

20052

ORIGINAL
Volume II of IV

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

James R. Barber, III, Circuit Court Judge

RECEIVED

NOV 16 2012

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ANTHONY HACKSHAW,

APPELLANT

Appellate Case No. 2010-177006

RECORD ON APPEAL

SUSAN B. HACKETT
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

BRENDAN J. McDONALD
Assistant Attorney General

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit
Post Office Box 192
Columbia, SC 29202-0192
(803) 576-1800

Attorneys for Respondent

INDEX

INDEX..... i

PRETRIAL MOTIONS 2

MOTION TO EXCLUDE EVIDENCE OF PRIOR DRUG DEALINGS 24

MOTION TO SUPPRESS EVIDENCE SECURED BY SEARCH WARRANT 46

VOIR DIRE 75

JURY SELECTION 92

JUDGE’S INTRODUCTORY INSTRUCTIONS 100

RENEWED MOTION TO EXCLUDE EVIDENCE OF PRIOR DRUG DEALINGS 106

TRIAL TRANSCRIPT 1

OPENING STATEMENT BY MS. SIMPSON 132

OPENING STATEMENT BY MS. SHURLING 145

TESTIMONY

 BRIAN J. CARROLL

 Direct Examination by Ms. McDuffie 158

 Cross Examination by Ms. Shurling 167

 RUTH J. GOLD

 Direct Examination by Ms. Simpson 170

 Cross Examination by Ms. Shurling 173

 ZIONDE HARPER

 Direct Examination by Ms. Simpson 180

 Cross Examination by Ms. Shurling 182

 PETER CURRIE

 Direct Examination by Ms. McDuffie 190

 Cross Examination by Ms. Shurling 204

 KIM DINH

 Direct Examination by Ms. McDuffie 214

 Cross Examination by Ms. Shurling 221

CLEVELAND JOYNER	
Direct Examination by Ms. Campbell	223
Cross Examination by Ms. Shurling	248
Redirect Examination by Ms. Campbell.....	271
Recross Examination by Ms. Shurling	273
ELLISON HUDSON	
Direct Examination by Ms. Campbell	279
Cross Examination by Ms. Shurling	325
Redirect Examination by Ms. Campbell.....	403
Recross Examination by Ms. Shurling	409
KEVAE DOLPHIN	
Direct Examination by Ms. Campbell	415
Cross Examination by Ms. Shurling	423
Redirect Examination by Ms. Campbell.....	430
Recross Examination by Ms. Shurling	431
MOTION FOR MISTRIAL	439
VOIR DIRE OF JUROR VITALI	447
NINA J. GORDON	
Direct Examination by Ms. Simpson.....	453
Cross Examination by Ms. Shurling	459
Redirect Examination by Ms. Simpson	469
JOANN PICKETT	
Direct Examination by Ms. McDuffie	471
Cross Examination by Ms. Shurling	475
STEPHANIE MCGOWAN	
Direct Examination by Ms. Campbell	478
Cross Examination by Ms. Shurling	484
Redirect Examination by Ms. Campbell.....	490
Recross Examination by Ms. Shurling	493
WHITNEY CARUTH	
Direct Examination by Ms. McDuffie	494
Cross Examination by Ms. Shurling	498
MALI ALLEN	
Direct Examination by Ms. Campbell	500
Cross Examination by Ms. Shurling	506
Redirect Examination by Ms. Campbell.....	510
Recross Examination by Ms. Shurling	510

NORMAN JENKINS	
Direct Examination by Ms. Campbell	512
Cross Examination by Ms. Shurling	515
SHANELLE LATIMER	
Direct Examination by Ms. Simpson	520
Cross Examination by Ms. Shurling	523
Redirect Examination by Ms. Simpson	526
Recross Examination by Ms. Shurling	526
SHAQUENDA EVANS	
Direct Examination by Ms. McDuffie	527
Cross Examination by Ms. Shurling	531
LORRAINE TRACEY	
Direct Examination by Ms. Simpson	534
Cross Examination by Ms. Shurling	538
Redirect Examination by Ms. Simpson	542
WILLIAM LITTLEJOHN	
Direct Examination by Ms. Simpson	544
Cross Examination by Ms. Shurling	547
JONATHAN BAILEY	
Direct Examination by Ms. Campbell	551
Cross Examination by Ms. Shurling	563
SHELDON MCDOWELL	
Direct Examination by Ms. McDuffie	568
Cross Examination by Ms. Shurling	576
ARTHUR L. THOMAS	
Direct Examination by Ms. Campbell	583
Cross Examination by Ms. Shurling	625
Redirect Examination by Ms. Campbell	661
Recross Examination by Ms. Shurling	667
KERRY JOHNSON	
Direct Examination by Ms. McDuffie	672
Cross Examination by Ms. Shurling	677
WILLIAM GONZALEZ	
Direct Examination by Ms. McDuffie	680
Cross Examination by Ms. Shurling	687

JOSEPH SMITH, JR.	
Direct Examination by Ms. Simpson	696
Cross Examination by Ms. Shurling	702
JOHN BARRON	
Direct Examination by Ms. Campbell	710
Cross Examination by Ms. Shurling	722
ILA SIMMONS	
Direct Examination by Ms. Campbell	726
Cross Examination by Ms. Shurling	738
Redirect Examination by Ms. Campbell	742
Recross Examination by Ms. Shurling	742
MONICA P. GOODWIN	
Direct Examination by Ms. McDuffie	744
Cross Examination by Ms. Shurling	748
TORRIAN GLEATON	
Direct Examination by Ms. Campbell	758
Examination by the Court	763
KELLY COBIA	
Direct Examination by Ms. McDuffie	768
Cross Examination by Mr. Thompson	774
Redirect Examination by Ms. McDuffie	779
Recross Examination by Mr. Thompson	780
TERRAN HUGHEY	
Direct Examination by Ms. Campbell	785
Cross Examination by Ms. Shurling	802
Redirect Examination by Ms. Campbell	811
Recross Examination by Ms. Shurling	812
TERRI GLEASON	
Direct Examination by Ms. Simpson	819
Cross Examination by Ms. Shurling	831
TORRIAN GLEATON (recalled)	
Direct Examination by Ms. Campbell	846
Cross Examination by Ms. Shurling	847
TRAVIS GOLSTON	
Direct Examination by Ms. Campbell	858
Cross Examination by Ms. Shurling	870

DR. BRADLEY J. MARCUS	
Direct Examination by Ms. McDuffie	894
Cross Examination by Ms. Shurling	911
Redirect Examination by Ms. McDuffie.....	914
Recross Examination by Ms. Shurling	915
JEFFERY STROHM	
Direct Examination by Ms. McDuffie	916
Cross Examination by Mr. Thompson.....	926
CASEY SECOR	
Direct Examination by Ms. Campbell	948
Cross Examination by Ms. Shurling	954
WALTER MAHONEY	
Direct Examination by Ms. Campbell	960
Cross Examination by Ms. Shurling	1002
Redirect Examination by Ms. Campbell.....	1006
Recross Examination by Ms. Shurling	1009
KEVIN REESE	
Direct Examination by Ms. Campbell	1010
Cross Examination by Ms. Shurling	1067
MOTION FOR A DIRECTED VERDICT	1113
ROTANIA GRENALD	
Direct Examination by Ms. Shurling	1126
Cross Examination by Ms. Campbell	1133
Redirect Examination by Ms. Shurling.....	1147
ROSA GRENALD	
Direct Examination by Ms. Shurling	1151
Cross Examination by Ms. Campbell	1164
Redirect Examination by Ms. Shurling.....	1185
Recross Examination by Ms. Campbell.....	1190
TAMMY CHAHINE	
Direct Examination by Ms. Shurling	1211
AUBREY PORT	
Direct Examination by Ms. Shurling	1216
Cross Examination by Ms. McDuffie.....	1218

ELEANOR D. CLEARY

Direct Examination by Ms. Shurling	1219
Cross Examination by Ms. Campbell	1227
Redirect Examination by Ms. Shurling.....	1241
Recross Examination by Ms. Campbell.....	1246

PAUL H. LOMAS

Direct Examination by Ms. Shurling	1249
Cross Examination by Ms. Campbell	1256
Redirect Examination by Ms. Shurling.....	1259

LESLIE MCCARVER

Direct Examination by Ms. Shurling	1263
Cross Examination by Ms. Campbell	1268
Redirect Examination by Ms. Shurling.....	1269

MARJORIE WHITE

Direct Examination by Ms. Shurling	1270
------------------------------------------	------

TORRIAN GLEATON

Direct Examination by Ms. Shurling	1291
------------------------------------------	------

JASON WILLIAMS

Direct Examination by Ms. Shurling	1295
------------------------------------------	------

AARON JOHNSON

Direct Examination by Ms. Shurling	1299
Cross Examination by Ms. Campbell	1305
Redirect Examination by Ms. Shurling.....	1311
Recross Examination by Ms. Campbell.....	1312

AMOS JONES

Direct Examination by Ms. Shurling	1313
Cross Examination by Ms. Campbell	1321
Redirect Examination by Ms. Shurling.....	1322

DEBRA CHAPMAN (in camera)

Examination by the Court	1329
Direct Examination by Ms. Shurling	1330

DAVID MACDOUGALL

Direct Examination by Ms. Shurling	1338
Cross Examination by Ms. Campbell	1363
Redirect Examination by Ms. Shurling.....	1373
Recross Examination by Ms. Campbell.....	1376

ANTHONY HACKSHAW	
Direct Examination by Ms. Shurling	1389
Cross Examination by Ms. Campbell	1427
Redirect Examination by Ms. Shurling.....	1453
OPENING ON THE LAW BY MS. CAMPBELL	1489
CLOSING ARGUMENT BY MS. SHURLING	1507
CLOSING ARGUMENT BY MS. CAMPBELL	1540
MOTION TO PRECLUDE STATE FROM OPENING ON THE LAW	1474
MOTION FOR DEFENDANT TO HAVE FINAL ARGUMENT.....	1474
RENEW OF DIRECTED VERDICT MOTION AND MISTRIAL MOTION	1477
CHARGE ON THE LAW	1571
PROFFER ON THIRD PARTY GUILT	1591
BRIEN GWYN (in camera)	
Direct Examination by Ms. Shurling	1592
MICHAEL BABIN (in camera)	
Direct Examination by Ms. Shurling	1600
NOTE FROM THE JURY.....	1602
KEVIN REESE (in camera)	
Direct Examination by Ms. Shurling	1610
VERDICT.....	1619
STATE'S EXHIBIT # 61 (MUGSHOT OF ELLISON HUDSON).....	1625
STATE'S EXHIBIT #68 (TORRIAN GLEATON'S STATEMENT).....	1626
SENTENCING TRANSCRIPT DATED NOVEMBER 3, 2010.....	1628
KENNETH GOODWIN (in camera)	
Direct Examination by Ms. Shurling	1649
MOTION FOR NEW TRIAL.....	1659
SENTENCING.....	1645

INDICTMENTS.....1663
CERTIFICATE OF COUNSEL1671

THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

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

1 A. I work for state government for D.D.S.N.

2 Q. For whom?

3 A. D.D.S.N.

4 Q. D.D.S.N.?

5 A. Uh-huh.

6 Q. And what do you do there?

7 A. Accountant.

8 Q. An accountant?

9 A. Uh-huh.

10 Q. And do you have any children?

11 A. Yes.

12 Q. And how many children do you have, ma'am?

13 A. I have four.

14 Q. Okay. Do you have a child named Jonathan?

15 A. Yes.

16 Q. And what's his last name?

17 A. Bailey.

18 Q. And how old is Jonathan Bailey?

19 A. He's 21.

20 Q. I want to turn your attention back to May the 20th of
21 2009. Did you have any contact with your son that day?

22 A. Yes, ma'am.

23 Q. And can you explain to the jury why you were making
24 contact with your son that day?

25 A. Jonathan -- an officer had come to my house to serve a

1 warrant on him I think the week before or a couple of days
2 before and wanted him to contact him.

3 Q. And as a result of that officer making contact with you
4 looking for Jonathan, did you make contact with Jonathan
5 yourself?

6 A. Yes.

7 Q. And how did you make contact with him, ma'am?

8 A. I called him on his cell phone.

9 Q. Specifically, would that be the morning of May the 20th,
10 2009?

11 A. It was around noon, around about lunchtime, I believe I
12 talked to Jonathan.

13 Q. And I want to show you what's been marked as State's
14 exhibit number 58 and just ask you if you recognize that.

15 A. That's my cell phone bill.

16 Q. And this is actually something I believe you provided to
17 law enforcement at sometime?

18 A. Yes.

19 **Ms. Campbell:** And, Your Honor, at this time I'd offer
20 State's exhibit 58 into evidence. You've got a copy.

21 **Ms. Shurling:** That's fine.

22 **Ms. Campbell:** Specifically, I want to turn your
23 attention to---

24 **The Court:** Did you have any objection?

25 **Ms. Shurling:** No, sir.

1 **The Court:** All right. So admitted without objection.

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

3 (State's exhibit 58 was received in evidence.)

4 By Ms. Campbell:

5 Q. State's exhibit number 58, specifically looking at the
6 entries for May the 20th of 2009, is there a call indicated
7 there where you made contact with your son that day around
8 the lunchtime?

9 A. Yes.

10 Q. And specifically is that indicated on those -- on the
11 third page, I believe, of those records?

12 A. Yes.

13 Q. And what's the time period where you made the actual
14 phone call to his number?

15 A. It looks like 12:20, yeah.

16 Q. 12:20?

17 A. Uh-huh.

18 Q. And that would be 12:20 in the daytime, correct, not at
19 night but in the daytime?

20 A. Yes.

21 Q. Like around lunch.

22 A. Yes.

23 Q. And does it indicate the phone call where you made
24 contact with him?

25 A. Yes.

1 Q. And what was the purpose of that phone call at 12:20 on
2 the 20th of May of 2009?

3 A. To put him in contact with the officer that had -- was
4 looking for him for the warrant.

5 Q. And the next note -- and were you able to get him on the
6 phone?

7 A. Yes.

8 Q. And are you familiar with what's called conference
9 calling or three-way calling?

10 A. Yes.

11 Q. And did you have the ability to do that on your phone?

12 A. Yes, I did.

13 Q. And in this case at 12:20, after making contact with
14 your son, Jonathan, on the phone, did you then get him in
15 touch with the officer who had been trying to get in touch
16 with him?

17 A. Yes.

18 Q. And is that number indicated right below the entry at
19 12:20?

20 A. Yes.

21 Q. And what's that number that's indicated right there?

22 A. It's 600-7002.

23 Q. And is that the number that had been provided you by law
24 enforcement that needed to talk to Jonathan about an
25 outstanding warrant?

1 A. Yes.

2 Q. And were you able to successfully make a three-way call
3 between yourself, your son, and the deputy?

4 A. Yes.

5 Q. And does it also indicate how many minutes that call
6 actually lasted?

7 A. About 14, 15. Yeah, 14 minutes.

8 Q. And it was actually 14 minutes you were on the phone
9 with your son---

10 A. Uh-huh.

11 Q. ---and then down here, 13 of those were on the three-way
12 call with the deputy.

13 A. Yes.

14 Q. And that's indicated on these records.

15 A. Yes.

16 Q. And that's the information you provided to law
17 enforcement---

18 A. Yes.

19 Q. ---after his arrest. Is that correct?

20 A. Yes.

21 Q. And during that 14-minute call from 12:20 'til let's say
22 12:34, sometime in that range, he was on the phone actively
23 talking with the deputy.

24 A. Yes.

25 Ms. Campbell: I don't have anything further. Thank

1 you.

2 **The Court:** Ms. Shurling, anything?

3 Cross-Examination

4 By Ms. Shurling:

5 Q. The 600-7002 number is the number of the officer?

6 A. Yes.

7 Q. Okay. And so the 768-2210 number is the number your son
8 was using?

9 A. Yes.

10 Q. So this call lasted, including the one-minute connection
11 time for the three-way, a total of 14 minutes; correct?

12 A. Yes. I guess that's what the phone bill says.

13 Q. That's what the records reflect.

14 A. Yes.

15 Q. And the call ended at 12:41; correct?

16 A. Yes.

17 Q. Actually -- I'm sorry. The call didn't end. The next
18 call on the bill is at 12:41; correct? Do you have a copy?

19 A. Yeah, it's up here.

20 Q. Okay. The next call was at 12:41; right?

21 A. Yes.

22 Q. Okay. But the three-way with your son began at 12:21;
23 correct?

24 A. It's---

25 Q. The part where all three of you were on the phone.

1 A. Started at 12:20, looks like.

2 Q. Twelve... You're on the phone with your son at 12:20.

3 A. Uh-huh.

4 Q. 12:21 you're hooked up with the officer; correct?

5 A. Yes. Uh-huh.

6 Q. All right. And that call lasted 13 minutes. Isn't that
7 right?

8 A. Okay. Yes.

9 Q. So that call would have ended at 12:34. Correct?

10 A. Yeah. I'm just looking at the bill. I can't really
11 tell here. I guess -- because I see where I called Jonathan
12 back again at 12:41.

13 Q. Yes, ma'am.

14 A. Yes.

15 Q. But the call, according to the phone records, lasted 13
16 minutes and you were connected with the officer at 12:21.

17 A. Yes.

18 Q. So that means that call ended at 12:34.

19 A. Could be.

20 Q. Correct?

21 A. I guess that's the way -- I'm looking at the bill. I
22 guess that's what it says. I'm not sure. I wasn't counting
23 the minutes.

24 Q. Yes, ma'am. How did law enforcement get your cell phone
25 records? Did you give them to them?

1 A. Yes, ma'am.

2 Q. A moment's indulgence, Your Honor. There are three
3 calls after the end of your three-way phone conversation with
4 the law enforcement officer. Can you look at your copy of
5 the bill, please, ma'am?

6 A. Uh-huh.

7 Q. One at 12:41. Then you called right back at 12:42 and
8 again at 12:43. Did your son answer those calls?

9 A. I'm not sure. I know I --- after he got off the phone,
10 yes, I called him back to see what he needed to do and we
11 talked very briefly. I'm not sure. I can't tell you if each
12 time he answered. I know I did talk to him after because he
13 wanted to know -- I wanted to know what he had to do. Was he
14 going to do the seven days or was he going to have to pay the
15 fine for \$300? I'm not sure. I can't really remember
16 exactly how many times we talked after that.

17 Q. Seven days or \$300? What was this telephone
18 conversation about?

19 A. The officer was trying to serve Jonathan because of a
20 warrant he had for his arrest, and he said either he could do
21 seven days or either pay a \$300 fine.

22 Q. And what was the warrant for?

23 A. I can't really remember. He came to my home earlier
24 that morning.

25 Q. You don't remember what the outstanding warrant was for.

1 A. I can't really remember off the top of my head.

2 Q. Do you remember calling your son three times in a row?

3 A. (Witness nodded head up and down.) Obviously I did,
4 yeah. It's been so long; I probably did.

5 Q. Yes, ma'am.

6 A. Yeah.

7 Q. I'm not asking you whether that's what your phone bill
8 shows. Do you remember calling him back three times?

9 A. I remember calling Jonathan to find out what the officer
10 said. I can't tell you if I remember calling him three times
11 or not. I remember calling him to find out what he needed to
12 do.

13 Q. I thought you were on the call with the officer and your
14 son?

15 A. I was, but I wanted to know exactly what Jonathan was
16 going to do because the officer gave him options of whether
17 he could take the seven days or the \$300. He wanted him to
18 come in and either -- do either one and I wanted to know what
19 Jonathan was going to do.

20 Q. Yes, ma'am, but didn't you just say you wanted to know
21 what the officer said?

22 A. It's the same -- well, I'm sorry, ma'am. It's been so
23 long ago; I can't really remember. I just wanted to know
24 what my son was going to do. Was he going to go and serve
25 the seven days or was I'm going to have to help him with the

1 \$300? Because he didn't give an answer.

2 **Ms. Shurling:** Thank you. No further questions.

3 **The Court:** Anything?

4 **Ms. Campbell:** Just one question.

5 Redirect Examination

6 By Ms. Campbell:

7 Q. But you did talk to him after you hung up on the three-
8 way.

9 A. Yes, I did.

10 Q. Shortly thereafter, either 12:41, 12:42 or 12:43.

11 A. Yes, I did.

12 **Ms. Campbell:** Thank you.

13 **The Court:** Anything?

14 Recross Examination

15 By Ms. Shurling:

16 Q. Are you certain that one of these three phone calls
17 connected and that you actually talked to your son?

18 A. I know I talked to him after that three-way conference.
19 I can't tell you which one. I know I talked to him because I
20 wanted to know what was going to happen. What was he going
21 to do? What was his choice?

22 Q. Could you have talked to him later that day?

23 A. Well, I talked to him several times that day.

24 Q. Okay.

25 A. Yeah.

1 Q. Do you know -- so you don't know for sure whether any of
2 these three calls connected?

3 A. I can't -- I know I talked to him directly after that,
4 ma'am. I can't tell you which one of those calls connected.
5 I know I did talk to him. I use T-Mobile which has bad
6 signals.

7 Q. Yes, ma'am. My question is: When you talked to your
8 son, was it sometime immediately after the three-way call?

9 **Ms. Campbell:** Objection, Your Honor. Asked and
10 answered.

11 **Ms. Shurling:** No, sir, it was not.

12 **The Court:** Yes, she's answered it, but you can answer
13 it again.

14 **The Witness:** I remember talking to Jonathan after the
15 conference call.

16 By Ms. Shurling:

17 Q. Immediately after?

18 A. Yeah, I remember calling him immediately to find out
19 what his decision was going to be.

20 **Ms. Shurling:** Thank you. No further questions.

21 **The Court:** All right. Thank you, ma'am. You may step
22 down.

23 **Ms. Campbell:** The State calls Norman Jenkins.

24 Norman Jenkins, after being duly sworn, testified
25 as follows:

1 **The Clerk:** Please have a seat and state your full name.

2 **The Witness:** Norman Jenkins.

3 Direct Examination

4 By Ms. Campbell:

5 Q. Sir, where are you employed?

6 A. Richland County Sheriff's Department.

7 Q. What do you do there, sir?

8 A. I'm a sergeant in the fugitive task force.

9 Q. And as part of your duties of the fugitive task force,
10 are part of your duties including finding people to serve
11 warrants?

12 A. That's correct.

13 Q. I want to turn your attention back to May the 20th of
14 2009. Was there an outstanding warrant for a Jonathan Bailey
15 that you were in charge of back then?

16 A. I'm not -- I'm not actually sure.

17 Q. As far as the name? Let me do it this way. As part of
18 your duties in order to get someone to respond -- or would
19 you make attempts to try to get someone at a known address?

20 A. Correct.

21 Q. Would it be unusual for you to contact family members in
22 order to get in touch with someone who had an outstanding
23 warrant?

24 A. Not unusual at all.

25 Q. And, in fact, that's a very common way of trying to get

1 people in to get a warrant served.

2 A. That's correct.

3 Q. Specifically, I want to show you what's been marked as
4 State's exhibit number 58 and show you some phone records and
5 ask you if you've had an opportunity to review those phone
6 records.

7 A. Yes, I have.

8 Q. And do those help refresh your memory a little bit about
9 a possible phone call that happened on May the 20th?

10 A. It -- the only thing I can say is that the records show
11 that I made a phone call or someone called my line.

12 Q. Someone called your line. And basically what was your
13 phone number? Is it indicated on there?

14 A. 600-7002.

15 Q. And I believe the duration of the actual time you were
16 on the three-way call was a total of 13 minutes, indicated on
17 there?

18 A. Yes.

19 Q. And that would have been to your -- on May the 20th
20 there's no doubt you would have had your cell phone.

21 A. No doubt.

22 Q. And you would have been the one talking on that phone---

23 A. Correct.

24 Q. ---for that 13 minutes. You don't have an independent
25 memory of that, but that would be correct.

1 A. That would be correct.

2 Q. And these accurately reflect your phone number, and you
3 would have been in possession of that phone that day talking
4 to him.

5 A. Correct.

6 Q. And is it unusual in your duties, and specifically as to
7 this case, that you would have talked to a person about
8 turning themselves in, their options, possible penalties and
9 things of that nature?

10 A. Yes.

11 Q. And that is your phone number on those records.

12 A. Yes.

13 Q. So you would have been on that phone that day for that
14 13-minute period.

15 A. Correct.

16 Q. You don't have any independent recollection of that
17 phone call, do you?

18 A. No, none at all, because I -- I get numerous phone calls
19 per day and I make numerous phone calls per day.

20 Q. Do you recall Investigator Reese contacting you about
21 confirming a phone call to someone? You may not have known
22 the specifics.

23 A. Yes.

24 Q. And that would have been, in fact, shortly thereafter
25 May the 20th.

1 A. Correct.

2 Ms. Campbell: Thank you.

3 The Court: Anything?

4 Cross-Examination

5 By Ms. Shurling:

6 Q. Do you actually recall your conversation with
7 Investigator Reese?

8 A. No.

9 Q. You don't.

10 A. No.

11 Q. So you have no idea how long you told him the phone call
12 lasted, if you gave him an estimate at all?

13 A. No, I wouldn't -- it wasn't a -- it wasn't a situation
14 that I just sit and try to remember.

15 Q. Okay. Do you remember what warrant it was that you were
16 attempting to serve on Mr. Bailey?

17 A. No, I don't.

18 Q. Can you identify this document for me?

19 A. Yes, it's a booking sheet, an arrest report.

20 Q. And can you tell me what warrant it shows was issued
21 nine days---

22 Ms. Campbell: Objection, Your Honor. I believe -- we
23 would ask if it helps refresh his memory would be the only
24 pertinent, relevant part of that document, if it was relevant
25 at all.

1 By Ms. Shurling:

2 Q. Does this document help refresh your memory as to what
3 warrant was issued for Mr. Bailey nine days before that
4 telephone conference?

5 A. No.

6 Q. This is a Richland County arrest warrant record;
7 correct?

8 A. Yes, it is.

9 Q. And what warrant does it show was---

10 Ms. Campbell: Objection, Your Honor.

11 Ms. Shurling: ---issued?

12 The Court: Sustained.

13 Ms. Campbell: Thank you.

14 Ms. Shurling: Your Honor, I have a matter I have to
15 discuss outside the presence of the jury.

16 The Court: We'll do it in a minute. Proceed.

17 Ms. Shurling: Were you present when Mr. Bailey's mother
18 said that she wanted to know whether or not her son was going
19 to take the option of---

20 Ms. Campbell: Objection, Your Honor. They've all been
21 sequestered, per her request.

22 Ms. Shurling: And law enforcement officers have been in
23 the courtroom. I did not know whether he was present; I was
24 asking.

25 The Court: All right. Ms. Shurling, look at me. If

1 he's sequestered -- you've been sequestered.

2 **The Witness:** Yes, sir.

3 By Ms. Shurling:

4 Q. Do you recall telling Mr. Bailey anything about
5 potential sentences or options that he might be facing on the
6 warrant in question?

7 A. No.

8 **Ms. Shurling:** Thank you. No further questions.

9 **The Court:** Anything further?

10 **Ms. Campbell:** No, sir. May he be excused?

11 **The Court:** He may.

12 **The Witness:** Am I excused outright, Judge?

13 **The Court:** Sir?

14 **The Witness:** Am I excused outright?

15 **The Court:** Well, you're excused from this courtroom.

16 We might have to find you again if we need you.

17 **Ms. Shurling:** I'm sorry, Your Honor. I forgot -- I'd
18 move to introduce this document, please.

19 **Ms. Campbell:** No foundation.

20 **The Court:** All right.

21 **Ms. Shurling:** Your Honor, it's been identified---

22 **The Court:** Overruled -- I mean, not admitted. Ladies
23 and gentlemen, we're going to let you take a break, if you'll
24 step outside, please. Don't discuss the case while we're on
25 break, and we'll bring you back in about 15 minutes or so.

1 (Whereupon, the jury was excused from open court at 3:43
2 p.m.)

3 **The Court:** All right. Ms. Shurling, what do you want
4 to take up?

5 **Ms. Shurling:** Your Honor, Mr. Bailey's mother has
6 specifically testified that as a part of that three-way
7 telephone conversation her son was being given the option of
8 serving seven days or paying a \$300 fine. This document
9 identified by the officer shows that an arrest warrant was
10 issued on May 11th, just nine days before this telephone
11 conference, about an outstanding warrant for the crime of
12 armed robbery. The mother's testimony creates the impression
13 that Mr. Bailey was wanted for something very minor by
14 relaying to this jury that he was given the option of serving
15 only seven days or paying a \$300 fine.

16 **The Court:** So, I mean, what is it you're -- what are
17 you asking me to do? Get him to testify to something he
18 doesn't know?

19 **Ms. Shurling:** I am moving to introduce a document
20 identified by him as a record from the Richard County
21 Sheriff's Department---

22 **The Court:** All right. He's not the records custodian.

23 **Ms. Shurling:** Thank you, Your Honor. I'll be sure and
24 testify to that person later for the trial. Thank you.

25 **Ms. Campbell:** Just for the record, Your Honor, it also

1 shows in addition to the armed robbery that there was a
2 failure-to-appear warrant out which would be---

3 **The Court:** Well, the thing is not being introduced at
4 this time.

5 **Ms. Campbell:** Thank you.

6 **The Court:** He can't -- he says it looks like a booking
7 sheet. That's all he says. He doesn't know anything about
8 that or anything else. He's not the records custodian. He
9 can't testify as to what's kept in the regular course of
10 business. We will take a break and be back.

11 (Whereupon, a short break was taken.)

12 **The Court:** All right. Thank y'all. Bring us the jury
13 in, Mr. Hollis. Have y'all got your next witness ready?

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

15 **The Court:** Where he/she be? All right.

16 **Ms. McDuffie:** Talking to Mr. Hollis.

17 **The Court:** You're getting better.

18 **Ms. Campbell:** We're trying.

19 (Whereupon, the jury was brought into open court at 4:01
20 p.m.)

21 **The Court:** All right. Y'all want to call your next
22 witness?

23 **Ms. Simpson:** The State calls Shanelle Latimer.

24 Shanelle Latimer, after being duly sworn, testified
25 as follows:

1 A. Last year I lived in Atlanta.

2 Q. Okay. And back on May of last year, the 20th, of 2009,
3 where were you living at that time?

4 A. I was staying in Bent Tree Apartments.

5 Q. Okay. And did anyone live with you?

6 A. One of my friends but she moved out, and my father and
7 my boyfriend occasionally.

8 Q. What's your boyfriend's name?

9 A. Tony Craft.

10 Q. And do you know the defendant, Anthony Hackshaw?

11 A. Yes.

12 Q. And how long have you known the defendant?

13 A. Since -- I'm not sure the exact date but only like a
14 year or something? Like a year?

15 Q. Okay. And you know his wife, Rosa; correct?

16 A. Uh-huh. Yes.

17 Q. And are you -- would you say you're more familiar with
18 the defendant or Rosa?

19 A. Yeah, Rosa.

20 Q. Rosa? And how do you know Rosa?

21 A. We went to school together.

22 Q. And turning your attention back to May the 20th of 2009,
23 did you have a chance to speak with Rosa the day after this
24 incident on May the 21st?

25 A. What? Would you be more clear with the incident?

1 Q. That we're here for today when Ebony Fogle was murdered,
2 the incident -- and you may not be familiar with what
3 happened on May the 21st.

4 A. Yeah.

5 Q. But do you recall that at some point Rosa came to you
6 regarding the silver Honda?

7 A. Yes.

8 Q. And after you spoke with Rosa on the 21st, what did she
9 do? Did she drive away in the car or did she leave the car?

10 A. She simply just came to my house, and I dropped her off
11 at home and I came back home.

12 Q. Okay. And were the keys in your possession?

13 A. Yes.

14 Q. And at any point did you or your boyfriend drive the
15 car?

16 A. I had to drive back to my house and I drove her home,
17 and I went out of town and my boyfriend needed to go
18 somewhere, so I said he can drive the car.

19 Q. And -- but hadn't Rosa told you that you weren't
20 supposed to drive the car?

21 A. No, she never said that.

22 Q. You don't recall telling law enforcement back in 2009---

23 A. She said for emergencies. Emergencies. She said that.

24 Q. Emergencies only.

25 A. Uh-huh.

1 Q. So essentially she didn't want you just out driving the
2 car everywhere you had to go, but if he needed to be to work
3 or...

4 A. Yeah, she just said for emergencies.

5 Q. And were you aware of news reports at that time
6 indicating that there was a silver Honda that was a suspect
7 vehicle?

8 A. No.

9 Q. No? And did Rosa ever find out that Tony -- actually,
10 let me back up. On that Friday did Rosa come and get the car
11 back from you?

12 A. I think so. I think it was that Friday, yes.

13 Q. And do you recall seeing either Rosa or the defendant in
14 that car after she came and took the car back?

15 A. I was out of town.

16 Q. You were out of town.

17 A. Uh-huh.

18 Q. Now, you've actually been convicted back in 2006 of two
19 counts of shoplifting; correct?

20 A. Yes.

21 Ms. Simpson: Thank you. Please answer any questions
22 the defense may have.

23 Cross-Examination

24 By Ms. Shurling:

25 Q. Thank you. You're good friends with Rosa?

1 A. Yes.

2 Q. Do you think you know your friend pretty well?

3 A. I would say that.

4 Q. Well, let's start with something else though. Do you
5 remember specifically what date she left the little silver
6 Honda with you?

7 A. I was in Miami. I don't -- I don't know the dates. I
8 was in Miami. I was out of town for the whole weekend.

9 Q. Well, were you at home the day she left the car there?

10 A. Yeah. I left that following night though.

11 Q. Okay. And my question is: Do you know for sure that
12 that was May 21st?

13 A. I don't know the exact date, but I know it was Memorial
14 Day weekend of last year.

15 Q. All right. And I believe you said you drove Rosa back
16 to her apartment?

17 A. Yes.

18 Q. Did she seem upset or anxious or worried about anything?

19 A. Not really. We just talked regular like how we usually
20 talk, and I asked her was anything wrong and she didn't say
21 anything, so I left it alone.

22 Q. Okay. But did she seem any different from usual?

23 A. I thought something was wrong, but I wasn't about to
24 keep asking her. If she didn't want to tell me, then I left
25 it alone.

1 Q. Well, did she tell you that wasn't her car? I mean, you
2 knew that car didn't belong to her, didn't you?

3 A. I knew it was her sister's car.

4 Q. It was her sister's car.

5 A. Yeah.

6 Q. Had you and Rosa ever borrowed each others' cars before?

7 A. At the time I had never borrowed, but I used to always
8 drive, yeah, always drive her cars.

9 Q. So it wasn't unusual for her to let you drive one of her
10 cars.

11 A. No.

12 Q. Okay. That wasn't an unusual event in the friendship.
13 You didn't have any reason to question it.

14 A. No.

15 Q. Did she tell you that her sister was afraid they were
16 about to repossess the car?

17 **Ms. Simpson:** Objection, Your Honor.

18 **The Court:** Sustained.

19 **The Witness:** No.

20 **The Court:** Sustained. She can't testify to what
21 somebody else told her.

22 By Ms. Shurling:

23 Q. Did your friend give you any indication why she wanted
24 you to keep the car?

25 A. No.

1 Q. None at all?

2 A. No, and I didn't ask. No.

3 Q. And, again, she didn't tell you you couldn't drive it.

4 A. No, she didn't.

5 **Ms. Shurling:** Thank you. No further questions.

6 **The Court:** Anything?

7 **Ms. Simpson:** Briefly, Your Honor.

8 Redirect Examination

9 By Ms. Simpson:

10 Q. Going back to the day that Rosa left the keys with you,
11 that car was actually at your apartment in your possession at
12 that time. Correct?

13 A. That's correct.

14 Q. You dropped Rosa off, so she did not have the silver
15 Honda..

16 A. No.

17 **The Court:** Is that a no?

18 **The Witness:** Yeah, that was a no.

19 **Ms. Simpson:** Nothing further.

20 Recross Examination

21 By Ms. Shurling:

22 Q. I'm a little confused. You drove Rosa back home?

23 A. Uh-huh.

24 Q. How did Rosa get to your apartment?

25 A. She drove the car there. I guess she was at work.

1 Well, she was at work and she came to my apartment, and she
2 said, "Could you drop me off at home?" I said, "Yes."

3 Q. So she---

4 A. I took her home.

5 Q. Pardon me. She needed a ride home because she had
6 driven the silver Honda to your house, to your apartment.

7 A. Yes.

8 **Ms. Shurling:** Thank you.

9 **The Court:** All right. Thank you, ma'am. You may step
10 down.

11 **Ms. McDuffie:** The State would call Shaquenda Evans.

12 Shaquenda Evans, after being duly sworn, testified
13 as follows:

14 **The Clerk:** Please have a seat and state your full name
15 for the record.

16 **The Witness:** Shaquenda Evans.

17 Direct Examination

18 By Ms. McDuffie:

19 Q. Ms. Evans, where are you currently employed?

20 A. The Home Depot.

21 Q. Which Home Depot do you work at?

22 A. Harbison.

23 Q. What are your duties at this Home Depot?

24 A. I'm a finance supervisor. I manage the cashiers and
25 kind of keep the flow going.

1 Q. And in May of 2009 were you working at Home Depot then?

2 A. Yes, ma'am.

3 Q. And do you know Rosa Grenald?

4 A. Yes, ma'am.

5 Q. And how do you know her?

6 A. Because she was one of my cashiers.

7 Q. At Home Depot?

8 A. Yes.

9 Q. Back in 2009?

10 A. Uh-huh.

11 Q. In the early part of 2009?

12 A. Yes.

13 Q. And have you ever met the defendant, Anthony Hackshaw?

14 A. Just one time.

15 Q. And how -- or who was that through or how did you meet
16 him?

17 A. Through Rosa.

18 Q. And did you have a conversation with him? Did you see
19 him?

20 A. Just see him.

21 Q. And on May the 22nd of 2009 did you meet Rosa at the
22 Bent Tree Apartments?

23 A. Yes.

24 Q. And why did you do that?

25 A. Because we switched -- we were going to switch cars

1 because she knew I had an older car and I was looking for,
2 you know, a new car and she said that her sister---

3 Q. Don't say anything that she told you, but just tell the
4 jury what you did.

5 A. Oh, I went to the Bent Tree Apartment and switched cars
6 with Rosa.

7 Q. And where was the car located when you went there?

8 A. In front of an apartment building.

9 Q. Do you know whose apartment it was?

10 A. At the time, no.

11 Q. Did you later learn whose apartment it was?

12 A. Yes.

13 Q. And whose apartment was it?

14 A. Shanelle's.

15 Q. And do you know how she knew Rosa?

16 A. Not at that moment but I did later.

17 Q. Did you learn they were friends?

18 A. Yes.

19 Q. And so the car was at Shanelle's apartment?

20 A. Uh-huh.

21 Q. And Rosa -- you switched cars with her?

22 A. Correct.

23 Q. Why?

24 A. Because we were talking about me taking over the
25 payments. Her sister -- it was her sister's car, and I

1 needed a new car and I was just going to take over the
2 payments I guess, you know, like a test drive and that was
3 it.

4 Q. And had y'all talked about this before or was this kind
5 of out of the blue?

6 A. Just out of the blue she had came to the job with a new
7 car.

8 Q. And she told you you could switch cars with her?

9 A. Yes.

10 Q. Try it out for a little while? Try the car out for a
11 little bit?

12 A. Yes.

13 Q. And how long did you think you were supposed to keep the
14 car?

15 A. Well, we spoke and she said for about a week.

16 Q. And how long did you end up keeping the car?

17 A. I think for like a week to two weeks.

18 Q. And then at some point she got the car back from you?

19 A. Yes.

20 Q. And where do you live or where did you live in May of
21 2009?

22 A. In Batesburg-Leesville.

23 Q. And in Batesburg-Leesville did you live in a house?
24 Apartment complex? Where?

25 A. Mobile home.

1 Q. And were there lots of neighbors around you in
2 Batesburg-Leesville?

3 A. Yes.

4 Q. And was your -- did you live in Batesburg itself or did
5 you live kind of---

6 A. In the outskirts.

7 Q. In the outskirts? Was it a heavy traffic area where you
8 lived?

9 A. No.

10 Q. And you kept the car for about a week and a half to two
11 weeks?

12 A. Yes, ma'am.

13 Q. And then at some point in time did you return it to
14 Rosa?

15 A. Correct.

16 Q. And the car, was it a two-door silver Honda?

17 A. Yes, ma'am.

18 **Ms. McDuffie:** Beg the court's indulgence. No further
19 questions for this witness, Your Honor.

20 Cross-Examination

21 By Ms. Shurling:

22 Q. Good afternoon.

23 A. Hello.

24 Q. Where is the Home Depot where you work?

25 A. In Irmo, South Carolina.

1 Q. Were you driving the silver Honda back and forth to
2 work?

3 A. Yes, ma'am.

4 Q. So you weren't hiding the car in Batesburg-Leesville,
5 were you?

6 A. That's -- no.

7 Q. You drove it back and forth right into Columbia to the
8 Home Depot where you worked with Rosa.

9 A. Correct.

10 Q. Now, you've indicated that you ended up keeping it a
11 little bit longer than you originally thought you would? Is
12 that right?

13 A. Yes, ma'am. Yes, ma'am.

14 Q. But you worked with Rosa; right?

15 A. Correct.

16 Q. You were actually her supervisor. Is that correct?

17 A. Correct.

18 Q. So if you'd had a problem with the cars being switched
19 for that long, you could have easily just told her you wanted
20 to switch back; right?

21 A. Correct.

22 Q. So you didn't have a problem with keeping it that long.

23 A. No.

24 Q. Okay. And you've indicated that you had expressed an
25 interest in taking the payments over for the sister?

1 A. That's why we switched.

2 Q. And had she indicated to you that the sister was
3 concerned about losing the car?

4 Ms. McDuffie: Objection, Your Honor. Hearsay.

5 The Court: Sustained.

6 Ms. Shurling: Did Rosa give you any reason why she
7 wanted to leave the car with you?

8 The Court: Sustained.

9 The Witness: To leave the car---

10 The Court: Ma'am, you can't answer that question. I
11 sustain the objection. It's hearsay.

12 By Ms. Shurling:

13 Q. Why did you switch cars with Rosa?

14 A. Because I was going to purchase the car from her sister.
15 That was the intentions of me.

16 Q. And you were not aware of any other reason for
17 switching.

18 A. No, ma'am.

19 Ms. Shurling: Thank you. No further questions.

20 The Court: Anything?

21 Ms. McDuffie: No, sir, Your Honor.

22 The Court: All right. Thank you, ma'am. You may step
23 down. All right. Next?

24 Ms. Simpson: The State calls Lorraine Tracey.

25 Lorraine Tracey, after being duly sworn, testified

1 as follows:

2 **The Clerk:** Please have a seat and state your full name
3 for the record.

4 **The Witness:** Lorraine Tracey.

5 Direct Examination

6 By Ms. Simpson:

7 Q. Good afternoon, Ms. Tracey. What do you do for a
8 living?

9 A. I'm a nurse manager.

10 Q. And what agency are you employed with?

11 A. South Carolina Department of Mental Health and Bryan
12 Hospital.

13 Q. And what exactly is Bryan Hospital?

14 A. It's a psychiatric facility. Acute psychiatric
15 facility.

16 Q. And what are your duties at Bryan Psychiatric?

17 A. As I stated, I'm the manager, so I oversee nurses,
18 mental health specialists, unit clerks, people that work in
19 the unit that take care of patients that we have admitted
20 there.

21 Q. So it's essentially a supervisory role.

22 A. Yes.

23 Q. And are you familiar with the defendant?

24 A. Yes.

25 Q. How do you know him?

1 A. He was employed on my unit.

2 Q. Okay. And do you recall what his position was?

3 A. Mental health specialist.

4 Q. Describe for the jury the timekeeping or leave system
5 that was in place back on May the 20th of 2009.

6 A. With regard to?

7 Q. Like -- I'll make it a little more clear.

8 A. Okay.

9 Q. With respect to employees documenting their time, I
10 mean, was it a timestamp? Timecards? How do you all
11 regulate that?

12 A. Sign-in sheets. We have a sign-in book that goes to
13 payroll. You sign in when you come in to work. You sign out
14 for breaks, and then you sign out when you leave duty.

15 Q. And the employees themselves sign in and out?

16 A. Yes.

17 Q. So is this essentially an honor system?

18 A. Yes.

19 Q. And you stated that employees are required to sign out
20 for breaks. Are there other -- can you give some examples of
21 other types of appointments or things that they would need to
22 sign out for?

23 A. If they're taking a patient on an appointment, sometimes
24 they sign out for that, but as I said, it is an honor system
25 and they sometimes sign out. Sometimes they don't.

1 Q. Okay. And are you familiar with the records-keeping
2 process with respect to the time sheets?

3 A. Yes.

4 Q. So these are documented and kept.

5 A. Yes.

6 Q. How long do you all maintain this information?

7 A. We don't maintain them on our unit, but we send them to
8 the central timekeeping office, and I believe it's either
9 three to five years or longer.

10 **Ms. Simpson:** Okay. Let the record reflect that I'm
11 showing opposing counsel and the witness what has been marked
12 as State's exhibit 60 for identification.

13 **Ms. Shurling:** Without objection, Your Honor.

14 **Ms. Simpson:** The State would go ahead and move to
15 introduce State's exhibit 60 into evidence.

16 **The Court:** Without objection, so admitted.

17 (State's exhibit 60 was received in evidence.)

18 By Ms. Simpson:

19 Q. Ms. Tracey, can you describe for the jury what that is?

20 A. This is an employee timesheet. When you come in to
21 duty, you sign in. If you take a break, you're supposed to
22 sign out, and then at the end of the day you sign out to go
23 home. If you take any type of leave, you would submit a
24 leave slip, and it's documented here if you took sick leave
25 that day or if you had vacation or whatever. It's recorded

1 on this sheet.

2 Q. And would doctors' appointments need to be recorded on
3 that sheet as well?

4 A. They should be.

5 Q. Should be, ideally. And can you describe what it
6 indicates on May the 20th of 2009?

7 A. May 20th, which is a Wednesday, the sign-in time here
8 for Mr. Hackshaw was 7 and the sign-out time was 3:30.

9 Q. Okay. And at no point on this sheet did Mr. Hackshaw
10 ever indicate that he signed out that day.

11 A. Not on that page.

12 Q. And can you describe for a little bit how Bryan
13 Psychiatric is set up, how the campus is set up?

14 A. Okay. It's an open campus. When you come in to the
15 facility you can -- there's a perimeter road that goes around
16 the entire facility. You can go to different units. There
17 are parking lots around the facility where you can park near
18 most of the units there.

19 Q. Okay. And are they kind of laid out in little separate
20 pod---

21 A. Lodges.

22 Q. ---structures?

23 A. Yes. The buildings are called lodges.

24 Q. Lodges.

25 A. Uh-huh.

1 Q. Okay. And would you agree with me that it would be
2 fairly easy for an employee to come and go without ever being
3 detected?

4 A. Yes.

5 Q. And do you recall back on May the 20th of 2009 seeing
6 the defendant, Anthony Hackshaw?

7 A. Being that that's been more than a year ago, I have to
8 go by what's documented. Of course, I would not remember
9 that. It's October of 2010, so, you know, I just look at the
10 documentation and can tell you yes.

11 Q. And you don't stand over all the employees and monitor
12 all their movements throughout the day.

13 A. No.

14 Ms. Simpson: Nothing further for this witness.

15 Cross-Examination

16 By Ms. Shurling:

17 Q. Good afternoon, Ms. Tracey.

18 A. Hello.

19 Q. Taking a look at what's now been marked State's exhibit
20 60, it has my client's time in and out for May 18th all the
21 way through May 26th, doesn't it?

22 A. May 17th through June 1st, it looks like to me. The pay
23 period was May 17th to June 1st.

24 Q. Yes, ma'am.

25 A. Yes.

Lorraine Tracey - cross-exam by Ms. Shurling

559

1 Q. But the time shown on this sheet as time worked by my
2 client goes from May 18th through May 26th; correct?

3 A. Yes, that's what's indicated.

4 Q. And---

5 A. Well, actually no. The last day on this sheet that he
6 signed in was June 1st.

7 Q. Pardon me. I stand corrected.

8 A. Uh-huh.

9 Q. Every single day this shows him signed in at what time?

10 Every day that he worked. Pardon me.

11 A. Seven.

12 Q. And checking out at?

13 A. 3:30.

14 Q. Okay. Now, you're a supervisor?

15 A. Yes.

16 Q. Do you have a problem with the young men that work out
17 there forgetting to clock in and out or write in and out as
18 it were for lunch?

19 A. Sometimes, yes.

20 Q. Do they pretty regularly not write down when they leave
21 for lunch?

22 A. It depends on the person. Some people regularly do
23 that; some people don't.

24 Q. Well, if they regularly turn in time records that show
25 when they arrived and when they left and no time in the

1 middle for a lunch, is it your role to call them on that and
2 make sure they start checking out for lunch?

3 A. Not really because they may not leave the campus for
4 lunch so they may not sign out for lunch.

5 Q. Okay. Okay. But in any event, it wasn't just this one
6 day, May 20th, when my client signed in at 7 and not 'til
7 3:30 and didn't put any time out in the middle of the day,
8 was it?

9 A. That's correct.

10 Q. And I believe that when you were interviewed by law
11 enforcement you did indicate that you remembered at some
12 point Mr. Hackshaw leaving early, didn't you?

13 A. Yes, not because of those records though but because of
14 the assignment sheet that's made out. He was signed out I
15 believe for a 12:30 lunch that day, if I can recall.

16 Q. So on another document it shows him signed out for lunch
17 at 12:30.

18 A. It signed him being assigned to lunch at 12:30, not that
19 he signed out for lunch.

20 Q. Okay.

21 A. He was assigned to go to lunch at 12:30.

22 Q. Okay.

23 A. Okay.

24 Q. So there were records at the hospital that did show that
25 he was assigned for a lunch period at 12:30.

1 A. Yes.

2 Q. Do you have any specific recollection of seeing him
3 leave early that day?

4 A. No, I wouldn't remember that now.

5 Q. Okay. This same sheet that we've talked about does have
6 my client's hours for May 18th, doesn't it?

7 A. May 18th, yes, it does.

8 Q. And what hours does it show he worked that day?

9 A. 7 'til 3:30.

10 Q. Okay. Thank you, ma'am. Do you recall back in May of
11 -- and even a little before April and May in the spring of
12 '09 that Anthony Hackshaw was undergoing physical therapy?

13 A. Yes.

14 Q. And he had to leave in the middle of the day fairly
15 often for physical therapy sessions?

16 A. Yes.

17 Q. You were aware of that, weren't you?

18 A. Yes.

19 Q. He didn't hide the fact that he was leaving to go to
20 physical therapy, did he?

21 A. No.

22 Q. Okay. And when he would leave and go to physical
23 therapy, would he come back to work afterward?

24 A. I can't recall that at this time.

25 Ms. Shurling: Okay. Thank you. No further questions.

1 **The Court:** All right.

2 **Ms. Simpson:** Brief redirect, Your Honor.

3 Redirect Examination

4 By Ms. Simpson:

5 Q. Can you describe for us what a mental health specialist
6 is, what exactly Anthony Hackshaw's role was?

7 A. A mental health specialist is the equivalent of a
8 nursing assistant or a nurse's aide type position where you
9 do direct patient care with a specific patient or patients
10 that you're assigned to.

11 Q. And we've talked a lot about signing in and out for
12 lunch and whether an employee may or may not leave campus.
13 With respect to doctors' appointments, it is expected that an
14 employee would sign out; correct? That is a form of leave,
15 technical leave.

16 A. Yes, in some instances. If it's a work-related injury,
17 they may not sign out because they're going to be paid for it
18 anyway.

19 Q. Okay. And by a work-related injury, something that
20 happened while at work.

21 A. That's right,

22 Q. And on the defendant's sign-in sheet, while it says 7 to
23 3:30 and never indicates any time away from lunch, at some
24 point on May the 24th he actually does indicate that it's --
25 that he took some annual leave; correct?

1 A. I don't recall that without seeing it.

2 Q. I believe -- showing you what's been marked as State's
3 exhibit 60.

4 A. On which date?

5 Q. It would have been the 24th and 25th, the .5 hours of
6 annual leave.

7 A. That actually was for tardiness or he came in at 7 -- it
8 looks like 7:30. That's why I was looking at this before
9 because he still signed out at 3:30. It looks like it's
10 indicated here that he may have come in later than 7:00.

11 Q. Okay. So even when they came in late, they were
12 supposed to indicate this---

13 A. Yes.

14 Q. ---on their leave sheet.

15 A. Yes.

16 **Ms. Simpson:** Nothing further.

17 **The Court:** Anything?

18 **Ms. Shurling:** No, Your Honor.

19 **The Court:** All right. Thank you.

20 **Ms. Shurling:** Thank you for being here.

21 **The Court:** Next?

22 **Ms. Simpson:** Oh, the State calls Officer William
23 Littlejohn.

24 William Littlejohn, after being duly sworn,
25 testified as follows:

1 **The Clerk:** Please have a seat and state your full name
2 for the record.

3 **The Witness:** My name is William Littlejohn.

4 Direct Examination

5 By Ms. Simpson:

6 Q. Good afternoon, Mr. Littlejohn. Can you tell us what
7 you do for a living?

8 A. I work for the Department of Mental Health, state
9 constable.

10 Q. And how long have you been with the Department of Mental
11 Health?

12 A. Approximately five years.

13 Q. Five years? And are you actually assigned to a specific
14 location within the Department of Mental Health?

15 A. Bryan Psychiatric and Morris Village.

16 Q. Morris Village? And what are your duties at Bryan
17 Psychiatric?

18 A. Outside of upholding the law, we do patient management,
19 make sure the staff is secure and make sure no violators come
20 inside our property.

21 Q. And do you know the defendant?

22 A. Yes, I do.

23 Q. How do you know him?

24 A. He was -- he used to work at Bryan Psychiatric.

25 Q. And what types of cars have you seen the defendant

1 driving?

2 A. Only one car, a black Charger.

3 Q. A black Charger?

4 A. Uh-huh.

5 Q. Have you ever seen him in any other types of vehicles?

6 A. I seen him riding in a gray Honda civic.

7 Q. Uh-huh. Beg the court's indulgence. And have you also
8 seen the defendant occasionally in a green Honda? Does that
9 sound about right?

10 A. That sounds about right, only a few times.

11 Q. And with respect to the silver Honda, do you recall what
12 kind of tags it had?

13 A. I don't know the precise number, but I know it was the
14 state of New Jersey.

15 Q. And are you pretty familiar with the employee cars? How
16 is it that you would notice what the defendant was driving?

17 A. Because we're trained to know what employees drive so we
18 know when people from the outside come in, if they're
19 visitors or not.

20 Q. And do you recall telling law enforcement that this was
21 a two-door Honda civic?

22 A. Yes, I do.

23 Q. And are -- I want to move your attention -- turn your
24 attention to May the 20th of 2009. Do you actually recall
25 that day?

1 A. I recall it vividly.

2 Q. And how is it that you're to recall it?

3 A. Because on that particular day we had to do a code
4 lockdown at our facilities.

5 Q. And why did you have to do a code lockdown?

6 A. Because C.P.D. put out for our dispatch that -- we
7 didn't know what kind of offense -- what took place, but we
8 knew that something of high priority happened within the
9 Greenview community and we had -- when something like that
10 goes on, we have to put officers in code lockdown. Nobody
11 can enter and nobody can leave.

12 Q. And are you aware of how far Greenview is from Bryan
13 Psychiatric?

14 A. I will say maybe three or four miles from that facility.

15 Q. So not very far at all.

16 A. Not far.

17 Q. And on this day that you all had to go in the code
18 lockdown, do you recall seeing the defendant come to work
19 that day?

20 A. I can't recall.

21 Q. I know it's been awhile.

22 A. Yes, ma'am. I can't recall.

23 Q. And so you're not aware -- let me back up just a second:
24 How big is the Bryan Psychiatric campus, Bryan Hospital?

25 A. In circumference it's 1.2 miles.

1 Q. So it's pretty big.

2 A. It's pretty big.

3 Q. Is the campus spread out as in...

4 A. No, it's all -- it's all -- it's all compact, but around
5 the perimeter it's 1.2 miles. I know that for sure.

6 Q. Okay. And is it difficult for someone to come and go
7 without being detected?

8 A. That's fairly easy to do.

9 Q. So a person can't be accounted for at all times unless
10 you're a patient maybe in lockdown.

11 A. Well, patients are, but as far as the staff, no.

12 Q. And do you remember telling law enforcement that you saw
13 Anthony Hackshaw that day on May the 20th of 2009?

14 A. I don't recall telling them that.

15 Q. Okay. So either way you don't remember seeing the
16 defendant that day.

17 A. I sure don't.

18 **Ms. Simpson:** Nothing further.

19 Cross-Examination

20 By Ms. Shurling:

21 Q. Good afternoon.

22 A. Good afternoon.

23 Q. Did you know my client by sight when he worked at Bryan
24 Psychiatric?

25 A. Yes, ma'am.

1 Q. How did he dress for work?

2 A. Majority of the time he wore scrubs.

3 Q. And can you describe those scrubs? What color?

4 A. Scrubs like a -- like a -- I mean, just not any
5 particular scrub. He had different outfits like what a nurse
6 or a doctor wear at a hospital.

7 Q. Okay. Have you seen him wearing dark scrubs on plenty
8 of occasions?

9 A. Different colors: Light, dark. I mean -- I mean, they
10 vary.

11 Q. Have you seen him wearing dark-colored scrubs?

12 A. Yes.

13 Q. Have you seen him wearing dark-colored scrubs on more
14 than one occasion?

15 A. Yes.

16 Q. On multiple occasions?

17 A. Yes.

18 Q. Okay. Now, you gave a statement to law enforcement on
19 June 5th? Does that sound right? June 5th of '09?

20 A. That sounds -- that sounds about right -- accurate.

21 Q. Okay. And at that time you were asked about what kinds
22 of vehicles you had seen my client in and driving; correct?

23 A. Correct.

24 Q. You were just asked whether you were -- asked whether or
25 not you had seen my client on May 20th? You said you don't

1 recall that, do you?

2 A. I don't recall whether I seen him on that particular
3 day, no.

4 Q. Is this the statement you signed for law enforcement?

5 A. Yes, it is.

6 Q. Does it indicate anywhere on there that they asked you
7 if you even saw Anthony on May 20th?

8 A. No, it doesn't.

9 Q. Were you aware that Anthony Hackshaw was undergoing
10 physical therapy during the early part of 2009?

11 A. I wasn't aware of that.

12 Q. You were not aware that he was leaving the grounds to go
13 to physical therapy appointments?

14 A. If he's leaving -- well, excuse me. Back up. Retract
15 that. If any employee is leaving or coming and going, we
16 don't know what the reason is for their coming and going, so
17 I couldn't answer that.

18 Q. I understand. I wasn't challenge you. I'm just asking
19 whether you were aware that sometimes when he left it was to
20 go to physical therapy.

21 A. No, ma'am, I wasn't aware of that.

22 Q. You don't know. Now, can you describe for me this
23 lockdown that you engaged in on May 20th? What exactly does
24 a -- you called it a general lockdown?

25 A. It's called a code lockdown.

1 Q. Oh, a code lockdown.

2 A. Yes, ma'am.

3 Q. Explain to me -- describe for me what a code lockdown
4 means.

5 A. That means when something high priority happens within
6 the community surrounding our campuses that nobody can enter
7 and nobody can exit. So that means that either one or two
8 officers is going to be at the front gates of each facility
9 to ensure that that doesn't happen.

10 Q. Do you recall how long that lockdown stayed in place on
11 May 20th?

12 A. I believe that it stayed in place either an hour, hour
13 and a half or so.

14 Q. Okay... So from the time you heard about the incident,
15 the lockdown was only in place for an hour and a half or so,
16 an hour, hour and a half?

17 A. Yes, ma'am.

18 Ms. Shurling: Thank you. A moment's indulgence.

19 Nothing further, Your Honor. Thank you.

20 Ms. Simpson: Nothing further from the State.

21 The Court: All right. Thank you, officer. You may
22 step down.

23 Ms. Campbell: The State calls Jonathan Bailey.

24 Jonathan Bailey, after being duly sworn, testified
25 as follows:

1 A. Yes, ma'am.

2 Q. What's your relationship with Kevae?

3 A. She's a friend.

4 Q. Did you know a young woman named Stephanie?

5 A. Yes, ma'am.

6 Q. And what was your relationship with Stephanie?

7 A. She's a friend.

8 Q. All right. Did you know Ellison Hudson?

9 A. Yes, ma'am.

10 Q. And how did you know Mr. Hudson?

11 A. I heard his name.

12 Q. And when you say you heard his name, through what -- who
13 would talk about him?

14 A. Just other people.

15 Q. Other people? Did you ever know him directly?

16 A. No, ma'am.

17 Q. Did you ever have any kind of contact with him, hang out
18 with him, anything of that nature?

19 A. No, ma'am.

20 Q. But you knew who he was.

21 A. Yes, ma'am.

22 Q. I want to turn your attention back to May of last year,
23 the day of May the 20th. That morning -- well, where did you
24 stay that night before May 20th?

25 A. With my girlfriend.

1 Q. And what's her name?

2 A. Whitney Caruth.

3 Q. And that morning tell this jury what you did after you
4 woke up.

5 A. I woke up that morning. She fixed me breakfast. I was
6 looking for a job. She fixed me breakfast that morning. We
7 was getting ready -- she was about to go to work. She was
8 about to drop me off at a friend's before she went to work.

9 Q. Okay. And do you remember where she was working at the
10 time?

11 A. Piggly Wiggly on North Main.

12 Q. And she was getting ready to drop you off at a friend's
13 house?

14 A. Yes, ma'am.

15 Q. And what friend's house were you going to that day?

16 A. Kevae.

17 Q. Kevae?

18 A. Yes, ma'am.

19 Q. In what part of town does Kevae live?

20 A. She stays -- she stays on top of Farrow Road out at
21 Summer Valley.

22 Q. Summer Valley?

23 A. Yes, ma'am.

24 Q. Do you know approximately what time of day it was when
25 you got dropped off at Kevae's house?

1 A. It's been over a year. I can't tell you exactly the
2 time, about 11, 10 -- between 11 and 10. I can't tell you
3 the exact time.

4 Q. You don't know the exact time.

5 A. No, ma'am.

6 Q. You're estimating?

7 A. Yes, ma'am.

8 Q. But you're honestly saying you just don't know the time.

9 A. Yes, ma'am.

10 Q. And at the time you didn't know it was going to be
11 important, did you?

12 A. No, ma'am.

13 Q. And why do you get dropped off? Why didn't you drive?

14 A. Because I didn't have no vehicle.

15 Q. So Whitney dropped you off?

16 A. Yes, ma'am.

17 Q. When you got to Kevae's house, who all was there?

18 A. Kevae and Stephanie.

19 Q. And what was Kevae doing that day?

20 A. She was at the house chilling. All of us were just at
21 the house.

22 Q. And did you stay there for a period of time?

23 A. Yes, ma'am.

24 Q. And do you know approximately how long you were there?

25 A. I stayed 'til about 3:00 or a little after 3.

1 Q. During the time when you were there, did your mother
2 make contact with you?

3 A. Yes, ma'am.

4 Q. And tell the jury why your mother was making contact
5 with you that day.

6 A. She made contact with me because I was getting a bench
7 warrant -- getting lifted. Was talking to an officer. She
8 called me on a three-way phone.

9 Q. You had an outstanding bench warrant?

10 A. Ma'am?

11 Q. You were told you had an outstanding bench warrant?

12 A. Yes, ma'am.

13 Q. And the officer was trying to get in touch with you.

14 A. Yes, ma'am.

15 Q. What, if anything, did your mother do in order for you
16 to get in touch with that officer that day?

17 A. She called him on a three-way phone on a cell phone.

18 Q. She made contact with you first?

19 A. Yes, ma'am.

20 Q. And then she was able to three-way into the officer?

21 A. Yes, ma'am.

22 Q. And did you have a conversation with the officer that
23 day?

24 A. Yes, ma'am.

25 Q. And what did y'all talk about?

1 A. About me setting up to get my bench warrant lifted.

2 Q. Were you on the phone with him for a period of time?

3 A. Yes, ma'am.

4 Q. And your mother was on the phone as well?

5 A. Yes, ma'am.

6 Q. And the officer.

7 A. Yes, ma'am.

8 Q. And where were you when this phone call was taking
9 place?

10 A. Kevae's house.

11 Q. I'm going to show you what's been marked as State's
12 exhibit number 58, and I don't know if you've seen these or
13 not, but do you remember who your mom's phone company was?

14 A. T-Mobile.

15 Q. Is this a copy of her phone records?

16 A. Yes, ma'am.

17 Q. You stayed at Kevae's house for several hours and then
18 you left?

19 A. Yes, ma'am.

20 Q. And where did you go?

21 A. To a friend's house on Clemson Road.

22 Q. Did you drive or did somebody give you a ride?

23 A. Someone gave me a ride.

24 Q. And later that day did you meet back up with Whitney?

25 A. Yes, ma'am.

1 Q. I believe at -- where she works?

2 A. Yes, ma'am.

3 Q. During the course of that evening into the next day, did
4 you become aware of a shooting that took place off of Farrow
5 Road?

6 A. I was told that a shooting happened over a phone
7 conversation.

8 Q. At that point were you concerned about that or your
9 involvement in that at that point?

10 A. No, ma'am.

11 Q. The next day did you become aware of some information
12 that did concern you?

13 A. Yes, ma'am.

14 Q. And tell the jury what you found out.

15 A. My mom called me and told me that I was wanted for
16 murder. She told me to look up W.I.S. and I was wanted for
17 murder. You could see my picture all over the news.

18 Q. So what did you do?

19 A. I got -- I got -- I got myself ready. I left the house,
20 went to a friend's house, and then after that I went to a
21 lawyer's office to turn myself in.

22 Q. And did you speak with a lawyer that day about your
23 situation?

24 A. Yes, ma'am.

25 Q. And that would have been I believe on the 21st. Is that

1 correct?

2 A. Yes, ma'am.

3 Q. The next day.

4 A. Yes, ma'am.

5 Q. And after you spoke to a lawyer, where did you go?

6 A. I went to Two Notch Road, the sheriff's office, to turn
7 myself in.

8 Q. To the sheriff's office to turn yourself in?

9 A. Yes, ma'am.

10 Q. And at that point did you turn yourself in on the murder
11 warrant?

12 A. Yes, ma'am.

13 Q. Did you make contact while at the sheriff's department
14 with investigators from the Columbia Police Department?

15 A. Yes, ma'am.

16 Q. And do you remember Investigator Reese?

17 A. Yes, ma'am.

18 Q. Did you make contact with Investigator Thomas?

19 A. Yes, ma'am.

20 Q. After they made contact with you at the sheriff's
21 department, did they take you into custody and then transport
22 you somewhere?

23 A. Yes, ma'am.

24 Q. And did you go back to the Columbia Police Department
25 headquarters?

1 A. We went downtown to the city police department.

2 Q. Okay. To the city police department?

3 A. Yes, ma'am.

4 Q. And once you were at the city police department, do you
5 remember being advised of your rights?

6 A. Yes, ma'am.

7 Q. And I'm going to show you a copy of your advice of
8 rights. Before they talked to you or questioned you about
9 anything, did they explain to you what your constitutional
10 rights were?

11 A. Yes, ma'am.

12 Q. And did you sign off acknowledging that you understood
13 your rights?

14 A. Yes, ma'am.

15 Q. And this indicates that that occurred on what date?

16 A. The 21st.

17 Q. The 21st?

18 A. Yes, ma'am.

19 Q. And on here does it have the time?

20 A. 6:24?

21 Q. 16:24?

22 A. 16:24.

23 Q. Which would be 4:24. At that point did you want to
24 talk?

25 A. Yes, ma'am.

1 Q. Had your lawyer told you to talk?

2 A. He told me not to talk, ma'am.

3 Q. But you wanted to.

4 A. Yes, ma'am.

5 Q. Why is that?

6 A. Because I told him if I had -- if I had nothing to do
7 with it, I had no involvement, then I should state that I had
8 nothing to do with it.

9 Q. And at that point when you made contact with the
10 Columbia Police Department did you tell them about where
11 you'd been the day before?

12 A. Yes, ma'am.

13 Q. And did you give them an actual statement?

14 A. Yes, ma'am.

15 Q. And I show you a copy of this. Do you recognize that?

16 A. Yes, ma'am.

17 Q. And in this does that summarize -- we'll go into more
18 detail here, but does that summarize where you were
19 approximately the hours...

20 A. Yes, ma'am.

21 Q. Did you tell them about going over to Kevae's house?

22 A. Yes, ma'am.

23 Q. Did you tell them about your calling the deputy on the
24 phone?

25 A. Yes, ma'am.

1 Q. And why did you want to talk to them about that?

2 A. Because I just wanted -- they was questioning me really
3 like certain times of the day where I was and what I was
4 doing, and I was just really telling them and I wanted to
5 just prove that I had nothing to do with what happened.

6 Q. So you provided them that information?

7 A. Yes, ma'am.

8 Q. For them to follow up on.

9 A. Yes, ma'am.

10 Q. And you were also placed under arrest I believe that day
11 for an armed robbery as well?

12 A. Yes, ma'am.

13 Q. It was a separate event. Did you know Ebony Fogle?

14 A. No, ma'am.

15 Q. Now, you have been convicted back in 2007 of
16 shoplifting?

17 A. Yes, ma'am.

18 Q. And recently in the last week or so you pled guilty to
19 one count of assault on a federal employee?

20 A. Yes, ma'am.

21 Q. In federal court?

22 A. Yes, ma'am.

23 Q. And you had an attorney for that?

24 A. Yes, ma'am.

25 Q. And I believe the penalty on that is up to 20 years in

1 prison?

2 A. Yes, ma'am.

3 Q. Or a \$250,000 fine, I believe?

4 A. Yes, ma'am.

5 Q. And then even if you get imprisonment after that, you
6 would be on probation or some kind of supervision for another
7 three years?

8 A. Yes, ma'am.

9 Q. In addition to that, the statewide grand jury has also
10 indicted you on two counts of armed robbery?

11 A. Yes, ma'am.

12 Q. And criminal conspiracy?

13 A. Yes, ma'am.

14 Q. And possession of a weapon during a violent crime?

15 A. Yes, ma'am.

16 Q. And on each count of just the armed robberies alone
17 you're facing up to 30 years on those?

18 A. Yes, ma'am.

19 Q. A minimum of 10? And in the solicitor's office you have
20 an armed robbery -- in our office an armed robbery pending as
21 well.

22 A. Yes, ma'am.

23 Q. With the same penalty. Is your testimony today here the
24 same as what you told the officers on the 21st when you
25 turned yourself in so you could clear your name?

1 A. Yes, ma'am.

2 Q. Beg the court's indulgence. By the way, do you even
3 know Anthony Hackshaw?

4 A. No, ma'am.

5 Q. One final question. Did you shoot Ebony?

6 A. No, ma'am.

7 Ms. Campbell: Thank you. I don't have anything
8 further.

9 The Court: All right. Ms. Shurling?

10 Ms. Shurling: Yes.

11 Cross-Examination

12 By Ms. Shurling:

13 Q. Mr. Bailey?

14 A. Yes, ma'am.

15 Q. Did you give a written statement to law enforcement on
16 May 21st, 2009?

17 A. Yes, ma'am.

18 Q. Can you identify this document?

19 A. Yes, ma'am.

20 Q. Is that your statement?

21 A. Yes, ma'am.

22 Q. All of it.

23 A. We had a recorded statement, too, a recorded statement.

24 Q. But your written statement, this is it?

25 A. That's right.

1 Q. One page. How long were you interviewed by law
2 enforcement? How long did you talk to them?

3 A. I can't give the exact time, but I know it was more than
4 an hour.

5 Q. Would one hour and 12 minutes sound about right?

6 A. Yes, ma'am, I guess.

7 Q. Would you agree with me that you discussed a great deal
8 more information with law enforcement in your oral statement
9 than ended up in writing in the statement you signed?

10 A. Yes, ma'am.

11 Q. For example, didn't you claim to law enforcement that
12 you were on the phone with Officer Jenkins for over a half an
13 hour, up close to an hour?

14 A. I couldn't -- I couldn't say guaranteed. This has been
15 over a year, so I couldn't say exactly what I said or
16 remember exactly what I said. I know I told them I was on
17 the phone. I estimated the time when I told them.

18 Q. Do you not deny telling Investigator Reese that you were
19 on the phone with Officer Jenkins for close to an hour?

20 A. I'm not denying that. I just don't know exactly if
21 that's what I said because it's been over a year since these
22 events happened since we have spoken. So I couldn't tell you
23 that I said that exactly that exact time.

24 Q. You also told the police that they could verify your
25 alibi with Kevae Dolphin because you'd be on the recording at

1 her house, didn't you?

2 A. Yes, ma'am.

3 Q. So when you were interviewed on May 21st, you told law
4 enforcement that Kevae Dolphin had a recording device and
5 that you would have been recorded and they could confirm your
6 alibi with that tape.

7 A. I said she had surveillance on her house, so she should
8 have, you know, recordings and they can go to her house and
9 look at the tape. At the time I wasn't aware that it wasn't
10 recording, but I know she had surveillance over her house,
11 the front of her house where I was.

12 Q. What time did you tell law enforcement you arrived at
13 Kevae Dolphin's house?

14 A. Like I told the other lawyer, I can't be specific with
15 my time because it's been over a year since I said that -- I
16 made them statements. So I would say it was between 10,
17 10:30, 11.

18 Q. Would you review your statement to refresh your
19 recollection?

20 A. (Witness complies.) Okay.

21 Q. What time does it say you arrived?

22 A. Twelve -- between 12 and 12:20.

23 Q. Between 12 and 12:20? Your girlfriend dropped you off
24 at Kevae's house?

25 A. Yes, ma'am.

1 Q. Did you tell your girlfriend you were going to visit
2 Stephanie McGowan?

3 A. No, ma'am. I told her I was going to Kevae's house.

4 Q. Why didn't you tell her you were going to visit
5 Stephanie?

6 A. I didn't want her to know I was seeing another girl.

7 Q. But Stephanie is just a friend.

8 A. She's a friend.

9 Q. What kind of friend?

10 **Ms. Campbell:** Objection, Your Honor.

11 **The Court:** Sustained.

12 **Ms. Shurling:** It's a legitimate question, Your Honor.

13 **The Court:** Did you hear my response?

14 **Ms. Shurling:** No, sir, I did not.

15 **The Court:** I sustained the objection.

16 **Ms. Shurling:** Thank you, Your Honor. A moment's
17 indulgence.

18 By Ms. Shurling:

19 Q. How often did you visit at Kevae Dolphin's house?

20 A. I couldn't give you a specific number, but I done been
21 there several times.

22 Q. Pardon?

23 A. I couldn't give you a specific number, but I had been
24 there several times.

25 Q. Several?

1 A. Yes, ma'am.

2 Q. How often did you meet up with Stephanie at Kevae
3 Dolphin's house?

4 A. That was the first.

5 Q. That was the first time?

6 A. Yes.

7 Q. Did you meet up with her after that day with Stephanie
8 at all?

9 A. No, ma'am. I was arrested the next day.

10 Q. So that was the one and only visit with Stephanie at
11 that house.

12 A. Yes, ma'am.

13 Q. When you got out of your car when Whitney took you to
14 visit Kevae, did you have anything in your hand?

15 A. No. I mean, I had a drink from Wendy's. I just went
16 and got some food from Wendy's. I had a cup. I had a bag
17 from Wendy's and a cup.

18 Q. A bag from Wendy's?

19 A. Yeah. I'd just left and got some food from Wendy's
20 before I got dropped off.

21 Q. So when you got out of the car you were carrying a bag
22 from Wendy's and a drink.

23 A. Yes, ma'am.

24 **Ms. Shurling:** No further questions, Your Honor.

25 **The Court:** Anything?

1 **Ms. Campbell:** No, sir. I'm sorry.

2 **The Court:** All right. Thank you, sir. You may step
3 down. Ready to call your next witness?

4 **Ms. McDuffie:** The State would call Sheldon McDowell.

5 Sheldon McDowell, after being duly sworn, testified
6 as follows:

7 **The Clerk:** Please have a seat and state your full name
8 for the record.

9 **The Witness:** Sheldon McDowell.

10 Direct Examination

11 By Ms. McDuffie:

12 Q. Mr. McDowell, are you currently employed?

13 A. Yes, ma'am.

14 Q. Where do you work?

15 A. I work at a country club.

16 Q. And are you also in school?

17 A. Yes, ma'am.

18 Q. And what are you studying?

19 A. H.V.A.C.

20 Q. And do you know Ellison Hudson?

21 A. Yes, ma'am.

22 Q. Please tell the jury how you know him.

23 A. I went to school with him in the past.

24 Q. And where did you go to school with him?

25 A. Spring Valley High School.

1 Q. And in the early part of 2009 how often would you see
2 Ellison?

3 A. I'd say maybe almost every week---

4 Q. And---

5 A. ---just about.

6 Q. I'm sorry to interrupt you. Did you call him by any
7 name, a certain name?

8 A. E.

9 Q. E.?

10 A. Yes.

11 Q. And did you have a nickname that you went by?

12 A. Yes, they called me Hot Boy sometimes.

13 Q. And in April of 2009, April 23rd of 2009, did you and
14 Ellison go to [REDACTED]?

15 A. I'm not familiar with the road.

16 Q. Did you go to the Wyndham Pointe Apartments?

17 A. Apartments? Yes, ma'am.

18 Q. And why did you and Ellison go there?

19 A. To buy some marijuana.

20 Q. And did you know who you were buying the marijuana from?

21 A. No, ma'am.

22 Q. Had you and -- or had you and Ellison bought marijuana
23 in the past?

24 A. Uh-huh.

25 **The Court:** You need to say yes or no.

1 **The Witness:** Oh, yes, ma'am.

2 **Ms. Shurling:** Your Honor, at this point I would renew
3 my earlier objection to the line of questioning I believe
4 we're approaching.

5 **The Court:** Okay.

6 By Ms. McDuffie:

7 Q. How often would you give -- would you give Ellison money
8 to buy it or would you both go to buy marijuana together?
9 How would that work?

10 A. I gave him some money time; he went to get it. And then
11 one time I went with him.

12 Q. And on April the 23rd, that's when you went with him?

13 A. Yes, ma'am.

14 Q. And when you got to Wyndham Pointe Apartments, where did
15 you go?

16 A. Just through the gate and in the parking lot.

17 Q. And did you know where you were going or were you being
18 told where to go?

19 A. I was being told where to go.

20 Q. And who was telling you where to go?

21 A. E.

22 Q. And E. Told you where to go in the apartment complex?

23 A. Yeah. He basically just parked right there to the side,
24 and he was coming to meet somebody.

25 Q. And what happens once you parked there?

1 A. He got out of the car, and then I guess he went to go
2 get the marijuana.

3 Q. And where were you at this time?

4 A. In the car.

5 Q. And what, if anything, happened after that?

6 A. He came around the building and told me to come here,
7 and we were going to check out the marijuana.

8 Q. And so did you go with him to check out the marijuana?

9 A. Yeah, when he called me over there.

10 Q. And what happened when you got out of the car and went
11 over there?

12 A. I went to go check it out and smelled it, and then after
13 that I guess I seen a lot of commotion, seen a pistol come
14 out, so I pulled mine out. That's when the bag was thrown at
15 me from somebody running up the stairs, and then that's when
16 we just grabbed it and took off.

17 Q. And do you know who threw the drugs at you or who y'all
18 were purchasing the drugs from that day?

19 A. I don't know his name.

20 Q. Did you know a nickname?

21 A. No.

22 Q. Had you ever seen the person before---

23 A. No, that was---

24 Q. ---prior to that day?

25 A. That was the first time.

1 Q. And had you seen -- have you seen him since then?

2 A. No, ma'am.

3 Q. And on that day you say they threw a backpack at you?

4 A. Uh-huh.

5 Q. And what did you then do?

6 A. Grabbed it and ran to the car.

7 Q. And you went to the car?

8 A. Yes, ma'am.

9 Q. What kind of gun did you have.

10 A. .45.

11 Q. And did you see Ellison with a gun?

12 A. Yes, ma'am.

13 Q. What kind of gun did he have?

14 A. I believe it was a .22, 25, a small caliber.

15 Q. And you don't know if it was a .22 or a .25?

16 A. A .22 I believe.

17 Q. And after you grabbed the backpack and went to your car,
18 what did you do?

19 A. Drove off.

20 Q. Did Ellison come to the car?

21 A. Yeah, he came to the car. He was behind me when we were
22 running.

23 Q. And when you both got in the car, what happened, if
24 anything?

25 A. I started the car and drive off, then go through the

1 gate. Then I heard a couple of shots being fired. I looked
2 and there was somebody from the balcony shooting down.

3 Q. And did you see the person on the balcony shooting down
4 at you?

5 A. Yes, ma'am.

6 Q. And who was that person?

7 A. The guy over there.

8 Q. And was he the same person with the backpack?

9 A. Yes, ma'am.

10 **The Court:** Hold on just a minute. The guy over there
11 -- would you identify what guy over where?

12 **The Witness:** Sitting at -- sitting -- in the tie, the
13 red tie.

14 **The Court:** The defendant in this matter?

15 **The Witness:** Yes, sir.

16 **The Court:** All right. He identified Mr. Hackshaw.

17 By Ms. McDuffie:

18 Q. And that is the individual who threw the backpack at
19 you?

20 A. Yes, ma'am.

21 Q. And then the same individual you saw shooting from the
22 balcony or the breezeway of the apartment complex?

23 A. Same individual.

24 Q. And did you return fire?

25 A. No, ma'am.

1 Q. Did E. Return fire?

2 A. Yes, ma'am.

3 Q. And after that what happened?

4 A. We went to go drop the car off and he gave me a --
5 basically see how much marijuana it was I guess that was in
6 the backpack, and he gave me a little bit of what I had
7 purchased.

8 Q. So you were supposed to buy drugs. You gave him the
9 money and he gave you the drugs?

10 A. Yes, ma'am.

11 Q. And what kind of car were you driving that day?

12 A. It was a silver Pontiac.

13 Q. And a four-door? Two-door?

14 A. Four-door.

15 Q. And whose car was that?

16 A. It belonged to a female.

17 Q. One of your friends?

18 A. Yes, ma'am.

19 Q. And did E. Have access to that car as well?

20 A. No.

21 Q. Could he have driven it or borrowed it?

22 A. Yes, ma'am, I believe so. She would have let him. He
23 never asked her though, I don't think.

24 Q. Did you ever know if he did or did not borrow that car?

25 A. No, I don't.

1 Q. And on -- after the April 23rd incident, did you talk to
2 E. Any more after that?

3 A. One time I believe when we got up together and we
4 smoked, yeah.

5 Q. And then on June 10th did law enforcement come and track
6 you down?

7 A. June 10?

8 Q. Of 2009?

9 A. Yes, ma'am.

10 Q. And did they ask you about this incident?

11 A. Yes, ma'am.

12 Q. And is what you told the jury today what you told law
13 enforcement on June the 10th of 2009?

14 A. Yes, ma'am.

15 Q. And you have a prior conviction in 2007 for possession
16 of drugs first offense?

17 A. Yes, ma'am.

18 Q. And on June the 10th you told the police what happened?
19 You told them about the robbery?

20 A. Yes, ma'am.

21 Q. And you told them that you had a gun?

22 A. Yes, ma'am.

23 Q. That Ellison had a gun?

24 A. Yes, ma'am.

25 Q. That y'all were taking drugs?

1 A. No, I didn't tell them we were taking drugs.

2 Q. I mean, you told them that what was in the backpack was
3 drugs?

4 A. Yeah. When we were trying to get out to the car we seen
5 it because we opened the backpack and there was drugs in the
6 car.

7 Ms. McDuffie: Beg the Court's indulgence. No further
8 questions for this witness, Your Honor.

9 The Court: Ms. Shurling?

10 Cross-Examination

11 By Ms. Shurling:

12 Q. What's your nickname?

13 A. Hot Boy.

14 Q. Hot Boy?

15 A. Yes, ma'am.

16 Q. When you went to the apartment with Mr. Hudson, did you
17 know he was going to rob someone?

18 A. No, ma'am.

19 Q. When Mr. Hudson pulled out a weapon on one of the two
20 gentlemen standing there, were you surprised?

21 A. Yes, ma'am.

22 Q. Did you have any idea why he pulled out a gun?

23 A. After the fact -- after the fact the guy -- he said the
24 guy looked like he was flinching in the corner. There was
25 another guy standing there. There was a guy on the stairs

1 and another guy, and he said the guy looked like he was
2 flinching for a gun. So I seen him moving, and that's when I
3 pulled mine out.

4 Q. But you didn't see a gun, did you?

5 A. No, ma'am, I didn't see.

6 Q. How close to the guy were you standing?

7 A. Probably to the edge of that podium at the bottom.

8 Q. And how close were you standing to Mr. Hackshaw?

9 A. He was on my left-hand side, probably just about the
10 same distance. Relatively close.

11 Q. So you were standing -- I'm not good at distances
12 either. I forget who said that earlier. But how many feet
13 would you say it is between you and the bailiff?

14 A. Probably -- how many feet between me and who?

15 Q. How far were you standing from the gentleman that was
16 holding the backpack?

17 A. The backpack was on the stairs with that Anthony
18 Hackshaw. It was sitting on the stairs.

19 Q. Let me start over. When Mr. Hudson came and told you to
20 come on around---

21 A. Uh-huh.

22 Q. ---at some point---

23 A. Yes, ma'am.

24 Q. ---you came and stood there with Mr. Hudson, my client,
25 and there was a second man there. Right?

1 A. Yes, ma'am.

2 Q. Okay. Who had the backpack?

3 A. The backpack was on the ground.

4 Q. Was on the ground.

5 A. Yes, ma'am, beside your client.

6 Q. And how close to Hudson and the second man were you
7 standing?

8 A. Within -- within about three feet is the distance.

9 Q. Three feet?

10 A. Yes, ma'am, two to three feet.

11 Q. Two to three feet.

12 A. Yeah, from here to over there. I don't know exactly how
13 far that is but maybe two or three feet from here to the edge
14 of that podium right there. Yes, ma'am.

15 Q. Where I'm standing you would say is approximately the
16 distance you were from who? My client or the second man?

17 A. Just about both on each side. They were on each side,
18 so just about -- about the same for both.

19 **Ms. Shurling:** Okay. Your Honor, I'd ask the record to
20 reflect that I'm standing approximately six to eight feet
21 away from the witness box.

22 **The Court:** I think you're right.

23 **Ms. Shurling:** Thank you.

24 By Ms. Shurling:

25 Q. And you did not see a weapon of any sort on the second

1 man.

2 A. No, I didn't see it.

3 Q. You didn't see a weapon on my client either, did you?

4 A. Not at the time.

5 Q. Not at that time.

6 A. Yes, ma'am.

7 Q. Now, did you get closer to them at any point before Mr.
8 Hudson pulled out a gun?

9 A. Just to step and reach in and grab the marijuana that he
10 handed me.

11 Q. So you got close enough for him to hand you something.

12 A. Yes, ma'am.

13 Q. Okay. That's closer than from there to there, isn't it?

14 A. That's why I said about three -- about three to four
15 feet.

16 Q. Okay. But you never got any closer to the gentleman
17 other -- let me -- number two man -- let me call him that
18 because you don't know who the second man was; right?

19 A. No, ma'am.

20 Q. You never got any closer to him.

21 A. No, ma'am.

22 Q. Okay. And, again, you never saw a weapon on him, did
23 you?

24 A. No, ma'am.

25 Q. After you saw Mr. Hudson pull a gun, grab the baggy and

1 run, what happened next?

2 A. We got in the car.

3 Q. Pardon?

4 A. We got in the car.

5 Q. You got in the car?

6 A. Yes, ma'am.

7 Q. But something happened in between, didn't it? What
8 happened about the backpack?

9 A. Oh, the backpack was thrown down from the top. He
10 didn't grab the backpack and run. You said Ellison grabbed
11 the backpack and ran. The backpack was grabbed by your
12 client and threw down from the top of the stairs at me.

13 Q. Okay. Mr. Hudson grabbed the little bag of marijuana;
14 right?

15 A. I can't recall. I don't know anything about a little
16 bag of marijuana.

17 Q. Well, there was a bag of marijuana separate from what
18 was in the backpack, wasn't there?

19 A. I can't recall.

20 Q. Well, in your statement you gave law enforcement on
21 June 10th you said that you got a chance to smell the
22 marijuana; right?

23 A. Yes, ma'am. That's what you just asked me.

24 Q. Now, that would mean that they took some of it out of
25 the backpack, wouldn't it?

1 A. Yes, ma'am.

2 Q. How was it contained? What was it in?

3 A. It was in a bag.

4 Q. Okay. So a smaller bag of marijuana was at some point
5 handed to you.

6 A. It was handed to me.

7 Q. Is that correct?

8 A. Yes, ma'am. It was handed to me and I smelled it, and
9 it was handed back.

10 Q. Okay. And you're telling us you don't know what
11 happened to that bag?

12 A. No, ma'am.

13 Q. Okay. Well, when you grabbed the backpack and ran with
14 it, at some point you opened it up and discovered it had more
15 marijuana in it; right?

16 A. Yes, ma'am.

17 Q. Now, it's your testimony that when you went over there
18 that day you just went to buy a little weed from my client;
19 right?

20 A. Yes, ma'am.

21 Q. And Mr. Hudson suddenly and without you knowing anything
22 about he was going to do it pulled a gun.

23 A. Yes, ma'am.

24 Q. Once you opened the backpack and saw that it had some
25 more marijuana in it, did you return it?

1 A. No, ma'am.

2 Q. What did you do with it?

3 A. Got -- basically got my portion of what I paid for.

4 Q. And what happened to the rest of it?

5 A. E. Took it.

6 Q. Were you aware that Mr. Hudson had another gun in the
7 car besides the one he was carrying?

8 A. No, ma'am.

9 Q. You didn't know that?

10 A. No, ma'am.

11 Q. Why did you have a .45 on you that day?

12 A. I used to carry guns all the time.

13 Q. You carried a gun all the time?

14 A. Yes, ma'am.

15 **The Court:** All right. Anything further?

16 **Ms. Shurling:** Nothing further, Your Honor.

17 **The Court:** Anything?

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

19 **The Court:** All right. Thank you. You may step down.

20 Call your next witness, please.

21 **Ms. Campbell:** The State would call Investigator Thomas.

22 Arthur L. Thomas, after being duly sworn, testified
23 as follows:

24 **The Clerk:** Please have a seat and state your full name
25 for the record.

1 A. That is correct. My partner, Investigator Reese, was
2 the lead investigator assigned.

3 Q. When you came on board on the 21st, what, if any --
4 what, if anything, was the focus of your investigation at
5 that point based on information that had been obtained the
6 day before?

7 A. Based on information obtained the day before, we were
8 looking at an individual, Bailey, and statements were given
9 and so forth in regards to the murder that occurred on the
10 20th.

11 Q. Specifically, had there been a statement taken from an
12 Ellison Hudson implicating Jonathan Bailey as the murderer?

13 A. Yes.

14 Q. Based on that information, were y'all attempting to
15 locate Jonathan Bailey?

16 A. Yes, we were.

17 Q. Were you able to make contact with him on May the 21st?

18 A. On May the 21st we were able to make contact with Mr.
19 Bailey. I believe he communicated with his mother, and he
20 communicated with his attorney and then he turned himself in
21 to Richland County.

22 Q. At Richland County?

23 A. Yes.

24 Q. And did y'all make contact with him actually at the
25 Richland County Sheriff's Department then at that point?

1 A. Yes, we did.

2 Q. And was he subsequently transported back to the Columbia
3 Police Department?

4 A. Yes, he was.

5 Q. And were you made aware of whether or not his attorney
6 had given him any advice about speaking to you?

7 A. Yes. His attorney at the time advised him not to speak
8 with investigators once he returned back to headquarters.

9 Q. When you all made contact with Mr. Bailey, once you got
10 him back to headquarters, did you go ahead and advise him of
11 his rights?

12 A. Yes, we did.

13 Q. And tell this jury: When someone is arrested or taken
14 into custody, is it appropriate to advise them of their
15 rights prior to asking any questions?

16 A. Yes.

17 Q. And why is that, sir?

18 A. So they're fully aware of their rights and aware that
19 anything that they say can be used against them in court, and
20 it's also to keep them from incriminating themselves
21 unintentionally without knowledge of their rights. So we
22 want to make sure they fully know that anything they say we
23 could possibly use against them.

24 Q. And on that day, as you would do with any defendant
25 taken into custody, did you actually go through his advice of

1 rights and did he sign off acknowledging he understood his
2 rights?

3 A. Yes, he did that.

4 Q. And did he choose to speak to you that day, despite his
5 attorney's advice?

6 A. He was adamant about speaking with us to get his version
7 out.

8 Q. Were you able to take a statement from him that day
9 about his whereabouts on the day prior?

10 A. Yes.

11 Q. Specifically, what time period were you focusing in on
12 as far as his whereabouts?

13 A. We were focusing on the time between about 12:40 --
14 11:45 going to about 1:30, 1:45. We wanted to know exactly
15 where his whereabouts were during that timeframe and then
16 thereafter.

17 Q. Was he able to give you some pertinent information that
18 you were able to follow up on at a later time as to his
19 whereabouts?

20 A. Yes.

21 Q. Or his alibi?

22 A. Actually was, yes. We were able to corroborate a few
23 things.

24 Q. And did you actually -- I believe there was a recorded
25 statement, an audio recording made of the statement?

1 A. Correct.

2 Q. As well as a short written statement taken.

3 A. Correct.

4 Q. Were you able to confirm any of the information he was
5 able to give you that day on the 21st?

6 A. We actually I think made contact with individuals on --
7 I want to say on the 22nd, I believe it was.

8 Q. What about that day as far as Deputy Jenkins and his
9 mother as far as a phone call that may have been significant?
10 Had y'all been able to confirm those with those two?

11 A. Yes.

12 Q. That was done the same day?

13 A. Yeah, that was done the same day. Excuse me.

14 Q. The next day did you go a step further and follow up on
15 people he said would know where he was around that time
16 period?

17 A. Yes, we did after confirming---

18 Q. Who did you make contact with?

19 A. We made contact with a Kevae Dolphin at [REDACTED]

20 [REDACTED].

21 Q. While you were there, did you observe any kind of
22 equipment set up at the front of her house and on the
23 interior of her house?

24 A. During the individual's statement, he advised that there
25 was a video recording device set up for monitoring for

1 security, and we were able to observe that device when we
2 entered the home.

3 Q. Was there an actual recording made, however?

4 A. In conversing with Kevae, she advised that they did not
5 have the recorder on, but you could plainly see it sitting
6 right in the living room area right beside the television
7 that there was a monitor that was active.

8 Q. And without going into what she said, were you able to
9 confirm the information that had been given to you by
10 Jonathan Bailey the day before?

11 A. Yes, we were able to corroborate his statement as of the
12 timeframe that he arrived at her residence and the timeframe
13 that he left and to whom he visited while at that location.

14 Q. Later that day did y'all also execute a search warrant
15 back at Elliott, excuse me, at Ellison Hudson's residence in
16 the back yard?

17 A. Yes.

18 Q. And you were searching for additional evidence in this
19 case?

20 A. Yes, we were.

21 Q. What specific type of evidence were you searching for?

22 A. We were trying to locate the actual bullets that were
23 lodged in the earth in the firing of the weapon into the
24 victim's body.

25 Q. And was there a specific area underneath the victim's

1 body that you were looking for?

2 A. That's correct.

3 Q. And why were you specifically looking right beneath
4 where her body had come to rest for projectiles down in the
5 ground? Why was that significant?

6 A. Well, we were able to locate several shell casings,
7 approximately nine or ten or so, but we weren't able to
8 really recover any projectiles. We felt strongly that the
9 projectiles were in the earth, but we didn't know to what
10 level or depth and we wanted to recover that for evidence.

11 Q. On that date were you successful in finding the
12 projectiles which you were looking for that would have been
13 beneath where she fell?

14 A. Yes. I believe that's when we had S.L.E.D. out.

15 Q. No.

16 A. I'm sorry.

17 Q. This is before S.L.E.D. This is the first one. I'm
18 sorry.

19 A. I apologize. On the first one our C.S.I. Pete Curry was
20 unable to locate the projectiles for us. We had a metal
21 detector and we could not locate projectiles at that time.

22 Q. And you did follow up with that - we'll get to that
23 later - with S.L.E.D.

24 A. Correct.

25 Q. On that day did you also secure an arrest warrant for

- 1 Ellison Hudson?
- 2 A. Yes.
- 3 Q. And what was the warrant for?
- 4 A. The warrant for Hudson was for hiding the weapon.
- 5 Q. But what was the charge?
- 6 A. The charge itself I think was -- forgive me.
- 7 Q. Are you referring to the case notes?
- 8 A. I'll get it real quick for you. For Hudson...
- 9 Q. On May the 22nd?
- 10 A. The 22nd? One second. I'm trying to locate the...
- 11 Obstruction of justice.
- 12 Q. Okay. Thank you. The next day did y'all make contact
- 13 with the victim's mother, Barbara Taylor?
- 14 A. Yes.
- 15 Q. And I believe on that same day did you also -- were you
- 16 also able to on May the 23rd, now we're on---
- 17 A. Okay.
- 18 Q. Were you also able to make contact with Ellison Hudson?
- 19 A. Yes.
- 20 Q. And was he arrested at that point on the obstruction of
- 21 justice?
- 22 A. We spotted him on Farrow Road. He did not make his
- 23 appointment for the interview and, yes, he was arrested at
- 24 that point.
- 25 Q. And once he was taken into custody, did you again advise

1 him of his rights prior to any questioning?

2 A. Yes, we did.

3 Q. And was he interviewed for a second time on May the
4 23rd?

5 A. Yes, he was.

6 Q. And without saying specifically what he said to you
7 because that would be hearsay, at that point were y'all
8 searching for a possible suspect in this case---

9 A. Yeah.

10 Q. ---that you had a nickname for at this point?

11 A. Yes.

12 Q. What was the nickname that you were trying to research
13 at this point?

14 A. We were trying to locate an individual by the name of
15 Bump, and at that time that's the only thing we had.

16 Q. Moving forward to June the 1st, did you proceed to a
17 Brighton Hill Road address?

18 A. Yes.

19 Q. And at that point did you speak with the apartment
20 management---

21 A. Yes, we did.

22 Q. ---there?

23 A. Yes.

24 Q. And specifically what incidents were you looking into
25 that may or may not relate to your murder that happened prior

1 to that?

2 A. Well, we were trying to corroborate the incident of a
3 robbery that occurred, a robbery slash shootout, that
4 occurred at this complex. It was a gated community, and we
5 weren't certain that it actually happened. So we spoke with
6 management, and she was able to corroborate that there was
7 some type of shootout between two parties at the Hackshaws'
8 building.

9 Q. At the Hackshaws' building?

10 A. Correct.

11 Q. And did she indicate whether or not this had occurred
12 before or after the May the 20th murder?

13 A. The incident had occurred before the May 20th murder.

14 Q. And while you were there at the location as far as this
15 point, the only name you have is Bump, I believe?

16 A. Correct.

17 Q. Were you able to get information and get a name that
18 went with the nickname Bump?

19 A. Yes. The management was quite familiar with Mr.
20 Hackshaw and familiar with his wife and the name Bump, and at
21 that time we were able to identify Mr. Hackshaw as Bump.

22 Q. Were you also able to get information about what agency
23 was actually investigating that shootout/robbery?

24 A. That's correct. The area in question is in Richland
25 County. We were able to identify the Richland County

1 deputies that were investigating. I believe Investigator
2 Gonzalez was the assigned investigator.

3 Q. So if the shooting occurred in Richland County and gets
4 reported to the sheriff's department versus in the city, it
5 would have gotten reported to you.

6 A. That's correct.

7 Q. And where this occurred where Mr. Hackshaw's apartment
8 was was in the county, and that's why the sheriff's
9 department was investigating it.

10 A. That is correct.

11 Q. Did you also find out who the lead investigator was on
12 that case?

13 A. We did. Investigator W. Gonzalez was the lead
14 investigator. I was familiar with Gonzalez as well as
15 Investigator Reese.

16 Q. And while you were there, did you also have an occasion
17 to speak with one of the residents that lived near Mr.
18 Hackshaw's building?

19 A. Yes.

20 Q. And without going into what they said, did it further
21 confirm the incident you were looking into at the apartment
22 complex?

23 A. The incident was further corroborated by several
24 neighbors.

25 Q. On that same date did you also make contact with Ms.

1 Joann Pickett?

2 A. Yes.

3 Q. And was she able to give you information about people
4 she observed around the time of the shooting?

5 A. Yes.

6 Q. Moving on to June the 2nd, did you -- were you able to
7 secure certain documents involving the shooting at the
8 Brighton Hill apartment complex?

9 A. Yes, we were. We got incident reports and so forth from
10 Richland County in reference to the shooting itself.

11 Q. Did you become aware of any type of physical evidence
12 that had been recovered at that -- and do you remember
13 approximately the date the original shooting occurred?

14 A. Not off hand. What we did---

15 Q. This murder occurred on May the 20th?

16 A. Right.

17 Q. Was it several weeks earlier?

18 A. It was several weeks -- at least two weeks or better
19 prior to the murder.

20 Q. Okay. And did you become aware of any physical
21 evidence?

22 A. Yes. They talked about .40 caliber casings and bullet
23 fragments and projectiles that were recovered.

24 Q. That day did you also make contact with Investigator
25 Gonzalez with the Richland County Sheriff's Department?

1 A. Yes, we did a briefing with Gonzalez.

2 Q. And what's a briefing? Tell the jury what you were
3 trying to get.

4 A. We just met with Gonzalez in reference to information
5 about our murder and how it was linking to the shooting
6 incident as a possible motive. He gave us details involving
7 the shooting incident, stating at what point his
8 investigation was at that time.

9 Q. Okay. And without going into what he told you, you were
10 able to use that information later?

11 A. Correct. We were able to corroborate some things that
12 we received from other witnesses.

13 Q. On June the 3rd of 2009 did you make contact with
14 Cleveland Joyner again?

15 A. Yes.

16 Q. And at that point did you interview him about some
17 specifics -- some additional information as to what he gave
18 initially?

19 A. Yes, we were.

20 Q. And was Joyner's statement recorded and documented?

21 A. It was.

22 Q. On June the 4th, the day after you met with Cleveland
23 Joyner, did you meet with Hudson again? Ellison Hudson?

24 A. Okay. Yes, and we met with Hudson, his public defender,
25 as well as Gonzalez at the Richland---

1 Q. Investigator Gonzalez.

2 A. Yeah, at Richland County.

3 Q. And was he interviewed again about specifics about the
4 shooting/robbery?

5 A. He was.

6 Q. Without going into all that again, was it recorded?

7 A. Yes.

8 Q. I'm going to skip down to June the 5th of 2009. Did you
9 make contact with some employees at the Home Depot, I
10 believe?

11 A. Yes, we did. At the Lowe's?

12 Q. At the Lowe's.

13 A. Is it Home Depot?

14 Q. It's Home Depot.

15 A. Home Depot.

16 Q. Her name is Lowe.

17 A. Yeah.

18 Q. But it's at the Home Depot. Were you trying to get
19 information about a specific person that worked there?

20 A. Yes.

21 Q. And who was the person of interest that had come up
22 during the course of your investigation, your briefings with
23 the county, and all that?

24 A. Rosa Hackshaw, Mr. Hackshaw's wife.

25 Q. And did she go by the last name of Hackshaw or Grenald?

1 A. At the time we had I believe Grenald. We found out that
2 she was -- they were, in fact, married.

3 Q. And at that point when interviewing employees about Ms.
4 Grenald and things about her, was there certain information
5 -- let me ask you this: Did you become aware during the
6 course of your investigation of certain information about an
7 automobile that was seen at the murder---

8 A. Yes.

9 Q. ---in and around the murder?

10 A. Yeah. During the course of the investigation we had
11 several witnesses---

12 **Ms. Shurling:** Objection, Your Honor. Assuming facts
13 not in evidence. She has said did he become aware of certain
14 information about the automobile involved in this murder.
15 She's questioning him about the automobile that was actually
16 Ms. Grenald's---

17 **The Court:** Rephrase the question.

18 By Ms. Campbell:

19 Q. As a result of your initial investigation in talking to
20 witnesses at the initial scene and everything, was there a
21 certain automobile that you were interested in information
22 about?

23 A. Yeah. We were interested in a two-door Honda with
24 tinted windows.

25 Q. And do you remember what color the Honda was?

1 A. Silver in color.

2 Q. Based on your interview of Rosa Grenald's - the
3 defendant's wife - supervisor, were you all able to get
4 certain information about a silver Honda?

5 A. Yes. When speaking with the individual, we came into
6 information that she, in fact, drove and would come to work
7 or be dropped off in a two-door silver-in-color Honda with
8 tinted windows.

9 Q. That same day did you also make contact with a person
10 who worked where Mr. Hackshaw was supposed to be employed, a
11 Mr. Littlejohn, I believe? Officer Littlejohn?

12 A. Yes.

13 Q. And without going into what he said to you, were you
14 able to get certain information that was pertinent to your
15 investigation?

16 A. Officer Littlejohn corroborated the vehicle information
17 as well and it being in the possession of Mr. Hackshaw at
18 certain points.

19 Q. Where is it that Mr. Hackshaw was working that day?
20 Where is -- it's Bryan Psychiatric Hospital?

21 A. Correct.

22 Q. Where is that located?

23 A. It's located off of Farrow Road just past I-20.

24 Q. Just past I-20?

25 A. Yes, on your left.

1 Q. And the [REDACTED], that's in what subdivision?

2 A. That's in the Greenview subdivision.

3 Q. And approximately how far is that -- how long would it
4 take to drive there from Bryan's?

5 A. Oh, a minute and a half, two minutes. That's -- it's
6 approximately a mile and a half away.

7 Q. And is Juniper Street -- is that subdivision -- what's
8 it called?

9 A. Greenview subdivision.

10 Q. Greenview. And is that actually located off Farrow
11 Road?

12 A. Yes, it is.

13 Q. Just on the other side of I-20?

14 A. That's correct.

15 Q. On June the 5th did you also make contact with Lorraine
16 Tracey while you were at Bryan Psychiatric?

17 A. Yes, we did.

18 Q. And without going into what she said, she was able to
19 give you additional information as well.

20 A. She was.

21 Q. On June the 8th of 2009 did you make contact with
22 Shaquenda Evans?

23 A. Yes.

24 Q. And were you able to summarize the information she was
25 able to give you?

1 A. Yes. She also corroborated the silver Honda with the
2 tinted windows as being in the possession of Rosa and Mr.
3 Hackshaw.

4 Q. I want to turn to that same day. Did you become
5 involved in a search warrant or the planning of a search
6 warrant?

7 A. Was that on June 8th?

8 Q. Yes, sir. Investigator Gonzalez.

9 A. Yeah, Gonzalez indicated to us that they were planning a
10 search warrant on the Hackshaws' residence. We were, in
11 fact, I think at that time actually looking for the Honda
12 while they were preparing to execute the search warrant on
13 the residence, if I recall correctly.

14 Q. And without going into what was found there -- we don't
15 want to go into that.

16 A. Okay.

17 Q. But you were not able to locate the Honda on that day.

18 A. No, we were not.

19 Q. The next day did you make contact with Home Depot again
20 about Rosa Grenald's whereabouts?

21 A. Yes.

22 Q. On June the 9th?

23 A. On June the 9th? Yes.

24 Q. And were you able -- and why were you trying to get in
25 touch with Ms. Grenald at Home Depot?

1 A. Again, trying to locate her and also trying to locate
2 Mr. Hackshaw and the vehicle.

3 Q. And what information were you able to get about where --
4 whether or not she was at work that day?

5 A. We were informed that she did -- she was supposed to
6 work but did not show up for work and did not call.

7 Q. Did you then make contact with people at the Bryan
8 Center?

9 A. Yes, we did.

10 Q. And what were you trying to find out from people at the
11 Bryan Center on June 9th?

12 A. Trying to locate Mr. Hackshaw and find out his
13 whereabouts and again locate the silver vehicle. He, too,
14 did not show up for work and did not make any notification
15 that he wasn't coming in.

16 Q. And this would have been the day after the search
17 warrant was executed at their residence?

18 A. That is correct.

19 Q. On that day did you also make contact with a Shanelle
20 Latimer?

21 A. Yes.

22 Q. Later that day?

23 A. Yes, we did.

24 Q. And again without going into what she said, you were
25 able to get information from her?

1 A. Yeah, and we got corroborative information from Ms.
2 Latimer in reference to the silver Honda being parked in
3 front of the apartment.

4 Q. At some point during this investigation about this time
5 did you also think it prudent or as part of your
6 investigation to try to follow up and get some cell phone
7 records?

8 A. Yes.

9 Q. And specifically as to Mr. Hackshaw and Ms. Grenald, did
10 y'all then request through a search warrant cell phone
11 records for those two people?

12 A. That's correct.

13 Q. Then on June the 12th of 2009 did you get some
14 information about the apartment -- well, let me put it this
15 way. From June the 9th through June the 12th and we'll get
16 further, were you attempting to find Hackshaw and/or Ms.
17 Grenald?

18 A. Yes, we were.

19 Q. Were you able to locate them anywhere?

20 A. No, we were unable to locate either individual.

21 Q. On that day on June the 12th did you receive some
22 information about their apartment?

23 A. Yes. We received information of a subject calling in
24 reference to moving items out of the apartment, and the
25 subject identified -- hold on one second. Let me read this

1 information. The claiming Hackshaw's brother made inquiry
2 into---

3 **Ms. Shurling:** Objection, Your Honor. Hearsay.

4 **The Court:** I can't hear what -- I can't understand what
5 he's saying.

6 **The Witness:** I apologize. I was trying to find the
7 location which she's referencing to. There was a
8 communication---

9 **The Court:** Don't testify to what somebody told you.

10 **The Witness:** All right. There was communication made
11 by a brother to the office personnel about moving.

12 **Ms. Shurling:** Objection, Your Honor. Hearsay.

13 **The Court:** Sustained.

14 By Ms. Campbell:

15 Q. On June the 14th -- skip that. On June the 17th did
16 you, in collaboration with S.L.E.D., go over some records,
17 telephone records specifically?

18 A. Yes.

19 Q. And what kind of information were you trying to get from
20 the cell phone records at that point? What were y'all
21 focusing on at that point? And, again, at this point did you
22 have the defendant? Was he around?

23 A. No. We still could not locate the defendant or his
24 wife. We made several attempts through family and so forth.
25 We went to S.L.E.D. so we could try to get phone records, see

1 if the phones were on, ping the phone, also get tower
2 indicators on possible whereabouts and also information on
3 the whereabouts during the day of the actual homicide.

4 Q. Did you continue to try to find them and then -- and
5 continue to try to follow up on other leads in the case?

6 A. Yes.

7 Q. On June the 26th did you make contact with a Ms. Gordon,
8 Nina Gordon?

9 A. Yes.

10 Q. And was she able to give you -- do not say what she
11 said, please.

12 A. I will not.

13 Q. Was she able to give you information?

14 A. Yes, she was.

15 Q. On July the 6th of 2009 now have you still -- have you
16 been able to connect or make contact with either Anthony
17 Hackshaw or Rosa Grenald?

18 A. No.

19 Q. And on that day did you make contact with another
20 witness in the case?

21 A. Yes.

22 Q. And who was that?

23 A. That was -- again, we spoke to a Ms. Gordon, a Gwen
24 Moore, and let's see...

25 Q. Could it have been a Karen Moore?

1 A. Karen Moore.

2 Q. Thank you.

3 A. Excuse me.

4 Q. And without going into what she said, you were able to
5 get information from her?

6 A. Correct.

7 Q. Moving on to July the 7th of 2009, did you make contact
8 with another witness in the case, a Joe Smith?

9 A. Joe Smith.

10 Q. On July 7. 7/7/09.

11 A. Hold on one second. Yes.

12 Q. What was his relationship with Anthony Hackshaw?

13 A. He's an acquaintance. He says he's known -- oh, he's an
14 acquaintance of Hackshaw.

15 Q. Was he able to give you information?

16 A. Yes.

17 Q. July the 10th of 2009, did you secure arrest warrants in
18 this case?

19 A. Yes.

20 Q. On whom?

21 A. Arrest warrants were secured on Anthony Hackshaw and
22 Rosa Hackshaw.

23 Q. And what was the arrest warrant for Anthony Hackshaw --
24 what was the charge?

25 A. Murder, assault and battery with intent to kill, and

1 possession of a weapon during the commission of a violent
2 crime.

3 Q. And on Rosa Grenald, what was the charge on her?

4 A. Obstruction of justice I believe is the charge for Rosa.

5 Q. At this point had you been able to make contact with
6 either one of them?

7 A. No, we were not.

8 Q. On July the 23rd of 2009 did you get contacted by an
9 investigator from the solicitor's office?

10 A. Yes.

11 Q. Based on the information that he was able to give you,
12 did you then proceed to another location?

13 A. Yes.

14 Q. And what location was that?

15 A. We went to Number One Monckton Boulevard which is a
16 Doctors Wellness Center.

17 Q. Uh-huh. And did you -- without going into what was said
18 to you - I know this is hard - did you get information and
19 then subsequently use that to get a search warrant?

20 A. Yes, we did.

21 Q. And what records were you looking for in the search
22 warrant? You can say that.

23 A. Just the history of Mr. Hackshaw's visits, times in and
24 out through his therapy, particularly on the day of the 20th.

25 Q. On the day of the 20th?

1 A. Yes.

2 Q. And, again, we're referring to May the 20th---

3 A. May 20th.

4 Q. ---the day of the murder.

5 A. That's correct.

6 Q. Specifically, were you able to get a sign-in sheet?

7 A. Yes, we were.

8 Q. And that was obtained pursuant to a lawful search
9 warrant.

10 A. Yes, it was.

11 Q. On the 27th of July did you make contact with Monica
12 Goodwin?

13 A. Yes, we did.

14 Q. And you were able to get information from her.

15 A. That is correct.

16 Q. Then I want to turn to July the 29th of 2009. At that
17 point you all had a -- you'd been trying to get in touch with
18 him for a period of time.

19 A. Yes.

20 Q. And at this point you had secured an arrest warrant for
21 him some 19 -- excuse me. You secured the arrest warrant on
22 July 10th. Is that correct?

23 A. That's correct.

24 Q. And then on the 29th of that month did he turn himself
25 in?

1 A. Yes, he did.

2 Q. And was he arrested at that point?

3 A. Yes, he was.

4 Q. The next day on July the 30th did you receive some
5 documents from Hackshaw's supervisor at work?

6 A. Yes, we did.

7 Q. And what kind of documents were those?

8 A. It was a timesheet, log-in sheet.

9 Q. On July the 31st, some two days -- or actually the next
10 day, did Rosa Grenald turn herself in?

11 A. Yes, she did.

12 Q. And was she placed under arrest?

13 A. Yes, she was.

14 Q. In every case, even after the arrest, does the
15 investigation continue?

16 A. Yes.

17 Q. And did that happen in this case?

18 A. Yes, it did.

19 Q. Turning your attention to November the 8th of 2009---

20 **The Court:** Ms. Campbell, will you and Ms. Shurling step
21 up here just one second?

22 (Whereupon, a bench conference was held.)

23 By Ms. Campbell:

24 Q. I'm sorry. On November the 8th of 2009, did you make
25 contact with Investigator Gonzalez again from the Richland

1 County Sheriff's Department?

2 A. Yes, we did.

3 Q. And was there certain information y'all had come into
4 possession with that became of interest about some cell phone
5 records?

6 A. Yes.

7 Q. And did that lead to the identity of a person with whom
8 Hackshaw's cell phone records were collected that he was in
9 constant?

10 A. Yes.

11 Q. What was the name of that person?

12 A. That individual was Gleaton.

13 Q. Torrian Gleaton?

14 A. Yes, Torrian Alexander Gleaton.

15 Q. I want to move on to November the 18th of 2009. Your
16 Honor, may I approach? I forgot about this.

17 **The Court:** You may.

18 (Whereupon, a bench conference was held.)

19 **The Court:** All right. Ladies and gentlemen, we're
20 going to go ahead and recess for the afternoon at this --
21 this seems to be, according to the attorneys, a good place to
22 take a break. A couple of things I want to tell you. One---

23 **Ms. Shurling:** Your Honor? I apologize. Given how far
24 the State has gone with their examination of this witness and
25 the fact that if they're allowed to leave a small portion of

1 it 'til tomorrow morning, it will allow them to have
2 communication with him over the evening break. I would ask
3 that they be required to finish direct tonight.

4 **The Court:** All right. Thank you. We're going to
5 break. I'm going to ask again, ladies and gentlemen, that
6 you not discuss this case with anybody while you're gone:
7 Family, friends. You've invested two full days, and you
8 don't want to do anything to jeopardize all your efforts and
9 your patience and hard work.

10 Don't make any independent inquiries. Don't listen to
11 anything on the radio or watch T.V. or read anything in the
12 newspaper in case there is. I'm going to ask you to be here
13 tomorrow morning at 9:15. We may not -- our court reporter
14 has a doctor's appointment at 8:30, and she anticipates
15 she'll be back here ready to go by 9:15, but in case she's a
16 few minutes late we'll fine her and then we'll -- we'll start
17 when she gets here, but she -- she'll be here just as
18 promptly as she can. So y'all have a nice evening and nice
19 to see you, and we'll see you tomorrow morning.

20 (Whereupon, the jury was excused from open court at 5:49
21 p.m.)

22 **The Court:** All right. Investigator Thomas, I'm going
23 to caution you: Do not discuss your testimony with anybody
24 once we leave this courtroom. Don't talk to any of the
25 solicitor's office. Don't talk to anybody on the defense

1 side. Don't talk to anybody - family, friends, or anybody
2 else - about your testimony. We want to begin tomorrow as
3 though we had not broken today, so just don't do that for me
4 if you would.

5 **The Witness:** Yes, sir.

6 **The Court:** All right. We'll -- if y'all could be here
7 at 9:15, too, in case Daphne gets back in time, we'll start
8 just as quickly as we can at 9:15. I don't know what y'all
9 think in terms of how fast we're moving, but it appears to me
10 that we may not finish this this week. We've gotten 20
11 witnesses so far and we've got another 20 to go on the
12 State's side and up to 10 on the defendant's side.

13 **Ms. Campbell:** We have eliminated three, judge.

14 **The Court:** Pardon me?

15 **Ms. Campbell:** We have eliminated three.

16 **The Court:** Three what?

17 **Ms. Campbell:** Witnesses.

18 **The Court:** Well, okay. So instead of 105 you've got
19 102.

20 **Ms. Campbell:** Correct.

21 **The Court:** So we only have 82 possible more defendants
22 (sic) to go. We will probably be here well past next week if
23 you call all those folks so... Anyway, y'all have a nice
24 evening and we'll see you tomorrow morning at 9:15.

25 **The Witness:** Thank you, Your Honor.

1 **The Court:** Y'all don't talk to Investigator Thomas now.
2 Don't tempt him.

3 (Whereupon, the trial concluded for the day at 5:50 p.m.
4 and resumed the following day, October 27, 2010 as follows.)

5 **The Court:** All right. Thank y'all. Y'all please be
6 seated. Okay. I understand your client had some success
7 last night.

8 **Ms. Shurling:** Yes, sir, Your Honor. Thank you very
9 much.

10 **The Court:** Well, that's good. All right. Where is our
11 investigator? Do you want to come back up here, please, sir?

12 **The Witness:** Yes, sir.

13 **The Court:** All right. Investigator Thomas, you haven't
14 had any conversation about your testimony at all.

15 **The Witness:** No, sir.

16 **The Court:** All right. Good.

17 **The Witness:** I have not.

18 **The Court:** All right. Anything we need to take up real
19 quick before we bring the jury in? Are y'all ready to go?

20 **Ms. Campbell:** I'm ready.

21 **The Court:** Y'all ready to go?

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

23 **The Court:** All right. Bring the jury in if you could.

24 (Whereupon, the jury was brought into open court at 9:18
25 a.m.)

1 **The Court:** Good morning, ladies and gentlemen. Nice to
2 see you this morning. As you see, Ms. Helms made it in
3 earlier and so we're able to start at 9:15. Again, I want to
4 ask you this morning: Anybody have any conversation about
5 the case since we left yesterday or were you approached by
6 anybody about the case?

7 (All jurors respond in the negative.)

8 **The Court:** Did y'all do any independent inquiries, make
9 any -- read any papers, do anything that would be something
10 that I've asked you not to do?

11 (All jurors respond in the negative.)

12 **The Court:** All right. Good. Hope you had a nice
13 evening and ready for another full day's work. So with that,
14 as you recall with -- the State was in the process of putting
15 -- had investigator Thomas on the stand and was direct-
16 examining this witness. So I'll ask you if you would
17 proceed, please, Ms. Campbell.

18 **Ms. Campbell:** May it please the Court?

19 **The Court:** Yes, ma'am.

20 Direct Examination Resumed

21 By Ms. Campbell:

22 Q. Investigator Thomas, I want to turn your attention back
23 to November the 18th of 2009. On that day were you contacted
24 by someone on behalf of the defendant who at this point was
25 under arrest? Is that correct?

1 A. You said November 18th?

2 Q. 19th.

3 A. 19th? Let me locate that.

4 Q. Excuse me. The 18th. I apologize.

5 A. There's a reference to Hackshaw's attorney?

6 Q. Yes, sir.

7 A. One moment. Yes. Hold on a second. Okay. Yeah, we
8 were notified by Mr. Johnson, I believe, Mr. Hackshaw's
9 attorney at the time.

10 Q. Mr. Johnson?

11 A. Uh-huh.

12 Q. Who was Hackshaw's attorney at the time?

13 A. That's correct.

14 Q. And that would be Anthony Hackshaw?

15 A. Correct.

16 Q. Who was under arrest at that point for the murder in
17 this case.

18 A. Correct.

19 Q. And prior to -- and did you actually arrange for -- were
20 arrangements made for you to talk to Mr. Hackshaw?

21 A. Yes, they were.

22 Q. With his attorney's involvement.

23 A. Correct.

24 Q. And prior to talking to with him, did you advise him of
25 his rights?

1 A. Yes, I did.

2 Q. I want to show you what's been marked as State's exhibit
3 number 63 and just ask: Do recognize that?

4 A. Yes. That's the advisement of rights form that I read
5 out to Mr. Hackshaw.

6 Q. Okay. And---

7 **The Court:** Mr. Thomas, I need you to speak up a little
8 bit.

9 **The Witness:** Oh, I'm sorry. Yes, this is the
10 advisement of rights form that I read off for Mr. Hackshaw.
11 By Ms. Campbell:

12 Q. Okay. And I notice that there's some handwriting on
13 here. Is this your handwriting or someone else's handwriting
14 or can you tell?

15 A. It appears to be Kevin's handwriting.

16 Q. Kevin Reese's?

17 A. Yeah.

18 Q. And that's another investigator that was involved in
19 this case?

20 A. Correct.

21 Q. And did you actually advise him of his rights that day?

22 A. Yes.

23 Q. And you did it using this form?

24 A. That's correct.

25 Q. And once he had been advised of his rights, did he then

1 sign off indicating whether or not he understood his rights?

2 A. Yes, he did.

3 Q. And is that done in this case?

4 A. Yes.

5 Q. And are there also some witness signatures on this?

6 A. Correct. The investigator---

7 Q. And who all's signature is on there witnessing the
8 defendant's acknowledgment of his advice of rights on that
9 day?

10 A. It would be Mr. Hackshaw's signature, Investigator Kevin
11 Reese, my signature, Investigator Lance Reeves, and his
12 attorney, Charlie Johnson. All signatures are present.

13 **Ms. Campbell:** Your Honor, at this time we'd offer
14 State's exhibit number 63 into evidence.

15 **Ms. Shurling:** Without objection, Your Honor.

16 **The Court:** So admitted.

17 (State's exhibit 63 was received in evidence.)

18 By Ms. Campbell:

19 Q. Specifically, where did this interview take place?

20 A. It took place at the Columbia Police Department's
21 headquarters. We have certain interview rooms, and it's one
22 of the rooms in our office.

23 Q. And approximately what time was it that you actually
24 advised him of his rights prior to talking to him?

25 A. The time noted here is at 17:57 hours which is

1 approximately 5:57.

2 Q. 5:57 in the afternoon?

3 A. Yes.

4 Q. And just briefly go through what advice of rights was
5 actually given to the defendant in this case.

6 A. Okay. Basically we go: Before we ask you any
7 questions, you must understand your rights. You have the
8 right to remain silent. Anything you say can be used against
9 you in court. You have the right to talk to a lawyer before
10 we -- before we advise you of any questions and -- excuse me.
11 Let me do it over.

12 You have a right to talk to a lawyer and have him
13 present before we ask you any questions. If you cannot
14 afford a lawyer, one will be appointed to you before
15 questioning if you wish. If you decide to answer questions
16 now without a lawyer present, you will still have the right
17 to stop answering questions at any time. You also have the
18 right to stop answering questions at any time until you talk
19 to a lawyer.

20 Q. And he then signed off acknowledging that he understood
21 what his rights were?

22 A. Yes, after reading the waiver.

23 Q. At that point he did indicate he wanted to talk to you.

24 A. That's correct.

25 Q. With his lawyer present and with his advice.

1 A. That's correct.

2 Q. After you advised him of his rights, did you attempt to
3 conduct an interview of the defendant?

4 A. We did so.

5 Q. And specifically referring to the notes, did you ask him
6 about the robbery that occurred on April 23rd of 2009 where
7 he was actually the victim of the robbery?

8 A. Yes. That question was asked, and he denied any.

9 Q. He denied what?

10 A. Any knowledge of any robbery or ever been robbed.

11 Q. He denied any knowledge of any robbery or being
12 involved, and what about the shooting that accompanied the
13 robbery?

14 A. He denied any knowledge of any shooting or any incident
15 happening at his complex.

16 Q. Did you also ask him specifically about making certain
17 statements to people about how he would handle things?

18 A. Again, he denied making any statements or accusations.

19 Q. That he would say what -- that he denied making
20 statements to what effect?

21 A. To threats of E. Or he actually denied knowing E. Or
22 communicating in any fashion.

23 Q. Did you ask him about the vehicle that had been
24 identified by witnesses and the victims at the murder?

25 A. He denied any knowledge of the vehicle or his wife

1 owning or having the vehicle.

2 Q. Specifically, what vehicle were you referring to?

3 A. We inquired about the silver-in-color two-door Honda.

4 Q. And as far as knowing anything about the murder, did he
5 indicate whether or not he had any knowledge of that?

6 A. He denied any knowledge of the murder as well.

7 Q. Did you also inquire about a visit he made later that
8 day to a physical therapist's office?

9 A. Yes. When we made an inquiry about making the visit for
10 his therapist, he with most arrogance said, "You already
11 know. You've already been there," which gave us indication
12 that someone communicated that we'd visited that office.

13 Q. After a period of time, did you choose or did y'all
14 choose to terminate the attempt to interview this defendant?

15 A. Yeah. Due to his mannerisms and attitude toward the
16 interview, even with his attorney's presence and encouraging
17 him to speak honestly, we could determine that we wasn't
18 going to get anywhere in the interview, so we terminated it.
19 He had a lot of arrogance, kind of hostile, during the course
20 of the interview. So we terminated the interview.

21 Q. On that day did you all make an attempt to actually
22 audio-record that statement?

23 A. Yes, we did .

24 Q. And was there a malfunction that prevented that from
25 happening?

1 A. Unfortunately, there was some type of malfunction
2 between trying to get it on disk. We were only able to
3 retrieve three minutes, the initial three minutes of this
4 interview, and we called in our computer techs and so forth
5 to try to see if we could try to fix the malfunction and get
6 the entire interview, but we were unable to do so.

7 Q. And after that you did not have any more contact with
8 him.

9 A. No.

10 Q. And you shouldn't without his lawyer being involved.

11 A. Correct.

12 Q. I want to turn your attention to March the 11th of the
13 next year, 2010, this year.

14 A. March 11th.

15 Q. Did y'all make contact with another witness in this
16 case?

17 A. (Pause.)

18 Q. March 11th. I do believe it says '09 in your notes. It
19 should be '10.

20 A. Okay. Page 3. I think there was a Terrain (sic)---

21 Q. Travis Golston first.

22 A. Oh, Golston.

23 Q. On March the 11th.

24 A. Golston.

25 Q. And just for the record, you're referring to the notes

1 in this case?

2 A. Yeah, I'm---

3 Q. There are lots of notes and we're skipping over them---

4 A. There's about 30 pages of notes, so I'm flipping through
5 here, so forgive me. All right. Travis Golston. Okay.

6 Yeah, we were contacted by his attorney and---

7 Q. By his attorney? And without going into what he said to
8 you because that would be hearsay---

9 A. Correct.

10 Q. ---did y'all conduct an interview?

11 A. Yes, we did.

12 Q. And was that interview recorded?

13 A. Yes, it was.

14 Q. And was he able to give you pertinent information that
15 the defendant had relayed to him?

16 A. Yes, very detailed information.

17 Q. I want to skip forward now to April 26, 2010, of Mr.
18 Terran Hughey?

19 A. Uh-huh.

20 Q. Again, were you contacted by Mr. Hughey's lawyer?

21 A. We were.

22 Q. And without going into what was said, after speaking to
23 Mr. Hughey's lawyer did y'all do?

24 A. After speaking to Mr. Hughey's lawyer -- hold on one
25 second. Let me... We actually -- I believe we moved Mr.

1 Hughey from the---

2 Q. We're about to get to that part.

3 A. Okay.

4 Q. As far as with Mr. Hughey, did you then set up an
5 interview?

6 A. Yes.

7 Q. And was Mr. Terran Hughey interviewed concerning
8 information that had been relayed to him by the defendant in
9 this case?

10 A. Oh, yes.

11 Q. And was that information pertinent to your murder
12 investigation?

13 A. Yes, it was, definitely so.

14 Q. And finally on July the 28th of this year did your
15 investigation continue when you attempted to interview
16 another possible witness in this case?

17 A. July 28th.

18 Q. I believe it was Mr. Aaron Johnson.

19 A. I do remember a Mr. Johnson, but I'm trying to find that
20 on this note here. Yes. All right.

21 Q. And did y'all attempt to interview Mr. Aaron Johnson?

22 A. Yes.

23 Q. And what was his relationship to the defendant in this
24 case?

25 A. I believe Mr. Johnson was a brother.

1 Q. Was Mr. Johnson able to provide you with any information
2 that was pertinent to the murder investigation in this case?

3 A. No. In this interview I believe Investigator Reese
4 interviewed Mr. Johnson without my presence.

5 Q. I'm sorry.

6 A. Yes, I wasn't present on this one.

7 Q. We talked earlier about how a search warrant was
8 executed to get certain phone records?

9 A. Yes.

10 Q. Specifically from Sprint? Did y'all attempt to get the
11 defendant's phone records?

12 A. Yes.

13 Q. I want to show you what's been marked as State's exhibit
14 number 102 (sic). Do you recognize those?

15 A. Yes. These are the records or the returns that we got
16 from the phone company.

17 Q. And so a lawful search warrant had to be executed and
18 this is the information that the phone company provided to
19 y'all?

20 A. That's correct.

21 Q. And that has to do with the defendant's phone. Is that
22 correct?

23 A. That's correct.

24 Ms. Campbell: Your Honor, at this time we'd offer
25 State's exhibit 102 (sic).

1 **Ms. Shurling:** Without objection, Your Honor.

2 **The Court:** All right. So admitted.

3 (State's exhibit 62 was received in evidence.)

4 By Ms. Campbell:

5 Q. Once y'all received these records, did you then forward
6 them to S.L.E.D. for further analysis?

7 A. Yes.

8 Q. And what is S.L.E.D.?

9 A. It's the State Law Enforcement Division.

10 Q. And do they sometimes assist y'all in your
11 investigations?

12 A. They often do, particularly when it comes to phone
13 tracing or tracking of records.

14 Q. The more technical aspects.

15 A. That's correct.

16 Q. And that was done.

17 A. Yes.

18 **Ms. Campbell:** Beg the Court's indulgence. I apparently
19 misread the number on the exhibit. I apologize, Your Honor.
20 It's actually exhibit 62, not 102. I misread it.

21 **The Court:** All right.

22 **Ms. Campbell:** Thank you, for the record. Thank you.

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

24

25

1 Cross-Examination

2 By Ms. Shurling:

3 Q. Good morning.

4 A. Good morning, Ms. Shurling. How are you?

5 Q. Investigator Thomas, when did you become involved in the
6 investigation of this case?

7 A. I actually became involved on the 21st. The incident
8 occurred on the 20th, and I was communicated to what we had
9 and came in and assisted my partner, Investigator Reese.

10 Q. Okay. Why were you not with your partner on May 20th at
11 the scene?

12 A. There might be a number of things. Apparently I either
13 took some time off or had just came off a murder. A lot of
14 times they won't call me in right after dealing with a
15 different homicide. So something of that nature probably
16 occurred.

17 Q. Now, you noted just a moment ago that -- pardon me. You
18 were not present when Aaron Johnson was interviewed?

19 A. Aaron Johnson, yes.

20 Q. But you were present when quite a few of the witnesses
21 in this case were interviewed. Is that true?

22 A. Correct. Correct.

23 Q. Let's go back a little bit. How long have you been in
24 law enforcement?

25 A. Twenty-one years.

1 Q. Twenty-one years?

2 A. Uh-huh.

3 Q. And when did you become an investigator, a plain-clothes
4 officer?

5 A. I've been doing investigation for approximately 10
6 years.

7 Q. Ten years?

8 A. Uh-huh.

9 Q. Okay. And I assume somewhere way back then you had to
10 go to the academy and learn basic police procedure?

11 A. I have taken a number of courses, from criminal
12 profiling to interrogation and so forth, yes.

13 Q. During the interviews of the various witnesses in this
14 case, did you personally take some notes?

15 A. Not really. We recorded a number of the interviews and
16 so forth, and when Kevin and I are together we consolidate
17 our information after we do the interviews. So whoever the
18 lead investigator is actually takes the notes. That's what
19 I'm referring to is his actual case notes.

20 Q. Okay. So you consolidate---

21 A. Correct.

22 Q. ---your information. I don't believe I got a yes or no
23 answer. Do you or don't you jot down some notes during the
24 interview process?

25 A. If I think there's something prevalent that I want to

1 inquire about and ask a question on, I may.

2 Q. And where are those notes that you took while these
3 witnesses were being interviewed?

4 A. Again, because we interviewed so many people, if it's a
5 jot-down, it's a jot-down to reiterate on a question or
6 something that I saw a subject say or evade in saying. Then
7 I'll ask the question that I will get... And, again, because
8 things are recorded for the most part and he and I discuss
9 the issue, that's---

10 Court Reporter: I'm sorry. Repeat that.

11 The Witness: Because he and I discuss the issues prior
12 to doing the case notes, I don't have any notes for you.

13 By Ms. Shurling:

14 Q. Well, not all the witnesses' interviews were recorded,
15 were they?

16 A. I said the majority, yes. I have no notes, if that's
17 your question.

18 Q. Well, my question is: Did you have notes?

19 A. I have no notes.

20 Q. Sir, my question is: Did you jot down information while
21 people were being interviewed?

22 A. And I answered that question in saying that if there was
23 something that I wanted to re-reference to, I may have made
24 some notes, yes.

25 By Ms. Shurling:

1 Q. And what did you do with any notes that you did make?

2 A. Put them in this packet for you.

3 Q. Where are your handwritten notes?

4 A. I don't have any handwritten notes for you.

5 Q. So you didn't put them in the file?

6 A. No.

7 Q. Why not?

8 A. Because again, as I'll reiterate, Investigator Reese and

9 I after the interviews speak on what we heard and so forth.

10 He makes his notations, and these are the notes. That's it.

11 Q. Is that standard police procedure not to preserve your
12 notes you make in interviewing witnesses?

13 A. This is the preservation of the notes that we have in
14 this case. These are the references that you'll see me go to
15 during the course of your questioning, and these are the only
16 notes available.

17 Q. Okay. That's the case notes---

18 A. Correct.

19 Q. ---of the incident report. Correct?

20 A. No, this is the case notes. These are the -- these are
21 the investigative notes that we take during the course of our
22 interviews, and it is collaboratively placed in these pages.
23 That's it.

24 Q. Well, if I look in your file---

25 A. Uh-huh.

1 Q. ---on this case, I will find handwritten notes taken by
2 Investigator Reese, won't I?

3 A. He's the lead. If he had some handwritten notes, then
4 he must have turned them and he turned them in to you.

5 Q. Okay. I'll move on.

6 A. Okay. Thank you.

7 Q. You have indicated that when my client was interviewed
8 with his lawyer, that interview was taped?

9 A. Yes, it was.

10 Q. But the machine malfunctioned.

11 A. There was a combination of a possible user error with a
12 rookie investigator and the machine itself, yes.

13 Q. A user?

14 A. Yes.

15 Q. What does that mean?

16 A. It's a malfunction. Someone who is not used to our
17 equipment borrowed the equipment, and in trying to retrieve
18 the information it was somehow deleted except for the first
19 three minutes. And, again, we called our computer techs in
20 and tried to recover it the best we could and we just could
21 not do so.

22 Q. So to clarify, it wasn't that the machine didn't record
23 it. It was that somebody in your department erased it.

24 A. No, that's not what I said. I said there was a
25 malfunction of some nature and it covered three minutes of

1 the interview, so it was recorded. It shows maybe an hour on
2 the actual disk, but when you play the disk it only plays
3 three minutes of it and we could not get our technicians to
4 figure out why it was doing that.

5 Q. And isn't it noted somewhere in your case notes that
6 when an officer was transferring the information to a disk it
7 was somehow deleted?

8 A. During the transfer, the disk shows the time of the
9 interview. All right. You can see it when you put the disk
10 in, how long the interview took place, but only three minutes
11 of that interview would play and we could not figure out why
12 that happened.

13 Q. Okay. Did you experience any kind of similar
14 malfunction with any of the other witnesses in this case?

15 A. Not in this case but in another case that was on that
16 same recorder, yes; I have a similar problem.

17 Q. Okay.

18 A. It all transferred at the same time, and the technician
19 said it had to be something within that transference stage.

20 Q. Now, you got my client to sign a waiver of rights form,
21 didn't you?

22 A. That is correct.

23 Q. It's already been identified here this morning.

24 A. That is correct.

25 Q. Did you document that interview in a written statement

1 and get my client to sign it?

2 A. No. No. His -- his attitude and posture during the
3 course of the interview was such that we didn't even engage
4 in the written portion of it, even with his attorney present.
5 There was just an abundance of arrogance and uncooperation
6 whatsoever.

7 Q. Well, Mr. Thomas---

8 A. Uh-huh.

9 Q. ---during the interview he said certain things---

10 A. He did.

11 Q. ---that you think are important to the case---

12 A. He did.

13 Q. ---that you are now conveying to this jury.

14 A. Correct.

15 Q. And at the time you had the opportunity to do a written
16 statement, give my client an opportunity to read it and check
17 it for accuracy and sign off on it. Correct?

18 A. We had the interview recorded at the time. Again,
19 because of his mannerisms that changed dramatically during
20 the course of the interview, we terminated interview at that
21 point, along with speaking with his attorney, and we did not
22 get a written portion because of the change in the progress
23 of the interview.

24 Q. Well, before you made the decision not to bother doing a
25 written statement---

1 A. Uh-huh.

2 Q. ---did you check your recording equipment and make sure
3 that the interview properly---

4 A. In fact I did, yes. Yes.

5 Q. So you checked it and---

6 A. Uh-huh.

7 Q. ---made sure that it was properly---

8 A. Played it to make sure that it was---

9 **Court Reporter:** I'm sorry. I can't take you both at
10 the same time.

11 **The Witness:** I'm sorry. Yes, we played the recorder
12 again just to hear if it taped the few minutes -- the front
13 portion of it. Everything played like it normally does and
14 cut it off.

15 By Ms. Shurling:

16 Q. When did you discover that it wasn't all there?

17 A. Again, during the transference stages of taking it from
18 the recorder and placing it on a disk is when we discovered
19 that it was not the complete interview.

20 Q. And my question was: When did that happen?

21 A. Right now I can't be precise on when that happened, to
22 be honest with you.

23 Q. Well---

24 A. It was during the transference stages during the course
25 of the investigation. I can't say if it happened that day.

1 I doubt it happened that day, but during the transference of
2 that information it happened, but I can't be precise on
3 Monday, Tuesday, Wednesday or the 20th. I can't give you
4 that.

5 Q. What kind of recording device is this?

6 A. It's a digital recorder, Sony, 120 buck recorder.

7 Q. Pardon?

8 A. About \$120 recorder. It's one of the higher-end
9 recorders.

10 Q. Okay. What kind of memory does it have?

11 A. Off the top I want to say between 30 or so. Is it a 20-
12 gig, 30-gig? Something like that.

13 Q. Okay.

14 A. Yes, it's got an extensive amount of memory.

15 Q. When you record an interview, after the interview is
16 over you transfer the interview as a matter of course in
17 every case to disks?

18 A. Correct, so that we can distribute it to you and the
19 solicitor's office.

20 Q. Pardon?

21 A. So that we can distribute it to you and the solicitor's
22 office, yes.

23 Q. And you don't leave these statements on your recording
24 device once they're transferred to C.D.'s, do you?

25 A. Not normally. At some point we delete from the

1 recording device so we could have room for the next
2 interview. We have a number of homicides, so we can't
3 continue to keep each case on those little recorders. So
4 when we transfer from recorder to disk, normally you're going
5 to delete so you can keep your space. And so that's --
6 that's what happened in this particular case and in my other
7 case.

8 Q. So in order to free up space on your digital recorder,
9 you would transfer interviews to a disk fairly quickly,
10 wouldn't you?

11 A. As timely as we can, yes.

12 Q. Okay. Once you discovered that you did not have my
13 client's entire interview, did you call his lawyer and ask
14 that they bring him back in to review a written statement and
15 approve it and sign it?

16 A. No, did not.

17 Q. Why not?

18 A. You would have to inquire that with Investigator Reese.
19 I -- again, during the course of the first initial interview,
20 personally I would see no need to bring him back in. There
21 was just straight denial in anything. Again, he denied even
22 being in the shooting incident and so forth, denied the car.
23 I wouldn't see a need to bring him back in for that, no.

24 Q. Where did you interview Kevae Dolphin?

25 A. Kevae was interviewed at her home, I believe.

1 Q. Pardon?

2 A. You said where?

3 Q. Where.

4 A. Yeah, at home.

5 Q. At home?

6 A. Uh-huh.

7 Q. Did you take notes during that interview?

8 A. No.

9 Q. Was Investigator Reese with you?

10 A. Yes. He took notes.

11 Q. Did you do a written statement for her?

12 A. I cannot recall if they did. I believe he did something
13 with her on that. She just gave her statement on the stand,
14 so what she said was pretty much what was said during the
15 time.

16 Q. So the answer is no.

17 A. Again, I can't recall right now. Whatever she said, I'm
18 certain they did some kind of written statement. I can't
19 recall though. We got a statement from a number of people,
20 but what she stated on the stand is what she pretty much
21 stated at her home that day.

22 Q. But, once again, we don't have a written document,
23 recording -- a recording or written document verifying what
24 she said on that date, do we?

25 A. What you have is her words that she gave you on

1 yesterday when she spoke to the jury, and those are the words
2 she said pretty much the day of.

3 Q. How many years have you been a homicide investigator?

4 A. Approximately five or six.

5 Q. And in something as serious as a homicide case, isn't it
6 generally important to get written statements from people?

7 A. Well, again, it depends on the level of the interview
8 with the individual. We document what she stated in the case
9 notes that you keep referring to and, again, the case notes
10 that I'm looking at and the statement that she made that day
11 are the same and that's -- and this is, as you keep referring
12 to it, documentation of statements, interviews, and people
13 that we spoke with. So if we don't put it in a statement
14 form, we will document, notate, what's important to us in
15 these notes.

16 Q. What's important to y'all.

17 A. Correct.

18 Q. So we don't have a written statement on her. How about
19 the neighbors, the various people that we have heard testify
20 and some others that will testify that were testifying to who
21 they saw and what they observed? Did you take written
22 statements from those people?

23 A. I will reiterate that if there's not a written statement
24 and I -- I don't have the case jacket here to go through each
25 statement. If there's not a written statement on individuals

1 that you saw in this court proceeding, the notations are in
2 these investigative notes.

3 Q. So there was nothing written down that the witness had
4 an opportunity to review and sign off on its accuracy, was
5 there?

6 A. If there are, you have them, and if there are not,
7 they've been notated.

8 Q. Okay. Thank you.

9 A. Yes, ma'am.

10 Q. Kevae Dolphin was an important witness in this case,
11 isn't she?

12 A. I think she did well in what she stated to the jurors.
13 They have to judge that.

14 Q. With all due respect, sir, I didn't ask you your opinion
15 of her testimony.

16 A. You asked my opinion. I gave you my answer.

17 Q. I asked you if she was an important witness in this
18 case.

19 A. She is a witness as every other witness in this case,
20 and the corroborative information that we received from all
21 the witnesses is very important.

22 Q. Well, she was the witness that supposedly corroborates
23 the alibi of the first person positively identified by the
24 eyewitness; right?

25 A. She is a witness along with a chain of witnesses that

1 corroborate this entire case, and it takes the corroboration
2 of every witness to make the case that we're presenting
3 today. So her weight is no higher than anybody else's, in my
4 opinion.

5 Q. Okay. Well, she claimed, again as documented in your
6 case notes---

7 A. Yes, ma'am.

8 Q. ---or Investigator Reese's notes---

9 A. Uh-huh.

10 Q. ---that a young lady by the name of Stephanie was at the
11 house on the day in question; right?

12 A. Right. She's taken the stand already, yes.

13 Q. On the day in question did you ask Stephanie's last
14 name?

15 A. On the day in question I thought we got as much
16 information as we could from Stephanie. I think in the notes
17 we had just the last name and that she was out of town.

18 Q. Pardon?

19 A. I said in the notes it indicates that we have the last
20 name and that she was already out of town.

21 Q. You had a last name in your notes?

22 A. I mean first name; I'm sorry.

23 Q. Why would you not have asked Kevae Dolphin what
24 Stephanie's last name was?

25 A. Stephanie was identified and she was present. She's

1 already given a statement.

2 Q. Pardon?

3 A. Stephanie has already spoken to the jury. She has been
4 identified and she's given a statement.

5 Q. Sir, that's not what I asked you.

6 A. Okay.

7 Q. What date did you interview Kevae Dolphin?

8 A. Kevae Dolphin was interviewed on 5/22 of 2009.

9 Q. So just two days after this shooting.

10 A. Two days after.

11 Q. And Kevae Dolphin was the alibi supposedly for the
12 person identified by the eyewitness -- positively identified
13 by the eyewitness as one of the shooters. Right?

14 A. Correct.

15 Q. And she claimed that her story could be backed up by a
16 second female that was there - Stephanie. Correct?

17 A. Correct.

18 Q. And my question to you is: You didn't even bother to
19 find out what Stephanie's last name was?

20 A. Again, Stephanie was identified. She was present. She
21 gave her statement today. Contact was attempted to be made
22 by Stephanie. She was present here. She's made her
23 statement. This corroborates---

24 Q. Contact?

25 A. ---Ms. Dolphin's statement.

1 Q. Let's back up for a minute. Contact was attempted to be
2 made with Stephanie? How did you attempt to contact
3 Stephanie if you didn't even know her last name?

4 A. Again, Ms. Stephanie was contacted. She was present
5 here today. The day of the -- on this day, if you're
6 referring to this day, all we had was her first name. That's
7 what was given.

8 Q. Sir, you're an investigator.

9 A. Uh-huh.

10 Q. This person tells you: Bailey was here with me and my
11 friend, Stephanie.

12 A. Uh-huh.

13 Q. And you didn't ask a woman's last name.

14 A. We didn't. We didn't get the last name that day that I
15 can recall.

16 Q. Okay.

17 A. If that's your question, I'm trying to answer that as
18 honestly as I can.

19 Q. My actual question was: Why not? Why would you not
20 ask---

21 A. Either they---

22 Q. ---for her last name?

23 A. Either they did not give it - all right - or it wasn't
24 given at that particular point.

25 Q. Could you repeat that?

1 A. It wasn't given at that particular point.

2 Q. No, that was the second half of your answer. What was
3 the first half?

4 A. I said either they did not give it or it wasn't given at
5 that particular point.

6 Q. Thank you. Now---

7 A. Okay.

8 Q. ---you've referred in these cases notes to the fact that
9 Stephanie who was out of town---

10 A. Correct. Bike week or something of that nature.

11 Q. Pardon?

12 A. Bike week or something of that nature was mentioned.

13 Q. Is that in the report?

14 A. What -- that's not important to me. That she's at bike
15 week? That's not important. No, it's not in the report.

16 Q. She didn't testify to anything about being in bike
17 week---

18 A. I think she did.

19 Q. ---did she?

20 A. I think she did say she went out of town.

21 Q. We'll let the jury---

22 A. The jury can determine that, but I recall her saying
23 something of that nature.

24 Q. Well, even if she did---

25 A. Uh-huh.

1 Q. ---how long does bike week last?

2 A. Listen, I'm not into the social events of that nature.

3 I was into this investigation. I don't harp on one

4 individual. Again, we have to find other individuals and

5 this investigation continued to go on, so we moved on.

6 Q. Did you make any attempt to determine how long biker
7 week lasted?

8 A. No attempt whatsoever. I moved to the next individual
9 and the next piece of this puzzle. That's where I moved to.

10 Q. Did you ever at a later date, say a week or two later,
11 try to go back and find Stephanie?

12 A. Again, I moved to the next piece of the puzzle. No.

13 Q. Sir, please answer my question.

14 A. I just answered. No. I can get no---

15 Q. You did not.

16 A. I can get no more direct than that, counselor.

17 Q. You didn't consider it important to follow up and see
18 whether or not she would verify every aspect of what Kevae
19 Dolphin was claiming?

20 A. I considered it very important to move to the next
21 portion of this investigation to corroborate all parts of
22 this investigation, so I moved forward.

23 Q. Okay.

24 A. I did not go to biker week to track her down or
25 anything. I did not.

1 Q. We talked a moment ago about the warrant that was
2 obtained for my client's cell phone records. Has that been
3 introduced? No?

4 **Ms. Campbell:** I cannot -- the search warrant is not
5 legally admissible in court or I would have produced it.

6 By Ms. Shurling:

7 Q. You've already given testimony about getting a search
8 warrant.

9 A. Yeah, search warrants were done on several numbers.
10 Yes.

11 Q. Pardon?

12 A. Search warrants were done on the numbers, yes.

13 Q. Who got that warrant?

14 A. Probably Investigator Reese.

15 Q. Okay.

16 A. Yes.

17 Q. Who got the warrant for Bailey's cell phone records?

18 A. Someone -- either Investigator Reese or someone in our
19 team.

20 Q. They did?

21 A. Again, I---

22 Q. Did you review---

23 A. Say that again.

24 Q. Did you review Jonathan Bailey's cell phone records?

25 A. Did I review them? No, I can't say that I reviewed

1 them.

2 Q. But it's your position that y'all had them?

3 A. You'd probably have to check with Investigator Reese on
4 Bailey. Again, Bailey -- Bailey's situation occurred before
5 I came into play. They had everything on Bailey before I
6 came into play on this. I came into play the next day. You
7 would have to talk to Investigator Reese on Bailey.

8 Q. If you don't record someone's interview---

9 A. Uh-huh.

10 Q. ---and you don't get a written statement from them---

11 A. Uh-huh.

12 Q. ---what happens if that person is no longer available as
13 a witness?

14 A. It will have to be dealt with at that point, but
15 apparently all our witnesses are here.

16 Q. Are you aware that one of the witnesses in this case
17 died before this trial?

18 A. I'm not aware of that.

19 Q. Thank you. Does the Columbia City Police Department
20 have any kind of policy about written notes during an
21 investigation or an interview?

22 A. The investigator determines what he's going to notate,
23 what statements he's going to take, how he takes those
24 statements. So, no, it's not written out in some policy
25 specifically exactly how I'm supposed to take my notes during

1 the course of my investigation.

2 Q. Is there any policy in the Columbia City Police
3 Department about what should be done with notes if they are
4 taken?

5 A. We're to give notations that are given in the
6 investigation to the prosecutor in our jackets when we turn
7 them in, and that's what we've done.

8 Q. So there's no rule about preserving notes in the file.

9 A. Again, whatever we develop in our investigation we are
10 to give the prosecution and that's it.

11 Q. Investigator Thomas, I'm not trying to be difficult.
12 I'm asking you if there is a policy about preserving your
13 notes in an investigation.

14 A. There is a policy about how we place our jackets, how we
15 do our jackets, yes. All right? And in our jackets there
16 are certain things that we should put in the jacket. All
17 right? Including the notes you keep referencing to, incident
18 reports and so forth, and that's been done in this case,
19 ma'am.

20 Q. It's not your position that the Columbia Police
21 Department policy permits you to destroy notes from
22 interviews, is it?

23 A. No notes are destroyed from interviews. I have not
24 destroyed any notes from interviews.

25 Q. I'll move on.

1 A. Thank you.

2 Q. Will you agree with me that in the scheme of things a
3 murder case is probably one of the most important kinds of
4 crimes you have occasion to investigate?

5 A. That's why I'm where I am because it is one of the most
6 important crimes that you have to investigate. That's why I
7 chose to do this job.

8 Q. And would you agree with me that in a murder case it's
9 especially important to observe the highest standards of
10 professionalism in police work?

11 A. And I try to ensure that I do so.

12 Q. Let's talk about when you went to Kevae Dolphin's house.
13 Where did you interview her?

14 A. Kevae Dolphin was interviewed in her living room area
15 where we could look at that monitor that was mentioned during
16 the course of the interviews, and we could plainly observe it
17 next to the television in the living room area.

18 Q. Okay. What date did you interview her?

19 A. Again, that was on the 22nd.

20 Q. What date was Mr. Bailey cut loose?

21 A. Mr. Bailey cut loose?

22 Q. Uh-huh. Yes.

23 A. Once we were able to corroborate his alibi and so forth,
24 I believe it was sometime around -- let's see. I want to say
25 around the 5th. On June the 5th I believe was around the

1 time Mr. Bailey was actually cleared.

2 Q. Was he in jail between May 20th and when he was cleared?

3 A. To my knowledge, he was in jail the entire time, yes.

4 Q. Did you investigate any contact that Mr. Bailey may have
5 had with Kevae Dolphin or Stephanie during that time?

6 A. During the time of his apprehension?

7 Q. Between when he was arrested and when you interviewed
8 Kevae Dolphin.

9 A. No. I've not checked on any communication between the
10 two of them, no.

11 Q. All telephone calls in the jail are recorded, aren't
12 they?

13 A. Yes, they are.

14 Q. So you had the opportunity at the time to check out any
15 calls Mr. Bailey may have made to Kevae Dolphin to give her a
16 heads-up about what he claimed, didn't you?

17 A. Yes.

18 Q. You didn't do that, did you?

19 A. No, did not.

20 Q. When you got to Kevae Dolphin's house---

21 A. Uh-huh.

22 Q. ---and when you interviewed her in her living room, this
23 was on the 22nd. Correct?

24 A. Correct.

25 Q. She pointed out the monitoring system to you?

1 A. That's correct.

2 Q. Did she demonstrate it for you?

3 A. Did she demonstrate it? No. She just advised that the
4 recorder was not working.

5 Q. Pardon?

6 A. She advised that the recording portion was not on.

7 Q. Did you verify that by examining the machine yourself?

8 A. Well, we looked at the machine, yes.

9 Q. Sir?

10 A. We looked at the machine, yes.

11 Q. You looked at it.

12 A. Uh-huh.

13 Q. Did you turn it on?

14 A. It was already on.

15 Q. Did you ask her to demonstrate for you where any data
16 recorded on the machine was stored?

17 A. No, I did not. I did not, no.

18 Q. Did you attempt to replay any information that may have
19 been on that recorder?

20 A. No. She stated that it was not recording. She showed
21 us the actual device itself and so forth, and that was it.

22 Q. And you took her word for it.

23 A. Yes, I did.

24 Q. And at that point you'd known her how long?

25 A. The moments that I entered the house, that's it and for

1 the time that we interviewed her.

2 Q. Did you look all the way around the perimeter of her
3 house?

4 A. All around the perimeter? No. We just noted -- we
5 noted where the camera was placed. When we first arrived, we
6 could see the camera itself. We went inside and spoke to her
7 and noted the set-up that they had in the house and retrieved
8 the information we needed and we left.

9 Q. On that date did she tell you that the majority of the
10 time Jonathan Bailey was there she was downstairs and Bailey
11 was upstairs alone with Stephanie?

12 A. That was stated, yes.

13 Q. Sir?

14 A. That was stated, yes.

15 Q. Okay. Did you attempt to go out the back door at the
16 Dolphin house?

17 A. No, I did not.

18 Q. So you don't know whether it was locked or not.

19 A. No.

20 Q. Did you examine the door to see what kind of lock it had
21 on it?

22 A. I did not examine any back door; no, ma'am.

23 Q. So you can neither confirm nor refute her claim that
24 that back door was locked with a key lock that she didn't
25 have access to.

1 A. I can only go on the statement she gave here on the
2 stand, ma'am.

3 Q. Okay. You didn't ask her to unlock it. You didn't
4 examine the lock.

5 A. No, ma'am.

6 Q. How about the windows? Did you check the windows in the
7 house to see if any of them were pinned?

8 A. I did not find the need to do either of those things
9 that you're inquiring about.

10 Q. Pardon?

11 A. I did not find the need to do either of the things
12 you're inquiring about, the windows nor the back door, so I
13 did not.

14 Q. How many homicide investigations have you worked on,
15 sir?

16 A. I can't even tell you that, ma'am. A lot.

17 Q. You have worked on cases, have you not, where someone
18 claimed to have been somewhere for a long period of time---

19 A. Uh-huh.

20 Q. ---as part of their alibi?

21 A. That's correct.

22 Q. And you were ultimately called upon as a part of your
23 investigation to determine whether they could have left---

24 A. Correct.

25 Q. ---long enough to have committed the crime.

1 A. Correct.

2 Q. And you didn't check that out in this case, did you?

3 A. Yes, I did.

4 Q. Sir?

5 A. The information that we received from the individuals we
6 interviewed in reference to Bailey corroborated Bailey's
7 alibi or corroborated his timeline and he was cleared.

8 Q. Again---

9 A. And it's a collective -- it's not just Stephanie. It's
10 not just Kevae. It's collective information that we have
11 received, all right, that corroborated Bailey's alibi.
12 That's why he was cleared. But I did not check a window or a
13 door.

14 Q. Okay. Now---

15 A. But I did check with other people. I checked with the
16 individual that we spoke with on the phone from the county
17 and so forth, and collaboratively it cleared Bailey.

18 Q. How far is Kevae Dolphin's house from the crime scene?

19 A. Her house is much further than the mental institution.
20 Her house is maybe 15 minutes -- 10, 15 minutes away from
21 that Greenview area I believe it is.

22 Q. Ten or 15 minutes.

23 A. Yeah.

24 Q. Jonathan Bailey in his interview claimed that he was on
25 the phone with Officer Jenkins for over a half an hour close

1 to an hour, did he not?

2 A. On the stand he said he couldn't recall, but I believe
3 at the interview he made that type of statement.

4 Q. You got his mother's cell phone records, didn't you?

5 A. I believe Investigator Reese did, yes.

6 Q. Okay. But you've seen them.

7 A. I viewed them, yes.

8 Q. You've reviewed them, and you know that that phone call,
9 in fact, only lasted 14 minutes; right?

10 A. That's correct. That's what he stated here on the
11 stand.

12 Q. And that it ended in plenty of time for him to have
13 gotten to this crime scene, didn't it?

14 A. I don't believe that he had time, due to the things that
15 he said and that the witnesses are saying, to be there. All
16 right.

17 Q. Pardon?

18 A. I do not believe and I didn't believe at that time and I
19 do not believe now that he had time to get anywhere due to
20 the information we received from the witnesses. Again, his
21 alibi was corroborated. He was cleared.

22 Q. A moment's indulgence, Your Honor. I show you what's
23 been entered as State's exhibit 58 and ask you to reference a
24 14-minute call on 5/20.

25 A. 5/20, 14 minutes. All right.

1 Q. According to that record, what time was that call
2 initiated?

3 A. If I'm looking at it correctly, it is showing a time of
4 12:20.

5 Q. 12:20.

6 A. Uh-huh.

7 Q. Twenty plus 14 is what?

8 A. That's 34.

9 Q. 12:34.

10 A. Uh-huh.

11 Q. And what's the best approximation of what time the shots
12 were fired at the Hudson residence?

13 A. Approximately 12:52 or, I mean, what was it? About
14 12:52, 12:58, along that range.

15 Q. 12:58?

16 A. Yeah.

17 Q. Okay.

18 A. On that one...

19 Q. Plenty of time to drive six miles, isn't it?

20 A. Well, again, on the collaborative information that we
21 received in reference to Bailey, not. Bailey did not drive;
22 he doesn't have a car. He got dropped off by his girlfriend
23 who, unbeknownst to her, was dropping him off to see another
24 female who he intended to spend time with. He had no
25 mobility at that moment to go anywhere. He is depending on

1 other people to pick him up. Someone else picked him up to
2 actually transport him from that location, so, no.

3 Q. Someone else picked him up.

4 A. That's correct.

5 Q. Who did Kevae Dolphin tell you picked him up?

6 **Ms. Campbell:** Objection, Your Honor, to hearsay on
7 this.

8 **The Court:** Sustained.

9 By Ms. Shurling:

10 Q. According to your case notes---

11 A. Uh-huh.

12 Q. ---what did your investigation yield concerning who
13 picked Bailey up?

14 **Ms. Campbell:** Objection, Your Honor, as to who---

15 **The Court:** Sustained.

16 **Ms. Campbell:** Thank you.

17 **The Witness:** He was picked up.

18 By Ms. Shurling:

19 Q. Pardon?

20 A. He was picked up by a friend.

21 Q. By a friend.

22 A. Uh-huh.

23 Q. What would prevent that same friend or another from
24 picking him up down the street somewhere sometime during this
25 time period?

1 A. I have no evidential facts that that occurred.

2 Q. Pardon?

3 A. I have no evidential facts that that occurred

4 whatsoever, but I do have corroborating facts that it did not
5 by the statements given by individuals that we interviewed.

6 Q. And you corroborated---

7 A. Uh-huh.

8 Q. ---that he couldn't have gotten out the back side of the
9 house where there was no camera.

10 A. No evidence indicated that that ever occurred.

11 Q. If we believe Kevae and Stephanie.

12 A. That's up to the jury. They've heard those young
13 ladies' statements.

14 Q. But you haven't provided them any tools to know whether
15 or not they were telling the truth, have you?

16 **Ms. Campbell:** Objection, Your Honor.

17 **The Court:** Sustained. Ms. Shurling, that's an issue
18 for the jury to decide.

19 **Ms. Shurling:** I'll move on.

20 By Ms. Shurling:

21 Q. In her testimony yesterday, Kevae referred to there
22 being a couple of other girls that were at the house getting
23 their hair done in the garage?

24 A. Uh-huh.

25 Q. Did you find out those girls' names?

1 A. No, I did not. I don't believe she mentioned those
2 individuals at the time. The only person that was mentioned
3 at the time was Stephanie which is the---

4 Q. She didn't, did she?

5 A. Say that again.

6 Q. She didn't tell you there was anybody else there, did
7 she?

8 A. All she mentioned was Stephanie at the time.

9 Q. So she didn't acknowledge that there were other people
10 there until her testimony here today.

11 A. All she mentioned at the time was Stephanie.

12 Q. Let's move on to Travis Golston.

13 A. Golston.

14 Q. You took his statement all by yourself; right?

15 A. Golston. Let me see if I can locate him. On what day
16 was that, ma'am, that you're referring to?

17 Q. I believe March 11th, '09, according to your testimony
18 on direct.

19 A. March 11th, '09? Was that March 11th, '10?

20 Q. '09.

21 A. Okay.

22 Q. Or---

23 **Ms. Campbell:** '10.

24 By Ms. Shurling:

25 Q. Pardon me. March 11th, '10.

1 A. Okay.

2 Q. And I apologize for that. Too many dates to keep up
3 with. It's important that it was the 10th, so thank you.
4 March 11th, 2010.

5 A. Okay. Let me see what I can locate. All right. I do
6 recall. Let's see... Okay. Yes, ma'am.

7 Q. His interview was recorded; correct?

8 A. Correct.

9 Q. Did you talk to him any that isn't on that recording?

10 A. Did I talk to him any that isn't on the recording?

11 Q. Was there any interview -- did you ask him any
12 questions, discuss this with him at all before the recording
13 was turned on or after?

14 A. I advised him of what we were going to do and what it
15 would entail, and I think I spoke with his lawyer in
16 reference to this information being given freely. There will
17 be no deals cut, made, so forth, so on. So, yeah, I did
18 that.

19 Q. Okay. And he was in jail.

20 A. That's correct. That's why I made that spiel so that
21 it's clear that information he's providing us is free and
22 voluntary and that by providing this we're not cutting any
23 time off his sentence. I can't even recall what he was in
24 there for or anything of that nature. So I gave that spiel
25 prior to just to ensure that he wanted to give this

1 information freely.

2 Q. How long had he been in jail on March 11th, 2010?

3 A. Who? Travis?

4 Q. How long had he been sitting at the Alvin S. Glenn
5 Detention Center?

6 A. To be honest, I can't tell off the top of my head. I
7 just know he was in jail when we were contacted. He'd been
8 there.

9 Q. You don't know the arrest date?

10 A. To be honest, I can't recall. Even if I knew it at the
11 time, I just knew that it was an inmate that was incarcerated
12 that wanted to talk to investigation in reference to the
13 murder.

14 Q. Are you aware that he was released on a P.R. bond very
15 shortly after giving you his statement?

16 A. I did not check the status.

17 Q. What's a P.R. bond?

18 A. Personal recognizance, meaning you don't have to come up
19 with my money.

20 Q. Well, he'd been sitting in jail for awhile, but you
21 don't know how long.

22 A. No.

23 Q. He gives this statement against my client, and all of a
24 sudden he's released on a P.R. bond.

25 A. Again, I don't know what he was released on. There are

1 other individuals that spoke to us. I have no idea of their
2 status either.

3 Q. You didn't have anything to do with helping him get a
4 P.R. bond?

5 A. Again, I gave my spiel to him before he gave his
6 statement and that was it. Whatever the course of his
7 sentencings and so forth, I had nothing to do with that. And
8 his bond, I definitely had nothing to do with bonds.

9 Q. Pardon?

10 A. I said I had nothing to do with his bonds or anything
11 like that. That is not of interest. The interest that I had
12 was whatever he wanted to provide to me in reference to this
13 case. That's my interest.

14 Q. Now, a P.R. bond means that you don't even have to post
15 any money to get out, doesn't it?

16 A. It means that you must come to court appearances as
17 scheduled is my understanding.

18 Q. And that you don't have to post money to get out.

19 A. No.

20 Q. Correct?

21 A. Correct.

22 Q. And he wasn't given a P.R. bond until after he gave the
23 statement to you against my client.

24 A. Again, whatever happened to these individuals I can't
25 tell you, ma'am. If that's what your records show, then that

1 apparently is what happened.

2 Q. A moment's indulgence. You have recalled for us how
3 this recording malfunctioned or download malfunctioned---

4 A. Uh-huh.

5 Q. ---happened on my client's interview.

6 A. Correct. That actually happened on another interview as
7 well. It's not just your client.

8 Q. It didn't happen on any of the interviews in this case.

9 A. Not in this case, no, but in another murder case, yes.

10 Q. Can you tell us what case that was?

11 A. That's not relevant here.

12 Q. You brought it up, sir. You opened the door.

13 A. I'm just---

14 **Ms. Campbell:** Objection, Your Honor, as to relevance.

15 **The Court:** The name of the case doesn't have
16 anything -- sustained. Let's move on.

17 By Ms. Shurling:

18 Q. Did you document in any way this equipment failure?

19 A. I believe Investigator Reese may have documented it in
20 his notes that I can recall. It was a very serious situation
21 for us. We were not pleased. We really wanted you to hear
22 your client.

23 Q. And that's why when you didn't have a recording you went
24 that extra mile to get a written statement signed; right?

25 A. No, that's why we went the extra mile to get the

1 technician in to try and recover the data.

2 Q. And when you couldn't---

3 A. Then we moved on.

4 Q. Without even trying to get a written statement.

5 A. Correct.

6 **The Court:** All right. Anything on redirect?

7 **Ms. Campbell:** Yes, sir.

8 Redirect Examination

9 By Ms. Campbell:

10 Q. She's asked you questions about the equipment and
11 everything about the interview with Hackshaw.

12 A. Uh-huh.

13 Q. You all chose to terminate that.

14 A. Yes.

15 Q. Because what was his attitude at that point?

16 A. He was arrogant. He was noncooperative. He was in just
17 a -- seemed angry at certain points and just was absolutely
18 defiant about anything, even with his attorney trying to tell
19 him to cooperate.

20 Q. So what did -- would he have given you any information
21 in a written statement?

22 A. No.

23 Q. And---

24 **Ms. Shurling:** Objection, Your Honor. It calls for
25 speculation.

1 **The Court:** Sustained.

2 **The Witness:** It was determined that he wouldn't.

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

4 **The Witness:** It was determined that he wouldn't
5 cooperate further.

6 By Ms. Campbell:

7 Q. And as to what he told you, it's documented in the
8 notes. Is that correct?

9 A. That's correct.

10 Q. And basically he denied knowing anything about anything.

11 A. That's correct.

12 Q. She also asked you about your training and everything.
13 Is it discretionary whether or not you take a written
14 statement from a witness?

15 A. Yes, it is.

16 Q. And in some agencies they're actually forbidden from
17 actually taking recorded statements such as you did in this
18 case.

19 A. Yes, it is.

20 Q. And even in the F.B.I. they aren't allowed to take
21 written statements in any manner. They just do summaries
22 like are in your case notes.

23 A. Absolutely.

24 Q. And in those case notes that you referred to, is it
25 documented, in addition to the written, what each and every

1 witness in this case told you?

2 A. Yes, it is.

3 Q. And that's proper police protocol.

4 A. Yes, it is.

5 Q. And that was followed in this case.

6 A. Yes, it was.

7 Q. She had also asked you about on Kevae whether or not she
8 told you about other people in the house. When you spoke to
9 Kevae Dolphin, you were trying to find out who had actually
10 seen Jonathan Bailey that day.

11 A. Correct.

12 Q. And the two people that she indicated had seen him, she
13 gave you the names - Stephanie and herself.

14 A. Correct.

15 Q. The other people were in the garage.

16 A. Correct.

17 Q. She asked you about a witness that had died in this
18 case?

19 A. Right.

20 Q. And that witness just gave you information corroborating
21 the silver Honda?

22 A. Correct.

23 Q. She also asked you about Bailey and when you cut him
24 loose, that you actually sent -- I believe you and I had a
25 conversation about him being exonerated in this case?

1 A. Correct.

2 Q. But he was being held on other charges anyway, wasn't

3 he?

4 A. Correct.

5 Q. So the fact that you didn't get the memo to me 'til June

6 the 5th didn't affect his custody status in any way.

7 A. No, it did not.

8 Q. She also asked you about the time frame of this

9 incident?

10 A. Uh-huh.

11 Q. I'm going to refer to the incident report. On that does

12 it say the time that the actual event, the shooting, would

13 have actually started?

14 A. It shows the incident time dispatched was at 13:01.

15 Q. Excuse me. Let me back up to the incident time.

16 A. It shows the incident time at 12:52.

17 Q. 12:52?

18 A. Yes, ma'am.

19 Q. And then the first dispatch time was three minutes

20 later?

21 A. Then the first dispatch time was 12:56..

22 Q. During the course of your investigation -- and was it

23 corroborated by independent witnesses as well as the victim

24 in this case---

25 A. Uh-huh.

1 Q. ---that the persons that committed this murder had
2 circled around several times?

3 A. That's correct.

4 Q. And does that take time?

5 A. It does take time.

6 Q. So the actual time that the persons that committed this
7 crime were there would have been well before 12:52.

8 A. Absolutely.

9 Ms. Shurling: Objection, Your Honor. That calls for
10 speculation.

11 The Court: Well, I don't know. I overrule the
12 objection.

13 Ms. Campbell: Thank you, Your Honor.

14 By Ms. Campbell:

15 Q. She also talked about what you had to corroborate with
16 Kevae on May the 22nd when you talked to her and she asked
17 you about you didn't go and talk to Stephanie the next day or
18 the next day or the next day. When did y'all interview the
19 victim in this case that had lied about Jonathan Bailey---

20 A. We interviewed---

21 Q. ---after talking to Kevae?

22 A. We interviewed Hudson again on the 23rd which is the
23 very next day.

24 Q. And in that interview did he admit to lying about the
25 identity of the person who shot him?

1 A. That is correct.

2 Q. So at that point the person who alleged it was Jonathan
3 Bailey admitted he was wrong.

4 A. Exactly.

5 Q. And you already had the information about Stephanie to
6 follow up at a later date.

7 A. Correct.

8 Q. For the record, the search warrant that allowed you to
9 get the -- we can't admit it, but it was a lawful search
10 warrant?

11 A. Yes, it was.

12 Q. And was it signed off on by an independent judge?

13 A. Yes, it was.

14 Q. Isn't that necessary before you can go and invade
15 anyone's privacy---

16 A. Yes, it is.

17 Q. ---in getting their records?

18 A. Yes, it is.

19 Q. And was that done in this case?

20 A. Yes, it was.

21 Q. Was proper police procedure done in this case?

22 A. Yes, it was.

23 Q. The person that the evidence shows committed this murder
24 that you've charged with this murder---

25 A. Yes.

1 Q. ---do you see him here in the courtroom?

2 A. Yes, I do.

3 Q. Can you identify him for the jury?

4 A. The gentleman in the gray suit, Anthony Hackshaw.

5 Ms. Campbell: Your Honor, may the record reflect he's
6 identified Anthony?

7 The Court: All right. Ms. Shurling?

8 Recross Examination

9 By Ms. Shurling:

10 Q. When Hudson changed his story from Bailey to Hackshaw,
11 he didn't admit that he had lied when he said it was Bailey,
12 did he?

13 A. When he changed his story, yes.

14 Q. He did not tell you, "I lied when I said it was Bailey."

15 A. When he changed his story, it changed the direction of
16 the investigation.

17 Q. Sir, that's not what I asked you. You were just asked
18 and answered affirmatively that when he changed his story he
19 admitted to you that he had lied about it being Bailey. That
20 isn't true, is it?

21 A. He didn't use the word lie, but the narrative that he
22 gave in the next statement... He didn't say, "I lied." If
23 you're asking did he use that word, no, but he changed his
24 story denying that it was Bailey at the time.

25 Q. You were in the courtroom yesterday, weren't you?

1 A. Yes, I was.

2 Q. Did you not hear the portion of the audiotape where Mr.
3 Hudson said clearly when challenged about why he hadn't named
4 Hackshaw to begin with he said, "Because I didn't think it
5 was no Bump, but y'all said it couldn't be Bailey"? Isn't
6 that what he said?

7 A. I heard Mr. Hudson's statement on the stand, and his
8 statement on the stand and that statement in the recording
9 are consistent.

10 Q. You were asked a few moments ago whether when Mr. Hudson
11 changed his story he admitted to you folks that he had lied
12 when he named Bailey, and you answered affirmatively.

13 A. Affirmative.

14 Q. He did not tell you, "I lied. It wasn't Bailey. It was
15 Hackshaw."

16 A. He did not -- he did not say the word, "I lied." All
17 right? But the information that he provided us in his
18 statement advised that Bailey was not the shooter, if that
19 helps any. All right? But he didn't say the word that she's
20 asking for that, "I lied."

21 Q. And he indicated to you that the reason he was changing
22 it from Bailey to Hackshaw was because law enforcement told
23 him it couldn't be Bailey.

24 A. No, that's not -- he didn't indicate that on the stand
25 either. He didn't indicate that during the interview nor on

1 the stand.

2 Q. Sir, are you accusing me of fabricating the tape the
3 jury listened to yesterday?

4 **The Court:** Ms. --- Ms. Shurling, that is not
5 appropriate.

6 **Ms. Shurling:** No further questions, Your Honor. A
7 moment's indulgence, Your Honor.

8 By Ms. Shurling:

9 Q. Ah, I was about to forget something important.

10 A. Yes, ma'am.

11 Q. Who has died since this event? What witness?

12 A. Again, I can't recall who has passed. You mentioned it
13 and Ms. Luck mentioned it. I can't recall who passed.

14 Q. You don't know which one of your witnesses has died?

15 A. I can't recall, ma'am. I just answered your question.

16 Q. Well, the case summary that we have been referring to
17 talks about a Ms. Williams---

18 A. Okay.

19 Q. ---who was interviewed.

20 A. Okay.

21 Q. Are you aware that Ms. Rosa Williams is now deceased?

22 A. Well, since you're mentioning it, I would guess that
23 that's the individual that's passed.

24 Q. And I believe you testified earlier that all these
25 witnesses' statements just corroborated what you knew anyway?

1 A. Correct.

2 Q. Correct?

3 A. Correct.

4 Q. Isn't it true that your investigation of this particular
5 witness yielded information that a four-door Honda was seen
6 driving on Juniper?

7 A. It has been my experience that when you interview
8 witnesses -- you can interview all 12 of these individuals.
9 They could see the same car, and there will be variances in
10 the description of the car. Some will see a hatchback. Some
11 will see a four-door. Some will see a two-door. Some would
12 see rims; some would not see rims. So it is not uncommon
13 that when you give a physical description - height, weight of
14 an individual - or a physical description particularly of
15 automobiles that the brand, the style, and so forth will vary
16 depending upon the individual themselves.

17 Q. So in your experience---

18 A. Uh-huh.

19 Q. ---eyewitness testimony about what kind of car, what
20 model car, what style car---

21 A. Uh-huh.

22 Q. ---is not very reliable.

23 A. I said it could vary.

24 Q. Pardon?

25 A. I said it could vary.

1 Q. It could vary greatly.

2 A. I said it could vary.

3 Q. You've just recalled that one witness referred to this
4 silver Honda as a hatchback; right?

5 A. Correct.

6 Q. Were you able to determine in the course of your
7 investigation that the silver Honda my client and his wife
8 had for a time was a hatchback?

9 A. It's not a hatchback.

10 Q. It was not a hatchback.

11 A. No.

12 Q. Do you have a written statement from the now deceased
13 Rosa Williams with the information she provided you?

14 Ms. Campbell: Objection, Your Honor. Asked and
15 answered.

16 The Court: Well, the information she may have provided
17 is hearsay and it's not appropriate, so let's -- does he have
18 a written statement from Ms. Williams? Is that the question?

19 The Witness: No.

20 Ms. Shurling: My question is we don't have a written
21 statement from Ms. Williams.

22 The Court: Well, ask the question. Is that the
23 question? Do you have a written statement from Ms. Williams?

24 The Witness: I do not have a written statement from Ms.
25 Williams.

1 **The Court:** All right. Then the answer is no.

2 **Ms. Shurling:** And you've already confirmed that your
3 case note summaries confirm that your investigation -- the
4 portion of your investigation dealing with Ms. Williams
5 yielded information that it was a four-door Honda.

6 **Ms. Campbell:** Objection, Your Honor. Hearsay.

7 **The Court:** Sustained.

8 **Ms. Shurling:** He's already answered that question
9 without objection, Your Honor.

10 **The Court:** Well, she's objecting now. It's sustained.

11 **Ms. Shurling:** No further questions, Your Honor.

12 **The Court:** All right. You may step down.

13 **The Witness:** Thank you, Your Honor.

14 **Ms. McDuffie:** May it please the Court, Your Honor? The
15 State would call Investigator Kerry Johnson.

16 Kerry Johnson, after being duly sworn, testified as
17 follows:

18 **The Clerk:** Please have a seat and state your full name
19 for the record.

20 **The Witness:** My name is Kerry Johnson.

21 Direct Examination

22 By Ms. McDuffie:

23 Q. Investigator Johnson, where are you currently employed?

24 A. With the Richland County Sheriff's Department.

25 Q. And what are your duties with the Richland County

1 Sheriff's Department?

2 A. At the moment, I'm an investigator dealing with property
3 crimes.

4 Q. And in -- on April the 23rd of 2009 were you employed in
5 the Richland County Sheriff's Department?

6 A. I was.

7 Q: And in what capacity were you employed there?

8 A. I was a training officer in a uniform, responded to
9 calls and trained new officers.

10 Q. And how long have you been in law enforcement?

11 A. March the 3rd will be 25 years.

12 Q. And prior to being at Richland County, where were you
13 employed?

14 A. I was with the Lexington County Sheriff's Department for
15 18 years, and I was a Columbia city police officer for almost
16 two years.

17 Q. And on April the 23rd, 2009, did you respond to [REDACTED]
18 [REDACTED]?

19 A. I did. I was dispatched to a call there to meet with a
20 complainant about some shots that had been fired in the
21 apartment complex.

22 Q. And you were dispatched to a shooting?

23 A. That's correct.

24 Q. And when you arrived on the scene, what did you observe?

25 A. When I arrived on the scene at [REDACTED]

1 which is the Wyndham Pointe Apartments in the Dentsville area
2 of Richland County, there were several people milling around.
3 I made contact with the lady who called. I noticed a window
4 on the second floor had bullet hole in it. I spoke to
5 several people in the area of the -- of the complex that had
6 been there when the shooting occurred.

7 Q. And the information you received was about a shooting?

8 A. That's correct. The information I received is that
9 there were two, maybe more, shooters but at least two: One
10 on the -- in the parking lot shooting back up toward the
11 second or third floor of building number two and there was
12 also indication that someone up on the second or third floor
13 was shooting back down at the individual in the parking lot.

14 Q. And did you through your investigation learn who the
15 individual who was shooting down may be?

16 A. Through my investigation it led me to speak to Mr.
17 Hackshaw who lived in apartment [REDACTED] which is that building
18 where the gun -- where the bullet hole was in the window, and
19 I did knock on the door of [REDACTED] and did make contact with Mr.
20 Anthony Hackshaw on that day.

21 Q. And what did Mr. Hackshaw tell you that day?

22 A. As we did to just about everybody there, we knocked on
23 the door to see if anybody saw anything, and Mr. Hackshaw had
24 several people, from what I remember, inside the apartment.

25 I stated to him that several gunshots had been fired

1 reportedly right outside of his door. Certainly he must have
2 heard or seen something.

3 At first he just flat out denied that he had any
4 knowledge of it whatsoever, and the more I questioned him,
5 the more adamant that he was that he didn't know anything
6 about it. In fact, he got very angry at me and asked me why
7 was I still asking him questions when I think another officer
8 had already spoken to him.

9 Q. And please describe his demeanor for the jury.

10 A. Again, as I -- I had -- I had talked to him and just
11 something about his demeanor made me want to ask him more
12 questions. Again, he was right in the area where the
13 shooting had occurred. He was right in the area and lived on
14 the floor to where the second shooter who was shooting down
15 at the parking lot was located. And the more I asked Mr.
16 Hackshaw about his dealings that morning, what he was doing,
17 the people he had in his apartment, he got very agitated,
18 very belligerent toward me, again just wanted me to get away
19 quite frankly, didn't want me to ask him any more questions.

20 Q. And did you proceed to talk to other people at the
21 apartment complex?

22 A. Yes, I did. I spoke to several witnesses. There was
23 one in the parking lot who was actually waiting on the police
24 to arrive when we got there, and that particular witness
25 actually handed me a shell casing of one of the shots that

1 had been fired that was out in the parking lot. That witness
2 also gave me a brief description of what he thought the
3 person on the breezeway up on the second or third floor was
4 wearing, and that kind of matched what Mr. Hackshaw had on at
5 the time also.

6 Q. And you collected that shell casing that was given to
7 you at the scene?

8 A. I did, turned it in to evidence.

9 Q. And were you able to charge anyone or come up with
10 anything other than a shooting at the apartment complex that
11 day?

12 A. No, I was not. We did the initial investigation,
13 completed the incident report, listed all the witnesses and
14 the lady who was -- who had the hole shot in her window and
15 put her down as a complainant, the victim, and waited for
16 C.S.I. to respond. Once C.S.I. got there, I pointed out
17 various areas for him to process, one being a car that had a
18 bullet hole in it. Hopefully we were able to get the -- a
19 fragment of the bullet out of the car. Once that was
20 underway, I left the scene.

21 Q. And while you were at the scene and speaking with all
22 the witnesses, including Mr. Hackshaw, did anyone mention a
23 robbery?

24 A. One of the witnesses stated that the guy that was in the
25 parking lot was holding something, and my report indicates

1 that he was carrying a plastic bag that, quote, looked like
2 it had clothes in it, but he really couldn't tell what was
3 inside and that the guy in the parking lot that was shooting
4 back up towards the second or third story was holding it
5 tightly and running with it as if he had just taken it.

6 Ms. McDuffie: Thank you. No further questions of this
7 witness, Your Honor.

8 Cross-Examination

9 By Ms. Shurling:

10 Q. Good morning.

11 A. Good morning.

12 Q. From the testimony of the witnesses at the scene, were
13 you able to determine who fired first?

14 A. I was not.

15 Q. There was no way for you to know whether the people
16 running away with something had fired first at the apartment
17 or whether someone at the apartment had fired at them.

18 A. I was unable to determine that.

19 Q. And to this day, other than the claims of those
20 individuals who have now been identified, you have no way of
21 proving that, do you?

22 A. The extent of my investigation, I had no way to.

23 Q. And I just want to clarify something. It was a little
24 confusing to me. You said something about getting a bullet
25 fragment out of Ms. Rodriguez's car? Is that correct?

1 A. Let me -- let me verify that name. Hold on one second,
2 please.

3 Q. Carmen Rodriguez?

4 A. I believe Carmen Rodriguez was the one that owned the
5 car that was in the parking lot. There was a bullet hole in
6 the car that had obviously occurred during this shoot-out,
7 and I directed the C.S.I. - I think it was Oates at the time
8 - to attempt to try to get a bullet fragment out of that car.

9 Q. And were you able to get a bullet fragment out of that
10 car?

11 A. Again, I left the scene and that was being taken care of
12 by the crime scene investigator. I don't have personal
13 knowledge if anything was taken out of it.

14 **Ms. Shurling:** Thank you. No further questions.

15 **The Court:** Anything?

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

17 **The Court:** All right. Thank you very much. You may
18 step down.

19 **The Witness:** Thank you.

20 **The Court:** All right. Ladies and gentlemen, we're
21 going to take a break at this time. I'll let you step back
22 to the jury room, have some refreshments, relax a little bit.
23 Please don't discuss the case while you're there, and we'll
24 bring you back in about 15 minutes.

25 (Whereupon, the jury was excused from open court at

1 10:41 a.m.)

2 **The Court:** All right. We'll stand in recess for a
3 little bit.

4 (Whereupon, a short break was taken.)

5 **The Court:** All right. Thank y'all. All right. Let's
6 bring the jury in if we could, Mr. Dye. Can you tell them --
7 or somebody. Oh, we don't have the defendant? Oops.

8 **Bailiff:** He's coming.

9 **The Court:** Tell them not to bring -- Marshall, tell
10 them don't bring the jury in yet.

11 (Pause in proceedings. Mr. Hackshaw was brought into
12 the courtroom.)

13 **The Court:** All right. Now we can bring the jury in if
14 we could.

15 (Whereupon, the jury was brought into open court at
16 11:00 a.m.)

17 **The Court:** Madam Solicitor, y'all ready to call your
18 next witness?

19 **Ms. McDuffie:** If it pleases the Court, Your Honor, the
20 State would call Investigator William Gonzalez.

21 William Gonzalez, 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

1 witnesses, any information from the witnesses that were given
2 on the scene, anything that could help us -- help the
3 investigator later on in his follow-up.

4 Q. And then what is your role when you get the case, when
5 the case is assigned to you?

6 A. When the case is assigned to me, I will look at the
7 report, start gathering information. If there's any witness
8 information or if there's any suspect information, I'll start
9 gathering pictures. I like to put a face with a name and
10 then go to the scene and start asking questions around, see
11 if anybody has seen anything or is familiar with what the
12 incident report states.

13 Q. And did you begin to investigate a shooting that
14 occurred on April 23rd, 2009, at [REDACTED] ?

15 A. That's correct, ma'am.

16 Q. And how did you proceed with your investigation or what
17 did you first do?

18 A. I initially responded out to the incident location, and
19 I went and spoke to several individuals that were out there.
20 I spoke to the manager, got a list of everybody that lived in
21 that building so I could go door to door and talk to people
22 to see if they saw anything that was different from anybody
23 else.

24 Q. And did you do that? Did you follow up with witnesses
25 regarding the shooting incident?

1 A. That's correct, ma'am.

2 Q. And did you have the chance to speak with Anthony
3 Hackshaw?

4 A. That's correct.

5 Q. And when -- do you recall when that occurred?

6 A. In one of my second or third visits back to the
7 apartment complex, I confronted Mr. Hackshaw at the manager's
8 office outside.

9 Q. And please describe that -- that meeting with Mr.
10 Hackshaw to the jury.

11 A. I confronted Mr. Hackshaw. I knew who he was. I had a
12 picture of him already. And I asked him if -- I presented
13 myself who I was and I asked him if he could tell me anything
14 about what happened in front of the building -- the shooting
15 that happened in front of the building, and his words was, "I
16 don't know what you're talking about. I have no knowledge or
17 I have no involvement in that."

18 Q. And please describe his demeanor for the jury.

19 A. Well, I kept on asking questions and poking a little bit
20 more, and at one point he got agitated to a point that he
21 raised his voice to a certain level and I had to ask him to
22 bring it back down. It's just me and him talking. We don't
23 need to be yelling or screaming or nothing like that here.

24 Q. And he denied any knowledge or any involvement in the
25 shooting incident at [REDACTED].

1 A. That's correct.

2 Q. And on June the 4th of 2009 did you receive further
3 information in this case?

4 A. I was approached by the city investigators, Investigator
5 Reed.

6 Q. And did you, along with the city investigators,
7 interview Ellison Hudson?

8 A. That's correct.

9 Q. And based on your conversations with Ellison Hudson, did
10 you learn more information regarding Anthony Hackshaw?

11 A. Yes, ma'am.

12 Q. And please tell the jury what your investigation
13 revealed.

14 A. After speaking to Mr. Ellison, his information that he
15 gave me was pretty much consistent with what I had so far
16 found out by witnesses on the scene.

17 Q. Regarding what sort of incident?

18 A. Regarding the shooting.

19 Q. And based on the information you had from the witnesses
20 on the scene and also from Ellison Hudson, did you get a
21 lawful search warrant to execute at Anthony Hackshaw's home
22 for evidence relating to that shooting?

23 A. That's correct, ma'am.

24 Q. And can you please tell the jury the address of the home
25 that you searched?

1 **Ms. Shurling:** Your Honor, subject to my previous
2 objection.

3 **The Court:** All right.

4 **The Witness:** Can I refer to my...

5 By Ms. McDuffie:

6 Q. Please, yes.

7 A. Real quick. The address that we searched was [REDACTED]

8 [REDACTED]. I'm looking at the search warrant right
9 now. [REDACTED], apartment [REDACTED], Columbia, South
10 Carolina.

11 Q. And were you aware who the occupant of that apartment
12 was?

13 A. That's correct, ma'am.

14 Q. And who was that?

15 A. Anthony Hackshaw along with his wife.

16 Q. And I'm going to show what's been marked as State's
17 exhibit 61. Do you recognize this item?

18 A. Yes, ma'am.

19 Q. And where did you find -- or did you find this item?

20 A. Correct, ma'am.

21 Q. And is this the actual item you found?

22 A. That's correct.

23 Q. Where did you find this item?

24 A. If I'm not mistaken, it was in the found in the bedroom
25 dresser, the right drawer, on the top right drawer.

1 Q. Of whose bedroom?

2 A. Of the -- there was only one bedroom in there: Anthony
3 Hackshaw and his wife.

4 Ms. McDuffie: Your Honor, at this time we'd offer
5 State's exhibit 61 into evidence.

6 Ms. Shurling: Again, subject to my previous objection.

7 The Court: All right. So admitted over the defendant's
8 objection.

9 (State's exhibit 61 was received in evidence.)

10 By Ms. McDuffie:

11 Q. Can you please tell the jury what is in State's exhibit
12 -- what State's exhibit 61 is?

13 A. That's a print-out of the -- of a jail picture when an
14 individual is arrested from the Alvin Glenn Detention Center.

15 Q. And who is the individual depicted in this photograph?

16 A. Ellison Hudson.

17 Q. And you found this actual piece of paper in Anthony
18 Hackshaw's home?

19 A. That's correct, ma'am.

20 Q. And where in his home did you find this?

21 A. I found it in his dresser drawer in his bedroom on the
22 top -- top drawer.

23 Q. And what date did you execute the search warrant?

24 A. The search warrant was executed on June the 8th of 2009
25 at 10:30 in the morning.

1 Q. June the 8th of 2009?

2 A. Ma'am?

3 Q. June the 8th of 2009?

4 A. That's correct.

5 Q. And were you able to further pursue your investigation
6 into this matter or did you further pursue your investigation
7 into this matter?

8 A. After the search warrant?

9 Q. (Nodded head up and down.)

10 A. No, ma'am.

11 Q. And why is that?

12 A. Once we -- once we executed the search warrant, there
13 was basically no victim.

14 Q. What do you mean no victim?

15 A. Based on the report -- can you clarify your question,
16 ma'am?

17 Q. Was Ellison Hudson charged with robbing Mr. Hackshaw?

18 A. Oh, no, ma'am.

19 Q. Why?

20 A. There was no victim. There was no victim that came
21 forward and reported that he was robbed. We were strictly
22 investigating the shooting that happened in front of the
23 building, that there were real property and personal property
24 that was damaged.

25 Q. And Mr. Hackshaw never cooperated in your investigation

1 of the robbery.

2 A. That's correct.

3 Q. Beg the Court's indulgence. The individual that you
4 spoke to at the apartment manager's office in April of -- in
5 April or into early May of 2009, do you see him in the
6 courtroom today?

7 A. Yes, ma'am.

8 Q. And can you please point him out for the jury?

9 A. Yes, ma'am. It's the -- it's the gentleman sitting
10 right in the middle of the chair -- of the table.

11 Q. And can you please -- what is he wearing, for the
12 record?

13 A. He's wearing a gray -- gray jacket, gray shirt.

14 **Ms. McDuffie:** Beg the Court's indulgence. No further
15 questions.

16 **The Court:** All right. Let the record reflect he's
17 identified the defendant.

18 Cross-Examination

19 By Ms. Shurling:

20 Q. Good morning.

21 A. Good morning, ma'am.

22 Q. I believe you indicated that there were witnesses from
23 the scene who reported shots being fired in both directions
24 on the April incident?

25 A. That's correct.

1 Q. Was there any way for you to ascertain from the
2 information you gleaned in your investigation who fired
3 first?

4 A. Not at that immediate -- not at that moment, no.

5 Q. And to this day the only information you have concerning
6 who fired first comes from Mr. Hudson claiming that he didn't
7 fire first. Correct?

8 A. That's correct.

9 Q. There's no way to verify that.

10 A. That's correct.

11 Q. But you did have witnesses from the scene that reported
12 seeing someone firing shots from off my client's balcony?

13 A. That's correct.

14 Q. Okay. And you had a hole, gunshot hole, in a window at
15 my client's apartment, I believe.

16 A. No, ma'am. I believe there was a gunshot hole in one of
17 the apartments which is next to where your client was
18 supposed to be standing when he was shooting.

19 Q. So if an earlier officer testified that there was a
20 gunshot hole in a window at my client's apartment; that would
21 be in error?

22 A. I don't know what the officers testified. I just know
23 what I know.

24 Q. I'll move on. Some states have a system where a victim
25 has to bring charges. Isn't that true?

1 A. That's correct.

2 Q. South Carolina doesn't have that system, do we?

3 A. Oh, without a victim there's nobody there to make
4 charges, ma'am.

5 Q. Well, charges in this state belong to, for lack of a
6 better description, the State, not the victim. Correct?

7 A. It all depends. It depends what kind of charges.

8 Q. Well, for example, if I were sitting at a bar and my
9 ex-husband walked in and cold-cocked me in front of 50
10 witnesses, broke my nose, bloodied me, if I refuse to
11 cooperate, didn't want to get him in trouble, you could still
12 bring charges against my ex for assault and battery of a high
13 and aggravated nature, couldn't you?

14 A. Oh, in that situation it would be criminal domestic
15 violence.

16 Q. Not if he's my ex. But in any event---

17 A. Yes, ma'am.

18 Q. ---you could bring charges for assault and battery even
19 if I didn't want to press charges. Right?

20 A. In that situation, based on you guys being married or
21 separated, charges could be brought for criminal domestic
22 violence.

23 Q. Well, my hypothetical may be too narrow for you. Let's
24 say I'm sitting in a bar on a bar stool and---

25 Ms. McDuffie: Your Honor, I object to the hypothetical

1 form of these questions.

2 **The Court:** Let's deal with the offense here, Ms.
3 Shurling.

4 By Ms. Shurling:

5 Q. If you have witnesses to a crime being committed and can
6 prove that it was committed independent of the cooperation of
7 the victim, in South Carolina the State can still prosecute,
8 can't they?

9 A. If the victims don't want to prosecute, ma'am, there's
10 basically -- there's basically nothing that we could do.

11 Q. So you're telling me that under the law in South
12 Carolina you can't bring charges if the victim doesn't
13 cooperate?

14 A. If the victim doesn't want to cooperate, if she doesn't
15 want to give a statement of what happened, there's basically
16 nothing we can do.

17 Q. I'll move on. At some point -- well, first off, I think
18 it's been established earlier, but the apartment complex
19 where the April incident happened is in Richland County and
20 so it was under the jurisdiction of the sheriff's department.
21 Right?

22 A. That's correct.

23 Q. Okay. At some point were you contacted by members of
24 the Columbia City Police Department about securing immunity
25 for Ellison Hudson for this armed robbery?

1 A. Immunity? No. There was -- there was a conversation
2 between his attorney and the solicitor's office in reference
3 to that.

4 Q. Do you have a copy of your own report?

5 A. Yes, ma'am.

6 Q. The pages are not numbered, sir, but may I approach,
7 Your Honor?

8 **The Court:** You may.

9 By Ms. Shurling:

10 Q. Will you look at the note on the bottom of that page.

11 A. (The witness complies.) Yes, ma'am. The one that's
12 highlighted or the one that's underlined?

13 Q. Okay. First, can you confirm that you have the exact
14 same thing in your report?

15 A. That's correct.

16 Q. Okay. And what does that note indicate you did at the
17 request -- pardon me. What did you request that's documented
18 in your own report?

19 A. Well, I didn't request nothing, ma'am. I just wrote
20 down what I -- what I had heard that Ellison's attorney
21 wanted to do -- was on the phone with the solicitor's office.
22 There was -- do you want me to read it?

23 **Ms. McDuffie:** Your Honor, I object to hearsay.

24 **The Court:** Sustained.

25 By Ms. Shurling:

1 Q. Your own report indicates that you were present when the
2 solicitor's office was contacted about whether or not they
3 would prosecute Hudson for this armed robbery. Isn't that
4 true?

5 A. We were in the same room: Myself, Ellison, his attorney
6 and Investigator Reed and Investigator Thomas and Sergeant
7 McDaniels.

8 Q. And your report indicates that Mr. Hudson's attorney was
9 present during the telephone conversation; correct?

10 A. He was the one that was having -- that was having the
11 conversation. He was the one that was on the phone talking
12 to somebody in the solicitor's office.

13 Q. Your report doesn't reflect that, does it?

14 A. It doesn't say that I was on the phone.

15 Q. No, sir, I didn't say it did. But it doesn't say that
16 it was Mr. Hudson's lawyer on the phone with the solicitor
17 either, does it?

18 A. It says it right here.

19 Q. What does it say?

20 A. It says Attorney Maye was also present during the
21 conversation with Solicitor Luck. He was the one that had
22 the conversation.

23 Q. Okay. But as it's documented in your report, the lawyer
24 was merely present.

25 A. Ma'am?

1 Q. I said what's documented in your report is that the
2 lawyer was present during the conversation with Ms. Campbell.

3 A. You could perceive it that way, yes.

4 Q. Okay. And what was the result of that conversation?

5 A. That Mr. Ellison cooperated, giving us a statement.

6 Q. And what was he promised if he cooperated?

7 A. He was told that if he tell the truth -- if he tell the
8 truth about it, just like I stated on here in my statement --
9 that he needed to be truthful with us in reference to the
10 armed robbery or to the shooting.

11 Q. And if he cooperated and was in your estimation
12 truthful, he would receive immunity for the armed robbery.
13 Correct?

14 A. There was no victim.

15 Q. Sir, that's not what I asked you. Ellison Hudson had
16 admitted to robbing Anthony Hackshaw. Isn't that true?

17 A. That's true.

18 Q. Told you when he did it, who he did it with, what he
19 stole, everything. Correct?

20 A. That's correct.

21 Q. Admitted being armed.

22 A. That's correct.

23 Q. Admitted his co-conspirator was armed.

24 A. That's correct.

25 Q. Even admitted shots were fired.

1 A. That's correct.

2 Q. And he was granted immunity.

3 A. He was told -- to my knowledge, he was told that he
4 needed to be truthful of the situation.

5 Q. Sir, I understand that, but so we're clear: He was
6 granted immunity.

7 A. Well, I never told him that he was granted immunity. As
8 far as I know, nobody that I know of that was standing there
9 granted him immunity. He was just told that he needs to be
10 truthful about the situation.

11 Q. Where -- when this conversation was taking place on the
12 telephone with the fifth circuit solicitor's office, where
13 was Mr. Hudson?

14 A. We were all sitting in the room, in one of the offices.

15 Q. So he was sitting right there.

16 A. That's correct.

17 Q. So he heard the discussion about immunity. Correct?

18 A. It didn't come out like that as immunity. It came out
19 as he needs to tell the truth.

20 Q. Well, according to you, it was his own lawyer that was
21 on the phone with the solicitor's office, correct?

22 A. That's correct.

23 Q. And as documented in your report, his lawyer was told
24 that if he cooperated and was in the estimation of the State
25 being truthful, he would be granted immunity. Correct?

1 A. Well, I'm reading here now that I wrote down here the
2 word immunity was put in there.

3 Q. Okay. Is that something you would expect his defense
4 attorney to share with him?

5 A. Share with?

6 Q. Would you expect his own lawyer to tell him that?

7 **Ms. McDuffie:** Your Honor, I object.

8 **The Court:** He can't comment on that.

9 By Ms. Shurling:

10 Q. Did you eventually get a bullet fragment out of the car
11 at the scene from Ms. Rodriguez, I believe, with a Pontiac?

12 A. No, ma'am.

13 **Ms. Shurling:** Okay. Thank you. No further questions.

14 **The Court:** Anything?

15 **Ms. McDuffie:** Not from this witness, Your Honor.

16 **The Court:** All right. You may step down.

17 **The Witness:** Thank you.

18 **The Court:** Let me get -- Ms. Campbell, you and Ms.

19 Shurling step up here a moment, please.

20 (Whereupon, a bench conference was held.)

21 **The Court:** All right. Call your next witness.

22 **Ms. Simpson:** The State calls Joseph Smith.

23 Joseph Smith, Jr., after being duly sworn,

24 testified as follows:

25 **The Clerk:** Please have a seat and state your full name

1 for the record.

2 **The Witness:** Joseph Smith, Jr.

3 Direct Examination

4 By Ms. Simpson:

5 Q. Good morning, Mr. Smith. Can you tell us how old you
6 are?

7 A. I'm 27.

8 Q. And are you married?

9 A. No, I'm not.

10 Q. Where are you currently---

11 **The Court:** Speak up if you would, please, Mr. Smith.

12 **The Witness:** Excuse me?

13 **The Court:** I need you to speak up if you would. We
14 need to have all the people in this courtroom be able to hear
15 you.

16 **The Witness:** I'm currently living at [REDACTED].

17 By Ms. Simpson:

18 Q. All right. And do you work?

19 A. Yes, I do.

20 Q. Where are you working?

21 A. At Trane.

22 Q. And what do you do at Trane?

23 A. I'm a material handler.

24 Q. Now, have you always lived in Columbia?

25 A. No, ma'am.

1 Q. Where did you live before?

2 A. I lived in Norfolk, Virginia, stationed in the military.

3 Q. And back on May the 20th of 2009, where were you living
4 at that time?

5 A. At [REDACTED].

6 Q. And did anyone live with you?

7 A. Yes, my roommate, Quinton Broadwater.

8 Q. Let me back up. The address you gave back on -- as to
9 where you were living on May the 20th of 2009, is that
10 located in the Wyndham Apartments?

11 A. No, it isn't. It's located off North Main in Summer
12 Hill.

13 Q. Okay. And prior to that, back on April 23rd of 2009,
14 were you living in the Wyndham Apartments?

15 A. Yes, ma'am.

16 Q. And do you know the defendant?

17 A. Yes, I do.

18 Q. How do you know him?

19 A. We was neighbors for about a year and a half.

20 **Ms. Shurling:** Your Honor, subject to my previous
21 objections.

22 **The Court:** All right. Proceed.

23 By Ms. Simpson:

24 Q. I'll ask again: How do you know the defendant?

25 A. We was neighbors for about a year and a half.

1 Q. And prior to May the 20th -- or had you ever had any
2 discussions regarding firearms or ammunitions with the
3 defendant?

4 A. Yes.

5 Q. And can you tell us about those?

6 A. Well, I can't remember the exact date but, you know, on
7 one day he asked me to get him some nine millimeter bullets
8 which I was going to the country to see if someone had them
9 because the stores were sold out, but I didn't find any.

10 Q. Okay. So you actually went to look to see if you could
11 find some?

12 A. Well, I was going down there, but I never went to check
13 because I didn't have time.

14 Q. Okay. And have you ever seen the defendant with a gun?

15 A. Yes.

16 Q. And what kind of gun?

17 A. I'm not sure.

18 Q. Okay. But you have seen... Just one gun or have you
19 seen him with several different guns?

20 A. Just one.

21 Q. And did you become aware that the defendant and his wife
22 had moved out shortly after deputies had executed a search
23 warrant on their home?

24 A. Well, I was given a call by one of the neighbors that we
25 stayed with telling me what happened with the situation.

1 **Ms. Shurling:** Objection, Your Honor. Hearsay.

2 **The Court:** Sustained. You can't testify as to what
3 people told you.

4 By Ms. Simpson:

5 Q. Okay. Has the defendant contacted you since June of
6 '09?

7 A. No, he hasn't.

8 Q. Okay. Did he contact you at any point after the
9 May 20th, 2009, date where you had a chance to inform him
10 that the police were looking for him?

11 A. I'm not exactly sure of the date, but I was given a call
12 by him and I had explained to him that the officers was
13 looking for him and it was about a murder trial.

14 Q. And what did he say to you?

15 **Ms. Shurling:** Objection, Your Honor.

16 **The Court:** That's overruled.

17 **The Witness:** On the date we was talking, I had let him
18 know that the officer had came and they said that there was a
19 murder dealing with him, and he said he had nothing to do
20 with it and he said he was laughing at those fuck boys.

21 By Ms. Simpson:

22 Q: And with respect to the phrase "laughing at those fuck
23 boys," how -- what did he sound like when he stated that?

24 How was his voice or his demeanor?

25 A. He was just calm and cool and collected about it like it

1 didn't matter to him so...

2 Q. Just kind of indifferent?

3 A. Yeah.

4 Q. And what did you take him to mean by that statement?

5 A. I guess regarding to the police officers.

6 Q. Were you present during the shootout at the apartment on
7 April 23rd of 2009?

8 A. Yes.

9 Q. And did the defendant ever make any statements to you
10 about what happened on that day?

11 A. On that day he just told me -- like I said, we was
12 outside with the police officers, and they was stating like
13 it was towards me, not to be so flashy.

14 **Court Reporter:** I'm sorry. Repeat that.

15 **The Witness:** He was stating---

16 By Ms. Simpson:

17 Q. Let me just back up so you don't get into any statements
18 that we can't testify to here today. At any point, not
19 necessarily on that day, did the defendant make any
20 statements about the actual shooting or what had happened to
21 him on that date?

22 A. Yes. I guess he was being robbed and he said he knew
23 who did it, so he would handle that situation.

24 Q. And are you familiar with the types of car that the
25 defendant has driven?

1 A. Yes.

2 Q. And can you describe those for the jury?

3 A. When he first moved out there, he was driving a black
4 Dodge Charger and then it was another -- I guess his
5 girlfriend's car was a green compact vehicle. I'm not
6 exactly sure the kind, and then there was a -- later on there
7 was a grayish-color Honda.

8 Q. And do you recall whether that was two doors or four
9 doors?

10 A. Two-door.

11 Q. And was that -- with respect to the order of those cars
12 being driven, was that at the latter part of the time? Was
13 that one of the last cars that you saw the defendant driving?

14 A. Yes.

15 Q. Okay. And just backing up so we're clear: With respect
16 to the robbery, what did the defendant tell you about how he
17 was going to handle it?

18 A. He had stated that he knew who did it and he would call

19 G. Or boss or someone, that he'll get it handled it.

20 Q. But he was going to take matters into own hands?

21 A. Yes, ma'am.

22 Ms. Shurling: Objection, Your Honor. That's not what
23 he said.

24 The Court: Sustained.

25 Ms. Simpson: Withdrawn.

1 By Ms. Simpson:

2 Q. And backing up to the defendant, when he spoke to you
3 regarding the ammunition, just for clarification what type of
4 caliber was he looking for?

5 A. Nine millimeter bullets.

6 Ms. Simpson: Nothing further.

7 The Court: All right. Ms. Shurling?

8 Cross-Examination

9 By Ms. Shurling:

10 Q. Good morning, Mr. Smith.

11 A. Good morning.

12 Q. Do you recall being interviewed by Investigator Reese?

13 A. Yes, I do.

14 Q. And that didn't take place until July of '09. Isn't
15 that true?

16 A. Yes.

17 Q. And isn't it true that in that interview you told
18 Investigator Reese that you had never seen my client with a
19 nine millimeter gun?

20 A. I told him I didn't know the type of gun it was. He
21 didn't ask me what specific kind.

22 Q. You deny telling Investigator Reese that you had never
23 seen my client with a nine millimeter gun.

24 A. I didn't know what type it was. I told him I seen him
25 with a gun. I told him -- he asked me about nine millimeter

1 bullets.

2 Q. So I assume you also deny telling him that you had seen
3 my client with a .40 caliber pistol?

4 A. I didn't say that. He was telling me the types of guns.
5 I don't know exactly what types of gun it is that he had, but
6 I seen him with a gun. So I'm not denying telling him about
7 any gun, but I seen him with a gun. Like I don't know the
8 exact name of which kind he had.

9 Q. I'm not asking you what you know here today. I'm asking
10 you: Do you deny telling Investigator Reese that you had
11 seen my client with a .40 caliber handgun?

12 A. Yes.

13 Q. Yes?

14 A. Yes, because I didn't see him -- like I said, I don't
15 know what type of gun he had. I just told, Officer Reese I
16 seen him with a gun which if he said it was a .40 cal I might
17 have agreed to it because I guess he knew what guns he had or
18 not, not me.

19 Q. Do you also deny telling him that the .40 caliber
20 handgun you had seen was one that had been purchased by my
21 client's wife?

22 A. I told him the gun that he showed me that was purchased
23 by his wife, but I didn't know what kind of gun it was.

24 Q. If there's any documentation that you made those
25 statements to Investigator Reese, the officer would be either

1 lying or mistaken.

2 A. Well, if he had said it was a .40 caliber gun, obviously
3 I thought he knew what gun he was talking about. I told him
4 I seen him with a gun and it was one that was purchased by
5 his wife. So I guess he had all the receipts or whatnot
6 saying what kind of gun it was. So, therefore, I told him,
7 yes, I seen him with a gun that was purchased by his wife.

8 Q. Let me back up. Who had all the receipts and whatnot?

9 A. I'm saying I guess he had. If he knew what type of gun
10 it was that his wife purchased, he had to have known
11 (unintelligible words spoken). -- Anthony Hackshaw showed...

12 Q. I'm a little confused. Did you tell -- you told an
13 officer you'd seen my client with a gun.

14 A. Yes.

15 Q. But you never told him what caliber.

16 A. No, I didn't.

17 Q. And you never told him that you had never seen my client
18 with a nine millimeter.

19 A. I never seen him with it. I don't know what type of gun
20 it was. I told him I seen him with a gun.

21 Q. And did you tell the officer that the gun that my client
22 showed you was one his wife had purchased?

23 A. Yes, I knew it was silver---

24 Q. You did tell him that.

25 A. Yes, it was a silver like a silver...

1 Q. The exact words you used a few moments ago was that my
2 client said he would handle that situation when he was
3 referring to the robbery?

4 A. I guess so, yes.

5 Q. Handle it.

6 A. Yes.

7 Q. So for all you know, he meant he was going to ask the
8 guys to give him his---

9 Ms. Simpson: Objection, Your Honor.

10 The Court: Sustained. Same reason y'all objected.
11 Don't answer that question.

12 The Witness: Okay.

13 Ms. Shurling: No further questions.

14 The Court: Anything further?

15 Ms. Simpson: Nothing further.

16 The Court: All right. Mr. Smith, you can step down.
17 You're free to leave.

18 Ms. Campbell: Your Honor, may we approach?

19 (Whereupon, a bench conference was held.)

20 The Court: Ladies and gentlemen, let me let you step
21 back to the jury room. Don't discuss the case, and we'll be
22 with you in just a minute.

23 (Whereupon, the jury was excused from open court at
24 11:37 a.m.)

25 The Court: All right. Ms. Campbell, what is it you

1 want to tell me?

2 **Ms. Campbell:** Your Honor, Ms. McDuffie might address
3 this issue.

4 **Ms. McDuffie:** Your Honor, in pretrial motions Ms.
5 Shurling moved to suppress the search warrant. Included in
6 that were the gun and the drugs, Your Honor. We told the
7 Court at that time that we were not intending to introduce
8 the gun and the drugs unless they became relevant at some
9 point. However, we were intending to introduce a photograph
10 taken from that search warrant. We are---

11 **The Court:** Wait a minute.

12 **Ms. McDuffie:** I'm sorry, Your Honor.

13 **The Court:** Let's refresh my memory.

14 **Ms. McDuffie:** Your Honor---

15 **The Court:** The gun and the drugs that were found---

16 **Ms. McDuffie:** In the defendant's home along with the
17 photograph of Ellison Hudson, Your Honor, were all taken
18 pursuant to the search warrant that was executed -- that was
19 obtained and executed by Investigator Gonzalez. We agreed
20 during the pretrial or we told Ms. Shurling and we told the
21 Court that we did not plan to introduce the gun that was
22 taken during that search warrant unless it became relevant.
23 We did not plan on introducing that gun.

24 Your Honor, we have not brought up the .40 caliber gun.

25 We have not brought up that it was recovered, that it

1 existed, that the -- you know, the shell casing, the
2 projectile, that was taken from the car, we have not gone
3 there whatsoever, Your Honor. However, Ms. Shurling through
4 the last witness went into the .40 caliber gun, went into
5 that the defendant had a .40 caliber gun, went into the
6 paperwork for the .40 caliber gun, the purchaser of the .40
7 caliber gun and, Your Honor, we think at this point in time
8 it's absolutely relevant to show that, yes, that that's all
9 true, that, in fact, it is true and that a .40 caliber was
10 taken from the defendant's home on June the 8th of 2009.

11 **Ms. Shurling:** May I, Your Honor?

12 **The Court:** You may.

13 **Ms. Shurling:** Your Honor, it was agreed that neither
14 the marijuana nor the gun would be gone into. However, the
15 State has deliberately elicited testimony from this witness
16 that he had previously seen my client with a gun and had him
17 claim in front of the jury that he didn't know what caliber
18 it was. He made those representations on the heels of
19 claiming that my client had once upon a time asked him to
20 secure nine millimeter bullets for him, thereby by asking
21 those questions and allowing this witness to say that he
22 didn't know what caliber the gun he saw was, it's created the
23 inference that my client may have been in possession of a
24 nine millimeter.

25 That required that I clarify with this witness that he

1 had not indicated that he saw a gun that he didn't know what
2 caliber it was. Otherwise, the jury would be left with the
3 inference that the gun seen by Mr. Smith could have been a
4 nine millimeter which would be very dangerous in the facts of
5 this case. So---

6 **The Court:** I don't know what a nine millimeter has to
7 do with it, but the inference in the jury would be it could
8 be a .22, a .25, a .38, a .45, a nine millimeter because he
9 said, "I didn't know what kind of gun it was," period.

10 **Ms. Shurling:** Your Honor, this jury has heard testimony
11 that ten nine-millimeter shell casings were found around the
12 body of Ebony Fogle.

13 **The Court:** All right. So you want -- so you want it in
14 that he had a .25 caliber. I mean, what is it?

15 **Ms. McDuffie:** Your Honor, a .40 caliber gun was used---

16 **The Court:** .40 caliber.

17 **Ms. McDuffie:** ---at the shooting.

18 **The Court:** Say that again.

19 **Ms. McDuffie:** A .40 caliber gun was used on the
20 shooting on April 23rd. The gun that was recovered from his
21 home matched the projectile that was removed from one of the
22 victim's vehicle -- from one of the -- from Carmen Rodriguez'
23 vehicle at the scene on April 23rd.

24 **Ms. Shurling:** Your Honor, if I may, I have to
25 reiterate: They asked this witness about seeing my client

1 with a gun, had him testify that -- he testified that he had
2 no idea what caliber that gun was. He gave that testimony on
3 the heels of testimony that he had once been asked by my
4 client to secure nine millimeter ammunition for him. If I'm
5 not allowed to clarify that the gun that was once upon a time
6 shown to him - and he doesn't even remember when - was not a
7 nine millimeter, then the jury---

8 **The Court:** Well, then you wouldn't have any objection
9 to their introducing the .40 caliber gun.

10 **Ms. Shurling:** Sir?

11 **The Court:** You wouldn't have any objection to their
12 introducing the .40 caliber gun.

13 **Ms. Shurling:** Yes, sir, I would because the issue then
14 is whether or not the .40 caliber gun was in the apartment at
15 a date and time much after the April 23rd incident. All that
16 guy's testimony was relevant to is that at some point in
17 history - he doesn't even remember when - my client showed
18 him a gun, and I simply acted to rebut the inference created
19 by the State's questions that that gun may have been a nine
20 millimeter, something that would have been highly prejudicial
21 to my client on the facts of this case. I submit I did not
22 open the door to them reneging on the agreement that they
23 would not go into the discovery of a .40 caliber pistol in
24 the apartment or the drugs.

25 **Ms. McDuffie:** Your Honor, if I may, Ms. Shurling asked

1 him was it a nine millimeter. He said he didn't know the
2 caliber. I mean, how much -- she chose to then go into the
3 .40 caliber gun, to then put that evidence of a .40 caliber
4 gun in front of the jury and, Your Honor, we think that it's
5 appropriate at this time. As we said before, we would not
6 introduce the gun---

7 **The Court:** All right. Well, I'm going to -- we're
8 going to leave it out. I'm not going to find that she opened
9 the door. Proceed.

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

11 **The Court:** All right. Bring the jury in, please.

12 (Whereupon, the jury was brought into open court at
13 11:43 a.m.)

14 **The Court:** All right. Call your next witness, please,
15 Madam Solicitor.

16 **Ms. Campbell:** The State would call John Barron.

17 John Barron, after being duly sworn, testified as
18 follows:

19 **The Clerk:** Please have a seat and state your full name
20 for the record.

21 **The Witness:** My name is John Barron, B-A-R-R-O-N.

22 Direct Examination

23 By Ms. Campbell:

24 Q. Sir, where are you employed?

25 A. Richland County Sheriff's Department.

1 Q. And what do you do there?

2 A. D.N.A. analysis.

3 Q. Can you tell this jury a little bit about what your job
4 duties include in D.N.A. analysis?

5 A. D.N.A. analysis involves the analysis of evidence that
6 is brought in by agencies to our department. The objective
7 is to identify any D.N.A. that might be on this evidence and
8 to compare it to known samples from individuals to see
9 whether or not the D.N.A. belongs to people.

10 Q. Can you tell this jury a little bit about your education
11 and training in the field of D.N.A. analysis?

12 A. I have Bachelor of Science degree in microbiology from
13 Clemson University. I have been employed in forensic science
14 for a number of years, beginning at S.L.E.D., South Carolina
15 Law Enforcement Division, where in the year 1999 I was
16 transferred to the D.N.A. department and from there was
17 trained in the latest technology in D.N.A., became qualified
18 as a D.N.A. analyst at S.L.E.D., and in 2004 myself and
19 another individual from S.L.E.D., another qualified
20 individual, came and set up the D.N.A. laboratory at the
21 Richland County Sheriff's Department. I've been working up
22 there for the last six years and have testified over 30 times
23 in -- as an expert in D.N.A. analysis.

24 Q. And is your laboratory at Richland County as well as at
25 S.L.E.D. accredited by any national organizations?

1 A. Yes, they are.

2 Q. And do you follow the guidelines that are required by
3 that accreditation?

4 A. Yes, not only guidelines from that but also the F.B.I.
5 and some guidelines for D.N.A. laboratories throughout the
6 United States that we adhere to.

7 Q. I believe you testified you've been qualified before as
8 an expert?

9 A. Yes, I have.

10 Q. In D.N.A. analysis?

11 A. Yes, ma'am.

12 Q. Over 30 times?

13 A. Yes, I have.

14 Ms. Campbell: Your Honor, at this time we would offer
15 him as an expert in D.N.A. analysis.

16 Ms. Shurling: Without objection, Your Honor.

17 The Court: All right. Ladies and gentlemen, if
18 scientific, technical, or other specialized knowledge will
19 assist you, the trier of the facts, in understanding any
20 evidence or determining any fact that may be in issue, a
21 witness by virtue of his or her knowledge, skill, experience,
22 training or education may be qualified as an expert and as a
23 result can testify in the form of an opinion in his or her
24 area of expertise. I'm going to find Mr. Barron to be
25 qualified as an expert in D.N.A. analysis. As such, you

1 are -- he can offer opinions in this area and you are to give
2 his testimony such weight and credibility as you deem
3 appropriate, as you will with any and all witnesses who
4 testify in this trial.

5 **Ms. Campbell:** Thank you, Your Honor.

6 **The Court:** Yes, ma'am.

7 By Ms. Campbell:

8 Q. Investigator Barron, I want to turn your attention to
9 the case. Did the Columbia Police Department request that
10 you do some testing on certain evidence?

11 A. Yes, they did.

12 Q. I'm going to show you first what's been marked State's
13 exhibit number 64 and 65. Are those a number of swabs that
14 were collected from certain shell casings in this case?

15 A. Yes, they are.

16 Q. In D.N.A. analysis, typically from a crime scene, what
17 type of evidence are you able to analyze and look for as far
18 as body fluids and things of that nature?

19 A. Any cellular material from your body would contain
20 D.N.A.; that is potential evidence. So typically it could be
21 from blood, sexual assault cases from semen and vaginal
22 fluid, any type of material that you might put your mouth on
23 would contain D.N.A. from the cells in your mouth, and it's
24 -- the technology has become so sensitive now that even
25 things that you touch can potentially recover D.N.A. from

1 them as well. Items of clothing that you wear have enough
2 cellular material that we could develop a D.N.A. profile.

3 This does not guarantee that we're able to do that, but
4 there's potential there. And so often evidence is brought in
5 that has been touched or potential biological material has
6 been left on that we will test to see if there is any D.N.A.
7 there, and if there is enough D.N.A. there, we can get a
8 profile and compare it to known individuals, as I said
9 before.

10 Q. So typically you get evidence that's secured at a crime
11 scene and it may be submitted to you, if it's appropriate,
12 for you to further test on. Say if the defendant had left a
13 hat at the scene, you may test that?

14 A. Oh, yes.

15 Q. Or shell casings from a scene, you can obviously do some
16 test on that as well?

17 A. Yes. The technology is so sensitive now that even
18 touching a small item has the potential for leaving D.N.A.

19 Q. When you do your D.N.A. testing and you come up with
20 results - say you're able to match someone's profile to a
21 known source and I'll get to that in a minute - can you tell
22 how long that D.N.A. has been on that item?

23 A. No. D.N.A. is -- it's found to be very stable. As a
24 matter of fact, you may have heard of historical
25 investigations where they've gone back and analyzed very old

1 material and found sufficient D.N.A. for identification.

2 Q. And even, say, if an item has some D.N.A. on it and it
3 may be touched by someone else, is everyone that touches --
4 because this is a relatively newer field, touch D.N.A.?

5 A. Correct.

6 Q. Is everyone that touches an item necessarily going to
7 leave D.N.A. there?

8 A. No, they're not.

9 Q. Similar to a fingerprint.

10 A. No, not necessarily.

11 Q. Explain that to the jury.

12 A. You know, it's all dependent upon the cells that you
13 leave behind, and some people for whatever reason leave more
14 cells than others. Some people may touch a material that
15 they may have gloves on. Of course, that wouldn't leave any
16 D.N.A. on it, the material left behind. But it seems to be a
17 random thing. Sometimes we find D.N.A. on items that have
18 been touched and other times we do not, even though obviously
19 they have been touched like a doorknob or a handle or
20 something like that.

21 Q. And typically you're familiar with guns as part of your
22 training. You're a law enforcement officer.

23 A. Yes.

24 Q. Just tell them what -- and in order for, say, bullets to
25 be loaded into a gun, they would have to be touched to be

1 loaded. Is that generally -- that sounds stupid when I say
2 that, but is that generally how they get loaded?

3 A. Right. I think---

4 Q. It's touch---

5 A. That would be common knowledge, yes.

6 Q. In order to develop D.N.A. from a crime scene such as
7 touch D.N.A., generally how do y'all do that? What kind of
8 testing is done?

9 A. It's the same test we do with blood. I mean, it's just
10 -- the reagents and the kits that have been developed are now
11 extremely sensitive, much more so than they were ten years
12 ago when I started.

13 Q. Okay. Typically once you do the testing and everything,
14 you are able to develop what's known as a D.N.A. profile?

15 A. Correct.

16 Q. And in order to use that information in the forensic
17 world, then you would take that D.N.A. profile and compare it
18 to a D.N.A. profile of a known sample.

19 A. That's true.

20 Q. And when getting a known sample, say if there's a
21 suspect in a case or a possible witness in a case you may
22 want to get D.N.A. from or a victim, how is that D.N.A.
23 typically nowadays collected?

24 A. Nowadays we use a fairly noninvasive technique which is
25 swabbing inside the mouth. It's called a buccal swab because

1 the skin cells inside your mouth are scientifically called
2 buccal cells.

3 Q. And for you to do an accurate comparison to anyone, be
4 it a witness, a defendant or whatever, you need to have a
5 known sample.

6 A. Yes, other than the fact that we do compare them to
7 convicted offenders in the database.

8 Q. I want to show you what's been marked as State's exhibit
9 number 66. Is this a buccal swab or a known sample that was
10 collected from Anthony Hackshaw?

11 A. Yes, it is.

12 Q. And was that submitted as part of your testing?

13 A. It was.

14 Q. In addition to the standards, the swabs from the shell
15 casings that are in State's exhibit 64 and 65?

16 A. Yes.

17 **Ms. Campbell:** Your Honor, at this time we'd offer these
18 three into evidence.

19 **Ms. Shurling:** No problem. No objection.

20 **The Court:** All right. So admitted without objection.

21 (State's exhibits 64 through 66 were received in
22 evidence.)

23 By Ms. Campbell:

24 Q. And were all these items - and I'll refer to some items
25 in a minute, some other known samples that were submitted in

1 comparison - all of them submitted in proper form, packaged
2 correctly, and all that?

3 A. Yes. You can tell by this packaging that they've got
4 evidence tape all over them. People initialed them,
5 including myself. That is -- part of the procedure for
6 evidence is that each time that it's passed it's documented.

7 Q. And initially that was the evidence that was submitted
8 to you. At a later time did you also receive additional
9 evidence as far as known samples from other individuals that
10 you were asked to compare the results to?

11 A. Yes.

12 Q. And who were those additional people?

13 A. Ellison Hudson, Cleveland Joyner, and Jonathan Bailey.

14 Q. So you actually had known samples from which you
15 developed D.N.A. profiles on those -- in those individuals.

16 A. Yes.

17 Q. And that was Ellison Hudson? Who was the second
18 individual?

19 A. Cleveland Joyner.

20 Q. Cleveland Joyner. And who was the third one?

21 A. Jonathan Bailey.

22 Q. In addition to the Anthony Hackshaw, the known sample.

23 A. Correct.

24 Q. And tell this jury once you developed D.N.A. profiles on
25 all those -- well, I'm going in the wrong order, but were you

1 able to do any testing on the swabs that were taken from the
2 shell casings?

3 A. Yes, I tested all the -- all ten of the swabs that were
4 swabbed of the ten separate shell casings.

5 Q. And those tests were all done individually?

6 A. Yes.

7 Q. And why is it you do a swab from the shell casing rather
8 than testing the shell casing yourself -- itself?

9 A. Well, in order to extract D.N.A. it has to be put into a
10 tube, and the shell casing itself would not fit into the
11 tube. So we swabbed it and cut the swab and put it into the
12 tube.

13 Q. And that's done normally.

14 A. That's the normal procedure, yes.

15 Q. The normal procedure. And that was done in this case,
16 and there were ten separate shell casings to swab. Is that
17 correct?

18 A. Yes.

19 Q. And were you able to extract D.N.A. from any of those
20 shell casings?

21 A. Nine of the ten I did not get any D.N.A. One of them I
22 did get a very minute amount of D.N.A.

23 Q. A minute amount of D.N.A.? Is that unusual with shell
24 casings?

25 A. Not unusual at all.

1 Q. Why is that, sir?

2 A. Well, it's a small item to begin with, and then it's
3 fired out of a weapon and there's a lot of heat and pressure
4 that may do something with the D.N.A.; we're not sure. For
5 awhile we even -- couldn't even get any D.N.A. at all off the
6 shell casings, and we thought that could have been the reason
7 why. Then, like I said, recently more sensitive techniques
8 and procedures have come out and chemicals that, you know,
9 that identify D.N.A., enables us now to pick up some D.N.A.

10 Q. And as far as your comparison on the one shell casing
11 from which you did get a minute amount of D.N.A., did you
12 compare that to the four known samples that were submitted to
13 you as far as matching that D.N.A.?

14 A. Yes.

15 Q. And did it match any one of the four people: Jonathan
16 Bailey, Cleveland Joyner, Ellison Hudson, or Anthony
17 Hackshaw?

18 A. It did not.

19 Q. And is that unusual when it comes to shell casings and
20 how they may or may not be handled?

21 A. I've run a good many shell casings now over the last few
22 years since we've developed more sensitive techniques. It
23 may be and like some of the other material we get in, it is
24 subject to what we call contaminants from other sources.

25 Somebody may have touched it somewhere along the line. We've

1 actually gotten contaminants we believe from a manufacturer
2 of some of the tubes and materials that we use in the lab.
3 It is -- it's something that can happen, and so even though
4 we get a profile, it may not be associated with anyone at
5 all. This profile that was developed in this cartridge
6 casing was compared to the convicted offender database. It
7 did not return any matches there either, so...

8 Q. So the D.N.A. you found is as innocent as the person
9 that actually loaded it into the box that was shipped out.

10 A. That's true.

11 Q. And that's how sensitive the D.N.A. tests have gotten.

12 A. Yes.

13 Q. But that doesn't mean that anyone -- that other --
14 obviously someone else loaded it into the gun from the box.

15 A. I would -- yes, that would be a logical assumption that
16 if it was fired from a weapon someone had to load it into the
17 weapon.

18 Q. Also when -- once a crime occurs such as a murder, there
19 were different people that are called into a crime scene as
20 well such as E.M.S., deputies, things of that nature?

21 A. That's correct. I mean---

22 Q. And you don't know who may or may not have handled that.

23 A. We don't know who may have touched it. Somewhere along
24 the lines someone touched it that left enough cellular debris
25 that I was able to pick it up.

1 Q. And it was only off of one shell casing you were
2 actually able to actually get any D.N.A. at all.

3 A. That's correct.

4 Ms. Campbell: Thank you.

5 The Court: All right. Ms. Shurling?

6 Ms. Shurling: Very quickly.

7 Cross-Examination

8 By Ms. Shurling:

9 Q. You said there was a minute amount of D.N.A. that you
10 were able to extract for testing off one shell casing.

11 A. That's correct.

12 Q. But it was sufficient to test.

13 A. It was. We have -- at Richland County we have four
14 different potential D.N.A. tests we can do, and there's four
15 separate individual tests. When we have plenty of D.N.A.,
16 any one of those tests is sufficient to get something. In
17 this case it took three of them to compile enough from a
18 profile to be able to identify, but that's -- that just tells
19 me how small an amount of D.N.A. it was. Each of these kits
20 are sensitive in a different degree. But eventually I was
21 able to compile a sufficient profile that is identifiable if
22 I find the right person.

23 Q. Okay. And exemplars compiled in the way you were
24 referring to were -- have been successfully used in the
25 prosecution of many cases, haven't they?

1 A. Yes, they have.

2 Q. So there's nothing wrong with a D.N.A. profile done the
3 way you're talking about with this little tiny amount of
4 D.N.A.

5 A. Not at all.

6 Q. Okay. Now, I want to show off my college knowledge.
7 You're not -- D.N.A. stands for deoxyribonucleic acid; right?

8 A. That's correct.

9 Q. You're not saying -- you mentioned contaminants a second
10 ago, a few minutes ago. You're not suggesting that some
11 contaminant could be responsible for your not being able to
12 identify my client on that D.N.A., are you?

13 A. That is a potential. I'm not saying that that's what
14 happened, but anyone who touched that cartridge casing,
15 whether it be an innocent person who happened to handle the
16 shells in the manufacturing process or someone at the crime
17 scene or some friend who handled them before they were loaded
18 in the weapon that had nothing to do with this particular
19 crime...

20 Q. Well, I understand that. When you say the shell may
21 have been contaminated, you mean that somebody that shouldn't
22 have handled evidence may have handled evidence; correct?

23 A. Not necessarily.

24 Q. Well---

25 A. No.

1 Q. Pardon me.

2 A. It's just---

3 Q. One option is -- one possibility is that somebody that
4 shouldn't have handled evidence handled it.

5 A. Well, I don't know where the D.N.A. came from. I know
6 it just didn't come from any of these four people.

7 Q. Okay.

8 A. And any other source is supposition at this point.

9 Q. But you can say conclusively that it didn't come from
10 any of these four people.

11 A. I certainly can.

12 Q. Absolutely.

13 A. No doubt about it.

14 Q. Okay. So my question again was: You weren't intending
15 for this jury to think that the reason it didn't match my
16 client might be because the sample was contaminated.

17 A. I'm not sure what you mean by contamination. What I'm
18 saying is if you want to interpret the word contamination---

19 Q. Well, let me---

20 A. ---as being an innocent person---

21 **Ms. Campbell:** Objection, Your Honor.

22 **The Witness:** ---who touched this somewhere along the
23 line, I mean, sometimes I have contaminated the evidence, but
24 I know what my D.N.A. profile is so I can tell you that I
25 contaminated the evidence. But contamination just in one

1 sense is saying that someone touched this thing that wasn't
2 associated with this crime, and that is the case in this
3 cartridge casing.

4 By Ms. Shurling:

5 Q. I understand. Based on all your scientific training and
6 experience in this field, can you say with a degree of
7 scientific certainty that that D.N.A. sample did not match my
8 client?

9 A. That is my testimony today.

10 Ms. Shurling: Thank you. No further questions.

11 The Court: Anything, Ms. Campbell?

12 Ms. Campbell: No, sir.

13 The Court: All right. Thank you, sir. You may step
14 down.

15 Ms. Campbell: The State would call Ila Simmons.

16 The Court: Pardon me?

17 Ms. Campbell: I'm sorry. Ila Simmons. Your Honor, may
18 he be excused?

19 The Court: Sure.

20 Ila Simmons, after being duly sworn, testified as
21 follows:

22 The Clerk: Please have a seat and state your full name
23 for the record.

24

25

Direct Examination

1
2 By Ms. Campbell:

3 Q. Agent Simmons, where are you employed?

4 A. At the South Carolina Law Enforcement Division's
5 forensic trace evidence area..

6 Q. And as a forensic trace analyst, what do your duties
7 include?

8 A. We analyze gunshot residue. We also perform fiber
9 comparisons, paint comparisons. We analyze glass,
10 explosives, and arson debris.

11 Q. Tell the jury a little bit about your education and your
12 training in the field of trace evidence.

13 A. I have a Bachelor's of Science degree in chemistry.
14 After completing that, I came to work at S.L.E.D. where for
15 three years I worked with a court-qualified S.L.E.D.-
16 certified trace evidence examiner. During that time I had to
17 take written practical and oral examinations and complete
18 them all with 100 percent efficiency to become a trace
19 evidence examiner.

20 Q. And since that time, have you testified before as an
21 expert in the field of trace analysis?

22 A. Yes, I have.

23 Q. And approximately how many times have you been qualified
24 as an expert in that field?

25 A. Approximately 200 times.

1 Q. 200?

2 A. Yes, ma'am.

3 Q. Approximately.

4 A. Yes, ma'am.

5 **Ms. Campbell:** Your Honor, at this time I offer her as
6 an expert in trace analysis.

7 **Ms. Shurling:** I'm well familiar with her credentials,
8 Your Honor. No objection.

9 **The Court:** All right. Ladies and gentlemen, again I
10 told you earlier if scientific, technical, or other
11 specialized knowledge will assist you in understanding any
12 evidence or determining any matter in issue, then a person
13 can be qualified by virtue of his or her experience,
14 training, knowledge, skill or education and can offer
15 opinions in his or her areas of expertise. I'm going to find
16 Ms. Simmons to be qualified as an expert in trace evidence
17 analysis, and she can offer opinions in that field. You are
18 to give her testimony such weight and credibility as you deem
19 appropriate.

20 **Ms. Campbell:** May it please the Court?

21 By Ms. Campbell:

22 Q. Agent, the field of trace evidence, it encompasses many
23 different things, but I'd like to focus today on gunshot
24 residue. Is that one of your areas of expertise?

25 A. Yes, ma'am.

1 Q. And tell this jury basically what gunshot residue
2 collection and analysis can show them as far as involving
3 weapons that have been fired.

4 A. Gunshot residue is a mixture of microscopic chemicals
5 that come out of a gun when it's fired. It can get on
6 anything in close proximity to the gun including the hand of
7 someone shooting the gun or someone who is being fired upon.
8 When G.S.R. is collected, the investigators are trained to
9 determine whether or not someone fired a gun or was in close
10 proximity to a gun when it's discharged, and that's -- during
11 this analysis -- it's a two-part kit where particle lifts as
12 well as swabs are collected from the hands of anyone that's
13 suspected to be in the vicinity of a gun when it's fired.

14 Q. And how are the particle lifts, the actual evidence you
15 tested, how are those collected from a person?

16 A. It's a double-sided sticky tape with a handle so that
17 the person collecting the kit never touches the evidence that
18 is being analyzed. The tape is just dabbed along the hands
19 of the person the kit is being collected from.

20 Q. And is there a certain time period in which a person --
21 if they've been around, say, a murder crime scene where a gun
22 is used, is there a certain time period where this evidence
23 becomes less probative or actually y'all have a policy, I
24 believe, that it's got to be collected within a certain
25 number of hours?

1 A. Yes, ma'am. On a living individual, gunshot residue
2 will not remain more than six hours. So if a kit is
3 collected more than six hours from the incident, we will not
4 analyze the kit.

5 Q. Okay. And on a person who has been shot and died, is
6 there a longer time period that's involved?

7 A. It is indefinite then because with the --- when the heart
8 stops beating, you stop sweating. You're no longer in
9 motion, not making contact with things. So the gunshot
10 residue can remain on the hands of a deceased person
11 indefinitely.

12 Q. And, say, if the person is not apprehended at the scene
13 or within the six hours and not until months later, is there
14 any probative value in trying to do a gunshot residue kit at
15 that point?

16 A. No, there isn't.

17 Q. In this case were you submitted I believe three
18 different gunshot residue kits that had been collected?

19 A. Yes, I was.

20 Q. And I want to show you what's been marked and is already
21 in evidence as State's exhibit 21, 22, and 23.

22 A. Yes, ma'am.

23 Q. And were those the kits that were submitted to you?

24 A. Yes, ma'am. They are marked with my initials, with the
25 laboratory identification number that's given to each case,

1 and with a specific item number for each piece of evidence.

2 Q. And I believe with you today you also have your case
3 notes. Is that correct?

4 A. Yes, ma'am, I do.

5 Q. And do those reflect everything -- were these items all
6 -- when you received them, had they been altered with or
7 tampered with in any way that you could determine?

8 A. No, ma'am. They were sealed with the proper evidence
9 tape, and they were in the proper container.

10 Q. And is that important to you prior to your testing any
11 kind of evidence that may be submitted to you?

12 A. Yes, ma'am. If they were not sealed properly, they
13 would not have been analyzed.

14 Q. And once you get this evidence, do you also check to
15 make sure that it was collected within the proper time
16 period?

17 A. Yes, ma'am, we do.

18 Q. And in these items individually, were they all collected
19 within the six-hour period?

20 A. Yes, ma'am.

21 Q. And you verified that.

22 A. Yes.

23 Q. Were these items labeled as who the gunshot residue kits
24 were collected from?

25 A. Yes, ma'am.

1 Q. And who were the three individuals that the Columbia
2 Police Department -- and you don't go collect them yourself,
3 do you?

4 A. No, I do not.

5 Q. And you rely on crime scene people to do that?

6 A. Yes, ma'am.

7 Q. And they are taught how to do that properly.

8 A. Yes.

9 Q. And is there any indication in this case they were done
10 any way but proper?

11 A. No. Everything was correct in this case.

12 Q. And in this case who did you receive gunshot residue
13 kits from that had been collected there at the scene in close
14 proximity to the time of the shooting?

15 A. From Cleveland Joyner. Another kit was submitted from
16 Ebony Fogle, and a kit was collected from Ellison Hudson.

17 Q. And, again, when you receive these items, you don't know
18 what anybody's individual role is or anything that would
19 influence your testimony.

20 A. No, I do not.

21 Q. The kit from Ellison Hudson, when you tested that kit
22 for the presence of -- how do you put it?

23 A. Gunshot residue.

24 Q. Gunshot residue. What were your findings?

25 A. The quantities of metals that we found, the gunshot

1 residue metals, did not indicate the presence of gunshot
2 residue on any of the samples from Ellison Hudson.

3 Q. What does that mean in real life?

4 A. That no gunshot residue was found.

5 Q. No gunshot residue was found. And what does that
6 indicate to you in your expertise, in your experience, as far
7 as Ellison Hudson being involved around or near a gun or
8 shooting it?

9 A. That this person either had not fired a weapon, had not
10 been in the vicinity of a weapon when it was discharged, or
11 that if they had been in the vicinity of a weapon, the
12 gunshot residue had been removed in some way.

13 Q. And let me back up for a minute. As far as gunshot
14 residue, say if someone is shooting someone across this
15 courtroom, even though that person is across the courtroom
16 being shot, are they necessarily going to get gunshot residue
17 on them even if, say, a bullet goes by their head?

18 A. No, ma'am, because gunshot residue is very light and it
19 will fall off more quickly than a projectile which is made of
20 lead. In fact, on most handguns, gunshot residue is going to
21 travel about six feet.

22 Q. About six feet. From the barrel where it exits the gun.

23 A. Yes, ma'am.

24 Q. So from the end of the gun to six feet out is generally
25 where the gunshot residue may spread.

1 A. Yes.

2 Q. And so if a person is close in proximity to the end of
3 the barrel, they may get gunshot residue and if they're
4 shooting it, they may get gunshot residue.

5 A. That's correct.

6 Q. And on Ellison Hudson you found no gunshot residue?

7 A. No, I did not.

8 Q. And that is consistent with him not having fired a gun
9 or not having been within six feet of the end of the muzzle?

10 A. Yes. That's correct.

11 Q. At the time a gun may have been fired. Did you also get
12 a gunshot residue kit from Cleveland Joyner?

13 A. Yes, I did.

14 Q. And what did you find when you tested that kit?

15 A. On the samples I collected, I found that round lead
16 particles were found on the back of the right hand. A sample
17 was taken from the palm of the right hand, another sample
18 from the back of the right hand, a sample from the palm of
19 the left hand and the back of the left hand.

20 Q. And just for clarification, each one of these kits we're
21 talking about, there were samples taken from the palm and the
22 back of each hand.

23 A. Yes, ma'am.

24 Q. And you tested those individually.

25 A. Yes.

1 Q. Because that can be significant.

2 A. Yes.

3 Q. And in this case you found the presence of gunshot
4 residue where?

5 A. On the back of the right hand.

6 Q. On the back of the right hand?

7 A. Yes, ma'am.

8 Q. Not on the palm?

9 A. No, ma'am.

10 Q. And not on the left hand.

11 A. No, ma'am.

12 Q. And what is that consistent with as far as your
13 experience and your expertise as far as gunshot residue?

14 A. It's most consistent with someone having been in the
15 vicinity of a weapon when it was discharged. If -- when
16 someone fires a weapon, gunshot residue is going to get on
17 the palm and the back of the hand, the majority of the
18 gunshot residue getting on the back of the hand of a shooting
19 person because the palm of the hand is obscured by the
20 receiver or the butt of the gun.

21 Q. So that would be consistent with Cleveland Joyner having
22 fired a gun within at least six hours of that.

23 A. Either firing a gun or being in very close proximity
24 when the gun was discharged.

25 Q. And the level of gunshot residue you find, is that

1 significant in your findings?

2 A. Yes, it is.

3 Q. And in this case what were the levels that were found
4 just on the back of the right hand of Cleveland Joyner?

5 A. I have to consult my notes.

6 Q. Yes.

7 A. It was approximately 280 counts of lead which is---

8 Q. 280 counts of lead?

9 A. Yes, which is approximately what we have found -- we've
10 test-fired thousands of different firearms with different
11 types of ammunition and found that about seven counts of
12 antimony, which is one element we're looking for, and about
13 170 to 200 counts of lead is common for someone who has fired
14 a gun.

15 Q. So this would be most consistent -- and, again, there
16 are always variables you can't account for, but this would be
17 most consistent with Cleveland Joyner having had a gun in his
18 right hand and having fired it---

19 A. Yes, that is possible---

20 Q. ---within the six hours of the test being collected.

21 A. Yes, ma'am. It's a possibility.

22 Q. You also received a gunshot residue kit from an Ebony
23 Fogle?

24 A. Yes.

25 Q. And what were your findings when you tested the kit from

1 Ebony Fogle?

2 A. We found that metals consistent with gunshot residue
3 were found on her right palm, and metals were also found on
4 the back of the right hand, so on the palm and the back of
5 the right hand.

6 Q. And the levels that you found on the palm and the back
7 -- both of them; right?

8 A. Yes, ma'am.

9 Q. What were those levels like?

10 A. On the palm of the hand it was about 1200 counts of
11 lead, and on the back of the hand it was about -- just one
12 moment; let me make sure. It was 700 counts of lead. The
13 higher the amounts of gunshot residue that we find is more
14 consistent with the hand being nearer the muzzle of the gun
15 than being behind the gun because when gunshot residue comes
16 out of the gun it comes out going forward with a projectile,
17 and only a small amount is hit by the force of air and wraps
18 back around the hand of someone shooting a gun. But if
19 someone's hand is in front of the gun when it's discharged,
20 it can get higher quantities of gunshot residue when the gun
21 goes off.

22 Q. And that's what you found in this case?

23 A. Yes, ma'am.

24 Q. And you've testified 200 times, so you've done thousands
25 of kits. Is that consistent with, say, someone being in a

1 defensive posture if someone is within close proximity of
2 them shooting at them?

3 A. Yes, ma'am, it can be.

4 Q. And the highest amount that you found was actually on
5 the palm.

6 A. Yes, ma'am, which is -- which is more consistent with
7 having been on the muzzle end of the gun because when someone
8 fires the gun, generally more gunshot residue is going to be
9 on the back of the hand because the palm is going to be more
10 obscured by the gun itself.

11 Q. As with Mr. Joyner.

12 A. Yes.

13 Q. But Mr. Joyner's amounts were much lower than these.

14 A. Yes.

15 Q. 1200 versus 200 and something?

16 A. Yes. That's correct.

17 Q. And Mr. Joyner would be consistent with having fired a
18 gun, and Ms. Fogle's would be consistent with?

19 A. Yes, ma'am, most consistent with being in a defensive
20 posture situation.

21 Q. If she had been shot multiple times within, say, a six-
22 foot range, you can't say which one of those or if any or all
23 of those contributed to that.

24 A. No, ma'am, I cannot.

25 Q. But it would be consistent with her having been the

1 victim of a close-range shooting.

2 A. Yes, ma'am, it could be.

3 **Ms. Campbell:** Thank you. I don't have anything
4 further.

5 **The Court:** All right. Ms. Shurling.

6 Cross-Examination

7 By Ms. Shurling:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. I finally get to say that. Okay. Ebony Fogle's G.S.R.
11 kit showed gunshot residue on the right palm.

12 A. Yes, ma'am.

13 Q. And on the back of her hand.

14 A. Yes, ma'am.

15 Q. Correct? If she's holding her hands up in a defensive
16 posture near the muzzle of a gun when it goes off, how does
17 she get it on the back of her hand?

18 A. If the hand is bladed in a way so that most of the palm
19 is facing, however the back of the hand is also in the plume
20 of gunshot residue as it comes out in a cloud, it can get on
21 the back of the hand and the palm of the hand.

22 Q. Okay. I understand that, but will you tell me again
23 what the levels were on the back of the hand?

24 A. Yes, ma'am. It was approximately 700 counts of lead.

25 Q. Okay. So the hands are sprayed. The metal goes through

1 the fingers, and you're saying it's possible for that much to
2 have gotten on the back of the hand?

3 A. Yes, ma'am, because the entire hand is going to be in
4 the -- can be in the cloud of gunshot residue. If that were
5 the case, then it could have gotten on the back of the hand
6 as well.

7 Q. How about if she herself fired a much higher caliber
8 weapon?

9 A. Well, I would have expected to find more on the back of
10 the hand if it was -- if it were a handgun because as someone
11 shoots, more and more gunshot residue will get on the back of
12 the hand and less will be on the palm of the hand.

13 Q. Okay. You've worked on a lot of cases involving gunshot
14 residue; right?

15 A. Yes, ma'am.

16 Q. Isn't it true that gunshot residue can be rubbed off to
17 a certain extent?

18 A. Yes, ma'am, it can.

19 Q. And so if someone at the scene was handling the body or
20 holding her hand in a consoling posture, they may have rubbed
21 some of it off her hands?

22 A. That is a possibility.

23 Q. And, again, the higher the caliber gun, the higher the
24 level of residue you're going to expect to see. Right?

25 A. Yes, ma'am.

1 Q. So it's possible that the higher levels of residue on
2 her hands could be attributable to the calibration of a gun
3 that she fired.

4 A. That can be possible; yes, ma'am.

5 Q. Okay. Now, let me take a look at an exhibit right
6 quick, please. If you'd take a look at State's exhibit
7 number 10 for me, please.

8 A. Uh-huh.

9 Q. That shows the unfortunate deceased at the scene;
10 correct?

11 A. Yes, ma'am, it appears to.

12 Q. Can you describe her clothing?

13 A. She appears to be wearing a blue tank-top-style shirt
14 and long denim shorts.

15 Q. Okay. If, as you say, she had held her hands up in a
16 defensive posture and gotten gunshot residue on her, would
17 you also have expected it to be on her forearms possibly?

18 A. That is a possibility. However, a standard gunshot
19 residue kit that is submitted to different agencies only
20 takes samples from the palms and backs of the hands.

21 Q. I understand, but you're telling us that in your science
22 it's known that victims sometimes have gunshot residue on
23 them as a result of holding their hands near a firearm.

24 A. Yes, ma'am.

25 Q. And it is also established that that residue would be in

1 a cloud and would go you said I believe six inches?

2 A. Six feet.

3 Q. Six feet?

4 A. Yes, ma'am.

5 Q. Pardon me.

6 A. Yes, ma'am.

7 Q. So if you were trying to establish whether or not a
8 victim had fired a weapon versus being in close proximity, it
9 would be prudent to take swabs from the arms as well as the
10 hands, wouldn't it?

11 A. That could be helpful. However, I have seen in numerous
12 cases where someone fires a gun and has gunshot residue as
13 far as the chest because we've collected samples from
14 clothing. So even if I were firing the gun like this, I
15 could still get gunshot residue on my foreman, on my upper
16 arm, and my chest area.

17 Q. Okay. But you didn't receive any swabs in this case
18 from anywhere other than her hands.

19 A. No, ma'am. I just received the standardized kit that
20 was taken.

21 Q. And although educated, it is just conjecture as to how
22 she got it on her hands, isn't it, the gunshot residue?

23 A. Yes. Gunshot residue can get on someone's hands by
24 firing a gun or being in close proximity to a gun. Yes,
25 ma'am.

1 wasn't doing this with both hands.

2 A. The left hand was probably shielding in some way. If
3 this hand was in the plume of the cloud and that's how it got
4 the gunshot residue on it, then this hand could not have been
5 in the cloud because it was negative.

6 Q. Or else the hand was used to fire a gun. You just don't
7 know which.

8 A. That is also a possibility.

9 Q. Now, earlier when we were talking about the residue on
10 Cleveland Joyner's test---

11 A. Yes, ma'am.

12 Q. ---being higher on the outside of the hand---

13 A. Yes, ma'am.

14 Q. ---than on the palm---

15 A. Yes, ma'am.

16 Q. ---and you said that's consistent with having fired a
17 weapon.

18 A. Yes, ma'am, it can be.

19 Q. And his levels were considerably lower than Ms. Fogle's.
20 You've told us that.

21 A. Yes, ma'am.

22 Q. Were you aware that the gunshot residue test on Mr.
23 Joyner was not done until some two hours after the incident?

24 A. Yes, ma'am.

25 Q. Okay. Would what Mr. Joyner did during that two-hour

1 period possibly have some effect on the levels on his hands?

2 A. It can because gunshot residue can be removed from the
3 hands.

4 Q. If I put my hands in my pockets---

5 A. Uh-huh.

6 Q. ---a time or two, could that affect how much was on my
7 hands?

8 A. Yes, ma'am, it can.

9 **Ms. Shurling:** Thank you. No further questions.

10 **The Court:** You may step down. You are free to leave.

11 Thank you. All right. Y'all ready to call your next
12 witness?

13 **Ms. McDuffie:** The State calls Monica Goodwin.

14 Monica P. Goodwin, after being duly sworn,
15 testified as follows:

16 **The Clerk:** Please have a seat and state your full name
17 for the record.

18 **The Witness:** My name is Monica Patrice Goodwin.

19 Direct Examination

20 By Ms. McDuffie:

21 Q. Ms. Goodwin, where do you currently live? What state?

22 A. Maryland.

23 Q. And in May of 2009 did you live in Columbia, South
24 Carolina?

25 A. Yes.

1 Q. And in May of 2009 where were you employed?

2 A. Progressive Physical Therapy.

3 Q. And where was that located?

4 A. 1 Monckton Boulevard off of Forest Drive.

5 Q. In Columbia?

6 A. Yes. Off of Trenholm Road. Excuse me.

7 Q. And during your employment at the Progressive Physical
8 Therapy, did you become acquainted with Anthony Hackshaw?

9 A. I did.

10 Q. And how is that?

11 A. Like other patients, he was there for three days a week
12 for several months, so it got to be somebody that I expected
13 to see, like I said, like many other patients.

14 Q. And when you would see him, would he come to physical
15 therapy by himself or with another person sometimes?

16 A. Sometimes his wife would come with him, and I do
17 remember initially like his eval day she was with him on that
18 day and she did accompany him several other times, but that
19 was the only other person that ever came with him.

20 Q. And do you know what car he would drive to Progressive
21 Physical Therapy?

22 A. Yeah, it was a black Honda Accord.

23 Q. And on May the 20th, 2009, were you working at
24 Progressive Physical Therapy?

25 A. Yes.

1 Q. And were you -- did you see Mr. Hackshaw or did you see
2 the car he was driving on that day?

3 A. I did.

4 Q. What kind of car was that?

5 A. It was a silver Honda Accord.

6 Q. Do you remember if it was two-door or four-door?

7 A. I don't. I do remember thinking to myself as I looked
8 out the window that the cars looked very similar. I know the
9 black one was a two-door. I can't say definitively whether
10 the other one was or not, but I had thought to myself like
11 did they get the car painted because they looked so similar.

12 Q. And do you remember telling Investigator Kevin Reese
13 that it was a two-door Honda?

14 A. I do remember telling him that, but it's because of the
15 similarities of the -- of the cars. But today here I
16 can't -- I don't want to say for sure. Do I feel that in my
17 gut that it was a two-door? Yeah.

18 Q. And do you remember what time he came to physical
19 therapy on May 20th?

20 A. I don't.

21 Q. And was there a reason that you were looking for him or
22 that you noticed him come in?

23 A. I did not see him come in. I saw him leave.

24 Q. Oh, I'm sorry. Is there a reason you noticed him
25 leaving?

1 A. Mr. Hackshaw, because of the frequency, always spoke.
2 And it's a small clinic, so people -- everybody knew
3 everybody. So any time he would come to therapy, he would
4 peek around the corner, say hello, if it were when he arrived
5 or if he left. On that day I looked out the window and he
6 was leaving, and I didn't even know he was there. So that's
7 why I stepped closer to the window, and he did not -- he
8 hadn't said anything that day. So I didn't even know he was
9 in the building, that he had an appointment or anything so...

10 Q. You did not see him arrive.

11 A. No.

12 Q. You did not see him in the building.

13 A. No.

14 Q. But you saw him exiting Progressive Physical Therapy or
15 you saw him in his vehicle---

16 A. I saw him walking past the window as if he had exited
17 Progressive Physical Therapy and get into a car, yes.

18 Q. And that was a silver Honda and you believe it's a two-
19 door but not for sure.

20 A. Right.

21 Q. And was he alone or did you notice anyone else?

22 A. I did not see anybody else with him.

23 Q. And you're not sure of the time?

24 A. No.

25 **Ms. McDuffie:** Beg the Court's indulgence. No further

1 questions for this witness, Your Honor.

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

3 Cross-Examination

4 By Ms. Shurling:

5 Q. Very briefly. Where do you sit at Progressive Physical
6 Therapy?

7 A. I didn't sit. I was a physical therapy tech, and so I
8 stood up a lot of the times as I worked with patients.

9 Q. Okay.

10 A. And on that day I was standing when I happened to see
11 outside.

12 Q. Okay. That's the point I was trying to get to. You're
13 a physical therapist yourself, aren't you?

14 A. I'm in school to be a physical therapist right now, yes.

15 Q. Pardon?

16 A. I'm in school. I'm in school right now to be a physical
17 therapist.

18 Q. To become one.

19 A. Right. Before it was sort of an internship as a
20 physical therapy tech. It gave me the experience, kind of a
21 -- not a foot in the door but just to learn about the field
22 itself. And so I'm now actually in school to get that
23 degree.

24 Q. So as part of that internship, were you actually
25 treating patients by yourself or were you working with other

1 therapists?

2 A. I was working with other therapists. That's the job of
3 a rehab tech or an aide, some people call us. It's to assist
4 the physical therapists and physical therapy assistants. We
5 learn the interventions that patients receive, their
6 exercises. We know their flow sheets. And like I said, with
7 the frequency that patients come, we are kind of a person
8 that -- because we aren't actually skilled in the field of
9 medicine -- none of us really like going to the doctor, so
10 we're just kind of the person that buffers that experience,
11 and we also like fold towels and wipe mats and do those kind
12 of things that are...

13 Q. I understand.

14 A. Yes, ma'am.

15 Q. How many physical therapists work at Progressive?

16 A. In that particular...

17 Q. Clinic?

18 A. Only one physical therapist and one physical therapy
19 assistant. There were times when there would be a
20 fill-ins if we had evals on the day when our therapist was
21 scheduled to be off. They would just bring another therapist
22 in.

23 Q. Okay.

24 A. But on a permanent basis there was just one physical
25 therapist and one physical therapy assistant and then myself

1 as a physical therapy aide.

2 Q. Now, the physical therapist's assistant would sometimes
3 work one on one with a patient by himself; right?

4 A. Oh, absolutely. Yes.

5 Q. So there would be times when you would be in a room with
6 a physical therapist's assistant and somebody else would be
7 in a room with the actual certified therapist.

8 A. Well, no, because it's all in the same room. We
9 actually just kind of had a corner, say just like the corner
10 of this room, where there was no separation. Everybody was
11 in the same place.

12 Q. You mentioned folding towels?

13 A. Uh-huh.

14 Q. Do y'all wash and dry and---

15 A. Absolutely. Yeah. It was my job in addition to -- in
16 addition to the things that are directly related to my
17 schooling, that was my job. I had to fold towels. I had to
18 wash them. I had to make sure mats were cleaned for the next
19 patient, were disinfected, and that was a part of my job as
20 well as instruct patients on how to do exercises correctly.

21 Q. Okay.

22 A. And guide them through their session.

23 Q. Where was the washer and dryer located?

24 A. As you enter Progressive and enter that corner where the
25 P.T. office is set up, the washer and dryer is on your left.

1 Q. But it's not in the main therapy room.

2 A. Yes, it is. Yeah. Everything is right there. It's
3 really small. It's a really small clinic.

4 Q. So the washer and dryer is off in the corner of the
5 therapy room?

6 A. No, it's kind of like, say, like in an apartment. Where
7 there's the folding doors, it's inside of a wall.

8 Q. Okay.

9 A. There's a recess and there's a washer and dryer, and you
10 just opened the folding doors and they were there.

11 Q. Okay. You're certainly not swearing to this jury, are
12 you, that every time my client arrived at Progressive
13 Physical Therapy he sought you out and greeted you before he
14 started his therapy session?

15 A. Absolutely not.

16 Q. And there may have been other occasions when he came in
17 and got right down to business without speaking to you,
18 weren't there?

19 A. Yes, that might have been the case. I don't remember
20 those times because it wasn't the last time.

21 Q. Okay. Well, I assume you go to the rest room every now
22 and then, don't you?

23 A. Absolutely, yes.

24 Q. Okay. So it's even possible you were in the ladies room
25 when he arrived, isn't it?

1 A. When he arrived?

2 Q. You said you don't recall---

3 A. Any day?

4 Q. ---him speaking to you when he came in on May 20th.

5 A. Oh, anything is possible. Yeah.

6 Q. Okay. You could have been in the rest room.

7 A. Yeah.

8 Q. You could have been busy at the washer and dryer with

9 your back turned and not notice him.

10 A. (Witness nodded head affirmatively.)

11 Q. He could have spoken and the sound of the hair dryer was

12 loud enough that you didn't hear it, couldn't it?

13 A. We didn't have a hair dryer.

14 Q. I mean, not hair dryer. Pardon me. Clothes dryer.

15 A. It's possible.

16 Q. I mean, if you were standing right there on top of the
17 dryer it's possible that the sound of the washer and/or dryer
18 may have obscured a greeting, isn't it?

19 A. It's possible, but usually if you speak to someone you
20 want them to see you. So to just say hi seems a bit random.

21 Q. You didn't have any kind of relationship with my client,
22 did you?

23 A. No.

24 Q. Okay. So he may or may not have greeted you and you
25 didn't hear it.

1 A. That's possible; yes, ma'am.

2 Q. You may have been in the rest room.

3 A. That's possible.

4 Q. And when he left, he didn't speak to you.

5 A. Okay. Yes.

6 Q. Did that hurt your feelings?

7 A. No, it didn't hurt my feelings. Absolutely not it
8 didn't hurt my feelings.

9 Q. Okay.

10 A. It was just something that was out of the ordinary
11 because of the frequency of which I saw him. It's just like
12 many other -- I still have patients who now ask about me,
13 so...

14 Q. Again, I'm not trying to be difficult.

15 A. No, I understand.

16 Q. But you can't swear that he said farewell to you every
17 time he left a session, can you?

18 A. I cannot.

19 Q. Okay. And you don't know what may have been the reason
20 why he could have been leaving that day in a mood where he
21 didn't feel like chit-chatting.

22 A. That's possible.

23 Q. Could have been a hard therapy session. Might have been
24 tired; right?

25 A. Yeah, that's possible.

1 Q. Could have been in pain.

2 A. That's definitely possible.

3 Q. Could have been in a hurry to get somewhere, back to
4 work or something.

5 A. Yeah. That's true.

6 Q. Thank you.

7 A. You're welcome.

8 **Ms. Shurling:** A moment's indulgence, Your Honor.

9 Nothing further.

10 **The Court:** Anything further?

11 **Ms. McDuffie:** No, sir, Your Honor. We ask the witness
12 please be excused.

13 **The Court:** All right. Thank you, ma'am. You may step
14 down.

15 **Ms. Campbell:** May we approach?

16 **The Court:** Pardon me?

17 **Ms. Campbell:** May we approach?

18 **The Court:** You may.

19 (Whereupon, a bench conference was held.)

20 **The Court:** All right. Ladies and gentlemen, we're
21 going to break for lunch. It may be that the next witness
22 would go longer than will allow us to be out of here in a
23 relatively short period of time. So I'm going to ask you to
24 come back in an hour and 15 minutes, and shall we synchronize
25 again here, folks? I got 25 'til. I got 26 'til. But let's

1 come back about 10 'til 2, and y'all have a nice lunch and
2 don't discuss the case while you're gone, and apparently our
3 alternate is really hungry. Y'all have a good lunch.

4 (Whereupon, the jury was excused from open court at
5 12:37 p.m. to go to lunch.)

6 **The Court:** All right. Y'all have a good lunch and
7 we'll see you back here in an hour and 15 minutes.

8 (Whereupon, a lunch break was taken.)

9 **The Court:** All right. Thank y'all. Please be seated
10 if you would. Did they bring the... Do you have the
11 witness?

12 **Ms. Campbell:** He...

13 (The witness enters the courtroom.)

14 **The Court:** All right. Y'all ready to go?

15 **Ms. Campbell:** We just need to clean up his record
16 first, Your Honor, if we may.

17 **The Court:** All right.

18 **Ms. Campbell:** Your Honor, this is Torrian Gleaton. He
19 is currently in federal custody. He recently pled guilty to
20 one count of an unlawful possession of a firearm charge in
21 federal court. It's my understanding that that charge
22 carries a penalty of up to ten years, a fine of \$250,000, and
23 a term of supervised release for at least three years in
24 addition to any term of imprisonment. I have spoken with his
25 lawyer, Ms. Chapman.

1 In addition to that, Your Honor, as far as pending
2 charges, he does have pending in Sumter County an unlawful
3 carrying of a weapon charge in State court in Sumter County.
4 As far as his prior record which I just turned over prior
5 records to everybody this afternoon, to Mr. -- you got it?
6 Good. As far as anything possibly impeachable, it does show
7 where he has a 2008 conviction for -- it looks like
8 possession of cocaine. I have to ask: Is it possession of
9 crack or cocaine?

10 Mr. Gleaton: Ecstasy.

11 Ms. Campbell: What?

12 Mr. Gleaton: Ecstasy.

13 Ms. Campbell: Possession of Ecstasy in 2008 and that
14 would be the extent of anything I would submit that is
15 impeachable as far as his prior record.

16 The Court: Do you agree with that, Ms. Shurling? I
17 don't have his record, so---

18 Ms. Shurling: I'm looking at the record right now, Your
19 Honor. Just a second.

20 Ms. Campbell: The only other thing I would note, Your
21 Honor, is it's my understanding that in federal court that if
22 he did testify and was cooperative that that could be grounds
23 for a downward departure as far as -- I don't know what
24 sentence he's facing. Your maximum is ten years?

25 Mr. Gleaton: Yes, ma'am.

1 **Ms. Campbell:** I don't know what sentence his sentencing
2 recommendation is within that guideline, but if he -- if he
3 cooperates with the State and testifies truthfully, he could
4 be eligible for a downward departure is my understanding of
5 the federal law.

6 **Ms. Shurling:** I'm very familiar with that system, Your
7 Honor.

8 **The Court:** All right. Well, y'all ready to go?

9 **Ms. Campbell:** I did speak to his lawyer today, Your
10 Honor. She's not going to be here for his testimony. She
11 understands he's going on the stand, in any event. He has
12 indicated to her that he does not want to cooperate, my
13 understanding.

14 **The Court:** All right. Bring the jury in if you could.

15 (Whereupon, the jury was brought into open court at 1:57
16 p.m.)

17 **The Court:** Okay. Madam Solicitor, ready to go forward
18 with the next witness?

19 **Ms. Campbell:** Yes, sir. May it please the Court?

20 **The Court:** Yes, ma'am.

21 **Ms. Campbell:** The State calls Torrian Gleaton.

22 Torrian Gleaton, after being duly sworn, testified
23 as follows:

24 **The Clerk:** Please have a seat and state your full name
25 for the record.

Direct Examination

2 By Ms. Campbell:

3 Q. Are you good? Mr. Gleaton, how old are you?

4 A. Twenty-two.

5 Q. And where do you live, sir?

6 A. Flora Drive.

7 Q. Flora Drive here in Columbia?

8 A. Yeah.

9 Q. And how long have you been living in the Columbia area?

10 A. All my life.

11 Q. All your life? Can I get you just a little bit closer?

12 And you're currently in custody?

13 A. Yes, ma'am.

14 Q. And sometime I believe -- was it August you got indicted
15 on the federal level?

16 A. Yes, ma'am.

17 Q. And you've been convicted in the federal court?

18 A. Yes, ma'am.

19 Q. And what have you -- you've actually pled guilty. What
20 did you plead guilty to?

21 A. What do you mean? Like a sentence---

22 Q. What's the charge?

23 **The Court:** You needed to speak up.

24 **The Witness:** Possession of a firearm by a felon.

25 By Ms. Campbell:

1 Q. Possession of a firearm by a felon?

2 A. (Witness nodded head up and down.)

3 Q. And I believe the maximum penalty you're facing in
4 federal court is up to ten years imprisonment?

5 A. Yes, ma'am.

6 Q. And/or a \$250,000 fine?

7 A. Yes, ma'am.

8 Q. And even if you get a term of imprisonment after that,
9 they can put you on mandatory three years of supervision. Is
10 that correct?

11 A. Yes, ma'am.

12 Q. And as part -- in federal court you don't know what your
13 sentencing guidelines are yet, do you, sir?

14 A. No, ma'am.

15 Q. But as part of it, if you cooperate and testify
16 truthfully, you could get a downward departure as to whatever
17 sentence they deem appropriate.

18 A. Yes, ma'am.

19 Q. Is that true?

20 A. Yes, ma'am.

21 Q. Okay. But you don't know even what your sentence is
22 supposed to be at this point.

23 A. No, ma'am.

24 Q. But it could be up to ten years.

25 A. Yes, ma'am.

1 Q. And in addition to that, just so we make the record
2 clear, you currently have pending in Sumter County one count
3 of an unlawful possession of a weapon.

4 A. Yes, ma'am.

5 Q. Is that correct?

6 A. (Witness nodded head up and down.)

7 Q. And then as far as your prior record goes, back in 2008
8 you were convicted on one count I believe of possession of
9 Ecstasy?

10 A. Yes, ma'am.

11 Q. Do you know Ellison Hudson?

12 A. I don't want to cooperate.

13 Q. You don't want to cooperate?

14 A. No.

15 Q. Do you know Anthony Hackshaw?

16 A. I don't want to cooperate.

17 Q. You don't want to cooperate.

18 A. No, ma'am.

19 Q. Okay. Let me ask you this. Do you remember back on
20 June the 3rd of this year when you met with investigators
21 from the Columbia Police Department?

22 A. I remember meeting with them.

23 Q. Okay. I believe you had your mom and your dad with you
24 that day, didn't you?

25 A. Yes, ma'am.

1 Q. You met with Investigator Reese?

2 A. Yes, ma'am.

3 Q. And Investigator Mahoney?

4 A. Yes, ma'am.

5 **Ms. Shurling:** Your Honor, I would have an objection at
6 this time.

7 **The Court:** An objection?

8 **Ms. Shurling:** Yes, sir. I believe I need to be heard
9 outside the presence of the jury.

10 **The Court:** Come up here and tell me what you object to.

11 (Whereupon, a bench conference was held.)

12 By Ms. Campbell:

13 Q. Do you remember back on -- I'm sorry. June the 3rd you
14 went to the Columbia Police Department?

15 A. Yes, ma'am.

16 Q. And you met with Investigator Reese and Investigator
17 Mahoney, like we just said.

18 A. Yes, ma'am.

19 Q. And you had your mother and your father with you, and
20 you were down at the headquarters.

21 A. Yes, ma'am.

22 Q. And do you remember meeting with them and talking to
23 them about Anthony Hackshaw and Ellison Hudson.

24 A. I don't want to cooperate.

25 Q. You don't want to cooperate. Just answer me. Do you

1 remember meeting with them?

2 A. Yeah, I remember meeting with them.

3 Q. And you gave some statements which they recorded?

4 A. I don't want to cooperate.

5 Q. I understand you don't want to cooperate. Just answer
6 me this: Do you remember giving them statements that they
7 recorded?

8 A. I remember.

9 Q. Okay. And do you remember telling them about how you
10 knew Bump, just whether or not?

11 A. I don't want to cooperate.

12 **Ms. Shurling:** Objection, Your Honor. I don't believe
13 -- we've approached the point counsel addressed at the bench,
14 and she's beginning to get into those matters.

15 **The Court:** I'm going to let her ask the questions, and
16 we'll see what he says. Now, I'm going to advise you that it
17 would be in your best interest to answer the questions here.
18 You are subject to the sanctions of the Court if you don't.

19 **The Witness:** What you mean?

20 **The Court:** Ladies and gentlemen, I'm going to let you
21 step back outside.

22 (Whereupon, the jury was excused from open court at 2:03
23 p.m.)

24 **The Court:** Where is his lawyer?

25 **Ms. Campbell:** She told me she got called to another

1 court. I probably -- if he needs an opportunity to consult
2 with her, that might be prudent after you advise him.

3 **The Court:** All right.

4 Examination by the Court

5 Q. All right. You are Mr. Gleaton? Is that right?

6 A. Yes, sir.

7 Q. All right. Mr. Gleaton, you have an obligation to
8 answer the questions here today. If you don't answer the
9 questions, the Court conceivably could hold you in contempt.
10 If you're held in contempt, then you could be incarcerated on
11 that as well which not only I'm sure would not be in your
12 best interest on your federal sentence but would add
13 additional time or could add additional time to whatever sentence
14 you get in the federal court. Would you like to see your
15 lawyer?

16 A. Yes, sir.

17 **The Court:** All right. We need to make arrangements to
18 have---

19 **Ms. Campbell:** I just sent my paralegal to call her and
20 get her over here, and we'll get him back downstairs. The
21 only reason we tried to get him done today, Judge, is because
22 we did get him out of federal custody and that's why we were
23 trying to get him expedited.

24 **The Court:** Well, we'll see whether we can get Ms.
25 Chapman over here.

1 **Ms. Campbell:** Yes, sir. We're doing it right now.

2 **The Court:** And he can have an opportunity to talk to
3 her. Have you got another witness you can call?

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

5 **Ms. Shurling:** I would inquire again from the State what
6 specific authority you're relying on to try to get his
7 testimony in?

8 **Ms. Campbell:** It's under Rule 613(b), Extrinsic
9 Evidence of Prior Inconsistent Statement of a Witness.

10 **The Court:** Whose cell phone is that?

11 **Ms. Shurling:** You said 619.

12 **Officer:** One of the jurors that brought it in.

13 **The Court:** Hold on just a minute. Well, that's not an
14 issue at this point in time.

15 **Ms. Campbell:** No, sir.

16 **The Court:** We're going to see what this witness wishes
17 to do after he's talked to his attorney. All right. If
18 y'all will take Mr. Gleaton back downstairs.

19 (Mr. Gleaton is taken out of the courtroom.)

20 **The Court:** All right. Are you ready -- have you got
21 another witness to call?

22 **Ms. McDuffie:** Beg the Court's indulgence.

23 (An off-the-record discussion takes place between Ms.
24 McDuffie and Ms. Shurling.)

25 **Ms. Shurling:** Your Honor, I have just been an advised

1 that the State does not intend to call the expert from Sprint
2 to testify concerning the technology involved with cell
3 towers and determining locations calls are made from based on
4 triangulation with cell towers. I would object at this time
5 to their introducing any testimony concerning location
6 information supposedly gleaned from cell tower records unless
7 they produce the expert who has the expertise to address the
8 issues.

9 **Ms. McDuffie:** Your Honor, there's -- we are intending
10 to call Kelly Cobia from S.L.E.D. The defendant's cell phone
11 records were already admitted into evidence. There was no
12 objection by Ms. Shurling at the time those records were
13 admitted in evidence. The testimony of Ms. Cobia from
14 S.L.E.D. will be that she took those phone records and using
15 the tower -- the towers are done by numbers using the tower
16 number and the location of that tower provided by S.L.E.D.

17 She plotted the locations of the towers on a map and
18 then put which calls were hitting which towers, all based on
19 the information in the phone records which is already in
20 evidence, Your Honor. There's no expertise or any -- I mean,
21 there's -- I mean, all she can do is say that she plotted it
22 on a map based on the information that's in the phone records
23 that are already in evidence, Your Honor.

24 **The Court:** All right.

25 **Ms. Shurling:** Your Honor, a moment, please. Your

1 Honor, they got the phone records from Sprint. It's their
2 records that show these numbers that supposedly establish the
3 locations.

4 **The Court:** Look, if the records are in evidence---

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

6 **Mr. Thompson:** If I may address it, Judge. What they
7 have admitted are the actual phone calls made by Mr.
8 Hackshaw. They have not, to the best of my knowledge,
9 admitted any evidence of where the towers are located.

10 **Ms. Shurling:** That's correct.

11 **Ms. McDuffie:** Your Honor, the tower location
12 information is with the phone records which was admitted
13 earlier through Investigator Thomas when he testified that
14 this is what they received from Sprint and as the return of
15 the search warrant that they executed, and there was no
16 objection to the records that were returned to them.

17 **The Court:** That information is on those records that
18 were previously admitted?

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

20 **Ms. Shurling:** No, sir, Your Honor, it is not.

21 **The Court:** Well---

22 **Ms. McDuffie:** Your Honor, the exhibit is right there.

23 **The Court:** I guess what we'll have to do is see what
24 the witness says. If she testifies that this record says
25 Tower 10 or whatever -- I don't know how they identify it.

1 **Ms. McDuffie:** By numbers, Your Honor; yes, sir.

2 **The Court:** Do you want to show them where it shows the
3 tower?

4 (Ms. McDuffie shows the information to Ms. Shurling and
5 Mr. Thompson.)

6 **Ms. Shurling:** Your Honor, I don't dispute that there
7 are numbers on here indicating the number of the tower, but
8 they don't have anyone here from Sprint to testify to what
9 number tower is located where.

10 **The Court:** Well, if she can't---

11 **Ms. McDuffie:** Your Honor, the location is with the
12 Sprint phone records. If you look at Tower 147, it says,
13 "Tower 147, 207 Pisgah Church Road, Columbia, South Carolina,
14 Richland, 29203," and then it gives the latitude and
15 longitude.

16 **Ms. Shurling:** Your Honor, the expert from S.L.E.D. ---
17 pardon me. The expert from Sprint is the individual who has
18 the knowledge of Sprint's workings---

19 **The Court:** Well, I'm going to let this witness testify
20 that they got that information from this bill and they --
21 this is what they base whatever it is based on that. If you
22 want to bring somebody in that says, hey, all that
23 information, those addresses -- that tower is not there, then
24 you're -- if you want to ask them... But if they're going to
25 testify from those records, I'm going to let them do it.

1 **Ms. Shurling:** Note my objection, Your Honor, please.

2 **The Court:** All right. Let's bring -- I'm going to tell
3 the jury that the -- that the witness has been excused for
4 the time being and may be recalled at some point in time.
5 All right. Bring the jury in.

6 (Whereupon, the jury was brought into open court at 2:10
7 p.m.)

8 **The Court:** All right. Ladies and gentlemen, the
9 witness, Mr. Gleaton, the Court has excused him from
10 testifying at this time. He may or may not be recalled at
11 some point in time in the future, but we're going to proceed
12 with calling the next witness.

13 **Ms. McDuffie:** The State would call Kelly Cobia.

14 **The Clerk:** Please have a seat and state your full name.

15 Kelly Cobia, after being duly sworn, testified as
16 follows:

17 Direct Examination

18 By Ms. McDuffie:

19 Q. If you would state your full name for the record.

20 A. Kelly Cobia.

21 Q. Ms. Cobia, where are you currently employed?

22 A. South Carolina Law Enforcement Division.

23 Q. And what unit are you in at the South Carolina Law
24 Enforcement Division?

25 A. In the Fusion Center.

1 Q. And can you please tell the jury what you do, what your
2 job description is, your job title at S.L.E.D.?

3 A. I'm a criminal intelligence analyst, so I do research
4 for cases. I create charts and maps, things like that.

5 Q. Analyze data?

6 A. Yes.

7 Q. And could you please tell them a little bit about your
8 educational background and training?

9 A. I've been working with S.L.E.D. -- I have a degree in
10 accounting. I've been working with S.L.E.D. for about four
11 and a half years. I've been to several analyst courses.
12 I've been to classes for charting and mapping software.

13 Q. And as part of your duties at S.L.E.D., do you analyze
14 cell phone records and tower locations?

15 A. Yes.

16 Q. And I'm going to show you what's been already been
17 admitted into evidence as State's exhibit 62 and ask if those
18 were the records that you were asked to analyze in this case.

19 A. Yes.

20 Q. And including the tower locations?

21 A. Yes, with the tower -- yes.

22 Q. And those were provided to you as a return from a search
23 warrant?

24 A. Right.

25 Q. By the City of Columbia Police Department?

1 A. Yes.

2 Q. And you analyzed these cell phone records of Anthony
3 Hackshaw?

4 A. Yes.

5 Q. And did we meet last week, specifically on Friday?

6 A. Yes.

7 Q. And did I ask you to see if you could come up with a map
8 or chart so that we could show this information to a jury?

9 A. Yes.

10 Q. And did you map, in preparation for this trial, the
11 defendant's cell phone records and tower locations based on
12 the information provided to you in State's exhibit 62 for May
13 the 20th of 2009?

14 A. Yes.

15 Q. And specifically did you concentrate from 11 a.m. to
16 shortly after 2 p.m. on May the 20th, 2009?

17 A. Yes.

18 Q. Is that the chart that you prepared in State's exhibit
19 67?

20 A. Yes, it is.

21 **Ms. McDuffie:** Your Honor, at this time we'd offer
22 State's exhibit 67.

23 **Ms. Shurling:** Subject to my objection, Your Honor.

24 **The Court:** All right. So admitted.

25 (State's exhibit 67 was received in evidence.)

1 Ms. McDuffie: Your Honor, if I may have the witness
2 step down.

3 The Court: You may. If you'll put the witness on---

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

5 The Court: ---this side so when she speaks, she speaks
6 to the jurors as well as back to the court reporter.

7 By Ms. McDuffie:

8 Q. Stand over here and keep your voice up so the court
9 reporter can hear you. Stand on that side so she can see you
10 over there. And can you please tell the jury how you created
11 this chart or what information you used in preparing this?

12 A. In the phone records it gives the tower information. It
13 also gives the coordinates, the G.P.S. coordinates, so I
14 entered that into my software here. It pinpointed exactly
15 where each tower was located. I also found the coordinates
16 for the residence and the doctor's office, and I also charted
17 those.

18 Q. The victim's residence, that's located at [REDACTED]

19 [REDACTED] ?

20 A. Right.

21 Q. And the Doctors Wellness Center is located at 1 Monckton
22 Court?

23 A. Yes.

24 Q. And you obtained this information from these phone
25 records?

1 A. The tower information. The victim's residence and the
2 doctor's office came from the investigator.

3 Q. And based on that, you were able to formulate this chart
4 for the jury.

5 A. Right.

6 Q. And can you please show the jury where in these phone
7 records the cell tower is indicated---

8 A. Sure.

9 Q. ---where the call starts?

10 A. In the last two columns it says first cell and last
11 cell. There's a four-digit number. The first digit
12 represents a sector. Most towers are split up into three to
13 four sectors. The last three numbers identify the actual
14 tower. So that's why these are all, like I said, with three-
15 digit numbers because that's the actual tower number.

16 Q. And so where here it says 2223, that's actually 223?

17 A. Right.

18 Q. And then based on that number, you then use the records
19 and you get the map coordinates from Sprint?

20 A. Exactly.

21 Q. And that's included in these records?

22 A. Yes.

23 Q. And please tell the jury starting at 11 a.m. the cell
24 phone tower that the defendant's phone was hitting off of.

25 A. At 11 a.m. -- between 11 a.m. and 12:23 p.m. his phone

1 was hitting off of Tower 147 which is in this area, and you
2 can see the progression from 12:25 to 1:17, 1:18. He was
3 hitting off of this tower.

4 Q. Let me stop you right there. Are you aware of how far
5 the victim's residence is from Tower 223?

6 A. It was a little over two miles, 2.04 miles.

7 Q. And is 2.04 miles within the range of a cell phone
8 tower?

9 A. Absolutely.

10 Q. And the defendant's phone is hitting off this tower for
11 what period of time?

12 A. Between 12:25 p.m. and about 1:17, 1:18 p.m.

13 Q. And then please tell the jury the next cell phone tower
14 that was then used by the defendant's phone.

15 A. The next call was at 1:19. He hits off of this tower in
16 this area from 1:19 to 1:22 and continues on from 1:22 to
17 about 2:18. He's hitting off this tower in that region.

18 Q. And that is the closest tower to Doctors Wellness
19 Center?

20 A. Yes.

21 Q. This is the victim's residence here. If you could have
22 a seat again. In looking at the cell phone records, there's
23 some calls that are not plotted on your chart that say routed
24 call and they -- what do they indicate as tower information?

25 A. Nothing. There is no tower information. To my

1 knowledge, routed calls means that it was sent to voice mail
2 or text message.

3 Q. And so no tower was used by the phone?

4 A. Right.

5 Q. And that's why you're not able to plot the phone during
6 a routed call.

7 A. Right.

8 Q. So only incoming and outgoing calls do you get tower
9 information so that you can plot the location that the cell
10 phone is hitting, the location of the tower that the cell
11 phone is hitting?

12 A. Correct.

13 Q. And the chart that you prepared for the jury is the
14 location of the cell phone towers?

15 A. Yes.

16 Q. And you used that using the exact coordinates provided
17 to you in those phone records?

18 A. Exactly.

19 **Ms. McDuffie:** Beg the Court's indulgence. No further
20 questions for this witness, Your Honor.

21 **The Court:** All right. Ms. Shurling. Oh, Mr. Thompson.

22 Cross-Examination

23 By Mr. Thompson:

24 Q. Good morning. I apologize. I was out of the courtroom
25 when you came in. What's your name?

1 A. Kelly Cobia.

2 Q. Kelly what?

3 A. Cobia.

4 Q. Cobia? How do you spell that?

5 A. C-O-B-I-A.

6 Q. Ms. Cobia, my name is Jeremy Thompson. How are you
7 doing?

8 A. Pretty good.

9 Q. So you work for S.L.E.D. That's right?

10 A. Yes.

11 Q. You don't work for Sprint.

12 A. No.

13 Q. And you just basically got this information from Sprint
14 and plotted all these towers.

15 A. Right.

16 Q. But you can't tell -- you don't have any specific
17 information about how the towers work?

18 A. No.

19 Q. You don't have -- and what's your -- what's your degree
20 in again?

21 A. Accounting.

22 Q. Do you have any specific experience in working for a
23 cell phone company?

24 A. No.

25 Q. Do you have any specific experience working for cell

1 phone towers, you know, burying them, anything along those
2 lines?

3 A. No.

4 Q. So all you can tell us is what the records actually say.

5 A. Right.

6 Q. And you can't tell us how far away someone could be when
7 they made that call and it hit that tower?

8 A. Not specifically. Only from what I've heard.

9 Q. But you don't know that. You don't know that personally
10 because you don't work for Sprint. Right?

11 A. Right.

12 Q. And you don't know what could cause someone to connect
13 to a tower that's perhaps further away from a tower they're
14 nearest?

15 A. Right.

16 Q. You don't know that.

17 A. No, I don't know.

18 Q. You don't know how someone could connect to a side of
19 the tower that they're not closest to. You don't know that,
20 do you?

21 A. Do not.

22 Q. All you can tell us is what tower someone actually
23 connected off of based on those records.

24 A. Correct.

25 Q. Did you conduct any additional analysis or is that all

1 you did?

2 A. That's all I did.

3 Q. Did you -- did you prepare the hot number list for
4 S.L.E.D. in this case that went through and prepared each and
5 every phone call that someone made from that phone?

6 A. No.

7 Q. So all you did was just took the numbers and plugged
8 them into a computer and that's what you got.

9 A. Right.

10 Q. And you don't know anything else about that -- about
11 this other than that.

12 A. Right.

13 Q. Beg the Court's indulgence. To the best of your
14 knowledge -- I mean, did -- you didn't even produce these
15 records; right?

16 A. Not the records, no. They were given to me.

17 Q. So you can't even vouch for their accuracy, can you?

18 A. No.

19 Q. So you don't even know if they came from Sprint, do you?

20 A. I guess technically no.

21 Q. And you don't technically even know who these cell phone
22 records are for. Correct?

23 A. Correct.

24 Mr. Thompson: Beg the Court's indulgence.

25 The Court: You only get one indulgence.

1 **Mr. Thompson:** I apologize, Judge.

2 By Mr. Thompson:

3 Q. You testified earlier that a routed call was one that
4 goes to voice mail?

5 A. Yes.

6 Q. That's to the best of your knowledge?

7 A. That's to the best of my knowledge.

8 Q. And those -- those wouldn't hit off a tower, to the best
9 of your knowledge?

10 A. To the best of my knowledge, they would not.

11 Q. I'm just going to ask you to take a look at that entry
12 right there.

13 A. Uh-huh.

14 Q. And is that a routed call?

15 A. That's what it says.

16 Q. And does that ping off two towers?

17 A. Looks like it does.

18 Q. And three lines down, is that a routed call?

19 A. Yes.

20 Q. And does that ping off two towers?

21 A. It does.

22 Q. How about that one?

23 A. It does?

24 Q. And that one?

25 **The Court:** Ma'am, you need to answer. Shaking your

1 head won't do it.

2 **The Witness:** I'm sorry. Yes.

3 By Mr. Thompson:

4 Q. That one? Okay. So your statement earlier that a
5 routed call doesn't ping off a tower, that it goes straight
6 to voice mail, does that always occur? That's just a guess?

7 A. Like I said, it was to the best of my knowledge. I'm
8 not, you know, a cell phone tower specialist, so I don't
9 know. That's just what I've been told.

10 **Mr. Thompson:** Nothing further of this witness.

11 **The Court:** All right. Anything?

12 **Ms. McDuffie:** Briefly, Your Honor.

13 Redirect Examination

14 By Ms. McDuffie:

15 Q. The chart that you prepared is accurate according to the
16 records that were provided to you?

17 A. Yes.

18 Q. And what company name is on those records that were
19 provided to you?

20 A. Sprint.

21 Q. Sprint?

22 A. I believe so, yes. Yes, Sprint Nextel. Yes.

23 Q. And are these the official records that were provided to
24 you?

25 A. I don't -- I mean, yes.

1 Q. Or a copy?

2 A. I had a copy, yes.

3 Q. And the call -- the routed calls that were done during
4 this time, do they show tower location information?

5 A. No, they do not.

6 Q. And, therefore, they're not able to be plotted?

7 A. Right.

8 Q. And voice mail is one of the ways that that gives you a
9 zero on both?

10 A. Yes.

11 Q. And that's why those calls were not plotted.

12 A. Right.

13 Q. Had you been able to, you would have plotted them on the
14 chart?

15 A. Yes.

16 Q. And this is an accurate chart based on the information
17 contained in those records.

18 A. Yes, it is.

19 **Ms. McDuffie:** No further questions.

20 **The Court:** All right. Anything?

21 Recross Examination

22 By Mr. Thompson:

23 Q. What is the basis for your knowledge that a phone call
24 that doesn't ping off a tower that goes to voice mail is --
25 how do you know that?

1 A. We have agents who specialize in cell phone
2 surveillance. So that's...

3 Q. You asked one of them?

4 A. I mean, yes.

5 Q. Or someone has told you that before?

6 A. Right.

7 Q. But you don't actually know that personally?

8 A. Right. Yeah. To the best of my knowledge, that's what
9 happens.

10 Q. And did you call anybody from Sprint to verify that you
11 got these from Sprint?

12 A. I did not.

13 **Mr. Thompson:** Nothing further, Your Honor.

14 **The Court:** All right. Thank you, ma'am. You may step
15 down.

16 **Ms. McDuffie:** We ask the witness be excused, Your
17 Honor.

18 **The Court:** She may. Call your next witness.

19 **Ms. Campbell:** The next witness, Your Honor, would be
20 Terran Hughey, but it may take a second to get him up here.
21 We do have a matter we need to take up before...

22 **The Court:** Wait a minute. Tell me that again.

23 **Ms. Campbell:** The next witness is Terran Hughey.

24 **The Court:** All right. Ladies and gentlemen, let me let
25 you step back to the jury room. Please don't discuss the

1 case while you're back there.

2 (Whereupon, the jury was excused from open court at 2:26
3 p.m.)

4 **Ms. Campbell:** May it please the Court, Your Honor?

5 **The Court:** Yes, ma'am.

6 **Ms. Campbell:** The next witness is Mr. Terran Hughey.
7 He did receive information from the defendant directly when
8 they were incarcerated together. As far as his prior record,
9 Your Honor, he does have a 2001 forgery conviction that we
10 believe would be impeachable. From 2003 a receiving stolen
11 goods conviction and a possession of stolen vehicle. In 2004
12 a grand larceny. Then in 2008 a burglary third degree and
13 assault upon corrections employee. And then currently he
14 most recently was convicted of two counts of burglary in the
15 second degree and grand larceny, and he is currently being
16 held with a 15-year sentence.

17 He was put into a program by I believe Judge Cooper - it
18 was either Judge Cooper or Judge Childs - where he went to a
19 program and he completed it. I don't know what happened
20 since. Anyway, he failed out of that program. He's
21 currently being held on a bench warrant because he failed out
22 of that program and he's facing up to 15 years, I believe, on
23 one of those burglary seconds. But I've sent for his lawyer,
24 and I mistakenly told Mr. Maye - it's not his fault - that we
25 thought it would be around 3:00.

1 **The Court:** Say that again.

2 **Ms. Campbell:** I said---

3 **The Court:** Mr. Maye is his lawyer?

4 **Ms. Campbell:** Yes, sir, and I'm saying I told Mr. Maye
5 I thought we wouldn't get to his client until around 3:00 and
6 I messed up.

7 **The Court:** So is Mr. Maye not around?

8 **Ms. Campbell:** He's coming up. It's just my fault that
9 he's not here yet. He's coming. There he is.

10 **The Court:** All right. So what -- what's he doing?

11 **Ms. Campbell:** I just wanted to clarify with him that I
12 stated correctly that he was convicted of two counts of
13 burglary in the second degree and he's been sentenced to 15
14 years on each.

15 **Mr. Maye:** He was sentenced to 15 years suspended to
16 three years probation.

17 **Ms. Campbell:** And part of the probation is that he
18 attend a certain program?

19 **Mr. Maye:** Correct.

20 **Ms. Campbell:** An in-house...

21 **Mr. Maye:** Drug treatment, Victorious Overcomers.

22 **Ms. Campbell:** Which he has failed out. He has since
23 been picked up on a bench warrant. He is currently facing
24 sentencing up to 15 years on those charges. Is that a
25 correct statement?

1 Mr. Maye: That's a correct statement.

2 Ms. Campbell: I just didn't want to misrepresent---

3 The Court: What, on a probation revocation?

4 Mr. Maye: Yes, sir.

5 The Court: All right. Anything else?

6 Ms. Campbell: And I believe that one of those was
7 originally a burglary first that's pled to a burglary second.

8 Mr. Maye: That's correct. They're both burglary second
9 violent.

10 The Court: Anything?

11 Ms. Shurling: I don't believe so, Your Honor.

12 The Court: All right. Well, let's -- where is this
13 fellow?

14 Ms. Campbell: I asked Joe to get him, and he went down
15 to get him, so he should be on his way up.

16 The Court: All right.

17 Ms. Shurling: Your Honor, while we're waiting, may I
18 take this opportunity to have a quick word with Mr. Maye?

19 The Court: You certainly can. I'm going to watch you
20 to see if there's such thing as a Shurling quick word.

21 (Pause in proceedings.)

22 The Court: All right. Everybody had all the chance
23 they want to talk to Mr. Maye?

24 Ms. Campbell: Mr. Maye is very popular.

25 The Court: He's a popular fellow among you ladies. At

1 least that's what he's told me. All right. Let's bring the
2 jury in.

3 Ms. Campbell: Thank you, Your Honor.

4 (Whereupon, the jury was brought into open court at 2:31
5 p.m.)

6 The Court: All right. Madam Solicitor, do you want to
7 call your next witness?

8 Ms. Campbell: The State calls Terran Hughey, Your
9 Honor.

10 Terran Hughey, after being duly sworn, testified as
11 follows:

12 The Clerk: Please have a seat and state your full name
13 for the record.

14 Direct Examination

15 By Ms. Campbell:

16 Q. Mr. Hughey, how old are you?

17 A. Thirty-eight.

18 Q. And you live here in the Columbia area?

19 A. Yes, ma'am, I do.

20 Q. How long have you been living in Columbia?

21 A. All my life.

22 Q. All your life? You're very soft-spoken. You're going
23 to have to speak up a little bit. Okay?

24 A. All my life, ma'am.

25 Q. All your life?

1 A. Yes, ma'am.

2 Q. And you're currently incarcerated?

3 A. Yes, ma'am.

4 Q. Obviously. And what are you incarcerated on right now?

5 A. Well, I'm locked up for two counts of burglary, a grand
6 larceny and a petit larceny, but I'm back now on a probation
7 violation.

8 Q. Okay. And you've got a prior record, don't you?

9 A. Yes, ma'am, I do.

10 Q. And I want to go through it a little bit. Starting back
11 in about 2001, you were convicted of forgery?

12 A. Yes, ma'am.

13 Q. And then in 2003 you were convicted of receiving stolen
14 goods?

15 A. Yes, ma'am.

16 Q. And possession of stolen vehicle.

17 A. Yes, ma'am.

18 Q. Then in 2004 you were convicted of grand larceny.

19 A. Yes, ma'am.

20 Q. And in 2008 you got a burglary in the third degree and
21 assault on a corrections officer?

22 A. Yes, ma'am.

23 Q. And then earlier this year in May you pled guilty to two
24 counts of burglary second and to grand larceny and petit
25 larceny?

1 A. Yes, ma'am, I did.

2 Q. And at that point you received a 15-year sentence
3 suspended on you completing a drug program. Wasn't that
4 right?

5 A. Yes, ma'am.

6 Q. And you failed out of that.

7 A. Yes, ma'am.

8 Q. So you're back in custody.

9 A. Yes, ma'am, I am.

10 Q. And that burglary second -- actually one of them was
11 pled down from a burglary first. Is that correct?

12 A. That's correct.

13 Q. The burglaries that you pled to, do you remember when
14 you got arrested on those?

15 A. Yes, ma'am. January the 20th, 2009.

16 Q. And from the time of January 20th of 2009 until you pled
17 I believe in May of this year---

18 A. Yes, ma'am.

19 Q. ---were you incarcerated?

20 A. Yes, ma'am, I was.

21 Q. And where were you incarcerated, sir?

22 A. At Alvin S. Glenn Detention Center in the Hotel Unit.

23 Q. In the Hotel Unit?

24 A. Yes, ma'am.

25 Q. And tell this jury: How is the jail set up? Are there

1 different units where different people are housed?

2 A. Yes, ma'am, there is.

3 Q. Is there interaction -- how many people approximately do
4 you know are housed in one unit or stay in the Hotel Unit?

5 A. At least about 60.

6 Q. About 60?

7 A. Yes, ma'am.

8 Q. And is there any interaction between the people that are
9 housed within the same unit?

10 A. Yes, ma'am. Everybody comes out together.

11 Q. And is there kind of a common area in the middle and
12 then there's individual kind of cells around it?

13 A. Yes, ma'am, there is.

14 Q. And in the common area, the recreation area, people can
15 interact. Is that correct?

16 A. Yes, ma'am.

17 Q. Inmates.

18 A. Inmates.

19 Q. And what types of things do you do when you're in the
20 common areas?

21 A. Use the phone, watch T.V., play cards, walk on the rec
22 yard, go in the multipurpose room, and, you know, have
23 religious service. I mean, you basically can -- you got the
24 free will to move around, you know, as long as you're out.

25 Q. And then at certain times you have to go back to your

1 cell where you sleep and things of that nature.

2 A. Yes, ma'am.

3 Q. But for the most part during the day y'all are out in
4 the common area---

5 A. Yes, ma'am.

6 Q. ---at least parts of it?

7 A. Yes, ma'am.

8 Q. And that's where you play cards and everything.

9 A. Yes, ma'am, it is.

10 Q. Let me ask you this: Prior to getting incarcerated on
11 these burglary charges, did you ever know Anthony Hackshaw?

12 A. No, ma'am, I didn't.

13 Q. Tell this jury how you met Anthony Hackshaw.

14 A. Playing cards at Alvin S. Glenn Detention Center,
15 playing spades.

16 Q. Was he housed in the same unit with you?

17 A. Yes, ma'am, he was.

18 Q. And when you first met him, did you know what charge he
19 was in on?

20 A. No, ma'am, I didn't.

21 Q. You had never had any contact with him before.

22 A. No, ma'am, I hadn't.

23 Q. Do you know approximately when it was when you first met
24 him?

25 A. I don't know exactly what month, but I know it was like

1 six or seven months prior to me getting released in May.

2 Q. So if I said the fall of 2009, would that be about
3 right?

4 A. Yes, ma'am, that would.

5 Q. And at that point y'all started playing cards together.

6 A. Yes, ma'am, we did.

7 Q. And tell this jury how you got to know him.

8 A. Well, we started playing spades against each other, and
9 he found out that I had you as my solicitor and he started
10 asking me questions about you as far as trial purposes and
11 how was you and things of that nature.

12 Q. And as time progressed, did y'all -- did he start
13 telling you more and more about himself?

14 A. Yes, ma'am. He started telling me where he was from and
15 what he was doing here in Columbia and, I mean, letting me
16 read his books and newspapers and, you know, he just started
17 telling me a lot of stuff about himself.

18 Q. And during that period of time you said he told you
19 where he was from. Where was he from?

20 A. He said he was from New York.

21 Q. And did he tell you why he was here in Columbia?

22 A. No, he didn't tell me why he was here in Columbia, but
23 he told me where he was working at. He told me he had a
24 Dodge Charger sitting on 24 rims and told me, you know, he
25 was hustling and into the music thing and things of that

1 nature.

2 Q. Okay. When he said he was hustling, what does that
3 mean?

4 A. He was selling weed.

5 Q. And---

6 **Ms. Shurling:** Objection, Your Honor.

7 **The Court:** Sustained.

8 By Ms. Campbell:

9 Q. Did he start -- did you at some point learn from him
10 what he was charged with?

11 A. Yes, ma'am.

12 Q. How did that happen?

13 A. He started telling me -- basically started asking me
14 about different things like as far as evidence in the case.
15 He heard I went to trial along with you as a lawyer and found
16 out that I got a hung jury.

17 Q. Got a hung jury?

18 A. Yes, ma'am. So he started asking me about evidence as
19 far as no eyewitness, no weapons, things of that nature
20 there.

21 Q. And did he tell you what he was charged with?

22 A. Yes, ma'am.

23 Q. And what did he tell you he was charged with?

24 A. Charged with murder.

25 Q. Did he start to tell you specifics about what had

1 happened and what he knew about his charges?

2 A. Yes, ma'am, he did.

3 Q. And what did he tell you?

4 A. First he started asking me do I know a dude named E. And
5 a dude named Hot Boy which I didn't.

6 Q. A dude named E.?

7 A. Yes, ma'am.

8 Q. And a dude named Hot Boy.

9 A. Yes, ma'am.

10 Q. And you didn't know them?

11 A. No, ma'am, I don't know them.

12 Q. What did he tell you about E. And Hot Boy?

13 A. Told me they robbed him for a half pound of weed and,
14 you know, he told me where they was from and how he learned
15 about where they lived at through some girl and---

16 **Ms. Shurling:** Your Honor, again subject to my previous
17 objection...

18 **The Court:** All right. Overruled. Go ahead.

19 **Ms. Campbell:** Thank you.

20 By Ms. Campbell:

21 Q. He told you about E. And Hot Boy.

22 A. Yes, ma'am.

23 Q. That they robbed him?

24 A. Yes, ma'am.

25 Q. What did he say he wanted to do after they robbed him?

1 A. Said he was going to get them, but he said he waited a
2 couple of weeks and said some girl that he know knew them,
3 paid her to tell him where they was at. So she took him on
4 Two Notch Road and showed them to a Best Buy where E's father
5 worked at.

6 Q. Where E's father works?

7 A. Yes, ma'am.

8 Q. The Best Buy.

9 A. Yes, ma'am.

10 Q. Some girl took him over is what he told you?

11 A. Yes, ma'am.

12 Q. And showed him where E's father worked.

13 A. Yes, ma'am.

14 Q. And at that point did he notice anything in the parking
15 lot?

16 A. Yes, ma'am. At the time they seen I guess it was E's
17 father getting out of a white two-door pickup truck at the
18 time when she was showing him, but she took him to Best Buy.

19 Q. Did he say she took him anywhere else?

20 A. Yes, ma'am. After that she took him to a place on
21 Farrow Road close to Isaac Street and showed him where E.
22 Supposed to have been staying at a house on the corner.

23 Q. A house on a corner?

24 A. Yes, ma'am, with a fence around it.

25 Q. With a fence around it.

1 A. Yes, ma'am.

2 Q. And did he indicate whether or not the girl told him who
3 lived at the house on the corner with the fence around it
4 near Isaac Street?

5 A. Yes, ma'am. She said that the dude E. Stayed at the
6 house with the fence around it.

7 Q. When he went there with the girl, did he say he saw
8 anything in the driveway?

9 A. Yes, ma'am. He said a black Honda car he seen in the
10 driveway that was supposed to have been the guy E. Car.

11 Q. Did he indicate anything else about the neighborhood
12 that she told him?

13 A. Yes, ma'am. He said she told him that there was a
14 senator or a representative that stayed a couple of houses
15 down and if he was going to do something there he had to be
16 careful because they visit them on a regular and he brung
17 body guards with him.

18 Q. A senator or somebody? Do you remember a name?

19 A. I think it was somebody named Clyburn.

20 Q. Clyburn?

21 A. Yes, ma'am.

22 Q. And was it him or a relative?

23 A. Was it him? As far as who?

24 Q. As far as who lived in the neighborhood.

25 A. It was a relative. I think he said his mother stayed in

1 the neighborhood.

2 Q. Did he ever say after the girl showed him where E. Lived
3 and he gave you that information about it -- did he ever tell
4 you about whether or not he went back to where E. Lived?

5 A. Yes, ma'am.

6 Q. And tell the jury what he told you about that.

7 A. He said they came back later on that night and rode past
8 the house, and they seen the white truck and the car in the
9 yard at the same time, so he knew that was the right spot.

10 Q. Because he recognized the white truck?

11 A. Yes, ma'am.

12 Q. He had mentioned earlier to you that he was going to get
13 back at E. And Hot Boy?

14 A. Yes, ma'am.

15 Q. Did he ever tell you what he did in furtherance of that?

16 A. I know he said they waited like a couple of weeks, and
17 then they was at the studio getting high or getting blowed
18 and I guess they got a call. When it came through, said they
19 seen two dudes in the yard with dreads in their head. I know
20 he said one of them was E. I don't know who the other one
21 was.

22 Q. One of them was E?

23 A. Yes, ma'am.

24 Q. But he didn't -- he didn't tell you he knew who the
25 other one was?

1 A. No, ma'am.

2 Q. Okay. And he said they both had dreads.

3 A. Yes, ma'am.

4 Q. What did he say he did when he got that information?

5 A. He said they rode by, got out of the car, and they
6 handled their business.

7 Q. Did he tell you specifically how they handled their
8 business?

9 A. Yes, ma'am.

10 Q. What did he say they did?

11 A. Said they rode past the house, went and parked, got out,
12 and I guess there's a yard there that adjoins their yard like
13 a cut that comes through the back. So they came up and they
14 unloaded, said they let like over 20 something rounds go on
15 these people, and then he said the next day he seen it on the
16 news where a girl had done got hit, said he didn't know how
17 he missed them. Then he said that that's when he found out
18 the girl got killed. Then he said they arrested some dude
19 named James Bailey.

20 Q. Okay. Let me slow you down a little bit. He said --
21 you said they unloaded?

22 A. Yes, ma'am.

23 Q. And did he tell you how many times he thought he shot?

24 A. I think he said over like -- they let loose like over 20
25 something rounds.

1 Q. That they let loose.

2 A. Yes, ma'am.

3 Q. Did he ever name who the person was with him?

4 A. No, ma'am. He just said his man, him and his mans.

5 Q. Him and his mans?

6 A. Yes, ma'am. He never gave me a specific name.

7 Q. And I believe you said something a few minutes ago that
8 he sprayed them and he didn't know how he missed them?

9 A. Yes, ma'am.

10 Q. Who is them that he's referring to that he missed?

11 A. The two guys in the yard.

12 Q. And one of those guys was whom?

13 A. Supposed to have been a guy named E.

14 Q. E?

15 A. Yes, ma'am, the guy that was supposed to live at the
16 house.

17 Q. And then you mentioned something about he saw something
18 the next day?

19 A. Yes, ma'am, on the news that a girl got killed.

20 Q. You also mentioned something about a guy named Bailey?

21 A. Yes, ma'am.

22 Q. What did he tell you about the guy named Bailey?

23 A. He said that they arrested -- he seen on the news that
24 they arrested a guy named Bailey for the murder, so he felt
25 like he was all right. He was in the clear until they

1 flashed his picture and the police called him and told him to
2 come down to the station. That's when he say he went and got
3 his lawyer and he went down to the station.

4 Q. Did he ever give you a name for the guy Hot Boy which is
5 one of the guys that he said robbed him?

6 A. Yes, ma'am.

7 Q. Do you remember the name now?

8 A. I think he said Ellison Hudson or Hudson Ellison,
9 something like that.

10 Q. Would that be the guy named E.?

11 A. Yes, ma'am.

12 Q. What about the guy named Hot Boy? Do you remember the
13 name he gave you?

14 A. Yes, ma'am.

15 Q. What was it?

16 A. I think it was Sheldon McDowell. Yes, ma'am, I think
17 that was it.

18 Q. And was that pretty much the substance of what he told
19 you happened and what he did?

20 A. Yes, ma'am.

21 Q. Did he ever tell you about any of the evidence he was
22 going to present in court?

23 A. He told me that he know they didn't have nothing on him
24 because he had a physical therapist or somebody at his job as
25 a witness, but that was during the time when he was quizzing

1 me about -- you know, asking me about fingerprints and
2 telling me they didn't have no eyewitness and all this here.

3 Q. Did he ever talk to you about him being surprised about
4 E. And Hot Boy telling the police about what had happened?

5 A. Yes, ma'am.

6 Q. What did he tell you about that?

7 A. He said he couldn't see them going to the police because
8 when they put the pistol on him he kept it in the streets.
9 So now that he done came back and put it on them, they done
10 went to the police snitching on him and he couldn't see them
11 doing that.

12 Q. Did he ever want you to help him make contact with
13 anybody?

14 A. When he first came in the dorm, he wanted me to make a
15 call so he can try to contact them fellows and tell them he
16 was going to pay them to keep their mouth shut, but then
17 later on - I guess a couple of months later - he says that he
18 went and took a lie detector test and passed it, so he ain't
19 needed to do that no more because he was going to beat the
20 charges.

21 Q. Did Hackshaw ever tell you about any plans he had once
22 he beat the charge?

23 A. Yes, ma'am.

24 Q. And what were those plans?

25 A. He said when he get out he was going to kill E, Hot Boy,

1 and another guy named Dow.

2 Q. Okay. Stop on that. Okay?

3 A. Yes, ma'am.

4 Q. When you were talking to him about -- when he was
5 talking to you -- excuse me.

6 A. Yes, ma'am.

7 Q. What was his demeanor like?

8 A. He was a real arrogant dude, loved to brag, loved to
9 talk what about he got, what he done did, where he been. I
10 mean, he's just an arrogant dude.

11 Q. Now, when you went to the police -- when your lawyer
12 actually went to the police I believe on your behalf---

13 A. Yes, ma'am.

14 Q. ---did they promise you anything in exchange for your
15 testimony? So when you gave the statement which is
16 substantially the same as today---

17 A. Yes, ma'am.

18 Q. ---nobody had made you any promises?

19 A. No, ma'am.

20 Q. And later on you actually pled guilty to two counts of
21 burglary second?

22 A. Yes, ma'am.

23 Q. One count was down from a burglary first.

24 A. Yes, ma'am.

25 Q. And you were sentenced and were put into a drug program.

1 A. Yes, ma'am.

2 Q. And now you're back facing the 15 years.

3 A. Yes, ma'am, I am.

4 Q. And, of course, you hope that your truthful testimony
5 will help you?

6 A. Yes, ma'am, I do.

7 Q. But has anybody promised you anything?

8 A. No, ma'am, they haven't.

9 Q. The person that you met in the Hotel dorm that told you
10 about his case that you've just related to this jury---

11 A. Yes, ma'am.

12 Q. ---do you see him here in the courtroom?

13 A. Yes, ma'am, I do.

14 Q. Can you point him out for the jury?

15 A. The guy sitting right there.

16 Q. What's he wearing?

17 A. The gray suit.

18 Q. Sitting in the middle?

19 A. Yes, ma'am, sitting in the middle.

20 Q. Between his lawyers or between the woman and the man.

21 A. Between the woman and the man.

22 Ms. Campbell: Your Honor, may the record reflect he's
23 identified the defendant?

24 The Court: It does.

25

Cross-Examination

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

By Ms. Shurling:

Q. Good afternoon, Mr. Hughey.

A. Good afternoon, ma'am.

Q. Let me clarify your current charges, if I may. I believe you said you had two counts of second degree burglary?

A. Yes, ma'am, I do.

Q. Wasn't one of those charges originally first degree burglary?

A. Yes, ma'am.

Q. Are you aware of what the penalty for first degree burglary is?

A. Yes, ma'am.

Q. What?

A. What the penalty is for it?

Q. Right.

A. (Witness shook head from side to side.)

Q. Fifteen years to life. Does that sound familiar?

A. Yes, ma'am.

Q. And the penalty for second degree burglary is what?

A. Fifteen years.

Q. Up to 15 years.

A. Yes, ma'am.

Q. And you could have gotten penalties for both of those

1 charges run consecutively as opposed to concurrently.

2 Correct?

3 A. Yes, ma'am, I could have.

4 Q. So you were looking at potentially life plus 15 for
5 these charges. Right?

6 A. No, ma'am.

7 Q. Pardon?

8 A. No, ma'am.

9 Q. Based on what you were charged with, if you had not had
10 a deal, you were facing up to life plus 15 years. Isn't that
11 correct?

12 A. I guess so; yes, ma'am.

13 Q. Okay.

14 A. Okay.

15 Q. And you have gone over your prior record with us here
16 today, haven't you?

17 A. Yes, ma'am, I have.

18 Q. And tell us again what sentence you ended up getting.

19 A. Fifteen years suspended to one year in the drug program
20 and two years probation.

21 Q. Pretty sweet deal for somebody with your record, isn't
22 it?

23 A. Well, can I explain to you why I got that?

24 Q. Oh, I know why you got it.

25 **Ms. Campbell:** Objection, Your Honor.

1 **The Court:** You can explain your answer.

2 **The Witness:** One of my victims is a lawyer named Jackie
3 Barlow, and my other victim is a lady named Miss Angela
4 Taylor. At the time of my arrest I had like a thousand
5 dollars worth of her jewelry that I turned over to her
6 through my lawyer. So both of my victims was asking that and
7 requesting that I go to this program.

8 By Ms. Shurling:

9 Q. At your guilty plea proceeding on May 11th, 2010, they
10 had you put on the record an extensive proffer of what your
11 testimony against my client would be before you were
12 sentenced, didn't they?

13 A. Yes, ma'am.

14 Q. Now, you were in Hotel dorm. Is that right?

15 A. Yes, ma'am, I was.

16 Q. And did I hear you say at one point you were my client's
17 cell mate?

18 A. No, ma'am, I wasn't.

19 Q. You were never his cell mate.

20 A. No, ma'am, I wasn't.

21 Q. All right. But you were in his pod.

22 A. Yes, ma'am.

23 Q. Now, during the day when you're not on lockdown, you
24 folks are free to meander around around the pod. Right?

25 A. Yes, ma'am.

1 Q. And just so these folks understand what the set-up is,
2 there's a big room in the middle. Right?

3 A. Yes, ma'am.

4 Q. And on the first tier there are cells all the way around
5 the outer perimeter.

6 A. (Witness nodded head up and down.)

7 Q. And then there's a staircase and there are cells all the
8 way around the perimeter on the second level as well.

9 Correct?

10 A. Yes, ma'am.

11 Q. But when you're not on lockdown during regular time
12 during the day, everybody wanders around everywhere. Right?

13 A. Yes, ma'am.

14 Q. Did you ever have occasion to sit and visit with my
15 client in his cell?

16 A. No, ma'am.

17 Q. Were there times when you could walk in his cell if you
18 had wanted to?

19 A. Yes, ma'am.

20 Q. Plenty, weren't there?

21 A. Yes, there was.

22 Q. And you are aware, are you not, that he had copies of
23 his discovery material in his cell with him, didn't he?

24 A. Was I aware of that? No, ma'am, I wasn't.

25 Q. Do you know what discovery materials are?

1 A. Yes, ma'am, I do.

2 Q. And you're denying that you ever got a chance to look
3 through those when my client wasn't looking sometime.

4 A. Yes, ma'am, I'm denying that.

5 Q. Of course, if you had done that you would have been able
6 to read all about this case, wouldn't you?

7 A. I guess so.

8 Q. And you would be able to find out where the incident
9 location was. Correct?

10 A. Yes, ma'am.

11 Q. And who was hurt, who the witnesses were, all kinds of
12 stuff just from reading that discovery, wouldn't you?

13 A. Yes, ma'am.

14 Q. But you didn't do that, did you?

15 A. No, ma'am, I didn't.

16 Q. Okay. Now, I believe you also told law enforcement that
17 my client supposedly confessed to you in someone else's
18 presence, a Mr. Kendrick Nelson. Is that correct?

19 A. He didn't confess to me in front of his presence. He
20 came through the door making a statement about taking a lie
21 detector test in front of his presence.

22 Q. Okay. And to your knowledge, Kendrick Nelson is very
23 close friends with E. Hudson, isn't he?

24 A. Yes, ma'am.

25 Q. So you want this jury to believe that my client would be

1 fool enough to be talking about his case in front of Kendrick
2 Nelson.

3 A. No, ma'am.

4 Q. And I don't mean to be rude to you, sir.

5 A. Uh-huh.

6 Q. But who are you in my client's universe that he would
7 just up and confess murder to you? Why would he just up and
8 confess murder to you of all people?

9 A. I don't know. That's something you would have to ask
10 your client, ma'am.

11 Q. Well, let's talk about that. How long had he known you?

12 A. Like about seven or eight months.

13 Q. Didn't know you on the street.

14 A. No, ma'am.

15 Q. Not somebody that had ever done any favors for him.

16 A. No, ma'am.

17 Q. You're not kin to him.

18 A. No, ma'am.

19 Q. You didn't know a bunch of people that he knew on the
20 street.

21 A. No, ma'am.

22 Q. But despite the very serious consequences of being
23 convicted of murder, he just decided to throw caution to the
24 wind and confess to you.

25 A. Yes, ma'am, he did.

1 Q. That's what you want this jury to believe.

2 A. I want the jury to know and believe the truth. That's
3 why I'm here today.

4 Q. With your prior record and the seriousness of the
5 charges you were facing, you knew you were looking at hard
6 time this time, weren't you?

7 A. Yes, ma'am.

8 Q. And unless you pulled a rabbit out of your hat, that's
9 exactly what was going to happen to you, isn't it?

10 A. No, ma'am.

11 Q. It's not?

12 A. No, ma'am.

13 Q. Again, at your guilty plea proceeding it was made
14 abundantly clear that you weren't going to be sentenced until
15 you put a proffer of what you were willing to testify to
16 against my client on the record. Right?

17 A. Nobody promised me nothing, ma'am.

18 Q. Before your plea proceeding, you had already given law
19 enforcement a statement against my client, hadn't you?

20 A. On my own free will.

21 Q. And as a result of that, you got a charge that carried a
22 life sentence reduced to one that carries 15. Correct?

23 A. Yes, ma'am.

24 Q. And once you made this proffer on the record of exactly
25 what you were willing to come to court and say about my

1 client, you got one year in a drug program, didn't you?

2 A. Yes, ma'am, but I was already going to the drug program
3 before the statement was even given.

4 Q. Mr. Hughey, you can't know that.

5 The Court: Look.

6 Ms. Shurling: Can you?

7 The Court: Don't argue with the witness. If you want
8 to ask him a question, ask him a question.

9 By Ms. Shurling:

10 Q. Mr. Hughey?

11 A. Yes, ma'am.

12 Q. They didn't give you that sentence until after you put a
13 sworn proffer on the record about what you were willing to
14 testify against my client. Right?

15 A. Yes, ma'am.

16 Q. And in a place like the Hotel Unit, you're there with a
17 lot of young men from the community, aren't you?

18 A. Yes, ma'am, I am.

19 Q. And how many months were you at Hotel before this
20 so-called confession happened?

21 A. Maybe about ten months.

22 Q. And how long were you in jail with my client before he
23 had the notion to unburden himself to you?

24 A. Probably about four or five months.

25 Q. So you had plenty of time to glean information, gather

1 information, not just from the discovery materials but from
2 talking to people on the street and other people in the Hotel
3 Unit, didn't you?

4 A. No, ma'am, I didn't.

5 Q. You couldn't have done that.

6 A. I had no reason to. I had no reason to do that.

7 Q. You had no reason to do that?

8 A. No, ma'am.

9 Q. How about facing life plus 15 in prison? That didn't
10 give you a reason?

11 A. No, ma'am, it didn't.

12 Q. A moment's indulgence. Okay. Very quickly let's just
13 go back over a couple of things. You said in your statement
14 that Mr. Hackshaw said he went to the location and shot up
15 the house. Correct?

16 A. Ma'am?

17 Q. In your statement to the police you claimed that my
18 client told you that he went to Hudson's home and shot up the
19 house.

20 A. Yes, ma'am.

21 Q. That's correct, isn't it?

22 A. Yes, ma'am.

23 Q. And he also supposedly told you that he didn't realize a
24 girl had been hit?

25 A. Yes, ma'am.

1 Q. What would you take shooting up the house to mean? Like
2 a drive-by?

3 A. Really, ma'am, I don't know. I just know shooting up
4 the house means pulling out a gun and shooting up the house.
5 So, I mean, I don't know -- he didn't say a drive-by. He
6 just said they shot up the house.

7 Q: So it was your understanding he shot up the house.

8 A. Yes, ma'am.

9 **Ms. Shurling:** Thank you.

10 **The Court:** All right. Anything in redirect?

11 **Ms. Campbell:** Just a couple of things.

12 Redirect Examination

13 By Ms. Campbell:

14 Q. Just a couple of questions. As far as the chain of
15 events, Mr. Hughey, you were charged and you came forward
16 sometime in March or April of last year?

17 A. Yes, ma'am.

18 Q. And when you gave your statement, you were still charged
19 with burglary in the first degree?

20 A. Yes, ma'am.

21 Q. And burglary in the second degree.

22 A. Yes, ma'am, I was.

23 Q. And at that point -- you also knew at that point that
24 your victims had both been contacted by your lawyer and they
25 wanted you to go into drug treatment.

1 A. Yes, ma'am. We was fighting it the whole time.

2 Q. And you knew that when you gave your statement then, and
3 then when you did your guilty plea a couple of -- a month or
4 so later, that was put on the record again that that's what
5 the victims wanted.

6 A. Yes, ma'am.

7 **The Court:** Anything, Ms. Shurling?

8 Recross Examination

9 By Ms. Shurling:

10 Q. Do you know Travis Golston?

11 A. Yes, ma'am, I do.

12 **Ms. Campbell:** Objection, Your Honor. Outside the
13 scope.

14 **The Court:** It is. You can only recross on what she
15 redirected on.

16 **Ms. Shurling:** Nothing further, Your Honor.

17 **The Court:** Thank you. You may step down.

18 **The Witness:** All right.

19 **The Court:** All right. Do you want to call your next
20 witness?

21 **Ms. Campbell:** Your Honor, may we approach?

22 (Whereupon, a bench conference was held.)

23 **The Court:** Ladies and gentlemen, I've got to take up a
24 matter involving something right now. I need you to -- we'll
25 take a shorter -- we'll take a break on a shorter time. So

1 I'm going to let you step back to the jury room. We'll relax
2 for about 15 minutes or so. Please don't discuss the case
3 while you're back there, and we'll bring you back. It might
4 actually be longer than 15 minutes. Depends on what I've got
5 to do here.

6 (Whereupon, the jury was excused from open court at 3:04
7 p.m.)

8 **The Court:** All right. Ms. Campbell?

9 **Ms. Campbell:** Your Honor, I think Mr. Kirkland can put
10 on the record what he's talked to his client about.

11 **Mr. Kirkland:** Your Honor, I apologize. I was not -- I
12 was associated on Torrian Gleaton's case, his federal
13 charges. I was not aware that he was appearing in court
14 today. I was associated to handle this, so I have to ask
15 permission first may I appear in front of you in improper
16 attire?

17 **The Court:** You already have.

18 **Mr. Kirkland:** I know, unfortunately.

19 **The Court:** Don't worry about that. We'll...

20 **Mr. Kirkland:** I went downstairs and I talked to him,
21 Your Honor, and I want to tell you what I told him, and you
22 can correct me if I told him something incorrect. I told him
23 that there are two types of contempt in South Carolina.
24 There's civil contempt in which you can try to compel him to
25 commit to some sort of action and you can hold him until he

1 does what it is you ask of him, and there's also criminal
2 contempt that you may punish him for not doing what you tell
3 him up to -- a possible -- up to a possibility of 180 days.
4 He---

5 **The Court:** I think I can hold -- without a jury trial,
6 I think I can put him in jail for up to 180 days.

7 **Mr. Kirkland:** Correct.

8 **The Court:** If we want to try him -- get the solicitor
9 to try him on a jury trial, then he can get longer than that.

10 **Mr. Kirkland:** Well, I've instructed him about the 180
11 days and I have instructed him about compelling him by
12 holding him until he does what you ask him to do, and he has
13 indicated that if that is the potential limit of what you
14 could do to him, he's going to choose to not testify.

15 **The Court:** All right. Where is your client?
16 Downstairs?

17 **Mr. Kirkland:** They have him in the holding cell.

18 **The Court:** All right. Well, stick around. We'll bring
19 him back up here and see whether he's going to refuse to
20 answer because, I mean, obviously he's got the right to
21 refuse to answer if the reasons are appropriate, but just to
22 come in and tell me he's not cooperating---

23 **Mr. Kirkland:** He maintains that the reason that he is
24 not cooperating -- unfortunately, he's not able to plead
25 under -- to say that it's a fifth amendment privilege against

1 incriminating himself. He's only able to say that he fears
2 for his safety and the safety of his family.

3 **The Court:** Well---

4 **Ms. Shurling:** And I would obviously object to him
5 saying anything like that in the presence of jury, Your
6 Honor.

7 **The Court:** All right. Your objection is noted. Well,
8 that isn't -- while I may be sympathetic to his concern,
9 unfortunately that's not a sufficient reason for his coming
10 into this court and saying that I'm not going to cooperate
11 and refuse to answer.

12 **Mr. Kirkland:** I gave him that instruction.

13 **The Court:** All right. Well, let's bring him up here,
14 and when he gets here in about 15 minutes we'll deal with it.

15 **Ms. Campbell:** Yes, Your Honor. And we're still wanting
16 to impeach him pursuant to 613, Rule 613.

17 **The Court:** Okay.

18 **Ms. Campbell:** Okay.

19 **The Court:** We'll come back -- as soon as they can get
20 him up here -- where is the deputy? Mr. Gravelyn, as soon as
21 you can get Mr. Gleaton -- is that his name?

22 **Mr. Kirkland:** Torrian Gleaton.

23 **The Court:** We're going to take a little bit of a break,
24 but if you could get him up here in about 10 minutes we'll...

25 (Whereupon, a short break was taken.)

1 **The Court:** Where is Mr. Kirkland and Mr. Gleaton?

2 (Mr. Kirkland and Mr. Gleaton enter the courtroom.)

3 **The Court:** All right. Mr. Gleaton?

4 **Mr. Kirkland:** Take the stand.

5 **The Court:** You can stand up here by him if you want.

6 Mr. Gleaton, I have asked Mr. Kirkland to come over here.

7 Mr. Kirkland represented you in the past? Is that correct?

8 **Mr. Gleaton:** Yes, sir.

9 **The Court:** And you've had an opportunity to talk to him
10 about whether you're going to testify here or not?

11 **Mr. Gleaton:** Somewhat. If I could have a little bit
12 more time, it would be great because I ain't really---

13 **The Court:** How much more time are you going to need?

14 **Mr. Gleaton:** Maybe about 10 or 15 minutes.

15 **The Court:** All right. Well, we'll---

16 **Mr. Gleaton:** Not much at all.

17 **The Court:** We'll give you some more time.

18 **Mr. Gleaton:** Okay.

19 **Mr. Kirkland:** I don't think it will be quite that much
20 time. We have one final issue that we---

21 **The Court:** Well, what probably is going to -- I mean,
22 we're going to put up another witness. So, you know, my
23 experience is in this case we don't finish witnesses in 10 or
24 15 minutes. So you might have a little more time than 10 or
25 15 minutes. Who is your next witness? Lengthy?

1 **Ms. Simpson:** We can put up Terri Gleason, Your Honor.

2 She shouldn't be too terribly lengthy. She's the firearms---

3 **The Court:** We'll get you back quickly.

4 **Mr. Kirkland:** Thank you, Your Honor.

5 **The Court:** Do y'all want to go back downstairs?

6 **Mr. Kirkland:** Wherever they want us. I know they have
7 security issues.

8 **The Court:** Okay. I don't know---

9 **Mr. Kirkland:** Anywhere they want us is fine.

10 **The Court:** Pardon me?

11 **Mr. Kirkland:** Anywhere that they want us is fine.

12 We'll go to whatever room they want us.

13 **The Court:** We want you to be comfortable.

14 **Mr. Kirkland:** Well, I'll be comfortable up here.

15 **The Court:** You don't want him to be too comfortable; we
16 want you to be.

17 **Mr. Kirkland:** Well, we'll be fine up here.

18 **The Court:** All right.

19 **Ms. Campbell:** Your Honor, while we're breaking, if you
20 want to, the final witness that we need to settle the record
21 on is Mr. Travis Golston. As far as I can tell, Your Honor,
22 his prior -- he currently has pending an assault and battery
23 with intent to kill and an unlawful possession of a weapon
24 during a violent crime in Richland County and one failure to
25 stop for a blue light in Lexington County.

1 As far as his prior record as far as what's impeachable,
2 in 2000 he had a possession of stolen vehicle. Then in 2005
3 he was convicted of assault and battery of a high and
4 aggravated nature and criminal conspiracy, and then in 2005
5 he was convicted of failure to stop for a blue light. In
6 2007 burglary second degree, breach of trust with fraudulent
7 intent, and grand larceny. And I believe that's the extent
8 of his impeachable record.

9 **The Court:** All right. Y'all got anything different as
10 to the record?

11 **Ms. Shurling:** I'm sorry, Your Honor. I was asking my
12 associate a question. Ms. Campbell, I apologize. Would you
13 repeat to me what you think his impeachable offenses are?

14 **Ms. Campbell:** Yes, ma'am. Possession of stolen vehicle
15 in 2000. Assault and battery of a high and aggravated
16 nature, criminal conspiracy, and failure to stop for a blue
17 light in 2005. Burglary second degree, breach of trust, and
18 grand larceny in 2007.

19 **The Court:** Is he your next witness?

20 **Ms. Campbell:** Your Honor, no.

21 **The Court:** Or we're just doing that while the jury is
22 out?

23 **Ms. Campbell:** I was just doing it while the jury was
24 out.

25 **The Court:** All right. All right. Let's bring us the

1 jury in.

2 (Whereupon, the jury was brought into open court at 3:25
3 p.m.)

4 **The Court:** Do you want to call your next witness,
5 please?

6 **Ms. Simpson:** The State calls Terri Gleason.

7 Terri Gleason, after being duly sworn, testified as
8 follows:

9 **The Clerk:** Please have a seat and state your full name.

10 **The Witness:** Terri Gleason.

11 Direct Examination

12 By Ms. Simpson:

13 Q. Good afternoon. Can you tell us where you work?

14 A. I work for the Richland County Sheriff's Department as a
15 firearms and tool mark examiner with their Forensic Services
16 Unit.

17 Q. And as -- in that capacity, what are your duties?

18 A. Our primary duties are to look at firearms and other
19 tools as well as ammunition components and the evidence that
20 comes in for individual characteristics, marking
21 characteristics, and other forensic evidence that we can then
22 report our interpretations to the court.

23 Q. And how long have you worked with the Richland County
24 Sheriff's Department in that capacity?

25 A. I have been with Richland County just short of three

1 years.

2 Q. And what is your prior work experience?

3 A. Actually this is my tenth year as a firearms examiner.
4 I started with the Georgia Bureau of Investigation with their
5 state crime lab in Atlanta, Georgia. I spent about five and
6 a half years with them. I then went to Fort Worth Police
7 Department. I was also a firearms examiner with them as well
8 as the technical lead of the firearms section, and then I
9 went and worked with the Atlanta Police department as their
10 laboratory director and their firearms examiner, all before
11 coming here.

12 Q. And can you tell us what firearms and tool marks
13 identification or examination is exactly?

14 A. It's a branch of the forensic sciences that looks at
15 firearms and ammunition components in order to determine a
16 common origin. So we're looking at cartridge cases or
17 bullets from scenes, and if we have a gun we're going to be
18 able to determine whether they came from a particular gun.
19 If we don't have a gun, we'll look at the individual bullets
20 and cartridge cases and provide perhaps investigative leads
21 as to what type of firearm might have fired them as well as
22 how many firearms were involved at the scene.

23 Q. And what exactly makes this identification possible?

24 A. When a firearm is manufactured, it goes through a
25 variety of processes that leave behind individual markings on

1 the interior surface of the firearm. One of the most
2 significant processes that it goes through is what's termed
3 rifling. Rifling is used to impart spin to the bullet much
4 like a well-thrown football has tight spiral. You're looking
5 for the spin of the bullet to give it better accuracy and
6 stability while it's flying towards its target.

7 During the rifling process, what allows them to get the
8 spiral on to the bullet is that the manufacturer has designed
9 the firearms to have a set number of grooves that are either
10 cut or formed into the barrel. These grooves will have
11 either a right or a left-hand twist. So later in my
12 testimony you may hear me say that the bullet was consistent
13 with being a five right gun. This would mean that it came
14 from a gun with five of those grooves that have a right-hand
15 twist.

16 In the process of rifling as well as other finishing
17 characteristics, microscopic imperfections in the form of
18 nicks, spurs, cuts, scratches are left behind on the surface
19 of the barrel and those are placed there randomly. They're
20 not any part of the design, and they're unique to that
21 particular firearm, much like the fingerprint of that
22 firearm.

23 Another area of the firearm that has a lot of machining
24 processes done to it is termed the breech face. The breech
25 face is at the rearward part of the firearm, and it supports

1 the head of the cartridge or a single unit of ammunition in
2 the firearm. This section is cut out and is filed and goes
3 through other finishing processes that again leave behind
4 those microscopic imperfections that are unique to that
5 breech face. We term those individual characteristics. It's
6 those individual characteristics that we're looking for
7 between cartridge cases, firearm, and bullets to determine
8 whether they all had a common origin.

9 Q. And can you tell us a little bit about your educational
10 background?

11 A. Sure.

12 Q. And training?

13 A. I have a Bachelor of Arts in both criminal justice and
14 psychology from the University of Georgia and a Master of
15 Science and Forensic Science from the University of New
16 Haven. In July of 1999 I began work with the Georgia Bureau
17 of Investigation, and in order to receive certification as a
18 firearms and tool mark examiner, I underwent an extensive
19 two-year training program dealing specifically with firearms
20 and tool marks. During that time I also received
21 certification from the Federal Bureau of Investigation in
22 muzzle-to-target distance termination and from the Bureau of
23 Alcohol, Tobacco, and Firearms in serial number restoration.

24 To date, I have logged over 2500 hours on the comparison
25 microscope, completed approximately 2,000 weapon examinations

1 and over 700 actual firearm and tool mark cases. I'm also a
2 member of our professional organization which is the
3 Association of Firearm and Tool Mark Examiners.

4 Q. And you may have said this. So have you testified
5 before as an expert?

6 A. I have, approximately 40 times in three different
7 states.

8 **Ms. Simpson:** Your Honor, at this time I would move to
9 qualify Terri Gleason as an expert in firearms and tool marks
10 examination.

11 **Ms. Shurling:** Certainly, Your Honor, with no objection.

12 **The Court:** All right. Ladies and gentlemen, I've
13 already explained to you the purpose of an expert witness,
14 and I'm going to find Ms. Gleason to be qualified as an
15 expert in the field of firearms and tool marks examination.
16 You are to give her testimony such weight and credibility as
17 you deem appropriate.

18 **Ms. Simpson:** Thank you.

19 By Ms. Simpson:

20 Q. I am handing you what has been introduced as State's
21 exhibits 20, 31, 45, 57, and 56. Could you just take a
22 moment and look at those items?

23 A. Sure. It's okay to open these?

24 Q. Yes.

25 A. (The witness looks at the exhibits.)

1 Q. And as you're looking, if you could just tell us if you
2 have seen these items before, as you go on.

3 A. I recognize and identify State's exhibit 20 as the 10
4 nine millimeter Luger caliber cartridge cases that we
5 received on April 20th of this year. I also recognize and
6 identify State's exhibit 31 as a fired lead bullet or bullet
7 core that we also received on April 20th of this year.

8 State's exhibit 45 are the five fired bullets that we
9 also received on April 20th. State's exhibit 56 I recognize
10 and identify as Charter Arms model Undercover .38 special
11 caliber revolver, serial number 30320, that I received on
12 September 21st of this year.

13 Q. And did you have a chance to examine these items?

14 A. Yes, I did.

15 Q. And if you would, please describe I guess your
16 examination process, and as you do, if you wouldn't mind just
17 holding the certain items that you're referring to to the
18 jury, in front of the jury.

19 A. Okay. Let me look at this last piece here. This last
20 item here I recognize and identify as State's exhibit 57 as
21 five fired .38 special caliber cartridge cases that I also
22 received on September 21st of this year. So I'll start with
23 the evidence I received back in April. The first thing we
24 had were the 10 nine millimeter cartridge cases. I did not
25 have a firearm to compare these to, so what I did is I looked

1 at these on a comparison microscope which is essentially a --
2 two microscopes that are joined together by an optical bridge
3 that lets me look at two items side by side under the same
4 lighting and magnification.

5 So I would take one cartridge case and put it on one
6 side of the microscope, put a second one on the other side,
7 and I'd look under that under magnification. I did that for
8 all 10 cartridge cases, and I was able to determine that all
9 10 cartridge cases were fired by one firearm. This is based
10 on the individual characteristics of that cartridge case
11 being pushed against the breech face that we talked about and
12 the imperfections being put on to the head of the cartridge
13 case. And based on the type of the markings that we saw, I
14 was able to say that these 10 were consistent with being
15 fired from a Glock nine millimeter caliber pistol.

16 Q. And if you could explain a little bit more about the
17 rifling characteristics and just how those differences affect
18 your examination as far as figuring out which ones or noting
19 that all of them were fired by the same firearm.

20 A. Okay. Well, with the -- with the cartridge cases they
21 do not have the rifling. The rifling is only imparted on to
22 the barrel of the firearm which is impacted with the bullet.
23 So to take it back a few steps, a single unit of ammunition
24 is comprised of the bullet that sits in the head of the
25 cartridge case and then the cartridge case body that has a

1 priming mixture in the head and gun powder inside the
2 cartridge case.

3 So when the weapon is fired, the firing pin comes
4 forward and strikes the primer that holds an explosive
5 mixture. This creates sparks. Those sparks then ignite the
6 gun powder. That gun powder has to go rapidly from a solid
7 to a gas which has to take up much more space. So it creates
8 a great deal of pressure, and it forces the bullet out of the
9 cartridge case and down the barrel.

10 As the bullet travels down the barrel, it's marked not
11 only with the rifling impressions but also with those
12 imperfections that we talked about and a pattern of
13 striations that is unique to that firearm. Likewise, that
14 same pressure that forces the bullet out of the cartridge
15 case also pushes the cartridge case back against the breech
16 face, and at that time the breech face is then impressed on
17 to the head of cartridge case. So that's -- those are the
18 marks that we're looking at on a comparison scope to be able
19 to say that they came from one firearm.

20 Q. And so all of the 10 nine millimeter shell casings were
21 shot from the same gun.

22 A. Correct.

23 Q. But you didn't have a gun to compare it to.

24 A. That's correct.

25 Q. All right. If you could just move on to the next item.

1 A. State's exhibit 31 is consistent with lead; it's a soft
2 metal material. This projectile is too deformed for us to be
3 able to do any kind of comparison work with it. The most I
4 was able to determine: That it is consistent with being an
5 ammunition component, and based on the weight of this as well
6 as some of the characteristics that are left in the lead,
7 it's most consistent with being a revolver bullet, most
8 likely from a .38 special caliber revolver.

9 Q. And what types of things would cause a fired bullet to
10 be unsuitable for comparison?

11 A. Well, in this case the damage here would be most likely
12 from impact or having passed through another item. That
13 causes deformation, particularly if this is a revolver bullet
14 that didn't have a jacket on it. That lead is really soft.
15 So when it impacts a surface, it deforms pretty easily.

16 Q. And when you say that it's unsuitable for comparison,
17 that means it's unsuitable for comparison to a particular
18 firearm. Correct?

19 A. It's unsuitable for comparison to a particular firearm.
20 It's also unsuitable for comparison to any other projectile
21 that I might receive on the case.

22 Q. Thank you.

23 A. Uh-huh. Okay. State's exhibit 45 is made up of five
24 fired bullets, so I had to sub-itemize those and compare them
25 against each other. Again, with these we use a comparison

1 microscope. We'll put bullet -- one bullet on one side, one
2 bullet on another. But what we could first do is look at
3 class characteristics of those bullets or class
4 characteristics is the term we use, but it's really just a
5 grouping characteristic. So what makes it similar -- we can
6 take things that are alike based on caliber, the number of
7 lands and grooves, and put them into a subcategory.

8 So from that I was able to put four of the bullets into
9 one group, and one stood alone. The four bullets were all
10 consistent with being nine millimeter Luger caliber bullets.
11 They look much like this one. They all appeared to have some
12 kind of sandblasting as if they went into dirt or some other
13 material, and in this process those microscopic imperfections
14 that we talked about were really obscured by that
15 sandblasting effect.

16 So two of those four bullets were unsuitable for any
17 type of comparison, and two of them had a few marks, but it
18 was inconclusive as to whether they were fired from the same
19 gun. And, again, we had no nine millimeter firearm, so there
20 was nothing to compare them to in terms of a specific
21 firearm.

22 The fifth bullet is consistent with being a .38 caliber
23 bullet being fired out of a revolver. This bullet doesn't
24 have the jacket of the other one, and the O. Guide or the
25 nose of it is shaped differently for the revolver. From this

1 one it also had a great deal of damage, but I was able to see
2 all the rifling impressions and this came out of a five right
3 firearm. Again, we had -- well, in this case we did have a
4 .38 special firearm, but it is an eight right firearm, so it
5 could not be the firearm that fired this bullet.

6 Q. Okay. So just to clarify, four of the bullets were
7 actually fired from a nine millimeter even though you can't
8 necessarily compare them to one another.

9 A. Correct.

10 Q. Correct? And then the other was a .38 but that .38 --
11 the .38 bullet that you had was not fired by the same -- by
12 the .38 revolver that you were using.

13 A. That's correct.

14 Q. Just to back up a bit, so part of the reason the
15 comparison would have been or that your results came out the
16 way they did is the possibility that those items were found
17 in dirt?

18 A. Correct.

19 Q. Okay.

20 A. Okay. State's exhibit 57 is five fired .38 special
21 cartridge cases. With these I did have a .38 gun. So the
22 first thing I did was test-fire the firearm into a horizontal
23 water tank. We use water because it's the best means to slow
24 down a bullet without imparting any additional
25 characteristics to the bullets and cartridge cases.

1 The tests are then removed from the water tank, and we
2 mark them as tests. We'll then look at them under the
3 comparison microscope, and we will determine if the marks are
4 reproducing from test to test. We do this because we want to
5 see that those imperfections I was telling you about are
6 actually being carried over into each of the tests that we
7 fire. Then we will replace one of the tests and look at it
8 compared to the evidence.

9 In this case the cartridge case test-fires were very
10 difficult to compare to one another. I ended up shooting six
11 different - I'm sorry - eight different test-fires. Six of
12 them I was able to say came from the firearm that I test-
13 fired it from. Two I couldn't. I was using different
14 ammunition combinations and types of ammunition.

15 So that will explain a little bit about what was going on
16 with these five. Of these five cartridge cases, one of them
17 I was able to I.D. back to that firearm. Three others I was
18 able to compare to each other and say that they were from one
19 firearm, but I couldn't I.D. them back to the specific
20 firearm. And then the fifth cartridge case I couldn't
21 identify to either the firearm or to the other cartridge
22 cases.

23 **Ms. Simpson:** Beg the Court's indulgence.

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

25 **Ms. Simpson:** Nothing further for this witness.

Cross-Examination

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

By Ms. Shurling:

Q. Good afternoon.

A. Hi.

Q. So we know that all 10 of the nine millimeter shell casings found at the scene were all fired by the same nine millimeter weapon.

A. That's correct.

Q. Beyond any doubt.

A. Yes.

Q. Okay. And the nine millimeter slugs that were found in the ground beneath -- or you don't concern yourself with where things are found but in the dirt you know.

A. Right.

Q. Were consistent with having been fired from the same weapon.

A. No. Actually with those, they had so much damage from the dirt that I could not I.D. them to one another. Two of them were totally unsuitable, meaning that I wouldn't be able to compare them to a firearm, and two of them had some markings. So there's some potential if I did have a firearm that I might be able to get it, but it would have been a very difficult identification.

Q. So three of the five you could determine to have been fired from the same weapon?

1 A. No. The -- that's okay.

2 Q. If I'm unclear, I'm afraid they are.

3 A. Sure.

4 Q. Please explain it.

5 A. Sure. Of the four -- we talked about having five --
6 five bullets submitted on that State's exhibit. Four of them
7 were consistent with being fired from a nine millimeter, but
8 as far as a particular firearm or whether it was the same
9 nine millimeter, I couldn't tell you because they were
10 damaged.

11 They did all have - and this is something we haven't
12 talked about in detail - but a specific type of rifling
13 that's termed as polygonal. Instead of cutting the metal
14 away to form the rifling, it's actually formed. It gives it
15 a different look. That's unique to a smaller subset of
16 firearms. They did all exhibit that type of rifling, but
17 again because of the damage I couldn't tell you if they were
18 from one firearm or four different nine millimeter firearms.
19 They were, however, all fired from a nine millimeter.

20 Q. Okay. So we know that four were all fired from a nine
21 millimeter, and although we can't positively say that they
22 were all fired from the same gun, we know that they share at
23 least one characteristic that's not found in test-fires from
24 all nine millimeters.

25 A. That's correct.

1 Q. Okay. And there was one .38 caliber slug found in the
2 same general region with the four nine millimeter slugs.

3 Correct?

4 A. I have no knowledge of where the bullets came from.
5 When they come to me, they don't -- they don't say. There
6 was a .38 bullet, however.

7 Q. Thank you. And that .38 slug was positively matched to
8 the firearm in front of you in the box; right?

9 A. No. That is the bullet that I was telling you had five
10 right rifling. This firearm has eight right. So, therefore,
11 that firearm could not fire the .38 bullet.

12 Q. That's what I wanted to make real clear. That .38 slug
13 was not fired by that gun.

14 A. That's correct.

15 Q. And so you don't know -- you don't have a test weapon
16 for that .38 caliber slug.

17 A. I do not.

18 Q. Can you tell by the degree of degradation of the slugs
19 found in the dirt the distance from which they were fired?

20 A. No, I cannot.

21 Q. Is that a -- and is it possible -- you've covered for us
22 -- let me rephrase. You've covered for us the fact that
23 based on imperfections on the inside of the barrel you can
24 identify and cross-reference, match hopefully, projectiles.

25 A. Correct.

1 Q. Shell casings are based on striking images.

2 A. Right, on that breech face surface. There's some other
3 parts of the firearm that can also leave marks, but the
4 breech face is the area that we're most commonly looking at.

5 Q. Is the state of the art with ballistics such that you
6 can take projectiles and say with certitude whether they came
7 out of a known cartridge?

8 A. A known cartridge case. There is the possibility that
9 during firing -- because we're talking about the components
10 of a cartridge. You've got the cartridge case, and until
11 it's fired that bullet is actually seated into the cartridge
12 case. In theory, as the bullet is pulled out from the
13 pressure, some marks from the mouth of the cartridge case may
14 be put on to the base of the bullet. However, the theory
15 behind which we base our identification is that once that
16 bullet is fired and travels down the barrel, it's going to be
17 imparted or impacted by the marks of the barrel. So in my
18 experience those marks at the base don't remain after firing.
19 They may but not to the point that I've ever been able to
20 take a bullet back to a cartridge case.

21 Q. So you were not able to do any kind of comparison
22 between the projectiles and the shell casings to determine
23 whether those projectiles came out of those shell casings.

24 A. That's correct. That is such a rare service that we
25 don't even look at it routinely. It would have to be

1 specifically requested.

2 **Ms. Shurling:** Nothing further. Thank you.

3 **The Court:** Anything?

4 **Ms. Simpson:** No, Your Honor.

5 **The Court:** All right. Thank you, ma'am. You may step
6 down. You are free to leave. All right. Ladies and
7 gentlemen, I need to let you step back to the jury room again
8 because I need to take up a matter. Please don't discuss the
9 case.

10 (Whereupon, the jury was excused from open court at 3:55
11 p.m.)

12 **The Court:** All right. Let's bring Mr. Gleaton in.

13 (Mr. Gleaton is brought into the courtroom.)

14 **The Court:** All right. Have you had enough time to talk
15 to Mr. Kirkland---

16 **Mr. Gleaton:** Yes, sir.

17 **The Court:** ---Mr. Gleaton? All right. Are you ready
18 to go forward here today?

19 **Mr. Gleaton:** Yes, sir.

20 **The Court:** Are you going to respond to the questions?

21 **Mr. Gleaton:** To the best of my ability.

22 **The Court:** Well, I don't want you to do something --
23 tell us something you don't know and do something you can't
24 do. But I'm ordering that you answer the questions, Mr.
25 Gleaton, that -- that are posed to you by the solicitor.

1 You've got an obligation to respond. You don't have any sort
2 of privilege that I'm aware of at this point in time. So if
3 that's the case, we're going to go forward with your
4 testimony. Did you want to say something, Mr. Kirkland?

5 **Mr. Kirkland:** If I may, Your Honor, he does intend to
6 defy your order. I've explained to him the consequences of
7 defying your order, but he would like to defy it. My
8 understanding is that he's not going to admit to even having
9 made the statement today. So, you know, he knows the
10 consequences, and I guess he just has to go through with it.

11 **The Court:** I don't know what he's planning on. Is he
12 denying he made the statement? Is that what he intends to do
13 or...

14 **Mr. Kirkland:** My understanding is he's not going to
15 cooperate at all.

16 **The Court:** Well, tell me what that means.

17 **Mr. Kirkland:** He's not going to -- he's not going to
18 answer---

19 **The Court:** He's going to refuse to answer.

20 **Mr. Kirkland:** That is -- yes.

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

22 **Mr. Gleaton:** Yes, sir.

23 **The Court:** All right. Well, if you do, I will find you
24 in contempt.

25 **Mr. Gleaton:** Yes, sir.

1 **The Court:** And I will sentence you accordingly.

2 **Mr. Gleaton:** Yes, sir.

3 **The Court:** Do you understand that?

4 **Mr. Gleaton:** Yes, sir.

5 **The Court:** All right.

6 **Mr. Kirkland:** He's going to do it respectfully, but
7 that's all he can do.

8 **The Court:** Well, that's not all he can do.

9 **Mr. Kirkland:** I understand.

10 **The Court:** He can do as every other citizen is required
11 to do and that's come in and testify and tell the truth.

12 **Mr. Kirkland:** Yes, sir.

13 **The Court:** He's elected not to do that, and I assume
14 that what I do will have an effect not only on what time he
15 serves but also his sentence in the federal court.

16 **Mr. Kirkland:** And I do want to bring that up while
17 we're here. I've instructed him as to civil contempt which
18 you could hold him until he complies, criminal contempt which
19 is up to 180 days---

20 **The Court:** Well, I'm not going to hold him in civil
21 because that won't do any good.

22 **Mr. Kirkland:** Correct.

23 **The Court:** I mean, the trial will be over in another
24 three or four days.

25 **Mr. Kirkland:** Correct.

1 **The Court:** And he won't have the opportunity to purge
2 himself---

3 **Mr. Kirkland:** Correct.

4 **The Court:** ---after that.

5 **Mr. Kirkland:** I've told him you can sentence him to 180
6 days here without a jury just on your own. I've told him
7 that there's a possible 10-year felony offense in South
8 Carolina for criminal contempt, and I've told him that
9 there's a potential five-year sentence for perjury. And he
10 is aware of all of those penalties, and he tells me that he
11 does not wish to cooperate. And he will -- he tells me ahead
12 of time he's going to defy your order.

13 **The Court:** All right.

14 **Mr. Kirkland:** I told him to do it politely.

15 **The Court:** Well, that's nice of you. All right. We
16 will -- now, you indicate you want -- somehow believe that
17 you're able to attempt to get this statement that he gave
18 into evidence as substantive evidence if you lay a proper
19 foundation. You better explain that to me here today because
20 I think one of the -- I mean, you can tell me otherwise. I
21 think that he's got to be subject to cross-examination. If
22 he's refusing to answer, I don't know how that's subject to
23 being cross-examined.

24 **Ms. Campbell:** Ms. McDuffie knows the legal...

25 **Ms. McDuffie:** Your Honor, I believe that from -- since

1 we haven't proffered the testimony, I believe that he is
2 going to say he does not admit to making the statement, from
3 talking to Mr. Kirkland.

4 **The Court:** That's not my understanding. My
5 understanding is he's going to just refuse to answer. If he
6 denies he made the statement, that's -- that may be a little
7 different but...

8 **Mr. Kirkland:** I might be able to shed a little bit of
9 light on this, Your Honor. I asked him: If you are asked
10 the question, "Do you admit having made this statement?" He
11 said that he will answer no to that question and he will not
12 cooperate with any further questioning.

13 **The Court:** So he will deny he made the statement.

14 **Mr. Kirkland:** That's what -- that's exactly -- what I
15 just related to you is exactly how he said it.

16 **The Court:** All right. All right. So let's assume he
17 denies it.

18 **Ms. McDuffie:** Your Honor, the facts here are very
19 similar to the recent South Carolina Supreme Court case,
20 State v. Stokes. In that case the State called a witness---

21 **The Court:** Do you have a copy of State v. Stokes that
22 you can give me a site?

23 **Ms. McDuffie:** Your Honor, I can -- I have one copy of
24 it I can hand up. I don't have a site because it was printed
25 off the South Carolina Supreme Court web site, but it was a

1 decision on February 17th of 2009.

2 **The Court:** All right. Well, can you give us a minute
3 to... We'll go run this off if you'll... Have you got a --
4 what is that?

5 **Ms. McDuffie:** I have one copy, Your Honor.

6 **The Court:** Well, we'll get one. Do you need a copy?

7 **Ms. Shurling:** I do, Your Honor. I would just note for
8 the record, Your Honor, that---

9 **The Court:** Ma'am?

10 **Ms. Shurling:** I'd like to note for the record that it's
11 my understanding from the little bit that he got out of his
12 mouth before we started down this journey that he was not
13 saying that he didn't make the statement. He was saying: I
14 don't want to cooperate; I'm not answering your questions.
15 And that's a different situation.

16 **The Court:** Well, we'll find out, won't we?

17 **Ms. Shurling:** Sir?

18 **The Court:** His lawyer says that he's going to deny that
19 he made the statement.

20 **Ms. Shurling:** And, Your Honor, again he has already
21 from the witness stand said: I'm not cooperating.

22 **The Court:** That's fine. I understand that.

23 (Pause in proceedings.)

24 **The Court:** All right. You can go ahead and tell me
25 whatever it is... Did they beat my clerk?

1 Ms. McDuffie: We did.

2 The Court: All right.

3 Ms. McDuffie: Your Honor, in Stokes the State called
4 the defendant's uncle to the stand to testify.

5 The Court: I'm sorry. The State what?

6 Ms. McDuffie: Called the defendant's uncle to the stand
7 to testify. They questioned -- the State asked him whether
8 or not he had made a statement to the police on November 26th
9 of 2003 after he was taken to the hospital. He denied making
10 that statement.

11 Your Honor, the State was then allowed to introduce
12 extrinsic evidence of the prior inconsistent statement.

13 Defense counsel argued under Crawford that they were denied
14 effective cross-examination of him. However, the South
15 Carolina Supreme Court held, based on Crawford, that they
16 were not denied the protections that Crawford affords the
17 defendant. Because the declarant was therefore cross-
18 examination (sic) at trial, the confrontation clause places
19 no constraints at all on the use of prior testimonial
20 statements. And they further went on to say that the
21 confrontation clause does not bar admission of the statement
22 so long as the declarant is present at trial to defend or to
23 explain it.

24 Your Honor, the Court went on to emphasize that it's the
25 opportunity to cross-examine that is constitutionally

1 protected and that in the incident case, Your Honor, we would
2 argue the defense will have that opportunity to cross-examine
3 the witness. He is here. He is on the stand available for
4 cross-examination, Your Honor, and it is the opportunity to
5 cross-examine, not the effectiveness or the -- or any other
6 thing that Crawford protects.

7 Therefore, Your Honor, the statement would -- our
8 position is that the prior inconsistent statement would not
9 be hearsay as defined under -- I think it's 801(d)(1), Your
10 Honor.

11 **The Court:** Right.

12 **Ms. McDuffie:** ---and that, further, Crawford would not
13 be implicated, relying most recently on State v. Stokes which
14 is a 2009 South Carolina Supreme Court case.

15 **The Court:** I'm familiar with State vs. Stokes.

16 **Ms. Shurling:** And, Your Honor, in State v. Stokes
17 defense counsel cross-examined Brown about his prior criminal
18 record and did not ask Brown any additional -- further
19 questions about his alleged statements to the police. The --
20 over the defendant's objection out of the presence of the
21 jury, the trial court noted that Brown had been on the stand
22 and available for cross-examination. Moreover, the trial
23 court specifically offered defense counsel the opportunity to
24 recall Brown for further cross-examination or as a witness
25 for the defense, and counsel rejected the trial court's

1 offer. So Stokes is far from on all fours with the facts in
2 this case. More on point, Your Honor, would be State v.
3 Mitchell found at 378 South Carolina---

4 **The Court:** Have you got a copy of it?

5 **Ms. Shurling:** Sir?

6 **The Court:** Have you got a copy of it?

7 **Ms. Shurling:** I don't, Your Honor. We just pulled it
8 up on the computer. I can quote, Your Honor, from the
9 decision.

10 **The Court:** Well---

11 **Ms. Shurling:** "In the present case, although Johnson
12 took the stand, he refused to answer the solicitor's
13 questions, was found in contempt, and was removed from the
14 courtroom while still on direct examination and before his
15 statement was introduced. We are simply at a loss to
16 understand how Mitchell ever had the opportunity to cross-
17 examine Johnson"---

18 **The Court:** Well, I can assure you that we're going to
19 give you that opportunity. I'm not removing him from the
20 courtroom until we're finished with whatever they want to do
21 and whatever you want to do.

22 **Ms. Shurling:** Your Honor, I would say that the
23 situation is more analogous to that found in Crawford v.
24 Washington, although marital privilege was involved in the
25 Crawford decision. It's also -- I believe guidance can be

1 found from a far older case, Douglas versus Alabama, 380 U.S.
2 415, 1963. Your Honor, in Crawford you have a situation
3 where the witness had a privilege not to testify and
4 exercised that privilege. The net result was that the
5 witness was not available to answer questions on cross-
6 examination.

7 Just because this client isn't exercising his fifth
8 amendment privilege -- if he says, "I'm not answering
9 questions," then he's just as unavailable for me to
10 cross-examine as he would be if he were invoking the fifth
11 and, therefore, I believe that Crawford versus Washington
12 would clearly apply and his earlier statement cannot be
13 admitted.

14 **The Court:** All right. Okay. I need to read this case.
15 (Pause in proceedings.)

16 **The Court:** All right. Well, I'm going to allow you
17 to -- allow you to proceed and we'll see what he does, and
18 then we'll see if you can lay a foundation. And if you do
19 that, the way I read this case, they can offer extrinsic
20 evidence at some point in time in the future.

21 **Ms. Shurling:** Your Honor, I would ask that you note my
22 strong objection for the record.

23 **The Court:** Is that something different than a regular
24 objection?

25 **Ms. Shurling:** Your Honor, in this case I believe that

1 the law in this state and in---

2 **The Court:** Ms. Shurling, if you lose this case, there
3 will be an appeal for a whole bunch of reasons, I feel
4 confident. You don't need to tell me your appeal is strong.
5 Does that mean that I should disregard your other -- I mean,
6 your objections on other matters?

7 **Ms. Shurling:** Certainly not, Your Honor.

8 **The Court:** The way I read that case is if this fellow
9 is available -- and in reading other cases if, in fact, he
10 says, "I don't remember," I think the law is the Court can
11 interpret whether he is -- even if he doesn't answer is that
12 amounts to a denial. So we'll have to see what he does. All
13 right. Let's bring the jury in. Mr. Gleaton, I remind you
14 you're previously under oath.

15 **Mr. Gleaton:** Yes, sir.

16 **The Court:** Do you remember having been sworn a little
17 while ago?

18 **Mr. Gleaton:** Yes, sir.

19 (State's exhibits 68 and 69 were marked for
20 identification only. Whereupon, the jury was brought into
21 open court at 4:12 p.m.)

22 **The Court:** Okay. Ladies and gentlemen, you'll recall
23 earlier this afternoon Mr. Gleaton was sworn and took the
24 stand, and the Court excused him for a temporary period of
25 time. We're not swearing him again because he's previously

1 been sworn, and I remind him that he's previously under oath.
2 If you will proceed, Madam Solicitor.

3 **Ms. Campbell:** May it please the Court?

4 Torrian Gleaton, having been previously sworn and
5 remaining under oath, testified as follows:

6 Direct Examination

7 By Ms. Campbell:

8 Q. Mr. Gleaton, I'm showing you what's been marked as
9 State's exhibit number 68, a written statement, and State's
10 exhibit number 69, a recorded statement. Do you admit making
11 those statements on June the 3rd of this year, 2010, at the
12 Columbia Police Department headquarters to Kevin Reese and
13 Investigator Mahoney?

14 A. No, ma'am.

15 Q. You do not admit to making those.

16 A. No, ma'am.

17 **Ms. Campbell:** Your Honor, that would be the basis of
18 our foundation for admission under extrinsic evidence.

19 **The Court:** Well, I don't know...

20 **Ms. Campbell:** Do you want me to go into specifics of
21 what's in the statement?

22 **The Court:** Pardon me?

23 **Ms. Campbell:** Shall I go into specific statements in
24 the statement?

25 **The Court:** Well, he's denied that he made the

1 statement.

2 Ms. Campbell: Yes, sir.

3 The Court: I don't know how you intend to introduce
4 extrinsic evidence, but you don't intend to do it at this
5 time.

6 Ms. Campbell: No, sir. I can't---

7 The Court: All right. Do you have any other questions
8 you want to ask him concerning any foundation or anything
9 else you want to ask him?

10 Ms. Campbell: I think we're covered for the record,
11 Your Honor.

12 The Court: All right. Ms. Shurling?

13 Ms. Shurling: Your Honor? Your Honor?

14 Cross-Examination

15 By Ms. Shurling:

16 Q. Sir, are you willing to answer my questions?

17 A. With all due respect, ma'am, I just don't feel
18 comfortable cooperating.

19 Q. Okay. So I can't ask you anything either. You're not
20 going to answer my questions either.

21 A. No, ma'am.

22 Ms. Shurling: Thank you.

23 The Court: Well, ask him what questions you want to ask
24 him and let's see whether he answers them.

25 By Ms. Shurling:

1 Q. Will you admit to me that you made those statements?

2 A. No, ma'am.

3 **Ms. Shurling:** Thank you.

4 **The Court:** All right. Anything on redirect?

5 **Ms. Campbell:** No, sir.

6 **The Court:** All right. Ladies and gentlemen, I'm going
7 to let you step back to the jury room again for a few
8 minutes. I hate to keep doing this.

9 **Juror:** That's all right, judge.

10 (Whereupon, the jury was excused from open court at 4:15
11 p.m.)

12 **The Court:** All right. Mr. Gleaton, I had previously
13 ordered that you answer questions. You and your attorney,
14 neither one, had given me any particular reason that you --
15 any right that you may have not to answer the questions other
16 than you've elected not to do so for whatever reason you've
17 elected not to do so.

18 So I'm going to find that you are in direct contempt of
19 the order that I issued, that you exhibited that contempt
20 here in front of me and in the courtroom. And anything you
21 want to tell me, Mr. Kirkland, about your client? Anything
22 that you want me to consider?

23 **Mr. Kirkland:** Yes, sir. The reason that he has told me
24 that he does not want to cooperate and I think it would be
25 inappropriate to say it in front of a jury, but he feels like

1 it will endanger his life and the life of his or the welfare
2 of his family. He has actually discussed this with members
3 of his family, and there are members of his family that are
4 even afraid if he were to come in here today and testify
5 against this particular man. Even though this particular
6 person could not harm him, he believes that this person could
7 direct others to harm him, and he refuses to do anything to
8 assist in the prosecution of him.

9 **The Court:** All right. Well...

10 **Mr. Kirkland:** Which is not a legal privilege,
11 unfortunately.

12 **The Court:** I understand what you're telling me, and
13 unfortunately we can't operate our court system when people
14 come in and say I'm in fear of this or that. Whether you're
15 in fear or not for yourself or the safety of others, I don't
16 know. But clearly if that were -- if that were a basis for
17 people not having to testify, we'd get everybody in the world
18 coming in and saying, "I'm in fear. I don't want to
19 testify," and our system would break down and we can't have
20 that, Mr. Gleaton.

21 It's a -- I mean, you're a citizen. You have certain
22 responsibilities as well as rights, and one of those is you
23 have to participate in a process such as what we have here.
24 So I'm going to find you -- as I said, I'm finding you in
25 contempt, direct contempt. I'm going to sentence you to six

1 months in the department of corrections, and I'm going to run
2 it consecutive to your sentence with the United States
3 government. And, Madam Pendergrass, if you've got an order
4 there...

5 **Mr. Kirkland:** And, Your Honor, so I have a complete
6 record of this, I did instruct him that that was my opinion
7 of what sentence you would give him. So he was aware of that
8 particular possibility of a consecutive six-month sentence.

9 **The Court:** All right. When was his plea?

10 **Mr. Kirkland:** His plea was -- was it last week? Do you
11 remember the date?

12 **Mr. Gleaton:** I ain't really sure of the date.

13 **Mr. Kirkland:** I apologize, Your Honor. I don't have
14 the date. He won't have sentencing for another month or two.

15 **The Court:** I understand that. That's what I'm...

16 **Mr. Kirkland:** I might be able to look at my calendar.
17 Do you know what...

18 **Ms. McDuffie:** Your Honor, my understanding is it was
19 last Tuesday or Wednesday.

20 **Mr. Kirkland:** It was last -- I just don't remember the
21 exact day, and I apologize.

22 **Ms. Campbell:** I know he pled guilty.

23 **The Court:** That would be the 19th?

24 **Ms. Campbell:** Somewhere right around there, yes, Your
25 Honor.

1 **Mr. Kirkland:** Yes, sir.

2 **Ms. Campbell:** We can get that information if it needs
3 to be updated.

4 **Mr. Kirkland:** And it was a plea to a federal possession
5 of a firearm by a convicted felon.

6 **Mr. Thompson:** Judge, I have the printout from the plea.
7 It was on the 18th.

8 **The Court:** On the 18th? All right. Madam clerk?
9 Okay. Thank you.

10 **Ms. Shurling:** A moment's indulgence, Your Honor. There
11 may be a matter I need to put on the record.

12 **The Court:** Now, I am going to allow them to have the
13 opportunity -- I don't know where he goes.

14 **Mr. Kirkland:** He goes back to the Lexington County
15 Detention Center.

16 **The Court:** All right. If y'all want to attempt to
17 recall him, madam...

18 **Ms. Shurling:** Your Honor, this individual has stated on
19 the record through his attorney, of course, that he has
20 concerns for his safety and for that of his family. If, in
21 fact, my client is convicted, there's quite a sentencing
22 range for murder: 30 years to life. I think because of that
23 I am compelled to ask for clarification as to -- since those
24 remarks have been made before the bench who it is he's
25 alleging he's afraid of.

1 **The Court:** Well, we're not -- he's finished with here.
2 I've sentenced him. I will tell you this: If you want to
3 recall him to the stand at some point in time, we will make
4 him available for you to recall him:

5 **Ms. Shurling:** Then I would note for the record, Your
6 Honor, that the federal plea that he just entered, the
7 indictment that he pled on, he was co-defendants with
8 Jonathan Bailey. He was indicted along with Jonathan Bailey.

9 **The Court:** All right. I'm not sure what that has to do
10 with this. Anyway, if you do -- if you decide you do want to
11 call him, just let me know and we'll make arrangements to
12 have him transported. But in the meantime, he's heading back
13 to jail and he will be in jail, and I have sentenced him to
14 this sentence to run consecutive to his existing sentence.

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

16 **The Court:** Mr. Kirkland, I appreciate you making
17 yourself available on such short notice.

18 **Mr. Kirkland:** I'm sorry I was not dressed.

19 **The Court:** Well...

20 **Ms. Shurling:** I would request---

21 **The Court:** You always look good, so...

22 **Mr. Kirkland:** Well, I appreciate it.

23 **Ms. Shurling:** With regard to the opportunity to recall
24 him at a later date, Your Honor, I believe this witness has
25 made it clear he won't answer my questions.

1 **The Court:** Well, I don't know. You know, strange
2 things happen in trial.

3 **Mr. Kirkland:** And if they do intend to recall him, if
4 they could contact Deborah Chapman, she'd be happy to be up
5 here.

6 **The Court:** We got you.

7 **Mr. Kirkland:** Or me. I'm happy to do it now.

8 **The Court:** Well---

9 **Mr. Kirkland:** I know what's going on now.

10 **The Court:** I promise you this: If he's recalled by
11 anybody from the plaintiff -- I mean, from the State to the
12 defendant to the Court we will certainly have y'all available
13 and brought.

14 **Mr. Kirkland:** Thank you, Your Honor.

15 **The Court:** Brought up here so that he will have your
16 advice and counsel.

17 **Mr. Kirkland:** Thank you very much, Your Honor.

18 **The Court:** All right. Thank you.

19 **Ms. Shurling:** And, Your Honor, I know how much time
20 we're taking and I'm sorry, but in the interest of a record
21 that will survive subsequently, I would note that my full
22 objection to the State being permitted to get into this
23 gentleman's prior statement is that it violates my client's
24 rights pursuant to the confrontation clause of the United
25 States constitution. Thank you.

1 **The Court:** All right. I understand that. Based on the
2 recent case of State v. Stokes at 673 southeastern second 434
3 I have determined that he's refused to answer and -- I mean,
4 denied the statement and he's -- was available for cross-
5 examination and that it can be through extrinsic evidence---

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

7 **The Court:** ---that the statement can be -- wait a
8 minute. Let me finish. The statement can be admitted and...

9 **Ms. Shurling:** Your Honor, have you had the opportunity
10 to read State v. Mitchell, the 2008 case?

11 **The Court:** I have not had the opportunity to read State
12 v. Mitchell, but I've read State v. Stokes and I listened to
13 what you told me about State v. Mitchell. So based on what
14 you told me, which I assume is what you felt was pertinent
15 out of that case that I should consider, I have made my
16 ruling.

17 **Ms. Shurling:** Your Honor, I had limited opportunity to
18 do research here on the laptop in the courtroom, pulled up
19 the case, and in the time allowable pulled up the pertinent
20 portion of the case and quoted it to Your Honor. I did ask
21 that you take that decision into account, and it appears that
22 you've read the full authority cited by the State and you
23 haven't read the full decision in Mitchell, and I would
24 implore Your Honor to do so before making a final judgment.

25 **The Court:** All right. Y'all don't call your witness to

1 introduce the statement 'til I've had a chance to read the...

2 Ms. Campbell: Okay. Then let me get this other witness
3 brought up.

4 The Court: All right.

5 Ms. Campbell: Where is a deputy? We need to tell him
6 to bring the other guy.

7 The Court: All right. What is the cite of State v.
8 Mitchell?

9 Ms. Shurling: Your Honor---

10 The Court: Can you -- can you just read it to me? I've
11 got my second-place law clerk -- I say that, Marshall,
12 because they got State v. Stokes here before you did. So I
13 think---

14 Ms. Shurling: 378 South Carolina.

15 Mr. Thompson: 305.

16 Ms. Shurling: 662 southeastern second 493, Court of
17 Appeals, 2008, and cert. Was granted but then subsequently
18 dismissed as a---

19 The Court: All right. Well, look, we'll read it. All
20 right. Who is the next witness?

21 Ms. Campbell: It was going to be Investigator Mahoney,
22 but we'll push him back and we'll do Travis Golston.

23 The Court: All right. Where is he?

24 Ms. Campbell: Downstairs. We just called down to get
25 him brought up.

1 **Ms. Shurling:** Your Honor, while we're waiting for him
2 to be brought up, can we take a five-minute quick break?

3 **The Court:** Sure.

4 **Ms. Shurling:** Please? Thank you.

5 **The Court:** What are you drinking in that cup?

6 **Ms. Shurling:** Ice.

7 **The Court:** You don't drink ice. You chew ice. You
8 swallow ice, but you don't drink it.

9 **Ms. Shurling:** It's Diet Coke, Your Honor.

10 (Whereupon, a short break was taken.)

11 **The Court:** All right. Ms. Shurling, while you were
12 gone---

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

14 **The Court:** ---I spoke to the respective counsel, I
15 mean, the solicitor and Mr. Thompson, about where we are in
16 terms of schedule of this trial, and the State has indicated
17 they thought they would finish their case at the end of the
18 morning tomorrow. Mr. Thompson believes that your case will
19 be a day to a day and a half.

20 Now, I'm not holding you to that -- to that, but I want
21 to give this jury some notice that we may go into next week
22 rather than have on Friday afternoon they're all expecting to
23 end and we have to come back because they may have some
24 employment situations they have to straighten out. And so
25 unless you tell me something contrary, I'm going to tell them

1 that there's a chance that it might go into Monday and that
2 Mr. Thompson thought that it might be Monday before we could
3 argue and charge that day.

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

5 **The Court:** And I understand this is -- this is all
6 guesswork based on the experience of everybody but---

7 **Ms. Shurling:** Well, it looks like I just added one more
8 witness to my witness list.

9 **The Court:** Well, unless you tell me you believe it's
10 going to finish tomorrow, then---

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

12 **The Court:** I'm going to put the jury on notice.

13 **Ms. Shurling:** I wish I could, but I don't think so.

14 **The Court:** All right. All right. Let's bring the jury
15 in. Oh, did you get the guy? Is he around? The witness?

16 **Ms. Campbell:** I hear somebody.

17 (Whereupon, the jury was brought into open court at 4:31
18 p.m.)

19 **The Court:** Madam Solicitor, are you ready to call your
20 next witness?

21 **Ms. Campbell:** The State's ready, Your Honor.

22 **The Court:** All right. If you would, please.

23 **Ms. Campbell:** The State calls Travis Golston.

24 **Ms. Shurling:** Your Honor, may I approach with the
25 State?

1 Q. Back in 2000 were you convicted of possession of a
2 stolen vehicle?

3 A. Yes, ma'am.

4 Q. And then in 2005 you were convicted of assault and
5 battery of a high and aggravated nature?

6 A. Yes, ma'am.

7 Q. Criminal conspiracy?

8 A. Yes, ma'am.

9 Q. And failure to stop for a blue light?

10 A. Yes, ma'am.

11 Q. And then in 2007 you were convicted of burglary in the
12 second degree?

13 A. Yes, ma'am.

14 Q. Breach of trust and grand larceny.

15 A. Yes, ma'am.

16 Q. And then recently you were convicted of giving false
17 information?

18 A. Yes, ma'am.

19 Q. For which you received a fine.

20 A. Yes, ma'am.

21 Q. Is that correct? Back in 2000 -- when were you actually
22 arrested for the assault and battery with intent to kill? Do
23 you remember?

24 A. I think September of '04.

25 **The Court:** I need you to speak up a little bit if you

1 would, please, sir.

2 **The Witness:** Yes, sir.

3 **Ms. Campbell:** The crime that you---

4 **The Court:** You might want to move up into that mic.
5 That might carry your voice a little bit.

6 By Ms. Campbell:

7 Q. Well, let me back up. Earlier this year were you being
8 housed in the Alvin S. Glenn Detention Center?

9 A. Yes, ma'am.

10 Q. And were you being held on the assault and battery with
11 intent to kill charge?

12 A. Yes, ma'am.

13 Q. And had you been in the Alvin S. Glenn Detention Center
14 for a period of time prior to your release?

15 A. No, ma'am.

16 Q. Do you remember how long you had been there?

17 A. I think I had been there like seven months or eight
18 months.

19 Q. Seven or eight months?

20 A. Yes, ma'am.

21 Q. And what dorm were you being housed in?

22 A. Hotel Unit.

23 Q. The Hotel Unit?

24 A. Yes, ma'am.

25 Q. And tell this jury how the dorm is set up and the

1 central area in the middle.

2 A. Well, you've got like tables in the middle and you've
3 got the upstairs and downstairs. That's where the cells are
4 at.

5 Q. Okay. Was your cell upstairs or downstairs or do you
6 remember?

7 A. My cell was downstairs.

8 Q. During the course of being in the middle during the day,
9 do you get to know different inmates?

10 A. Yes, ma'am.

11 Q. And was Anthony Hackshaw an inmate that was housed with
12 you?

13 A. Yes, ma'am.

14 Q. And over the course of several months did you get to
15 talking to him?

16 A. Yes, ma'am.

17 Q. And specifically did he start telling you about his
18 charges?

19 A. Yes, ma'am.

20 Q. Tell this jury what he told you about what he was
21 charged with.

22 A. He told me he was charged with murder.

23 Q. Once he told you that he was charged with murder, did he
24 tell you any other specifics about what had happened?

25 A. Yeah, he told me little details about the case.

1 Q. Can you tell this jury the details he told you about the
2 case?

3 A. He told me basically like what happened.

4 Q. Did Anthony Hackshaw, the person you know now as Anthony
5 Hackshaw, did he -- did you know him by a nickname?

6 A. Yes, ma'am.

7 Q. What was his nickname?

8 A. Bump.

9 Q. Bump?

10 A. Yes, ma'am.

11 **Ms. Shurling:** Your Honor, at this time I would renew my
12 earlier objections, please. Subject to my previous
13 objections.

14 By Ms. Campbell:

15 Q. Did Anthony Hackshaw tell you about who his intended
16 victims were?

17 A. Yes, ma'am.

18 Q. And who did he tell you that he was going to shoot the
19 day of the murder?

20 A. Somebody named E. And Hot Boy.

21 Q. E. And Hot Boy?

22 A. Yes, ma'am.

23 Q. Did he indicate whether or not he had actually killed
24 someone the day of the murder?

25 A. No, ma'am. No, ma'am.

1 Q. He didn't tell you he had killed anybody, he had shot
2 anybody or shot anybody I guess I should say?

3 A. I thought you were saying be specific. I thought you
4 were saying did he say he killed E. Or Hot Boy.

5 Q. Neither one of E. Or Hot Boy did he kill. Did he
6 indicate he had shot somebody that day though?

7 A. Yes, ma'am.

8 Q. And who did he say he shot?

9 A. I think he said he shot the girl or something.

10 Q. The girl?

11 A. Yes, ma'am.

12 Q. Okay. Did he say why that he was going after E. And Hot
13 Boy?

14 A. He said -- he said that they robbed him of some
15 marijuana.

16 Q. They robbed him of some marijuana?

17 A. Yes, ma'am.

18 Q. And did he indicate whether or not he held this against
19 them?

20 A. Yeah, he held it against them.

21 Q. What did he say specifically?

22 A. He was like when they robbed him, he let it go for like
23 a couple of weeks.

24 Q. Let it go for a couple of weeks?

25 A. Yes, ma'am.

1 Q. And then what did he tell you he wanted to do?

2 A. He said he wanted to get back at them for robbing him.

3 Q. To get back at them?

4 A. Yes, ma'am.

5 Q. And who was he referring to that he get back at?

6 A. E. And Hot Boy.

7 Q. Did he indicate how he figured out where E. Lived?

8 A. Said from a girl, some girl.

9 Q. And what did he indicate that he found out from the
10 girl?

11 A. I couldn't hear you. I couldn't hear you.

12 Q. What did he tell you he found out from the girl?

13 A. Oh, he told me she told him where E. -- where E's dad
14 worked and then she showed him the house.

15 Q. And he said some girl had showed him where E's dad
16 worked?

17 A. Yes.

18 Q. Do you remember where he said that was?

19 A. Best Buy or something like that.

20 Q. And then he said the girl showed him where the house
21 was.

22 A. Yes, ma'am.

23 Q. Was he able to confirm in any way that that was the
24 house where E. Would live?

25 A. Yeah, he said he seen the same truck at the Best Buy

1 that was in the yard where the girl showed him the house.

2 Q. What did he say he did once he figured out where E.
3 Lived?

4 A. He said he staked the house out.

5 Q. And after he staked the house out, what did he do? What
6 did he tell you he did?

7 A. He told me he came around there and seen two dudes with
8 dreads.

9 Q. He saw two dudes with dreads. Did he say where they
10 were?

11 A. He said they were standing on the side of the house.

12 Q. On the side of the house?

13 A. Yeah.

14 Q. And what did he say that he -- what did he tell you that
15 he did when he saw the two dudes with dreads?

16 A. He said he jumped out of the car and started shooting at
17 them.

18 Q. Did he say anything about the shooting itself other than
19 he started shooting at them?

20 A. What do you mean?

21 Q. Did he say whether or not he -- I guess he said he hit
22 the girl.

23 A. I mean, he said he jumped up---

24 **Ms. Shurling:** Objection to leading, Your Honor.

25 **The Court:** Sustained. Don't lead.

1 By Ms. Campbell:

2 Q. What did he say? I'm sorry.

3 A. He said he jumped out of the car and he started shooting
4 at them and they ran.

5 Q. Did he tell you anything else specific about what
6 happened that day?

7 A. He said before he did the shooting or something he was
8 at the studio or something like that.

9 Q. At the studio?

10 A. Yeah.

11 Q. Do you remember the name?

12 A. Quantum B's or something like that.

13 Q. Quantum B's?

14 A. Yes, ma'am.

15 Q. Did he tell you what he did after the shooting?

16 A. No, not that I can remember.

17 Q. Did he tell you anything about the police investigation
18 after he had done the shooting?

19 A. Yeah, he said somebody -- he was watching the news and
20 he said he was straight, that they had---

21 Q. He was straight?

22 A. Yeah. They had locked somebody named John Bailey up.

23 Q. Because they had locked somebody named Jonathan Bailey
24 up?

25 A. Yeah.

1 Q. Do you remember anything else he told you about this?

2 A. That's about it right there.

3 Q. Did he ever talk to you anything about Hot Boy and
4 getting back at Hot Boy?

5 A. Yeah, he said he wanted to get back at Hot Boy.

6 Q. Did he tell you any specifics that he found out about
7 Hot Boy and where he was?

8 A. Yeah. He said he had got a call from one of his
9 partners that they had located Hot Boy, said he stayed along
10 Chimney Ridge or somewhere off Clemson Road.

11 Q. So he even had the information about Hot Boy.

12 A. Yes, ma'am.

13 Q. Did he ever tell you anything about how he had missed
14 actually hitting any of the people who he was shooting at
15 that day?

16 **Ms. Shurling:** Your Honor, I object to---

17 **The Witness:** Yes.

18 **Ms. Shurling:** ---her leading.

19 **The Court:** Sustained. Don't lead.

20 By Ms. Campbell:

21 Q. What did he tell you about the shooting?

22 A. The only thing he said was he don't see how he missed
23 them for all the rounds he shot.

24 Q. Finally, did he tell you anything else about E. And Hot
25 Boy?

1 A. That's about it right there.

2 Q. Back when you were incarcerated on the other charges,
3 did you contact your lawyer and have them contact our office?

4 A. Yes, ma'am.

5 Q. And did you come forward and give a statement at that
6 time?

7 A. Yes, ma'am.

8 Q. And was anything promised you in exchange for that
9 statement that you gave, I believe, on March the 11th of
10 2010?

11 A. No, ma'am.

12 Q. And is this a copy of your statement?

13 A. Yes, ma'am.

14 Q. And is this actually a copy of your notes you actually
15 made in your handwriting?

16 A. Yes, ma'am.

17 Q. And that contains basically the information you have
18 conveyed here today? Who is the person that told you about
19 the shooting of the girl?

20 A. You said who is the person?

21 Q. What's his name?

22 A. Oh, Anthony Hackshaw.

23 Q. And at the time when you came forward and told the
24 police officers, did anybody promise you anything?

25 A. No, ma'am.

1 Q. And are those charges still pending?

2 A. Yes, ma'am.

3 Q. Sometime after this happened, did your lawyer then make
4 a motion and go before a judge for a bond reduction?

5 A. Yes, ma'am.

6 Q. And did the judge grant that?

7 A. Yes, ma'am.

8 Q. But no promises were made to you by the State.

9 A. No, ma'am.

10 Q. Beg the court's indulgence. The person that told you
11 about the shooting and about E. And Hot Boy, do you see him
12 here in the courtroom?

13 A. Yes, ma'am.

14 Q. Will you point him out for the jury?

15 A. (The witness points to the defendant.)

16 Q. Can you describe what he's wearing and where he's
17 seated?

18 A. He's got a grayish blue suit on.

19 Q. Is he sitting in the center of the table?

20 A. Yes, ma'am.

21 Q. Between the man and the woman?

22 A. Yes, ma'am.

23 **Ms. Campbell:** Your Honor, may the record reflect he's
24 identified the defendant?

25 **The Court:** All right. It does. All right. Ms.

1 Shurling?

2

Cross-Examination

3 By Ms. Shurling:

4 Q. Mr. Golston, when were you booked into Alvin S. Glenn
5 this last stay?

6 A. Oh, around August.

7 Q. Of '09?

8 A. Of this year.

9 Q. This year. August 10th, 2010.

10 A. Yes, ma'am.

11 Q. And---

12 A. No, '09. '09. Excuse me. '09.

13 Q. Okay. So you had been in jail at Alvin S. Glenn for
14 approximately how long before you say my client decided to
15 confess to you?

16 A. I mean, I can't tell you exactly what time frame,
17 probably like -- I'd say like -- at least like five and a
18 half months, six months.

19 Q. You had been in jail without bond for five and a half
20 months---

21 A. No, I had a bond.

22 Q. You had a bond.

23 A. Yeah.

24 Q. But you couldn't make that bond, could you?

25 A. Yeah, I could have made it.

1 Q. Well, you didn't make it, did you?

2 A. No.

3 Q. You were sitting in jail. And shortly after you gave
4 law enforcement the statement against my client, what kind of
5 bond were you released on?

6 A. A personal recognizance.

7 Q. A P.R. bond?

8 A. 30,000, yeah.

9 Q. Pardon?

10 A. Yes.

11 Q. Which means you got out without paying any money; right?

12 A. Yes, but at the same time they -- they was holding my
13 motion for a long time, so that's why my lawyer really put in
14 for another bond reduction. I was there a whole seven months
15 without any type of -- without no motion. So that's why the
16 judge really granted my bond.

17 Q. Okay. You weren't waiting 'til you had a good reason
18 for them to give you a bond reduction?

19 A. That's the reason they gave me a bond reduction, from my
20 understanding.

21 Q. Thank you. Now, did you know my client on the street?

22 A. No, ma'am.

23 Q. Didn't know him at all.

24 A. Didn't know him at all.

25 Q. Did you know any of his kin people?

1 A. No, ma'am.

2 Q. So you had no relationship with him whatsoever until you
3 landed in the same pod with him at Alvin S. Glenn Detention
4 Center.

5 A. Correct.

6 Q. And it's your contention that my client who is in jail
7 waiting to be tried for murder decided to just confess to
8 you. That's what you want this jury to believe.

9 A. That's your theory. I mean, we became friends.

10 Q. No, that's not my theory, sir.

11 **The Court:** Wait a minute. He's answering the question.
12 Let him answer.

13 **The Witness:** Yeah, that's your theory. I mean, we
14 became friends. I ain't saying he just told me this off the
15 stump. I mean, we became friends.

16 By Ms. Shurling:

17 Q. In jail, Mr. Golston, isn't it fairly common knowledge
18 that you have to watch out for jailhouse snitches?

19 A. Yep.

20 Q. Doesn't everybody pretty much know that there are people
21 sitting around in every pod just looking for somebody they
22 can snitch on?

23 A. If that's what you say, yes, ma'am.

24 Q. And knowing that, it's your position that my client just
25 told you he did it.

1 A. How else I got the facts?

2 Q. Pardon?

3 A. How else I got the facts? If he didn't tell me, where
4 did I get them from?

5 Q. Well, let's talk about that. Did you ever take a look
6 at the discovery materials my client had at the jail?

7 A. No, we never was roommates. It was one person to a
8 room.

9 Q. But those cell doors are open wide during most of the
10 day---

11 A. No, they make you -- they make you shut your door every
12 time you come out of the room.

13 Q. Mr. Golston---

14 A. Making sure you lock the door every time you come out of
15 the room.

16 Q. Are you sure you want to swear to that under oath?

17 A. They make you shut the door. That's the procedure.
18 You're supposed to shut your door, secure your door when you
19 come out for rec.

20 Q. That may be what you're supposed to do, but do you want
21 to testify under oath---

22 A. I mean, I'm answering the question---

23 Q. ---that all those doors---

24 A. You're asking me a question. I'm answering the
25 question.

1 Q. All right. I'll narrow the question. Is it or is it
2 not true that during general visitation time when you're not
3 locked down that many, if not most, of the cell doors are
4 wide open?

5 A. I mean, maybe sometimes, but I mean, your door is
6 supposed to be locked. Every time you come out of your room
7 your door is supposed to be secured.

8 Q. I didn't ask you whether it was supposed to be. I asked
9 you: Isn't it true that in everyday practice most of those
10 doors are wide open?

11 A. Well, no. No.

12 Q. You're going to deny under oath---

13 A. No. I mean, you can't tell me what I see. I mean, when
14 I look around most of the doors be shut.

15 Q. Some of them are open?

16 A. I mean, they are because people are coming out of their
17 rooms.

18 Q. So you deny you would have ever had an opportunity to
19 read discovery materials that were sitting around.

20 A. No. Yeah, I'm denying that.

21 Q. Okay. You are facing charges now of what?

22 A. Assault and battery with intent to kill and possession
23 of a firearm.

24 Q. Assault and battery with intent to kill which carries a
25 sentence of up to 20 years.

1 A. All you've got to do is look at the motion though.

2 Q. I asked you your charge carries up to 20 years. You
3 know that, don't you?

4 A. Oh, I don't know how much it carries.

5 Q. How long have you been in jail on this charge?

6 A. Like eight months, seven or eight months.

7 Q. Who is your lawyer?

8 A. Casey Secor.

9 Q. And nobody has ever told you what kind of time you will
10 be facing on that charge.

11 A. No. I never asked.

12 Q. You've been in jail all those months for assault and
13 battery with intent to kill and you've never even asked?

14 A. No, because I didn't do it. So, I mean, you know, I
15 always know I was coming home.

16 Q. You've already gone over your criminal record with us
17 this afternoon. With your record, isn't it true that you
18 knew if you were convicted of assault and battery with intent
19 to kill you'd be looking at hard time?

20 Ms. Campbell: Objection, Your Honor.

21 The Court: Well, rephrase the question. I mean, I
22 don't -- what is hard time?

23 Ms. Shurling: I'll rephrase.

24 By Ms. Shurling:

25 Q. Mr. Golston, quickly review for us what your priors are

1 for.

2 A. I don't know. I don't -- I can't remember. You can
3 read them off if you'd like.

4 Q. Okay. The ones you went over with the prosecution a
5 moment ago were accurate.

6 A. Yes, they were accurate.

7 Q. Okay. My question is: With that as your prior record,
8 faced with assault and battery with intent to kill, didn't
9 you have a good reason to fear that you could get a
10 substantial jail sentence?

11 A. No, ma'am, because I didn't do it. So I wasn't in fear
12 of nothing.

13 Q. Mr. Golston, who is Kendrick Nelson?

14 A. A guy who was in the Hotel Unit with us.

15 Q. And you are aware, are you not, that Kendrick Nelson is
16 homeboys with E. And Hot Boy; right?

17 A. I mean, I don't know Kendrick Nelson off the street.

18 Q. Pardon?

19 A. I don't know them off the street, so I don't know who he
20 know or whatever.

21 Q. So you're denying knowing from your conversations with
22 him in jail that he knew Hudson and Hot Boy well?

23 A. I don't even know who is E. And Hot Boy. So, I mean,
24 how should I know who he knew is?

25 Q. Hudson.

1 A. I don't know. That's---

2 Q. The fellow's whose house was supposedly shot up.

3 A. The only thing I know is what this man told me. I mean,
4 as far as me knowing this man personally or ever seeing him,
5 I don't know him, and I don't know if Kendrick Nelson knew
6 them either.

7 Q. Well, you told law enforcement that my client confessed
8 to being involved in this shooting in front of Kendrick
9 Nelson, didn't you?

10 A. I said Kendrick Nelson heard the same thing I heard.
11 That's what I said.

12 Q. Okay. So you're saying my client told you these things
13 close enough that Kendrick Nelson could hear it.

14 A. Yeah.

15 Q. Do you deny knowing that Kendrick Nelson was closely
16 affiliated with Ellison Hudson and Hot Boy?

17 A. Yes, ma'am.

18 Q. Okay. Now, isn't it true that when you told your story
19 to law enforcement that you told them that my client said
20 that Fogle must have been in the shed when she was shot
21 because he didn't see her?

22 A. Repeat that question.

23 Q. Isn't it true that this statement you claim my client
24 made admitting this crime, you claim that he said the girl
25 must have been in the shed because he didn't see no girl.

1 She must have gotten shot inside the shed.

2 A. Yeah, that's what -- that's what he said. He said he
3 didn't shoot no girl.

4 Q. So part of this confession of his was that he didn't
5 even know there was a girl in the yard.

6 A. I mean, well -- yeah, that's true.

7 Q. Mr. Golston, before you gave your story to the police
8 about my client when you'd be sitting in jail for about five
9 and a half months, isn't it true that you tried to get my
10 client to have someone in his family make bond for you?

11 A. No, I don't remember that.

12 Q. Are you sure about that?

13 A. Yeah, I'm sure about that.

14 Q. You didn't ever write him a letter or talk to him about
15 getting somebody in his family to put up the money to help
16 get you out?

17 A. No, not for the whole bond. No.

18 Q. Not for the whole bond.

19 A. Not for the whole bond.

20 Q. Oh, I get it. You only meant---

21 A. You said post a bond, so you're talking about a whole
22 bond.

23 Q. Okay.

24 A. But he came to me. He asked me -- he came to me and
25 said he was going to get me something which he lied, you

1 know. So I didn't worry about that.

2 Q. Uh-huh. So you only asked him to help you a little bit
3 with your bond.

4 A. No, he offered.

5 Q. Really?

6 A. Yeah.

7 Q. And when you didn't get help with your bond, then you
8 called the law and told them he'd confessed to this crime.
9 Isn't that true?

10 A. No, that's false. You're making a story there. That's
11 not the way the story happened.

12 Q. Well, you're the one with the history of telling
13 stories, Mr. Golston, not me.

14 A. Okay. Well, if I lied, show me where I lied, where I
15 told a story at.

16 Q. Mr. Golston, in your pod at Alvin S. Glenn there are
17 people from all over Columbia, aren't there?

18 A. I imagine so.

19 Q. And among the people, there are people from the Fairview
20 community, aren't there?

21 A. People from the what?

22 Q. The Fairview neighborhood -- Greenview. Pardon me.
23 Greenview neighborhood.

24 A. I mean, there's people -- just like you said, there's
25 people from everywhere.

1 Q. So there have been people during this long jail
2 sentence, I mean, pardon me, pretrial detention of yours,
3 you've actually been in jail with people from the Greenview
4 community, haven't you?

5 A. I mean, not that I can recall because I'm not from the
6 Greenview area, so I wouldn't really know nobody from around
7 there.

8 Q. But you've had plenty of time to talk to a whole bunch
9 of people about that killing that happened that Hackshaw was
10 charged with, haven't you?

11 A. No.

12 Q. No?

13 A. Huh-uh.

14 Q. You didn't ever ask anybody about that killing that
15 happened in Greenview?

16 A. No, ma'am, not once.

17 Q. You didn't ask anybody in your family maybe to look up
18 stuff on the internet or in the media?

19 A. No, ma'am.

20 Q. You agree with me you could have gotten details about
21 the crime from that kind of source, couldn't you?

22 A. I mean, if you say so. I mean, I don't know.

23 Q. Well---

24 A. I mean, why would it be important to me?

25 Q. Why would it be important to you?

1 A. Yeah, to just dig up information.

2 Q. Well, you've now given -- well, first off, after five
3 and a half months in jail with a bond that had been set that
4 included paying money -- how much was that bond for?

5 A. 30,000.

6 Q. The one you had set.

7 A. 30.

8 Q. 30,000?

9 A. Uh-huh.

10 Q. And after you gave the statement against my client, you
11 got out on a P.R. bond. Right?

12 A. Due to the fact of they're holding my motion. They're
13 holding my motion -- what do you call it? For holding my --
14 what do you call that motion? I forgot the name of the
15 motion. Motion of discovery. They wouldn't give me a copy
16 of my motion. They didn't even have a motion for seven whole
17 months. That's why I got my personal recognizance.

18 Q. Your story, it didn't have anything to do with
19 cooperating with law enforcement to make a case against my
20 client.

21 A. Not from my knowledge, no, ma'am.

22 Q. You would never give false information to the police,
23 would you?

24 A. (No response.)

25 Q. Would you, Mr. Golston?

1 A. What are you doing? Are you asking me a question? What
2 are you doing?

3 Q. You've been convicted of giving false information,
4 haven't you?

5 A. Yeah, in my absence.

6 Q. In your absence?

7 A. Yeah.

8 Q. You gave false information in your absence?

9 A. No, I've been convicted -- I was convicted in my
10 absence.

11 Q. But you were convicted; correct?

12 A. Yeah, for giving them the wrong name.

13 Q. A moment's indulgence, Your Honor. Who is the solicitor
14 in your case?

15 A. Who is the solicitor in my case?

16 Q. In your case.

17 A. Oh, Heather Weiss.

18 Q. Isn't it true that the solicitor assigned to prosecute
19 your case is Ms. Campbell?

20 A. No, ma'am.

21 Q. You didn't ever tell people at the jail that it was Ms.
22 Campbell?

23 A. No. No, ma'am.

24 Q. Mr. Golston, I show you a copy of the order reducing
25 your bond to a P.R. bond filed with our clerk of court on

1 March 16th, 2010. Do you recognize that?

2 A. Yeah.

3 Q. Who does it say right there the solicitor in your case
4 is?

5 A. I think my -- I think my solicitor was sick that day or
6 something. She was out that day. I don't know. I think so.

7 Q. Who does it say it is?

8 A. You read it out. I can't read that good.

9 Q. No, sir. You answer my question.

10 A. What does it say?

11 Q. Who does it say your solicitor is?

12 A. It says Luck Campbell.

13 Q. Thank you. So you're saying that the solicitor's office
14 -- the solicitor assigned to your case didn't give you any
15 discovery in your case? Is that what you said awhile ago?

16 A. Yes.

17 **Ms. Shurling:** Nothing further, Your Honor.

18 **The Court:** Anything?

19 **Ms. Campbell:** I don't have anything further, Your
20 Honor.

21 **The Court:** All right. Thank you. You may step down.

22 All right. Call your next witness.

23 **Ms. Campbell:** Your Honor, the next witness is
24 Investigator Mahoney, and I anticipate that taking a
25 significant amount of time.

1 **The Court:** All right.

2 **Ms. Campbell:** I just know you advised me earlier...

3 **The Court:** All right. Ladies and gentlemen, we're
4 going to have to break -- we were going to have to break at
5 5:30 anyway because we had a conflict and somebody had to be
6 somewhere at 5:30, so we will break at 5. But let me give
7 you the bad news while you're here.

8 We're probably going to go into next week. I don't
9 anticipate -- I'm hoping that we finish all of the evidence
10 this week and that Monday we can argue and charge and that
11 you'll get the case then. So it may be -- you may be here an
12 extra day. Of course if we can finish sooner, we'll do that,
13 but the reason I tell you that is in case you need to let an
14 employer know or somebody that you might be a day or so, but
15 we've reviewed the logistics of it and I think there's a good
16 chance we can finish all the evidence on Friday -- by Friday
17 and argue and charge and you can have the case on Monday
18 and...

19 So, anyway, I thank you for your hard work today. You
20 have invested three solid days. Again, I'm going to ask you
21 not to discuss this case with anyone while you're gone, and
22 when you come back tomorrow morning, don't discuss it. I
23 think -- have we got anything tomorrow? What time do y'all
24 want to start?

25 **Juror:** 10:00.

1 **Juror:** 8.

2 **The Court:** 8?

3 **Juror:** 9:00.

4 **The Court:** All right. We'll start at 9. Anyway, so
5 have a nice evening. Don't do anything. Don't read about
6 it, listen to it, go by and ride by anything. Don't talk
7 about it and don't talk about it when you come back in the
8 morning. Y'all have a nice evening, and we'll see you
9 tomorrow morning.

10 **Juror:** You, too.

11 **The Court:** Thank you, ma'am. You're on the record now.

12 (Whereupon, the jury was excused from open court for the
13 day at 5:05 p.m.)

14 **The Court:** Okay. I have read Mitchell and I have not
15 changed my opinion after reading Mitchell. Mitchell --
16 clearly there was a difference in the facts, the availability
17 of that witness. They were removed from the courthouse.
18 Nobody had an opportunity to talk to that witness, question
19 him. You know, we gave you as much opportunity as we could
20 under the facts and circumstances in this case, so I don't
21 believe based on Stokes that -- I believe Stokes is
22 controlling in this instance, and I'm going to allow the
23 extrinsic evidence to come in if that's what the State
24 intends to do at some point in time.

25 **Ms. Shurling:** Your Honor, I need to inquire based on

1 some language in Stokes whether the State is willing to
2 stipulate that Mr. Gleaton is unwilling to answer my
3 questions. If not, then I'm going to have to ask for a Court
4 order to have him transported back as a witness for the
5 defense so that I can attempt yet again to ask him questions.

6 **The Court:** Sure. We'll bring him back. Y'all make
7 arrangements. If you need an order from me...

8 **Ms. Campbell:** Yes, Your Honor. We'll have to get
9 another writ done. Would Friday be a good day to have him
10 brought back?

11 **Ms. Shurling:** That's fine.

12 **Ms. Campbell:** It just takes a little while to get the
13 paperwork done because he's in federal custody.

14 **The Court:** All right. Well, just have him here early
15 Friday morning, I mean, you know, whenever they can get him
16 here Friday morning.

17 **Ms. Campbell:** I'll get the writ to you first thing in
18 the morning and get---

19 **The Court:** And get -- have somebody in your office
20 notify Mr. Kirkland and Ms. Chapman to -- have them on
21 standby. There's no point in them coming over here at 9:00
22 on Friday morning and sitting until this witness is called
23 or...

24 **Ms. Campbell:** Okay.

25 **Ms. Shurling:** And I apologize for the extra work, but

1 I'm just concerned that under the language in Stokes that it
2 creates a problem if I don't exercise every reasonable effort
3 to question him.

4 Ms. Campbell: That's fine.

5 Ms. Shurling: Thank you.

6 The Court: We want you to do what you've got to do.

7 All right. Anything else we need to take up? Who is your
8 witness tomorrow first thing?

9 Ms. Campbell: Investigator Mahoney.

10 The Court: All right. And then?

11 Ms. Campbell: Pathologist. We've got Sprint, the lead
12 investigator, and maybe a couple more. That's it. Those are
13 the significant ones.

14 The Court: All right.

15 Ms. Shurling: Your Honor, I need to inquire -- earlier
16 today Ms. Campbell told me she thought she could finish up at
17 about 10 in the morning. She hoped---

18 The Court: Well, she won't make that.

19 Ms. Shurling: ---by lunchtime at the latest.

20 The Court: She won't make that.

21 Ms. Shurling: Pardon?

22 The Court: She won't make that.

23 Ms. Shurling: I feel fairly confident that's true, sir,
24 and I just have a lot of witnesses on phone standby.

25 The Court: Well, I would tell them to be ready tomorrow

1 afternoon.

2 **Ms. Campbell:** I told her lunchtime, Your Honor. She
3 said she would have everyone at 10:30. I said whatever she
4 felt was appropriate was fine.

5 **The Court:** Say that again.

6 **Ms. Campbell:** I told her I thought we would finish our
7 case around lunchtime.

8 **Ms. Shurling:** She did, Your Honor. Then she said she
9 thought there was a possibility it could be earlier, and
10 that's when I settled on -- she's right. I'm the one that
11 said 10:00 when she said she thought it might be---

12 **The Court:** Well, all I can tell you is Vince Lombardi
13 expects that when the State rests y'all are to go forward.

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

15 **The Court:** So you need to put them on notice.

16 **Ms. Campbell:** Your Honor, we did request earlier from
17 Ms. Shurling dates of birth on her witnesses so we can run
18 raps so that will expedite the whole process. She said she
19 would provide them to me. I have not gotten them.

20 **The Court:** All right. Get them whatever you've got.

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

22 **The Court:** They want dates of birth of your witnesses
23 so they can run rap sheets.

24 **Ms. Shurling:** Our list of lay witnesses we can get
25 together for them in about five minutes, Your Honor.

1 **The Court:** They might want them on your experts, too,
2 so get them on all of them.

3 **Ms. Shurling:** We will, Your Honor. We have a practical
4 matter to take up, Your Honor. Thus far the witnesses in the
5 case, of course, have been all the prosecution's witnesses
6 and they have been hanging out in the hall in various places,
7 but now that there will be here at the courthouse some
8 overlap between defense witnesses and the State witnesses, I
9 think we need to decide as a practical matter where we're
10 going to sequester witnesses.

11 **The Court:** Well, I'm not getting involved in that.

12 **Ms. Campbell:** Usually they sit in the hall. That's
13 where our witnesses sit. Does she want a room or something?

14 **The Court:** I think she's afraid that there may be some
15 trouble out there, trouble in River City. Well, hopefully
16 those metal detectors work.

17 **Ms. Shurling:** Okay, Your Honor. I'm just -- we've got,
18 you know, some---

19 **The Court:** Well, my recollection is Mr. MacDougall is a
20 former law enforcement officer. He can be the marshal of the
21 -- do you want to be the marshal?

22 **Mr. MacDougall:** It's been so long that I forgot which
23 way.

24 **The Court:** You might have forgotten a lot, but you
25 still remember a lot, too.

1 **Mr. MacDougall:** Oh, yeah.

2 **The Court:** All right. I don't know what to tell you
3 about that. You're going to have to make sure your witnesses
4 are -- if you're concerned about some problem developing,
5 then you're just going to have to make sure your witnesses
6 stay away, and we have a crack security team around here and
7 they...

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

9 **The Court:** The last time I saw somebody jump somebody
10 in the hall, it was one girlfriend against another. I don't
11 think it really was -- that was serious stuff then, but you
12 guys keep your eyes peeled tomorrow. All right. Well, y'all
13 have a nice evening.

14 (Whereupon, the trial concluded for the day at 5:11 p.m.
15 and resumed the following day, October 28, 2010 as follows.)

16 **The Court:** All right. Thank y'all. Good morning to
17 you. Please be seated if you would. All right. We have all
18 the jurors here. Y'all be seated. Yes, ma'am. I assume
19 you've got something you want to tell me.

20 **Ms. Campbell:** Yes, sir. Just because of scheduling
21 problems and plane flights and stuff, there are a couple of
22 witnesses we'd like to put up first before we get to
23 Investigator Mahoney. In addition to that, Ms. Shurling
24 indicates to me that she's got a problem with the actual tape
25 coming in. We're trying to work to resolve that, and she can

1 bring that up, Judge. The only other thing that came up last
2 night is she did give me -- you ordered her to give us dates
3 of birth and she didn't have those, so she gave me copies of
4 her subpoenas.

5 **The Court:** Wait a minute. I ordered that she do what?

6 **Ms. Campbell:** Give me dates of births on the witnesses.
7 We had requested that, Judge, on her witnesses so we could
8 expedite that whole process. I think she's trying to comply
9 with that. We don't have any yet, but as a result of that
10 she gave me copies of some of the subpoenas she had served.

11 There was some records in there that we had not received
12 from her that she requested from various agencies. It's my
13 understanding now that there's only two or three outstanding
14 pages that we haven't received, and I just wanted to clarify
15 that for the record.

16 **Ms. Shurling:** That's correct, Your Honor. There are
17 some records from his workplace demonstrating that he, in
18 fact, worked some days after May 20th up through June 8th,
19 and my associate is looking or my investigator is looking for
20 those records as we speak. I'll get a copy to the State.
21 Your Honor, I don't know whether you want to take this up now
22 or before we get into the testimony of Officer Mahoney.

23 **The Court:** I do not.

24 **Ms. Shurling:** Over last evening---

25 **The Court:** I don't want to take it up now.

1 **Ms. Shurling:** Sir?

2 **The Court:** I don't want to take it up now.

3 **Ms. Shurling:** Thank you.

4 **The Court:** Now, you need to give those dates of birth
5 or we're not going to have -- those witnesses will not
6 testify.

7 **Ms. Shurling:** Yes, sir, Your Honor. I will have my
8 investigator go call Eleanor Cleary and get the date of birth
9 for Rosa's sister.

10 **The Court:** Just whoever you propose to have as a
11 witness you need to make sure you get it. All right.

12 **Ms. McDuffie:** Your Honor, before we bring the jury in,
13 our next witness is going to be Dr. Bradley Marcus who is
14 going to testify about the autopsy. I've shown Ms. Shurling
15 the photographs we intend to introduce, and I don't know
16 whether -- she hasn't said whether there's an objection or
17 not.

18 (Ms. Shurling looks at photographs.)

19 **Ms. Shurling:** Your Honor, I would object to the
20 photographs on the ground that they're potentially
21 inflammatory and prejudicial and that the location of the
22 wounds can adequately be described by the pathologist without
23 exposing---

24 **The Court:** So you object to all of them?

25 **Ms. Shurling:** No, only those that show the victim's

1 breast blade.

2 **The Court:** I don't know how many---

3 **Ms. McDuffie:** Your Honor, she was shot in the breast.
4 That's the only reason.

5 **The Court:** Is that the only picture?

6 **Ms. McDuffie:** Your Honor, I'll be happy -- for the
7 record, it's Court's exhibit 72 and -- or State's exhibit 72
8 to 77.

9 **The Court:** All right. Well, which one is it that we
10 object to?

11 **Ms. Shurling:** The ones that show the victim's breasts,
12 Your Honor. I believe that the good doctor can testify to
13 the location of the wounds without inflaming the jury's
14 prejudices by making them see those photographs.

15 (The Court looks at the photographs.)

16 **The Court:** Are these each a different bullet hole?

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

18 **The Court:** All right. I'm going to overrule your
19 objection. I'm going to find that while they are
20 prejudicial, just about everything they try to introduce is
21 prejudicial. They're not more prejudicial than probative.

22 All right. Let's bring the jury in if we could, Mr. Hollis.

23 (Whereupon, the jury was brought into open court at 9:11
24 a.m.)

25 **The Court:** All right. Good morning, ladies and

1 gentlemen. Nice to see you this morning, and again I'll ask
2 you the questions I've asked you all week. Has anybody had
3 any conversation about this case or been approached by
4 anybody to discuss the case since we left yesterday
5 afternoon? Anybody made any independent inquiries through
6 the technology field or in person in any way? All right.
7 Good.

8 Ladies and gentlemen, as you're aware, the State is
9 still in the process of putting up its case in chief. And so
10 I'll ask, Solicitor, if you would call your next witness,
11 please, ma'am.

12 **Ms. McDuffie:** At this time, Your Honor, the State would
13 call Dr. Bradley Marcus.

14 Dr. Bradley Marcus, after being duly sworn,
15 testified as follows:

16 **The Clerk:** Please have a seat and state your full name.

17 **The Witness:** Bradley J. Marcus, M-A-R-C-U-S.

18 Direct Examination

19 By Ms. McDuffie:

20 Q. Dr. Marcus, where are you currently employed?

21 A. I work for Professional Pathology Services here in
22 Columbia, South Carolina.

23 Q. Where are you based?

24 A. Palmetto Health Richland Hospital.

25 Q. And can you please tell the jury what a pathologist

1 does?

2 A. A pathologist studies diseases, tissues, diseases at a
3 microscopic level and a gross level. Also we also do
4 autopsies.

5 Q. And can you please tell the jury a little bit about your
6 education and background and training in the field of
7 pathology and in forensic pathology?

8 A. Sure. I went to college, and then I also went to
9 medical school. After medical school I spent six years at
10 the Medical University of South Carolina Charleston learning
11 to be a pathologist and a forensic pathologist per se, and
12 from there I took a job here in Columbia two years ago
13 working as a forensic pathologist and a general pathologist
14 and am currently board certified in pathology, forensic
15 pathology, clinical pathology, and cytopathology.

16 Q. And can you tell the jury the difference between
17 pathology and forensic pathology?

18 A. Sure. Pathology is just the general study of diseases
19 and tissues. Forensic pathology talks about studies,
20 autopsies, and the cause -- cause of death and manner of
21 death. Cause of death is any disease or injury that brings
22 about a sudden demise of somebody. And manner of death, we
23 also make distinctions of what they are: Either natural,
24 homicide which is death at the hands of a person, accident,
25 suicide or undetermined.

1 Q. And are you board certified in the field of pathology
2 and forensic pathology?

3 A. Yes, I am.

4 Q. And what does being board certified means?

5 A. Board certified means I took -- I did an extra year of
6 training under and I worked one on one with another forensic
7 pathologist, and we worked multiple -- hundreds and hundreds
8 of cases together. At the end of that year I had to take an
9 exam given by other forensic pathologists whether I have
10 mastered the material or not.

11 Q. And you are board certified in four areas?

12 A. Yes.

13 Q. And how many areas are you allowed to be board certified
14 in?

15 A. Four.

16 Q. And have you testified as an expert in courts of record
17 of this state and other states?

18 A. Yes.

19 **Ms. McDuffie:** Your Honor, at this time we would offer
20 Dr. Marcus as an expert in the field of forensic -- in the
21 field of forensic pathology.

22 **The Court:** Anything?

23 **Ms. Shurling:** No objection, Your Honor.

24 **The Court:** All right. Ladies and gentlemen, I've
25 previously explained to you what an expert is, and I'll

1 remind you again today: If scientific, technical, or other
2 specialized knowledge will assist you, the trier of fact, in
3 understanding any fact that may -- I mean, evidence that may
4 be at issue or fact that may be at issue, then a witness can
5 be qualified as an expert by virtue of his or her knowledge,
6 skill, experience, training, or education and, as such, can
7 offer opinions in his or her areas of expertise.

8 I'm going to find Dr. Marcus to be qualified as an
9 expert in the field of forensic pathology. As such, he can
10 offer opinions in this field, and you are to give his
11 testimony such weight and credibility as you deem
12 appropriate. All right. Madam Solicitor?

13 By Ms. McDuffie:

14 Q. Dr. Marcus, if I could reference your attention to an
15 autopsy performed on May 21st, 2009, of Ebony Fogle. Did you
16 actually perform this autopsy?

17 A. No, I did not.

18 Q. Who performed the autopsy?

19 A. My former colleague, Dr. Clay Nichols.

20 Q. And has Dr. Nichols since retired?

21 A. Yes.

22 Q. And have you been given his report to review?

23 A. Yes.

24 Q. And do you concur in the findings of Dr. Nichols?

25 A. Yes.

1 Q. And you've had adequate opportunity to review his report
2 and are prepared to tell the jury about the autopsy of Ebony
3 Fogle?

4 A. Yes.

5 Q. Could you please tell the jury what -- when you're going
6 to perform an autopsy, what's the first thing you like to do?

7 A. The first thing we do is we get the case history. The
8 case history is very important to determine the circumstances
9 of what took place. And then from there -- well, the body of
10 the deceased comes in and we document the clothing, document
11 any injuries or lack of injuries that are present. We do a
12 full external exam where we draw diagrams of any tattoos, any
13 injury marks. We also take photos.

14 From there we then x-ray the body to make sure that --
15 in cases where there's either gunshots or stab wounds, we
16 always x-ray to look for bullets or maybe some type of knife
17 tip could break off. We look for any radiopaque objects that
18 are in the body so we focus -- so we're able to remove them.
19 And then from there, after an external exam is performed,
20 then we go and do an internal exam and just document any
21 injuries or natural disease processes that are in the body,
22 and then from there afterwards the body is closed up and sent
23 off to the funeral.

24 Q. And to the best of your knowledge, were those procedures
25 followed in this case?

1 A. Yes.

2 Q. Were there any findings of significance in the external
3 examination of Ms. Fogle's body?

4 A. Yes, there were.

5 Q. Would you please tell the jury just briefly what those
6 were and then we'll go into them more?

7 A. On Ms. Fogle's body there was evidence of multiple
8 traumatic events. Mainly gunshot wounds were present through
9 her body.

10 Q. And approximately how many gunshot wounds were present
11 to her body?

12 A. There were 12 holes in her body. All right? Including
13 -- and then add on to there one -- a graze wound on her
14 thumb.

15 Q. Now, when you say 12 wounds, does that actually mean 12
16 gunshots?

17 A. Well, no. What that means is sometimes the bullet will
18 enter the body and stay there. Sometimes the bullet will
19 enter and then exit.

20 Q. So when a bullet enters and exits out, that produces two
21 wounds.

22 A. Correct.

23 Q. And in this case did any projectiles stay in the body or
24 did they all enter and exit?

25 A. All the projectiles in this case exited the body.

1 Q. So there were six entrance wounds corresponding to six
2 exit wounds?

3 A. Correct.

4 Q. Showing you what's marked as State's exhibit 72 to 77,
5 have you had an opportunity to review these?

6 A. Yes, I have.

7 Q. And are those photographs taken of the autopsy of Ebony
8 Fogle?

9 A. Yes, they were.

10 **Ms. McDuffie:** Your Honor, at this time we'd offer
11 State's 72 to 77.

12 **Ms. Shurling:** Subject to my previous objection, Your
13 Honor.

14 **The Court:** All right. They're admitted over the
15 objection of the defendant.

16 (State's exhibits 72 through 77 were received in
17 evidence.)

18 **Ms. McDuffie:** Your Honor, if I may have the witness
19 step down, please.

20 **The Court:** You may. You need to make sure you speak
21 up, doctor, so the court reporter can get your testimony.

22 **The Witness:** Okay, sir.

23 By Ms. McDuffie:

24 Q. Dr. Marcus, if I could have you stand on this side so
25 the court reporter can see you.

1 A. Over here?

2 Q. Yes, please. Have you had the opportunity to review
3 State's 71?

4 A. Yes.

5 Ms. McDuffie: Your Honor, I offer State's 71.

6 Ms. Shurling: No objection, Your Honor.

7 The Court: So admitted.

8 (State's exhibit 71 was received in evidence.)

9 By Ms. McDuffie:

10 Q. Now, when you are doing an autopsy, can you tell which
11 wound occurs first, which wound occurs second, things of that
12 nature?

13 A. Yes. In general, entrance gunshot wounds make a very
14 distinctive wound on the body whereas exit wounds make again
15 a different type of wound because when a bullet exits the
16 body, it loses some of its ballistics characteristics and
17 sometimes it can tumble. It makes different -- different
18 wounds on the body.

19 Q. But can you tell which entrance wound came before which
20 other entrance wound?

21 A. No.

22 Q. So when you're doing an autopsy, do you just arbitrarily
23 label those---

24 A. Yes.

25 Q. ---as one, two, three, four, five, six?

1 A. Yes.

2 Q. But that has no meaning in terms of which was shot first
3 or which was shot second.

4 A. Right. There's no way to know what happened first or
5 second, third, and fourth.

6 Q. Okay. If we could go with the first wound that was
7 identified. If you could show the jury where on Ms. Fogle's
8 body that wound entered and exited the body.

9 A. The first wound was described as entering on the right
10 neck right there and then exiting on the body right there.
11 So entrance, exit.

12 Q. And when a gunshot wound enters the body, can you tell
13 the distance the gun was fired when the projectile enters the
14 body?

15 A. Sometimes.

16 Q. Could you tell the jury what that's based on?

17 A. Sometimes when a gun is fired at close range like on
18 skin contact, you're going to have the soot and the burning
19 effect of the powder that comes out, and you can see that.
20 Clearly you can see soot on a wound. You can clearly see it.

21 Sometimes when a gun is, you know, up to 12 inches away,
22 some unburned powder comes out of the gun and kind of causes
23 little cuts and abrasions around the wound. That's called
24 stippling. Sometimes you see that on intermediate wounds,
25 but again it all depends on the type of gun and the type of

1 ammunition to determine that. Every gun is different. Every
2 ammo is different. The third type of wound is called a
3 distant-range gunshot wound where there's no -- no soot
4 around the wound. There's no stippling. There's just a hole
5 and generally those are distant-range gunshot wounds.

6 Q. And when you say distant-range, do you mean that they
7 had to be at least 10 feet away or what is that? Anything
8 over---

9 A. I would say again anything over 12 inches I could call a
10 distant range. If I don't see stippling or any soot, I would
11 probably have to call it a distant-range gunshot wound.

12 Q. So anything within 12 inches you would say is a closed
13 or could be a contact shot, and anything over 12 inches would
14 be labeled a distant shot even though you have no idea what
15 distance that---

16 A. Right.

17 Q. ---gunshot was fired at.

18 A. Right.

19 Q. So the first wound, would this be a close wound or---

20 A. This was -- Dr. Nichols described this as a distant-
21 range gunshot on -- this was the entrance and that was the
22 exit.

23 Q. Okay. If you could please go to the second one.

24 A. Okay. The second wound, approximately right here. The
25 entrance---

1 Q. And please describe when it entered the body what it did
2 once it entered the body.

3 A. Okay. I apologize. I just have the papers here. Okay.
4 So the -- this gunshot wound, the entrance was designated as
5 D., and this wound went through the heart. It went through
6 the left lung. Okay? And exited out -- out the left back at
7 approximately this location. So it went -- it entered here,
8 went through the heart which sits in the center of your
9 chest, went through the left lung, and then came out to this
10 corresponding exit wound right here.

11 Q. And is that what's depicted in State's exhibit 76?

12 A. Yes, that's the entrance wound.

13 Q. If you could please go on to -- I'm sorry. Was that a
14 close gunshot wound or a distant gunshot wound?

15 A. Dr. Nichols, according to his report, said there was
16 possible -- possible stippling right here. Again, I -- I
17 would -- I would tend to get away from possible stippling in
18 this area. I don't---

19 **Ms. Shurling:** Objection, Your Honor. May I approach
20 the bench?

21 (Whereupon, a bench conference was held.)

22 **The Court:** Ladies and gentlemen, let me let you step
23 back to the jury room. Please don't discuss the case.

24 (Whereupon, the jury was excused from open court at 9:25
25 a.m.)

1 **The Court:** All right. What do you want to tell me, Ms.
2 Shurling?

3 **Ms. Shurling:** Your Honor, I was informed -- I don't
4 remember exactly when -- we were scheduled to go to trial on
5 the 18th, that Dr. Nichols would be unavailable because he
6 would be in some sort of conference or something. He
7 wouldn't be here. I was asked if I would agree to someone
8 else from the office testifying to the findings in his
9 autopsy report and at which point Ms. Campbell assured me
10 that he would be testifying to exactly what was in the
11 autopsy report, nothing else, that he wouldn't be adding
12 anything to exactly what was in the autopsy report.

13 Now, this physician is testifying that the autopsy
14 report says that it's a possible close wound but that he
15 would stay away from that because -- and he was approaching
16 giving his own opinion concerning that matter, and that was
17 not my agreement. I agreed for Dr. Nichols not to be here
18 based on their stipulation that they would be going by the
19 autopsy report and nothing else.

20 **The Court:** That was -- was that y'all's agreement?

21 **Ms. Campbell:** I don't recall ever saying anything
22 about -- we asked if Dr. Bradley could testify if he reviewed
23 Dr. Nichols' report, and she asked me if he would be
24 testifying to Dr. Nichols' report and I said yes. I don't --
25 I mean---

1 **The Court:** What is it -- what is it you're going to ask
2 him?

3 **Ms. McDuffie:** Your Honor, Dr. Nichols' report says a
4 possible close gunshot wound. I believe Dr. Marcus'
5 testimony will be that on the photographs he did not observe
6 the soot and stippling, so he could not say it's a close
7 gunshot wound.

8 **Ms. Shurling:** Your Honor, once again I'm not -- he
9 didn't perform the autopsy. He did not see the wound in the
10 flesh; Dr. Nichols did.

11 **The Court:** Well, stick to the report, but if he can
12 look at a picture and testify as to something, then he can
13 look at the picture.

14 **Ms. Shurling:** Your Honor, for the record---

15 **The Court:** You don't need for the record. Tell me what
16 you---

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

18 **The Court:** Tell me -- don't say, "For the record."
19 Everything you say is on the record.

20 **Ms. Shurling:** I was specifically informed that the
21 testimony of their stand-in physician would not deviate from
22 the autopsy report, that it wouldn't add anything to it. It
23 would be exactly what was in the autopsy report. Had I not
24 been told that, I would have required Dr. Nichols to be here.

25 **The Court:** I don't know where Dr. Nichols is. Where is

1 Dr. Nichols? I thought y'all said he's retired.

2 Ms. Campbell: He has retired, Your Honor, and I believe
3 he's in Alaska.

4 The Court: You know, they would have been able to bring
5 another doctor regardless of whether Dr. Nichols is available
6 or not. You didn't have to agree to it.

7 Ms. Shurling: Your Honor, I reiterate: I was told he
8 was going to be unavailable for two weeks because he was out
9 of town for some conference or something.

10 The Court: I don't know.

11 Ms. Campbell: I never said conference.

12 Ms. Shurling: Well, some event. I apologize.

13 Unavailable for two weeks for some event.

14 The Court: All right. I'm going to let him -- if he
15 has some observation from a photograph, I will let him
16 testify as to that observation. Stick to the report as to
17 the report.

18 Ms. McDuffie: Thank you, Your Honor.

19 The Court: Bring the jury in.

20 (Whereupon, the jury was brought into open court at 9:30
21 a.m.)

22 The Court: All right. Proceed.

23 By Ms. McDuffie:

24 Q. Now, Dr. Marcus, you said that gunshot wound goes
25 through the heart, then through the lung, and then exits in

1 the back?

2 A. Yes. That's correct.

3 Q. And that's depicted in State's photograph exhibit 76?

4 A. Yes.

5 Q. If you could please go on to gunshot wound number 3.

6 A. Okay. Gunshot number 3 enters in the right back area
7 right here. It goes through the -- goes through the liver.
8 Then it goes through the -- it also goes through the right
9 lung and then comes out on gunshot wound indicated C. Which I
10 believe was on the left. It's on the left breast area right
11 in there. So that's your entrance. That's your exit. It
12 goes through the liver, and it goes through the lung.

13 Q. And is that depicted in State's 74?

14 A. Yes, that's the exit wound.

15 Q. If you could go on to gunshot wound number 4, please.

16 A. Gunshot wound number 4 again is to the upper right back
17 right there, and then it exits and then it goes through --
18 goes through the left -- left lung. This is right here. And
19 it comes out approximately right here.

20 Q. That's going in at a slightly downward angle?

21 A. Yes, downward angle, clips the left lung.

22 Q. And again for the last two you described, were those
23 close gunshot wounds or distant gunshot wounds?

24 A. Distant gunshot wounds.

25 Q. Meaning they were shot from at least 12 inches away?

1 A. Yes.

2 Q. If you would go on to wound number 5, please.

3 A. Gunshot wound -- gunshot wound number 5 enters on the
4 left back approximately right here. It goes through the
5 spleen which is located in the left part of your body right
6 here, and then the gunshot wound exits approximately right
7 here.

8 Q. And is that depicted in State's 75?

9 A. Yes, it is.

10 Q. If you could please go on to the sixth gunshot wound.

11 A. Gunshot wound number 6 goes into the right -- right
12 buttocks region approximately right there, and then it exits
13 on the anterior aspect of the right thigh right here. So
14 it's going in downward and comes out right there.

15 Q. And is that depicted in State's 73?

16 A. Yes, it is.

17 Q. And then did she also have a -- there were six gunshot
18 wound entrances and six exit wounds, and did she also have
19 any gunshot wounds that grazed her body?

20 A. Yes, she had one graze wound. Approximately right there
21 is a graze wound.

22 Q. To her right thumb?

23 A. Right thumb.

24 Q. So she was shot in the right hand on the thumb or a
25 bullet grazed her right hand?

1 A. A bullet grazed her hand there.

2 Q. And you can't tell if that's the same bullet that then
3 entered somewhere else, can you?

4 A. I can't tell. It's---

5 Q. I'm sorry. Go ahead.

6 A. It's possible it could have entered the body and then
7 exited. I just can't tell.

8 Q. If you could have a seat back on the stand. Dr. Marcus,
9 can you tell which or which combination of these shots could
10 have been the fatal shot?

11 A. Yes. From reviewing the report, Ms. Fogle died of
12 internal hemorrhage.

13 Q. Please tell the jury what internal hemorrhage means.

14 A. A hemorrhage is -- your blood is usually in your
15 circulatory system, pumped by your heart, and what happened
16 was we had a disruption of that system. There was a hole in
17 the heart. There was a hole in the lungs. So the
18 combination of, you know, all the gunshot wounds basically
19 disrupted all the blood vessels, disrupted the heart, and she
20 bled to death.

21 Q. And is there one wound that contributes more than
22 another or are they all taken together?

23 A. I would take them all in one -- certainly the gunshot
24 wound to the chest, to the heart, that's -- having a hole in
25 your heart is incompatible with life.

1 Q. Dr. Marcus, can you please tell the jury what your
2 opinion is and the opinion of Dr. Nichols to a reasonable
3 degree of medical certainty as to the cause of death of Ebony
4 Fogle?

5 A. Yes. Ebony Fogle died of internal hemorrhage due to
6 multiple gunshot wounds sustained.

7 **Ms. McDuffie:** Beg the Court's indulgence. No further
8 questions of this witness.

9 Cross-Examination

10 By Ms. Shurling:

11 Q. Good morning, Dr. Marcus.

12 A. Hi.

13 Q. You did not perform this autopsy, did you?

14 A. No.

15 Q. You did not see Ms. Fogle's body.

16 A. No.

17 Q. Okay. With regard to whether or not the second wound
18 described, that one to the upper chest was a possible close
19 gunshot wound, you're relying on viewing the pictures?

20 A. Viewing the pictures and Dr. Nichols' notes.

21 Q. Correct. And -- but Dr. Nichols, when he made the
22 observation that it was a possible close wound, he was
23 actually looking at the wound.

24 A. He was.

25 Q. Okay.

1 A. But he had placed a question mark next to that wound on
2 his diagram. So I -- he's unsure. He's not sure exactly
3 what it is, what that mark was.

4 Q. You're assuming that's what he meant.

5 A. I'm assuming that, yes.

6 Q. You didn't discuss it with him.

7 A. No.

8 Q. Okay. And his report again says possible close---

9 A. Yes.

10 Q. ---wound. And do his notes indicate that he observed
11 some stippling or powder?

12 A. Can I read?

13 Q. Certainly.

14 A. Can I read the report? That gunshot wound... In his
15 report he writes a possible area of stippling is present
16 around the left neck near the midline.

17 Q. Okay. And, again, it would be the presence of stippling
18 that would tell us that the shot occurred at extremely close
19 range.

20 A. Correct.

21 Q. And for us lay people, distant doesn't mean distant,
22 does it? I mean, it doesn't mean distant in the ordinary
23 vernacular, does it?

24 A. No, it doesn't.

25 Q. I believe you said a wound could be distant and be from

1 a distance more than 12 inches?

2 A. Correct.

3 Q. So you could be standing 18 inches away from someone and
4 fire a gun, and forensic science would determine that to be a
5 distant wound.

6 A. Correct.

7 Q. With regard to the abrasion on her hand, that was
8 described as a graze wound?

9 A. Yes.

10 Q. Using more general terminology, was it a cut or an
11 abrasion? What was it?

12 A. Generally -- generally, what happens is -- a graze wound
13 I describe as having the characteristics of a gunshot wound,
14 but it actually doesn't enter the body. Like I said, it
15 grazes the skin and it's got a very, very characteristic look
16 to it because you have a high-speed bullet grazing the skin
17 and it makes a mark. It's very, very -- again, from
18 experience I know what a graze wound looks like, and it's
19 very characteristic of a graze wound. It's like an abrasion.
20 It's like a superficial abrasion, yes.

21 Q. And, again, you know what one looks like, but you didn't
22 do this autopsy report.

23 A. No, I did not. I didn't do this autopsy report.

24 Q. So what did Dr. Nichols' notes document with regard to
25 the character and nature of the wound on the hand?

1 A. There's a graze gunshot wound to the base of the right
2 thumb, 28 inches from the top of the head. The graze wound
3 is 0.5 to 0.8 inches in greatest diameter. No soot or powder
4 stippling is identified.

5 Q. So there are no other characteristics of that wound
6 described other than his opinion that it was a graze wound.

7 A. Correct.

8 Q. And I believe you just said a graze wound can look like
9 an abrasion.

10 A. Yes. A graze wound can look like an abrasion, but it's
11 got a -- again, a graze wound is -- in our forensic world has
12 a very characteristic look to it.

13 Q. Can an abrasion that someone gets from some other trauma
14 sometimes look like a graze wound?

15 A. I guess it's possible.

16 **Ms. Shurling:** Thank you. No further questions.

17 **The Court:** Anything?

18 **Ms. McDuffie:** Briefly.

19 Redirect Examination

20 By Ms. McDuffie:

21 Q. When the term graze is used in an autopsy report, does
22 that signify some sort of meaning as a forensic pathologist?

23 A. Yes. It means -- it specifies that it was caused by a
24 bullet or projectile.

25 **Ms. McDuffie:** Thank you. No further questions.

Recross Examination

By Ms. Shurling:

Q. But, again, Dr. Nichols didn't document in this autopsy or in the notes that you have available any characteristics of that wound that support the conclusion that it was a graze wound versus any other kind of just scratch on her hand, abrasion on her hand. Right?

A. No. He just wrote graze wound.

Ms. Shurling: Thank you.

The Court: Thank you, Doctor. You can step down. All right. Do you want to call your next witness?

Ms. McDuffie: The State calls Jeffrey Strohm. Your Honor, we'd ask that the Dr. Marcus be excused.

The Court: Sure. You're free to leave.

Jeffery Strohm, after being duly sworn, testified as follows:

The Clerk: Please have a seat and state your full name for the record.

The Witness: My name is Jeff Strohm. S-T-R-O-H-M, as in Mary.

Direct Examination

By Ms. McDuffie:

Q. Mr. Strohm, where are you currently employed?

A. Sprint Nextel Telecommunications.

Q. And what are your duties with Sprint Nextel

1 Telecommunications?

2 A. I'm a custodian of records.

3 Q. And what do you do as a custodian of records for Sprint
4 Nextel?

5 A. As a custodian of records, I'm responsible for going out
6 and testifying for all the records produced in Sprint's Legal
7 Compliance Department. When I'm not on the road testifying,
8 I'm responsible for responding to legal demands, providing
9 various types of phone records.

10 Q. And were you requested or was Sprint Nextel requested by
11 the City of Columbia Police Department to provide records
12 pertaining to cell phone number 803-227-9330 in State's
13 exhibit 62?

14 A. Yes.

15 Q. And are those records that are kept in the normal and
16 ordinary course of Sprint's business?

17 A. Yes.

18 Q. And are those, in fact, the records that were provided
19 by Sprint Nextel Corporation in response to a City of
20 Columbia subpoena?

21 A. Yes, they are.

22 Q. And have those records been manipulated or changed or
23 doctored in any way?

24 A. No.

25 Q. And could you please tell the jury what those records

1 contain and what information those records contain?

2 A. Sure. What we're looking at is a Call Detail Record
3 Report or all of the incoming and outgoing phone calls for
4 phone number 803-227-9330. Also included on this report is
5 the cell site information which indicates all the cell phone
6 towers that are utilized by that number throughout all the
7 phone calls.

8 Q. And could you please tell the jury how a cell phone
9 tower works? How do you make -- how do I make a cell phone
10 call to you? What happens when I dial your number?

11 A. When you make or receive a phone call, you're sending or
12 receiving radio frequency waves to a cell phone tower. The
13 cell phone tower is the physical mechanism responsible for
14 fielding the waves that come to and from our phones. So if
15 I'm making an outgoing phone call, what happens is I dial the
16 number. I press send. My phone starts shooting out radio
17 frequency waves that connect to a cell phone tower. The cell
18 phone tower that I'm utilizing searches for the cell phone
19 tower that can be utilized by the number that I dialed. So
20 there's interaction amongst the cell phone towers. There's
21 one cell phone tower that I'm using as the number that is
22 originating the phone call, and then there's another cell
23 phone tower that's being utilized by the recipient of the
24 phone call.

25 Q. And how does a call go to a cell phone tower? What are

1 some of the factors that go into that?

2 A. There's different factors. The first one is proximity
3 or how far away you are from a particular cell phone tower.
4 Other factors include other radio frequency activity that a
5 cell phone tower may be fielding at a given time. Weather
6 can play a role. The overall strength of a cell phone tower
7 and your line of sight to a cell phone tower... If there's a
8 big building between you and the cell phone tower, that may
9 impede on the signal.

10 Q. So a call could go to a tower that was further away but
11 there were no obstructions theoretically?

12 A. That can happen, yes.

13 Q. But generally the cell phone is searching for the tower
14 that is the closest with the best strengths. I mean, tell
15 the jury what the cell phone is searching for.

16 A. What your cell phone is doing is constantly searching
17 for the cell phone tower that's emitting the strongest
18 signal. Generally speaking, that's the closest one.

19 Q. But that's not always the case.

20 A. Not always the case, no.

21 Q. And, again, tell the jury what those factors are that go
22 into that equation.

23 A. Other radio frequency activity. If a particular cell
24 phone tower is fielding a high volume of calls, that's going
25 to diminish its signal and may cause you to connect to a cell

1 phone tower that's further away. Line of sight. Again, if
2 there's a building between you and the cell phone tower that
3 impedes on its signal, it may cause you to turn to a further
4 away cell tower. The overall strength of the cell phone
5 tower. If one tower is designed for a stronger signal
6 compared to another, you may connect to that stronger tower
7 regardless of if it is further away or not.

8 Q. And how far does a cell phone tower -- how far can you
9 be from one and make a call? What's the general range that's
10 accepted?

11 A. We say that there is a nationwide average maximum
12 distance from the phone to the cell phone tower of two to ten
13 miles depending on the area. Two miles is going to be the
14 norm in a more urban area, and ten miles is going to be the
15 norm in a more rural area. Again, that's a maximum distance.
16 You could obviously be standing right underneath a cell phone
17 tower and connect accordingly.

18 Q. And in a more urban area there's multiple cell phone
19 towers within, you know, one city, say like Columbia or
20 Charlotte. There's multiple cell phone towers in these
21 locations.

22 A. Correct.

23 Q. And so your phone is always searching for the one that
24 has those factors that you've just described.

25 A. Yes.

1 Q. The closest, the best signal, things of that nature?

2 A. Right. It's constantly taking into consideration those
3 factors.

4 Q. And the tower locations for the cell phone towers in
5 this case are also contained in State's exhibit 62?

6 A. Yes, they are.

7 Q. And those are provided by Sprint Nextel?

8 A. Yes.

9 Q. And those have not been changed in any way or
10 manipulated in any way?

11 A. No.

12 Q. If I could direct your attention to the last few pages
13 of those records. If you could please tell the jury: Cell
14 Tower 147, I'm sorry, 102, can you please tell the jury where
15 that's located?

16 A. Sure. Tower 102 is at 6515 North Trenholm Road.

17 Q. North Trenholm Road?

18 A. Yes, in Forest Acres, South Carolina.

19 Q. And Cell Phone Tower 147?

20 A. 207 Pisgah Church Road.

21 Q. I'm sorry. I didn't mean to interrupt you.

22 A. I'm sorry?

23 Q. Please proceed. I'm sorry.

24 A. Okay. That's in Columbia, South Carolina.

25 Q. Cell Tower 223?

1 A. 223 is at 7403 Parklane Road, Columbia, South Carolina.

2 Q. And finally Cell Phone Tower 256.

3 A. 256, 5032 Forest Drive, Forest Acres, South Carolina.

4 Q. And not only are the addresses provided by your company
5 but also the latitude and longitude of those cell phone
6 tower---

7 A. Correct.

8 Q. ---sites. And why is that done?

9 A. For our radio frequency engineers so that they have an
10 understanding as to where our towers are located. Latitude
11 and longitude is going to be a more precise depiction as to
12 where the tower is located as opposed to an address.

13 Q. And when a call hits a tower, does it hit a certain part
14 of the tower? How does that work?

15 A. Oftentimes towers are split off into different sectors,
16 and what the sectors indicate are where antennas on the tower
17 are located. More often than not, you have a three-sector
18 cell phone tower.

19 Q. So it looks like a triangle? The top of the tower would
20 look like a triangle if you're looking down?

21 A. If you're looking down on a three-sector tower, it would
22 look like a triangle, yes.

23 Q. And how does -- in each side of that triangle -- each
24 sector is given a specific number by your company?

25 A. Yes.

1 Q. And then that number would be also reflected on those
2 records?

3 A. Correct.

4 Q. So if the cell tower site said 4-147, that would be side
5 four that was numbered four, then Tower 147?

6 A. That's exactly right.

7 Q. And if I'm standing on the southwest side of the tower,
8 will I automatically correspond to the southwest portion of
9 the tower?

10 A. Not necessarily.

11 Q. What factors or what variables play into that?

12 A. The same factors I indicated earlier. If there's a
13 building, the line of sight could play a role. If -- I
14 believe you said northwest?

15 Q. Just whatever you're...

16 A. If you're on the northwest side and then the northwest
17 sector is fielding a high volume of calls, that will diminish
18 its signal, and you could theoretically connect off the
19 southeast side of the tower.

20 Q. And so there's no way to precisely pinpoint where
21 exactly the cell phone is when it's connecting to the tower?

22 A. Correct. We can't give an exact approximation as to
23 where the tower is located.

24 Q. But you can approximate it's somewhere within the range
25 of the cell phone tower.

1 A. Yes.

2 Q. Which in urban areas is closer to two miles but could be
3 in rural areas as far as up to ten miles?

4 A. Correct.

5 Q. And on the phone records it has a first cell -- first
6 cell tower site and a last cell tower site. Can you explain
7 that to the jury?

8 A. Sure. That's the final two columns of the spreadsheet.
9 What that indicates is the tower you're using at the
10 beginning of the phone call and then the tower you're using
11 at the end of the phone call.

12 Q. So, for instance, if I'm in my car driving down the
13 highway, when I start a call I may hit one tower, but when I
14 finish it, I may hit another one?

15 A. Because of that constant search, yes.

16 Q. So you don't stay on the same tower if you're in motion.

17 A. Correct.

18 Q. On the phone records there are also some things that are
19 listed as routed calls. Can you tell the jury what a routed
20 call is?

21 A. Sure. There's two examples of routed phone calls. The
22 first is when a phone call -- when an inbound phone call is
23 routed to the target number's voice mail, that's reinforced
24 in the called number column when there's a "one one" before
25 the target number. The other type of routed phone call is

1 when a T-L-D-N is used. T-L-D-N is an acronym for Temporary
2 Local Dialing Number. What that is is a bridge number that's
3 used when you're in an area where you otherwise cannot find
4 service.

5 When I'm receiving an inbound phone call and I can't
6 make a connection to the cell phone tower, a number that's
7 stored by another cell phone tower, the T-L-D-N is used to
8 help bridge the call so that I'm able to make a connection.

9 Q. And on these phone records they'll also show other calls
10 with a zero as a figure for the first cell tower and last
11 cell tower. What are some types of calls those could be or
12 what could those be?

13 A. The most common example of that is when a text message
14 is sent or received by the target number. You know a text
15 message happens first of all when you see zeros in the cell
16 site columns, but also if you look to the third to the last
17 column, the repoll column, any---

18 **Court Reporter:** I'm sorry. The what column?

19 **The Witness:** Repoll. R-E-P-O-L-L. Any time that
20 number is in between 291 and 299, you know it's a text
21 message.

22 By Ms. McDuffie:

23 Q. And there are also some things labeled as undetermined
24 calls on phone records. What could that possibly be?

25 A. That simply means that when we pulled the information

1 off of a switch, the switch via its raw data was unable to
2 determine whether or not the phone call was inbound,
3 outbound, or routed. When we look at the report as humans,
4 however, we can determine whether or not the phone call was
5 inbound, outbound, or routed by looking at the calling number
6 column and the called number column.

7 Q. And there's also a column for duration, how long the
8 call lasts. Correct?

9 A. Yes.

10 Q. And can you tell if a call was picked up or not based on
11 these phone records?

12 A. Based on my personal experience, anything over 35
13 seconds means that it was no longer ringing and that
14 conversation ensued. Anything prior to 35 seconds, I
15 couldn't tell you whether or not it was just ringing or
16 whether or not there was actual conversation.

17 Q. So if I pick up my cell phone and I dial a number, as
18 I'm listening to it ring, that's all counting the time of the
19 duration.

20 A. That's connection time and, yes, that's included in the
21 duration.

22 Q. So the duration does not start when the phone is picked
23 up.

24 A. No.

25 Q. And anything under 35 seconds, could you say whether or

1 not it's answered or not?

2 A. No, I cannot.

3 Q. It could be answered. You just don't know.

4 A. I don't know one way or another. Correct.

5 Q. But after 35 seconds, that's generally when you can
6 assume that the call would have been answered or gone to
7 voice mail?

8 A. Correct.

9 **Ms. McDuffie:** Beg the Court's indulgence. No further
10 questions at this time, Your Honor.

11 **The Court:** Mr. Thompson, anything?

12 **Mr. Thompson:** May it please the Court, Your Honor?

13 Cross-Examination

14 By Mr. Thompson:

15 Q. Do you have the records up there with you?

16 A. Yeah.

17 Q. The State was asking you some questions about some of
18 the locations of the cell towers. Could you please tell me
19 where Cell Tower 144 is located?

20 **Ms. McDuffie:** Your Honor, I'd ask that exhibits not be
21 shown to the jury until they're admitted into evidence.

22 **The Witness:** Cell Tower 144 is at 6011 Shakespeare
23 Road, Columbia, South Carolina.

24 By Mr. Thompson:

25 Q. Can you give me the zip code on that?

1 A. Sure. 29223.

2 Q. 29223.

3 A. Yes.

4 Q. All right. And how about Cell Tower Number 224?

5 A. 3315 Two Notch Road, Columbia, South Carolina, 29204.

6 Q. 29204. Thank you. Now, you were testifying earlier
7 about calls that don't pick up on a cell tower, and you were
8 talking about text messages in particular that don't hit a
9 cell tower. Is that right?

10 A. They don't connect to a cell phone tower the same way a
11 normal phone call does; correct.

12 Q. Now, if you had a phone call, an actual phone call, not
13 a text message, that didn't connect to a cell tower, why
14 would you think that happens? What are some of the reasons
15 why a cell phone would not connect to a tower?

16 A. You're in an area where you can't find service.

17 Q. And what would those kind of areas be normally?

18 A. The first example that jumps into my mind is if you're
19 in a desert. Because there's no cell phone towers, you're
20 not going to be able to connect anywhere.

21 Q. Would you expect to find somebody not being able to
22 connect to a cell phone tower in just a regular residential
23 area?

24 A. Generally speaking, I would not expect that, no.

25 Q. And if there were cell phone towers within -- if -- just

1 hypothetically speaking, if there were about five or six cell
2 phone towers within two miles, two to three miles of an area,
3 would you expect -- a residential area. Would you expect a
4 phone call to be able to connect to one of those towers?

5 A. Generally speaking, I would expect, yes.

6 Q. I'm going to show you what's been marked as State's
7 exhibit 61. Do you have a -- do you have a copy of that up
8 there with you?

9 A. Yes.

10 Q. Okay. And right here it says victim's residence?

11 A. Yes.

12 Q. Right? And we've got, let's see, one, two, three towers
13 right in that area? Is that right?

14 A. Yes.

15 Q. And you don't have any knowledge if this maps out every
16 cell tower in this area, do you?

17 A. Say that again.

18 Q. You don't know -- you didn't produce this map, did you?

19 A. I didn't make that map, no.

20 Q. So you don't personally have any knowledge that this map
21 maps out every cell phone tower that's in the Columbia area.

22 A. I don't know one way or another; correct.

23 Q. Or in the area around this residence.

24 A. I don't know one way or another.

25 Q. And if there are additional cell phone towers that are

1 closer to this residence, you wouldn't know that off the top
2 of your head.

3 A. I wouldn't know.

4 Q. And let's just hypothetically say there's a cell phone
5 tower right here.

6 A. Okay.

7 Q. And a cell phone tower down here.

8 A. Okay.

9 Q. And you've got one, two, three, four, five cell phone
10 towers all around this area?

11 A. Okay.

12 Q. And this is a residential neighborhood?

13 A. Okay.

14 Q. Would you expect a phone call at this area to connect to
15 one of these cell phone towers?

16 A. When you said one of these, are you referencing the
17 make-believe ones or the ones---

18 Q. All -- all five, yes. Make-believe ones and the ones
19 that are on the map.

20 A. Yes, I would expect it to connect to one of those.

21 Q. Thank you. Now then, you said -- you said that -- you
22 testified earlier that cell phone towers have a general range
23 of two to ten miles. Is that right?

24 A. Depending on the area, yes.

25 Q. If you had about five cell phone towers in about a five,

1 ten-mile radius, how far away do you think you could be to
2 connect to one of those towers?

3 A. Say that again.

4 Q. If you had five cell phone towers in an area about five
5 miles around, how far away could you be to connect to any of
6 those cell phone towers? What would the range of those cell
7 phone towers be?

8 A. That would be closer -- that would be more
9 representative of a more urban area, and because it's a more
10 urban area, the maximum distance you would be is about two
11 miles.

12 Q. Could cell phone towers be built to be further away, to
13 pick up signals further away?

14 A. Yes.

15 Q. And you can't take a look at a picture of a cell phone
16 tower and know, you know, if it's close, if it can pick up
17 signals far away or not?

18 A. Correct. I don't know that.

19 Q. And you testified earlier that if you connect to one
20 side of the cell phone tower and you -- you connect to
21 another side of the cell phone tower, that means that you're
22 moving. Is that generally true?

23 A. If you connect to one tower at the beginning of the
24 phone call and then a different tower at the end of the phone
25 call, that can mean that you are moving, yes.

1 Q. Can it mean that you're also standing still?

2 A. That can happen, yes.

3 Q. And not just -- not just one side of it -- not just one
4 tower to another but from even one side of the tower to
5 another side of the tower. Is that right?

6 A. That can happen, yes.

7 Q. So I could -- there could be a big, old cell phone tower
8 standing right here and I could be calling and I can start on
9 north side of the tower, not move, and connect to the south
10 side of the tower just standing here when I end up -- when I
11 end the phone call.

12 A. That can happen, yes.

13 Q. And if -- and you said -- you said earlier that one of
14 the main reasons why you might connect to another side of the
15 cell phone tower is due to, you know, proximity and frequency
16 and how high volume traffic there is, things of that nature?

17 A. Those are some of the different factors.

18 Q. In your experience what times of the day do you
19 generally have the most cell phone activity?

20 A. In my experience, right when I get off work, 5 p.m.

21 Q. And do people also make a lot of phone calls during
22 lunch?

23 A. Yes.

24 Q. So about 12 to 1:00 you get a lot of cell phone
25 activity?

1 A. Yes.

2 Q. So you would expect somewhere, you know, a phone call to
3 be made at 1:00 perhaps to have some difficulty connecting to
4 the closest cell phone tower?

5 A. It would have a higher probability at that time to be
6 swayed by factors other than proximity. That still doesn't
7 mean a hundred percent that it would go to a further cell
8 phone tower.

9 Q. Do you have any -- do you have any knowledge of what
10 types of -- let me -- let me -- let me backtrack. Do some
11 Sprint phone call -- do some Sprint cell phones have the
12 ability to connect to one another through I guess like
13 walkie-talkies?

14 A. You're talking about the Nextel phone. That's -- Sprint
15 Nextel is the name of the company I work for. There's a
16 Sprint network or a Sprint group of cell phone towers, and
17 there's a Nextel group of cell phone towers. For this phone
18 number and for everything we've talked about so far, we're
19 talking about Sprint towers that do not encompass direct-
20 connect or walkie-talkie activity.

21 Q. So -- so this phone call -- this phone would not be able
22 to do a walkie-talkie direct-connect.

23 A. Not that I am aware of unless it was a hybrid phone
24 where it used the Sprint network for interconnect, incoming
25 and outgoing phone calls, and used the Nextel network for

1 direct-connect, walkie-talkie phone calls.

2 Q. And if -- let me see that again. I'm going to show you
3 again State's exhibit 61, and take a look right here at
4 Doctors Wellness Center.

5 A. Okay.

6 Q. And there's a cell tower 256 right there. Right?

7 A. Right.. I see it.

8 Q. If -- let's -- just directionally, what side of the
9 tower is that on?

10 A. That's on the south side.

11 Q. It's on the southwest or southeast side?

12 A. Southwest side of the tower.

13 Q. And on the phone records you would expect a phone call
14 coming from that location to connect to the southwest side of
15 that tower; correct?

16 A. Generally speaking, there's a high probability that it
17 would connect to the southeast - I'm sorry - southwest
18 portion of that tower, yes.

19 Q. And on these records, if the number three appears before
20 the cell tower site, what does that mean?

21 A. That would mean that it connected off sector 3, but I
22 don't have the directions or the degree of the angle of the
23 antenna of sector 3 with me up here.

24 Q. Okay. Is it, generally speaking, the southeast side of
25 the tower?

1 A. I don't know that infor -- every cell phone tower is
2 different, so I can't say that one way or another.

3 Q. Beg the Court's indulgence one more time. I'm going to
4 show you this document. Do you recognize that document?

5 A. Yes, I do.

6 Q. What is that document?

7 A. This is a general graphic of a cell phone tower in a
8 three-sector layout.

9 Q. And is that a document that's regularly prepared in
10 Sprint's course of business?

11 A. Yes. We provide it when we provide cell site
12 information. However, this template has been updated. So
13 what you're seeing on this page, we now send out something
14 that's been updated has an extra -- extra information on it.

15 Q. What extra information is on it?

16 A. It's a disclaimer that says basically that this three-
17 sector layout can be misleading because, like I said before,
18 every cell phone tower is different, and the degrees of the
19 sectors and the antenna differs with every individual cell
20 phone tower.

21 Q. So when you're talking about -- so when you're talking
22 about cell phone towers and the sides that people are on and
23 things of that nature, y'all's cell phone towers can't even
24 -- I mean, according to your three-sector layout, different
25 sides of the towers, you don't even know what side that might

1 be of the tower that that phone connects to?

2 A. Not by looking at the Call Detail Record Report. You
3 can't determine that information, no.

4 Q. So you can't determine what side of the tower the person
5 is on even with the call detail on there saying two, three,
6 four. You can't tell that?

7 A. You can't tell the direction, no.

8 Q. And, again, I'm going to show you what's been marked as
9 State's exhibit 62. You take a look at that phone call right
10 there at 12:54.

11 A. Okay.

12 Q. Do you see that it connects to repoll number 631?
13 Right?

14 A. Yes.

15 Q. So that means it connects to a Columbia cell phone
16 tower, not connects, but it's a call originating in Columbia.

17 A. It's connecting to a tower that's in and around the
18 Columbia area, yes.

19 Q. And if there are no cell -- can you show me -- does it
20 say it connects to a cell phone tower?

21 A. 12:54?

22 Q. Yeah, right there.

23 A. There's no cell site information for that call.

24 Q. So with your prior testimony you would expect that
25 somebody who was -- who had that phone on their person was

1 either in a desert or in a very large building at the time
2 that that phone call was made?

3 A. No. If an entry shows up on the Call Detail Record
4 Report, you definitely made a connection to a cell phone
5 tower. Otherwise, it wouldn't appear on there. When there
6 are zeros on the cell site information, when you do make a
7 connection to a tower and it's not a text message, the reason
8 there are zeros is that we were simply unable to retrieve
9 that information when we got it off the switch.

10 Q. I thought you testified earlier that something with
11 zeros would not be -- would just not have picked up a cell
12 phone tower.

13 A. No, I -- I didn't say that.

14 Q. Then what were you testifying earlier about not picking
15 up a cell phone tower?

16 A. When you're not being able to find service. When you're
17 in a desert. When you're not able to connect to a cell phone
18 tower. When that happens, nothing shows up on the Call
19 Detail Record Report.

20 Q. Beg the Court's indulgence. If someone did not connect
21 to a cell phone tower at all, what would the repoll number
22 show?

23 A. Nothing would show up in the Call Detail Record Report.

24 Q. There wouldn't even be a call listed?

25 A. Correct. If you're not making a connection to a cell

1 phone tower, we're not able to retrieve any information.

2 Q. So you have -- but based on these cell phone records,
3 you can't tell where that call originated from, what that
4 person was doing at that point in time, if there's no
5 connection to a cell phone tower?

6 A. Right. We can't give any information as to the phone's
7 whereabouts. We can't provide that.

8 Mr. Thompson: No further questions.

9 The Court: Anything?

10 Ms. McDuffie: No questions for this witness, Your
11 Honor. We'd ask that he please be excused.

12 The Court: All right. Thank you. You may step down.

13 Mr. Thompson: We have no objection.

14 The Court: All right. Do you want to call your next
15 witness?

16 Ms. Campbell: Your Honor, our next witness is
17 Investigator Mahoney, and we need to---

18 The Court: All right. Well, this witness is going to
19 be a little while. Ladies and gentlemen, we might as well
20 take a break before we do this witness because it's going to
21 -- rather than start and stop in 15 minutes or so. I'm going
22 to let you step back to the jury room and relax for a few
23 minutes, have some refreshments, and we'll start back in
24 about 15 or 20 minutes. Please don't discuss the case while
25 you're back there.

1 (Whereupon, the jury was excused from open court at
2 10:15 a.m.)

3 **The Court:** So what have we got here?

4 **Ms. Campbell:** Your Honor, the next witness is
5 Investigator Mahoney. We were planning on publishing the two
6 statements that Mr. Gleaton denied yesterday, and Ms.
7 Shurling informed me this morning that she had a problem with
8 the actual tape recording being published to the jury based
9 on one of your earlier rulings, and I told her I would give
10 her the opportunity to address that with the court. She has
11 provided me a transcript from that statement, which we are
12 currently reviewing, that she wishes to use instead of the
13 actual recording itself.

14 **The Court:** What is this memorandum here?

15 **Ms. Shurling:** I was going to say that's -- actually,
16 Your Honor, my first motion concerns the admissibility of the
17 recordings at all, and I realize that we addressed that
18 yesterday, Your Honor. I had no advance knowledge that Mr.
19 Gleaton was not going to cooperate, so I was relying on---

20 **The Court:** So you're attempting to re-address the issue
21 that I addressed yesterday?

22 **Ms. Shurling:** Your Honor, I found out for the first
23 time yesterday---

24 **The Court:** Is that what you're attempting to do?

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

1 **The Court:** All right. Well, I've heard all I want to
2 hear on it. I'm not going to address that issue; I've ruled.
3 Are you familiar with Rule 43---

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

5 **The Court:** ---which says when the Court rules, that's
6 it?

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

8 **The Court:** All right. So what is the next issue? The
9 issue now is you want to exclude the---

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

11 **The Court:** ---the recording itself.

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

13 **The Court:** And what? Have a transcript?

14 **Ms. Shurling:** Your Honor, may I state my grounds on the
15 record, please?

16 **The Court:** Is that -- is that the next issue?

17 **Ms. Shurling:** I need to state my grounds on the record
18 concerning the introduction of the tapes at all.

19 **The Court:** Ms. Shurling, is that the next issue?

20 **Ms. Shurling:** That would be the next issue, Your Honor,
21 but regardless of Your Honor's ruling, with all due respect,
22 I have an obligation to put my argument on the record with
23 regard to this.

24 **The Court:** You put it on the record yesterday.

25 **Ms. Shurling:** No, sir, I did not.

1 **The Court:** You can put it on the -- you can put it on
2 the appeal.

3 **Ms. Shurling:** Your Honor, I can't address it on
4 appeal---

5 **The Court:** Ms. Shurling---

6 **Ms. Shurling:** ---if Your Honor doesn't allow me---

7 **The Court:** ---that is all I'm hearing about that
8 matter.

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

10 **The Court:** All right. Let's address the issue of the
11 transcript vis-a-vis the tape recording or whatever it is
12 you've got.

13 **Ms. Campbell:** Yes, sir. She's had provided me
14 graciously with a copy of her transcript. What he denied
15 yesterday was the third -- the 36-minute portion of that.
16 She has provided me copy of the transcript. There's some
17 minor discrepancies. We don't have a problem with using this
18 transcript if that's what she wants to do. If you grant her
19 motion where she wants to redact certain portions, I don't
20 know what that motion is per se.

21 **Ms. Shurling:** Your Honor had previously indicated that
22 you were allowing testimony concerning how Hudson came to
23 know my client and that you were not going to restrict
24 references to the fact that there had been drug dealings
25 between the two of them, but you were not letting other

1 witnesses get into other previous alleged drug transactions.
2 Throughout these statements, there are claims of previous
3 drug transactions with my client which we would submit would
4 fall under that ruling and should be redacted.

5 **The Court:** All right. Seems like they're on top to me
6 if that's the case. What did y'all want to say?

7 **Ms. Campbell:** We have no problem with that, Your Honor,
8 if she'll just point out the parts she wants redacted and we
9 could argue the specifics.

10 **The Court:** Well, I don't know what that -- you argue
11 specifics. I mean---

12 **Ms. Campbell:** Just the portions she wants out. If
13 those fall under your ruling---

14 **The Court:** Well, if it relates to a---

15 **Ms. Campbell:** Yes, Your Honor.

16 **The Court:** I don't know how he could relate to any
17 drugs, could he? Gleaton? Is this who it is?

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

19 **The Court:** I mean, anything he says doesn't have
20 anything to do with the drug -- alleged drug robbery. Right?

21 **Ms. Shurling:** Correct.

22 **The Court:** So any reference he makes to drugs or a drug
23 relationship I would think would be redacted.

24 **Ms. Campbell:** Yes, sir. We'll be glad to redact those,
25 if we could have a few minutes to get with Ms. Shurling to go

1 through the parts.

2 **The Court:** Sure. We're going to have---

3 **Ms. Campbell:** It may take us just a few minutes.

4 **Ms. Shurling:** Your Honor, at this time I'd ask for my
5 memorandum of law on the issue that the Court declined to
6 hear me on be introduced as a Court's exhibit.

7 **The Court:** It will be.

8 (Court's exhibit 1 was marked for identification only.)

9 **The Court:** All right. Anything else?

10 **Ms. Campbell:** Your Honor, while we're working that out,
11 there is one other -- we've only got Investigator Mahoney,
12 Investigator Reese, and we intend on also, Your Honor, at
13 this time calling Casey Secor on an issue that came up in Mr.
14 Golston's testimony yesterday about who was prosecuting him
15 and what the terms were as far as his bond hearing. We just
16 want to put him up for purposes of clearing that up. He was
17 not on our witness list, Your Honor, because we didn't
18 anticipate this issue. So if you could inquire of the jury
19 if they know him so that we could proceed, and I apologize
20 about not including him on the jury list and anticipating
21 this.

22 **Ms. Shurling:** As long as we have the opportunity to
23 speak with Mr. Golston's attorney and present testimony from
24 them as well.

25 **The Court:** Tell me that again. Who is Mr. Golston's

1 attorney?

2 Ms. Campbell: Casey Secor.

3 Ms. Shurling: We'll get in touch with him.

4 Ms. Campbell: I can get him.

5 The Court: I mean, I don't know of any reason you

6 couldn't talk to him if he's willing to talk to you.

7 Ms. Campbell: He's willing to talk to us.

8 The Court: I can't tell you he's willing to talk to

9 either one of you.

10 Ms. Campbell: True.

11 The Court: But you certainly have a right to ask him.

12 Ms. Shurling: Yes, sir.

13 The Court: Well, before you call him then, make sure

14 Ms. Shurling has that opportunity.

15 Ms. Campbell: I'm getting him in here right now, Your

16 Honor.

17 The Court: Huh?

18 Ms. Campbell: I'm getting him in here.

19 The Court: Where is he? Is he outside?

20 Ms. Campbell: Yes, sir. I just didn't bring him back.

21 The Court: All right. Well, you can talk to him, and

22 we'll take a break. Come back in about 15 minutes.

23 (Whereupon, a short break was taken.)

24 The Court: All right. Y'all be seated. Ms. Shurling,

25 for your information I read your brief and I read your

1 memorandum and I read your case, and after having done so, it
2 still doesn't persuade me that my decision was something that
3 I would change. But we've made your brief, and you can
4 attach the case to it if you'd like.

5 **Ms. Shurling:** Your Honor, may I make one point? Just
6 one?

7 **The Court:** And it's Rule 18 in the criminal court, not
8 Rule 43, so... But quickly.

9 **Ms. Shurling:** The case Your Honor relied on yesterday,
10 the defense attorneys did not argue Rule 804. As Your Honor
11 knows, the appellate court can only rule on arguments made
12 below and ruled on below. So the argument that
13 unavailability is established under that rule was not present
14 in that case that was relied on as authority for Your Honor's
15 ruling.

16 **The Court:** Okay. Thank you, ma'am. All right. Y'all
17 ready to go?

18 **Ms. McDuffie:** Your Honor, they -- we went over what
19 they wanted redacted out of the statement. We have agreed on
20 some things, and there are two matters I believe that need to
21 be taken up before Your Honor. We've agreed that all the
22 drug references should be redacted out of the statement.
23 There's no objection on our portion to that, Your Honor.

24 However, they want on the first -- in the first minute
25 of the conversation, Investigator Reese says, "And this

1 information is a bit different from what you've given us
2 originally. Is that right?" Mr. Gleaton says, "Yes, sir."
3 Reese says, "All right. Let's be clear and clear one thing
4 up. Are you worried about any sort of retribution to you or
5 your family?" Gleaton says, "Somewhat."

6 **The Court:** All right. We will delete that.

7 **Ms. Shurling:** Your Honor, if I may hand up for you
8 the -- following that is a colloquy all referencing this
9 witness's fear of retaliation and danger to his family. We
10 believe that the portion in the brackets should be deleted.

11 **The Court:** All right. Well, whatever deals with
12 retribution or retaliation we're not going into. You
13 wouldn't go into that if he were here.

14 **Ms. McDuffie:** Your Honor, there's a statement that, "Is
15 there anything else you want to say?" He says, "I want you
16 to take me out the back door."

17 **The Court:** Tell me what that has to do with anything.

18 **Ms. McDuffie:** I mean, it's just -- that's fine, Your
19 Honor, if you're going to redact it. I'm not going to argue.

20 **The Court:** Thank you.

21 **Ms. Shurling:** Thank you, Your Honor. Your Honor, my
22 associate is, as we speak, deleting those portions and
23 preparing---

24 **The Court:** Well, I don't---

25 **Ms. Shurling:** ---the redacted copy.

1 **The Court:** All right. We can't wait, so we've got to
2 get going. Do y'all understand what it is that you're not
3 supposed to...

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

5 **The Court:** Are you going to read a question and he's
6 going to -- somebody is going to respond to the question? I
7 haven't -- I don't know what the testimony is. Is it a
8 question and answer---

9 **Ms. Campbell:** We'll get the investigator to read the
10 questions and answers.

11 **The Court:** Oh, he's going to read them both?

12 **Ms. Campbell:** Since we aren't putting in the tape now,
13 Your Honor - I didn't realize it until this morning - I think
14 it would be easier if we just designated Investigator Reese
15 asks however... I think that would be...

16 **The Court:** I don't care. I'm just trying to understand
17 what you're doing.

18 **Ms. Campbell:** Or I'll be glad to read the question and
19 he can read the answer.

20 **The Court:** Whatever you want to do. Generally the way
21 it's done in reading depositions, somebody reads the question
22 and somebody reads the answer because it makes it---

23 **Ms. Campbell:** We'll be glad to do it that way.

24 **The Court:** It makes it clearer to the jury as to who is
25 doing what.

1 **Ms. Campbell:** We can do that, Your Honor.

2 **The Court:** And it's understood that this is -- this is
3 Officer Smith who is asking the questions and this is Witness
4 Jones who is responding to it. Somebody needs to set it up.

5 **Ms. Campbell:** I'll be glad to. I'm sorry.

6 **The Court:** All right. We're ready to go.

7 **Ms. Campbell:** Your Honor, while they're preparing the
8 redacted version, I can go ahead and call Mr. Secor.

9 **The Court:** All right. Let's bring the jury in. Where
10 is Ms. Shurling? Did you have a chance to talk to Mr. Secor?

11 **Ms. Shurling:** Oh, yes, sir. Thank you.

12 **The Court:** Let's bring the jury.

13 (Whereupon, the jury was brought into open court at
14 10:46 a.m.)

15 **The Court:** Ladies and gentlemen, you will recall before
16 we actually selected the jury in this case we did what we
17 call voir dire. That means we asked you certain questions,
18 and one of the things we did: We enumerated a number of
19 potential witnesses in this case and asked you something
20 about those. Well, there is an individual who was not listed
21 in that list and is going -- is scheduled to testify next, so
22 I need to inquire about this witness.

23 This witness is Mr. Casey Secor, and Mr. Secor is
24 standing right here. And I would inquire at this time,
25 ladies and gentlemen, is there any member of this jury panel

1 or any member of the jury panel's immediate family who is
2 related by blood or connected by marriage or either now or in
3 the past has had a close personal relationship with Mr. Secor
4 or either now or in the past has had an employment or a
5 business relationship with him? If so, please stand. All
6 right. Thank you. Mr. Secor, if you'll come down here, I
7 think you're the next witness. Is that correct, Madam
8 Solicitor?

9 Ms. Campbell: Yes, sir.

10 The Court: All right.

11 Casey Secor, after being duly sworn, testified as
12 follows:

13 The Clerk: Please have a seat and state your full name
14 for the record.

15 Direct Examination

16 By Ms. Campbell:

17 Q. Mr. Secor, where are you employed?

18 A. The public defender's office here in Richland County.

19 Q. The public defender's office?

20 A. Yes, ma'am.

21 Q. And what do your duties include at the public defender's
22 office?

23 A. I represent citizens of Richland County who are indigent
24 and charged with criminal offenses.

25 Q. Do you know Travis Golston?

1 A. I do.

2 Q. How do you know Mr. Golston?

3 A. I was appointed to represent Mr. Golston in August of
4 2009.

5 Q. And so he was arrested in August of 2009?

6 A. That's correct.

7 Q. And to your knowledge, after his arrest was he housed at
8 Alvin S. Glenn Detention Center prior to any disposition of
9 his case?

10 A. He was at Alvin S. Glenn Detention Center from August
11 2009 to March of 2010, I believe.

12 Q. Are you familiar with the Hotel dorm at the jail?

13 A. That's correct.

14 Q. And is that where he was housed?

15 A. That's where he was housed, yes.

16 Q. Are you aware of who the case was assigned to in the
17 solicitor's office?

18 A. Heather Weiss.

19 Q. Heather Weiss? And is she another prosecutor in my
20 office?

21 A. She is. I believe she handles most of the Columbia
22 Police Department cases.

23 Q. And I just want to move on and not get into any
24 attorney/client privilege.

25 A. Uh-huh.

1 Q. Did you become aware in March of 2010 that your client
2 had certain information about another defendant he was housed
3 with?

4 A. Yeah. It may have been before March, but I did hear---

5 Q. February, March?

6 A. Yeah.

7 Q. And, again, these dates are approximate.

8 A. Yeah.

9 Q. I don't want to mislead anybody. And, in fact, were you
10 called up to my office and there was a message that had been
11 left by your client on my phone with information?

12 A. There was -- you played for me a voice mail that was
13 made -- left by Travis Golston via his mother, and you played
14 that voice mail for me saying that he wanted to speak to
15 investigators about Mr. Hackshaw.

16 Q. That information was related to me through his mother?

17 A. No. It was him on the phone, but it was -- it was a
18 three-way call. Yes, ma'am.

19 Q. Through his mother. Okay. To be clear.

20 A. Uh-huh.

21 Q. And I didn't initiate contact with him. He initiated
22 contact with me. Is that correct?

23 A. To the best of my knowledge, that's correct.

24 Q. Once I asked you to come up and immediately review that,
25 did you then proceed to talk to the prosecutor that was

1 handling the case?

2 A. I brought up the issue to Ms. Weiss and asked her if she
3 would contact investigators with the C.P.D. to see if they
4 would be interested in talking to Mr. Golston.

5 Q. And did Ms. Weiss do that?

6 A. I don't know exactly. I wasn't there when she made the
7 call, but that meeting happened---

8 Q. As a result of her efforts, did a meeting come around
9 between Investigator Reese and some of the police department?

10 A. I know Investigator Thomas was there. I don't remember
11 if Investigator Reese was there.

12 Q. And I misspoke. It was Investigator Thomas and I
13 believe Investigator Reese. And she facilitated that
14 meeting, and at that point in March did your client give a
15 statement?

16 A. He did.

17 Q. And at that point were any promises made to him?

18 A. No.

19 Q. At that point did you have -- had you filed a motion for
20 a bond reduction?

21 A. Yeah, I think it was -- I think the -- I think my motion
22 was actually the same day that he made the statement.

23 Q. The same day?

24 A. Uh-huh.

25 Q. And as a result, was the motion scheduled for March the

1 15th or did it get heard on March the---

2 A. I think -- yeah, I think it was the same day.

3 Q. Was Ms. Weiss available that day for that motion?

4 A. My recollection is that she was not because she was not
5 there. She was not present for the meeting that I had with
6 Travis and Investigator Thomas. But I was -- I wanted to
7 have the motion heard as a consequence of what Travis had
8 relayed to the police and...

9 Q. At your request did I accompany you in speaking to the
10 judge in that motion that day?

11 A. That's correct. Yes.

12 Q. And as part of my ethical duties, do I have an ethical
13 duty to inform the judge of the truth if he cooperated?

14 A. All attorneys have that obligation.

15 Q. And as far as him giving a statement, did I relate that
16 information truthfully to the judge?

17 A. I think I -- I think I relayed most of what he had said
18 to the judge because you weren't in the room at the time the
19 statement was given to Investigator Thomas. So I had
20 knowledge of what he had told Investigator Thomas.

21 Q. And as my ethical duty, I confirmed that he had
22 cooperated.

23 A. Yeah.

24 Q. Did you argue then for a bond reduction?

25 A. I did.

1 Q. And did the State consent or in any way say he should
2 get a bond reduction?

3 A. There was -- there was no explicit consent by your
4 office for the bond reduction. There wasn't a big fight
5 about it, but, no, there was no consent.

6 Q. And what were the grounds for your bond reduction?

7 A. Mr. Golston had been in jail for a pretty long time. He
8 had not received discovery for four months after his arrest.
9 It was, in my opinion, a weak case against him, and my
10 understanding is that Ms. Weiss had no communication from the
11 alleged victim in the case.

12 Q. Had had no communication?

13 A. I'm sorry?

14 Q. Ms. Weiss had had what?

15 A. No communication from the alleged victim in the case.

16 Q. So the victim was uncooperative at that point.

17 A. That was my impression, and also the statement that
18 Travis had given to Investigator Thomas was grounds for my
19 motion.

20 Q. And who actually made the decision on whether or not he
21 got a surety bond or a P.R. bond or whatever?

22 A. I believe it was Judge Childs who was on the bench the
23 day that the motion was heard.

24 Q. And she has since become a federal judge?

25 A. That's my understanding.

1 Q. Who is -- he still has charges pending?

2 A. Travis?

3 Q. Uh-huh.

4 A. Yeah, he's got charges pending in Richland.

5 Q. Who has been the prosecutor the entire time?

6 A. Heather Weiss.

7 Q. Is it unusual for one prosecutor to stand in for another
8 if one is unavailable?

9 A. In the three years I've been doing it, I've seen it
10 numerous times. I've had to have people stand in for my
11 cases as well.

12 Ms. Campbell: Thank you.

13 Cross-Examination

14 By Ms. Shurling:

15 Q. Thank you for being here. When your client's mother, I
16 believe you said, contacted you, did you then have
17 conversations subsequently with your client about potentially
18 cooperating?

19 A. Yeah. Just to be clear, Travis made a three-way call
20 through his mother to the solicitor's office. So it wasn't
21 actually his mother. It was him on the phone, but it was a
22 three-way call. And then, yes, as a consequence of hearing
23 that voice mail, I had spoke to Travis.

24 Q. And as part of your communication with your client, did
25 you discuss with him the potential benefits of cooperating

1 with law enforcement?

2 A. Well, I mean, my communications with my client about
3 virtually every topic are privileged but, you know,
4 certainly---

5 Q. Let me rephrase my question. When any client broaches
6 the subject of potentially cooperating with law enforcement
7 with you, is it your practice to discuss with them the
8 potential benefits of doing so?

9 A. Yeah. I mean, you know, my job is to look out for the
10 best interest of my clients, and if I think that that's
11 something that might benefit them, I would certainly discuss
12 that with them.

13 Q. And in your -- you were asked a moment ago whether any
14 promises were made to your client in exchange for his
15 cooperation. I believe you said there were not. Correct?

16 A. There were not.

17 Q. In your experience, when a client is offering to
18 cooperate with the solicitor's office, do they generally want
19 to give you any kind of promise up front?

20 A. My understanding is that they have a policy of not
21 giving any promise up front.

22 Q. So when the person cooperates, they do so with the hope
23 of being rewarded for their cooperation with law enforcement.

24 A. In my experience, that is unquestionably the motivation.

25 Q. But the solicitor's office won't tell them until after

1 they've given a statement and testified what kind of
2 reward---

3 **The Court:** Ms. Shurling, just a minute.

4 **Ms. Shurling:** Or if they're going to get a reward.

5 **The Court:** Ms. Shurling, just one moment. Y'all are
6 going to have to cut that off.

7 (Pause in proceedings.)

8 By Ms. Shurling:

9 Q. Is that correct?

10 A. I'm sorry. Will you say that one more time?

11 Q. So in practice, the individual who is considering
12 cooperating has to give whatever information he has to give,
13 potentially even testify, before he finds out what, if
14 anything, the solicitor's office is going to do to reward him
15 for having cooperated.

16 A. Yes, ma'am. That's my experience.

17 Q. Kind of a you do right by us and we'll do right by you?

18 A. That's my impression of the way things work.

19 Q. Why would it -- why would a prosecutor not want to---

20 **Ms. Campbell:** Objection, Your Honor, as to speculation.

21 **Ms. Shurling:** Your Honor, she broached the subject to
22 whether or not promises were made. I'm asking this witness
23 in practice why the solicitor's office would not be willing
24 to make promises.

25 **The Court:** All right. You can ask him.

1 **The Witness:** Answer?

2 **The Court:** If you know.

3 **The Witness:** Okay.

4 **The Court:** If you don't know...

5 **The Witness:** Well, I don't know that I could say
6 definitively, but my belief is that the solicitor's office
7 doesn't want it to appear that somebody got a benefit for
8 testifying.

9 By Ms. Shurling:

10 Q. And they, in fact -- under the law if they make a
11 promise in advance, then when the person is on the stand that
12 has to be disclosed, doesn't it?

13 A. My understanding is is that would certainly be
14 admissible questioning to, you know, find out the person's
15 credibility.

16 Q. And, in theory, that could diminish the view of that
17 person's credibility.

18 A. Certainly could.

19 Q. By establishing a motive for them potentially to
20 fabricate. Correct?

21 A. Potentially.

22 Q. Now, your client had been in jail for over five months
23 you said approximately?

24 A. He was arrested in August of '09, and then I believe he
25 made the statement to Investigator Thomas in March of 2010.

1 So...

2 Q. Seven months.

3 A. Something like that.

4 Q. Roughly.

5 A. Uh-huh.

6 Q. And there's no question that you argued his cooperation
7 in providing evidence against my client as one of the major
8 reasons he should be given a P.R. bond.

9 A. Yeah. I mean, I was -- there was I believe four main
10 points that I conveyed to the judge, but I had -- I had moved
11 for a bond reduction in the past. And so the fact that he
12 had given a statement to the Columbia Police Department was
13 important grounds for me to be moving for another bond
14 reduction.

15 Q. So other arguments for a bond reduction had failed until
16 he cooperated and gave the statement against my client.

17 A. No, I wouldn't say they had failed because I had been
18 successful in reducing his bond on previous arguments, but I
19 had made the same arguments at the second motion because they
20 were still in existence. I was still having problems. He
21 was still -- had been in jail for a long time. There was a
22 lack of cooperation by the alleged victim. I was -- the
23 discovery that I had been provided was incomplete, so I had
24 some of the same arguments.

25 Q. Sure. But based on the other arguments as you say had

1 been made before, he'd never been given a personal
2 recognizance bond, had he?

3 A. No.

4 Q. Now, I believe you've stated that the solicitor's office
5 didn't consent or recommend -- consent to or recommend a P.R.
6 bond, did they?

7 A. They did not.

8 Q. They didn't object to it either, did they?

9 A. It was -- it was more of a conversation between me and
10 Judge Childs. Like I said, they did not consent to it. They
11 didn't agree to it, but it was not a fight that I was having
12 with the solicitor's office. It was sort of a fight I was
13 having with the judge.

14 Q. So you don't recall the solicitor's office making any
15 strenuous effort to keep him from getting a P.R. bond.

16 A. I do not recall them making a strenuous effort to
17 prevent him from getting a P.R. bond.

18 **Ms. Shurling:** Thank you. No further questions.

19 **The Court:** Anything further?

20 **Ms. Campbell:** No, sir.

21 **The Court:** All right. Thank you. Mr. Secor, you can
22 step down and you're free to leave.

23 **The Witness:** Thank you.

24 **The Court:** All right. Call your next witness.

25 **Ms. Campbell:** The State calls Investigator Mahoney.

1 Your Honor, if I may just tell him something.

2 Walter R. Mahoney, after being duly sworn,
3 testified as follows:

4 **The Clerk:** Please have a seat and state your full name
5 for the record.

6 **The Witness:** My name is Walter R. Mahoney, investigator
7 for the Columbia Police Department.

8 (Whereupon, a bench conference was held.)

9 **Ms. Shurling:** Your Honor, this portion of the testimony
10 is please subject to my previous objections.

11 **Ms. Campbell:** Your Honor, if I may just refer...

12 Direct Examination

13 By Ms. Campbell:

14 Q. Investigator Mahoney, where are you employed?

15 A. Columbia Police Department.

16 Q. What do you do there, sir?

17 A. Investigator for the Major Crimes Unit.

18 Q. And how long have you been in law enforcement?

19 A. Seventeen years seven months.

20 Q. I want to turn your attention back to June of this year.

21 Did you and Investigator Reese make contact with a Torrian
22 Gleaton?

23 A. Yes, ma'am.

24 Q. And where was that contact made?

25 A. Down at Number One Justice Square, police headquarters.

1 Q. That's police headquarters?

2 A. Yes, ma'am.

3 Q. Here in downtown Columbia?

4 A. Yes, ma'am.

5 Q. And that day, how did Mr. Gleaton get to headquarters?

6 Do you know?

7 A. As far as I know, he came in on his own.

8 Q. Was he accompanied by anyone when he came to

9 headquarters that day?

10 A. His mother and his father.

11 Q. And were you aware or made aware -- your participation

12 in this investigation is somewhat limited, is it not?

13 A. Yes, ma'am.

14 Q. In fact, it's limited to that day, this interview of Mr.

15 Gleaton. Is that correct?

16 A. Yes, ma'am.

17 Q. Prior to him coming, were you made aware that y'all were

18 going to take a statement concerning the murder of Ebony

19 Fogle?

20 A. Yes, ma'am.

21 Q. Once he got there, did y'all make -- did y'all then

22 escort him to an interview room?

23 A. Yes, ma'am.

24 Q. And who all was present initially when he was being

25 interviewed?

1 A. Investigator Reese and myself.

2 Q. Okay. At some point did a point of the interviews --
3 did his parents also participate in the interview?

4 A. Yes, ma'am.

5 Q. And then finally at some point did he request that his
6 parents not be there?

7 A. Yes, ma'am.

8 Q. And, in fact, at that point was it you and Investigator
9 Reese that were actually talking?

10 A. Yes, ma'am.

11 Q. Do you have a copy -- there was a C.D. that was entered,
12 State's exhibit number 69, which was a tape recording of
13 the -- Mr. Gleaton's actual statement that day?

14 A. Yes, ma'am.

15 Q. And have you had an opportunity to review that?

16 A. Yes, ma'am.

17 Q. And then I've given you a redacted version of the
18 transcript of that tape. Is that correct?

19 A. Yes, ma'am.

20 **Ms. Campbell:** Your Honor, at this point we'd offer
21 State's exhibit 69 into evidence, but we would supplement it
22 with the appropriate transcript at the appropriate time.

23 **The Court:** Well, we're not -- we're not going to
24 introduce that.

25 **Ms. Shurling:** No, sir.

1 **Ms. Campbell:** Then we would mark that -- it's been
2 marked for I.D., Your Honor. At the appropriate time I'd
3 move the transcript into evidence. We would move the
4 appropriate transcript into evidence.

5 **Ms. Shurling:** Your Honor, again that was not my
6 understanding. It was my understanding she was going to
7 engage in the colloquy publishing that at this time.

8 **The Court:** That's what we're going to do.

9 **Ms. Campbell:** Okay.

10 **The Court:** So I assume that was an objection? Which
11 was sustained.

12 **Ms. Shurling:** Other than subject to my earlier
13 objection.

14 **The Court:** Well, I understand.

15 By Ms. Campbell:

16 Q. Have you been provided a transcript of that recorded
17 conversation?

18 A. Yes, ma'am.

19 Q. And for purposes of the jury's edification, in that are
20 there a series of questions between Investigator Reese and
21 some answers by Mr. Gleaton?

22 A. Yes, ma'am.

23 Q. And at one point in the transcript you actually are
24 heard reading parts -- some information into the recording as
25 well. Is that true?

1 A. Yes, ma'am.

2 Q. So there are three actual participants. For purposes of
3 what we're going to do in front of the jury, I'll read
4 Investigator Reese's questions, and can you read Mr.
5 Gleaton's answers?

6 A. Yes, ma'am.

7 Q. Okay. Investigator Reese -- and this will be him asking
8 the questions---

9 A. Yes, ma'am.

10 Q. Right? "Once again, today is June the 3rd, 2010. We
11 terminated the interview with Torrian -- Torrian a few
12 minutes ago, and Torrian then asked to speak to investigators
13 without the presence of his mom and dad not in here. Right?"

14 A. "Yes, sir."

15 Q. Did Mr. Gleaton answer?

16 A. Yes, ma'am. Mr. Gleaton said, "Yes, sir."

17 Q. "All right. We'll get you some water in a few minutes,
18 but we're not going to interrupt this right now. He asked to
19 speak to me alone without Mahoney present, without his
20 parents present. I wouldn't allow myself to speak with him
21 without Investigator Mahoney present. Torrian then agreed.
22 Is that correct, Torrian?"

23 A. Gleaton: "Yes, sir."

24 Q. Then Investigator Reese: "All right. And since then
25 you've given us -- we -- we spoke briefly, probably about

1 five, six, seven minutes without your parents present."

2 A. Gleaton: "Yes, sir."

3 Q. Investigator Reese: "You've given us more information."

4 A. Gleaton: "Yes, sir."

5 **The Court:** All right. Officer?

6 **The Witness:** Yes, sir.

7 **The Court:** Ladies and gentlemen, this officer is

8 reading the responses that---

9 **The Witness:** Okay.

10 **The Court:** ---Mr. Gleaton gave in the interview that

11 was done. You'll remember Mr. Gleaton was here yesterday.

12 You don't need to read his name each time. We know you are

13 portraying Mr. Gleaton here today, so...

14 **The Witness:** Yes, sir.

15 **The Court:** Just give us the responses.

16 By Ms. Campbell:

17 Q. "And you've given us more information?"

18 A. "Yes, sir."

19 Q. "And this information is a bit different from what you
20 gave us originally. Is that right?"

21 A. "Yes, sir."

22 Q. "But it's me coming out of here." Excuse me. What was
23 his next answer down?

24 A. "But it's me coming out of here. I don't care if I got
25 weed, if I went to jail for weed. You know what I mean?"

1 Anything me coming out---

2 **Ms. Shurling:** Objection, Your Honor.

3 **The Witness:** Excuse me.

4 **Ms. Shurling:** Can we approach?

5 (Whereupon, a bench conference was held.)

6 **The Court:** Read the question before you ask it and make
7 sure...

8 **Ms. Campbell:** So you just worried -- excuse me.

9 **The Court:** Have you got a portion of it right there?

10 **Ms. Campbell:** Do you want to show me exactly...

11 **The Court:** Is that a portion of it?

12 (Ms. Campbell and Ms. Shurling talk off the record.)

13 **Ms. Campbell:** The next question: "All right. Now,
14 let's move on to the information that you just gave me and
15 Mahoney a minute ago. Walt, can you please read back what he
16 was saying to you just so I can -- so we can be on the same
17 sheet of music, please?" And then it's Investigator Mahoney
18 that reads into the record, Your Honor.

19 **The Court:** All right.

20 By Ms. Campbell:

21 Q. "Torrian was saying that the next day Bump says to Torri
22 that E. Shot somebody in Greenview. Bump said they went to
23 get E. And started spraying. And Torri -- and Bump asked
24 Torri did E. Get shot, and Bump said that they shot somebody.
25 They sprayed someone. They didn't know who they hit." And

1 then Investigator Reese says, "All right. You heard what
2 Mahoney just read."

3 A. Okay.

4 Q. Your Honor, if I could ask...

5 A. Yeah. Where are we...

6 Q. To help him find the correct place... Start there.

7 A. Okay. "Yes, sir. That's correct. That's exactly what
8 I said."

9 Q. "All right. Now, just in case my recording -- you know,
10 you're still being recorded again."

11 A. "Yes, sir."

12 Q. "If it did not pick up what -- Investigator Mahoney up,
13 I need to hear this from you from your own lips. All right?
14 Okay? That's cool?"

15 A. "Yes, sir."

16 Q. "All right. The next -- when -- when -- what Mahoney
17 was talking about just now, you are -- are you talking about
18 the original con -- telephone call Bump gave you?"

19 A. "This was afterwards."

20 Q. "This was after?"

21 A. "Not that -- I mean, it was that day or the next day.
22 One of the two."

23 Q. "All right. That day or the next day?"

24 A. "Yeah."

25 Q. "One or either that. All right. Tell me what Bump,

1 Anthony Hackshaw, told you about this shooting on that day or
2 the next day. Whatever it is that Mahoney just read, tell me
3 about that because we got -- we got to go into a little more
4 detail."

5 A. "That they sprayed somebody. They were going to look
6 for E. And they were looking for E. And they sprayed."

7 Q. "That means they were looking for E. Before they started
8 shooting?"

9 A. "Oh, yeah."

10 Q. "And sprayed means shooting?"

11 A. "They were looking for E. The day he robbed him. All
12 tell they were going to -- all tell they were going to catch
13 up with him."

14 Q. "All right."

15 A. "Every day."

16 Q. "So Bump has told you that they were looking for E.
17 Since E. Robbed him?"

18 A. "In one of them phone calls he's asking me have I seen
19 E-Dog."

20 Q. "Those -- the phone calls that you're talking about, are
21 they before Ebony Fogle was killed in E's back yard or after?
22 Because it sounds like you're telling me two different things
23 here."

24 A. "Before and after."

25 Q. "Before and after?"

1 A. "I tell you they both wanted me to play 'cause -- wanted
2 me -- E. Knew he had done robbed somebody. I knew and he
3 still wanted me to buy the weed. He knew that somebody I
4 knew robbed him. He just wanted me to help him get him.
5 That's not my style, bro. I don't sell weed no more. You
6 probably still think I do, but I don't sell it. That's not
7 my thing no more."

8 Q. "Okay. It doesn't matter what I think."

9 A. "Yeah, that set-up thing."

10 Q. "Let me -- let me clarify what you -- what you just
11 said. After E. Got Bump, Bump was in conversation with you
12 trying to find out if you know where he can find E. Is that
13 right?"

14 A. "Yeah, because he knew I knew E."

15 Q. "Because he knew you knew E?"

16 A. "Yeah."

17 Q. "And at any time did he tell you -- now, this is before
18 the shooting in E's yard. At any time did Bump tell you what
19 he planned to do to E. Once he found him?"

20 A. "He said he was going to get him."

21 Q. "He said he was going to get him?"

22 A. "Yeah."

23 Q. "Is that the words he used?"

24 A. "That's what I'm saying; I ain't positive. I know he
25 was going to retaliate from the robbery."

1 Q. "He was going to retaliate from the robbery?"

2 A. "Yes, sir."

3 Q. "Did -- was anybody with Bump when he was telling you
4 this?"

5 A. "No, he was alone, by himself."

6 Q. "Was he on the telephone talking to you or was he in
7 person?"

8 A. "In person."

9 Q. "He was in person, and nobody was with him?"

10 A. "No. No. We was outside at his house."

11 Q. "Outside at his house? Did you ever give Bump
12 information where he could find E? Doesn't matter whether
13 you did or not. Did you?"

14 A. "No."

15 Q. "Do you know of anybody that would have given -- did
16 Bump give you any information on somebody telling him where
17 they can find -- he can find E?"

18 A. "Somebody was telling him."

19 Q. "Yeah. Who was the person?"

20 A. "I don't know because he knew that E. Stayed in
21 Greenview before me."

22 Q. "Did Bump ever tell you how he knew that E. Stayed in
23 Greenview?"

24 A. "No. That's how I knew he was talking to somebody
25 before me because, like I say, I ain't -- I ain't know E.

1 Stay. I still don't know where the brother stay at, but he
2 knew that cous' stayed in Greenview."

3 Q. "Okay. All right. The day before May the 20th which is
4 the day that the shooting happened at E's yard---"

5 A. "Yes, sir."

6 Q. "---did you have any telephone communication with Bump
7 the day before?"

8 A. "Yes, sir, nine times out of ten."

9 Q. "Well, what does that mean? Does that mean yea or nay?"

10 A. "I probably talked to Bump every day or every other
11 day."

12 **Ms. Shurling:** Objection, Your Honor. Pardon me, Your
13 Honor. This time I was wrong. I apologize.

14 By Ms. Campbell:

15 Q. Just to be sure, let me... "Okay. That's fine. Well,
16 did Bump give you anything to help him find out where E.
17 Lived? Did he offer you anything?"

18 A. "Uh-huh."

19 Q. "But he asked you at least one time where does Bump --
20 where does E. Live?"

21 A. "He was asking me -- I kind of figured like he knew that
22 I could and that I was cool with E., but he -- I think he was
23 trying to think I was more cool with him and was going to jam
24 E. Up."

25 Q. "So he wanted you to set up E.?"

- 1 A. "No, I wouldn't say that."
- 2 Q. "What's you say?"
- 3 A. "He just wanted me to find out where he -- where he was
4 or where he be at."
- 5 Q. "All right. Do you---"
- 6 A. "Or did I see him."
- 7 Q. "Can you estimate about how many times Bump asked you
8 where does E. Live or have you found out where E. Lived?"
- 9 A. "No. See, he never asked me about where he lived. He
10 ain't just asked me about where he be at."
- 11 Q. "Oh, where he be at?"
- 12 A. "Yeah, because I think E. Used to hit them clubs like
13 Rockaway and shit."
- 14 Q. "All right. So---"
- 15 A. "I mean, so cous' was on some club-type shit. He was
16 going -- he was going every night trying to -- I mean, he was
17 looking for him."
- 18 Q. "So you're telling me that Bump was going out club-
19 hopping looking for -- is that what you're saying?"
- 20 A. "I would say."
- 21 Q. "Huh?"
- 22 A. "I would say."
- 23 Q. "You would say?"
- 24 A. "Yes, sir."
- 25 Q. "All right. So then the day before the shooting in E's

1 yard do you recall any conversations you had with Bump?"

2 A. "No, I can't remember, sir."

3 Q. "You can't remember?"

4 A. "Not no conversation. I mean, I probably talked to him,
5 but I don't remember no conversation."

6 Q. "All right. That's understandable. The day of -- and
7 I'm sorry. We just got back through this again."

8 A. "Yes, sir."

9 Q. "So I can get you from point A. To point B. To Z. Do
10 you understand?"

11 A. "Yes, sir."

12 Q. "All right. The day of the shooting in E's yard, did
13 you get any phone calls from Bump?"

14 A. "Yeah."

15 Q. "All right. And the first phone call I got, if this
16 still stands - now correct me if I'm wrong - was Bump asking
17 you how is the hood?"

18 A. "Yes, sir."

19 Q. "And you took that to mean what's going on in the
20 neighborhood."

21 A. "Yes, sir."

22 Q. "All right. And from there you called your cousin,
23 Gerald Squire?"

24 A. "Yes, sir."

25 Q. "And Gerald told you about the shooting?"

- 1 A. "Yeah. He said it was hot in the neighborhood."
- 2 Q. "It was hot in the neighborhood?"
- 3 A. "Yeah."
- 4 Q. "Meaning?"
- 5 A. "Cops was everywhere."
- 6 Q. "Meaning cops was everywhere."
- 7 A. "Yes, sir."
- 8 Q. "Okay. And how -- is that how you found out about the
9 shooting?"
- 10 A. "Yes, sir."
- 11 Q. "Gerald told you?"
- 12 A. "Yeah. When we -- yesterday Gerald told me Bump just
13 told me to see how the hood looked. Gerald told me somebody
14 got shot."
- 15 Q. "Okay. When you're saying Bump, did Bump call you and
16 tell you to check out what's going on in neighborhood or is
17 he just asking you how is the hood?"
- 18 A. "No, he asked me how your hood was looking. I was like,
19 shit, I don't know. I ain't seen. The whole time he be
20 thinking I'm living out there."
- 21 Q. "Okay."
- 22 A. "So me dealing with people like that, I don't like
23 people where I live at or where I stay at."
- 24 Q. "All right."
- 25 A. "So the whole time he's thinking that's where I got to

1 every day, every night."

2 Q. "All right. So what you're saying is he's thinking you
3 could have some info---"

4 A. "Yeah."

5 Q. "---on what just happened out there."

6 A. "Yeah."

7 Q. "All right. You told him, 'I don't know. I'll call you
8 back later'?"

9 A. "Yeah."

10 Q. "You call Gerald, and Gerald tells you what happens down
11 in the hood?"

12 A. "Yes, sir."

13 Q. "About the shooting."

14 A. "Yes, sir."

15 Q. "And Gerald tells you three people were shot in the
16 street or something like that?"

17 A. "Yes, sir."

18 Q. "Is that right? And then with that information you
19 called Bump back and relayed it to him?"

20 A. "Yes, sir."

21 Q. "And what did Bump say to you in response to the
22 information you had just given him?"

23 A. "What's up with that nigger, E.? Is he hit?"

24 Q. "Say that again."

25 A. "What's up with E.? Is he hit? Did E. Get killed, I

1 mean, shot by somebody?"

2 Q. "So he's asking you did E. Get shot?"

3 A. "Or is he still around. Where he at. He just wanted to
4 know about E."

5 Q. "Okay. Did he ask you about anything else, excuse me,
6 anybody else?"

7 A. "No."

8 Q. "Did he say anything else about it because the
9 conversation must have gone on beyond where he is E. And did
10 E. Get shot? What was his response when you gave him your
11 answer? Whatever your answer -- what was your answer?"

12 A. "When?"

13 Q. "When he asked you about E., did E. Get shot."

14 A. "No, I don't. I don't know. I ain't know."

15 Q. "You told him you didn't know?"

16 A. "Yeah. I ain't even -- I ain't even -- I ain't had even
17 talked to E. Once E. Had told me about the little lick
18 situation, I was trying to..."

19 Q. "All right. That's fine. What was your response then
20 after you told E. - Bump - that you didn't know whether E.
21 Was shot or not? What did Bump say?"

22 A. "Say the question one more time."

23 Q. "When you called Bump back and told him what Gerald had
24 said and Bump asked you was E. -- was E. Shot, what did you
25 -- told him -- that you don't know? You said, 'I don't

1 know.' Right?"

2 A. "Yeah, I ain't even had seen or talked to."

3 Q. "Okay. What did Bump say after you told him you didn't
4 know whether E. Was shot or not?"

5 A. "To be honest, I ain't even sure what he said."

6 Q. "All right."

7 A. "It was something; I knew it was. If it was -- if it
8 was about that, it was something out of the way."

9 Q. "All right. Well, that's fine. The next time then that
10 you had a conversation with him was -- was that the end of
11 the conversation then when you told him you didn't know?"

12 A. "Yeah. He was like, I guess he was still around."

13 Q. "Do what now?"

14 A. "He wanted to know if E. Was shot."

15 Q. "I understand that."

16 A. "Oh, okay."

17 Q. "Bump wanted to know whether he shot E."

18 A. "Yeah."

19 Q. "Okay. You told him you didn't know."

20 A. "Yeah. That's just all he was really trying to figure
21 out."

22 Q. "All right then. If you remember that, if you can
23 remember what his response was, was it, 'Fuck, I missed the
24 asshole' or---"

25 A. "No. See---"

1 Q. "----'good, I got him?'"

2 A. "I don't know. I don't see. I don't even think bro
3 knew what he -- what he did. See, I done talked to E. And
4 all after this here."

5 Q. "What do you mean when you say bro -- I don't think bro
6 know what he did? Who is it you're talking about?"

7 A. "Bump."

8 Q. "What do you mean you don't think he know what he did?"

9 A. "Well, I mean -- I mean, from what -- from what I hear,
10 I don't know if he -- I don't know. That's what is kind of
11 hard for me. I don't want to tell you some shit and then it
12 don't be right. I'm just going off, well, like how I think."

13 Q. "With all due respect, unfortunately I'm not interested
14 in what you think."

15 A. "Yeah."

16 Q. "I'm just interested in what you know."

17 A. "Okay."

18 Q. "Okay?"

19 A. "Yes, sir."

20 Q. "So what was Bump's response to you after you said, 'I
21 don't know'? Was there any more conversation between the two
22 of you then?"

23 A. "I ain't sure. Probably was. I really ain't sure
24 because really I don't remember what number he called from."

25 Q. "All right. That's fine."

1 A. "So if I---"

2 Q. "The next -- next part of the conversation and the next
3 time you conversated with him would have been over the phone
4 call?"

5 A. "Yeah."

6 Q. "Would that have been the next day?"

7 A. "I don't think so."

8 Q. "Or later? That would have been later on that day?"

9 A. "Or the next. I don't know. It might have been the
10 next day. I think he dipped. I think he dipped."

11 Q. "Well, I don't -- I don't know whether he dipped. I'm
12 not interested in whether he dipped."

13 A. "See, I ain't really -- that's what I'm saying. I ain't
14 really sure. That's why I'm asking you about the phone."

15 Q. "Well, then, when is the next conversation that you had
16 with him over the phone, son?"

17 A. "Either that day or the next day."

18 Q. "All right. What was that conversation about?"

19 A. "To see if he had -- if I had heard anything about E."

20 Q. "He was asking you about E. At this time and you had
21 heard -- had you heard anything about him?"

22 A. "Yeah, when I -- when I seen him."

23 Q. "So he's asking you have you seen -- did you see E."

24 A. "Seen him, heard from him, talked to him."

25 Q. "All right then."

1 A. "How is E.?"

2 Q. "Earlier you told us that he said, 'We went in the yard
3 spraying or something like that.' Do you recall that, what
4 Mahoney just read back to you?"

5 A. "Yeah."

6 Q. "Does he -- does he need it read back again?"

7 A. "No, I know. I think it was two people that was doing
8 the shooting."

9 Q. "Okay. Now, don't think for me, son."

10 A. "Oh, well."

11 Q. "Tell me what it is that you were telling us earlier
12 about what Bump said about spraying."

13 A. "They said they -- that they were just spraying."

14 Q. "He said that they -- we were just spraying? Okay.
15 Tell me about the conversation then. Do you understand what
16 I'm getting at?"

17 A. "I'm -- I'm trying."

18 Q. "I need you to tell me about that conversation."

19 A. "Sir, I'm trying for real. I'm really trying."

20 Q. "Okay. Go from the part -- from the -- when he called
21 you, if you can remember, to whatever he talked about,
22 whatever he said. Even if he said, 'We were spraying,' who
23 was spraying, who they were spraying at. Do you follow me?"

24 A. "Yes, sir."

25 Q. "All right."

1 A. "I'm trying -- I'm just trying to put it together for
2 real 'cause..."

3 Q. "Take your time."

4 A. "Yeah. I -- see, I talked to E. And I talked to Bump
5 afterwards. I don't want E's story to get mixed up with
6 Bump's."

7 Q. "All right. Fair enough. Let's just---"

8 A. "I'm still cool with E. And all, still right to this
9 day."

10 Q. "I understand that. Well, let's just -- let's just deal
11 with Bump."

12 A. "You see, I don't want to tell you if E. Told me what
13 happened or if Bump told me what happened."

14 Q. "Well---"

15 A. "In detail."

16 Q. "All right. You -- you're really going to have to do
17 better, a lot better, than what you're doing."

18 A. "I know, sir. I was just saying -- I don't mean -- it's
19 been so long ago, and like I said, I been -- I ain't had
20 nothing really to do with me so... Well, at that time that I
21 thought so, I wasn't even really worried -- worried about it
22 like that."

23 Q. "And it still don't have anything to do with you."

24 A. "Yeah."

25 Q. "You're making it about you?"

1 A. "Because I don't want to give you all no bullshit ass
2 information. I want to give you my thoughts of what I think.
3 I want to give you what I -- facts -- what I..."

4 Q. "But I don't think there's one time you heard me ask
5 what you think."

6 A. "Yeah."

7 Q. "I just keep asking what you know."

8 A. "But I keep saying shit that I think and you was
9 like---"

10 Q. "Well, tell me. Tell me about the spraying then."

11 A. "That's what it is. That was it, that they sprayed."

12 Q. "Let me help you out again. Walt, one more time,
13 please." And then this is Investigator Mahoney: "Okay. You
14 stated what Torri stated was that the next day Bump says to
15 Torri that he shot somebody from Greenview. Bump stated they
16 went to get E. And started spraying." And then Investigator
17 Reese says, "All right." Then Mahoney: "Did E. Get shot and
18 they shot? Did E. Get -- get shot and they shot somebody?
19 They sprayed at somebody? Then you said he said the day
20 after the shooting?" This is Investigator Reese. "Is that
21 true, son?"

22 A. "I say either that day or the next day."

23 Q. "Okay. All right. So that's true. What -- not only
24 what Mahoney just said you said---"

25 A. "Not word for word what he said though."

1 Q. "I understand."

2 A. "Yeah."

3 Q. "Paraphrasing plays an important part here, but that
4 conversation did take place between you and Bump?"

5 A. "Yes."

6 Q. "All right. Now, one more time: What was the last
7 thing you said he said was?" And then Investigator Mahoney:
8 "He said that did E. Get shot, and this is what Bump said:
9 To ask you did E. Get shot and that they shot somebody. They
10 started spraying. They shot somebody. They don't know who
11 they shot. They just started spraying." Investigator Reese
12 again says, "Okay. All right. So, in effect, what that
13 means is that Hackshaw is telling you they shot somebody, but
14 they don't know who they shot? Is that right?"

15 A. "They went back. They sprayed."

16 Q. "And they went back and they -- went back there and
17 sprayed?"

18 A. "Sprayed."

19 Q. "All right. Do you understand what him to have been
20 saying to you occurred in -- at E's house?"

21 A. "No."

22 Q. "Excuse me."

23 A. "No."

24 Q. "Why not?"

25 A. "Because I don't know where E. Lives."

1 Q. "All right. Do you know whether -- do you know where E.
2 Lives or not?"

3 A. "Ask me again. Say---"

4 Q. "Did you understand what Hackshaw was telling you about
5 going there and spraying and shooting somebody to you?"

6 A. "Uh-huh."

7 Q. "Was that the same incident of what happened at E's
8 house?"

9 A. "Oh, yeah. That was the same incident, what he was
10 telling me."

11 Q. "The same incident."

12 A. "Yeah."

13 Q. "All right. Did you question him, ask him anything else
14 about that event?"

15 A. "Well, I tried to cut off with him. No, I tried to cut
16 it off."

17 Q. "You tried to, but you were able to cut it off?"

18 A. "No, him calling us. Us dealing with each other. Yeah,
19 that was through."

20 Q. "Right."

21 A. "That was a done deal."

22 Q. "But -- but when you had that conversation there with
23 him that Mahoney just read back---"

24 A. "Yeah."

25 Q. "---there was some other stuff that made you clear on

1 what he was telling you. In other words, by the time you
2 finished with the conversation between yourself and -- and
3 Bump, there was no doubt in your mind that Bump was talking
4 about the shooting that happened at E's yard. Isn't that
5 right?"

6 A. "Right, but I'm going to tell you I---"

7 Q. "That's right."

8 A. "Yeah. Right. I ain't even going to go -- I ain't even
9 going to go into it because you're going to say some other
10 junk."

11 Q. "Probably so."

12 A. "I already know."

13 **Ms. Shurling:** Your Honor, at this time I would request
14 that where there are portions that indicate that it's un --
15 that there are portions of a response that are unintelligible
16 that that be communicated to the jury as well because there's
17 another portion to the answer that is not contained in the
18 portion read, and it needs to be clear that there was more
19 said that could not be understood.

20 **The Court:** I'm not sure what you just said, but if the
21 questions were asked and -- but couldn't -- the response
22 was -- couldn't be determined, then just tell them that.

23 **Ms. Campbell:** Okay. I'll back up on one thing.

24 By Ms. Campbell:

25 Q. Going back up to -- start back up, "Right, but I'm going

1 to tell you" -- what Gleaton says.

2 A. "Right, but I'm going to tell you I..."

3 Q. And then it's unintelligible?

4 A. Right.

5 Q. "That's right."

6 A. "Yeah. Right. I ain't even going to go into it because
7 you're going to say some other junk."

8 Q. "Probably so."

9 A. "I already know."

10 Q. "It was you and me. We done got to know each other
11 pretty goddamn well."

12 A. "But you've got to understand now---"

13 Q. "What's that?"

14 A. "What was the question you asked me? One more -- say it
15 one more time so I can tell you."

16 Q. There's laughing. "I don't -- you -- I like you, boy."

17 A. "Because I don't want to fuck nobody over, man. I don't
18 want to say this person said this or this person said that."

19 Q. "And you ain't even got to worry about that."

20 A. "Yeah."

21 Q. "Because I'm not going to let you fuck anybody over.
22 That's not my style."

23 A. "Yeah, this ain't my style."

24 Q. "That's why I've been sitting up here with you the last
25 three or four hours talking to you about this because if I

1 wanted to fuck anybody over, it would have been done a long
2 time ago and you would be on the totem pole as well."

3 A. "I know it."

4 Q. "Do you feel me?"

5 A. "I'm beginning feeling you. I've been feeling you."

6 Q. "Now, there was some other stuff that Hackshaw and you
7 talked about, mostly Hackshaw, that day after the shooting
8 and that you used to put it all together. You weren't there.
9 You ain't had shit to do with this, but Hackshaw gave you
10 more information than just that and probably asked you to do
11 stuff as well."

12 A. "No, he ain't asked me to do nothing."

13 Q. "Well, then fine. Give me the other information that he
14 gave you. Tell me what else he told you after he told you
15 about they went in there spraying. What kind of car was he
16 driving that day?"

17 A. "See, I don't know what kind of car. See, that's what
18 I'm saying. My understanding: They were in the middle of
19 the street. It was in the middle of the street. I thought
20 they just did it."

21 Q. "It was in the middle of the street?"

22 A. "Yeah, I thought they was in the middle. This..."

23 Q. "All right. And who -- who is they?"

24 A. "I thought -- I don't know."

25 Q. "Who did -- who did he come to that yard with?"

1 A. "I don't know."

2 Q. "Is that what I'm asking you?"

3 A. "I don't know who he be -- who he went with. I just
4 think."

5 Q. "All right. And who is it -- you think what?"

6 A. "I heard it was somebody with dreadlocks."

7 Q. "Now, who is this person with dreadlocks that you know
8 has been hanging around with this boy right here at the
9 Quantum Studio?"

10 A. "I've seen -- I've seen this man maybe, to be honest,
11 maybe two or three times, bro."

12 Q. "Yeah, but I ain't talking about him."

13 A. "No, I'm just saying I don't know."

14 Q. "All right."

15 A. "He's just sitting at the desk."

16 Q. "I'm asking about the person with the dreads that hangs
17 out with Hackshaw at the Quantum Studio. Who is that?"

18 A. "I don't know. I never hung at Quantum. But, like I
19 said, he came out the door. I went in there two or three
20 times for Kirk."

21 Q. "Well, then, who would be Hackshaw's people that you
22 were talking about that's been at his house whenever you go
23 there with the dreads? Who is that?"

24 A. "There wasn't nobody over there with dreads. It was a
25 big dude with a low cut."

Walter Mahoney - direct exam by Ms. Campbell

1009

1 Q. "A big dude with a low cut?"

2 A. "Yeah, he was from up top, I guess, because he had that
3 -- that funny swag."

4 Q. "All right. What kind of questions did you ask
5 Hackshaw?"

6 A. "I ain't really. Once I pulled my shit together, I
7 ain't want to -- I ain't want to talk to that man like that."

8 Q. "Now, but you -- I'm pretty sure you wasn't gloating
9 about this because you ain't had nothing to do with it."

10 A. "Who? I?"

11 Q. "As a matter of fact, you felt bad about it, didn't
12 you?"

13 A. "Hell yeah. See, this is what I'm telling you. Once it
14 hit the news, see, and I seen that girl -- you can ask my
15 mama. I was sitting at the house. I was like, 'Damn, Mom.
16 You ain't -- that girl's face on there.'"

17 Q. Okay. You skipped. There's a part in there
18 unintelligible.

19 A. Right. Okay. "That girl's face on there."

20 Q. "And how -- that's how your mama knew about it?"

21 A. "Exactly, bro. Once real shit -- they don't know them
22 though."

23 Q. "Now, I don't know that they know him, but they know you
24 knew about the shooting."

25 A. "No, I won't say -- I wouldn't say that. My daddy bring

1 them papers every day, every day. Do you know what I'm
2 talking about?"

3 Q. "Yeah, I know what you're talking about."

4 A. "I know somebody is there all the time. I tell
5 everybody I see. I know. I point out."

6 Q. And then Investigator Mahoney interjects, "Midlands Most
7 Wanted?"

8 A. "That's what it is, and there's another one. He bring
9 it home all the time."

10 Q. "All right. What did Hackshaw tell you he used when he
11 went up there?"

12 A. "He ain't say nothing."

13 Q. "What kind of gun? Did he say?"

14 A. "He ain't say. I figured it was something big because
15 he said he was going to spray. You can't spray with no
16 handgun that I know of unless you've got a super extender."

17 Q. "Is that what he told you?"

18 A. "No. I'm just saying. No, he ain't told me nothing
19 about guns."

20 Q. "All right. When you found out on the news that the
21 girl was killed in the back yard and you had a conversation
22 with Hackshaw after this thing came off the news, was
23 Hackshaw now, according to you -- told you -- Hackshaw told
24 you they hit somebody, according to you. Is that right?

25 Okay. Don't nod."

Walter Mahoney - direct exam by Ms. Campbell

1011

1 A. Oh. It's got it cut out.

2 Q. Did you... At the end of that it says...

3 A. Yeah, but it's got it scratched out here.

4 Q. Excuse me. "You got to talk?"

5 A. "Yes, sir. Yes, sir."

6 Q. "All right. Did he tell you who the person was that was
7 hit?"

8 A. "No, sir."

9 Q. "When he said we hit somebody, how did he say that?
10 What did he say about that?"

11 A. "Just like that. I don't know who he hit. He just went
12 back there spraying. We hit somebody."

13 Q. "Okay. He didn't say we had hit somebody; we had hit
14 somebody. He said we hit somebody."

15 A. "I don't know."

16 Q. "You don't know?"

17 A. "Because I don't -- once I seen that shit on the news,
18 it fucked me up."

19 Q. "All right."

20 A. "And I'm already -- and I already know every time."

21 Q. "But it didn't fuck you up enough -- enough to stay the
22 hell away from him?"

23 A. "I ain't never went around him though."

24 Q. "But you called him on the phone?"

25 A. "When he called me -- see, listen. This is what I'm

1 saying. He -- if you check the records, he don't call me
2 from the cell phone. So when you call me from another
3 number, the number ain't programmed."

4 Q. "Well, yeah. Yeah. That's cool. That's
5 understandable. I don't want you to think I'm thinking under
6 these circumstances."

7 A. "Yeah."

8 Q. "That that's a bad thing."

9 A. "Yeah."

10 Q. "That you stayed away from him."

11 A. "Yeah."

12 Q. "Actually it's a good thing that you did stay away from
13 him. It's good for this case and it's good for that woman's
14 child that you -- that laid out in that -- in that back yard
15 there."

16 A. "Yes, sir."

17 Q. "Because just like for the past few months, we've got
18 your telephone records."

19 A. "Yes, sir."

20 Q. "You were just another party that this Hackshaw ruled on
21 trying to drag in the middle of this just to help him out for
22 self-serving purposes."

23 A. "Yeah."

24 Q. "And if you let that happen, if you go any further than
25 you already have, then your ass is just as evil as Hackshaw."

Walter Mahoney - direct exam by Ms. Campbell

1013

1 A. "Believe me, I know. I ain't let it go no further, sir.
2 You already know, honestly."

3 Q. "So then -- then the buck and the ball should stop right
4 here in this interview room right here because you've been
5 carrying this bullshit around in your chest for too long."

6 A. "I had forgot about it, bro. I had forgot about that,
7 sir. I try to forget about shit like that, and like I said,
8 I ain't really had me thinking."

9 Q. "You're 22 now, and you think at the age of 32 you're
10 just going to wake up and this shit is going to hit you
11 again?"

12 **The Court:** Ms. Campbell, y'all come on up here.

13 (Whereupon, a bench conference was held.)

14 **Ms. Campbell:** Thank you, Your Honor.

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

16 By Ms. Campbell:

17 Q. Let's go down to where he says, "All right. But he gave
18 you the details about how they found E's house?"

19 A. "What do you mean?"

20 Q. "He told you how he found out where E. Lived?"

21 A. "No."

22 Q. "No?"

23 A. "Uh-huh. I don't -- I don't know he knew where E.
24 Lived."

25 Q. "Okay. He told you how he got to E's house that day?"

1 A. "No, sir."

2 Q. "He told you who was in the car with him that day?"

3 A. "No, sir."

4 Q. "He told you what kind of car was driving that day?"

5 A. "No, sir."

6 Q. "He told you where he came from to get to E's house that
7 day?"

8 A. "No, sir."

9 Q. "All right. On May the 20th were you over at Quantum?
10 On the day that this girl died, had you been to the studio
11 that day?"

12 A. "Not that I remember."

13 Q. "Not that you remember?"

14 A. "No. I'd say I'd been over there two or three times,
15 and it may have been like twice he was over there."

16 Q. "Well, you ought to know if you had been over that day
17 because that day, that's the day somebody's child died."

18 A. "I ain't..."

19 Q. "So that should stick out in your mind."

20 A. "Well, no, I ain't remember. Like I said, once it
21 happened, no, I ain't been around that day. No."

22 Q. "That day you weren't over at Quantum?"

23 A. "Yeah. No."

24 Q. "And you didn't personally see Anthony Hackshaw? The
25 only conversations you had with him were over the phone?"

1 A. "Over that jack."

2 Q. "All right. Walt, have you got anything else?" And

3 Investigator Mahoney replies, "No." Then Reese continues,

4 "You need to ask him?" Then Investigator Mahoney says, "No.

5 I've gotten everything I need." Investigator Reese again,

6 "Other than that, is there anything else you want to say?"

7 A. "Is there anything else I can do to help you all or help
8 myself?"

9 Q. And skipping down. "The information you just gave, is
10 it the truth?"

11 A. "Yeah."

12 Q. "No lies?"

13 A. "No lies."

14 Q. "No bullshit."

15 A. "No bullshit. No lies."

16 Q. "Are you holding -- withholding anything from us now?"

17 A. "No, sir."

18 Q. "And that's truth."

19 A. "Positive."

20 **Ms. Campbell:** Your Honor, may we approach?

21 **The Court:** You may.

22 (Whereupon, a bench conference was held.)

23 By Ms. Campbell:

24 Q. Moving to the next page. Just for summation, we'll go

25 over the same information he related to you again. After he

1 gave that oral statement, did he also provide a short written
2 statement summarizing his information?

3 A. Yes, ma'am.

4 Q. I want to show you State's exhibit number 68.

5 A. Yes, ma'am.

6 Ms. Campbell: And, Your Honor, do you want me to do
7 this in the same manner we did the other one?

8 The Court: If you would.

9 Ms. Campbell: Yes, sir.

10 Ms. Shurling: Actually, Your Honor, there's a portion
11 at the top of page 74 that I think is very relevant.

12 The Court: Are you talking about what she's here or are
13 you---

14 Ms. Shurling: Where are you picking back up?

15 Ms. Campbell: I was basically pursuant... Wrapping it
16 up. If there's a part you want me to publish, I'll be glad
17 to do it, but you're the one that...

18 Ms. Shurling: Your Honor, may we approach?

19 The Court: Have you got something you want to publish?

20 Ms. Shurling: Sir?

21 The Court: Have you got something you want to publish?

22 Ms. Shurling: I do, sir.

23 The Court: Well, she said she would -- just show her
24 whatever it is..

25 Ms. Campbell: I'll be glad to -- anything you want

1 published, I'll be glad to...

2 (Ms. Shurling and Ms. Campbell talk off the record.)

3 Ms. Campbell: Well, then, Your Honor, I think I need to
4 go into the other part she didn't want.

5 The Court: I don't know what it is y'all are talking
6 about. Ladies and gentlemen, this statement was given and
7 the Court has ruled that part of it is not admissible because
8 it's not relevant. I mean, they deal with all kinds of stuff
9 and it's not admissible and it's... And so I have ordered
10 that certain parts of it be redacted, and that's where we're
11 having the little problem here is making sure because we
12 don't have a -- we don't have a script that we could -- I
13 think they were trying to print one, but I stopped them so --
14 because I couldn't hear what was being said. So I don't know
15 what you're talking about here. If you want me to take a
16 look at it...

17 Ms. Shurling: I do, Your Honor.

18 (Whereupon, a bench conference was held.)

19 Ms. Shurling: I'll do it on cross, Your Honor.

20 Ms. Campbell: I'll publish it.

21 By Ms. Campbell:

22 Q. I want to go back to -- and I apologize -- the page we
23 were on where it starts with, "Well" -- when Reese says,
24 "Well, it would have been easier."

25 A. Okay.

1 Q. I'll start there.

2 A. Yes, ma'am.

3 Ms. Campbell: And into the next page is what you want?
4 Correct, Ms. Shurling?

5 Ms. Shurling: Yes.

6 By Ms. Campbell:

7 Q. Well, wouldn't it have been easier for you just to tell
8 the truth in front of your mom and dad than go through all
9 this if you're concerned whether Reese got -- if you think I
10 got a problem with you, then you obviously know the reason
11 why I got a problem with you."

12 A. "Yeah."

13 Q. "So what good did you do in asking them to leave and
14 wanted to talk to me face to face, one on one?"

15 A. "You calmed down. That's how I feel. That's how -- you
16 asked me. That's just how I feel. You ain't -- I ain't had
17 a problem with you since you came back in. You ain't gotten
18 loud, slapped no desk, cursed, none of that. You ain't did
19 none of that."

20 Q. "Well, then, you would -- you would probably agree with
21 me the reason I had cursed or snapped the desk is because
22 finally it looks like you're telling the truth?"

23 A. "Yeah, but I still -- I ain't been had really -- I
24 wasn't lying then. I was just saying I don't know. But
25 slap, that wasn't going to get us nowhere."

1 Q. "You were omitting a bunch of stuff?"

2 A. "What you didn't ask."

3 Q. "Yeah. Excuse me?"

4 A. "Yeah, what you ain't asked."

5 Q. And then there's a recitation where they go through the
6 same set of facts that he relayed to the Court. Is that a
7 fair characterization?

8 A. Yes, ma'am.

9 Q. Okay. I show you a copy of State's exhibit number 68,
10 omitting again that line.

11 A. Yes, ma'am.

12 Q. The statement that was taken shortly after that recorded
13 statement, the question -- and these are questions by
14 Investigator Reese?

15 A. Yes, ma'am.

16 Q. "Do you know a person named Bump?"

17 A. "Yes."

18 Q. "Do you know of an incident that occurred on May the
19 20th of 2009 in Greenview area where a person was shot and
20 killed?"

21 A. "Yes."

22 Q. "Did you ever have a conversation with Bump about this
23 incident?"

24 A. "Yes."

25 Q. "Do you know the person whose yard this incident

1 happened in?"

2 A. "Now I do. E."

3 Q. "Did Bump tell you he had something to do with the
4 shooting in E's yard on May the 20th of 2009?"

5 A. "Yeah."

6 Q. "Did he tell you if anyone else was with him at the
7 time?"

8 A. "I'm not saying if it was E. Or Bump that told me about
9 the dude with the dreads. I don't -- I know both of them."

10 Q. "Did Bump tell you he shot somebody that day?"

11 A. "He said they sprayed."

12 Q. "What does that mean to you?"

13 A. "Means they shot. I didn't think -- I don't think dude
14 knew he hit that girl."

15 Q. "Why do you say that?"

16 A. "He wasn't acting like that. He was just asking around
17 E. -- he was just asking about E."

18 Q. "Did Bump ever deny shooting the girl in the yard?"

19 A. "No."

20 Q. "What other indication that Bump gave you that leads you
21 to believe he did not -- he did not know he shot the girl?"

22 A. "There was no others. He made me think he had something
23 to do with it, the way he told me the way he took off. No
24 communications. I knew something was up."

25 Q. "Did you have anything to do with the shooting at E's