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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Steven H. John, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TYRONE BEATY,

APPELLANT

Appellate Case No. 2010-167826

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
2006-GS-26-1747-1748

State of South Carolina,)
))
Plaintiff,)
))
-VS-)
))
Tyronne Beaty,)
))
Defendant.)
_____)

TRANSCRIPT OF RECORD

July 12-16, 2010
Conway, South Carolina

B E F O R E:

HONORABLE STEVEN H. JOHN, Circuit Judge.

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1 come in, please, sir.

2 **(THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE**
3 **JURY.)**

4 THE COURT: All right, Solicitor, your first
5 witness, please, ma'am.

6 MS. VON HERRMANN: Thank you, Your Honor. The State
7 calls Corey Smalls.

8 THE COURT: Mr. Smalls, if you would come around to
9 be sworn, please, sir, over here.

10 COREY SMALLS, being first duly sworn, testifies as
11 follows:

12 THE CLERK: Be seated and state your full name and
13 spell your last for the Court.

14 MR. SMALLS: My name is Corey Napoleon Smalls,
15 S-M-A-L-L-S.

16 THE COURT: All right, Solicitor.

17 MS. VON HERRMANN: Thank you, Your Honor.

18 DIRECT EXAMINATION BY MS. VON HERRMANN:

19 Q. Mr. Smalls, where are you from?

20 A. Murrells Inlet.

21 Q. Lived there your whole life?

22 A. My whole life.

23 Q. What do you do for a living?

24 A. What I do for a living? I really don't do nothing,
25 but now I'm unoccupied right now.

1 Q. Mr. Smalls, do you sell drugs?

2 A. Oh, yeah, I sell drugs. Yeah, that's what I do.

3 Q. And let's just -- let's just get this right out in
4 the open.

5 A. All right.

6 Q. Just go ahead with it. You've got a rap sheet, ---

7 A. Yes, ma'am.

8 Q. --- a criminal history, possession of crack,
9 distribution of crack, possession with intent?

10 A. (Nods in the affirmative.)

11 THE REPORTER: Excuse me, please. I need a verbal
12 answer.

13 A. Oh, yes, ma'am.

14 Q. Possession with intent to distribute crack?

15 A. Yes, ma'am.

16 Q. Failure to stop for a blue light?

17 A. Yes, ma'am.

18 Q. Breaking and entering into an automobile?

19 A. Yes, ma'am.

20 Q. Resisting arrest?

21 A. Yes, ma'am.

22 Q. You've got some pending charges?

23 A. Yes, ma'am.

24 Q. You're charged in this case with murder and armed
25 robbery, ---

1 A. Yes, ma'am.

2 Q. --- is that correct?

3 A. Yes, ma'am.

4 Q. And you've also got a trafficking in cocaine case
5 out there, is that correct?

6 A. Yes, ma'am.

7 Q. So you've pretty much spent a good portion of your
8 adult life selling drugs?

9 A. Yes, ma'am.

10 Q. Did you know the victim in this case, Miles Slay?

11 A. Yes, ma'am.

12 Q. How did you know him?

13 A. I met him through my cousin, Wesley Quick.

14 Q. And what was -- when did you meet him?

15 A. I met him in like -- like in August, July, August
16 of '05.

17 Q. A couple of months before this incident took place?

18 A. Yes, ma'am.

19 Q. All right, and did you have some dealings with
20 Miles?

21 A. Yes, ma'am.

22 Q. Tell the jury, please, what kind of dealings you
23 had with him.

24 A. We had some drug dealings. You know me, I'm -- he
25 was supplying me at the time, you know, getting my stuff

1 from him and what not.

2 Q. Let me direct your attention to October the 20th of
3 2005. Do you remember that day?

4 A. Yes, ma'am.

5 Q. Tell me what you did -- where did you wake up that
6 morning?

7 A. I was at my hotel room, Best Western off of 26
8 North when I got a call from Miles. It was early that
9 morning, and he woke me up, and he was looking for a large
10 amount of drugs or what not, and I said, "Well, I'll see
11 what I can do for you. I'm going to see if I can find
12 somebody, you know, who -- who want -- who got what you
13 wanted," which he wanted a brick of cocaine.

14 Q. Let me -- let me break it down a little bit.
15 You're talking awfully fast, and we're trying to ---

16 A. All right.

17 Q. --- we're trying to take all this in.

18 A. Yeah.

19 Q. So who was it that called you that morning?

20 A. Miles.

21 Q. And he said that he wanted a brick?

22 A. Yeah, he wanted a brick of cocaine.

23 Q. All right. Tell the jury, please, what is -- what
24 is a brick of cocaine?

25 A. A brick of cocaine is one thousand grams, thirty-

1 six ounces, of cocaine.

2 Q. Is that also known as a kilo?

3 A. A kilo, yes.

4 Q. What does a kilo specifically cost on the -- on the
5 street?

6 A. Anywhere from Twenty Four Thousand to like Thirty
7 Thousand.

8 Q. And did Mr. Slay tell you how much money he had?

9 A. Yeah. He said he had Sixteen Thousand Dollars that
10 he wanted to spend.

11 Q. And what did you tell him about that?

12 A. I told him, "For Sixteen Thousand Dollars, you
13 can't get a brick for no Sixteen Thousand Dollars down
14 here."

15 Q. What did you try to -- what did you try to do for
16 him?

17 A. I was trying to connect him to some of my people
18 who I thought had it at the moment.

19 Q. And were you successful in that?

20 A. No, I was not successful.

21 Q. And did you come into contact with the Defendant,
22 Mr. Beaty, that day?

23 A. Yes, ma'am.

24 Q. Tell me how that happened, please.

25 A. When I couldn't get in contact with my first

1 dealer, okay, I had called Tyronne Beaty, and I told him
2 that I had somebody who wanted to buy a brick, and he said
3 that he was going to get in contact and he would call me
4 back, so he called me back and he said that he couldn't
5 get a whole brick, know what I'm saying, but he said he
6 would look out for Sixteen Thousand Dollars, so I hang the
7 phone up and I call Miles, and I said, "Well, Miles,
8 listen, my man said that he don't have a whole brick for
9 you, but he'll look out, you know what I'm saying, for
10 Sixteen Thousand Dollars, you know what I'm saying, he'll
11 give you twenty-seven ounces," and Miles say, "Well, the
12 numbers don't sound right." I said, "Well, the only thing
13 I could do is relay the message. Do you want me to look
14 out?" I said, "Do you want me to call some of my people?
15 I did that and I got in contact with somebody for you.
16 This is what he got on the table, so if you want it or
17 not."

18 Q. And then tell me -- tell the jury what you did
19 next, please.

20 A. Okay. What I did next, my cousin, Antonio Smalls,
21 he came inside the room looking for some toothpaste, and I
22 said, "Well," -- his nickname is Punch, so I said, "Punch,
23 we've got to go to the Inlet because Tyronne Beaty told me
24 to meet him in Murrells Inlet at my house," and so he
25 said, "Okay," so after he got done brushing his teeth, we

1 left.

2 MR. BELLAMY: Your Honor, I would object to what
3 other people told him other than a statement of my
4 client ---

5 A. Okay, so ---

6 THE COURT: Just a second.

7 MR. BELLAMY: --- as being hearsay.

8 THE COURT: As to what's already been testified, I'm
9 going to allow that, but, Solicitor, if you'll be careful
10 in the questions that you ask so as not to elicit hearsay
11 testimony.

12 MS. VON HERRMANN: I will.

13 THE COURT: Okay, thank you.

14 Q. So, Mr. Smalls, your cousin, Antonio, ---

15 A. Yes, ma'am.

16 Q. --- his nickname is ---

17 A. Is Punch.

18 Q. --- Punch? All right. Were you all together there
19 at -- you were together there at the motel?

20 A. Uh-huh (affirmative response).

21 THE COURT: You need to say yes or no.

22 A. Oh, yes, ma'am. I'm sorry.

23 THE COURT: The Court Reporter can't tell what uh-
24 huh is.

25 A. Okay. I apologize. Yes, ma'am, we was at the

1 hotel together.

2 Q. When did you leave the hotel?

3 A. When did we left? We left the hotel, I'm going to
4 say around like ten, eleven, something like that. I can't
5 remember. It was like in the morning or afternoon when we
6 left.

7 Q. What were y'all driving?

8 A. We was driving Antonio Smalls' car. He had a blue
9 Lincoln at the moment, and we had left there and -- but
10 prior to going to Murrells Inlet, I had called Tyronne
11 Beaty back to let him we was coming, and he said, "It's
12 best to get another car," so I called one -- the people,
13 one of my client at that time I was supplying drugs to,
14 and we switched cars, you know.

15 Q. Why did -- why did you need to switch cars? What
16 did Antonio's car look like?

17 A. It's a -- it's a blue Lincoln, like a older model
18 Lincoln.

19 Q. Flashy?

20 A. No, it wasn't flashy, didn't have no rims or
21 nothing on it, just a regular ol' Lincoln.

22 Q. A big car?

23 A. Uh-huh (affirmative response).

24 Q. Why -- why did you think -- why would y'all need to
25 change cars?

1 **A.** At the moment, I wasn't even thinking why. I just
2 went off of what he said, so we went and we switched cars.

3 **Q.** What did you do next?

4 **A.** Okay, what we did next, I got in contact with my
5 client and I got the car, and from there we had took
6 Antonio car to a Bridget Allen's home, her residence, and
7 we left her car there, and so from there we went -- and we
8 went to Murrells Inlet and went to ---

9 **Q.** Let me stop you for just one moment. I'm going to
10 show you what's been marked as State's Exhibit 2 for
11 identification and ask you to take a look at that and tell
12 me what that is.

13 **A.** That's -- that's the car we was driving at the
14 time. That's the car that we switched out for that car
15 right there.

16 **Q.** This is the car that you got from your client?

17 **A.** Yes, ma'am.

18 **Q.** And does this fairly and accurately represent that
19 vehicle?

20 **A.** Accurately, yes; yes, ma'am.

21 MS. VON HERRMANN: I would move to have this
22 admitted in evidence, Your Honor.

23 MR. BELLAMY: Your Honor, could I just look at it
24 for just a second?

25 THE COURT: Yes, sir.

1 MR. BELLAMY: No objection.

2 THE COURT: All right. It's in evidence without
3 objection.

4 PHOTOGRAPH OF CAR ADMITTED INTO EVIDENCE AS
5 STATE'S EXHIBIT NUMBER 2.

6 Q. I'm now going to show you what's been marked as
7 State's Exhibit Number 3 for I.D. and I'm going to ask you
8 the same thing. What does that picture represent?

9 A. That picture represent the car that we had the day
10 that -- the night that Miles got killed.

11 Q. And does it fairly and accurately represent that?

12 A. Fairly accurate.

13 MS. VON HERRMANN: I would move to have this
14 admitted as well, Your Honor.

15 MR. BELLAMY: No objection to State's 3.

16 THE COURT: All right. It's in evidence without
17 objection.

18 PHOTOGRAPH OF CAR ADMITTED INTO EVIDENCE
19 AS STATE'S EXHIBIT NUMBER 3.

20 Q. All right, when I interrupted you, Mr. Smalls, you
21 told me that you had gone down to Murrells Inlet?

22 A. Yes, ma'am.

23 Q. All right. What -- why did you go down to Murrells
24 Inlet?

25 A. Because that's what Tyronne Beaty wanted to met us

1 at, right there at my mama and daddy house in Murrells
2 Inlet.

3 Q. And did that happen? Did you meet him there?

4 A. Yes, ma'am.

5 Q. What happened when you met up with him?

6 A. All right, when we pull up in the yard, Tyronne
7 Beaty and his cousin, Neil, they came up behind us in a
8 Jeep, like not even a couple of seconds later, behind us
9 in a Jeep. They got out of the Jeep and they got in the
10 back seat, and when he got in the back seat, Tyronne was
11 like, "Man, man, look," you know what I'm saying, "man,
12 let's rob him," you know what I'm saying, he -- he -- we
13 had a plan to rob him, so I look at my cousin, Antonio,
14 and my cousin, Antonio, got me like we just agreed through
15 -- through looking at each other, but Tyronne Beaty was
16 like, "Man, oh, man, y'all got to do nothing. Just let me
17 rob him and we'll split the money," you know what I'm
18 saying. I'm messed up at the moment and I'm saying, "I
19 ain't" -- I said, "Man," telling him, I said, "We can't do
20 that, man." He said, "Man, look, y'all ain't got to do
21 nothing. Just let me do this," you know what I'm saying,
22 so he convinced me into agreeing with it.

23 Q. Now, let me stop you right there. Up until that
24 point in time, did you think that he was going to have the
25 whole amount of the drugs?

1 A. At that -- before we got to my house? Yeah, at
2 that moment, yes, I thought he was going to have the full
3 amount of drugs, yes.

4 Q. All right, so when you got to your house, who was
5 driving that vehicle?

6 A. My cousin, Antonio Smalls, was driving at the time.

7 Q. And where were you seated in the car?

8 A. I was sitting in the passenger seat.

9 Q. And where did Mr. Beaty, Tyronne Beaty, sit?

10 A. Tyronne Beaty, he got behind me. He was behind me
11 at that moment.

12 Q. And who was with him?

13 A. Neil, Neil Hill.

14 Q. And who is Neil Hill?

15 A. His cousin.

16 Q. So when they got into the car -- you were talking
17 real quickly. I want to -- I want to make sure I
18 understand what -- what it is that you said. What did
19 Tyronne say to you?

20 A. He said, "Man, listen man. Man, let's rob him." I
21 mess up at the time. I need the money, and I'm like,
22 "Man, I don't know if I can do that," you know what
23 I'm ---

24 Q. What does that mean, "I messed up at the time"?

25 A. He -- he's down and out, you know what I mean. He

1 was trying to find a way to come up, and I guess I was his
2 way of coming up, through Miles.

3 Q. And so what happened then?

4 A. Okay, he convinced -- he convinced me and my
5 cousin, Antonio, to agree due to the fact that, "Okay,
6 well, you ain't got to do nothing," you know what I'm
7 saying, so when we left there, we went to Food Lion and
8 that's when he had went to Food Lion and bought like -- I
9 don't know if it was baking so- -- I don't know if it was
10 flour or pancake mix and some sandwich bags, and he put
11 everything inside to make it like it was real cocaine, and
12 he had one real stuff, and after a while he was bagging
13 everything up, my cousin, Antonio Smalls, like, "Man, I
14 want to pick my daughter up from daycare."

15 Q. Let me stop you for just a second. Let me show you
16 what's been marked as State's Exhibit 6, ---

17 A. Uh-huh (affirmative response).

18 Q. --- and tell me what this is, please.

19 A. That's Food Lion right there off of Glenn's Bay
20 Road.

21 Q. Is that where you all went?

22 A. Yes, ma'am, that's ---

23 Q. That's a fair and accurate representation?

24 A. Yes, ma'am.

25 MS. VON HERRMANN: I'd move to have State's Exhibit

1 6 admitted into evidence.

2 MR. BELLAMY: Without objection to State's 6.

3 THE COURT: All right. State's 6 is in evidence
4 without objection.

5 PHOTOGRAPH OF FOOD LION ADMITTED INTO EVIDENCE

6 AS STATE'S EXHIBIT NUMBER 6.

7 Q. I need you to slow down a little bit because you
8 talk awfully fast ---

9 A. Yes, ma'am.

10 Q. --- and it's hard for us to take it all in when you
11 talk so fast, okay?

12 A. I apologize. Yes, ma'am.

13 Q. You're in the car?

14 A. Yes, ma'am.

15 Q. And that's where the plans were formulated?

16 A. Yes, ma'am.

17 Q. You said that you weren't for it to begin with, but
18 the fact of the matter is once they talked about -- once
19 Tyronne talked about it, you were in?

20 A. Yes, ma'am.

21 Q. Antonio was in?

22 A. Yes, ma'am.

23 Q. Neil was in?

24 A. Yes, ma'am.

25 Q. Y'all were all in and ---

1 A. Yes, ma'am.

2 Q. --- you were going to rip him off?

3 A. Yes, ma'am.

4 Q. So then you go to the Food Lion?

5 A. Yes, ma'am.

6 Q. And who got out of the car at Food Lion?

7 A. Tyronne Beaty was the one that got out of the car
8 at Food Lion, and he went inside and purchased whatever it
9 was going to purchase to get ---

10 Q. What -- what was it specifically that you know that
11 he purchased?

12 A. I would say it was flour in a substitution of the
13 real cocaine, and sandwich bags, and a grey duct-tape.

14 Q. Now, let's talk about -- a little bit about
15 cocaine. When you sell someone some cocaine, how is it
16 normally packaged?

17 A. It's packaged inside a sandwich bag.

18 Q. So it doesn't come in a box?

19 A. Huh-uh (negative response).

20 Q. Doesn't come in an envelope, a sandwich bag?

21 A. Yes, ma'am.

22 Q. Kind of the tools of the trade?

23 A. Yes, ma'am.

24 Q. Whose idea was it to substitute flour in to make
25 the package look bigger?

1 **A.** Tyronne Beaty.

2 **Q.** And where did the real cocaine come from?

3 **A.** The real cocaine came from him. He was the one
4 that supplied the real cocaine at the moment, along with
5 the substitution of the fake one, you know what I'm
6 saying.

7 **Q.** Did he have that real cocaine when he got into the
8 vehicle with you all at your house?

9 **A.** Yes, ma'am.

10 **Q.** Did you see it at that time?

11 **A.** No, I didn't see it at the time. At the time I saw
12 it was when we left Food Lion and he was behind me in the
13 back seat bagging everything up and then he showed me the
14 fake stuff along with the real stuff and like, "Look, I'm
15 going to get him with this right here, and then I'm going
16 to -- you know what I'm saying. I'm going to get him, you
17 know what I'm saying, to look at the real stuff to get him
18 to get him to get this right here," and that's when I saw
19 -- that's when I saw the real thing at that moment, so I'm
20 like, "Okay."

21 **Q.** Somebody who deals with cocaine, can they tell the
22 difference between looking at it, the real stuff and
23 flour?

24 **A.** Not really. It -- it -- it varies, you know what
25 I'm saying; it varies.

1 Q. Are they -- are they similar?

2 A. It's similar. It could be similar, yes.

3 Q. But if you got right up on it, do you think you'd
4 be able to tell?

5 A. Yeah, you can tell if you got right up on it.

6 MR. BELLAMY: Your Honor, I would object as to what
7 someone might be able to do. I think it's too speculative
8 and it's an opinion.

9 MS. VON HERRMANN: I'll rephrase the question.

10 THE COURT: All right.

11 Q. Would you be able to tell?

12 A. I'd be -- yes. I been dealing with it long enough,
13 I -- I'd be able to tell.

14 Q. All right, so what did you all do then after he
15 bagged that flour up?

16 A. All right, well, we went to the daycare to pick
17 Punch -- Antonio Smalls' daughter up, and while we was
18 there, Tyronne Beaty had got out of the car and went
19 inside the daycare and threw something in the trash, and
20 at the same time, he slipped and threw the real cocaine in
21 the trash because when we left, after we pick up Antonio's
22 daughter, he was looking for the cocaine and he was like,
23 "Man, turn back around. Turn back around," so we turn
24 around and went back to the daycare and he went in the
25 daycare and find the cocaine in the trash can.

1 Q. All right, let me get this straight. Y'all were
2 throwing some trash away at a daycare, and he accidentally
3 throws real cocaine away?

4 A. Yeah. Well, he was the one that really got out of
5 the car and throw the trash away at the daycare, but in
6 the process, he must have -- somehow the real cocaine got
7 mixed up with the trash and we had to go back. He told us
8 to turn around and go back, and he went inside there. He
9 came back, like, "Man, I got it. I got it," and so we're
10 looking at him like, "Are you crazy?" you know.

11 Q. So now you guys are in the car. You've got a child
12 in the car with you?

13 A. Yes, ma'am.

14 Q. And you've got -- how much real cocaine was it?

15 A. I'd say it probably was a little over a ounce,
16 probably like thirty grams, the way I saw it, because at
17 the time, he was like, "Look. Look," and when I looked at
18 it -- so I'm saying it was a little over an ounce.

19 Q. So you've got an ounce of real cocaine and then
20 you've got the fake stuff ---

21 A. Yes, ma'am.

22 Q. --- packaged up?

23 Where did you go then?

24 A. Okay, we left there, we went to drop Antonio's
25 daughter off at Bridget Allen's residence.

1 Q. Who is Bridget Allen?

2 A. Bridget Allen is a friend of mine.

3 Q. And did y'all let Bridget know you were coming, or
4 did you take the child there ---

5 A. See, we just had pulled up in the yard, and --
6 because this is after we had dropped Antonio car off there
7 first, and then we let her know, "Okay, can you watch
8 Monnie?" We call Punch -- Antonio daughter Monnie, you
9 know what I'm saying, until we come back, and she agreed
10 to it.

11 Q. And at that point, did you drop her off because you
12 knew you were going to rip this guy off?

13 A. Yeah, we drop her off there so we can go and rip
14 the guy off.

15 Q. All right. Who picked the spot where you all were
16 going to rip him off?

17 A. Tyronne Beaty was the one that picked the spot for
18 us to rip him off.

19 Q. All right. What was -- what was your part of the
20 plan? What were you going to do?

21 A. What I was going to do be that Miles called me,
22 what I was going to do, he had me drop off at Foxtrot, and
23 why was he dropping me off at Foxtrot, I was waiting for
24 Miles to come. There was a store right there, and waiting
25 for him to come, and I went -- while I was there, I went

1 to talk to my friend, Vicki, and so I called Miles, okay,
2 after Tyronne Beaty show us where we was going to rip the
3 guy off at, you know what I'm saying, right there off of
4 Butler Drive, right there off of Enterprise Road. There's
5 a parking lot right there, and he said, "Well, like I'm
6 going to see if we can sit right here. We going to drop
7 you off there. When he come, bring us over there, you
8 know, bring him to the spot." I'm like, "Okay, I'll do
9 that."

10 Q. And when you said that you went to Foxtrot, what is
11 Foxtrot?

12 A. It's an apartment complex off of Enterprise Road.

13 Q. Let me show you what's been marked as State's
14 Exhibit 4 and ask you what that is?

15 A. That the Wilco right across the road from Foxtrot,
16 right across the highway.

17 Q. All right, and that's a fair and accurate
18 representation, is that correct?

19 A. Yes, ma'am, uh-huh.

20 MS. VON HERRMANN: I would move State's Exhibit 4
21 into evidence.

22 MR. BELLAMY: No objection to State's 4, Your Honor.

23 THE COURT: All right. State's 4 is in evidence
24 without objection.

25 PHOTOGRAPH OF WILCO ADMITTED INTO EVIDENCE AS

1 STATE'S EXHIBIT NUMBER 4.

2 Q. All right, let's look at this picture for a second.

3 You were across the road here, ---

4 A. Yes, ma'am.

5 Q. --- correct?

6 A. Yes, ma'am.

7 Q. And you had a telephone conversation?

8 A. Yes, ma'am.

9 Q. With who?

10 A. With Tyronne Beaty.

11 Q. All right, and what was the gist of that
12 conversation?

13 A. Okay, after Miles had pull up, he pull up real --
14 like on the other side of that car right there, and while
15 I was walking across the road to get there, I call
16 Tyronne. I said, "Well, Tyronne, he here. What -- what
17 you want me to do?" He said, "Bring him to the spot," so
18 while I was walking, at the same time I was pulling up on
19 the car. I'm like, "Well, he got somebody else with him,"
20 because I saw two more people with him.

21 Q. With who?

22 A. I saw two other people with Miles, ---

23 Q. All right.

24 A. --- okay, and I said, "Well, they got two more
25 people with them, so what you want me to do?" He said,

1 "Man," -- he started speaking in a Jamaica tone, for what
2 I don't know, you know what I'm saying.

3 Q. A Jamaican accent?

4 A. Like a Jamaican accent.

5 Q. Hey, Mon?

6 A. Yeah.

7 Q. All right.

8 A. And I can't speak Jamaican real good, but he was
9 saying, "Tell them to get out," you know what I'm saying,
10 because he don't trust them to come to the area, you know
11 what I'm saying. Basically, I said, "Miles," I said,
12 "Well, you've got to leave your own boys here while we go
13 -- because my man don't want you to come -- he don't want
14 you to bring anybody to his house.

15 Q. Did you know those two people that were with Miles?

16 A. I know one of them. I ---

17 Q. What was his name?

18 A. His name is Dominique.

19 Q. Dominique?

20 A. Uh-huh (affirmative response).

21 Q. All right, and how about the other guy?

22 A. The other guy, I seen him before, but I don't -- I
23 don't know his name.

24 Q. What did he look like, a black guy, a white guy?

25 A. A white guy.

1 Q. Heavy?

2 A. Yeah, kind of like heavy-set.

3 Q. Had you seen him any time before then?

4 A. Yeah, I seen him -- I seen him. Like I said, I
5 seen him before, but I don't actually really know him that
6 good.

7 Q. Okay. I think that you -- you told the police
8 actually that his name was Daniel, is that correct?

9 A. Yeah, Daniel. That's -- yeah. It was so long ago,
10 yeah.

11 Q. So that's the -- that's the fellow that ---

12 A. Yeah, that was him.

13 Q. --- was there? All right, and did you then
14 instruct the two of them that they had to stay there?

15 A. Yeah; yeah. I told them, I say, -- I say, "Man" --
16 I told Miles, I say, "Man, listen, they going to have to
17 stay here while I take you to meet my man, or what not,"
18 and so Miles, "Okay, that's cool. Y'all stay until I come
19 back, you know what I'm saying. I'm going to take care of
20 this and I'm going to come right back," and so at that
21 time, I was at the back seat of the driver, but when they
22 had got out, I got out of the back seat and I went around
23 to the passenger seat, and I took him down Enterprise Road
24 to where Tyronne Beaty wanted us to meet him at.

25 Well, being that that was a new area for me, because

1 I just came home from prison, so I didn't know all that
2 stuff had built up at that time, so we passed it the first
3 time. Then I said, "Hold up." I said, "Man, this don't
4 look like the spot," but I said, "Turn around. Turn
5 around." He turned around and we passed on the way coming
6 back. I said, "Man," I said, "Where the spot at?" So I
7 said, "Turn around one more time," and he turned around,
8 and I said, "Man, drive slow," and that's when I saw the
9 road. It says Butler Drive, parking, right, something
10 like that. I said, "Turn right here. Turn right here,"
11 so we turned and we went down that road, and I tell him
12 to, you know, to drive slow so I won't miss where they was
13 at, you know what I'm saying, so when I saw the car ---

14 Q. Whose car?

15 A. The car, the gold car that we was all driving at
16 that time, and I said, "Okay, turn -- turn -- turn right
17 here," and so we had turn in. We turn in ---

18 Q. Let me -- let me stop you right there. Let's just
19 go back just a little bit. I'm going to show you State's
20 Exhibit 5 and see if you can identify that for me.

21 A. Yeah, that's -- that's what we was in. I was on
22 the passenger side right there.

23 Q. This is what Miles was in?

24 A. Yeah, that was what Miles was driving.

25 Q. A fair and accurate representation?

1 A. Fair and accurate, yeah.

2 MS. VON HERRMANN: I would move to have State's
3 Exhibit 5 admitted.

4 THE COURT: Any objection?

5 MR. BELLAMY: No objection to State's 5, Your Honor.

6 THE COURT: All right, sir. In evidence without
7 objection.

8 PHOTOGRAPH OF VEHICLE ADMITTED INTO EVIDENCE

9 AS STATE'S EXHIBIT NUMBER 5.

10 Q. And I'm also going to show you what's been marked
11 State's Exhibit 1.

12 A. Yes, ma'am.

13 Q. Can you tell me what that is?

14 A. Yeah. That's the map of the area where
15 everything ---

16 Q. Is that -- have you had an opportunity to review
17 that?

18 A. Yes, I have.

19 Q. And you feel like that fairly and accurately
20 represents that area?

21 A. Yes.

22 MS. VON HERRMANN: I'd move State's Exhibit 1 in as
23 well.

24 MR. BELLAMY: No objection.

25 THE COURT: All right, sir. In evidence without

1 objection.

2 LARGE AERIAL PHOTOGRAPH ADMITTED INTO EVIDENCE

3 AS STATE'S EXHIBIT NUMBER 1.

4 Q. All right.

5 MS. VON HERRMANN: Your Honor, could I have him step
6 down for one moment?

7 THE COURT: Is there any objection to that?

8 MR. BELLAMY: No, sir, Your Honor.

9 THE COURT: All right. Just make sure y'all stand
10 right in front of that microphone over there, that box in
11 the middle of the rail.

12 Q. Okay, so you're going to have to talk kind of loud,
13 and that's the microphone there, all right?

14 A. Yes, ma'am.

15 Q. All right, so let's look at this map, and point out
16 to me -- I think we've got it labeled already ---

17 A. Uh-huh (affirmative response).

18 Q. --- where the Wilco is.

19 A. The Wilco is this right here.

20 Q. And is that where you met up with Miles?

21 A. Yes, ma'am.

22 Q. All right, and then show the jury, please, if you
23 will, where you went from that point.

24 A. Where we went from here ---

25 Q. Let's do -- let's do this real quick.

1 A. Yes, ma'am.

2 Q. Let me just -- let me get you to identify some
3 areas. What is this road right here?

4 A. That's Highway 707.

5 Q. Okay. Where does that road go to?

6 A. This road, it lead from Murrells Inlet all the way
7 up to Socastee, but it's leaded to Enterprise Road.

8 Q. All right, and so then where did you all go from
9 the Wilco?

10 A. We left from the Wilco and we went down this road
11 right here.

12 Q. Is that Enterprise?

13 A. Yeah, I think that is Enterprise right here,
14 because this is the Butler Road that we turn down off,
15 because when we left, that's where we left right here,
16 and ---

17 Q. But you -- you went past this, is that what ---

18 A. We went past it at first. We passed it at first,
19 and then we turn around and we pass it again. For the
20 third time, we got it on the third time, right here. This
21 was like a new area for me because I just came home from
22 the penitentiary at the time.

23 Q. All right, and there are some other areas that we
24 have identified on here that you've testified about, too.
25 This Food Lion here is Glenn's Bay Road. Would that be

1 the Food Lion that you went to?

2 A. Yes, ma'am.

3 Q. All right, and how about -- I believe you testified
4 about Bridget Allen's house?

5 A. Yeah.

6 Q. Would that be where her house is located?

7 A. Yeah. That is her house right here, yes, ma'am.

8 Q. Is this all pretty -- the area pretty close
9 together within ---

10 A. Yes, ma'am.

11 Q. Within a couple of miles anyway?

12 A. Yes, ma'am.

13 Q. All right, and -- and so you grew up what would be
14 south of here, is that correct?

15 A. Yes, ma'am.

16 Q. But you are pretty familiar with this ---

17 A. Yeah, I'm familiar.

18 Q. --- area right here?

19 A. Uh-huh (affirmative response).

20 MS. VON HERRMANN: All right, let me have you go
21 ahead and have a seat back up there.

22 Q. When you all pulled down by the road, did you know
23 the exact location that you had to -- or you sort of had
24 to look for it?

25 A. When me and Miles left Wilco?

1 Q. Yes.

2 A. I had to look for it at first.

3 Q. Okay, but once you pulled down Butler Road, how did
4 you know where to go?

5 A. Because I know where to go at because that's why I
6 told him to drive slow once we get down this road because
7 like there was an open area anyway, and the car that I
8 knew of, the gold car, was sitting right there, so when I
9 saw it, I'm like, "Okay, turn right here. Turn right
10 here," and that's when we turned.

11 Q. Who was driving that -- that gold Maxima?

12 A. My cousin, Antonio Smalls, was driving that Maxima
13 at the time.

14 Q. Did he drive it the whole day?

15 A. Yeah, he drive it the whole day.

16 Q. Did Tyronne ever drive that vehicle?

17 A. No, ma'am.

18 Q. Did Neil Hill ever drive that vehicle?

19 A. No, ma'am.

20 Q. All right, so you pulled in there, and what
21 happened next?

22 A. All right, when we pulled inside there, we park
23 beside the car, like a little -- not right beside it, but
24 we parked, and Tyronne came up ---

25 Q. Let me stop you. Which way did the gold car face?

1 **A.** The car was facing the road.

2 **Q.** All right, and when you all pulled up, where were
3 you parked, facing in, or did you all flip around and park
4 face out?

5 **A.** No, we was facing in. This -- they was facing this
6 way (indicating) and then when we pulled in, we was facing
7 towards the woods area.

8 **Q.** Okay, so then the driver's side of each car would
9 have been beside each other, is that correct?

10 **A.** It was like this right here (indicating). The
11 driver's side of the gold car would have been facing the
12 back side of the driver side of the Jeep.

13 **Q.** I got'cha. I understand, so you're not side by
14 side; you're a little bit apart?

15 **A.** Yes, ma'am.

16 **Q.** And how many feet would you estimate was between
17 the two vehicles?

18 **A.** I would say at the most -- at the most, I would say
19 about nine, eight, nine feet, somewhere up in there.

20 **Q.** So you were saying that when you pulled up in
21 there, what was it that you did?

22 **A.** I -- when -- when we pull up, Tyronne Beaty came
23 walking up and Miles is like, "Oh, I know my man. I know
24 him," and so I'm like, "Okay, if you know him then," I got
25 out of the car. I got out of the Jeep, and that's when I

1 went to the gold car, and by that time, I got some ---

2 Q. Let me -- let me stop you. This is important, so
3 let's slow this down a little bit.

4 A. Yes, ma'am.

5 Q. When you pull up, you see Tyronne?

6 A. Yes, ma'am.

7 Q. Where was he standing?

8 A. He was standing like behind the Maxima. He was
9 standing behind it, like further feet from it, but it was
10 behind -- he was behind the Maxima, so that's why when we
11 pulled up, Miles recognize him right away. He's like,
12 "Oh, I know my man. I know him."

13 Q. Did -- did y'all realize that that was going to
14 happen, that Miles was going to recognize him?

15 A. No, ma'am.

16 Q. And the plan was to -- what was -- the plan
17 involved you up until this point, ---

18 A. Yes, ma'am.

19 Q. --- right, and so what -- what changed by the fact
20 that he -- that Miles happened to know Tyronne?

21 A. What changed is that -- let me see. In my mind, it
22 really wasn't too much thing that changed, is the fact
23 that, "Well, okay, well, now y'all deal with each other.
24 What goes on, that's between y'all," you know what I'm
25 saying, so it's like when he say, "I know my man," he said

1 it -- he was excited because I felt that there was a trust
2 that he could have trusted Tyronne Beaty the way he said
3 it, like, "Oh, I know him."

4 MR. BELLAMY: I would object to what he felt. He
5 can testify to what he heard.

6 THE COURT: I think he was talking about his own
7 particular feelings, and I'm going to allow it. Thank
8 you.

9 A. Yeah, and so that's when I got out of the Jeep, and
10 when I went walking towards the car, the Maxima ---

11 Q. When you say Jeep, you're referring to that Toyota
12 Highlander?

13 A. Yeah, yes, ma'am, I'm referring to that, and that's
14 when I went to the car, the gold Maxima, and so by the
15 time I got to the Maxima and sat down in it, I heard
16 Tyronne Beaty, "He's grabbing for something. He's
17 grabbing for something," so we all had looked like,
18 "What's going on?" So when we looked, Tyronne Beaty and
19 Miles was tugging-a-war with a bag of money. He was
20 tugging-a-war with it, and so the next thing you know,
21 Tyronne Beaty pulled his gun out and he shot in the Jeep,
22 pow, pow, pow, three time, and so he ran. I was already
23 sitting in the Jeep, so all us like, "What's wrong with
24 Tyronne," and so when he ---

25 MS. VON HERRMANN: Could we just have one moment?

1 THE COURT: Yes.

2 (Pause.)

3 THE COURT: All right, go ahead. Continue on.

4 A. So she shot him -- he shot him. He shot in the
5 Jeep like three times, and then when he ran to the car
6 that we all was sitting in, he throw the bag of money in
7 my lap like he was in a rush to go. He throw the bag of
8 money in my lap, and so right before Antonio pull off, he
9 said, "Hold on for a minute," because Miles was still
10 living at the time, okay, he was like, "Hold on. Hold on.
11 Hold on," so he jumped back out the car and went back and
12 finished him off, and how I know that he was dead, because
13 the last thing Miles did was he screamed like, "Oh-h," and
14 he lean over, so I'm like, "Ah, man."

15 Somehow I know Tyronne just kill that man, and it
16 mess me up because at the time I felt he didn't care about
17 me because I was the person that touched his Jeep, you
18 know what I'm saying. I thought he didn't care about me
19 because of the fact that my face was seen through other
20 people. He would kind of hide his image behind everything
21 else, but left me there, left me out, you know what I'm
22 saying. I didn't have any mind that he was going to kill
23 this man, you know. I mean, it hurted me that he did
24 that, and I felt bad that I let him -- I'm my own man, but
25 I felt bad that I let him influence me to even go down

1. with something like this, you know what I'm saying.

2. Q. Well, and -- and let's just back up again. You
3. said that you saw them struggling over the money?

4. A. Yes, ma'am.

5. Q. How was -- how was the money packaged?

6. A. The money was packed. It was a bag inside a white
7. bag, because the outside was white, so when he throw it in
8. my lap, I was -- I was dazed, so I'm looking at it like
9. (indicating), not the fact that we had the money. I was
10. looking at it because my attention was nowhere else but
11. other than what he did.

12. Q. Did -- you knew -- you knew that Miles had that
13. money in the car prior to your arriving at Butler Road?

14. A. Yes, ma'am.

15. Q. Did -- did you see where he had the money?

16. A. I didn't see where he had the money, but I know he
17. had the money because that's the sole purpose of him
18. meeting us, but I didn't know exactly where he had the
19. money at.

20. Q. All right. What did he do with that gun when he
21. got back in the car?

22. A. What he did with the gun? When he got back in the
23. car, I looked at him, and I asked him, I said, "Tyronne,
24. man, why you -- why you -- why you shot that man?" Man,
25. he was wiping the gun at the same time he was taking the

1 clip out. He said, "Man, I had to shoot him. I had to
2 shoot him." He said, "He know me," so I look at him like,
3 "Man, you ain't had to kill that man, man. You didn't."
4 He was like, "Well, he snatched the bag of money out my
5 hand -- out my lap, you know what I'm saying. He was
6 like, "I'm going to hold onto the money. I'm going to
7 hold onto the money just in case something go down, you
8 know what I'm saying. I got the money," this and that,
9 this and that, so I look at him, and so when we left, at
10 the same time while he doing all this ---

11 Q. Let me stop you for just a second because I think
12 -- I think you're cleaning it up a little bit for this
13 jury.

14 A. Yeah.

15 Q. And you said what, "Hey, Tyronne, what are you
16 doing?" I mean, ---

17 MR. BELLAMY: I would object. He's testified. The
18 Solicitor is trying to tell him he's cleaning it up. Let
19 him testify.

20 THE COURT: Mr. Bellamy, your objection is ---

21 MR. BELLAMY: Leading, Your Honor.

22 THE COURT: Leading. Thank you.

23 Solicitor, don't lead your witness.

24 Q. You used some foul language previously, didn't --
25 you used some foul language at that time, didn't you, ---

1 A. Yes, ma'am.

2 Q. --- when you got in the car, so just go ahead and
3 tell the jury what it was you said.

4 A. I was like, "Man, why in the fuck you kill that
5 man?" basically, you know what I'm saying, "Why in the
6 fuck you did that, man?"

7 Q. And what did he say to you? What did he -- where
8 did he put the gun?

9 A. What he did with the gun -- I know he was unloading
10 the gun with his shirt, wiping it, and he throwed a bullet
11 out the window. Whatever bullet he had left, he threw it
12 out the window, but what he actually did with the gun, I
13 can't -- I don't know what he did with the gun, but at the
14 moment, he -- he was finish taking the bullets out of --
15 the left bullets out of the clip and throw it out the
16 window while we was -- while we was moving.

17 Q. And did you say that he took the money from you?

18 A. Yes, ma'am. He took -- he snatched it out of my
19 lap. I mean, I didn't have no grasp of it, but he -- like
20 I'm holding -- I'm holding onto this right here
21 (indicating).

22 Q. Where did he put it?

23 A. He put it in his lap.

24 Q. And where did you all go?

25 A. I -- well, we left -- we went down that road, went

1 down the back -- the back way. We then went back down
2 Enterprise Road and went down -- went out the back way,
3 and ---

4 Q. Well, let's look at this. When you say the back
5 way, which way did you go?

6 A. We went out -- when we left here, when we left out
7 of Butler Road, we bust -- we bust a left down Enterprise
8 Road, but we didn't went back out towards where the -- we
9 went out this way and we went down Bay Road if I'm not
10 mistaken. Yeah, we went down Bay Road, the back side of
11 707, ---

12 Q. Okay.

13 A. --- and then when we left there, that's when we
14 went to Bridget -- we went to Bridget house, and ---

15 Q. All right. What -- are you familiar with guns?

16 A. Yeah, I'm a little familiar with guns.

17 Q. You've used a gun before?

18 A. Yeah, I use a gun before. I mean, I know what a
19 gun is, yeah.

20 Q. What type gun was that?

21 A. I'm going to say a forty caliber.

22 Q. A big gun, a small gun?

23 A. It was a big gun, about that size right there,
24 black.

25 Q. A revolver, semi-automatic?

1 **A.** One with a clip inside of it.

2 **Q.** All right, so you went to Bridget Allen's house?

3 **A.** Yeah. I went to Bridget Allen house and we all got
4 out of the car at that time. They -- Punch -- I mean
5 Antonio, Tyronne Beaty, and Neil jump inside of Punch --
6 Antonio car, because that's where his car was at. They
7 jump out of the car, and that's when I took the gold car I
8 had and take it back to my client, and I parked it by the
9 -- by the -- I parked it by the mailbox in that
10 neighborhood and I call -- I like, "Man, look, your car by
11 the mailbox. Go and get your car," so I ran back down the
12 road thinking that they still will be at Bridget house,
13 which they wasn't. They left, so I call Antonio. I say,
14 "Antonio, where" -- I say, "Punch" -- "Antonio, where you
15 at?" "Man, I'm tak-" -- "I'm dropping -- I'm dropping
16 Tyronne Beaty and Neil off. I'll be -- I'll be right
17 back."

18 MR. BELLAMY: Your Honor, I would -- again, that
19 would be hearsay.

20 THE COURT: All right, sir.

21 Just continue on, Solicitor.

22 **Q.** Did you run back into Antonio again that day?

23 **A.** Yeah. He came -- it was that night. He came --
24 after he dropped them off, he came back to Bridget Allen
25 house where I was waiting on him at, and I jumped inside

1 the car, which is the blue Lincoln, and he went and get
2 his daughter out of the house, because his daughter was
3 there through the whole time. He went to get his daughter
4 out of the house and we left there, and that's when we had
5 dropped his daughter off at the game room at the 544. It
6 was a game room that his wife -- not his wife, his baby
7 mama, was working at, and we drop her off, and then we
8 went back to my hotel room, Best Western, 26 North, and
9 when I got there, I had call my girlfriend at the time,
10 Felicia, and I told Felicia everything what happen because
11 at that time, Felicia, she was a Federal investigator, so
12 I'm like, "Man, I need to tell Felicia what going on," you
13 know, so that night I call Felicia and I told Felicia
14 everything from -- basically what I'm telling y'all,
15 that's what I told her, and Felicia started crying, you
16 know, and so she was like ---

17 Q. Well, we don't want you testifying about what
18 anybody else has said.

19 A. Okay.

20 Q. Let's go back a little bit.

21 A. Yes, ma'am.

22 Q. Did you -- did you ever see that money again?

23 A. No, I never seen that money again.

24 Q. All right. What did Tyronne tell you he was going
25 to do with the money?

1 A. He said he was going to hold on to the money just
2 in case anybody got locked up or whatever, he would use
3 the money, you know what I'm saying.

4 Q. In other words, if you all got arrested for this,
5 he was going to use -- use the money?

6 A. Yeah.

7 Q. And you never got any part of that money, did you?

8 A. No, ma'am.

9 Q. And when you got arrested, were you able to afford
10 a lawyer?

11 A. No, ma'am.

12 Q. Did the Public Defender appoint a lawyer to you?

13 A. Yes, ma'am.

14 MR. BELLAMY: Your Honor, I'd like to approach.

15 THE COURT: Yes, sir.

16 (A Bench conference was held in the presence, but out
17 of the hearing, of the jury.)

18 MR. BELLAMY: Thank you, Your Honor.

19 Q. That's Ms. Floyd, and she's seated here in the
20 courtroom, is she not?

21 A. Yes, ma'am.

22 Q. Did you turn yourself in to the police?

23 A. Yes, I had turn myself in to the police.

24 Q. And did you give them a statement about what had
25 happened?

1 A. Yes, I give them a statement of what happen.

2 Q. When you -- were you completely honest when you
3 first started talking to them?

4 A. At first, I wasn't honest, because at the time I
5 was -- really wanted to protect him, but at the same time
6 protect myself, but I got -- I'm not that good of a liar,
7 so it -- me lie, trying to protect him, but at the same
8 time trying to protect myself, caused them to have
9 reasonable cause to lock me up for murder, and that's when
10 everybody came about.

11 Q. And did you tell them -- did you tell the police
12 about Antonio's role, your cousin?

13 A. Yes, ma'am.

14 Q. And did you tell them about Neil Hill's role?

15 A. Yes, ma'am.

16 Q. Did you -- you and your lawyer have met several
17 times to discuss this case, is that correct?

18 A. Yes, ma'am.

19 Q. And, in fact, you and your lawyer met with me prior
20 to the trial of this case ---

21 A. Yes, ma'am.

22 Q. --- to talk about this case, is that right?

23 A. Yes, ma'am.

24 Q. And your law- -- you, and your lawyer, and I
25 entered into an agreement, ---

1 A. Yes, ma'am.

2 Q. --- is that correct?

3 A. Yes, ma'am.

4 Q. And that's called a proffer letter, right?

5 A. Yes, ma'am.

6 PROFFER LETTER, 1/25/10, MARKED FOR IDENTIFICATION

7 AS STATE'S EXHIBIT NUMBER 38.

8 Q. I will show you what's been marked as State's
9 Exhibit 38 for I.D. Is that the proffer letter you just
10 described?

11 A. Yes, ma'am. My signature is right there.

12 MS. VON HERRMANN: And I would move to have this
13 admitted into evidence.

14 MR. BELLAMY: Your Honor, may we approach?

15 THE COURT: Yes, sir.

16 (A Bench conference was held in the presence, but out
17 of the hearing, of the jury.)

18 THE COURT: All right, I'm going to allow State's 38
19 into evidence. Solicitor, you will substitute a copy.
20 You will black out Paragraph 2 in this particular matter
21 and have the item re-marked as State's Exhibit 38 and that
22 will be the one that will be in evidence in this
23 particular matter, all right?

24 MS. VON HERRMANN: Yes, Your Honor. Thank you.

25 THE COURT: Thank you.

1 PROFFER LETTER, 1/25/10, EXCEPT PARAGRAPH 2,
2 ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 38.

3 Q. With regard to that proffer agreement, did I make
4 any promises to you?

5 A. No, ma'am.

6 Q. You're pleading guilty in this case, is that
7 correct?

8 A. Yes, ma'am.

9 Q. Is there any -- any secret agreement between you,
10 or I, or your lawyer, or anything else the jury doesn't
11 know about?

12 A. No, ma'am.

13 Q. Let me ---

14 MS. VON HERRMANN: Hang on for one second.

15 THE COURT: Yes, ma'am.

16 Q. You hope that you will get some benefit, is that
17 correct?

18 A. Yes, ma'am.

19 Q. And I have told you per the terms of that proffer
20 agreement that I would make the Judge aware of your level
21 of cooperation?

22 A. Yes, ma'am.

23 Q. But other than that, is there any benefit that you
24 have received?

25 A. No, ma'am.

1 Q. Thank you.

2 MS. VON HERRMANN: I don't have any further
3 questions.

4 THE COURT: All right, cross examination.

5 MR. BELLAMY: May it please the Court.

6 THE COURT: Yes, sir.

7 CROSS EXAMINATION BY MR. BELLAMY:

8 Q. Mr. Smalls, are you going to plead guilty to
9 murder?

10 A. Am I going to plead guilty to murder?

11 Q. You just told the Solicitor you're going to plead
12 guilty in this case. Are you pleading guilty to murder?

13 A. I'm not pleading guilty to murder.

14 Q. Oh, okay, so when she says you're going to plead to
15 something, you ain't going to plead to murder, though, are
16 you, because that carries thirty years to life, don't it,
17 so you ain't going to plead to that, are you?

18 A. Huh-uh (negative response).

19 THE COURT: You need to answer yes or no.

20 A. Oh, no, sir.

21 Q. Okay. Now, what about the armed robbery, are you
22 going to plead guilty to that, and that carries ten to
23 thirty? Are you going to plead to that?

24 A. Yes, I'm -- I'm -- I was a part of the robbery. I
25 was a part of it, ---

1 Q. Are you going to plead to it?

2 A. --- so yes, I'll plead to that, because I was a
3 part of the armed robbery, yes.

4 Q. Okay, so when the Solicitor says you're going to
5 plead guilty in this case, you're not going to plead to
6 any murder?

7 A. I'm not going to plead to the murder, but I'm going
8 to plead to armed robbery because it's -- it all had
9 happen at one time, so that's what I was referring to when
10 she said that.

11 Q. But you're going to plead to the armed robbery, but
12 you had nothing to do with the armed robbery?

13 A. I mean, I initiated it in a way because I agreed to
14 him robbing him, and I said -- so ---

15 Q. And let's talk about a couple of other charges.
16 You are looking at twenty-five to thirty years for
17 trafficking cocaine in Georgetown, aren't you?

18 A. Uh-huh (affirmative response)..

19 Q. A minimum of twenty-five where you serve eighty-
20 five percent, right?

21 A. Yeah.

22 Q. Are you pleading to that?

23 A. I mean, it's my charge.

24 Q. I'm asking you if you're pleading to it?

25 A. Yes, I'm pleading to it.

1 Q. Okay, and you don't think you're going to get some
2 help by being up here, Corey?

3 A. It's -- it's not about the help. It's about being
4 honest and being truthful for what your client did.

5 Q. All right. That's what we want -- we want to talk
6 about being honest.

7 A. Uh-huh (affirmative response).

8 Q. You an honest fellow?

9 A. I try my best to be honest.

10 Q. Do you?

11 A. Yes.

12 Q. Do you?

13 A. (No response.)

14 Q. And I'm not going to go back through your record,
15 but you've got four or five drug charges, resisting, all
16 these other things, and in fact, the trafficking charge
17 you've got happened in '07 or '08, two or three years --
18 while you're out on bond ---

19 A. Uh-huh (affirmative response).

20 Q. --- for murder and armed robbery, you go get
21 another trafficking charge, don't you?

22 A. Yes.

23 Q. But you're an honest person?

24 A. Uh-huh (affirmative response).

25 Q. We can trust Corey Smalls, can't we? Can I trust

1 you?

2 A. It's all about your intentions.

3 Q. Okay. Now, you talk about the truth. You
4 initially indicated you didn't tell the police the truth
5 on October 24th, right?

6 A. Uh-huh (affirmative response).

7 Q. And -- but then ultimately you -- in that statement
8 you did tell them the truth, right?

9 A. Yes.

10 Q. And the truth you told them on October 24th, 2005,
11 is just as much truth as you're telling them today, right?

12 A. Yes.

13 Q. You're sure, now?

14 A. Well, when I came back with the truth, yes.

15 Q. Okay, so when you ended that statement, it was
16 true, ---

17 A. Yes.

18 Q. --- to the police, and, in fact, there's three
19 videos, and I don't know if you looked at them, there's
20 five hours of you?

21 A. Uh-huh (affirmative response).

22 Q. And you gave a statement on video tape for five
23 hours, right?

24 A. Yes.

25 Q. Now, did you tell them about going to Bridget's

1 house in any of those five hours, and I'll let you listen
2 to all five if you want to, ---

3 A. That was set. That was five years ago, and I can't
4 really exactly remember ---

5 Q. Well, let me ask it this way: The truth is you
6 never mentioned going to Bridget's house, did you?

7 A. In the interview?

8 Q. In the five hours?

9 A. Okay, when the five hour interview -- at -- when I
10 first went, like I say, I was trying to protect Tyronne
11 Beaty. I was trying to protect myself, but in the process
12 of lying at that moment, I got caught lying, so that's
13 when I came up with the truth later on.

14 Q. And that's -- my point is, though, ---

15 A. Yeah.

16 Q. --- you've already testified for me now ---

17 A. Yeah.

18 Q. --- that at the end you told them the truth, right?

19 A. Yes.

20 Q. All right. Now, in the end, did you tell them
21 about picking up the gold -- that you were the one that
22 got the gold Maxima? Did you ever tell them that in that
23 five hour statement, not from the beginning, but at any
24 time in there did you tell them about your role in getting
25 the Maxima?

1 A. I can't -- in that interview now, I don't think I
2 did.

3 Q. Okay. You never tell them in there about going to
4 Bridget's house, do you?

5 A. Uh-huh (affirmative response), yes, sir.

6 Q. You don't tell them about going back to Bridget's
7 house afterwards, do you?

8 A. Yes, sir.

9 Q. You never tell them about picking up Antonio's
10 child, do you?

11 A. Yes, sir.

12 Q. When you say "Yes, sir," you never did, did you?

13 A. I'm just -- I don't think I did, because like I
14 say, that was five years ago and my mind was ---

15 MS. VON HERRMANN: I'm going to object. He said
16 that he does not remember.

17 THE COURT: I appreciate that, and you can ask him
18 questions on redirect if you choose, but I'm going to
19 allow the cross examination.

20 MR. BELLAMY: The tapes are here. The tapes are
21 here.

22 MS. VON HERRMANN: I think you should refresh his
23 recollection.

24 THE COURT: Solicitor, I don't need any extraneous
25 comments. I made a ruling. We'll continue on.

1 Continue on.

2 Q. You don't tell them anything in there about going
3 to Food Lion in those five hours, do you?

4 A. Like I say, I cannot remember anything that
5 happened five years ago because my mind -- I was -- what
6 happen that night had my mind so messed up to where I did
7 agreed that I did lied in the interview with the tape, so
8 I can't remember exactly what I said, but later on down
9 the road, yes, I have told them the truth. That what got
10 us here right now today.

11 Q. Well, let's hold on a minute. I'm talking about
12 that five hours, four days after this happened.

13 A. I can't remember.

14 Q. So you don't remember it?

15 A. I can't remember.

16 Q. Okay, but you don't deny you never told them any of
17 the things I just asked you, do you?

18 A. Like I say, I can't remember exactly what I said,
19 because if it's a lie, I can't remember, but the truth
20 stands forever. The lies, like I can't remember if I --
21 because like I said, I did agree to lying to them because
22 I was trying to protect your client and I was trying to
23 protect myself at the same time, but I failed.

24 Q. Okay. Now, well, let's just -- before we get any
25 further, you gave the statement October 24th, do you agree

1 with that?

2 A. Yeah, I remember giving a statement.

3 Q. Okay, and in early November, I believe November the
4 2nd, ---

5 A. Uh-huh (affirmative response).

6 Q. --- you gave a second -- not a video, but an audio-
7 taped statement to Detective Vokov, did you not, ---

8 A. Yeah, I remember ---

9 Q. --- at J. Reuben Long?

10 A. Yes.

11 Q. Okay. What other -- now, you've told me in neither
12 of those statements do you mention anything you talked
13 about here today. When did you tell the police what
14 you're telling us now? What statement was that?

15 A. Well, I remember when the detective came to me, if
16 it was in November -- okay, when he came to me in
17 November, this was after my cousin, Antonio Smalls got
18 locked up, and he said, "Smalls" -- this is what I
19 remember, because this is the truth: He said, "Smalls, I
20 told your cousin, Antonio Smalls," -- he said, "Your
21 cousin, Antonio Smalls, tell me everything. I remember
22 y'all" -- he said, "I know y'all went to Food Lion. I
23 know Tyronne Beaty was involved. I know" -- so I was
24 like, "Yes, sir." He brought out the pictures. He said,
25 "Is this Tyronne Beaty or is this Neil?" And I said,

1 "Yes," ---

2 Q. Do you want me to play that taped statement?

3 That's a taped statement where you asked for a lawyer and
4 they stopped the conversation. You don't say any of that
5 stuff, did you?

6 A. Was that ---

7 MS. VON HERRMANN: Objection.

8 A. Was that the interview, the first interview? I'm
9 speaking about the second part when they came to J. Reuben
10 Long. Now, I'm speaking about the part, the time when
11 they came to J. Reuben Long. I'm not speaking about ---

12 Q. That's what I'm talking about.

13 A. --- right there, you know what I'm saying.

14 Q. I listened to that tape, and we can let you listen
15 to it ---

16 A. Okay, yeah.

17 Q. --- and see if you tell them what you ---

18 THE COURT: Mr. Bellamy, are you asking questions or
19 are you making statements?

20 MR. BELLAMY: I'm probably making a statement,
21 Judge. I'm sorry.

22 THE COURT: All right, sir.

23 Q. Now, my point is, Corey, that when you talked for
24 five hours on those video tapes, ---

25 A. Uh-huh (affirmative response).

1 Q. --- you never tell them what you've told here
2 today, did you?

3 A. Because ---

4 Q. You tell them a different person, aren't you?

5 A. Because I lied on that day, yes, on those first
6 interview, yes.

7 Q. Okay, and you told the Solicitor in this statement
8 here when you talked to the police you did it, about
9 telling them the truth, but that's -- that's not true, is
10 it?

11 A. If that's prior to the interviews, all I ever did
12 was bogus, but later on down the road, everything was
13 true. According to that right there, if it's according to
14 those right there, those interviews, ---

15 Q. Corey, I can't understand what you're saying.

16 A. Those statement -- those interviews right there, I
17 agree that at first I lied because I was trying to protect
18 your client. I was trying to protect myself. That was my
19 first time I ever dealt with this, if it's in that
20 interview.

21 Q. But again, and I'm not trying to belabor the point,
22 but you just told me that ultimately you did tell them the
23 truth in this interview?

24 A. No, I never -- I never said that.

25 Q. You didn't say that just a few minutes, five

1 minutes ago?

2 A. I never said -- I said it was prior to the one at
3 J. Reuben Long, I said, because they came to see me, the
4 one at J. Reuben Long, that's when I agreed to it then
5 because they brought the pictures that -- after they
6 caught my cousin, Antonio Smalls. There was more than one
7 time that they came to see me. There was more than one
8 time.

9 Q. Well, can you tell me when that was?

10 A. I can't remember the dates.

11 Q. You don't remember the dates?

12 A. I can't remember the dates, but I know ---

13 Q. Well, just help us with this: Tell us who came.

14 A. I can't even tell you. I know the face. I know
15 the -- I'm pretty much good with faces. I'm not that good
16 with names.

17 Q. Well, now, here's a face you won't forget, John
18 Lewis ---

19 A. Yeah.

20 Q. --- if you spent five hours with him.

21 A. Yeah, that's the five hours -- that's the first
22 one.

23 Q. Is he the one that you ended up telling what you
24 call "the truth" to?

25 A. No. I lied to him. He was the fir- -- because I

1 went -- I went to them, yeah.

2 Q. So he's not the one you gave this mystery statement
3 to?

4 A. Uh-huh (affirmative response).

5 Q. And you can't tell us who it is?

6 A. It was another -- it was another detective that
7 came to J. Reuben Long, and that's the one that I kind
8 of ---

9 Q. Okay, again, I want to be sure we're clear on this.
10 I thought you told me that you told him the truth in this,
11 but now you say you lied to him and all that, so the day
12 in question, just so we're clear, the stories you've told
13 here today is contained in a statement that was given to a
14 law enforcement officer, and that's the truth, right?

15 A. Uh-huh (affirmative response), yes.

16 Q. And in that statement, you're telling the same
17 story you're telling here today?

18 A. The prior to which they came ---

19 Q. I don't care when, where; I want to know if, in
20 fact, you told a police officer the same story you're
21 telling here today, and I'll find that fellow and we'll
22 bring him here and see if it's true.

23 A. I give him -- the one that came to see me in J.
24 Reuben Long after he visited my cousin, Antonio Smalls,
25 cousin, my cousin, Antonio Smalls, told him everything and

1 I possibly agreed to it, "Like yeah, yeah, that's him.
2 Yes, Food Lion, we did went there, yes," but I didn't
3 actually sit and break the whole thing down from A to Z.
4 Certain things that I did agree to, and yes, I did ask for
5 an attorney, but certain things that I did agree to.

6 Q. Well, I guess my point is the stories you're
7 telling this jury today you've never told before to any
8 law enforcement officer, have you?

9 A. Well, I did -- okay, I'm -- I'm going to put this
10 into consideration of Felicia Smith. She's a Federal
11 investigator. I break everything down to her, and that's
12 why I brought myself to the detective here, you know what
13 I'm saying, because she -- she was the one that told me to
14 turn myself in and tell them the truth, but I feel like
15 that, but as a Federal investigator, yes, I have told
16 Felicia Smith everything.

17 Q. You told her everything?

18 A. I told her everything, everything that I'm telling
19 them right here, I told them everything.

20 Q. Now, let me -- now that you've brought her up -- I
21 wasn't going to talk about her right now, but they took
22 your phone when you turned yourself in, didn't they? They
23 got your phone, didn't they?

24 A. Yeah, they took my phone.

25 Q. And I'll see if I can find a photograph of it, but

1 she texted you when you were going to talk to the police,
2 didn't she?

3 A. Yes.

4 Q. And she told you, "Just act like you don't know
5 what they're talking about"? Isn't that what she texted
6 you?

7 A. Yeah, that's -- that what she text me, but that was
8 -- I guess she was trying to get me to change my mind at
9 the second end, and that's -- I mean, that's ---

10 Q. You just told us she told you, "Just tell the
11 truth"?

12 A. That's when I -- when I went -- yes, she told me to
13 tell the truth. I went verbally -- but when I went to
14 turn myself in that Monday to talk to them, I guess she
15 was like, "Well, don't tell them everything," you know
16 what I'm saying, because I guess she felt that I didn't
17 had a attorney at the moment, so she was trying to protect
18 me, I guess, you know what I'm saying, not to tell the
19 detective everything.

20 Q. She texted you and said, "Just act like you don't
21 know what they're talking about"?

22 A. Yeah.

23 Q. And this is a Federal agent?

24 A. Uh-huh (affirmative response).

25 Q. So again, you've never told the story you have told

1 -- told today?

2 MS. VON HERRMANN: I'm going to object; asked and
3 answered.

4 MR. BELLAMY: Well, I ---

5 THE COURT: Don't argue. I'm going to allow you to
6 answer the question. Thank you.

7 A. Uh-huh (affirmative response).

8 Q. And I'm not trying to get complicated, but the
9 story you've told here today, ---

10 A. Uh-huh (affirmative response).

11 Q. --- that complete story, have you ever told that
12 story, this story today, ---

13 A. Uh-huh (affirmative response).

14 Q. --- to any police officer or law enforcement
15 officer, whether prior to being arrested, or at J. Reuben
16 Long, or at any time over the last five years?

17 A. Partially, yes, to one of the detectives. I can't
18 remember, but he was a short detective that came to see me
19 and partially, yes. I didn't told them -- I didn't break
20 it down from A to Z, but I agreed to some of the things
21 that he asked me because my cousin, Antonio, already told
22 them everything, so I'm like, "Yes, that is him. Yes,
23 that is the Food Lion we went to. Yes," and then I'm
24 like, "You know what," at the end of it, I'm like, "Man,
25 you know what I'm saying, I want -- I want -- I want me a

1 lawyer," ---

2 Q. Okay.

3 A. --- so I partially did agree to some of the things
4 that was the facts, but actually sitting down and break it
5 down, no, I haven't.

6 Q. So the answer is no, you haven't, right?

7 A. (No response.)

8 Q. Right?

9 A. Are you ask- -- say that again.

10 Q. Yes, sir. So the answer to your question is you've
11 never told this whole story ---

12 A. I never told the whole story, you know. I ---

13 Q. --- to any law enforcement officer ---

14 A. To any ---

15 Q. Today is the first day?

16 A. I mean, like, I still consider it as me telling a
17 part of it, though. I mean, I don't -- I'm not saying
18 never, but I told a -- I partially -- I didn't break the
19 whole thing down; I didn't. After you break the whole
20 thing down, but in some of those words -- in your aspect
21 now, I haven't told them, no law enforcement anything, in
22 the way you want to see it, if that's what you're looking
23 for.

24 Q. Now, in this five hour statement here, you say
25 you're protecting Tyronne?

1 **A.** Yeah. I was trying to protect him by not giving up
2 no names or nothing like that, you know what I'm saying.

3 **Q.** In fact, you, in that statement, deny ever having
4 seen or had anything -- talked to Mr. Miles Slay, who got
5 shot?

6 **A.** Yeah, all that was in that first five hours right
7 there, yes.

8 **Q.** And they way they get you to tell some of the
9 truth, and I say some of the truth, ---

10 **A.** Uh-huh (affirmative response).

11 **Q.** --- they play something for you, don't they?

12 **A.** Yeah. When they get the recording of Miles' cell
13 phone, on voice mail, and heard my voice right there,
14 so ---

15 **Q.** And your voice is on his cell phone?

16 **A.** Uh-huh (affirmative response).

17 **Q.** But before they played that, you denied ever having
18 talked to him in days, weeks, didn't you?

19 **A.** Yes, I did.

20 **Q.** So they played it for you?

21 **A.** Uh-huh (affirmative response).

22 **Q.** And then -- so you remember telling them, "Yes, I
23 did talk to him," right?

24 **A.** Uh-huh (affirmative response).

25 **Q.** And at that point what you're telling me is that

1 you were going to do a deal, but it never went down,
2 right?

3 A. Yes.

4 Q. Then -- then they -- and then you never saw at that
5 point -- you said you didn't even see, but then they
6 confront you some more, and you admit that you may have
7 saw him at the Wilco station by accident?

8 A. Uh-huh (affirmative response).

9 Q. That's right?

10 THE COURT REPORTER: Excuse me?

11 A. Oh, I'm sorry; I'm sorry. Yes, ma'am.

12 Q. She's got to hear you.

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

14 Q. So then you said, "Maybe I saw him by accident,"
15 but then he left, and you left, and you don't know
16 anything else, ---

17 A. Yes.

18 Q. --- is that correct?

19 A. Yes; yes.

20 Q. Then you -- they bring in a tape that looks about
21 like this, I guess, and they put it on the table, and they
22 say, "Listen here, fellow, we've got the video from the
23 gas station?

24 A. Yes.

25 Q. They didn't, but you thought they did, and then you

1 admit at that point, "Okay, okay, I rode off with him,"
2 right?

3 A. Yes.

4 Q. Then you tell them you rode off -- that he dropped
5 you off at a trailer park, didn't you?

6 A. Yes.

7 Q. And that he met up with somebody, and you walked
8 back to Foxtrot, to the apartment complex, right?

9 A. Yes.

10 Q. And that you didn't have anything else to do with
11 it?

12 A. Yes.

13 Q. All right. Then they keep talking, and finally
14 they get you down there on Butler Road?

15 A. Yes.

16 Q. And -- but then you tell them that you followed
17 these other people down there, right?

18 A. Yes.

19 Q. You said that everybody was at the trailer park,
20 right?

21 A. Yes.

22 Q. And that you went to the Butler Road ---

23 A. Yes.

24 Q. --- place?

25 A. Yes.

1 Q. Now, at some point in your statement, you talked
2 about -- you deny ever talking to Corey about this -- I
3 mean, Corey, you denied talking to Tyronne out there on
4 Butler Road? You didn't do that? You just got out of the
5 car, right?

6 A. Yes.

7 Q. And what you tell the police in this story and on
8 these tapes is that you jumped out of the car and they
9 left you there, isn't it?

10 A. Yes.

11 Q. And you never change that story, do you?

12 A. Everything that was in that tape, I agreed to the
13 fact that I was lying because of the fact that like I
14 said, I was trying to defend him and I was trying to
15 defend myself. I'm not a good of a liar. You even -- you
16 even know yourself that I lied in that tape, ---

17 Q. Oh, I ---

18 A. --- you know what I'm saying. I'm not a good of a
19 liar, so when he brought the tape -- when you heard my
20 voice, I had no choice but to say, "Yeah," you know what
21 I'm saying, "I know Miles." He had evidence of my voice
22 on the tape when I told Miles to come at Wilco, that
23 Tyronne Beaty was waiting on him, "We're waiting on him,"
24 you know what I'm saying. Yes, all -- all -- I agreed
25 that I lied on that right there.

1 Q. All right. Let me talk about a couple of other
2 things. You indicated on direct examination you did not
3 know this Daniel person that was with Miles Slay?

4 A. I seen him before. I seen him a few times through
5 my cousin. I met him through my cousin, Cleveland, as
6 well, but I didn't really know his name, like that, you
7 know what I'm saying, but yes, I know him, but not like I
8 know anybody else.

9 Q. Now, there's no question that the only phone calls
10 back and forth is between you and Miles, right, ---

11 A. Uh-huh (affirmative response).

12 Q. --- on your cell phone, and you and your
13 cousin, ---

14 A. Uh-huh (affirmative response).

15 Q. --- isn't that right?

16 A. Uh-huh (affirmative response).

17 THE COURT: You need to answer yes.

18 A. I'm sorry; I'm sorry. Yes, sir; yes, sir.

19 Q. And, in fact, later that night, you receive a phone
20 call from Mr. Slay's cousin, or family, or some of those
21 people he was with when he left with you, right?

22 A. Yes; yes, sir.

23 Q. And what do you tell them?

24 A. Okay, when we had left, the truth is, when we had
25 left the scene after Tyronne Beaty shot and killed Miles,

1 they recognized that we didn't came right back, so Daniel
2 called my phone and was like, "Yo, where Miles at?" I
3 said, "Man, I don't know where Miles at because he dropped
4 me off somewhere. I don't know where he at." Then I
5 asked him, "Yo, do y'all got any weed," trying to calm
6 things down because of the fact my mind was running so
7 wild.

8 Q. All right. Let me -- let me ask you this: Your
9 testimony is that within a hour, hour and a half, of
10 watching this murder, ---

11 A. Uh-huh (affirmative response).

12 Q. --- and when that call was made to you, ---

13 A. Uh-huh (affirmative response).

14 Q. --- looking for Miles, were you with Mr. Beaty?

15 A. Yeah, I was -- I was with Tyronne.

16 Q. You were still with him?

17 A. I was with Tyronne Beaty. We was heading out
18 through the back way at that time.

19 Q. Okay, so you were on the phone at that time, and
20 you're wanting to go get some weed?

21 A. I was doing that to throw Daniel off that something
22 had happened to Miles, because I was actually with the guy
23 who had a gun, so what can I say? Tyronne at that time --
24 Tyronne shot Miles. He probably would have turn around
25 and shot me, so I had to throw it off like he didn't know

1 that I was talking to the person who saw me with Miles.

2 Q. Okay, but at some point that night, you go straight
3 to Bridget's house and we've got this -- or I believe the
4 testimony is that that's what you did?

5 A. Yes. That's her house right there.

6 Q. Ten minutes to get there, maybe fifteen?

7 A. About fifteen, yes.

8 Q. Ten or fifteen minutes, so within fifteen minutes
9 of this happening, Mr. Beaty is gone, right?

10 A. All of us was together, but when we got to Bridget
11 house, yes, he left, him, Tyronne.

12 Q. That's my point; fifteen minutes of then, Mr. Beaty
13 is gone?

14 A. Yes.

15 Q. Okay, and you had a cell phone?

16 A. Uh-huh (affirmative response).

17 Q. Did you ever call Miles' family back and tell them
18 what happened?

19 A. No, I never -- I never call them back.

20 Q. Did you ever call the police back?

21 A. Never called no police or anything, no.

22 Q. But you say you told Felicia, and what's this
23 cousin, is it Winston or who is it?

24 A. Wesley.

25 Q. Wesley?

1 A. Wesley Quick; that's my cousin.

2 Q. You told him, too?

3 A. Yeah, I told him.

4 Q. Okay.

5 A. The only thing I told Wesley is like, "Man, Miles
6 just got killed." That's the only thing that I told
7 Wesley, and I hang the phone up, and we was heading to my
8 hotel room, and when I got to my hotel room, I went
9 straight to my room and that's when I called Felicia.

10 Q. Okay. Now, and there's no question that you're the
11 one -- there's a fellow named McDowell in this case, isn't
12 there? Isn't he the one that had the Maxima?

13 A. McDowell? Are you talking about the white guy with
14 the red hair?

15 Q. I don't know.

16 A. I don't know. I know him -- if that's the one with
17 the Maxima, I know him by Red. I don't even know ---

18 Q. No question that he would come and say that you are
19 the only one that called him about getting the car?

20 A. Yeah, I was the only one that called him to get the
21 car because that was my client at the time.

22 Q. He was your client? What kind of client was he?

23 A. I was in the drug game at the moment.

24 Q. And didn't you pay him with crack cocaine for the
25 use of this car?

1 **A.** Yeah. Like I say, I -- like I say, he was my
2 client at the time and the bad terms, I give him ---

3 **Q.** You paid him with crack to use the car?

4 **A.** Yeah, I give -- I give him crack, yeah.

5 **Q.** And, now, Bridget, she would have seen y'all
6 whenever you dropped the child off, right?

7 **A.** Uh-huh (affirmative response).

8 **Q.** She would have seen that?

9 **A.** She was in the house when we brought the daughter
10 through the door. We brought her, like, "Bridget can you
11 watch Monnie for us," and ---

12 **Q.** But she was there at the house when y'all rolled
13 up?

14 **A.** She was there at the house, yes.

15 **Q.** She was there at the house when all of you rolled
16 up supposedly after, so she would have been there,
17 right, ---

18 **A.** Yes.

19 **Q.** --- and would have seen, and the next day you go --
20 now it says something -- it was your birthday?

21 **A.** Yeah, it was my birthday.

22 **Q.** This was a Thursday. On Friday, it was your
23 birthday?

24 **A.** Yeah.

25 **Q.** You go celebrate, don't you, ---

1 A. But really ---

2 Q. --- you and your girlfriend?

3 A. Yeah.

4 Q. Y'all go to Columbia and you buy you some new
5 clothes, don't you?

6 A. Really, I never -- I never went to Columbia, but
7 that's what I told the detective. I was right -- I was in
8 Bishopville, you know what I'm saying. I was in
9 Bishopville at Felicia house.

10 Q. All right, and then -- and then you come back and
11 you stay at the Sea Mist Resort, don't you? You get you a
12 room there, don't you?

13 A. Yeah. See, when I left, I didn't went to party. I
14 didn't went to buy no clothes. Only -- I went because I
15 wanted to talk to Felicia because like I said, she was a
16 Federal investigator, and I went to talk to her personally
17 other than the phone, so when I went to there and talk to
18 Felicia, I break everything down to her, and so while I
19 was talking to Felicia, I got a call from my little
20 brother, and my little brother say, -- Dayton Smalls; he
21 was like, "Corey, man, what going on?" I said, "Why?
22 What's up?" He said, "Man, a detective at grandmama house
23 looking for you." I said, ---

24 Q. Now, we can't talk about what other people told
25 you.

1 **A.** No. I'm bringing the facts. You want the whole
2 story? You want the truth?

3 **Q.** Rules of evidence provide ---

4 THE COURT: Gentlemen.

5 MR. BELLAMY: Excuse me.

6 THE COURT: Mr. Bellamy, if you've got an
7 objection ---

8 MR. BELLAMY: I would object to hearsay, Judge.

9 THE COURT: You asked the question. Answer the
10 question.

11 **A.** All right, so my brother was like, "They looking
12 for you," you know what I'm saying, so he like, "If you
13 want the number, I'll call Mary Ann and get the number
14 from Mary Ann. He left a car at Mary Ann," so I call my
15 aunt, Mary Ann. I said, "Aunt Mary Ann," I said, "what's
16 the detective number," so she gave me the detective
17 number, and Felicia was right beside me. I call the
18 detective. I said, "Sir," I said, "This is Corey Napoleon
19 Smalls." I said, "I was told you are looking for me." He
20 said, "Yes. Where are you?" I said, "Sir, I'm in
21 Columbia," so he say, "How soon would it be before you
22 come back home because I need to ask you some questions,"
23 but the whole time I was in Bishopville," so I say, "What
24 kind of question you need to ask me?" He say, "I want to
25 ask you a question about an assault." I say, "Ask me a

1 question about an assault," when the whole time I know it
2 was about murder, so I'm like, "Well," I say, "I don't
3 know anything about no assault," and so I'm like -- that's
4 when I was about to hang up with him.

5 He say, "Well, how soon will it be before you come
6 back because I really need to talk to you," and I look at
7 Felicia. Felicia say, "You" -- she did this (indicating).
8 "You need to go and talk to them people," so I like,
9 "Well, I'll be down there tomorrow," because at this time,
10 it was Sunday, so I left and I went back home, and after
11 Felicia -- she got a room in her name at the Sea Mist,
12 okay, so the next morning, which was Monday, that's when I
13 call a lawyer by the name of Julian Hanna and my daddy. I
14 call Julian Hanna and my daddy because I wanted them to be
15 with me when I go and talk to these people.

16 In my mind, it was about telling the truth at the
17 moment, right, so we went and meet Julian Hanna at Inlet
18 Sitters where my daddy -- or my mama was working at, and
19 so we got out the car and got inside with Julian Hanna,
20 and we went to Conway Police Department, and I call the
21 detective. I said, "Sir, this is Corey Smalls." I say,
22 "I'll be there in five minute." He said, "No, no, no."
23 He say, "Come back tomorrow because," he say, "we about to
24 -- I'm about to leave. I'm about to get off." I say,
25 "No, listen man." I say, "I know what you want to talk to

1 me about." I say, "Man, I'm coming." I say, "Man, I need
2 to talk to you," and so he say, "Well, come on then," so
3 when we pull up, Julian Hanna, and my daddy, and I, we sat
4 in the lobby waiting for them, and that's when the
5 detective came, and that's when I got up -- Julian Hanna
6 -- I didn't told Julian Hanna what happened. I didn't
7 told my daddy what happened.

8 They were just there, you know, and so we went in the
9 interview room, but yes, while on the way there, Felicia
10 told me -- she text me. She did say that. She said,
11 "Don't tell them everything," you know what I'm saying, so
12 I say -- at that time, I'm like, "Man, she just told me to
13 tell the people the truth." Then she tells me -- I'm
14 there. I'm walking in to the place, you know, saying --
15 so it had my mind messed up at the time, because at the
16 time, I didn't -- we came with Julian Hanna, so she was
17 basically telling me that because I had the right, with a
18 attorney, to talk to these people, that's why she tell me,
19 "Don't tell them everything," basically what she saying,
20 if I don't have an attorney.

21 Okay, so when I went inside there without my
22 attorney, which I didn't have none because I didn't retain
23 Julian Hanna, and so the officer here, he asked me ---

24 Q. Excuse me; I'm sorry. Officer who?

25 A. Detective -- I don't know his name -- Detective ---

1 Q. The officer here, okay?

2 A. Yeah, the detective, and he asked me, he said, "I'm
3 going to need you to go back to the day of -- of -- of
4 Thursday. Can you remember anything that happened
5 Thursday," which was the day before the murder. In my
6 mind, he was trying to get me to see if I remember
7 anything Thursday so I could remember everything that
8 Friday, what happened Friday, so I played dumb. I played
9 dumb, like, "Man, I can't remember. I was -- "Man, I was
10 smoking weed. My mind bad." I was playing dumb, but the
11 whole time, I know what he was getting at.

12 I should have told him the truth, but I didn't, you
13 know what I'm saying, because the fact, like I said, I was
14 trying to protect him and I was trying to protect me,
15 because nobody at that moment was -- nobody at that moment
16 wasn't -- they didn't know nothing about nobody else at
17 the moment but me because of the last -- because the last
18 two persons who said I was last seen with the guy, which
19 was Dominique and Daniel, so right away, I knew what it
20 was, and so the whole time I was lying, lying, lying, and
21 I wasn't -- I wasn't good at it, so he said, "Well," --
22 and actually asked me a question about did I ever speak to
23 Miles. I said, "No. I don't know no Miles now. I never
24 -- I never" -- but the whole time, my mind like this,
25 like, "Oh, man." I'm going like this (indicating), so he

1 like, "Well, I meet you here." I said, "Yes, I did. I
2 just want a attorney." I said, "Man, I would like to
3 speak to my attorney. I would like to speak to my
4 attorney," because he was trapping me off. I mean, he was
5 trapping me off, so he brought the tape out. "I need you
6 to hear something," so he brought the tape.

7 Q. If I might, we've already been over that, and that
8 wasn't the question I asked you, ---

9 A. Yeah.

10 Q. --- I thought, at some point, but let's move on,
11 and what I'd like you to do is I'd like to go back over
12 what happened out there on Butler Road, so ---

13 A. All right; all right.

14 Q. --- we'll move on from all these statements and
15 when you told what or who you didn't tell.

16 A. All right.

17 MR. BELLAMY: Let me bring these over here, if I
18 might, Your Honor, and I would ask if it would be okay if
19 he steps down.

20 THE COURT: Y'all either use the microphone --
21 you've got to connect a microphone on ---

22 MR. BELLAMY: I'm going to bring it down here in
23 front of the jury and let him just ---

24 THE COURT: All right, sir; that's fine.

25 MR. BELLAMY: Your Honor, if it would be okay, I

1 would ask Mr. Smalls to step off the witness stand.

2 THE COURT: You can step down to the ---

3 Q. If you would, Mr. Smalls, and, you know, this is
4 not an art class and nobody is going to get a grade on
5 this, but would you draw for me the two cars, and I know
6 this is not to scale, but relative to the position that
7 they were in. Would you draw that for me, please.

8 A. The car, the gold car, that they was in, this is
9 the gold car. It was facing the highway, facing the
10 highway. When we came in, this is the Jeep. It was
11 facing this way.

12 Q. Okay. Now, could you tell me -- and the gold car,
13 for the jury again, can everybody see? (No response.)
14 The gold car was the car that who was in?

15 A. This is the car that ---

16 Q. Put the initials of the people.

17 A. Antonio was here.

18 Q. Okay. Put "A.S." there, Antonio Smalls, correct?

19 A. Antonio Smalls, yes, ---

20 Q. Okay.

21 A. --- was in the driver's seat.

22 Q. Okay.

23 A. Neil was here, and Tyronne was like -- when I came,
24 we pull up, Tyronne was like standing in the back.

25 Q. Put a mark there, please, and put "T.B." there,

1 Tyronne Beaty. He was right on the passenger side, back
2 of the gold Maxima?

3 A. Yes. He was standing back there, yes, sir.

4 Q. Now, if you will, draw here what you think the
5 feet, how the distance between -- this is the driver's
6 side of this car, the driver's side of this car. About
7 how far -- what was the distance in between?

8 A. I'm going to say -- I'm going to say about eight
9 feet.

10 Q. About eight feet, okay. Now, and there's been some
11 photographs shown ---

12 MR. BELLAMY: Is 5 in evidence? I believe it is.

13 THE COURT REPORTER: Yes.

14 THE COURT: Yes.

15 Q. Let me show you State's Exhibit 5, Mr. Smalls. You
16 recognized that, I believe, earlier?

17 A. Uh-huh (affirmative response).

18 Q. And if you would, this area out here, so everybody
19 can see it, there's an open field, I guess, so there's no
20 shrubs, or bushes, or trees between these cars, right?

21 A. Uh-huh (affirmative response).

22 Q. It's just flat land ---

23 THE COURT: You need to answer out loud.

24 A. Yes, sir. I mean, there ain't no shrub bushes or
25 nothing.

1 Q. Okay, so -- and this would be the vehicle that Mr.
2 Slay was in, correct?

3 A. Yes, sir.

4 Q. And this is the passenger side?

5 A. Yes, that's -- yes, sir.

6 Q. So the other vehicle would have been facing the
7 opposite direction on the other side?

8 A. Yes, sir.

9 Q. Now,, it's your testimony -- I'll let you do this.
10 You draw for me where Mr. Slay was.

11 A. Mr. Slay?

12 Q. And do initials, please.

13 A. All right. Miles, he was in the driver -- the
14 driver's side.

15 Q. Okay. Put "M.S." there.

16 A. (Witness writes on document.)

17 Q. And you were seated where when the car came up?

18 A. When we pulled up?

19 Q. Yes.

20 A. I was right here in the passenger side.

21 Q. Was there anybody else in the vehicle?

22 A. No, sir.

23 Q. Okay, and -- all right, when you get there, Mr.
24 Beaty is standing here, ---

25 A. Uh-huh (affirmative response).

1 Q. Okay, and what happens?

2 A. I -- Miles was like, "Oh, I recognize him. I know
3 the guy," so Beaty started walking ---

4 Q. Okay, let me slow you down. That was while you
5 were still in the car?

6 A. I was still in the car.

7 Q. While you were pulling up or after you came to a
8 stop?

9 A. After we came to a stop, because we was already at
10 a halt, and that's when he recognized Tyronne Beaty.

11 Q. Was it daylight or dark?

12 A. It was like dusky dark. It was getting to be dark.

13 Q. Okay, so as you're pulling up -- and I'm sorry,
14 when you stopped is when he said it, correct?

15 A. Uh-huh (affirmative response).

16 Q. Okay, and when he says that, what do you do, and
17 let's take a blue pen and mark for me where you go with
18 the blue pen.

19 A. (Witness writes on document.) All right. Well, I
20 got out; I got out. When he said that, because Tyronne
21 Beaty was already walking up, and he was like, "Well, I
22 recognize him," so I like, "Okay. Well, that's" ---

23 Q. Go around front now; right, now, you go around
24 front of the car you're in?

25 A. Yeah, the front of the car we was in, and that's

1 when I went to this side because I was thinking Tyronne
2 Beaty was going to get in the passenger seat. That's why
3 I got out, too, because -- but he went to the window to
4 where Miles was at.

5 Q. Now, so do y'all stop and talk anywhere?

6 A. No. I pass him. By the time I got here, he was
7 already walking up.

8 Q. Okay.

9 A. That's when I already -- I went and I got in the
10 car right here.

11 Q. Okay, and you -- okay, now put yourself there. All
12 right, and are you in the car with the door closed?

13 A. (Witness writes on document.) The door was like
14 half-way open, about to be closed. I went to close it
15 when I heard just that quick Tyronne Beaty keep grabbing
16 something, grabbing for something, and that's when I
17 looked back. I looked back, and everybody else was
18 looking, too.

19 Q. All right, now, let me ask you: When you say you
20 looked back, ---

21 A. Yeah.

22 Q. --- were these cars parallel or is this car ---

23 A. This car -- this car here was just -- it was -- it
24 was up a little -- it was up a little bit. It wasn't like
25 straight here. Like it ain't so big, but this car was

1 like here and this car like right here, but it was like
2 eight feet apart, so ---

3 Q. You would have to look a little bit back ---

4 A. Yeah.

5 Q. --- to see the front part of this car?

6 A. Yeah.

7 Q. It wasn't like it was ---

8 A. No.

9 Q. --- you could look straight across?

10 A. No.

11 Q. You'd have to look a little bit back?

12 A. Yeah.

13 Q. And you are seated here?

14 A. Yeah.

15 Q. And, now, there's a bag on this window, right?

16 A. Yeah, yes, that's a bag on this window right here.

17 Q. But you could see out of this window?

18 A. Yeah, I could see.

19 Q. And out of the back window?

20 A. Out of the back, yeah.

21 Q. And how long do you think it took you to get from
22 here to get seated, ten seconds?

23 A. Yeah, about ten second, if that.

24 Q. Okay, and write that down there in blue, ten
25 seconds.

1 A. (Witness writes on document.)

2 Q. All right, and then you're here; go over that
3 again.

4 A. He grabbed something. I heard Miles say -- I'm
5 sorry; I heard Tyronne Beaty like he grabbed something, he
6 grabbed for something, and when we looked back, they was
7 tugging around over the bag. They was tugging on it.

8 Q. Okay, tugging on what bag?

9 A. The bag of money.

10 Q. How do you know it's a bag of money?

11 A. Because after he shot him, after he shot in the
12 car, Miles had throw the money in the same bag, and he
13 grabbed and he throw it in my lap.

14 Q. Okay. Now, so you're watching the whole time, and
15 let's use red, or green, for Tyronne, and I know you've
16 already drawn a line there, but if you would, re-draw that
17 line and show me where Mr. Beaty is.

18 A. You say -- you talking from right here?

19 Q. Yes, from where he is at the back of the car to
20 where you say he went to the driver's window.

21 A. When he -- after he got -- after he shot and got
22 the money? After he shot and got the money, ---

23 Q. Just draw a line from -- if you would, from where
24 he was standing, ---

25 A. Yeah.

1 Q. --- how he went to go to the Jeep.

2 A. (Witness writes on document.) He went boom,
3 straight, straight over there.

4 Q. Okay, and again, that would be about ten feet maybe
5 that he would have walked, ---

6 A. Yeah, something like that, ---

7 Q. --- right?

8 A. --- yeah..

9 Q. Okay, and when he gets there, where is he standing
10 relative to the driver's window or door?

11 A. He was to the window.

12 Q. Okay, right at the door?

13 A. Uh-huh (affirmative response).

14 Q. Okay. Put his initials there for me.

15 A. (Witness writes on document.)

16 Q. Okay, was the door open or closed?

17 A. At the time the door was closed because when we
18 looked, it was tug-o-warring through the window.

19 Q. And the door was closed?

20 A. The door was closed at the moment.

21 Q. Okay. Now, how long does the tussling go on, five
22 seconds, ten seconds?

23 A. When -- when I looked, I can't -- I can't really
24 say the timing, know what I'm saying, but it was a few
25 seconds. It was liked when I looked back, he was

1 grabbing, "Yo, yo. He grabbed for something. He grabbed
2 for something," so when I -- I mean, they were already in
3 the motion of it, so I ---

4 Q. So how long did that last, that tugging?

5 A. Well, when I look back, snuggled back, pow, pow,
6 pow, that's when I saw him -- I heard, "He's grabbing
7 something, grabbing something," but when I looked back,
8 that's when he boom, boom, boom.

9 Q. So by the time -- the time it took you to turn your
10 head, he was shooting, is that what you're saying?

11 A. Yeah. When I look, after he had pull the gun
12 out ---

13 Q. What I'm asking, now, did you see the tussling or
14 did you not see the tussling?

15 A. I see -- I look -- I saw the tussling, because when
16 he shot him, Miles was still holding onto the money.

17 Q. Okay.

18 A. He was still holding onto the money, you know what
19 I'm saying, so that's -- for one time, pow. Miles hold
20 the money. The second time, pow. Miles had the money,
21 and by the third time, Miles let go of the money.

22 Q. And then -- and then he came back to where?

23 A. He came back ---

24 Q. Draw me a line to where he came back.

25 A. He came back to this side of the car right here.

1 He was behind ---

2 Q. Did he get in the car?

3 A. Yeah, he got in the car, ---

4 Q. Okay.

5 A. --- because I was right there.

6 Q. Now, Antonio and Neil never get out of the car, is
7 that your statement?

8 A. Huh-uh (negative response).

9 Q. Okay. Now, you realize that in that five hour
10 statement you talk about both of them getting out, don't
11 you, but that was a lie, right?

12 A. No, I don't remember that now. I don't remember
13 that.

14 Q. Well, you can look at it, but you deny that?

15 A. Yeah. I don't remember saying that they got out of
16 the car.

17 Q. All right. Now, let's go back up to here. He
18 comes to here. You look, and about the time you look is
19 when he starts shooting, ---

20 A. Uh-huh (affirmative response).

21 Q. --- was seconds, okay, and Mr. Slay is seated in
22 the car?

23 A. Yeah, he was seated in the car.

24 Q. With the door closed?

25 A. Yeah, the door was closed at the time.

- 1 Q. And my client, you say, ---
- 2 A. Uh-huh (affirmative response).
- 3 Q. Had a gun in which hand?
- 4 A. He had a gun in this hand right here (indicating).
- 5 Q. His right hand?
- 6 A. In his right hand.
- 7 Q. Okay, and that he shot him through the window.
- 8 A. Yeah. He ---
- 9 Q. The window was down?
- 10 A. The window was down, and he shot through the
- 11 window.
- 12 Q. Okay, so was his hand inside of the car, ---
- 13 A. Yeah.
- 14 Q. --- like if here's the window, ---
- 15 A. Yeah.
- 16 Q. --- his hand was actually in the car?
- 17 A. Yeah, shooting down in his lap, yeah, in the
- 18 stomach, like in the lower area.
- 19 Q. Okay. How close would that gun have been to Mr.
- 20 Slay?
- 21 A. If he was sitting in the car and I was on this
- 22 side, so I can't really say how close the gun was to him,
- 23 like this right here. I can't really say, but I know it
- 24 was close enough the way he got hit.
- 25 Q. Okay, but not much room between that door and where

1 he was seated, was there?

2 A. Let's say this -- I guess this -- let's say this
3 would be the door. He was like this right here
4 (indicating), but he was like this right here.

5 Q. So he's inside the car?

6 A. Miles is inside the car. Tyronne Beaty was
7 standing outside the car, pointing in ---

8 Q. But he had his arm within the car?

9 A. Uh-huh (affirmative response).

10 Q. Okay, and did Miles ever get out of the car?

11 A. No, Miles never got out of the car.

12 Q. All right, so after this, how many shots were there
13 then?

14 A. The first shots were three shots I heard, and he
15 came ---

16 Q. And then Mr. Beaty came back and threw something in
17 your lap?

18 A. Throw a bag of money in my lap.

19 Q. Did he get in the car and sit down?

20 A. He got in the car and say, "Pull up," and he got
21 back out and ---

22 Q. And shot again?

23 A. --- and finish him off like that, and then that's
24 when he went and wipe all the fingerprints off the car,
25 off the thing, wipe all his fingerprints off the ---

1 Q. Hold on. Let me ask you about that, now. You just
2 testified for the Solicitor and you didn't mention
3 anything about wiping anything off?

4 A. I mean -- I mean -- cause there's lots of things
5 that happened at that time, a lot of things that I
6 remember, you know what I'm saying; it's coming to me as
7 I'm speaking about.

8 Q. So things start coming to you and you remember them
9 now?

10 A. Yeah, I mean, he wiped all the fingerprints off the
11 Jeep -- off the frame of the car door, you know.

12 Q. Okay. Now, where was he when he shot him the
13 second time?

14 A. He went back to the same area. He went back ---

15 Q. Right to the door and then he shot him again?

16 A. Yeah.

17 Q. All right, and then what? Now, you say he -- did
18 anybody else get out of the car?

19 A. No, nobody else got out of the car.

20 Q. And then y'all took off?

21 A. Yeah, we took off.

22 Q. All right, but -- and like you told the police in
23 that one statement, you didn't jump out of the car and run
24 back to Miles, did you?

25 A. No, I never jump out of the car. I was in the car

1 until the time we got to Bridget Allen house and
2 everything like that, but like I say in that interview,
3 yes, I did admit to lying, because I was ---

4 Q. You admit now to lying. You didn't admit then
5 necessarily, but you admit now that all that was a lie?

6 A. Yeah; yeah, but I'm saying all this right here, ---

7 Q. Now this is true?

8 A. --- all this is behind me.

9 Q. All right. In fact, -- all right, you can go have
10 a seat back up there.

11 A. (Witness returns to the witness stand.)

12 MR. BELLAMY: The Court's indulgence for just a
13 second, Judge.

14 Q. You had over Five Hundred Dollars in cash when you
15 went to talk to the police about this supposed assault,
16 didn't you?

17 A. I had some money on me, yes.

18 Q. Over Five Hundred Dollars in cash?

19 A. I can't remember exactly. I know it was like a few
20 hundred dollars.

21 Q. And you were staying at the Sea Mist Resort at the
22 time?

23 A. Uh-huh (affirmative response).

24 Q. And at the time supposedly this happened, you were
25 renting the penthouse at the Best Western and had been

1 there for two weeks, hadn't you?

2 A. Yeah, I had been there for two weeks.

3 Q. Did you ever write any letters to your wife -- or
4 she's not your wife. She's identified as wife here on
5 your phone, but Felicia, while in jail?

6 A. Yeah, I wrote a letter to Felicia, yes.

7 Q. Did you ever talk about in those letters about
8 money and how you needed money and stuff like that ---

9 A. How I needed money?

10 Q. --- during this time period?

11 A. If I say anything about needing money, it's about
12 me probably getting a lawyer, you know what I'm saying,
13 paying the lawyer and probably for bond purpose.

14 Q. Okay, and you testified on direct that every --
15 that until the moment that Mr. Beaty comes down there, and
16 you say you called him to come down there, until he got
17 there, you had no plan to do anything wrong other than a
18 dope deal, and that's wrong, but other than that, you
19 didn't have any plans to do anything wrong, did you?

20 A. No, sir.

21 Q. This is one hundred percent Mr. Beaty's idea to
22 switch the cars, Mr. Beaty's idea to put the child over
23 here, Mr. Beaty's idea to do this? Everything was Mr.
24 Beaty? Nothing was ---

25 A. No, it wasn't his idea to put the child here. It

1 was Punch idea to let -- you know what I'm saying, to put
2 his child there, but according to all the robbery and all
3 that, it was ---

4 Q. That's all Tyronne Beaty?

5 A. Tyronne Beaty, yeah.

6 Q. Switching cars, ---

7 A. Switching, yeah.

8 Q. --- all the talking, every bit of it, and before he
9 got there, there wasn't any talk about that, right?

10 A. Excuse me?

11 Q. That before he got there, there wasn't no talk
12 about that, was there?

13 A. Huh-uh (negative response).

14 Q. And -- and Mr. Beaty done all this?

15 A. Yes.

16 Q. Okay, and what -- let me ask you this: Your
17 testimony is that -- that he convinced you to do this, ---

18 A. Uh-huh (affirmative response).

19 Q. --- right?

20 A. Yes.

21 Q. And what were you going to get?

22 A. He -- he -- he was the man behind all this.

23 Whatever he willing to give me at that moment, you know

24 what I'm saying, it was on him. There wasn't no amount

25 discussed. The only thing he say, that he would look out

1 for me and my cousin, Antonio. There was no amount.

2 Q. You were going to get you something; you wanted
3 money, didn't you?

4 A. I'm saying, that was the whole -- that was his
5 idea, to look out, you know what I'm saying, because I'm
6 putting him on to a lick, in someone's words, but I never
7 got no money, none of us. At least me and my cousin,
8 Antonio, never saw no money.

9 Q. Who took Mr. Beaty away from Bridget's, do you
10 know?

11 A. My cousin, Antonio Smalls.

12 Q. How did Mr. Beaty get to -- your testimony, how did
13 he get to you, and I guess it was Murrells Inlet?

14 A. Yeah, Murrells Inlet. He was in ---

15 Q. The Hot Road, is that what they call it?

16 A. Yeah.

17 Q. How did he get there?

18 A. He was inside a -- I think it was -- not a dark
19 gray, a black Jeep, Chrysler Je- -- a Cherokee Jeep.

20 Q. Do you know who was driving it?

21 A. No, I don't know. I know it was a female driving,
22 but I don't know who was driving it.

23 MR. BELLAMY: The Court's indulgence for just one
24 second.

25 THE COURT: Yes, sir.

1 MR. BELLAMY: I don't have anything further, Mr.
2 Smalls.

3 THE COURT: Redirect.

4 MR. BELLAMY: The Solicitor may have some redirect.

5 MS. VON HERRMANN: Thank you, Your Honor.

6 REDIRECT EXAMINATION BY MS. VON HERRMANN:

7 Q. Mr. Smalls, you're no saint, are you?

8 A. Ma'am?

9 Q. You're no saint, are you?

10 A. No, ma'am.

11 Q. And you don't claim to be?

12 A. No, ma'am.

13 Q. You're a drug dealer?

14 A. Yes, I am a drug dealer.

15 Q. And when y'all set this deal up, you expected to
16 get some money?

17 A. Uh-huh (affirmative response).

18 Q. That's the way ---

19 A. Yes, ma'am; yes, ma'am.

20 Q. --- it works. When you set up a lick -- what's a
21 lick?

22 A. A lick is like a robbery or anything like that, a
23 robbery.

24 Q. When you set up a lick, you get paid, right?

25 A. Yes, ma'am.

1 Q. All right. Let's go back, and let's talk about
2 these five hours of tape.

3 A. Yes, ma'am.

4 Q. You admitted to knowing Miles Slay?

5 A. Yes, ma'am.

6 Q. You admitted that he made a phone call to you?

7 A. Yes, ma'am.

8 Q. You admitted that you went to Foxtrot?

9 A. Yes, ma'am.

10 Q. You admitted who you saw when you went to Foxtrot?

11 A. Yes, ma'am.

12 Q. You said you went to the Wilco?

13 A. Yes, ma'am.

14 Q. You admitted riding in the car with Miles Slay?

15 A. Yes, ma'am.

16 Q. You admitted you went to Butler Road?

17 A. Yes, ma'am.

18 Q. You said you followed some other people?

19 A. Yes, ma'am.

20 Q. You said a person named Jamaica was going to make a
21 deal with Miles?

22 A. Yes, ma'am.

23 Q. Who is Jamaica?

24 A. The Jamaica that I was speaking about really was a
25 made-up image. The reason why I said Jamaica, because

1 when he was speaking in a Jamaican tone when I went and
2 meet Miles, it give me an idea to say it was a Jamaican,
3 to say it like I say it to save him, because I didn't want
4 to say Shady or Tyronne Beaty, so I just say it was a
5 Jamaican.

6 Q. But you did say Shady, right?

7 A. Yeah. Yes, ma'am.

8 Q. All right. Who is Shady?

9 A. Tyronne Beaty.

10 Q. So you told the police that y'all set up a deal
11 which was between Shady and Miles?

12 A. Yes. That ---

13 Q. You told them that, right?

14 A. Yes, ma'am.

15 Q. You told them you saw Miles with Daniel and
16 Dominique?

17 A. Yes, ma'am.

18 Q. You told the police that the victim was shot by
19 Jamaica or Shady?

20 A. Yes, ma'am.

21 MR. BELLAMY: Your Honor, I would object as to
22 leading at this point.

23 THE COURT: I'll -- I'm going to allow the questions
24 as currently posed. Thank you.

25 You may continue.

- 1 Q. You told the police how the money was packaged?
- 2 A. Yes, ma'am.
- 3 Q. You told them it was in a white, plastic bag?
- 4 A. Yes, ma'am.
- 5 Q. You told the police you called Daniel?
- 6 A. Yes, ma'am.
- 7 Q. You drew the police a diagram?
- 8 A. Yes, ma'am.
- 9 Q. You showed them where you were?
- 10 A. Yes, ma'am.
- 11 Q. You talked about the incident location?
- 12 A. Yes, ma'am.
- 13 Q. You described the incident location?
- 14 A. Yes, ma'am.
- 15 Q. You described both vehicles?
- 16 A. Yes, ma'am.
- 17 Q. You described your position?
- 18 A. Yes, ma'am.
- 19 Q. You told the police where you went after you left
- 20 there?
- 21 A. Yes, ma'am.
- 22 Q. You told them you were at the Sea Mist?
- 23 A. Yes, ma'am.
- 24 Q. You called the police?
- 25 A. Yes.

1 Q. And you told them that you were willing to come in
2 and speak with them?

3 A. Yes, ma'am.

4 Q. And you did come in and speak with them?

5 A. Yes, ma'am.

6 MS. VON HERRMANN: I have no further questions.

7 THE COURT: Questions on those questions posed by
8 the Solicitor?

9 RECROSS EXAMINATION BY MR. BELLAMY:

10 Q. You didn't tell them you went back to Bridget's
11 house after the incident, did you? Did you?

12 A. That I went back to Bridget house after ---

13 Q. After the incident?

14 A. Right after the incident.

15 Q. In the statements, ---

16 A. Right after the incident -- right after the
17 incident, we went to Bridget house.

18 Q. You've got to listen to me. She's asking about
19 these five hours of statements.

20 A. Okay.

21 Q. In these five hours of statement, you don't tell
22 them you went to Bridget's house before, during, or after,
23 do you?

24 A. I remember telling them that I went ---

25 Q. Just yes or no, and you can explain.

1 A. Yes, I remember telling them I went back to where
2 -- I guess I told them I went back to Bridget house and
3 from Bridget, we went to the Sea Mi- -- we went back to
4 the motel room.

5 Q. You never tell them that you went to Bridget's
6 house before or after no statements, Mr. Smalls.

7 A. It was five years ago.

8 Q. And you tell them in those statements that you left
9 the scene on foot and never went with those people is what
10 you tell them, didn't you?

11 A. Yes, in those right there, yeah.

12 Q. That's right, and that's what she's asking you
13 about.

14 A. Which I thought she mean like prior to that, other
15 than that right there.

16 Q. And you make up a story in there about going to a
17 trailer park, too, don't you?

18 A. Yes, I did.

19 Q. And you never tell them about riding around and
20 smoking dope and drinking beer, or anything like that, or
21 going to Food Lion in there either, do you?

22 A. Huh-uh (negative response).

23 Q. Okay, so the truth just ain't in there?

24 A. No, it's ---

25 Q. You tell what truth you have to tell when they

1 confront you with phone messages and everything else, ---

2 A. Yeah.

3 Q. --- don't you?

4 A. Yeah, and that's when I review everything else.

5 Q. And the only time you've ever told this story that
6 you've told here today is today, and you want to talk
7 about bits, and pieces, and maybe parts, but the whole
8 story you've told here today has never been told to a
9 police officer in five years?

10 A. Well, according -- well, to this right here, you
11 know what I'm saying, in bits and pieces, I mean if you --
12 if you looking as to me not telling the truth in the bits
13 and pieces, but later, after this right here, I did told
14 them, but I didn't told them everything from A to Z. I
15 didn't told them the way I break it down right now, you
16 know what I'm saying.

17 I didn't told them, but according to what my cousin,
18 Antonio, told them, later that he came and asked me, then
19 I told them yes, we was at the Food Lion, yes; he bought
20 that from Food Lion, yes. He went and he throw the bullet
21 out the highway because one of the detectives was supposed
22 to come back and get me that Friday. He said, "Well, you
23 sure them bullets out there?" I say, "Yes, them bullets
24 out there." He supposed to come and get me that Friday,
25 so yes, I did told him the truth after that right there,

1 so ---

2 Q. And that officer would be able to come in here and
3 confirm that, that you told him all this stuff?

4 A. The big -- it -- it -- it was the big guy that was
5 with him.

6 Q. Todd Cox?

7 A. The big guy. He ---

8 Q. We'll bring him in here.

9 A. I asked him, because I told him about the bullets
10 and all. He supposed to come and get me that Friday.

11 Q. That's good. That's good.

12 A. Yeah, because he said, "Well, I'll be back Friday."

13 Q. And he's the one you told it to?

14 A. Yeah. He said, "I will be" -- he said, "I will be
15 back Friday to come and get you if you would show me where
16 those bullets was at," but he never came back.

17 Q. Okay.

18 THE COURT: Anything else, Mr. Bellamy?

19 MR. BELLAMY: No, sir.

20 THE COURT: Anything else, Solicitor?

21 MS. VON HERRMANN: No, Your Honor.

22 THE COURT: All right. You may step down, Mr.

23 Smalls.

24 MR. SMALLS: Yes, sir.

25 MS. VON HERRMANN: Your Honor, we do have the -- the

1 employed.

2 A. I'm employed with the Horry County Police
3 Department.

4 Q. And how long have you been with the Horry County
5 Police Department?

6 A. It will be eleven years next month.

7 Q. And were you -- were you working on October the --
8 October the 21st of 2005?

9 A. I was.

10 Q. And what was your position at that time?

11 A. I was a corporal.

12 Q. And did you respond to an incident on Butler Road?

13 A. I did.

14 Q. And what did you -- do you know what time you
15 arrived there?

16 A. Approximately twenty minutes after one in the
17 afternoon.

18 Q. Tell the jury, if you will, as a matter of
19 procedure, what happens when a 911 call comes in how that
20 -- how that gets to the Police Department.

21 A. When a 911 call is called in to a dispatch center,
22 the dispatchers send us to the call via radio. I was in a
23 vehicle, received a call, and proceeded to it.

24 Q. So you have some idea of the nature of the scene
25 that you were arriving to, is that correct?

1 A. Correct.

2 Q. All right, and I'm going to show you some
3 photographs, State's Exhibit 7, and ask if you can
4 identify that for me?

5 A. I can. It's a picture from the scene on that day.

6 Q. Is that a fair and accurate representation?

7 A. Yes, ma'am.

8 Q. All right. Let me show you also State's Exhibit 8.
9 Is that also a fair and accurate representation of that
10 scene?

11 A. It is.

12 Q. And also, State's Exhibit 9, what about that?

13 A. It's an accurate picture, yes.

14 Q. State's Exhibit Number 10?

15 A. It is.

16 Q. State's Number 11?

17 A. Yes, ma'am, it is.

18 Q. And State's Number 12?

19 A. Yes.

20 MS. VON HERRMANN: I would move to have those
21 admitted into evidence, Your Honor.

22 THE COURT: Any objection?

23 MR. BELLAMY: I don't think so, Judge. I just want
24 to look at them real quick.

25 THE COURT: All right, sir.

1 MR. BELLAMY: (Reviews photographs.) No, sir, Your
2 Honor.

3 THE COURT: Thank you.

4 SIX (6) SMALL PHOTOGRAPHS OF INCIDENT SCENE
5 ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
6 7, 8, 9, 10, 11, AND 12.

7 Q. Tell me what you observed when you first arrived on
8 this scene.

9 A. I observed a blue-in-color SUV parked next to a
10 metal building on Butler Road. The window -- or the door
11 was open on the driver's side, and I observed a male
12 inside the vehicle that appeared to be deceased.

13 Q. Were there any other people in that -- in the
14 immediate vicinity of that vehicle at the time you
15 arrived?

16 A. Not in the immediate area, no, ma'am.

17 Q. Bystanders, perhaps, in the perimeter of the area?

18 A. Yes, but not in the immediate area.

19 Q. And so what did you do to secure the area?

20 A. I took yellow crime scene tape that is issued to us
21 at the Police Department and secured the area by creating
22 a wide perimeter.

23 MS. VON HERRMANN: And I would ask that he be
24 allowed to come down and publish these photographs to the
25 jury.

1 calls Neil Hill.

2 THE COURT: All right. Come up here to the Clerk,
3 please.

4 NEIL HILL, being first duly sworn, testifies as
5 follows:

6 THE CLERK: Please be seated. State your full name
7 and spell your last name.

8 MR. HILL: Spell my last?

9 THE CLERK: Yes.

10 MR. HILL: My name is Neil Hill, Neil Nehi Hill.
11 Last name, H-I-L-L.

12 DIRECT EXAMINATION BY MS. VON HERRMANN:

13 Q. Good morning, Mr. Hill; how are you?

14 A. All right.

15 Q. A little bit nervous today?

16 A. Yes, ma'am.

17 Q. Tell me where you live, please.

18 A. I live in Conway.

19 Q. And how long have you lived in Conway?

20 A. Basically since I've been living down here, between
21 Conway and Surfside.

22 Q. How long has that been?

23 A. About ten years.

24 Q. Now, you've -- you've got a criminal record, is
25 that correct?

1 A. Yes, ma'am.

2 Q. You've got a possession with intent to distribute
3 marijuana?

4 A. Yes.

5 Q. And a failure to stop for a blue light, ---

6 A. Yes.

7 Q. --- is that correct? All right. Let me direct
8 your attention to October the 20th of 2005. Do you
9 remember that day?

10 A. Yes.

11 Q. And where did you wake up that morning?

12 A. At home.

13 Q. Where -- and who was there with you at that house?

14 A. Me -- my baby mother, and my son, and my own step-
15 daughter.

16 Q. At some point during the day, did you speak with
17 Tyronne Beaty?

18 A. Yes, ma'am.

19 Q. And let's talk a little bit about Tyronne Beaty.
20 Tyronne Beaty is your cousin?

21 A. Yes, ma'am.

22 Q. How are you all -- how are you cousins?

23 A. My dad and his dad are brothers.

24 Q. And y'all are close?

25 A. Yes.

1 Q. Your families are close?

2 A. Yes.

3 Q. And you don't really want to be here today, do you?

4 A. No, ma'am.

5 Q. All right. When you talked with Tyronne that
6 morning, what was the gist of that conversation?

7 A. It wasn't that morning. It was kind of like in the
8 afternoon, ---

9 Q. Okay.

10 A. --- you know, but he had call me to ask me to ride
11 with him to Murrells Inlet because Corey Smalls had owed
12 him some money. He owed him a Thousand Dollars and he was
13 going to ask him about his money, and if he didn't have
14 his money, there was going to be a altercation between him
15 and Corey, and he asked me to come along with him in case
16 Antonio jumped in.

17 Q. Okay, and so you -- you were sort of there for
18 protection, is that correct?

19 A. Yes, ma'am.

20 Q. All right, so did you drive down to Murrells Inlet?

21 A. Yes, ma'am.

22 Q. And when you got down there, where did you go?

23 A. We went to the -- we went -- first he stopped at
24 his mother house, seen his mother, and then we went on a
25 Hot Road.

1 Q. On a Hot Road?

2 A. Yes, ma'am.

3 Q. Is that where Corey Smalls lived?

4 A. Yes, ma'am.

5 Q. All right. Who was there at the Hot Road when you
6 arrived?

7 A. Corey and Antonio was pulling out of the front
8 yard..

9 Q. They were?

10 A. Yes, ma'am.

11 Q. And what were they driving?

12 A. A gold Maxima.

13 Q. Let me show you State's Exhibit Number 2. Is that
14 the gold Maxima they were driving?

15 A. It look just like it.

16 Q. And who was driving that vehicle?

17 A. Antonio.

18 Q. Where was Corey seated?

19 A. At the time when we first got to Murrell's Inlet,
20 Corey -- Corey and Antonio was only in the car, so Corey
21 was sitting in the passenger side. Antonio was driving.

22 Q. Okay, and who drove you and Corey to that location?

23 A. I didn't ---

24 Q. Excuse me. Who drove you and Tyronne to that
25 location?

1 A. His girlfriend.

2 Q. What was she driving?

3 A. A Cherokee.

4 Q. And did she just drop you off there?

5 A. Yes, ma'am.

6 Q. And she went on?

7 A. Yes, ma'am.

8 Q. Did you get into the vehicle with Corey and
9 Antonio?

10 A. Yes, ma'am.

11 Q. Where were you seated?

12 A. I was seated -- at first I was seated behind the
13 driver in the back seat.

14 Q. All right. Let's talk about Corey and Antonio.
15 How long have you known Corey?

16 A. I mean, I really -- I really haven't known Corey,
17 you know. I really never known Corey. I just always
18 heard about Corey.

19 Q. Y'all aren't good friends or buddies?

20 A. No, ma'am. I don't even associate with Corey. How
21 about Antonio, are y'all pretty tight or not?

22 A. No, ma'am; the same -- the same thing with ---

23 Q. With Antonio?

24 A. Yes, ma'am.

25 Q. So once you get in the car, what is the discussion?

1 I don't want you to tell me anything that Corey said.

2 What did Tyronne say when he got into the car?

3 A. Tyronne basically didn't say nothing because before
4 we got in the car, he ask Corey about his money, and Corey
5 was like he about to go take care of something. After he
6 take care of what he got to take care of, he's going to
7 buy something from him and also pay him, so he was like we
8 can ride with him if we would like, ---

9 Q. Okay.

10 A. --- and so we got in the car and rode with him.

11 Q. All right, and where did you go from there?

12 A. From there, we was riding around, and at some point
13 we had went by Food Lion.

14 Q. All right. Now, you all had a discussion prior to
15 going to Food Lion about ripping off this person who had
16 the money, correct?

17 A. No, ma'am, because when he got in the car --
18 because when they first got in the car, after we got in
19 the car, we was smoking and drinking.

20 Q. Did they have that discussion before they got in
21 the car?

22 A. I never heard no discussion about they ripping
23 nobody off.

24 Q. You never heard the discussion about them ripping
25 anybody off?

1 A. No, ma'am.

2 Q. All right. What did you go to Food Lion for?

3 A. He had went to Food Lion because the window in the
4 car was broke, and I know he went into Food Lion to
5 purchase tape for the window, and he also, when he came
6 back out, he had flour and sandwich bags.

7 Q. All right, and what -- who had the flour and
8 sandwich bags?

9 A. Tyronne.

10 Q. All right, and what did he do with the flour and
11 the sandwich bags?

12 A. I seen him bend over. He was bend over like this
13 (indicating), like he was bagging the flour up.

14 Q. All right. Was he -- what was he putting it into?

15 A. A sandwich bag.

16 Q. All right, and how long was he -- was he -- was it
17 just Tyronne that went into that Food Lion ---

18 A. Yes, ma'am.

19 Q. --- or did anybody else go in there?

20 A. Yes, ma'am, just Tyronne.

21 Q. Where did y'all go from there?

22 A. From there, we was still riding around, and the
23 next thing I know, Antonio was like he had to go pick his
24 daughter up from daycare.

25 Q. Where was that daycare located?

1 A. Socastee.

2 Q. And did y'all go to the daycare?

3 A. Yes, ma'am.

4 Q. And did you pick his daughter up?

5 A. Yes, ma'am.

6 Q. While you were there at the daycare, did either
7 Antonio or Tyronne get out of the vehicle?

8 A. Antonio got out.

9 Q. And what did he do?

10 A. He got out to go get his daughter, also throw some
11 trash away inside the daycare.

12 Q. And when he threw the trash away, did he throw
13 something else away along with it?

14 A. Yes, ma'am.

15 Q. What was that?

16 A. Some cocaine.

17 Q. All right. Whose cocaine was that?

18 A. Tyronne.

19 Q. Had you seen that before?

20 A. No, ma'am.

21 Q. You had never seen that cocaine?

22 A. No, ma'am.

23 Q. How did you know that it had been thrown away?

24 A. Because he was like -- Tyronne was like, "I can't
25 -- I can't find -- I can't find my stuff," and he was

1 like, "What you looking for?" He was like, "I can't find
2 my -- my coke," and was looking for it or what not. He
3 told Antonio to go look and see if he threw it away.
4 Antonio got back out and went in.

5 Q. And did he find it?

6 A. Yes, ma'am.

7 Q. All right, so tell me what then was left in the
8 car. The cocaine was back in the vehicle, right?

9 A. Yes, ma'am.

10 Q. All right. Where was that located? Where was the
11 cocaine? Did Tyronne have that in his hands, or was it on
12 the floor, or where was that located?

13 A. He probably put it in his pocket.

14 Q. But you didn't see him put it in his pocket?

15 A. No, ma'am.

16 Q. All right. What about the flour?

17 A. It probably was still between his legs in the bag.

18 Q. All right. Did you look at it?

19 A. No, ma'am, because I was leaning to the left
20 because I was -- I was about asleep because I was
21 intoxicated. We was drinking 211's, which was the beer,
22 and we was also smoking marijuana.

23 Q. You were -- and where were you seated again?

24 A. I was seated behind the driver.

25 Q. And what did y'all do after you left the -- after

1 you left the daycare?

2 A. Antonio went and dropped his daughter off at
3 Bridget house.

4 Q. And what did -- what did y'all do next?

5 A. After that, I had dozed off. I remember -- I
6 remember his daughter getting out at Bridget house, and
7 once I had dozed off, I remember being woke up again at
8 the soccer field.

9 Q. You woke up at the soccer field?

10 A. Yes, ma'am.

11 Q. Down ---

12 A. That's where they had the Burgess -- the Burgess
13 Bike Show.

14 Q. All right. Is that on Butler Road?

15 A. I don't know the name of the road exactly.

16 Q. All right. Well, we'll just take a look at this
17 map. This is State's Exhibit Number 1 I'm going to show
18 you. Let me just get you oriented here a little bit.
19 This is the Wilco. Are you familiar with the Wilco?

20 A. I think that's right by Foxtrot.

21 Q. Yes, it is, and how about this, what is that?

22 A. Food Lion.

23 Q. All right. Is that the Food Lion ---

24 THE COURT: You need to speak up, sir.

25 A. Yeah, that's Food Lion.

1 Q. That's the Food Lion that you went to?

2 A. Yes, ma'am.

3 Q. All right, and how about this spot right here,
4 would that be Bridget Allen's residence?

5 A. Yes, ma'am.

6 Q. All right, so you're at Bridget's and then you fall
7 asleep?

8 A. Yes, ma'am.

9 Q. And when you ---

10 A. I was on the way -- I was on the way to sleep
11 between going to the daycare and going to Bridget house.

12 Q. Okay. When you got to Bridget's house, did you
13 wake up for a minute?

14 A. No. I looked -- I looked over -- I looked up and
15 looked over and I seen Antonio's daughter getting out of
16 the car. His daughter was getting out of the car, and I
17 seen -- I seen Bridget face, so I remember seeing her
18 face, and I just turned my head back the other way.

19 Q. All right, so you just went back to sleep?

20 A. Yes, ma'am.

21 Q. All right, and then when you woke up, where were
22 you again?

23 A. At the soccer field.

24 Q. Is that off of Enterprise Road?

25 A. Yes, ma'am.

1 Q. All right. This is Enterprise Road right here that
2 I'm indicating on this map. Can you show the jury,
3 please, where that soccer field would be?

4 A. Right here (indicating).

5 Q. That would be right there on Butler Road?

6 A. Yes, ma'am.

7 Q. And when you woke up at the soccer field, what
8 happened next?

9 A. Tyronne woke me up and ask me if I need to use the
10 bathroom. I told him yeah. Me, and him, and Antonio got
11 out and we walked into the bathroom area. I went in and
12 used the bathroom, and as we was coming back out, Tyronne
13 told me to sit in the front seat, so I sat in the front
14 seat, and me and Antonio was still in the car, and Antonio
15 started talking to him about somebody owe him some money,
16 and he asked him what do he think he should do about it,
17 you know, so eventually, like I was telling you, I don't
18 really associate with Antonio, though, so I lean back over
19 and I was just sitting there, and I doze back off, and it
20 seem like fifteen minutes later I heard gunshots go off.

21 Q. All right. Well, were you -- when you heard the
22 gunshots go off, did that wake you up?

23 A. Yes, ma'am.

24 Q. All right, and when you woke up, were you still at
25 the soccer field or were you somewhere else?

1 A. I can't remember. It was dark, but I don't think
2 we was at the soccer field.

3 Q. All right. You think you were somewhere else?

4 A. Yes, ma'am.

5 Q. All right. Was there another vehicle there?

6 A. I never remember no other vehicle.

7 Q. You didn't remember another vehicle?

8 A. I didn't see no vehicle because it was dark.

9 Q. You heard some shots?

10 A. Yes, ma'am.

11 Q. And what did you do when you heard those shots?

12 A. I jumped up and I seen Tyronne jump in the car and
13 then I seen Corey jump in the car, and I was like, "What's
14 going on? What's going on?" and Corey was like, "To the
15 death, to the death," and, I mean, "Ain't nothing. Ain't
16 nothing." I'm like, "What's going on?" Corey like, "It
17 ain't nothing. It ain't nothing. If I find out" ---

18 Q. And then y'all just drove off?

19 A. --- "If I find out -- if I find out -- if I find
20 out you seen something or know something, I'm going to
21 come see you."

22 Q. And then y'all just drove off?

23 A. Yes, ma'am.

24 Q. All right. Let me talk to you about a statement.

25 Do you remember giving -- let me just ask you -- actually,

1 let me ask you a couple of other things first. When you
2 got -- when you drove off ---

3 A. Yes, ma'am.

4 Q. --- from Butler Road, where did y'all go then?

5 A. From Butler Road, we went to Bridget house.

6 Q. And when ---

7 A. When they -- when they pulled up at Bridget house,
8 I seen Antonio car parked in the back yard.

9 Q. What kind of car was that?

10 A. Like it was a gray Lincoln.

11 Q. Let's go back. How many shots did you hear?

12 A. I think like three or four.

13 Q. And then did you hear some more shots after that?

14 A. No, ma'am.

15 Q. All right, and y'all go to Bridget's house, and who
16 does what?

17 A. Corey was like, "I'm got to go take the car back."

18 Q. What car would that have been?

19 A. The gold car.

20 Q. All right, and then what did you do?

21 A. Me and Tyronne was pushing the issue for Antonio to
22 drop us off, ---

23 Q. All right.

24 A. --- which -- which he did.

25 Q. All right, and where did he drop you off?

1 A. He drop -- he dropped us off between Southbridge
2 and the church right there on Glenn's Bay Road, ---

3 Q. Okay.

4 A. --- and I jumped out of the car and ran through the
5 -- through the path and ran in the house.

6 Q. All right. Did you see any money?

7 A. No, ma'am.

8 Q. And did you hear Tyronne say anything about any
9 money?

10 A. No, ma'am.

11 Q. All right.

12 A. I heard Tyronne say -- I heard Ty- -- I heard -- I
13 heard Corey call Tyronne when we was getting out of the
14 car, and Tyronne was like, "I'm not f-ing with you. I'm
15 not f-ing with you. You got me -- you got me caught up in
16 this B.S. I'm not f-ing with you," and, I mean ---

17 Q. All right. Let me ask you this: Did you and your
18 lawyer, Mr. Monckton, ---

19 A. Uh-huh (affirmative response).

20 Q. --- speak with me about this case?

21 A. Yes, ma'am.

22 Q. And did we discuss the facts of this case?

23 A. Yes, ma'am..

24 Q. In detail?

25 A. Yes, ma'am.

1 Q. And were you truthful at that time?

2 A. Yes, ma'am.

3 Q. All right, and did we enter into the proffer
4 agreement?

5 A. Yes, ma'am.

6 Q. And by the terms of the proffer agreement, you
7 agreed to testify truthfully today in court?

8 A. Yes, ma'am.

9 Q. And in the same way that you told me and your
10 lawyer the story previously?

11 A. Yes, ma'am.

12 Q. All right.

13 MS. VON HERRMANN: Let me get this marked.

14 (State's Exhibit Number 42 was previously marked.)

15 Q. I'm going to show you State's Exhibit 42. You tell
16 me what that is. Is that the proffer agreement that we
17 entered into?

18 A. Yes, ma'am.

19 Q. Is that your signature on the back?

20 A. Yes, ma'am.

21 MS. VON HERRMANN: I would move in State's Exhibit
22 42.

23 THE COURT: Any objection?

24 MR. BELLAMY: No, sir, Your Honor.

25 THE COURT: It's in evidence without objection.

1 PROFFER AGREEMENT OF NEIL HILL ADMITTED INTO EVIDENCE
2 AS STATE'S EXHIBIT NUMBER 42.

3 Q. And, Mr. Hill, you have not testified in conformity
4 with your earlier statement, did you?

5 A. How? You saying did I testify?

6 Q. Listen to me. Did you tell me before ---

7 MR. BELLAMY: Your Honor, I would object. She's
8 making herself a witness in this case.

9 Q. Did you tell ---

10 THE COURT: You need to rephrase your question,
11 Solicitor.

12 Q. Did you tell the police earlier that you went to
13 Corey's house?

14 A. Yes, ma'am.

15 Q. That Tyronne had a conversation with Corey and that
16 they talked about ---

17 MR. BELLAMY: Your Honor, may -- may we approach?

18 THE COURT: Yes, sir.

19 (A Bench conference was held in the presence, but out
20 of the hearing, of the jury.)

21 THE COURT: You can continue, Solicitor.

22 MS. VON HERRMANN: Thank you, Your Honor.

23 Q. Did you tell me at that time that when you were in
24 the car with Tyronne, Neil -- I mean, Tyronne, Corey, and
25 Antonio, that y'all discussed the drug rip?

1 **A.** No, I did not.

2 **Q.** Did you tell the police, and did you tell others,
3 including your attorney, that Tyronne showed Corey some
4 cocaine that was in a plastic bag when y'all were driving
5 around?

6 **A.** I said did he show him some cocaine?

7 **THE COURT:** Let's ---

8 **A.** I never said that he show him cocaine.

9 **THE COURT:** I'm sorry, sir. Stop. Stop. Let's
10 stop for a second.

11 Ladies and gentlemen, go to the jury room for a
12 second, please, ma'am.

13 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF**
14 **THE JURY.)**

15 **THE COURT:** And before we went any further, Mr.
16 Monckton, you're present in the courtroom, is that
17 correct?

18 **MR. MONCKTON:** That's correct, Your Honor.

19 **THE COURT:** And you are counsel for Mr. Neil Hill,
20 is that correct?

21 **MR. MONCKTON:** That's correct, Your Honor.

22 **THE COURT:** All right. Do you want to take any
23 opportunity at this point in time to talk to your client
24 about the proceedings at this point in time?

25 **MR. MONCKTON:** Your Honor, just for a second, if I

1 may.

2 THE COURT: And advise him as to anything you might
3 deem proper.

4 We'll take a short break for about five minutes.

5 Thank you very much.

6 (OFF THE RECORD)

7 ON THE RECORD

8 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
9 THE JURY.)

10 THE COURT: All right, you may be seated.

11 MR. MONCKTON: We're ready, Your Honor.

12 THE COURT: All right, very good. Is the State
13 ready?

14 MS. VON HERRMANN: Yes, sir.

15 THE COURT: Defense?

16 MR. BELLAMY: Yes, sir.

17 THE COURT: Ask the jury to come in, please.

18 (THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE
19 JURY.)

20 THE COURT: All right, Solicitor, you may continue.

21 Q. Mr. Hill, you knew this was going to be a drug rip?

22 A. I figured out that it was going to be a drug rip
23 when I seen him bagging up the flour.

24 Q. Well, you knew -- you knew what was going on?

25 MR. BELLAMY: Your Honor, I would ask that she ask

1 -- not ask leading questions.

2 THE COURT: Rephrase that last question, Solicitor.

3 Q. Did you know what was going to happen?

4 A. Yes, ma'am. When I seen him bagging up the flour,
5 I figured they was going to rip somebody off.

6 Q. And whose suggestion was it that y'all go to Food
7 Lion?

8 A. Tyronne.

9 Q. And there was some discussion about what was going
10 to happen when this drug rip went down, wasn't there?

11 A. What do you mean by what was going to happen?

12 Q. Did Tyronne tell you what his role in the drug rip
13 was supposed to be?

14 A. I mean, he never told me nothing about far as what
15 was going on, like what he was going to do or anything
16 like that now.

17 Q. Who was going to hand the cocaine off to the -- to
18 the victim?

19 A. I think Ty- -- I think Tyronne.

20 Q. Did Tyronne tell you that?

21 A. Yes, ma'am.

22 Q. So Tyronne told you he was going to hand the drugs
23 off?

24 A. Yes, ma'am.

25 Q. Did you see the money?

1 A. No, ma'am.

2 Q. Did you hear Tyronne discussing the money?

3 A. I heard him and Corey arguing over some money.

4 Q. Did Tyronne say that he was going to hold the
5 money?

6 A. I can't remember him saying anything about him
7 holding the money. I know that him and Corey was having a
8 argument on the phone about money.

9 Q. And what about holding the money for bail, did you
10 hear a conversation about that?

11 A. I think I heard Tyronne tell Corey he better hold
12 it for bail.

13 Q. Tyronne told Corey?

14 A. Yes, ma'am.

15 Q. To hold the money for bail?

16 A. I think he told Corey he better hold the money for
17 bail, like Corey better hold the money for bail basically.

18 Q. All right, so if you just had said in your taped
19 interview earlier that Tyronne said that he was going to
20 hold the money for bail ---

21 A. I said that Tyronne said that he was going to hold
22 the money for bail? When did I say that?

23 Q. On your taped interview, Mr. Hill.

24 A. I don't remember that, ma'am.

25 MR. BELLAMY: Your Honor, may we approach?

1 THE COURT: Yes, sir.

2 (A Bench conference was held in the presence, but out
3 of the hearing, of the jury.)

4 Q. I show you this video at the Food Lion.

5 A. Yes, ma'am.

6 Q. Have you seen this before?

7 A. I -- yes, ma'am, I seen it.

8 MR. BELLAMY: Your Honor, may I?

9 THE COURT: Yes, sir, absolutely.

10 Q. Come on and step down here, if it's okay with the
11 Court, Mr. Hill. Let the jury be able to see as well, all
12 right? I'm going to play this video and you let me know
13 if you see somebody that you know from this video. (Food
14 Lion video is played.) Do you recognize that person? Who
15 is that?

16 A. Tyronne.

17 THE COURT: You need to speak up, sir. Nobody can
18 hear you.

19 Q. Speak up.

20 A. Tyronne.

21 THE COURT: Speak up, sir. Nobody can hear you.

22 Q. You said Tyronne?

23 A. Yes, ma'am.

24 Q. Where were you when this was going on?

25 A. In the car.

1 Q. Asleep?

2 A. No, ma'am.

3 Q. You were awake at that point?

4 A. (Nods in the affirmative.)

5 Q. All right, you can go have a seat. Again, Mr.

6 Hill, Tyronne is your cousin, right?

7 A. Yes, ma'am.

8 Q. And y'all are very close. You don't want to hurt
9 your cousin, do you?

10 A. Do I want to hurt him?

11 Q. You don't want to hurt your cousin, do you?

12 A. No, ma'am, but right now I'm in a position now I
13 have to look out for Neil. I can't think about nobody but
14 Neil right now.

15 Q. And you knew what was going on?

16 A. Yes, ma'am.

17 Q. And you know that someone was killed as a result of
18 this?

19 A. Yes, ma'am.

20 MS. VON HERRMANN: I don't have anything further.

21 THE COURT: Cross examination?

22 MR. BELLAMY: May it please the Court.

23 CROSS EXAMINATION BY MR. BELLAMY:

24 Q. As I understand it, Mr. Hill, the purpose of you
25 and Mr. Beaty going, according to your testimony, to

1 Murrells Inlet is because Corey Smalls -- and he goes by
2 C.O.?

3 A. Yes, sir.

4 Q. Owed Tyronne some money?

5 A. Yes, sir.

6 Q. And Corey said, "I'll get your money. I've got
7 something to work out, and I'm going to get it today for
8 you"?

9 A. Yes, sir.

10 Q. So when you went down there, there was no plan to
11 necessarily ride off with them? In fact, they were
12 already pulling out when y'all pulled up? They were
13 going?

14 A. Yes.

15 Q. And they said, "Y'all can ride with us if you want
16 to"?

17 A. Yes.

18 Q. And they already had the gold Maxima?

19 A. Yes.

20 Q. And this business -- did you overhear a discussion
21 between Corey where Mr. Beaty, over here, Corey and Mr.
22 Beaty, where he convinced him to do something, meaning
23 Tyronne was trying to convince Corey to go do something,
24 rob some people and stuff like that?

25 A. No, I never heard that. You said did I hear

1 Tyronne trying to convince Corey to go rob somebody?

2 Q. Yes.

3 A. No.

4 Q. Now, you indicated that you fell asleep?

5 A. Yes, sir.

6 Q. You woke up at the soccer fields out there off
7 Enterprise Road?

8 A. Yes.

9 Q. Okay, and you went to the restroom?

10 A. Yes.

11 Q. Then you fell asleep again?

12 A. I got back in the car, sat down, and dozed back
13 off.

14 Q. Okay, and then you heard three, maybe four shots?

15 A. Yes.

16 Q. And you -- was Corey -- when you heard those shots,
17 was he out of the car or in the car?

18 A. Corey was out of the car because when I jumped up,
19 I seen Tyronne jump in. Then I seen Corey jump in the
20 car.

21 Q. Who jumped in first?

22 A. Tyronne.

23 Q. Did you see anything in Tyronne's hand?

24 A. No.

25 Q. But you did see something in Corey's hands, didn't

1 you?

2 **A.** I couldn't really tell what it was.

3 **Q.** But he had something?

4 **A.** Yes.

5 **Q.** But not Tyronne?

6 **A.** No.

7 **Q.** Now, did you hear Corey on the phone -- okay, well,
8 let me back up. Y'all went to Bridget's house, correct?

9 **A.** After? Before or after the shooting?

10 **Q.** After.

11 **A.** After, yes, sir.

12 **Q.** And Corey -- you get out of the Maxima?

13 **A.** Yes, sir.

14 **Q.** Tyronne gets out of the Maxima?

15 **A.** Yes, sir.

16 **Q.** And Punch gets out of the -- Punch is Antonio?

17 **A.** Yes, sir.

18 **Q.** The three of y'all get out, and who takes the
19 Maxima?

20 **A.** Corey.

21 **Q.** And you go -- what do you do at that point? You
22 get in the Lincoln?

23 **A.** Yes. Before we got in the Lincoln, we was
24 basically pushing the issue for Antonio to drop us off
25 while Corey was gone.

1 Q. Okay. How long did it take for you to talk
2 Antonio/Punch into taking y'all?

3 A. A couple of seconds.

4 Q. A minute, maybe?

5 A. Yes.

6 Q. And then the three of y'all jump in the
7 Lincoln, ---

8 A. Yes.

9 Q. --- or get in the Lincoln, and go to the
10 Southbridge area off of Glenn's Bay?

11 A. Yes.

12 Q. And did you see in the time from when y'all pulled
13 off -- after you hear the shots, they jump in and you
14 pulled immediately off, correct?

15 A. Yes.

16 Q. Okay. Was Corey on the phone between that time,
17 which would be off Burgess Road ---

18 A. Are you talking about when -- after the shooting?

19 Q. Yes.

20 A. No, he wasn't.

21 Q. Okay, so ---

22 A. He wasn't on the phone.

23 Q. Let me show you State's 1. From Butler Road, ---

24 A. Uh-huh (affirmative response).

25 Q. --- okay, ---

1 A. They came around the back way. They didn't ---

2 Q. From Holmestown, y'all go down by the landing?

3 A. Right.

4 Q. And then back up by Myrtle Beach Golf & Yacht ---

5 A. And come back on 707, yes.

6 Q. And then come here, so y'all -- that would take ten
7 or fifteen minutes maybe total?

8 A. Yeah.

9 Q. Did Corey get on the phone during that time ---

10 A. No, he didn't.

11 Q. --- before y'all got out of the car?

12 A. No, he didn't.

13 Q. And let me talk to you briefly about what you said.
14 When Corey jumped back in the car, and you said this in
15 your previous statement which was video-taped, that he
16 said something about "Take this to the death"?

17 A. Yes.

18 Q. I think I know what that means, but would you
19 explain what that means to this jury.

20 A. It means that whatever happened, you're going to
21 take to the grave with you.

22 Q. That you can't tell nobody, and who said that,
23 Corey?

24 A. Yes.

25 Q. And he said -- did he say anything else, if he

1 heard that you had said anything, what he was going to do?

2 A. He said that he was going to come see me, meaning
3 he was going to come do harm to me.

4 Q. Were you afraid of him?

5 A. Yes.

6 Q. Now, you got dropped off at Southbridge, correct?

7 A. Yes.

8 Q. And you and Tyronne took a cab back to Conway,
9 correct?

10 A. Yes.

11 Q. And so you -- were you riding in the back seat with
12 him in the cab?

13 A. Yes.

14 Q. Did you see any money with him?

15 A. No, I did not.

16 Q. Did you see any gun on him?

17 A. No. We didn't even speak. When we got -- we got
18 -- we got off at my house -- when we got out at my house,
19 he just gave me -- gave me five and jumped in the truck
20 with his girlfriend and left, and I went in the house with
21 my family.

22 Q. Is that the same person who dropped y'all off?

23 A. Yes.

24 Q. So it's fair to say, Mr. Hill, there was never any
25 plan to kill anybody that you heard?

1 A. No.

2 Q. Never any plan to hurt anybody?

3 A. No.

4 Q. Never any plan to rob anybody, rob them and take a
5 gun and pull it on somebody, was there?

6 A. No.

7 Q. That was never a plan, was it?

8 A. No. I think they was just going to -- going to
9 beat him out of his money.

10 Q. It might have been to trick somebody maybe?

11 A. Yeah, might have been a better word to use.

12 Q. But there was never any plan or anybody even
13 thought that anything like this would happen?

14 MS. VON HERRMANN: Objection, Your Honor. I have a
15 matter of law that we need to take up.

16 THE COURT: All right. Y'all come and talk to me
17 first.

18 (A Bench conference was held in the presence, but out
19 of the hearing, of the jury.)

20 Q. Mr. Hill, to clarify now, did you hear when you
21 were present any conversation between my client and either
22 Antonio or Corey about robbing anybody?

23 A. No, I didn't.

24 Q. Did you hear any conversation about using --
25 between my client and Corey or Antonio about using a gun

1 out there?

2 A. No, I didn't.

3 Q. And you ---

4 A. I know -- I know -- I know -- I know Tyronne was
5 like Corey tried to -- Corey tried to get him to hide a
6 gun for him, but he was like he wouldn't because of the
7 simple fact that, you know, I mean, he didn't want his
8 fingerprints on the gun.

9 Q. And that was Corey? Corey wanted that done?

10 A. Yes. He wanted him to hide it.

11 Q. Now, and you rode down there with Tyronne?

12 A. To Murrells Inlet?

13 Q. Yes, sir.

14 A. Yes.

15 Q. In the car with him, and that was from Conway?

16 A. Yes.

17 Q. And you rode back with him?

18 A. Yes.

19 Q. Now, ---

20 A. I ask -- I asked him what was going on. I asked
21 Tyronne what was going on, what happened.

22 Q. And that was after the fact?

23 A. I asked him, you know what I mean. I asked him
24 what was going on when he jumped in the back of the car.
25 I asked him like, "What's going on?" but he wouldn't say

1 nothing. He put his head down. I don't -- I don't know
2 if he was scared or what, you know, because me, myself,
3 when I jumped over, I was -- I was shocked, you know, to
4 not know what was going on. They was jumping in the car.
5 I know I heard gunshots. I didn't know if they was in a
6 shootout or somebody was shooting at them. I did not
7 know.

8 Q. Did my client ever threaten you, Neil?

9 A. No, he hasn't.

10 Q. Did Corey ever threaten you?

11 A. Yes.

12 MR. BELLAMY: I don't have any further questions.

13 THE COURT: Redirect?

14 MS. VON HERRMANN: A couple, Your Honor.

15 REDIRECT EXAMINATION BY MS. VON HERRMANN:

16 Q. Tyronne told you he was going to meet Corey?

17 A. Yes.

18 Q. You don't know what conversation he had with Corey
19 before you caught up with Tyronne, do you?

20 A. No, ma'am.

21 Q. You weren't privy to that conversation?

22 A. No, ma'am.

23 Q. You weren't privy to any conversation according to
24 your testimony between Tyronne and Corey, were you?

25 A. No, ma'am.

1 Q. And so you don't even know what was discussed in
2 the car because you were just asleep the whole time,
3 right?

4 A. I wasn't asleep the whole time.

5 Q. Well, you didn't hear any conversations about it?

6 A. It wasn't really no conversation about what they
7 was going to do, you know. Tyronne was like, "We can go
8 to Food Lion," and, I mean, he got the tape and
9 everything, and I think he was like something about the
10 flour -- something about the flour would be better or
11 something. I don't know.

12 Q. You knew it was a drug rip?

13 A. Yes, ma'am, I figured it was going to be one.

14 Q. No question about that?

15 A. Yes, ma'am.

16 Q. Y'all all agreed to it, even if you didn't have --
17 even if you didn't discuss it, ---

18 A. I didn't -- I didn't ---

19 Q. --- you knew it was going to happen?

20 A. I didn't agree to it.

21 Q. You didn't say, "Y'all better let me out of this
22 car. I'm not going to have anything -- I'm not having
23 anything to do with any drug deals. I'm not involved in
24 that kind of stuff"?

25 A. No, I didn't say that. I didn't say, "Let me out.

1 I don't got nothing to do with no drug deal."

2 Q. So you knew there was going to be a drug rip?

3 A. I figured there was going to be one when I seen him
4 bagging up the flour.

5 Q. And you stayed in the car?

6 A. Yes, ma'am.

7 Q. You stayed in the car?

8 A. Yes, ma'am.

9 Q. And you didn't ask to be let out of the car?

10 MR. BELLAMY: Your Honor, she's leading the witness.
11 I'd ask her to ask appropriate questions.

12 THE COURT: At this stage, I'm going to allow her to
13 ask the questions as posed under the rules.

14 Q. You didn't ask to be allowed out, did you?

15 A. No, ma'am.

16 Q. All right, and when this whole thing was going
17 down, you've got -- you've got your cousin in the car with
18 you? You could have said, "Hey, hold on. I've got to get
19 out. I can't do this," right?

20 A. Yes, ma'am.

21 Q. You're a big boy?

22 A. Yes, ma'am.

23 Q. And you didn't do that?

24 A. Yes, ma'am.

25 Q. And you knew it was going down, and you stuck with

1 it?

2 A. I didn't -- I didn't ---

3 Q. You knew it was going down, didn't you?

4 A. --- know anything about -- I knew that they was
5 probably going to take somebody or rip somebody off
6 because I seen them bagging up the flour for myself.

7 MS. VON HERRMANN: I don't have anything further.

8 THE COURT: Anything else?

9 MR. BELLAMY: One question, Judge, and I think it
10 relates to her redirect.

11 RECROSS EXAMINATION BY MR. BELLAMY:

12 Q. She asked you about not hearing conversations prior
13 to going down there between my client and Corey?

14 A. Something like?

15 Q. Prior to y'all going down there?

16 A. Going to Murrells Inlet?

17 Q. Yes, sir.

18 A. Before? When he called me?

19 Q. Yes.

20 A. I haven't -- he hadn't even talked to him.

21 Q. Okay, and was it apparent when you first got there
22 -- well, let me back up. Tyronne told you why he was
23 going there, correct?

24 A. Yes.

25 Q. And was it apparent when you overheard the

1 conversation between Tyronne that Tyronne was solely there
2 to get some money that he was owed?

3 A. Yes.

4 Q. And you overheard that conversation?

5 A. Yes.

6 Q. And that was the purpose of going down there?

7 A. That was the purpose of me even going.

8 Q. Okay, and you heard a conversation between Tyronne
9 and Corey that confirmed that, did you?

10 A. Yes.

11 MR. BELLAMY: Thank you.

12 MS. VON HERRMANN: Just one in follow-up, Your
13 Honor.

14 THE COURT: Yes, ma'am.

15 REDIRECT EXAMINATION BY MS. VON HERRMANN:

16 Q. The conversation that you heard, they worked their
17 business -- they worked their business out before y'all
18 ever got in the car, didn't they?

19 A. They had to.

20 Q. They had it all worked out before they ever got --
21 before y'all ever got in the car?

22 A. They had to because I never heard any -- the
23 conversation about them going to rip the guy off, because
24 I never -- I hadn't even -- I didn't even know the guy.

25 Q. So they had taken care of their business about this

1 Thousand Dollars, right?

2 A. Yes, ma'am.

3 Q. Before y'all ever got in the car?

4 A. Yes, ma'am.

5 Q. And there wasn't any need for y'all to get in that
6 car, was there?

7 A. If they had of taken care of their business, no,
8 ma'am, there wouldn't have been no need.

9 Q. They had resolved -- they had resolved their
10 issues?

11 A. Yes, ma'am.

12 Q. So there was no other reason for them to get in
13 that car?

14 A. If they would -- if they would have resolved their
15 issues, it wouldn't have been no reason for us to get in
16 the car..

17 Q. And as far as you know, the issues were resolved?

18 A. What happened?

19 Q. As far as you know, the issues between Tyronne and
20 Corey were resolved, correct?

21 A. Yes, ma'am, because Corey said that he had
22 something to go take care of. After he take care of it,
23 he was going to pay him and buy something else.

24 MS. VON HERRMANN: Thank you. I don't have any
25 further questions.

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1 THE COURT: All right, sir.

2 All right, Solicitor.

3 MS. VON HERRMANN: Thank you.

4 DIRECT EXAMINATION BY MS. VON HERRMANN:

5 Q. Mr. Smalls, where do you live?

6 A. [REDACTED]

7 Q. How long have you lived there?

8 A. Since about 2001.

9 Q. How long have you lived in Horry County?

10 A. Since 2003.

11 Q. Enterprise Road, is that in Horry County?

12 A. Yes, ma'am.

13 Q. You have got two felony -- prior felony convictions
14 from fifteen years ago, is that correct?

15 A. Yes, ma'am.

16 Q. And I think you have a pending distribution of
17 cocaine charge, is that correct?

18 A. Yes, ma'am.

19 Q. Let me -- let me direct your attention to Thursday,
20 October the 20th, 2005. Do you remember that day?

21 A. Yes, ma'am.

22 Q. Tell me what you did, where you woke up that
23 morning.

24 A. I woke up in a motel room on the beach called the
25 Best Western.

1 Q. All right. Where is that located?

2 A. Myrtle Beach.

3 Q. And who was there with you, anybody?

4 A. Me and my cousin, Corey Smalls.

5 Q. And what did you do after y'all woke up?

6 A. Smoked a couple of joints and watched T.V.

7 Q. At some point, did Mr. Smalls, Corey, receive a
8 telephone call?

9 A. Yes, ma'am.

10 Q. Who was that telephone call from if you know?

11 A. I don't know the guy name by him, but it was a
12 phone call.

13 Q. All right, and what did y'all do as a result of
14 that phone call?

15 A. My cou- -- the phone call was about buying a large
16 quantity of drugs or something.

17 Q. Did you know a guy named Miles Slay?

18 A. No, ma'am.

19 Q. You didn't know him?

20 A. No, ma'am.

21 Q. You know who he is now, though?

22 A. Yes, ma'am.

23 Q. And during the course of your conversations with
24 Corey, did you -- did you learn somehow that Mr. Slay was
25 the one who was going to purchase those drugs?

1 A. Yes, ma'am.

2 Q. And so what did you all do? Did Corey make any
3 more calls?

4 A. Yeah. He try to -- he made a phone call to try to
5 see if we could get what the person wanted. He made a
6 couple of phone calls and nobody answered, so he called
7 somebody else to see if he could get what the person
8 wanted.

9 Q. All right, and was he able to find some drugs?

10 A. No, ma'am.

11 Q. Do you know if he had a conversation with Tyronne
12 Beaty?

13 A. Yes, ma'am.

14 Q. And what did y'all do as a result of the
15 conversation that he had with Mr. Beaty?

16 A. My cousin asked me to drive him to Murrells Inlet
17 to pick up Tyronne Beaty and Neil Hill.

18 Q. On your way -- what were y'all driving at the time
19 when you left the hotel?

20 A. A Lincoln Towncar.

21 Q. Was that your car?

22 A. Yes, ma'am.

23 Q. What did y'all do with that car?

24 A. Went to Bridget Allen house.

25 Q. Did you drop her off there?

1 A. Yes, ma'am.

2 Q. And did you at some point pick up another vehicle?

3 A. Yes, ma'am.

4 Q. What kind of vehicle was that?

5 A. A Nissan Maxima.

6 Q. Why -- why did y'all do that?

7 A. My car wasn't running right that -- that day.

8 Q. And so Corey knew somebody that had a car?

9 A. Yes, ma'am.

10 Q. And you get in the Maxima. Who is driving the
11 Maxima?

12 A. I'm driving the Maxima.

13 Q. And where did y'all go from there?

14 A. After we left Murrells Inlet, we got on Highway 17.
15 I proceeded to drive. The back window of the car was
16 broke, so we had to go to Food Lion to get some tape to
17 try to fix the window.

18 Q. Let me -- let me back up just a little bit. Did
19 you and Corey go down to Murrells Inlet alone?

20 A. Yes, ma'am.

21 Q. All right, and once you got down to Murrells Inlet,
22 where -- where were you?

23 A. I was in my grandmother's yard.

24 Q. And at some point did y'all run into Tyrone Beaty
25 and Neil Hill?

1 A. Yes, ma'am.

2 Q. When did that happen?

3 A. Probably like about thirty minutes after we got to
4 Murrells Inlet.

5 Q. Do you know anything about Corey owing Tyronne some
6 money?

7 A. Not that I know of.

8 Q. Did you hear any discussion about Corey owing
9 Tyronne any money?

10 A. No, ma'am.

11 Q. Do you think Corey would have told you if he'd owed
12 Tyronne some money?

13 MR. BELLAMY: Your Honor, I would object to what
14 Corey might think he would. I think that's an improper
15 question.

16 THE COURT: Rephrase your question, Solicitor.

17 Q. You didn't have -- there was no discussion that you
18 overheard about that?

19 A. No, ma'am.

20 Q. And you and Corey didn't have a discussion about
21 that?

22 A. No, ma'am.

23 Q. So when you get there, you run into the two of
24 them. What happens next?

25 A. They get in the car. Everybody is talking, and I

1 proceed -- I get on the highway, go down Highway 17, and
2 we went to Food Lion.

3 Q. Why did you go to Food Lion?

4 A. Because Tyronne Beaty wanted to get flour, scotch,
5 tape, and Ziploc bags.

6 Q. Was it scotch tape or was it duct tape?

7 A. Duct tape.

8 Q. What was the duct tape for?

9 A. To fix the back window.

10 Q. What was wrong with the back window?

11 A. It was broke.

12 Q. I'm going to show you a picture of State's Exhibit
13 Number 3. Is that the gold Maxima?

14 A. Yes, ma'am.

15 Q. All right. Tell me about that back, passenger side
16 window.

17 A. It was broke when we got the car.

18 Q. All right. Is it -- was it just busted out?

19 A. Yes, ma'am.

20 Q. There was a piece of -- a piece of plastic there?

21 A. Yes, ma'am.

22 Q. Y'all were going to fix the window?

23 A. Uh-huh (affirmative response).

24 Q. All right, and what was the flour for?

25 A. The flour was for -- so the person could see what

1 he was getting, I guess.

2 Q. So when you say that the person could see what they
3 were getting, there was a plan, was there not, to rip
4 somebody off on a drug deal?

5 A. Yes, ma'am.

6 Q. And you knew that?

7 A. Yes, ma'am.

8 Q. And y'all had discussed that in the car?

9 MR. BELLAMY: Your Honor, again I think she's
10 leading her witness.

11 MS. VON HERRMANN: I'll rephrase it.

12 THE COURT: All right.

13 Q. Had you discussed that in the car?

14 A. Yes, ma'am.

15 Q. Was Neil Hill in that car?

16 A. Yes, ma'am.

17 Q. Was he awake during that conversation?

18 A. He was awake.

19 Q. So he heard that conversation?

20 A. Yes, ma'am.

21 Q. And when you went to the Food Lion -- well, tell --
22 tell the jury, if you will, what was the plan for this
23 drug rip?

24 A. The plan was to give him the flour in the bag so
25 when he seen it he would have thought it was the drugs and

1 he would have bought it.

2 Q. And did y'all know how much money he had?

3 A. No, ma'am.

4 Q. So was there some real cocaine?

5 A. Yes, ma'am.

6 Q. And then some fake cocaine?

7 A. Yes, ma'am.

8 Q. Who had the real cocaine?

9 A. Tyronne Beaty.

10 Q. Where did he have it?

11 A. In his pocket.

12 Q. You saw it?

13 A. Yes, ma'am.

14 Q. And why did you need some real stuff and some fake
15 stuff?

16 A. I guess he needed the real stuff so when he looked
17 at it, he would think that's what he was getting.

18 Q. All right, so the stuff that was to be shown
19 originally, I guess, would -- would be the real stuff,
20 right?

21 A. Yes, ma'am.

22 Q. Have you had an opportunity to review a Food Lion
23 video tape, security tape, a Food Lion video?

24 A. Yes, ma'am.

25 Q. And when you reviewed that tape, did you recognize

1 anyone in that tape?

2 A. Yes, ma'am.

3 Q. And who was the person that you recognized in that
4 tape?

5 A. Tyronne.

6 Q. And do you recall him going into the store?

7 A. Yes, ma'am.

8 Q. And did anyone else go into the store?

9 A. No, ma'am.

10 Q. Did you drive him to the store?

11 A. Yes, ma'am.

12 Q. Did you drive that gold Maxima the whole day?

13 A. Yes, ma'am.

14 Q. What did he do when he came out of the Food Lion?

15 A. He came out of the Food Lion. He got into the car.
16 Then he try to fix the window, and he tape it up as best
17 he could, and we left.

18 Q. All right, and where was he seated at that time?

19 A. He was seated behind me.

20 Q. And could you see what he was doing?

21 A. No, ma'am.

22 Q. Was there some discussion in the car about what was
23 being done?

24 A. No, ma'am.

25 Q. Where -- and where was Neil at that time?

1 A. Neil was sitting behind me.

2 Q. Neil was sitting behind you and ---

3 A. Well, the passenger -- on the other side of the
4 passenger.

5 Q. So Neil was in the back seat passenger side, and
6 Tyronne was in the back seat driver's side?

7 A. Yes, ma'am.

8 Q. How big of a car is that Maxima?

9 A. A compact.

10 Q. Pretty close ---

11 A. Yes, ma'am.

12 Q. --- to see what's going on in there?

13 A. (No response.)

14 Q. All right. Where did y'all go from the Food Lion?

15 A. After we left the Food Lion, my cousin wanted me to
16 drop him off at Foxtrot Villas.

17 Q. All right. Well, let me stop you for a second
18 there. Do you have a daughter?

19 A. Yes, ma'am.

20 Q. Was your daughter with you that day?

21 A. Yes, ma'am.

22 Q. Was she with you when you dropped Corey off at
23 Foxtrot?

24 A. No, ma'am.

25 Q. All right. When did you pick her up?

1 **A.** I don't know the time frame, but I remember picking
2 my daughter up from the daycare.

3 **Q.** Did you pick her up after y'all left Food Lion?

4 **A.** Yes, ma'am.

5 **Q.** All right, so where is her daycare?

6 **A.** It was located in Socastee.

7 **Q.** All right. You drove to Socastee, is that correct?

8 **A.** Yes, ma'am.

9 **Q.** And is everybody still in the car at that time?

10 **A.** Yes, ma'am.

11 **Q.** All right. What happens when you get to the
12 daycare?

13 **A.** I walk in the daycare like I normally would do,
14 pick my daughter up, walk her to the car. I told her to
15 get in the back seat, and I got in the car and I drove
16 off. During that time we drove -- was driving off,
17 Tyronne said he dropped something in the garbage by
18 accident and asked me can I go back, so I turned around
19 and went back.

20 **Q.** What was it that he had dropped by accident?

21 **A.** Some cocaine.

22 **Q.** Is that the same cocaine you had seen him with
23 earlier?

24 **A.** Yes, ma'am.

25 **Q.** Were y'all a little bit panicky there that your

1 ounce of cocaine was gone?

2 A. Yes, ma'am.

3 Q. What did he have to say about that?

4 A. He said he had to get it out of the trash before it
5 goes in the trash.

6 Q. So you went back to the daycare?

7 A. Yes, ma'am.

8 Q. And who got out?

9 A. I got out.

10 Q. And you went and found it?

11 A. Uh-huh (affirmative response).

12 Q. You brought it back in the car, is that right?

13 A. Yes, ma'am.

14 Q. All right, and who did you hand that of to?

15 A. Tyronne.

16 Q. Did you handle that cocaine after that time?

17 A. No, ma'am.

18 Q. And tell us now, you -- I think you mentioned a
19 minute ago that you dropped Corey off at Foxtrot. Tell us
20 what Foxtrot is.

21 A. Foxtrot is a apartment complex.

22 Q. Where is that located?

23 A. Enterprise Road.

24 Q. Is it across the street from the Wilco?

25 A. Yes, ma'am.

1 Q. Let me show you a photograph, State's Exhibit 4.
2 Would that be that Wilco?

3 A. Yes, ma'am.

4 Q. It's easy to walk from Foxtrot over to the Wilco?

5 A. Yes, ma'am.

6 Q. All right. Why did you drop him off at Foxtrot?

7 A. I drop him off at Foxtrot because he was supposed
8 to meet up with the -- with the victim.

9 Q. And that was something you all had -- all discussed
10 in the car?

11 A. Yes, ma'am.

12 Q. And where did you go after you dropped Corey off?

13 A. After we dropped Corey off, I drove down Enterprise
14 Road.

15 Q. I want you to step down here just for a minute,
16 Antonio, ---

17 MS. VON HERRMANN: With the Court's indulgence?

18 THE COURT: Yes, ma'am.

19 Q. Here's the Wilco. Show them where you drove from
20 there.

21 A. I drove down Enterprise Road.

22 Q. All right. You're going to have to -- there's a
23 microphone right there. You're going to have to talk kind
24 of loud and speak up so that everybody can hear you.

25 A. I drove down Enterprise Road. I had to use the

1 bathroom, so it was a ball field, turn down the ball
2 field. Everybody got out of the car to use the bathroom,
3 used the bathroom and got back in the car. During that
4 time, my phone rung. It was my cousin, Corey, on the
5 phone.

6 Q. Okay.

7 A. And he want to talk to Tyronne.

8 Q. All right. Let me ask you -- we'll get back to
9 that in just a second, but did you all, while we're
10 standing here with the map, did you all drive anywhere
11 else?

12 A. No, ma'am.

13 Q. All right, so the location where you ultimately
14 ended up with the deal, was that located here on Butler
15 Road?

16 A. Yes, ma'am.

17 Q. Is that in Horry County?

18 A. Yes, ma'am.

19 Q. Okay. Go ahead and have a seat. All right, so you
20 were saying that there was a phone call?

21 A. Yes, ma'am.

22 Q. And the phone call was from Corey?

23 A. Yes, ma'am.

24 Q. And was it to your phone?

25 A. Yes, ma'am.

1 Q. And he spoke with Tyronne then?

2 A. Yes, ma'am.

3 Q. And tell me what Tyronne -- what Tyronne's end of
4 that conversation was.

5 A. I don't really remember what the conversation was
6 because I was in the car and he was kind of like standing
7 outside the car.

8 Q. Tyronne was standing outside the car?

9 A. Yes, ma'am.

10 Q. All right, and then did he get back in the car?

11 A. Yes, ma'am.

12 Q. And what was the plan? What was the plan about how
13 -- how was Corey supposed to know where you all were and
14 how was he supposed to know where to bring the victim?

15 A. I don't know how that came about, but I was told to
16 drive at the Moose -- the Moose Lodge. When I arrived
17 there, I pulled in. Tyronne told me to back the car in,
18 so I did what I was told.

19 Q. Okay. He said -- so Tyronne was the one who -- he
20 picked the location?

21 A. Well, I think my cousin did.

22 Q. Okay, and so y'all drove in there and he told you
23 to turn around. Which way would you have been facing?

24 A. I was backed in.

25 Q. Backed in?

1 A. Yes, ma'am.

2 Q. All right, and then tell us what was the
3 conversation while y'all were sitting there?

4 A. As we -- as we arrived there, me and Neil was
5 talking. Tyronne really wasn't saying much. During that
6 time, I seen a small SUV pull up.

7 Q. All right. Let me -- let me slow you down just a
8 minute here. I've got a photograph that I want to show
9 you.

10 MS. VON HERRMANN: The Court's indulgence, please.

11 THE COURT: All right.

12 Q. You said that was a Moose Lodge. Do you think it
13 might have been a Masonic Lodge?

14 A. (No response.)

15 Q. It's some kind of lodge, ---

16 A. Yes, ma'am.

17 Q. --- is that correct? All right, so, I'm sorry; I
18 interrupted you with my trying to locate this photograph,
19 but at any rate, when you get in there, did you see -- did
20 you ever see a gun?

21 A. No, ma'am.

22 Q. Had you seen -- did y'all have a discussion about a
23 -- about a gun at some point?

24 A. Yes, ma'am.

25 Q. All right, and tell the jury, please, when you had

1 the discussion about the gun.

2 MR. BELLAMY: Your Honor, if she would specify when
3 she said, "Y'all had a discussion," specifically who she
4 is referring to the discussion was with.

5 THE COURT: I am -- let's just wait and see what the
6 answer is from the witness, and we can go from there. We
7 don't want to suggest, as you indicated before, the answer
8 to the witness.

9 Go ahead.

10 A. I didn't see the gun until my cousin and the victim
11 arrived.

12 Q. All right, and then when they arrived, where did --
13 where did you see it?

14 A. On his lap.

15 Q. On whose lap?

16 A. Tyronne lap.

17 Q. All right. Where was he seated?

18 A. During that time he was sitting in the back on the
19 back passenger side.

20 Q. All right, and so did you turn around and see it?

21 A. Yes, ma'am.

22 Q. Are you -- are you familiar with guns at all?

23 A. Kind of.

24 Q. Do you know -- were you -- can you tell me what
25 kind of gun it was that you saw?

1 A. It looked like a nine, or a Glock, or something.

2 Q. So it was not a revolver?

3 A. No, ma'am.

4 Q. It was a semi-automatic weapon?

5 A. Yes, ma'am.

6 Q. Was it a big gun or a little gun?

7 A. Not too big, regular size.

8 Q. Do you know what a twenty-two is?

9 A. Yes, ma'am.

10 Q. Is that a big gun or a little gun?

11 A. That's a little gun.

12 Q. Was this -- you think this looked like a twenty-
13 two?

14 A. Probably a little bigger than that.

15 Q. You think it's a bigger caliber than that?

16 A. Yes, ma'am.

17 Q. All right, and when you saw the gun, what did you
18 do?

19 A. I started to panic a little bit.

20 Q. You didn't -- you didn't know that there was a gun
21 until then?

22 A. Yes, ma'am.

23 Q. What did he say about the gun?

24 A. He didn't say anything.

25 Q. Did you ask him about it?

1 A. No, ma'am.

2 Q. Why didn't you ask him about it?

3 A. I was scared.

4 Q. Now I'm going to show you what's been marked as
5 State's Exhibit 27 and ask you if you can identify that?
6 Is that the area on Butler Road?

7 A. Yes, ma'am.

8 Q. Is that the lodge that you had referred to earlier?

9 A. Yes, ma'am.

10 Q. Does that picture fairly and accurately reflect
11 that?

12 A. Yes, ma'am, it looks like.

13 Q. Is that how it looked the day that you all -- that
14 you rode up on it?

15 A. Yes, ma'am.

16 MS. VON HERRMANN: I'd move State's Exhibit 27 in.

17 THE COURT: Any objection?

18 MR. BELLAMY: No, sir, Your Honor.

19 THE COURT: All right. State's 27 is in evidence
20 without objection.

21 PHOTOGRAPH OF INCIDENT SCENE ADMITTED INTO EVIDENCE

22 AS STATE'S EXHIBIT NUMBER 27.

23 Q. Let me see if the jury can see.

24 MS. VON HERRMANN: I'm going to ask that you step
25 down one more time if Your Honor would not mind.

1 THE COURT: All right.

2 Q. Where did you -- where was it that you pulled in
3 when you first arrived?

4 A. I pulled in here, and I was told to back up, so I
5 pulled back out and I backed in right -- right around this
6 area.

7 Q. All right, so the front of your car would have been
8 facing ---

9 A. Facing that way (indicating).

10 Q. Which would -- which would be the road, is that
11 correct?

12 A. Yes, ma'am.

13 Q. Go ahead and have a seat. And your cousin, Corey,
14 -- you saw a vehicle drive up, correct?

15 A. Yes, ma'am.

16 Q. What type of vehicle was that?

17 A. A Toyota something. I don't ---

18 Q. What color was it?

19 A. Like a sky blue.

20 Q. I'm going to show you State's Exhibit Number 5. Is
21 that that vehicle?

22 A. Yes, ma'am.

23 Q. And where was Corey seated?

24 A. In the passenger vehicle.

25 Q. And who was seated in the driver's seat?

1 A. The victim.

2 Q. What did they do when they came in?

3 A. They pulled up and they was discussing something.
4 I'm not sure what they was discussing, and my cousin got
5 out of the car and came to the car we was sitting in.

6 Q. Let me stop you right there. Where -- did they
7 turn back around, or where was their car facing?

8 A. Their car was facing inside the gate.

9 Q. So it was not facing the same -- in the same
10 direction as the other car?

11 A. Their car was pointing -- face our car.

12 Q. So were the windows on the driver's side windows
13 side by side on the car?

14 A. No, ma'am.

15 Q. All right. Describe how they -- describe how they
16 -- the cars were located.

17 A. Ten or fifteen yards apart.

18 Q. All right, and ten or fifteen yards or ten or
19 fifteen feet?

20 A. Ten or fifteen yards.

21 Q. All right, and where was the -- you were seated in
22 the front driver's side of your vehicle?

23 A. Yes, ma'am.

24 Q. So if you looked to your left, what would you have
25 seen?

1 A. The building, the Moose Lodge building.

2 Q. And so the other vehicle would have been sort of
3 behind you, is that correct?

4 A. Yes, ma'am.

5 Q. All right. Now, tell me what happened next after
6 Corey gets out of the car.

7 A. Corey gets out of the car and he walks to the car
8 we were sitting in.

9 Q. And what was he doing?

10 A. Smoking a Black & Mild.

11 Q. All right. Is that -- that's a cigar?

12 A. Yes, ma'am.

13 Q. Was he inside the car, or was he standing in the
14 back ---

15 A. He was standing off the side at the back of the
16 car.

17 Q. All right, the back passenger side or back driver's
18 side?

19 A. The back passenger side.

20 Q. And did you see Tyronne Beaty exit the vehicle?

21 A. Yes, ma'am.

22 Q. And where did he go?

23 A. To the victim's car.

24 Q. Did he have anything in his hands at that time?

25 A. No, ma'am.

1 Q. Where did he have the -- where did he have the fake
2 dope?

3 A. In his pocket.

4 Q. And did you -- were you able to see the gun at that
5 time? Do you know where he had that?

6 A. I didn't see no gun at the time.

7 Q. And so what was the next thing that you saw happen?

8 A. When I looked to the right, Neil Hill had his head
9 back.

10 Q. He did? Was he -- was he awake or was he sleeping?

11 A. He was awake, but he had his eyes closed. We was
12 talking, and I heard gunshots.

13 Q. What did you do when you heard the gunshots?

14 A. I -- I jumped.

15 Q. What did you see at that time?

16 A. I see Tyronne leaving the victim's car.

17 Q. All right. Did you -- how many shots did you hear
18 fired?

19 A. Three shots.

20 Q. And did you see Tyronne fire those shots?

21 A. I didn't see him, but I heard them.

22 Q. Was anybody else up at the victim's vehicle at that
23 time?

24 A. No, ma'am.

25 Q. Was Corey up at the vehicle at that time?

1 A. No, ma'am.

2 Q. Again, where was Corey?

3 A. The car I was in, he was sitting behind it or
4 standing behind it.

5 Q. And what happened next?

6 A. When Tyronne came back to the car, I looked at the
7 victim's car, and it look like he was trying to reach for
8 something, and I'm looking at Neil Hill and he's looking
9 at me, and I heard two more gunshots.

10 Q. All right. You heard two more gunshots?

11 A. Yes, ma'am.

12 Q. All right. Was Tyronne outside -- was Corey in the
13 car at that time?

14 A. He was outside of the car.

15 Q. And Tyronne outside of the car at that time?

16 A. Yes, ma'am.

17 Q. So let's -- because I'm unclear about this. The
18 jury may be unclear. There were initially three shots?

19 A. The first time, yes, ma'am.

20 Q. All right, and then there was some period of time
21 and then there were two more shots?

22 A. Yes, ma'am.

23 Q. All right. Did Tyronne say you as y'all were
24 pulling out, "Wait a minute. We -- I've got to go back"?

25 A. No, ma'am.

1 Q. All right, so he was -- he was still out there, ---

2 A. Yes, ma'am.

3 Q. --- by the car, and you could see when the -- when
4 the second shots were fired that he was near that vehicle,
5 is that correct?

6 A. Yes, ma'am.

7 Q. Did you see Tyronne show the cocaine to the victim?

8 A. Yes, ma'am.

9 Q. And did you hear him ask the victim for the money?

10 A. I seen his lips moving, but no, I didn't.

11 Q. So you could tell there was a conversation going
12 on, but couldn't -- couldn't overhear what was being
13 said, ---

14 A. Yes, ma'am.

15 Q. --- is that accurate? All right. How about the
16 money, did you see the money?

17 A. After he moved -- came from the car, he had a bag
18 in his hand.

19 Q. Who had a bag in his hand?

20 A. Tyronne.

21 Q. And you saw that once he had gotten in the vehicle?

22 A. Yes, ma'am.

23 Q. All right. What did he do with that money?

24 A. He stuck it under his shirt.

25 Q. Did Corey have anything in his hand other than his

1 Black & Mild?

2 A. No, ma'am.

3 Q. And so what happened next?

4 A. My cousin, Corey Smalls, said to Tyronne, "Why did
5 you do that? Why did you do it?"

6 Q. And what did Tyronne say?

7 A. And he said, "He was reaching for something."

8 Q. And did you say anything? Were you involved in
9 that conversation?

10 A. No, ma'am.

11 Q. You were just driving?

12 A. Yes, ma'am. I was doing what I was told.

13 Q. Where did you drive?

14 A. I drove down Enterprise Road until we got to a boat
15 landing. I made a left.

16 Q. So did you -- show me which way -- this is where
17 you were on Butler Road. Show me which way you went when
18 you pulled out of there.

19 A. I left back out the opposite way.

20 Q. All right, and then where did you go from there?

21 A. I went to Bridget Allen house.

22 Q. Trace with your finger, please, for the jury just
23 which route you would have taken.

24 A. I had to go this route right here (indicating),
25 somewhere up in here, came to a short-cut.

1 Q. And then you ultimately ended up over at Bridget's
2 house?

3 A. Yes, ma'am.

4 Q. Are you related to Bridget?

5 A. No, ma'am.

6 Q. Do you know if Bridget is related to Tyronne?

7 A. Not that I know of.

8 Q. You know that Neil is Tyronne's cousin, right?

9 A. Yes, ma'am.

10 Q. All right. So when y'all go to Bridget's house,
11 what happened there?

12 A. We get to Bridget house. Everybody get out of the
13 car. I went inside Bridget house to get my daughter.
14 During that time, my cousin say he want to take the car
15 that we had back to the person he got it from.

16 Q. All right, and did you see the money once you were
17 over at Bridget's house?

18 A. No, ma'am.

19 Q. Did you hear Tyronne say anything about the money?

20 A. No, ma'am.

21 Q. All right. Did you get any of that money?

22 A. No, ma'am.

23 Q. Was there a discussion about the money being like
24 used for bail?

25 A. Yes, ma'am.

1 Q. Who said that?

2 A. Tyronne Beaty.

3 Q. Tell the jury, please, specifically what he said
4 about the money.

5 A. My cousin, Corey Smalls, asked him about the money,
6 and he said he's not giving up no money because we might
7 need it for bond.

8 Q. And do you know if Corey got any of that money?

9 A. Not that I know of.

10 Q. Do you know if Neil got any of that money?

11 A. No.

12 Q. So Corey left and dropped the vehicle off?

13 A. Yes, ma'am.

14 Q. So that left you there at Bridget's house ---

15 A. Yes, ma'am.

16 Q. --- with Neil and Tyronne?

17 A. Yes, ma'am.

18 Q. All right. Where -- what did you all do at that
19 point?

20 A. At that point, I was so hysterical and scared,
21 Tyronne asked me can I drop him off up the road, so we got
22 in my Lincoln Towncar, proceeded up the road, and I
23 dropped him off.

24 Q. Did you drop Neil off there as well?

25 A. Yes, ma'am.

1 Q. And where specifically did you drop him off?

2 A. Like a little bit past a Kangaroo station. I don't
3 even remember what the area was, but it was a little bit
4 past a Kangaroo station.

5 Q. Did you see the gun at that point in time?

6 A. No, ma'am.

7 Q. So did you see the gun after you all got out of the
8 -- out of the vehicle at Bridget's?

9 A. No, ma'am.

10 Q. And when was the next time that you spoke with
11 Tyronne?

12 A. I think it was Friday morning.

13 Q. And what did he say?

14 A. I told him that I had got a phone call from the
15 detective saying he wants to talk to me.

16 Q. And what did Tyronne say?

17 A. He said please go down there and tell them what
18 they -- tell them the truth, whatever, so we can get some
19 sleep, because he couldn't sleep.

20 Q. All right. That's Tyronne or Corey?

21 A. Tyronne.

22 Q. All right, and did you go down there and talk to
23 the police?

24 A. Yes, ma'am.

25 Q. And did you tell the police the truth?

1 A. Yes, ma'am.

2 Q. And did you tell them the things that you've told
3 the jury here today?

4 A. Yes, ma'am.

5 Q. All right, and were any promises made to you about
6 your pending charges that you have?

7 A. No, ma'am.

8 Q. You've got a murder charge and an armed robbery
9 charge, correct?

10 A. Yes, ma'am.

11 Q. Along with everybody else?

12 A. Yes, ma'am.

13 Q. And a distribution of some drugs?

14 A. Yes, ma'am.

15 Q. And you and I and your lawyer have got together and
16 we entered into an agreement, did we not?

17 A. Yes, ma'am.

18 Q. I want to show you State's Exhibit 43. Is that the
19 agreement, proffer agreement, that we entered into?

20 A. Yes, ma'am.

21 Q. Is that your statement there on the back page?

22 A. Yes, ma'am.

23 MS. VON HERRMANN: I'd move to have those
24 introduced.

25 THE COURT: Any objection?

1 MR. BELLAMY: No, sir, Your Honor.

2 THE COURT: All right. It's in evidence without
3 objection.

4 PROFFER AGREEMENT FOR ANTONIO SMALLS ADMITTED INTO
5 EVIDENCE AS STATE'S EXHIBIT NUMBER 43.

6 Q. And you and I have discussed this case before
7 today, right?

8 A. Yes, ma'am.

9 Q. What were my instructions to you about your
10 testimony today?

11 A. You said that you wasn't going to promise me
12 anything, just come on and tell my side of the story, tell
13 the truth.

14 Q. And have you done that today?

15 A. Yes, ma'am.

16 Q. Thank you.

17 MS. VON HERRMANN: I have no further questions.

18 THE COURT: Cross examination.

19 MR. BELLAMY: May we approach for one second, Your
20 Honor?

21 THE COURT: Yes, sir.

22 (A Bench conference was held in the presence, but out
23 of the hearing, of the jury.)

24 THE COURT: Thank you, Mr. Bellamy.

25 MR. BELLAMY: May it please the Court.

1 THE COURT: Yes, sir.

2 CROSS EXAMINATION BY MR. BELLAMY:

3 Q. You are Corey's cousin, right?

4 A. Yes, ma'am -- yes, sir.

5 Q. Okay. Now, let's kind of go over some things. You
6 gave a statement back in 2005, correct?

7 A. Yes, sir.

8 Q. And it was audio-taped, is that right? It wasn't
9 video taped, or do you know?

10 A. I think it was audio-taped.

11 Q. Okay. They had a little tape recorder or something
12 there?

13 A. Excuse me?

14 Q. They had a tape recorder there, so it was audio-
15 taped, right?

16 A. Yes, sir.

17 Q. And it was a rather lengthy statement? It was
18 several hours that you were in there with, I believe,
19 Detective Lewis and Detective Cox. Do you remember that?

20 A. Yes, sir.

21 Q. And so no question, you gave that statement?

22 A. Yes, sir.

23 Q. Did you give any other statements to police in
24 relation to this case after that?

25 A. No, sir.

1 Q. Okay, so that's the only statement you've ever
2 given, ---

3 A. Yes, sir.

4 Q. --- okay, that you remember? All right. Now, is
5 it fair to say, Mr. Smalls, that during that statement
6 that you lied? You don't tell the truth, do you?

7 A. I tell the truth.

8 Q. In the whole statement?

9 A. At first when they ask me, I act like I didn't know
10 what was going on.

11 Q. So at the first part, you don't even mention
12 anything about seeing Corey that day, Tyronne that day, or
13 anybody, do you?

14 A. Yes, sir.

15 Q. And that's probably at least half of the time that
16 you completely deny anything, don't you?

17 A. Yes, sir.

18 Q. Okay, and the police, Detective Lewis and Detective
19 Cox, keep telling you that you're lying and you'd better
20 change your story, don't they?

21 A. Yes, sir.

22 Q. And they tell you that you're on a sinking ship,
23 better get off. They're going to throw you a life jacket,
24 aren't they?

25 A. Yes, sir.

1 Q. And so you change your story, but that happens
2 about four or five times that you change your story. It's
3 not two stories. You sort of add to every time a little
4 bit, don't you?

5 A. Yes, sir.

6 Q. All right. Now, let's talk about a couple of
7 things. Before you see my client, Mr. Beaty, you and
8 Corey have some conversation up there at the Best Western,
9 don't you?

10 A. Yes, sir.

11 Q. About this fellow who is wanting to buy drugs,
12 right?

13 A. Yes, sir.

14 Q. And Ty- -- not Tyronne. Corey tells you that man
15 is calling to get robbed, isn't that what Corey tells you?

16 A. No, sir.

17 Q. He didn't tell you that?

18 A. No, sir.

19 Q. Well, when you con- -- let me ask you this: When
20 you confront him about this buy, about maybe not wanting
21 to do this, or you not wanting to be a part of it, or
22 maybe he didn't -- shouldn't be a part of it, doesn't he
23 say something to the effect of, "F--- that. I need the
24 money"?

25 A. Yes, sir.

1 Q. He says that, doesn't he?

2 A. Yes, sir.

3 Q. And that's before Tyronne or Neil is there? That's
4 at the hotel, isn't it?

5 A. Yes, sir.

6 Q. So that's -- Corey had a plan then that he needed
7 money, didn't he?

8 A. Yes, sir.

9 Q. Now, and you also told them on that statement on
10 the 25th of October, and I can show it to you, I've got it
11 transcribed, that you didn't know who had the gun, but
12 that only Corey was out of the car. Didn't you tell them
13 that?

14 A. Yes, sir.

15 Q. Now, and I guess it's your testimony today that you
16 don't know who shot anybody, do you?

17 A. Yes, sir.

18 Q. That's your testimony?

19 A. Yes, sir.

20 Q. All right. I do want to correct one thing, I think
21 the record may be mistaken, or maybe you are right. You
22 indicated it was ten or fifteen yards between these cars?

23 A. Yes, sir.

24 Q. Okay. Now, ten or fifteen yards would be thirty to
25 forty-five feet, and I'm fairly good at estimating, but

1 that would be, I guess, about as far as I am to that back
2 wall. Were y'all that far apart?

3 A. Yes, sir, about that close, yeah.

4 Q. So you were from here to that back wall?

5 A. Yes, sir.

6 Q. Okay. Now, y'all went and got this Maxima well
7 before Tyronne was there, right?

8 A. No, sir.

9 Q. Y'all got it before, though, didn't you?

10 A. Yes, sir.

11 Q. And y'all were leaving in the Maxima at the time
12 you saw Tyronne, correct?

13 A. Yes, sir.

14 MR. BELLAMY: And if the Court would allow me, I
15 would like to bring the easel over for Mr. ---

16 THE COURT: Yes, sir.

17 MR. BELLAMY: Your Honor, if he could be allowed to
18 step down.

19 THE COURT: Yes, sir.

20 Q. Would you step down for me, Mr. Smalls. I'm sorry.
21 And I'm going to give you a black marker to start with
22 here. If you would, draw the cars in the positions that
23 they were in out there, and I know this isn't going to be
24 to scale, but just as best you can, and maybe draw an
25 arrow or like a point on which way the car was facing.

1 **A.** (Witness draws on diagram.)

2 **Q.** What is that? I don't know what that is.

3 **A.** This is the car we in facing the road.

4 **Q.** Okay.

5 **A.** The car that my cousin, Corey Smalls, and the
6 victim came in was facing this way.

7 **Q.** Okay. Where is the car in rela- -- if this is the
8 car you're in, and it's parked, I'm assuming?

9 **A.** Uh-huh (affirmative response).

10 **Q.** You stop. Where is that other car?

11 **A.** Facing this way (indicating).

12 **Q.** Okay, but where is it? Is it here? Is it here?
13 Where would it be?

14 **A.** About right here.

15 **Q.** Well, draw -- draw the other car if you would for
16 me, please.

17 **A.** (Witness draws on diagram.) It's facing this way,
18 towards us.

19 **Q.** All right, so it is in front?

20 **A.** Uh-huh (affirmative response).

21 **Q.** Okay. Now, you might want to stand to the side.
22 If you would just stand just a little bit back. Now, if
23 you would mark -- put -- and the car you were in was what
24 kind of car?

25 **A.** A Nissan Maxima.

- 1 Q. And this is this car?
- 2 A. Yes, sir.
- 3 Q. All right, so write "Maxima" out here for me.
- 4 A. (Witness writes on diagram.)
- 5 Q. And just put -- and this would be the ---
- 6 A. Toyota.
- 7 Q. Just put "TOY."
- 8 A. (Witness writes on diagram.)
- 9 Q. All right, so facing this way, and they're apart,
- 10 so as you're -- where would you be seated? Put a -- let's
- 11 put a red where you are. Let's put a red in the car where
- 12 you are, where you would be seated.
- 13 A. (Witness writes on diagram); seated right here.
- 14 Q. Okay. Now, let's put blue where Neil was.
- 15 A. Neil was right here. (Witness writes on diagram.)
- 16 Q. You've got to speak up, please.
- 17 A. He was in the passenger front car.
- 18 Q. Okay. Now, let's put green where Tyronne was, and
- 19 speak up, please.
- 20 A. (Witness writes on diagram.) The passenger to the
- 21 back of the car, the back passenger.
- 22 Q. On the back passenger side?
- 23 A. Yes, sir.
- 24 Q. Okay. Now, let's go up to this vehicle. Let's use
- 25 blue to indicate where Mr. Slay was.

1 **A.** He was driving the car. (Witness writes on
2 diagram.)

3 **Q.** Okay, and let's use, let's say, green for Corey.
4 Where was he?

5 **A.** Sitting in the passenger car, ---

6 **Q.** Okay.

7 **A.** --- passenger seat. (Witness writes on diagram.)

8 **Q.** All right. Now, when they pull up, how far -- let
9 me say this: Y'all are facing towards each other, but
10 some distance apart here. How far is the front of that
11 car to the front of your car if you could estimate for me?

12 **A.** About from here to that first row of seats.

13 **Q.** The first row of seats?

14 **A.** Yes, sir.

15 **Q.** I'm right here, so that would be about eighteen
16 feet?

17 **A.** About right.

18 **Q.** So it's eighteen feet in front of you?

19 **A.** Yes, sir.

20 **Q.** Okay. Let me write that down for you. (Mr.
21 Bellamy writes on diagram.) So this is eighteen feet, is
22 that right?

23 **A.** Yes, sir.

24 **Q.** Now, what's the difference between the side of this
25 car and the side as far as parked like that? Do you see

1 what I'm saying?

2 A. Yes, sir.

3 Q. How far apart? Is that that forty-five feet you
4 talked about or fifteen yards?

5 A. No, it wasn't that far.

6 Q. Okay. Well, how far apart then?

7 A. About eighteen, eighteen feet.

8 Q. Okay. Now, I understand the front of the cars are
9 eighteen feet away, ---

10 A. Okay.

11 Q. --- but if you were to -- the door of this car to
12 the door of that car, how far this way (indicating) would
13 it be?

14 A. About twenty, twenty-five feet, or something.

15 Q. Apart?

16 A. Apart.

17 Q. Okay, so twenty to twenty-five feet (Mr. Bellamy
18 writes on diagram). Okay, and is that where the car
19 stopped?

20 A. Yes, sir.

21 Q. And y'all were already parked?

22 A. Yes, sir.

23 Q. Okay, and what happened? Where do you say -- did
24 you indicate Corey got out in the beginning? You might
25 need to slide back. But Corey got out of the car?

1 A. Corey Smalls got out of the car.

2 Q. Okay. Now, draw me a line. Let's do it with the
3 green since he's green in there. Draw me a line of where
4 Corey went.

5 A. (Witness writes on diagram.) He walked to the back
6 of the car.

7 Q. The back of which car now so the record will
8 indicate ---

9 A. The back of the Maxima.

10 Q. Okay, so he walked to the back of the Maxima, and
11 what did he do? Now, put an "X" where he is.

12 A. (Witness writes on diagram.)

13 Q. All right, and now, so is he at the back or is he a
14 little bit to the passenger side back?

15 A. At the back bumper of the car.

16 Q. Okay, and now put "C.O." there. That's his -- not
17 his initials, but that's what we call him, okay?

18 A. (Witness writes on diagram.)

19 Q. Okay. Now, did he get out of the car, meaning
20 Corey, first and come here?

21 A. Yes, sir.

22 Q. Okay. He was the first person to get out?

23 A. Yes, sir.

24 Q. And at the time he got out and came here, where was
25 Mr. Beaty?

1 A. Sitting right here at the back of the car.

2 Q. He was still seated in the car?

3 A. Yes, sir.

4 Q. Okay. Now, and let me -- I want to try to clarify
5 this. I thought -- and if I'm wrong, you can correct me,
6 but on direct examination you told us that Mr. Beaty was
7 in back behind -- directly behind you?

8 A. At first, he was.

9 Q. Okay.

10 A. Before I dropped my cousin off.

11 Q. Okay. Then he got into the passenger seat?

12 A. He got into the back passenger -- yeah.

13 Q. Okay. Now, so C.O. comes to here?

14 A. Yes, sir.

15 Q. And Mr. Slay, does he get out of his car?

16 A. No, sir.

17 Q. So he's still seated in his car?

18 A. Yes, sir.

19 Q. All right, and what do you do, or what happens at
20 that point? Does anybody get out of the car at that
21 point?

22 A. No, sir. At that point, like I say, me and Neil,
23 we started talking, so I don't believe he exited the car,
24 the Maxima.

25 Q. Okay, and let's draw a line again with the green,

1 and draw a line from the path he took and where he went
2 when he -- excuse me; you might want to -- back to the
3 side.

4 A. (Witness writes on diagram.) During that time,
5 Tyronne exited the car, and he walked to the victim's car,
6 the driver's door.

7 Q. Okay, and stopped?

8 A. Stopped.

9 Q. Okay. Now, let's put just maybe right up here
10 "T.B." up there.

11 A. (Witness writes on diagram.)

12 Q. All right. Now, so he's standing. So as you're
13 sitting in the car, you're looking straight out, right?

14 A. Yes, sir.

15 Q. Okay, and as you're looking straight at it, how
16 close if -- let's say I'm -- I'm sitting in the driver's
17 seat. How close was Mr. Beaty to that car if I'm -- if I
18 were driving?

19 A. About eighteen foot.

20 Q. No, no, no. He's eighteen feet away from the car?

21 A. Oh, from the car?

22 Q. Yeah, yeah, yeah. Mr. Beaty, he's standing here by
23 the driver's side window, right?

24 A. Uh-huh (affirmative response).

25 Q. So is he right close to it ---

- 1 A. Yeah; he ---
- 2 Q. --- within a couple of feet?
- 3 A. He's close to it.
- 4 Q. Real close?
- 5 A. Real close.
- 6 Q. Okay. Could he reach his hand inside the car?
- 7 A. Yes, sir.
- 8 Q. Okay, so within one to two feet?
- 9 A. Yes, sir.
- 10 Q. Okay, so let's write -- and I'll write that. (Mr.
- 11 Bellamy writes on diagram.) So Mr. Beaty here is one to
- 12 two feet from the car, all right?
- 13 A. Yes, sir.
- 14 Q. Now, so you're watching. Now, where is, again,
- 15 C.O.? Is he still standing back here smoking the Black &
- 16 Mild?
- 17 A. Yes, sir.
- 18 Q. All right. Now, and it's your testimony, I
- 19 believe, from before, that when Mr. Beaty leaves the car
- 20 and walks over here, you do not see anything in his hands?
- 21 A. No, sir.
- 22 Q. Okay, and you don't see a gun at that time?
- 23 A. No, sir.
- 24 Q. Okay, and he walks to the car?
- 25 A. Yes, sir.

1 Q. And you cannot hear what's being said, is that your
2 statement?

3 A. Yes, sir.

4 Q. All right. Was your window ---

5 THE COURT: Please speak up in your answers.

6 A. All right.

7 Q. Speak up loud, okay? You can't hear what's being
8 said, but you indicated that you could see lips moving, or
9 the mouth moving. Would that be for both Mr. Slay and Mr.
10 Beaty?

11 A. Just Tyronne.

12 Q. Just Tyronne?

13 A. Yes, sir.

14 Q. Could you see Mr. Slay as he was seated in the car?

15 A. Yes, sir.

16 Q. Okay, because you could see through his front
17 window, couldn't you?

18 A. Yes, sir.

19 Q. And then you started, as you indicated, you start
20 talking to Neil, ---

21 A. Yes, sir.

22 Q. --- correct, and then you hear what?

23 A. Gunshots.

24 Q. Okay, how many?

25 A. Three.

1 Q. And when you heard them, which direction were they
2 coming from?

3 A. The front of me.

4 Q. Huh?

5 A. The front of me.

6 Q. The front, okay, and so then you look and what do
7 you see?

8 A. When I look, I see Tyronne wiping the car with his
9 hands, like this (indicating).

10 Q. With his hands?

11 A. Yes, sir. He left that car and came back to the
12 car we was driving.

13 Q. And gets in?

14 A. And gets in.

15 Q. Now, where does he get in the car?

16 A. Right here (indicating).

17 Q. He gets back in the same spot?

18 A. The same spot.

19 Q. Okay. Where does C.O. go?

20 A. My cousin, Corey, runs to this side of the car, the
21 back, and he gets in. During that time, Corey and Tyronne
22 starts arguing over what happened.

23 Q. Now, did you see anything in Tyronne's hand when he
24 come back?

25 A. No, sir.

1 Q. Okay, and did you see anything in Corey's hands?

2 A. No, sir.

3 Q. Now, they -- they're arguing, and then is that when
4 you leave and go to Bridget's down Enterprise to the
5 landing?

6 A. Yes, sir.

7 Q. And y'all go to Bridget's house?

8 A. Yes, sir.

9 Q. All right, and I believe there you, Tyronne, and
10 Neil get out of the car?

11 A. Yes, sir.

12 Q. Okay, and Corey leaves?

13 A. Yes, sir.

14 Q. And then how long were you there until you took
15 Tyronne and Neil to the Southbridge\Kangaroo area off of
16 Glenn's Bay?

17 A. Probably like fifteen minutes.

18 Q. Okay, but then you took them and dropped them off?

19 A. Yes, sir.

20 Q. And then you took your daughter back to the
21 Inlet, ---

22 A. Yes, sir.

23 Q. --- and dropped her off at the game room, and some
24 other things?

25 A. Yes, sir.

1 Q. Okay. Did you see anybody shoot that night? You
2 didn't see anybody shoot, did you?

3 A. No, sir, but I heard the shots.

4 Q. You heard shots, but you didn't see anybody shoot?

5 A. Yes, sir.

6 Q. Okay, and when you looked up, where was Mr. Beaty
7 standing? How close was he to that car?

8 A. About one ---

9 Q. One foot?

10 A. One foot.

11 Q. You can have a seat back up there.

12 MR. BELLAMY: The Court's indulgence for just one
13 second.

14 THE COURT: Yes, sir.

15 Q. Did Corey use the phone from the point y'all left
16 Butler Road and Bridget's house? That takes how long to
17 get there between those two places, Butler Road being
18 here, coming down, just off of Holmestown Road? That's
19 takes about ten minutes, right?

20 A. Yes, sir.

21 Q. All right. During that ten minutes after you say
22 this happened, was Corey on the phone?

23 A. Not to my knowledge.

24 Q. Okay, and then after that point, he was gone with
25 the Maxima? He would not have been around Tyrone at that

1 point, correct?

2 A. Yes, sir.

3 Q. Do you ever recall him after he -- the two of y'all
4 hooked back up together, do you ever recall him being --
5 calling a Daniel Prater or looking for marijuana that
6 night after this happened?

7 A. No, sir.

8 Q. You don't recall that?

9 A. No, sir.

10 Q. Do you recall people -- anybody calling him and his
11 phone ringing, looking for this Mr. Slay fellow?

12 A. Yes, sir.

13 Q. You recall that?

14 A. Yes, sir.

15 Q. But you don't recall him looking for marijuana?

16 A. No, sir.

17 Q. Okay. Now, you also tell the police in this
18 statement that C.O. had a brown bag and that he was faking
19 it, and that C.O. had the flour? Don't you tell them in
20 that statement here to the police on the 25th day of
21 October, 2005?

22 A. I don't remember saying that.

23 Q. You deny saying that?

24 A. I don't remember saying it.

25 Q. You don't remember saying it?

1 A. No, sir.

2 Q. But now you do say that at some point that the only
3 person out of the car was Corey when you heard the shots?
4 You do tell the police that at first, don't you?

5 A. Yes, sir.

6 Q. And then the police tell you they don't like that
7 story, and you're on the sinking ship with no life jacket
8 and you better give them something different, and that's
9 when you change and add Mr. Beaty, isn't it?

10 A. Yes, sir.

11 Q. So you had to tell them something? They didn't
12 like it, did they? They didn't like what you were telling
13 them, so you had to tell them something different to help
14 yourself, right?

15 MS. VON HERRMANN: I'm going to object to that, Your
16 Honor.

17 Q. Did you change your story after they told you you
18 were on a sinking ship?

19 A. Yes, sir.

20 Q. And before that, you had never mentioned Mr. Beaty
21 as shooting anybody, or having no gun, or none of that
22 business, had you?

23 A. Yes, sir.

24 Q. You told them that it was Corey out there when the
25 shots went off, didn't you?

1 A. I never said that.

2 Q. You didn't say that?

3 A. No, sir.

4 Q. Well, you didn't mention anything about my client
5 doing anything until they told you that you needed to get
6 off the ship?

7 THE COURT: You need to answer.

8 A. Yes, sir.

9 Q. The question wasn't asked, "Okay, but it was just
10 Corey and this other dude?" And your answer is, "Uh-huh
11 (in the affirmative), Line 19 through 21. Is that a
12 question and answer that was given to you in your
13 statement, previous statement?

14 MS. VON HERRMANN: Your Honor, I'd like to take a
15 look at that, and I don't know that that's proper to ---

16 THE COURT: Sustain the objection.

17 MS. VON HERRMANN: If he wants to put that in
18 evidence.

19 Q. Did you -- was that a question and answer in a
20 previous statement that you gave, yes or no?

21 A. No, sir.

22 Q. Let me ask you about your cousin, Corey. He's a
23 member of a gang, isn't he? Isn't he?

24 A. Not that I know of.

25 Q. Are you familiar -- well, what about you?

1 A. I'm not affiliated with no gang.

2 Q. You're not affiliated with no gang?

3 A. No, sir.

4 Q. Are you familiar with The Bloods?

5 MS. VON HERRMANN: Objection, Your Honor.

6 THE COURT: Sustained.

7 Q. Let me show you this and see if you recognize that.

8 MS. VON HERRMANN: I'd like to see what he's handing
9 him and have that marked.

10 THE COURT: Solicitor.

11 Mr. Bellamy, if you're going to ask the witness to
12 identify something, if you haven't shared it with the
13 Solicitor, please do so.

14 MR. BELLAMY: I got it from the Solicitor, Your
15 Honor.

16 THE COURT: All right, very good then.

17 MR. BELLAMY: These would be the letters written by
18 Mr. Smalls, Corey.

19 MS. VON HERRMANN: I'd like to see the particular
20 letter that he intends to show him.

21 THE COURT: Just show it to her.

22 MR. BELLAMY: (Hands document to Ms. Von Herrmann.)

23 MS. VON HERRMANN: Your Honor, I don't have any
24 objection to this if he wants to mark it and put it in,
25 but I've got an objection if he doesn't intend to do that.

1 MR. BELLAMY: Your Honor, I'm going to show him and
2 ask him if he recognizes anything on it.

3 THE COURT: I'll allow you to show it to him and see
4 if he recognizes it.

5 Q. Let me ask you to look at this, Mr. Antonio Smalls.
6 Now, there's some ---

7 THE COURT: Don't describe it. Just ask him if he
8 recognizes it.

9 Q. Do you recognize that handwriting?

10 A. No, sir.

11 Q. You don't recognize that as being your cousin?

12 MS. VON HERRMANN: Objection.

13 Q. Yes or no?

14 A. No, sir.

15 Q. Okay. Now, but you say that Corey is not a member
16 of any gang?

17 A. Not to my knowledge.

18 Q. Nor are you?

19 A. No, sir.

20 Q. What about Mr. Slay, was he a member of some -- a
21 group called The Folk Nation?

22 A. Not to my knowledge.

23 Q. Are you familiar with any tattoos that your cousin,
24 Corey, might have on his forearms?

25 A. No, sir.

1 Q. You're not? The door to the SUV on the driver's
2 side, open or closed?

3 A. Closed.

4 Q. It was closed when you left it, wasn't it?

5 A. Yes, sir.

6 MR. BELLAMY: The Court's indulgence.

7 Q. Let me ask you this, just one more question.
8 You've got pending distribution of drug charges, don't
9 you?

10 A. Yes, sir.

11 Q. And that carries fifteen years?

12 A. Not -- not that I know of.

13 Q. Well, it carries some jail time.

14 MS. VON HERRMANN: Objection.

15 Q. Well, do you know how much it carries?

16 A. No, sir.

17 Q. You're also charged with murder and armed robbery,
18 aren't you?

19 A. Yes, sir.

20 Q. And that's ten to thirty?

21 MS. VON HERRMANN: Objection.

22 THE COURT: It's already been asked and answered by
23 previous witnesses and not objected to, so I'm going to
24 allow it.

25 Q. It carries up to thirty on robbery, right?

1 A. Yes, sir.

2 Q. And thirty -- and, in fact, I believe it's in your
3 proffer agreement that's already introduced into evidence
4 by the State that -- or Mr. Hills, that it carries thirty
5 to life for murder, right?

6 A. Yes, sir.

7 Q. And you expect, don't you, Mr. Smalls, to get some
8 help because you're up here testifying?

9 A. I wasn't promised nothing.

10 Q. You just came on your own free will and accord?

11 A. Yes, sir.

12 Q. And you don't anticipate that anything better is
13 going to happen because you're up here talking?

14 A. No, sir.

15 MR. BELLAMY: I don't have any further questions,
16 Mr. Smalls.

17 THE COURT: Redirect.

18 MS. VON HERRMANN: Just a couple.

19 REDIRECT EXAMINATION BY MS. VON HERRMANN:

20 Q. Mr. Bellamy asked you about a statement that Corey
21 said; he asked that, "I need the money." Do you remember
22 him asking you about that question?

23 A. Yes, sir -- I mean, yes, ma'am. I'm sorry.

24 Q. And he said -- he asked you about that, and that
25 statement took place at the motel, is that correct?

1 A. Yes, ma'am.

2 Q. And that was prior to when you all had gone and met
3 Tyronne and Neil, correct?

4 A. Yes, ma'am.

5 Q. But it was after a telephone conversation that
6 Corey had had with Tyronne, is that correct?

7 A. Yes, ma'am.

8 Q. All right, and was he saying that in response to
9 something shortly after that telephone conversation?

10 A. Yes, ma'am.

11 Q. You said at some point that you did not -- during
12 your interview that you didn't know who shot Miles,
13 correct?

14 A. Yes, ma'am.

15 Q. And the fact of the matter is you were there?

16 A. Yes, ma'am.

17 Q. And you did hear the shots?

18 A. Yes, ma'am.

19 Q. Was there anyone even remotely in the area of Miles
20 Slay's vehicle other than Tyronne Beaty?

21 A. No, ma'am.

22 Q. The shots came from in front of you?

23 A. Yes, ma'am.

24 Q. Was there any other individual other than Tyronne
25 Beaty in front of you?

1 A. No, ma'am.

2 Q. Did you know where Corey Smalls was standing?

3 A. Yes, ma'am.

4 Q. Did you know where Neil Hill was sitting?

5 A. Yes, ma'am.

6 Q. Did you know where you were sitting?

7 A. Yes, ma'am.

8 Q. Were there any other people in that location?

9 A. No, ma'am.

10 Q. In fact, that location -- who picked out that
11 location?

12 A. If I'm not mistaken, Corey Smalls.

13 Q. Okay, and that location was picked out because
14 there wasn't going to be any -- a bunch of people around
15 there, isn't that true?

16 A. Yes, ma'am.

17 Q. Now, also during that interview that Mr. Bellamy
18 asked you about, you told the police that Tyronne told you
19 that that was a forty-five caliber gun? Do you remember
20 that?

21 A. No, ma'am.

22 MR. BELLAMY: Your Honor, I didn't -- I don't
23 believe I covered that on cross examination.

24 THE COURT: Let's -- let's move along, Solicitor.

25 Q. You also testified that you didn't see anything in

1 Tyronne's hand when he was going to the car, correct?

2 A. Yes, ma'am.

3 Q. But you did testify that he had a gun and the dope
4 in his pocket?

5 A. Yes, ma'am.

6 Q. And you saw the money and you saw the gun at
7 Bridget's house, correct?

8 A. No, ma'am.

9 MR. BELLAMY: Your Honor, ---

10 Q. When the police -- when you talked to the police,
11 you gave them a statement, correct?

12 A. Yes, ma'am.

13 Q. And, in fact, you went with -- offered to go or did
14 go with officers from the Horry County Police Department
15 and you showed them the crime scene area, correct?

16 A. Yes, ma'am.

17 Q. And you drove around and you told them where you
18 had dropped Corey off, and where Bridget's house was, and
19 where the scene was, and described to them what was done,
20 and what had taken place on that day, is that correct?

21 A. Yes, ma'am.

22 Q. Thank you.

23 MS. VON HERRMANN: I don't have any further
24 questions.

25 THE COURT: Anything on those questions?

1 the jury to come in?

2 MS. VON HERRMANN: Yes, sir, Your Honor.

3 THE COURT: And Defense?

4 MR. BELLAMY: Yes, sir, Your Honor.

5 THE COURT: Very good. Could we ask the jury to
6 come in, ma'am.

7 (THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE
8 JURY.)

9 THE COURT: All right, Solicitor, your next witness,
10 please, ma'am.

11 MS. VON HERRMANN: Thank you, Your Honor. The State
12 calls Dr. Cynthia Schandl.

13 THE COURT: All right. Please come around to be
14 sworn, ma'am.

15 DR. CYNTHIA SCHANDL, being first duly sworn,
16 testifies as follows:

17 THE CLERK: Please be seated. State your full name
18 and spell your last name.

19 DR. SCHANDL: Cynthia Anna Schandl,
20 S-C-H-A-N-D-L.

21 THE COURT: All right, Solicitor.

22 MS. VON HERRMANN: Thank you.

23 DIRECT EXAMINATION BY MS. VON HERRMANN:

24 Q. Dr. Schandl, how are you currently employed?

25 A. I am employed at the Medical University of South

1 Carolina in Charleston, South Carolina, as a forensic
2 pathologist and Assistant Professor in the Department of
3 Pathology and Laboratory Medicine.

4 Q. Are you a licensed physician?

5 A. Yes, I am a licensed physician in the states of
6 South Carolina and Florida.

7 Q. If you will, give the jury, please, just the
8 benefit of your educational and professional experience.

9 A. So in order to become a forensic pathologist, one
10 must complete college. I have a Bachelor's Degree from
11 the California State University in San Bernadino. One
12 must then complete medical school. I went to medical
13 school at the Medical University of South Carolina in
14 Charleston, South Carolina. During those years, I also
15 attended graduate school and also obtained my Ph.D., so
16 from the Medical University, I obtained my M.D. and Ph.D.
17 degrees in '99.

18 After that training, so after medical school and
19 graduate school, I became fully licensed in the state and
20 then continued my training in what is called a residency
21 program. The different facets of medicine each have a
22 training program called a residency program. The one that
23 I chose is that in pathology and laboratory medicine,
24 which is a four year training program. I chose to do that
25 training, again, at the Medical University of South

1 Carolina.

2 Following that training, one can choose to then
3 practice in pathology or get further training. I chose to
4 get further training in the field of forensic pathology
5 and thus did another one year fellowship also at the
6 Medical University in the field of forensic pathology, and
7 at the combination of that training, I did take Board
8 examinations, National Board examinations, in the fields
9 of anatomic pathology, clinical pathology, and forensic
10 pathology, and thus I am Board Certified in those three
11 areas.

12 Since that time, I have been on faculty at the
13 Medical University of South Carolina since 2004.

14 Q. And tell the jury, if you will, what exactly is it
15 that a forensic pathologist does?

16 A. Pathology itself is the study of disease. Forensic
17 pathology concerns itself with those areas that may have
18 medical-legal consequences. Frequently what we're looking
19 at are autopsies in individuals, that we will perform
20 autopsies on individuals who have died under circumstances
21 that are not known to be natural, so, for example, we may
22 not perform an autopsy, a forensic autopsy, on someone who
23 has been in a hospital with a diagnosis of cancer.

24 On the other hand, if we have a person of that same
25 age, perhaps sixty or seventy, who is at home and has no

1 medical history, that might be referred to us because we
2 don't know what that cause of death is. We don't know if
3 it was natural, it's a fall, which would be accidental is
4 involved or some other thing, and so also in the State, we
5 would get those cases that are thought to be homicides,
6 suicides, so we would get homicides, suicides, accidental
7 deaths, and natural deaths where that cause has not been
8 determined prior to death.

9 Q. How many autopsies do you think that you've
10 performed?

11 A. I have performed over a thousand cases.

12 Q. And when you perform an autopsy, and I think you
13 talked about it here just a moment ago, but is there some
14 specific finding that you are looking to make at the
15 conclusion of that autopsy?

16 A. Yes. Generally speaking, particularly in forensic
17 pathology, we are directed to find a cause of death, which
18 may be something like a heart attack or might be something
19 like a gunshot wound, and then we're also directed to try
20 to identify a manner of death, and those manners of death
21 are state determined, so they tell us what we can choose
22 from, and those manners of death in this State are
23 homicide, suicide, natural, accidental, and undetermined,
24 if a manner cannot be determined.

25 MS. VON HERRMANN: Your Honor, I would move to have

1 Dr.. Schandl qualified as an expert in the field of
2 forensic pathology..

3 THE COURT: Do you wish to voir dire the witness as
4 to her qualifications?

5 MR. BELLAMY: Just briefly, Your Honor.

6 THE COURT: Very good. You may do so.

7 VOIR DIRE EXAMINATION BY MR. BELLAMY:

8 Q. Dr. Schandl, or how do you pronounce it?

9 A. Schandl.

10 Q. I'm sorry. Now, if I could, ---

11 MR. BELLAMY: And you're seeking to qualify her as a
12 forensic pathologist?

13 MS. VON HERRMANN: In the field of forensic
14 pathology.

15 Q. If you would, what's the difference between a
16 pathologist and a forensic pathologist?

17 A. A pathologist, again, is the broad field that
18 covers clinical pathology and anatomic pathology, which
19 are the two sort of broad fields of pathology, but it also
20 covers all the sub-specialties, which include forensic
21 pathology, hematic pathology, clinical chemistry, dramatic
22 pathology, and a whole 'nother -- a whole group of
23 specialties, so forensic pathology is a sub-specialty of
24 pathology.

25 Q. And how does one become a forensic versus a -- some

1 of those others that you mentioned? Is there additional
2 education, training, or specific training that these
3 others don't have?

4 A. Yes, so for, again, for the sub-specialty training
5 after the training for the broad areas of pathology,
6 clinical and anatomic pathology, you can then train
7 further in a fellowship specific to that sub-specialty
8 that you have most interest in, and in my case, it was
9 forensic pathology, so that, again, entailed an additional
10 year of training with its own separate National Board
11 examination.

12 Q. And you did that training where?

13 A. At the Medical University of South Carolina.

14 Q. And when we say training, is that -- and you have
15 to help me -- classroom, like I think of going to college,
16 you go to a classroom, or is this a practical thing where
17 you're in assisting with autopsies or things of that
18 nature, or is it a combination?

19 A. It's a combination of both, so as a forensic
20 pathology fellow, you come and every day you perform
21 autopsies under the direction of the attending
22 pathologists who have already had their training, so
23 you're performing cases during the day, and you're also
24 going to different seminar series and doing different
25 readings and so forth to back up that knowledge as you are

1 around your cases that you are doing for the day, so it's
2 really a combination of both.

3 Q. And you indicated that you took a national test?

4 A. Yes. The American Board of Pathology has a
5 National Board examination.

6 Q. Would that be specific to forensic pathology?

7 A. They have one specific to forensic pathology.

8 Q. And I understand you took it -- you took that?

9 A. That's correct.

10 Q. And when was that that you took that?

11 A. 2005.

12 Q. 2005, okay. Have you been employed the entire time
13 at M.U.S.C.?

14 A. Yes, sir.

15 Q. Okay, and when we say forensic, again that would be
16 something beyond a person dying in the hospital or it
17 would be something that would be unusual, as you stated?

18 A. Well, again, we get cases referred of all different
19 types, but forensic pathology is directed at those cases
20 that are not due necessarily to natural deaths.

21 Q. And do you have special training in like gunshot
22 wounds, things of that nature, knife wounds, things that
23 would be again not natural?

24 A. Yes, sir.

25 Q. Okay, and you have -- would that be part of that

1 year training that you have done?

2 A. That's correct.

3 MR. BELLAMY: The Court's indulgence.

4 THE COURT: Yes, sir.

5 MR. BELLAMY: Your Honor, I don't have any objection
6 to Dr. Schandl being qualified as an expert in the field
7 of forensic pathology.

8 THE COURT: All right. I am going to qualify her to
9 give her opinion in the field of forensic pathology.

10 You may continue, Solicitor.

11 MS. VON HERRMANN: Thank you, Your Honor.

12 DIRECT EXAMINATION CONTINUES BY MS. VON HERRMANN:

13 Q. Did you have occasion to conduct an autopsy on the
14 victim in this case, Miles Slay?

15 A. Yes, ma'am, I did.

16 Q. And on what date did that occur?

17 A. The autopsy was performed on October 22nd of 2005.

18 Q. All right, and how did that -- how did the body
19 come to you?

20 A. Well, since we are in the State of South Carolina,
21 which is a Coroner state, each of the individual counties
22 have elected officials who are the Coroner for that
23 county, so it is the Coroner who contacts our office, or
24 the other offices around the State that employ forensic
25 pathologists, and let us know that there is a case and

1 that they would like to send it to us, so in this case we
2 were contacted by the Deputy Coroner of Horry County who
3 told us that an individual would be coming to us, and so
4 that's how -- that's how we are introduced to the case, is
5 through the Coroner.

6 Q. And when you began your autopsy on Mr. Slay, what
7 was the first thing -- what is the first thing that you do
8 in this autopsy, or any autopsy for that matter?

9 A. So essentially the individual will come to us and
10 then we would bring that individual up from the morgue up
11 to the autopsy suite. That individual will be placed on
12 an autopsy table as he is received by our office, so he
13 may be entirely clothed, or if he has been to the
14 hospital, it's likely the clothing has been removed, but
15 however he gets to us is how he comes onto the autopsy
16 table.

17 At that point, a series of photographs will be taken
18 to document how he comes to us. In addition, we will
19 begin to diagram what we see, and then we will take the
20 clothing off, and if it's important to the case, we may
21 also document things with the clothing, defects to the
22 clothing, whether there's blood stains on it or other
23 things that we need to look at, so that the clothing
24 becomes in its own separate examination essentially. It
25 comes off of the body as well.

1 We will then take another set of photographs of the
2 individual without the clothing. Again, we're looking for
3 things that might be identifying features as well, such as
4 a tattoo or scars, things like that, as well as any
5 injuries or other things that we might see in any
6 particular case, so photographs get taken at that point.

7 Then after the photographs, again we're working at
8 diagrams and we're looking at identifying features, hair
9 length, weight, length of the body, does the person have a
10 beard, what is their eye color, those sorts of things, so
11 we will document all those things on every individual, and
12 then once those things are documented, we will move to any
13 injuries if injuries might be present, and then we will
14 begin to document those.

15 In the case of gunshot wounds, which this is a
16 multiple gunshot wound case, we will document those
17 injuries both by a diagram so essentially where are those
18 defects in the body, as well as in a form that tells us
19 that -- directs us to say where exactly are they on the
20 body, so top of the head, left or right of midline, and
21 that actual description of the defect itself, so we have
22 many different pieces of paperwork that we are filling out
23 as we are going through the case.

24 And so after we've documented that, so on the
25 external we have all these different defects to the body,

1 then we'll move to what's classically considered the
2 autopsy and begin, you know, the "Y" incision to look
3 inside of the body to try and figure out which organs may
4 have been struck, in this case, by bullets or other
5 things, if there's natural disease processes going on, and
6 so forth, so that's essentially one of the later steps is
7 to document those internal findings.

8 Also in the course of an autopsy, fluids are taken in
9 order to look at any toxicological findings, so those are
10 sent away for toxicological studies, and then we also take
11 representative sections from the organs, again, to look at
12 under the microscope, both to document injury, as well as
13 any natural disease processes going on, so that -- that's
14 sort of an overview of basically how we do every single
15 autopsy, and in this case, it was a case of multiple
16 gunshot wounds.

17 Q. Okay, and so we'll get to the gunshot wounds in a
18 moment, but aside from those gunshot wounds, tell the
19 jury, please, how you found Mr. Slay's physical condition
20 to be.

21 A. Okay. We found him to be about five foot, six, and
22 two hundred and thirty pounds. He was -- he was clothed,
23 so he had on a tee shirt, like an undershirt. He had
24 shorts and socks. His shoes were -- he wasn't wearing
25 them by the time I got him, the shoes that came with him.

1 Let's see; what other things might you be interested
2 in?

3 Q. Did you find him to be in good health otherwise?

4 A. Yes, both just looking at him externally, as well
5 as at the conclusion of the autopsy, after looking at all
6 the organs and taking sections and looking at them under
7 the microscope. Let me see if we found anything as far as
8 his health. He did have some focal mild coronary artery
9 atherosclerosis, a little bit of plaque in one of his
10 coronary arteries, and that was it.

11 Q. And what did you determine in this case ultimately
12 caused Mr. Slay's demise?

13 A. Well, ultimately he was killed as a result of the
14 multiple gunshot wounds. In particular, one of the
15 gunshot wounds went through the aorta, which is the
16 largest blood vessel in the body. It's about the size of
17 a garden hose in caliber, and so it did hit the aorta and
18 the left lung, one of these particular bullets that went
19 through his body.

20 Another one also hit the right lung. Another one of
21 the projectiles hit the right lung, so -- and the
22 remaining gunshot wounds, although they did damage to his
23 soft tissues and invariably fractured different areas,
24 didn't go into the body cavities, so essentially the cause
25 of death in this case was that gunshot wound that went

1 through the aorta and the left lung.

2 Q. And did you do a diagram in connection with this
3 case?

4 A. Yes, ma'am.

5 Q. And do you have that with you?

6 A. Yes, I do.

7 MS. VON HERRMANN: Before we get to that, let me ask
8 the Court to allow her to stand down, and I'll stand up
9 here and I will be your model or your dummy, depending on
10 who you are talking to, but if you would just step down
11 here, and I will stand here and if you will just show them
12 sort of where those shots came from.

13 THE COURT: Could you move a little bit closer,
14 Solicitor and Doctor, to that -- you see that box on the
15 rail, that's a microphone.

16 DR. SCHANDL: Thank you, sir.

17 MR. BELLAMY: Your Honor, might I -- so I can see a
18 little bit better?

19 THE COURT: Absolutely.

20 A. So he had a number of defects to his body. It's
21 difficult to tell you exactly how many times he was shot.
22 He was shot either five, or six, or seven times, and I
23 will explain that. All of the gunshot wounds went all the
24 way through his body and out with the exception of one, so
25 in one instance we had a gunshot that was recovered; we

1 did recover the bullet. Okay, so with every other gunshot
2 wound, there are at least two holes in the body, okay, so
3 the question about how many times was he shot is
4 complicated by the fact that if the bullet goes all the
5 way through the body, it is possible that it can then re-
6 enter the body and go through it a second time, okay?

7 So what we have with this case is we have a through
8 and through, so again all the way through, a gunshot wound
9 to his right hand ---

10 Q. And kind of show on me where ---

11 A. Essentially with a hole here and a hole here
12 through the right hand (indicating). We have a through
13 and through gunshot wound that went ---

14 Q. Well, you can show it on yourself if it's easier
15 for you.

16 A. I just -- I'm used to doing that.

17 Q. Okay, whichever you're more comfortable with.

18 A. Okay, that's fine, so a through and through gunshot
19 wound that went through the -- basically the side of the
20 arm or the shoulder, the left side, out about here
21 (indicating), okay, so it's coming out. Now, there's
22 another entrance wound about here (indicating), so it's
23 possible again that this pathway may have continued to
24 this pathway which went from here to the other side of the
25 face and out, okay, so I don't know -- I can't tell you

1 for sure if this is one gunshot all the way through or two
2 gunshots, okay, so we've got the one through the hand, the
3 one through the left shoulder, the one through the neck to
4 the face.

5 And there's another one that's here, about here, on
6 the left chest (indicating) that comes out right here on
7 the neck. Now, this one I'm quite certain then re-enters
8 right here on the neck because there is a continuous what
9 we call a graze wound that's connecting this gunshot
10 wound, this exit gunshot wound, with this re-entrance
11 gunshot wound, which then continues to come out the face
12 here.

13 This is the one that went through the aorta and the
14 left lung, and then it continued here and shattered the
15 jaw over here and some teeth, okay, so this one I'm quite
16 certain is a single gunshot wound that caused four
17 different defects in this individual, so again, that one
18 through the hand, one through this shoulder, possibly also
19 that continuing through the neck to the face, one through
20 here (indicating), to the neck, to here, and out the face,
21 okay?

22 Now, the other one is to the back at about here
23 (indicating), and it travels across the mid-line, hit the
24 right lung, and ends up in this arm, okay, and then we
25 have another one that travels from the lateral --

1 posterior lateral thigh back here and then exits about
2 here on the upper buttocks on the right-hand side, okay,
3 so traveling from about here (indicating) to about here in
4 an upward direction, depending on, of course, where the
5 body is.

6 And let me refresh my memory. We have one that goes
7 to (i) is the one I'm looking for, (g) to (i), so there's
8 another one that is here (indicating) that crosses the
9 mid-line without entering the chest cavity and comes out
10 the front of the right arm, okay, so again we'll just go
11 through them one more time.

12 One goes through the right hand. It's certainly
13 possible that it then re-entered at some other place; I
14 don't know where. One goes through this shoulder and then
15 possibly through the neck and out the side of the face.
16 One goes from here and out the front of the arm. One goes
17 from here, up to here, back into the neck and out of the
18 face, and one goes from the back across the mid-line
19 through this lung, and this is the one we find the bullet
20 in the right arm, okay, so he was shot either five, or
21 six, or seven times, depending upon those variables.

22 Q. Thank you, and the bullet that you removed from Mr.
23 Slay, what did you -- did you turn that over to the Horry
24 County Police Department?

25 A. Yes, we did turn that over to John Lewis of the

1 Horry County Police Department.

2 Q. And there was also a crime scene person there as
3 well that day, is that correct?

4 A. There certainly likely was. I don't have that
5 information here.

6 Q. Okay. The distance of each of these shots, are you
7 able to make a determination about the distance of the gun
8 to the body?

9 A. I call each of these gunshot wounds distant. Now,
10 what -- what I mean by that is there are certain things
11 that we look for on the skin around the gunshot wound that
12 may tell us that it is a contact wound, and we might see
13 soot on the wound, around the wound, or that it is a close
14 range gunshot wound, in which case we might see stippling
15 around the wound. Stippling is when particular matter
16 comes out of the muzzle or the end of the gun and
17 scratches the skin, so those are the two things that we
18 can see with our eyes. We can see soot, which suggests a
19 contact wound, or we can see stippling, which suggests a
20 close range wound.

21 In this, I did not see either soot or stippling
22 associated with any of the defects to him, so I would
23 consider that distant, but we have to keep in mind or I do
24 keep in mind that to me as a forensic pathologist, distant
25 is the same thing as indeterminate because it is -- I'm

1 looking at something that I don't see, not something that
2 I do see, so it's a negative finding.

3 So that doesn't mean that it's not closer than
4 distant because it is possible that there are other things
5 going on that I'm unaware of. Perhaps there is an
6 intermediate target, so the bullet went through something
7 and hit the skin, and maybe it was just this far away
8 (indicating), but I would never know that, because it hit
9 something and I don't have this. I have the person, so
10 that's one possibility, so there are a number of different
11 possibilities that can make distant not be distant, which
12 is why I prefer to call it indeterminate.

13 Q. And do you do a toxicology screen as well as part
14 of the autopsy?

15 A. We draw blood and send it to a private laboratory
16 for toxicology studies, yes.

17 Q. And did you get a toxicology report back in this
18 case?

19 A. Yes, ma'am.

20 Q. And did you find anything of any significance in
21 that toxicology report?

22 A. One moment. There was ethanol, which is alcohol,
23 at a level of twenty-two milligrams per deciliter, which
24 is 0.022 percent.

25 Q. And let me stop you right there. When you say

1 that, the legal alco- -- the legal blood alcohol limit in
2 South Carolina is .08. Is this less than .08?

3 A. Yes, it is significantly less than 0.08. It is
4 0.02. And the other -- another finding is Delta Nine
5 Carboxyl Tetrahydrocannabinol, which is an inactive
6 metabolite of THC, so a cannabinoid, and then there's also
7 nicotine, which is from cigarettes or chewing some kind of
8 tobacco product, and its metabolite, cotinine.

9 Q. With regards to THC, is that something that's
10 typically found in marijuana?

11 A. Yes. THC is definitely something that is generally
12 found in marijuana. What we see in his blood is an
13 inactive metabolite of that, which is from marijuana.

14 Q. And so that means that he had some marijuana in his
15 system at some point in time?

16 A. That's correct. We presume since he has the
17 metabolite that at some time in the past he had the active
18 drug on board.

19 Q. But at the time, this time that the autopsy was
20 conducted, the blood was drawn, there was not a sufficient
21 amount to say that he was under the influence of
22 marijuana?

23 A. That's correct.

24 Q. All right. Let's talk again just briefly about the
25 bullet pattern. You have a number of shots that take

1 place in the upper body, entrance and exit wounds,
2 correct?

3 A. Yes.

4 Q. And then there are two other that appear to be in
5 the lower portion of the body, is that correct?

6 A. Well, there's one pathway in the lower body, so
7 from the left thigh to the buttock, there's that one.

8 Q. Would that be consistent with someone being shot if
9 they were in a seated position and slumped over?

10 A. That is possible. That is possible. It's
11 impossible for me to tell you how the person was in space
12 because, again, I get them after the fact outside of that
13 situation. I don't know if they were moving when the
14 trigger was pulled. You know, I don't know if they were
15 bending over, if they were standing on their head, or
16 what, so all I can tell you is where did it hit him and
17 where did it come out.

18 Q. And one of the things that you consider in looking
19 at those gunshot wounds is the potential for movement
20 within the victim's body while those shots are taking
21 place, is that -- is that true?

22 A. That is something that I have to keep in mind, but
23 I cannot tell you where the shooter was. I cannot tell
24 you where the victim was at the time of any individual
25 gunshot wound.

1 Q. And movement, ---

2 A. Because they move. People move.

3 Q. Now, there was a shot that you described that was a
4 through and through the interior of the right hand, is
5 that correct?

6 A. Yes.

7 Q. And appearing to exit on the outside of that hand.
8 Is that -- would that wound be consistent with a defensive
9 type wound?

10 A. Any wound that's to the hands or even to the
11 forearms is considered a defensive wound because one can
12 presume that one would attempt to defend themselves if
13 they were being fired upon, so it is consistent with a
14 defense wound.

15 Q. And in this case, did you determine what the cause
16 of death was?

17 A. Yes, ma'am.

18 Q. And what was that cause of death?

19 A. Lung and aorta perforation due to distant
20 perforating gunshot wound to the left chest ---

21 Q. And ---

22 A. --- and contributory, multiple distant penetrating
23 and perforating gunshot wounds to the back, chest, neck,
24 and extremities.

25 Q. And what did you determine to be the manner of

1 death?

2 A. The manner of death is classified as homicide.

3 MS. VON HERRMANN: Thank you, Your Honor. I have no
4 further questions. Please answer any questions Mr.
5 Bellamy has.

6 A. Yes, ma'am.

7 THE COURT: Cross examination.

8 MR. BELLAMY: May it please the Court, Your Honor.

9 CROSS EXAMINATION BY MR. BELLAMY:

10 Q. Doctor, you, in your report, which I have here, you
11 described these wounds as all being distant. You don't
12 use the term "indeterminate" in here, do you?

13 A. No, I don't believe I used that term in the report.

14 Q. But as I understand it, you -- you described them
15 as interchangeable?

16 A. Yes, sir.

17 Q. But if -- let's say a hand wound, assuming -- and
18 I'll give you a hypothetical and you can tell us, if
19 there's nothing on my hand and a gunshot was close -- this
20 far away, a foot away, you would expect to see soot or
21 stippling, would you not?

22 A. A foot away begs the question. I can't tell you
23 one way or the other. If it was against the skin, I would
24 expect to see soot. If it was very near to the skin, I
25 would expect to see stippling, but as soon as you get more

1 than six inches or a foot away, you're got to test fire,
2 or I really cannot tell you what you would expect to see.
3 It's very variable after that.

4 Q. Okay. Did you see any soot or stippling on any of
5 the clothing that was taken?

6 A. No, I did not see.

7 Q. Okay, and did you turn over that clothing to the
8 law enforcement people?

9 A. Yes, sir.

10 Q. Did you do a diagram noting the -- the -- any
11 damage to the clothing?

12 A. Yes, sir.

13 Q. Do you have that with you?

14 A. Yes, I believe so.

15 MR. BELLAMY: Is that report in evidence?

16 MS. VON HERRMANN: No.

17 THE COURT: No.

18 Q. Did you review that?

19 A. Yes, sir.

20 Q. In particular, in the shorts, or pants, or
21 whatever, was there any damage to the clothing?

22 A. Yes. There is a defect to the back left side of
23 the shorts, sort of in the seat area of the shorts.

24 Q. The back left of the shorts?

25 A. Yes, sir.

1 Q. And would that be consistent with the wound that
2 you described to the back of the leg?

3 A. Yes, sir.

4 Q. Okay. Now, in the process of doing this, and I
5 know you went through with Ms. Von Herrmann and described
6 it on her. I may want you to do sort of a similar thing,
7 but in addition to that, you did take measurements and did
8 angles of each of these wounds, did you not?

9 A. That's correct.

10 Q. So would you mind coming down and on me kind of
11 going through these, but maybe write on this thing here,
12 describe the angle and direction of each of these wounds,
13 which I believe you did, is that correct?

14 A. I do estimate the angle and direction of each of
15 the wounds, yes.

16 MR. BELLAMY: Your Honor, may she come down and do
17 that?

18 THE COURT: Yes, sir.

19 Q. And I'll let you pick whichever wounds you want to
20 start with, and maybe if you would label it Number 1, and
21 then show them on me where it went in and came out and
22 then your measurements as related to that.

23 A. Okay.

24 Q. Is that okay?

25 A. Yes. I think I can -- I think I can work with

1 that.

2 Q. And, now, and if it will make it simpler for the
3 jury, I know you labeled them, you know, "B" and "L" and
4 things like that. Maybe if we just did it 1, 2, 3, 4, ---

5 A. I'm happy to help you with that.

6 Q. --- would that be okay? It might be simpler, okay?
7 Whichever one you want to pick, if you would show on my
8 body, and then would you write up there what -- tell us
9 what the measurements and write those for us.

10 A. Sure.

11 Q. Okay.

12 A. Okay, so I had made a list of -- of the different
13 wounds so that I would know what I'm telling you guys is
14 right, so that I have it on one page, okay, so that's what
15 I'm looking at now is my notes based on my report, and in
16 this -- on here I have a gunshot wound Number 1, and I
17 have them individually, so in this -- in this description
18 what we're going to have is each of them is going to be an
19 individual.

20 We're not going to talk about them going through and
21 through, and back in, and all that good stuff, except for
22 the one which -- the one that I told you was really quite
23 obvious, okay, so Number 1 is the one that went into the
24 lateral left neck here (indicating), and out on the right
25 facial cheek here, and so this one is going from left to

1 right, and the angle is like this, right? This is what we
2 call anatomic position, so all of our measurements are
3 based on someone standing, completely still, not moving,
4 and looking straight forward with their palms facing
5 forward, okay, so if a person is going to be -- stand like
6 that, it's fifteen degrees up, slightly forward, and again
7 to the right, okay, so neck slightly forward, a bit up,
8 and that way.

9 The one I've got here as Number 2 is the one that
10 went to the left lateral chest here and then came out of
11 the neck. This is the one that I know then re-entered and
12 then went out the front of the face on the right-hand
13 side, okay, so again it's going from -- to the right, left
14 to right, about thirty degrees up, slightly forward. Is
15 this what you ---

16 Q. Yes; this is just perfect.

17 A. Okay. Number 3 -- okay, and this is the one again
18 -- that's the one that went through the aorta and through
19 the lung, and then back through and fractured the jaw.
20 Number 3 to the left upper back here, up here, okay, that
21 one went again through the right -- and that's the one
22 that went through the right lung again and we recovered
23 that bullet in the right lung, and again, left to right
24 about twenty-five degrees up and slightly forward, so
25 before -- what I am saying is, if you would stand sideways

1 here, this would be neither forward nor back. This would
2 be forward, and this would be back, so when I'm saying
3 forward, I'm saying a little bit forward like that, okay,
4 slightly left and straight on.

5 Okay, Number 4 is the one that's to the interior left
6 axilla, so right around here, and that's the one that
7 crosses the mid-line without going through the chest. It
8 comes out on this shoulder, so again left to right,
9 slightly up, slightly forward.

10 5, this is the one that ---

11 Q. Would you go back to 4 for just a second for me.

12 A. Sure.

13 Q. 4 was where now? Tell me that again.

14 A. From here, the axilla, across the mid-line and out
15 the front of the right arm.

16 Q. Okay, so does it go into my arm?

17 A. No. The axilla is your arm; that's here.

18 Q. Okay, and then it comes out, and would that be
19 slightly forward or slightly back if it comes out my arm?

20 A. It's slightly forward.

21 Q. Okay.

22 A. Number 5, from the left lateral shoulder, this is
23 the one that is going through the arm and comes out here,
24 and this is the one that we possibly -- it might go back
25 in, but just the same, we know it goes from here to here.

1 We have that figured out for sure, and it's left to right
2 again, thirty degrees up and slightly forward.

3 And then 6 is the one that goes through the hand, and
4 the nature of the wounds, the defects to the hand, were
5 such that I could not tell whether it was coming this way
6 and going out this way, or going this way and going that
7 way. It looks to me more likely that's it going in here
8 and coming out here, but I cannot tell you that for a
9 fact, so like, you know, depending on whether it's either
10 going up or it's going down. It's going left or it's
11 going right, so I don't want to confuse it by putting
12 something on there.

13 And then the last one is the one that's to the left
14 posterior lateral thigh. That's the -- right about here,
15 I suppose, and then it's going across and up and comes out
16 right about here on the buttock, and that one is again
17 from left to right, about sixty degrees up and slightly
18 back. That's everybody.

19 Q. That's everybody? Thank you, and if I could, just
20 so we've got these labeled, but ---

21 A. You want to know where ---

22 Q. Yeah, if you could write out right here just ---

23 A. The letters?

24 Q. No, let's don't do letters. How about if we put
25 like neck to cheek right there in that one, and that might

1 help us, because it's hard to remember one that we've ---

2 Q. --- just a brief description.

3 A. (Witness writes on diagram.) So 1 is -- you can
4 read. I'll just put this up here.

5 Q. And that's the one that re-entered, which would be
6 Number 2, into the -- came out of -- under the chin and
7 re-entered, okay?

8 A. Uh-huh (affirmative response).

9 Q. And 3 would be in the back?

10 A. Uh-huh (affirmative response). Okay, and I'll
11 write on here so that you guys know what these silly words
12 mean. Anterior is going to be front.

13 Q. Let me -- when you say anterior, if my mid-line is
14 right here, I guess where the crease of these pants are,
15 the front would be anterior. Anything behind that is ---

16 A. Posterior.

17 Q. Posterior.

18 A. Anterior is going to be the front; posterior is
19 going to be the back. Lateral is the side. I think
20 that's everybody, okay.

21 Q. Thank you.

22 MR. BELLAMY: Well, I might want one other thing.
23 May we approach?

24 THE COURT: Yes, sir.

25 (A Bench conference was held in the presence, but out

1 of the hearing, of the jury.)

2 Q. I have what's been marked as State's Exhibit 35,
3 okay? Have you seen these photographs, ---

4 A. I have seen ---

5 Q. --- some of them?

6 A. --- seen photographs. I couldn't say if I've seen
7 this photograph.

8 Q. Okay. If I were to tell you, I guess, that this is
9 Mr. Slay, the individual you did the autopsy on, and this
10 is the position of the body when it was found, ---

11 A. Okay.

12 Q. Could you -- and for the jury we'll do it in a
13 couple of places, point -- can everybody see, and I'll
14 walk down so that everybody can see and we'll get a little
15 bit closer, Doctor, and point -- if you want to use my
16 pen, that might be better, point to the location of Wound
17 7, the entrance of Wound 7, what would be the entrance
18 point of Wound 7.

19 A. So this is his left leg, his left thigh right here,
20 and the entrance wound is to the side and back, so it's
21 probably right around this area, and I can't tell you for
22 sure because the hole is in the pants, but it's right
23 about there.

24 Q. Well, let me ask you, the hole in the pants, is it
25 in this -- and this is black and white, but these were red

1 and white, I believe, or red and black pants, is it in
2 this portion of this color, and if you want to go look at
3 your notes?

4 A. Yeah, I will have to take a look at that.

5 Q. Go look at your notes of the diagram of the
6 clothing.

7 A. My diagram would indicate that it's more to the
8 back than to the side. It's more likely that it is in the
9 black portion of those shorts.

10 Q. So, okay, so it would be not this portion, but it
11 would be this por- -- this colored portion here, that
12 color?

13 A. Yes.

14 Q. And if you would, again, if you want to use my
15 glasses or something, point to it ---

16 A. So it's somewhere -- somewhere in this -- this
17 region here, but again, I can't tell you exactly.

18 Q. Okay, and it's going up sixty degrees and slightly
19 back?

20 A. That's correct.

21 Q. Can we move over here and show the -- again, I'll
22 let you ---

23 A. Okay, so that the one that's to the left thigh
24 again, the left posterior lateral thigh, is somewhere in
25 this region of his anatomy.

1 Q. So it's in the darker shaded -- it went through the
2 darker shaded clothing?

3 A. That's my interpretation. I don't specify that in
4 my notes. I can't tell you that for a fact. That is my
5 interpretation because as I say, it is the posterior
6 aspect of the shorts which would suggest more back than
7 side that that's where it is.

8 Q. Okay, and again, that wound was going up, if you're
9 anatomically correct, up at sixty degrees and slightly
10 back?

11 A. That's correct.

12 Q. Thank you. You can have a seat.

13 MR. BELLAMY: The Court's indulgence.

14 THE COURT: Yes, sir.

15 Q. Can you, Doctor, tell us which wound would have
16 been first, second, third, fourth, fifth, essentially six
17 and seven?

18 A. No, sir, I cannot tell that.

19 Q. Okay. Is there -- the one that you indicated that
20 would have killed him, that would have been -- how long
21 would it have taken Mr. Slay to have died from that wound?

22 A. That would be very highly variable. I -- I cannot
23 answer that question.

24 Q. Are there any other wounds that were post-mortem or
25 indicative of the person's having died and then he was

1 shot?

2 A. No, sir.

3 Q. And, Doctor, the shorts that have the hole in it,
4 do the police have those?

5 A. Yes, sir.

6 Q. And all the other clothing?

7 A. That's correct.

8 Q. You indicated that in order to determine the amount
9 of -- and I don't know if soot, stippling, or what comes
10 out of the end of the barrel, if you had the ammunition,
11 the bullet that has the primer and gun powder, whatever,
12 in it, if you had that, would that help you determine how
13 much would come out if you test-fired it and did the piece
14 of paper thing like we talked about?

15 A. Yes, sir. If you're -- if you're asking questions
16 about distance of fire, the greatest variable is going to
17 be the gun itself and the ammunition that is used, so what
18 is done traditionally, if you have the weapon and the same
19 type of ammunition that was used is what they call test-
20 fire the gun, and so what they'll do is they'll -- they'll
21 take the gun and they'll shoot at a target, and they'll,
22 you know, start at contact and see what that does, and
23 then back up and see what it does at each distance and
24 when exactly no residue and no particular matter is
25 deposited on that target, so that's the most accurate way

1 to determine distance, so you really need to do that if
2 you're going to say that it's, you know, at least thirteen
3 inches or whatever the case may be, if you're going to
4 qualify what you mean by distant.

5 Q. If you had the ammunition, but without the
6 particular gun, could you do it using the ammunition and
7 one of the peripheral types of gun it may be? Would that
8 be better than not knowing at all?

9 A. It might give you an idea, but it would not be as
10 accurate.

11 MR. BELLAMY: I don't have anything further for the
12 Doctor. Thank you.

13 THE COURT: Redirect?

14 MS. VON HERRMANN: None, Your Honor. I would just
15 ask that she be released from her subpoena.

16 THE COURT: Any objection to the witness being
17 excused?

18 MR. BELLAMY: No, sir, Your Honor.

19 THE COURT: All right, Doctor, you are released from
20 your subpoena and may go back to your regular duties.
21 Thank you, ma'am.

22 DR. SCHANDL: Thank you.

23 THE COURT: All right, Solicitor, your next witness,
24 please, ma'am.

25 MS. VON HERRMANN: Yes, sir, Your Honor. The State

1 calls Peter Cestare.

2 THE COURT: All right. Please come around and be
3 sworn.

4 PETER CESTARE, being first duly sworn, testifies as
5 follows:

6 THE CLERK: Please be seated. State your full name
7 and spell your last name.

8 MR. CESTARE: Peter Cestare, C-E-S-T-A-R-E.

9 DIRECT EXAMINATION BY MS. VON HERRMANN:

10 Q. Tell the jury, if you will, please, by whom you are
11 employed.

12 A. I am employed with the Horry County Police
13 Department, and my current position title is Specialist.
14 I'm in charge of the Crime Scene, and Property and
15 Evidence sections.

16 Q. We had a gentleman, Robbie Caulder, in here earlier
17 who testified during the week. Are you his supervisor?

18 A. Yes, I am.

19 Q. How long have you been with -- how long have you
20 been in policing?

21 A. Since 1981. I've been with Horry County since --
22 for about seven years. I'm in my eighth year now.

23 Q. And tell the jury, please, what is a crime scene
24 specialist?

25 A. My position is overall forensic investigation for

1 all cases within Horry County.

2 Q. And what do you do? What are your duties?

3 A. I supervise on a day to day basis the crime scene
4 investigators. I respond to investigations as well and
5 oversee and direct their responsibilities and duties at
6 investigations.

7 Q. And during the course of those duties, do you
8 analyze crime scenes?

9 A. Yes, I do.

10 Q. And are you called upon periodically to reconstruct
11 crime scenes?

12 A. Yes, I am.

13 Q. And tell the jury, please, what your educational
14 experience is and what training you've had in that
15 particular area.

16 A. Prior to Horry County, I was employed by the New
17 York City Housing Police Department under N.Y.P.D. I was
18 a detective, rose through the ranks from police officer to
19 detective commander there. I was in charge of their
20 special investigations unit which would consist of major
21 cases, homicides, mechanical deaths, things of that
22 nature. I've been trained by the N.Y.P.D. in crime scene
23 processing, forensics processing, DNA collection and
24 handling of evidence by N.Y.P.D. and the Department of
25 Justice, blood stain pattern interpretation and analysis

1 by both N.Y.P.D. and the Department of Justice, crime
2 scene processing and analysis by N.Y.P.D. and the
3 Department of Justice, crime scene reconstruction by
4 N.Y.P.D. and the Department of Justice, ballistics
5 alignment, laser and trajectory by N.Y.P.D. and the
6 Department of Justice -- I'm sorry, by N.Y.P.D., AFIS,
7 Automated Fingerprint Identification System, through both
8 SLED and Motorola, the manufacturer of the equipment. I'm
9 trained in photography through Nikon, the Nikon School of
10 Photography, and I've been trained in fingerprinting, fume
11 and chemical treatment and alternate light source, both by
12 N.Y.P.D. and by Horry County Police Department.

13 Q. All right, so would all of those things sort of
14 fall under the purview of forensic investigation?

15 A. Yes, it would.

16 Q. And have you been qualified as an expert in court
17 previously?

18 A. Yes, ma'am, I have.

19 Q. How many times approximately?

20 A. Here in Horry County, probably seven, eight, and in
21 New York, upwards of fifty.

22 MS. VON HERRMANN: Your Honor, I would move to have
23 him qualified as an expert in the field of forensic
24 investigation.

25 THE COURT: Do you wish to voir dire the witness

1 about his qualifications?

2 MR. BELLAMY: No. I'm familiar with him. I think
3 he's qualified to testify.

4 THE COURT: All right. I am going to qualify him to
5 give his opinion in the field of forensic investigation.

6 A. Thank you, Your Honor.

7 Q. I'm going to start off just with a couple of things
8 that the jury has seen before. This is State's Exhibit
9 31. If you would just take a look at that, just open it
10 up if you will and tell me what that is.

11 OFFICER CESTARE: Do you have gloves by any chance,
12 or is there any objection to me handling the evidence in
13 there?

14 MS. VON HERRMANN: I have no objection to you
15 handling it.

16 THE COURT: We don't have any gloves anywhere?

17 MR. BELLAMY: I'm not sure which one that is.

18 MS. VON HERRMANN: 31.

19 THE COURT: We don't have any gloves anywhere?

20 A. I'll just ---

21 Q. If you want to just look at it, you don't need to
22 pull it out.

23 A. Okay. They are sandwich bag, sandwich baggie
24 packaging. I can take them out without touching them.
25 They are a typical plastic type of sandwich bag or baggie

1 packaging material.

2 Q. And are those the bags that were taken from -- from
3 the crime scene in this case where both fake and the real
4 cocaine were found?

5 A. Yes, that's correct. They were taken from there.

6 MS. VON HERRMANN: I would move these into evidence
7 at this time.

8 THE COURT: All right. What was the State's exhibit
9 again?

10 MS. VON HERRMANN: That was Number ---

11 MR. BELLAMY: 31.

12 THE COURT: 31?

13 MS. VON HERRMANN: 31.

14 THE COURT: Any objection?

15 MR. BELLAMY: No, sir, Your Honor.

16 THE COURT: All right, State's 31 is in evidence
17 without objection.

18 BAGGIES IN SMALL MANILLA ENVELOPE ADMITTED IN

19 EVIDENCE AS STATE'S EXHIBIT NUMBER 31.

20 Q. And I also want to ask you about State's Exhibit
21 Number 32 and ask you to identify what that is for me.

22 A. State's Exhibit 32 will be collected by
23 Investigator Caulder. They are forty-five caliber spent
24 shell casings, shell casings three, four, five. There are
25 five spent shell casings and two, three, four, five

1 projectiles.

2 Q. And were you present when those were collected?

3 A. Yes, I was.

4 Q. And were those placed in ---

5 A. I'm sorry; let me back up one moment. I was
6 present when the shell casings were collected and some of
7 the projectiles. Others were collected, I believe, during
8 the autopsy. I was not at the autopsy.

9 Q. Okay, so there's one projectile that was collected
10 at the autopsy and so you were not there for that, but the
11 remainder, you were present for the collection of those
12 particular items?

13 A. Correct.

14 Q. And were these items then placed in your custody
15 and control, or your officers, and sent ultimately to SLED
16 to test?

17 A. Yes. They were collected by Caulder, packaged by
18 him under my supervision, and brought back to the police
19 station and subsequently transferred to SLED.

20 Q. Thank.

21 MS. VON HERRMANN: I would move State's Exhibit 32
22 into evidence.

23 THE COURT: Is there any objection?

24 MR. BELLAMY: No objection.

25 THE COURT: All right. State's 32 is in evidence

1 without objection.

2 BOX CONTAINING NINE SMALLER BOXES AND ONE PLASTIC
3 VIAL ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
4 NUMBER 32.

5 Q. All right, let's talk about Thursday, October the
6 21st, of 2005. Were you at the crime scene that occurred
7 on Butler Road?

8 A. Yes, I was.

9 Q. And what was your role in being there?

10 A. I was notified by our communications section, our
11 dispatchers, that patrol units had responded there and
12 found a deceased male inside a vehicle in a grassy area
13 adjacent to a building. I directed the response from my
14 unit and responded to that location as well to supervise
15 the investigation.

16 Q. And what did you specifically do when you first
17 arrived?

18 A. We first come on location obviously before we make
19 any entry into the immediate area surrounding, in this
20 case, where the vehicle is. Obviously we do a wide-
21 pattern walkaround of the grassy area and building to get
22 an overall look at everything. When you -- when you begin
23 to process a crime scene, we start way out at the outer
24 edges of it and work our way in. That way, we're sure
25 that we don't contaminate any evidence or trample any

1 evidence in the process of making our path into that
2 scene, and in this case, obviously patrol officers had
3 been up to the vehicle or close enough to the vehicle to
4 identify that there was a male deceased in the vehicle, as
5 well as paramedics and so forth, so we have to carefully
6 comb that area coming in to make sure that all evidence is
7 collected.

8 Q. I'm going to show you -- and ultimately you reached
9 the inside of the vehicle, is that correct?

10 A. Yes.

11 Q. I'm going to show you what's been marked as State's
12 Exhibit 20 and ask you to take a look at that photograph.

13 A. Yes.

14 Q. And also, State's Exhibit Number 5, and I notice on
15 those two photographs that the passenger side, front
16 passenger side window appears to be shattered, is that
17 correct?

18 A. Yes. In State's Exhibit 5, it's obvious.

19 Q. And when -- when you see that shattering effect
20 from there, what determination, if any, could you make
21 about -- well, let me just broaden it. When you look at
22 that scene in particular, could you make any determination
23 about whether there were any shots fired from the
24 passenger side of that vehicle or whether all of the shots
25 were fired from the driver's side?

1 **A.** In this -- first understand in both of these
2 photos, let me just go back one second, these photos have
3 been slightly altered from the standpoint of there are
4 evidence markers in them. No other alterations have been
5 done to these other than the placement of evidence
6 markers.

7 On State's Exhibit 5, there's a view on the passenger
8 side of that vehicle. On this -- on this photograph, it
9 is obvious to me that the window, the passenger window,
10 front passenger window, had been in the up position or
11 closed position as you would commonly think of it, and
12 when it busted, the glass being a tempered glass, which is
13 used on all automobiles, spider cracks or splinters and it
14 fell back in because of the angle of the glass, how it
15 pitches, it fell back into the seat.

16 State's Exhibit 20, again has been slightly altered
17 by the placement of two evidence markers there, shows
18 evidence markers indicating two projectiles on that seat,
19 as well as glass from that front passenger window.

20 With respect to your question concerning shots
21 through the passenger window, it's my opinion that there
22 were no shots fired from the passenger side of that
23 vehicle. All evidence relating to the shots was from the
24 driver's side of the vehicle.

25 PHOTOGRAPH OF CONSOLE MARKED FOR IDENTIFICATION AS

1 STATE'S EXHIBIT NUMBER 44.

2 Q. I'm now going to show you what's been marked as
3 State's Exhibit 44 and ask you if you can take a look at
4 this and identify this for me.

5 A. Yes. State's Exhibit 44 is untouched; there's no
6 alteration to the photo, no evidence markers or anything
7 in it. It is a -- typically a straight downward shot
8 photograph of the center console of the vehicle. This
9 photograph was taken after the victim had been removed
10 from the vehicle.

11 Q. And is it a fair and accurate representation of
12 what it is depicting here?

13 A. Yes.

14 MS. VON HERRMANN: I would move State's Exhibit 44
15 into evidence.

16 MR. BELLAMY: Your Honor, may we approach?

17 THE COURT: Absolutely.

18 (A Bench conference was held in the presence, but out
19 of the hearing, of the jury.)

20 THE COURT: All right, so you have an objection to
21 that particular ---

22 MR. BELLAMY: As to relevance. I'm not sure what
23 the relevance is.

24 THE COURT: All right, very good. I'm going to
25 allow it in evidence over the objection of the Defense.

1 MS. VON HERRMANN: Thank you, Your Honor.

2 THE COURT: You may continue.

3 PHOTOGRAPH ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT

4 NUMBER 44.

5 Q. And what is that -- what is that depicting there?

6 A. That's the console of the vehicle in between the
7 two front seats, the driver's seat and the passenger seat.

8 Q. And is that open or closed?

9 A. It's open.

10 Q. And that is -- I don't see any numbers or anything
11 here, so this would have been ---

12 A. After the -- after the victim was removed from the
13 vehicle and prior to the complete inventory of the
14 vehicle.

15 Q. So neither you nor anyone else that you aware of in
16 the police department would have opened that console?

17 A. No. That's the way we found it.

18 Q. Was a murder weapon ever recovered in this case?

19 A. No, ma'am, it was not.

20 Q. Was there a gun that was recovered in this case?

21 A. Yes, there was, from the victim.

22 Q. All right, it was recovered from the victim. Where
23 was it located?

24 A. It was -- may I stand?

25 Q. Certainly.

1 MS. VON HERRMANN: Your Honor, could we allow him to
2 step down to the jury?

3 THE COURT: Yes, ma'am.

4 A. The victim ---

5 THE COURT: You need to stand right in front of that
6 box that's on the rail there.

7 A. The victim was -- was seated on the passenger side
8 of the vehicle and slumped -- I'm sorry, in the driver's
9 side of the vehicle and slumped right towards the
10 passenger side of the vehicle. When we moved him out of
11 the vehicle or in the process of trying to do that, we
12 felt an object on his right side. We lifted up his shirt
13 and -- he had on a tee shirt. We lifted up the tee shirt,
14 and tucked in the waistband of the pants was a forty-five
15 caliber handgun.

16 Q. All right, and was that handgun then packaged and
17 sent up to SLED as well?

18 A. Yes, it was. That handgun was sent for SLED -- to
19 SLED for an analysis to compare it against the casings and
20 projectiles that were found there.

21 MS. VON HERRMANN: If you'll just stay right there
22 for one moment.

23 Q. I'm going to show you what's been marked as State's
24 Exhibit 17; it's in evidence, and would this be the side
25 of the shirt that the gun was located on, or would it be

1 the other side?

2 **A.** No. This is a view -- again, a slightly altered
3 photo as you will see the evidence markers in there. This
4 is a view from the driver's -- from the open driver's door
5 of the vehicle. Standing just to the side of the vehicle,
6 I'm looking in the driver's door, and as you can see, as I
7 mentioned, the victim is seated in the driver's seat,
8 slumped to the right, and no, the side that the weapon is
9 on would be underneath him at the seat.

10 **Q.** Okay. I'm going to show you what's been marked as
11 State's Exhibit 36 for identification. I don't want you
12 to show this to the jury, but I just want you to kind of
13 take a look at this and tell the Court, please, if you
14 think that that would aid and assist you in describing to
15 the jury how you found that location and with relevance to
16 that weapon that you found on the victim.

17 **A.** Yes, it would aid me in being able to tell you what
18 the position of the weapon is. It would also bring a
19 second photograph into that center console area, showing
20 it open.

21 **Q.** Okay, and does it fairly and accurately represent
22 what it purports to depict? It is in black and white, but
23 other than the fact that it's in black and white, does it
24 fairly and accurately ---

25 **A.** * Yes, that's correct. Again, it's got a slight

1 alteriza- -- alter to it because of the evidence marker
2 put in it. Outside of that and the coloring, that's
3 exactly the way the photo was taken.

4 Q. Thank you.

5 MS. VON HERRMANN: Your Honor, I would ---

6 MR. BELLAMY: Judge, I'm still not sure ---

7 THE COURT: All right, I appreciate that. What is
8 that? Which Exhibit is it?

9 MR. BELLAMY: It's State's 36.

10 THE COURT: All right, it's State's 36. State's 36,
11 you're offering it in evidence?

12 MS. VON HERRMANN: Yes, sir, Your Honor.

13 THE COURT: And you have an objection?

14 MR. BELLAMY: Yes.

15 THE COURT: All right, as to relevance?

16 MR. BELLAMY: Judge, I objected as to the nature of
17 the photograph.

18 THE COURT: All right, and the nature of the
19 photograph?

20 MR. BELLAMY: The Solicitor indicated there was a
21 specific reason why -- why that position needed to be
22 there, and I'm not sure what -- the officer hasn't said --
23 I didn't understand what he said.

24 THE COURT: All right, and I appreciate that.

25 Based on the testimony presented, I'm going to allow

1 36 in evidence over the objection of the Defense.

2 MS. VON HERRMANN: Thank you, Your Honor.

3 PHOTOGRAPH OF VICTIM ADMITTED INTO EVIDENCE AS

4 STATE'S EXHIBIT NUMBER 36..

5 Q. So if you will, just pull that up and let's take a
6 look at that. The jury is allowed to see that now.

7 A. This is the photo that was just introduced.

8 THE COURT: Sir, you -- you need to speak up, sir.

9 I'm sorry.

10 A. I'm sorry. This is the photograph that was just
11 introduced as State's Exhibit 36. This is a photograph
12 from the passenger side of that vehicle, looking at the
13 victim in there, and you will see, as I indicated, how he
14 is slumped to the right, a slump to that passenger side.

15 You will also see that the center console area is
16 open somewhat. The previous photo showed that as well.
17 The gun that the victim has on him is underneath his shirt
18 and under this waistband at -- pretty much at where he's
19 pressed against the seat or where his body is against the
20 seat in -- and that console area.

21 Q. Thank you. After reviewing those two photographs
22 and seeing what you observed there at the crime scene on
23 that day, do you have an opinion about whether or not ---

24 MR. BELLAMY: Your Honor, I would like to approach
25 the bench on this. I have an objection, Judge.

1 THE COURT: Okay. Well, I understand the objection.
2 I have to hear the question first.

3 MR. BELLAMY: Okay.

4 THE COURT: I mean, let me hear the question, and
5 then don't answer it, but let me hear the question first.

6 Q. Do you have an opinion about whether or not the
7 victim was attempting to reach that weapon?

8 THE COURT: All right, don't answer it.

9 All right, y'all come and talk to me.

10 (A Bench conference was held in the presence, but out
11 of the hearing, of the jury.)

12 Q. Was that gun exposed in any way?

13 A. No, ma'am, it was not. It was covered by the shirt
14 and within the -- tucked into the waistline of the -- of
15 the pants.

16 Q. Now, let's talk a little bit about -- you said that
17 was in the right-hand side, ---

18 A. Yes, the right side.

19 Q. --- is that correct?

20 I'm going to show you what's been marked as State's
21 Exhibit 45 and ask if you can identify that?

22 A. Yes. State's Exhibit 45 looks -- is a photograph
23 of the -- of the victim's hand.

24 Q. Does that fairly and accurately represent that
25 scene as it was on that particular day?

1 **A.** Yes, it does.

2 MS. VON HERRMANN: I would move to admit State's
3 Exhibit 45.

4 THE COURT: Any objection?

5 MR. BELLAMY: I would object, Judge, as to
6 relevance. The Doctor has already testified as to the
7 entrance and exit wounds. I'm not sure that
8 this officer even took this photograph or whose hands are
9 in here, but I would object to it as cumulative. The
10 Doctor has already testified, and ---

11 THE COURT: Why don't you ask the -- if you want to
12 cover some rationale or purpose for this particular
13 witness.

14 MS. VON HERRMANN: Yes, sir, Your Honor.

15 **Q.** Taking a look at this photograph, do you think that
16 this would aid and assist you, and aid and assist the
17 jurors in your explanation of that crime scene?

18 **A.** Yes, I believe it will.

19 **Q.** And in what way do you believe that -- that will
20 aid you?

21 **A.** This photo was taken to -- to specifically show
22 something that I observed on the victim's hand that day.

23 THE COURT: I'm going to allow State's 45 into
24 evidence over the objection of the Defense.

25 PHOTOGRAPH OF VICTIM'S HAND ADMITTED INTO EVIDENCE

1 AS STATE'S EXHIBIT NUMBER 45.

2 THE COURT: You may continue.

3 MS. VON HERRMANN: Thank you.

4 Q. Let's take a look at this photograph here. I don't
5 know if you can see that or not.

6 THE COURT: Just go, yeah, go right in front of that
7 microphone.

8 Q. What is this a photograph of?

9 A. This photograph shows the victim's right hand. You
10 can clearly tell it's the right hand by the placement of
11 the thumb and fingers. What you see on this photograph is
12 both -- is two wounds, entrance and exit, and what makes
13 this photograph unique to me is that it's what I would
14 refer to as a defensive wound. This photograph indicates
15 to me ---

16 MR. BELLAMY: Your Honor, I am going to ---

17 A. --- that this person's hand was up.

18 THE COURT: I am going to allow him, based upon the
19 Court qualifying him as a forensic investigator and his
20 experience, I am going to allow him to testify and respond
21 to that question. Thank you.

22 A. This photograph would indicate that this person's
23 hand was up in a defensive manner blocking something
24 coming at him, a shot. Commonly a defensive wound is --
25 there's two, two types of wounds when you classify wounds

1 on a body, offensive and defensive, offensive being the
2 aggressor, defensive being the person who is trying to
3 defend themselves or protect themselves. This would
4 appear to me to be a defensive wound, like the hand was
5 placed up.

6 There's also a bruising pattern here ---

7 MR. BELLAMY: Your Honor, I would object. He's now
8 getting into medical sort of things. The Doctor was here.
9 She testified.

10 THE COURT: Well, I -- I -- okay, I understand your
11 objection is to exceeding his qualifications, and I
12 respectfully disagree. I'm going to allow him. You can
13 certainly cross examination -- cross examine him. I will
14 allow the question and the answer.

15 A. It appears that there is a bruise pattern in the
16 hand, but there's obviously an entrance and exit wound on
17 the hand.

18 Q. And does -- in your experience, and I believe
19 you've had an opportunity on that day to view the victim's
20 body and the position of the victim body, you also map out
21 sort of where those entrance and exit wounds are on the
22 victim's body, is that correct?

23 A. Yes. At the time we mapped all of the wounds that
24 were observed by us on the body, and that along with the
25 photographs and everything from the scene are taken to the

1 autopsy so that the doctor that -- if the doctor in the
2 autopsy has any questions, obviously they weren't at the
3 scene, they can review our photographs. The investigator
4 that's assigned in this case, John Robert Caulder, Robbie
5 Caulder, attended the autopsy and would be able to point
6 out all of the wounds that we found, and the doctor would
7 make a determination at that point as to what's an entry
8 and what's an exit wound, what's an entry and correlates
9 to any projectiles within the body.

10 THE COURT: Solicitor, I hate to interrupt, but I
11 need to -- sir, if you could come back to the witness
12 stand for a minute, please, and ladies and gentlemen of
13 the jury, if you would go to the jury room for a moment,
14 please. Just leave your notes, pads and pens there.

15 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
16 THE JURY.)

17 THE COURT: Solicitor, and Mr. Bellamy.

18 (Ms. Von Herrmann and Mr. Bellamy speak with the Court off
19 the record.)

20 (Alternate Juror Hearl enters the Courtroom.)

21 THE COURT: Mr. Hearl, could you come around,
22 please, sir. (The Court speaks with Mr. Hearl off the
23 record.)

24 Let's just take a short break for about five minutes,
25 and then Madam Clerk, you report back to me, all right?

1 pen of Mr. Hearl, please.

2 Counsel, for your information, I instructed the Clerk
3 to collect the note pad and pen that Mr. Hearl was using,
4 and those notes will be destroyed.

5 Madam Clerk, you will make sure those notes are
6 shredded.

7 (THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE
8 JURY.)

9 THE COURT: All right, Madam Forelady, ladies and
10 gentlemen of the jury, one of your fellow jurors, the
11 alternate, Mr. Hearl, had a serious family emergency.
12 Based upon a phone call he made home, I've excused Mr.
13 Hearl from any further service in this particular case.

14 All right, Solicitor, you may continue on.

15 NOTE FROM JURY MARKED AS COURT'S EXHIBIT NUMBER 3.

16 DIRECT EXAMINATION OF OFFICER CESTARE CONTINUES:

17 Q. When we left off, you had been talking about the
18 shots that was through the victim's hand.

19 A. Yes.

20 Q. Is there any way to determine a sequence of shots
21 when you arrive at a scene like this?

22 A. In some cases you can. In this case, the only
23 thing I can -- I can tell you is from looking at the
24 totality of the scene itself, the victim in the car, how
25 everything was placed.

1 MR. BELLAMY: Your Honor, I would object. He's now
2 -- the Doctor has testified there is no way to determine
3 which one was first, and he's a crime scene specialist,
4 and I appreciate that ---

5 THE COURT: I understand that, and I don't -- I
6 didn't understand his answer to be that, but if -- I'll --
7 at this point in time, I've got to hear his answer and
8 then we'll see if I'll allow it. Thank you.

9 Go ahead.

10 A. As I mentioned earlier, in looking at that injury,
11 it is in my opinion a defensive wound which would indicate
12 his hand was up. When you look at the photos you've shown
13 here, State's Exhibit 20, State's Exhibit 36, clearly show
14 the victim's arm in a downward angle towards the front
15 passenger floorboard. In order for that shot to have been
16 through his hand, it could not have occurred where his
17 hand is now, so, therefore, his hand had to be up when
18 that shot occurred.

19 Q. Unable to tell with regard ---

20 THE COURT: I'm going to allow that. Thank you.

21 Go ahead.

22 Q. But unable to determine other than perhaps it being
23 a defensive wound what -- which one of those shots
24 occurred in what sequence, is that correct?

25 A. That's correct.

1 Q. Let's go back and talk about this vehicle quickly.
2 I'm going to show you State's Exhibit 25 and we did talk
3 about it for a moment, but what is -- what is that
4 photograph?

5 A. Okay, State's Exhibit 25 orientates in this manner:
6 It shows an exit hole through the pass- -- front passenger
7 door of that vehicle, and if I may, State's Exhibit 5 --
8 correct, that's 5, shows the overall vehicle. This is
9 simply a close-up of that bullet hole in the -- in the
10 door. That -- in looking at it, obviously that is an
11 exit, which meant it went from the inside of the vehicle
12 out.

13 I measured in the processing of that vehicle that
14 path, the trajectory, the angle at which the bullet went
15 through the door panel, the inside door panel, and through
16 the outer door skin, and it was measured at a fifteen
17 degree downward angle, so the bullet is traveling
18 downward.

19 Q. Okay, but the -- just in terms of how high would
20 you estimate that particular hole, bullet hole, to be?

21 A. I don't have a -- I don't have a distance on it
22 from the ground. Offhand, I don't know if it's in the ---

23 Q. What did you ---

24 A. The path of it is at a fifteen degree downward
25 angle.

1 Q. Downward angle?

2 A. So it's being -- it's coming from the driver's side
3 out the passenger side at a fifteen degree downward angle.

4 Q. Do bullets lose velocity as they travel?

5 A. Yes, they do.

6 Q. Tell the jury, please, how that -- how that
7 happens.

8 MR. BELLAMY: Judge, again, he's a crime scene --
9 ballistic guy was here. I would think he would be the
10 more appropriate person to testify to this and, Your
11 Honor, I've not been -- this has not been disclosed to
12 me ---

13 THE COURT: I'm going to sustain that objection.

14 MS. VON HERRMANN: Okay.

15 Q. Let me have you look at State's Exhibit 36 and
16 there obviously is some blood in that photograph. Did you
17 do any kind of blood spatter analysis in this particular
18 case?

19 A. No, ma'am, I did not because it was apparent that
20 the incident -- the victim was in the vehicle throughout
21 the course of the incident in my opinion, so, no, no blood
22 spatter analysis was done on that vehicle.

23 Q. What is blood spatter analysis typically used for?

24 A. To show movement. Real quick, an easy to
25 understand blood spatter and blood analysis is that blood

1 travels at different speeds depending upon what is making
2 it travel. In this case, the victim is in the vehicle so
3 that the area of containment is fairly small. There was
4 no need to really do a workup for blood spatter in this
5 vehicle.

6 Q. That's something that if you had a question about
7 whether a person was cut, or stabbed, or -- that might be
8 something you would look at in a case like that, correct?

9 A. Yes.

10 Q. But not appropriate really for this case?

11 A. Not in this particular incident, no.

12 Q. There's also some -- a photograph there of the
13 interior of the car where the two projectiles are sitting
14 in the passenger seat and there's some glass in there?

15 A. Yes, ma'am.

16 Q. Is there any way to determine whether those
17 projectiles landed on the seat first and the glass broke,
18 or whether the glass had broken beforehand and then the
19 projectiles landed there?

20 A. No. I was not -- I couldn't be able to tell you
21 that.

22 Q. Did you ever retrieve any clothing from Tyrone
23 Beaty in this case?

24 A. No, ma'am, I did not.

25 Q. In terms of forensic evidence, how many cases do

1 you think you've worked over the years?

2 A. I'm sorry; say again.

3 Q. How many cases do you think you've worked on over
4 the years?

5 A. Well over a thousand.

6 Q. In terms of what you all were able to gather in
7 terms of forensics in this case, a lot of forensic
8 evidence, you know, fifty-fifty with other cases, or not a
9 whole lot, how would ---

10 MR. BELLAMY: Judge, I would object to comparing to
11 other cases. He can talk about what he's done in this
12 case, but to compare it to other cases he's worked, I
13 think is not proper.

14 THE COURT: I -- I didn't understand. I understood
15 it to go to his experience as to what he has done in the
16 past.

17 MS. VON HERRMANN: And my question, Your Honor, is
18 there a lot of forensic evidence in this case compared to
19 other cases that he's worked on.

20 THE COURT: I don't -- I think you need to rephrase
21 your question, Solicitor, to be a little bit more specific
22 as to what area that you would be looking for him to
23 comment.

24 Q. Did you find any hair in this case?

25 A. Not in -- no.

1 Q. Did you find any fibers?

2 A. No.

3 Q. Find prints?

4 A. I'm sorry?

5 Q. Prints?

6 A. Yes.

7 Q. All right, and did any of those prints match up to
8 any of the co-defendants?

9 A. Not that I'm aware of, no.

10 Q. Were you able to find blood spatter evidence?

11 A. There's blood evidence, but no spatter analysis was
12 done.

13 Q. So my question, then, is this: There's not a whole
14 lot of forensic evidence in this case, is there?

15 A. I would have to say no. I mean, there's not a lot
16 of evidence that was collected.

17 Q. Thank you. That's my question.

18 MS. VON HERRMANN: I don't have any further
19 questions. Please answer any questions Mr. Bellamy has
20 for you.

21 THE COURT: Cross examination.

22 MR. BELLAMY: May it please the Court, Your Honor.

23 THE COURT: Yes, sir.

24 CROSS EXAMINATION BY MR. BELLAMY:

25 Q. Let me ask you -- let's go through some things that

1 what -- that are work related, okay, and you have your
2 notes and everything there?

3 A. I've got -- yeah, I've got a good amount of notes,
4 okay.

5 Q. Now, you did collect the evidence of the victim in
6 this case, did you not, the victim's clothing that he was
7 wearing at the time he was found?

8 A. Yes, sir.

9 Q. Okay. That was -- that was found, and you have
10 that currently in evidence, don't you?

11 A. Yes, sir, I believe we do.

12 Q. Did you ever do any -- and there was a hole in the
13 back of the pants of that victim, was there not, or
14 shorts?

15 A. I can't say with certainty.

16 Q. If I show you a photograph of that and I ask you if
17 you recognize it, that will help refresh your
18 recollection?

19 A. Yes, sir.

20 Q. Does that help refresh your recollection?

21 A. Yes, sir, it does.

22 Q. Okay. In fact, there was a hole in the back of the
23 pants, wasn't there?

24 A. Yes.

25 Q. Did you measure from the change in the color how

1 far back it was?

2 A. No, sir, I did not.

3 Q. The clothes that were taken from the autopsy, did
4 you -- talking about there's not a lot of forensic
5 evidence here, did you take those clothes and send them to
6 SLED to look for gunpowder residue?

7 A. I did not, sir. I can't speak for that evidence
8 that was handled by Investigator Caulder.

9 Q. Okay, but that's quite possible to take clothing
10 and look for gunpowder residue which can help determine
11 how close a shot was -- the gun barrel was from the
12 person, isn't that true?

13 A. I can't speak on behalf of ballistics, for them.

14 Q. Well, you can tell us about defense wounds, but is
15 it possible to -- for SLED to analyze clothing for
16 gunpowder residue? Now, what that means, somebody else
17 can tell us, but is that a possibility?

18 A. It's possible that they can analyze clothing to see
19 if there is gunpowder on it, yes.

20 Q. Okay, and that wasn't done in this case, was it?

21 A. I do not know, sir.

22 Q. Who would? You're the crime scene supervisor who
23 collects evidence. Do you have notes there that might
24 help you with that?

25 A. Yes. I have an evidence supervisor that deals with

1 SLED, and the individual investigator in this case would
2 have been Caulder, who deals with SLED.

3 Q. Okay, but can you tell us if that was sent to SLED
4 to be analyzed for gunpowder residue?

5 A. I cannot, sir, no.

6 Q. Okay. Now, there were also tire tracks or
7 impressions taken from that area where you went out there
8 to the scene, right?

9 A. Yes, sir.

10 Q. There were tire impressions taken from there,
11 correct?

12 A. There were tire impressions photographed, yes.

13 Q. And a cast actually was made, correct?

14 A. I believe so. Let me look back at the notes from
15 there. Yes, sir, there was.

16 Q. Okay, and you also obtained the known tire prints
17 of this gold Maxima, did you not?

18 A. I did not do that, sir, no.

19 Q. Well, as head of the crime scene people out there,
20 do you know if known prints of that gold Maxima were taken
21 to compare to the unknown tire tracks at the scene?

22 A. If you will give me just a moment.

23 MS. VON HERRMANN: Your Honor, I'm actually going to
24 object because Caulder has already testified that he ---

25 THE COURT: I appreciate that, but I'm going to

1 allow him to answer the question.

2 A. Bear with me just a minute. I've got to find all
3 this paperwork. I don't see the paperwork for that. I
4 may not have it with me.

5 Q. Maybe if I rephrase this, it might speed it up.

6 A. All right.

7 Q. No question you got the tire cast or impression
8 from the scene where the victim's vehicle was located,
9 correct?

10 A. Yes, sir.

11 Q. And that was taken because it was believed to
12 possibly help identify what type car may have also been
13 there, correct?

14 A. It was in the general area, yes, sir.

15 Q. Okay, so it would not have been in an area far away
16 that would have been irrelevant. It was an area that you,
17 as a crime scene investigator, thought would be relevant,
18 correct?

19 A. Anything within that field would have been
20 relevant, yes, sir.

21 Q. And is it fair to say also that you did get the
22 gold Maxima at some point in time and have custody of it?

23 A. Yes, sir, we did.

24 Q. So is it fair to say that then you had what has
25 been identified as a witness -- as a vehicle that was at

1 the location, correct, other than the victim's?

2 A. Yes, sir.

3 Q. And you also had these other known tire tracks,
4 correct?

5 A. Yes, sir.

6 Q. And you would have probably sent all that to SLED
7 so we could have a SLED agent come here and tell us
8 whether it is or isn't, right?

9 A. It would have been looked at, and whether or not it
10 was sent to SLED, I can't tell you that information.

11 Q. But you wouldn't deny if I had a SLED report from
12 latent prints and that that came back to y'all -- I'm not
13 going to talk about what it says, but if, in fact, SLED
14 sent a report back to Detective Lewis on that particular
15 issue?

16 A. Okay.

17 Q. Okay. Now, in addition to that, there were twenty-
18 two latent lifts taken from the crime scene, and when I
19 say crime scene, I mean out there, you know, not the
20 Maxima, but the crime scene which would have been out
21 there where the victim was found, is that not correct?

22 A. Yes, sir.

23 Q. And there were twenty-two, so there were twenty-two
24 prints taken, and I believe your testimony to the
25 Solicitor is that none of those matched my client, Tyrone

1 Beaty?

2 A. Not to my knowledge, none of them, yes, sir.

3 Q. But they also tested them against the two known
4 people in the vehicle, being Mr. Daniel Prater and
5 Dominique Carr, who had last been with the victim prior to
6 his death, and they weren't theirs either, were they?

7 A. I did not test them, so I can't attest for that.

8 Q. You don't disagree with that, though, do you?

9 A. I can't tes- -- I can't testify to it.

10 Q. Who could? Would it be Caulder or SLED?

11 A. Caulder.

12 Q. All right. Now, Caulder testified that things were
13 sent to SLED, that certain items were sent to SLED?

14 A. Yes, sir.

15 Q. And isn't it true that there's at least four of
16 those prints that come back, that they're not sure about
17 Antonio Smalls, that they were -- everybody else in this
18 case but Antonio Smalls, that he can't be ruled out? You
19 wouldn't disagree with that either? SLED sent that report
20 to Detective Lewis over here.

21 A. If that's what the report indicates.

22 THE COURT: Mr. Bellamy, are you asking a question
23 or are you making a statement? You're testifying.
24 Rephrase your question.

25 Q. Do you know if SLED sent a report back to your

1 department as to their findings as far as latent prints in
2 this case?

3 A. Yes, sir, they did.

4 Q. Okay, and who would have -- who would that have
5 been sent to?

6 A. That would have been sent to Detective Lewis and
7 more than likely a copy to Investigator Caulder.

8 Q. Okay. Now, have you reviewed that report?

9 A. I've looked at it. I've not reviewed it for ---

10 Q. Okay. Now, also, so there's a SLED report out
11 there on latent prints? There's a SLED report out there
12 on -- is that correct?

13 A. Yes, sir.

14 Q. There's a SLED report out there on these tire
15 tracks, is that correct?

16 A. That one I've not seen. I can't say that.

17 Q. Well, what about -- let's talk about DNA. Were
18 things sent to the DNA forensic department up at State Law
19 Enforcement Division for their analysis, items that y'all
20 collected from the crime scene or other places?

21 A. I can't say with any certainty, sir.

22 Q. Okay. Well, ---

23 A. I did not send them. It's possible someone else
24 did.

25 Q. Specifically the clothing of the victim, was it

1 sent to DNA, cuttings of the clothing of the victim? Was
2 it sent to DNA for analysis? Do you have a chain of
3 custody or anything there that would help you with that?

4 A. And again, sir, I didn't send them so I can't say
5 whether they were or weren't.

6 Q. Well, do you know if State Law Enforcement Division
7 sent a report back as to their findings for the DNA
8 evidence y'all sent?

9 A. The only report that I have back from SLED in my
10 possession is in reference to latent prints.

11 Q. Oh, so you do have that report?

12 A. Yes, sir, I have got a copy of that.

13 Q. I had just asked you concerning Mr. Antonio Smalls.

14 MR. BELLAMY: I'm not sure what I'm going to ask,
15 but I think they might object, and maybe SLED needs to ---

16 Q. Mr. Cestare, are there prints from the crime scene
17 that could possibly be Antonio Smalls, but no other person
18 in this case?

19 A. I don't think I can answer that. I think SLED
20 answered that already.

21 Q. And they sent a report to that effect? They sent a
22 report, right?

23 A. Yes, sir.

24 Q. Okay, so they would need to tell us that?

25 A. Yes, sir.

1 Q. Okay. Now, and as to DNA, you aren't sure if
2 anything was sent or if they sent a report back?

3 A. I don't have a report back, so, yes, sir, I do not
4 know what was sent, if anything was sent.

5 Q. Okay, and you don't deny that there were fingernail
6 -- fingernail clippings from the victim's hands sent up
7 there, do you?

8 A. Sir, again, I don't know what was sent up there.

9 Q. And who would know, the lead -- who is the lead
10 detective in this case if you know?

11 A. Detective Lewis.

12 Q. He's sitting right here?

13 A. Yes, sir.

14 Q. And he would get these reports back typically and a
15 copy to Crime Scene, correct?

16 A. A copy to the crime scene investigator, yes, sir.

17 Q. Do you know, or if you don't, you don't, about the
18 law enforcement going out to the house of the girlfriend
19 of my client, Tyronne Beaty, and taking photographs?

20 A. No, sir, I was not present at that. I have nothing
21 I can say against that.

22 Q. But as a crime scene supervisor, can you look
23 through your notes and indicate if that did, in fact,
24 occur?

25 A. If they went to what location, sir?

1 Q. To the home of the girlfriend, which was identified
2 as being with my client the night this happened, and take
3 photographs or take any items ---

4 MS. VON HERRMANN: I'm going to object, Your Honor.
5 In fact, I've got a motion as well.

6 THE COURT: All right, very good.

7 Ladies and gentlemen of the jury, go to your jury
8 room, please.

9 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
10 THE JURY.)

11 THE COURT: Yes, ma'am, be glad to hear from you.

12 MS. VON HERRMANN: Yes, sir, Your Honor. Mr.
13 Bellamy has just made a statement wherein he said
14 something about his Defendant being with his girlfriend on
15 the night of this incident. That's clearly injecting
16 alibi into this trial. There's been no notice of alibi
17 sent to the Solicitor's Office, and I think it's
18 completely improper.

19 THE COURT: Mr. Bellamy.

20 MR. BELLAMY: Your Honor, her witness, Neil Hill,
21 testified that when they went back to Conway, his
22 girlfriend picked him up that night. That's all I'm
23 alluding to. I'm not alluding that he ---

24 THE COURT: Well, then, you need to rephrase the
25 question, that after the shooting and after Mr. -- your

1 do that at this point in time, ---

2 MR. BELLAMY: So I can ---

3 THE COURT: --- they'll be in evidence, and then
4 you're going to be able to ask him questions about
5 documents that are in evidence, so ---

6 MR. BELLAMY: Thank you.

7 THE COURT: --- you go ahead and get those marked,
8 Solicitor, by the Court Reporter, please.

9 MS. VON HERRMANN: Let me think about this for a
10 second.

11 (THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE
12 JURY.)

13 (A Bench conference was held in the presence, but out
14 of the hearing, of the jury.)

15 SOUTH CAROLINA LAW ENFORCEMENT DIVISION REPORT,
16 LATENT PRINTS DIVISION, MAY 16, 2006, INTRODUCED
17 INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 46.

18 SOUTH CAROLINA LAW ENFORCEMENT DIVISION REPORT,
19 DNA DEPARTMENT, APRIL 17, 2007, INTRODUCED
20 INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 47.

21 SOUTH CAROLINA LAW ENFORCEMENT DIVISION REPORT,
22 EVIDENCE PROCESSING, DECEMBER 16, 2008, INTRODUCED
23 INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 48.

24 SOUTH CAROLINA LAW ENFORCEMENT DIVISION REPORT
25 REGARDING LATENT PRINTS, APRIL 25, 2006, INTRODUCED

1 INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 49.

2 THE COURT: All right, if you would identify all
3 those documents, please, Solicitor.

4 MS. VON HERRMANN: Yes, sir, Your Honor. These are
5 the -- this will be State's Exhibit 46, which would be
6 South Carolina Law Enforcement Division, Latent Prints
7 Division, referring to tire impressions from a Nissan
8 Maxima.

9 Number 47 will be South Carolina Law Enforcement
10 Division, a report from the DNA Department.

11 48 will be a South Carolina Law Enforcement Division
12 report from Evidence Processing.

13 And 49, a South Carolina Law Enforcement Division
14 report regarding latent prints.

15 THE COURT: All right, and as I understand it,
16 that's being introduced by the State, the agreement by the
17 Defense? There's no objection by the Defense, is that
18 correct?

19 MR. BELLAMY: That's correct, Your Honor.

20 THE COURT: All right, so State's 46, 47, 48, and 49
21 are in evidence without objection.

22 MS. VON HERRMANN: Thank you, Your Honor.

23 MR. BELLAMY: Thank you, Your Honor.

24 CROSS EXAMINATION BY MR. BELLAMY CONTINUES:

25 Q. I know that was difficult because you're not from

1 SLED, but this will make it easier. These are reports
2 that we've agreed to let come on in and that you could
3 testify from, okay?

4 A. Yes, sir.

5 Q. I know it's not your reports specifically, but go
6 back to the tire impressions. I'm going to hand you what
7 is now in evidence as State's 46, and that is a report
8 from SLED that deals with the tire impressions, correct?

9 A. Yes, sir, and rolled impressions, yes.

10 Q. Okay, so in essence they took the cast from the
11 incident location that you found where there had been a
12 car ---

13 A. Yes, sir.

14 Q. --- that left an impression, and they compared it
15 to this gold Maxima that we've been talking about this
16 week, correct?

17 A. Yes, sir.

18 Q. And did they reach a conclusion as to whether the
19 car that left that impression at the scene was that gold
20 Maxima?

21 A. Yes, sir, and no conclusion was rendered due to the
22 quality of Item 50, which was the tire impression cast.
23 In other words, it's -- it's soft soil, so they weren't
24 able to get a clear enough cast to ---

25 Q. Read on. They did get it on the second one, did

1 they not?

2 **A.** Right, and then tire impression cast from behind
3 northeast corner of the Masonic Lodge is not identified
4 with Items 46 through 49, 46 through 49 being the rolled
5 impressions from that vehicle, so that was not identified,
6 yes, sir.

7 **Q.** The conclusion is that there were two casts made.
8 One was not a good enough cast; the other was, but it
9 wasn't the Maxima, correct?

10 **A.** Yes. There again, it's a grass field, so anybody
11 could have driven up on it.

12 **Q.** Okay, but y'all thought it was important to take?

13 **A.** Yes, sir.

14 **Q.** Okay. Now, I'm going to hand you now what's marked
15 as State's Exhibit 47, which is a DNA analysis ---

16 **A.** And just for the record, sir, the date on that
17 report is wrong. They have the incident date incorrect.

18 **Q.** Okay, and I asked you previously about fingernail
19 clippings and you were unable to ascertain whether that
20 had been done. I would ask that you look at 39-R and 39-L
21 and indicate whether fingernail clippings of the victim
22 were taken?

23 **A.** Yes, sir, clipping were taken from both the left
24 hand and right hand of Miles Thomas Slay.

25 **Q.** And fingernail scraping clippings?

1 A. Clippings, sir.

2 Q. Okay. Did they determine if there was anything
3 underneath there, or do you know? Do you know who took
4 those?

5 A. I don't, sir. I don't know who took them, and I
6 don't know what the analysis was requesting.

7 Q. Let's talk about the latent lifts. I show you
8 what's been marked as State's 49, and you had already
9 indicated you had this before, correct?

10 A. Yes, sir, I believe I do if it's the same one. May
11 I ---

12 Q. And I'll let you look at this. Maybe I'll hold
13 this and does that look like the same report?

14 A. Yes, sir; yes, sir, it is.

15 Q. Now, on this there was -- the latent lifts that
16 were taken were sent to SLED for their comparison, right?

17 A. I'm sorry, sir; I didn't hear you.

18 Q. I'm sorry. The latent lifts that y'all got from
19 the crime scene were sent to SLED for their analysis, or
20 some of them?

21 A. Yes, sir. These are the lifts from the Toyota
22 Highlander.

23 Q. Okay, and on Item -- and they are -- let me see --
24 if you want to review it to help yourself, are there any
25 of those that are matched to my client, or the two other

1 known people, Dominique Carr and Daniel Prater, who were
2 in the car?

3 A. And you're asking specifically if they were
4 identified to who, sir?

5 Q. To Tyronne Beaty, Daniel Prater, or Dominique Carr?

6 A. No, sir, not that I see in here, and I -- unless
7 I'm missing something.

8 Q. Now, are there some that listed as no conclusion?
9 I think three of them?

10 A. That's correct, sir.

11 Q. And that would be as to which particular
12 individual?

13 A. Some were not suitable at all for comparison.

14 Q. The ones that were suitable is what I'm talking
15 about, the ones where you have a print ---

16 A. Uh-huh (affirmative response).

17 Q. --- and they're comparing them?

18 A. No conclusion be rendered to the quality of Item 40
19 to Antonio Smalls.

20 Q. Antonio Smalls, okay, and ---

21 A. And there's one -- let me just see what the other
22 one is here. That's all I see.

23 Q. How many did you see? They came to no conclusion
24 as to Mr. Smalls, Antonio Smalls?

25 A. Roughly fifteen if I'm counting this accurately.

1 Q. Fifteen?

2 A. Yes, sir.

3 Q. Okay. Now, and before I hand you this, I'm going
4 to ask you as a crime scene specialist, do you send items
5 to the State Law Enforcement Division for what we call
6 evidence processing to -- for them to try to extract DNA
7 from items?

8 A. In some instances, yes, sir. In other instances,
9 we will do the prep work for it.

10 Q. When you say -- would y'all actually attempt to
11 extract DNA from an item and then send that, package it
12 somehow and send it to SLED, or would you send it to SLED
13 and let them extract it?

14 A. It's done both ways, sir.

15 Q. And in this case, do you know if y'all did any DNA
16 extraction work, and look through your notes and see if
17 there's any -- anything that indicates that there was DNA
18 extraction work done?

19 A. Yes, sir, I have -- I do have a sheet here from
20 SLED on some DNA work.

21 Q. I'm sorry; would you say that again?

22 A. I do have a SLED -- a copy of a SLED report here
23 referencing some DNA work, yes, sir.

24 Q. DNA work or evidence processing?

25 A. DNA for analysis, a SLED report.

1 Q. Could I see that?

2 A. (Witness hands document to Mr. Bellamy.)

3 Q. Okay, that's got some DNA tests. What I'm
4 referring to is whether DNA was extracted from an item,
5 where it's taken from clothing, from a cigarette butt, or
6 other item. Did y'all locally, I'm talking about the
7 County Police, do any of you have a report, a County
8 Police report, that indicates that y'all attempted to
9 extract DNA off of or from any item collected?

10 A. I don't have that information, sir. I don't know.
11 I did not.

12 Q. Okay. Are you aware as a supervisor if Officer
13 Caulder -- now, he had just started at that time, is that
14 my understanding, in Crime Scene? He was on probation, I
15 think?

16 A. Not probation, but he was new to Crime Scene, yes,
17 sir.

18 Q. And I didn't mean it in a bad way. I think that's
19 what he said when he testified, but he was relatively new.
20 Do you have any indication as to whether any of that work
21 was done to extract DNA from any of the items that y'all
22 collected?

23 A. I don't have that information, sir. I don't know.

24 Q. Now, do you know, and I'll show you this, what is
25 now marked as State's 48, which is a Evidence -- from

1 Evidence Processing of the State Law Enforcement Division,
2 and if you know, isn't that the place where evidence goes
3 to be processed and then sent off, either looking for
4 fingerprints there, DNA, and then they send it to the
5 appropriate department for them to analyze, correct?

6 A. Within SLED, yes, sir, that's correct.

7 Q. The Evidence Processing point is where you would
8 send an item and they try to extract from that what they
9 can and then send it to whoever that has a specialty in --
10 whether it's Trace, Fingerprints, Toolmarks, whatever it
11 may be, correct?

12 A. To some degree, sir, and it's not always
13 extracting. Sometimes DNA is as simple as swabbing this
14 counter for touched DNA, so you wouldn't be extracting it.
15 You'd simply be ---

16 Q. But you could find it on something like that?

17 A. Yes, sir.

18 Q. Now, what items does it indicate on that SLED
19 report were sent, and when we talk about DNA, we're
20 talking about human bodily fluids or something that has, I
21 guess, what DNA is, hair, saliva, something from a person?
22 In other words, DNA is not gunpowder residue? It's not
23 those sort of things, and drugs? DNA is from a person,
24 correct?

25 A. DNA would -- you are looking for something to

1 identify it back to a person, yes, sir.

2 Q. To a specific person?

3 A. Yes, sir.

4 Q. So in this report, what items were sent to SLED to
5 be processed and what were they processed for as indicated
6 by that report?

7 A. This report indicates that items -- as SLED keyed
8 in the items, Item Number 34, 35, 36, 37, and 38,
9 respectively, being a short sleeve tee shirt, a sleeveless
10 tee shirt, shorts, a pair of socks, pair of shoes.

11 Q. And those would have been from the victim and
12 analyzed for DNA evidence, correct?

13 A. I cannot tell you that with any certainty. It
14 doesn't say what they're from. I'd have to see the SLED
15 log-in sheets to tell you what -- where those pieces
16 correlate to.

17 Q. Okay, well, and if you don't know where they come
18 from, but it appears that they are processed for DNA
19 evidence?

20 A. They were -- yes, sir, they were brought to see if
21 there was DNA available to be sent on to the DNA lab.

22 Q. Okay.

23 A. Yes, sir.

24 Q. So they processed and sent it on ---

25 A. Yes, sir.

1 Q. --- according to this report?

2 A. Yes, sir.

3 Q. And it may help you -- I believe you have the DNA
4 report up there, correct?

5 A. Yes, sir, I think I do.

6 Q. And if we look at these together, and I'm sorry
7 this seems complicated, but I believe it would help you to
8 look at items off of here and compare them to the DNA
9 which indicates what they are?

10 A. Okay.

11 Q. Does that make sense?

12 A. Sure. Yes.

13 Q. So the items that were 34, 35, 36, and 37, and 38,
14 so what those items are, are reflected in the DNA report,
15 aren't they?

16 A. Well, with the exception of 35, yes, sir. Thirty
17 -- I see 34, 36, 37. I do not see 35 indicated here --
18 34, 35, 36, 37, 38 -- yes, everything but 35 appears to be
19 contained on these sheets.

20 Q. Okay, and now the only items sent for processing --
21 you're aware of no processing done locally?

22 A. I don't understand your question, sir.

23 Q. Okay. Items that were collected to extract -- and
24 when I use the word "extract," I don't know what --
25 because you talk about it could be just a ---

1 **A.** Say a locating or whatever, okay.

2 **Q.** Whatever, swabbing or something for DNA. As far as
3 swabbing or attempting to locate DNA in this case, did
4 anyone do that here locally?

5 **A.** Yes, sir. Evidence would be looked at in our
6 office by the investigator.

7 **Q.** But do you have any notes that indicate that any of
8 the evidence collected was looked at for DNA?

9 **A.** No, sir. That's what I said earlier; I don't have
10 that information, but if it went to SLED, it had to be
11 looked at in order to be transported up there.

12 **Q.** Okay. I guess my question is, though, do you have
13 any report from Crime Scene, from you, or Officer Caulder
14 that indicates that any evidence was processed here for
15 DNA?

16 **A.** Not that I'm aware of. In this case where SLED is
17 going to be doing -- as you indicated on that, evidence
18 processing, it would have been looked at by Caulder and
19 then transported to SLED for them to process and then
20 analysis.

21 **Q.** Okay, so ---

22 **A.** So obviously if it's at SLED, Caulder looked at it,
23 so yes, it ---

24 **Q.** But when you say looked at it, I understand he
25 looked at it. He had to pick it up and put it in the

1 thing, but did he process it specifically for DNA
2 evidence, any of the items that was collected?

3 A. Sir, everything that we touch essentially is
4 processed by us in one form of a -- or another.

5 Q. Okay. Do you have a report that says that?

6 A. No, sir; there wouldn't be.

7 Q. Okay. Now, you just told me, I believe, or
8 testified, but I think you probably told me what -- in
9 response to a question about extracting DNA. You could
10 get DNA off of that, can't you?

11 A. In some instances, yes, sir.

12 Q. DNA, because when -- I believe it was Officer
13 Caulder that testified when you put your hand down,
14 there's sweat and oil that's left behind, and not -- yeah,
15 sweat and oil out of your fingers that are left behind,
16 but potentially right there, you could get my DNA,
17 correct?

18 A. Potentially, yes.

19 Q. Okay, so potentially just by touching something,
20 you could swab it and potentially get DNA?

21 A. Yes, sir, in some cases, yes.

22 Q. Okay, and I understand not in every case, but in
23 some cases, that could be done?

24 A. Yes.

25 Q. So if you have an item that is known to have been

1 touched or someone says it's been touched by -- Mr.
2 Bellamy is the only one that touched that item, then that
3 would be something you would want to test for DNA and
4 swab, because that would be -- if you find my DNA, that
5 would be powerful evidence, wouldn't it?

6 A. It would be powerful evidence, yes, but not
7 everything can be swabbed.

8 Q. Well, I understand. You might not get it, but you
9 would need to swab it to determine if you could get that
10 DNA, correct?

11 A. In some cases, yes.

12 Q. Or in some cases you would extract it if it's a
13 porous material possibly?

14 A. It could be as simple as finding a droplet of blood
15 or finding a hair or a fiber, sure.

16 Q. So it could be anything, hair, fiber, saliva,
17 blood, ---

18 A. Yes, sir.

19 Q. --- or what you leave behind when you touch
20 something?

21 A. Yes. DNA is your genetic fingerprint essentially.

22 Q. And you have no record of any swabbing being done
23 of any evidence, correct, that y'all have, and I
24 understand SLED may have done whatever they did?

25 A. Not that I'm aware of, sir, no.

1 MR. BELLAMY: The Court's indulgence.

2 THE COURT: Yes, sir.

3 Q. I would like to go back right before I believe we
4 took a little break and clarify one of my questions that I
5 think may have been confusing, if you know. There's been
6 evidence in the case that Mr. Beaty was, after this event
7 occurred allegedly, that my client afterwards was with his
8 girlfriend, she picked him up in Conway. Do you have any
9 record of your people or Crime Scene going to this lady's
10 house and photographing the house or anything of that
11 nature?

12 A. No, sir, I have no knowledge of that.

13 MR. BELLAMY: The Court's indulgence.

14 THE COURT: Yes, sir.

15 MR. BELLAMY: I don't have any further questions of
16 Mr. Cestare. Thank you.

17 THE COURT: Redirect?

18 REDIRECT EXAMINATION BY MS. VON HERRMANN:

19 Q. Y'all don't -- y'all don't do DNA at the police
20 department here, do you?

21 A. We don't analyze it, no, ma'am.

22 Q. So when you have a question about DNA, you package
23 it up, ---

24 A. We call SLED.

25 Q. --- and you send it to SLED?

1 In this case, y'all sent a number of items that were
2 taken from the autopsy, the victim's clothing from the
3 autopsy, and you sent them up to SLED for DNA, correct?

4 A. Again, I -- I don't know exactly what these items
5 are from without seeing the SLED Intake Sheet on it.

6 Q. Well, let's just look at the items that were
7 submitted here: Short sleeve tee shirt, correct?

8 A. Uh-huh (affirmative response).

9 Q. Sleeveless tee shirt, ---

10 A. Yes.

11 Q. --- correct? Shorts, correct?

12 A. Yes.

13 Q. A pair of socks and a pair of shoes?

14 A. Yes.

15 Q. And y'all sent those items up to DNA at SLED and lo
16 and behold, those items taken from the autopsy come back
17 with DNA from Miles Slay, the victim, is that correct?

18 A. Yes. Items 34, 36, 37, 39 are consistent with the
19 DNA profile from Miles Slay.

20 Q. So it's not surprising that the victim's bloody
21 clothing comes back positive for DNA to the victim, is it?

22 A. That would be correct, yes.

23 Q. All right. Let's take a look at these tire
24 impressions. Where did this incident take place?

25 A. In a grassy, sandy field adjacent to a Masonic

1 Lodge on Butler -- Butler Road.

2 Q. A Masonic Lodge, a meeting place, right?

3 A. Well, the grassy area is their parking area, yes.

4 Q. Lots of cars coming in and out?

5 A. Yes, ma'am.

6 Q. Two tire impressions, one of them no conclusion,
7 correct?

8 A. Yes.

9 Q. One of them, not identified as the Maxima, right?

10 A. Correct.

11 Q. Latent prints, y'all took a bunch of prints off the
12 Highlander?

13 A. Yes, ma'am.

14 Q. Twenty-two of them?

15 A. Yes.

16 Q. And sent them off to SLED; SLED processed them. Of
17 all the prints, no prints identified to Tyrone Beaty,
18 right?

19 A. Correct.

20 Q. No prints identified to Neil Hill, correct?

21 A. Correct.

22 Q. No prints identified to Corey Smalls?

23 A. Correct.

24 Q. No prints identified to Dominique Carr?

25 A. Correct.

1 Q. No prints identified to Daniel Slater, correct?

2 A. Correct.

3 Q. All right. No conclusions as to Antonio Smalls,
4 correct?

5 A. Correct.

6 Q. And read that and tell me why there's no conclusion
7 as to Antonio Smalls.

8 A. They were not suitable for South Carolina Automated
9 Fingerprint, AFIS, System.

10 Q. Those prints, they don't know whether those prints
11 belong to Antonio Smalls, or me, or you, or anybody else,
12 is that correct?

13 A. Correct.

14 Q. All right, so the gist of it is we've got DNA on
15 the victim's bloody shirt that belonged to the victim. We
16 got nothing with regard to prints, and we got nothing with
17 regard to tire impressions, right?

18 A. Correct.

19 Q. All right. Thank you.

20 MS. VON HERRMANN: I don't have any further
21 questions.

22 THE COURT: Anything on those questions, Mr.
23 Bellamy?

24 MR. BELLAMY: Yes, sir, on the one -- the last
25 question, I believe.

1 RECROSS EXAMINATION BY MR. BELLAMY:

2 Q. As far as Antonio Smalls, there were three of them
3 that didn't come back -- came back no conclusion, correct?

4 A. Uh ---

5 Q. The rest of those prints -- well, let me let you
6 answer. I'm sorry.

7 A. Yes.

8 Q. Is that correct?

9 A. Yes.

10 Q. So the other nineteen, they were able to compare
11 Mr. Smalls' prints to what your known -- unknown prints
12 off of the car were, and that's not him either, right?

13 A. No, that's not correct. Some of them say no value
14 for identification. Some of the lifts were not ---

15 Q. Okay. I understand.

16 A. --- good enough for ---

17 THE COURT: Mr. Bellamy, allow him to finish his
18 answer.

19 Q. The ones that were ---

20 THE COURT: Mr. Bellamy, allow him to finish his
21 answer.

22 Finish your answer, sir.

23 A. There are several prints indicated here, lifts, and
24 -- and -- where it says, "Result, no value for
25 identification." In other words, the lift did not pull

1 enough ridge detail in order to identify to anybody.

2 Q. To anybody in the world?

3 A. Yes, sir.

4 Q. And I know -- I'm not talking about those. I'm
5 talking about the ones where you actually got a valid
6 print off the car and were analyzed by SLED. Some of the
7 ones they did analyze Antonio Smalls and can say were not
8 his, correct?

9 A. Correct.

10 Q. Okay, so there's a print on the car that says it's
11 not anybody in this case, but on three specific ones, they
12 can't tell -- they can't say it's not Antonio, can they?

13 A. Well, they're saying to please resubmit inked palm
14 prints and so forth ---

15 Q. On who?

16 A. On Antonio Smalls.

17 Q. Okay. Did y'all do that?

18 A. I don't know, sir.

19 MR. BELLAMY: I don't have anything further.

20 THE COURT: Anything else, Solicitor?

21 MS. VON HERRMANN: No, sir.

22 THE COURT: Do you wish the witness to be excused?

23 MS. VON HERRMANN: I do, Your Honor.

24 THE COURT: Any objection?

25 MR. BELLAMY: No, sir, Your Honor.

1 ORIGINAL FOOD LION VIDEO MARKED AS STATE'S EXHIBIT
2 NUMBER 29 IS RE-MARKED AS COURT'S EXHIBIT NUMBER 5.

3 EDITED FOOD LION VIDEO IS MARKED IN EVIDENCE

4 AS STATE'S EXHIBIT NUMBER 29.

5 (THE EXHIBITS AND VERDICT FORM ARE TAKEN TO THE JURY AT
6 12:10 P.M. TO BEGIN DELIBERATION.)

7 (OFF THE RECORD)

8 ON THE RECORD

9 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
10 THE JURY.)

11 THE COURT: All right, ladies and gentlemen,
12 pursuant to a note from the jury, they had some question
13 about the charge. I wrote them a note and asked them to
14 be more specific what they wanted. The return notes
15 states that the jury would like to hear the entirety of
16 the law presented to us, so I intend to have the jury come
17 back and charge them. I will go over everything that I
18 did. I might not be as expansive as I was regarding
19 credibility and believability, but briefly go over that
20 and probably just skim over the note-taking, but go over
21 everything else that I talked about.

22 All right, ask the jury to come in, please, sir.

23 NOTE FROM THE JURY AND JUDGE'S RESPONSE MARKED

24 AS COURT'S EXHIBIT NUMBER 6.

25 NOTES FROM THE JURY MARKED AS COURT'S

1 THE COURT: All right, very good. All right, we'll
2 be at ease until the jury needs us.

3 (OFF THE RECORD)

4 ON THE RECORD - 6:15 P.M.

5 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
6 THE JURY.)

7 THE COURT: All right, Solicitor and Mr. Bellamy, at
8 the Court's instruction the Clerk of Court inquired of the
9 jury and they have requested to go home for the evening
10 and come back tomorrow morning and resume deliberations.
11 It was the jury's apparent belief from that that they
12 would be better served by doing that, and I would tend to
13 agree, giving them an opportunity to approach the matter
14 again fresh in the morning, so ask the jury to come in,
15 please.

16 (AT 6:15 P.M., THE FOLLOWING TAKES PLACE IN THE
17 PRESENCE OF THE JURY.)

18 THE COURT: All right, ladies and gentlemen, in
19 response to the Court's inquiry of you and your response
20 and request of the Court, I am going to recess for the
21 evening and have y'all go home now with these cautionary
22 instructions.

23 Obviously you cannot discuss the case with anyone.
24 By the chance that you would see one of your fellow
25 jurors, if you went out to dinner or something like that,

1 obviously you can't discuss the matter. You cannot
2 discuss the matter until all twelve of you are there
3 present in the jury room, so when you reconvene tomorrow
4 morning and five, six, ten of you are there, you still
5 can't talk about it.

6 Until all twelve of you are there, you may not
7 discuss any aspect of the case. It must be done with all
8 twelve of you able to hear and participate in those
9 discussions, and again, don't talk about it with anybody,
10 don't allow anybody to talk to you about it. You can't do
11 any research on your own. You've got the law that I have
12 given you. You have to apply that law, and you've got the
13 evidence as you so find it to be in this matter, and you
14 have to make your decision based solely and completely on
15 that and from no other source, so with that, I'll see you
16 back tomorrow morning at nine o'clock.

17 I would ask that y'all be back in your jury room at
18 nine o'clock and reconvene, and we'll start back again.
19 Probably what will happen is the bailiffs will wait until
20 all twelve of you are there and then they will bring in
21 all of the exhibits and the note pads and pens, and all
22 that, so we will make sure we're all there when everything
23 is discussed, okay? See you back tomorrow morning at nine
24 o'clock. Thank you very much.

25 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF**

1 MR. BELLAMY: Thank you, Your Honor.

2 THE COURT: All right, thank you very much.

3 NOTE FROM JURY MARKED AS COURT'S EXHIBIT NUMBER 9.

4 (OFF THE RECORD - End of Day)

5 FRIDAY, JULY 16, 2010

6 ON THE RECORD - 11:50 A.M.

7 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
8 THE JURY.)

9 THE COURT: All right, Solicitor and Mr. Bellamy, I
10 understand the jury has reached a verdict in this matter.
11 Is the State ready to receive it?

12 MS. VON HERRMANN: Yes, sir, Your Honor.

13 THE COURT: And Defense?

14 MR. BELLAMY: Yes, sir, Your Honor.

15 THE COURT: All right, thank you.

16 Let me just say to the persons in the courtroom, as I
17 always do, we asked this jury to do a very difficult task,
18 that is to render a unanimous verdict in this particular
19 matter. I do not know what the verdict is. We will all
20 find out what their verdict is together.

21 Whatever the verdict is, it will be received with
22 respect and silence. The Court will not tolerate any kind
23 of show of emotion or any outburst of any kind. If that
24 does occur, you will be detained by a Deputy Sheriff from
25 Horry County and I will hold a contempt of court

1 proceeding thereafter. If you cannot follow these
2 instructions, please leave the courtroom. Thank you very
3 much.

4 Ask the jury to come in.

5 (AT 11:55 A.M., THE JURY RETURNS TO THE COURTROOM
6 WITH ITS VERDICT, AND THE FOLLOWING TAKES PLACE IN THE
7 PRESENCE OF THE JURY.)

8 THE COURT: All right, Madam Forelady, has your jury
9 reached a verdict in these two matters?

10 THE FORELADY: We have, Your Honor.

11 THE COURT: All right, thank you, ma'am. If you can
12 hand the verdict forms to the Clerk, please, ma'am.
13 (The Clerk hands the verdict forms to the Court.)

14 THE COURT: You may publish the verdicts.

15 THE CLERK: Indictment Number 2006-GS-26-1747,
16 Indictment Number 2006-GS-26-1748, State of South
17 Carolina, County of Horry versus Tyronne Beaty, "On the
18 charge of murder, we, the jury, by unanimous consent, find
19 the Defendant guilty. On the charge of armed robbery, we,
20 the jury, by unanimous consent, find the Defendant
21 guilty," dated July 15th, 2010, signed by Foreperson
22 Arline Elston, Juror Number 370.

23 Ladies and gentlemen of the jury, if this is your
24 verdict, so signify by raising your right hand. (All
25 jurors raise their right hand.) Thank you.

1 briefly address the Court.

2 THE COURT: All right, sir.

3 Mr. Beaty, I'll be glad to hear from you, sir.

4 TYRONNE BEATY: Today -- today is the day I've
5 waited five years for this day to come, and I thought
6 today would be the day that the truth could come out and
7 it would be told. Now I see I have to deal with the
8 situation. All I ask is for you to do, give me the mercy
9 of the Court because I am not the trigger man. I am not
10 the killer in this case, but I am going to get charged for
11 this, so all I can ask for you to do is be as lenient as
12 you can, as you can.

13 MR. BELLAMY: Thank you. Thank you, Your Honor.
14 That would be all.

15 THE COURT: All right. 2006-GS-26-1748, the State
16 of South Carolina, County of Horry, versus Tyronne Beaty
17 regarding the charge of murder. In this particular
18 matter, all of the circumstances surrounding this from
19 beginning to end are just an absolute tragedy for all
20 persons involved.

21 Regarding this particular matter, the Court hereby
22 sentences the Defendant to the South Carolina Department
23 of Corrections for a determinate term of thirty-four
24 years.

25 2006-GS-26-1747 regarding armed robbery, the sentence

1 is the Defendant is committed to the State Department of
2 Corrections for a determinate term of thirty years,
3 concurrent with 06-GS-26-1748. Thank you very much.

4 Anything further from the State at this time?

5 MS. VON HERRMANN: Nothing, Your Honor.

6 THE COURT: Anything further from the Defense?

7 MR. BELLAMY: Nothing, Your Honor.

8 THE COURT: All right. This term of General
9 Sessions Court is, therefore, ended sine die. Thank you
10 very much.

11 (Conclusion of Transcript of Record.)

12

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WITNESSES

LEWIS/HCPD

ARREST WARRANT NO.

I-269562

CDR: 0139 16-11-0330(A)

DOA: 10-04-05

ACTION OF GRAND JURY

TRUE BILL

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury Date:

DOCKET NO. 2006-GS-26-1747

THE STATE OF SOUTH CAROLINA

COUNTY OF HORRY

79198-1

WBvH

COURT OF GENERAL SESSIONS

APRIL

TERM

2006

THE STATE

vs.

TYRONE BEATY

B/M

DOB:

SSN:

ATTORNEY: SCOTT BELLAMY

INDICTMENT FOR:
ARMED ROBBERY

ORIGINAL

J. GREGORY HEMBREE, SOLICITOR

CERTIFIED COPY
2010 JUL 22 AM 7:43
Melanie Hembree-Donald
CLERK OF COURT
HORRY COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT FOR:
ARMED ROBBERY

At a Court of General Sessions, convened on April 27, 2006, the Grand Jurors of Horry County present upon their oath:

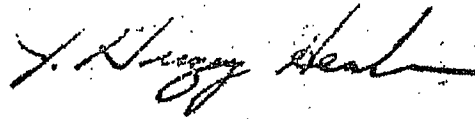
ARMED ROBBERY

CDR: 0139 16-11-0330(A)

7/12/10
motion to amend
granted

That TYRONE BEATY did in Horry County on or about the ^{20th} day of October, 2005, while armed with a deadly weapon, to wit: a pistol, take and carry away personal property of from or in the immediate presence of Miles Thomas Slay, II with intent to deprive him of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

Foreman of Petit Jury Date:

DOCKET NO. 2006-GS-26-1748

THE STATE OF SOUTH CAROLINA

COUNTY OF HORRY
79198-1 WBvH

COURT OF GENERAL SESSIONS

APRIL TERM 2006

THE STATE

vs.

TYRONE BEATY B/M

DOB:
SSN:

ATTORNEY: SCOTT BELLAMY

INDICTMENT FOR:
MURDER.

ORIGINAL

J. GREGORY HEMBREE, SOLICITOR

2010 JUL 22 AM 7:43
MEDANES HINDSON, Edward
CLERK OF COURT
HOBBS COUNTY

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

INDICTMENT FOR:
MURDER

At a Court of General Sessions, convened on April 27, 2006, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

*7/12/10
motion to amend
granted*

That TYRONE BEATY did in Horry County, on or about the 21st day of October, 2005, willfully, feloniously, and intentionally kill the victim, Miles Thomas Slay, II, with malice aforethought, either express or implied, by means of shooting the victim in the chest, and the victim did die as a proximate result thereof on or about October 21, 2006 in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

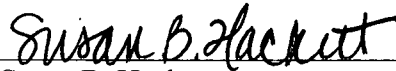
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 3rd, 2013



Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JAN 03 2013

SC Court of Appeals

Appeal from Horry County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

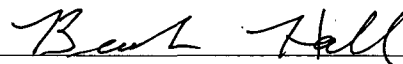
V.

TYRONE BEATY,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 3rd day of January, 2013.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 3rd day of January, 2013.



(L.S.)
Notary Public for South Carolina

My Commission Expires: November 16, 2022.