may step down.
2 All right. Whoever is in charge of the next witness, y'all
3 step up here a minute, please.

4 (Whereupon, a bench conference was held..)

5 **The Court:** All right. Do you want to call your next
6 witness?

7 **Ms. Campbell:** The State calls Kevae Dolphin.

8 Kevae Dolphin, after being duly sworn, testified as
9 follows:

10 **The Clerk:** Please have a seat and state your full name
11 for the record. Spell your first name.

12 **The Witness:** My name is Kevae Dolphin. K-e-v-a-e.

13 Direct Examination

14 By Ms. Campbell:

15 Q. Ms. Dolphin, how old are you?

16 A. Nineteen.

17 Q. And you live here in the Columbia area?

18 A. Yes, ma'am.

19 Q. And how long have you been living in Columbia?

20 A. About four years.

21 Q. And are you currently employed?

22 A. No, ma'am.

23 Q. Are you going to school?

24 A. I was. I'm planning on going back.

25 Q. Okay. What were you studying in school?

1 A. Paralegal.

2 Q. Paralegal?

3 A. Yes, ma'am.

4 Q. And where were you going---

5 **The Court:** You need to speak up if you would, please.

6 If you need to move closer, that's fine.

7 By Ms. Campbell:

8 Q. I'm sorry. The acoustics in here are kind of bad. And
9 where were you going to school before?

10 A. Before South University?

11 Q. South University. Okay. Thank you. Where do you live
12 here in Columbia?

13 A. In Summer Valley on Hardscrabble.

14 **Court Reporter:** I'm sorry. Summer Valley?

15 **The Witness:** Summer Valley.

16 By Ms. Campbell:

17 Q. Speak up just a little bit. You're soft-spoken.

18 A. Okay.

19 Q. It's hard to hear in here. Okay?

20 A. All right.

21 Q. In Summer Valley?

22 A. Yes, ma'am.

23 Q. Where is that located?

24 A. On Hardscrabble.

25 Q. Off Hardscrabble Road?

1 A. Uh-huh.

2 Q. Here in Richland County?

3 A. Yes, ma'am.

4 Q. And what's the exact address of where you live, ma'am?

5 A. [REDACTED], Columbia, South Carolina.

6 Q. Summer Park Road, [REDACTED]?

7 A. Yes, ma'am.

8 Q. And who all lives there with you?

9 A. Me, my mom, my sister-in-law, and my two nieces.

10 Q. Two nieces?

11 A. Yes, ma'am.

12 Q. And how old are they?

13 A. Ashanti (phonetic) is eight and Tylashia (phonetic) is
14 three.

15 Q. Do you know a young man named Jonathan Bailey?

16 A. Yes, ma'am.

17 Q. Can you tell this jury how you knew Jonathan Bailey?

18 A. I met him when I first moved here through Cory Sanders.

19 Q. And when you first moved here you met him?

20 A. Yes, ma'am.

21 Q. And were you friends?

22 A. We were friends.

23 Q. And as part of your friendship, sometimes would he come
24 over to your house?

25 A. Yes, ma'am.

1 Q. Was that unusual?

2 A. No, ma'am.

3 Q. I want to turn your attention back to May the 20th of
4 last year of 2009. Were you at home that day?

5 A. Yes, ma'am.

6 Q. And what were you doing at home?

7 A. Me and my friend Stephanie was at home and---

8 Q. You and your friend Stephanie?

9 A. Uh-huh.

10 Q. And were there other people kind of in and out of the
11 house?

12 A. Yes, ma'am. I was actually frying pork chops and
13 braiding hair in my garage.

14 Q. You were braiding hair in your garage?

15 A. Yes, ma'am.

16 Q. You weren't frying pork chops in your garage.

17 A. No, ma'am. The kitchen and the garage is right
18 together.

19 Q. Okay. And do you remember whose hair you were braiding
20 that day?

21 A. Kiosha.

22 Q. But she was out in the garage.

23 A. Yes, ma'am.

24 Q. And as far as who was in the house, you mentioned your
25 friend Stephanie?

1 A. Uh-huh.

2 Q. So she was in the house---

3 **The Court:** Is that a yes? You need to say yes or no.

4 **The Witness:** Oh, yes, ma'am.

5 By Ms. Campbell:

6 Q. So she was in the house with you that day?

7 A. Yes, ma'am.

8 Q. At some point did you get in touch or did Jonathan
9 Bailey get in touch with you?

10 A. Yes, ma'am, me and Stephanie.

11 Q. And how did that happen?

12 A. He called Stephanie's phone because he wanted to come
13 over.

14 Q. And was that in the morning, the afternoon or night or
15 when was that?

16 A. The morning and like the afternoon.

17 Q. And that morning he called Stephanie; right?

18 A. Yes, ma'am.

19 Q. And did Jonathan Bailey come over to your house on May
20 the 20th of 2009?

21 A. Yes, ma'am.

22 Q. And do you remember what time it was when he got there?

23 A. Around 11 becoming -- like going into 12:00.

24 Q. Between 11 and 12?

25 A. Yes, ma'am.

1 Q. And why do you remember the time?

2 A. Because he called our phones and my camera system in my
3 house...

4 Q. Explain that to the jury. You have a camera system in
5 your house?

6 A. Yes, ma'am. It's -- my camera is right here and my
7 flat-screen T.V. and my box, my cable box. So as you look at
8 the small T.V., you can see the T.V. and the cable box with
9 the time on the top of it.

10 Q. And when you say you have a camera in your home, what is
11 the camera -- where is the camera located?

12 A. In the front of my house. The garage is right here and
13 it's pointing this way. So everybody that rides by and
14 everybody that pulls up and pulls on the side of my house,
15 you can see everything.

16 Q. And can you see people as they actually approach your
17 door?

18 A. Yes, ma'am.

19 Q. And is that a safety precaution your mother put in?

20 A. Yes, ma'am.

21 Q. And at the time -- on the day in question, was it
22 actually recording who was out there or were you just able to
23 see who was coming up to the door?

24 A. No, ma'am, it wasn't recording.

25 Q. But did you actually see Mr. Bailey come up?

1 A. Yes, ma'am.

2 Q. And that's when you noticed the time.

3 A. Uh-huh.

4 Q. Sometime between 11 and 12 that day.

5 A. Yes, ma'am, the best I remember.

6 Q. Once he came inside your house, who all was inside the
7 house while he was there?

8 A. Stephanie was because she was staying with me because
9 she was from Florida. The rest of the kids that was outside
10 can't come in my house. They were in the garage.

11 Q. They were in the garage?

12 A. Yes, ma'am.

13 Q. And that day did Jonathan Bailey come inside and stay
14 for a period of time?

15 A. Yes, ma'am, upstairs with Step.

16 Q. And they were upstairs and you were downstairs doing
17 what?

18 A. Hair.

19 Q. And I believe you mentioned you were cooking?

20 A. Yes, ma'am.

21 Q. How long did he stay? Do you remember?

22 A. About four hours, three or four hours.

23 Q. Three or four hours?

24 A. Yes, ma'am.

25 Q. And do you know exactly what time it was when he left

1 that day?

2 A. 3:02.

3 Q. And why did you know that?

4 A. Because I was standing in front of my camera system.

5 Q. And it was 3:02.

6 A. Yes, ma'am. I remember that.

7 Q. And you remember that exact time.

8 A. Yes, ma'am.

9 Q. Shortly after -- and that day there wasn't anything
10 special going on that you knew about. Right?

11 A. Oh, no, ma'am.

12 Q. Shortly thereafter, within a day or two, did the police
13 come and talk to you?

14 A. Yes, ma'am. Two black guys came to my house.

15 Q. Investigators with the Columbia Police Department?

16 A. I know they was investigators.

17 Q. Do you remember Investigator Reese?

18 A. I don't remember him. I just remember he was black.

19 Q. Two investigators.

20 A. Yes, ma'am.

21 Q. And at that point did they ask you specifically about
22 Jonathan Bailey being at your house on the date in question?

23 A. Yes, ma'am.

24 Q. And you actually gave them that information while it was
25 still fresh in your memory.

1 A. Yes, ma'am.

2 Q. And you gave the same information you're giving us here
3 today.

4 A. It was fresher then.

5 Q. It was fresher then?

6 A. Yeah.

7 Q. But you still remember it now.

8 A. Yes, ma'am.

9 Q. And from sometime -- before 12:00 until 3:02, he was at
10 your house with you and Stephanie that day.

11 A. Yes, ma'am.

12 Q. Did he ever leave during those periods of time?

13 A. No, ma'am.

14 Q. And, in fact, did he have any means of transportation
15 himself?

16 A. No, ma'am. Whitney brought him over.

17 **Ms. Campbell:** Okay. Thank you. I don't have any
18 further questions.

19 **The Court:** Ms. Shurling?

20 Cross-Examination

21 By Ms. Shurling:

22 Q. Hello, Ms. Dolphin.

23 A. Hi.

24 Q. What day did you say the two black officers came to your
25 house?

1 A. A couple of days after. I don't remember exactly the
2 day.

3 Q. Okay. And what time did you tell them Jonathan Bailey
4 had arrived at your house?

5 A. Between 11 and 12. It was pushing 12:00.

6 Q. Didn't you, in fact, claim to remember that he arrived
7 at 11:58 and---

8 A. Yes, ma'am.

9 Q. ---he left at 3:02?

10 A. Two days later when the police came to my house, yes, I
11 knew then, but a year later, I remember it was between 11 and
12 12.

13 Q. So on that day when they came to ask you about Mr.
14 Bailey being at your house, you were prepared to tell them
15 11:58 and stayed 'til 3:02. Correct?

16 A. I wasn't prepared to tell them that. When they came to
17 my house, yes, I had the times that, yeah, he was there.

18 Q. Okay. There is one camera on your home surveillance
19 system; correct?

20 A. On my garage, yes, ma'am.

21 Q. It's actually posted on the far right corner of the
22 molding over the garage door, isn't it?

23 A. Yes, ma'am.

24 Q. And it points sharply to the left so that you can see
25 comings and goings on the front of your house?

1 A. Yes, ma'am.

2 Q. It can't show you a thing in the back, can it?

3 A. Oh, no, ma'am.

4 Q. Is there a back door to your house?

5 A. Yes, ma'am. There's a back door to my house that only
6 my mom has the key to, so you can't go in or out.

7 Q. Is there a side door?

8 A. No, ma'am.

9 Q. So there's a back door, but it's locked all the time.

10 A. My mom has a key to it. We have cameras and stuff
11 because girls busted my windows out, so my mom has a key to
12 it. She got a man to come over there to make it especially
13 for her. She has a key to it.

14 Q. When the police came and interviewed you, you told them
15 there was a young lady there named Stephanie; correct?

16 A. Yes, ma'am.

17 Q. Did you give them her last name?

18 A. Stephanie McGowan?

19 Q. I'm asking if when you were interviewed on May 22nd you
20 gave them her last name.

21 A. You're asking me that? I don't remember a year ago.
22 Maybe I did. I know Steph's name. She's my best friend.

23 Q. Okay. My question is: On May 22nd when law enforcement
24 came and interviewed you---

25 A. Uh-huh.

1 Q. And you told them a female named Stephanie was there.

2 Did you give them Stephanie's last name?

3 A. I don't remember.

4 Q. You don't remember.

5 A. No, ma'am.

6 Q. Did you give them contact information for Stephanie?

7 A. Stephanie said they contacted her mother because her
8 mother works for the government.

9 Q. Pardon?

10 A. Stephanie said they contacted her mother in Florida
11 because her mother works for the government. Her mother knew
12 everything that was going on in South Carolina. So obviously
13 I had to give them her last name.

14 Q. And you told law enforcement that on May 22nd?

15 A. I don't remember if I gave them her last name or not,
16 but they contacted her mother in Florida that works for the
17 government, so they had her last name.

18 Q. Okay. Now, you were in the garage working on hair?

19 A. Yes, ma'am.

20 Q. Whose hair were you working on?

21 A. Kiosha's.

22 Q. Did you tell law enforcement that?

23 A. No, I don't believe I did.

24 Q. You didn't, did you?

25 A. I don't remember.

1 Q. Okay. So the majority of the time that you say Bailey
2 was there in your house, you were in the garage doing hair.

3 A. Yes, ma'am.

4 Q. Did Bailey want to be alone with Stephanie?

5 A. They was upstairs together.

6 Q. Pardon?

7 A. They were upstairs together.

8 Q. They were upstairs together.

9 A. Yes, ma'am.

10 Q. Were they - what's the expression you kids use -
11 talking?

12 A. Were they friends? They were friends; yes, ma'am.

13 Q. Ms. Dolphin, were they more than friends?

14 A. I don't know. They was upstairs. I was downstairs. So
15 whatever went on upstairs, I don't know.

16 Q. You had reason to believe they had a little something
17 going on, didn't you?

18 **Ms. Campbell:** Objection, Your Honor, relevance on all
19 this.

20 **The Court:** Sustained.

21 By Ms. Shurling:

22 Q. How long have you known Jonathan Bailey?

23 A. A few years.

24 Q. You told the police that someone came and picked him up;
25 right?

1 A. Yes, ma'am.

2 Q. Well, first off you told the police you were in the
3 habit of looking at your camera every time somebody arrived
4 and every time somebody left. Is that true?

5 A. No, ma'am. The same thing you're doing to me they did
6 to me, too. They drilled me about do I look at the camera
7 every move I make. No, that's not true.

8 Q. It isn't true?

9 A. No.

10 Q. Okay. And you told the police that someone came and
11 picked Bailey back up shortly after 3:00. Correct?

12 A. Uh-huh.

13 Q. Who was that someone?

14 A. I told them then; I don't remember now. Well, I know
15 it's Q., but I had to have Step remind me who picked him up
16 because it happened a year. So I don't want to tell you
17 something that somebody else told me, but it was Q. Who
18 picked him up. Step reminded me.

19 Q. Who reminded you?

20 A. Step.

21 Q. Who is Step?

22 A. Stephanie.

23 Q. Stephanie. I'm sorry. I thought you said Step.

24 A. That's her nickname.

25 Q. Oh, okay.

1 A. Uh-huh.

2 Q. So you've discussed this with Stephanie.

3 A. No. I asked her who -- "Step, do you remember who
4 picked up Bailey?" And she was like, "Yeah, it was Q.
5 Remember?" And she was like -- I was like, "Yeah, he was
6 driving that blue car." He was driving the Caprice.

7 Q. So since May 22nd, 2009, you and Stephanie have had
8 conversations about---

9 A. Yes, ma'am. Bailey had got prosecuted for it. Then I
10 remember Ellison getting charged for false information. So
11 obviously I didn't know that was going to come back anymore,
12 so I thought it was going to be out the window. So why would
13 I remember something that happened a whole year ago? I mean,
14 it's irrelevant, I mean, at least I thought, but I'm here
15 today.

16 Q. How far is your house from the scene where the shooting
17 occurred on May 20th?

18 A. I don't know where the shooting occurred or nothing
19 about it.

20 Q. Do you know the Fairview neighborhood -- Greenview.
21 Pardon me. Greenview neighborhood?

22 A. I know a little bit about it.

23 Q. It's about six miles from your house, isn't it?

24 A. I guess.

25 Q. You guess?

1 A. Yes, ma'am. I don't know the miles. If you say it's
2 six miles, it's six miles.

3 Q. A moment's indulgence. You mentioned a moment ago, Ms.
4 Dolphin---

5 A. Uh-huh.

6 Q. ---that you knew Ellison Hudson had gotten charged with
7 obstruction of justice.

8 A. Uh-huh.

9 Q. Do you know---

10 The Court: Is that a yes?

11 The Witness: Oh, yes, ma'am.

12 By Ms. Shurling:

13 Q. Do you know Ellison Hudson well?

14 A. I didn't know him at the time, but I know a little bit
15 about him now.

16 Q. Do you know about him or do you know him?

17 A. I don't know him like that. He talks to my friend.

18 Q. He talked to your friend?

19 A. Yes. They're boyfriend and girlfriend.

20 Ms. Shurling: Thank you. No further questions.

21 Redirect Examination

22 By Ms. Campbell:

23 Q. Kevae, just a couple of questions. For the record, you
24 didn't know Ellison Hudson when this happened.

25 A. Oh, no, ma'am.

1 Q. And just for the record, back in 2008 you were convicted
2 of shoplifting?

3 A. Yes, ma'am.

4 Ms. Campbell: Thank you.

5 The Court: Anything further?

6 Recross Examination

7 By Ms. Shurling:

8 Q. You were convicted of shoplifting you said?

9 A. Yes, ma'am.

10 Q. Is that the only prior that you have?

11 A. Huh-uh. No, ma'am.

12 Ms. Campbell: Objection, Your Honor. May we approach?

13 (Whereupon, a bench conference was held.)

14 The Court: All right. Sustained.

15 Ms. Shurling: Your Honor, may we approach?

16 (Whereupon, a bench conference was held.)

17 Ms. Shurling: Nothing further.

18 The Court: All right. You may step down. All right.

19 Ladies and gentlemen, we're going to go ahead and break for
20 lunch. I've got 25 'til 1. We're going to take about an
21 hour and 15 minutes, so that will be 10 'til 2. Y'all don't
22 discuss the case while you're gone. Everybody's watch
23 synchronized with mine? I see y'all all looked. Don't
24 discuss the case while you're gone. Have a nice lunch, and
25 we'll see you back here at 10 'til 2.

1 (Whereupon, the jury was excused from open court to go
2 to lunch at 12:38 p.m.)

3 **The Court:** Y'all have a nice lunch. Who are y'all
4 going to call after lunch? Is it somebody long or are we
5 going to get some short ones or...

6 **Ms. Campbell:** They should be relatively short. The
7 only one that might go after lunch that could be long is
8 Jonathan Bailey, but his should be short, but then again I
9 didn't anticipate this morning being quite as long as it
10 went.

11 **The Court:** Do y'all have any idea how many witnesses
12 you think you actually may call of these 105 that you've
13 listed?

14 **Ms. Campbell:** Your Honor, it looks like a total of
15 around between 30 and 40 witnesses.

16 **The Court:** 30 and 40. All right. Y'all have a good
17 lunch.

18 **Ms. Campbell:** Thank you.

19 **The Court:** See you later.

20 (Whereupon, a lunch break was taken.)

21 **The Court:** All right. Thank y'all. Please be seated
22 if you would. All right. Mr. Hollis, let's bring us the
23 jury in if we could.

24 **Ms. McDuffie:** Your Honor?

25 **The Court:** Ma'am? Hold on, Mr. Hollis.

1 **Bailiff:** Okay.

2 **The Court:** Did you want to say something?

3 **Ms. McDuffie:** Yes, sir, Your Honor. Before we bring
4 the jury in, the next couple of witnesses we provided their
5 criminal records to Ms. Shurling. The only ones, Your Honor,
6 that we see that have impeachable offenses are Shanelle
7 Latimer who has two counts of shoplifting, both in 2006, and
8 Tony craft who has a P.W.I.D. cocaine from 2008.

9 **The Court:** All right.

10 **Ms. Shurling:** That would be accurate, Your Honor.

11 **The Court:** All right.

12 **Ms. McDuffie:** Your Honor, we would submit that none of
13 our other witnesses have records that are impeachable that we
14 intend to call except for Jonathan Bailey, but that's a whole
15 nother...

16 **Ms. Campbell:** I've got Jonathan Bailey. Do we want to
17 address that now or whenever you think is appropriate as far
18 as his pending convictions?

19 **The Court:** All right. Well, let's go ahead and do Mr.
20 Bailey and see if we get to him today.

21 **Ms. Campbell:** Your Honor, we do plan on getting to him
22 today. I have turned over -- I've received from his federal
23 attorney a copy of the plea agreement he entered into with
24 the federal government. He entered a plea I believe earlier
25 last week to one count of assaulting a federal employee. His

1 presentence report is not complete, but the term is up to 20
2 years and a fine of not more than \$250,000 with a term of
3 supervised release of three years.

4 **Court Reporter:** I'm sorry. Of What?

5 **Ms. Campbell:** It's a maximum term of imprisonment of 20
6 years and/or a fine of not more than \$250,000 and a term of
7 supervised release of at least three years in addition to any
8 imprisonment. I just want to know if we agree that that's
9 what he's facing.

10 **Ms. Shurling:** And is that his only prior within the
11 last ten years?

12 **Ms. Campbell:** I haven't gotten to his priors. His only
13 prior conviction is a 2007 shoplifting, but I'll get to that.
14 That's what he just pled guilty to and that's what he's
15 facing on that charge.

16 **Ms. Shurling:** Thank you.

17 **Ms. Campbell:** Okay. And then pending with the
18 statewide grand jury he has one count of criminal conspiracy,
19 two counts of armed robbery, and one possession of a weapon
20 during a violent crime. And then pending in our office he
21 has three counts of armed robbery. However, the armed
22 robbery -- one of them was superseded by the federal
23 indictment and then the other two have been adopted by the
24 statewide grand jury, so I don't know quite how to handle
25 those.

1 **The Court:** Well, if the same charges are pending in
2 another court and those are being prosecuted in another
3 matter, then we would not go through it twice.

4 **Ms. Campbell:** Yes, sir. I just wanted to make sure.
5 And then finally, Your Honor---

6 **The Court:** If he doesn't have a charge on the state
7 level and now it's on the federal level and the federal level
8 charge -- I guess that's the one he pled to?

9 **Ms. Campbell:** He pled to -- he was originally charged
10 in the federal level---

11 **The Court:** I know, but that's part of what he just pled
12 in federal court?

13 **Ms. Campbell:** Yes, sir.

14 **The Court:** And there is no pending charge in the state
15 court on that charge anymore.

16 **Ms. Campbell:** There is a pending armed robbery that I
17 just have to dismiss that I didn't want to dismiss until this
18 proceeding was taken care of. In other words, the two armed
19 robberies that were consumed by the statewide grand jury and
20 the federal charge that was taken up by the feds is still
21 technically pending in my office.

22 **The Court:** But it's been -- it's got to be dismissed
23 because the feds took it, right, and they've dealt with it?

24 **Ms. Campbell:** Yes, sir, they dealt with it.

25 **The Court:** All right. Well, we won't report it twice.

1 **Ms. Campbell:** Thank you. And then finally, Your
2 Honor---

3 **The Court:** All right. Hold on.

4 **Ms. Shurling:** I'm just wondering -- I want to make sure
5 I'm clear. There's two counts of armed robbery in the
6 statewide grand jury?

7 **Ms. Campbell:** Yes, ma'am.

8 **Ms. Shurling:** And?

9 **Ms. Campbell:** And a possession of a weapon during a
10 violent crime and one criminal conspiracy.

11 **Ms. Shurling:** And one count of armed robbery was
12 included in what the feds took over?

13 **Ms. Campbell:** They took over that entire case which
14 included, I believe, an armed robbery and then this assault
15 on a federal employee. He pled without any of our
16 involvement to assault on a federal employee and is now
17 facing that amount of time I just went over.

18 **Ms. Shurling:** Okay. And that's three total.

19 **Ms. Campbell:** Yes, ma'am. Actually there's---

20 **The Court:** Well, there's actually more than that.

21 **Ms. Campbell:** No. The two armed robberies---

22 **The Court:** I thought you had more than two armed
23 robberies pending here.

24 **Ms. Campbell:** I have three armed robberies pending
25 here.

1 **The Court:** Well, not the one that's been superseded by
2 the feds. All you have in Richland County is two armed
3 robberies?

4 **Ms. Campbell:** I still have the one that's been consumed
5 by the feds pending.

6 **The Court:** I understand that, but that's getting ready
7 to go way because it's been superseded by the feds.

8 **Ms. Campbell:** Yeah. And then since then, too, the
9 statewide grand jury took the other two armed robberies I
10 have and they're prosecuting those, but they have been not
11 been disposed of.

12 **The Court:** And they have some other charges as well.

13 **Ms. Campbell:** Yes, sir.

14 **The Court:** How many other charges do they have besides
15 those two armed robberies?

16 **Ms. Campbell:** They have one count of criminal
17 conspiracy and one possession of a weapon during a violent
18 crime.

19 **Ms. Shurling:** Your Honor, it's my understanding that
20 she could still prosecute at the state level that armed
21 robbery if she chose to. I know with drug cases they can't,
22 but it's my understanding as long as it's not a drug case, we
23 have dual sovereignty and she still technically could
24 prosecute that armed robbery. She hasn't dismissed it before
25 now.

1 **Ms. Campbell:** That was because I didn't want to mess up
2 his bond, but I -- certainly you don't think I can do the two
3 that the statewide is prosecuting.

4 **Ms. Shurling:** No.

5 **Ms. Campbell:** And we have no intention of prosecuting
6 the armed robbery which the feds took over.

7 **Ms. Shurling:** But you were not dismissing it until this
8 case was over.

9 **Ms. Campbell:** That's true.

10 **Ms. Shurling:** So you would not mess up his bond.

11 **Ms. Campbell:** And he just pled guilty last week and I
12 didn't even find out about it until right before this trial.
13 I'll be glad to say there's one armed robbery pending in
14 state court.

15 **The Court:** I'm sure this case is going to hinge on
16 that. Anything else?

17 **Ms. Campbell:** No, sir. And his 2007 shoplifting
18 conviction.

19 **The Court:** All right. Anything else?

20 **Ms. Shurling:** Yes, sir, Your Honor, unfortunately.
21 Over the lunch break I had an opportunity to discuss with my
22 client what happened during Mr. Hudson's testimony, his
23 revelation in the presence of the jury that he had taken a
24 polygraph. Your Honor allowed me to ask limited questions.
25 I was only allowed to ask whether he knew what the results

1 were, and he said he did not. But unfortunately, in my
2 opinion, the clear inference to the jury would be that the
3 State would not put him up as a witness if he had failed the
4 polygraph. Therefore, they would wrongfully conclude that
5 the polygraph had proven him to be truthful with regard to
6 the details of this final statement.

7 So as reluctant as I am to do it because of everyone's
8 hard work at this time and -- oh, and, Your Honor,
9 unfortunately this is minor compared to that, but I'm also
10 told that as we broke for lunch and my client was taken out
11 of the courtroom he was seen in shackles by the jury. I
12 believe the officer will confirm that.

13 **Officer:** I can confirm that I was standing in front of
14 him.

15 **Ms. Shurling:** Pardon?

16 **Officer:** I was standing in front of him. Another
17 officer walked out the door. I don't know who was in the
18 hallway.

19 **Ms. Shurling:** Your Honor, it's my client's position---

20 **The Court:** Wait a minute. Wait a minute.

21 **Ms. Shurling:** ---that he was seen. In any event, Your
22 Honor, at this time I would move for a mistrial.

23 **The Court:** Wait a minute. Stand up for a minute.

24 **Officer:** Yes, sir.

25 **The Court:** Where was he taken?

1 Officer: He was back here---

2 The Court: Did y'all take him back in the hallway?

3 Officer: No.

4 The Court: How did the -- how did the jury see him in
5 the...

6 Officer: There was another officer that come behind me
7 and opened the door. As he opened that door, I'm standing
8 here---

9 The Court: Wait a minute. You're walking out with the
10 defendant.

11 Officer: Out of this door right here.

12 The Court: You go through that door right there.

13 Officer: Right.

14 The Court: All right.

15 Officer: Do you want me to show...

16 The Court: So what happens? You get out the door, and
17 what happened?

18 Officer: We come out this door.

19 The Court: All right.

20 Officer: We're standing here at the elevator. He's
21 standing and I'm standing here. He's standing here. Here is
22 the door.

23 The Court: So you're standing by the elevator.

24 Officer: Right. He's standing -- I'm standing in front
25 of him in front of the door. There was another officer who

1 came through here and went out the door.

2 **Bailiff:** Over here.

3 **The Court:** And what?

4 **Officer:** Sir?

5 **The Court:** And jurors saw him in...

6 **Officer:** I don't know if they did or not. He told --
7 he tells me that there was the jury out there and they saw
8 him in shackles.

9 **The Court:** Who said that? The defendant?

10 **Officer:** That's what the defendant says.

11 **The Court:** He wouldn't know any more than you know,
12 would he?

13 **Officer:** I don't know who was in the hallway.

14 **The Court:** What do y'all want to say about that? What
15 do y'all want to say about the mistrial?

16 **Ms. Campbell:** Your Honor, we don't think a mistrial is
17 warranted in this case. She was the one that asked the
18 question as to why...

19 **The Court:** I'm sure you don't, but that's all you want
20 to say?

21 **Ms. Campbell:** No, Your Honor.

22 **The Court:** Somebody moved for a directed verdict one
23 time in a criminal case and somebody in your office got up
24 and said, "You got anything you want to say?" "Yeah. I
25 object." They sat down. I said, "Do what?"

1 **Ms. Simpson:** Wasn't me.

2 **The Court:** You know, generally we want some basis for
3 whatever your---

4 **Ms. Campbell:** Your Honor, as far as the first basis, I
5 think that any kind of mistrial motion at this point -- the
6 answer to the question as to, "Why should they believe you?"
7 Was in response to her question. He put it out there. She
8 chose to go back and emphasize it by following up with
9 follow-up questions. At that point he says he doesn't know
10 what the results are.

11 I don't know how she can infer that the jury thinks he
12 passed it when he says he doesn't even know what the results
13 are or anything of that nature. She chose to follow up on it
14 at that point and make it into more of an issue where it
15 might have passed over their heads otherwise, and there's no
16 evidence in this record that he passed a polygraph or didn't
17 pass a polygraph or anything. She elicited the answer in
18 response to her question as to why would you believe him, and
19 then she's now moving for a mistrial based on that, Your
20 Honor.

21 I think you've cured any possible problem. Now, if she
22 wants a curative instruction, we don't have a problem with
23 that which may be appropriate if she wants that. We have no
24 objection to you making a curative instruction that they
25 aren't supposed to consider any mention of the polygraph in

1 their deliberations. That would obviously cure any possible
2 prejudice that she -- we don't think there's any prejudice,
3 but if you want to even go so far as to say there could be,
4 which we don't see any evidence of, then that would cure any
5 possible problem. And do you want me to address the
6 shackles?

7 **The Court:** All right.

8 **Ms. Shurling:** Your Honor, the record will speak for
9 itself, but my question was was how is this jury supposed to
10 know---

11 **The Court:** All right. You wanted to ask him if he --
12 he doesn't know whether he passed. He has no idea whether he
13 passed. Now, maybe if somebody up here who administered the
14 polygraph or somebody that relied on the polygraph could say
15 whether he passed it or not, but if he doesn't know, he
16 doesn't know.

17 **Ms. Shurling:** That's not the issue, Your Honor. The
18 issue is that he was given a polygraph.

19 **The Court:** Well, I understand that, Ms. Shurling. You
20 asked him a question as to---

21 **Ms. Shurling:** Whether he knows what the results are or
22 not is irrelevant. The jury is going to assume the integrity
23 of the State as such---

24 **The Court:** Ms. Shurling, let me tell you something:
25 When I'm talking, you don't. When -- you're the one that

1 said I want to publish to the jury that the results were
2 inconclusive. He doesn't know what the results. He can't
3 testify to anything. You certainly don't have the ability to
4 get up and testify, if you want to be the lawyer. If y'all
5 stipulate that the results were inconclusive, then that
6 obviously could have come in. So the best you could do is:
7 What is it that -- did you pass it or did you not pass it? I
8 don't have -- I don't know. That's all he can testify. He
9 can't testify to something more than he knew.

10 At some point in time if somebody who does know comes
11 up, maybe we'll let you ask that question: Did he pass the
12 polygraph? But he can't testify to something that he doesn't
13 know under any circumstances.

14 I'm going to deny your motion for a mistrial. I will
15 give a curative instruction on that basis if you'd like. Is
16 there something you would like me to tell the jury?

17 **Ms. Shurling:** Your Honor, may I give you my answer on
18 that before the final charge?

19 **The Court:** Yeah. I mean, you know, probably the sooner
20 we do it, the better it would be but...

21 **Ms. Shurling:** I'd like to state on the record that I
22 was trying to avoid the necessity for a mistrial. I
23 believed, as I still do, that the only way to cure the
24 prejudice to my client was for the jury to know that the
25 results of the test were inconclusive. Now, Mr. Hudson may

1 not have known that they were inconclusive contemporaneous
2 with when the test was given, but he does now know. So I
3 could have asked him and was not permitted to---

4 **The Court:** How does he know? Because of hearsay?

5 **Ms. Shurling:** If he's been informed by the prosecution,
6 by the State, whether or not he passed his polygraph, he
7 knows.

8 **The Court:** He says nobody ever told him.

9 **Ms. Shurling:** Your Honor, I had a copy of the report.
10 I asked permission to let him see it so that he---

11 **The Court:** A copy of the report?

12 **Ms. Shurling:** So that I could -- pardon?

13 **The Court:** A copy of the report?

14 **Ms. Shurling:** I had a copy of the report showing that
15 the results of his test were inconclusive. I asked
16 permission to let him see it.

17 **The Court:** I have no -- I have no recollection of your
18 asking permission to let him see the copy of the report.

19 **Ms. Shurling:** I did, Your Honor. I said, "Your Honor,
20 I have the report right here. I can show it to him."

21 **The Court:** I've denied your motion.

22 **Ms. Shurling:** Thank you, Your Honor.

23 **The Court:** You're going to let me know when whether you
24 want a curative instruction?

25 **Ms. Shurling:** If I may have just a moment.

1 **The Court:** All right. Now, let's talk about the other
2 issue. Do you want me to make any inquiry of this jury as to
3 whether they saw your client after they were excused for
4 lunch?

5 **Ms. Shurling:** Yes, sir, Your Honor, I do.

6 **The Court:** All right. Bring the jury in if you could.

7 (Whereupon, the jury was brought into open court at 2:13
8 p.m.)

9 **The Court:** All right. Ladies and gentlemen, sorry to
10 keep you waiting, but sometimes we have to take up some
11 matters outside the presence of the jury. When I asked you
12 to be back at 10 'til, we were here and I've been dealing
13 with some matters that I needed to deal with.

14 I want to ask y'all a question. When we broke for
15 lunch, after you exited courtroom did anybody see the
16 defendant at any time after we had broken for lunch when you
17 exited courtroom?

18 **Juror:** Excuse me?

19 **The Court:** All right. Don't -- did you see the
20 defendant? Yes or no.

21 **Alternate Juror:** Yes.

22 **The Court:** All right. Ladies and gentlemen, I want
23 everybody else to step back to the jury room. If you'll stay
24 here, please, sir.

25 (Whereupon, the jury was excused from open court at 2:15

1 p.m. Alternate Juror Vitali remained in the courtroom.)

2 The Court: All right. You're Mr. Vitali?

3 Juror Vitali: Yes.

4 The Court: All right. Mr. Vitali, tell me what you
5 saw.

6 Juror Vitali: I was walking out in the hall and a door
7 opened and I looked out there, and as I was walking by I saw
8 the defendant standing.

9 The Court: Did you see anything else?

10 Juror Vitali: Nothing. I just quickly was walking by.

11 The Court: And you just saw the defendant standing in
12 the room on the other side of the doorway.

13 Juror Vitali: Correct.

14 The Court: All right. Nothing else.

15 Juror Vitali: Was there -- I don't know.

16 The Court: Well, I mean, you know what you saw.

17 Juror Vitali: I mean, I didn't see anything else. Was
18 there anything else going on?

19 The Court: I wasn't -- I wasn't there. I'm trying to
20 find out. Okay.

21 Juror Vitali: That's all I saw, a quick glimpse as I
22 was walking by.

23 The Court: Sir? All right. I'm going to let you step
24 back to the jury room. Please do not discuss with the jury
25 anything that I have just addressed with you, either now or

1 at any time. Okay?

2 Juror Vitali: Sure.

3 The Court: If you'll step back to the jury room.

4 (Juror Vitali exits the courtroom.)

5 The Court: All right.

6 Ms. Shurling: Your Honor, my concern is that the way
7 the inquiry was put to the jury. This gentleman obviously
8 understood what you meant and responded about viewing the
9 client in the hall there, but I'm afraid that the way the
10 question was put that the jury might not have understood that
11 you meant including when he was being taken out of the
12 courtroom.

13 The Court: I asked them at any time after they exited
14 this courtroom did they see the jury -- I mean the defendant.
15 Now, how could you not understand that?

16 Ms. Shurling: May I ask Your Honor to inquire of the
17 witness -- the juror that just left the room whether any
18 other jurors were standing with him when he observed the
19 defendant?

20 The Court: You can ask. I'm not going to do it.

21 Ms. Shurling: Pardon?

22 The Court: I'm not going to do that.

23 Ms. Shurling: You will not?

24 The Court: I will not. All the other jurors indicated
25 -- now, the question is: What is it that we want to do with

1 this juror that -- I mean, he says he has seen nothing other
2 than the defendant standing on the other side of that
3 doorway.

4 **Ms. Shurling:** Your Honor, I believe that he's an
5 alternate, and in an abundance of caution I'm afraid that I
6 would have to ask that he be excused.

7 **The Court:** What do y'all want to say?

8 **Ms. McDuffie:** Your Honor, the juror said that he did
9 not observe anything. I don't believe there's any reason to
10 excuse him. There's no cause to excuse him. He saw the
11 defendant standing in the back hallway, and that was simply
12 all he saw. Your Honor, we don't believe that there's any
13 grounds to excuse the juror at this point.

14 **Ms. Shurling:** The problem, Your Honor, obviously is
15 that without saying, "Did you see him in shackles? Did you
16 observe the shackles?" We have no---

17 **The Court:** Well, Ms. Shurling, I've been doing this 14
18 years. It is my experience that if somebody had seen a
19 defendant in handcuffs and leg irons and shackled in any way,
20 that generally is something that they notice and will bring
21 to the Court's attention. I mean, that is unusual for the
22 average citizen to be moving around. Of course, I don't know
23 if he was in shackles. I have no idea what his situation
24 was. Where is the deputy? What did he have? Just---

25 **Officer:** He had leg shackles and he was handcuffed

1. behind his back.

2. **The Court:** All right. So you want me to excuse this
3. juror?

4. **Ms. Shurling:** I do, Your Honor.

5. **The Court:** All right. All right. I'm going to excuse
6. the juror. If we lose two of them, we're going to -- we
7. might be back here in December to try it.

8. **Ms. Shurling:** I understand, Your Honor.

9. **The Court:** All right.

10. **Ms. Campbell:** Yes, Your Honor. Can I get---

11. **The Court:** I mean, we'll just recess 'til everyone who
12. gets sick gets better and whatever one has a funeral, that
13. pins us.

14. **Ms. Campbell:** Your Honor, may I approach about getting
15. a signature on a writ to get somebody transported tomorrow?

16. **The Court:** Sure.

17. **Ms. Campbell:** Thank you. This is the federal writ that
18. goes with those to get him transported over to testify.

19. **The Court:** All right. Bring Mr. Vitali in.

20. (Juror Vitali is brought into the courtroom.)

21. **The Court:** All right. Mr. Vitali, we're going to
22. excuse you from further service on the jury. I'm sure you
23. didn't see anything, but the concern was the defendant was
24. moved from the courtroom and taken -- and taken out in the
25. custody of a deputy and he was in shackles.

1 **Juror Vitali:** I didn't even notice that, Your Honor.

2 **The Court:** Well, I'm sure of that, but out of an
3 abundance of caution and at the defendant's request we're
4 going to go ahead and we'll just proceed with what we have.
5 I mean, it's certainly nothing you did. You just happened to
6 be there and observed, but I do appreciate your service. I'm
7 going to send you back downstairs to the jury room. Do not
8 discuss this situation at all with any jurors. If you come
9 back for another trial -- I don't know whether they've got
10 other trials going on. This case is going to go this week,
11 so you won't be back up here, but, you know, if they don't --
12 don't talk to any other jurors about what's happened because
13 things filter out for some other reason.

14 **Juror Vitali:** Certainly, Your Honor.

15 **The Court:** If you don't mind. All right. Thank you.

16 (Juror Vitali was excused from the trial at 2:21 p.m.)

17 **The Court:** All right. Anything else? You're going to
18 let me know at some point in time about a curative
19 instruction.

20 **Ms. Shurling:** Yes, sir, Your Honor. I was just going
21 to ask if I could have 30 seconds with my client.

22 **The Court:** Sure.

23 (Whereupon, an off-the-record discussion takes place
24 between Ms. Shurling and Mr. Hackshaw.)

25 **Ms. Shurling:** Your Honor, at this time we would not

1 request an instruction.

2 The Court: All right.

3 Ms. Shurling: We believe the harm has been done and
4 could not be cured. We're not waiving our previous motion
5 for a mistrial.

6 The Court: All right. Bring the jury in, please.

7 (Whereupon, the jury was brought into open court at 2:22
8 p.m.)

9 The Court: All right. Ladies and gentlemen, I
10 appreciate your patience. Mr. Vitali who was your alternate
11 number 2, I have excused him from further service on the jury
12 which means one thing: The pressure is on y'all. So nobody
13 get sick. Nobody have anybody that's a friend that dies that
14 you've got to go to the funeral because if you do, we're
15 going to wait 'til you get well or we're going to wait 'til
16 you get back before we start back. So, anyway, stay safe and
17 healthy. All right. Y'all ready to call your next witness?

18 Ms. Simpson: We are, Your Honor.

19 The Court: All right. If you would, please.

20 Ms. Simpson: The State calls Nina Gordon.

21 Nina J. Gordon, after being duly sworn, testified
22 as follows:

23 The Clerk: Please have a seat and state your full name
24 for the record.

25 The Witness: My name is Nina J. Gordon.

Direct Examination

By Ms. Simpson:

Q. Good afternoon, Ms. Gordon. Can you tell the jury where you live?

A. I live at [REDACTED] and I live in apartment

[REDACTED].

Q. And how old are you, Ms. Gordon?

A. Fifty-eight.

Q. At least at close range. And are you married?

A. No.

Q. Any children?

A. Yes.

Q. And how many children have you got?

A. I have two and one adopted, my grandson.

Q. Okay. And as a matter of fact, you actually have to go pick one of your children up now.

A. I kind of made hopefully arrangements for someone to pick up my granddaughter.

Q. Okay. Well, we're calling you just a little bit out of order.

A. Okay.

Q. But are you currently working?

A. No, I'm retired.

Q. Retired? And are you from Columbia?

A. Yes.

1 Q. And do you know the defendant, Anthony Hackshaw?

2 A. Yes.

3 Q. And are you familiar with his wife, Rosa?

4 A. Yes.

5 Q. And how is it that you know them?

6 A. We're neighbors. Uh-huh.

7 Q. And how long would you say that you've known them?

8 A. About a year. A little over a year.

9 Q. And where were you living back on May the 20th of 2009?

10 A. [REDACTED] apartment [REDACTED].

11 Q. The same apartment complex---

12 A. Yeah.

13 Q. ---just a different number. And do you recall that day?

14 A. Somewhat, yes.

15 Q. And what do you remember about the morning of May the
16 20th of 2009? Do you recall seeing the defendant at some
17 point that morning?

18 A. Well, I always see everybody just about go to work
19 because I'm up. I'm up around 5 in the morning.

20 Q. So did you see the defendant that day?

21 A. Just them leaving, going down the stairs, going to work.
22 I always kind of peep out the window.

23 Q. Okay. And would that have been early morning? Six,
24 seven o'clock?

25 A. Early mornings. Between the hours of 6 and 7, somewhere

1 about 6:30, somewhere along in there.

2 Q. Okay. And do you remember what the defendant was
3 wearing at that time? I know it's been a year and several
4 months.

5 A. To my -- when he was going out down the stairs, he had
6 on like a -- always wear like a hoodie thing with a hat on.

7 Q. Okay. And would it have been light clothing? Dark
8 clothing?

9 A. Dark. Dark jacket.

10 Q. Dark-colored clothing? And was he with anyone when he
11 was leaving that day?

12 A. Not that I recall. I didn't see anyone with him.

13 Q. Okay. And I know it's been a year or so. Is there a
14 chance that you would have told law enforcement that he had
15 been walking with a friend who may have been following behind
16 him?

17 A. I think the guy was going like behind him somewhere, I
18 think, like you go down the stairs.

19 Q. Just kind of following him?

20 A. Kind of walking down the walkway.

21 Q. And did you see the defendant leave, actually get into
22 the car?

23 A. Well, like I'm up early every morning because my
24 goddaughter is military and I usually have her children, so I
25 always open up the blinds so when the cars are going I can

1 kind of see the cars leaving the complex from where my window
2 was.

3 Q. Okay. And shortly after you saw the defendant that day,
4 did you observe a car leaving out of the gate?

5 A. Well, like I said, I see a lot of cars and the Honda
6 went out -- the car that he was driving went out the gate
7 that day.

8 Q. And would that have been a two-door silver Honda, to the
9 best of your recollection?

10 A. It was silver, yes.

11 Q. Now, can you tell the jury what happened next? Like
12 what did you do?

13 A. Well, later on that day at some point, you know, like I
14 have the kids. I didn't want to cook anything. So I wanted
15 to go get them something to eat, some nuggets and fries, and
16 my neighbor -- I had tried to call Rosa, but I didn't get an
17 answer. So I called Karen, my neighbor upstairs, and asked
18 if she had seen Rosa. Was she at home? Could she come watch
19 them while I go get something to eat for the kids? And she
20 said, "Well, I'm not home." I said, "Well, can you see if
21 Rosa is home and call her for me and see if she could come
22 down?" So evidently she texted her, I think, and then Rosa
23 called me and I asked if she would come down, and so she came
24 down.

25 Q. And do you recall about what time in the afternoon that

1 would have been?

2 A. About 11:30, somewhere about 12, somewhere along in
3 there.

4 Q. And how long were you away? When did you return home?

5 A. It had -- I want to say about something 'til 1,
6 somewhere, because I went to Wendy's to get the nuggets and
7 fries.

8 Q. Okay. So probably around 1:30?

9 A. It was somewhere---

10 Q. Might be correct?

11 A. Could have been because when I go -- if I go between 12,
12 the lines are long because it's lunchtime.

13 Q. And when you returned home, did you speak with Rosa?

14 Can you tell us about what happened?

15 A. Well, we sat there and we talked and she didn't go home.
16 She said that she thought she left a pot on the stove, and I
17 said, "Well, go and check the pot and come back down," and
18 she said, "Okay," but then she said something about her
19 husband didn't want her to go home and he was mad with her or
20 something. And I said, "Well, he'll be okay. Just sit here
21 with me. You know, go check the pot and come back down." So
22 she stayed there and she said, "Well, he wanted me to stay
23 here until he tell me to go home."

24 Q. Okay. And were you actually present when Rosa was
25 talking to the defendant at some point?

1 A. She was on her cell phone across from me in the chair.

2 Q. And so it was your understanding that the defendant was
3 pretty angry with her being at your home.

4 A. Well, she stated that he told her not to leave the house
5 and that he told her that something -- that she was acting up
6 or something, she said. I said, "Well, you know how mens
7 are. They always say that. It will be okay."

8 Q. But the defendant was not happy either way that she was
9 not home.

10 A. Well, from her reactions I assume, but I didn't directly
11 hear him say anything to her.

12 Q. And do you recall when Rosa left or about how much
13 longer she would have stayed?

14 A. Well, she said to me that he said stay here and stay
15 there at---

16 Ms. Shurling: Objection, Your Honor. Hearsay.

17 The Court: Well, you can't testify to what somebody
18 else told you.

19 The Witness: Well---

20 Ms. Simpson: I'll move on, Your Honor.

21 By Ms. Simpson:

22 Q. So are you aware of either the defendant or Rosa ever
23 actually driving a two-door silver Honda?

24 A. Yes.

25 Q. And after -- after you saw the silver Honda the morning

1 of May the 20th of 2009, do you recall ever seeing it again
2 that day?

3 A. I don't recall seeing it again that day. I don't.
4 remember.

5 Q. And do you recognize the person you saw on the morning
6 of May the 20th of 2009 wearing the dark clothing with the
7 cap and the dark hoodie in the courtroom here today?

8 A. Yes.

9 Q. And can you point him out for the jury?

10 A. Anthony.

11 Q. Anthony Hackshaw, the defendant.

12 A. Uh-huh.

13 **The Court:** She's identified the defendant at defense
14 counsel's table.

15 **Ms. Simpson:** Please answer any questions the defense
16 may have.

17 **The Witness:** Thank you.

18 Cross-Examination

19 By Ms. Shurling:

20 Q. Good afternoon.

21 A. Hi.

22 Q. When did the police come and talk with you and ask you
23 about the events of May 20th?

24 A. When? I can't quite remember when, but it was sometime
25 in May that they spoke with me. I can't remember when, but

1 someone did -- two came and talked with me.

2 Q. Now, you understand that Ms. Fogle was killed on
3 May 20th; correct?

4 A. From my understanding, yes.

5 Q. Okay. And so it's your testimony that somebody came and
6 talked to you about your recollections of that day before the
7 end of May?

8 A. Oh, no. This was after the shooting. Someone came and
9 spoke with me. If I can say this, before that incident there
10 was a shooting in the apartment complex, and the bullet went
11 through my bedroom window. Someone spoke to me prior to that
12 time, and then sometime someone came to me - I'm not sure
13 when - but it was later two people said they needed to speak
14 to me in reference to some -- about the shooting in
15 connection with something else.

16 Q. Yes, ma'am.

17 A. But this was after the 20th---

18 Q. Yes, ma'am.

19 A. ---I'm pretty sure.

20 Q. My question -- and I'll try to make it a little clearer.
21 Between May 20th, the day the events transpired that you've
22 been talking about---

23 A. Yes.

24 Q. ---and when the officers came to talk to you about what,
25 if anything, you remembered on -- from May 20th---

1 A. Uh-huh.

2 Q. ---how much time passed?

3 A. I don't remember how much time had passed but---

4 Q. Isn't it true that it was over a month later?

5 A. Possibly. It could have been. I don't remember. I did
6 know that someone did come to speak with me in reference to
7 that situation.

8 Q. And isn't it true that when you were first asked what,
9 if anything, you recalled from May 20th, you informed the
10 police that you were not too clear on the events of that day
11 and that you'd have to get back with them after you checked
12 into the matter?

13 A. Well, I wasn't too clear in reference to the time, but I
14 do recall having Rosa come down to my home because I needed
15 to go out and get the kids something to eat because I did not
16 want to cook. Now, I knew that was on the 20th because I had
17 marked -- I didn't exactly mark where I was going, but I
18 didn't go to the bank on that day. I think I went to the
19 bank on the 18th, and I went to get the food on the 20th.

20 Q. Yes, ma'am.

21 A. It was the middle of the week and I did recall telling
22 them that, and I checked my book. That's the reason I told
23 them that I would get back with them because I needed to know
24 if I had gone to the bank on that day. Then there would be
25 an accurate record of me going to the bank because I could

1 have pulled that, but I did go to Wendy's on that day to get
2 the nuggets and the fries.

3 Q. So I'm not real clear on your answer.

4 A. Well, in a phone conversation---

5 Q. Did you or didn't you tell them that you weren't clear
6 on the events of that day, that you would have to check on it
7 and get back to them?

8 A. The reason I stated that I wasn't clear again is that on
9 that day I wasn't sure if I had gone to Wendy's or to the
10 bank and I couldn't give them an accurate date when I went to
11 the bank, but if it was a Wednesday that I had gone to the
12 bank I could get the record from the bank. But I did go to
13 Wendy's on the 20th because I had her come down to my home on
14 the 20th to watch the kids while I go get the food, and
15 that's the reason she was there. She was there with me on
16 the 20th.

17 Q. Isn't it true that you subsequently in early July told
18 the police that you remembered better after you talked to a
19 neighbor, a Ms. Karen Moore?

20 A. The reason I spoke with Karen Moore is because I called
21 Karen to ask her exactly when did I call Rosa, and Karen
22 said, "Well, remember I wasn't home when you called her, so I
23 texted her for you or called her," and then Rosa called me on
24 that date and she came down.

25 Q. So you didn't have a clear recollection of it being

1 May 20th. You were relying on what some neighbor told you.

2 A. It wasn't that I wasn't clear. The part that I wasn't
3 clear about was did I go to the bank on that day at AllSouth?
4 I would have had a record to prove that I had gotten her down
5 to show where I went, but I went to Wendy's on that date.
6 That's the only part I wasn't clear about, if I went to the
7 bank or Wendy's. I went to the bank either on the 18th and I
8 went to get the food on the 20th from Wendy's---

9 Q. So you---

10 A. ---on Rabon Road.

11 Q. You were able to check your bank records and confirm
12 that you had not been to the bank on the 20th?

13 A. I wasn't trying to confirm whether I went to the bank on
14 the.... What I was trying to do was to show where I was at
15 that time. Normally I write everything down in my book. I
16 didn't put down there that I had gone to the bank, and I
17 wanted to go to the bank, but I went on that Monday. I went
18 to Wendy's on the 20th. If you can check my -- I can get a
19 copy of my phone log that I did speak with Rosa and that Rosa
20 did come down to my home on the 20th and we sat down and we
21 talked.

22 Q. If law enforcement records indicate that you didn't give
23 any detailed information about what happened on May 20th, is
24 that not true?

25 A. I did tell them that, that I went -- gone to Wendy's

1 because I looked back in my book when I talked with the
2 detectives, and I checked the book and I says, "No, I went to
3 Wendy's that day. I didn't go to the bank on that day."

4 Q. Do you write down in your book every time you go to
5 Wendy's?

6 A. I write down in my book if someone comes to visit me
7 most of the times. I try to keep up with things.

8 Q. Do you write down in your book every time you go to
9 Wendy's?

10 A. If I go out, I'll say "food." I usually write down,
11 "Went for food."

12 Q. Yes, ma'am.

13 A. I'm on a budget and I try to keep everything intact.

14 Q. But how often do you go to Wendy's?

15 A. Not that often. I went that day because I didn't want
16 to cook. Sometimes I order pizza for the kids if they're
17 there.

18 Q. Yes, ma'am. Me, too. But my point is: That wasn't the
19 only day you went to Wendy's, was it?

20 A. No, that's not the only day.

21 Q. So remembering that you---

22 A. My granddaughter likes Wendy's. She likes their Asian
23 chicken or whatever that stuff is and I go get it. So I did
24 go to the Wendy's on the 20th. There's no reason for me to
25 lie, and I'm not trying to insinuate that I don't remember

1 what I did. Some things I don't, but I do know for a fact
2 that I called Rosa. When Karen called her, Karen called me
3 back or texted me back. I said, "She's not answering." So I
4 said, "You call her for me because I need her to come down."
5 Karen called her. Rosa called me, and I said, "Would you
6 mind coming down and watching the kids while I go get them
7 something to eat?" And this was on May the 20th. Now, I
8 don't know anything about that happened that day on May the
9 20th. I know the reason I called her was to get the food for
10 the children.

11 Q. Did you see Anthony leaving for work fairly frequently?

12 A. Yes. I'm up at 5 every morning. My goddaughter was --
13 she's stationed in Virginia now. She's in the military and
14 she brought her kids to me between sometime a quarter 'til 5
15 or 5:20. I'm up every morning. I open the blinds, see
16 straight out the blinds to the gate, pool house, and every
17 car that goes past, not that I'm trying to be nosy, but I
18 just always look out the window.

19 Q. Yes, ma'am. How was he normally dressed when he was
20 going to work?

21 A. He always wear the little hoodie thing or hat, kept a
22 hat on his head. He like to wear hats and he---

23 Q. What kind of clothing does he wear to go to work?

24 A. Scrubs, navy blue scrubs sometimes. He wear dark black
25 scrubs to work and the little hoodie jacket and he always had

1 a hat on. Sometime he put that on top of the hat. They had
2 to go past -- everybody went past my door if they came
3 through the breezeway to go downstairs.

4 Q. Yes, ma'am. My point is: My client wore scrubs to work
5 every day that you saw him, didn't he?

6 A. Uh-huh.

7 Q. And he wore dark scrubs.

8 A. Sometimes light blue. He had a light blue set, navy
9 blue, and black.

10 Q. But you frequently saw him wearing navy blue or black or
11 some other dark-colored scrubs, didn't you?

12 A. Yes.

13 Q. And tell me again how you can be so sure that the
14 morning that you saw -- that you saw him on the morning of
15 the 20th wearing dark scrubs?

16 A. Uh-huh. Yes. I was looking -- my bed -- where the
17 stairs are, my bedroom window is right there. So if I'm
18 looking out the bedroom window, once they hit the bottom of
19 the stairs I can see you right there.

20 Q. Yes, ma'am.

21 A. So everybody -- I'm very sensitive about people because
22 I've been attacked once before in my life. When people are
23 going up and down the stairs, by my door being right there I
24 always look out the window.

25 Q. Yes, ma'am.

1 A. When they come in at three or four o'clock in the
2 morning, I know when they're coming in. I know -- if
3 somebody is walking down the stairs, I'm going to look and
4 see because my door is right there.

5 Q. Yes, ma'am.

6 A. I'm not being personal in anybody's business, but I was
7 living by myself and I always am very cautious.

8 Q. I understand. I'm alone, too. But you have admitted
9 that you have seen Mr. Hackshaw leaving early in the morning
10 for work in scrubs a number of times. Right?

11 A. Well, sometimes he would even ring the doorbell. He
12 would leave and go down the steps, mash the doorbell. I know
13 it was him.

14 Q. But you've seen him on multiple occasions leaving for
15 work wearing dark scrubs.

16 A. I guess that's the attire that he worked in, yes.

17 Q. Yes, ma'am. My question to you is how you can be so
18 sure that that particular morning was May 20th when you saw
19 him wearing you said dark or black scrubs that day. How can
20 you be so sure of the day?

21 A. It was him. I looked out the window. It was him
22 leaving to go to work.

23 Q. But how do you know it was May 20th that you saw him; if
24 you saw him frequently that way?

25 A. I get up every morning. I don't specifically look at

1 the calendar, but I know what I saw and I know what I've
2 seen. All I know: He went to work that morning. He had on
3 his scrubs. He had on the hoodie. He had a black -- a hat
4 or something sticking out under there, hand in his pocket,
5 walking because the car was parked down by building number 3.

6 Q. Yes, ma'am.

7 A. In the middle on the end, over that area.

8 Q. And law enforcement didn't come question you about what
9 your observations were on May 20th until some four or five
10 weeks later; right?

11 A. Well, like I said, I was questioned prior to that in
12 reference to the incident, and then prior to after whatever
13 happened on May the 20th they came and said that they were
14 trying to tie up some loose ends with this situation and
15 another situation.

16 Q. Yes, ma'am.

17 A. Uh-huh.

18 Q. Mr. Hackshaw and his wife are fairly young, aren't they?

19 A. Yes.

20 Q. Young married couples fight?

21 A. I don't live in their household, so I don't know.

22 Q. Well, in your experience do a lot of young married
23 couples have tiffs and arguments?

24 A. I assume anyone does in a relationship. I can't say
25 that for sure. I don't live in their household.

1 Ms. Shurling: Thank you, ma'am. No further questions.

2 The Court: Anything?

3 Ms. Simpson: Brief redirect, Your Honor.

4 Redirect Examination

5 By Ms. Simpson:

6 Q. The defense has made a big deal about May 20th of 2009
7 being a special day. Isn't it true that law enforcement
8 actually came to you based on the fact that they had phone
9 records indicating that calls had been made back and forth---

10 A. Yes.

11 Q. ---between yourself and Rosa---

12 A. Yes.

13 Q. ---on that day? And as far as -- you've told the jury
14 about what you meant by checking up on the matter because it
15 had been several weeks prior.

16 A. Yes.

17 Q. And with respect to that, you also -- I believe you
18 indicated that you spoke with a Karen Moore?

19 A. Yes.

20 Q. And she's your neighbor?

21 A. She used to be.

22 Q. She used to be.

23 A. Uh-huh. Well, we still -- she still calls me and I
24 still check on her. They were like my children. You know, I
25 love them all.

1 Q. And Ms. Moore that day -- have you actually asked if she
2 could keep your kids as well?

3 A. Yes. I talked with her and said, "Can you come down?"
4 She said, "Well, I'm not home," because I called her first.
5 She says, "I'm not home, Ms. Nina," and I said, "Oh, okay."
6 I said, "Well, I called Rosa and I didn't get an answer." I
7 said, "Maybe she doesn't know my number. Maybe you can call
8 her for me and see if she could come down."

9 Q. And did Ms. Moore actually indicate to you that she had
10 an appointment that day because she was getting ready to
11 leave to go to Florida?

12 A. Yes.

13 Q. A hair appointment?

14 A. Yes. She was getting her hair done or something that
15 day. She wasn't---

16 Q. So that day would have been pretty fresh in her mind,
17 too---

18 A. Yes.

19 Q. ---since she was leaving to go out the next day.

20 A. Yes.

21 Q. Nothing further, Your Honor.

22 A. Thank you.

23 The Court: Anything?

24 Ms. Shurling: No recross, Your Honor.

25 The Court: All right. Thank you, ma'am. You may step

1 down. Call your next witness.

2 **Ms. McDuffie:** The State would call Joann Pickett.

3 Joann Pickett, after being duly sworn, testified as
4 follows:

5 **The Clerk:** Please have a seat and state your full name
6 for the record.

7 **The Witness:** Joann Pickett.

8 Direct Examination

9 By Ms. McDuffie:

10 Q. Ms. Pickett, where do you reside?

11 A. [REDACTED].

12 Q. And in May of 2009 did you live at [REDACTED]?

13 A. Yes, ma'am.

14 Q. On May the 20th of 2009 were you at your home at [REDACTED]

15 [REDACTED]?

16 A. Yes, I was.

17 Q. And did -- was there an event that was out of the
18 ordinary on May the 20th of 2009?

19 A. Yes, there was.

20 Q. Can you please describe for the jury what happened that
21 afternoon?

22 A. Okay. I was -- I had a doctor's appointment. My
23 appointment was at 1:30 and I was---

24 **The Court:** Ma'am, you need to speak up if you could,
25 please. Maybe you need to speak into the mic.

1 **The Witness:** My appointment -- my doctor's appointment
2 was about 3:30 -- 1:30. I'm sorry. And on that day I was
3 leaving out of the house and I looked -- when I was getting
4 in my car, I seen two gentlemens (sic) coming down the street
5 on the other side of the street walking real fast. The next
6 thing I know I heard some shots, a whole lot of shots. So I
7 jumped in my car and I just ducked down. And at that time I
8 seen one guy ran up the street. I don't know what happened
9 to the other guy. My husband, he came out the door and he
10 went across the street and he looked in the back yard and he
11 said the lady was down. I was on the phone calling 9-1-1
12 when I first heard the shots.

13 **By Ms. McDuffie:**

14 Q. Let me have you back up for a second. So you're at your
15 car. You see the gentlemen walking fast down the street, and
16 then do you get in your car?

17 A. Yeah, I get in -- I got in my car.

18 Q. And when you first hear the shots, you're in your
19 vehicle?

20 A. Yes, I was in my vehicle.

21 Q. And what did you do after you first heard the shots?

22 A. I ducked down.

23 Q. And then how long were you in your vehicle?

24 A. About two minutes, two or three or four. About two.

25 Q. When did you get out of your vehicle and why did you get

1 out of your vehicle?

2 A. Well, I was telling my husband to go back in the house
3 because he was coming out to see what was going on. I told
4 him to get back in the house.

5 Q. And did you go back in the house as well?

6 A. No, I didn't go back in the house. I stayed in my car.

7 Q. And did you have a phone with you in your car?

8 A. No, my husband brought the phone out to me.

9 Q. And you got on the phone?

10 A. Uh-huh.

11 Q. With 9-1-1?

12 A. Yes.

13 Q. And did you tell 9-1-1 what you observed as you observed
14 it?

15 A. Yes, I did.

16 Q. And have you had the opportunity to listen to the call
17 that you placed to 9-1-1?

18 A. Yes, I have.

19 Q. Is it, in fact, you calling 9-1-1 and describing what
20 you were viewing as it was happening on May the 20th of 2009?

21 A. Yes.

22 Ms. McDuffie: Your Honor, at this time we'd offer
23 State's exhibit 59.

24 Ms. Shurling: Without objection, Your Honor.

25 The Court: So admitted, whatever it is.

1 (State's exhibit 59 was received in evidence.)

2 Ms. McDuffie: Your Honor, permission to publish it to
3 the jury?

4 The Court: All right.

5 (State's exhibit 59 begins to be played for the jury.)

6 By Ms. McDuffie:

7 Q. And are you still at your house right now?

8 A. No, I'm in the street.

9 (Ms. McDuffie continues playing the tape.)

10 By Ms. McDuffie:

11 Q. Are you speaking to your husband at this point?

12 A. (Witness nodded head up and down.)

13 Q. Ms. Pickett, what you were telling the 9-1-1 operator is
14 what you were observing as it was happening?

15 A. Uh-huh. Yes.

16 Q. You saw how many individuals walking fast across the
17 street from your house?

18 A. There was two.

19 Q. And then after the shooting how many individuals did you
20 see?

21 A. One.

22 Q. And which direction was that individual going?

23 A. Toward Farrow Road.

24 Ms. McDuffie: Beg the Court's indulgence. No further
25 questions of this witness, Your Honor.

Cross-Examination

By Ms. Shurling:

Q. Very briefly, Ms. Pickett. Thank you for being here.

A. Uh-huh.

Q. I'm sure this was a terribly frightening and upsetting experience, wasn't it?

A. Yes, it was.

Q. You just listened to the tape of your 9-1-1 call?

A. Yes, ma'am.

Q. That I assume was your voice?

A. Yes, it was.

Q. On that call you reported shots having been fired?

A. Yes, ma'am.

Q. And didn't you follow up by saying they are running down the street now?

A. I did. I probably did say they, but I only seen one. I seen two coming down the street, but I only seen one going up, back up.

Q. Okay. So when you said they are running down the street, you were just mistaken there.

A. No, I probably wasn't mistaken. I was just saying they. I seen two, but I only seen one going up the street, so the other one had to go through the back yard or something.

Q. Yes, ma'am.

A. Uh-huh.

1 Q. I'm not challenging you at all. I'm just saying that
2 you saw two walking on.

3 A. Yes, I did.

4 Q. And you heard all the gunfire.

5 A. Uh-huh.

6 Q. And you only saw one walking back toward or running
7 toward Farrow Road.

8 A. Yes, ma'am.

9 Q. Okay. So if the 9-1-1 tape says they are running down
10 the road now, that was just -- you misstated.

11 A. Yes, ma'am.

12 Q. Yes, ma'am. That's all I was trying to get to.

13 A. Okay.

14 Q. Now, you described today one of them was wearing --
15 well, let's go through it again. What was -- what were they
16 wearing?

17 A. One was wearing a black tee shirt and dark blue jean
18 pants, and other one was wearing a dark blue jean suit.

19 Q. Did you give any other physical description of the
20 people you'd seen to the police?

21 A. No, ma'am.

22 Q. Do you not recall telling officers that one of them was
23 tall, dark-skinned wearing blue jean clothing?

24 A. Yes, one -- yeah, one was dark. Uh-huh. Yes, I
25 remember that.

1 Q. And you told them that one of them was tall.

2 A. Yes, I did. One of them was tall. Uh-huh.

3 Q. So you did give an additional little description.

4 A. Yes, ma'am.

5 Q. Okay. Now, when you talked to the police you didn't
6 give any kind of clothing description for the other one, did
7 you?

8 A. Ma'am, I can't answer that because I don't know whether
9 I gave them a description or a clothing -- a description or
10 not. Seem like I would have gave them the same description I
11 gave the 9-1-1 call.

12 Q. Based on what, ma'am?

13 A. I gave -- when I called 9-1-1, I gave them a description
14 on what they was -- what they had on. I'm pretty sure that I
15 gave the police officer the same.

16 Q. When did the police talk to you, Ms. Pickett?

17 A. They didn't talk to me that same day because I had a
18 doctor's appointment.

19 Q. Could it have been about the first of June?

20 A. It could have been. I know it wasn't the same day.

21 Q. It was quite a few days later.

22 A. Yes, ma'am.

23 Q. The one of the fellows that you saw walking down the
24 street, did you see anything in his hand?

25 A. No, ma'am, I didn't see anything in their hand.

1 Q. You didn't see anything in his hand at all.

2 A. I just seen 'em walking real fast when they came down.

3 Ms. Shurling: Thank you. No further questions.

4 The Court: Anything?

5 Ms. McDuffie: None, Your Honor.

6 The Court: Pardon me?

7 Ms. McDuffie: No, Your Honor.

8 The Court: All right. Thank you, ma'am. You may step
9 down.

10 Ms. Campbell: The State calls Stephanie McGowan.

11 Stephanie McGowan, after being duly sworn,
12 testified as follows:

13 The Clerk: Please have a seat and state your full name
14 for the record, please.

15 The Witness: Stephanie McGowan.

16 Direct Examination

17 By Ms. Campbell:

18 Q. Ms. McGowan, how old are you?

19 A. Twenty.

20 Q. And what state do you currently live in?

21 A. Florida.

22 Q. How long have you been living in Florida?

23 A. Two years.

24 Q. Who do you live down in Florida with?

25 A. On and off with my parents.

1 Q. Okay. Are you employed down there?

2 A. I'm a student.

3 Q. And where are you a student?

4 A. The University of South Florida.

5 Q. University of South Florida?

6 A. Yes.

7 Q. And what are you studying at the University of South
8 Florida?

9 A. Communications.

10 Court Reporter: I'm sorry?

11 The Witness: Communications.

12 By Ms. Campbell:

13 Q. Okay. If you can speak into that microphone a little
14 bit but get a little bit away from it. There you go. I want
15 to turn your attention back to May of 2009. Were you living
16 here in the Columbia area?

17 A. No, I was visiting for the summer.

18 Q. Okay. And who were you visiting for the summer?

19 A. Kevae.

20 Q. Kevae?

21 A. Uh-huh.

22 Q. Who testified earlier today?

23 A. Uh-huh.

24 Q. And how did you know Kevae?

25 A. I used to stay two houses down from her. We still own

1 the house two houses down from her.

2 Q. So had your family moved back to the Florida area?

3 A. No. Oh, yes. Yeah. I'm sorry.

4 Q. They had moved to the Florida area at that point.

5 A. Uh-huh.

6 Q. But you were back visiting for the summer?

7 A. Uh-huh.

8 Q. Specifically on May the 20th of 2009, were you -- you
9 were staying with Kevae at that point.

10 A. Yes.

11 Q. Do you remember that day?

12 A. Yes.

13 Q. That morning what were y'all doing? Were you there at
14 the house?

15 A. Yes.

16 Q. And which house was this? Do you remember the address
17 or what area it's in?

18 A. It's in Summer Valley.

19 Q. Summer Valley?

20 A. Uh-huh.

21 Q. And who all was living there at the time? Do you
22 remember?

23 A. Kevae, her mother, her brother, her two nieces, and her
24 brother's girlfriend.

25 Q. Okay. What was Kevae doing that morning? Do you

1 remember?

2 A. Cooking and she had a client she was about to do hair.

3 Q. And where would she do hair?

4 A. In her garage.

5 Q. And that day on and off were different people in and out
6 of the house?

7 A. Not in the house, only to use the bathroom downstairs
8 because nobody was allowed in the house. But in the garage,
9 yes.

10 Q. Were you aware whether or not they had a surveillance
11 camera on the front of the house?

12 A. Yes.

13 Q. And was that a safety feature her mother had put in?

14 A. Yes.

15 Q. And were you also aware that it showed -- it would kind
16 of pan the front of the house and who was approaching?

17 A. Uh-huh.

18 **The Court:** Miss, I need you to answer yes or no.

19 **The Witness:** Oh, yes. I'm sorry.

20 By Ms. Campbell:

21 Q. Okay. Did you know Jonathan Bailey?

22 A. Yes.

23 Q. And how did you know Jonathan?

24 A. I went to high school with him.

25 Q. And what high school did y'all go to again?

1 A. Ridge View.

2 Q. Ridge View?

3 A. Uh-huh. Yes.

4 Q. That morning did Jonathan Bailey make contact with you?

5 A. Yes.

6 Q. And how did he contact you?

7 A. My cell phone. He called me.

8 Q. And as a result of that call, did y'all make some plans?

9 A. Yes.

10 Q. And what was the plan?

11 A. For -- he was coming over for the day.

12 Q. For the day?

13 A. Uh-huh.

14 Q. And do you remember approximately what time of day it
15 was when he got there?

16 A. About 11.

17 Q. Somewhere around 11?

18 A. Uh-huh.

19 Q. And were you looking at your watch or do you know
20 exactly---

21 A. No. No, I know it was about 11 because we missed
22 breakfast at McDonald's because that's what I wanted. He had
23 to bring me lunch.

24 Q. And did he actually drive himself or did he get dropped
25 off?

1 A. He got dropped off.

2 Q. Once he was there, did he stay there for a period of
3 time?

4 A. Yes.

5 Q. During that period of time were you with him?

6 A. Yes.

7 Q. Was Kevae also there that day?

8 A. Yes.

9 Q. And, again, she was also attending -- doing someone's
10 hair in the garage area.

11 A. Yes.

12 Q. Do you know approximately what time it was when he left
13 that afternoon?

14 A. Around 4.

15 Q. Around 4?

16 A. Uh-huh.

17 Q. And, again, were you looking at your watch?

18 A. No.

19 Q. But you know it was that time period.

20 A. Uh-huh. The kids was coming---

21 **The Court:** You need to---

22 **The Witness:** Yes, the kids were coming -- like getting
23 off the school bus around that time.

24 By Ms. Campbell:

25 Q. During that time period were you with him pretty much

1 constantly from sometime around 11 to sometime around 4?

2 A. Yes.

3 Q. Did he ever leave that you knew of?

4 A. No.

5 Q. And would you have known if he had?

6 A. Excuse me?

7 Q. Would you have known if he had left?

8 A. Yes.

9 Q. And there's no doubt that on May the 20th he was in your
10 company during that time period we're talking about.

11 A. Yes.

12 Q. And as far as you knew that day, he didn't even have a
13 vehicle that you knew of.

14 A. No.

15 Ms. Campbell: I don't have anything further.

16 The Court: All right. Ms. Shurling?

17 Cross-Examination

18 By Ms. Shurling:

19 Q. Hello.

20 A. Hello.

21 Q. After May 20th when is the first time anyone in law
22 enforcement or from the prosecutor's office called and talked
23 to you about this incident?

24 A. They were trying to get in contact with me immediately
25 after.

1 Q. Objection, Your Honor. When is the last time --- the
2 first time---

3 Ms. Campbell: Your Honor, I think she has a right to
4 answer the question.

5 The Witness: I had a cell phone issue at the time. I
6 went to bike week and I lost my cell phone, but I could still
7 check my messages. I recall them leaving messages on my
8 phone, but I can't call them back because I didn't have a
9 phone.

10 By Ms. Shurling:

11 Q. They had left you messages.

12 A. Yes.

13 Q. When?

14 A. The next couple of days after that, between the 23rd,
15 24th and 25th, because that's when bike week was on.

16 Q. Okay. And so between the 24th, 25th of May---

17 A. 23rd.

18 Q. ---2009---

19 A. Uh-huh.

20 Q. ---and now, when is the next time anyone from law
21 enforcement or the prosecutor's office talked to you?

22 A. About two weeks ago.

23 Q. Two weeks ago?

24 A. Uh-huh.

25 The Court: Is that -- that's a yes?

1 **The Witness:** Yes. I'm sorry.

2 By Ms. Shurling:

3 Q. And who did you speak with?

4 A. An investigator.

5 Q. Did you have a conversation with Ms. Campbell, the
6 prosecutor?

7 A. No.

8 Q. You did not?

9 A. No, I didn't.

10 Q. Okay. Have you also subsequently had a conversation in
11 the last few days with my investigator, Dave MacDougall?

12 A. Yes.

13 Q. And isn't it true that you told Mr. MacDougall that Mr.
14 Bailey arrived sometime between 11 and 11:30?

15 A. I might. I don't know.

16 Q. Okay. And didn't you also tell Mr. MacDougall that Mr.
17 Bailey left around 3:00, not 4---

18 A. No, I said -- I said 4. It was around 4 because the
19 kids were getting off the school bus.

20 Q. Okay. You were in town from Florida for how long?

21 A. The whole summer, from April until June.

22 Q. Okay. How often did Mr. Bailey come over to Kevae's
23 house to visit with you?

24 A. Every other day.

25 Q. Frequently.

1 A. Uh-huh.

2 Q. And what kind of relationship did you have with Mr.
3 Bailey?

4 A. We were friends.

5 Q. What kind of friends?

6 **Ms. Campbell:** Objection, Your Honor.

7 **The Witness:** What do you mean? What kind of friends
8 are there? There's only one type of friend.

9 **The Court:** She's answered the question.
10 By Ms. Shurling:

11 Q. Do you recall there being a home security camera on your
12 friend Kevae's house?

13 A. Yes.

14 Q. Where is it located?

15 A. On top of her garage.

16 Q. I'm sorry about that. Could you identify this, please?

17 A. That's Kevae's house.

18 Q. Kevae's house?

19 A. Yes.

20 Q. And the front of it?

21 A. Uh-huh.

22 Q. And the garage?

23 A. Uh-huh.

24 Q. And what can you see in the corner, top right corner?

25 A. The camera.

1 **Ms. Campbell:** Your Honor, I don't mind her testifying
2 to it if she just offers them into evidence first.

3 **Ms. Shurling:** Your Honor, I would offer this photograph
4 into evidence.

5 **Ms. Campbell:** No objection.

6 **The Court:** So admitted. Defendant's exhibit number 1.

7 (Defendant's exhibit 1 was received in evidence.)

8 By Ms. Shurling:

9 Q. Okay. That's the front of Kevae's house.

10 A. Uh-huh.

11 Q. And the security camera.

12 A. Uh-huh.

13 **The Court:** Ma'am, I need---

14 **The Witness:** Yes.

15 **The Court:** You've got to remember to say it because the
16 court reporter is taking down what you get.

17 **The Witness:** All right.

18 **The Court:** And it's easier if you say yes or no than if
19 she has to figure out uh-huh or huh-uh.

20 **The Witness:** Okay.

21 By Ms. Shurling:

22 Q. And that security camera shows the area where people are
23 walking up to the front door, doesn't it?

24 A. No. It shows from -- it can show from her garage to
25 like almost two houses down because of the angle it's at

1 because I lived---

2 **Court Reporter:** Because of what?

3 **The Witness:** ---two houses down. I live two houses
4 down, and you can see people pull into my driveway from her.

5 By Ms. Shurling:

6 Q. Okay.

7 A. Uh-huh.

8 Q. But it's not a magic camera, is it?

9 A. No.

10 Q. It can't see through the building.

11 A. No.

12 Q. So it can't show the back yard.

13 A. Nobody would go through the back yard.

14 Q. That's not what I asked you.

15 A. No. No, it can't show the back yard.

16 Q. The camera doesn't give you any view of the back yard.

17 A. No.

18 Q. When Mr. Bailey arrived at the Dolphin residence, where
19 was Kevae?

20 A. Downstairs. She opened the door.

21 Q. Pardon?

22 A. She opened the garage door for him.

23 Q. Did you on an earlier occasion tell my investigator that
24 she was in the garage doing hair?

25 A. Yes, but that was before -- Bailey came before she

1 started doing hair.

2 Q. So you did not tell my investigator that she was in the
3 garage doing hair when Bailey arrived?

4 A. No. Bailey came before she was doing hair.

5 Q. And the entire -- well, most of the time Mr. Bailey was
6 there, it was just the two of you upstairs.

7 A. Yes.

8 Q. And this was one of many days during your trip that he
9 came and spent the day with you?

10 A. Yes.

11 Q. Are you still close friends with Mr. Bailey?

12 A. We keep in contact occasionally.

13 Q. Are you friends with his girlfriend?

14 A. No.

15 Ms. Shurling: A moment's indulgence. Nothing further.

16 The Court: Anything?

17 Ms. Campbell: May it please the Court? Yes, sir.

18 Redirect Examination

19 By Ms. Campbell:

20 Q. I show you some photographs -- a single photograph of a
21 house. I'm going to show you what's been marked as State's
22 exhibits 48 and 49.

23 A. Uh-huh.

24 Q. Do you recognize those?

25 A. Uh-huh.

1 Q. And then State's exhibits 52 and 54?

2 A. Yes.

3 Q. And State's exhibit number 50, do you recognize that
4 area?

5 A. Yes.

6 Ms. Campbell: Your Honor, at this time we'd offer these
7 into evidence.

8 Ms. Shurling: No problem.

9 Court Reporter: Can you repeat those numbers?

10 Ms. Campbell: Yes, ma'am.

11 The Court: I take that to mean no objection?

12 Ms. Shurling: No objection.

13 The Court: So admitted.

14 Ms. Campbell: 48, 49, 52, 54, and then 50.

15 (State's exhibits 48 through 50, 52 and 54 were received
16 in evidence.)

17 By Ms. Campbell:

18 Q. I took them out of order. State's exhibits number 48
19 and 49, what do those show?

20 A. The side of Kevae's house.

21 Q. And that's actually the front and side of Kevae's house?
22 And one of those photographs, specifically State's exhibit
23 number 49, can you see the garage area you were talking
24 about?

25 A. Yes.

1 Q. And the garage door you mentioned that Kevae opened when
2 Jonathan got there, is that shown in this picture?

3 A. Yes.

4 Q. State's exhibit number 52 -- and 54 is a little further
5 away. What does that actually show?

6 A. The camera.

7 Q. That's actually a close-up of the camera? And you
8 mentioned that when you looked through -- and where were you
9 able to view what was seen in this camera? In what room?

10 A. The den.

11 Q. Okay. And is that shown in State's exhibit -- or the
12 monitor itself - it's not all in this picture - but State's
13 exhibit 50?

14 A. Yes.

15 Q. And is that the monitor there that would show what was
16 panned outside?

17 A. Yes.

18 Q. Is that it right there?

19 A. Yes.

20 Q. And if it was turned on, it would actually show the
21 exterior and the interior of the house, inside to see what
22 was outside.

23 A. Yes.

24 Ms. Campbell: I don't have anything further.

25 The Court: Anything?

Recross Examination

By Ms. Shurling:

Q. To your knowledge, was that camera equipped with a recording device?

A. Yes.

Q. Was that recording device on that day?

A. I'm not sure. It's on every day, but I don't know if it was recording, but it's on every day. The monitor is on every day.

Q. But you don't know whether or not it was recording.

A. No.

Ms. Shurling: Thank you. No further questions.

The Court: All right. Thank you, ma'am. You may step down.

Ms. Campbell: Your Honor, may she be excused to go back to Florida?

The Court: Any objection? Who subpoenaed her?

Ms. Shurling: No objection, Your Honor.

Ms. Campbell: We did.

The Court: All right. She's free to leave. Thank you.

Ms. Campbell: Thank you.

The Court: Have y'all called your next witness?

Ms McDuffie: The State would call Whitney Caruth.

Whitney Caruth, after being duly sworn, testified as follows:

1 **The Clerk:** Please have a seat and state your full name
2 for the record.

3 **The Witness:** I'm Whitney Caruth.

4 Direct Examination

5 By Ms. McDuffie:

6 Q. Whitney, where do you currently live?

7 A. Parklane Apartments.

8 Q. And where -- are you currently employed?

9 A. Yes.

10 Q. And where do you work?

11 A. United Cerebral Palsy.

12 Q. And what do you do with them?

13 A. It's working with disabled consumers.

14 Q. And are you currently in school?

15 A. Uh-huh.

16 Q. And what are you studying?

17 A. Nursing.

18 Q. And where do you go to school?

19 A. Midlands Tech.

20 Q. And do you know an individual by the name of Jonathan
21 Bailey?

22 A. Yes.

23 Q. And how do you know him?

24 A. He's my boyfriend.

25 Q. And how long have you known him?

1 A. Two years?

2 Q. And you were dating him in May of 2009?

3 A. Uh-huh.

4 Q. On May the 20th of---

5 The Court: Miss, I need you to say yes or no. Okay?

6 The Witness: Yes.

7 By Ms. McDuffie:

8 Q. On May the 20th of 2009 did you see Jonathan Bailey that
9 morning?

10 A. Yes.

11 Q. And please tell the jury about that.

12 A. That morning he was actually -- we woke up. We were
13 about to go looking for jobs. He was -- what was he doing?
14 He was -- he had called his mother. He was on the phone with
15 his mother a lot. We went to Wendy's. It was around --
16 around lunchtime because it was crowded or whatever. And
17 after that I dropped him to Kevae's house.

18 Q. And do you know Kevae?

19 A. Yes, through him.

20 Q. Through him?

21 A. Uh-huh.

22 Q. And do you know approximately what time you dropped him
23 off at Kevae's house?

24 A. It was around lunchtime because it was busy at Wendy's.
25 It was the rush hour, so -- not the exact time but it was

1 around lunchtime.

2 Q. And were you working at this time?

3 A. Yes.

4 Q. Where were you working?

5 A. Piggly Wiggly.

6 Q. And did you have to work that day?

7 A. Yes.

8 Q. Do you remember what hours you worked at Piggly Wiggly?

9 A. It had to be 2 to 9.

10 Q. And so this was sometime before 2?

11 A. Yes.

12 Q. Do you remember about how long before 2:00 this was?

13 Ten minutes? An hour? Two hours?

14 A. It was a good little minute.

15 Q. So awhile before---

16 A. Yes.

17 Q. ---2:00?

18 A. Uh-huh.

19 Q. And you took him to Kevae's house?

20 A. Uh-huh.

21 Q. Why didn't he drive himself?

22 A. He doesn't drive.

23 Q. Does he have a car?

24 A. No.

25 Q. Does he know how to drive?

1 A. A little bit, yeah. He can but not good.

2 Q. And did he have access to a car?

3 A. No.

4 Q. So you dropped him off there?

5 A. Uh-huh. Yes.

6 Q. When you dropped him off, did you go inside?

7 A. No.

8 Q. You dropped him off?

9 A. Yes, I dropped him off.

10 Q. And then you went to work a short time after that?

11 A. At 2:00.

12 Q. And between 2:00 and 9:00 did you see him again that
13 day?

14 A. No. We were texting.

15 Q. And then after 9:00 did you at some point see him again
16 that day?

17 A. Yes.

18 Q. At someone else's house?

19 A. He actually got dropped off at my job.

20 Q. And then where did you go from there?

21 A. We went to the gas station. We went to get something to
22 eat. Then we went to my sister's house.

23 Q. What's your sister's name?

24 A. Brittany.

25 Q. And so from the time you dropped him off at Kevae's

1 house until he was dropped off at your job, you didn't see
2 him at any time during that period of time?

3 A. No. No.

4 Ms. McDuffie: Beg the Court's indulgence. No further
5 questions for this witness.

6 The Court: Anything?

7 Ms. Shurling: Yes, please.

8 Cross-Examination

9 By Ms. Shurling:

10 Q. You said you dropped your boyfriend off at Kevae
11 Dolphin's house before you went to work?

12 A. Uh-huh. Yes.

13 Q. And you went to work at 2:00?

14 A. Yes.

15 Q. Did you go straight to work after you dropped him off?

16 A. No.

17 Q. What did you do in between?

18 A. I probably -- I went back to my house in Parklane
19 Apartments.

20 Q. Pardon?

21 A. I went back to Parklane Apartments, my apartment.

22 Q. For how long?

23 A. It had to be about two hours because I had to be to work
24 at 2.

25 Q. And about what time did you say you dropped him off at?

1 A. Around lunchtime.

2 Q. Around lunchtime.

3 A. Yes.

4 Q. That would be around noon? One? What time?

5 A. Early lunch. We were up---

6 Q. Early lunch?

7 A. Yeah.

8 Q. And y'all went to Wendy's for lunch.

9 A. Yes.

10 Q. Okay. What was your understanding when you dropped him
11 off at the Dolphin residence? Who was he going to see?

12 A. Kevae.

13 Q. Did you know anything about his friend Stephanie McGowan
14 being there?

15 A. No.

16 Q. You didn't know he was going to visit a girl from out of
17 town?

18 A. No.

19 Q. When he got out of the car to go in the house, did he
20 have anything with him?

21 A. His phone.

22 Q. Nothing else.

23 A. Not that I can recall, no.

24 Q. He wasn't carrying a bag or anything.

25 A. No. No.

1 Q. Thank you.

2 A. You're welcome.

3 Ms. Shurling: No further questions.

4 The Court: Anything?

5 Ms. McDuffie: No, Your Honor. We'd ask the witness be
6 excused.

7 The Court: All right. Thank you. You are free to
8 leave.

9 Ms. Campbell: The State would call Mali Allen.

10 Court Reporter: What was that name?

11 Ms. Campbell: Mali, M-a-l-i, Allen.

12 Mali Allen, after being duly sworn, testified as
13 follows:

14 The Clerk: Please have a seat and state your full name
15 for the record.

16 The Witness: Mali Allen.

17 Direct Examination

18 By Ms. Campbell:

19 Q. Mali Allen?

20 A. Yes.

21 Q. Ms. Allen, do you live here in the Columbia area?

22 A. Yes, I do.

23 Q. How long have you been living in Columbia?

24 A. My whole life.

25 Q. And what do you do for a living, ma'am?

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

James R. Barber, III, Circuit Court Judge

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RESPONDENT, **SC Court of Appeals**

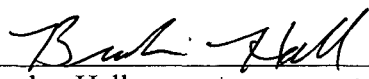
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ANTHONY HACKSHAW,

APPELLANT

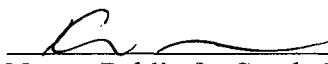
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 16th day of November, 2012.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 16th day of November, 2012.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 2, 2013.