

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Horry County
The Honorable Steven H. John, Circuit Court Judge
Appellate Case No. 2010-167826

THE STATE,

Respondent,

vs.

TYRONE BEATY,

Appellant.

SUPPLEMENTAL RECORD ON APPEAL

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ORIGINAL

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CERTIFICATION OF COUNSEL	

1 The State calls Jarrett Jeffcoat.

2 THE COURT: All right, sir, please come around to be
3 sworn.

4 JARRETT JEFFCOAT, being first duly sworn, testifies
5 as follows:

6 THE CLERK: Please be seated. State your full name
7 for the record and spell your last.

8 MR. JEFFCOAT: Full name is Jarrett Jeffcoat. Last
9 name is spelled J-E-F-F-C-O-A-T.

10 DIRECT EXAMINATION BY MS. VON HERRMANN:

11 Q. Good afternoon, Mr. Jeffcoat.

12 A. Good afternoon.

13 Q. Thank you for your patience.

14 A. You bet.

15 Q. Tell the jury, please, how you are employed.

16 A. I'm employed with Food Lion. I'm a loss prevention
17 investigator. I've been with Food Lion for twenty years,
18 and I've been in the loss prevention department for ten
19 years, the last ten years.

20 Q. And tell the jury, please, what your duties are in
21 that regard.

22 A. My basic job functions are to identify associate
23 theft, associate dishonesty, associate integrity. We also
24 work in conjunction with the local authorities to provide
25 information should they seek it.

1 Q. And did you have occasion to take a look at some
2 items -- let me show you -- actually, let me show you
3 what's been marked as State's Exhibit 29 and ask you if
4 you can identify that for me?

5 A. Yes. It appears to be a Food Lion video cassette.

6 MS. VON HERRMANN: Your Honor, I would move this
7 into evidence. It will be State's 29.

8 THE COURT: Any objection?

9 MR. BELLAMY: I assume that's what we previously --
10 has been disclosed.

11 MS. VON HERRMANN: It is.

12 MR. BELLAMY: No problem, Judge.

13 THE COURT: All right, sir. In evidence without
14 objection.

15 MS. VON HERRMANN: Thank you.

16 VIDEO CASSETTE ADMITTED INTO EVIDENCE AS
17 STATE'S EXHIBIT NUMBER 29.

18 Q. And tell the jury, please, how the video system
19 worked at Food Lion, or rather how it worked in 2005 when
20 this particular video was made.

21 A. Yes, in 2005, the system was basically a VCR with
22 roughly nine to twelve cameras in a store, and the cameras
23 would be linked to the VCR and also what's called a
24 multiplexer, which is like a converter, and the
25 multiplexer converts the video that is taped into the VCR,

1 so what it does, it has nine to twelve frames, or nine
2 cameras, and if you could picture nine frames on a screen,
3 and it starts at the first screen, and it takes a one
4 second -- one to three second intervals for it to record
5 the first frame to the last frame, back to the first
6 frame.

7 MS. VON HERRMANN: Your Honor, I would ask that Mr.
8 Jeffcoat be allowed to step down and I be allowed to
9 publish State's 29 to the jury.

10 THE COURT: Any objection to publication?

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

12 THE COURT: You may do so.

13 Step down, sir.

14 Q. There's no sound on this, is that correct?

15 A. Yes, no sound.

16 MR. BELLAMY: Your Honor, may I?

17 THE COURT: Yes, sir, certainly.

18 (Food Lion video cassette is played for the jury.)

19 Q. Is someone checking out there?

20 A. Yes.

21 Q. I know there are going to be several views of that
22 individual checking out.

23 A. Yes.

24 Q. Would that be the same scene there, only from a
25 different perspective?

1 A. The same scene, but it's actually zoomed in a
2 little bit closer.

3 Q. And again, this would be just a different angle, is
4 that correct?

5 A. Correct.

6 Q. And I notice in this video, some portions bears a
7 date at the top of the frame, is that correct?

8 A. Yes. That shows the date and the time.

9 Q. And this is just something that you regularly keep
10 at the store for some period of time, correct?

11 A. Yes, correct.

12 Q. How long do you typically keep these tapes?

13 A. In '05, we actually keep the tapes -- they would
14 cycle out every thirty days, so at the first of the month,
15 the tapes are typically labeled, one for the 30th, or the
16 date of the month, and one for thirty-one, so on, we'll
17 say September 1st, that tape would be used, and then on
18 October 1st, it would be recorded over and used again.

19 MS. VON HERRMANN: Thank you. Please have a seat
20 again.

21 Your Honor, I'm going to rewind this to the
22 appropriate spot so when it goes back it will be ---

23 THE COURT: Yes, ma'am.

24 Q. And if you will, please, take a look at what's been
25 marked State's Exhibit 30 and tell me what that is.

1 A. This was an actual transaction that occurred at the
2 register. On it shows the date, time, the register, the
3 transaction number, and the store location, and the
4 cashier, the number.

5 MS. VON HERRMANN: And I would ask that Mr. Jeffcoat
6 be allowed to come down -- let me move this into evidence
7 first.

8 Q. Is this something that's regularly kept in the
9 course of business?

10 A. Yes.

11 MS. VON HERRMANN: I would move State's Exhibit 30
12 into evidence.

13 THE COURT: Any objection?

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

15 THE COURT: And what date was that, please, ma'am?

16 MS. VON HERRMANN: This is 10/20/05.

17 THE COURT: Thank you.

18 MS. VON HERRMANN: And I would ask that he be
19 allowed to come down and show this to the ---

20 THE COURT: You may do so.

21 If I did not say, State's 30 is in evidence without
22 objection.

23 FOOD LION RECEIPT ADMITTED INTO EVIDENCE AS

24 STATE'S EXHIBIT NUMBER 30.

25 A. Basically what this is is a receipt that's

1 generated at the store ---

2 THE COURT: You need to please speak up. You're
3 kind of covering that microphone right there, so you need
4 to speak up.

5 A. This is a receipt that is generated at the store.
6 It's kept in our database. Our stores are able to go in
7 any time and look at a transaction on a certain date or
8 time, and what it denotes here is the actual items that
9 were scanned at the register, and down here it denotes, if
10 you could see this, it shows the date, it shows the time,
11 it shows the store number, it shows the register number,
12 it shows the transaction number, and it shows the cashier
13 number that actually ran it. Each cashier is given a
14 sequence of numbers.

15 Q. And does that correspond with the video that we
16 just watched here a moment ago?

17 A. Yes.

18 Q. And would you tell the jury, please, what items
19 were purchased on that -- what date is that?

20 A. This is dated for 10/20/05 at 17:27, which is 5:27
21 in the evening.

22 Q. Okay, and what items were purchased?

23 A. Martha White plain flour, Food Lion sandwich
24 spread, duct tape, Food Lion lunch bag, and this bottom
25 thing here is actually an on-sale item. It just denotes

1 that an item was on sale. It takes a certain percentage
2 of it off.

3 Q. The second item that you mentioned, I believe that
4 you said -- that actually is a sandwich bag, a sandwich
5 bag, is that correct?

6 A. Yes. I was incorrect. That's a Food Lion pleated
7 sandwich bag.

8 MS. VON HERRMANN: Thank you very much.

9 Your Honor, I have no further questions for this
10 witness.

11 THE COURT: All right. Cross examination?

12 MR. BELLAMY: No questions, Judge.

13 THE COURT: Do you wish the witness to be excused?

14 MS. VON HERRMANN: I do, Your Honor.

15 THE COURT: Any objection?

16 MR. BELLAMY: No, Your Honor.

17 THE COURT: All right. Sir, you are released from
18 your subpoena and may go back to your regular duties.

19 Thank you.

20 MS. VON HERRMANN: Your Honor, at this time the
21 State would call Renee Hardwick.

22 THE COURT: Would you come around and be sworn,
23 please, ma'am.

24 RENEE HARDWICK, being first duly sworn, testifies as
25 follows:

1 THE CLERK: Please be seated. State your full name
2 and spell your last.

3 RENEE HARDWICK: Sharon Renee Hardwick,
4 H-A-R-D-W-I-C-K.

5 DIRECT EXAMINATION BY MS. VON HERRMANN:

6 Q. Ms. Hardwick, how are you currently employed?

7 A. I am the Deputy Director of Horry County 911.

8 Q. And how long have you been in that position?

9 A. Twenty years.

10 Q. And you've testified in a number of trials, have
11 you not, ---

12 A. Yes, ma'am.

13 Q. --- with regard to 911 tapes?

14 A. Yes, ma'am.

15 Q. And I'm going to show you what's been marked as
16 State's Exhibit for I.D. 28 and have you take a look at
17 that item if you will.

18 A. Okay.

19 Q. Have you had an opportunity to review that
20 particular item?

21 A. I have.

22 Q. And does it fairly and accurately represent the
23 contents of the 911 call that was placed?

24 A. Yes, ma'am. am'

25 MS. VON HERRMANN: I'd ask -- move to have this

1 entered into evidence as State's 28.

2 THE COURT: Any objection?

3 MR. BELLAMY: No, Your Honor.

4 MS. VON HERRMANN: And I'd ask to be allowed to
5 publish it to the jury.

6 THE COURT: No objection. Again, Solicitor, I'm
7 sorry, did you have the witness identify the date?

8 MS. VON HERRMANN: Yes, absolutely.

9 Q. Is the date of this call October the 21st of 2005?

10 A. Yes, ma'am.

11 Q. And where did that call come from? Do you know
12 which location it was? Is that a Butler Road location?

13 A. Yes, ma'am. It was a call off of -- a resident off
14 of Butler Road.

15 Q. Thank you.

16 CASSETTE TAPE OF 911 CALL ADMITTED INTO
17 EVIDENCE AS STATE'S EXHIBIT NUMBER 28.

18 (State's Exhibit Number 28 is played in its entirety
19 for the jury.)

20 MS. VON HERRMANN: I have no further questions for
21 this witness. Please answer any questions Mr. Bellamy
22 has.

23 THE COURT: Cross examination?

24 CROSS EXAMINATION BY MR. BELLAMY:

25 Q. Ms. Hardwick, what time did that call come in?

1 A. Approximately 1:30.

2 Q. 1:30 on?

3 A. ~~October the 21st~~ of 2005.

4 Q. Would that be 1:30 ---

5 A. P.M.

6 Q. Okay.

7 MR. BELLAMY: Thank you so much.

8 THE COURT: Any redirect?

9 MS. VON HERRMANN: No, Your Honor, and I would ask
10 that the witness be allowed to be excused.

11 THE COURT: Any objection?

12 MR. BELLAMY: No, sir.

13 THE COURT: All right, ma'am, you are released from
14 your subpoena and may go back to your regular duties.
15 Thank you.

16 MS. VON HERRMANN: The State calls Robert Kegler.

17 THE COURT: Please come around to be sworn up here,
18 please.

19 ROBERT KEGLER, being first duly sworn, testifies as
20 follows:

21 THE CLERK: Please be seated. State your full name
22 and spell your last name.

23 ROBERT KEGLER: Robert Kegler, K-E-G-L-E-R.

24 DIRECT EXAMINATION BY MS. VON HERRMANN:

25 Q. Could you tell the jury how you are currently

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 THE COURT: Any objection?

2 MR. BELLAMY: No, Your Honor.

3 THE COURT: You may do so. Just remember, Officer,
4 to speak loudly in front of that microphone over there,
5 sir.

6 A. Sure. (Witness steps down from the witness stand.)
7 Okay, this picture here is the SUV that I observed when I
8 first pulled up to the scene. Like I said, it was parked
9 next to the metal building by where I was dispatched to.

10 Q. You can go ahead and show that to them if you want
11 to.

12 A. Okay. (Displays photograph to the jury.)

13 This picture here is a wider shot of the same
14 thing. It is the SUV in question next to the metal
15 building, and my patrol vehicle is actually in this
16 picture as well, right on the perimeter of where the --
17 where I began to secure the scene.

18 This picture is a side view of the same SUV parked
19 next to the metal building. Again, in this one, you can
20 see the crime scene tape as well.

21 This picture is a front view of the vehicle. You
22 can see my patrol car in the background.

23 This picture is a rear view picture of the SUV
24 parked next to or close to the metal building where I was
25 dispatched to.

1 And the last picture is a close-up of the SUV taken
2 from the passenger side.

3 Q. When you arrived there, did you touch anything or
4 tamper with anything in that area?

5 A. No, ma'am.

6 Q. And did you have -- did either you or you have
7 someone set up a crime scene log?

8 A. I did.

9 Q. What is the purpose of a crime scene log?

10 A. It -- what it does is indicate everybody who went
11 in and out of the crime scene for documentation purposes
12 so that there's an accurate account of who went -- entered
13 the crime scene.

14 Q. And did you do anything further regarding this
15 investigation?

16 A. No, ma'am. I wrote the initial police report. I
17 notified my supervisor who, in turn, did what he needed to
18 do in order to get Investigations on scene.

19 Q. So it's the protocol then that you would -- you
20 would call your supervisor and your supervisor would then
21 call Detectives, or Violent Crimes, or whoever that he
22 felt like needed to come out?

23 A. It is.

24 Q. Okay.

25 MS. VON HERRMANN: Thank you. I don't have any

1 further questions for this witness. Please answer any
2 questions Mr. Bellamy has.

3 THE COURT: Cross examination.

4 CROSS EXAMINATION BY MR. BELLAMY:

5 Q. And you probably just answered it with that
6 question, but I want to ask you anyhow. Did you go around
7 the neighborhood and question people about did anybody see
8 anything, hear anything, or would that have been an
9 investigator, detective, or somebody else?

10 A. I did not question anybody. The original
11 complainant who called spoke to me briefly. I do not
12 recall what he said at all, but the investigators would
13 have been the ones to go speak with neighbors.

14 Q. Okay, thank you.

15 MR. BELLAMY: No further questions.

16 THE COURT: Anything else, Solicitor?

17 MS. VON HERRMANN: Nothing, Your Honor. I would
18 just ask that this witness be excused.

19 THE COURT: Any objection?

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

21 THE COURT: All right, Officer, you are released
22 from your subpoena and may go back to your regular duties.

23 OFFICER KEGLER: Thank you.

24 THE COURT: And your next witness, Solicitor.

25 MS. VON HERRMANN: Your Honor, if I may wait until

1 the jurors finish looking at those photographs.

2 THE COURT: Yes, ma'am.

3 MS. VON HERRMANN: But our next witness will be
4 Robert Caulder.

5 THE COURT: Please come forward to be sworn, sir.

6 JOHN R. CAULDER, being first duly sworn, testifies as
7 follows:

8 THE CLERK: State your full name and spell your last
9 name.

10 JOHN R. CAULDER: John R. Caulder, C-A-U-L-D-E-R.

11 DIRECT EXAMINATION BY MS. VON HERRMANN:

12 Q. How are you?

13 A. I'm doing fine. How are you?

14 Q. I am doing well. Tell the jury how you are
15 employed.

16 A. I am employed as the Senior Crime Scene
17 Investigator in the Horry County Police Department.

18 Q. How long have you been employed in that capacity?

19 A. I've been with the Crime Scene Unit since 2004.

20 Q. And on this particular day in question, on October
21 the 21st of 2005, what was your position at that time?

22 A. I was the crime scene investigator, the first crime
23 scene investigator, on the scene.

24 Q. And was there another crime scene investigator that
25 was there as well?

1 A. Yes, my supervisor, Specialist Peter Cestare.

2 Q. When you arrived at the crime scene, give the jury
3 your initial impression of what you saw there.

4 A. Immediately upon arrival, road officers Kegler and
5 Brummett had secured the scene. Pretty much what happens
6 at that point, we just find out kind of what's going on.
7 There was a Masonic Lodge to the right of the area that
8 was cordoned off, and there was a new vehicle, a SUV type
9 vehicle, parked to the left of the Masonic Lodge with the
10 driver's door ajar.

11 At that point in time, kind of made a brief walk
12 around the building, kind of to the area, where we waited
13 for detectives to get a search warrant for the vehicle and
14 noticed that there was a black male, deceased victim,
15 lying in the front seat of the vehicle.

16 Q. And was there a search warrant that was obtained in
17 this case?

18 A. Yes, there was.

19 Q. Why do you -- why do you observe the outside of the
20 area before you observe the inside of the area? What's
21 the importance of that?

22 A. The importance is because you don't know with that
23 type of scenario, with it closed down, with it being a
24 Masonic Lodge or that type of business with not a lot of
25 traffic, it being the only vehicle, you want to try to

1 remain true as far as the scene goes, as far as tire wear
2 impressions, anything that may have been moved around or
3 is kind of out of place as far as the scene itself.

4 Q. And when you go into a scene, do you label certain
5 items as you find them?

6 A. Basically what happens first is we will photograph
7 the scene so it remains true, so nothing can be -- so we
8 can go back at a later date and time, if we need to, and
9 put it back into place, but immediately if we come upon a
10 piece of evidence or what we deem is evidentiary value on
11 the scene, we'll place a placard beside it whether it be
12 -- we use numbers. You may see alphabet -- alphabetic
13 numbers. We use letter numbers, so we place them down by
14 the items that we are going to collect. Then we
15 photograph those items.

16 Q. And did you do that in this case? Did you take
17 photographs initially and then also with items that you
18 located that were numbered?

19 A. Yes, ma'am.

20 Q. And do you use a metal detector to go around the
21 area to locate ---

22 A. Yes, ma'am, in certain scenarios and in this case,
23 yes, ma'am. Since there was a -- what we observed to be a
24 shooting involved, we try to do that to try to locate any
25 other type of metals, such as casings, things like that,

1 that we may overlook with just the blind eye.

2 Q. I'm going to show you some photographs here. This
3 is State's Exhibit 13. I'm going to ask you if you can
4 identify that?

5 A. Yes, ma'am. That's the driver's side exterior of
6 the vehicle as I saw it upon arrival and then placing the
7 placards there. There were three baggies and a casing
8 that was found outside on the driver's side of the
9 vehicle.

10 MS. VON HERRMANN: For expediency's sake, you know,
11 I would ask if he could identify -- if he is able to
12 identify each of these ---

13 THE COURT: That's fine.

14 MS. VON HERRMANN: --- and if Mr. Bellamy doesn't
15 have any objection. I think he's had an opportunity to
16 look at them.

17 MR. BELLAMY: That's correct, Your Honor.

18 THE COURT: Okay.

19 Q. And does each and every one of those photographs
20 fairly and accurately represent the scene as it appeared
21 that day?

22 A. Yes, ma'am, they do.

23 MS. VON HERRMANN: Your Honor, I would move State's
24 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26,
25 and then 34, 35, 36, and 37 in evidence.

1 THE COURT: Any objection?

2 MR. BELLAMY: I don't think so, Judge. I just --
3 I've seen these, but I just want to go through just a
4 minute.

5 THE COURT: All right, sir.

6 MR. BELLAMY: Your Honor, I have no objection. I
7 believe there was the one photograph that we had
8 previously discussed not being published at this time.

9 THE COURT: All right. What number is that?

10 MS. VON HERRMANN: That's Number 36.

11 THE COURT: 36, all right, so State's 13 through 26,
12 34, 35, and 37 are in evidence without objection.

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

14 SEVENTEEN (17) PHOTOGRAPHS OF INCIDENT SCENE ARE
15 ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
16 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24,
17 25, 26, 34, 35, AND 37.

18 MS. VON HERRMANN: And I would ask that he be
19 allowed to step down so that he can publish these
20 photographs to the jury.

21 THE COURT: Any objection to publication?

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

23 THE COURT: You may do so.

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

25 Q. Let's just go through these one by one. State's

1 Exhibit 13, if you will show this to the members of the
2 jury and point out to them what items are located there.

3 A. This is Evidence Items 1, 2, 3, and 4 that you
4 could see inside of the car door itself, the Toyota
5 Highlander, which is parked here. You can partially see
6 the victim that's lying inside of the Highlander, and
7 Evidence Item Number 9 -- Evidence Items Number 9 is a
8 spent shell casing. Items 1, 2, 3, and 4 that you can see
9 are small plastic baggies containing an un- -- at that
10 time an unknown white powdery-type substance.

11 Q. All right, and I'm going to show you State's
12 Exhibit 14.

13 A. This is just a close-up view of that Item Number 1
14 that you saw. This is the clear plastic bag that contains
15 the white powdery, at that time, unknown substance.

16 Q. You mentioned a moment ago that one of the items
17 located in there -- what item is that, Number 6, that's a
18 shell casing?

19 A. Number 9.

20 Q. And we'll get to that in one moment. State's
21 Exhibit 15?

22 A. It's just a closer view of Evidence Item Number 2,
23 another clear white -- unknown white substance in a bag
24 that was found on the exterior driver's side of the
25 vehicle.

1 Q. And State's 16?

2 A. Number 3, this is a small -- this is a spent shell
3 casing. It's kind of hard to -- the rocks kind of blend
4 in with it.

5 Q. Tell the jury if you will, please, what is a spent
6 shell casing? What does that mean?

7 A. It's just a -- the casing of a bullet, is what the
8 actual lead gun powder is encased in that's fired, when
9 it's fired from a weapon, in this case probably a semi-
10 automatic weapon. It ejects out of the chamber of the
11 weapon, and that is what's left. That just means the
12 bullet has been fired.

13 Q. So there are two separate parts of the bullet and
14 then a shell casing, is that correct?

15 A. That is correct.

16 Q. And State's Exhibit 17?

17 A. This is the interior, just the interior shot of the
18 front driver's of the Toyota Highlander. You could see
19 the victim and items -- Evidence Items Number 4 and Number
20 5, and you can see the -- another clear bag with the
21 unknown white powder. It's there at the -- it's right
22 there at the base of the door.

23 Q. And State's Exhibit 18?

24 A. This is a close-up of Number 5. This is another
25 spent shell casing, and it was right there at the door,

1 this previous photograph, right there at the apex of the
2 door. This is just a close-up, and like I say once again,
3 that's just a spent shell casing.

4 Q. And State's 19?

5 A. This is Item Number 6. This is from the -- from --
6 thinking correctly, this is from the passenger side
7 exterior on the ground on the passenger side of the
8 vehicle. This is a projectile. This is what is extended
9 from the casing. When a weapon is fired or handgun is
10 fired, this is the actual what everybody calls a bullet.
11 It's actually referred to as a projectile.

12 Q. Let me get you to hold up there for one second.
13 I'm going to show you State's 5 in evidence. Can you show
14 the jury, please, on that photograph where this particular
15 projectile was found?

16 A. This is the Toyota Highlander. This is the
17 exterior side of it, and this is Evidence Item Number 6.
18 This is -- and that, of course, is a close-up of that
19 projectile. This was where it was located.

20 Q. As you observe that photograph, is there something
21 in particular about that Highlander and the shell casing
22 there?

23 A. As far as the window being busted out and -- or
24 the ---

25 Q. What is this right here?

1 **A.** These here are -- it's kind of hard to see with
2 these up close, and you'll probably get the opportunity
3 later to see them better, but on the actual sides of the
4 vehicle are exit marks made from the -- from a fired
5 projectile where they actually enter from the inside of
6 the vehicle and exit the outer shell of the vehicle.

7 **Q.** How do you know that that is an exit as opposed to
8 an entrance?

9 **A.** When a -- when a projectile is fired, there's --
10 after it enters -- if it enters, say, inside of this
11 vehicle, it bevels outward. When it hits, it will cause
12 the interior side to kind of cave and follow the fired
13 path. The outside will actually bevel outward from the
14 path of the bullet, and then it exits.

15 **Q.** And with regard to the broken glass there, is it
16 unusual that the glass is broken into the -- inside the
17 vehicle?

18 **A.** As far as if it were -- if whomever was standing on
19 the driver's side and fired these rounds and they went
20 through -- if the window was rolled up and a projectile
21 passed through, it would have shattered the glass or it
22 could have been from the percussion from the actual fired
23 bullet. There's no actual way to tell because there -- it
24 is just broken glass now, but the percussion from the
25 actual projectiles hitting the doors could actually have

1 caused the glass to break.

2 Q. And State's Exhibit Number 20?

3 A. This is Items 7 and 8. I haven't seen an overview
4 of this, but what this is, this is the passenger seat of
5 the Toyota Highlander. You notice the broken glass from
6 the window, the passenger window, on the seat. Items 7
7 and Items 8 are -- they are two brass-colored projectiles,
8 kind of like Number 6, but these were actually found
9 inside of the vehicle.

10 Q. And State's 21?

11 A. It gets confusing to me with these numbers; it's
12 hard for me to tell with the little line across it. It's
13 always been confusing to me. This is the actual item
14 found from the driver's side of the vehicle, the casing
15 that was with the other item. The reason why it's not
16 labeled as -- like 1, 2, 3, and 4, along with the driver's
17 side is because after the immediate search, then when we
18 broke out metal detectors, this was actually found just a
19 little ways up from the powder on the driver's side, and
20 this is a spent shell casing.

21 Q. Let me show you State's Exhibit 22.

22 A. This is the -- the inside of the Toyota Highlander
23 right there above the center console in the little
24 compartment area. This is the driver's license that was
25 found inside of the vehicle in that little overhead

1 storage compartment. It is photographed and collected to
2 help identification with the victim.

3 Q. And is that, in fact, how the -- how the victim was
4 identified in this case?

5 A. Yes, ma'am.

6 Q. And State's 23?

7 A. This is Evidence Item Number 29. This is, I want
8 to say -- I'm not looking at my paperwork. This is going
9 to be the front pass- -- or the front driver's seat of the
10 Toyota Highlander, and this is a spent shell casing that
11 was found, having been the victim has already been removed
12 at this time, so that's why you're not seeing him. This
13 is actually the seat that was under him.

14 Q. That's the passenger ---

15 A. No. This is ---

16 Q. I mean, that's the driver's side?

17 A. The driver's side front seat.

18 Q. State's Exhibit 24?

19 A. The Evidence Item Number 40, this is also a spent
20 shell casing. I don't have my paperwork with me to find
21 exactly where it was located, but that is the spent shell
22 casing there by the C.D.

23 Q. Here is the other picture, State's Number 25.

24 A. This is the passenger side of the vehicle. When I
25 said about the beveling, you can actually see this is

1 where one of the projectiles exited the passenger side
2 door, front door, of the vehicle and this is a close-up
3 with scale. You can see the beveling outward, how it kind
4 of opens up as the projectile comes from the interior to
5 the exterior, opens up, and that's how you determine which
6 way the projectile was coming from.

7 Q. And State's Exhibit 26. Now I'm going to go to the
8 interior of that vehicle.

9 A. This is the interior of the Highlander. This is
10 the back -- the predominant part of the picture is the
11 back rear seat of the Highlander, and this evidence item
12 that was collected from the back seat, which are Evidence
13 Items 10 that you can see, pretty much 10, 11, 12, 13, 14,
14 15, 16, and 17. Some of them are hard to see, but with
15 other photographs, you can actually see every one of them
16 had to -- that's just an overview of the back seat from
17 the driver's side.

18 Q. Okay, and we'll get more in depth about this in a
19 moment, but those items that are in there, there are a
20 number of drink bottles and things like that, is that
21 correct?

22 A. Yes, ma'am.

23 Q. And were those items processed?

24 A. Yes, ma'am, they were.

25 Q. Thank you, and State's Exhibit Number 35.

1 A. This is Evidence Number 25. This is the victim as
2 found lying. On 25 is a silver in color cell phone that
3 was found on his person.

4 Q. And State's 37?

5 A. This is just an -- just an overview of the front
6 passenger seat. I mean, you could still see the glass,
7 the broken glass from the passenger window. This is
8 pretty much before any of the placards are put into place.
9 This is upon arrival how it is seen. This is before any
10 -- any person that -- from law enforcement, first arrival,
11 before anybody touches anything. This is how it's
12 photographed. This is the way we find it.

13 Q. And State's Exhibit 34?

14 A. This is a projectile. The victim here, this
15 projectile was found on the victim himself. It was just
16 kind of -- it had entered and exited him, but did not exit
17 the clothing that he was wearing. In this photograph, we
18 collected before the body is moved, but that's what that
19 is a photograph of.

20 Q. You can have a seat back on the witness stand. All
21 right, in addition to what we've seen in these
22 photographs, during the time that you were conducting your
23 investigation, there was some blood that was found at a
24 residence down the road, is that correct?

25 A. Yes, ma'am.

1 Q. And did you all test that?

2 A. We did -- we did presumptives at the scene.

3 Q. Okay, and when you did that presumptive test, was
4 it presumptive for human blood?

5 A. Our test doesn't differentiate between human or
6 animal.

7 Q. Okay.

8 A. It just tells us it's positive for blood.

9 Q. And when that ultimately came back, it was not
10 human blood, is that correct?

11 MR. BELLAMY: Your Honor, may we -- may we approach?

12 THE COURT: Yes.

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

15 Q. All right, let's talk a little bit about
16 fingerprints. Did you collect fingerprints at that
17 location?

18 A. From the -- from the actual -- not that day, from
19 items that were processed at a later time from that scene.

20 Q. All right. Let's talk a little bit about how that
21 works. How long have you been in doing fingerprint work?

22 A. Since 2005, just about, less than a year after I
23 came to crime scene.

24 Q. And what -- do you have some specialized training
25 in that particular area?

1 A. Yes, ma'am. You have to go through a basic forty
2 hour class with the South Carolina Criminal Justice
3 Academy. I have also been certified for the automated
4 fingerprint identification or the AFIS System through
5 SLED, which is an eight hour course that just allows you
6 to put fingerprints into the AFIS, and I also have
7 continuing training in excess of a hundred and twenty
8 hours with the F.B.I. through latent print photography and
9 latent print work itself.

10 Q. Explain to the jury, please, what that -- what the
11 AFIS System is.

12 A. The Automated Fingerprint Identification System is
13 an automated system where if you have a latent print,
14 which is -- latent meaning is a unseen, is a hidden print,
15 that can only be detected after some type of development
16 process as compared to a known print.

17 Known means I take your fingerprints and actually
18 roll them, and that's a known. A latent fingerprint is
19 put into the AFIS System, which is pretty much a camera
20 attached to a database through the South Carolina
21 interface. That latent print is then ran using algorithms
22 that is set up through Motorola that I don't -- I don't
23 have a lot of clue about, but -- as far as the algorithms
24 go, but you place the latent fingerprint into the AFIS
25 System through criteria which are certain characteristics

1 within a fingerprint which are such as bifurcations,
2 ending ridges, the ridges and furrows that are on your
3 actual fingerprint, and the pattern type.

4 The AFIS System uses what you put into it and sends
5 back an X-amount of possible matches, possible meaning
6 that's what the machine thinks is a match. Well, that's a
7 starting point for us because it gives us certain
8 fingerprints, known fingerprints, that we can compare that
9 latent to. Then it's a process after it sends the knowns
10 back. We have to compare the latent to each known the
11 machine sends back.

12 Q. Have you testified previously in court as an expert
13 in fingerprint analysis?

14 A. As an expert, no, ma'am, but I have testified as
15 far as latent and fingerprint work goes.

16 Q. All right, and in the finger- -- and you did take
17 these fingerprints in this case, is that correct?

18 A. Several fingerprints off of some of the items I had
19 processed, yes, ma'am.

20 Q. And other prints were taken by your supervisor, ---

21 A. That is correct.

22 Q. --- is that correct, so do you know which ones you
23 took and which ones he took?

24 A. Off the items I processed, yes, ma'am, and he
25 processed the exterior of the Toyota Highlander.

1 Q. And in looking at those prints, you all were not
2 able to make -- make any determination about whether any
3 of the prints you found were related to any of the
4 defendants in this case, is that correct?

5 A. No, ma'am.

6 Q. And tell the jury, please, with regard to the gold
7 Maxima, when was that vehicle actually -- when did that
8 come into your possession?

9 A. I'm showing on my paperwork that I processed it in
10 the first of November. As far as when it was towed in or
11 that information, I -- I don't know. They just give me a
12 search warrant and ask that I process it and what I should
13 be looking for while I am processing it, so what day it
14 was towed to the Police Department, that I do not know.

15 Q. But that would be the date that you actually did
16 the list of the fingerprints?

17 A. Yes, ma'am, from the Maxima.

18 Q. Tell the jury -- let's talk a little bit about
19 fingerprints. What types of items create a good
20 fingerprint and what types of items do not create a good
21 fingerprint?

22 A. Basically when talking about a -- fingerprints,
23 fingerprints are ninety-nine percent water, sweat that's
24 created. The other one percent is just basic oils and
25 other things that can lend -- medications. Young ladies,

1 such as yourself there, you like wearing lotions. That
2 creates that other one percent.

3 As far as surfaces, you can leave behind a
4 fingerprint any time or none of the time. It's not a --
5 it's not a given that you leave a fingerprint behind just
6 by touching something. When it comes to vehicles, the
7 dashboard of a vehicle is pretty -- most of the time, and
8 I have done quite a few, is not real conducive with
9 fingerprints because it is a rough, non-porous edge, which
10 means it has a bunch of tiny divots in it, so you're not
11 actually touching the entire surface with your
12 fingerprint.

13 The exterior of cars, windows, gear shifts, rearview
14 mirrors, items such as this, flat, non-porous areas, are
15 actually the best spots to lift a print from.

16 MS. VON HERRMANN: Your Honor, at this time, the
17 State and the Defense has stipulated as to a drug report,
18 and I would like to ask this witness to identify and move
19 it in through him.

20 THE COURT: Is there any objection to that, Mr.
21 Bellamy?

22 MR. BELLAMY: No objection to the report. I'm not
23 sure coming in through this witness. I thought it would
24 just be a straight stipulation. That's fine.

25 MS. VON HERRMANN: That's fine. We can do it that

1 way, and I'll just question him about it.

2 THE COURT: All right.

3 Q. Before I move on to this, the things like -- what
4 -- what types of environmental things would affect
5 fingerprints? Would the weather affect it?

6 A. Weather can affect it. Some thunderstorms we have
7 here in the south can affect it over a period of time, but
8 if a -- for the most part, the only thing that really gets
9 rid of fingerprints is you have to actually wipe them away
10 if a fingerprint is left behind. Like I say, just because
11 you touch it doesn't mean that there's going to be a
12 fingerprint. Then you're looking at door handles, things
13 -- items that are touched frequently, you're looking at
14 constant rubbing, so chances are -- around door handles is
15 not really a good place because they are constantly
16 touched.

17 Q. So let me show you State's Exhibit 39. I think
18 you've had an opportunity to look at that in the past?

19 A. Yes, ma'am.

20 Q. What is that?

21 A. This is a SLED Evidence Intake Report, or it's
22 actually the SLED Report where ---

23 THE COURT: Before we do that, you're moving State's
24 39 in through stipulation, is that correct?

25 MS. VON HERRMANN: Yes, sir.

1 THE COURT: All right. Thereby there would be no
2 objection, so it's in evidence without objection.

3 SLED EVIDENCE INTAKE REPORT ADMITTED INTO EVIDENCE
4 AND MARKED AS STATE'S EXHIBIT NUMBER 39.

5 THE COURT: You may proceed.

6 MR. CAULDER: Thank you, Your Honor.

7 A. It's a SLED Evidence Report. After things are
8 taken from our laboratory that we can't process at our
9 laboratory, they're taken up to the state agency, which is
10 SLED, the State Law Enforcement Division, and this is the
11 drug analysis report that was sent back from them.

12 Q. If you will, read that report to the jury.

13 A. It states my name, my department, my address. It
14 says, "Drug Analysis," dated December 14, 2009, the SLED
15 lab number, our case number, which is 0592898, the
16 incident date, which the actual date of recovery was, the
17 21st of October, 2005. It has the victim listed as Miles
18 Slay, and four suspects, Neil Hill, Corey Smalls, Antonio
19 Smalls, Tyronne Beaty.

20 It just states that it's an official report from the
21 State Law Enforcement Division, Forensic Services
22 Laboratory, and it's to be used in connection with an
23 official criminal investigation. Examinations were
24 conducted under the assurance, no previous examinations of
25 persons of evidence submitted in this case have been or

1 will be conducted by any other laboratory or agency, and
2 it's signed Ronald L. Lloyd, Director of South Carolina
3 Law Enforcement Division, and then below that, it has
4 items of evidence that were submitted by our agency to
5 them.

6 It says, "Sub Number 2." It states, "On December 14,
7 2005, items were received on E241266 from Lorie Rabon of
8 the Horry County Police Department," Lorie Rabon being the
9 evidence supervisor. That E241266 is a SLED Best Kit
10 number, and it has Item 52.1, which was a brown paper bag
11 containing plastic Ziploc bag, number 1, containing powder
12 substance. Results, no controlled substance detected.

13 Item 52.2 was a brown paper bag containing plastic
14 Ziploc bag, number 2, containing powder substance.
15 Results, no controlled substance detected.

16 Item 52.3 was a brown paper bag containing plastic
17 Ziploc bag, number 4, containing powder substance.
18 Results, cocaine found, 24.34 grams or 375.61 grains,
19 which is a -- it says C2, which is a Schedule 2 controlled
20 substance.

21 And the last page of the report just states that the
22 chemical analyst was a Nathan R. McCoy.

23 Q. And so the items that were sent off to SLED to be
24 analyzed, just in layman's terms, were those the three
25 bags that you found around the -- around the area there?

1 A. That is correct.

2 Q. Let me get you to just pull these out in order and
3 see if you can identify them.

4 A. This is our -- is that 52.1 for the SLED number,
5 which is our Item Number 1 in those photographs, and this
6 is the -- this paper -- this plastic bag here is the bag
7 that was actually sent to SLED, the powder was sent to
8 SLED in, but it was repackaged by me because of having to
9 process the actual bag that they were in. This was
10 actually sent back from SLED, and this is the white powder
11 that was tested by SLED, their Item Number 52.1.

12 MS. VON HERRMANN: All right, that's State's Exhibit
13 Number 33, and I would move State's 33 into evidence at
14 this time.

15 THE COURT: Any objection?

16 MR. BELLAMY: No, sir.

17 THE COURT: All right, so State's 33 is in evidence
18 without objection.

19 ZIPLOC BAG CONTAINING WHITE POWDER ADMITTED

20 INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 33.

21 A. This is my Evidence Item Number 2, which is the
22 State laboratory's Number 52.2. This is the white or the
23 clear plastic bag that I sent it in as it was repackaged,
24 and this is the powder that was sent back from SLED.

25 MS. VON HERRMANN: Have we marked that one yet? I

1 don't believe we've marked that. Let me mark this one for
2 I.D. please.

3 ZIPLOC BAG CONTAINING WHITE POWDER MARKED FOR
4 IDENTIFICATION AS STATE'S EXHIBIT NUMBER 40.

5 Q. And I know you just identified this, but if you
6 will, just do that one more time for the record, please.

7 A. This is how it was sent back from SLED, my Evidence
8 Item Number 2, it was the package back from SLED.

9 MS. VON HERRMANN: I would move in State's 40.

10 THE COURT: Any objection?

11 MR. BELLAMY: No objection.

12 THE COURT: In evidence without objection.

13 ZIPLOC BAG CONTAINING WHITE POWDER ADMITTED INTO
14 EVIDENCE AS STATE'S EXHIBIT NUMBER 40.

15 A. And this is my Evidence Item Number 4, the SLED
16 Number 52.3. This is the package in which I repackaged it
17 and sent it to SLED in that, and this is how the powder
18 was sent back from SLED, repackaged back to us.

19 Q. All right. That item that you are holding now, it
20 came back positive for cocaine?

21 A. That is the one that the SLED report identified as
22 cocaine.

23 Q. All right.

24 MS. VON HERRMANN: Your Honor, may we approach for
25 one moment?

1 Mr. Bellamy, do you have any objection to that
2 introduction?

3 MR. BELLAMY: (Nods in the negative.)

4 THE COURT: What number is that, first?

5 A. 41, Your Honor.

6 THE COURT: All right, so State's 41 is in evidence
7 without objection.

8 SMALL ZIPLOC BAG CONTAINING COCAINE ADMITTED

9 INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 41.

10 THE COURT: All right, ladies and gentlemen, State's
11 41 having been identified as a controlled substance, under
12 the laws of the State of South Carolina, the Court has
13 allowed that to be an exhibit in this particular case.
14 That item will not be submitted to you in your jury room
15 as an exhibit. If for some reason you need to look at it
16 again, you can ask to come back to the courtroom and it
17 will be shown to you, but it obviously will not be sent to
18 you in the jury room, it being a controlled substance.
19 Thank you very much.

20 You may continue, Solicitor.

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

22 Q. I'm going to show you State's Exhibit 31 and ask if
23 you can identify that as well?

24 A. This is the three plastic bags that the three
25 powder substance were found in at the scene. These are

1 the three plastic bags that they were found in on the
2 scene. I will try not to touch them because they have
3 been processed. They were taken out. Like I say, they
4 were placed -- they were placed -- after the powder
5 substance was taken out of the plastic bags as found on
6 the scene, they were placed in this other white bag, but
7 after they were removed from -- the powder was removed
8 from the plastic bags, they were then processed in our
9 laboratory back at the Horry County Police Department, and
10 this is the three of those bags.

11 Q. And what is that black -- the black stuff?

12 A. Upon removing the powder out of the bag and
13 transferring it to another plastic container, there were
14 cyanoacrylate, which is super glue, -- they were placed in
15 a chamber; the super glue was heated for about three
16 minutes. It forms a -- like a smoke. The super glue
17 heats up and it creates a smoke. The actual smoke will
18 adhere to any possible latent prints or fingerprints that
19 may be on the bag itself and turns them a white, kind of
20 like a white.

21 At that point in time, they were then taken and a
22 chemical called black powder or it's called liquid black
23 powder, is applied to it at which point in time it's then
24 sprayed off and if there's any latent prints, which is the
25 print is on the bag itself, the system and the powder

1 together will enhance that fingerprint that's located on
2 it.

3 Q. If I can get you to just put those back in the ---
4 A. Okay.

5 Q. Did you during the course of your investigation
6 attend the autopsy of Mr. Slay?
7 A. Yes, ma'am. I attended with Detective Lewis.

8 Q. And at the time of the autopsy, was a projectile
9 removed from that victim's body?
10 A. If you'll give me just a second to ---
11 Q. Sure. Take your time.

12 A. Yes, ma'am.

13 Q. And was that bullet collected and taken into
14 evidence by the Horry County Police Department?
15 A. Yes, ma'am. They were handed over to Detective
16 Lewis from the attending physician.

17 Q. And were you present when that took place?
18 A. Yes, ma'am.

19 Q. And did you then take that bullet and do something
20 with it?
21 A. It was packaged and sent to SLED's lab in Columbia.

22 Q. And were -- let's talk a little bit about the --
23 about -- about the bullets that you found there. One
24 bullet that came out of the victim's body, is that
25 correct?

1 A. Yes, ma'am.

2 Q. And how many other projectiles were recovered?

3 A. If you'll give me just a second, I'll ---

4 Q. Would the SLED report help you to refresh your
5 recollection about that?

6 A. There is -- with the -- the one from the autopsy
7 were a total of five projectiles, and the casings, there
8 were four -- five, correction, five, forty-five caliber
9 spent shell casings that were sent to SLED.

10 Q. Five projectiles, five shell casings?

11 A. Yes, ma'am.

12 MS. VON HERRMANN: The Court's indulgence.

13 I don't have anything further for this witness, Your
14 Honor.

15 THE COURT: All right. Cross examination?

16 MR. BELLAMY: May it please the Court, Your Honor.

17 THE COURT: Yes, sir.

18 CROSS EXAMINATION BY MR. BELLAMY:

19 Q. Officer Caulder, I've got some questions for you
20 concerning -- first of all, I want to talk about this --
21 your indulgence for a minute.

22 I want to show you what is now Exhibit 25, which you,
23 I believe, previously identified?

24 A. Yes, sir.

25 Q. That being the hole, exit hole, from the ---

1 A. Passenger side ---

2 Q. --- passenger side of the vehicle?

3 A. Yes, sir.

4 Q. How far down would that have been from the top of
5 the glass? Do you have some notes? I noticed in some
6 other photographs there were some measurements taken.
7 Could you tell us that?

8 A. I have here in my report, it says the exit of the
9 projectile on the passenger door to bottom of window,
10 which would have been the center -- the center of the
11 actual -- the hole, the exit hole itself to the bottom of
12 the window on the passenger side, so from there to the
13 middle of the hole down, it's six and a quarter inches.

14 Q. Okay, and did you do anything to determine the
15 angle that this particular projectile going from in to out
16 would have been? Would it have been degrees one way or
17 the other, or was it straight across?

18 A. I -- I don't recall. I do recall placing
19 trajectory rods, but I don't recall the actual angle that
20 was determined or if any were determined.

21 Q. Now, the glass that was broken, ---

22 A. Yes, sir.

23 Q. --- the passenger side, in looking at the window,
24 it appears as if the window was rolled up, correct?

25 A. Yes, sir.

1 Q. Because you can identify glass going up the side
2 that's still on the side, correct?

3 A. Yes, sir.

4 Q. And it's fair to say that in the photographs that
5 all of the glass would be on the side of the vehicle, and
6 there was none on the outside, correct?

7 A. That is correct.

8 Q. And it is quite possible that someone shot from the
9 outside of the vehicle and shot and broke that glass, is
10 that not correct as well?

11 A. Yes, sir.

12 Q. So it -- the bullet hole we see in the door clearly
13 did not -- would not have impacted the glass? The
14 vibration of it, I guess, could, but yet there's no glass
15 on the outside of the car, correct?

16 A. If there was, it was a minute amount.

17 Q. Okay, so all of it is on the inside?

18 A. Yes, sir, the predominant amount.

19 Q. Now, there are two projectiles that you find in the
20 passenger seat, is that correct?

21 A. That is correct.

22 Q. Now, did you know or see whether those projectiles
23 are on top of the broken glass, or if it's underneath the
24 broken glass, or some combination thereof?

25 A. I did not note it, no, sir, other than the

1 photography did not note it.

2 Q. Well, if you had done that, wouldn't that help
3 indicate which shots were at least fired at least in some
4 sequence, would help you to maybe identify the broken
5 glass as coming after or before?

6 A. Yes, sir.

7 Q. Okay. Now, let's go through some of -- and if you
8 don't mind, I'm going to ask you to come down and kind of
9 do a little drawing for me if I can get this easel thing
10 set up.

11 If you would draw the vehicle, and I -- obviously
12 what I would like you to do is just draw the vehicle at
13 this time, and then I'd like to go through some of the
14 items that were collected at least outside of the ---

15 A. (Witness draws on diagram.) I mean, ---

16 Q. That's good.

17 Q. All right, this being obviously the front of the
18 vehicle?

19 A. Yes.

20 Q. Now, if you -- and I don't know whether you did or
21 not. Obviously this is not going to be to scale, but I'm
22 going to ask you to write some things down. The Item
23 Number 1 on your list, and you may need your notes for
24 this.

25 A. Yes, sir.

1 Q. Okay. Item Number 1, which would be one of the
2 bags containing the powder substance. Can you indicate
3 where -- okay, is that where ---

4 A. Yes, sir.

5 Q. You just want to put Item 1?

6 A. Yes.

7 Q. We'll just do that. Okay.

8 A. (Witness writes on diagram.)

9 Q. Now, if you would tell us the distance that this
10 was found, and did you take -- well, first, did you take
11 measurements?

12 A. Yes, sir.

13 Q. Would you write somewhere, and if you want to maybe
14 catalog it down here, that might be easier than trying to
15 do it there, and just give us the distance that that was
16 found relative to the vehicle.

17 A. All distances that were taken are from the -- going
18 to be from -- for this side anyway, are going to be from
19 the center of the front and the center of the rear tires,
20 back in this direction. Number 1 is going to be seventy-
21 two inches from the center of the front tire, and one
22 hundred and two inches center the rear tire, so it's going
23 to be seventy-two and one zero two.

24 Q. Okay. Now, let's go to Item Number -- now, this
25 line here, what is that?

1 A. That's the door, the front door.

2 Q. Okay, so it would have been behind that according
3 to your calculations, or ---

4 A. Yes, sir, pretty much -- pretty much right up under
5 it, right in this area right ---

6 Q. Right there.

7 A. --- up under the door.

8 Q. All right. Now, let's go to Item 2, and that,
9 again, is another plastic bag. If you'll give us the
10 measurements on that.

11 A. It's still going to be in this general area, and
12 it's going to be fifty-two inches, front tire, and forty-
13 five inches from the rear tire.

14 Q. Okay.

15 A. Excuse me -- fifty-two.

16 Q. Would that be closer, I believe?

17 A. Yes, sir.

18 Q. That's okay.

19 A. I've got fifty-two foot. There was a typeover; it
20 was way off according to that, but it wasn't fifty-two
21 foot.

22 Q. Okay. Well, let's go to Item -- but your records
23 indicate fifty-two feet?

24 A. Yes.

25 Q. And I'll leave that to you to explain. Let's go to

1 Item 3, being one shell casing. Can you identify where
2 that was found and give us the measurements, please.

3 A. Still in this same general vicinity, and it's going
4 to be fifty-one inches from the center of the front tire
5 and fifty-nine from the center of the rear tire.

6 Q. So that being, again, closer to the front than to
7 the rear in that measurements?

8 A. Yes, sir.

9 Q. Okay. Now, let's go to Item -- that was Item 3?

10 A. Yes, sir.

11 Q. Item 4.

12 A. Item 4 is still another plastic bag, and that's
13 going to be right on the end, just right in the door
14 jamb, ---

15 Q. Okay.

16 A. --- right in this area here, 4, and I have is
17 fifty-three -- again, it's got fifty-three foot, but it's
18 probably going to be fifty-three inches from the front
19 tire and fifty-four inches from the rear tire.

20 Q. All right, Item 5.

21 A. It is in the doorway here also. 4 and 5 are
22 together just inside of the ---

23 Q. And 4 -- and 5 would be -- and let's, if we would,
24 mark Number 1, just a brief description of what that is, a
25 bag or something.

- 1 A. (Witness writes on diagram.)
- 2 Q. All right.
- 3 A. You want to go to 5?
- 4 Q. Yes, let's go to 5. On your list, it's Number 5,
5 and we're not going to do every -- there's thirty or forty
6 some of these. We're not going to do every one; I
7 promise.
- 8 A. Number 5 is a casing.
- 9 Q. Okay, and can you give us the measurements on that?
- 10 A. Fifty-four from -- fifty-four inches, the front
11 tire; fifty-three inches, the rear tire.
- 12 Q. Okay, and that's the casing?
- 13 A. Yes, sir.
- 14 Q. Now -- and let's talk about -- I think Ms. Von
15 Herrmann described a casing, but a casing, and if you
16 know, and I know this isn't your area of expertise, but
17 the casing is what a bullet is encased in prior to being
18 fired?
- 19 A. Yes, sir.
- 20 Q. And it is what is ejected from the gun after it is
21 fired, correct?
- 22 A. Yes, sir.
- 23 Q. Okay, so it's not the actual bullet that is shot
24 out; it's what remains behind?
- 25 A. Yes, sir, just ---

1 Q. And if you know, in a semi-automatic pistol, a
2 special revolver, the casing, does it automatically come
3 out or does it have to be manually ejected, or do you
4 know?

5 A. It is manufactured to automatically expel itself
6 after the actual implosion, the firing of the firing pin,
7 that small explosion that occurs from the firing pin
8 striking the primer and igniting the gun powder. The
9 actual jerk back of the weapon is what creates the shell
10 casing to eject. There can be misfires, but that's the
11 actual principle that it was built to work on.

12 Q. Okay, so it automatically would eject?

13 A. Yes, sir.

14 Q. Okay. Let's go to Item 9. We'll skip down. What
15 item is that?

16 A. That is another spent shell casing.

17 Q. Okay. Where -- what is the measurements on that?

18 A. I've got seventy-five feet from the front tire and
19 a hundred and twenty-one feet from the rear tire.

20 Q. Okay. That's Item 9?

21 A. Yes, sir.

22 Q. Okay. Now, let's go to Item 27, and what was that
23 item?

24 A. A small, clear, hard plastic top from the front
25 driver's seat.

1 Q. Okay, and where was it located in reference to the
2 victim?

3 A. It was located under the victim.

4 Q. Under him, okay, so just put -- and that would be
5 Item 27?

6 A. Yes, sir. I'm going to draw a little seat. It
7 ain't much of a good one, but ---

8 Q. So it's found underneath him?

9 A. Yes, sir.

10 Q. All right. Now, Item 29, what would that be?

11 A. It is a silver-in-color forty-five spent shell
12 casing.

13 Q. And where was that found?

14 A. That was also located in the seat.

15 Q. And that would have been under the victim by your
16 notes?

17 A. Yes, sir.

18 Q. If you would, just -- go to 27 and write out -- and
19 what was the other one, 29, what it would be and, I guess,
20 seat under victim.

21 A. (Witness writes on diagram.)

22 Q. Okay. I have one more I want to talk about. Item
23 40, and we'll go to that; that would be what?

24 A. That is a silver-in-color C.D. and one spent forty-
25 five caliber shell casing from compartment on the front

1 passenger door.

2 Q. All right, and if you'll ---

3 A. It's going to be -- there's two little
4 compartments. You've got the door handle; it's going to
5 be kind of hard to draw that.

6 Q. It's on the passenger side, correct?

7 A. It is on the front passenger, yes, sir, which would
8 have been kind of like a door handle and then the little
9 compartment down at the bottom.

10 Q. That you would put something in?

11 A. Yes, sir, a little storage area.

12 Q. And that's a -- what was found there again, a
13 forty-five ---

14 A. A forty-five caliber spent shell casing, yes, sir.
15 (Witness writes on diagram.)

16 Q. Okay, and I believe that's all I'm going to need.
17 You can go back and have a seat.

18 Now, Officer Caulder, you also were able to, through
19 your examination of the crime scene, identify certain
20 latent prints or prints in this -- the blue Highlander,
21 correct?

22 A. Yes, sir.

23 Q. Okay, and I believe twenty-two, twenty-three lifts
24 were done from the vehicle, either inside or outside, or
25 you tell me?

1 A. Specialist Cestare, which was -- is -- is my
2 supervisor, processed the exterior of the vehicle, and let
3 me find his ---

4 MS. VON HERRMANN: Your Honor, I would object to
5 that. I think the supervisor would be the more
6 appropriate to testify to that.

7 THE COURT: Well, I appreciate that. I don't know
8 that he's asked any questions about those.

9 A. Yes, sir, according to Specialist Cestare's
10 paperwork, he did lift twenty-two latent lifts from the
11 exterior of the Toyota Highlander.

12 Q. Okay, and so that I'm clear, your job and Special
13 Agent Cestare is to find the prints, and then you forward
14 those to SLED, the State Law Enforcement Division, for
15 them to do a comparison?

16 A. No, sir. Our responsibility, if a latent print is
17 to be looked at, then we in-house that ourselves. Some
18 fingerprints, if no fingerprints can be determined, or in
19 some instances if prints are identified as someone, it
20 also -- it always has to be verified. We don't have
21 enough persons in-house to actually verify fingerprints,
22 so that in some instances we may have to send a latent
23 print, or shoe wear, or tire wear, things like that, may
24 have to go to SLED because they have the certified persons
25 that we necessarily don't.

1 I can look at a print and identify a person, but the
2 problem is as far as protocol that is set up and
3 nationally recognized is that we have to have it verified
4 by another independent examiner.

5 Q. Okay. In this case, these prints, I believe, were
6 sent to SLED, were they not?

7 A. Some were off the -- pretty much -- I don't know if
8 all of them were. Some of them weren't; some of them
9 were.

10 Q. Okay. Now, of the ones that you had a print, okay,
11 that you looked at to try to identify, ---

12 A. Yes, sir.

13 Q. --- and I understand SLED did some separate from
14 y'all, would you have been the one who actually did that
15 comparison or would it have been Special Agent Cestare?

16 A. That would have been me.

17 Q. Okay. Now, of the ones that you were able to get,
18 and this is off of the blue Highlander, ---

19 A. Yes, sir.

20 Q. --- you were referring to, outside, inside,
21 wherever, okay, were you able to match -- did you have the
22 known prints or get the known prints of Tyrone Beaty?

23 A. I don't think that -- I never had the privilege of
24 having the known prints of Mr. Beaty. No, sir, I didn't.

25 Q. Okay. Well, whose -- the print that you were

1 comparing to -- so you've got unknown from a vehicle and
2 you're comparing them -- did you run that through AFIS?

3 A. Yes, sir.

4 Q. Okay, and in running that through AFIS, nothing
5 came back to indicate that any of those were my client's,
6 were they?

7 A. No, sir, not off -- not Mr. Beaty's, no, sir.

8 Q. Okay, none at all out of the twenty -- how many did
9 you say there were?

10 A. Twenty-two from the Highlander.

11 Q. And of the ones that were sent to SLED, and if you
12 don't know, we can let the SLED agent testify to this, do
13 you know if any of those which were compared to Mr. Beaty
14 came back as being his?

15 A. From the paperwork I have received from SLED, no,
16 sir, none was identified back to Mr. Beaty, no, sir.

17 Q. Okay, so we have known -- or I guess we have prints
18 that are unknown. We know someone touched something and
19 we've got ridge whatever, and I'm not an expert in this,
20 that come back as not being belonging to my client?

21 A. Yes, sir, that is correct.

22 Q. And now there were some prints sent to SLED that
23 came back that it was -- it was no conclusion as to one of
24 the particular defendants in this case, isn't that
25 correct?

1 A. There were some inconclusives, yes, sir, but I
2 don't -- I don't know to who.

3 Q. If I showed you the fingerprint report, would that
4 help you, from SLED or ---

5 A. No, sir. That's their report.

6 MR. BELLAMY: That's not his report, so if it's not
7 proper, ---

8 THE COURT: All right, sir.

9 MR. BELLAMY: --- I'll let the SLED agent ---

10 THE COURT: So then it wouldn't be a proper question
11 to him then.

12 MR. BELLAMY: Thank you, Your Honor. I'll move on.

13 Q. Now, but needless to say, those items went to SLED
14 and they tested them and came to their own conclusions,
15 correct?

16 A. That is correct.

17 Q. Now, you also indicated, and I may have to get that
18 thing back, in one of your reports that you took tire
19 impressions out there that night, ---

20 A. Yes, sir.

21 Q. --- is that correct?

22 A. Yes, sir.

23 Q. And I might want you to come -- do you have the
24 location of those that we could put on this diagram if you
25 don't mind?

1 A. I'm -- let me just make sure.

2 Q. Okay. I believe that one of them is Item 34.

3 A. I have it. It was mixed in with the rest of these
4 papers just a second ago.

5 Q. I'm sorry.

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

8 THE COURT: Yes, sir.

9 Q. If I recall, this is within your report, but
10 there's an indication there, and that might help you some.

11 A. Okay.

12 Q. Officer Caulder, I'm sorry; is that, the page I've
13 just showed you, part of the report that you completed?

14 A. Yes, sir.

15 Q. So where, do you know, and if you would draw it on
16 the diagram you've previously done, if you are aware of
17 where that tire impression was done?

18 A. Once again, I'm sorry, Your Honor.

19 THE COURT: It's all right.

20 A. All right, Your Honor.

21 THE COURT: All right, Mr. Bellamy.

22 A. (Witness draws on diagram.)

23 Q. And this would be -- well, tell us what -- where
24 and what you found in reference to tire impressions.

25 A. What I have listed is I have a tire cast

1 impressions which were behind the Masonic Lodge building,
2 which was on the northeast corner of the building. I will
3 draw it. I'm kind of out of room on this. The building
4 is actually, as I say, to the passenger side of the
5 vehicle, the northeast corner. It's going to be this area
6 over here where the casting was actually found.

7 The measurements, as far as measurements, and the
8 measurements weren't collected for this item, and what
9 happens is just a cast is taken of the tire impression and
10 then the casting taken of the impression itself.

11 Q. Now, how many -- did you get more than one
12 impression?

13 A. Yes, sir, two, and the other tire impression came
14 from in this general area back behind the Toyota
15 Highlander from where Butler Road -- between Butler Road
16 and the back of the Highlander. (Witness draws on
17 diagram.)

18 Q. Got'cha. Thank you; you can have a seat back up
19 there, and those items that you collected, did you do a
20 comparison or did you send those to SLED for them to
21 compare them?

22 A. Those items were sent to SLED.

23 Q. Okay, and did you also send -- did you secure tire
24 prints, and I don't know how you do this, but tire prints
25 on this gold Maxima we've been talking about to send up to

1 be compared?

2 A. Yes, sir, ---

3 Q. Okay.

4 A. --- that is correct.

5 Q. So you sent -- much like the fingerprints, you sent
6 a known impression to compare against an unknown?

7 A. Yes, sir.

8 Q. So that was sent to SLED?

9 A. Yes, sir.

10 Q. Now, you indicate or indicated that the best -- and
11 I know there's no absolutes in this, but you sort of
12 alluded to this, that the best surfaces to get
13 fingerprints off of are not bumpy, but more of a flat,
14 non-porous type surface, correct?

15 A. When dealing with vehicles, yes, sir.

16 Q. With vehicles, or with anything, would that not be
17 true?

18 A. No, sir. It's a different story when it comes to
19 paper ---

20 Q. Wait; wait -- go ahead.

21 A. --- paper items, things like that. There's other
22 -- because there's certain chemicals you can use on porous
23 items as opposed to ---

24 Q. Okay, so you can get things off of porous items as
25 well as non-porous?

1 A. Yes, sir.

2 Q. But your indication would be non-porous is
3 generally -- is the best surface to leave behind a print?

4 A. Yes, sir.

5 Q. Now, let's talk about the autopsy. You went to the
6 autopsy?

7 A. Yes, sir, I attend it for photographs.

8 Q. For photographs, and I believe Detective Lewis
9 attended as well, ---

10 A. Yes, sir.

11 Q. --- did he not? Okay, and you secured the clothing
12 from there, is that not -- is that correct?

13 A. They were released to Detective Lewis who, in turn,
14 gave them to me to put into evidence, yes, sir.

15 Q. And y'all have kept those in evidence?

16 A. Yes, sir.

17 Q. And also the projectiles, bullets we'll call them,
18 that were collected at the scene were also sent -- where
19 were they sent?

20 A. They were sent to SLED, too, to their Firearms
21 Division.

22 Q. Okay. Do y'all have those here?

23 A. Yes, sir. They -- they're in that box right there,
24 over here to -- behind the ---

25 Q. The little one?

1 A. Yes, sir, or that's what they were in.

2 Q. Tell me what those would be without -- don't take
3 them out.

4 A. I'm sorry. I'm sorry. This is ---

5 Q. Do you know what those are?

6 A. Yes, sir. They're the casings and the projectiles
7 from the scene and from the autopsy.

8 Q. And those were sent by you to the State Law
9 Enforcement Division ---

10 A. Yes, sir.

11 Q. --- or by someone?

12 A. By someone in Evidence, yes, sir.

13 Q. For their analysis?

14 A. Yes, sir.

15 Q. Okay. The shell casings, do they, if you know, do
16 they have the same head stamp? Are they the same
17 manufacturer type bullet or are they different casings, or
18 do you know?

19 A. If you would give me a second, ---

20 Q. Okay.

21 A. --- I may have it listed as far as when I collected
22 them on scene. I do not have them listed as far as the
23 way -- just all I have from the way I collected them, they
24 are -- it just is a forty-five caliber spent shell casing.

25 Q. Okay. Did y'all take the cell phone out of there

1 as evidence?

2 A. Yes, sir. It was collected as Evidence 25,
3 Evidence Number 25.

4 Q. Pursuant to a search warrant?

5 A. Yes, sir.

6 Q. Now, did you also examine, and if you didn't and it
7 was another officer, the gold Maxima? Y'all came into
8 possession of that at some point, correct?

9 A. Yes, sir, that is correct.

10 Q. All right, and did you examine it for fingerprints
11 or DNA and that sort of thing?

12 A. Yes, sir. The exterior of the car, as well as the
13 interior of the car, was processed.

14 Q. All right, and was there anything of value that you
15 determined, was there any DNA that was found that you
16 could send off to be analyzed?

17 A. Nothing was found from the interior of the car, the
18 exterior of the car. The only items located were latent
19 prints.

20 Q. Okay. Did y'all send those off or do your own
21 comparison?

22 A. Yes, sir, they were sent off as well with the other
23 items.

24 Q. Okay, so you didn't do any comparisons with the
25 prints from the Maxima?

1 A. No, sir.

2 Q. But in the inside of the vehicle, were you able to
3 get any -- anything -- any blood, for instance, out of the
4 Maxima?

5 A. No, sir. No items were collected from the interior
6 of the Maxima.

7 Q. What about any hair, fiber, anything of that nature
8 from the Maxima?

9 A. No, sir.

10 Q. What about in your processing of the Highlander,
11 were you able to get any DNA or any hairs or fibers out of
12 there?

13 A. I believe no hairs or fibers were found, and the
14 only DNA that come back -- if -- if you would give me just
15 a second.

16 Q. Take your time.

17 A. No hairs or fibers that were found on the inside of
18 the Highlander.

19 Q. And the DNA from inside the Highlander ---

20 A. Was -- was from clothing that was turned in ---

21 Q. Clothes; is that from the autopsy?

22 A. Yes, sir, and from -- let me make sure, but
23 anything that was turned in only came back to -- as far as
24 DNA came back belonging to the victim, and that's from a
25 SLED report that I have.

1 Q. Okay. Let me ask, on the inside of this vehicle,
2 the Highlander, did you look or were you able to get blood
3 splatter from the vehicle when the bullet may have struck
4 Mr. Slay? Did you look in the vehicle for blood splatter
5 which may have helped you figure out how this happened?

6 A. At that -- at that time, I didn't. Now, Specialist
7 Cestare may have looked for blood spatter at that point in
8 time during -- during his -- when he looked into the
9 vehicle. I didn't because at this point in time, I'm
10 pretty much doing everything up unto a point.

11 He's kind of doing everything, and I'm kind of
12 mimicking what he's doing because, like I say, I have just
13 recently started, so I'm under a probation period, so he
14 -- as far as blood spatter, there was none that was inside
15 of the vehicle.

16 Q. That you observed?

17 A. Yes, sir.

18 MR. BELLAMY: The Court's indulgence for just one
19 second.

20 THE COURT: Yes, sir.

21 MR. BELLAMY: Thank you, Officer Caulder. I don't
22 have anything.

23 Thank you, Your Honor.

24 THE COURT: Redirect?

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

1 REDIRECT EXAMINATION BY MS. VON HERRMANN:

2 Q. This just wasn't a great case in terms of coming up
3 with forensic evidence, was it?

4 A. No, ma'am.

5 Q. You didn't come up with any prints that matched any
6 of the defendants?

7 A. No, ma'am.

8 Q. Sometimes crime scenes are very rich in forensic
9 evidence, is that correct?

10 A. That's correct.

11 Q. And sometimes they are not?

12 A. That is true.

13 Q. And where would you put this one on the scale of
14 being able to extract forensic evidence?

15 A. Pretty slim just as far as the given scenario, the
16 type of scene it was. It was just not a very good chance
17 of anything.

18 Q. And we -- you know, most of us have seen these
19 shows on television, CSI and all of that, but things don't
20 really work in real life like they work on T.V., do they?

21 MR. BELLAMY: Judge, I would object to that type of
22 question.

23 THE COURT: I'm going to allow it. Thank you.

24 Q. It's difficult to go out there and just be able to
25 extract fibers, and hair, and DNA, and those types of

1 things, isn't it?

2 A. That is correct.

3 Q. Do you feel like under the circumstances that you
4 did the best job you could in trying to find these items?

5 A. Yes, ma'am.

6 MS. VON HERRMANN: Thank you. I don't have any
7 further questions.

8 THE COURT: Any questions on the questions asked by
9 the Solicitor?

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

11 THE COURT: Do you wish the witness to be excused?

12 MS. VON HERRMANN: I do, Your Honor.

13 THE COURT: Any objection?

14 MR. BELLAMY: I would ask that he be kept under
15 subpoena, Your Honor. I obviously don't want him here --
16 he doesn't have to stay in the courtroom, but be available
17 should we need him.

18 THE COURT: All right, sir, you will remain under
19 subpoena. You do not need to remain in the courthouse,
20 but you will still be until the conclusion of the case at
21 the call of the Court.

22 OFFICER CAULDER: All right. Thank you, Your Honor.

23 THE COURT: Thank you very much.

24 All right, ladies and gentlemen, we're going to take
25 a break, about ten or fifteen minutes. If you will just

1 and spell your last name.

2 MR. PRATER: Daniel Robert Prater, P-R-A-T-E-R.

3 DIRECT EXAMINATION BY MS. VON HERRMANN:

4 Q. Good afternoon, Mr. Prater.

5 A. Hello.

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

7 A. Yes, ma'am.

8 Q. How did you know him?

9 A. Well, we were friends.

10 THE COURT: Could you speak up. You've either got
11 to speak directly into the microphone or get your voice
12 up.

13 A. We were friends. We had got to know each other
14 hanging out in the gym, and music, and just, you know,
15 come to be pretty good friends.

16 Q. How long had you known him?

17 A. For about six or seven months, not -- not that
18 long, just come to know him.

19 Q. And were y'all pretty tight in that period of time?

20 A. Yes, ma'am, you could say that.

21 Q. What did -- what did Miles do for a living?

22 A. He sold drugs, anything really that he could do to
23 make a dollar.

24 Q. And you've actually been in a little bit of trouble
25 yourself in the past, haven't you?

- 1 A. Yes, ma'am.
- 2 Q. All right, and let's talk about that real quick.
- 3 You have a burglary and grand larceny?
- 4 A. Yes, ma'am.
- 5 Q. Trafficking in cocaine?
- 6 A. Yes, ma'am.
- 7 Q. Possession with intent to distribute marijuana?
- 8 A. Yes, ma'am.
- 9 Q. Misprision of a felony?
- 10 A. Yes, ma'am.
- 11 Q. And resisting arrest, is that correct?
- 12 A. Yes, ma'am.
- 13 Q. All right, and I think you may have some charges
- 14 pending in our office right now that are unrelated to this
- 15 case, is that correct?
- 16 A. Yes, ma'am.
- 17 Q. All right, and you and I have spoken before about
- 18 this case. Have any promises been made to you at all
- 19 about your testimony in this case?
- 20 A. No, ma'am.
- 21 Q. All right. We didn't enter into a proffer
- 22 agreement or anything like that, and I'm not even the
- 23 Solicitor prosecuting your case, am I?
- 24 A. No, ma'am.
- 25 Q. Okay. All right, do you recall October the 20th of

1 2005?

2 A. Yes, ma'am.

3 Q. Do you recall that day?

4 A. Yes.

5 Q. What were you doing that day?

6 A. Well, I woke up, called Miles to come by and take
7 me out. We was going to the gym to hang out. I woke up
8 probably about ten-thirty. He picked me up about a little
9 after eleven, after I got showered and everything, and we
10 proceeded to our day. He had a friend of mine, another
11 friend of ours, Dominique, with him, and we all went to
12 the gym and hung out there for a couple of hours, and
13 then ---

14 Q. What gym would that have been?

15 A. The Crabtree Gym at the Air Force Base.

16 Q. What did y'all do there at the gym?

17 A. Shot basketball, worked out for a little while. We
18 just, you know, tried to stay in shape.

19 Q. What was -- what was Miles driving on that day?

20 A. He had a rental car. It was a Toyota Highlander, I
21 believe.

22 Q. If you would just bear with me for one moment here.
23 I'm going to show you State's Exhibit 5. Is that the
24 vehicle that he was driving on that particular day?

25 A. Yes, ma'am.

1 Q. And he came and picked you up, is that correct?

2 A. Yes, ma'am.

3 Q. And besides going to the gym, what else did you all
4 do that day?

5 A. Well, we just rode around, looked at cars to buy,
6 went out to eat.

7 Q. Where did you go eat?

8 A. Socastee Station. It's a place over off of 707.

9 Q. What time was that?

10 A. It was more toward the end of the afternoon. We
11 was trying to beat the rush. The rush special is probably
12 about four o'clock or so.

13 Q. What time does the lunch special end?

14 A. I'd say about four-thirty, something like that.

15 Q. And you made it get a lunch special that day?

16 A. Yes, ma'am, we made it.

17 Q. And what did you do after that?

18 A. After that we just kind of rode around, stopped to
19 a couple of houses, a couple of Miles' people, and rode
20 around some more, and we was waiting on a phone call.

21 Q. Who were you waiting on a phone call from?

22 A. Were a guy named Corey Smalls.

23 Q. And why were y'all waiting on that phone call?

24 A. Well, Miles had some things set up to where he was
25 supposed to purchase some cocaine from Corey and them.

1 Q. Did he have some money with him?

2 A. Yes, ma'am.

3 Q. Did you see the money?

4 A. Yes, ma'am.

5 Q. And how -- how was that money packaged?

6 A. It was just in a -- he had it in a white bag like a
7 store bag, but you couldn't -- you couldn't see through
8 the bag or nothing like that, and he just had it sitting
9 in the center console of the truck whenever I saw it.

10 Q. Okay, placed in the center console?

11 A. Yes, ma'am.

12 Q. Did he have the top down on that console?

13 A. Yes, ma'am.

14 Q. And are you familiar with Corey Smalls?

15 A. I've only met him a time or two before that on the
16 streets.

17 Q. And do you know with regard to this drug deal, what
18 was -- what was Corey's role, to the best of your
19 knowledge, supposed to be?

20 MR. BELLAMY: Your Honor, I would object as to what
21 he thinks. I would like to know the foundation or the
22 basis ---

23 THE COURT: Why don't you rephrase the question.

24 MR. BELLAMY: --- the basis for how he would know
25 that, Your Honor.

1 THE COURT: I understand. Why don't you rephrase
2 the question, Solicitor.

3 Q. Did you have conversations with Miles during the
4 course of that day?

5 A. Yes, ma'am.

6 Q. And did you discuss this drug deal that was going
7 to take place?

8 A. Yes, ma'am.

9 Q. And did you talk about Corey Smalls ---

10 A. Yes.

11 Q. --- during the course of that?

12 A. Yes, ma'am.

13 Q. And do you know of your own knowledge what Corey
14 Smalls' role was to be in that drug deal?

15 MR. BELLAMY: Your Honor, again I don't -- I don't
16 know how he would know that unless he talked to Mr.
17 Smalls. Otherwise it would be hearsay coming from a third
18 party.

19 THE COURT: I appreciate that. Based on the fact
20 that Mr. Smalls has already testified, I'm going to allow
21 the question to be asked at this point in time.

22 Go ahead.

23 Q. Do you know what Mr. Smalls', Corey Smalls', role
24 was to be?

25 A. Well, as far as I know, I didn't know there was

1 anybody outside of that. I just knew that he was meeting
2 Corey to get some dope from him.

3 Q. And where -- where did you all go after he had this
4 conversation?

5 A. Well, after we had -- after we all was talk- -- I
6 mean, to start, we all talked at the gym, and then we
7 talked while we were riding around, but after we went to
8 Enterprise to a gas station was where he was supposed to
9 be meeting Corey at.

10 Q. I'm going to show you State's Exhibit 4. What's
11 that?

12 A. That's the Wilco on the corner of 707 and
13 Enterprise Road.

14 Q. And is that where you went to meet Corey?

15 A. Yes, ma'am.

16 Q. All right. Where were you all parked?

17 A. Actually right here where this silver car is, in
18 that exact same parking spot.

19 Q. And if you're looking directly at the building,
20 that would be on the right ---

21 A. On the right-hand side, yes, ma'am.

22 Q. All right, and did you at some point come into
23 contact with Corey?

24 A. Yes, ma'am.

25 Q. Tell me how that happened.

1 **A.** Well, he came -- Corey come walking up from behind
2 the car. I didn't see him pull in or nothing like that,
3 and when he walked up to the car he give Miles daps, you
4 know. He just dapped him up like that (indicating), and
5 then when he -- he looked in the car and was seeing who
6 was else in there, and there was another guy in there,
7 Dominique. You know, he kind of said what to him, and
8 then he saw me being in there, and I just met him kind of
9 recently to that, and he, you know, gave me daps and
10 everything like that, like ---

11 **Q.** So you didn't -- you knew who Corey was, but you
12 didn't know him real well?

13 **A.** No, ma'am, I didn't know him that well.

14 **Q.** And again, when he -- when he approached the
15 vehicle, he -- did you see another car driving off, or did
16 he appear to be walking from somewhere, or ---

17 **A.** He just kind of appeared to be coming maybe from
18 the apartments and from behind the Foxtrot Apartments,
19 because I didn't see him walking down the road or nothing.
20 He just kind of popped out.

21 **Q.** So when he walks up, are you all all seated in the
22 Highlander?

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

24 **Q.** All right. Where is Mr. Slay seated?

25 **A.** The driver's seat.

- 1 Q. And where was Dominique seated?
- 2 A. The passenger seat.
- 3 Q. And where were you seated?
- 4 A. In the rear passenger.
- 5 Q. Which side -- oh, the rear passenger you said?
- 6 A. Yes, ma'am.
- 7 Q. I'm going to show you State's Exhibit 26 and ask
- 8 you to take a look at that. What is that?
- 9 A. It's a pack of Newports, a Mountain Dew bottle, and
- 10 a bottle of water.
- 11 Q. Is this the Highlander that you all were in?
- 12 A. Yes, ma'am.
- 13 Q. Are those your Newports?
- 14 A. Yes, ma'am.
- 15 Q. Is that your Mountain Dew?
- 16 A. Yes, ma'am.
- 17 Q. Is that your bottle of water?
- 18 A. Yes, ma'am.
- 19 Q. There's a McDonald's bag down there, too. Is that
- 20 y'all's?
- 21 A. Yes, that was ours, not from that day, though.
- 22 Q. All right, and when Corey comes up to the car, was
- 23 he -- did he have a cell phone, do you know?
- 24 A. Yes, ma'am.
- 25 Q. Did he -- did he talk to someone on that cell

1 phone?

2 A. Yeah. He, you know, said whatever to everybody.
3 He called somebody, and then he was walking back and forth
4 onto the right side of the store, front of the car, was
5 talking on the phone so that we couldn't hear him.

6 Q. So you couldn't hear the conversation he was
7 having?

8 A. No, ma'am.

9 Q. And did he come back to the vehicle at some point?

10 A. Yes, ma'am.

11 Q. What happened at that point?

12 A. When he come back to the vehicle, he was like, "All
13 these people can't ride," and Dominique was like, "All
14 right, I'll stay here." Then he was like, "No, I'm
15 talking about like him. You know, he don't like white" --
16 he was looking at me, and he was like, "You know, he don't
17 like white people."

18 Q. Corey said ---

19 A. He said, "You know he don't trust white people,"
20 excuse me; is what he said.

21 Q. Corey said, "He don't like white people"?

22 A. Yeah; yes, ma'am.

23 Q. Do you know who "he" was?

24 A. No, ma'am.

25 Q. He didn't name any names?

- 1 A. No, ma'am.
- 2 Q. What did you do?
- 3 A. Well, I told Miles that I don't trust the situation
4 and I don't think that he should go by himself, and Miles
5 said it was all right, and I got out of the car and was
6 waiting on Miles.
- 7 Q. All right, and when you got out of the car, did you
8 just hang out there at the Wilco?
- 9 A. Yes, ma'am.
- 10 Q. I show you State's Exhibit Number 1. Take a look
11 at that for me. Do you see the Wilco on that map?
- 12 A. Yes, ma'am.
- 13 Q. Right, that's where you were, and where was Corey
14 seated in the car?
- 15 A. When he got in, he got into my seat, because I --
16 whenever he came up to Miles' window, I leaned across the
17 back seat and rolled the window down like this
18 (indicating), and where we was like both on the same side
19 of the car, and then when he got in, I jumped in behind
20 Miles because there was more room right there and, you
21 know, everything, slid over for him to get in the back
22 seat.
- 23 Q. So he got in the back seat first?
- 24 A. Yes, ma'am.
- 25 Q. And then at some point, did he get into the front

1 seat with Miles?

2 A. Yes, ma'am. When me and Dominique got out, that's
3 when they switched seats, and he got up front.

4 Q. And when they left, when they left the Wilco, which
5 way did they go?

6 A. They took a left onto Enterprise Road.

7 Q. All right, and this is Enterprise Road here. Just
8 point out to the jury, please, which way they would have
9 -- which way they would have gone.

10 A. This way (indicating).

11 Q. All right. Did you wait there at the Wilco?

12 A. Yes, ma'am, for a little while. I waiting around
13 about ten minutes, and then I kind of walked over to the
14 warehouses that are beside the 707 gun shop and stuff,
15 which the properties are joined together.

16 Q. Were you expecting Miles to come back and pick you
17 up? Was that the plan?

18 A. Yes, ma'am.

19 Q. Did you, and Dominique, and Miles discuss that he
20 would be coming back to pick you up?

21 A. Yeah.

22 Q. And at some point, did you become concerned about
23 it?

24 A. Yes, ma'am.

25 Q. And what did you do as a result of that?

1 A. Well, I called Miles, and Miles wouldn't answer his
2 phone, so I wait a little bit, probably about twenty more
3 minutes later, and I called him again, and then I wind up
4 seeing somebody at the gas station that I knew, and I
5 asked them could they give us a ride to the house until I
6 can call a ride to come pick us up because Miles didn't
7 come back to get us, and I had a feeling something was
8 wrong because he wouldn't just leave me on the side of the
9 gas station knowing that I was there.

10 Q. Did you receive a call at some point later from
11 Corey?

12 A. Yes, ma'am.

13 Q. What time was that approximately?

14 A. I'd probably say around eight-thirty or so, between
15 seven forty-five to eight-thirty, somewhere in that area.
16 It was closer to dark.

17 Q. And why was Corey calling you?

18 A. Well, he called -- he called me and was asking me
19 about some weed.

20 Q. Some weed, marijuana?

21 A. Yeah.

22 Q. Did you -- did you ever meet up with Corey again?

23 A. No, ma'am.

24 Q. And when Miles turned down that road on Enterprise,
25 did you ever see him after that day?

1 A. No, ma'am.

2 MS. VON HERRMANN: I don't have any further
3 questions. Please answer any questions Mr. Bellamy has.

4 THE COURT: All right, cross examination.

5 MR. BELLAMY: May it please the Court. The Court's
6 indulgence.

7 THE COURT: Yes, sir.

8 CROSS EXAMINATION BY MR. BELLAMY:

9 Q. Mr. Prater, you -- did you ever see Tyronne Beaty
10 that night?

11 A. No, sir.

12 Q. And you were with Miles, I believe, most of that
13 day or all of that day?

14 A. Just about all that day.

15 Q. In fact, y'all had actually -- I think y'all had
16 went to Florida that week, had you not?

17 A. Yes, sir.

18 Q. And that was for a dope deal, wasn't it?

19 A. Yes, sir.

20 Q. But it didn't happen?

21 A. No, sir.

22 Q. And to your knowledge, Miles Slay never had any
23 conversation with Tyronne Beaty, did he?

24 A. No, sir.

25 Q. And, in fact, we know now that they've got Miles'

1 phone. But you have no reason to believe he ever talked
2 to my client, do you?

3 A. (No response.)

4 Q. Do you know if they had ever met?

5 A. No, sir.

6 Q. You don't they'd ever met?

7 A. Not that I'm aware of.

8 Q. Okay, and you were hanging out pretty steady, going
9 to Florida, you were with Miles pretty much all the time,
10 weren't you?

11 A. So to -- not -- not all the time constantly. I had
12 my own life and he had his.

13 Q. But y'all would go -- you went to Florida with him,
14 right?

15 A. Yeah.

16 Q. And you hung out with him pretty much a good bit of
17 the time? I'm not saying twenty-four hours a day, but a
18 good bit of the time?

19 A. Yeah.

20 Q. It was your understanding that the deal was between
21 Corey and Miles, correct?

22 A. To my understanding, Corey was kind of like a
23 ~~middle man.~~

24 Q. Okay. Well, your earlier testimony was that it was
25 just -- you didn't know anything about anybody else, just

- 1 Miles and Corey? That was what you ---
- 2 A. Well, at that time, yeah.
- 3 Q. And then after you got to the Hess station is when
- 4 Corey said something about somebody else?
- 5 A. Yes, sir, that's correct.
- 6 Q. That's the first that ever came up?
- 7 A. Yes, sir.
- 8 Q. Okay, and do you know Corey Smalls?
- 9 A. Just met him a couple of times.
- 10 Q. A couple of times?
- 11 A. Yes, sir.
- 12 Q. Did he have your phone number or you have his phone
- 13 number?
- 14 A. I think I -- I think he had -- we both had each
- 15 other's numbers, but we didn't never call each other or
- 16 nothing like that. We just, you know, swapped numbers
- 17 through his cousin.
- 18 Q. Okay. Now, who called Corey Smalls that night
- 19 after Miles rode off with him? Who called him?
- 20 A. I did.
- 21 Q. You called on which phone, your phone?
- 22 A. From my phone.
- 23 Q. Okay, and the purpose of that was to look for ---
- 24 A. Miles.
- 25 Q. --- Miles?

1 A. Correct.

2 Q. How long after Miles had ridden off?

3 A. Probably about thirty to forty-five minutes.

4 Q. Did you get him the first time -- I'm talking about
5 Corey, not Miles, but did you get Corey that first time
6 you talked to him?

7 A. Did I get Corey? Yes, sir.

8 Q. I mean the first time you called him. I'm sorry;
9 that didn't make sense. The first time you called him,
10 were you able to talk to Corey?

11 A. Yes, sir.

12 Q. And that would have been -- do you remember what
13 time they rode off, and I've got notes from this and what
14 you've said in the past, but do you remember looking at
15 the clock in the car?

16 A. ~~Probably~~ around -- ~~seem like it said six -- quarter~~
17 ~~to seven, something like that, and more evening time.~~

18 Q. Okay. ~~Would you disagree that you previously made~~
19 ~~a statement that you looked at the clock and remember it~~
20 ~~being 6:59? Does that help you?~~

21 A. Yeah, that ---

22 Q. Now, so about thirty to forty minutes after that,
23 did you call Miles or did you call Corey?

24 A. I called Miles first.

25 Q. And did you get an answer?

- 1 A. Huh-uh (negative response).
- 2 Q. Okay, so then you called Corey?
- 3 A. Yes, sir.
- 4 Q. Again, that would be thirty to forty-five minutes
5 later, or thirty minutes to an hour?
- 6 A. A little bit right after calling Miles, forty-five
7 minutes or so after they left the store.
- 8 Q. And he answered the phone?
- 9 A. Yes, sir.
- 10 Q. And tell me the -- what you asked him and what he
11 told you.
- 12 A. I said, "Hey, Corey, where is Miles at," and he
13 said, "He dropped me off down here in Burgess. I don't
14 know where he's at."
- 15 Q. And then hung up the phone, but then you got a call
16 from him, didn't you, later?
- 17 A. Yes, sir.
- 18 Q. He called your phone?
- 19 A. Yes, sir.
- 20 Q. About nine, isn't that right?
- 21 A. Probably in that -- yeah, in that area.
- 22 Q. The purpose in calling you at nine o'clock or after
23 was for him to -- ~~he was trying to buy marijuana from you?~~
- 24 A. Yes, sir.
- 25 Q. He wanted you to bring him some dope?

1 A. Uh-huh (affirmative response).

2 Q. And that's at least two hours after Miles leaves
3 you, correct, ---

4 A. Something like that.

5 Q. --- if not more?

6 A. If not less.

7 Q. Okay, but he leaves you at 6:59 and you get a call
8 at nine. That would be at least two hours, wouldn't it?

9 A. Yeah, somewhere in that area.

10 Q. Okay.

11 A. I'm not too sure of the times.

12 Q. And what -- did you have any other conversation
13 during his phone call to you?

14 A. During Corey's phone call to me, no.

15 Q. Other than the marijuana?

16 A. Other than the fact that I said, "Hey, where is
17 Miles at?" and he was like, "Man, that nigger is out
18 probably grinding right now," and that was all that was
19 said, and I said, "That don't sound right. -- Something
20 ain't right," and I hung up.

21 THE COURT: Yes, ma'am?

22 THE FORELADY: Could you repeat that last question?

23 THE COURT: Ma'am, if you need the witness to speak
24 up, we'll do so. They can't ask the questions or give you
25 the answers again. If you need them re-played, we can

1 have them re-played. Do you want them re-played?

2 THE FORELADY: Please.

3 MS. VON HERRMANN: May we approach, Your Honor?

4 THE COURT: Yes.

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

7 THE COURT: We're going to have it re-played.

8 (The last question and answer was played for the jury.)

9 Q. Let me ask you, other than him wanting you -- to
10 buy marijuana from you, what -- and talk ---

11 A. Put it in layman terms for y'all, what that means?

12 Q. What -- what -- yeah. I didn't understand.

13 A. Okay.

14 Q. Just say what he said, and then if you want to
15 break it down, I'll let you break it down, but I didn't --
16 I can't -- I couldn't understand what you said, but try to
17 make it a little clearer, and then if you want to, you can
18 explain in, as you said, layman's terms what that means,
19 so go ahead.

20 A. All I was saying that was he said, "He's probably
21 out grinding right now," which means he's out on the block
22 making money or selling dope, whatever is the ---

23 Q. You were there with him all day that day, ---

24 A. Yes, sir.

25 Q. --- Miles, I'm talking about?

1 A. Yes, sir.

2 Q. Had y'all been shooting guns or anything that day?

3 A. Huh-uh (negative response).

4 Q. Had you shot guns ---

5 THE COURT: Sir, you need to answer yes or no.

6 A. No, sir.

7 Q. You've got to answer yes or no, or explain, however
8 you want to, but she can't pick up uh-huhs and nodding.
9 How about -- that was -- do you know what day of the week
10 this was?

11 A. No, sir, I don't remember which day of the week it
12 was.

13 Q. Well, let's go back when you went to Florida. How
14 many -- do you recall shooting guns or anything with Miles
15 in the previous week?

16 A. No, sir.

17 Q. And had you been with him about every day, at least
18 during parts of the time?

19 A. Maybe thirty minutes for one day or something like
20 that.

21 MR. BELLAMY: The Court's indulgence, Your Honor.

22 THE COURT: Yes, sir.

23 MR. BELLAMY: I don't have any further questions,
24 Your Honor.

25 THE COURT: Do you have some redirect?

1 REDIRECT EXAMINATION BY MS. VON HERRMANN:

2 Q. Did Miles show the money to Corey?

3 A. Yes, ma'am.

4 Q. You saw him show the money?

5 A. Yes, ma'am.

6 Q. And did Corey have the dope with him when he went
7 to the Highlander?

8 A. When he came up to the car when I was in it? No,
9 ma'am.

10 Q. So was it your impression that they had to go
11 somewhere else to get the dope?

12 A. Yes, ma'am.

13 Q. Corey didn't have it?

14 A. No, ma'am.

15 Q. They had to go somewhere else?

16 A. They had to meet somebody else.

17 Q. So that would make Corey the middle man, wouldn't
18 it?

19 MR. BELLAMY: Your Honor, I would object to the
20 leading nature and it's outside the ---

21 THE COURT: I'm going to allow the question. Thank
22 you.

23 MR. BELLAMY: I believe it's outside the cross of
24 redirect.

25 THE COURT: I don't believe so. I'm going to allow

1 -- I don't believe it was outside the cross examination.
2 I think it pertains to the cross examination. I'm going
3 to allow it.

4 You may continue.

5 Q. Did Miles ever say anything to you about going and
6 ripping somebody off for the drugs?

7 A. No, ma'am.

8 Q. It was a straight-up deal?

9 A. He was a straight-up kind of man. He was just
10 trying to make some money to feed his family and do the
11 right -- you know.

12 MS. VON HERRMANN: Thank you. I don't have any
13 further questions.

14 THE COURT: Anything on those questions, Mr.
15 Bellamy?

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

17 THE COURT: All right, sir.

18 Do you wish the witness to be excused?

19 MS. VON HERRMANN: I do, Your Honor.

20 THE COURT: Any objection?

21 MR. BELLAMY: We would ask he be kept under
22 subpoena, Your Honor.

23 THE COURT: Have you subpoenaed him?

24 MR. BELLAMY: Have I? I don't think I have. We
25 don't have a problem. We can release him, Judge.

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1 THE COURT: All right, you may step down, sir.

2 Do you wish the witness to be excused from his
3 subpoena?

4 MS. VON HERRMANN: Please, Your Honor.

5 THE COURT: Any objection?

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

7 THE COURT: All right, you're excused from your
8 subpoena, sir, and I don't think I said it, Mr. Bellamy,
9 but on -- I was using -- I said according to the rules. I
10 was using Rule 607 as to your last objection.

11 Your next witness, Solicitor.

12 MS. VON HERRMANN: Thank you, Your Honor. The State
13 calls Antonio Smalls.

14 Judge, may Mr. Bellamy and I approach for a moment?

15 THE COURT: Yes, ma'am.

16 Come around and be sworn, sir. Come around front.

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

19 ANTONIO SMALLS, being first duly sworn, testifies as
20 follows:

21 THE CLERK: Please be seated. State your full name
22 and spell your last name.

23 MR. SMALLS: Antonio Smalls.

24 THE COURT: Spell your last name, please, sir.

25 MR. SMALLS: S-M-A-L-L-S.

1 THE COURT: Very good. Ask the jury to come in,
2 please.

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

5 THE COURT: All right, Solicitor, your next witness,
6 please, ma'am.

7 MS. VON HERRMANN: Thank you, Your Honor. The State
8 calls Dan DeFreese.

9 THE COURT: Please come around to be sworn, sir.

10 DAN DEFREESE, being first duly sworn, testifies as
11 follows:

12 THE CLERK: Please be seated. State your full name
13 and spell your last name.

14 AGENT DEFREESE: My name is Frank Dan DeFreese, and
15 that's D-E-F-R-E-E-S-E.

16 DIRECT EXAMINATION BY MS. VON HERRMANN:

17 Q. Agent DeFreese, how are you currently employed?

18 A. I work for the South Carolina Law Enforcement
19 Division in the laboratory in Columbia.

20 Q. How long have you been employed by SLED?

21 A. For forty-three years.

22 Q. And tell the jury, if you will, please, what
23 specifically do you do there at SLED.

24 A. I'm assigned to the department within the
25 laboratory where we do the analysis of firearm and

1 toolmark evidence.

2 Q. And please give the jury the benefit of your
3 educational experience and any training you may have in
4 that area.

5 A. Sure. Well, I'm a graduate of the University of
6 South Carolina in Columbia, and after my employment with
7 SLED, I undertook a course of instruction that lasted
8 about two and a half years to learn the techniques
9 involved in firearm and toolmark analysis. My principle
10 instructor was a gentleman by the name of Millard Cate.
11 Mr. Cate established the SLED laboratory when SLED itself
12 was established in 1947, and Lieutenant Carl Stokes, who
13 was also an examiner at the time -- there were only the
14 three of us, and I was employed in 1967.

15 After about two and a half years of instruction under
16 their direct supervision, I began accepting cases on my
17 own and testifying as to my results, which I have been
18 doing since 1969. I am a member of the -- of several
19 professional organizations, including the Association of
20 Firearm and Toolmark Examiners. I've testified in courts
21 throughout this State and in Federal Court, and in courts
22 in other states.

23 Q. And ---

24 MR. BELLAMY: Your Honor, I would agree. I am very
25 familiar with Mr. DeFreese, and that he is very qualified

1 to testify as to toolmarks and firearm examination.

2 MS. VON HERRMANN: I would move at this time to have
3 him admitted as an expert, Your Honor.

4 THE COURT: All right. He is qualified in those
5 fields. Any other fields that you expect him to testify
6 in?

7 MS. VON HERRMANN: Just the field of firearms
8 identification and analysis.

9 THE COURT: All right, very good. He's qualified to
10 give his opinion.

11 MS. VON HERRMANN: Thank you.

12 Q. Tell the jury, if you will, what the difference is
13 between a revolver and a semi-automatic pistol.

14 A. Well, both are handguns, but a revolver is a type
15 of handgun that has a rotating central member that's
16 cylindrical in shape that has a number of chambers cut
17 into it, that's a manually operated firearm that, for
18 instance, holds usually anywhere between five and nine
19 rounds. The operator would open or somehow place the
20 cartridges within the various chambers in the cylinder and
21 then as the hammer is cocked and the trigger is pulled,
22 the cylinder rotates to bring the next chamber into
23 alignment with the barrel and permit the cartridge to be
24 fired, and at the conclusion of the firing, the gun would
25 have to be manually reloaded, that is the cartridges

1 removed either all at once or one by one.

2 A semi-automatic pistol is the type of handgun that
3 does not typically have a cylinder in it in which some of
4 the energy from the cartridges being fired is used to
5 extract and eject the fired cartridge case, load another
6 cartridge in the chamber and prepare the firearm for the
7 next shot to be fired.

8 Most semi-automatic pistols have a magazine that's
9 located in the grip into which a number of cartridges can
10 be placed. Thereafter, the top cartridge in the magazine
11 is charged into the barrel and the gun is fired, and each
12 time it is fired, a bullet leaves the barrel, and each
13 time it is, a fired cartridge case is automatically
14 extracted and ejected from the firearm to prepare it so
15 the next cartridge can be fired, and they typically hold
16 anywhere from about six to sixteen, eighteen, or more
17 rounds.

18 Q. So in a situation -- I know you're not -- have not
19 been here for the testimony in this case, but in a
20 situation where one found shell casings, would it be fair
21 to assume that the weapon used was a semi-automatic as
22 opposed to a revolver?

23 A. It's certainly an indication of it.

24 Q. Thank you, and did you have a number of items
25 submitted to you by the Horry County Police Department in

1 this case?

2 A. I did.

3 Q. I'm going to show you what's been marked as State's
4 Exhibit 32 and ask you if you can -- I know you've had an
5 opportunity to go through that -- identify what it is that
6 are there in that box.

7 A. State's Exhibit 32 has a number of containers in
8 it. Within those containers, there are five fired forty-
9 five caliber bullets, and there are five fired forty-five
10 auto-caliber cartridge cases.

11 Q. And how do you know when you receive an item like
12 this from a police department, is there some sort of
13 protective measure that's used to make sure that that
14 evidence stays intact?

15 A. There is.

16 Q. And tell the jury, please, about how that works.

17 A. When a police agency brings evidence to the SLED
18 laboratory, certain information is collected about the
19 evidence and then the person bringing it puts the evidence
20 in a container, which is taped and it's sealed with
21 evidence tape. It's signed and dated, and thereafter
22 within the laboratory when evidence moves from hand to
23 hand, it does so as a sealed container.

24 So, for instance, if it's brought in, evidence
25 personnel will have the contributor seal it. I will come

1 to the evidence room, pick up a sealed package. I will
2 open it, do my examination of it and then re-seal the
3 package to prepare it for subsequent return to the
4 submitting agency.

5 Q. And when you received this, what's been marked here
6 in this exhibit, did that appear to have had those
7 safeguards and to have been properly secured?

8 A. It did.

9 MS. VON HERRMANN: I would move to have State's
10 Exhibit 32 moved into evidence at this time.

11 THE COURT: Any objection?

12 MR. BELLAMY: I want to look at it just briefly.

13 THE COURT: Yes, sir.

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

15 THE COURT: Yes, sir.

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

18 MS. VON HERRMANN: Again, Your Honor, I would move
19 State's Exhibit 32 in, subject to the conference we had
20 there.

21 THE COURT: All right, subject to -- I will allow it
22 into evidence subject to the testimony of one of the
23 officers later.

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

25 MR. BELLAMY: Thank you, Your Honor.

1 (State's Exhibit Number 32 previously marked for
2 identification.)

3 Q. Just take a look at those items, and if you will,
4 pull those out and tell the jury what those items are.

5 A. Within State's Exhibit 32, the box, there are nine
6 smaller boxes and one plastic vial. An item of evidence,
7 when it's brought in the laboratory, is assigned an item
8 number. You will see labels here marked 20, 21, 22, 23.
9 This one was too small, and it's marked with Item 19.
10 Items, what I refer to in my -- for my laboratory records
11 is Items 19 through 23 were fired forty-five auto-caliber
12 bullets.

13 These have various captions on them. They were
14 placed there by the submitting agency.

15 Q. And does the submitting agency make those markings
16 so that they can identify those as to where they collected
17 them?

18 A. Yes. This is the bullet that -- one of the
19 bullets. It's a copper alloy-jacketed bullet, what's
20 known as a full metal case bullet. As part of my
21 examination, I microscopically compared the markings on
22 the five bullets contained in these various containers
23 that I've labeled 19 through 23. I found sufficient
24 matching individual markings on all but one.

25 I perhaps should back up and mention that when

1 bullets are fired through a rifled gun barrel, and the gun
2 barrels of pistols and revolvers are typically rifled, the
3 rifling grips the bullet as the bullet is being pushed
4 through the barrel and out of the gun. That causes the
5 bullet to spin to make the bullet accurate in flight, but
6 it also marks the bullet with a unique signature from that
7 gun barrel, which can be identified back to that
8 particular gun, so in my microscopic analysis of these
9 bullets, I was looking for a unique individual striated or
10 scratch type markings that were placed on these bullets by
11 the gun that fired them, if indeed they were fired by one
12 gun, and I found that, as I say, with the exception of
13 Item 20.

14 Item 20 had a number of similarities to the other
15 four bullets, but Item 20 was somewhat more damaged than
16 the other ones, and I just did not see sufficient
17 agreement to conclude that this was fired by the same gun
18 barrel to the exclusion of another gun barrel. It
19 certainly could have been fired by the same gun, but I
20 just can't say so for sure.

21 Q. And is the reason that you can't say so is because
22 there was damage to that -- that particular bullet?

23 A. Yes. There was damage and just a lack of the kind
24 of markings that I'm looking for for identification
25 purposes. It just wasn't enough to say for sure.

1 Q. And with regard to the other four bullets there --
2 well, let's talk about all of them. Are those all forty-
3 five caliber bullets?

4 A. Yes, they are.

5 Q. All right, and the four that you have there
6 definitely have a match?

7 A. Correct.

8 Q. And Number 20 is a bullet which was damaged and you
9 can't say whether it did or did not come from the same
10 gun, is that correct?

11 A. Correct. They all have the same number of land and
12 groove impressions on them. They are all constructed the
13 same. They are all forty-five caliber. They are all full
14 metal case -- you know, they are all consistent in their
15 construction, but as I say, one of them just didn't have
16 enough markings on it.

17 Q. And again, I think you just said that this is the
18 same type ammunition?

19 A. Yes.

20 Q. And just is it consistent -- is it consistent with
21 the other ---

22 A. Yes. All the observable physical characteristics
23 of the bullet that I call Item 20 are the same as the
24 other bullets.

25 Q. And sometimes that happens and you're just not able

1 to make a perfect match?

2 A. True. It frequently happens because the bullets
3 are traveling at high speeds, and when they run into
4 objects, they can become damaged, and when they are too
5 badly damaged and don't have enough of -- enough
6 characteristics for identification left on them, you just
7 can't say.

8 Q. Let's talk a little bit -- I believe you've got
9 some shell casings in there as well, is that correct?

10 A. I do.

11 Q. And if you will pull those out and just show those
12 to the jury.

13 A. I'm pulling -- these, I refer to as my Items Number
14 24 through 28, and they are all the same in construction.
15 I have Item 24 in my hand, and this is a -- it's marked on
16 its head stamp, the mark that was put there by its
17 manufacturer, "CCI," which is the maker; it's marked "NR"
18 which stands for not reloadable, and then it's marked "45
19 Auto," and each of these bears the same markings.

20 This is a type of cartridge case that's known as a
21 CCI Blazer. The cartridge case itself is made out of
22 aluminum and it has a type of primer that's somewhat
23 difficult to remove, and it's made that way so that people
24 will not attempt to reload these cartridge cases. They're
25 only intended to be fired one time.

1 I looked for the kinds of markings on each of these
2 cartridge cases that would permit me to conclude they were
3 fired by the same gun, if indeed they were, but these
4 cartridges simply did not have enough markings on them to
5 conclude that they were fired by one gun. The markings
6 just were not -- they weren't of a quality and
7 sufficiency. They were the same to the extent that they
8 were there, but they were not sufficient to say they were
9 all fired by one gun, but they could have been.

10 Q. Are consistent with being fired by one gun?

11 A. Yes, they could have been fired by one gun.

12 Q. You don't have anything there in looking at those
13 that would make you believe that they were fired by
14 separate guns?

15 A. No; no. They were -- they were -- the markings on
16 them were sufficient to eliminate a great many guns, but I
17 -- they were just not sufficient to say that one gun and
18 only one gun fired these.

19 Q. Did you have a gun that was submitted to you by the
20 Horry County Police Department?

21 A. I did.

22 Q. And did you have an opportunity to examine that?

23 A. I did.

24 Q. And what findings did you make with regard to that?

25 A. The firearm that was submitted was a Star Model PD

1 forty-five auto-caliber pistol, and I obtained test
2 bullets and cartridge cases from that gun and I compared
3 them with the fired bullets and cartridge cases in Item
4 32, and they were sufficiently different so that I could
5 conclude that that gun did not fire any of these cartridge
6 cases or any of these bullets.

7 Q. And when that gun came to you, was it loaded or
8 unloaded?

9 A. It was unloaded at the time it was received, but
10 there were six unfired forty-five auto-caliber cartridges
11 that were received with the gun.

12 Q. So those -- those bullets then appeared to go with
13 that gun, is that correct?

14 A. Well, they were the correct caliber cartridges, you
15 know, not bullets. They were the correct caliber of
16 cartridge for use in that gun, and they are the same
17 caliber of cartridge that all of this evidence in Item 32
18 is, but those bullets were a different brand of ammunition
19 and they were loaded with jacketed hollow-point bullets,
20 whereas the bullets involved in these items are full metal
21 case round-nose bullets.

22 Q. So in other words, you got a gun that's submitted
23 to you by the police department and then you have the
24 projectiles and shell casings that you discussed earlier,
25 and those two were not consistent with one another?

1 A. No. The only thing that was the same was the
2 caliber, but they were not the same brand; they were not
3 the same type. The gun that was submitted had different
4 rifling standards, that is different widths of lands and
5 grooves, and its firing pin and breach face markings were
6 different from the ones that remain on the five fired
7 cartridge cases in Item 32.

8 Q. And the gun that you received, was that in working
9 order?

10 A. It was. It was a little -- it had been processed
11 for fingerprints and it was dry. Its action lacked
12 lubrication, so it didn't want to close well, but once the
13 slide closed, it would fire okay.

14 Q. So it would fire once, and then maybe you would
15 have a problem ---

16 A. Right.

17 Q. --- with getting it to fire again? Okay, and just
18 to clarify, that gun is not consistent with the bullets
19 found?

20 A. Right. That gun did not shoot any of these
21 specimens in Item 32.

22 Q. Thank you.

23 MS. VON HERRMANN: I don't have any further
24 questions. Please answer any questions Mr. Bellamy may
25 have.

1 THE COURT: Mr. Bellamy.

2 MR. BELLAMY: May it please the Court, Your Honor.

3 CROSS EXAMINATION BY MR. BELLAMY:

4 Q. You described, Agent DeFreese, a difference between
5 a revolver and a semi-automatic, correct?

6 A. Yes, sir.

7 Q. And a revolver -- and, well, you tell me because
8 you know more than I do about it, but does not eject the
9 casing or the thing that the bullet would be enclosed in,
10 does it?

11 A. It doesn't extract and eject a cartridge case every
12 time it's fired. It's manually loaded and manually
13 unloaded.

14 Q. Okay, but with a revolver, it would automatically
15 -- do you have one of the shell casings that we could look
16 at?

17 A. Sure.

18 Q. Okay. We'll leave it in the ---

19 A. Okay.

20 Q. This is one of the shell casings that you received?

21 A. Yes, it is.

22 Q. Now, and within this would be the, I guess, the gun
23 powder, primer, whatever it is, in the bullet?

24 A. Right. The whole cartridge is made up of a bullet,
25 a cartridge case, a primer, and then the propellant powder

1 that's inside the cartridge case.

2 Q. Okay, and this is what is left behind with either
3 the gun in the revolver or ejected out of the semi-
4 automatic?

5 A. Correct.

6 Q. Okay.

7 A. That's a fired cartridge case.

8 Q. Okay, and this item is hollow, so there's nothing
9 in the middle, right?

10 A. Correct.

11 Q. All right. Now, when a semi-automatic -- and did
12 you -- were you able to determine what type of gun or
13 types of gun that may have fired these casings or that
14 bullet? I know you don't have a gun to compare to; you
15 compared it to one and that's not it, but do you know what
16 types of gun may have fired those bullets and these
17 casings?

18 A. Yes, sir. I have -- I prepared, as I -- as I
19 frequently do in cases where no firearm is submitted or
20 the incorrect firearm is submitted, I prepared a list of
21 possible makes of firearms that could have fired the
22 bullets in this case, and that's based on their general
23 rifling characteristics, that is on the number of land and
24 groove impressions, the direction of land and groove
25 twists, and on the widths of the lands and grooves, and we

1 have a database that we correlate with to give the
2 investigators an idea of what brand of firearm they might
3 be looking for.

4 Q. Okay, and of the ones you identified in your
5 report, are you familiar with those guns?

6 A. Yes.

7 Q. Okay, and they are semi-automatics?

8 A. Most of them are semi-automatic pistols. Actually,
9 three of them are sub-machine guns.

10 Q. All right, but what happens if I were -- I don't
11 want to point at the jury; I'll point at you. If I'm
12 pointing a gun at you, ---

13 A. Yes, sir.

14 Q. --- my finger being the gun, and I shoot, ---

15 A. Yes.

16 Q. --- the projectile goes toward you?

17 A. Yes.

18 Q. And the shell casing goes where?

19 A. Well, it depends on the gun. It depends on the
20 particular pistol. It depends on a great many factors.

21 Q. On the guns that we've identified as pistols, ---

22 A. Yes.

23 Q. --- not the sub-machine guns, but these guns that
24 you've identified that may have fired this, which were
25 pistols, where would the projectile have went?

1 A. Where would the cartridge casing have gone?

2 Q. Yeah, yeah, yeah, ~~not the projectile, the~~
3 ~~cartridge, yeah, the casing.~~

4 A. ~~It depends on a lot of factors. Generally~~
5 ~~speaking, you like to think of firearms, such as semi-~~
6 ~~automatic pistols, as extracting to the right of the~~
7 ~~shooter, but ---~~

8 Q. This way (indicating)?

9 A. Yes. Like if I were pointed at you, it would go
10 this way (indicating), ---

11 Q. This way?

12 A. --- ~~but it doesn't always work that way, ---~~

13 Q. Okay.

14 A. --- ~~because factors such as the angle at which the~~
15 ~~gun is pointed, and whether the gun is straight up or~~
16 ~~whether the gun is twisted to the side, ---~~

17 Q. But would you anticipate that wherever the gun is,
18 that the hole where it ejects is on the right side,
19 correct?

20 A. ~~Most of them are toward the right side. Some of~~
21 ~~them are actually open top slides, and some of them will~~
22 ~~eject to the right. Some of them will eject ---~~

23 Q. But if you could identify ---

24 A. --- ~~virtually straight up.~~

25 MS. VON HERRMANN: Your Honor, I would ask that he

1 be allowed to answer the question.

2 THE COURT: Mr. Bellamy, ---

3 MR. BELLAMY: Yes, sir.

4 THE COURT: --- just let him answer the question.

5 MR. BELLAMY: Yes, sir.

6 A. Some of them eject to the -- many of them extract
7 and eject to the right. Some of them will extract and
8 eject so the cartridge case goes literally straight up.

9 Q. Okay.

10 A. ~~Some of them will eject to the left, and that~~
11 ~~assumes that a gun is being held in a substantially~~
12 ~~vertical position. Some of them will extract and eject to~~
13 ~~the right and slightly forward, some slightly to the rear,~~
14 ~~and it depends on a great many factors, such as the angle~~
15 ~~at which the gun is held, the force with which the gun is~~
16 ~~gripped, because frequently when -- when one doesn't apply~~
17 ~~sufficient force to the gun, it may eject in a totally~~
18 ~~different direction than it does when you have a really~~
19 ~~tight grip on it, so the long and short of it is I can't~~
20 say for sure.

21 Q. Is it fair to say that the vast majority eject to
22 the right and slightly back, though?

23 A. Many -- many of them do.

24 Q. Most do; would that be a fair statement?

25 A. I'm not sure I can say that most do. Many of them

1 do extract to the -- so that they eject to the right, but
2 as to whether they go forward or backward, I just can't --
3 I can't give you a number on that.

4 Q. Okay. Are you able to say more or less than fifty
5 percent? Can you do that for me or not, ---

6 A. No.

7 Q. --- and if you can't, you can't?

8 A. No, not really.

9 Q. Do any of them -- would any of them eject forward,
10 say, four feet?

11 A. Yes, I've seen them do that.

12 Q. You've seen them do that?

13 A. Yes. It can happen.

14 Q. Now, the guns that we're talking about that you've
15 identified, those guns, do you know how they eject?

16 A. I didn't independently study each of the guns that
17 I listed in my possible makes for the ejection pattern on
18 them because even -- even different guns of the same make
19 and model may not eject to the same place.

20 Q. Would you say this, Mr. DeFreese, the same gun
21 would eject the same way every time or a similar way,
22 would it not?

23 A. No.

24 Q. It wouldn't?

25 A. No.

1 Q. So it may eject forward one time, backwards one
2 time, up or down?

3 A. Yes.

4 Q. Okay.

5 A. It can -- that also can happen.

6 Q. It's possible?

7 A. Right. When I go to the range to qualify myself,
8 most of them are -- most of my rounds are ejected to the
9 right shooting a Glock pistol. Every once in a while, one
10 of them will come right up and go down my collar. I don't
11 know why it does that, but they just go different places
12 different times.

13 Q. But generally they would -- the same gun would
14 eject in the same manner generally?

15 A. They tend to, but if you change the brand of
16 ammunition, if you change the way you hold the gun, if you
17 change the tilt of the gun slightly, I just can't say with
18 any confidence that it's going to always going to go to
19 the right, or it's always going to go to the right and
20 forward, because it varies from shot to shot.

21 Q. Okay. Thank you.

22 THE COURT: Any redirect?

23 MS. VON HERRMANN: No, sir, Your Honor, and I would
24 ask that he be released from his subpoena.

25 THE COURT: Any objection to the witness being

1 excused?

2 MR. BELLAMY: I believe I have him under subpoena as
3 well, Judge. I'd like to keep him here for a little bit
4 to talk to him.

5 THE COURT: All right, very good.

6 All right, Mr. DeFreese, you remain under the
7 Defense's subpoena. You are released from the State's
8 subpoena, and until the Defense releases you, you need to
9 stay with us. Thank you, sir.

10 AGENT DEFREESE: All right, sir.

11 MS. VON HERRMANN: Your Honor, may we approach for a
12 moment?

13 THE COURT: Absolutely.

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

16 THE COURT: All right, ladies and gentlemen, the
17 next witness by the State is a pathologist, the medical
18 doctor, and that particular individual, because of their
19 duties, though they were supposed to be here will not be
20 here for a considerable period of time, so what we're
21 going to do is we are going to break for lunch and I'm
22 going to have you come back at two o'clock. Hopefully by
23 two o'clock that witness will be released from their other
24 activities. As you understand, they might have other
25 duties than coming to Court, and we will resume at two

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

3 THE COURT: All right, ladies and gentlemen, it's
4 now my responsibility to give you the law that you're
5 going to apply to the facts and evidence you find to be
6 true in this case.

7 Now, in this matter I have not indicated to you in
8 any way what I believe the facts and evidence in this case
9 are because that's not my job. That's not my
10 responsibility. That is your job. That is your
11 responsibility. As I indicated to you earlier,
12 collectively you are the judges of the facts of this
13 particular case.

14 Now, if you came into this courtroom with any
15 preconceived ideas of what the law is, what it ought to
16 be, what it should be, what you hoped it would be, you
17 will disregard that. You will take the law as I now give
18 it to you and apply it to the facts that you find to be
19 true in this particular matter.

20 I indicated to you at the very beginning one of your
21 jobs, and duties, and responsibilities was to judge the
22 credibility and the believability of the witnesses that
23 have testified before. In doing so, you can believe one
24 witness against several, several against one. You can
25 believe a portion of what a witness says and disregard the

1 remaining portion of it:

2 If you've got a good and sound reason for doing so,
3 you could disregard in its entirety the testimony of a
4 particular witness. Now, how do you do this? You're
5 judging the credibility and believability of the
6 witnesses. You look at whether or not that witness had
7 exhibited to you any kind of interest, bias, prejudice,
8 motive they might have in giving you the testimony they
9 gave you.

10 You can consider the demeanor of the witness. That
11 is how did they appear when they gave you the testimony
12 they gave you in this particular case, and, of course, you
13 consider the opportunity for knowledge, how did they come
14 about that information that they gave you from the witness
15 stand. Your objective, ladies and gentlemen, is to find
16 the truth of this matter, find the evidence which
17 convinces you of its truth.

18 In judging the credibility and believability of the
19 witnesses, if you think about it, it is something you do
20 every single day of your life. When somebody tells you
21 something, you are automatically judging whether or not
22 you believe them, and you do that by using your good
23 common sense, and the good common sense that you use in
24 conducting your ordinary and everyday affairs, and that's
25 what we are asking you to do here today, take your good

1 common sense, apply it to the facts and evidence that
2 you've heard in this case, and find that evidence which
3 convinces you of its truth, and then you will take that
4 evidence you find to be true and weigh it against the
5 State's burden to prove the Defendant guilty beyond a
6 reasonable doubt.

7 You don't have any friends to reward. You don't have
8 any enemies to punish. Your verdict can't be the result
9 of any kind of passion, prejudice, or sympathy. It has to
10 be an examination of the evidence and find that evidence
11 which convinces you of its truth.

12 Now, in this case, I allowed certain witnesses to
13 give their opinion. Sometimes they're called expert
14 witnesses. What I do is qualify the witness to give their
15 opinion, because normally we don't allow witnesses to give
16 their opinion. They've got to tell you what they know,
17 not what they think or they believe, but when you've got
18 certain experience, training, knowledge in a
19 particularized area, we will allow certain witnesses to
20 give their opinion.

21 Now, just because the Court qualifies certain
22 witnesses to give their opinion doesn't give them any
23 special status. You judge all the witnesses the same.
24 You look at all the witnesses, judging their credibility
25 and believability, and find that evidence which convinces

1 you of its truth.

2 I told you about taking notes, and I told you about
3 that at the beginning, and I allowed you to take notes in
4 this, but I ask you to remember obviously some people take
5 notes better than others. Sometimes, you know, we have a
6 Clerk in here and they ask me how can I look at a
7 computer, and take notes, and hear what the attorneys are
8 doing. It's because I've been doing it for so long, but
9 if you don't have that training, then some people might be
10 taking better notes than others.

11 You've got to remember just because you've got it
12 written down on a piece of paper, you have to think about
13 the collective wisdom also of the jury in a particular
14 matter. Someone's recollection is considered just as
15 reliable as the notes somebody else put on a piece of
16 paper.

17 The prior record of a witness, the South Carolina
18 Rules of Evidence provides that the testimony of a witness
19 may be discredited or impeached by showing the witness has
20 been convicted of a crime for which that person could have
21 been imprisoned for more than one year or a crime that
22 involved dishonesty. Now, as to this evidence, it goes to
23 the issue of credibility or believability and no other
24 purpose.

25 The Defendant in this case did not testify. I

1 instruct you and emphasize the fact that the Defendant did
2 not testify in this case is not, is not a factor to be
3 considered by you in any way. It is not part of this
4 case. It cannot be considered by you in any way in your
5 deliberations, either mentally or in your discussions. It
6 cannot come up. It is not part of this case. The State
7 has the burden of proof to prove the Defendant guilty
8 beyond a reasonable doubt. The Defendant has nothing to
9 prove to you.

10 In this case, as in virtually every case that is
11 tried, there were presented two types of evidence, direct
12 and circumstantial evidence. Direct evidence, that's the
13 testimony of a person who asserts or claims to have actual
14 knowledge of a fact. Circumstantial evidence is proof of
15 a chain of facts indicating the existence of a fact. The
16 law doesn't make any distinction between the two. The law
17 doesn't require a greater degree of proof of one over the
18 other. You look at all the evidence in the case and find
19 that evidence which convinces you of its truth.

20 In this case, there were certain documents, proffer
21 documents, that were introduced and by direction of the
22 Court, I had a certain portion of it blacked out. The
23 reason I did that was because it didn't have anything to
24 do with this case, had nothing to do whatsoever with this
25 case, so it was blacked out, and that's the only reason,

1 is because it's not a part of the evidence in this case.

2 I told you at the beginning, and I'm telling you
3 again now, the Defendant has pled not guilty to the
4 charges the State brought against him, so that has put
5 that burden of proof on the State to prove the Defendant
6 guilty beyond a reasonable doubt. This is called the
7 presumption of innocence.

8 A person charged with committing a crime is never
9 required to prove themselves innocent. No matter what the
10 charge may be, a defendant is always presumed to be
11 innocent of the crime for which the indictment was issued
12 until and unless guilt has been proven to you by evidence
13 that satisfies you of that guilt beyond a reasonable
14 doubt. This presumption of innocence didn't end at the
15 beginning of the trial. It hasn't ended now. It does not
16 end until you find evidence that you believe to be true
17 and from that evidence believe the State has proved the
18 Defendant guilty beyond a reasonable doubt.

19 This presumption of innocence is not just some legal
20 theory. It's not just some legal phrase. It's a
21 substantial right to which every defendant is entitled
22 unless you, the jury, are satisfied from the evidence
23 presented, of the Defendant's guilt beyond a reasonable
24 doubt.

25 Now, what's reasonable doubt? Reasonable doubt is

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1 the kind of doubt that would cause an ordinary, reasonable
2 person to hesitate to act. Proof beyond a reasonable
3 doubt is proof that leaves you firmly convinced of the
4 Defendant's guilt. Now, there are very few things that we
5 can know with absolute certainty and the law doesn't
6 require the State to give you that kind of degree of
7 proof.

8 What is required is if based upon your consideration
9 of the evidence, evidence you find to be true, you are
10 firmly convinced that the Defendant is guilty of the crime
11 charged, you must find the Defendant guilty. On the other
12 hand, based upon your view of the evidence you are not
13 firmly convinced that the Defendant is guilty of the crime
14 charged, you must give the Defendant the benefit of the
15 doubt and find him not guilty.

16 Now, the State has charged the Defendant with two
17 crimes, and I'm going to go over the elements of the
18 crimes that the State has to prove to you beyond a
19 reasonable doubt, the first one being murder. The State
20 must prove beyond a reasonable doubt that the Defendant
21 killed another person with malice aforethought.

22 Now, malice is hatred, ill will, hostility towards
23 another person. It's the intentional doing of a wrongful
24 act without just cause or excuse and with the intent to
25 inflict an injury under circumstances or under

1 circumstances that the law would infer an evil intent.

2 Now, malice aforethought does not require that this
3 malice exists for any particular time before the act is
4 committed, but malice has to exist in the minds of the
5 defendant immediately before or just before and at the
6 time an act is committed. Therefore, there has to be this
7 combination of evil intent and the act.

8 Now, malice aforethought can be express or inferred,
9 and it can be shown to you by direct or -- direct evidence
10 or by inference from the facts and circumstances which
11 have been proved to you beyond a reasonable doubt. The
12 law states if one intentionally kills another during the
13 commission of a felony, the inference of malice may arise.

14 If facts are proved beyond a reasonable doubt
15 sufficient to raise an inference of malice to your
16 satisfaction, this inference would simply be an
17 evidentiary fact that you would take into consideration
18 along with all the other evidence and you give it the
19 weight that you decide it should receive.

20 The Defendant has also been charged with the crime of
21 armed robbery. In order to prove this offense the State
22 must prove beyond a reasonable doubt that the Defendant
23 took personal property from the person or presence of
24 another person. Legal or illegal property may be the
25 subject of an armed robbery. Property is within the

1 presence of a person if it's within that person's reach,
2 inspection, observation, or control so that the person
3 could, if not overcome by violence or prevented by fear
4 to, keep possession of that property.

5 The State also has to prove beyond a reasonable doubt
6 that the defendant carried the property away intending to
7 permanently deprive the owner of the property and to keep
8 the property for the defendant's own use. The slightest
9 removal of the property or the complete possession of the
10 property, even for an instant by the defendant, is
11 sufficient to show a taking and carrying away of the
12 property.

13 The taking and carrying away of that property must
14 have been done with violence or by putting the owner of
15 the property in fear of violence, and finally, the State
16 has to prove to you beyond a reasonable doubt that the
17 defendant was armed with a deadly weapon during the
18 robbery.

19 A deadly weapon is any kind of article, instrument or
20 substance which is likely to cause death or great bodily
21 harm. Whether an instrument has been used as a deadly
22 weapon depends on the facts and circumstances of each
23 case.

24 Mere presence at the scene of a crime is not
25 sufficient to prove someone guilty of that crime. The

1 burden is on the State of South Carolina to prove every
2 element of the crime charged. If you find after reviewing
3 all the evidence that the State has proved the Defendant
4 was only present at the scene of a crime and they have not
5 proved beyond a reasonable doubt any other kind of
6 participation in the crime, then you must find the
7 Defendant not guilty. The law is that proof at the scene
8 of the crime is not sufficient to find someone guilty of
9 that crime.

10 There's another principle of law that's called the
11 hand of one is the hand of all. If a crime is committed
12 by two or more people who are acting together in
13 committing a crime, the act of one is the act of all. A
14 person who joins with another to accomplish an illegal
15 purpose is criminally responsible for everything done by
16 that other person which occurs as a natural or probable
17 consequence of the act done in carrying out that common
18 plan or purpose. The act of one is the act of all, or it
19 is sometimes said the hand of one is the hand of all.

20 Prior knowledge that a crime is going to be committed
21 without more is not sufficient to make someone guilty of
22 that crime. Mere knowledge that another person is going
23 to commit the crime, even if the defendant is present, is
24 not sufficient to convict the defendant. The State has to
25 prove to you beyond a reasonable doubt the theory of the

1 hand of one is the hand of all.

2 A principal in a crime is one who either actually
3 commits the crime or who is present, aiding, abetting, or
4 assisting in committing the crime. When a person does an
5 act in the presence of and with the assistance of another,
6 the act is done by both. Where two or more acting with a
7 common plan or intent are present at the commission of a
8 crime, it does not matter who actually committed the
9 crime. All are guilty. The hand of one is the hand of
10 all.

11 Present at the commission of a crime means to be
12 sufficiently near, to aid, abet, or assist in the
13 commission of that crime. Again, mere presence at the
14 scene of the crime is not sufficient to convict. Intent
15 is a necessary element. There must have been some common
16 design or intent to commit a crime, and the crime must
17 have been committed pursuant thereto with the person
18 aiding and abetting by some overt act. Intent means
19 intending the result which actually occurs, not
20 accidentally or involuntarily. And intent can be shown by
21 acts and conduct of the defendant and any other
22 circumstances from which you could naturally and
23 reasonably infer intent.

24 Now, as to all these elements again, the State has to
25 prove all that to you beyond a reasonable doubt, because

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1 again, in everything the State has the burden of proof to
2 prove the defendant guilty beyond a reasonable doubt.

3 Now, that, ladies and gentlemen, is the law that
4 you're going to use to apply to the facts that you find to
5 be true in this particular case.

6 Now, the Court has prepared for you a verdict form
7 for your use and I believe it is fairly straightforward.
8 It has the caption of the case. It has on here murder.
9 "On the charge of murder, we, the jury, by unanimous
10 consent, find the Defendant, Tyronne Beaty," and there's
11 two choices. We put one before the other. Obviously
12 don't assign anything to that -- not guilty or guilty, and
13 once your jury has reached a unanimous verdict on that
14 particular charge, Madam Forelady, sign your name, check
15 the appropriate block, and put today's date.

16 And once you have reached a verdict on that
17 particular charge, you go to Count Two, armed robbery.
18 "On the charge of armed robbery, we, the jury, by
19 unanimous consent, find the Defendant, Tyronne Beaty," and
20 again, two choices, not guilty or guilty, and again, Madam
21 Forelady, when your jury has reached a unanimous verdict,
22 you will check the appropriate block, sign your name, and
23 put today's date to indicate your jury has reached a
24 unanimous verdict, and then you will knock on the door and
25 let the bailiff know that the jury has reached a unanimous

1 verdict on both of the charges.

2 I have said unanimous I don't know how many times.
3 It means exactly what you think it means. It means
4 twelve/zero. It doesn't mean eleven/one, ten/two, any
5 combination thereof. Whatever the verdict is, it must be
6 unanimous; everybody agrees to that verdict, so Madam
7 Forelady, when you check the blocks and you sign your
8 name, you're telling the Court every single member of the
9 jury agrees that is their verdict.

10 All right, what I'm going to have you do, Madam
11 Forelady, is take your jury -- Madam Alternate, you will
12 stay with us. Don't go anywhere. Take your jury to the
13 jury room. Do not -- do not begin your deliberations
14 until the bailiff brings in to you the verdict form and
15 the exhibits. When the bailiff does that, then you may
16 begin your deliberation. You obviously may take your pens
17 and note pads with you at this point in time. Thank you.

18 Madam Alternate, please stay with us. You sit; have
19 a seat.

20 (THE JURY RETIRES TO THE JURY ROOM AT 12:07 P.M., AND
21 THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
22 JURY.)

23 THE COURT: All right, as to the alternate, is there
24 any reason that the alternate should not be excused at
25 this time?

1 EXHIBIT NUMBER 7 AND COURT'S EXHIBIT NUMBER 8.

2 (AT 2:50 P.M., THE FOLLOWING TAKES PLACE IN THE
3 PRESENCE OF THE JURY.)

4 THE COURT: All right, Madam Forelady, and ladies
5 and gentlemen of the jury, regarding the notes that you
6 have given to me, I am going to go back over the law that
7 I charged to you previously.

8 As I told you at the very beginning, I am just going
9 to skim over this part very briefly. You understand your
10 job is to judge the credibility and believability of the
11 witnesses, and again as I told you, it's your job to find
12 the evidence that convinces you of its truth in this
13 particular matter.

14 And what I told you about the note-taking, you
15 obviously take everything into consideration and just
16 don't pay a particular part to any particular witnesses.
17 Regarding the expert witnesses, you look at all of the
18 witnesses the same.

19 I remind you about the rule of evidence that provides
20 that testimony of a witness can be discredited or
21 impeached if that witness has been convicted of a crime
22 for which they could have been imprisoned for more than
23 one year or the crime involves dishonesty. Again, that
24 goes to credibility and believability alone.

25 And the fact that the Defendant didn't testify, again

1 not a factor in this case and can't be considered by you
2 in this matter.

3 There's two types of evidence, direct and
4 circumstantial evidence, remembering there's no
5 distinction between the two. You judge it all the same.
6 You look at all the evidence the same. You find that
7 evidence which convinces you of its truth, nothing
8 different between the two.

9 Presumption of innocence, you understand the
10 Defendant comes into Court and remains -- as he has pled
11 not guilty to this, he's presumed innocent unless and
12 until you find there is sufficient evidence to convict the
13 Defendant of the crimes charged beyond a reasonable doubt.
14 That remains with the Defendant throughout the entirety of
15 the trial and remains now until you make that decision.

16 Reasonable doubt, the kind of doubt that would cause
17 a reasonable person to hesitate to act. Perfect proof
18 isn't required by the State. What's required is that they
19 provide you with proof that if based on your consideration
20 of the evidence you are firmly convinced the Defendant is
21 guilty of the crime charged, you must find him guilty. If
22 you are not firmly convinced that he is guilty of the
23 crimes charged, you must find the Defendant not guilty.

24 Murder. The Defendant is charged with the crime of
25 murder. The State has to prove to you beyond a reasonable

1 doubt that the Defendant killed another person with malice
2 aforethought. Now, malice, that's hatred, or ill will, or
3 hostility. It's the intentional doing of a wrongful act
4 without some just cause or excuse with an intent to
5 inflict an injury, or it's under circumstances that the
6 law infers an evil intent.

7 Now, that malice aforethought does not require that
8 malice exists for any particular time before the crime is
9 committed, but malice has to exist just before and at the
10 time the act is committed. It must be there just before
11 and at the time the act is committed. There has to be
12 this combination of evil intent and the act.

13 Malice aforethought can either be shown to you by
14 direct evidence or by inference from the facts that have
15 been proved to you beyond a reasonable doubt.

16 I told you if one intentionally kills another during
17 the commission of a felony, a crime, the inference of
18 malice may arise. If facts are proved beyond a reasonable
19 doubt sufficient to raise an inference of malice to your
20 satisfaction, again that's just an evidentiary fact that
21 you take into consideration along with all the other facts
22 and you decide what weight, if any, it would be given.

23 The Defendant is also charged with the crime of armed
24 robbery. The State has to prove to you beyond a
25 reasonable doubt that the Defendant took personal property

1 from the person or the presence of another. Legal or
2 illegal property can be the subject of armed robbery.
3 That can be the property. Legal property or illegal
4 property can be the subject of an armed robbery.

5 Property is in the presence of a person if it is
6 within that person's reach, inspection, observation, or
7 control so that the person could keep their property if
8 they weren't overcome with violence or prevented by fear
9 from keeping their property.

10 The State has to prove to you beyond a reasonable
11 doubt that the Defendant carried the property away
12 intending to permanently deprive the owner of the property
13 and to keep the property for their own use. The slightest
14 removal of the property or the complete possession of the
15 property, even for an instant, by the Defendant is
16 sufficient to show a taking and carrying away of the
17 property.

18 The taking and carrying away of that property must
19 have been done with violence or putting the owner of the
20 property in fear of violence, and finally, the State has
21 to prove to you beyond a reasonable doubt that the
22 Defendant was armed with a deadly weapon during the
23 robbery, and again, deadly weapon is any kind of article,
24 instrument, substance which is likely to cause death or
25 great bodily harm, and whether it is a deadly weapon or

1 not depends on the facts and circumstances of each case.

2 Now, regarding these particular matters, the crimes
3 charged, mere presence at the scene of the crime is not
4 sufficient to prove someone guilty of that crime. The
5 burden is, and I told you it always is on the State of
6 South Carolina, to prove every element of the crime
7 charged beyond a reasonable doubt.

8 If you find after reviewing all the evidence that the
9 State has only proved to you beyond a reasonable doubt
10 that the Defendant was only present at the scene of the
11 crime and they haven't proved to you beyond a reasonable
12 doubt any other participation in the crime, then you must
13 find the Defendant not guilty.

14 And I also told you about the theory of law of the
15 hand of one is the hand of all. If a crime committed by
16 two or more people who are acting together in committing a
17 crime, the act of one person is the act of all. A person
18 who joins with another to accomplish an illegal purpose is
19 criminally responsible for everything done by that other
20 person which occurs as a natural or a probable consequence
21 of the act done in carrying out that common plan or
22 purpose. The act of one is the act of all, or it is
23 sometimes said the hand of one is the hand of all.

24 Now, prior knowledge that a crime is going to be
25 committed without anything else is not sufficient to make

1 a person guilty of that crime. Mere knowledge that
2 another person is going to commit a crime, even if the
3 defendant is present when the crime is committed, is not
4 sufficient to convict a defendant. The State has to prove
5 to you beyond a reasonable doubt the theory of the hand of
6 one or the hand of all.

7 A principal participant in a crime is one who either
8 actually commits the crime or who is present, aiding,
9 abetting, or assisting in committing the crime. When a
10 person does an act in the presence of and with the
11 assistance of another, the act is done by both. When two
12 or more acting with a common plan or attempt are present
13 at the commission of a crime, it does not matter who
14 actually committed the crime. All are guilty. The hand
15 of one is the hand of all.

16 Present at the commission of a crime means to be
17 sufficiently near, to aid, abet, or assist in the
18 commission of the crime. Now, again, mere presence at the
19 scene of the crime is not sufficient to convict somebody.
20 Intent is a necessary element, for there must have been
21 some common design or intent to commit a crime, and the
22 crime must have been committed pursuant with the person
23 aiding and abetting by some overt act.

24 Intent means intending the result which actually
25 occurs, not accidentally or involuntarily. An intent can

1 be shown by acts and conduct of the defendant or other
2 circumstances for which you could reasonably infer the
3 intent.

4 That, ladies and gentlemen, is the law that you need
5 to apply to the facts as you find to be true in this case,
6 and remembering again it is the State's burden of proof to
7 prove the Defendant guilty beyond a reasonable doubt based
8 on the evidence presented in accordance with this law, all
9 of the totality, all of the things I told you, using that
10 law, and again, your decision has to be unanimous.

11 Whatever the decision is, it has to be the decision of all
12 twelve of you. All twelve of you must agree. That is the
13 decision, whatever it is, whatever y'all agree, the
14 decision.

15 All right, Madam Forelady, take your jury back to the
16 jury room and proceed with your deliberations. Thank you
17 very much.

18 (AT 3:03 P.M., THE JURY RETURNS TO THE JURY ROOM, AND
19 THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
20 JURY.)

21 THE COURT: Exceptions, deletions, additions to the
22 charge from the State?

23 MS. VON HERRMANN: None from the State.

24 THE COURT: From the Defense?

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

CERTIFICATE OF COUNSEL FOR RESPONDENT

Counsel for Respondent certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material, and that this Supplemental 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 24, 2013.



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