

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY

J. C. Buddy Nicholson, Jr., Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DERELL GREEN,

APPELLANT

APPELLATE CASE NO. 2011-201486

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

STATE’S EXHIBIT #28 (DVD)

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
State of South Carolina,	)	CASE NO. 2010-JU-10-0180,
	)	2010-JU-10-0181,
	)	2010-JU-10-0182
PETITIONER,	)	
	)	
IN THE INTEREST OF:	)	Charleston, South Carolina
	)	
Derell Green,	)	
	)	
A JUVENILE.	)	
	)	

TRANSCRIPT OF RECORD

(A certification sheet will be attached bearing an original signature
if this transcript has been certified by the court reporter.)

COMMENCING:

October 21, 2010 10:05 a.m.

Before The Honorable Judy L. McMahon

APPEARANCES:

Attorney for the Plaintiff
Anne B. Seymour, Esquire

Attorney for the Defendant
Megan Ehrlich, Esquire

1 manslaughter charge would be considered a violent offense by
2 the Department of Juvenile Justice under that statute he
3 would be transferred at age 17 to the youthful offender
4 division of the Department of Corrections. I believe that
5 the court indicated ---

6 THE COURT: His -- his expert testified about that, and
7 that was in her report.

8 MS. ERHLICH: Okay.

9 THE COURT: Go ahead.

10 MS. ERHLICH: I believe that the court in your -- in
11 the ruling indicated that there would be a lack of services
12 upon the transfer to Department of Corrections. And that is
13 really one of the main things that we wanted to bring up
14 today. There are services available to him through the
15 youthful offender division.

16 All -- there is a list of services available, and on
17 their website it provides all those services. I have a copy
18 of that if the court wants to review it.

19 THE COURT: Yes, let's go ahead and mark that.
20 (Defendant's Exhibit No. 1, list of youthful offender
21 services, was marked for identification.)

22 THE COURT: Go ahead.

23 MS. ERHLICH: Your Honor, the services for him would
24 not stop at age 17 just because he is transferred over to
25 Department of Corrections, because the statute specifically

1 would require that he be housed at the youthful offender
2 division.

3 There is a difference between just going into a
4 maximum-security institution or going into the youthful
5 offender division.

6 They have a wide array of services including social
7 skills programming, academic requirements. There's phases
8 of the program that in some way would apply to Derell, but
9 he would not complete the program as quickly as a regular
10 adult offender placed into the youthful offender program.

11 But really the services there pick up where Department
12 of Juvenile Justice would lead off into if he is transferred
13 to Department of Corrections. There is a case management
14 team. And then on Page 3 just substance abuse treatment,
15 family counseling, victimization counseling, anger
16 management, life skills.

17 And I think really if he is maintained in family court
18 the services wouldn't end just because he has to do an adult
19 transfer at age 17.

20 Also in the motion, Your Honor, we indicated that the
21 decision to send him to General Sessions Court would be
22 unnecessarily severe given his lack of prior contact,
23 minimal involvement with services prior to his arrest, and
24 special-education status, his age, and all the other
25 testimony that was provided by defense expert as well as the

1 State's expert about his ability to express empathy and
2 remorse and also with the strong family support that would
3 exist upon his release ultimately from Department of
4 Corrections.

5 Your Honor, I don't want to have a new hearing. I know
6 that the court heard me over and over again talk that
7 decreased culpability of a juvenile versus an adult. I do
8 just want to I guess bring that up again, remind the court
9 of those arguments that we made on his behalf.

10 Also, Your Honor, I think the court ruled that it would
11 be in his best interest to be waived up. And it is just
12 hard to see how sending somebody into an adult system where
13 he's potentially facing a 30-year sentence to life could be
14 in his best interest given the contact that he would have in
15 a harsh prison setting, given the fact that he would
16 basically grow up in prison.

17 He is only -- he was only 14 at the time of his arrest
18 with an eighth grade education. And it is just hard to
19 imagine how spending the rest of his teen years and 20s and
20 30s could be in his best interest.

21 Just in conclusion, Your Honor, we would ask that you
22 reconsider your decision to waive him up and your finding
23 that he could not be rehabilitated in the juvenile setting,
24 especially given the information on the youthful offender
25 program, and your finding that it is in his best interest.

1 THE COURT: All right. In response?

2 MS. SEYMOUR: Very briefly, Your Honor. The court
3 considered whether the juvenile could be rehabilitated in
4 the family court system.

5 While the State agrees the same opportunities will be
6 available for Derell with -- as long as he is with the
7 Department of Juvenile Justice where he will be until he is
8 17 he will receive all of the opportunities that the defense
9 counsel listed.

10 The difference between the two systems is the length of
11 time we have for rehabilitation. The testimony of the
12 defense witness, the psychiatrist, was that he is in need of
13 long-term treatment and would need treatment past the age of
14 21.

15 The court noted that the juvenile would have no
16 supervision, there would be no enforcement for need for
17 treatment following the age of 21 if he were in the juvenile
18 system.

19 There was no testimony in the waiver hearing regarding
20 the youthful offender program. How -- if Your Honor is
21 going to consider that, even though it was not discussed in
22 the hearing, then the court would have to review all the
23 services available in Department of Corrections.

24 Your Honor, the defense counsel is speaking to the best
25 interest of the juvenile; but the court is placed in the

1 position to have to balance not only the best interest of
2 the juvenile but protection of the community.

3 And in that balance the court found that if you have a
4 juvenile who shoots and kills a 17-year-old classmate after
5 school how do you balance that protection in the community
6 with a juvenile was also in need of long-term treatment
7 past the age of 21. And the court rightly found that the
8 adult system is therefore the appropriate place for Derell
9 Green.

10 THE COURT: All right.

11 MS. ERHLICH: Your Honor, may I reply briefly?

12 THE COURT: Go ahead.

13 MS. ERHLICH: Just specifically about our expert, I
14 believe that her testimony was that the long-term treatment
15 she was referring to would be medication management through
16 a psychiatrist.

17 THE COURT: I believe she said and counseling. Why
18 don't you pull it out. I did read and reread those
19 evaluations. But I would want you to just check that.
20 Because I thought it was that he would need to see a
21 psychiatrist for medication management and also counseling.

22 MS. ERHLICH: The court's indulgence.

23 THE COURT: And I was going to take this under
24 advisement, and I was going to go back and look at it. But
25 why don't you -- why don't we -- we may just need to take a

1 minute off the record and look.

2 (Break, off the record, 10:17 a.m. to 10:18 a.m.)

3 MS. ERHLICH: Your Honor, and I can share this with Ms.
4 Seymour. I have that I asked Dr. Halavonich when you say
5 long-term treatment do you believe Department of Juvenile
6 Justice and the family court system can address those
7 concerns long-term, is that enough time.

8 She said the short answer to that is yes, I think, you
9 know, if you went through the family court system and with a
10 release date at age 21 he needs to maintain treatment -- I
11 mean he needs to keep treating his anxiety disorder; he
12 needs to keep abstaining from substances; I don't -- I don't
13 think those are things that couldn't be done successfully
14 with him in the community.

15 And then I think I asked her if having a supportive
16 family would help with that.

17 THE COURT: Do you have a copy of that?

18 MS. ERHLICH: I can bring this up there for Your Honor
19 to review if you would like. May I approach?

20 THE COURT: It must have been in my notes from her
21 testimony. But I took it to mean he not only needed
22 medication management but he needed counseling too. Let me
23 read it.

24 (Document presented to the court.)

25 THE COURT: Okay. Anything further?

1 MS. SEYMOUR: Court's indulgence, Your Honor.

2 (Pause 10:20 to 10:21)

3 MS. SEYMOUR: Your Honor, I believe that it was in Dr.
4 Halavonich's waiver evaluation where she stated he displayed
5 difficulty processing information in a rational manner and
6 weighing the pros and cons when making decisions. She --
7 has difficulty gauging the long-term consequences of his
8 actions. Research has demonstrated that brain development
9 particularly in the frontal lobe that is largely responsible
10 for impulse control and executive functioning continues
11 through the age of 21. His abilities in these areas can be
12 expected to continue to strengthen.

13 And then it states under prospects for protection of
14 the public, Derell needs it is my opinion long-term
15 protection for the public would maximize through the
16 following:

17 He needs to be in a setting where he continues his
18 education with resources available to address special ed and
19 emotional disability needs. He needs to be in a highly
20 structured setting. Long-term treatment by both the
21 psychiatrist for medication management and a counselor for
22 individual therapy regarding his disruptive behaviors and
23 his history of marijuana abuse as indicated.

24 THE COURT: Okay.

25 MS. ERHLICH: Judge, I have one more thing.

1 THE COURT: Go ahead.

2 MS. ERHLICH: I think -- I think the position was that
3 the services that he needs, whether or not it is medication
4 or counseling after he is 21, because of the strong family
5 support that was brought up not just by the defense but also
6 by the State, there are -- there is somebody there for him
7 when he gets out at age 21 that would be helping him through
8 the transition process including a parole officer if he is
9 paroled prior to 21.

10 And, Your Honor, I would just move to put into evidence
11 the exhibit that was marked just so it is in there for the
12 court's record.

13 THE COURT: I'm sorry; what?

14 MS. ERHLICH: I would just move to put into evidence
15 the exhibit that was marked on the youthful offender
16 information ---

17 THE COURT: It is. It is admitted.

18 MS. ERHLICH: --- so that is part of the record.

19 THE COURT: It is admitted. Defendant's 1.

20 (Defendant's Exhibit No. 1 was admitted into evidence.)

21 MS. ERHLICH: Thank you, Your Honor.

22 THE COURT: Any response?

23 MS. SEYMOUR: No, Your Honor.

24 THE COURT: Anything from DJJ?

25 MS. HYRNE: No, Your Honor.

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	2010-GS-10-08153

STATE OF SOUTH CAROLINA	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	VOLUME 1 of 4
DERELL GREEN	)	
DEFENDANT	)	

August 22, 2011
Charleston, South Carolina

B E F O R E:

THE HONORABLE J. C. NICHOLSON, JR., Judge and a jury

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Attorneys for the Defendant

CAROL M. THUEME, RPR
Official Court Reporter

1 MS. EHRLICH: Your Honor, I guess I'm trying
2 to -- we're trying to get clarification about whether or
3 not he's intending on using that identification and I
4 think he said "it depends on her." I guess that's what
5 our question is.

6 MR. DURANT: I said it depended on her because I
7 don't know what she's going to say in terms of -- because
8 she can potentially be a hostile witness and I may end up
9 cross-examining her myself.

10 THE COURT: Is there any reason we can't deal
11 with that at the time --

12 MS. PROCTOR: Let's deal with it later.

13 THE COURT: We can deal with that when it comes
14 up and I can see how it's going, okay?

15 MS. PROCTOR: That's fine.

16 THE COURT: I just don't know of any way I can
17 deal with it at this time.

18 So what does that leave, the motion in limine
19 and that's involving the Jackson v Denno?

20 MR. DURANT: That's the Jackson v Denno and the
21 Neil v Biggers involving Jacquintus Washington and
22 Investigator Hill.

23 THE COURT: All right. Let me find out from the
24 defense what they're objecting to.

25 Are you objecting to whether it was freely and

1 voluntarily given, the Miranda rights were given, or both
2 or what was the situation? That's what I need to know
3 before we get into testimony.

4 What are you objecting to on behalf of the
5 defendant?

6 MS. EHRLICH: Judge, our position is going to be
7 that he did not understand the Miranda rights when he
8 waived them and that statement was involuntarily made.

9 THE COURT: So your position is not whether they
10 were given or not but the fact that he did not understand
11 it?

12 MS. EHRLICH: We know that they were given.
13 It's whether or not --

14 THE COURT: And whether the statement was
15 voluntarily given; is that correct?

16 MS. EHRLICH: Yes, sir.

17 THE COURT: Okay.

18 MS. EHRLICH: We have two other --

19 THE COURT: What did the statement consist of?
20 Is it in writing, oral, or what?

21 MR. DURANT: It's two different written
22 statements, Your Honor.

23 THE COURT: Okay.

24 MS. EHRLICH: It's two different written
25 statements given over a course of many hours.

1 THE COURT: Okay.

2 MS. EHRLICH: And, Judge, we have two other
3 issues to raise. I don't know if you want to address
4 those now or after we do his --

5 THE COURT: Well, you've got the motion to
6 remand jurisdiction to family court. I understand that.
7 What else do you have besides that that we haven't talked
8 about?

9 MS. EHRLICH: Judge, the only other issue that
10 we have is, I filed a motion against the Department of
11 Juvenile Justice for the release of records on some of the
12 witnesses. My understanding from their attorney is that
13 they could not consent to --

14 THE COURT: They need a court order because
15 they're privileged.

16 MS. EHRLICH: I have a proposed order if Your
17 Honor would be willing to look at it.

18 THE COURT: Have they been -- has the Department
19 of Juvenile Justice been notified?

20 MS. EHRLICH: They were notified. They said
21 that they would not object to it, but they weren't going
22 to sign a consent order for it.

23 THE COURT: Okay. Why do you need them?

24 MS. EHRLICH: I'm looking for --

25 THE COURT: And this is on who now?

1 THE COURT: What was his findings?

2 MS. EHRLICH: Her findings --

3 THE COURT: Or her findings.

4 MS. EHRLICH: Her findings were that he was less
5 mature, that he had social anxiety issues, untreated
6 depression, and her position was that he should remain in
7 family court.

8 Department of Juvenile Justice did their own
9 evaluation and the way they do their evaluations, they try
10 to stay, you know, four factors this way, four factors
11 that way, and let the Court decide where he should be.

12 But our expert was saying that he's better
13 suited to the juvenile system where he can be
14 rehabilitated, receive services, go to Department of
15 Juvenile Justice and then at 17, go to the Youthful
16 Offender program instead of a maximum security prison.

17 So he's going to go -- if he's convicted, at 17
18 he'll go from the Department of Juvenile Justice where he
19 gets education, social work, even if convicted as an
20 adult, but then at 17 he goes to a maximum security prison
21 where all he's going to do is be with adults.

22 THE COURT: Well, thank you very much for
23 answering my questions.

24 Let me ask you another one about Code Section
25 63-19-1210 (3).

1 MR. DURANT: Except the answer to that one is we
2 have double jeopardy considerations that they don't have,
3 Your Honor.

4 THE COURT: Did you find anything in those
5 annotations?

6 MS. PROCTOR: I'm still looking.

7 THE COURT: All right. I'm going to let them
8 continue to look at the annotations while we get started
9 on the Jackson v Denno hearing.

10 I'll take your motion under advisement at this
11 time until you have an opportunity to look at it, okay?

12 MS. EHRLICH: Thank you, Your Honor.

13 THE COURT: Just let me know what you find out.
14 Solicitor, we've got two written statements you
15 say?

16 MR. DURANT: That's correct, Your Honor.

17 THE COURT: Could you share a copy of them with
18 me so I can look at them very briefly and you can call
19 your first witness.

20 MR. DURANT: I have the originals marked, Your
21 Honor. Can I share those with you?

22 THE COURT: That will be fine. I'll be happy
23 with whatever you have I can look at.

24 Okay. Want to call your first witness on the
25 Jackson v Denno?

1 MR. DURANT: The State would call Alan Kramitz.

2 THE CLERK: Raise your right hand.

3 ALAN KRAMITZ, after being duly sworn, testified
4 as follows:

5 THE CLERK: Sir, if you'd take your seat. Sir,
6 if you'd state your first and last name, spelling your
7 last for the record, please.

8 THE WITNESS: Alan Kramitz, K-R-A-M-I-T-Z.

9 IN CAMERA DIRECT EXAMINATION

10 BY MR. DURANT:

11 Q You're employed where?

12 A City of North Charleston Police Department.

13 Q And in what capacity?

14 A Detective assigned to the Persons Unit.

15 Q And in that capacity, did you have any involvement in
16 the case involving the shooting death of Larry Taron
17 Maybank?

18 A Yes, I did.

19 Q What is your involvement in that case?

20 A I'm the assigned detective, the lead detective in
21 that case.

22 Q Okay. And did you actually respond to the scene of
23 the shooting that day?

24 A Yes, sir, I did.

25 Q And while you were there, did you have the occasion

1 to be dispatched to 2707 West Surrey Drive?

2 A That's correct.

3 Q And do you recall what time it was when you were
4 dispatched to that address?

5 A No. I'm sorry. I apologize.

6 Q Do you have your --

7 A Yes, I do.

8 Q Looking at your records, do they reflect or refresh
9 your recollection?

10 A Yes. I responded to the shooting at approximately --
11 went to the house, sir?

12 Q What time did you go to the shooting and what time
13 did you go to the house?

14 A Approximately 1330, 1:30 in the afternoon went to the
15 shooting and approximately 1410, which is 2:10 in the
16 afternoon --

17 Q You went to 2707 West Surrey?

18 A Yes.

19 Q And this is on February 5th, 2010?

20 A Yes, sir. I'm sorry, 1405, which is 2:05 in the
21 afternoon.

22 Q Okay. So you went to the house. And who lives at
23 2707 West Surrey?

24 A Derell Green.

25 Q And tell me, who did you go to 2707 West Surrey with?

1 A Sergeant John Reynolds.

2 Q And for what purpose did you go over there?

3 A We received information that the suspect lived at
4 that residence.

5 Q What subject?

6 A Derell Green.

7 Q Okay. And you all had indication at that time that
8 Derell Green may have been involved in this shooting; is
9 that correct?

10 A Yes, sir.

11 Q And what happened when you got over to 2707 West
12 Surrey?

13 A Arrived there and our Isle of P Team, which is kind
14 of a high-risk SWAT team, they were there along with two
15 of the detectives were on scene.

16 I was informed by Sergeant Roberts, who's a
17 lieutenant now, that they tried to locate who was inside
18 the residence by knocking on the door and there was no
19 answer at the door.

20 Q Okay. And do you know how long they had been trying
21 to get someone to answer the door?

22 A It had been quite awhile.

23 Q What happened after no one answered the door? Did
24 you try to knock on it?

25 A Yes, I did.

1 Q How many times did you knock on the door?

2 A Several.

3 Q Front door, back door, or both?

4 A Front door.

5 Q Were you able to get anybody to come to the door?

6 A No, sir.

7 Q And what happened at that point?

8 A Myself and Sergeant Reynolds stayed on the scene.

9 The Isle of P detectives, investigators left the area
10 along with two of the detectives. They were following up
11 other leads on this case, at which time Dawan Nelson
12 showed up.

13 Q Okay. And who is Dawan Nelson?

14 A I believe the stepfather of Derell Green.

15 Q And do you recall what time it was when Mr. Nelson
16 showed up at the residence?

17 A I think it was 1420.

18 Q That would be 2:20 p.m.?

19 A Yes, sir.

20 Q And, pardon me, he's the defendant's stepfather; is
21 that correct?

22 A Yes, sir.

23 Q Okay. And what happened when Mr. Dawan Nelson got
24 there?

25 A He arrived on scene. I exited the passenger's side

1 of my vehicle, Sergeant Reynolds was driving, and I
2 explained the situation Mr. Nelson.

3 Q All right. Did he ask why you were there?

4 A Yes, he did.

5 Q Okay. Is that -- what did you tell him?

6 A I explained that Derell was involved as a suspect in
7 a shooting that had just occurred on Bonds Avenue and we
8 needed to see if he was inside the residence.

9 Q Okay. And by this time did -- was the defendant's
10 mother there, too?

11 A She showed up a short time after that.

12 Q Okay. After Mr. Nelson?

13 A I believe it was 1422 or 2:22 in the afternoon.

14 Q Okay. Who is Ms. Nelson?

15 A Tamica Nelson is the mother of Derell Green.

16 Q Okay. And she is his biological mother; is that
17 correct?

18 A Yes, sir.

19 Q And what happened after Mrs. Nelson got there?

20 A I was informed by both parents that they would let me
21 inside the residence.

22 Q Okay. Did Mrs. Nelson also ask what was going on?

23 A Yes. And I told her a situation of which Derell was
24 involved in.

25 Q Okay. And what did they tell you?

1 A They would let me inside the residence. Mr. Nelson
2 informed me that --

3 MS. EHRLICH: Objection. Hearsay.

4 THE COURT: Pardon?

5 MS. EHRLICH: Hearsay.

6 THE COURT: Overruled.

7 THE WITNESS: Mr. Nelson informed me that if
8 Derell is in trouble that he'd probably run, at which time
9 Mr. Nelson himself informed Sergeant Reynolds to stay at
10 the front door while me and Ms. Nelson or Mr. Nelson went
11 to the back door.

12 BY MR. DURANT:

13 Q Okay. Now what happened after you and Mr. Nelson and
14 Mrs. Nelson went to the back door?

15 A Mr. Nelson banged the door pretty hard. He was
16 wanting to get -- he wanted to get inside the residence
17 but the back door was locked.

18 Q Okay. He didn't appear to have a key?

19 A No, he did not.

20 Q Did Mrs. Nelson appear to have a key?

21 A No.

22 Q Okay. And what happened after he banged on the door?

23 A We were back there several minutes banging on the
24 door, at which time Tonya Green came to the back door,
25 Derell Green's sister.

1 Q Okay. And she opened the door?

2 A Yes, she did.

3 Mr. Nelson and Mrs. Nelson were kind of upset
4 about why the door was locked and why they couldn't get
5 inside the residence.

6 Q Now what happened after they let you inside the
7 residence? Who was in the residence besides the sister?

8 A Derell Green and Daqone Lance.

9 Q Okay. And where were Derell Green and Daqone Lance?

10 A Sitting on the couch watching TV in the living room
11 area.

12 Q And what happened after you found Mr. Lance and the
13 defendant in the living room area watching TV on the
14 couch?

15 A I explained to Mr. Nelson and Mrs. Nelson that they
16 had to come to our North Charleston Police Department due
17 to the allegations that we're investigating, at which time
18 Mrs. Nelson said, "Do what you have to do. If Derell's
19 done something wrong, he needs to tell you."

20 Q And did you ask them to come to headquarters with
21 you?

22 A Yes, I did. I asked both the Nelsons to come to the
23 precinct also with me. They refused. They said that we
24 needed to do what we needed to do, at which time I told
25 the Nelsons that I was handcuffing both Daqone and Derell

1 due to the seriousness of the case.

2 Q And so they were given the opportunity to come to
3 headquarters with you?

4 A That's correct.

5 Q They had transportation?

6 A Yes, they did. They had vehicles.

7 Q Okay. But they declined to do so?

8 A Yes. We offered a ride also. If they wanted to come
9 down, we'd take them back and forth.

10 Q Okay. And where were Mr. Lance and Mr. Nelson (sic)
11 taken?

12 A North Charleston Police Department, Detective
13 Division. An interview room.

14 Q Okay. And if you would describe the interview room
15 that you used.

16 A A table, two chairs, beige in color, with an
17 observation window.

18 MR. DURANT: Okay. Have you had a chance to
19 read those, Your Honor?

20 BY MR. DURANT:

21 Q Now what happened when you got to the interview room?

22 A I provided Derell Green with his constitutional
23 rights.

24 Q And how did you go about doing that?

25 A The North Charleston Police Department has their own

1 form we use. It says North Charleston Police Department
2 Advice of Constitutional Rights form.

3 Q Okay. We're going to get into that in a second, but
4 I wanted to ask you something. What was -- and this is
5 Mr. Green we're talking about over here, correct?

6 A Yes, it is.

7 Q What was his demeanor at the time?

8 A Calm.

9 Q Okay. Let me hand you what's previously been marked
10 as State's Exhibit No. 35 for identification. And if you
11 would, tell us what that document is.

12 A This is the form that I read to Derell Green.

13 Q Okay.

14 A It says "North Charleston Police Department Advice of
15 Constitutional Rights" form.

16 Q Okay. And if you would, would you explain to Judge
17 Nicholson how you used to form to go about advising Mr.
18 Green of his rights.

19 A I asked him his name, date of birth, his age.

20 Q What was his date of birth?

21 A How far in school he got in school.

22 His date of birth was [REDACTED] or [REDACTED].

23 Q And what grade was he in in school?

24 A Eighth.

25 Q And so he was 14 at the time; is that correct?

1 A Yes, sir.

2 Q Okay. And how did you use that form to go with
3 advising him of his rights?

4 A I showed him the form first and explained that this
5 is a constitutional rights form and due to the fact of the
6 allegations made against him and that there are one, two,
7 three, four, five advise of rights we use. I would read
8 one and explain it to him, ask him if he understood it..

9 Q What do you mean "explain it to him?"

10 A "You have the absolute right to remain silent" and I
11 would explain what that all means.

12 Q Okay. Tell the judge how you explained it to him.

13 A I told Derell Green if he didn't want to talk about
14 the situation, he didn't have to.

15 Q Okay.

16 A If he wanted a lawyer present, he could have one
17 present.

18 Q Okay. Did -- when you explained it to him, did he
19 indicate that he understood it?

20 A Yes.

21 Q How about the second right?

22 A "If you do answer the questions or give a statement,
23 anything you say can be used against you."

24 I explained to him that if you do tell me
25 anything and we arrest you, it can be used against you in

1 court.

2 Q And did he indicate that he understood that?

3 A Yes.

4 Q How about the third right?

5 A "You have the right to have a lawyer of your choice
6 present during questioning."

7 I explained to him we will provide an attorney
8 for you or get one for you or bring somebody to you if you
9 need an attorney to help with your questions I'm going to
10 ask you.

11 Q Did you ask him if he understood that?

12 A Yes, I did.

13 Q How did he respond?

14 A He said he understood.

15 Q Okay. And keep going.

16 A I said, "If you request a lawyer and are unable to
17 afford one, we will provide you an attorney free of
18 charge. It will not cost you or your family any money at
19 all. That's just your right."

20 Q Okay. And did he indicate that he understood that?

21 A That's correct.

22 Q And finally the last one?

23 A "If you decide to answer questions here today without
24 a lawyer to represent you, you have the absolute right
25 during this thing to stop any questions."

1 I explained to Derell, I said, if you don't like
2 the way this interview's going, you can stop at any time
3 you want and there's no hard feelings, there's nothing
4 personal here, that if you don't like the way my questions
5 are going, we can stop at any time you want to. He
6 understood.

7 Q And when you say you explained to him, why did you
8 explain the rights to him like that?

9 A Because he's 14 years old and also I do it with
10 everybody I read the rights to; no matter if they're 14 or
11 25 or 35, I explain the rights completely.

12 Q Okay. Now at any time during this process where you
13 were advising him of his rights, did he appear to be
14 confused at all?

15 A No.

16 Q Did he indicate that he didn't understand you?

17 A No.

18 Q Did he ever ask you to explain something to him
19 further?

20 A No.

21 Q Did he appear to be under the influence of alcohol or
22 drugs or any other intoxicants?

23 A No, sir.

24 Q Did he appear to comprehend what you were saying?

25 A Yes.

1 Q Were you able to comprehend what he was saying?

2 A Yes.

3 Q Was there any problem with his speech or anything of
4 that nature that would indicate to you that he was under
5 the influence or didn't know what was going on?

6 A No, sir.

7 Q Was there anything about his demeanor or his conduct
8 which indicated to you that he did not understand what you
9 had said to him and what was going on?

10 A No, sir.

11 Q So what did you have him do after you advised him of
12 his rights?

13 A I had him sign it, the appropriate line, and I signed
14 right behind him.

15 Q Okay. And what do the initials by the individual
16 rights, when was that done?

17 A That's afterwards. After I read all five of them to
18 him, I ask him again, I say, "Do you understand everything
19 I explained to you?" He said yes. I told him, "Derell, I
20 need you to go ahead and initial each one of those lines.
21 This is not an admission of guilt or innocence. All it
22 says is that you understood and I explained the rights to
23 you, that I gave you the rights."

24 Q And did he initial the form?

25 A Yes, he did.

1 Q Okay. Now after you advised him of his rights, did
2 he indicate to you that he was willing to continue talking
3 with you?

4 A Yes. At the bottom of our form here we have a
5 statement, "Having these rights in mind, I wish to waive
6 these rights and answer questions. No threats, force or
7 promises of any kind have been made to you because you
8 waived these rights," and I explained that to him also.

9 I said "I have not yelled at you, screamed at
10 you, I'm not -- you know, nothing needs to cause you fear
11 or your family fear. It's just we're talking, that's all
12 it is." And he said he wanted to talk about it. And also
13 he signed it. I put the time, non-military time, and then
14 I signed it also.

15 Q Okay. And what time did you complete advising him of
16 his rights?

17 A 3:47 p.m.

18 Q Okay. That would be on February 5th, correct?

19 A Yes, sir.

20 Q Now what happened after you advised him of his rights
21 and then he indicated he was willing to talk to you and
22 you had him sign the waiver?

23 A I asked him if he needed a bathroom break or anything
24 to eat, anything like that at all, something to drink, he
25 said no, he's fine, and we went into the statement.

1 Q Okay. And how did you go about taking a statement
2 from him?

3 A First there's a verbal statement and then I would put
4 it on paper. I was asking questions or asking him what
5 happened and I would write it down.

6 Q Okay. So you would write down a question?

7 A Yes.

8 Q And you would ask him the question?

9 A Yes.

10 Q And what happened when he answered the question?

11 A He'd give me an answer and I wrote it down.

12 Q And you wrote it down as he told it to you?

13 A Yes.

14 Q And at any time during this process did you promise
15 him anything?

16 A No, sir.

17 Q Did you threaten him in any way?

18 A No, sir.

19 Q Did you threaten his family?

20 A No, sir.

21 Q Did you tell him that things would go easy on him if
22 he just talked to you?

23 A No, sir.

24 Q Did you induce him in any way by trickery or fraud?

25 A No, sir. I was very upfront with him.

1 Q Is that your style to do that?

2 A Yes. I have nothing to gain by lying to somebody. I
3 always tell them the truth. I explain to them what's
4 going on, and that's the way I do it.

5 Q Now at that point he gave you this. I hand you
6 what's been marked as State's Exhibit No. 36 and ask if
7 you can identify that item.

8 A Yes. This is the first statement.

9 Q Okay. And you say first statement because there were
10 two statements. Correct?

11 A Yes, sir.

12 Q Okay. And once you went over that or completed that
13 statement, what did you do with it?

14 A I read it back to him. I offered him the chance to
15 read it also and asked him if this is what happened. He
16 said yes, this is what happened.

17 Q Okay. And what about signing the statement?

18 A He signed the statement, each page.

19 Q Okay. And you signed as a witness?

20 A Yes, sir.

21 Q And I'm not going to ask you to publish the whole
22 thing because I think the judge has already read it, but
23 basically what did he tell you in the first statement?

24 A He spent time at the school in the morning, was at
25 his house after which he went right to school was

1 basically his day of that date.

2 Q Okay. And getting onto the afternoon of the
3 shooting, what did he tell you about the shooting?

4 A I asked him did something happen at the school; he
5 said there was a shooting on Bonds Avenue. I asked him
6 where he was when the shooting happened. He said he was
7 on Bonds Avenue heard and he said he heard three or four
8 shots and he ran to his house. And I asked him if he was
9 with anybody during the shooting and he told me no.

10 Q And who wrote out the questions and answers?

11 A I did.

12 Q Why?

13 A It's just my style. If -- I asked him if he wants to
14 write his own statement, he said no, then I would write it
15 for him.

16 Q Okay. And what time was it when you started taking
17 that first day?

18 A 3:55.

19 Q Okay. And how long did this process of writing out
20 the questions and the answers and all that take?

21 A An hour and a half, two hours at the most.

22 Q Okay. So you began and pretty shortly, within
23 minutes after, began advising him of his rights?

24 A That's correct.

25 Q Now what happened after you obtained that statement,

1 went over it with him, he signed it, where was Derell
2 taken then?

3 A He was still in the interview room.

4 Q Okay. Was he in the interview room with anybody?

5 A By himself.

6 Q Okay.

7 A Might check on him periodically, but he was by
8 himself.

9 Q Okay. Check on him periodically for what?

10 A Make sure he's okay, if he needs a bathroom break,
11 something to eat, something to drink.

12 Q And you said you started taking the first written
13 statement about what time?

14 A 3:55.

15 Q Okay. Around 4 p.m.?

16 A Yes.

17 Q And it took you about how long?

18 A An hour, hour and a half.

19 Q Okay. So 5, 5:30?

20 A Yes, sir.

21 Q How long was he in the interview room alone or by
22 himself?

23 A Minutes at a time or a half hour it might be.

24 Q I mean without somebody going in there and talking to
25 him. I know you checked on him and stuff like that.

1 A Right.

2 Q As a matter of fact, did you ask him if he wanted
3 anything to eat?

4 A Yes, I did.

5 Q Did you all end up getting him something to eat that
6 night?

7 A Yes, we did.

8 Q And -- but from between 5:30 and when, how long was
9 it when he was just in there pretty much by himself?

10 A Not much at all. I mean my desk is behind the
11 interview room, so I'd check on him periodically.

12 Q Okay. Now who went in there and talked to him at
13 about 7:30?

14 A Captain Sturkie.

15 Q Okay. Before -- between the time you finished
16 talking to him at 5:30 and when Detective Sturkie went in
17 there at 7, did anybody else attempt to question him?

18 A No.

19 Q Okay. So we're talking he's in there an hour and a
20 half?

21 A Yes, sir.

22 Q Okay. And why did Detective Sturkie go in there?

23 A We received a videotape of the school which refutes
24 what Mr. Green was telling us in his first statement.

25 Q Okay. Refuted what?

1 A Who he was with and his actions during the time of
2 the shooting.

3 Q Okay. Did you also have information from other
4 witnesses at that time that you didn't have previously
5 when you interviewed him?

6 A Yes, we did.

7 Q And that would be who?

8 A Mr. Pinckney, Terrell Pinckney.

9 Q Okay. And how about witnesses to the actual
10 shooting?

11 A Yes. Shalaine -- I'm sorry. I was informed that
12 Shalaine Jenkins had seen him earlier in the day with
13 access to the gun and Jacquintus Washington.

14 Q Okay. And you were informed Jacquintus Washington
15 had actually identified him as the shooter; is that
16 correct?

17 A That's correct. And also at his house.

18 Q So why did Detective Sturkie -- and who went with
19 Detective Sturkie, by the way?

20 A Detective Miller, Chris Miller.

21 Q Okay. And why did they go back in instead of you
22 going back in?

23 A They just did. I mean that was something they do. I
24 probably needed a chance to break from that and let them
25 work on the interview themselves.

1 Q I mean -- but my question is, you'd interviewed him
2 once. Was it for a change of pace? I mean why would two
3 different detectives go in?

4 A Just maybe to play off on what they knew, what they
5 found out about the videotape. I didn't see the videotape
6 yet, but they had information that I didn't have and they
7 were going to interview him.

8 Q Okay. So they went in about 7 o'clock; is that
9 correct?

10 A Yes, sir.

11 Q And what happened after that?

12 A I was informed by Captain Sturkie that Derell wanted
13 to change his statement, that he needed to tell the truth.

14 Q And what did you do at that point?

15 A I went back inside and did another statement form on
16 Derell.

17 Q And how did you go about taking that statement?

18 A Question and answer form again.

19 Q Same way you'd done the first one?

20 A That's correct.

21 Q And I hand you what's been marked as State's
22 Exhibit No. 37 for identification and ask if you recognize
23 that document.

24 A Yes, sir, I do. That's the second statement.

25 Q Okay. And once again, whose signature is on all the

1 pages of that?

2 A Myself and Derell Green.

3 Q All right.

4 A And Detective Sturkie. I'm sorry.

5 Q Okay. Detective Sturkie witnessed I think it's
6 whether or not -- and correct me if I'm wrong -- three out
7 of the four pages of that?

8 A Yes.

9 Q Do you know why it happened that he didn't --

10 A There was two statements done, Your Honor. We
11 probably mixed them both up and then one statement wasn't
12 signed by Detective Sturkie, one page.

13 Q Actually you got the first pages mixed up; is that
14 correct?

15 A Correct. Yes, sir.

16 Q Now, what time did you begin taking the second
17 statement from him?

18 A 7:45 p.m.

19 Q And had he already -- had you already gotten him
20 something to eat by that time?

21 A I went to Burger King myself and got him something to
22 eat. I actually asked him what he wanted and he said
23 Burger King.

24 Q Okay. Now at any time during the process of you
25 taking this second statement did you once again threaten

1 him?

2 A No, sir.

3 Q Promise him anything?

4 A No, sir.

5 Q Trick him in any way?

6 A No, sir.

7 Q Offer him any reward?

8 A No, sir.

9 Q Promise him leniency?

10 A No, sir.

11 Q Do anything to overbear his will?

12 A No, sir. I was pretty nice to him, tried to be.

13 Q And what was his demeanor at the time?

14 A Calm. He was nice back to me.

15 Q And that's when you concluded the second statement;

16 is that correct?

17 A Yes, sir.

18 Q And do you recall how long that one took?

19 A Maybe an hour.

20 Q Okay. And just to summarize, what did he change
21 between the first statement and the second statement?

22 A My first question I asked him was was he truthful and
23 the first thing he said was no, he wasn't.

24 I asked him to explain what happened and he said
25 he had been involved in a fight with the victim about a

1 month before this incident happened. He went to -- he
2 called him by Little T, something about a gold chain was
3 stolen from Derell Green.

4 He said that when he got out of school, Derell
5 and the victim saw each other in the courtyard and they
6 called it "mean mugging" when they give each other scary
7 looks back and forth. He explained that to me.

8 He said that he had the gun hidden in the house
9 across the street from the school, an abandoned house, and
10 he shot him several times; that the gun was loaded, it was
11 a revolver, a .38 caliber that had five bullets in it, and
12 he said he shot four or five times and then he ran down
13 the street and went home. He jumped some fences.

14 He told me he had the gun for about a year.

15 Q And once again, those are his signatures. When you
16 finish taking the written statement from him, did you go
17 back over the statement with him?

18 A Yes, I did. The same as before, I read it back to
19 him completely, asked him if he wanted to read it, review
20 it, and he signed it and I signed it.

21 Q Okay. And when did Mr. Sturkie sign it, if you
22 recall?

23 A I think Detective Sturkie came in and reviewed it
24 with me inside, both of us inside there, the interview
25 room.

1 MR. DURANT: Okay. Would you please answer any
2 questions that defense counsel may have for you.

3 THE WITNESS: Yes, sir.

4 THE COURT: Cross-examination.

5 IN CAMERA CROSS-EXAMINATION

6 BY MS. EHRLICH:

7 Q Hi, Detective Kramitz.

8 A Ms. Ehrlich, how are you doing today?

9 Q I'm okay.

10 A Good.

11 Q Let's talk a little bit about when you first got to
12 Derell's house at 1:30.

13 A Yes, ma'am.

14 Q Once you got in the house, Derell was handcuffed
15 almost immediately, right?

16 A Not really. It was maybe five minutes. We were
17 inside the residence, spoke to his parents, again
18 explained what we were going to do and explained the
19 seriousness of the charge and we had to have him in
20 handcuffs.

21 Q Okay. So you put him in handcuffs?

22 A Yes, we did.

23 Q And you were concerned about taking him into custody?

24 A Yes.

25 Q And there was no Miranda done at the house?

1 A No questions were asked.

2 Q And nothing in the car?

3 A No.

4 Q Was he transported with you?

5 A I believe so.

6 Q And I believe you testified that you told his mother
7 that she could come down to the station and that she
8 declined?

9 A Yes.

10 Q Your department was actively trying to search the
11 home at the time, right?

12 A No. No, we didn't. We had to get a search warrant..

13 Q When you got done somebody -- somebody had done a
14 consent to search?

15 A Yes.

16 Q And then the search was stopped at some point and you
17 guys went off to get a search warrant?

18 A Yes.

19 Q I think it was Detective Cook?

20 A I believe so.

21 Q And that happened sometime around maybe 5 o'clock?

22 A I think so, yeah.

23 Q And so she was still at the residence --

24 A I think so.

25 Q -- to your knowledge?

1 A Yes, ma'am. I was at the precinct.

2 Q And so Derell got taken to city hall you think with
3 you?

4 A Yes.

5 Q And got there 2:30-ish?

6 A Probably.

7 Q Okay. But you didn't start interviewing him until
8 around 3:45?

9 A Yes, ma'am.

10 Q And he was in the interview room alone that whole
11 time?

12 A I would check on him periodically. As I said, my
13 desk is right behind the interview room, so I would check
14 on him to see if he needed anything.

15 Q But for the most part he was just left alone in the
16 room?

17 A No.

18 Q I mean nobody was questioning him?

19 A Correct.

20 Q Okay. And when you were speaking to him, at that
21 point you became aware he was just 14 years old?

22 A Yes.

23 Q And I believe you became aware of his educational
24 level, eighth grade?

25 A Yes.

1 Q You didn't know if he had any reading problems or
2 anything like?

3 A No.

4 Q And didn't question him about whether or not he a
5 special education student or anything?

6 A No, ma'am.

7 Q Okay. And so it's at 3:45 that you start doing the
8 Miranda form with him?

9 A Yes, ma'am.

10 Q And your testimony is that you read them to him?

11 A Yes, I did.

12 Q And that he understood them?

13 A Yes.

14 Q I guess before you did that you completed the top
15 section about his grade level?

16 A Yes.

17 Q Date of birth?

18 A Yes.

19 Q And you wrote a report in this case?

20 A Yes, ma'am.

21 Q And in your report, you said that you provided Derell
22 with his rights?

23 A Yes, I did.

24 Q You didn't put anything in your report about
25 explaining them further than what was on here?

1 A No, ma'am.

2 Q Okay.

3 A I didn't get that detailed.

4 Q Okay.

5 A That's why I didn't think I needed to clarify that
6 much.

7 Q Okay. So you didn't put anything, though, in the
8 report about using simpler language or anything like that?

9 A I never have.

10 Q Okay. And you didn't put anything about telling him
11 how you would go get him a lawyer, that he wouldn't have
12 to pay for it?

13 A I verbally explained it to him. I didn't put it in
14 writing.

15 Q Okay. And on your North Charleston Advice of
16 Constitutional Rights form, at the bottom you have the
17 witness section, right?

18 A Yes, ma'am. I see it. Where I signed it?

19 Q Yes. At the bottom.

20 And when you did this you were alone with him in
21 the room?

22 A That's correct.

23 Q Because if somebody else had been in there you'd have
24 a second witness signing it?

25 A Yes, ma'am.

1 Q And I know that you were the only police officer in
2 there, but there was no -- his mom wasn't with him?

3 A I asked if she wanted to come. They both said no.

4 Q Okay. And so you took that statement first?

5 A Yes, ma'am, the advice of rights and then the first
6 statement.

7 Q Okay. And when he gave the second statement, you did
8 not do the Miranda warnings again because you had
9 previously done them?

10 A Correct.

11 Q Now during this process before you even started
12 writing things down, you were doing kind of like an
13 interview with him?

14 A Yes, ma'am.

15 Q And after he completed the first statement, other
16 detectives were going in to talk to him?

17 A Yes.

18 Q I think Detective Sturkie?

19 A Yes.

20 Q Detective Miller?

21 A Yes.

22 Q From my reading of the police reports, Detective Holt
23 went in there as well?

24 A I don't recall him going in, but yes, ma'am.

25 Q But if he put it in his report, you wouldn't doubt

1 that?

2 A Correct.

3 Q At any point, do you know if there was more than one
4 officer in there with him at a time?

5 A I think Sturkie and Miller were together.

6 Q So they kind of teamed up together and went in?

7 A Correct.

8 Q Okay. And you said that it's your style, I guess, to
9 write the statements?

10 A If somebody doesn't want to write their own
11 statement, I'll write it for him.

12 Q Okay. But it's not like somebody says, Will you
13 write this statement for me, you kind of offer it, right?

14 A I would say, Do you want to write your own statement
15 or do you want me to write it for you?

16 Q Okay. So you said, Do you want to write your
17 statement, and he said no?

18 A Yes, ma'am.

19 Q And you said, Okay, I'll write it for you?

20 A I said, I can write it for you.

21 Q Okay. Now the first statement he denied any
22 involvement in the shooting?

23 A Yes, ma'am.

24 Q He tells you that he was out there --

25 A Yes, ma'am.

1 Q -- on Bonds Avenue where the shooting happened?

2 A Yes, ma'am.

3 Q But denies being the shooter?

4 A Yes, ma'am.

5 Q Okay. And you didn't let him go, though, after that?

6 A No, ma'am.

7 Q And you kept him there?

8 A Yes, ma'am.

9 Q In the same room?

10 A Yes.

11 Q For several more hours?

12 A Yes, ma'am. Well, we give him breaks, bathrooms
13 breaks and stuff like that.

14 Q But between when you started the first statement and
15 when you started the second statement, there are four
16 hours?

17 A Yes, ma'am.

18 Q And I think you said that the first statement took
19 about an hour and a half?

20 A About that, yes, ma'am.

21 Q Okay. So that leaves about how many hours in
22 between?

23 A Three.

24 Q Okay. And do you remember testifying in this case in
25 August of last year?

1 A Yes, ma'am. At the waiver hearing?

2 Q Yes. And you testified then that he gave both
3 statements right after the other.

4 A I don't recall that, but okay.

5 Q Okay. I mean, would it help to look at the
6 transcript or do you trust me?

7 A I trust you.

8 Q Okay. But that's not true, there was actually like a
9 delay between the two?

10 A Yes, ma'am.

11 Q Okay. And that was after multiple other officers
12 were in there talking to him?

13 A Well, it was -- you said Holt, but I know Sturkie and
14 Miller.

15 Q Okay. And the way you kind of get in there for the
16 second statement is Sturkie comes out and says he's ready
17 to confess?

18 A Yes, ma'am.

19 Q And that's -- so you go in there and you write the
20 second statement?

21 A Yes, ma'am.

22 Q So that one's in your handwriting, too?

23 A Yes, ma'am.

24 Q And that's the one where he says he's the shooter?

25 A Yes, ma'am.

1 Q That he fired four or five times?

2 A Yes, ma'am.

3 Q And at that point you guys had already been in other
4 interviews with other witnesses, right?

5 A That's correct. And also looked at the video.

6 Q Okay. And you knew, though, that most of the
7 witnesses were saying there were three shots?

8 A No, I don't remember that.

9 Q Okay.

10 A Okay.

11 Q He also told you that he got a gun from across the
12 street?

13 A Yes. He said in an abandoned house.

14 Q Okay. But you reviewed the video, you testified
15 before that that was not possible?

16 A Well, he does go out of camera, but --

17 Q But you had previously said that there wouldn't be
18 time?

19 A I didn't think there was.

20 Q Okay. And I think Mr. DuRant already asked you this,
21 but I've got to go through some of this with you again.

22 You deny making any types of threats to Derell?

23 A Yes, ma'am.

24 Q You never told him things like "you'll never say the
25 light of day again" or anything like that?

1 A No, ma'am.

2 Q Okay. You did tell him at some point that he had
3 gunshot residue on his clothing?

4 A I think it was found on a tip on a jacket I think it
5 was.

6 Q And you told him that?

7 A I don't recall.

8 Q You testified previously --

9 A I may have then, okay.

10 Q You don't know, though, what the other detectives
11 said when you weren't in the room?

12 A No, ma'am.

13 Q So you can't testify to what Sturkie or Miller may
14 have said to him?

15 A Correct.

16 Q Okay. And I think you said that at some point you
17 offered him food?

18 A Yes, ma'am.

19 Q And that you went to go get him Burger King?

20 A Yes, ma'am.

21 Q The second statement was started at 7:45.

22 A Correct.

23 Q And I guess I'm confused because you guys submitted
24 as part of your case file a receipt from Burger King.

25 A Yes, ma'am.

1 Q And that's time stamped at 7:53.

2 A Okay.

3 Q So the food must have been after?

4 A Probably was.

5 Q Okay. So we know that he probably didn't get food
6 between his first statement and his second statement?

7 A Probably not, but we asked him.

8 Q Okay. And there's no videotape of the interviews?

9 A No, ma'am.

10 Q And I know we've gone -- you and I have gone through
11 this before but I'm about to ask you again.

12 A Yes, ma'am.

13 Q North Charleston does have access to video cameras?

14 A There is a system in place.

15 Q Okay. But outside of the interview room, you guys
16 have like handheld video cameras?

17 A I'm sure Crime Scene has them, but we -- I don't have
18 one.

19 Q Okay.

20 A Detective Division doesn't have access to them.

21 Q Well, Crime Scene went out and videotaped the crime
22 scene.

23 A Right.

24 Q So if you had wanted to, you could have gotten them
25 to come over?

- 1 A Yes, ma'am.
- 2 Q Okay. You all work for the same police department?
- 3 A Yes, ma'am. Correct.
- 4 Q Are you familiar with protocols that are to be used
- 5 in investigating child assault cases, sex assault cases?
- 6 A Not really, no.
- 7 Q Well, do you understand that they do forensic
- 8 interviews for those?
- 9 A Yes.
- 10 Q And that they're always videotaped?
- 11 A Yes, ma'am.
- 12 Q And that the reason for doing that is because they
- 13 want to avoid suggestive interview techniques?
- 14 A Yes, ma'am.
- 15 Q Okay. At any point during the interview did Derell
- 16 have access to his mom? I know she said that she didn't
- 17 want to come, to you.
- 18 A Yes, ma'am.
- 19 Q But he was never given an opportunity to call her?
- 20 A He could have told me that he wanted to see her.
- 21 Q Okay.
- 22 A And that was -- that would be no problem. I mean
- 23 we'd have went up and got her if he wanted to, but he
- 24 didn't want us to.
- 25 Q Okay. So you're -- you say he didn't ask for his

1 mom?

2 A No, he did not.

3 Q And if he had, you would have stopped the interview
4 and went to go get her?

5 A Yes.

6 Q Okay. Now just a couple more questions.

7 I've been to the police station. You have, I
8 guess, two interview rooms right next to each other?

9 A Correct.

10 Q And they're pretty small?

11 A Yes, ma'am.

12 Q And you've got a table in there?

13 A Yes, ma'am.

14 Q A couple chairs?

15 A Yes.

16 Q And there's a place where you can, I guess, cuff
17 somebody?

18 A Yes.

19 Q Okay. And Derell was cuffed, at least with one hand,
20 right?

21 A Yes, to the chair.

22 The handcuffing thing you're talking about is
23 actually like a bolt with a round head on it, but there's
24 a piece in there that prevents us from handcuffing
25 anybody, but we don't use that. We don't handcuff anybody

1 to the wall.

2 Q Okay. But he was cuffed somehow?

3 A Yes, to a chair, due to the seriousness of the
4 allegation.

5 Q Right. And then in the room, I guess, if you were
6 facing the glass window --

7 A Yes.

8 Q -- of the left corner you've got your camera?

9 A Yes, ma'am.

10 Q That's covered with a bolt --

11 A Yes, ma'am.

12 Q And it's covered because?

13 A I don't know why we don't use that. That's an
14 administrative decision.

15 Q Okay. But it was like that as of February of 2010?

16 A Yes, correct.

17 Q Okay. So we know for sure that there's no missing
18 videotape of this interview?

19 A No, there's no video.

20 Q That's no videotape of the Miranda warnings or
21 anything that happened in between the two statements?

22 A Correct. There's no videotape at all inside the
23 room.

24 Q And there's also no audiotape?

25 A No audiotape either.

1 MS. EHRLICH: Okay. Court's indulgence.

2 THE COURT: Yes, ma'am.

3 (Pause.)

4 MS. EHRLICH: Thank you.

5 THE COURT: Any redirect?

6 MR. DURANT: Just a couple, Your Honor.

7 IN CAMERA REDIRECT EXAMINATION

8 BY MR. DURANT:

9 Q I believe you already answered, did he ever ask for
10 his momma?

11 A No, he did not.

12 Q Did he ever ask for a lawyer?

13 A No, sir.

14 Q At any time did he say I don't want to talk to you?

15 A No, sir.

16 MR. DURANT: Okay.

17 THE COURT: Any recross?

18 IN CAMERA RECROSS-EXAMINATION

19 BY MS. EHRLICH:

20 Q Did he know that he could ask for his mom?

21 A Yes.

22 Q You told him he could?

23 A No, but I just assume he knew.

24 MS. EHRLICH: Okay. Thank you.

25 THE COURT: You may step down. Thank you very

1 much.

2 THE WITNESS: Thank you, Your Honor.

3 MR. DURANT: James Sturkie.

4 THE CLERK: Raise your right hand.

5 JAMES STURKIE, after being duly sworn, testified
6 as follows:

7 THE CLERK: Sir, if you'll state your first and
8 last name, spelling your last for the record, please.

9 THE WITNESS: James Sturkie, S-T-U-R-K-I-E.

10 IN CAMERA DIRECT EXAMINATION

11 BY MR. DURANT:

12 Q You are employed by North Charleston Police
13 Department?

14 A Yes, sir.

15 Q As a detective; is that correct?

16 A Yes, sir.

17 Q And you were so employed on February the 5th of 2010?

18 A Yes, sir.

19 Q In that capacity did you have an indication to speak
20 with defendant Derell Green?

21 A Yes, sir.

22 Q Where?

23 A At the North Charleston Police Department.

24 Q All right. Who was with you?

25 A Detective Miller.

1 Q And do you recall what time that was?

2 A At 7, 7:30.

3 Q And if you looked at your supplement, would that
4 refresh your recollection?

5 A Yes, sir.

6 Q Please do so.

7 A It was around 7 o'clock.

8 Q Okay. Why? Why did you talk to him?

9 A I was informed that he was a suspect in the shooting
10 that occurred earlier. We had several witness statements.

11 Q Okay. Were you aware that he had previously been
12 interviewed?

13 A Yes, sir.

14 Q By whom?

15 A Detective Kramitz.

16 Q And did you participate in that interview at all?

17 A No, sir.

18 Q So why is it that you went back in to interview him
19 at 7 p.m. that evening?

20 A Because there was a legitimate question of whether or
21 not he was telling the truth and we had information that
22 he was not.

23 Q Okay. And what information did you all have that he
24 was not telling the truth?

25 A A witness statement from Ms. Jenkins.

1 Q And how about Mr. Washington?

2 A And Mr. Jaquintus Washington as well.

3 Q Were you were aware of the video from Daniel Jenkins
4 Academy?

5 A I was aware of the video.

6 Q Okay. And so based upon that information, what
7 conclusion did you all reach regarding the first statement
8 that he had given?

9 A That it was not correct.

10 Q Now where was Mr. Green when you went to talk to him?

11 A He was seated in the interview room.

12 Q Were you aware of whether or not he had already been
13 advised of his Miranda rights at that time?

14 A Yes, I was already informed that he had been
15 Mirandized.

16 Q And that was by Detective Kramitz?

17 A Yes, sir.

18 Q What was his demeanor at the time that you talked to
19 him?

20 A He was very calm, seemed to be collected and
21 understood what was going on.

22 Q Did he appear to be under the influence of anybody or
23 intoxicated?

24 A No, sir.

25 Q Did he exhibit any confusion?

1 A No, sir.

2 Q Was he able to understand what you said to him?

3 A Yes.

4 Q Were you able to understand what he said to you?

5 A Yes, sir.

6 Q Was there anything about his behavior or conduct that
7 gave you concern as to whether or not he knew what was
8 going on?

9 A No.

10 Q Tell us what happened. How did it go?

11 A Well, we talked for probably 20, 25 minutes and I
12 could see that he was concerned that we kind of knew what
13 was going on and that he wanted to tell us what really
14 happened.

15 Q And what tactic did you use?

16 A What do you mean?

17 Q I mean, how did you get him to tell you what
18 happened? I mean, what did you do? Did you go in there
19 and beat the crap out of him or --

20 A No, sir.

21 Q What was your tactic?

22 A Well, I was sitting beside him and I just got closer
23 to him and put my hand on his shoulder and asked him, you
24 know, what really happened.

25 Q Putting your hand on his shoulder how, Detective

1 Sturkie?

2 A Just reached -- I was sitting right beside him.

3 Q Were you putting your hand on his shoulder like you
4 were going to take him to the ground in an atomic drop or
5 something?

6 A No, sir. It was more of a fatherly type.

7 Q Okay. Please explain what you mean, okay? And what
8 did you urge him to do?

9 A To tell the truth.

10 Q And what did you say?

11 A I asked him if it was over some money, some girls, or
12 some other property that belonged to him or something, you
13 know, that would -- a high-school kid would be concerned
14 with.

15 Q And what did he do? What did he say?

16 A He finally said that, you know, it was over a gold
17 chain with a Jesus head on it that had been stolen from
18 him.

19 Q By whom?

20 A Mr. Washington.

21 Q Mr. Washington or Mr. Maybank?

22 A I'm sorry, Mr. Maybank. I apologize.

23 Q And did he continue to give you information?

24 A Yes.

25 Q What did he tell you?

1 A He said that he was in an altercation with
2 Mr. Maybank several weeks before at a club or a party and
3 Mr. Maybank had stolen his gold chain.

4 Q And what else did he tell you?

5 A That he wanted his chain back and he confronted
6 Mr. Maybank, you know, and then he shot him.

7 Q Did he say what he shot him with?

8 A A revolver.

9 Q And what else do you recall him saying? And if
10 reading your supplement will refresh your recollection,
11 please do so.

12 A After the shooting he threw the gun away as he was
13 running. He eventually told us that he ran towards Henry
14 Street, which is the street over from where he was.

15 Q Okay. And that was in the direction where he lived?

16 A Yes, sir.

17 Q Okay. What did you do when -- what happened after
18 you got this information from him?

19 A I walked outside and told Detective Kramitz about it.

20 Q Okay. And how long did this whole conversation last
21 between -- about 7 p.m. when you went in there and the
22 time that he actually told you that he had shot
23 Mr. Maybank?

24 A Twenty to twenty-five minutes.

25 Q And what happened at that point?

1 A Detective Kramitz went back into the room and began a
2 written statement.

3 Q Okay. Did you participate in the written statement
4 that was taken from him?

5 A Not while he was writing it, no, but I went back and
6 asked Mr. Green if it was in fact his writing or what he
7 told Detective Kramitz and if it was the same thing that
8 he had told me and Detective Miller.

9 Q Okay. And what did he tell you?

10 A He said yes, and he signed the form.

11 Q Okay. Did you sign as a witness?

12 A Yes, sir.

13 Q And can you tell the Court how it came that you
14 signed as a witness on three pages of that statement and
15 not the first page?

16 A I'm not really sure how the paperwork got mixed up,
17 but apparently I signed the top of one and then the
18 remaining of the other.

19 Q Okay. During the witnessing part of it, as I
20 understand it, and correct me if I'm wrong, that you
21 accidentally signed the first page of his first statement
22 instead of the first page of his second statement?

23 A Yes, sir, I did.

24 Q Okay. Because you didn't participate in the first
25 statement?

1 A That's correct.

2 Q Now at any time during the time that you were in
3 there, either with Detective Miller or with Detective
4 Kramitz later when you were witnessing the thing, did you
5 promise Derell Green anything?

6 A No, sir.

7 Q Did you threaten him in any way?

8 A No, sir.

9 Q Did you offer him leniency?

10 A No, sir.

11 Q Did you threaten his family?

12 A No, sir.

13 Q Did he ever ask for an attorney?

14 A No, sir..

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

16 A No, sir.

17 Q Did he ever ask for his mother?

18 A No, sir.

19 MR. DURANT: Could you answer any questions
20 defense counsel may have for you.

21 THE COURT: Cross-examination.

22 IN CAMERA CROSS-EXAMINATION

23 BY MS. EHRLICH:

24 Q Hi, Detective Sturkie.

25 A Hello.

1 Q You talked to Derell much, much earlier than
2 7 o'clock for the first time, right?

3 A Not in full. I probably spoke to him, maybe stuck my
4 head in the room.

5 Q Do you remember going in the room and asking him
6 identifying information about him?

7 A Yes, I did.

8 Q Okay.

9 A I'm not sure exactly what time that was.

10 Q Would looking at your report help refresh your
11 memory?

12 A Yes.

13 Q Do you have a copy of your report?

14 A No, I do not.

15 MS. EHRLICH: Permission to approach the
16 witness.

17 THE COURT: Yes, ma'am.

18 THE WITNESS: At 3:05 I walked in.

19 BY MS. EHRLICH:

20 Q And you asked him like his name, date of birth,
21 things like that?

22 A Yes, I did.

23 Q Okay. So you were aware right then how old he was?

24 A Yes.

25 Q Okay. And you also got his mother's contact

1 information?

2 A Yes.

3 Q And that's because he gave that to you, right?

4 A Yes.

5 Q You didn't call his mom, though, right?

6 A I did not.

7 Q And you're saying that he never asked for his mom?

8 A Not that I recall.

9 Q And you never said, Hey, do you want me to call your
10 mom?

11 A No.

12 Q Okay. When you went in the second time, the first
13 interview had been completed, right?

14 A I'm not sure about that. I could look at the
15 statement.

16 Q Okay. But at that point when you went in, you went
17 in, I think, at 7, 7:05?

18 A Okay. Yes.

19 Q Is that right?

20 A Yes.

21 Q With Miller?

22 A Yes.

23 Q And you did not advise him of his Miranda rights
24 again?

25 A No, I did not.

1 Q You didn't tell them what could possibly happen or
2 anything like that, you just started interviewing him
3 again?

4 A Yes.

5 Q And I think you said that you started -- you had
6 already watched the videos?

7 A No, I had not. I did not see that video.

8 Q Okay. So you didn't know what was on the video from
9 the school?

10 A Just from what other detectives had told me about it.

11 Q But you personally had not watched it before speaking
12 to Derell?

13 A No, ma'am.

14 Q You mean you didn't talk to him about the video or
15 you did tell him that there was a video?

16 A I told him that there was a video, but I had never
17 seen that video.

18 Q Okay. And when you went in the room, he was still
19 handcuffed?

20 A That I don't recall.

21 Q Okay. But you went in there and, I guess, you said
22 that he wasn't telling the truth?

23 A Yes.

24 Q And that was based on what you had learned from other
25 witnesses?

1 A Yes.

2 Q That he was lying about not being the shooter?

3 A That's correct.

4 Q So you decided to keep asking him questions?

5 A Yes.

6 Q And I believe you just testified that you tried to
7 talk to him like he was in high school?

8 A What do you mean? I'm sorry, I don't understand.

9 Q You said you talked to him about things that kids in
10 high school talk about, girls, money, what was it about?

11 A Yes.

12 Q Okay. And I think in your report -- and let me know
13 if you need it -- you said that 20 minutes later he
14 started to show physical signs of wanting to tell the
15 truth.

16 A Yes.

17 Q Please explain that.

18 A People that -- his lip was quivering, he was like
19 what would happen to me if this, what would happen to me
20 if I did that, that type of thing.

21 Q He was asking those questions?

22 A Yes.

23 Q What did he ask?

24 A I'm not -- I don't recall exactly the questions.

25 Q Okay. But his lip was quivering?

1 A Yes.

2 Q That could be a sign of being scared?

3 A Yes.

4 Q Or overwhelmed?

5 A Yes.

6 Q And so upon seeing this lip quivering, that's when
7 you started this stuff about is it about girls, money,
8 drugs, right?

9 A Yes.

10 Q And that's the point where you kind of got closer to
11 him?

12 A Well, I was already sitting beside him. I was fairly
13 close the entire time.

14 Q Okay. And you said that you put your hand on him?

15 A On his shoulder, yes.

16 Q I mean, you're a big guy, you're tall, right?

17 A Yes.

18 Q How tall are you?

19 A Six-five.

20 Q He was much smaller than he is now, right? He's like
21 five-six, five-five, skinny?

22 A I wouldn't say -- he's not very much smaller, no.

23 Q Okay. Well, how big was he then?

24 A He's not much smaller or he was not much smaller than
25 he is now.

1 Q Well, he's not six-five; you can agree with that,
2 right?

3 A Yes.

4 Q And you said that you kind of used this fatherly
5 approach?

6 A Sort of, yes.

7 Q Like you were on his side?

8 A Not necessarily. I just touched him on the shoulder.

9 Q Like fatherly? What does that mean?

10 A It could be considered that, but that's not what I
11 would say it was.

12 Q And that's when he told you this stuff about being
13 ganged?

14 A Yes.

15 MS. EHRLICH: Okay. Court's indulgence.

16 THE COURT: Yes, ma'am.

17 (Pause.)

18 MS. EHRLICH: Thank you very much.

19 THE COURT: Any redirect?

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

21 THE COURT: You may step down. Thank you very
22 much.

23 Any further witnesses?

24 MR. DURANT: We'd call Chris Miller, Your Honor.

25 THE CLERK: Raise your right hand.

1 CHRIS MILLER, after being duly sworn, testified
2 as follows:

3 THE CLERK: Sir, if you'd please state your
4 first and last name, spelling your last for the record,
5 please.

6 THE WITNESS: My first name's Christopher, last
7 name is Miller, M-I-L-L-E-R.

8 IN CAMERA DIRECT EXAMINATION

9 BY MR. DURANT:

10 Q And you are employed by North Charleston Police
11 Department; is that correct?

12 A That's correct.

13 Q I believe you're out on the road now; is that also
14 true?

15 A That is.

16 Q And what were you doing on February the 5th of 2010?

17 A I was working with our investigation department at
18 that time.

19 Q Okay. And in that capacity, did you have an
20 opportunity to participate in the interview of Derell
21 Green with Detective Sturkie?

22 A I did, yes.

23 Q Tell us about it. What happened?

24 A That day, I believe it was around close to 1 o'clock,
25 12:45, 1 o'clock, and we received a call of shots fired,

1 persons down, and immediately responded.

2 Q Well, we don't need to go back that far.

3 A Okay.

4 Q We already know that. I want to find out what
5 happened from the time you went in with Detective Sturkie
6 at 7:30.

7 A Okay. I believe --

8 Q First of all, do you know why you all went back in to
9 talk to him?

10 A We did. We just felt that he wasn't being
11 forthcoming with the truth at that time. We thought since
12 Detective Kramitz had come out we'd give it a shot and
13 talk to him.

14 Detective Sturkie and I went in. Detective
15 Sturkie did a lot more talking than I did. I did a little
16 more persuasion, a little more talking with him about, you
17 know, being forthcoming, telling the truth, basically
18 stating we know that you're not telling us the truth, we
19 know what happened, we know what's going on.

20 Q Okay. At any time during this colloquy, did you or
21 Detective Sturkie threaten him in any way?

22 A Oh, no, not at all.

23 Q Did you physically harm him in any way?

24 A No.

25 Q Did you promise him anything?

1 A No.

2 Q Did you offer him leniency?

3 A No.

4 Q Did you tell him that things would be okay if he
5 would just tell the truth?

6 A No.

7 Q Was there anything about his demeanor or behavior
8 that gave you concern about that he didn't know what was
9 going on?

10 A No.

11 Q And what was his demeanor when you all first went in
12 there?

13 A When we first went in there he was very quiet, didn't
14 really want to respond to our questions. He was kind of
15 withdrawn.

16 Q Okay. Did he ever tell you "I don't want to answer
17 any questions?"

18 A No.

19 Q Did he ever say, "I want a lawyer?"

20 A Not to my recollection or knowledge, no.

21 Q Did he ever say, "I want my momma?"

22 A No.

23 Q And what happened while you all confronted him about
24 not telling the truth?

25 A After a little while of confronting him, Detective

1 Sturkie moved a little closer to him, put his hand on his
2 shoulder, and basically at that point he just start
3 telling us what exactly had transpired, confessing to us
4 that he did it.

5 At that point I exited the interview room and
6 went and got Detective Kramitz and told him that he was
7 starting to confess now and tell the truth.

8 Q Now tell us about putting his hand on his shoulder
9 thing.

10 A Basically he offered kind of a comfort to him where
11 he, you know, look, we know, we understand. He was just
12 being, I guess, gentle with him. And at that point of
13 being gentle, when he slid in closer to him, put his hand
14 on his shoulder and said, Come on, tell us what happened.
15 At that point he told us what happened.

16 Q Do you remember what he said, what the reason was for
17 the shooting?

18 A I don't recall the reason. I did exit rather quickly
19 after he began to tell us what happened to get the case
20 agent, Detective Kramitz.

21 Q Okay. How long were you all in the room all
22 together? Did you go back in the room after you left to
23 tell Kramitz what was going on?

24 A I did not.

25 Q How long were you all in the room all together?

1 A From my memory, I believe probably about a half an
2 hour.

3 MR. DURANT: Okay. Would you please answer any
4 questions defense counsel may have.

5 THE COURT: Cross-examination.

6 IN CAMERA CROSS-EXAMINATION

7 BY MS. EHRLICH:

8 Q Detective Miller, so you went back in the room with
9 Sturkie?

10 A Yes, him and I both pretty much went in at the same
11 time.

12 Q Around 7-ish?

13 A Yes, ma'am.

14 Q And you testified a minute ago that Derell seemed
15 withdrawn?

16 A He did.

17 Q That he didn't seem to want to answer questions?

18 A I don't know if it was that he seemed like he just
19 didn't want to answer questions or it was withdrawn, that
20 he has just withdrawn.

21 Q Okay. Was he shaking his head or anything when you
22 all were asking him questions or he just sat there?

23 A He sat there most of the time.

24 Q Okay. And I believe you had listened in on some of
25 the other interviews being done?

1 A I'm sorry, ma'am?

2 Q Had you been listening in to some of the other
3 interviews?

4 A Briefly. We're given a lot of responsibilities.

5 Q Okay. And then, I guess, you decided to go in with
6 Sturkie?

7 A Correct.

8 Q Like you all decided together or you just both
9 happened to go in?

10 A I think we both decided together.

11 Q Okay. And I think in your report you say that you
12 decided to talk to him about the truth, right?

13 A Yes, ma'am.

14 Q Okay. Like "we want the truth?"

15 A Yes, ma'am.

16 Q Did you say anything like, you know, you can tell us
17 the truth and we'll help you out?

18 A No, ma'am.

19 Q So what were you saying about the truth?

20 A Well, all we wanted was for him to confess to the
21 truth.

22 Q Okay. And you decided the truth was that -- you all
23 had decided at that point that the truth was that he was
24 the shooter?

25 A Yes.

1 Q Okay. So anything else that he would have said you
2 all would have thought was not the truth?

3 A No.

4 Q Does that mean no, you wouldn't or anything less than
5 him saying that he had done it to you was not the truth?

6 A At that point I would say yes.

7 Q Okay. And this stuff with Sturkie putting his hand
8 on his shoulder, that was like a comforting thing?

9 A I believe it offers a little bit of, you know,
10 comfort to show that, you know, we're not all in there to
11 --

12 Q To get him?

13 A Pretty much, yeah.

14 Q But you were?

15 A True.

16 Q And there was some language about just kind of tell
17 us what happened?

18 A Uh-huh.

19 Q Because you wanted a confession?

20 A Correct.

21 Q And I guess, you know, after you all got him to say
22 that he did it, you were like, "This is the truth," right,
23 and you go to get Kramitz, right?

24 A When he started telling us what we believed to be the
25 truth, that's when I went and got Detective Kramitz.

1 Q Okay. And then that when Detective Kramitz got the
2 second statement?

3 A I believe so. I was not --

4 Q And you weren't in the room for that?

5 A No, I wasn't.

6 Q When you went back in the room -- when you went in
7 the room at 7, you did not read any -- you did not give
8 him his rights again, right?

9 A I personally did not, no.

10 Q Okay. And I think that, based on the statement that
11 he gave you, you guys went out and searched the area for
12 the gun?

13 A Yes.

14 Q Where he had said he threw the gun?

15 A Yes.

16 Q And there was no gun there to be found?

17 A No, it was not.

18 Q Okay. And you -- there was no videotape going on in
19 the room?

20 A No, ma'am.

21 Q Okay. And I think that you used to work on sexual
22 assault cases?

23 A Yes.

24 Q So you're familiar with Low County Children's Center?

25 A I am.

1 Q And when that there is a child victim, you guys are
2 taught to not ask them too many questions up front?

3 A If possible -- can I back you up just a little bit?

4 Q Sure.

5 A I hadn't been assigned to that division at that time
6 yet. I was still working in our Person's Crime Division.

7 Q I'm just talking about now.

8 A Okay. Yes.

9 Q Your knowledge now from your experience?

10 A Okay.

11 Q You're kind of taught not to ask the victim too many
12 questions and let a professional forensic interviewer do
13 the questioning?

14 A Correct, on the victim.

15 Q And so when you've got a child victim, you send them
16 to Low County Children's Center?

17 A Correct.

18 Q And they are interviewed by the forensic interviewer?

19 A Uh-huh.

20 Q And that entire interview is videotaped?

21 A Correct.

22 Q And that's done for a number of reasons, right?

23 A Yes.

24 Q Including to make sure that there's no suggestibility
25 or suggested interviewing techniques being used by the

1 interviewer?

2 A Correct.

3 Q And that's kind of like the protocol in those cases?

4 A Yes, ma'am.

5 MS. EHRLICH: Court's indulgence.

6 (Pause.)

7 MS. EHRLICH: Thank you, Detective Miller.

8 THE COURT: Any redirect?

9 MR. DURANT: Just a couple on redirect.

10 IN CAMERA REDIRECT EXAMINATION

11 BY MR. DURANT:

12 Q And, of course, in those cases, you're dealing mostly
13 with very young children; is that correct?

14 A In most cases, yes.

15 Q About four, five, six?

16 A Yes.

17 Q Probably 95 percent of them?

18 A A large portion of them are under ten.

19 Q Do you remember him saying -- I was asking you
20 before, do you remember him saying anything about being
21 ganged by the victim?

22 A I don't believe he said that to us, or to me while I
23 was in the room, but that is what I read in one of the
24 statements.

25 Q Well, let me show you -- this would be your

1 supplement from that day.

2 A Okay.

3 Q Do you recall if -- based upon that, would that
4 refresh your recollection as to what he told you exactly?

5 A It does. I don't recall everything that he had said
6 off the top of my head in my memory that day in the
7 interview room, but normally as soon as we're done with
8 the interviews we make sure we get our case notes in while
9 it's fresh in our head.

10 Q Okay. And was there any mention of Church's Chicken?

11 A Yes.

12 Q What did he tell you about Church's Chicken?

13 A That he had been jumped by the victim near the -- the
14 deceased at that time by the Church's Chicken prior to
15 that day.

16 Q And what did he say about something having been taken
17 from him?

18 A That he had had a necklace stolen.

19 Q Okay. And what did he say about where he had -- what
20 he had done with the gun?

21 A He said he had threw it while he was running.

22 Q Okay. And you all went later to search where he said
23 he'd thrown the gun; is that correct?

24 A Yes, we did.

25 Q And you weren't able to find it, correct?

1 A We were not.

2 Q What is the area that you all were searching?

3 A We searched pretty much any area that was from the
4 school and expanded our area out from there. I remember
5 we were out there for hours and hours.

6 Q But where he said he'd thrown the gun was basically
7 an open field, right?

8 A Correct. It was an open field.

9 Q In a public area?

10 A Right.

11 Q In the middle of the neighborhood?

12 A Correct.

13 MR. DURANT: Nothing further.

14 IN CAMERA RECROSS-EXAMINATION

15 BY MS. EHRLICH:

16 Q Detective Miller, did you ask any of the other
17 officers if they gave him his Miranda warnings again?

18 A I didn't ask, but I knew they had been given. I'd
19 seen the statement where he had signed and waived his
20 Miranda rights.

21 Q The statement from 3:45?

22 A I'm sorry?

23 Q The first statement that he gave?

24 A Yes.

25 Q Earlier in the day?

1 A Yes.

2 Q Okay. But when you went in there, you know, three or
3 four hours later, you didn't ask him the Miranda -- you
4 didn't warn him again or ask anybody if they did it again?

5 A No.

6 Q Okay. And as far as the forensic interview that Low
7 Country -- children older than five, six, or seven come
8 there, right?

9 A Children older than that?

10 Q Yes. It's not -- if it's a 13 or 14 year old --

11 A That's correct.

12 Q -- that had an allegation of being sexually
13 assaulted, you would send them there?

14 A That's correct.

15 MS. EHRLICH: Thank you.

16 MR. DURANT: I have nothing further, Your Honor.

17 THE COURT: You may step down. Thank you very
18 much.

19 MR. DURANT: That's all I would have on the
20 issue at this time, Your Honor.

21 THE COURT: Okay. Does the defense have any
22 testimony concerning the statement?

23 MS. EHRLICH: Court's indulgence, Your Honor.

24 (Pause.)

25 MS. EHRLICH: Your Honor, we'll start with Carol

1 Fila with the school district.

2 THE COURT: Okay. How many do you think you're
3 going to have?

4 MS. EHRLICH: We have four witnesses.

5 THE COURT: All right. What I'm going to do,
6 it's quarter to 6. I'm going to stop at this time and
7 we'll just reconvene in the morning at 9:30.

8 MS. EHRLICH: Okay.

9 THE COURT: And listen to your four witnesses,
10 okay?

11 MS. EHRLICH: Okay.

12 THE COURT: Did you find anything on
13 Subsection 3?

14 MS. EHRLICH: Judge, we pulled the old statute.
15 It used to be under 20-7-430 was the old transfer statute.
16 And there's nothing in the old juvenile code about
17 legislative intent. We can research it further tonight
18 and let you know in the morning if we find anything else,
19 but we don't see anything here about legislative intent.

20 THE COURT: All right.

21 MS. EHRLICH: It's the same subsection.

22 THE COURT: Pardon?

23 MS. EHRLICH: It's the same subsection. It's
24 just a different overall number that they changed.

25 THE COURT: All right. Thank you very much.

1 THE COURT: I believe you're going to call four
2 witnesses?

3 MS. EHRLICH: Yes, Your Honor.

4 THE COURT: All right. Call your first witness.

5 MS. EHRLICH: Thank you.

6 The defense would call Carol Fila.

7 THE CLERK: Raise your right hand.

8 CAROL FILA, after being duly sworn, testified as
9 follows:

10 THE CLERK: Thank you, ma'am. If you would take
11 your seat.

12 Ma'am, if you would state your first and last
13 name, spelling your last for the record, please.

14 THE WITNESS: Carol Fila, F-I-L-A.

15 IN CAMERA DIRECT EXAMINATION

16 BY MS. EHRLICH:

17 Q Ms. Fila, where do you work?

18 A Charleston County School District.

19 Q And how long have you worked there?

20 A Unbroken service since 1993, so approximately 18
21 years, but prior to that, another six.

22 Q And what's your job with the school district?

23 A Special Education Coordinator.

24 Q And what does that mean?

25 A That means I oversee programming and compliance

1 issues for special education classrooms and teachers.

2 Q Okay. So when you say Coordinator of Exceptional
3 Services, is Exceptional Services special education
4 services?

5 A Yes.

6 Q Are you familiar with a student named Derell Green?

7 A Yes.

8 Q How do you know Derell?

9 A Derell was in several programs that I oversaw.

10 I do not know him personally. I attended three
11 meetings, I believe.

12 Q You've been able to review his records, though?

13 A Correct.

14 Q And where was Derell a student when he was arrested
15 on February 5th?

16 A Daniel Jenkins Academy in North Charleston.

17 Q What grade was he in?

18 A Grade eight.

19 Q Is that middle school?

20 A Yes.

21 Q And to your knowledge, did he ever fail or repeat any
22 grades?

23 A Yes. It appears by records that he was retained in
24 grade one.

25 Q Now at the time of his arrest, was he under any

1 special services with the school district?

2 A He had an individualized education program.

3 Q What is that?

4 A That is an IEP. It is a written statement about a
5 student's needs that follows special education laws and
6 regulations. It's designed to be developed, reviewed, and
7 revised at least once a year in order to help a student
8 meet his academic and/or functional goals.

9 Q So he has some sort of disability that qualifies him
10 for an IEP?

11 A Correct.

12 Q And do you know how long he had been receiving
13 special education services?

14 A Since approximately April of 2001 or May of 2001.
15 That was not clear in the records.

16 Q Does the IEP indicate the reason for him being under
17 an IEP?

18 A Yes.

19 Q And what is that?

20 A Learning disability was the category.

21 Q And what types of services was he receiving?

22 A He was receiving what we call pull-out resource
23 services.

24 Q Was he getting any resource help with reading?

25 A His IEP called for reading, math, written expression

1 transition. Can I refer to my notes on that?

2 Q Sure.

3 A Math, written expression, literature, and behavior.

4 Q All right. And the resource classes, can you explain
5 what that means?

6 A A resource class can be -- take two different forms.
7 Sometimes it is what we call push-in where the teacher
8 goes into a class where there are one or more students
9 with disabilities and co-teaches the class with the
10 general education teacher.

11 The other form it takes is what we call pull-out
12 where a student has a separate class called resource class
13 and that's where that student receives the specialized
14 instruction.

15 Q And did Derell get pull-out services?

16 A Derell received pull-out services.

17 Q Are you aware of any other prior school placements or
18 treatment programs that Derell went to?

19 A He was at Brentwood Middle School and I attended a
20 homebound meeting where he had been assigned to a day
21 treatment program at the, I believe, medical university.

22 Q And that would have been considered medical
23 homebound?

24 A That was considered medical homebound because a
25 doctor prescribed it.

1 Q And that was due to some sort of disability?

2 A I don't know why the doctor -- I do have notes on
3 that also. That was --

4 Q Do you know if that was related to any sort of mental
5 condition?

6 A I do not know that.

7 The doctor prescribed it. It would be -- the
8 doctor's diagnosis that I had on the medical homebound
9 form at the meeting that we had stated oppositional
10 defiant disorder as the reason for the medical homebound
11 placement.

12 MS. EHRLICH: Court's indulgence.

13 (Pause.)

14 MS. EHRLICH: Please answer any questions the
15 Solicitor has.

16 IN CAMERA CROSS-EXAMINATION

17 BY MR. DURANT:

18 Q Good morning, Ms. Fila.

19 A Good morning.

20 Q You'd indicated, I believe, in your testimony that he
21 had failed the first grade; is that correct?

22 A Correct.

23 Q And the second time around that time was he assessed
24 for potential special education?

25 A He was assessed in -- if you'll give me a minute, I

1 have that in my notes.

2 He was assessed in 2001, in April of 2001, and
3 it appears that that was kindergarten. According to the
4 records that I have, 2000-2001 was grade zero.

5 Q That's fine. As a matter of fact, he had a
6 psychological evaluation at that point?

7 A Correct.

8 Q On April 24th, 2001; is that correct?

9 A Correct.

10 Q And isn't it a fact that the findings of the
11 psychiatrist or psychologist that performed the evaluation
12 found that he was functioning within an average range of
13 intelligence?

14 A Correct.

15 Q That his visual motor integration and ability area
16 which impacts academic functioning, particularly writing
17 tasks, appears age appropriate?

18 A I do not have that psycho ed report in front of me,
19 so I can't answer that.

20 Q This would be the psychological evaluation that we
21 were talking about, April 24th of 2001, and this would be
22 by Marion Bazemore; is that correct?

23 A Correct.

24 Q School psychologist?

25 A Correct.

1 Q She is a Charleston County School District employee?

2 A Yes, sir, she is.

3 Q And indicated there in the highlighted portion; is
4 that correct?

5 A Correct.

6 Q That he's functioning at an average intelligence?

7 A Correct.

8 Q And that his academic functioning, particularly
9 writing tasks, appear age appropriate?

10 A Yes.

11 Q Are you familiar with and you've obviously studied
12 his school records in preparation for your testimony here
13 today, did you not?

14 A Yes.

15 Q And he was a student of Daniel Jenkins Academy at the
16 time?

17 A Yes.

18 Q And were you aware that he had an A in English
19 Language Arts at the time this incident occurred?

20 A Yes.

21 Q And English Language Arts is obviously a subject that
22 includes English, correct?

23 A Yes.

24 Q Language?

25 A Yes.

1 Q Reading, speaking, things of that nature?

2 A Yes.

3 Q Correct?

4 A Yes.

5 Q And he had an A at the time, in February of 2010, in
6 English Language Arts?

7 A Yes, he did.

8 Q And he's been tested throughout the time that he's
9 been in special education; is that correct?

10 A What do you mean by "tested?"

11 Q Well, like MAP.

12 What is MAP testing, by the way?

13 A Measures of Academic Progress.

14 Q Okay. And would you agree that his MAP scores from
15 2007 indicate that he was performing at the same level as
16 typical peers in reading?

17 A I did not see those MAP scores.

18 Q Okay. Were you aware that his language scores were
19 historically and consistently average?

20 A No.

21 Q According to Ms. Patricia Daughtry. Who is that?

22 A She is behavior coordinator.

23 Q For Charleston County School District?

24 A For Charleston County School District. At that time
25 I believe she was the school psychologist for Daniel

1 Jenkins.

2 Q Okay. And you'd also indicated that he was assigned
3 to treatment at MUSC?

4 A That was my understanding.

5 Q Is that the STAR program?

6 A Typically it is. I did not have that recorded in my
7 notes as being the STAR program. It might very well have
8 been. I call it a day treatment.

9 Q Okay. Were you aware of why he was referred to the
10 STAR program?

11 A There are things in the records that led me to
12 believe why he was.

13 Q And why was he referred to the STAR program?

14 A My understanding is that following his assignment to
15 Daniel Jenkins Academy, he went for orientation and
16 shortly after that day he was prescribed by his physician
17 attendance at the program at Medical University.

18 Q I mean for what reason?

19 A Well, according to the homebound order from the
20 doctor, it said oppositional defiant disorder.

21 Q Okay. Have you seen the discharge summary from the
22 STAR program?

23 A No, sir, I did not.

24 MR. DURANT: I would like to have this marked
25 for identification, please.

1 THE COURT: Do you want to make it a Court's
2 exhibit?

3 MR. DURANT: Yes, let's just make it a Court's
4 exhibit, Your Honor, for purposes of this.

5 THE COURT: All right.

6 MR. DURANT: Although depending on what happens
7 in the trial, it may be revisited.

8 THE COURT: You can always take it out as a
9 Court's exhibit if you want to.

10 MR. DURANT: Okay.

11 (WHEREUPON, The Court's Exhibit No. 1 was marked
12 for purposes of the record.)

13 BY MR. DURANT:

14 Q Ms. Fila, I now hand you what's been marked as
15 Court's Exhibit No. 1 and ask you to review that document.
16 Does that involve Derell Green?

17 A Could you repeat that, please?

18 Q Does that discharge summary involve Derell Green, the
19 subject that we're talking about currently?

20 A Yes.

21 Q And that is a discharge summary from the STAR program
22 at the Medical University of South Carolina; is that
23 correct?

24 A Correct.

25 Q And what does it indicate the reason for referral

1 was?

2 A Referred to STAR due to chronic escalating disruptive
3 oppositional defiant and aggressive behaviors.

4 Q And how did he progress in the program? How long --
5 does it indicate how long he was in the program?

6 A It looks like he was discharged in June.

7 Q Of 2009?

8 A Yes.

9 Q And why was he discharged?

10 A Would you like me to read it or paraphrase?

11 Q Sure.

12 A Due to his violating his behavior -- due to his
13 violating his plan and his negative influence on peers'
14 behavior, he was discharged from the program with plans to
15 transition to outpatient treatment.

16 Condition on discharge is not highlighted.

17 Would you like me to read that also?

18 Q So basically he was unsuccessfully terminated from
19 the program, correct? Is that correct?

20 A I would -- that would have to be an opinion, but it
21 appears that would be correct.

22 Q For a -- for continued aggressive behavior?

23 A Correct.

24 MR. DURANT: Your Honor, I would submit this to
25 you for your consideration.

1 THE COURT: Thank you very much.

2 BY MR. DURANT:

3 Q And do you know why he ended up at Daniel Jenkins
4 Academy to begin with?

5 A Yes.

6 Q And why was that?

7 A He was involved in an incident at his middle school.

8 MS. EHRLICH: Your Honor, can I make an
9 objection to relevance? I don't know why it's relevant to
10 this hearing why he was attending Daniel Jenkins Academy.

11 THE COURT: Overruled. Go ahead.

12 I mean I assume from you offering this witness
13 you're trying to take the position that mentally he wasn't
14 able to understand what was transpiring during the
15 questioning process, so why wouldn't this be relevant? Or
16 is there another reason you're offering this witness?

17 MS. EHRLICH: No. That's why we -- we offered
18 it to show that he was in special education services,
19 specifically for reading.

20 THE COURT: Well, then why wouldn't this be
21 relevant?

22 MS. EHRLICH: I think he's trying to get into
23 behavioral problems that aren't really relevant to whether
24 or not -- what his mental capacity was.

25 THE COURT: Overruled. Go ahead.

1 BY MR. DURANT:

2 Q So are you aware of the reason that he was referred
3 to or sent to Daniel Jenkins Academy to begin with?

4 A Yes.

5 Q And what was that?

6 A There was an incident of an assault at his previous
7 middle school.

8 Q Okay. Fact of the matter is, he and some other kids
9 beat up a kid in the bathroom, right?

10 A Correct.

11 Q And that's why he went to Daniel Jenkins?

12 A Correct.

13 Q And to send him to Daniel Jenkins he had to go
14 through some sort of a meeting; is that correct?

15 A They have an orientation.

16 Q And in reviewing the records, do you remember
17 reviewing this record when they made the decision to
18 transfer him to Daniel Jenkins Academy?

19 A Yes. In fact, I believe I have that in my notes.

20 Q Okay. And, if you would, the highlighted portion
21 there, what did it say about his mental abilities?

22 A It doesn't speak to his mental ability. However, it
23 said he is very capable of doing work at grade level,
24 although he was failing his classes.

25 Q Right. And what else does it say?

1 A "Derell does not seem concerned about the
2 consequences for his action, including possible expulsion.
3 At the conclusion of the meeting, it was agreed by all
4 parties that there is no relationship between the
5 disability and the behavior."

6 Q And that was at the time that he was sent to Daniel
7 Jenkins; is that correct?

8 A Following that meeting, the process in the school
9 district is to be referred to our Office of Student
10 Placement and the folks in that group make that final
11 assignment.

12 Q Okay. And have you ever sat down and had a
13 conversation with Derell?

14 A No, sir.

15 Q Okay. So you can't testify as to what his ability is
16 to understand and speak the English language?

17 A No, I can't.

18 Q Okay. But you would admit that he has -- at least
19 with regard to previous psychological testing, he falls
20 within the average range of intelligence?

21 A Yes.

22 MR. DURANT: I don't believe I have anything
23 else. Thank you very much.

24 THE COURT: Redirect.

25 MS. EHRLICH: Just briefly, Your Honor.

1 IN CAMERA REDIRECT EXAMINATION

2 BY MS. EHRLICH:

3 Q Now I recognize you're not a psychologist, but just
4 to clarify, somebody can be of -- can somebody be of
5 average intelligence but still have a learning disability?

6 A Yes.

7 Q Okay. And he was getting special education services
8 for a learning disability?

9 A Yes.

10 Q And that would have included writing?

11 A Yes.

12 Q Okay. And you were asked a question about his
13 ability to function at grade level?

14 A Yes.

15 Q His grade level was what at the time?

16 A At the time of his testing, which was kindergarten,
17 he was performing one to one and a half years below grade
18 level peers.

19 MS. EHRLICH: Thank you, Your Honor.

20 THE COURT: Any recross?

21 MR. DURANT: No, sir.

22 THE COURT: Okay. You may step down. Thank you
23 so very much.

24 Call your next witness.

25 MS. EHRLICH: Your Honor, we'll call Hannah

1 Hyrne.

2 THE COURT: Who?

3 MS. EHRLICH: Hannah Hyrne.

4 THE COURT: Okay.

5 THE CLERK: Raise your right hand.

6 HANNAH HYRNE, after being duly sworn, testified
7 as follows:

8 THE CLERK: If you'd take your seat, ma'am.

9 Ma'am, if you'll state your first and last name,
10 spelling your last for the record, please.

11 THE WITNESS: Hannah Hyrne, H-Y-R-N-E.

12 IN CAMERA DIRECT EXAMINATION

13 BY MS. EHRLICH:

14 Q Ms. Hyrne, where are you currently employed?

15 A Department of Juvenile Justice.

16 Q Were you employed there in February of 2010?

17 A I was.

18 Q And what is your job there?

19 A Probation officer for juveniles.

20 Q And how do you know Derell Green?

21 A I supervised him on probation.

22 Q Prior to him being arrested for this charge, did you
23 have a lot of interaction with him one-on-one?

24 A Not one-on-one.

25 Q Okay. When you did have interactions with him, what

1 were they like or who was with him?

2 A His mother was always with him.

3 Q Okay. And was he responsive to your questions?

4 A Yes.

5 Q And how would you describe his answers?

6 A One word answers, very brief.

7 Q During the course of this case, did you become
8 involved with an evaluation for him?

9 A I did.

10 Q And what was your role in that evaluation?

11 A My role was to answer juvenile history and family --
12 or ask him juvenile history and family information for
13 purpose of his waiver evaluation.

14 Q Can you explain to the Court what happened the first
15 time you met with him?

16 A The first time I met with him he could not sign our
17 waiver of release and we could not move forward.

18 Q What's the waiver of release?

19 A It's a release of information for purposes of me
20 gathering information for the waiver trial to determine
21 whether he should be tried as an adult.

22 Q And what section -- was there a section in particular
23 that he had problems with?

24 A He just -- when I would ask him to explain it, he
25 could just repeat back.

1 Q And what were the questions or what were you trying
2 to get him to understand?

3 A That what he was telling me was for the waiver
4 purposes only, that it wasn't going to be used against him
5 in General Sessions.

6 Q So what were the types of questions or I guess you
7 guys call them waiver of rights? What do you call it?

8 A It's just -- I mean, this is the waiver evaluation.
9 There's not a specific title to it. It just says
10 Understanding of Family Court Order for the General
11 Sessions Court Waiver Evaluation.

12 Q Okay. Who was there with you when you were trying to
13 get through this with him?

14 A I was there, my supervisor James Meek was there, you
15 his attorney was there, Derell was there, and his mother
16 was there.

17 Q How did you become aware that he was having trouble
18 understanding the form?

19 A Once I read him the form I asked him if he
20 understood, and he hesitated. I asked him if he could
21 explain it to me and he parroted back to me what I
22 basically told him, but -- and I asked him if he could
23 explain it in his words, and he couldn't do that.

24 Q Okay. What section of the form were you asking him
25 to explain?

1 A I can't recall a specific section of the form. The
2 form in general is what I wanted him to explain to me.

3 Q Okay. What kinds of things were you trying to
4 explain to him?

5 I know you said -- besides that this stuff
6 couldn't be used against him, what other things were you
7 trying to explain to him?

8 A I remember asking him if he understood what I was
9 asking him, if what I was asking him would be used against
10 him, and he hesitated.

11 I asked him if he understood the purpose of the
12 waiver. That part, you know, he did understand, and so --
13 you know, it's to determine whether he goes to General
14 Sessions or not. But the general purpose he didn't
15 understand.

16 Q Okay. What steps did you take to try to help him
17 understand this?

18 A I explained the form in different terms. My
19 supervisor also explained the form in very short forms of
20 language and he would parrot back what we told him.

21 Q How long did this go on?

22 A Approximately half an hour.

23 Q Okay. And what happened after half an hour?

24 A We stopped and we had to contact our legal to
25 determine if we could go forward or not.

1 Q Okay. Eventually were you able to proceed with your
2 evaluation process?

3 A Yes, my portion I was.

4 Q Okay. And without going into the specifics of his
5 answers to questions, how did you find it questioning him
6 during that portion of the evaluation?

7 A We struggled.

8 Q What do you mean by "struggled?"

9 A I would ask him general questions and he hesitated
10 and needed re-explaining what the question meant, given
11 examples just to answer the questions.

12 Q Was his mother there for this?

13 A Yes.

14 Q Did he look to her for assistance in any way?

15 A He did.

16 Q And what steps would you take when he didn't
17 understand the question?

18 A I would reword the question and give him examples.

19 Q Did he always tell you when he didn't understand
20 something?

21 A I would ask him -- I would see him, you know,
22 hesitating and I would ask him if he understood and he
23 would ask me to explain it.

24 Q Did you take extra steps to try to make sure he
25 understood?

1 A Yes.

2 MS. EHRLICH: Court's indulgence.

3 (Pause.)

4 MS. EHRLICH: Judge, may I approach the witness?

5 THE COURT: Yes, ma'am.

6 BY MS. EHRLICH:

7 Q Ms. Hyrne, do you have a signed copy of the form that
8 you're talking about?

9 A I do.

10 Q Is this the only form that you used or did you use a
11 different form, different version of this?

12 A That's the form that I used.

13 Q This is the one that you used?

14 A Yes.

15 MS. EHRLICH: Permission to mark this as a
16 Court's exhibit, Your Honor?

17 THE COURT: No. 2?

18 MS. EHRLICH: Yes, sir.

19 THE COURT: That would be fine.

20 Do you have a copy of that? Because I think
21 that's her original; is that correct?

22 THE WITNESS: That's not the original.

23 THE COURT: Okay.

24 THE WITNESS: But I have a copy of that.

25 THE COURT: All right.

1 (WHEREUPON, The Court's Exhibit No. 2 was marked
2 for purposes of the record.)

3 BY MS. EHRLICH:

4 Q So this is the form that you're saying he had trouble
5 understanding?

6 A Yes.

7 MS. EHRLICH: May I approach, Your Honor?

8 THE COURT: Yes, ma'am.

9 MS. EHRLICH: Please answer any questions the
10 Solicitor has.

11 THE COURT: Cross-examination.

12 IN CAMERA CROSS-EXAMINATION

13 BY MR. DURANT:

14 Q Ms. Hyrne, is it common in your profession to get one
15 word answers when you're talking to a juvenile
16 probationer?

17 A No.

18 Q As a matter of fact, it would be pretty unusual if
19 you ever got one that was articulate and glib and able to
20 discuss in great detail things, wouldn't it?

21 A Not unusual, but they're not regular, they're not
22 common.

23 Q It would certainly be the exception and not the rule,
24 correct?

25 A Correct.

1 Q So that in and of itself is not unusual?

2 A Correct.

3 Q And as I understood it, and I think the judge is
4 reviewing it, you read it to him and told him that what he
5 told you could not be used against him in any court
6 hearing; is that correct?

7 A Correct.

8 Q Okay. And you explained that to him?

9 A Correct.

10 Q And you asked him to explain it back to you?

11 A Correct.

12 Q And he said that what he told you couldn't be used in
13 a court hearing, which is what you told him, right?

14 A I don't know the exact language, but he parroted back
15 to me what I told him.

16 Q Okay. But certainly by virtue of the response
17 itself, it indicated that he understood what you told him?

18 A I don't know if he understood or not.

19 Q Well, I mean, if you asked the question, "What does
20 that mean?" and I don't care what words he repeats it in,
21 if he says that, you know, "They can't use this against
22 me," then what's your basis for claiming he didn't
23 understand?

24 A I don't know that he didn't understand it.

25 Q Exactly. That's my point. Because he told you he

1 understood it, correct?

2 A No. He never said, "I understand this."

3 Q Okay. Did he ever say "I don't understand it?"

4 A He hesitated and said he was unsure.

5 Q Okay. But you in your dealings with him, if there
6 was ever a point where he didn't understand what you were
7 asking about, you said there was no problem with him
8 asking and he would tell you that, correct?

9 A He would ask me to explain further.

10 Q Exactly. So, I mean, if he didn't ask you to
11 explain, would the converse of that be that yeah, maybe he
12 did understand?

13 A Maybe.

14 Q Okay. And also this was done not on February 5th,
15 2010; is that correct?

16 A What?

17 Q That was not done on February 5th of 2010, it was
18 done on July 6th of 2010, about five months later?

19 A I asked him those questions on March 11th, 2010.

20 Q Okay. So this is not the form we're talking about,
21 July the 6th of 2010?

22 A We initially met with him in March and then we
23 finally signed the form in July.

24 Q And the form that the judge has, that's the one that
25 was done in July?

1 A Yes.

2 Q Okay. So five months later?

3 A Correct.

4 Q So you can't tell us what his mental state was on
5 February 5th, 2010, correct?

6 A Correct.

7 Q Nor can you tell us what he understood or didn't
8 understand at that time?

9 A Correct.

10 Q In your opinion, based on what you said, if he didn't
11 understand what was being asked of him, he would ask you
12 to explain it to him, correct?

13 A Yes.

14 MR. DURANT: Okay.

15 THE COURT: Any redirect?

16 MS. EHRLICH: Just briefly.

17 IN CAMERA REDIRECT EXAMINATION

18 BY MS. EHRLICH:

19 Q Prior to when you met with him for the waiver
20 evaluation, had he ever spoken up about not understanding
21 what you were saying to him?

22 A No.

23 Q What was the difference this time?

24 A I was asking him consistently if he understood
25 everything I was saying.

1 Q Why were you so concerned, though?

2 A To make sure he understood his rights and everything
3 that he was telling me.

4 Q So you were taking extra precautions to make sure he
5 understood?

6 A Correct.

7 Q And that's why you tried to make sure you explained
8 it in simpler language?

9 A Correct.

10 Q When you would ask him what something meant, did you
11 ever ask him to explain it to you in his own words?

12 A Yes.

13 Q Is that what he was having trouble with when you say
14 that he was just parroting things back?

15 A Yes. He couldn't explain it in his own words.

16 MS. EHRLICH: Thank you very much.

17 MR. DURANT: Just a couple on redirect (sic).

18 IN CAMERA RECROSS-EXAMINATION

19 BY MR. DURANT:

20 Q Did you ever discuss other things with him?

21 A During the waiver.

22 Q Yes.

23 A What do you mean?

24 Q Well, other things. I mean did you talk to him about
25 his family history and blah, blah, blah, I mean all that

1 stuff in this eight or nine pages?

2 A Correct.

3 Q And you were able to communicate with him?

4 A Yes. I mean, he struggled throughout the questions
5 that I was asking him.

6 Q He struggled because he's not articulate, correct?

7 A I don't know that.

8 Q And like you say, it's not unusual for your clientele
9 to be inarticulate?

10 A That's correct.

11 Q And -- but you were able to get all the information
12 that you needed from him, correct?

13 A Correct.

14 Q He understood what you said to him, correct?

15 A Yes.

16 Q I'm not talking -- I'm talking about your entire
17 interaction with him, okay? He understood what you said
18 to him, correct?

19 A As far as I know.

20 Q And you understood what he said to you?

21 A That's correct.

22 MR. DURANT: Thank you.

23 THE COURT: You may step down. Thank you very
24 much.

25 Call your next witness.

1 MS. EHRLICH: We call Tamica Nelson.

2 THE COURT: You're calling who, I'm sorry?

3 MS. EHRLICH: Tamica Nelson, Your Honor.

4 THE COURT: Okay.

5 THE CLERK: Raise your right hand.

6 TAMICA NELSON, after being duly sworn, testified
7 as follows:

8 THE CLERK: Ma'am, if you would take your seat.

9 Ma'am, if you would, state your first and last
10 names, spelling your last for the record.

11 THE WITNESS: Tamica Nelson, T-A-M-I-C-A
12 N-E-L-S-O-N.

13 IN CAMERA DIRECT EXAMINATION

14 BY MS. EHRLICH:

15 Q Hi, Ms. Nelson.

16 A Hi.

17 Q What's your relationship with Derell Green?

18 A I'm his mother.

19 Q Okay. Were you home on February 5th when the police
20 first arrived?

21 A No, ma'am.

22 Q Okay. What happened when you did get there?

23 A When I got there -- well, my husband got there first
24 and I met him there because he got there before me. And
25 when I got there, the police was there and my husband

1 asked what was going on and he was like, "There was a
2 murder on Bonds Avenue and your son was involved in it."
3 And he said we can't get into -- my husband went to the
4 back door and I went to the front door.

5 Q Did you eventually get in the house?

6 A My husband went through the back door to get inside.

7 Q All right. What happened once the police were
8 inside?

9 A When they was inside they asked Derell if -- where
10 were he at and afterwards they -- they took him and his
11 friend Dagone Lance, they put a towel over their hand and
12 they took them outside.

13 Q Okay. Did you at any point ask the police if you
14 could go with them?

15 A Yes, ma'am.

16 Q And what were you told?

17 A They say not right now, they would call me.

18 Q They said they would call you?

19 A Uh-huh.

20 Q Did you end up going to the station?

21 A That was like 10 o'clock that night.

22 Q At 10 o'clock at night?

23 A Yes, ma'am.

24 Q Between when they took him from your house and going
25 at 10 o'clock at night, did you make any attempts to try

1 to get in touch with your son?

2 A I called twice, but I can't remember what time.

3 Q What happened when you called?

4 A When I called, he didn't like call back, just called
5 back because he didn't see nothing, he didn't write a
6 statement or nothing.

7 Q All right. How did you eventually end up speaking
8 with him?

9 A When I called back I asked them if we could come down
10 and he say he'll call me when to come down.

11 Q So did somebody eventually call you to come down?

12 A Yes.

13 Q And when was that?

14 A That had been like a little after 9. I know we got
15 there about 10.

16 Q All right. And did Derell ever call you?

17 A No, ma'am.

18 MS. EHRLICH: Court's indulgence.

19 (Pause.)

20 MS. EHRLICH: Please answer any questions the
21 Solicitor has for you.

22 THE COURT: Cross-examination.

23 IN CAMERA CROSS-EXAMINATION

24 BY MR. DURANT:

25 Q Okay. So they were at your house at 2 p.m., correct?

1 A Yes, sir.

2 Q And I understand from your testimony that you're
3 denying that you -- do you remember Detective Kramitz
4 right there?

5 A Uh-huh.

6 Q You deny him telling you that they were taking Derell
7 in and asking if you or your husband wanted to come?

8 A They didn't ask me. We asked them.

9 Q So you're saying you asked them and they said that
10 you couldn't come, is that your testimony?

11 A That's right.

12 Q Okay. And this is your 14-year-old child, correct?

13 A Yes, sir.

14 Q Natural born, correct?

15 A Yes, sir.

16 Q You had a car?

17 A Yes, sir.

18 Q You knew where North Charleston Police Department
19 was?

20 A Yes, sir.

21 Q And you didn't bother to go?

22 A Correct.

23 Q Until 10 o'clock?

24 A Correct.

25 Q And it wasn't because anybody was there searching

1 your house because your husband was there, correct?

2 A Correct. He went to took his truck back to the job.

3 Q All right. So there was no reason why you couldn't
4 have gone?

5 A But they told us -- they told me I couldn't leave.

6 Q So you're saying that they took your 14-year-old
7 child off in cuffs and they just said you couldn't go and
8 so you said okay, I'll sit here and play Solitaire
9 instead?

10 A No, sir.

11 Q Do you talk to your son?

12 A When I got there.

13 Q I'm not talking about -- do you talk to your son on a
14 routine basis?

15 A Yes, sir.

16 Q Do you understand him?

17 A Yes, sir.

18 Q He understand you?

19 A Yes, sir.

20 Q He's not retarded or anything like that, is he?

21 A No, sir.

22 Q He certainly has the ability to understand what
23 you're saying to him?

24 A Yes, sir.

25 Q And you have the ability to understand what he's

1 saying to you?

2 A Yes, sir.

3 Q He's had some difficulties in school; is that
4 correct?

5 A Yes, sir.

6 Q And primarily that's because he's a behavior problem?

7 A Yes, sir.

8 Q Okay. And he's been a behavior problem pretty much
9 for several years?

10 A Yes, sir.

11 Q And he doesn't like school, correct?

12 A He likes school.

13 Q Doesn't like learning, does he?

14 A He likes learning.

15 Q Does he have anger issues?

16 A Some.

17 Q As a matter of fact, that why he went to the Medical
18 University because he's got anger issues, correct?

19 A Correct.

20 Q And he was being aggressive at school?

21 A Correct.

22 Q And he's been aggressive at school on several
23 different occasions?

24 A Correct.

25 Q And you've been called a bunch from school because

1 he's been aggressive at school?

2 A Correct.

3 Q But he doesn't have any problem understanding the
4 English language?

5 A Correct.

6 Q And he doesn't -- when he doesn't understand things
7 or doesn't understand something that you say to him, will
8 he ask you what you mean?

9 A Yes, sir.

10 MR. DURANT: I have nothing else, Your Honor.

11 THE COURT: Okay. Redirect?

12 MS. EHRLICH: No, Your Honor.

13 THE COURT: Ms. Nelson, you may step down.

14 Thank you very much.

15 MS. EHRLICH: We call Derell Green.

16 THE COURT: Okay. Mr. Green, if you'll come
17 around.

18 DERELL GREEN, after being duly sworn, testified
19 as follows:

20 THE CLERK: Sir, if you'd take your seat.

21 Sir, if you would state your first and last
22 names, spelling your last for the record.

23 THE WITNESS: Derell Green, G-R-E-E-N.

24 THE COURT: Before we get started, let me clear
25 up one issue, if you please.

1 The indictment I believe spells his name
2 D-E-R-R-E-L-L and the proper spelling is D-E-R-E-L-L, just
3 one R; is that correct?

4 MS. EHRLICH: That's correct, Your Honor.

5 THE COURT: I understand you earlier --

6 MR. DURANT: I move to amend, Your Honor.

7 THE COURT: -- made a motion to modify the
8 indictment to the proper spelling.

9 MR. DURANT: That's correct, Your Honor.

10 THE COURT: And I'm going to -- on the
11 indictment itself I'm going to take out the R and put an
12 initial that that motion is granted as far as modifying
13 the indictment to the correct spelling.

14 MR. DURANT: Thank you, Your Honor.

15 THE COURT: Any objection from the defendant?

16 MS. EHRLICH: No, Your Honor.

17 THE COURT: Thank you very much. Please
18 proceed.

19 IN CAMERA DIRECT EXAMINATION

20 BY MS. EHRLICH:

21 Q Derell, I know that you're nervous, but you've got to
22 speak up and kind of lean into the microphone, okay?

23 A Yes, ma'am.

24 Q And you've got to answer out loud, too.

25 A Yes, ma'am.

1 Q Okay? What's your birthday?

2 A [REDACTED].

3 Q You've got to talk a little bit louder than that.

4 A [REDACTED].

5 Q Okay. And do you know how old you are -- how old you
6 were when you got arrested?

7 A Fourteen.

8 Q And what grade were you in?

9 A Eighth.

10 Q Where did you go to school?

11 A Daniel Jenkins.

12 Q And what types of classes did you take, do you
13 remember?

14 A No, ma'am.

15 Q Do you remember if you got any special help in
16 school?

17 A Yes, ma'am.

18 Q What kind of special help did you get?

19 A Resource.

20 Q Do you know what resource is?

21 A Yes, ma'am.

22 Q What is it?

23 A Pulled me out and helped me with my work.

24 Q Say it again?

25 A They pulled me out of class and helped me with my

1 work.

2 Q Okay. Now at the time that you got arrested, were
3 you taking any type of medicine?

4 A Yes, ma'am.

5 Q Do you know what you took the medicine for?

6 A No, ma'am.

7 Q Do you know what it was?

8 A Yes, ma'am.

9 Q What was it?

10 A Concerta.

11 Q Okay. And do you know if you were going to any types
12 of counseling?

13 A Yes, ma'am.

14 Q Do you know what it was for?

15 A No, ma'am.

16 Q Was that at school?

17 A Yes, ma'am.

18 Q Do you think that it was to help you with behavior?

19 A Yes, ma'am. Talked to me.

20 Q Say it again?

21 A They talked to me to help me calm down.

22 Q Okay. How do you do when you meet like new people?

23 A Not good.

24 Q What do you mean by "not good?"

25 A Nervous.

1 Q Nervous. What does that do to you when you're
2 nervous?

3 A I don't know.

4 Q Well, do you have -- what type of symptoms do you
5 have? Do you know what symptoms are?

6 A Yes, ma'am.

7 Q What type of symptoms would you have when you're
8 nervous?

9 A I don't like talking.

10 Q It's hard for you to talk?

11 A Yes, ma'am.

12 Q Okay. Now, have you ever gotten any type of
13 treatment for like nerves or anything?

14 A No, ma'am.

15 Q Okay. When you were arrested in February of 2010,
16 were you working anywhere?

17 A No, ma'am.

18 Q And had you ever had any type of jobs?

19 A Not real jobs.

20 Q What do you mean by "not real jobs?"

21 A I used to work at the barber shop after elementary
22 school.

23 Q Say it again?

24 A I used to work in a barber shop in elementary school.

25 Q Okay. What did you do for the barber shop?

- 1 A Sweep the floor.
- 2 Q Sweep the floor?
- 3 A Yes, ma'am.
- 4 Q Okay. Have you ever had like a paying job?
- 5 A No, ma'am.
- 6 Q Where did you live when you were arrested?
- 7 A West Surrey.
- 8 Q And who did you live with him?
- 9 A My momma, stepdad, and two brothers and sister.
- 10 Q Okay. And did you have any type of hobbies or
- 11 anything?
- 12 A No, ma'am.
- 13 Q Do you know what hobbies are?
- 14 A Yes, ma'am.
- 15 Q What are hobbies?
- 16 A Something you do.
- 17 Q Something you do?
- 18 A Uh-huh.
- 19 Q Okay. Did you have anything that you liked to do?
- 20 A Play games.
- 21 Q Play games? Did you watch like TV or anything?
- 22 A Yes, ma'am.
- 23 Q Okay. What was your favorite show on TV?
- 24 A Tom and Jerry.
- 25 Q Tom and Jerry? Okay.

1 Now, let's talk a little bit about your prior
2 experience with the police, okay?

3 Before you got arrested for this charge, had you
4 ever been arrested before?

5 A No, ma'am.

6 Q Have you had juvenile charges before?

7 A Yes, ma'am.

8 Q For what?

9 A Running away, disturbing schools.

10 Q Okay. When you got arrested for those, did you ever
11 have go to down to the police station?

12 A No, ma'am.

13 Q Did you ever get interviewed by the police?

14 A No, ma'am.

15 Q Did they ever tell you things like you have the right
16 to remain silent, you can have a lawyer, or anything like
17 that?

18 A No, ma'am.

19 Q Okay. Where were you when you got arrested for this
20 charge?

21 A Home.

22 Q And where again is home?

23 A West Surrey.

24 Q And how did it happen? What happened?

25 A I was sitting in my room and they come knocking to

1 the door.

2 Q Okay. And when you say "they," who's "they?"

3 A Police.

4 Q And was it one police officer?

5 A No, ma'am.

6 Q How many were there?

7 A I think it might have been a lot.

8 Q There was a lot?

9 A Yes, ma'am.

10 Q Okay. How were you feeling at that point?

11 A Scared.

12 Q What were you scared of?

13 A I don't know.

14 Q Were you scared of the police?

15 A Yes, ma'am.

16 Q Okay. When the police got there, how did they end up
17 getting inside your house?

18 A They stepped in when Momma came and opened the door.

19 Q Okay. So your parents let them in?

20 A Yes, ma'am.

21 Q And what happened once they got inside?

22 A They come to the living room.

23 Q Okay. And what happened next?

24 A They told me -- asked me why I wasn't at school
25 today.

- 1 Q Say it again?
- 2 A They asked me why I wasn't at school.
- 3 Q Okay. And then what happened?
- 4 A They tell me I'm under arrest.
- 5 Q Did they tell you why you were under arrest?
- 6 A No, ma'am.
- 7 Q At that point did they say, you know, you don't have
- 8 to talk to us?
- 9 A No, ma'am.
- 10 Q Did they say that you could get a lawyer?
- 11 A No, ma'am.
- 12 Q Did they say that you were free to go?
- 13 A No, ma'am.
- 14 Q Okay. Do you think that you were free to go?
- 15 A No, ma'am.
- 16 Q Why not?
- 17 A I was put in handcuffs.
- 18 Q Say what?
- 19 A They put me in handcuffs.
- 20 Q Okay. What happened after they put you in handcuffs?
- 21 A They cover my hands up.
- 22 Q Okay. And then what happened?
- 23 A They took me to city hall.
- 24 Q And how far away is city hall from your house?
- 25 A Not far.

- 1 Q Can you estimate how long it took?
- 2 A About five minutes.
- 3 Q Okay. Once you got to city hall, where did you go?
- 4 A To a room.
- 5 Q Okay. Now I know you've been to the room, but the
- 6 judge hasn't been to the room. What did the room look
- 7 like?
- 8 A It's small with a table and chairs, plate glass, a
- 9 covered camera.
- 10 Q A little bit slower. What size is the room?
- 11 A Small.
- 12 Q Was there any furniture in there?
- 13 A Yes, ma'am.
- 14 Q What was the furniture like?
- 15 A A table and chairs.
- 16 Q Were there any doors or windows?
- 17 A There was a glass.
- 18 Q What do you mean "glass?"
- 19 A A big glass that people could see out.
- 20 Q Say that again?
- 21 A A glass people could look out.
- 22 Q Okay. And was there anything up on the walls?
- 23 A A camera.
- 24 Q What do you mean "a camera?"
- 25 A There was a camera in the corner.

1 Q Okay. How do you know that? What did you see?

2 A It was covered up, though.

3 Q What was it covered with?

4 A I think a plastic cup.

5 Q Okay. What did you think about that being covered up
6 like that?

7 A I thought it was supposed to be working.

8 Q What do you mean you thought it was supposed to be
9 working?

10 A I don't know.

11 Q Okay. What did you think about that?

12 A Nervous.

13 Q Did it make you nervous?

14 A Yes, ma'am.

15 Q Okay. Once you're in the room, what happened with
16 your handcuffs?

17 A They took one off.

18 Q What did they do with the other one?

19 A They handcuffed me to the chair.

20 Q They handcuffed you to a chair?

21 A I think so.

22 Q Okay. And what happened next?

23 A He read the rights paper.

24 Q Who's "he?"

25 A Detective Kramitz.

- 1 Q Okay. And how did that happen? What was it like?
- 2 A He had read it to me and told me to sign it.
- 3 Q He told you to sign it?
- 4 A Yes, ma'am.
- 5 Q Did you read it yourself?
- 6 A No, ma'am.
- 7 Q Did he ask you if you understood it?
- 8 A I don't think so.
- 9 Q Okay. Did he explain it in language that you
- 10 understood?
- 11 A No, ma'am.
- 12 Q Did you understand it?
- 13 A No, ma'am.
- 14 Q Okay. You did sign it, though?
- 15 A Yes, ma'am.
- 16 Q Why did you sign it?
- 17 A They told me to put my signature right there.
- 18 Q Okay. So because he told you to sign it, you signed
- 19 it?
- 20 A Yes, ma'am.
- 21 Q But you didn't understand it?
- 22 A No, ma'am.
- 23 Q Okay. What happened next?
- 24 A He start taking a statement.
- 25 Q Okay. Do you know what time it was when they started

1 taking your statement?

2 A No, ma'am.

3 Q Was there a clock in the room?

4 A No, ma'am.

5 Q Okay. What type -- how did he take your statement?

6 A He started asking me questions.

7 Q Okay. And did you answer them?

8 A Yes, ma'am.

9 Q Why did you answer the questions?

10 A I don't know.

11 Q Well, did you think that you didn't have to?

12 A I thought I have to.

13 Q Okay. Who wrote your statement?

14 A Detective Kramitz.

15 Q All right. Why did he write it?

16 A I don't know.

17 Q Okay. Did he threaten you or anything?

18 A No, ma'am.

19 Q Okay. And when you were going through that
20 statement, did you tell the police that you had shot
21 anybody?

22 A No, ma'am.

23 Q Okay. Did you sign that statement?

24 A Yes, ma'am.

25 Q Did you read it before you signed it?

1 A No, ma'am.

2 Q Why not?

3 A I don't know.

4 Q Okay. Why did you sign it?

5 A He tell me to put my signature right there.

6 Q Okay. So do you know what time you finished doing

7 that statement?

8 A No, ma'am.

9 Q What happened after you finished that statement?

10 A Those other people came and talked to me.

11 Q Other people?

12 A Yes, ma'am.

13 Q Do you remember any of their names?

14 A No, ma'am.

15 Q What types of stuff were they saying to you?

16 A They saying, "We know you done it. We've got people

17 behind the glass pointing you out."

18 Q Okay. Did they say anything else to you?

19 A "You'll never go home. You'll never see daylight

20 unless you tell the truth."

21 Q They said that you wouldn't go home unless you told

22 the truth?

23 A Yes, ma'am.

24 Q Was Detective Kramitz saying any of that or was it

25 the other officers?

1 A The other officers in the room.

2 Q Okay. Did they make you any types of promises or
3 anything?

4 A They only say if I tell the truth it could help me in
5 court.

6 Q They said if you tell the truth it would help you in
7 court?

8 A Yes, ma'am.

9 Q Did you know if that was -- if it would help you in
10 court?

11 A I thought it does, it would.

12 Q Did you believe the officers?

13 A Yes, ma'am.

14 Q Okay. Do you remember giving the second statement?

15 A Yes, ma'am.

16 Q And in that statement you told the police that you
17 did do the shooting?

18 A Yes, ma'am.

19 Q How were you feeling at that point?

20 A Still nervous.

21 Q Okay. Had you been there a very long time?

22 A Yes, ma'am.

23 Q Did you sign that statement?

24 A Yes, ma'am.

25 Q Did you read that one before you read it or before

1 you signed it?

2 A No, ma'am.

3 Q Why did you sign that one?

4 A He had said put my signature there, too.

5 Q Okay. And who is "he?"

6 A Detective Kramitz.

7 Q Before you gave that statement, did they do another
8 rights form with you where they said that you didn't have
9 to answer questions?

10 A No, ma'am.

11 Q Okay. At any point did the police get you any food
12 or anything?

13 A Yes, ma'am.

14 Q When did they give you food?

15 A After the second statement.

16 Q Okay. Did you eat the food?

17 A Eat the fries.

18 Q You ate the fries?

19 A Yes, ma'am.

20 Q Did you ever ask the police if you could speak to
21 your mom?

22 A Like during the first statement.

23 Q Okay. And what did they tell you?

24 A When we get done.

25 Q Wait until we get done?

1 A Yes, ma'am.

2 MS. EHRLICH: Court's indulgence for just a
3 second.

4 THE COURT: Yes, ma'am.

5 (Pause.)

6 MS. EHRLICH: Derell, please answer any
7 questions the Solicitor has.

8 THE COURT: Cross-examination.

9 IN CAMERA CROSS-EXAMINATION

10 BY MR. DURANT:

11 Q Back when the police came to your house, there were a
12 lot of police out there, correct?

13 A Yes, sir.

14 Q But there weren't a lot of police out there when your
15 mom and dad or your mom and stepdad came and let Detective
16 Kramitz in; is that correct?

17 A Oh, they still been there.

18 Q How long were they out and you all didn't open the
19 door?

20 A I don't remember.

21 Q They were out there a long time and you all didn't
22 open the door. Why didn't you open the door?

23 A I wait until my momma come home.

24 Q But you knew it wasn't a burglar or anything, you
25 knew it was the police out there, correct?

- 1 A Yes, sir.
- 2 Q Now you were taken to the station; is that correct?
- 3 A Yes, sir.
- 4 Q You were put in this interview room?
- 5 A Yes, sir.
- 6 Q What is Megan Ehrlich?
- 7 A My attorney.
- 8 Q She's an attorney. What's an attorney?
- 9 A Someone that represent me.
- 10 Q Okay. Somebody to represent you when you get in
- 11 trouble, right?
- 12 A Yes, sir.
- 13 Q Okay. So you know what an attorney is?
- 14 A Yes, sir.
- 15 Q And you know when you get arrested you have a right
- 16 to an attorney, right?
- 17 A No, I didn't know that then.
- 18 Q Okay. But if somebody told you that, you have a
- 19 right to an attorney, you understand what that means?
- 20 A No, I didn't understand it right then.
- 21 Q Oh, you didn't understand, but you know what an
- 22 attorney is, what she does, and you understand that you
- 23 have a right to an attorney. But you only understand that
- 24 now, you say you just didn't understand it on
- 25 February 5th; is that correct?

1 A Yes, sir.

2 Q You don't have any problem with the English language,
3 do you?

4 A Oh, I do.

5 Q You understand what I'm saying to you, don't you?

6 A Yes, sir.

7 Q You understand when you say you have a right to an
8 attorney, don't you?

9 A Yes, sir.

10 Q You understand that if I tell you you have a right to
11 keep your mouth shut, don't you?

12 A Yes, sir.

13 Q You understand if I tell you that if you don't keep
14 your mouth shut, we can use what you tell us against you,
15 don't you?

16 A Yes, sir.

17 Q You understand all of that, correct?

18 A Yes, sir.

19 Q And there's no problem, there's no language barrier
20 here; is that correct?

21 A No, sir.

22 Q You're no moron?

23 A No, sir.

24 Q You're no idiot?

25 A No, sir.

1 Q You knew what Detective Kramitz was telling you?

2 A Little bit.

3 Q A little bit? You know if he's telling you the same
4 things I'm asking you today, correct?

5 A Yes, sir.

6 Q And you told him that you understood?

7 A Yes, sir.

8 Q Because you did understand it?

9 A No, I didn't say that.

10 Q Oh. So you just said that, okay? So how come you
11 understand it so well now and didn't understand it then?

12 A I had it explained to me.

13 Q And he explained it to you. Did you have to tell
14 him -- if you ever asked him to explain anything to you,
15 did he ever say, "I'm not going to explain anything to
16 you?"

17 A No, sir.

18 Q And he didn't promise you anything and he didn't
19 threaten you, did he?

20 A No, sir.

21 Q And he went over these with you, each one of these
22 rights with you, didn't he?

23 A He read it to me.

24 Q He read it to you and asked you if you understood it,
25 didn't he?

1 A I don't think so.

2 Q You don't think so. Well, why did you put your
3 initials there beside it?

4 A He say to put my signature here.

5 Q Okay. And what does that say?

6 A It mean?

7 Q What does this say? Can you read?

8 A I fully understand these rights as explained to me.

9 Q Okay. So you can read, can't you?

10 A Yes, sir.

11 Q And what is right under there where it says "I fully
12 understand these rights that have been explained to me?"

13 A Derell Green.

14 Q Okay. Can you read number one?

15 A Yes, sir.

16 Q Okay. What does number one say?

17 A "I have the absolute right to remain silent and do --
18 and do not have to answer any question or give a statement
19 and this fact cannot be used against me."

20 Q Okay. And you understand what that means?

21 A Yes, sir.

22 Q Okay. What does number two say?

23 A "If I do answer questions or give a statement,
24 anything I say can and will be used against me in a court
25 of law."

- 1 Q Okay. And you understand what that means?
- 2 A Yes, sir.
- 3 Q And that's a yes?
- 4 A Yes, sir.
- 5 Q Okay. And number three?
- 6 A "I have the right to consult with a lawyer of my
7 choice before I answer questions or give a statement and
8 also have him or her present while I'm being questioned."
- 9 Q You actually read pretty good, don't you?
- 10 A Yes, sir.
- 11 Q And you understand what that means?
- 12 A Yes, sir.
- 13 Q Number four?
- 14 A "If I wish to talk to a lawyer or have him or her
15 present but I am able (sic) to afford to hire a lawyer,
16 one will be appointed to represent me free of charge."
- 17 Q Okay. You understand what that means?
- 18 A Yes, sir.
- 19 Q Basically means you get a free lawyer if you can't
20 afford one, right?
- 21 A Yes, sir.
- 22 Q You understand that? Understood it then, didn't you?
- 23 A No, sir.
- 24 Q The last one.
- 25 A "If I decide to answer questions or give a statement

1 without having a lawyer present representing me, I have
2 the absolute right during this interview to stop answering
3 questions and remain silent."

4 Q Okay. What does that mean?

5 A Huh?

6 Q What does that mean?

7 A Could have been quiet.

8 Q That's right. You could have been quiet at any time,
9 correct?

10 A Yes, sir.

11 Q And you signed right under where it says, "I fully
12 understand each of these rights explained to me," and
13 those are your initials by each one of those --

14 A Yes, sir.

15 Q -- that you just read to this Court?

16 A Yes, sir.

17 Q And that you just said to this Court that you
18 understood?

19 A Yes, sir.

20 Q Okay. And then -- so you knew, you know, you didn't
21 have the right to talk to them and you talked to them,
22 correct?

23 A Yes, sir.

24 Q Did you talk to them?

25 A Yes, sir.

1 Q Pardon?

2 A Yes, sir.

3 Q As a matter of fact, you lied to them?

4 MS. EHRLICH: Objection, Your Honor.

5 THE COURT: We're not going to get into the
6 statement itself, okay, and the crime itself, the
7 voluntariness of it, okay? I'll sustain the objection.

8 MR. DURANT: I think it goes very much to his
9 presence of mind as to what he told them and how he
10 changed his story. It's not something that I know that I
11 use against him later. I understand that.

12 THE COURT: You understand that?

13 MR. DURANT: I understand that.

14 THE COURT: But you want to go into it for what
15 purpose?

16 MR. DURANT: I want to go into it for the
17 purpose that he had the mental capacity to understand that
18 he was in trouble and that he --

19 THE COURT: Okay. Then rephrase your question.

20 MR. DURANT: Okay.

21 THE COURT: Let me say this.

22 MS. EHRLICH: Your Honor --

23 THE COURT: A lot of things that are coming out
24 in this hearing won't come out before the jury.

25 MR. DURANT: I understand that.

1 THE COURT: Okay?

2 MR. DURANT: I understand that.

3 THE COURT: All right.

4 MS. EHRLICH: Your Honor, can we be heard?

5 THE COURT: I just asked him to rephrase his
6 question. You can make an objection on that question.
7 I've already sustained your objection.

8 MS. EHRLICH: Thank you, Your Honor.

9 THE COURT: I've not changed my mind on that.

10 MS. EHRLICH: Okay.

11 BY MR. DURANT:

12 Q Okay. And let's get to -- because there were two
13 different statements; is that correct?

14 A Yes, sir.

15 Q Okay. And let's just try to get a time frame
16 together.

17 He read you the rights, you acknowledge that; is
18 that correct?

19 A Yes, sir.

20 Q And it's got like -- where is it -- 3:47 p.m. in the
21 afternoon. Does that sound about right to you?

22 A I don't remember what time it was.

23 Q Okay. And then right after that he started asking
24 questions and you would answer them and he would write it
25 down; is that how it worked?

1 A Yes, sir.

2 Q Okay. And you have -- you said that you didn't read
3 the statement that you gave them, that first one?

4 A No, sir.

5 Q Okay. Have you read it since then?

6 A I don't think so.

7 Q So you haven't read this statement at all?

8 A No, sir.

9 Q This statement right here? Your attorneys never
10 showed that to you?

11 A Yeah, I got it.

12 Q Okay. And you just never read it is what you're
13 saying?

14 A No, sir.

15 Q You never read it?

16 A No, sir.

17 Q Okay. Do you remember what you told them?

18 A I think so.

19 Q What did you tell them?

20 MS. EHRLICH: Objection, Your Honor.

21 THE COURT: What's the legal objection?

22 MS. EHRLICH: It's not relevant to this hearing
23 or voluntariness of the statement. He's trying to go into
24 the actual statement and what he said. I don't think that
25 that's part of this hearing.

1 THE COURT: Overruled. I think he's talking
2 about the first statement.

3 MR. DURANT: I am talking about the first
4 statement.

5 THE COURT: He's talking about the first
6 statement. And in that statement he doesn't incriminate
7 himself at all, okay? So it's overruled.

8 MS. EHRLICH: Okay, Your Honor.

9 BY MR. DURANT:

10 Q Okay. And what did you say in the first statement?

11 A I don't know nothing.

12 Q Well, do you remember what you told them? What did
13 you tell them about -- let me ask you this. What did you
14 tell them about the shooting?

15 A I tell them I heard shots and I ran home.

16 Q That you heard shots and you ran home; is that
17 correct?

18 A Yes, sir.

19 Q Okay. And do you admit that -- and take your time
20 and read it and tell me if that's what he said and if he
21 wrote it down in that statement. Did he write down what
22 you told him?

23 A Yes, sir.

24 Q Huh?

25 A Yes, sir.

1 Q So you admit that he wrote down what you told him in
2 that first statement?

3 A Yes, sir.

4 Q So you have read it?

5 A No, sir.

6 Q Then how do you know?

7 A I don't know.

8 Q You have read it, haven't you, Mr. Green?

9 A No, sir.

10 Q So you're telling this Court that you have not read
11 that statement, even though it was provided to you by your
12 attorney, since February of 2010?

13 A I had it in February.

14 Q Okay. But you haven't read that statement since
15 February of 2010 is what you're saying?

16 A I haven't read it all.

17 Q Okay. But you do not deny that that statement sets
18 forth what you told Detective Kramitz that first time?

19 A Yes, sir.

20 Q Okay. And that was that you heard shots and ran
21 away?

22 A Yes, sir.

23 Q And those are, no question, your signature on all the
24 pages of that first statement; is that correct?

25 A Yes, sir.

1 Q And do you have any idea how long that took?

2 A No, sir.

3 Q And then after that happened, after, you know, he
4 took the written statement and you admit that he wrote
5 down what you told him and you signed it, were you by
6 yourself for awhile?

7 A Yes, sir.

8 Q Okay. And where were you by yourself?

9 A In the room.

10 Q Okay. And did they check on you while you were by
11 yourself in the room?

12 A Yes, sir.

13 Q They would ask you if you needed to go to bathroom?

14 A Yes, sir.

15 Q They would ask you if you needed anything to eat or
16 drink?

17 A No, not right then.

18 Q Not then, but I mean you did get something to eat
19 while you were there?

20 A Yes, sir.

21 Q Did they ever tell you you couldn't have anything to
22 eat or drink or you couldn't go to the bathroom?

23 A No, sir.

24 Q Any time you asked for something like that, did they
25 allow you?

1 A Yes, sir.

2 Q Okay. Now two other detectives came by to talk to
3 you later; is that correct?

4 A Yes, sir..

5 Q And they told you you weren't telling them the truth,
6 didn't they?

7 A Yes, sir.

8 Q Okay. And they told you you weren't telling them the
9 truth because they had a video from the school?

10 A They didn't tell me they had a video then.

11 Q Okay. So they didn't tell you -- because you'd told
12 them that you'd been by yourself and they said that you
13 weren't by yourself, you were with other people, they'd
14 seen it on the video; they didn't tell you?

15 A No, sir.

16 MS. EHRLICH: Your Honor, I'm going to object
17 again on the same thing.

18 THE COURT: Pardon?

19 MS. EHRLICH: I'm going to object that he's
20 trying to get into that second statement and the truth of
21 it.

22 THE COURT: Well, let him just lay the
23 groundwork.

24 I'm not going to let you ask him and put him in
25 a situation where he's going to incriminate himself under

1 oath, okay? I'm not going to do that.

2 MR. DURANT: I understand that, Your Honor.

3 That's not what I'm attempting to do.

4 THE COURT: I understand that. Just make sure
5 that's the limitation I'm putting on you. You're not
6 going to do that.

7 MR. DURANT: I understand that. I also
8 understand that even if that should be blurted out, it
9 could not be used against him.

10 THE COURT: That's exactly right, okay?

11 MR. DURANT: I understand that.

12 THE COURT: So please proceed.

13 MR. DURANT: That's not where I'm going.

14 THE COURT: Okay. But please proceed. I just
15 want to lay the groundwork.

16 MR. DURANT: That's okay.

17 BY MR. DURANT:

18 Q Did they tell you about other witnesses?

19 A Yes, sir.

20 Q Okay. And the other witnesses had implicated you or
21 said that you did this?

22 A Yes, sir.

23 Q Did they tell you that?

24 A Yes, sir.

25 Q Okay. And so it would be safe to say they didn't

1 believe you when they went there that second time; is that
2 correct?

3 A Yes, sir:

4 Q All right. Do you remember them asking you if it was
5 over drugs or money or anything like that?

6 A No, sir.

7 Q You don't remember that.

8 Did they use any physical force against you?

9 A No, sir.

10 Q Did you see Mr. Sturkie testify yesterday?

11 A Yes, sir.

12 Q Do you remember -- well, did he put a hand on your
13 shoulder, do you remember that?

14 A I don't remember him touching me.

15 Q You don't remember him touching you?

16 A No, sir.

17 Q Were you afraid of him?

18 A No, sir.

19 Q Okay. So you weren't afraid of him; is that correct?

20 A Yes, sir.

21 Q Were you afraid of the other guy?

22 A No, sir.

23 Q Detective Miller I think his name was?

24 A No, sir.

25 Q Okay. And I'm not going to ask you what you told

1 them, but at some point you changed your story, correct?

2 A Yes, sir.

3 Q Okay. And just to verify, is that your name on the
4 second statement, too?

5 A Yes, sir.

6 Q Okay. And you signed it?

7 A Yes, sir.

8 Q And nobody forced you to sign it?

9 A No, sir.

10 MR. DURANT: I don't think I have anything else,
11 Your Honor.

12 THE COURT: Okay. Thank you very much.
13 Redirect.

14 MS. EHRLICH: No, Your Honor.

15 THE COURT: Okay. Mr. Green, you may step down.
16 Thank you very much.

17 Have any further witnesses?

18 MS. EHRLICH: No, Your Honor.

19 THE COURT: Does the State have any witness in
20 reply?

21 MR. DURANT: Can I have just a moment to
22 consult?

23 THE COURT: Do you all want to take about a
24 five-minute break, ten-minute break?

25 MR. DURANT: That would be fine. I know I'm

1 probably going to have one very brief witness on the
2 videotape situation.

3 THE COURT: Okay. We'll take about a ten-minute
4 break.

5 MR. DURANT: Okay.

6 (A break was taken.)

7 THE COURT: Are you ready?

8 MR. DURANT: Yes, sir, Your Honor. I'm going to
9 call just one witness in reply.

10 THE COURT: Okay.

11 MR. DURANT: The State would call Scott Deckard.

12 THE CLERK: Raise your right hand.

13 THOMAS DECKARD, after being duly sworn,
14 testified as follows:

15 THE CLERK: Thank you, sir. You may take your
16 seat.

17 Sir, if you'd state your first and last names,
18 spelling your last for the record, please.

19 THE WITNESS: Thomas Deckard, D-E-C-K-A-R-D.

20 IN CAMERA DIRECT EXAMINATION

21 BY MR. DURANT:

22 Q And you are employed by North Charleston Police
23 Department; is that correct?

24 A Yes, sir.

25 Q And in what capacity?

1 A I'm the commander of the detective bureau in the rank
2 of a captain.

3 Q Okay. So you're like the head detective, I guess; is
4 that correct?

5 A Yes, sir.

6 Q Now there's been testimony in this case that when
7 Derell Green was interviewed, you didn't participate in
8 that interview; is that correct?

9 A No, sir.

10 Q There's been testimony that there was a video camera
11 in the interview room that had a cup over it?

12 A Yes, sir.

13 Q Could you tell us why?

14 A When we moved into that building in late 2009, we had
15 previously ordered a system to record audio and video of
16 our interviews. Shortly after moving in, we noticed that
17 the cameras in the interviews rooms were not equipped as
18 we ordered and there were several flaws with the system.
19 That being said, we placed the bowls over the cameras to
20 as to avoid any problems with the system itself.

21 Q Okay. First of all -- and when you say "problems
22 with the system," what are the problems with the system
23 that you all have?

24 A Well, there are several flaws in the cameras in that
25 they're motion activated, they can be remotely accessed by

1 non-police personnel which can jeopardize the identity of
2 witnesses, victims, juveniles, and suspects, and open up
3 any of what they say to interpretation by somebody else
4 and publication by somebody else other than law
5 enforcement.

6 Q And why would they have -- be accessed by non-law
7 enforcement personnel?

8 A The cameras themselves are wired directly into the
9 security system for the building. So the security cameras
10 that are on the outside of the building, the interior
11 lobby areas, and all the common public areas of the
12 building run into one server. That includes our interview
13 room cameras.

14 Q And was that the way it was intended to be before you
15 all moved in?

16 A No, sir, it was not.

17 Q Do you know why that changed?

18 A No, sir. I only know that during the construction of
19 the building, the budget and the funding for those
20 interview room cameras was one of the items that wasn't
21 completed and wasn't made available.

22 Q Okay. So bottom line is, you all had no control over
23 the video cameras in those interview rooms; is that
24 correct?

25 A That's correct.

1 Q Were the rooms even wired for sound?

2 A No, sir. There's no audio in the interview rooms.

3 Q Okay. So at most you just get video images even if
4 the system was functioning correctly?

5 A Yes. If the system's functioning you get video
6 images; however, they're motion activated. So if somebody
7 stops moving for a period of time the camera will shut off
8 until they move again and then it will come back on. So
9 you have that gap in time if somebody stops moving that
10 would not be recorded by the cameras themselves.

11 Q And are there any plans in place to remedy that
12 situation?

13 A Yes, sir. We've been searching for funding for
14 interview room cameras and the system that we desire for
15 those rooms, and we have alternative plans in place to
16 supplement video with audio and audio recorders and
17 attempting to secure the funding for those objects.

18 Q Okay. And just to be clear so this was not just
19 something that -- is this just something that happened in
20 Mr. Green's case or is this the state of affairs with all
21 the video cameras in the interview rooms at North
22 Charleston Police Department?

23 A It did not happen just for this case. As I said,
24 they've been covered since we moved into the building, all
25 six interview rooms have bowls over the cameras and have

1 not been removed until we get some other support for that
2 system.

3 MR. DURANT: Okay. Thank you very much.

4 THE COURT: Cross-examination.

5 IN CAMERA CROSS-EXAMINATION

6 BY MS. EHRLICH:

7 Q When did you guys move into that building?

8 A It was late 2009, I believe August.

9 Q Okay. And it was an expensive building overall?

10 A As I understand, yes.

11 Q But you guys did not get funding for the interview
12 rooms?

13 A The building was funded out of the construction and
14 the interview room cameras were funded out of the
15 construction budget. So as the project went on to my
16 understanding is that certain items had to be cut due to
17 that funding. There just wasn't enough to do every little
18 detail that everybody wanted to do, so certain items were
19 cut.

20 Q Your understanding is that the funding for recording,
21 video recording and audio recording in your interview
22 rooms was not there, it was cut?

23 A My understanding is that the funding for the system
24 that we desired, that we recommended, was not available.

25 Q Okay. There are other video cameras, though,

1 available within the police department, right?

2 A Stationary video cameras?

3 Q Yes. Well, any type of -- a video camera that I
4 could take from one room to the next.

5 A Yes, we have portable video cameras.

6 Q Okay. And what's the purpose behind, I guess,
7 covering them with a bowl and not like a cover?

8 A Because the bowls were available.

9 Q Okay.

10 A And they don't make a specific camera cover to cover
11 them to make it so you can't see. I could have covered
12 them with tape and served the same purpose.

13 Q Okay. Do you remember me coming down to the station
14 at one point to look at the rooms?

15 A I don't recall that.

16 Q Do you remember Andrew Grimes coming to look at the
17 rooms?

18 A Yes.

19 Q Okay. Do you remember telling him you guys covered
20 the cameras because the Solicitor's Office told you to?

21 A Throughout the moving into the building, noticing
22 that there was an issue with the system and all the
23 different factors involved, we did have conversation with
24 the Solicitor's Office and we decided to go the route of
25 covering the camera system.

1 MS. EHRLICH: Thank you.

2 MR. DURANT: Just one.

3 IN CAMERA REDIRECT EXAMINATION

4 BY MR. DURANT:

5 Q Did anybody in my office tell you not to record
6 interviews?

7 A No, sir. As a matter of fact, we would like to
8 record interviews and have that desire to do that, but at
9 this point in time it's not practical for us to record
10 every interview.

11 Q And, in fact, have we not urged North Charleston to
12 do so?

13 A Yes.

14 Q As a matter of fact, haven't I chewed you out about
15 it?

16 A Yes, on several occasions.

17 Q As a matter of fact, haven't I chewed out some of
18 your investigators about it?

19 A Yes, sir. I don't think you've left anybody else.

20 MR. DURANT: Okay. Thank you very much.

21 THE WITNESS: Yes, sir.

22 THE COURT: Anything else?

23 MS. EHRLICH: No, Your Honor.

24 THE COURT: You may step down. Thank you very
25 much.

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: When do you think you'll get them
3 operational?

4 THE WITNESS: Sorry?

5 THE COURT: When do you think you're going to
6 get them up and running?

7 THE WITNESS: Hopefully within the next few
8 months, but we'll have other options available to us
9 before then, before we get the system.

10 THE COURT: Thank you so very much. Have a good
11 day.

12 THE WITNESS: Yes, sir.

13 THE COURT: Any other witnesses?

14 MR. DURANT: No, Your Honor, at least not on
15 that issue.

16 THE COURT: Or any other issues?

17 MR. DURANT: I think we still have the Neil v
18 Biggers thing.

19 THE COURT: Well, I know that. Do you have any
20 more witnesses on the Jackson v Denno hearing?

21 MR. DURANT: No, I think I'm good on Jackson v
22 Denno.

23 THE COURT: All right. Any arguments?

24 MS. EHRLICH: Yes, sir.

25 I think there's no question that he was in

1 custody when he was taken down to the police station and
2 that his rights he read, his Miranda rights attached then.

3 And there's certainly no dispute that they read
4 him his rights. I think the dispute here is whether or
5 not he understood them and then also whether or not they
6 should have read him his rights again and whether his
7 statement was voluntary.

8 Our position would be that admitting the
9 statement would violate the Fifth and Fourteenth
10 Amendments of the U.S. Constitution as well as the South
11 Carolina related Articles and Sections of the South
12 Carolina Constitution.

13 There's several factors to consider here,
14 including his age. Nobody argues that he was 14 at the
15 time. Certainly a year and a half has passed, he's 16
16 now, but his age is relevant in determining the
17 voluntariness of his statement.

18 Intelligence. I think over all they're saying
19 that he's of average intelligence, but again, for his age.
20 Nobody's saying he's of average intelligence compared to
21 an adult.

22 As far as his education level, he was only in
23 the eighth grade, he was a middle-school student.

24 For his background, he was not working. He
25 testified that he was living at home with his parents.

1 His prior experience with the police needs to be
2 considered. He testified that he'd never been interviewed
3 by the police before. While he'd had some juvenile
4 contact with the police, he'd never gone through the
5 process of being interrogated or interviewed by them.

6 As far as his mental capacity, I think he had
7 some limitations. We know he's special education services
8 and we know that he was getting special help with reading.
9 Maybe he was making an A in reading because he had special
10 help.

11 Also, there's the form that Department of
12 Juvenile Justice went through with him that advised him of
13 similar things that he would be advised when giving a
14 statement, including that you have the right to remain
15 silent, that he can have an attorney. And Ms. Hyrne
16 testified from Department of Juvenile Justice that she had
17 concerns over whether or not he understood it.

18 Now, she took special steps and extra steps to
19 try to make sure he understood it because I think she
20 probably has a better understanding of what a 14-year-old
21 needs to be explained when going through something like
22 this instead of just comparing him to an adult.

23 When you look at the duration of his detention,
24 he's --

25 THE COURT: Well, this waiver statement, Court's

1 Exhibit No. 2, is a little different than a --

2 MS. EHRLICH: It's not exactly the same, but I
3 think it's comparable in some way in that somebody was
4 advising him of something that he had to understand and
5 sign.

6 THE COURT: I mean, the waiver statement is
7 you're telling the defendant, hey, you're going to have to
8 tell me everything we know because we have to have a
9 waiver hearing, but it can't be used against him.

10 MS. EHRLICH: Right.

11 THE COURT: It's sort of a little double talk.
12 It's a little different than the rights statement. It can
13 be confusing.

14 MS. EHRLICH: Yes, sir.

15 THE COURT: Especially to a non-legal person.

16 MS. EHRLICH: Right.

17 THE COURT: I mean they're saying tell me what
18 happened but I won't use it against you, you know. It's
19 sort of --

20 MS. EHRLICH: Right. And just like when you're
21 giving a statement to the police and they're say that
22 anything you say can be used against you, I think it's in
23 some ways comparable.

24 I understand it's confusing because I went
25 through it with him --

1 THE COURT: Right.

2 MS. EHRLICH: -- and tried to explain it.

3 THE COURT: Right.

4 MS. EHRLICH: I was there for that. I know what
5 it was like, and I think Ms. Hyrne explained how even
6 throughout the process --

7 THE COURT: I just don't think you're talk about
8 apples and apples there. You're talking about the waiver
9 statement versus the -- I don't have -- let me see the
10 exhibit, the waiver statement.

11 But go ahead. I didn't mean to interrupt your
12 argument.

13 MR. DURANT: Did you want the Advice of Rights
14 form?

15 THE COURT: Yes, the rights form and the two
16 statements, both of them.

17 I'm sorry. Go ahead.

18 MS. EHRLICH: Do you want me to go on about that
19 form or keep --

20 THE COURT: No, I just wanted to ask you that
21 question.

22 MS. EHRLICH: I mean, I know it's not the exact
23 same thing, but I think that you can consider it in
24 whether or not he was able to understand something. And
25 in that situation, he had the support of an attorney and

1 his mother to try to help him understand it.

2 I think another factor to consider was the
3 duration of the detention for him. The police arrived at
4 the house somewhere around 2 or 2:15 I think Detective
5 Kramitz said. He was taken into custody not much longer
6 after that. He was taken down to the police station where
7 he was handcuffed, kept in a small room.

8 There was a Miranda warning done by Detective
9 Kramitz, but I don't think, according to Derell's
10 testimony, there was any extra attempt to make sure that
11 he understood what was going on or that he understood his
12 rights. In fact, Derell testified that he was told, you
13 know, put your signature here, put your signature here,
14 that it was much different than what Detective Kramitz
15 testified to.

16 Certainly the length of questioning was long.
17 He was there probably around 2:30, starts giving his first
18 statement at 3:45, and then there is a four-hour period
19 between when he gives that statement and the second
20 statement. And I think the second statement, I could be
21 wrong, but I think that lasted about an hour, according to
22 the testimony.

23 He was certainly there for a long time. There
24 are multiple officers coming in and out. Detective
25 Kramitz was in there at one point, Detective Sturkie, and

1 Detective Miller.

2 There was no testimony about any physical abuse
3 and we're not trying to argue that there was physical
4 abuse, but I think there is some instance of intimidation
5 as far as threatening him: You'll never see the light of
6 day; you're not going home until you tell us the truth; if
7 you tell us the truth, we'll help you in court.

8 I think the video issue is important for two
9 reasons. One, I think it should have been videotaped. I
10 think that it would make everything easier for everybody
11 involved if we know what happened in the room. We've got
12 different witnesses testifying to different things, but it
13 certainly would be helpful to have the videotape running
14 and working. I think they had access to --

15 THE COURT: Well, I'll agree with that, but I
16 don't know of any legal standard that says they have to
17 videotape it.

18 MS. EHRLICH: They don't, Your Honor.

19 THE COURT: That's a department decision by each
20 police department. One of them video it and some of them
21 don't.

22 I personally agree with you that it would nice
23 to have a video. The videos in these DUI arrests have
24 even helped a lot of the officers on traffic stops when
25 they've been accused of wrongful conduct. So it's a

1 two-way street. It works both ways. It's protective for
2 the police as well as the defendant.

3 MS. EHRLICH: Right, Your Honor.

4 THE COURT: I just don't understand why police
5 departments don't want to do it. That's what I
6 understand. But that's just my personal opinion. But
7 there's no legal requirement for them to do it.

8 So what's your argument from that perspective?

9 I agree with you personally, but that's not the
10 legal standard in South Carolina.

11 MS. EHRLICH: My other argument related to the
12 video camera is not just that they didn't videotape it. I
13 think the act of having the camera in there --

14 THE COURT: Are you trying to say that because
15 they didn't videotape it is some abuse of process or it
16 violates the Fifth Amendment rights or what are you trying
17 to tell the Court?

18 MS. EHRLICH: I'm trying to tell the Court that
19 the fact that they have a camera in there covered up with
20 a bowl adds to the intimidation factor.

21 THE COURT: So you're saying the camera itself
22 is intimidating?

23 MS. EHRLICH: Yes. If you go in there as a
24 14-year-old, or even I think as an adult, and you walk
25 into a room where you know you're being interrogated by

1 the police and you look up and there's what obviously is a
2 camera but it's covered up, you're wondering why isn't
3 that recording, is something else going to be happening to
4 me in this room, and that's my point really behind that.

5 THE COURT: Well, I understand. But their fear
6 of -- I mean they see this on television everyday. Why
7 shouldn't they be familiar with it?

8 MS. EHRLICH: Because he watches Tom and Jerry.
9 He testified he watches Tom and Jerry.

10 THE COURT: I don't know what he watches, we
11 didn't go into it, but, I mean, the same type of
12 environment we have listened to this morning is it's shown
13 on television basically everyday.

14 MS. EHRLICH: Well, he testified today that he
15 watches Tom and Jerry, that that's his favorite show.

16 Watching it on TV and really being able to
17 comprehend it and understand what it is I think is a
18 different thing, especially when he --

19 THE COURT: I'll agree with you. All I'm saying
20 is that his exposure or his exposure to television, he
21 should be familiar with the room, the camera, and the
22 table, and I mean if he watches television. Most kids do.

23 MS. EHRLICH: I think that's an assumption that
24 there was --

25 THE COURT: I understand that's an assumption.

1 But go ahead.

2 MS. EHRLICH: The other issue that I wanted to
3 raise was the fact that he testified that he did ask for
4 his mother. I think that's a big deal that he asked for
5 his mother and he was told, "not until you're done."

6 I understand that his mom doesn't necessarily --

7 THE COURT: Also, I understand that the mother
8 was offered -- the opportunity to the mother was offered
9 to come and the mother chose not to come.

10 MS. EHRLICH: The mother testified differently,
11 that she asked to come and she was told she could not come
12 and that she made attempts to call and was told that they
13 would call when he was done.

14 She has no experience either --

15 THE COURT: Well, what's the significance of not
16 having the mother there, legally?

17 MS. EHRLICH: Legally?

18 THE COURT: Yes.

19 MS. EHRLICH: He doesn't have to have his mother
20 there.

21 THE COURT: Right.

22 MS. EHRLICH: There's no, you know, legal --
23 there's no case law that says his mom has to be there.
24 But I think it adds to whether or not the statement's
25 voluntary if he's there asking for his mom and they're

1 saying, "No, not until you're done." "Not until you're
2 done" means not until you write what we want you to write.

3 THE COURT: Okay.

4 MS. EHRLICH: I know also there was an issue
5 where I think Detective Sturkie testified that he was
6 talking to him like he was in high school, talking to him
7 about high-school subjects, girls, money, and I think that
8 that just kind of goes to their attitude towards him and
9 how they were treating him in explaining things to him.

10 You know, Detective Kramitz said, "Well, no, I
11 didn't tell him he could call his mom. I just thought he
12 would know that." But he's 14 years old.

13 I do think -- well, I know that the case law
14 says that age isn't the only factor to be considered, but
15 I think when you consider everything that happened, his
16 age, what happened in the room, and, you know, the length
17 of the detention, he was in there from at least 2:30
18 until, I think, 8:30 or 9 according to the detectives, I
19 think it's a significant period of time for an eighth
20 grade student to be interrogated by the police.

21 One of the detectives came and testified that
22 basically he decided what the truth was going to be and
23 that's what -- they really weren't going to rest until he
24 said what they wanted him to say.

25 So our position is that it wasn't a voluntary

1 statement given all the factors.

2 THE COURT: Okay. Thank you very much.

3 Solicitor.

4 MR. DURANT: Your Honor, I think pretty much in
5 terms of his ability to understand, I don't think there's
6 any question given the defendant's own testimony on
7 cross-examination that he fully understood his rights and
8 he fully -- he can read, he reads very well. He was able
9 to explain what each one of them meant. He told me he
10 understood them, told you he understood them. And to just
11 say oh, I understand them but I didn't understand them at
12 that particular time is --

13 THE COURT: I understand.

14 Let me ask you this question, because this is --
15 and I want to hear your response concerning the length of
16 the interrogation, okay?

17 MR. DURANT: Okay.

18 THE COURT: On Court's Exhibit No. 1, his
19 diagnosis is "Derell exhibited behavior consistent with a
20 diagnosis of ADHD."

21 Now I don't know if that diagnosis has been
22 made, but the report you gave me refers to that.

23 Now my concern -- if he is ADHD, then my concern
24 is the length of the time that he was in the interrogation
25 starting at -- the first one's at 3:45, second one's at

1 7:45.

2 MR. DURANT: Uh-huh.

3 THE COURT: From everything I've heard, that's
4 the only concern that this Court sees concerning the
5 voluntariness of his statement.

6 MR. DURANT: But he wasn't in interrogation all
7 that time.

8 THE COURT: But he was in the room.

9 MR. DURANT: He was in the room, but, I mean,
10 there's a difference between sitting in the room by
11 yourself and being interrogated for that long. He was not
12 interrogated for that long.

13 THE COURT: But if he's got -- if he has that
14 diagnosis -- if that diagnosis is correct, ADHD, I mean,
15 how's that going to affect him being handcuffed to a chair
16 for four or five hours?

17 MR. DURANT: But it wasn't like he was
18 handcuffed to a chair for four or five hours without being
19 given the opportunity to get up or go to the bathroom or
20 get something to drink or have something to eat. They
21 checked on him the whole time, and he certainly wasn't
22 under interrogation that entire time.

23 He was read his rights at 3:47. They started
24 taking that written statement at 3:55. And I think the
25 detective testified that it took like an hour, an hour and

1 a half just to go through the process of writing out the
2 questions and writing out the answers and signing it and
3 all that and then basically which would have put it at 5
4 or 5:30, and essentially from 5:30 to 7 o'clock, he was by
5 himself.

6 He was not being interrogated, nobody was
7 intimidating him and they came in and talked to him at
8 7 o'clock and by 7:20 he had told them the truth.

9 So you're basically talking about an
10 interrogation that lasted, even if you take into
11 consideration the mechanics of doing the first statement,
12 you're basically talking about an interrogation that
13 lasted two hours all together.

14 And, I mean, I certainly don't think that you
15 can take the time that he's there by himself as being part
16 of the interrogation.

17 THE COURT: My concern, if he has that
18 diagnosis, that he's going to be hyper and having him
19 confined by handcuff to a chair in a small room for that
20 period of time, what's it going to do to him mentally.

21 MR. DURANT: Well, there's certainly been no
22 testimony, even from him, that his will was overborn, Your
23 Honor.

24 THE COURT: I understand. But I'm just asking
25 you the question from everything I've heard.

1 MR. DURANT: I can only go by what he says, and
2 he does not say that was an issue.

3 THE COURT: Okay.

4 MR. DURANT: He didn't say that. He didn't say
5 he was scared, did he?

6 THE COURT: No.

7 MR. DURANT: He didn't say he was intimidated,
8 did he?

9 THE COURT: Okay. I just wanted to hear your
10 response to it. And I didn't mean to cut off anything
11 else you wanted to tell me.

12 MR. DURANT: No, that's all right. I mean, if
13 that's what concerns you. I mean that would be my
14 response on that issue.

15 I think -- like I said, I don't think there was
16 intimidation -- and I was going to address the duration
17 issue. And even though -- and like I said, I think you
18 have to take into consideration the time he was actively
19 being interrogated, not the time that he's just sitting
20 there twiddling his thumbs.

21 And other than that, I think what he said speaks
22 for itself.

23 THE COURT: Okay. Anything very briefly in
24 rebuttal?

25 MS. EHRLICH: Just briefly, Your Honor.

1 I know that your main concern is the length of
2 detention.

3 THE COURT: I'm sorry, what?

4 MS. EHRLICH: I know that your main concern is
5 the length of detention, but just to preserve another
6 issue on the record, as far as him understanding -- what
7 he testified today, understanding the rights, it's been a
8 year and a half. He was 14 years old when that happened
9 and he's had the advice of an attorney and gone through
10 significant hearings over and over and over again, so I
11 think it's to be expected that at this point he's going to
12 understand his rights.

13 As far as the length of detention, I think that
14 it's hard for anybody to really put themselves in that
15 position until they're in the room handcuffed to a chair
16 sitting there looking at a wall. And my understanding
17 from the testimony is that officers were going in and out
18 during that period and also that he did testify that he
19 was scared and that he was under medication for Concerta.
20 He wasn't able to say why he was under the medication, but
21 he was taking medication at the time. And I think that --

22 THE COURT: What was he taking the medication
23 for?

24 MS. EHRLICH: My understanding is for the ADHD.

25 THE COURT: Okay.

1 MS. EHRLICH: They've changed medications since
2 then, but at that time my understanding is that he was
3 diagnosed with ODD and ADHD.

4 Now, the length of detention for somebody of a
5 different age, of a different maturity level might not
6 seem quite as bad and long, but for a 14-year-old in his
7 shoes, I think it was too long.

8 THE COURT: Okay. Thank you very much.

9 MR. DURANT: Your Honor, I forgot to mention
10 this.

11 I did want to pass up to the Court a case. It's
12 not directly on point, but it involves a statement of a
13 17-year-old with a learning disability, with a third-grade
14 reading level. The Court found his statement was -- he
15 understood his rights and his statement was freely and
16 voluntarily given.

17 THE COURT: Point me to where you want me to
18 read in this case.

19 MR. DURANT: Basically the principal part of it
20 is Headnote 10, Your Honor.

21 THE COURT: Ten?

22 MR. DURANT: Yes.

23 It just says, "Here Smith testified during the
24 hearing that only he and Moses were present during the
25 interview. Although he acknowledged that several officers

1 walked in and out of the room, the record does not
2 indicate Moses was threatened by Smith, rather Smith's
3 aware that Moses was 17 years and enrolled in special
4 education classes took the time to write Moses' statement
5 himself. After reading each line of the waiver of rights
6 form to Moses, he then signed the form.

7 Additionally, Moses testified on two separate
8 occasions that he understood his Miranda rights. He
9 further testified that Smith did not tell him what to say
10 during this statement.

11 The record does not indicate that Moses was
12 detained for an extended period of time.

13 Finally, although Moses could only read and
14 write on a third-grade level, he was able to earn an
15 occupational diploma.

16 Although the trial courts failed to specifically
17 mention his mother's alleged request to be present during
18 the questioning, we find that the factor as taken alone is
19 not dispositive.

20 Ultimately upon review of the totality of the
21 circumstances in this case, the record supports the trial
22 court's conclusion that Moses' statement was freely,
23 knowingly and voluntarily made regardless of his age,
24 learning disability, and separation from his mother, and
25 thus we find no abuse of discretion.

1 Pretty close factually to what we have here,
2 Your Honor.

3 THE COURT: Thank you very much.

4 All right. The Court as far as the Jackson v
5 Denno and voluntariness of the statement and the granting
6 or the giving of Miranda rights makes the following
7 findings: As far as police coercion, the Court finds no
8 police coercion from any evidence that's been presented.

9 As the Court said earlier, the length of the
10 interrogation and the length of the confinement was
11 concerning because of the diagnosis of ADHD; however, he
12 was taking medication and there's been no testimony that
13 that diagnosis interfered with his ability to understand
14 the police officers. And from the testimony presented by
15 the defendant in court today, the location of the
16 interrogation and confinement does not convince the Court
17 that there's any -- that affected the voluntariness of it.

18 The continuity of the interrogation, one started
19 at 3:45 and the other one was at 7:45. The defendant's
20 maturity, education, physical condition, mental health,
21 the Court finds that none of those appear to have affected
22 his ability to be aware of the circumstances,
23 understanding the circumstances, and understanding the
24 advice given by the police officers on the advice of
25 consent rights as signed by the defendant and initialed by

1 each submission by the defendant.

2 Based on the totality of the circumstances, the
3 Court finds that the statement was voluntarily, freely
4 given and Miranda rights were given.

5 And the Court is convinced by the preponderance
6 of the evidence, and I so find, that the alleged statement
7 was obtained from the defendant, the defendant was fully
8 advised of his rights under the Fifth and Sixth Amendments
9 of the Constitution of the United States and the defendant
10 was advised of the constitutional safeguards required by
11 Miranda versus Arizona.

12 The defendant was advised prior to interrogation
13 he had the right to remain silent. The defendant was
14 advised prior to interrogation he had waived his right to
15 remain silent and made a statement and such statement can
16 and will be used against him in a court of law.

17 Defendant was advised prior to interrogation he
18 had the right to employ or select an attorney of his own
19 choice. If he did not have the money, funds or resources
20 to employ an attorney, the Court would appoint or provide
21 an attorney for him if he so desired without cost or
22 expense to him and that he had the right to have his
23 attorney present with him at all times in all interviews
24 and interrogations.

25 The defendant was advised prior to any

1 interrogation he had the right to consult with his
2 attorney before interrogation and defendant was advised
3 prior to any interrogation he had the right to interrupt
4 and terminate the interrogation at any time. He had the
5 further right to stop answering questions at any time
6 during interrogation.

7 The defendant was advised prior to interrogation
8 that during the interrogation if he desired an attorney,
9 the interrogation would cease until an attorney was
10 provided for him and he'd be given an opportunity to
11 consult with his attorney prior to further interrogation.

12 That defendant knowingly and intelligently
13 waived his rights to the Fifth and Sixth Amendments of the
14 Constitution of the United States and the constitutional
15 safeguards required by Miranda versus Arizona and that the
16 alleged statement obtained from the defendant was freely
17 and voluntarily given without duress, without coercion,
18 without undue influence, without reward, without promise,
19 a hope of reward without promise of leniency, without
20 threat of injury, and without compulsion or inducement of
21 any kind, and that such statement was a voluntary product
22 of the free and unconstrained will of the defendant.

23 As the Court makes those findings as to the
24 statement given that started at 3:45 and is marked as
25 State's Exhibit No. 36, the State (sic) also makes the

1 same findings as to the statement given at 7:45 and marked
2 as State's Exhibit No. 37. Those findings are effective
3 as to both statements.

4 This Court finds all the above conclusions by a
5 preponderance of the evidence and I therefore find the
6 statements admissible into evidence.

7 Are you ready to call your first witness?

8 MR. DURANT: Yes, Your Honor.

9 The State would call James Hill.

10 THE COURT: Let's get the jury in here first.

11 MS. PROCTOR: Wait. We have to do openings.

12 THE COURT: We have to have some openings first.

13 Sorry.

14 MR. DURANT: I was going to go into the Neil v
15 Biggers.

16 THE COURT: I was just really asking are you
17 ready for trial or do you want to do the Biggers hearing
18 now?

19 My problem is I've got a jury sitting in that
20 jury room now for two hours and I'd like to get started.

21 MR. DURANT: They've been there a long time, but
22 it's going to come up by the third witness anyways.

23 THE COURT: Well, I gave them a break earlier,
24 and they had a break.

25 MR. DURANT: Well, depending on how the Court

1 MS. EHRLICH: Certainly.

2 THE COURT: Are you ready for opening statements
3 or do you need a few minutes to re-collect your thoughts?

4 MS. EHRLICH: Prior to that, is the Court going
5 to make a ruling on the motion to remand the case?

6 THE COURT: On the --

7 MS. EHRLICH: To family court?

8 THE COURT: Let me find your -- you were going
9 to look at the annotations last night. Did you find
10 anything?

11 MS. EHRLICH: I had somebody go down to the law
12 library to see if they could find anything on legislative
13 intent. All the reports that there were available go back
14 to 1985 and I think the statute came into place in 1981,
15 so I don't have anything on the legislative intent.

16 THE COURT: Okay.

17 MS. EHRLICH: I would just renew that I think
18 the family court relinquished their jurisdiction, that the
19 case was brought properly through circuit court, and that
20 that Subsection 3 would apply and allow the Court to
21 remand it.

22 THE COURT: All right. I don't know how the
23 appellate court would view that statute because I think
24 you could do it either way, it's a constitutional argument
25 concerning that statute.

1 However, for purposes of my decision, I'm going
2 to accept your argument that the Court has the authority
3 to remand it back to family court, but based upon
4 everything I've heard, that motion is denied.

5 MS. EHRLICH: Thank you, Your Honor.

6 THE COURT: Anything else?

7 MR. DURANT: Do you plan to -- do you want to go
8 directly into testimony after openings or do you intend to
9 let the jury go to lunch at that time or I just need to
10 know?

11 THE COURT: I think -- that's why I asked you
12 awhile ago do you have a witness available.

13 MR. DURANT: Well, I thought I did, but I just
14 found out my first witness is apparently en route.

15 THE COURT: All right. Why don't we do this.
16 I'll give you a few minutes to get your thoughts together
17 on the opening statements, we'll have opening statements
18 and we'll take a lunch break and that will give you time
19 to realign your witnesses or whatever you want to do,
20 okay?

21 MR. DURANT: Okay.

22 THE COURT: Will that be sufficient? How much
23 time do you all need before I bring the jury in?

24 MR. DURANT: Five minutes is fine with me, Your
25 Honor.

1 these hearings that I had to take care of were going to
2 take, so that's my fault and not the attorneys' fault and
3 I apologize to you for that having happened. That was my
4 error.

5 Solicitor.

6 MR. DURANT: Thank you, Your Honor.

7 Good afternoon, ladies and gentlemen. I have
8 had the opportunity to introduce myself to you briefly.
9 My name is Bruce DuRant. I am the Deputy Solicitor for
10 the Ninth Circuit and it's my pleasure to be able to
11 present this case to you over the next couple of days.
12 And on behalf of the State of South Carolina, seated at
13 the table with me is Rich Waring. He's an intern in our
14 office and studying to become a lawyer and I believe I've
15 already introduced you to Detective Kramitz.

16 And as the judge told you, we do apologize for
17 keeping you back in the room so long. I oftentimes do not
18 estimate accurately how long motions are going to last,
19 but we will endeavor not to waste your time from this
20 point forward.

21 The victim in this case is named Larry Taron
22 Maybank. And Larry Maybank -- his friends called him
23 Taron -- was 17 years old.

24 On the afternoon of Friday, February 5th of
25 2010, shortly after 12:30, he was leaving school with his

1 friend Jacquintus Washington. They went to school at a
2 place called Daniel Jenkins Academy. It's on Bonds Avenue
3 about a block off of Dorchester Road.

4 Taron and Jacquintus were in a special program
5 there called the Summit program which was kind of
6 segregated from the rest of the student body.

7 And as they were leaving, they left the school
8 grounds and were walking down Bonds Avenue, that one block
9 towards Dorchester Road, but Larry Taron Maybank never
10 made it. And the reason he didn't make it was because in
11 front of 2630 Bonds Avenue he was murdered, shot in the
12 back, killed, gunned down, the victim of another senseless
13 act of violence by a generation which appears to only be
14 able to resolve with the business end of the pistol.

15 And the story began about a month before the
16 shooting. The victim, Taron Maybank, had been in some
17 sort of fight or altercation with this fellow over here.
18 His name is Derell Green. He was 14 at the time. And he
19 goes by the name "Noogie" -- that's what his friends call
20 him -- and he was also a student at Daniel Jenkins
21 Academy.

22 And whatever happened between them that month
23 previous, he could not let it go. It festered in him.
24 And on Friday morning, February 5th, 2010, he decided he
25 was going to do something about it. So when he went to

1 school that morning, he took his .38-caliber revolver.

2 And he's going to school and he meets up with
3 his friend, Daqone Lance. Daqone Lance, you might also
4 hear him referred to as "Mook" during the course of this
5 trial.

6 And apparently at some point on the way to
7 school, Derell gives the gun to Daqone Lance to hold it.
8 Because, you see, at Daniel Jenkins Academy they have
9 metal detectors and all the students are required to go
10 through the metal detectors prior to entering the school
11 so he just can't take his piece into the school.

12 So he goes onto school that day and it's Friday
13 and there's an early dismissal at 12:30. And it's the day
14 where, I think, the general student body at Daniel Jenkins
15 and the people in the Summit program are let go at the
16 same time, shortly after 12 o'clock.

17 So Derell, when school's over, he leaves school
18 and, sure enough, there's Daqone Lance waiting for him out
19 at the edge of the school grounds. So he hooks up with
20 Daqone Lance in short and also a couple of other friends
21 that you will hear from during this trial, Rashawn Bradley
22 and Antonio Smalls-Heyward. And the four of them are --
23 they're kind of at the edge of the school grounds talking
24 when Taron Maybank and his friend Jacquintus walk by. And
25 as soon as they walk by, Derell Green and his three

1 buddies drop in behind them.

2 And everybody's walking down Bonds Avenue, the
3 victim and his friend up front and the defendant and his
4 three friends behind them. And it's at about this time
5 that Daqone Lance passes the gun back to Derell Green and
6 Daqone tells Rashawn Bradley and Antonio Smalls-Heyward
7 back off. And they do back off and Daqone Lance backs
8 off. The three of them walk back towards the school,
9 watching to see what was going to happen.

10 Well, what happened is that Derell Green walks
11 up behind Taron Maybank, pulls his .38-caliber revolver
12 out of his belt and without saying a word or giving any
13 notice, began shooting him. And he shot Taron Maybank in
14 the back. He was hit twice, one of them was superficial,
15 but the other one went into his upper right back in this
16 area here through his lung, through the major vein and
17 artery entering into and leaving the heart, and he
18 stumbled and he collapsed in the driveway at 3620 Bonds
19 Avenue and despite the efforts of EMS to revive him, he
20 died.

21 I don't think that this should be a very long
22 trial. I don't believe that this will be a very difficult
23 trial for you all to resolve.

24 You will hear from a number of witnesses in this
25 case that actually saw this thing happen. You will see

1 some video in this case that is surveillance video from
2 Daniel Jenkins Academy, which doesn't actually catch the
3 shooting itself but shows you everything that happens up
4 to the point of the shooting and the defendant running
5 away.

6 And I'm convinced that once you've seen and
7 heard the evidence in this case, you will be convinced
8 beyond any reasonable doubt of two things: That Taron
9 Maybank was murdered, that he was shot in the back without
10 provocation and without warning and that he pulled the
11 trigger, that he is guilty of murder. Despite the fact
12 that he was 14 years old, he is guilty of murder.

13 THE COURT: Ms. Ehrlich.

14 MS. EHRLICH: Imagine that you're a kid and
15 you're only 14 years old, you live at home with your
16 family and you're in the eighth grade in middle school and
17 wake up on a Friday morning in February and you wake up
18 with all the hope in the world. You're not plagued by
19 thoughts of an economy in crisis or civil wars abroad.
20 All that's going through your head is it's Friday and it's
21 early release day at school. It's almost the weekend. So
22 you do what most kids do and you go to school.

23 Now jump ahead a few hours and it's early
24 release time. School gets out and it's the weekend,
25 you've push your way through the doors at school and you

1 skip into the courtyard. You skip up to where some of
2 your friends are standing and you greet them and you do
3 what's called a dap, the kids call it a dap. It's like a
4 friendly kind of fist hitting, saying hello to your
5 friends.

6 Soon after that you walk off campus and you walk
7 home or you try to walk home and you walk down Bonds
8 Avenue because you live only a couple of blocks away. And
9 it's on Bonds Avenue that your life as a 14-year-old
10 changes forever because a couple of hours later you're in
11 the back of a police car. The police have come to your
12 house, they've taken you away from your family and they've
13 isolated you from anybody who might care about you.

14 And then the next morning, Saturday morning,
15 instead of thinking about what's on TV, all the hope of a
16 young boy is gone because in your head, all you're
17 thinking about is they think I'm a murderer.

18 This case is filled with confusion and
19 conflicting stories.

20 This case is about a police department that
21 wanted to make a quick arrest, and you're going to hear
22 from a lot of different witnesses: Some who didn't see
23 the shooting, just heard some shots, and some witnesses
24 who had plenty of time between the day of the shooting and
25 when they spoke to the police to get their stories

1 straight.

2 You're going to hear from witnesses that the
3 State puts up that they say they saw the shooting. But
4 what they told the police first is that they didn't see
5 anything. It's only after the detectives tell them that
6 they're not telling the truth that they change their
7 stories. They help the police build their case against
8 Derell Green.

9 You're going to hear from another witness who
10 says right from the beginning I saw the shooting. Her
11 name is Ms. Simmons. She was going to the school to pick
12 up her son Anthony and she gives a detailed description to
13 the police about who the shooter was and that description
14 included somebody wearing dark pants, dark shoes and
15 dreadlocks.

16 Derell Green didn't have dreadlocks, he had
17 short hair, and the police did nothing with this
18 information. They never even seen showed Ms. Simmons a
19 lineup.

20 You're also going to hear about a lack of
21 physical evidence in this case. They never recovered a
22 gun. They searched Derell Green's house, didn't find a
23 gun, didn't find any bullets. They did testing on his
24 hands. It was negative for gunshot residue, and they
25 never bothered to test any of his clothing to see if he

1 had fired a gun.

2 This case is also about Derell Green being
3 locked in an interrogation room, isolated from anybody who
4 cared about him, handcuffed to a chair. And when he told
5 them that he didn't shoot Larry Maybank, that wasn't good
6 enough. They decided that wasn't the truth that they
7 wanted. Anything less than him saying yes, I did it, I
8 shot him was not the truth to them. That's not what they
9 wanted to hear.

10 So they kept him away from his mother for hours.
11 They kept him handcuffed to a chair for hours. They kept
12 him in a small room for hours with no clock, no concept of
13 time.

14 And the detectives pushed one by one, at least
15 four of them, against this 14-year-old boy. They pushed
16 for the story they wanted, and he eventually gave it to
17 them. He didn't have a chance against four detectives.

18 People have jumped to the conclusion that Derell
19 Green is a murderer. But today I think is the day of hope
20 for Derell Green. It's an important week for him. It's
21 probably the most important week that he's ever going to
22 have because today nobody gets to jump to conclusions or
23 make assumptions about the case. You get to really
24 examine what the police did and what the witnesses said
25 and you get to decide that Derell Green, the 14-year-old

1 boy that you're going to see on video skipping outside the
2 school, did anything more than just try to walk home from
3 school that day.

4 THE COURT: May I see the attorneys up here for
5 a second?

6 (A bench conference was held with the judge and
7 attorneys in the presence of the jury but out of the
8 hearing of the jury.)

9 THE COURT: All right. Madam Forelady, it's
10 12:35. We're going to take a lunch break at this time.
11 And if you'll be back in the jury room at 2 o'clock we'll
12 get started with testimony at that time.

13 Please don't discuss the case amongst yourselves
14 or with anyone else. As I told you yesterday, I don't
15 want you getting on any computers or Blackberries or
16 anything doing any type of research concerning this case
17 or the law in this case or anything concerning the case.
18 I want you to make a decision on what you hear in the
19 courtroom, not what you read in the paper or see on TV or
20 see on the internet.

21 Everybody has opinions. I want your opinion to
22 form from what you hear in this courtroom, not outside the
23 courtroom.

24 See you at 2:30. Have a good lunch.

25 Excuse me, 2 o'clock. I'm sorry. Excuse me, 2

1 picture.

2 MS. PROCTOR: Yes, Your Honor.

3 THE COURT: Okay. That's all I'm saying. I'm
4 not trying to pass judgment on it. We'll make the
5 decision when you make the objection, if you make it,
6 okay?

7 MS. PROCTOR: Yes, sir.

8 THE COURT: And I understand that you do
9 stipulate that the person on the gurney or on the
10 stretcher was the victim, Larry Maybank; is that correct?

11 MS. PROCTOR: Yes. That's correct, Your Honor.

12 THE COURT: All right. Anything else before we
13 bring in the jury?

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

15 THE COURT: Bring us the jury, please.

16 (The jury came into open court at approximately
17 2:12 p.m.)

18 THE CLERK: All jurors present, Your Honor.

19 THE COURT: Thank you very much.

20 Solicitor, if you'll call your first witness,
21 please.

22 MR. DURANT: Thank you, Your Honor.

23 The State would call William Lesesne.

24 THE CLERK: Sir, raise your right hand.

25 WILLIAM LESESNE, after being duly sworn,

1 testified as follows:

2 THE CLERK: Thank you, sir. If you would, take
3 your seat.

4 Sir, if you wouldn't mind stating your first
5 name and spelling your last for the record.

6 THE WITNESS: First name is Bill, last name
7 Lesesne, L-E-S-E-S-N-E.

8 DIRECT EXAMINATION

9 BY MR. DURANT:

10 Q Good afternoon, Mr. Lesesne.

11 A Good afternoon.

12 Q Could you tell our jury how old you are?

13 A Excuse me?

14 Q How old are you?

15 A Sixty-three.

16 Q And what do you do for a living, sir?

17 A I'm the owner of AllSouth Electrical Contractors --

18 Q And where --

19 A -- in North Charleston.

20 Q I'm sorry. I didn't mean to cut you off.

21 And where is AllSouth Electrical Contractors
22 located?

23 A 2630 Bonds Avenue, North Charleston.

24 Q And what type of business is that?

25 A We're electrical contractors.

1 Q Okay. You do residential, commercial?

2 A Commercial work.

3 Q Okay. Now, on February 5th of 2010, did you have
4 the occasion to be at work that day shortly after 12:30 in
5 the afternoon?

6 A Yes, I did.

7 Q And what were you doing at the time?

8 A I was doing paperwork at my desk.

9 Q And where is your office in the building?

10 A Office is on the -- it parallels Bonds Avenue. It's
11 kind of on the -- closest to Bonds Avenue, closest part of
12 our office.

13 MR. DURANT: Any objection?

14 MS. EHRLICH: No, sir.

15 MR. DURANT: Your Honor, we'd offer State's 27
16 at this time, I believe, without objection from defense
17 counsel.

18 THE COURT: No objection?

19 MS. EHRLICH: No objection.

20 THE COURT: All right. State's No. 27 is
21 admitted without objection.

22 (WHEREUPON, STATE'S Exhibit No. 27 was admitted
23 into evidence.)

24 BY MR. DURANT:

25 Q Mr. Lesesne, if you would, I think you've seen kind

1 of a smaller version of this before. Do you recognize
2 this area?

3 A Yes, I do.

4 Q Okay. And if you would, would you point out to the
5 jury where Dorchester Road is and Bonds Avenue?

6 A This is Dorchester Road, Bonds Avenue, and this is my
7 office right here.

8 Q Okay. And where is the driveway to your office?

9 A The driveway to my office -- the driveway comes off
10 of Bonds Avenue.

11 Q Okay.

12 A There's the driveway that continues on to the other
13 commercial businesses.

14 Q And basically all those businesses kind of use that
15 same driveway?

16 A Right.

17 Q And you indicated that your office is in what portion
18 of that building?

19 A Would be that corner right there.

20 Q Okay. What happened?

21 A As I was sitting at my desk I heard three loud bangs
22 or booms, I should say, and they were not as though -- it
23 was not the sound of a truck or anything in the area, so I
24 assumed that they were gunshots.

25 Q Okay. And you've heard gunshots before?

1 A Yes, I have.

2 Q I believe you hunt some?

3 A I do.

4 Q Okay. Any question in your mind at the time you
5 heard them what they were?

6 A Not really, no.

7 Q And what did you do when you heard these gunshots?

8 A I immediately got up and went to the front door of
9 our office --

10 Q Okay.

11 A -- and opened the front door and as I was looking out
12 the door and opening the door, an individual staggered
13 around the corner into our -- coming into our driveway,
14 coming into the building.

15 Q Okay. And could you tell if he was injured or not?

16 A I could.

17 Q How could you tell that?

18 A I could see an awful lot of blood.

19 Q And what happened after you saw this fellow
20 staggering to your driveway?

21 A He staggered a few steps and then just fell and hit
22 the pavement, his head hit the pavement and just -- and he
23 began flailing on the pavement for a brief period and then
24 that was it.

25 Q And when you say "that was it," what does that mean?

1 A Well, I say that it was. He did not move anymore
2 after that.

3 Q Okay. What did you do?

4 A The first inclination was to go help, but then after
5 hearing the gunshots, I went back in the office and locked
6 the doors and continued to watch the entire time until
7 someone arrived.

8 Q Okay. Did you have anybody contact the police?

9 A My secretary immediately contacted 911 -- she called
10 911 to contact law enforcement.

11 Q Okay. And so you sat there and watched --

12 A Yes, I did.

13 Q -- where this fellow had fallen in the driveway?

14 A Right.

15 Q How long did it take for somebody -- was he in your
16 sight the entire time?

17 A He was. He was.

18 Q How long did it take for someone to get there? And I
19 know that time --

20 A It's difficult. I would say anywhere from six,
21 eight, ten minutes, somewhere along that lines, but I
22 watched the entire time until someone arrived.

23 Q Okay. And who did arrive?

24 A The first to arrive was, I assume, somebody from the
25 school. It was not a law enforcement officer. It was

1 someone else, maybe a teacher or something of that sort.

2 Q Okay. And from what school would that have been, if
3 you know?

4 A Well, I think the name has changed. I cannot
5 remember, but it's the school on Bonds Avenue. It's a
6 fairly new school, just a few hundred yards from our office
7 on Bonds.

8 Q Okay. At any point did you observe any type of
9 weapon on this person that stumbled and fell in front of
10 your --

11 A I did not.

12 Q And you said you watched him until help arrived. Did
13 anybody come and take anything away from him?

14 A Did not.

15 MR. DURANT: Your Honor, I think at this time
16 we'd offer State's Exhibit 1, I believe, without
17 objection.

18 MS. EHRLICH: Without objection.

19 THE COURT: State's Exhibit No. 1 is admitted
20 without objection.

21 (WHEREUPON, STATE'S Exhibit No. 1 was admitted
22 into evidence.)

23 THE COURT: As to that, ladies and gentlemen of
24 the jury, there's basically three ways that evidence will
25 be brought to you in the courtroom: Number one, live

1 testimony from a sworn witness or possibly a deposition
2 where a sworn statement's been taken outside the courtroom
3 or a stipulation between the parties.

4 In this particular case, the parties have
5 stipulated that the person in the picture lying on the
6 gurney or lying on the stretcher was the victim in this
7 case named Larry Maybank and you are to accept that as if
8 it's a fact that's been proven in this courtroom.

9 Please proceed.

10 MR. DURANT: Thank you. Could we have this up
11 on the screen?

12 BY MR. DURANT:

13 Q And they put this in a very inconvenient place for a
14 witness, but could you turn around, Mr. Lesesne?

15 A Sure.

16 Q And could you point out to the jury -- and this is
17 kind of a laser pointer here, the red one right there.

18 A The red one. All right.

19 Q Okay. And could you point out to the jury your place
20 of business?

21 A It would be there.

22 Q Okay. And where was the door that you were looking
23 out of?

24 A Right there.

25 Q Okay. And that was the location where you saw the

1 victim fall to the ground?

2 A That's correct.

3 Q And he was moving originally you said?

4 A Moved for a brief period, a second or two, and then
5 became still, completely still.

6 Q Okay. And referring back to State's Exhibit No. 27,
7 where is that location on State's Exhibit 27 where the
8 actual gurney and the victim is?

9 A In this area right in there where it comes off Bonds
10 Avenue.

11 Q Okay. So right there right off of Bonds Avenue?

12 A Right. Right as you come in, just a few paces into
13 the driveway from Bonds, into our driveway.

14 MR. DURANT: Thank you, sir.

15 I don't believe I have any other questions, Mr.
16 Lesesne. Could you please answer any questions that the
17 defense may have for you.

18 CROSS-EXAMINATION

19 BY MS. EHRLICH:

20 Q Mr. Lesesne, I just want to clarify a couple of
21 things with you.

22 You heard three gunshots?

23 A Yes.

24 Q And you're positive that you heard three?

25 A Yes, I am.

1 Q And at no point did you see the shooting happen,
2 though?

3 A I did not.

4 Q And at no point did you see anybody running from the
5 area? The only person you saw is Mr. Maybank?

6 A That's correct.

7 MS. EHRLICH: Court's indulgence.

8 (Pause.)

9 MS. EHRLICH: I don't have any other questions.

10 THE COURT: Any redirect?

11 MR. DURANT: No redirect, Your Honor. I would
12 ask that Mr. Lesesne be excused.

13 THE COURT: You may step down and you may be
14 excused. Thank you very much.

15 THE WITNESS: Thank you.

16 MR. DURANT: The State would call James Camp.

17 THE CLERK: Raise your right hand.

18 JAMES CAMP, after being duly sworn, testified as
19 follows:

20 THE CLERK: Thank you, sir. If you'd go take
21 your seat.

22 Sir, could you state your first and last names,
23 spelling your last for the record.

24 THE WITNESS: My name is James Camp. Last name
25 is Camp, C-A-M-P.

1 DIRECT EXAMINATION

2 BY MR. DURANT:

3 Q Officer Camp, where are you employed?

4 A City of North Charleston.

5 Q And that would be the North Charleston Police
6 Department; is that correct?

7 A Yes, sir.

8 Q How long have you been with North Charleston PD?

9 A It will be ten years in September.

10 Q And what do you do for North Charleston Police
11 Department?

12 A Currently assigned as a school resource officer,
13 which means I work with the schools, handle any crimes
14 that happen there, teach the kids about law enforcement.

15 Q Okay. Do they have a school resource officer in
16 every school?

17 A All middle schools and high schools in the city of
18 North Charleston have school resource officers.

19 Q And to what school were you assigned on February the
20 5th, 2010?

21 A At that time I was assigned to Daniel Jenkins, which
22 is located on Bonds Avenue.

23 Q Okay. Were you the only resource officer assigned to
24 that school at the time?

25 A I was one of two officers assigned to that school at

1 that time.

2 Q And who was the other?

3 A Officer Kirk Hanson.

4 Q And if you would, where is Daniel Jenkins Academy
5 located?

6 A Located on Bonds Avenue which is in the city of North
7 Charleston, also located in Charleston County.

8 Q And did you happen to be on duty at Daniel Jenkins
9 Academy on February the 5th, 2010?

10 A Yes, sir, I was.

11 Q Do you recall what day of the week that was?

12 A It was a Friday.

13 Q And could you tell the jury what happened that
14 afternoon around 12:45 p.m.?

15 A That afternoon we were beginning our dismissal for
16 the end of the day. It was an early dismissal day. One
17 of the administrators, Mr. Pinckney, had called myself and
18 Officer Hanson on the radio telling us that there was some
19 sort of commotion in the middle of Bonds Avenue and that
20 he believed he had heard gunshots. We both got in Officer
21 Hanson's vehicle, drove down Bonds Avenue to see what was
22 going on.

23 Q Who is Mr. Pinckney?

24 A Mr. Pinckney is a school administrator for Daniel
25 Jenkins. He's currently assigned to the Charleston County

1 School District headquarters down here.

2 Q Okay. I'm sorry to interrupt you.

3 A That's all right.

4 Q And what did you and Officer Hanson do when you got
5 this -- and how did you get the call? Did he call you on
6 the phone or do you all have radios there or how does that
7 work?

8 A It came over the school radio which Mr. Pinckney had
9 and we always keep one when we're working at a school so
10 that they can tell us what's going on. It gets the
11 information to us much faster.

12 He said that there was some sort of commotion on
13 Bonds Avenue towards Dorchester Road. Bonds Avenue goes
14 between Azalea and Dorchester. So we got in our car, went
15 toward Dorchester Road, and we saw several people running,
16 we saw a lot of people looking, paying attention, and then
17 we observed a young man laying face first down in a
18 driveway just off of Bonds Avenue very close to Dorchester
19 Road.

20 Q And do you recall -- he was in a driveway. Do you
21 recall what that was the driveway to?

22 A It was some sort of electrician store located at 2630
23 Bonds Avenue.

24 Q Okay. And the victim obviously was still present
25 when you got there?

1 A The victim was laying on the ground face down. There
2 was a fair amount of blood coming from the victim's face.
3 It was unclear what the extent of his injuries were due to
4 the amount of hair he had.

5 Q Okay. And the amount of hair. What kind of hair did
6 he have? What kind of hairstyle did he have?

7 A It appeared to be about shoulder-length dreadlocks.

8 Q Okay. Now, were you the first person to get to the
9 victim?

10 A Me and Officer Hanson arrived at the same time.

11 Q Okay. Was there anybody else from the school there
12 at the time?

13 A School security agent Mr. Kevin Wren was also there.
14 Also, there were several people in the area that were
15 there before we were.

16 The only other person that I knew of, though,
17 was Kevin, and Mr. Wren was also assisting the victim,
18 trying to find signs of circulation, breathing, a pulse,
19 trying to give the aid he could.

20 I immediately jumped in with Mr. Wren to help
21 with that process while Officer Hanson checked the scene
22 that we were safe, began checking to see if there were any
23 witnesses that had seen it, calling in getting EMS on the
24 way, and that's what his role was at that time.

25 Q Okay. And I'm going to refer you back to State's

1 Exhibit No. 27 again if I could. Just to orient the jury,
2 could you point out -- I'm going to ask you to point out a
3 couple of things.

4 Could you show them where Dorchester Road is?

5 A Dorchester Road is over here.

6 Q And how about Bonds Avenue?

7 A Bonds Avenue, right here.

8 Q And where does this State's Exhibit 27 depict Daniel
9 Jenkins Academy?

10 A Daniel Jenkins Academy is here..

11 Q All right. And where was it that you located the
12 victim lying in the driveway?

13 A Just off of Bonds Avenue, in the driveway here.

14 Q Okay. To AllSouth Electrical?

15 A Uh-huh. I believe that's the name of it.

16 Q Okay. And that would be the same business depicted
17 in State's Exhibit No. 1; is that correct?

18 A Yes, sir.

19 Q In the driveway to AllSouth.

20 Were -- you said you and Mr. Wren attended to
21 the victim; is that correct?

22 A Yes, sir.

23 Q Were you able to obtain a pulse or anything of that
24 nature?

25 A I could not find any pulse. I could not find any

1 signs of breathing. There was a heavy amount of blood
2 coming from the mouth and the nose of the victim.

3 Q And was the area where the victim was located in that
4 driveway, is that in Charleston County as well?

5 A Yes, sir, it is.

6 Q Do you know if the -- who was the -- was the victim a
7 student at Daniel Jenkins Academy?

8 A He was a student at Daniel Jenkins.

9 Q And what was his name?

10 A It was Larry Maybank.

11 Q What happened after you and Mr. Wren attended to the
12 victim?

13 A Officer Hanson had called for EMS and their response
14 was pretty rapid. As soon they took over treating the
15 victim, I went back to Daniel Jenkins to begin pulling out
16 camera footage of whatever the school's cameras could have
17 seen. Also, we had the students in a lockdown at that
18 point, so I needed to find out what the status of the
19 school was as that's my primary responsibility.

20 Q Okay. And did you have the occasion to check the
21 school's -- you indicated that you went back to check the
22 video surveillance system. Did you do so?

23 A Yes, sir, I did.

24 Q And as a school resource officer at Daniel Jenkins,
25 did you have access to the video system yourself?

1 A Yes, I had access to the video system.

2 Q And are you one of the custodians to the school
3 surveillance system there?

4 A Yes, I am.

5 Q Are all those surveillance cameras, are they internal
6 cameras or external cameras or both?

7 A Both. We have multiple internal and external
8 cameras.

9 Q And specifically are there any cameras on the
10 Dorchester Road side of that school, Daniel Jenkins
11 Academy?

12 A Yes, sir. There are cameras on that side.

13 Q And did you have an occasion to observe the video
14 from that particular camera?

15 A Yes, sir. I was able to pull up the camera showing
16 that side of the school during the incident.

17 Q Okay. And were you able to observe the victim
18 leaving the school grounds that day?

19 A Yes, sir. I did observe the victim leave the school
20 grounds.

21 Q And what did you have done with the video footage
22 from that particular camera, that external camera?

23 A All the camera footage we were able to get was burned
24 to a CD-ROM and transferred to Sergeant Reynolds with our
25 detective bureau at the time.

1 Q And that was done pretty soon, pretty soon after the
2 shooting?

3 A Yes, sir. Within an hour we had all that done.

4 Q Officer Camp, I hand you what's previously been
5 marked as State's Exhibit 28 for identification and ask if
6 you recognize that item.

7 A Yes, sir. This is the copy of the video that I
8 observed and authenticated as the video of that day, and I
9 signed it and dated it.

10 Q And how do you know that?

11 A I viewed it.

12 Q You viewed it at my office, correct?

13 A Yes, sir. On the 11th.

14 Q Do you remember what date that was?

15 A The 11th of this month.

16 Q Okay. And that is a true and correct copy of the
17 video that was provided to Detective Reynolds at that
18 time?

19 A This is a true copy of that.

20 Q And that's only from one camera; is that correct?

21 A I only viewed one camera angle from this.

22 MR. DURANT: Your Honor, at this time we'd offer
23 State's Exhibit No. 28 into evidence if there's no
24 objection.

25 THE COURT: Any objection?

1 MS. EHRLICH: No, Your Honor.

2 THE COURT: State's No. 28 is admitted without
3 objection.

4 (WHEREUPON, STATE'S Exhibit No. 28 was admitted
5 into evidence.)

6 BY MR. DURANT:

7 Q When you examined the video footage at the school,
8 were any school officials able to identify any of the
9 persons on that video?

10 A Yes, sir. Mr. Pinckney, as I previously said, was
11 the principal there. Also Mr. Hewitt was an area
12 specialist in charge of one of our grades. Both of them
13 were able to identify the students on the video for me.

14 Q Okay. And were they able to identify the victim?

15 A Both the victim and the suspect.

16 Q And that would be Derell Green?

17 A Yes, sir.

18 MR. DURANT: Thank you. Could you please answer
19 any questions that defense counsel may have for you?

20 THE WITNESS: Yes, sir.

21 CROSS-EXAMINATION

22 BY MS. EHRLICH:

23 Q Officer Camp, you, I guess, were the first actual
24 officer on scene with Mr. Hanson?

25 A Yes, ma'am. Me and Officer Hanson are both the

1 school resource officers there.

2 Q Okay. And at some point you got a description of
3 people running from the scene?

4 A I do not remember getting a description of anyone
5 running from the scene.

6 Q If I showed you a copy of your report, would that
7 help refresh your memory?

8 A That might help refresh your memory.

9 MS. EHRLICH: Permission to approach the
10 witness, Your Honor?

11 THE COURT: Yes, ma'am.

12 THE WITNESS: Okay.

13 BY MS. EHRLICH:

14 Q You gave a description over dispatch?

15 A I do believe we got a description, a clothing
16 description.

17 Q And that was of two people running from the scene?

18 A According to the report it says two possible suspects
19 had been observed running from the scene.

20 Q And one was wearing all black is the description that
21 you put out over dispatch?

22 A Without hearing the tape I can't remember what, or
23 any, description I put out or whether Officer Hanson did.

24 Q Do you remember getting the description at some
25 point, based on your report?

1 A I believe Officer Hanson was fielding most of that
2 information as I was tending to the victim.

3 Q Okay. So is that your report or his report?

4 A This is my report, or my supplement to the report.

5 Q I'm sorry?

6 A This is my supplement to the report.

7 Q Okay. And in your report did you document sending a
8 description out over dispatch?

9 A I do not see that here. I might be missing it.

10 MS. EHRLICH: Permission to approach the
11 witness, Your Honor?

12 THE COURT: Yes, ma'am.

13 BY MS. EHRLICH:

14 Q So you didn't get -- you don't remember what the
15 description was?

16 A I don't remember.

17 Q Okay. But you did get a description and put it out
18 over dispatch?

19 A That is the way I remember it, yes.

20 Q And I guess after doing that and after EMS arrived,
21 that's when you went back to the school?

22 A As soon as I could. As soon as EMS took over.

23 Q And that's when you observed the video from the
24 school system?

25 A Yes, ma'am.

1 Q And your observation was that there was no sign of a
2 dispute when he was leaving campus?

3 A You can see where there was some sort of interaction,
4 but there's no audio and it's at some distance.

5 MS. EHRLICH: Court's indulgence.

6 (Pause.)

7 MS. EHRLICH: No other questions, Your Honor.

8 THE COURT: Any redirect?

9 MR. DURANT: A couple on redirect.

10 REDIRECT EXAMINATION

11 BY MR. DURANT:

12 Q Referring back to your supplement, and we'll put it
13 just as it says, "A witness advised that two possible
14 suspects had been observed running from the scene. Their
15 description was advised to dispatch."

16 That's all you say about that; is that correct?

17 A Correct.

18 Q Do you know who that witness was?

19 A I do not.

20 Q Do you know what the description was?

21 A I can't remember the description.

22 Q And do you know whether the two people that this
23 potential witness saw had anything to do with this case?

24 A I have no idea.

25 Q Because it took you some period of time to get there;

1 is that correct?

2 A We were there within minutes, but like I said before,
3 my entire focus was on the victim.

4 MR. DURANT: Okay. Thank you. I have nothing
5 further.

6 THE COURT: Any recross?

7 MS. EHRLICH: No, Your Honor.

8 THE COURT: You may step down. Thank you very
9 much.

10 THE WITNESS: Thank you, Your Honor.

11 MR. DURANT: I'd ask that Officer Camp be
12 excused, Your Honor.

13 THE COURT: Any objection? Any objection to the
14 officer being excused?

15 MS. EHRLICH: No, Your Honor.

16 THE COURT: All right. Officer Camp, you may be
17 excused. Thank you very much.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: You may call your next witness.

20 MR. DURANT: The State would call Terrell
21 Pinckney.

22 THE CLERK: Raise your right hand.

23 TERRELL PINCKNEY, after being duly sworn,
24 testified as follows:

25 THE CLERK: Thank you, sir. If you would, take

1 your seat.

2 Sir, if you'd please state your first and last
3 names, spelling your last name for the record.

4 THE WITNESS: My name is Terrell Pinckney. Last
5 name P-I-N-C-K-N-E-Y.

6 DIRECT EXAMINATION

7 BY MR. DURANT:

8 Q Good afternoon, Mr. Pinckney.

9 A Good afternoon.

10 Q We've been causing you to wait around a good bit the
11 last couple of days.

12 A Yes, you have.

13 Q I apologize.

14 A No problem.

15 Q Could you tell the jury your age?

16 A I'm 38 years old.

17 Q And where are you employed?

18 A I'm employed with the Charleston County School
19 District.

20 Q And what do you do for the Charleston County School
21 District?

22 A I'm the Behavior Programs administrator for
23 Charleston County School District.

24 Q And what is the Behavioral Programs administrator for
25 the Charleston County School District? What do you do?

1 A Currently I transition the students that are involved
2 with the Department of Juvenile Justice back into the
3 Charleston County Schools by determining alternative
4 placements for those students when they return to our
5 school district.

6 Q Okay. And are you working out then on Calhoun
7 Street; is that correct?

8 A Yes, my offices are on Calhoun Street.

9 Q Could you tell our jury where you were working on
10 February the 5th of 2010?

11 A On February the 5th of 2010, I was working at Daniel
12 Jenkins Academy. I was the Behavior Programs
13 administrator at the school.

14 Q Okay. And did you have pretty much the same duties
15 at the school as you do now or was it a different kind of
16 job?

17 A It was a different kind of job.

18 Q Okay. But you were pretty much -- you're not really
19 considered the principal, right?

20 A No. I oversaw the day-to-day operations of the
21 behavior components of the program. I was the chief
22 disciplinarian at the program.

23 Q Okay. And where is Daniel Jenkins Academy?

24 A Daniel Jenkins Academy is located on Bonds Avenue in
25 North Charleston, South Carolina.

1 Q And what kind of a school is it? We've heard it was
2 a relatively new school.

3 A Right. It's the alternative school for Charleston
4 County School District. At the time it served grades
5 sixth through tenth grade.

6 Q And what do you mean by an "alternative school?"

7 A In plain terms, a disciplinary school.

8 Q And where did the students from Daniel Jenkins come
9 from, from the other schools in the district?

10 A Right. The school serves grades six through ten and
11 these students are placed at the school from the variety
12 of schools across our school district.

13 Q Does Daniel Jenkins Academy have metal detectors?

14 A Yes, they have metal detectors.

15 Q Why?

16 A Metal detectors are used to deter the bringing of
17 contraband or metallic-type objects into the school and
18 the students are screened at each arrival station, and
19 there are two arrival stations at the school.

20 Q And every student is screened; is that correct?

21 A Every student that enters the building, they're
22 screened, in a non-dehumanizing way.

23 Q Okay. And how long were you the administrator at
24 Daniel Jenkins Academy?

25 A Since 2006.

1 Q As administrator, did you have an opportunity to
2 interact with and get to know individual students at the
3 school?

4 A Yes.

5 Q Do you know this fellow over here? And I know this
6 is -- and you can stand up if you need to.

7 A Yes, I do.

8 MS. EHRLICH: May we approach for a second?

9 MR. DURANT: Sure.

10 (A bench conference was held with the judge and
11 attorneys in the presence of the jury but out of the
12 hearing of the jury.)

13 BY MR. DURANT:

14 Q And who is this?

15 A Derell Green.

16 Q And do you recall how long Mr. Green was a student at
17 the school?

18 A Roughly a year or so at the school.

19 Q Okay. And during that year, did you have any
20 occasion to have personal interactions?

21 A Yes.

22 Q And you talked to him?

23 A Yes.

24 Q And he's talked to you?

25 A Yes.

1 Q And that's been on a number of different occasions;
2 is that correct?

3 A Yes.

4 Q Do you recall what grade he was in back in 2010?

5 A Derell was in the eighth grade.

6 Q Let me ask you about another fellow. Do you know a
7 fellow named Rashawn Bradley?

8 A Yes, I do.

9 Q Was he a student at Daniel Jenkins Academy?

10 A He's a student at Daniel Jenkins and he was in the
11 ninth grade.

12 Q How about a fellow named Antonio Smalls-Heyward?

13 A Yes, I do.

14 Q Also a student there?

15 A Also a student. He was in the sixth grade.

16 Q Did you know the victim in this case, Larry Taron
17 Maybank?

18 A Yes, I do.

19 Q And was he part of the general student body at Daniel
20 Jenkins?

21 A No, he was not.

22 Q What program was he in?

23 A He was in a credit recovery program called the Summit
24 program. The program was housed in Daniel Jenkins
25 Academy, and with him being in that program, I made myself

- 1 knowledgeable of all students in the Summit program
2 because ultimately they're all my responsibility as well,
3 but I had no direct contact with him on a daily basis.
- 4 Q Okay. Is that program segregated from the rest of
5 the school?
- 6 A Yes. They were segregated in a private classroom
7 that had its own restroom and water fountain in the
8 classroom along with their computer systems and they had
9 no reason to enter or go back and forth, inside and out of
10 the classroom. They had everything self-contained in the
11 classroom.
- 12 Q Okay. And you said it's a credit recovery program?
- 13 A Yes, a credit recovery type program.
- 14 Q Does that mean something to kind of help you get the
15 credit so they can graduate?
- 16 A Yes.
- 17 Q And correct me if I'm wrong.
- 18 A Yes, you're correct.
- 19 Q Okay. Now I believe you already answered that, but
20 is there any contact between the Summit people and the
21 regular student body of Daniel Jenkins?
- 22 A No, there's no contact. The Summit students, they
23 arrived at school on a staggered schedule outside of the
24 general population.
- 25 Q Okay. And you already said the classes are separate,

1 correct?

2 A Right.

3 Q Do you know a fellow named Jacquintus Washington?

4 A Yes, I do.

5 Q And was he a student at Daniel Jenkins?

6 A He was a student at Daniel Jenkins, but he was also
7 in the Summit program.

8 Q Okay. Mr. Pinckney, I want to talk a little bit
9 about Friday, February the 5th of 2010. Did you have
10 the occasion to be at school on that day?

11 A Yes, I was at school on that day.

12 Q And do you recall what -- that was a Friday, I
13 believe?

14 A That was a Friday.

15 Q And do you recall what time dismissal was that day?

16 A Dismissal was approximately 12:30.

17 Q And was that dismissal for everyone or both the
18 regular student body and the Summit program?

19 A The entire school.

20 Q Okay. Is that the only day that they all get out at
21 the same time?

22 A Right. The general population Monday through
23 Thursday they would get out at 3:30, but on Fridays they
24 got out at 12:30. And Summit generally got out at 12:30
25 every day.

1 Q Okay. Now where were you and what were you doing
2 during dismissal?

3 A During dismissal, I operate the entire dismissal
4 process and I'm in the front of the building monitoring
5 bus traffic, parent pickup traffic, and walkers that are
6 leaving the campus.

7 Q Okay. Did you do that pretty much every day at
8 dismissal?

9 A I was there every day.

10 Q Okay. Referring to State's Exhibit No. 27, could you
11 just point out to the jury where Daniel Jenkins Academy
12 is?

13 A Daniel Jenkins Academy is located right here. The
14 circle, that's Daniel Jenkins Academy.

15 Q And when you say that you were posted at the front of
16 the school, where are you talking about?

17 A I was posted right here.

18 Q And then when the buses come, how do the buses come
19 and leave?

20 A The buses come off of Azalea or Dorchester Road and
21 they enter the campus, into the campus right here.
22 There's one stop right here to pick up sixth graders and
23 seventh graders and then it motions around the building to
24 pick up high-schoolers and eighth graders.

25 Q Okay. And where did the Summit people exit the

1 school?

2 A The Summits exit the building through the front of
3 the building.

4 Q And how about the eighth graders?

5 A The eighth graders exit toward this side of the
6 building.

7 Q Okay. And if you would, could you tell our jury what
8 happened while you were out front overseeing the dismissal
9 that day?

10 A During the time when I was overseeing the dismissal,
11 I heard three pow, pow, pows. And after being out there
12 for years I've heard sounds before and I didn't pay too
13 much attention to it, it was very faint, but a young lady
14 in a white SUV pulled up on Bonds Avenue and yelled to me
15 by name that someone got shot, and she was pointing back
16 toward Dorchester Road. And so I immediately began to
17 motion myself into the direction of Dorchester Road and at
18 the same time --

19 Q Go ahead. I didn't mean to --

20 A -- at the same time my head of security for
21 Charleston County School District was pulling up as well
22 -- his name is Kevin Wren -- and he accompanied me to that
23 direction. And before I even got to the spot I had my
24 two-way radio and I called my SROs that were at the
25 school, Officer Camp and Officer Hanson, to please

1 accompany me to the area.

2 Q And what did you do when you got to the area of
3 AllSouth Electrical Contractors?

4 A When I got to the area I saw Taron Maybank
5 motionless, face down, a gargling-type last gasp of
6 breath. His papers were scattered about the area. And at
7 that time my SROs that were in the squad car, they pretty
8 much arrived simultaneously after I called them and I
9 pretty much turned the scene over to the SROs.

10 Q Was Mr. Maybank moving at the time?

11 A He was motionless.

12 Q Were you able to determine if he had been injured in
13 any way?

14 A I saw blood coming from his mouth and blood near his
15 head area.

16 Q Did you know whether or not he still alive at that
17 time?

18 A I could not determine if he was alive or not, but he
19 was motionless.

20 Q And if you could just point out where you located him
21 on State's Exhibit 27 here.

22 A Okay. This has to be the laundromat, so that's the
23 location.

24 Q Okay. So he wasn't right on Bonds Avenue?

25 A No. He was more --

1 Q Kind of in the driveway there?

2 A In the driveway there.

3 Q Okay. You didn't observe any kind of weapons or
4 anything like that on him?

5 A I didn't observe any weapons at all.

6 Q What did you do after the school resource officers
7 and EMS arrived?

8 A Prior to them, I immediately called back to my school
9 and went to emergency protocol. That's what we call it.
10 It's the school lockdown procedure. Because we didn't
11 know if a gunman was out in the area, making sure that the
12 remainder of the students that were in the building and
13 staff were still safe.

14 And so I immediately stopped all the bus traffic
15 and went to school lockdown. And that's when the students
16 go into a secure location in the building and they are
17 away from all windows and doors. And we have a green and
18 red card procedure, that the teachers have to place a
19 green card until their doors if all is safe and a red card
20 under their door if there's a problem, and I was doing
21 that via my two-way radio.

22 Q Okay. And after you did that, you radioed that, did
23 you return to the school?

24 A Yes, I returned to the school.

25 Q And what did you do when you returned to the school?

1 A Well, I shared with Sergeant Laurie that my school
2 has video surveillance and I began my school portion of
3 the investigation by reviewing the video surveillance
4 tapes.

5 Q And as the administrator there, you obviously have
6 access to the school surveillance system; is that correct?

7 A Yes, I do.

8 Q And that's all digital; is that correct?

9 A Yes. It's a digital eyepoint video system. The
10 video's captured on a database.

11 Q Okay. And you access that through your computer?

12 A Through my computer, yes.

13 Q Could you tell us a little bit about the surveillance
14 system at the school? How many cameras do they have?

15 A That was approximately -- well, at the time it had
16 40-plus cameras, cameras in each classroom, cameras in the
17 hallways, cameras at various locations outside of the
18 building, and of course a camera in the main lobby area as
19 well. And these cameras are activated by motion.

20 Q Okay. So there'd be times where they're cut off?

21 A If there's no motion they would not record, but
22 immediately when motion is picked up, it starts recording.

23 Q Okay. Is there any video on the north side of that
24 building, the Dorchester Road side of that building?

25 A Yes. That would have been camera 36.

1 Q And it depicts the parking lot and a portion of Bonds
2 Avenue?

3 A Portions of Bonds Avenue and the parking lot at
4 Daniel Jenkins Academy.

5 Q Okay. And you were aware, of course, that the police
6 were provided with a copy of the video from that
7 particular camera right after the shooting; is that
8 correct?

9 A Yes.

10 Q And I'd like to show you what's previously been
11 marked as State's Exhibit No. 28 in evidence and ask if
12 you recognize that item.

13 A Yes, I do recognize this item.

14 Q And how do you recognize it, sir?

15 A I viewed the video in your office.

16 Q Okay. And what did you do after you viewed the
17 video?

18 A I initialed and signed the video.

19 Q Okay. And that is a true and correct copy of the
20 video that was from that camera 36 on the day of the
21 incident; is that correct?

22 A Yes, that is correct.

23 Q And I believe the time frame on that was for about 45
24 minutes surrounding the shooting; is that correct?

25 A Forty-five minutes.

1 Q Surrounding the shooting; is that correct?

2 A Yes.

3 Q Now afterwards you said you also conducted an
4 investigation yourself. Did you observe this video that
5 day?

6 A Yes.

7 Q Were you able to identify the victim, Taron Maybank
8 on that video?

9 A Yes, I was able to.

10 Q Were you able to identify the defendant, Derell
11 Green, on that video?

12 A Yes, I was.

13 Q And were you able to identify Rashawn Bradley and
14 Antonio Smalls-Heyward on that video?

15 A Yes, I was.

16 Q And how were you able to do that?

17 A Because of my general knowledge and day-to-day
18 interactions with each student I understand that they were
19 on the video and I know them from my day-to-day
20 interactions with them.

21 Q Okay. So you know them?

22 A I know them, yes.

23 Q And also you had an occasion to track them on the
24 inside cameras, too, as well as the outside cameras as
25 they were leaving that day?

1 A Right.

2 Q And as part of your investigation, was this
3 information as to these people you have identified on the
4 video provided to the North Charleston Police Department?

5 A Yes, the information was provided to North Charleston
6 Police Department.

7 Q Okay. I believe -- were you able to identify Derell
8 Green and Taron Maybank the day of the shooting?

9 A Yes.

10 Q And later you met with -- about a week later, I
11 believe, you met with Detective Kramitz. Were you able to
12 identify any of the other individuals at that time?

13 A Yes, I was able to.

14 Q And who were those two people?

15 A The two people were Rashawn Bradley and Antonio
16 Smalls-Heyward.

17 Q And that information was provided to Detective
18 Kramitz on the 12th of February; is that correct?

19 A Correct.

20 Q And I believe you also provided Detective Kramitz
21 with another video on that occasion; is that correct?

22 A That's correct.

23 Q What was the difference between that video and the
24 one that was previously provided to the police department
25 on the day of the shooting?

1 A The video that you're mentioning tracks the movements
2 of each individual because the camera system, we have
3 multiple camera angles and I wanted to track the movements
4 of each individual from when they were in the building
5 until they were outside of the building, and they were
6 captured on camera 36.

7 Q Okay. And I hand you what's previously been marked
8 as State's Exhibit No. 44 and ask if you recognize that.

9 A Yes.

10 Q And what is that?

11 A This is a video of the camera angles that I viewed in
12 your office.

13 Q Okay.

14 A On the 19th of August.

15 Q Okay. And that contains basically some of the same
16 camera 36 but also some inside cameras; is that correct?

17 A Exactly, correct.

18 Q And tracks Derell Green and Taron Maybank as they
19 were leaving that day?

20 A Correct.

21 MR. DURANT: Your Honor, at this time we'd offer
22 State's Exhibit 44 into evidence.

23 THE COURT: Any objection?

24 MS. EHRLICH: No objection.

25

1 (WHEREUPON, STATE'S Exhibit No. 44 was admitted
2 into evidence.)

3 MR. DURANT: Your Honor, I'd request permission
4 at this time to publish State's Exhibit 28 to the jury.

5 THE COURT: Is it 28 and 44 or just 28?

6 MR. DURANT: Just 28 at this time, Your Honor.

7 THE COURT: Okay. All right.

8 MR. DURANT: If I may have just a technical
9 moment here, Your Honor.

10 THE COURT: Yes, sir.

11 MR. DURANT: Your Honor, may the witness come
12 down?

13 THE COURT: Yes, sir.

14 BY MR. DURANT:

15 Q Mr. Pinckney, would you mind coming and stand at the
16 podium maybe to be out of the people's way.

17 A Right here?

18 Q Yes, sir.

19 And I'm going to start this video from the
20 12:34:46 bar. And if we could, I'm going to -- if you'd
21 kill the lights.

22 (The video is played but not transcribed.)

23 BY MR. DURANT:

24 Q Mr. Pinckney, this is beginning at 12:34:50 roughly.
25 Where is that depicting at the school?

1 A That's the parking lot camera, camera 36. It depicts
2 the staff parking, the visitor's parking lot.

3 Q Did you notice that fellow that came out from behind
4 that tree up there?

5 A Yes. During my investigation, I was --

6 Q First of all, who is that walking across the street?

7 A That's -- the gentleman in the hat and white shirt
8 and khaki pants was Rashawn Bradley.

9 Do you want to go back and address the gentleman
10 behind the tree?

11 Q Well, I'll ask you about that in a second. I believe
12 he's going to come back in here.

13 And this is who in the white shirt?

14 A That's Rashawn Bradley.

15 Q And were you able to identify this fellow in the
16 black shirt over here?

17 A Yes, I was able to identify the gentleman in the
18 black shirt.

19 Q Is he a student at Daniel Jenkins Academy?

20 A No. He's not a student at Daniel Jenkins Academy.

21 Q I'm going to ask you some more about him in a moment.

22 Who is this?

23 A That's Derell Green.

24 Q From your investigation, were you able to determine
25 where Daqone Lance went to school?

1 A Yes. I was able to determine that he attended
2 Garrett Academy.

3 Q And were you able to determine whether or not he had
4 attended school that day?

5 A Yes. I determined that he was not at school that
6 day, but he was scheduled to be in school.

7 Q This person coming up right here, were you able to
8 identify him?

9 A Yes. That's Antonio Smalls-Heyward.

10 Q These people coming into the screen right there where
11 my cursor is?

12 A That's Taron Maybank in the reddish-type jacket and
13 Jacquintus Washington.

14 Q Then there's Taron and Jacquintus walking down the
15 road there?

16 A Correct.

17 Q And there appear to be how many people behind them?

18 You can't see now, they're out of the screen.

19 And do you recall -- were you able to tell how
20 many people came back in that direction?

21 If not, that's fine.

22 A Four.

23 MR. DURANT: That's all I want to play right now
24 of that.

25 (Video concluded.)

1 MR. DURANT: And at this time I want to publish
2 portions of State's Exhibit No. 44 with the Court's
3 permission.

4 THE COURT: Yes, sir.

5 (The video is played but not transcribed.)

6 BY MR. DURANT:

7 Q Okay. I'm going to play a portion of this video
8 starting at 12:34:22.

9 And if you'd kill the lights again I'd
10 appreciate it.

11 What is this depicting?

12 A This is the eighth grade commons area entrance that
13 houses four classrooms and a commons area for the
14 students.

15 Q Are these cameras synced, they all run on the same
16 time?

17 A Yes, they're all synchronized..

18 Q And is that how you were able to track from one area
19 to another?

20 A Correct.

21 Q Do you recognize that fellow walking down the hall?

22 A Yes, that's Derell Green.

23 Q You know what that is he has on his hand?

24 A That's a glove on his right hand.

25 Q Who's that teacher he's talking to?

1 A That's Mr. Hewitt, Student Center specialist,
2 Mr. Charlie Hewitt.

3 Q What does this view depict?

4 A This is the camera from the main hallway that faces
5 the eighth and high school exit and entrance area into the
6 building.

7 Q Would that be the door that Mr. Green would go exit
8 through?

9 A Correct.

10 Q And who is that exiting the school now?

11 A Derell Green.

12 Q And I know it's kind of hard to see on that.

13 I believe you previously identified this
14 gentleman as Mr. Bradley; is that correct?

15 A That's correct.

16 Q And this is Mr. Green as he's exiting that door that
17 we saw previously?

18 A Correct.

19 Q Okay. And were you also able to track any movements
20 of Mr. Maybank as he was leaving school that day?

21 A Yes, I was able to track his movements.

22 Q What is that?

23 A That is the Summit program classroom.

24 Q And who is this right here? Do you see my cursor?

25 A Yes, I can see your cursor.

- 1 That's Taron Maybank.
- 2 Q This is where the Summit program meets?
- 3 A That's correct, that's the Summit program.
- 4 Q I will speed it up a little bit here.
- 5 This is as they're exiting the classroom; is
- 6 that correct?
- 7 A That's correct.
- 8 Q And who is that right there? Is that him leaving the
- 9 classroom?
- 10 A Yes, that's Taron Maybank leaving.
- 11 Q And this is located where in the school?
- 12 A That's the main lobby area.
- 13 Q In the front of the school?
- 14 A Yes, sir, in the front of the school.
- 15 Q Who is that?
- 16 A That's Taron Maybank.
- 17 Q You would be where, outside this door here?
- 18 A I just exited behind Taron Maybank.
- 19 Q Oh, okay. This is Mr. Washington there?
- 20 A Jacquintus Washington, correct.
- 21 Q This would be looking back towards the door --
- 22 A Correct.
- 23 Q -- where you were?
- 24 A Correct.
- 25 Q Obviously bad weather that day?

1 A Yes. It was raining that day.

2 Q Who are these two people walking towards the camera
3 right there?

4 A Taron Maybank in the reddish-type jacket and
5 Jacquintus Washington in the blue shirt.

6 Q That's a little bit out of order. I believe that's
7 when you came out of the school building?

8 A Correct.

9 Q Is that you there?

10 A Correct.

11 Q That's the one where it picked him up on that
12 external camera, camera 36; is that correct?

13 A That's correct.

14 Q Thank you, sir. You may resume your seat.

15 A Thank you.

16 MR. DURANT: Court's indulgence.

17 (Pause.)

18 BY MR. DURANT:

19 Q I just have one other question.

20 I hand you what's been marked as State's Exhibit
21 No. 2 for identification and ask if you recognize the
22 person depicted in that photograph.

23 A Yes, I do. That's Taron Maybank.

24 Q And where was that picture taken?

25 A The picture was taken on February 5th on Bonds Avenue

1 after the medical officials arrived.

2 MR. DURANT: Okay. Thank you.

3 Would you please answer any questions defense
4 counsel may have for you.

5 THE WITNESS: Yes, sir.

6 MS. EHRLICH: Mr. Pinckney, I don't have any
7 questions for you.

8 THE WITNESS: Thank you.

9 THE COURT: You may step down. Thank you very
10 much.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: Madam forelady, it's 3:30. We've
13 been going almost an hour and a half. We're going to take
14 a break at this time. If you need anything, let the
15 bailiffs know.

16 Please don't discuss the case amongst yourselves
17 or with anybody else.

18 We'll see you in about 15 or 20 minutes.

19 (The jury left open court at approximately 3:26
20 p.m.)

21 THE COURT: All right. We'll take about a 15 to
22 20-minute break.

23 MR. DURANT: Thank you, Your Honor.

24 (A break was taken.)
25

1 testified as follows:

2 THE CLERK: Sir, if you wouldn't mind stating
3 your first and last names, spelling your last for the
4 record, please.

5 THE WITNESS: My name is Jacquintus Washington
6 last name is W-A-S-H-I-N-G-T-O-N. Anything else?

7 DIRECT EXAMINATION

8 BY MR. DURANT:

9 Q Thank you, sir. You can have a seat, Mr. Washington.

10 A All right.

11 Q If you would, I need you to speak up. That's the
12 microphone in front of you. And speak loudly because
13 everybody on the jury has to hear, okay?

14 Could you tell our jury how old you are?

15 A I'm 20 years old.

16 Q And are you still going to school?

17 A Yes, sir.

18 Q Where are you going to school this year?

19 A At Clark Academy.

20 Q That's over on James Island somewhere?

21 A Yes, sir.

22 Q And you are a senior; is that correct?

23 A Yes, sir.

24 Q Could you tell us where you were going to school in
25 February of 2010?

1 A I was attending Daniel Jenkins Academy at the Summit
2 program.

3 Q Okay. So you weren't in the regular student body
4 there, you were in the Summit program; is that correct?

5 A Yes, sir.

6 Q How long had you been going to the Summit program, if
7 you remember?

8 A I started -- just I started that semester --

9 Q Okay.

10 A -- at the date of August 18th.

11 Q So you'd been going about half the school year?

12 A Yeah, half the school year.

13 Q Now in the Summit program, did you all attend classes
14 for the entire day?

15 A No, sir.

16 Q Do you remember what time it was when you all
17 generally got out of school?

18 A It was like -- it's about 12.

19 Q And were you all part of the regular school at Daniel
20 Jenkins Academy?

21 A No, sir.

22 Q How many classrooms did the Summit program have?

23 A They only had one classroom.

24 Q And did you all have any kind of interaction with the
25 other students at the school?

1 A None at all.

2 Q Now while you were at Daniel Jenkins Academy in the
3 Summit program, did you have an occasion to meet a fellow
4 named Larry Taron Maybank?

5 A Yes, sir.

6 Q What did you call him?

7 A Taron.

8 Q And you knew him how or know him how?

9 A From school.

10 Q Okay. Just from Daniel Jenkins?

11 A Yes, sir.

12 Q You didn't know him before you all went to Daniel
13 Jenkins together?

14 A No, sir.

15 Q What program -- was he also in the same program that
16 you were?

17 A Yes, sir.

18 Q And do you remember how long it was that you knew
19 Taron?

20 A About a month or two.

21 Q And were you friends with Taron?

22 A Yes, sir.

23 Q Were you friends to the extent that you all used to
24 hang out together after school or things like or just at
25 school?

- 1 A At school.
- 2 Q Where did you live at the time?
- 3 A I lived downtown.
- 4 Q In downtown Charleston?
- 5 A Yes.
- 6 Q And how would you get to and from school?
- 7 A Bus.
- 8 Q City bus, CARTA bus?
- 9 A CARTA bus.
- 10 Q And when you rode the bus to school, where would you
- 11 get on and off the bus at?
- 12 A Down there by Gerald's Tires, Dorchester Road.
- 13 Q Okay. That's on Dorchester Road?
- 14 A Yeah.
- 15 Q And about how far is that from Bonds Avenue where the
- 16 school is?
- 17 A About a block or two.
- 18 Q Okay. Were you with Taron when he was shot on
- 19 February 5th?
- 20 A Yes, sir.
- 21 Q And do you recognize the person that shot him in this
- 22 courtroom?
- 23 A I sure do.
- 24 Q And could you please point him out to the jury for
- 25 us? If you need to stand, fine.

1 A Do you want me to point him out?

2 Q Yes, please point him out. Just tell us --

3 A That's him right there.

4 Q Wearing what?

5 A Wearing the white shirt.

6 Q Okay. You can be seated.

7 Did you know his name at the time of the
8 shooting?

9 A No, I didn't know his name.

10 Q Did you know who he was?

11 A Yeah, I knew who he was from somebody else telling
12 me.

13 Q Had you seen him before?

14 A Yes, sir.

15 Q And where had you seen him?

16 A Getting off -- well, getting off the bus stop, seeing
17 him walking to school.

18 Q Okay. Did he live near where you got off of the bus
19 at?

20 A Uh-huh.

21 Q And where in relation to where you got off the bus
22 did he live?

23 A Like -- I know the street, but there was another bus
24 stop that we used to took to get back downtown.

25 Q Okay. But at the end of the street that he lived

1 on -- the street that he lived on intersected Dorchester
2 Road?

3 A Yes, sir.

4 Q Is that where Gerald's is?

5 A Yeah, that's where it is.

6 Q Okay. So you lived right at the head of the street
7 that he lived on; is that correct?

8 A Uh-huh.

9 Q Do you know how many times you may have seen him
10 prior to February 5th of 2010?

11 A Like five times.

12 Q Did you know where he went to school?

13 A Yes, sir.

14 Q And you knew that how?

15 A From the uniform that he worn.

16 Q But you never really saw him in the school itself; is
17 that correct?

18 A Not really, no.

19 Q Let's talk a little bit about February 5th.

20 And I believe you've already told the jury how
21 you got to school that day. Did you ride the bus to
22 school that day?

23 A Yes, sir.

24 Q And when you all had dismissal that day, did you
25 leave the school walking with anybody?

1 A Yeah, was walking with Taron.

2 Q And when you and Taron went out the front door, which
3 way would you turn to go where you were going?

4 A We would turn left to go down Bonds Avenue.

5 Q Okay. And he was with you; is that correct?

6 A Correct.

7 Q Now -- and where were you headed at the time?

8 A We were headed to go get his bike so we'd go to the
9 bus stop to go back home.

10 Q Okay. He didn't ride the same bus you did, did he?

11 A Yeah, we did ride the same bus.

12 Q Okay. You all did ride the same bus on occasion?

13 A Yeah.

14 Q So he was from downtown, too?

15 A I don't believe so, but he got off at the Superstar
16 in North Charleston to get on another bus.

17 Q So you all would leave on the same bus but he would
18 get off at a stop before you?

19 A Yeah. Sometimes he would.

20 Q Okay. Where did he keep his bicycle?

21 A He keep the bicycle in some bushes down the street in
22 front of the school.

23 Q Now, as you were leaving school with Taron, do you
24 remember passing a group of four people?

25 A Yes, sir.

1 Q And could you tell, do you know who those four people
2 were?

3 A Yes, sir. From seeing them, yeah.

4 Q And was one of those four people this fellow right
5 here?

6 A Yes, sir.

7 Q Did you know the other three people that he was with?

8 A Yes, sir.

9 Q Did you know their names or anything like that?

10 A No, sir.

11 Q How did you know them or where had you seen them?

12 A Seeing them from the school.

13 Q Okay. Do you remember what he was wearing that day?

14 A Yeah. Khaki pants and the forest jacket.

15 Q What jacket?

16 A Well, camouflage jacket.

17 Q Okay. And you called it what, the forester jacket?

18 A Yeah, something like that.

19 Q Okay. But a camo kind of thing?

20 A Yeah, those hunting ones.

21 Q And khaki pants?

22 A Yes.

23 Q Did you remember, there was a guy with him wearing
24 black; is that correct?

25 A Yes, sir.

1 Q Do you remember what his name was? Or you didn't
2 know his name --

3 A I don't know.

4 Q -- but where had you seen him before?

5 A I seen him on a bus one day.

6 Q Okay. And how about the other two?

7 A At school.

8 Q Now, what did you or Taron say to them as you all
9 passed by these four guys?

10 A Absolutely nothing.

11 Q And what did these four guys say to you all?

12 A Nothing.

13 Q They didn't say anything to you all either?

14 A Nothing.

15 Q Did you hear any of them saying or talking about
16 anything?

17 A I heard one of them talking about some old
18 foolishness about a teacher and all that, but that's it.

19 Q Something --

20 A Talking about his teacher and stuff like that, making
21 him mad.

22 Q Did he appear to be mad?

23 A Yeah.

24 Q Okay. Do you remember which one that was?

25 A Yeah.

1 Q Do you remember what that one was wearing?

2 A Yeah, sure do.

3 Q What was he wearing?

4 A He was wearing a blue hat with khakis and a white
5 shirt.

6 Q He was wearing a white polo golf-type shirt?

7 A Yeah.

8 Q And he was saying something about being mad at a
9 teacher; is that correct?

10 A Yeah.

11 Q Did you see Mr. Maybank mug at anybody as you all
12 passed?

13 A No, sir.

14 Q What does "mugging" mean?

15 A It's kind of just like you got something, like you
16 got a problem with them or something like that.

17 Q Okay. Did you see Taron give anybody a nasty look in
18 that group?

19 A No, sir.

20 Q Did you give anybody a nasty look in that group?

21 A No, sir.

22 Q Did you see anybody in that group give a nasty look
23 to you all?

24 A No, sir.

25 Q Now what happened after you passed by this group of

1 four guys?

2 A I heard -- when we passed by these four guys we're
3 walking down Bonds Avenue. I guess --

4 Q In what direction toward?

5 A Towards Dorchester Road.

6 Q Okay.

7 A And Taron was -- I think he called somebody or
8 whatever telling them about they coming to their house and
9 stuff like that.

10 Q He called somebody about coming to their house?

11 A Yeah.

12 Q So you remember him having his phone out?

13 A Yeah.

14 Q Now at any time when you and Taron were walking down
15 Bonds Avenue, were you all on the road or on the sidewalk
16 at the time?

17 A We were on the sidewalk.

18 Q Did you ever look behind you?

19 A Yes, I sure did.

20 Q And what did you see when you looked behind you? And
21 I'm talking about before the shooting now.

22 A Before the shooting?

23 Q Yes, sir. What did you see when you looked behind
24 you?

25 A When I looked behind me -- you talking about when I

1 was actually all the way down Bonds Avenue?

2 Q I'm sorry, I didn't understand you.

3 A You asking me if I was -- the time when I was already
4 down Bonds Avenue?

5 Q Yeah, when you're down Bonds Avenue, getting close to
6 where --

7 A The bike was?

8 Q -- Taron was shot. Did you look behind you?

9 A Yes, sir.

10 Q And what did you see when you looked behind you?

11 A I saw Derell following us, then three other guys were
12 waiting back following over by the school.

13 Q Okay. So how close was Taron behind you?

14 A How close was Taron?

15 Q And if you could pick somewhere in court or if you
16 want me to come towards you.

17 A Can you restate that question?

18 Q How far behind you was Derell? You said you looked
19 and he was behind you.

20 A Uh-huh.

21 Q Where were his hands?

22 A In his pockets.

23 Q And was he still wearing the same camouflage jacket?

24 A Yes, sir.

25 Q How far behind you all was he?

1 A Let's see. Well, this thing here. No. This.

2 Q Okay. He was that close behind you?

3 A Yeah. And we were, like, say right here.

4 Q Okay. And where were the other three guys that you
5 had seen him with earlier?

6 A They were back at the spot where we passed them at.

7 Q Okay.

8 A Out into the road, yeah.

9 Q Out in the road but all the way back to the school;
10 is that correct?

11 A Yes, sir.

12 Q And so did you turn around and continue walking?

13 A Yes, sir.

14 Q And what happened?

15 A A few seconds later he started shooting.

16 Q And I didn't hear what you said right before that.

17 A A few seconds later after I looked back, he started
18 shooting.

19 Q Who started shooting?

20 A Derell.

21 Q And how do you know Derell started shooting?

22 A Because I turned around.

23 Q And when you turned around, what did you see?

24 A Him shooting.

25 Q And who was he shooting at?

1 A Taron.

2 Q Did he make any effort to shoot in your direction?

3 A No, sir.

4 Q Did he say anything before he started shooting?

5 A No, sir.

6 Q Do you remember what hand he had the gun in?

7 A The right hand.

8 Q And at this point was he still coming towards you,
9 was he stopped, or how was he --

10 A He stopped.

11 Q He was standing?

12 A Yes, sir.

13 Q And how did he have the gun presented at him? How
14 was the gun, just straight out in front of him?

15 A Straight out. Straight out, yeah.

16 Q Do you remember how many times he shot?

17 A Not exactly, but from what I recall it was maybe like
18 three.

19 Q Okay. Definitely more than one, correct?

20 A Yes, sir.

21 Q And what happened with Taron after the shooting and
22 you turned around and saw him shooting?

23 A Okay. After that we started running and I guess he
24 got shot one time and then that's when he tried to turn
25 around on the curb towards this construction company up

1 there into the parking lot and that's when he fell, and I
2 ran into the laundromat.

3 Q Okay. So you saw him go down to the ground?

4 A Yes, sir.

5 Q Did you see where Mr. Green went after he shot him?

6 A Yes, sir.

7 Q Which direction did he run?

8 A He ran in the direction of between where these houses
9 were.

10 Q Okay. On the same side of Bonds that you all were on
11 or the opposite side of Bonds?

12 A The opposite side of Bonds Avenue.

13 Q Do you know whether or not he jumped over a fence
14 over there?

15 A Yes, sir.

16 Q Did you see him jump over a fence?

17 A I didn't see him. I saw from what you showed me, I
18 saw that. I saw him running across the street.

19 Q Okay. And where did you go after Taron went down and
20 Mr. Green ran away?

21 A I ran into the laundromat and asked them for help or
22 whatever, but people weren't paying no attention.

23 Q Did the police come?

24 A Yes, sir.

25 Q Did you ask somebody to call the police?

1 A Yes, sir.

2 Q And you don't know who called the police, but the
3 police showed up?

4 A Well, the school officer came.

5 Q Okay. Do you know Mr. Pinckney from the school?

6 A Yes, sir.

7 Q Was he out there?

8 A Yes, sir.

9 Q And do you know Mr. Wren, Kevin Wren?

10 A I don't know their names.

11 Q Did you know any of the school resource officers
12 there?

13 A What's his -- Lane.

14 Q Okay.

15 A He's a director of some program.

16 Q Now, Mr. Washington, I want to direct your attention,
17 if I could, and maybe it would be better if I had you
18 stand down here.

19 Do we have an easel in this courtroom?

20 THE COURT: I don't know if we do or not.

21 We'll get one. Just hold on for one second.

22 MR. DURANT: Okay.

23 (Pause.)

24 BY MR. DURANT:

25 Q Mr. Washington -- and maybe it would be -- can you

1 still see it if you're like standing right here?

2 A Yeah.

3 Q It might be better so you'll be out of everybody's
4 way.

5 Do you recognize Daniel Jenkins Academy on
6 State's Exhibit No. 27?

7 A Yes, sir.

8 Q Could you point it out to the jurors with the laser
9 pointer?

10 A (Witness indicating.)

11 Q Now when you and Taron left out the front door, which
12 way did you all walk?

13 A We walked towards this area.

14 Q Okay. So there's a sidewalk going down that way; is
15 that correct?

16 A Yes, sir.

17 Q Can you recall where it was about where you passed
18 these four guys?

19 A About right in here.

20 Q Okay. Over there near where that tree is?

21 A Yes, sir.

22 Q And after you and Taron walked by them, which
23 direction did you all walk down Bonds Avenue?

24 A This direction.

25 Q Going to the left?

1 A Going to the left, right.

2 Q Okay. And you said at some point you turned around
3 and you noticed the defendant Derell Green behind you. Do
4 you recall about where that was on Bonds Avenue?

5 A It's about right there.

6 Q Now that was where you passed them; is that correct?

7 A No. That was right here.

8 Q Okay. So it was about halfway down Bonds?

9 A Yeah.

10 Q And when you turned around and saw him behind you,
11 where were the other three guys that you had seen with him
12 earlier?

13 A Right here.

14 Q So way back where you had seen them initially, the
15 same general area?

16 A Yeah.

17 Q All right. And when you turned around and you heard
18 the gunshots, where did you see Taron fall?

19 A It was about right here.

20 Q That driveway?

21 A Yeah, that driveway.

22 Q And which direction did you see Mr. Green run off?

23 A Into the opposite direction.

24 Q Over to the top of that?

25 A Yeah.

1 Q Okay. And where is the laundromat, that you went to?

2 A Laundromat was right there.

3 Q The one right on the corner?

4 A Yeah.

5 Q Okay. Thank you.

6 And I may have to have you step back down again,
7 Mr. Washington, because I want to show a video to you.

8 MR. DURANT: Your Honor, State's permission to
9 play State's Exhibit 28 for the witness.

10 (The video is played but not transcribed.)

11 BY MR. DURANT:

12 Q And if you would, you can stand right here at the
13 podium so you can see.

14 You've seen this video before, have you not?

15 A Yes, sir.

16 Q Do you recognize that fellow right there?

17 A Yeah, I recognize him.

18 Q You indicated you heard somebody complaining about a
19 teacher. Was that the one you heard complaining about a
20 teacher?

21 A Yeah.

22 Q This fellow dressed in black here, you said you
23 didn't know who he was. Was he one of the ones that was
24 with Derell Green when you passed by him?

25 A Yes, he was.

- 1 Q And do you recall what he was wearing?
- 2 A A black t-shirt.
- 3 Q Who is that?
- 4 A That's Derell.
- 5 Q Is that the jacket he was wearing?
- 6 A Yes, sir.
- 7 Q Is that the person that you saw behind you as you
- 8 were walking down Bonds Avenue?
- 9 A Yes, sir.
- 10 Q And is that the person you saw kill Taron?
- 11 A Yes, sir.
- 12 Q Do you recognize that guy coming out from the side
- 13 there?
- 14 A Yes, sir.
- 15 Q Was he one of the four that were there together?
- 16 A Yes, sir.
- 17 Q Now who is that coming into view right there?
- 18 A That's me and Taron walking.
- 19 Q That's you and Taron right there walking down the
- 20 road?
- 21 A Yes, sir.
- 22 Q Who is this group of boys right there? I know this
- 23 is not very good, but the people walking back that
- 24 direction towards the school.
- 25 A Yes, sir.

1 Q You see the guy in the white shirt?

2 A Yes, sir.

3 Q Now I know this is very hard to see, but you've seen
4 this video before?

5 A Yes, sir.

6 Q And we'll have it for the jury, to show them that
7 later.

8 Okay. I'm going to stop this right now.

9 (Video concluded.)

10 BY MR. DURANT:

11 Q Now you can resume your seat, Mr. Washington.

12 All right. Now afterwards did -- you said the
13 police came to where the shooting took place, correct?

14 A Yes, sir.

15 Q How did the police know that you were out there when
16 Taron had gotten shot?

17 A Because -- what's his name -- he was just asking
18 people questions what happened.

19 Q Who was asking questions?

20 A The police officer.

21 Q Okay. And did you tell him that you were out there
22 when Taron got shot?

23 A Yes, sir.

24 Q Where did they take you?

25 A To the North Charleston Police Department.

1 Q Now when you got to the North Charleston Police
2 Department, did you tell them what happened?

3 A At first I didn't.

4 Q Did you write out a statement?

5 A Yes, sir.

6 Q What did you not tell them when you wrote out a
7 statement?

8 A Who had shot him. Who shot Taron, sorry.

9 Q Okay. Who had shot Taron?

10 A Yes, sir.

11 Q Told them everything else but didn't tell them that,
12 correct?

13 A Yes, sir, correct.

14 Q Let me ask you this. Did you know Taron was dead
15 when you went down to headquarters?

16 A Not exactly. They came in and told me that he died,
17 yes.

18 Q So you were told while you were at headquarters that
19 he died?

20 A Yes, sir.

21 Q Now what happened after you wrote out that first
22 statement and said that you hadn't seen who shot him?

23 A I thought about it, conscience was getting to me, you
24 know, and I thought about his family, you know, and that's
25 when I told them the truth, wrote out a different

1 statement.

2 Q Did you go back to the detective?

3 A Yes, sir.

4 Q And what did you tell him?

5 A The full truth.

6 Q Did you tell him that you hadn't told him the truth
7 the first time?

8 A Yes, sir.

9 Q And that you wanted to tell the truth?

10 A Yes, sir.

11 Q And that's when you wrote out the other statement?

12 A Yes, sir.

13 Q And when you wrote out the other statement, did you
14 tell them that you had seen the shooting?

15 A Yes, sir.

16 Q Did you tell them that you had seen who did the
17 shooting?

18 A Yes, sir.

19 Q But you didn't know Derell Green's name at the time;
20 is that correct?

21 A No, sir.

22 Q And -- but did you know where he lived?

23 A Yes, sir.

24 Q And how did you know where he lived?

25 A From the bus stop.

1 Q Okay. And did a friend also tell you which one of
2 those houses he lived in?

3 A Yes, sir.

4 Q Did you tell that to the police?

5 A Yes, sir.

6 Q Now after you gave them the statement, do you recall
7 the officer showing you -- or one of the officers showing
8 you the pictures, some pictures?

9 A Yes, sir.

10 Q Was that a different officer from whom you'd given
11 the statement to?

12 A I don't remember clearly.

13 Q Okay. You don't remember?

14 Can I have you -- I'll hand you what's
15 previously been marked as State's Exhibit No. 38 and ask
16 if you recognize that document.

17 A Yes, sir.

18 Q Do you remember what that is?

19 A Uh-huh. The paper on which I wrote down what I saw.

20 Q Okay. And the police officer went over that with
21 you?

22 A Uh-huh.

23 Q And after that did he show you some photographs?

24 A Yes -- no. Can you repeat that again?

25 Q And after he went over those, all that stuff at the

1 top, did he show you some photographs?

2 A Yes, sir.

3 Q And I'm going to hand you what's been marked as
4 State's Exhibit No. 39 and ask if you recognize these
5 photographs.

6 A Uh-huh.

7 Q And if you would, look through them.

8 And what did you do when you saw photograph
9 number four?

10 A That's when I circled it and that's when I wrote down
11 person number four is the person that shot Taron.

12 Q Okay. And at any time did the officer tell you who
13 to pick out of this thing?

14 A No, sir.

15 Q And why did you pick out picture number four?

16 A Because that's the person who shot him.

17 Q And no doubt in your mind about that?

18 A No doubt.

19 Q And no doubt in your mind that that's the person that
20 killed Taron Maybank?

21 A No.

22 MR. DURANT: Your Honor, we would offer State's
23 38 and 39 into evidence if there's no objection.

24 MS. PROCTOR: May we see it just real quick?

25 MR. DURANT: Sure.

1 MS. PROCTOR: Okay. Your Honor, just note our
2 previous objection.

3 THE COURT: What's 38?

4 MR. DURANT: Thirty-eight is the admonition form
5 and 39 is the actual photo lineup.

6 THE COURT: Okay. State's 38 and 39 admitted
7 with objection.

8 (WHEREUPON, STATE'S Exhibits Nos. 38-39 were
9 admitted into evidence.)

10 BY MR. DURANT:

11 Q And this writing on State's Exhibit 38 where it says
12 "person number four is the one that shot Taron," that is
13 your writing?

14 A Yes, sir.

15 Q And that's your signature?

16 A Yes, sir.

17 Q Oh, one other thing I wanted to show you.

18 MR. DURANT: Your Honor, at this time the State
19 would offer State's Exhibit No. 7, a photograph of a cell
20 phone, I believe without objection.

21 THE COURT: Any objection?

22 MS. EHRLICH: No, Your Honor.

23 THE COURT: All right. No. 7 is admitted
24 without objection.

25

1 (WHEREUPON, STATE'S Exhibit No. 7 was admitted
2 into evidence.)

3 BY MR. DURANT:

4 Q Mr. Washington, I hand you what's been marked as
5 State's Exhibit No. 7 in evidence now and ask you if you
6 recognize that cell phone.

7 A I recognize this cell phone.

8 Q And whose cell phone is that?

9 A Taron's cell phone.

10 Q Is that the cell phone he was talking on shortly
11 before he was shot that day?

12 A Yes, sir.

13 MR. DURANT: Court's indulgence.

14 (Pause.)

15 BY MR. DURANT:

16 Q I show you what's previously been marked as State's
17 Exhibit No. 2 for identification and ask if you recognize
18 that person.

19 A Yes, sir.

20 Q And that is?

21 A Taron.

22 Q And Taron, what was Taron's hair style at the time?

23 A Yes, sir.

24 Q He had, what, long hair or short hair?

25 A Long hair.

1 Q Dreads; is that correct?

2 A (Witness nodding.)

3 MR. DURANT: Could you please answer any
4 questions defense counsel may have for you.

5 THE WITNESS: Yes, sir.

6 THE COURT: Cross-examination.

7 CROSS-EXAMINATION

8 BY MS. EHRLICH:

9 Q Mr. Washington, you were friends with -- you called
10 him Taron, right?

11 A Yes.

12 Q Did you call him anything else?

13 A No, sir. I mean no, ma'am.

14 Q So that was your friend?

15 A Yes, ma'am.

16 Q And you all met at the Summit program?

17 A Yes, ma'am.

18 Q And, I guess, you had known him for how long?

19 A At least about one or two months. Since he got
20 there. But I don't remember the time when he got there.

21 Q You had been there before and then he came --

22 A Yes, ma'am.

23 Q -- and you all started to become friends?

24 A Yes, ma'am.

25 Q And I guess you spent almost every single day in one

1 classroom together?

2 A Yes, ma'am.

3 Q So you get to know each other pretty quickly?

4 A Yes, ma'am.

5 Q And so at that time I think you were 18 years old?

6 A I believe so.

7 Q And because you were in the Summit program again, you
8 didn't go to school in the middle school section of the
9 school?

10 A No, ma'am.

11 Q All right. Now when this all first happened you were
12 taken down to the station pretty quickly?

13 A Yes, ma'am.

14 Q And so I guess what happened was pretty fresh in your
15 mind?

16 A Can you repeat that?

17 Q It was pretty fresh in your mind --

18 A Yes, ma'am.

19 Q -- the details and everything. And I imagine you
20 were upset because your friend had been shot?

21 A Yes, ma'am.

22 Q And it was -- you didn't want to just let it go,
23 right? That's why you went down to the station?

24 A Yes, ma'am.

25 Q Because you could have just run?

1 A Yes, ma'am.

2 Q All right. So you go down to the station and that's
3 when you give your first statement to the police?

4 A Yes, ma'am.

5 Q And in that statement you tell them that you and
6 Taron were walking down Bonds Avenue?

7 A Yes, ma'am.

8 Q And that you heard gunshots?

9 A Yes.

10 Q Right? And you said that you heard gunshots "coming
11 from behind us?"

12 A Yes, ma'am.

13 Q "So we started to run?"

14 A Yes, ma'am.

15 Q And that while you were running for a little bit, he
16 drops to the ground and you just kept running?

17 A Yes, ma'am.

18 Q Because you didn't know if you were going to get shot
19 either?

20 A Yes, ma'am.

21 Q And that's when you also told them that you went to
22 go get help at the laundromat or a business?

23 A Yes, ma'am, the laundromat there.

24 Q Okay. Now in that statement you don't say anything
25 about seeing who fired the gun?

1 A Uh-huh.

2 Q Not in the first statement?

3 A Yeah, in the first statement I didn't..

4 Q You didn't say anything about turning around?

5 A Not in that.

6 Q You didn't say anything about turning around before
7 the shooting?

8 A Uh-huh.

9 Q You did or you didn't?

10 A Can you repeat that again?

11 Q Okay. When you gave your first statement, you never
12 told the police that you had turned around before the
13 shooting happened?

14 A Uh-huh.

15 Q You did tell them or you didn't tell them?

16 A No, I didn't tell them that.

17 Q And then you didn't tell the police that after the
18 shooting you turned around?

19 A Uh-huh.

20 Q Right?

21 A (Witness nodding.)

22 Q And you didn't tell them that you saw anybody
23 shooting a gun?

24 A Uh-huh.

25 Q You just said that you heard shots and ran?

1 A Yes, ma'am.

2 Q And that it happened pretty quickly?

3 A Yes, ma'am.

4 Q Right?

5 A Yes, ma'am.

6 Q Okay. And did you -- you wrote the statement out by
7 yourself?

8 A Yes, ma'am.

9 Q And in your statement did you make corrections where
10 you made mistakes?

11 A Yeah, when I spelled words wrong, simple mistakes
12 like that.

13 Q So if you made a mistake you would cross it out and
14 put your initials over it, right?

15 A Yes, ma'am.

16 Q And I guess you read it before you signed it?

17 A Yes, ma'am.

18 Q And do you remember what it said at the bottom of the
19 statement?

20 A I don't remember because I haven't read it in a
21 little bit.

22 MS. EHRLICH: Permission to approach the
23 witness, Your Honor?

24 THE COURT: Yes, ma'am.

25

1 BY MS. EHRLICH:

2 Q You see where you signed it at to bottom?

3 A Uh-huh.

4 Q Do you see the sentence above that? Could you read
5 that for us?

6 A Oh, you want me to read it?

7 Q If you could just read it out loud.

8 A Where do you want me to start at?

9 Q Just at the sentence above where you signed. Right
10 here.

11 A What sentence?

12 Are you asking me if I read this?

13 Q Did you read it?

14 A Yes, ma'am.

15 Q Okay. And what does it say?

16 A I have read the forgiven -- the foregoing statement,
17 I have had it read to me and it is true and correct to the
18 best of my knowledge. I have given the statement freely
19 and voluntarily and have been proven -- well, provided a
20 copy of the statement.

21 Q Okay. So you signed this --

22 A Yes, ma'am.

23 Q -- saying that this was the truth at the time?

24 A Yes, ma'am.

25 Q Then did you -- you didn't leave the station, they

1 kept you there?

2 A Yeah. I was still there.

3 Q Say it again?

4 A I was still there.

5 Q Okay. And I think Detective Sturkie came in?

6 A Yeah, he came back in.

7 Q And that's when you started to have a conscient about
8 what happened?

9 A Yes, ma'am.

10 Q And so you decided at that point you were going to
11 tell them something different than what you said was true
12 the first time?

13 A Uh-huh.

14 Q And that's when you told them this stuff about Taron
15 getting a bike out of the bushes?

16 A Yes.

17 Q And that you heard a gun shot?

18 A Uh-huh.

19 Q Right?

20 A Can you repeat that whole thing again?

21 Q Okay. You told the detective then that you were
22 walking with Taron?

23 A Uh-huh.

24 Q And that he was going to get his bike out of the
25 bushes?

1 A Yes, ma'am.

2 Q And that you heard one shot, right?

3 A Yes, ma'am.

4 Q And then instead of running, you turned around?

5 A Uh-huh.

6 Q And you looked?

7 A Yes, ma'am.

8 Q And that's when you're saying now that you saw
9 somebody shooting the gun?

10 A Yes, ma'am.

11 Q Right?

12 A Uh-huh.

13 Q And that you didn't run right away?

14 A Didn't run right away.

15 Q So you hear a shot, turn around and keep looking
16 until the shots were done?

17 A No.

18 Q Okay. After one more shot?

19 A Like on the first shot you turn around -- well, I
20 turned around to see who was shooting at us, then I
21 started running. You would have did the same thing,
22 right?

23 Q I'm not asking what I would do. I'm just asking what
24 you did.

25 So you heard one shot, right?

- 1 A Yes, ma'am.
- 2 Q Turned around?
- 3 A Uh-huh.
- 4 Q Then turned back around and ran?
- 5 A Uh-huh.
- 6 Q And then heard the other two shots?
- 7 A Yes, ma'am.
- 8 Q Okay. So you never saw the gun fired? You turned
9 around, saw Derell Green, and turned around and heard two
10 shots?
- 11 A No. No, I didn't.
- 12 Q Okay.
- 13 A I say I heard the first gunshot -- well, when I
14 turned around and I heard the first gunshot, I saw him
15 when he was shooting the gun, then I turned around and
16 started running.
- 17 Q Okay. So you heard one shot --
- 18 A Uh-huh.
- 19 Q -- turned around, and then you're saying that you
20 watched him shoot again before you ran?
- 21 A Basically, yeah.
- 22 Q Okay. And you ran then to the laundromat?
- 23 A Yes, ma'am.
- 24 Q And went for help?
- 25 A Yes, ma'am.

1 Q Okay. Now let's rewind a little bit to before the
2 shooting even happened.

3 A Uh-huh.

4 Q Okay? When you're leaving school, you pass by a
5 group of boys.

6 A Yes, ma'am.

7 Q And they're younger than you?

8 A Yeah.

9 Q Right?

10 A Uh-huh.

11 Q And there's nothing that goes on between the two
12 groups?

13 A Uh-huh.

14 Q Right? There's no, like, mean mugging between any of
15 the sides?

16 A No, ma'am.

17 Q You don't even talk to them?

18 A No, ma'am.

19 Q And they don't talk to you?

20 A No, ma'am.

21 Q And I assume that you barely paid attention to them
22 at that point?

23 A Not at that point.

24 Q Okay. Now I think you testified earlier that a
25 friend had told you where Derell lived?

1 A Yes, ma'am.

2 Q So you didn't know yourself, somebody else told you
3 where he lived?

4 A Yeah. Plus I saw him after he was talking to the
5 other friend that was at the bus stop with me before and
6 he went into this house.

7 Q So you saw him but then you also asked somebody else
8 where he lived?

9 A No, he actually tell me where he lived.

10 Q Okay.

11 A And that's the house that he went in.

12 Q This was before you went to the station?

13 A That would be like a week before all of this even
14 happened, something like that.

15 Q Okay. So a week before you just happened to have a
16 conversation about Derell Green?

17 A No. He was walking from school when we were at the
18 bus stop --

19 Q Uh-huh.

20 A -- and that's when he walked past us and he was
21 talking to the friend that was at the bus stop with me and
22 he went on to his house, and that was it.

23 Q That was it?

24 A Yes, ma'am.

25 Q Okay. Now the day of the shooting, you go to the

1 station like at 1:30?

2 A I believe so.

3 Q You think?

4 A Yes, ma'am.

5 Q And then a couple of hours passed before you give the
6 other statement?

7 A Uh-huh.

8 Q And do you go to a photo lineup?

9 A Yes, ma'am.

10 Q So you already knew basically Derell Green --

11 A Uh-huh.

12 Q -- before you even looked at the lineup?

13 A You saying that I know him personally?

14 Q You knew who you were looking for when you looked at
15 the lineup?

16 A Oh, yes, ma'am.

17 Q Okay. And you also knew that you were looking for
18 somebody wearing the school uniform in the picture?

19 A Yes, ma'am.

20 Q Okay. And I think it's fair to say that this whole
21 thing happened really fast?

22 A Yes, ma'am.

23 Q And you were scared?

24 A Not totally scared, but scared.

25 Q You were scared?

1 A Yeah.

2 Q You were upset?

3 A Upset, yes.

4 Q And there was part of you that thought that you might
5 get shot?

6 A Uh-huh.

7 Q Right? And so you were trying to get out of there
8 quick?

9 A Yes, ma'am.

10 MS. EHRLICH: Court's indulgence.

11 (Pause.)

12 MS. EHRLICH: I don't have any other questions
13 for Mr. Washington.

14 THE COURT: Any redirect?

15 MR. DURANT: Yes, sir, just a little bit.

16 REDIRECT EXAMINATION

17 BY MR. DURANT:

18 Q And just so I'm clear --

19 MR. DURANT: I just want to mark this for
20 identification, if I could.

21 (WHEREUPON, State's Exhibit No. 47 was marked
22 for identification only.)

23 BY MR. DURANT:

24 Q I hand you what's been marked as State's Exhibit No.
25 47 for identification and ask if you recognize those. Do

1 you recognize them?

2 A Yes, sir.

3 Q Okay. And those weren't all given to the police at
4 the same time; is that correct?

5 A I don't think so. This was something he wrote
6 different.

7 Q Okay. The first two pages of those are in your
8 handwriting; is that correct?

9 A Yes, sir.

10 Q And is the one that's actually marked State's 47, is
11 that the first statement that you gave to the police?

12 A Yes, sir.

13 Q Now when you went back and gave them the second page
14 of that, did they come to you or did you go to them?

15 A They came to me and I told them that I had a second
16 statement that I wanted to write.

17 Q And why did you tell them that you wanted to write a
18 second statement?

19 A Because I wanted to tell the truth.

20 Q And you hadn't told the truth?

21 A Yes, sir.

22 Q Okay. And that's when you wrote the second page, the
23 second page of this three-page document that you have in
24 front you; is that correct?

25 A Yes, sir.

1 Q And you told them that you did see the guy that shot
2 him?

3 A Yes, sir.

4 Q But you didn't know who he was?

5 A Uh-huh.

6 Q And after that, you told them that you knew where he
7 lived?

8 A Yes, sir.

9 Q And I believe you wrote out the first statement at,
10 it says here, 1:32; is that correct?

11 A Yes, sir.

12 Q But there was some passage of time between that and
13 that; is that correct?

14 A Uh-huh.

15 Q Do you remember them showing you a picture of a
16 house?

17 A Yes.

18 MR. DURANT: I need to have this marked for
19 identification, too.

20 (WHEREUPON, State's Exhibit No. 48 was marked
21 for identification only.)

22 BY MR. DURANT:

23 Q I hand you now what's been marked as State's Exhibit
24 No. 48 and ask if you recognize that.

25 A Yes, sir.

1 Q And what is that?

2 A The house of Derell.

3 Q Is that a house, a picture of a house that the police
4 showed you?

5 A Yeah.

6 Q It came off of Google it looks like; is that correct?

7 A I think so.

8 Q Whose writing is that on there?

9 A That's my handwriting.

10 Q And what did you write?

11 A "This is the house."

12 Q Okay. And do you remember after that, because you
13 said you didn't know the name of this guy that shot him,
14 is that when they showed you these photographs?

15 A Yes, sir.

16 Q And is that when you picked out photograph number
17 four?

18 A Yes, sir.

19 Q And you told them that?

20 A Yes, sir.

21 Q And wrote on this statement that the guy in picture
22 number four was the one who shot Taron?

23 A Yes, sir.

24 MR. DURANT: Okay. Your Honor, we would offer
25 State's 48 into evidence at this time.

1 THE COURT: Any objection?

2 MS. EHRLICH: No, Your Honor.

3 THE COURT: All right. State's 48 admitted
4 without objection.

5 (WHEREUPON, STATE'S Exhibit No. 48 was admitted
6 into evidence.)

7 MR. DURANT: Okay. And do you all have any
8 objection to State's 47?

9 THE COURT: Any objection to 47?

10 MS. EHRLICH: No, Your Honor.

11 THE COURT: All right. State's No. 47 is
12 admitted without objection.

13 (WHEREUPON, STATE'S Exhibit No. 47 was admitted
14 into evidence.)

15 MR. DURANT: Your Honor, State's 47 is a
16 three-page exhibit that I'm going to just introduce as one
17 exhibit, if it's okay.

18 THE COURT: All right.

19 BY MR. DURANT:

20 Q And just to clarify, I now hand you back State's 47
21 into evidence. The first page is the first statement you
22 wrote out, is that correct, in your handwriting?

23 A My handwriting.

24 Q The second statement is in your handwriting; is that
25 correct?

1 A Yes, sir.

2 Q Okay. And that's when you told them you did see the
3 guy --

4 A Yes, sir.

5 Q -- but you didn't know who he was, correct?

6 A Yes, sir.

7 Q Correct? And then after that, you identified the
8 picture of the house, you identified the picture of the
9 defendant, and then came back and they did the third page;
10 is that correct?

11 A Yes, sir.

12 MR. DURANT: Just so we get the time sequence
13 down.

14 Thank you, Mr. Washington. I have nothing
15 further.

16 THE COURT: Any recross?

17 MS. EHRLICH: No, Your Honor.

18 THE COURT: Okay. Mr. Washington, you may step
19 down. Thank you very much.

20 THE WITNESS: All right.

21 MR. DURANT: Your Honor, I'd ask that Mr.
22 Washington be excused if there's no objection.

23 THE COURT: Any objection?

24 MS. EHRLICH: No, Your Honor.

25 THE COURT: All right. Mr. Washington, you may

1 Honor.

2 THE COURT: Thank you very much.

3 THE CLERK: Raise your right hand.

4 RASHAWN BRADLEY, after being duly sworn,
5 testified as follows:

6 THE CLERK: Thank you, sir. If you could take a
7 seat.

8 Sir, if you wouldn't mind, state your first and
9 last names, spelling your last for the record, please.

10 Sir, if you'd state your first and last names.

11 THE WITNESS: Rashawn Bradley.

12 THE CLERK: And if you'd spell your last name.

13 THE WITNESS: B-R-A-D-L-E-Y.

14 THE CLERK: Thank you.

15 DIRECT EXAMINATION

16 BY MR. DURANT:

17 Q And that would be good, Mr. Bradley, if you'd stay
18 that close to the mic, because we could hear you pretty
19 good right there, okay?

20 Could you tell the jury how old you are?

21 A Sixteen.

22 Q And are you in school?

23 A Yeah.

24 Q Right now?

25 A Yeah.

1 Q Where are you going to school?

2 A Clark Academy.

3 Q And what grade are you in?

4 A Ninth.

5 Q And you are here today pursuant to a subpoena; is
6 that correct?

7 A Yes, sir.

8 Q You don't want to be here, do you?

9 A No.

10 Q Could you tell the jury who this fellow is right
11 here?

12 A Derell.

13 Q And how do you know Derell?

14 A From school.

15 Q Where did you all go to school together?

16 A Murray Hill.

17 Q And that's also called Daniel Jenkins, it used to be
18 called Murray Hill, didn't it?

19 A Yeah.

20 Q How long did you all go to Daniel Jenkins together?

21 A I went there in 2009.

22 Q Okay. And you all went to school for about how long
23 together?

24 A Four or five months.

25 Q Did you know him before that?

1 A No.

2 Q And Derell's a friend of yours?

3 A No.

4 Q He wasn't a friend of yours then?

5 A Like him and me not no problem, but, like, he ain't a
6 friend or nothing.

7 Q Okay. And you've had some trouble as a juvenile; is
8 that correct?

9 A Yeah.

10 Q And, in fact, you were actually charged in this case
11 at one time; is that correct?

12 A Yeah.

13 Q Do you remember what you were charged with?

14 A Yeah.

15 Q What were you charged with?

16 A Accessory after the fact.

17 Q And were you also charged with a couple of other
18 things at the same time; is that correct?

19 A Yeah.

20 Q And you pled in family court to two counts of assault
21 and battery in October of 2010 and at that time the
22 accessory after the fact charge was dropped; is that
23 correct?

24 A Yeah.

25 Q Was that all done together?

1 A Huh?

2 Q Was that what they call a plea bargain?

3 A Oh, yeah.

4 Q Has anyone promised you anything for you to come in
5 here and testify today?

6 A No.

7 Q And you're here why?

8 A Because I got to be here.

9 Q Because you got served with a subpoena, correct?

10 A Yeah.

11 Q Now, you say you knew Derell. What's his nickname?

12 A Noogie.

13 Q And that's Noogie?

14 A Yeah.

15 Q Okay. Did you know another fellow named Daqone
16 Lance?

17 A Yeah.

18 Q What did you know Daqone Lance by? What's his
19 nickname?

20 A Mook.

21 Q And how do you know Daqone Lance?

22 A From elementary.

23 Q Okay. You all went to the same elementary school
24 together?

25 A Yeah.

- 1 Q Did Daqone Lance go to Daniel Jenkins Academy?
- 2 A No.
- 3 Q Where did he go to high school at?
- 4 A I don't know.
- 5 Q And you already said that Derell went to Daniel
- 6 Jenkins. Were you all in the same grade?
- 7 A No.
- 8 Q What grade were you in?
- 9 A Ninth.
- 10 Q And he was in the eighth at the time?
- 11 A Eighth.
- 12 Q And this would be back in February of 2010; is that
- 13 correct?
- 14 A Yeah.
- 15 Q Do you know a fellow named Antonio Smalls-Heyward?
- 16 A Yeah.
- 17 Q How well did you know him?
- 18 A Not well.
- 19 Q And how did you know him?
- 20 A I didn't know him. He just go to school with me.
- 21 Q Okay. Went to school with you where?
- 22 A Murray Hill.
- 23 Q Okay. Or Daniel Jenkins?
- 24 A Yeah.
- 25 Q Is he older or younger than you?

1 A Younger than me.

2 Q How much younger, do you know?

3 A No.

4 Q Wasn't in your grade, though; is that correct?

5 A No.

6 Q Did you know the fellow that got shot in this case?

7 A No.

8 Q Taron Maybank?

9 A No.

10 Q Had you seen him at Daniel Jenkins before?

11 A No.

12 Q And were you aware of any kind of beef between him
13 and Derell Green?

14 A No.

15 Q Let's talk a little bit about Friday, February 5th,
16 the day Taron Maybank was murdered. I believe it's
17 already been testified to that that was a Friday.

18 How did you get to school that morning?

19 A I walked.

20 Q You walked from where?

21 A My granny house.

22 Q And how did you get to your granny's house?

23 A My bike.

24 Q Okay. Is that what you usually do is you ride your
25 bike to your granny's house?

- 1 A Yeah.
- 2 Q Why do you do that?
- 3 A Because I go to my granny house in the afternoon.
- 4 Q Pardon?
- 5 A To go to her house in the afternoon after school.
- 6 Q Why do you go to your granny's house and then walk
7 from there? So you don't take your bike to school?
- 8 A Yeah.
- 9 Q Okay. And how close does your granny live to Daniel
10 Jenkins?
- 11 A Like two or three minutes away.
- 12 Q Okay. Now -- so you walked from your grandmother's
13 house. Do you remember running into Derell that morning?
- 14 A Yeah.
- 15 Q Where did you run into him at?
- 16 A Like by the highway.
- 17 Q And when you say "the highway," are you talking about
18 Dorchester Road?
- 19 A Yeah.
- 20 Q So you kind of hooked up with him at Dorchester and
21 where?
- 22 A Just from Dorchester.
- 23 Q Okay. And then you all walked down Bonds together;
24 is that correct?
- 25 A No.

1 Q Okay. You all didn't walk together?

2 A Well, we walked together.

3 Q Okay. Well, I'm just asking you, have you seen --
4 and I'm going to refer you to State's Exhibit No. 27.

5 It's been testified that's Daniel Jenkins Academy, Bonds
6 Avenue, and this is Dorchester Road.

7 Where did you run into Derell that morning?

8 A About right there.

9 Q Okay. So near this intersection?

10 A Yeah.

11 Q And when you met up with him, did you all walk the
12 rest of the way to school together?

13 A Yeah.

14 Q Okay. Now when you all got to school, what security
15 measures do they have at Daniel Jenkins Academy?

16 A A little -- like a little metal detector walking
17 through thing.

18 Q Okay. Are all students required to go through the
19 metal detector?

20 A Yeah.

21 Q Did you?

22 A Yeah.

23 Q And do you know if Derell did?

24 A No, I don't know.

25 Q You weren't with him at that time?

1 A Unh-unh.

2 Q Okay. Are all students required to go through the
3 metal detector?

4 A Yeah.

5 Q Do they have like a school resource officer there
6 when you all are coming in the school?

7 A Yeah.

8 Q Now with regard to your class schedule, do you have
9 any classes with Derell during the day?

10 A No.

11 Q Now we understand that that Friday was an early
12 release day. Do you remember what time you all got out of
13 school?

14 A Around 12 or 12:30.

15 Q Okay. And what did you do when you left school?

16 A I had to walk to my granny house.

17 Q Okay. And when you walked out of school, who did you
18 run into?

19 A I see Daqone.

20 Q And do you remember what Daqone was wearing?

21 A Black.

22 Q He was wearing a black what?

23 A Outfit.

24 Q Okay. Top and bottom?

25 A Yeah.

- 1 Q What did you say to Daqone?
- 2 A I get in trouble at school.
- 3 Q And what had you gotten in trouble at school about?
- 4 A This man, I cut his class.
- 5 Q Pardon me?
- 6 A This man, I cut his class.
- 7 Q Was this man one of the teachers?
- 8 A Yeah.
- 9 Q Okay. Were you angry about it?
- 10 A Yeah.
- 11 Q And you were telling who about that?
- 12 A Daqone.
- 13 Q Now while you were talking to Daqone, who else came
- 14 up?
- 15 A Derell.
- 16 Q And what did you do when Derell came up?
- 17 A Tell him the same thing I tell Daqone.
- 18 Q Did you tell him the same thing?
- 19 A Yeah.
- 20 Q And do you remember what Derell was wearing that day?
- 21 A The same thing I had on.
- 22 Q Okay. Did you have on a jacket that day?
- 23 A No, I don't think so.
- 24 Q And did he have on a jacket that day?
- 25 A Yeah.

- 1 Q And what kind of jacket did he have on?
- 2 A I think green.
- 3 Q And what kind of pattern to it?
- 4 A I'm not too sure.
- 5 Q Okay. Now after you met with Daqone and Derell, who
- 6 else showed up?
- 7 A The little boy, Antonio.
- 8 Q And while the four of you all were there together,
- 9 who walked by?
- 10 A That dude that got killed and somebody else.
- 11 Q The guy that got killed and someone else?
- 12 A Yeah.
- 13 Q What did you all say to these guys when they passed
- 14 by?
- 15 A I say nothing.
- 16 Q What did Derell say to them?
- 17 A I don't know.
- 18 Q You didn't hear -- did you hear him say anything?
- 19 A No.
- 20 Q Okay. Did you hear Daqone or Antonio say anything?
- 21 A No.
- 22 Q What did the guys that walked by say to you all?
- 23 A Nothing.
- 24 Q You didn't hear either one of them say anything?
- 25 A No.

1 Q Did you -- what's mugging? What is mugging? What is
2 mean mugging?

3 A That's when somebody's looking at you the wrong way,
4 staring at you.

5 Q Okay. Was there any of that going on?

6 A No.

7 Q That you saw?

8 A What?

9 Q That you saw?

10 A No.

11 Q Okay. And you didn't really know either of those
12 people?

13 A No, I knew none of them.

14 Q The two guys that walked by I'm talking about?

15 A No.

16 Q Okay. Now after those two guys walked by you, where
17 did they go?

18 A Up Bonds Avenue.

19 Q Which way?

20 A Toward Dorchester Road.

21 Q And where did the four of you go? And "the four of
22 you," I'm talking about you and Antonio and Derell and
23 Daqone. Where did you go?

24 A I'm going to my granny house.

25 Q Were you with them?

- 1 A Yeah.
- 2 Q And so the four of you were together; is that
- 3 correct?
- 4 A Yeah.
- 5 Q And which way were you walking, the four of you all
- 6 walk?
- 7 A Straight up Bonds Avenue.
- 8 Q Which direction?
- 9 A Dorchester Road.
- 10 Q And where were the two people that passed in front of
- 11 you in relation to where you all were?
- 12 A Ahead of us.
- 13 Q Okay. Now what did you -- while you all were walking
- 14 behind these people, what did you see Daqone do?
- 15 A Pass Derell something, Derell something.
- 16 Q Did you see what it was he passed to Derell?
- 17 A No.
- 18 Q What did you say to Daqone?
- 19 A I asked him what he bring.
- 20 Q And what did he say?
- 21 A He say nothing.
- 22 Q He didn't answer you?
- 23 A (Witness shaking head.)
- 24 Q What did Daqone do after you saw him pass something
- 25 to Derell and he wouldn't answer any questions?

1 A Did nothing.

2 Q So you all just continued walking together?

3 A No.

4 Q Why not?

5 A Because I had stopped.

6 Q And why did you stop?

7 A Because something wasn't right.

8 Q Okay. Did Daqone do anything to make you stop?

9 A He was like, "Just back up."

10 Q He's what?

11 A He's like, "Back up."

12 Q Is that what he said?

13 A Yeah.

14 Q Okay. And who was he saying that to?

15 A Me.

16 Q And who else?

17 A Antonio.

18 Q Okay. And what did you and Antonio do?

19 A Back up.

20 Q And when you say you backed up, which way did you
21 start walking then?

22 A Back by Murray Hill, the school.

23 Q Okay. And who was with you?

24 A Ain't nobody. Walk by myself, back by myself.

25 Q Okay. How about Antonio and Daqone, did they come

1 back in the same area that you were at?

2 A Yeah, but I'm not walking with them. They by me, but
3 I ain't walking with them.

4 Q Okay. Now after the three of you all backed off,
5 what did you see Derell do?

6 A Pull out the gun.

7 Q And what did he do with the gun?

8 A He shoot once and then I run..

9 Q And he shot one time at who?

10 A The dude that get killed.

11 Q And so you saw him shoot once and you ran, correct?

12 A Yeah.

13 Q Do you remember hearing any other shots?

14 A Yeah.

15 Q And where did you run to?

16 A By the school.

17 Q And after you ran back towards the school, where did
18 you go after that?

19 A My granny house.

20 Q You stayed at your granny's house that night?

21 A Yeah.

22 MR. DURANT: Court's indulgence.

23 (Pause.)

24 MR. DURANT: Your Honor, may the witness step
25 down?

1 THE COURT: Yes, sir. Mr. Bailey, if you'll
2 step down, please, sir.

3 MR. DURANT: Mr. Bradley --

4 THE COURT: Bradley, I'm sorry.

5 MR. DURANT: Mr. Bradley, if you'll step down
6 right up here and you can stand right here at this podium,
7 if you can. And I'm going to ask you some questions as we
8 watch this video, and if you would, just speak into that
9 speaker so we can hear your responses.

10 And, Sam, could you kill those lights, please?

11 THE CLERK: Certainly.

12 (The video is played but not transcribed.)

13 BY MR. DURANT:

14 Q Who is this person right there?

15 A Me.

16 Q And that's you when you were coming out of school
17 that day?

18 A Yeah.

19 Q Okay. Right here, who is that in the white shirt?

20 A Me.

21 Q And who is that you're talking to?

22 A Daqone.

23 Q Who is that?

24 A Derell.

25 Q Who is this person coming out on the screen right

1 there?

2 A The little boy, Antonio.

3 Q Okay. Those two people that just walked next to you,
4 who were they?

5 A The boy that get killed and the other dude.

6 Q Okay. And that's those two guys right there that
7 pass by you?

8 A Yeah.

9 Q Okay. And there are four people right there. Who
10 are those four people?

11 A Me, Derell, Daqone, and Antonio.

12 Q Okay. Now at about this point -- when was it that
13 you saw Daqone pass something to Derell? Was it after you
14 all got by those trees, before you all got behind those
15 trees?

16 A I can't remember.

17 Q Okay. Here's somebody in a white shirt walking by.
18 Who's that?

19 A Me.

20 Q And there's somebody with you. Do you remember who
21 that was?

22 A Antonio.

23 Q Okay. And then a third person joins you all and you
24 all walk offscreen. Where did you all walk to? Were you
25 all -- did you all stay on the same side of Bonds, did you

1 cross Bonds? Where did you all go?

2 A I stay on the same side.

3 Q Okay. And it was after you walked -- you all walked
4 over that area that you saw Derell shoot him?

5 A Yeah.

6 Q And then you ran; is that correct?

7 A Yeah.

8 Q Thank you. You can take a seat, Mr. Bradley.

9 Okay. And you, of course, didn't go to the
10 police and tell them what you saw, did you? Did the
11 police come to you?

12 A The week after.

13 Q Okay. It was about a week later; is that correct?

14 A Yeah.

15 Q Where were you when they came looking for you?

16 A School.

17 Q And what happened when the police came to school?

18 A The first time they asked me something and then the
19 next day they had locked me up.

20 Q Okay. They came and arrested you, right?

21 A Yeah.

22 Q Took you in. And where were you taken?

23 A To the -- I think the police station.

24 Q Okay. And you were read your rights and all that
25 stuff, right?

1 A Yeah.

2 Q And do you remember writing out a statement for the
3 police?

4 A Yes, sir.

5 Q And did you tell them the truth?

6 A No.

7 Q What did you not tell them about?

8 A The shooting.

9 Q Okay. You didn't tell them about that you had seen
10 the shooting; is that correct?

11 A Yeah.

12 Q What else did you not tell them about? What else did
13 you not tell them about what Dagone did?

14 A Oh, pass something.

15 Q Okay. And was that statement you gave the police
16 correct, true, that first one?

17 A No.

18 Q And you ended up giving them a second statement; is
19 that correct?

20 A Yeah.

21 Q And why was that?

22 A Because -- I don't know, you know. They want another
23 one.

24 Q Okay. Would it be safe to say they didn't believe
25 you?

1 A Yeah.

2 Q Did they tell you they didn't believe you?

3 A Yeah.

4 Q And at that point you wrote out a second statement;
5 is that correct?

6 A Yeah.

7 Q And what did you tell them differently in that
8 statement that you hadn't told them in the first?

9 A The shooting.

10 Q Okay. You told them you saw the shooting?

11 A Yeah.

12 Q What did you tell them Derell's involvement in the
13 shooting was?

14 A Huh?

15 Q What did you tell them that Derell's involvement with
16 the shooting was?

17 A What you mean?

18 Q What did you tell them? You said you told them you
19 saw the shooting. Who did you tell them you saw shoot?

20 A Oh, Derell.

21 Q Okay. And what did you tell them about Dagone?

22 A He pass something to him.

23 Q Okay. And was that statement the truth?

24 A Yeah.

25 MR. DURANT: Court's indulgence.

1 (Pause.)

2 MR. DURANT: Could you please answer any
3 questions defense counsel may have for you.

4 THE COURT: Cross-examination.

5 CROSS-EXAMINATION

6 BY MS. EHRLICH:

7 Q Good morning.

8 A Good morning.

9 Q Your full name's Rashawn Bradley, right?

10 A Yeah.

11 Q Do you prefer to go by Mr. Bradley or Rashawn?

12 A Any one.

13 Q Either one? So I can call you Rashawn?

14 A Yeah.

15 Q Okay. Now, you didn't go to the police station until
16 the police came to get you, right?

17 A Yeah.

18 Q They pulled out of school?

19 A Yeah. They put handcuffs on me and take me out.

20 Q Okay. So they handcuffed you at the school?

21 A Yes.

22 Q And said you were under arrest?

23 A I don't remember what they say.

24 Q Okay. But they did handcuff you and take you out?

25 A Yeah.

1 Q By then you knew Derell had already been arrested,
2 right?

3 A Yeah.

4 Q You had heard about him being arrested?

5 A Yeah.

6 Q Okay. And I'm not asking you what other people were
7 saying, but people were talking about the shooting, right?

8 A Yeah.

9 Q At school, in the streets people were talking about
10 it?

11 A Yeah.

12 Q Okay. Now when they took you to the police station,
13 did they put you in a -- like an interrogation room?

14 A Yeah.

15 Q And they put you in there right away?

16 A Yeah. They had me sitting for a couple hours.

17 Q They had you sit in there a couple hours?

18 A Yeah.

19 Q Okay. And I guess they read you that rights form
20 that the Solicitor was asking you about?

21 A Yeah.

22 Q Where they say you don't have to talk to them, things
23 like that?

24 A I can't remember.

25 Q You can't remember?

1 Did you understand what they were telling you?

2 A Some of it.

3 Q Some of it?

4 Did you know that you didn't have to talk to
5 them?

6 A No.

7 Q So you thought you had to stay there and talk to
8 them, right?

9 A Yes.

10 Q And --

11 MR. DURANT: Your Honor, I have a relevance
12 objection to this line of questioning. I don't see the
13 relevance.

14 THE COURT: Let me see you all up here just a
15 second.

16 MR. DURANT: She's already asking about
17 statements.

18 (A bench conference was held with the judge and
19 attorneys in the presence of the jury but out of the
20 hearing of the jury.)

21 THE COURT: All right. The objection is
22 overruled.

23 BY MS. EHRLICH:

24 Q You eventually did give a statement to the police,
25 though, right?

1 A Yes, ma'am.

2 Q And that was sometime on February the 12th?

3 A Yeah.

4 Q And you wrote that statement in your own handwriting
5 or did somebody write it for you?

6 A I write it.

7 Q Okay. And when you wrote that statement, you told
8 them that you came out of school and saw Daqone, right?

9 A Yeah.

10 Q And you gave him a dap?

11 A Yeah.

12 Q And a dap's like a --

13 A A handshake.

14 Q Like a handshake, right?

15 A Yeah.

16 Q And you also told them that you gave Derell a dap?

17 A Yeah.

18 Q Okay. So that was right there in the courtyard at
19 school?

20 A I think so.

21 Q Like by the parking lot?

22 A Yeah.

23 Q Okay. And you said that you all started walking,
24 right?

25 A Yeah.

1 Q And you decided -- do you remember if you had to go
2 get your headphones?

3 A Headset.

4 Q And so you were turning and walking back?

5 A Yeah.

6 Q And you said that you didn't see the shooting, right?

7 A Yeah.

8 Q And that was on February 12th?

9 A Yeah.

10 Q Okay. After you gave that statement, you weren't
11 taken to jail or anything, right?

12 A No.

13 Q The police wanted to talk to you more?

14 A Yeah.

15 Q And so you gave another statement?

16 A Yeah.

17 Q So that was after talking more to the detectives?

18 A Yeah.

19 Q Okay. And in that statement you said that you saw
20 Derell get something from Daqone?

21 A Yeah.

22 Q Right?

23 A Yeah.

24 Q And that you didn't just hear shots, but you saw
25 shots?

1 A Yeah.

2 Q So you told the police, then, that you saw that --
3 one of the shots?

4 A Yes.

5 Q And then you ran?

6 A Yeah.

7 Q Okay. And the police let you look at the statement?

8 A I don't remember.

9 Q Okay. Well, did you write it yourself?

10 A Yeah.

11 Q Do you remember if you signed it?

12 A No.

13 Q Okay. If I showed you a copy, would that help
14 refresh your memory?

15 A Yeah.

16 MS. EHRLICH: Permission to approach?

17 THE COURT: Yes, ma'am.

18 MS. EHRLICH: Can we mark this for
19 identification only?

20 THE COURT: Yes, ma'am.

21 (WHEREUPON, Defendant's Exhibit No. 1 was marked
22 for identification only.)

23 THE COURT: Defendant's 1 marked for
24 identification.

25

1 BY MS. EHRLICH:

2 Q Is that the statement that you gave?

3 A Yes, ma'am.

4 Q Is that the second one that you gave?

5 A Yeah.

6 Q And did you sign it at the bottom?

7 A No.

8 Q Okay. You don't know why you didn't sign it?

9 A No.

10 Q Then you gave a third statement, right?

11 A When?

12 Q Last month?

13 A Oh, yes, ma'am.

14 Q Yeah? At the Solicitor's office?

15 A Yeah.

16 Q And in that statement you don't say anything about
17 people dapping each other up, right?

18 A No.

19 Q You left that part out?

20 A Yeah.

21 Q Okay. And you don't say anything about, you know,
22 dapping Derell either, right?

23 A No.

24 Q But you did put in the stuff about seeing Daqone and
25 hand Derell something?

1 A Yeah.

2 Q All right. And you said that you saw Derell pull out
3 the gun?

4 A Yeah.

5 Q Now you were on Bonds Avenue at the same time as
6 Derell, right?

7 A Yeah.

8 Q And you were on the same side of the street as him?

9 A Yeah.

10 Q Because you said that you were on the sidewalk side?

11 A That's the same.

12 Q On the same side as the school, right?

13 A Yeah.

14 Q So you were like right behind him?

15 A No, not right behind him.

16 Q Not right behind him? Okay.

17 You knew Derell just from school?

18 A Yeah.

19 Q Okay. And Daqone you've known a lot longer?

20 A Elementary.

21 Q Okay. Daqone was right there when you saw the
22 shooting?

23 A He was right there.

24 Q Okay. And you were facing Derell at the time of the
25 shooting?

- 1 A Yeah.
- 2 Q So it wasn't that -- so you saw one shot and ran?
- 3 A Yeah.
- 4 Q And that's after Daqone waved you back? Didn't you
- 5 say Daqone waved you back?
- 6 A Yeah, to me go back.
- 7 Q Did he say it or did he just wave you off?
- 8 A I think he say it.
- 9 Q He said "get back?"
- 10 A Yeah, something like that.
- 11 Q Okay. So did you back up or did you turn around and
- 12 walk?
- 13 A Back up.
- 14 Q You backed up?
- 15 A Yeah.
- 16 Q And when you did that, Derell wasn't facing you,
- 17 right?
- 18 A No.
- 19 Q His back was to you?
- 20 A Yeah.
- 21 Q And when you gave this statement, you didn't say
- 22 anything about Derell having a gun earlier in the morning,
- 23 did you?
- 24 A No.
- 25 Q Because you ran into them that morning?

1 A Yeah.

2 Q And you walked to school with them?

3 A Yeah.

4 Q And you didn't see him with a gun?

5 A No.

6 Q And you didn't see him with a gun in the school?

7 A No.

8 Q And you never saw him hide a gun under a house, did
9 you?

10 A No.

11 Q Now you told Mr. Casey with the Solicitor's Office
12 that you lied to the police, right?

13 A Yeah.

14 Q And that's because you didn't want to be a rat?

15 A Yeah. And I was scared.

16 Q Okay. But at that time you already knew Derell had
17 been arrested, right?

18 A Yeah.

19 Q And so it wasn't going to make things worse for him
20 because you knew he was already locked up?

21 A Yeah.

22 Q After you gave your statement to the police, they
23 charged you, right?

24 A Yeah.

25 Q With accessory?

1 A After the fact.

2 Q For what?

3 A Just being there.

4 Q For being there?

5 A Yeah, I guess so.

6 Q Okay. You were worried about getting in trouble for
7 that?

8 A Trouble with?

9 Q For that charge.

10 A From who?

11 Q The Solicitor's Office, anybody. Did you think you
12 were going to get in trouble?

13 A No.

14 Q You didn't think you were going to get in trouble?

15 A No.

16 Q Okay. You weren't worried about getting locked up or
17 anything for juvenile court?

18 A No.

19 Q No?

20 A No.

21 Q No? Okay.

22 And they ended up dropping it for you, right?

23 A Last year.

24 Q Uh-huh. And that was after you got into even more
25 trouble, right?

1 A Yeah.

2 Q You had an assault and battery 2nd degree charge?

3 A Yeah.

4 Q Right?

5 A Yeah.

6 Q That you had to face?

7 A Yeah.

8 Q And I think you testified earlier that when you gave
9 your second statement, you said you didn't know why you
10 did that?

11 A No, not really.

12 Q Okay. And then you said it was because the police
13 said that they didn't believe you?

14 A Yeah.

15 Q And they wanted you to give another statement?

16 A Yeah.

17 MS. EHRLICH: Court's indulgence.

18 (Pause.)

19 MS. EHRLICH: I don't have any other questions.

20 THE COURT: Any redirect?

21 MR. DURANT: Just one, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. DURANT:

24 Q Okay. I'm handing you the second page of what's been
25 marked as Defendant's Exhibit No. 1 for identification,

1 and this is your handwriting, correct?

2 A Yes, sir.

3 Q And you wrote that out yourself?

4 A Yes, sir.

5 Q And let's see. I just want you to read this sentence
6 right there.

7 A We was still walking.

8 Q Okay. Continue.

9 A And then Daqone passed Derell something. I said what
10 it was and he wouldn't tell me.

11 Q Then what is the next sentence?

12 A Then he waved his hand back.

13 Q And?

14 A To tell me and Antonio to go back.

15 Q So that is the part that you left out of your first
16 statement; is that correct?

17 A Yeah.

18 Q Is that true?

19 A What you mean?

20 Q The second statement, was that the truth?

21 A Yeah.

22 MR. DURANT: I have nothing else.

23 THE COURT: Any recross?

24 MS. EHRLICH: Just one question.

25 RECROSS-EXAMINATION

1 BY MS. EHRLICH:

2 Q Is it Daqone who told you to back up, not Derell?

3 A Yeah.

4 MS. EHRLICH: Okay.

5 THE COURT: Mr. Bradley, you may step down.

6 Thank you very much.

7 Call your next witness.

8 MR. DURANT: I'll be glad to begin.

9 THE COURT: Yes, sir.

10 MR. DURANT: Okay. The State would call Antonio
11 Smalls-Heyward.

12 I'd ask that Mr. Bradley be excused because he's
13 got to go back to school, Your Honor.

14 THE COURT: Any objection from defense?

15 MS. EHRLICH: No, Your Honor.

16 THE COURT: Mr. Bradley, you may be excused.

17 Thank you.

18 THE CLERK: Raise your right hand.

19 ANTONIO SMALLS-HEYWARD, after being duly sworn,
20 testified as follows:

21 THE CLERK: Thank you, sir. If you'd take your
22 seat.

23 Sir, if you would, please state your first and
24 last names, spelling your last for the record, please.

25 THE WITNESS: My name is Antonio Smalls.

1 You said spell my last name?

2 THE CLERK: Yes, please.

3 THE WITNESS: S-M-A-L-L-S.

4 DIRECT EXAMINATION

5 BY MR. DURANT:

6 Q Mr. Smalls, I'd ask you to kind of get as close to
7 that mic as you can and speak in there because these
8 ladies and gentlemen have to hear what you have to say,
9 okay?

10 And also, I'm going to need you -- when I ask
11 you a question, I'm going to need you to answer because
12 this lady has to hear whatever you say, too, and take it
13 down, all right?

14 A Yes, sir.

15 Q Could you tell our jury how old you are?

16 A Fourteen.

17 Q And are you going to school now?

18 A Yes, sir.

19 Q Where do you go to school?

20 A Liberty Hill Academy.

21 Q And what grade are you in at Liberty Hill Academy?

22 A Eighth.

23 Q And you are also here because we served a subpoena on
24 you; is that correct?

25 A Yes, sir.

1 Q Who is this fellow over here?

2 A I know him as Noogie.

3 Q Okay. And what's Noogie's real name?

4 A I don't know.

5 Q Okay. You've always known him as Noogie?

6 A Yes, sir.

7 Q You don't know him as -- aren't you related to him
8 somewhat?

9 A I mean, that's my granny --

10 Q Pardon me?

11 A My granny, I say like from the Doctors or something.

12 Q Pardon me? I'm sorry, I just couldn't understand.

13 A My granny say like we're related to them, to our side
14 of the family of Doctors.

15 Q Okay. And you didn't know him by the name of Derell,
16 you just knew him by the name of Noogie; is that right?

17 A Yes, sir.

18 Q How did you know him?

19 A We grew up in, like, the same neighborhood.

20 Q Okay. And in February of 2010, where did you all go
21 to school?

22 A Daniel Jenkins Academy.

23 Q And did you know a fellow named Taron Maybank?

24 A Yes, sir.

25 Q And how did you know Taron? I mean, yes, how did you

- 1 know Mr. Maybank?
- 2 A Through my auntie boyfriend.
- 3 Q Pardon me?
- 4 A Through my auntie boyfriend.
- 5 Q Through your auntie's boyfriend?
- 6 A That's how I met him.
- 7 Q Okay. Now what grade were you in at Daniel Jenkins
- 8 Academy back in 2010?
- 9 A Sixth.
- 10 Q And what grade was Derell in?
- 11 A Eighth, ninth.
- 12 Q Did you all share any classes together?
- 13 A No, sir.
- 14 Q And do you remember how long you all were at Daniel
- 15 Jenkins Academy together, at the same school together
- 16 there?
- 17 A After my first year there.
- 18 Q Okay. So that entire school year you all had been
- 19 there together? Is that a yes?
- 20 A Yes, sir.
- 21 Q Was Derell a friend of yours?
- 22 A Yes, sir.
- 23 Q Did you know someone named Daqone Lance?
- 24 A Mook.
- 25 Q Okay. You know him as Mook?

1 A I know him as Mook.

2 Q Okay. You knew him as Mook.

3 Are you friends with Mook?

4 A Yes, sir.

5 Q Do you know where Mook went to school?

6 A No, sir.

7 Q Okay. But do you know whether he went to Daniel
8 Jenkins?

9 A No, sir.

10 Q He did not go to Daniel Jenkins.

11 How about a fellow named Rashawn Bradley or
12 Ray-Ray, do you know him?

13 A Yes, sir.

14 Q And where do you know him from?

15 A Daniel Jenkins.

16 Q And do you remember what grade that Rashawn Bradley
17 was in?

18 A Eighth or ninth.

19 Q Were you very good friends with Rashawn Bradley?

20 A Me, like me and him, he's like the type I always used
21 to talk to him, like, when I see him on the streets we
22 used to talk.

23 Q Okay. So would you consider him more of a friend or
24 an acquaintance?

25 A Acquaintance.

1 Q Okay. The victim in this case, Taron Maybank, what
2 was your nickname for him? What did you call him?

3 A I used to call him Tee.

4 Q Tee? And had you seen him at the Daniel Jenkins
5 Academy before, Tee?

6 A I seen him, yeah, when we used to check in the
7 building.

8 Q Pardon?

9 A We used to check in, like, when we first went in
10 school.

11 Q Okay. So you would see him sometimes when you all
12 first got to school?

13 A Yes, sir.

14 Q Let's talk about February 5th, the day that Tee got
15 murdered.

16 How did you get to school that morning?

17 A Walked.

18 Q Where did you walk from?

19 A My house.

20 Q And how close do you live to the school?

21 A Like, I live close. I live by the school right there
22 by Murray Hill, so I live pretty close.

23 Q Could you repeat that, please?

24 A I live close.

25 Q You live close?

1 And do you remember seeing Derell when you got
2 to school that morning?

3 A No, sir.

4 Q Do you remember giving the police a statement saying
5 you saw him going through the metal detector that morning?

6 A Oh, yeah.

7 Q Is that true?

8 A Yes, sir.

9 Q Did you see him going through the metal detector that
10 morning?

11 A Yes, sir.

12 Q Are all students required to go through the metal
13 detector?

14 A Yeah. But he at the other end because he's in high
15 school.

16 Q Okay.

17 A I talked to him, like, when we were walking.

18 Q Pardon me?

19 A I talk to him if I see him maybe walking.

20 Q I understand that, but you saw him when you're
21 actually going through the metal detector at school,
22 right?

23 A Yes, sir.

24 Q Okay. Are all students required to go through that
25 metal detector?

1 A Yes, sir.

2 Q Now when you all got out of school that day, where
3 were you going?

4 A I was going -- I always walk with them every day, so
5 like all of them in high school so I come out after them,
6 so I came out after.

7 Q Okay. You came out after them.

8 And excuse me if I'm repeating you a little bit,
9 but I'm just trying to make sure I understood what you're
10 saying.

11 Did you say you usually walk with them every
12 day?

13 A Yes, sir.

14 Q And when you say "them," who are you talking about?

15 A Them, like the people who go to school who, like, we
16 live in the same neighborhood, so, like, we walk together
17 every day.

18 Q Now is this group you usually walk home with, does
19 that usually include Derell Green?

20 A Yes, sir.

21 Q Does it usually include Rashawn Bradley?

22 A Yes, sir.

23 Q And yourself?

24 A Yes, sir.

25 Q Does it necessarily -- you all don't walk home with

1 Daqone Lance every day, do you?

2 A No, sir.

3 Q Okay. Because he doesn't go there, correct?

4 A No, sir.

5 Q Now, when you got out of school that day, who did you
6 hook up with?

7 A You mean?

8 Q Who did you meet? Right after you got out of school,
9 who did you meet?

10 A Noogie, Ray-Ray, and Mook.

11 Q Okay. So Mook was there that day?

12 A Yes, sir.

13 Q And what you're telling me, that's not usual; is that
14 correct?

15 A No, sir.

16 Q Now after you met up with the other three, who walked
17 by?

18 A Tee.

19 Q Was anyone with Tee?

20 A Yeah, his friend.

21 Q Did you know his friend?

22 A No, sir.

23 Q Okay. What did Tee or his friend say to you all as
24 they walked by?

25 A Nobody didn't say nothing to nobody.

1 Q Okay. So nobody in your group said anything to them
2 either?

3 A No, sir.

4 Q Do you know if there was any mugging going on?

5 A Unh-unh.

6 Q Do you remember, have you ever told anybody that
7 before? Did you tell the police that?

8 A No. There ain't been no mugging like that.

9 THE COURT: Is this a good stopping point for
10 you?

11 MR. DURANT: Yes, sir, Your Honor.

12 THE COURT: All right. Madam Forelady, ladies
13 and gentlemen of the jury, what we're going to do is break
14 at this time for a lunch break. And if you'll be back in
15 the jury room at 1 o'clock, we'll get started at that
16 time.

17 Please don't discuss the case amongst yourselves
18 and leave your note pads in your chairs.

19 I'll see you at 1 o'clock.

20 (The jury left open court at approximately 10:55
21 a.m.)

22 THE COURT: Anything from the State before we
23 take a break until 1?

24 MR. DURANT: Pardon me, Your Honor?

25 THE COURT: Anything from the State before we

1 THE COURT: Anything from the defense before we
2 bring the jury in?

3 MS. EHRLICH: No, sir.

4 THE COURT: Bring us the jury, please.

5 (The jury came into open court at approximately
6 1:05 p.m.)

7 THE CLERK: Jurors are all present, Your Honor.

8 THE COURT: You all are doing a good job of
9 filing in right where your pads are.

10 Please continue your direct, please.

11 MR. DURANT: Thank you, Your Honor.

12 CONTINUED DIRECT EXAMINATION

13 BY MR. DURANT:

14 Q Antonio, we've been through up to the point, I think,
15 where you said you'd come out of school and you hooked up
16 with Noogie and Mook and Ray-Ray; is that correct?

17 A Yes, sir.

18 Q Do you remember what Derell was wearing that day?

19 A A camouflage jacket.

20 Q And do you remember what Dagone was wearing that day,
21 Mook?

22 A A black shirt.

23 Q A black what?

24 A A black shirt.

25 Q How about his pants? Were his pants black, too?

1 A Yes, sir.

2 Q So he was all black?

3 A Yes, sir.

4 Q Okay. And now before you were out there and you said
5 these two fellows walked by you; is that correct?

6 A Yes, sir.

7 Q Was anything said by them to you or to your group to
8 them?

9 A No, sir.

10 Q Was there any mugging going on?

11 A No, sir.

12 Q Do you remember meeting with Detective Kramitz with
13 your mom on February the 12th of 2010 giving a statement
14 to him?

15 A Yes, sir.

16 Q Do you remember telling him at the time that there
17 was some mean mugging?

18 A No, sir.

19 Q If you were to look at your statement, do you think
20 that would refresh your recollection as to what you told
21 Detective Kramitz?

22 A I don't know.

23 MR. DURANT: Would you mark this for
24 identification, please?

25

1 (WHEREUPON, State's Exhibit No. 49 was marked
2 for identification only.)

3 BY MR. DURANT:

4 Q Antonio, I'm handing you what's now been marked as
5 State's Exhibit 49 for identification and ask if you
6 recognize that.

7 A Yes, sir.

8 Q Pardon me?

9 A Yes, sir.

10 Q Okay. And what is that?

11 A This one right here?

12 Q Pardon me?

13 A This one right here?

14 Q No, I mean what is that whole document that I gave
15 you?

16 A My statement.

17 Q Okay.

18 THE COURT: Mr. Heyward, sit up a little bit and
19 get closer to the microphone so we can hear you, okay?

20 BY MR. DURANT:

21 Q Okay. And you wrote out the first part of the
22 statement yourself, right?

23 A Yes, sir.

24 Q And then do you remember this fellow over here,
25 Detective Kramitz?

1 A Yes, sir.

2 Q And he was asking you some questions and you were
3 giving him some answers and he was writing down the
4 questions and the answers; do you remember that?

5 A Yes, sir.

6 Q Was your mom in there, too?

7 A Yeah, my mom get there after.

8 Q Okay. And referring you to page four, Detective
9 Kramitz asked the question, "When you guys were standing
10 in the driveway and Tee walked past you, what was being
11 said?" And can you read what your response was?

12 A No words was said. They mean mugged --

13 Q They what?

14 A They be mean mugging.

15 Q They be mean mugging? And who did you mean when you
16 say "they mean mugged?" Who were you talking about? You
17 don't remember?

18 A No, sir.

19 Q Okay. You just don't remember saying that?

20 A No, sir.

21 Q Okay. Do you know what mean mugging is?

22 A Yes.

23 Q What is mean mugging?

24 A When somebody looking at us funny.

25 Q Okay. Now after those two guys walked by you all,

1 what did the four of you do, you and the three people that
2 you were with?

3 A We started moving.

4 Q Pardon me?

5 A We started moving up.

6 Q You started moving up?

7 A Yeah.

8 Q And when you say you started moving up?

9 A We started walking.

10 Q Okay. You started walking, all four of you all were
11 walking together?

12 A Yeah. Like I was walking, like we got to go on.

13 Q Okay. And so the four of you were still together; is
14 that right?

15 A Yes, sir.

16 Q And where was the guy that got shot and his friend,
17 where were they?

18 A They were like close up both by the laundromat.

19 Q Okay. They were up ahead of you all?

20 A Yes, sir.

21 Q And what did you think was going to happen?

22 A I thought they might like fight.

23 Q You thought who was going to fight?

24 A Like, I thought Noogie and Mook would gang them or
25 something.

1 Q Were going to gang who?

2 A Tee.

3 Q And why did you think that Noogie and Mook were going
4 to gang Tee?

5 A Because I know they had some beef or something going
6 on.

7 MS. EHRLICH: Objection, Your Honor. May we
8 approach?

9 MR. DURANT: What's the basis for the objection?

10 THE COURT: What's your legal objection?

11 MS. EHRLICH: Hearsay.

12 THE COURT: Overruled. Go ahead.

13 BY MR. DURANT:

14 Q And why did you think that they were going to gang
15 them?

16 A Because I already know like something happened like
17 that weekend, like they had a fight or something.

18 Q Okay. You don't know when that was --

19 A No.

20 Q -- but you just heard about it?

21 A Yes, sir.

22 MS. EHRLICH: Objection, Your Honor. I'm going
23 to renewing my hearsay.

24 MR. DURANT: Okay. I withdraw it.

25 THE COURT: I'll sustain the objection.

1 BY MR. DURANT:

2 Q So you thought there might be a fight?

3 A Yes, sir.

4 Q Now tell us what happened. So those two were up
5 front and the four of you all were behind. What did you
6 see?

7 A We start standing right there like in front and
8 that's when I hear the gunshots and like I froze because I
9 can't believe they start like that. And then, like, after
10 that I started running and we hopped the gate.

11 Q Okay. But before that, what did you see Daqone do,
12 or did you see Daqone do anything?

13 A No, sir.

14 Q Okay. And who was up front?

15 A Derell.

16 Q Derell?

17 A Yes, sir.

18 Q And at some point did you and Ray and Daqone start
19 walking back toward the school?

20 A Yes. But we got stopped right there. Like, we have
21 to watch him for a minute.

22 Q You all were watching?

23 A Yeah, we had to stand.

24 Q Okay. And what did you see Noogie do?

25 A Pull out the gun and start shooting.

- 1 Q Pull out the gun and start shooting at who?
- 2 A Tee.
- 3 Q And where was Noogie at that time?
- 4 A He was by, like closer by the laundromat.
- 5 Q By the laundromat. And where were the three of y'all
- 6 at?
- 7 A Everybody had started running in the road and I stand
- 8 right there for a minute because --
- 9 Q You all were in the road for a minute?
- 10 A Yeah. I stopped right there for a minute because,
- 11 like, I froze because I can't believe that it just
- 12 happened.
- 13 Q And what did you think Derell was going to do?
- 14 A I thought he might, like, box him or something.
- 15 Q You thought he was going to box him?
- 16 A Yes, sir.
- 17 Q And what did he do instead of boxing him?
- 18 A He shoot him.
- 19 Q Where did he pull the gun from?
- 20 A Huh?
- 21 Q Where did he pull the gun from?
- 22 A I don't know, but I know he --
- 23 Q Pardon me?
- 24 A I don't know exactly where he pull it from.
- 25 Q Okay. Where did he get the gun?

1 A I don't know.

2 Q What did you tell the police back on
3 February 12th that he got the gun?

4 A I didn't tell them nothing.

5 Q Okay. Do you remember when Detective Kramitz -- and
6 this is on page five of State's Exhibit No. 49 -- asked
7 you the question, "Who gave Noogie the gun?"

8 A No.

9 Q And can you read your answer? What did you tell him?

10 A Huh?

11 Q What did you tell him?

12 A Huh?

13 Q What did you tell him?

14 A "Mook gave him the gun."

15 Q Okay. And why did you conclude that Mook had given
16 him the gun?

17 A Because you already know that because Mook isn't at
18 the school, so it's obvious that he gave him the gun.

19 Q Okay. Because Mook wasn't at school?

20 A Yes.

21 Q And Noogie had been at school?

22 A Yes.

23 Q So why couldn't Noogie have had the gun with him at
24 school?

25 A Because we had to go through the metal detectors.

1 Q Okay. And Ray-Ray was at the same school, right?

2 A Yes, sir.

3 Q And you were at the same school?

4 A Yes, sir.

5 Q So none of the three of you all had a gun, right?

6 A No, sir.

7 Q And did you see Derell get a gun from anywhere else?

8 A No, sir.

9 MS. PROCTOR: Your Honor, can I have Mr. Durant
10 back up because I can't hear what he's saying with him
11 standing in front of him.

12 THE COURT: Okay.

13 MR. DURANT: I'm sorry.

14 BY MR. DURANT:

15 Q So that's why you figured Noogie -- I mean Mook had
16 passed Noogie the gun?

17 A Yes, sir.

18 Q Okay. Now when you saw Derell shoot, what did you
19 do?

20 A I froze for a minute and after that, I started
21 running, I run home. I'm going home.

22 Q Did you hear any more shots while you were running?

23 A Yeah, a couple more.

24 Q And you ran home; is that right?

25 A Yes, sir.

1 Q Did you go home -- did anybody else come to your
2 house with you, you just went by yourself?

3 A Yes, sir.

4 Q Okay. Antonio, I'm going to ask you to come up here
5 and I'm going to play this video again. And I'm sure the
6 jury has seen it a lot of times, but I need to ask you
7 some questions from the video.

8 THE COURT: Just come and stand up there at the
9 microphone, please, sir. Turn the microphone up towards
10 your mouth, if you would, Mr. Heyward. Thank you very
11 much.

12 BY MR. DURANT:

13 Q Okay. First of all, I want to ask you, who is that
14 walking out on the bottom of the screen?

15 A Ray-Ray.

16 Q And that's Rashawn Bradley?

17 A Yes, sir.

18 Q And who is that coming out there?

19 A Noogie.

20 Q That's Noogie?

21 A Yes, sir.

22 Q And is that the camouflage jacket you were talking
23 about?

24 A Yes, sir.

25 Q And who are these two people he meets up with over

1 here?

2 A Ray-Ray and Mook.

3 Q And so you have Ray-Ray here, right?

4 A Yes, sir.

5 Q And this is Mook and he's wearing all black?

6 A Yes, sir.

7 Q And this is Derell right here with the camo jacket
8 and the khaki pants, correct?

9 A Yes, sir.

10 Q Okay. Who is that coming out right there?

11 A Me.

12 Q Do you remember what jacket you were wearing that
13 day?

14 A A different colorful jacket.

15 Q A what jacket?

16 A Colorful, with different colors on it.

17 Q Okay. It's darker colored on here; is that correct?

18 A Yes, sir.

19 Q What color pants were you wearing?

20 A Khaki.

21 Q Okay. That's kind of a school uniform there?

22 A Yes, sir.

23 Q Now, who are these two people walking right by you,
24 right there?

25 A Tee and a friend.

1 Q Tee and his friend?

2 A Yes, sir.

3 Q And that's the four of you all following behind them?

4 A Yes, sir.

5 Q These two people walking away are Tee and his friend?

6 A Yes, sir.

7 Q Okay. Now there's four people right behind him?

8 A Yes, sir.

9 Q Who are those four people?

10 A Me, Mook, Noogie, and Ray-Ray.

11 Q Now right here we start seeing some people coming
12 back the other way. Who is that in the white?

13 A That's Ray-Ray.

14 Q Right there. And who's that right behind him?

15 A That's me or Mook.

16 Q Okay. You might be able to see a little better here.

17 You all are standing kind of looking back; is
18 that correct?

19 A Yes, sir.

20 Q And then a third person walks up. Do you remember
21 who that was?

22 A That's Mook.

23 Q That was Mook?

24 A Yes, sir.

25 Q That person appears to be wearing all black; is that

1 correct?

2 A Yes, sir.

3 Q And where did you all walk off to there?

4 A We were like standing in the middle of the road.

5 Q You all were in the middle of the road you said?

6 A Yes, sir.

7 Q Okay. And were you looking back toward Derell?

8 A Yes, sir.

9 Q And why were you looking back that way?

10 A Because we thought he might fight.

11 Q And what did you see when you were looking back that
12 way?

13 A That's when he start shooting.

14 Q And when you say "he," who do you mean?

15 A Noogie.

16 Q Thank you. That's all I have right now.

17 Now you, of course, didn't go to the police,
18 right?

19 A No, sir.

20 Q And when -- do you remember when the police found
21 you?

22 A He got me the next week on Monday.

23 Q Okay. Did they come to school?

24 A Yes, sir.

25 Q Okay. And where did they take you?

1 A They take me to the police department.

2 Q Okay. And that's when you met with Detective
3 Kramitz, correct?

4 A Yes, sir.

5 Q Do you remember him reading your rights and all of
6 that stuff?

7 A Yes, sir.

8 Q And that's when you gave --

9 MS. EHRLICH: Objection, Your Honor.

10 BY MR. DURANT:

11 Q And was that when you gave your statement?

12 THE COURT: What's the legal objection?

13 MS. EHRLICH: Leading.

14 THE COURT: Pardon?

15 MS. EHRLICH: Leading.

16 BY MR. DURANT:

17 Q And when did you give them a statement?

18 THE COURT: Thank you.

19 BY MR. DURANT:

20 Q When did you give Detective Kramitz the statement?

21 A When I got there.

22 Q Okay. Now I'd already asked you, you'd seen State's
23 Exhibit 49 for identification. The first part of that
24 statement that you wrote out is only maybe one sentence
25 long?

1 A Yes, sir.

2 Q What did you tell Detective Kramitz?

3 A I tell him a different story, but when he start
4 talking to me, like he stop picking at me.

5 Q Pardon me? I'm sorry. I just didn't --

6 A When I got there I told him a different story, but I
7 told him the right story after that because they stop
8 picking at me.

9 Q Okay. What did you tell them the first time that
10 wasn't the whole truth?

11 A I just told them that I got out of school, me and my
12 friends dapped up, Derell or Mook, and we walked to the
13 other way and we heard gunshots and we ran.

14 Q Okay. You heard gunshots and you all ran?

15 A Yes, sir.

16 Q And then Detective Kramitz continued questioning you,
17 correct?

18 A Yes, sir.

19 Q And that's when you told him the rest of that stuff;
20 is that correct?

21 A Yes, sir.

22 Q And why did you tell him that?

23 A Because he stop picking at me.

24 Q Huh?

25 A He stopped picking at me.

1 Q So he stopped what?

2 A Picking at me. Like he stop making me feel bad.

3 Q Okay. Making you feel bad?

4 A Yes, sir.

5 Q Because the boy was dead? Or I don't understand what
6 you're saying.

7 A Because he was my auntie's boyfriend.

8 Q Okay. And was your mom there?

9 A Yeah, my mom was there after.

10 Q Okay. And your mom was there and you told him what
11 was in that question and answer part; is that correct?

12 A Yes, sir.

13 Q And is the part that's in that question and answer
14 part the truth or a lie?

15 A The truth.

16 Q Why didn't you tell him the truth to begin with?

17 A I was scared.

18 MR. DURANT: Could you please answer any
19 questions Ms. Ehrlich may have for you.

20 THE WITNESS: Yes, sir.

21 CROSS-EXAMINATION

22 BY MS. EHRLICH:

23 Q Hi, Antonio.

24 A Hi.

25 Q Some of the questions might be the same, but I just

1 want to make sure I heard you right, okay?

2 A Yes, ma'am.

3 Q All right. The day of the shooting, Daqone was the
4 one wearing black?

5 A Yes, ma'am.

6 Q And Ray-Ray was in white?

7 A Yes, ma'am.

8 Q And Derell was in a camo jacket?

9 A Yes.

10 Q And then you were also wearing a jacket?

11 A Yes, ma'am.

12 Q Okay. And you went down to the police station on
13 February 12th?

14 A Yes, ma'am.

15 Q And that's when the police had picked you up from
16 school?

17 A Yes, ma'am.

18 Q Right?

19 A Yes, ma'am.

20 Q And they took you to the police station?

21 A Yes, ma'am.

22 Q Right?

23 A Yes, ma'am.

24 Q And you were 12 then?

25 A Yes, ma'am.

1 Q Are you 13, 14 now?

2 A Fourteen.

3 Q You're 14 now. Okay.

4 When you got there, they gave you something to
5 write with?

6 A Yes, ma'am.

7 Q And that's when you wrote that you got out of school,
8 me and my friends dap with my cousin?

9 A Yes, ma'am.

10 Q And your cousin is Mook?

11 A I just say that because I was scared. I don't call
12 them no names or nothing.

13 Q Okay. So neither one of them's your cousin?

14 A Derell.

15 Q Correct?

16 A Yes, ma'am.

17 Q Now were you related to Tee?

18 A Through my auntie boyfriend.

19 Q So like a cousin, he was like a cousin?

20 A Like not by like biologically, but like --

21 Q By marriage?

22 A They ain't married yet, but, like, they going to get
23 married.

24 Q Okay. So he was in some ways family?

25 A Yes, ma'am.

1 Q All right. When you were at -- the first part of
2 your statement you said that after you dapped up your
3 cousin you walk away, right?

4 A Yes, ma'am.

5 Q And that you heard the gunshots?

6 A Yes, ma'am.

7 Q You didn't write that you saw them?

8 A No, ma'am.

9 Q And you didn't write who shot the gun?

10 A No, ma'am.

11 Q And you didn't say where the gun came from, right?

12 A Yes, ma'am.

13 Q I'm sorry?

14 A I didn't know where the gun come from.

15 Q You didn't know where the gun came from?

16 A No, ma'am.

17 Q Okay. After that, I guess the detective asked you
18 more questions?

19 A Yes, ma'am.

20 Q And they were -- did you say that they were looking
21 at you or what did you say?

22 A Huh?

23 Q Why did you change your story?

24 A To tell about the one I said that was the truth?

25 Q When you said -- when you started -- when Detective

1 Kramitz started asking you who did the shooting, why did
2 you start saying that?

3 A Telling the truth?

4 Q Yes. Well, you said that they were looking at you?

5 A Who?

6 Q Was the detective asking you a lot of questions? I
7 didn't hear what you said before.

8 A He just keep on asking me questions like who did the
9 shooting.

10 Q Uh-huh.

11 A And I told them they already know who did the
12 shooting, so --

13 Q Okay. They already knew who did the shooting?

14 A Yeah.

15 Q Did they tell you they knew?

16 A Yeah. So they just been like asking questions that
17 they already knew.

18 Q Okay. So they were asking you questions that they
19 said they already knew the answers to?

20 A Yes, ma'am.

21 Q Okay. And they were making you feel bad I think you
22 said?

23 A Yes, ma'am.

24 Q So that's when you said something different than what
25 you first wrote?

1 A Yes, ma'am.

2 Q That Tee had passed by you and your group of friends,
3 right?

4 A Yes, ma'am.

5 Q And that you all kind of followed behind for a bit?

6 A Yes, ma'am.

7 Q And when you wrote your statement, you said that
8 there was like mean mugging?

9 A Yes, ma'am.

10 Q But today you're saying that's not what happened?

11 A Like I --

12 Q Do you not remember or did you not say that?

13 A I still kind of scared.

14 Q You're scared today?

15 A Yes, ma'am.

16 Q Okay. Well, when you wrote your statement, you told
17 them that there was mean mugging?

18 A Yes, ma'am.

19 Q Right? But today you say no?

20 A Like when you scared, you forget something and say
21 strange stuff.

22 Q I'm sorry, I can't hear you.

23 A When you're scared you forget, like, certain stuff.

24 Q Okay. So you just don't know, you don't remember
25 what you said?

1 A No, ma'am.

2 Q Okay. Are you having trouble remembering what
3 happened?

4 A I know what happened, just like certain parts.

5 Q Just certain parts?

6 A Yes, ma'am.

7 Q When y'all were walking behind, do you remember
8 telling them that Mook was actually in front?

9 A Huh?

10 Q Do you remember telling the detective that Mook was
11 in front at first?

12 A No.

13 Q No?

14 A I don't know.

15 Q And that Derell walked past him?

16 A Derell take the lead like we when get by the
17 sidewalk.

18 Q Okay. He walked in front of y'all?

19 A Yes, ma'am.

20 Q And Mook was back with y'all?

21 A Yeah, he had came back.

22 Q He came back with you.

23 And I think you said today that you just figured
24 Mook passed the gun, but you don't --

25 A No one asked me about the gun, ma'am.

1 Q Say what?

2 A No one asked me about the gun.

3 Q I'm asking a different question now than what I was
4 asking before, okay? I'm done asking about where people
5 were walking.

6 All I want to know is, today you said that you
7 figured Mook passed the gun because he didn't go to school
8 there?

9 A Yeah. He can't bring no gun in the school, so --

10 Q So you knew that the gun couldn't have come from you?

11 A No. Yeah.

12 Q Right?

13 A Yes, ma'am.

14 Q Because you didn't bring the gun?

15 A Yes, ma'am.

16 Q And you knew Ray-Ray didn't bring the gun?

17 A Yes, ma'am.

18 Q And you knew Derell didn't bring the gun?

19 A Yes, ma'am.

20 Q So you guessed that Mook brought it, right?

21 A Yes, ma'am.

22 Q Because you never actually saw the gun?

23 A No, ma'am.

24 Q All right. And you didn't ever see Derell walk
25 across the street to a house to get a gun, right?

1 A No, ma'am.

2 Q That didn't happen?

3 A No, ma'am.

4 Q All right. When the shooting did happen, you were
5 still on Bonds Avenue, right?

6 A Yes, ma'am.

7 Q But you were further back than from the laundromat?

8 A Yes, ma'am.

9 Q And you were much further back than where Tee was,
10 right?

11 A Yes, ma'am.

12 Q And Derell?

13 A Yes, ma'am.

14 Q And Derell had his back to you?

15 A Yes, ma'am.

16 Q Right?

17 Did any other detectives question you when you
18 were meeting with them?

19 A Him and a lady.

20 Q Okay. Was the lady Ms. Spears maybe, a shorter lady?

21 A Yes, ma'am.

22 Q Okay. Do you remember telling her that Noogie told
23 you to go home, go straight home?

24 A I probably -- he probably did tell me that. Like I
25 told you before, I was scared.

1 Q Okay. So when you -- you're not sure what you told
2 her?

3 A I'm just trying to remember everything.

4 Q Okay. If you looked at the statement that Mr. Durant
5 showed you, would it help you remember?

6 A Yes, ma'am.

7 Q Do you want me to show you which page?

8 A Yes, ma'am.

9 MS. EHRLICH: Permission to approach, Your
10 Honor?

11 THE COURT: Yes, ma'am.

12 BY MS. EHRLICH:

13 Q See at the top of the pages here where it was
14 numbers? And if you have a hard time reading the
15 handwriting, just let me know.

16 A Yes, ma'am.

17 Q Okay. Do you see the last question on that page?
18 And you can just read it to yourself. Do you see that?

19 A Yes, ma'am.

20 Q Does that refresh your memory, or you still don't
21 remember if you said that?

22 A That refresh my memory.

23 Q Okay. So did you say that Noogie told you to run
24 home?

25 A Yes, ma'am.

1 Q Okay. Now do you remember when the police showed you
2 some pictures?

3 A Yes. I lied at first.

4 Q Yeah, you lied to them about Mook, right?

5 A Yes, ma'am.

6 Q I guess they showed you a group of pictures, right?

7 A Yes, ma'am.

8 Q And Mook was in that group of pictures?

9 A Yes, ma'am.

10 Q And you told them that you didn't recognize him?

11 A Yes, ma'am.

12 Q You lied about that?

13 A Yes, ma'am.

14 Q And you -- I think you told them that you were
15 scared?

16 A Yes, ma'am.

17 Q You were scared of Mook?

18 A I wasn't scared of him. I just like --

19 Q Are you scared of the police?

20 A No, they ain't bad. It's just like --

21 Q The situation?

22 A -- anything that happened, you know, anything that
23 happen to me, you know what happen to people, like, who
24 write statements and stuff and, like, tell.

25 Q When you -- I know this is hard for you, okay? When

1 you gave your statement, you knew Derell was already
2 arrested, right?

3 A Yes, ma'am.

4 Q So you knew he was already -- the police already knew
5 he did it?

6 A Yes, ma'am.

7 Q Right? Or they already had made their decision he
8 did it, right?

9 A Yes, ma'am.

10 Q And so when you gave your statement, you knew he'd
11 already gotten into some type of trouble?

12 A Yes, ma'am.

13 Q Nobody else you knew had gotten into trouble at that
14 point, right?

15 A No, ma'am.

16 Q I'm sorry?

17 A No, ma'am.

18 Q Okay. After you talked to the police, were they
19 going to try to charge you?

20 A No, they let me go home.

21 Q Okay. Did they ever say that they were going to
22 charge you?

23 A I don't -- I think that they said they try and
24 believe me or something.

25 Q I can't hear you.

1 A I don't know.

2 Q You don't know? Okay. They never made you come to
3 court for this, right?

4 A No.

5 Q Until today, right?

6 A Yes, ma'am.

7 MS. EHRLICH: Court's indulgence.

8 (Pause.)

9 BY MS. EHRLICH:

10 Q How long have you -- you've known Mook pretty much
11 forever?

12 A Yes, ma'am.

13 Q And I think you all used to live on the same street?

14 A Yes, ma'am.

15 Q Like a couple of houses down maybe?

16 A Yes, ma'am.

17 Q And when you went to the police station, you hadn't
18 seen Mook at all?

19 A No, ma'am.

20 Q Even though he lives just down the road?

21 A No, because like he probably -- he don't live down
22 here. His granny live down here. I don't know where he
23 live at. I know his granny live right down the street.
24 She used to live down the street from me.

25 Q Is that how you got to know him?

1 A Yes, ma'am.

2 MS. EHRLICH: All right. Court's indulgence.

3 (Pause.)

4 MS. EHRLICH: Thank you.

5 THE COURT: Any redirect?

6 MR. DURANT: Just a couple, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. DURANT:

9 Q And I'm asking this just because I thought I
10 understood you to say it on cross-examination. Is Derell
11 Green a cousin of yours, too?

12 A Huh?

13 Q Is Derell Green a cousin -- is Noogie a cousin of
14 yours, too?

15 A Yes, sir.

16 Q And do you know kind of what the relation is on that?

17 A Like through my other side of the family, the
18 Doctors.

19 Q He's the other side of the family what?

20 A Through my other side of the family, the Doctors.
21 Their last name is Doctors.

22 Q Doctors?

23 A Yes, sir.

24 Q But he's related to that side of the family?

25 A Yeah.

1 Q Okay. So there is some relation between you and
2 Derell; is that correct?

3 A Yes, sir.

4 Q And you didn't tell the police the truth to start
5 with; is that correct?

6 A You mean when I got first stopped?

7 Q When you first got there you didn't tell them the
8 truth, right?

9 A No, sir.

10 Q About Mook or Noogie, correct?

11 MS. EHRLICH: Objection. Leading.

12 THE WITNESS: No, sir.

13 BY MR. DURANT:

14 Q Why?

15 A I was scared.

16 Q Did you want to be -- get them in trouble?

17 A I didn't want nobody to get in trouble or nothing.

18 Q But what you told the police -- what we need to know
19 and what this jury needs to know is what you told --
20 eventually told the police and what you're telling the
21 jury today, is that the truth?

22 A Yes, sir.

23 Q And is that the truth because it is what you saw
24 happened or because what the police made you do?

25 A No, because what I saw happen.

1 MR. DURANT: Okay. Thank you. I have nothing
2 else.

3 THE COURT: Any recross?

4 MS. EHRLICH: No, Your Honor.

5 THE COURT: Okay. You may step down. Thank you
6 very much.

7 MR. DURANT: I'd ask that Mr. Heyward be
8 excused.

9 THE COURT: Any objection?

10 MS. EHRLICH: No, Your Honor.

11 THE COURT: All right. Mr. Heyward, you may be
12 excused. Thank you.

13 Call your next witness, please.

14 MR. DURANT: The State would call Vadrein
15 Simmons.

16 VADREIN SIMMONS, after being duly sworn,
17 testified as follows:

18 THE CLERK: Thank you, ma'am. You may take your
19 seat.

20 Ma'am, if you would, please state your first and
21 last names, spelling your last for the record.

22 THE WITNESS: Vadrein Simmons. My last name is
23 S-I-M-M-O-N-S.

24 DIRECT EXAMINATION

25 BY MR. DURANT:

1 Q Good afternoon, Ms. Simmons.

2 A How you doing?

3 Q I apologize for it taking so long to get you up here.

4 Could you tell our jury how old you are, ma'am?

5 A I'm 34 years old.

6 Q And if you would, I'm going to need you to kind of
7 scoot up to that microphone and talk into it because these
8 folks have to hear everything you've got to say, okay?

9 A I'm 34 years old.

10 Q Thank you. That's much better.

11 And are you employed?

12 A Yes, sir.

13 Q Where do you work?

14 A At Wingate at CSU.

15 Q Okay. And what do you do there?

16 A Housekeeping.

17 Q You have a son; is that correct?

18 A Yes, sir.

19 Q Named Anthony?

20 A Yes, sir.

21 Q Could you tell our jury where Anthony was going to
22 school in February of 2010?

23 A He was going at Jenkins Academy.

24 Q And where is Jenkins Academy?

25 A On Bonds Avenue.

1 Q Now was he in the regular student body at Jenkins
2 Academy or was he in the Summit program?

3 A He was in the Summit program.

4 Q Now, directing your attention back to February 5th of
5 2010, the date the victim in this case was shot, was your
6 child at school that day?

7 A Yes, sir.

8 Q And do you recall what time he got out of school?

9 A 12:30.

10 Q And how was he getting home from school that day?

11 A I take him to school and pick him up.

12 Q And where had you been prior to going and picking him
13 up?

14 A I was getting my hair fixed.

15 Q And what kind of car were you driving at the time?

16 A A Grand Cherokee. It was gray.

17 Q And when you were going to school to pick him up,
18 from which side would you come down Bonds Avenue, from the
19 Dorchester Road side or the Azalea Avenue side?

20 A Dorchester Road.

21 Q And do you recall when you were driving down
22 Dorchester, from Dorchester toward the school, whether
23 there were any people out on the sidewalk?

24 A Yes. Kids was walking from school.

25 Q Okay. And that would be on your right-hand side or

1 left-hand side?

2 A That would be on my left -- my right-hand side. I'm
3 sorry.

4 Q And what happened when you pulled up to the front of
5 the school?

6 A When I pulled up at the front of the school, the one
7 student came out and told me that my son already left.

8 Q And how had he left?

9 A He walked.

10 Q He was walking?

11 A Yeah.

12 Q Okay. And what did you do when you found out that
13 your son had left on foot?

14 A I turned around and went back towards Dorchester
15 Road, down Bonds Avenue.

16 Q So now you're heading from the school back toward
17 Dorchester; is that correct?

18 A Yes, sir.

19 Q And if you would, tell the jury what you saw.

20 A When I was coming back from the school, the kids I
21 saw when I was going, they was on my left-hand side with
22 me coming back.

23 Q So these were the same kids that you had seen --

24 A Yes, sir.

25 Q -- when you were coming, you saw the same kids when

1 you were leaving; is that correct?

2 A Yes.

3 Q Okay.

4 A And there was two guys walking and there was a gap in
5 between them and there was three guys behind them.

6 Q Uh-huh.

7 A And I saw one of the guys like come out to the street
8 and went back to the sidewalk. You know, I'm still
9 driving and --

10 Q Was this one of the guys in front or one of the guys
11 in back?

12 A The guy in front.

13 Q Okay.

14 A And I'm still driving and another guy came in front
15 of my car, I almost hit him with my car. So I had to slam
16 on brakes to stop so I won't hit him.

17 Q Okay. And what did the guy that ran in front of your
18 car have?

19 A He had a gun in his hand.

20 Q And as you were hitting the brakes, which way was he
21 coming, from your right to your left or your left to your
22 right?

23 A From my right to my left.

24 Q From your right to your --

25 A No, from my left to my right because he was on the

1 left-hand side.

2 Q So he'd been running from your driver's side to the
3 passenger side?

4 A Exactly.

5 Q And where did he run to after he got over past your
6 car?

7 A He ran through the little lot by the houses. I think
8 there was a yellow house.

9 Q Okay.

10 A He ran through, you know, the little field.

11 Q Was there a fence there?

12 A Yes, sir.

13 Q What did he do when he got to the fence?

14 A He jumped across the fence and keep running.

15 Q Okay. And do you remember what kind -- the fellow
16 that you saw running in front of your car with the gun in
17 his hand, what kind of jacket was he wearing?

18 A It was a camouflage jacket.

19 Q Did you actually see the fellow with the gun in his
20 hand, did you actually see him shoot?

21 A I saw him shoot like towards the bushes with it, but
22 I didn't see nobody else until I came up further.

23 Q You saw him shooting the gun?

24 A Yeah, from the bushes.

25 Q Okay. And then what happened when you saw him

1 shooting the gun, what happened to the guy in front?

2 A He was -- he went -- see, there's a lot of trees
3 right there. So he went like in the little -- it looked
4 like a little alley, you know, because there's warehouses
5 in the back, and he went that way. So when I pulled up a
6 little more I saw him, you know, the guy on the ground.

7 Q Okay. And where was he on the ground?

8 A He was laying half the way on his side, like face
9 down.

10 Q And did you get a good enough look at the person that
11 ran in front of you to be able to recognize him?

12 A I see him, but at that moment I was so scared I just
13 saw him. You see what I'm saying?

14 Q I understand.

15 A I don't know them, so --

16 Q Did you know either one of them?

17 A No, sir.

18 Q The fellow with the gun or the fellow that got shot?

19 A No, sir. I don't know none of them.

20 Q Now what did you do after this fellow ran in front of
21 you and you saw the other fellow on the ground?

22 A I pulled up in the parking lot by the laundromat and
23 I saw him and I called the police.

24 Q Did you call the police or did you call 911?

25 A I dialed 911. He was looking like he was trying to

1 move and then he stopped moving, you know.

2 Q Did he look like he was injured?

3 A Yes. Yes.

4 Q And how could you tell he was injured?

5 A Because he stop moving.

6 MR. DURANT: Court's indulgence for just one
7 moment.

8 (Pause.)

9 BY MR. DURANT:

10 Q Ms. Simmons, I have what's been marked as State's
11 identification No. 29 which appears to be a CD and ask you
12 if you recognize what that is.

13 A Yes, sir.

14 Q And what is that?

15 A The 911 call that I made.

16 Q And how do you know that?

17 A Because I heard it.

18 Q And where did you hear it?

19 A At the -- what is it -- I can't remember the name.

20 Q My investigator?

21 A Yes.

22 Q Matt Casey?

23 A Yeah. Okay, Matt Casey.

24 Q Okay. He played it for you?

25 A Yes, sir.

1 Q And after he played it for you, what did he have you
2 do?

3 A He had me to initial it and date it.

4 Q Okay. And are those your initials and the date on
5 there on State's Exhibit No. 29?

6 A Yes.

7 Q And does that accurately record your call that you
8 made to the 911 folks on February 5th after seeing this
9 shooting?

10 A Yes.

11 Q Is that an accurate recording?

12 A Yes, sir.

13 MR. DURANT: Do you have any objection?

14 MS. EHRLICH: No.

15 MR. DURANT: Your Honor, permission to publish
16 State's 29 to the jury, or play 29.

17 THE COURT: Any objection? That's already
18 admitted; is that correct?

19 MR. DURANT: We would offer it into evidence, I
20 believe, without objection.

21 THE COURT: All right. Without objection?

22 MS. EHRLICH: Without objection.

23 THE COURT: All right. State's Exhibit No. 29
24 without objection.

25

1 (WHEREUPON, STATE'S Exhibit No. 29 was admitted
2 into evidence.)

3 (The audiotape was played but not transcribed.)

4 BY MR. DURANT:

5 Q That was you?

6 A Yes, sir.

7 Q You were upset?

8 A I was scared.

9 Q If I could, Ms. Simmons, I'm going to refer you to
10 State's Exhibit 27, which is in evidence, I believe. I
11 believe you've seen something like this in our office; is
12 that correct? It's not this big, of course, but do you
13 remember seeing that?

14 A Uh-huh.

15 Q Do you recognize the area?

16 A Yes, sir.

17 Q And I need you to say yes or no because this lady's
18 got to take down what you're saying.

19 And where is Dorchester Road?

20 A Right here.

21 Q Okay. And where is Daniel Jenkins?

22 A Right here.

23 Q Okay. And when you were coming to pick up your son,
24 you came in from which way?

25 A This way, Dorchester Road.

1 Q And where did you see the boys on the side of the
2 road when you were coming in?

3 A They were on this side of the road.

4 Q Close to the school?

5 A Yes, like coming towards the laundromat. They was
6 closest to the laundromat.

7 Q Now is that when you were coming or leaving?

8 A That's when I was coming.

9 Q Okay. And then you were leaving and where did you
10 see this?

11 A Right in the middle right here.

12 Q Okay. And where did you see the boy fall on the
13 ground?

14 A Right there.

15 Q Okay. And where did you see the other boy with the
16 camouflage jacket running?

17 A Closest here.

18 Q Okay. And he jumped the fence?

19 A Yes. He was running back towards the school, but
20 there was a house with a fence right there.

21 Q Back towards the school but also across Bonds Avenue?

22 A Yes, sir.

23 Q Ms. Simmons, I also want to show you State's Exhibit
24 No. 28. And if you would, could you come down to the
25 podium here, because where you are that thing's going to

1 be flashing right in your eyes.

2 (Video played but not transcribed.)

3 BY MR. DURANT:

4 Q You have seen this as well; is that correct?

5 A Yes, sir.

6 Q And did you just see this recently?

7 A Within a couple of -- this month.

8 Q This month?

9 A Yes, sir.

10 Q Had you seen this at the time you gave your statement
11 to the police?

12 A No. No, sir.

13 MS. EHRLICH: Your Honor, may we approach? I
14 have an objection.

15 THE COURT: I'm sorry, what?

16 MS. EHRLICH: An objection. May we approach?

17 THE COURT: Yes, certainly.

18 (Video paused.)

19 (A bench conference was held with the judge and
20 attorneys in the presence of the jury but out of the
21 hearing of the jury.)

22 MR. DURANT: May I continue, Your Honor?

23 THE COURT: Yes, sir.

24 (Video continued.)

25

1 BY MR. DURANT:

2 Q Do you see that fellow walking out the bottom?

3 A Yes, sir.

4 Q What do you recognize about that fellow?

5 A The jacket.

6 Q And what do you mean you recognize the jacket?

7 A It looks like a camouflage jacket.

8 Q And when you say "camouflage jacket," what do you
9 mean? Is that what you were calling an army jacket when
10 you were talking to the 911 lady?

11 A Yes, sir.

12 Q And whose car is that that just came onto the screen?

13 A That's my truck.

14 Q Right here, correct?

15 A Yes, sir. That's my truck.

16 Q Okay. See that truck leaving up there?

17 A Yes, sir.

18 Q Is that your truck?

19 A Yes, sir.

20 MR. DURANT: Your Honor, could I have the jury
21 be able to step down in front of this screen?

22 THE COURT: I'm sorry, what?

23 MR. DURANT: Would I be allowed to have the jury
24 stand down and step just to be in front of this screen?

25 THE COURT: Why do you need that?

1 MR. DURANT: Because I've looked at this and I
2 just don't think that they can see this unless they're
3 right in front of it.

4 THE COURT: See what now?

5 MR. DURANT: I'm going to ask her about
6 something in a second, I'm going to point out something
7 and ask her what it is and I think they can only see it if
8 they're in front of the screen.

9 THE COURT: All right. I don't have any problem
10 with that.

11 Madame Forelady, if you all will leave your
12 notebooks and pads and come around.

13 Do you want them to stand in front of the
14 witness box?

15 And everybody get in a position as to where they
16 can see it. Come up close to the screen.

17 (The jurors leave the jury box and approach the
18 screen.)

19 THE COURT: Is everybody in a position to see
20 the screen?

21 THE JUROR: Yes, sir.

22 THE COURT: Is everybody close enough or do you
23 need to come closer? You're welcome to come closer to the
24 screen if you want to come closer. Just avoid the heads
25 in the screen and shadows.

1 If there's anybody that cannot see the screen
2 very clearly, raise your hand.

3 (No response.)

4 THE COURT: All right. Let the record reflect
5 no one raised their hand.

6 Please proceed.

7 MR. DURANT: Thank you, Your Honor.

8 BY MR. DURANT:

9 Q Ms. Simmons, I'd like you to direct your area to --
10 your attention to this area of the screen right here where
11 your car is just going. Did you see that object go across
12 there?

13 A Yes.

14 Q Who was that?

15 A That was the shooter.

16 Q And what was the shooter wearing?

17 A A camouflage jacket.

18 Q And was the person you saw running across and jumping
19 that fence the same person you saw coming out of the
20 school here earlier?

21 A Yeah.

22 MR. DURANT: Okay. Thank you, Your Honor.

23 That's all I have. It's very difficult to see, especially
24 on this --

25 THE COURT: All right. You all can go back and

1 have a seat.

2 (Jurors return to the jury box.)

3 BY MR. DURANT:

4 Q Ms. Simmons, you can resume your seat if you'd like.

5 Now I just have a few more questions and I'll be
6 through.

7 After this, did you end up at the police
8 department?

9 A No, sir.

10 Q Okay. Did you give a statement to the police that
11 day?

12 A Yes, sir.

13 Q Where was that at?

14 A Where did I give it?

15 Q Yes, where were you?

16 A I was by the laundromat on Dorchester and Bonds
17 Avenue.

18 Q Oh, so they took your statement at the laundromat on
19 Dorchester Road?

20 A Yes, sir.

21 Q Okay. And do you recall -- do you -- when you gave
22 the statement, was it -- to the detective at the
23 laundromat on Dorchester Road, do you recall telling the
24 police that the guy you saw with the camo jacket had
25 dreads?

1 A Yes, sir.

2 Q And dark pants?

3 A Yes, sir.

4 Q Would you -- and obviously at the time that you seen
5 that, you had not seen that video, correct?

6 A Right.

7 Q Have you changed your mind about that?

8 A No, sir.

9 Q Huh?

10 A No, sir.

11 Q So you still think the shooter had on black pants and
12 dreads?

13 A From what I saw. I mean, he was so up close to my
14 car you could just see the camouflage and dark clothes.
15 You know, everything's dark.

16 Q So you still think -- let me ask you that. Is the
17 fellow -- the jacket -- the fellow you saw coming out of
18 school with the jacket on, was that the jacket you saw?

19 A Yes, sir.

20 Q Can we play it again?

21 MS. EHRLICH: Objection. Asked and answered.
22 She said yes. I don't think she asked to see the video
23 again.

24 THE COURT: Overruled.

25 MS. EHRLICH: She said it was the same --

1 THE COURT: I understand. Overruled.

2 BY MR. DURANT:

3 Q Okay. Ma'am, turn around and watch this.

4 (Video played but not transcribed.)

5 BY MR. DURANT:

6 Q Would you agree that that fellow there does not have
7 dreadlocks?

8 A Yes, sir, he does not have dreadlocks.

9 Q Okay. What is it about that guy that you recognize?

10 A The jacket and he had a hoodie like halfway on his
11 head, so --

12 Q So there's a hoodie on that jacket; is that correct?

13 A Yes, sir.

14 Q Okay. And that fellow doesn't have dark pants on
15 either; is that correct?

16 A No, sir. He don't have no dark pants on.

17 Q But you recognize the jacket?

18 A Yes, sir.

19 Q And how do you recognize the jacket?

20 A Camouflage. I recognize it.

21 Q Pardon me?

22 A The camouflage jacket with the hoodie on, I recognize
23 that.

24 Q And where do you recognize it from?

25 A He had it on.

1 Q Who had it on?

2 A The shooter.

3 Q The fellow you saw with the gun?

4 A Yes, sir.

5 Q Any question in your mind that he had a camouflage
6 jacket on?

7 A He had a camouflage jacket on.

8 Q You told the 911 dispatch lady he had an army jacket
9 on, right?

10 A A camouflage jacket.

11 Q But you'd have to admit that that fellow doesn't have
12 dreads?

13 A Right.

14 Q Or dark pants?

15 A Right.

16 MR. DURANT: Okay. Court's indulgence..

17 (Pause.)

18 BY MR. DURANT:

19 Q Were you up -- the fellow that got shot, did you see
20 him on the ground?

21 A Yes, sir.

22 Q Could you get up close to him?

23 A No, sir.

24 Q Do you remember what he was wearing?

25 A Yeah. I think it was a red and white jacket. I know

1 it was red and white, but --

2 Q I just want to ask you, I know you don't want to look
3 at this, but can I show you State's Exhibit No. 2? Do you
4 recognize this fellow?

5 A (Witness nodding.)

6 Q And who is that?

7 I know, ma'am -- I apologize to have to show
8 that to you, but where do you recognize him from?

9 A He was the guy on the ground.

10 Q He was the guy lying on the ground?

11 A (Witness nodding.)

12 Q And would you agree that he had dreadlocks?

13 A At the time I didn't pay attention, you know --

14 Q Okay.

15 A -- if he had dreads, but --

16 MR. DURANT: Could you please answer any
17 questions Ms. Ehrlich has for you. I'm sorry.

18 THE COURT: Cross-examination.

19 CROSS-EXAMINATION

20 BY MS. EHRLICH:

21 Q Hi, Ms. Simmons.

22 A Hi.

23 Q Do you need a minute? Do you want some water?

24 THE COURT: Do you need to take a short break?

25 THE WITNESS: I'm -- yeah.

1 break.

2 MR. DURANT: Thank you, Your Honor.

3 (A break was taken.)

4 THE COURT: Ready to proceed? Anything from the
5 State before we bring the jury in?

6 MR. DURANT: No, sir.

7 THE COURT: Anything from the defense before we
8 bring the jury in?

9 MS. EHRLICH: No, sir.

10 THE COURT: Bring us the jury, please, sir.

11 (The jury came into open court at approximately
12 2:45 p.m.)

13 THE BAILIFF: All jurors are present, Your
14 Honor.

15 THE COURT: Thank you very much.

16 Please proceed with cross.

17 MS. EHRLICH: Thank you, Judge.

18 CONTINUED CROSS-EXAMINATION

19 BY MS. EHRLICH:

20 Q Ms. Simmons, the police haven't showed you that
21 video, right?

22 A No, ma'am.

23 Q I'm sorry?

24 A No, ma'am.

25 Q Okay. And the only time you ever saw it was at the

1 Solicitor's office?

2 A Yes, ma'am.

3 Q That was sometime this month?

4 A Yes, ma'am. I don't remember the exact date.

5 Q All right. And I guess you were meeting with them to
6 get ready for court?

7 A Yes, ma'am.

8 Q Now the day of the shooting you were -- you called
9 911, we heard your call --

10 A Yes, ma'am.

11 Q -- and you were right there when it happened?

12 A Yes, ma'am.

13 Q And I think you had went to pick up Anthony from
14 school?

15 A Yes, ma'am.

16 Q And you gave a statement almost right away?

17 A Yes, ma'am.

18 Q You spoke with the detective right there?

19 A Yes, ma'am.

20 Q Wasn't a delay in you talking to him --

21 A No, ma'am, talked to them right away.

22 Q -- right away while things were fresh in your mind?

23 A Yes, ma'am.

24 Q Real fresh?

25 A Yes, ma'am.

1 Q Okay. And you told Detective Holt that you saw the
2 shooting?

3 A Yes, I saw it.

4 Q Right. And that you saw the shooter?

5 A Yes, ma'am.

6 Q And you told the detective that the person had on the
7 camo jacket, right?

8 A Yes, ma'am.

9 Q Dark pants?

10 A Yes, ma'am.

11 Q Dark shoes?

12 A I didn't say about the shoes.

13 Q If I showed you your statement, would that help
14 refresh your memory?

15 A Yes, ma'am. But, I mean, a little I can remember
16 what I said, but yeah, that will be fine.

17 MS. EHRLICH: Permission to approach the
18 witness, Your Honor.

19 THE COURT: Yes, ma'am.

20 BY MS. EHRLICH:

21 Q Ms. Simmons, is that your statement?

22 A Yes, ma'am.

23 Q And if you look right here where it says, "Can you
24 describe the shooter?" is there anything about the shoes
25 there?

1 A Yes. But I didn't remember saying anything about the
2 shoes.

3 Q You don't remember the shoes?

4 A No. But it's there.

5 Q Okay. You do remember saying dreadlocks, though,
6 right?

7 A Yes, ma'am.

8 Q And you were confident?

9 A Yes, ma'am.

10 Q And you're still confident about that?

11 A Well, now that I see the video I'm not.

12 Q Well, do you remember talking to my investigator on
13 the phone, Lee Ginn?

14 A Yes.

15 Q And you told him dreadlocks?

16 A Yes.

17 Q And that's what you told the police?

18 A Right.

19 Q Right after the shooting?

20 A Yes, ma'am.

21 MS. EHRLICH: Court's indulgence.

22 THE COURT: Yes, ma'am.

23 (Pause.)

24 MS. EHRLICH: Thank you, Ms. Simmons.

25 THE COURT: Any redirect?

1 MR. DURANT: Just some follow-up.

2 REDIRECT EXAMINATION

3 BY MR. DURANT:

4 Q And you pretty much said dreadlocks all the way up to
5 the time you saw that video, didn't you?

6 A Yes, sir.

7 Q And when you saw that video did it change your mind
8 about the dreadlocks?

9 A Yeah.

10 Q Because he had a hoodie, too, right?

11 A Right.

12 MR. DURANT: Okay. Thank you. I have nothing
13 further.

14 THE COURT: Okay. You may step down. Thank you
15 very much.

16 Call your next witness, please, sir.

17 MR. DURANT: The State would call Kaylyn
18 Heyward.

19 THE CLERK: Raise your right hand.

20 KAYLYN HEYWARD, after being duly sworn,
21 testified as follows:

22 THE CLERK: Thank you, ma'am. You may take your
23 seat.

24 Ma'am, if you would, please state your first and
25 last names, spelling your last for the record, please.

1 THE WITNESS: Kaylyn Heyward, H-E-Y-W-A-R-D.

2 DIRECT EXAMINATION

3 BY MR. DURANT:

4 Q Good afternoon, Ms. Heyward. Could you tell our jury
5 where you're employed?

6 A Comcast.

7 Q And what do you do at Comcast?

8 A I am a customer service representative.

9 Q And you are married, I believe; is that correct?

10 A Yes, I am.

11 Q Could you tell our jury if you had an occasion to be
12 in the area of Daniel Jenkins Academy on Friday,
13 February 5th of 2010 shortly after 12:30 in the afternoon?

14 A My mother is a teacher there and I was -- me and my
15 husband was returning her car.

16 Q Okay. Whose car did you all have?

17 A My mother's.

18 Q And had you all borrowed it?

19 A We only have one car, so we borrowed her car to do
20 something else with it.

21 Q Okay. And you all had returned her car?

22 A We was returning her car to the school.

23 Q Okay. And so I guess you drove the car and your
24 husband followed and then you all both left in the same
25 car; is that correct?

1 A Correct.

2 Q And what kind of car is that that you all left in?

3 A At that time she had a Chevy Blazer.

4 Q And what kind of car did you or you and your husband
5 drive?

6 A A 2007 Kia Optima.

7 Q Pardon?

8 A A 2007 Kia Optima.

9 Q And what color was that Optima?

10 A Dark blue.

11 Q And who was driving?

12 A I was.

13 Q And as you were leaving the school, what direction
14 were you headed on Bonds? Were you going towards
15 Dorchester or towards Azalea?

16 A I was going towards Dorchester.

17 Q And if would you, what did you see?

18 A As I was going towards Dorchester, there was a
19 heavy-set boy. He had on a white shirt and khaki pants
20 with a hat on. He was running. He was closer to the
21 driver's side.

22 Q Uh-huh.

23 A Then there was a dark-skinned boy with dark shirt,
24 khaki pants, and a camouflage jacket and he ran in front
25 of my car. I wasn't paying any attention to him because I

1 was so busy paying attention to the other boy. My husband
2 grabbed my arm and told me to stop. I stopped. I almost
3 hit the boy and he jumped the fence with a gun in his
4 hand.

5 Q Okay. And when you say the boy jumped the fence with
6 a gun --

7 A The one with the camouflage jacket, he jumped the
8 fence with the gun in his hand.

9 Q And what brought your attention to him initially?
10 You said you were looking at the --

11 A I was about to hit --

12 Q -- the heavy-set guy with the white shirt and the hat
13 on --

14 A He looked scared, so my focus was on him and he was
15 running back to the school. Then my husband --

16 Q And your husband what?

17 THE COURT: Hold on a second.

18 MR. DURANT: Okay.

19 THE COURT: Everybody slow down. You ask the
20 questions and you answer them. Don't talk on top of each
21 other. We got to hear both of you and she's got to take
22 everything down.

23 THE WITNESS: Okay.

24 THE COURT: Go ahead.

25 BY MR. DURANT:

1 Q And you said you saw the heavy-set guy running and he
2 looked what? I couldn't --

3 A He looked scared.

4 Q Okay. And so what drew your attention to the other
5 direction?

6 A My husband grabbed my arm and told me to watch out.
7 I slammed on brakes.

8 Q What did you do when he told you to watch out?

9 A I slammed on brakes.

10 Q Where did you look?

11 A I looked straight then.

12 Q And what did you see when you looked straight ahead?

13 A The boy in front of my car, and he was running
14 because I almost hit him, the one who had on the white
15 shirt, the camouflage jacket, and the khaki pants.

16 Q Okay. And what did he have in his hand?

17 A He had a gun in his hand.

18 Q And where did he run?

19 As you were leaving, would he be running from
20 your left to your right or your right to your left?

21 A He was -- he was coming towards my car. He then --
22 we were in front of the school. He then shot across my
23 car and jumped the fence.

24 Q Okay. And did you ever see the fellow that got shot
25 that day?

1 A No.

2 Q You never noticed him?

3 A No.

4 Q When did you find out somebody had been shot that
5 day?

6 A When my mother got home.

7 Q Pardon?

8 A When my mother got home.

9 Q Okay. Ms. Edwards -- I mean Heyward -- I want to
10 show you -- if you would come down here for a second, I
11 want to show a little bit of a video that you've seen
12 previously. If you don't mind, could you just come down
13 to the podium here?

14 And this will be, once again, State's
15 Exhibit 28.

16 (Video played but not transcribed.)

17 BY MR. DURANT:

18 Q This fellow here, do you recognize him?

19 A That's the one I saw running towards the car, going
20 back towards the school.

21 Q The one that you said appeared to be scared?

22 A Uh-huh.

23 Q I'm going to jump ahead a little bit here.

24 Okay. This fellow coming out at the bottom of
25 the screen, do you recognize him?

1 A That's the one that jumped the fence with the gun.

2 Q He had the gun in his hand?

3 A Uh-huh.

4 Q Okay. I'm going to jump forward again here.

5 And you've see this in my office; is that
6 correct?

7 Do you recall if this is your car or this is
8 your car?

9 A That's my car.

10 Q The one in the back?

11 A Yeah. Uh-huh.

12 Q And I know you have to look very carefully here, but
13 do you see that person jumping that fence right there?

14 A Uh-huh.

15 Q Is that the person you were talking about?

16 A Uh-huh.

17 Q And that was the fellow you'd seen coming out of the
18 school with the camouflage jacket?

19 A Yes.

20 MR. DURANT: Thank you very much. I have no
21 further questions. Could you please answer any questions
22 defense might have for you.

23 CROSS-EXAMINATION

24 BY MS. PROCTOR:

25 Q Ms. Heyward, you said that you saw somebody that day

1 jump the fence with a gun in their hand?

2 A Yes.

3 Q And when you got home that night, you heard from your
4 mother that there had been a shooting?

5 A No. I heard on the news that there had been a
6 shooting down the street.

7 Q And I thought you said you heard something from your
8 mother?

9 A My mother didn't get home until after I heard that on
10 the news.

11 Q Okay. But then your mother also told you that?

12 A Uh-huh.

13 Q And did you ever go to the police and speak with them
14 about what you had seen?

15 A No.

16 Q And so you never called the police and told them that
17 you saw somebody with a gun the day of the shooting?

18 A No.

19 Q And was the first time that you told anybody about
20 this, was that when you went to the Solicitor's office
21 this month and spoke with them?

22 A No. I told my mother. Because I was constantly
23 calling my mother right after I saw him with the gun
24 because it's an alternative school. So I'm thinking that
25 he just was showing the gun off and a teacher saw him, he

1 got caught and he ran. I had no clue of what happened.

2 Q Yes. But you said you heard that night that a
3 shooting had happened?

4 A Uh-huh.

5 Q And my question to you is, you have never spoken to
6 the police about this?

7 A No, I did not.

8 MS. PROCTOR: Thank you.

9 MR. DURANT: I have nothing further, Your Honor.
10 I'd ask that Ms. Heyward be excused.

11 THE COURT: Okay. Any objection?

12 MS. EHRLICH: No, Your Honor.

13 THE COURT: Ms. Heyward, you may be excused.

14 Thank you very much.

15 MR. DURANT: Can I have just a moment to consult
16 with my investigator, Your Honor?

17 THE COURT: Yes, sir.

18 (Pause.)

19 MR. DURANT: Your Honor, the State would call
20 Shalaine Jenkins.

21 THE CLERK: Raise your right hand.

22 SHALAINE JENKINS, after being duly sworn,
23 testified as follows:

24 THE CLERK: If you'll please take your seat.

25 Ma'am, I need you to state your first and last

1 names, spelling your last for the record, please.

2 Ma'am, state your name for the record.

3 THE WITNESS: S-H-A-L-A-I-N-E J-E-N-K-I-N-S.

4 DIRECT EXAMINATION

5 BY MR. DURANT:

6 Q Good afternoon, Ms. Jenkins. Could you please tell
7 our jury how old you are?

8 A Sixteen.

9 Q And are you still in school?

10 A Yeah.

11 Q Where do you go to school?

12 A North Charleston.

13 Q And what grade are you in?

14 A Ninth.

15 Q And could you tell our jury where you went school in
16 February of 2010?

17 A Daniel Jenkins Academy.

18 Q And do you know this fellow seated at the table over
19 here?

20 A What?

21 Q Can you stand up?

22 Do you recognize this fellow? Yes or no?

23 A Yes.

24 Q And what's his name?

25 You can sit back down.

1 And what's his name?

2 THE COURT: Can you pull up to the microphone,
3 please, ma'am? And answer the questions. Lean forward
4 into the microphone so everybody can hear you, please,
5 ma'am.

6 BY MR. DURANT:

7 Q What's his name?

8 A Derell Green.

9 Q And does he also have a nickname you know him by?

10 A No.

11 Q Have you ever heard the name "Noogie" before?

12 A Uh-huh.

13 THE COURT: Ma'am, please answer the questions
14 yes or no.

15 THE WITNESS: Yes.

16 BY MR. DURANT:

17 Q Okay. And when you hear the name "Noogie," who are
18 you talking about?

19 A I don't know.

20 Q Huh?

21 A I don't know.

22 Q Okay. How do you know Derell Green?

23 A School.

24 Q And how long have you known Derell Green?

25 A A year.

1 Q You've known him for longer than a year, haven't you?

2 A No.

3 Q Went to elementary school with him, didn't you?

4 A No.

5 Q Okay. Do you remember going to the police department
6 on February the 5th of 2010 at about 2:30 p.m.?

7 A No.

8 Q Do you remember giving a statement to a Detective
9 Faison at the North Charleston Police Department at
10 2:30 p.m. on that day?

11 A No.

12 Q I hand you what's been previously marked as State's
13 Exhibit No. 43 and ask you what that is.

14 What is it, Ms. Jenkins?

15 A A statement.

16 Q Whose statement?

17 A Mine.

18 Q That's your signature on that statement, isn't it?

19 A Yep.

20 Q That is a yes?

21 A Uh-huh.

22 Q That page and that page; is that correct?

23 A Yes.

24 Q And what is the date that that statement was given?

25 A February 5th of '10.

1 Q February the 5th of 2010. And what time?

2 A 2:30.

3 Q And that is the statement you gave to Detective
4 Faison; is that correct?

5 That is the statement you gave to Detective
6 Faison on that date; is that correct?

7 A Yes.

8 Q Okay. Do you need to take time to read that
9 statement?

10 A No.

11 THE COURT: You may cross-examine the witness.

12 MR. DURANT: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. DURANT:

15 Q Do you recall --

16 MS. PROCTOR: Your Honor, may we approach?

17 THE COURT: Yes, ma'am.

18 (A bench conference was held with the judge and
19 attorneys in the presence of the jury but out of the
20 hearing of the jury.)

21 MR. DURANT: May I stand beside the witness,
22 Your Honor?

23 THE COURT: Yes.

24 MR. DURANT: I think that would get me out of
25 their way and out of their way.

1 THE COURT: Okay.

2 BY MR. DURANT:

3 Q Ms. Jenkins, do you recall --

4 THE COURT: Solicitor, if I may interject, just
5 ask her, if you would, the question and read the answer
6 and ask her. Rather than waiting for her to read the
7 answer, ask her is that what her answer was.

8 MS. PROCTOR: Your Honor, we would ask that he
9 not stand right next to her. I think he can stand --

10 THE COURT: Do you have another copy of the
11 statement?

12 MR. DURANT: This is the original statement,
13 Your Honor.

14 THE COURT: Does anybody have a copy of the
15 statement?

16 MS. PROCTOR: I do, Your Honor.

17 THE COURT: All right. Give her a copy of the
18 statement and you take the original and ask her -- show
19 her where you are on the pages and ask her is this the
20 question that was answered and is this the answer that was
21 given.

22 MR. DURANT: Okay.

23 THE COURT: Okay?

24 MR. DURANT: That's fine.

25 THE COURT: Ms. Jenkins, do you understand what

1 we're going to do?

2 (Witness nodding.)

3 THE COURT: Ma'am?

4 THE WITNESS: Yes.

5 THE COURT: He's going to ask you some questions
6 about that statement. So please look at the statement and
7 read along with him. Do you understand? Do you
8 understand, yes or no?

9 THE WITNESS: Yes.

10 THE COURT: Can you do that?

11 THE WITNESS: Yes.

12 THE COURT: Okay. Thank you so very much.

13 Please proceed.

14 BY MR. DURANT:

15 Q You have the statement in front of you.

16 Did you tell Detective Faison that you and
17 Noogie and Noogie's cousin were walking to Garrett High
18 School that morning?

19 A No.

20 Q Is that what that statement says?

21 A Yes.

22 Q So you deny you said that to Detective Faison?

23 A Yes.

24 Q Did you tell Detective Faison that "We was -- we were
25 walking Noogie's cousin to school?" Did you tell him

1 that?

2 A No.

3 Q So you deny that?

4 A Yes.

5 Q Did you tell him that you only know Noogie's cousin
6 by the name of Mook?

7 A No.

8 Q You deny that?

9 A Yes.

10 Q Did you tell him that "Noogie's name is Derell
11 Green?"

12 A No.

13 Q So you deny that?

14 A Yes.

15 Q Did you tell him that Noogie and you go to Murray
16 Hill School together?

17 A Yes.

18 Q Did you tell him that another guy named Dagone was
19 walking with you?

20 A No.

21 Q You deny that?

22 A Yes.

23 Q Did you tell them that as you were walking down the
24 street, "Noogie lifted his shirt up and showed us a gun?"

25 A No.

- 1 Q "That he had in his pants?"
- 2 A No.
- 3 Q You deny that you told the detective that?
- 4 A Yes.
- 5 Q Did you tell the detective that "The part I saw was a
6 black handle?"
- 7 A No.
- 8 Q You deny that?
- 9 A Yes.
- 10 Q Do you remember telling them or did you tell them
11 that "Before he lifted his shirt up he said to us, 'Boy,
12 y'all want to see my gun?'"
- 13 A No.
- 14 Q You deny that?
- 15 A Yes.
- 16 Q Did you say to -- tell the detective, "We asked him
17 where you going with that, you want -- won't be able to
18 get in the school with that," do you remember telling him
19 that?
- 20 A No.
- 21 Q You deny that you told that to the detective?
- 22 A Yes.
- 23 Q "He told us that he was not "-- did you tell the
24 detective that Derell told you he was not going to school
25 that day?

1 A No.

2 Q You deny that?

3 A Yes.

4 Q Did you tell the detective that when you got close to
5 Garrett, Noogie and his cousin turned off and the went
6 towards Garrett?

7 A No.

8 Q You deny that?

9 A Yes.

10 Q Did you tell the detective that you kept walking and
11 that was the last time you saw him until you got to
12 school?

13 A No.

14 Q You deny that?

15 A Yes.

16 Q Do you remember telling him that Daqone told you that
17 Noogie had had an argument with a boy at our school last
18 Friday?

19 A No.

20 Q You deny that?

21 A Yes.

22 Q Do you remember telling the detective that Daqone
23 never told what -- you what the argument was about or who
24 the boy was?

25 A No.

1 Q Okay. That is your signature on the bottom of this
2 statement; is that correct?

3 A Yes.

4 Q And on the bottom there?

5 A Yes.

6 Q So how do you explain that?

7 A I didn't say none of that.

8 Q You didn't say none of that? So you're saying the
9 police made it all up?

10 A I guess so.

11 Q And then, even though they made it all up about this
12 statement, you signed your name to it?

13 A Yes.

14 Q And you can read and write? You can read and write,
15 can't you?

16 A Yes.

17 Q And you signed your name to this statement after it
18 was done, correct?

19 A Yes.

20 MR. DURANT: Your Honor, I have a matter of law.

21 THE COURT: Pardon?

22 MR. DURANT: Could we approach the bench
23 shortly?

24 THE COURT: Yes. Do you need to put anything on
25 the record? We can send the jury out.

1 Please proceed.

2 MR. DURANT: Your Honor, at this time the State
3 would offer State's Exhibit 43 into evidence.

4 THE COURT: State's Exhibit No. 43 is admitted
5 into evidence with objection that was brought out in
6 camera.

7 MR. DURANT: And redacted by agreement of the
8 parties, Your Honor.

9 THE COURT: Yes, sir.

10 (WHEREUPON, STATE'S Exhibit No. 43 was admitted
11 into evidence.)

12 THE COURT: Ladies and gentlemen, what
13 "redaction" means, when there's something in the statement
14 that the Court feels like is not appropriate under the
15 Rules of Evidence, I have the parties to black it out and
16 mark it out so it's not available to be seen, and that's
17 what we did. One or two lines were redacted at the
18 Court's insistence on this statement.

19 Please proceed.

20 MR. DURANT: Thank you, Your Honor.

21 I have no need for this witness anymore.

22 THE COURT: Cross-examination.

23 MS. EHRLICH: Your Honor, I don't have any
24 questions of Ms. Jenkins.

25 THE COURT: Okay. Ms. Jenkins, you may step

1 down. Thank you very much.

2 Call your next witness, please.

3 MR. DURANT: The State would call Al Hallman.

4 THE CLERK: Raise your right hand.

5 AL HALLMAN, after being duly sworn, testified as
6 follows:

7 THE CLERK: Thank you, sir.

8 Sir, if you'd please state your first and last
9 names, spelling your last for the record, please.

10 THE WITNESS: Al Hallman, H-A-L-L-M-A-N.

11 DIRECT EXAMINATION

12 BY MR. DURANT:

13 Q Could you tell the jury where you're employed?

14 A City of North Charleston Police Department

15 Q How long?

16 A Almost 24 years now.

17 Q And you're obviously a sergeant in patrol; is that
18 correct?

19 A Yes, sir. I'm a street supervisor.

20 Q Okay. And prior to that, what did you do at the City
21 of North Charleston Police Department?

22 A I was the forensic supervisor for approximately 17
23 years.

24 Q And were you doing that on February the 5th of 2010?

25 A Yes, I was.

1 Q And in that capacity, did you have an occasion to
2 respond to the shooting on Bonds Avenue on the afternoon
3 of February 5th?

4 A Yes, sir, I did.

5 Q Did you have any involvement at scene really?

6 A Once I arrived on scene, several of the other
7 forensic investigators were already on scene. I just
8 assisted them with the processing of the scene.

9 Q Okay. And where did you go and what did you do at
10 scene, if you recall?

11 A Once the items of evidence or potential evidence were
12 located at the scene, I assisted in collecting some blood
13 swabs from several areas on the roadway.

14 It started to rain and then myself and Crime
15 Scene Officer Thomas collected some papers, some school
16 papers kind of rapidly because of the rain and got them
17 out of the water, or out of the weather, and collected
18 those as evidence.

19 Q And where did you go from the scene?

20 A Went down to MUSC.

21 Q For what purpose?

22 A To collect GSR, which is gunshot residue.

23 Q Okay. And to collect GSR from whom?

24 A The victim.

25 Q That would be Larry Taron Maybank?

1 A Yes, sir.

2 Q And how about, did you collect his fingerprints, too?

3 A Yes, sir. Collected ink fingerprints.

4 Q For what purpose?

5 A Identification.

6 Q Just to establish identification?

7 A Yes, sir.

8 Q And what is a GSR kit?

9 A A GSR kit is a kit that's prepared and packaged by
10 the State Law Enforcement Division that is basically
11 disseminated to all the local police agencies in South
12 Carolina.

13 The kit itself is a two-phase kit used to
14 collect possible gunshot residue or metals that is
15 consistent with gun shot residue.

16 The first step is a sticky-tab step which
17 collects the metals off the surface of the palms and backs
18 of the hands and fingers.

19 The second test is a nitric acid test which
20 consists of five percent acid and 95 percent distilled
21 water. That basically lifts anything that might have sunk
22 into the pores of the skin, lifts it out and collects it
23 so that the entire kit is then packaged, sent to SLED, and
24 examined with an electron microscope.

25 Q Okay. And I hand you what's previously been marked

1 as State's Exhibit No. 30 and ask if you recognize that
2 item.

3 A Yes. This is the gunshot residue kit collected by
4 myself on Larry Taron Maybank.

5 Q And how do you know that?

6 A It's got my name, has the officer's name on the kit,
7 and my badge number at that time.

8 Q Okay. It's your writing, I presume?

9 A I'm sorry?

10 Q And you prepared that?

11 A Yes. I prepared this kit and put my initials on the
12 evidence seal tape.

13 Q Okay. And you prepared it in accordance with what
14 you just told the jury, the sticky tabs and the swabs?

15 A Yes, sir.

16 Q Is that correct?

17 A Yes. All evidence is placed in here along with a
18 paper documenting the person's name that the kit was
19 collected off of and the basic time frame and elements and
20 location of the incident itself.

21 Q Okay. And at that point everything inside was
22 labeled and sealed?

23 A Yes, sir.

24 Q And then you labeled and sealed that package; is that
25 correct?

1 A That is correct.

2 Q And to whom did you give it?

3 A To Crime Scene Officer Thomas.

4 Q Okay. That same day?

5 A Yes, sir.

6 MR. DURANT: Okay. Thank you. I have nothing
7 further.

8 Could you please answer any questions that
9 defense counsel may have.

10 THE WITNESS: Definitely.

11 THE COURT: Cross-examination.

12 MS. PROCTOR: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MS. PROCTOR:

15 Q You say that you were on the scene that day, went to
16 the crime scene?

17 A Yes, ma'am.

18 Q And there were other officers there, correct?

19 A That's correct.

20 Q And you then went back to the station, correct, or
21 did you go to MUSC?

22 A I went to MUSC straight from the scene.

23 Q And did you send any items to SLED yourself?

24 A No. I was not the case agent in the case. Officer
25 Thomas was. So basically what I collected at the scene

1 was immediately turned over to him.

2 Q And when you went back to the station, do you recall
3 doing a GSR kit on a black-hooded sweatshirt?

4 A It wasn't a GSR kit. It was what we call a
5 presumptive gunshot residue test kit. It's called an
6 ISID, I-S-I-D, which stands for Instant Shooter
7 Identification Kit. I conducted that test on the sleeves
8 of that item that you're talking about, yes, ma'am.

9 Q Okay. And what was the testing on that?

10 A It was negative. There was nothing -- nothing
11 indicated any presence of metals or barium or lead or
12 anything like that.

13 Q Did you do a report on that?

14 A No, I did not.

15 MS. PROCTOR: Nothing further.

16 THE COURT: Any redirect?

17 MR. DURANT: I would ask that Officer Hallman be
18 excused if there's no objection.

19 THE COURT: Any objection?

20 MS. PROCTOR: No, Your Honor.

21 THE COURT: Officer Hallman, thank you very
22 much. You may be excused. Thank you.

23 THE WITNESS: Thank you, Your Honor.

24 MR. DURANT: The State calls J.T. Thomas.

25 THE CLERK: Raise your right hand.

1 J.T. THOMAS, after being duly sworn, testified
2 as follows:

3 THE CLERK: Sir, if you would, take your seat.
4 Sir, if you could please state your first and
5 last names, spelling your last for the record.

6 THE WITNESS: My name is J.T. Thomas. The last
7 name is T-H-O-M-A-S.

8 DIRECT EXAMINATION

9 BY MR. DURANT:

10 Q You are recently retired, I believe?

11 A Yes, sir, as of July 22nd.

12 Q And from where?

13 A North Charleston Police Department.

14 Q And what did you do at North Charleston Police
15 Department prior to retirement?

16 A I was a crime scene technician.

17 Q And were you working in that capacity on
18 February 5th of 2010?

19 A Yes, sir, I was.

20 Q And as a crime scene investigator, did you have an
21 occasion to respond to 2630 Bonds Avenue on that date?

22 A Yes, sir, I did.

23 Q In reference to what?

24 A There was a shooting call that went out. I was
25 clearing from another call and I heard the call go out and

1 I responded.

2 Q And do you recall what business was located at that
3 address?

4 A Yes, sir. AllSouth Electrical.

5 Q And do you recall what time it was when you received
6 the call?

7 A The call went out at approximately 12:45.

8 Q And how long did it take you to get there?

9 A Approximately 15 minutes.

10 Q And what did you do upon arriving at the scene? What
11 did you observe?

12 A When I first got there, the emergency personnel, fire
13 department, EMS were on the scene, they were working on
14 the victim. I used my D-40 camera. I snapped off three
15 quick shots of the victim as he was being loaded on the
16 gurney to be transported for medical treatment.

17 Q And where exactly was the victim located?

18 A Mr. -- he was located in the driveway to AllSouth
19 Electrical.

20 Q And I believe the victim was subsequently identified
21 as Larry Taron Maybank; is that correct?

22 A That's correct.

23 Q Do you recall what the weather was like that day?

24 A It was rainy, sir.

25 Q And what other crime scene investigators responded to

1 the scene besides you?

2 A Sergeant Al Hallman and Master Patrol Officer Andy
3 Coker.

4 Q What did you do after the victim was transported by
5 the emergency medical services?

6 A What I initially did was started taking photographs.
7 I was instructed by Sergeant Hallman to take as many
8 photographs as possible of the scene and also to try and
9 take panoramic shots of the scene.

10 Q Were any efforts made to locate shell casings or
11 anything of that nature?

12 A Yes, sir. We attempted to locate shell casings or
13 spent projectiles. We did that visually. We paid
14 particular attention to the houses, the mailboxes,
15 vehicles and such in the area. And Officer Coker went
16 back to North Charleston and got a metal detector and came
17 back and checked the area.

18 Q Okay. Were you able to locate any shell casings in
19 the area of the shooting?

20 A No, sir, we were not.

21 Q And what does that generally suggest to you as a
22 crime scene technician?

23 A Generally that suggests a revolver was used.

24 Q Okay. And why is that?

25 A A revolver doesn't eject spent shell casings.

1 Q Okay. So it would have to be that or somebody would
2 have to police-up the shell casings as they say; is that
3 right?

4 A That's correct.

5 Q And were you all able to kind of locate where you
6 thought the shooting had taken place?

7 A Yes, sir. We had a pretty good idea of the general
8 area.

9 Q And why is that?

10 A Mainly because of the amount of blood that was found
11 in that area. There was a relatively small amount of
12 blood.

13 Q Okay. And was there any kind of blood trail?

14 A Yes, sir, there was.

15 Q And leading from where the victim was found; is that
16 correct?

17 A That's correct.

18 Q And as part of the crime scene investigation, was
19 crime scene video taken at the scene?

20 A Yes, sir, it was.

21 Q And that was, of course, done after the victim had
22 been removed; is that correct?

23 A Yes, sir.

24 Q I hand you what's been marked as State Exhibit No. 33
25 and ask if you recognize that document. Or not document,

1 but disc.

2 A Yes, sir. This is the video that Officer Coker took
3 at the scene.

4 Q And how do you know that, sir?

5 A I viewed it and initialed off on it on July 19th of
6 this year.

7 MR. DURANT: Okay. Your Honor, we would offer
8 State's 33 into evidence I believe without objection.

9 THE COURT: Any objection?

10 MS. PROCTOR: No, Your Honor.

11 THE COURT: State's 33 admitted without
12 objection.

13 (WHEREUPON, STATE'S Exhibit No. 33 was admitted
14 into evidence.)

15 BY MR. DURANT:

16 Q Detective, you're a civilian now, right?

17 A Yes, sir.

18 Q Would you come down to the podium here? I want to
19 play this and I may some questions I want to ask you while
20 it's going on.

21 (Video played but not transcribed.)

22 BY MR. DURANT:

23 Q And what does this depict?

24 A That's the driveway to AllSouth.

25 Q And that's Bonds Avenue?

1 A No, sir. Yes, sir, I'm sorry.

2 Q And which direction? Is that towards Azalea?

3 A Where we were just looking, it's towards Azalea,
4 that's correct.

5 Q And what is this area you all have designated as
6 number three?

7 A That's where the victim was found.

8 Q This would be heading back towards Daniel Jenkins
9 Academy; is that correct?

10 A That's correct.

11 Q What is that?

12 A That is a Nokia cell phone.

13 Q Most of those placards that you have out there, what
14 are they marking?

15 A Most of those were indicating the blood trail.

16 Q That would be back towards the laundromat; is that
17 correct? That last view is back towards the laundromat
18 and Dorchester Road; is that correct?

19 A Yes, sir, that's correct.

20 (Video concluded.)

21 BY MR. DURANT:

22 Q You may resume your seat, please, sir.

23 And you also indicated that you had taken
24 photographs; is that correct?

25 A That's correct, sir. I think I took 102 color

1 digital photos.

2 Q Okay. I'm going to hand you some -- let me first
3 ask --

4 MR. DURANT: Your Honor, at this time I offer
5 into evidence, I believe without objection, I think No. 1
6 is already into evidence, but I would offer State's
7 Exhibits 3, 4, 5, and 6.

8 Is State's Exhibit 7 in evidence?

9 MS. PROCTOR: Yes.

10 MR. DURANT: Okay. Eight, nine, 10, 11, 12, 13
11 and 14, I believe without objection.

12 THE COURT: Is that correct?

13 MS. PROCTOR: Yes, Your Honor.

14 THE COURT: All right. Three, four, five, six,
15 eight, nine, 10, 11, 12, 13, and 14 admitted without
16 objection.

17 (WHEREUPON, STATE'S Exhibits Nos. 3, 4, 5, 6, 8,
18 9, 10, 11, 12, 13, 14 were admitted into evidence.)

19 BY MR. DURANT:

20 Q And, Mr. Thomas, I'm just going to run through these
21 quickly if we can. I believe -- and I think I've got you
22 to go back too quick. It's probably better if you came
23 down here again. Sorry.

24 A Do I need to bring these?

25 Q Thank you.

1 This is State's Exhibit No. 1. What does this
2 depict?

3 A That's where -- well, actually that is the victim
4 being placed on the -- he's on a backboard that's placed
5 on the gurney.

6 Q And what is that business in the background?

7 A That is AllSouth Electrical.

8 Q That's just obviously another view, kind of after the
9 victim has been removed, I would assume?

10 A That's correct.

11 Q That would be State's Exhibit No. 3.

12 State's Exhibit No. 4, what does that depict?

13 A I believe that's -- without seeing it up close,
14 that's more of the blood trail.

15 Q That's kind of right at the corner of the --

16 A Where the sidewalk comes --

17 Q -- sidewalk and the driveway where the victim was
18 found?

19 A That's correct, sir.

20 Q And I believe this just a close-up of that; is that
21 correct?

22 A Yes, sir.

23 Q State's Exhibit 6. And I know it's kind of hard to
24 see. Let me see if I can get this into a larger view.
25 Could you see that any better?

1 A I believe that's looking toward placard number seven.

2 I'm sorry. That's where the Nokia phone is, number four.

3 Q That's the Nokia phone, State's Exhibit 7.

4 State's Exhibit 8?

5 A That's showing the blood trail.

6 Q Okay. And five and six are for sure blood.

7 Do you all know what that substance was over
8 there across the street, No. 7?

9 A That looked like tissue.

10 Q Okay. And so you have five on the side, six in the
11 middle, seven across the street; is that correct?

12 A Yes, sir.

13 Q State's Exhibit 9 is five, State's Exhibit 10 is No.
14 6; is that correct?

15 A Yes, sir.

16 Q State's Exhibit 11, and that's where, in the street?

17 A It's on the side of the street opposite from AllSouth
18 Electrical.

19 Q Where most of the blood was? The opposite side of
20 the street from where most of the blood was?

21 A Yes, sir. That's correct.

22 Q This is State's Exhibit 12. And what does that
23 depict? Do you know what this building is there?

24 A No, sir, I'm not absolutely certain.

25 Q But this is back toward Dorchester Road; is that

1 correct?

2 A Yes, sir.

3 Q And these would be the placards that you marked
4 previously; is that correct?

5 A Yes, sir. That is No. 7 on the right.

6 Q State's 13. And this is from the driveway towards
7 which direction?

8 A That's -- it looks like it's standing pretty much on
9 the end of the sidewalk where it comes into the driveway
10 and looking toward Dorchester Road.

11 Q Okay. State's 14 is basically what?

12 A That's just looking down the sidewalk toward the
13 school.

14 Q Okay. And the school would be down there about a
15 good long block on the right; is that correct?

16 A That's correct, sir.

17 Q Okay. Thank you. You may take your seat again.

18 Now, after leaving the scene, did you go back to
19 North Charleston Police Department?

20 A Not immediately. I did subsequently.

21 Q Okay. I think you stopped to do a GSR kit on
22 somebody; is that correct?

23 A That's correct, sir.

24 Q Okay. Names Jamal Smalls?

25 A That's correct, sir.

1 Q Was it determined that Jamal Smalls had anything to
2 do with this case?

3 A No, sir.

4 Q And after that, where did you go?

5 A I went back to the North Charleston Police
6 Department.

7 Q And what did you do when you got back to the North
8 Charleston Police Department?

9 A I was met by detectives who advised they had two
10 suspects that they wanted GSR performed on.

11 Q And who were those suspects?

12 A Derell Green and Daqone Lance.

13 Q Okay. And both of them were at North Charleston
14 Police Department; is that correct?

15 A They were in an interview room.

16 Q Okay. Not together, correct?

17 A Not together.

18 Q And I hand you what's previously been marked as
19 State's 31 and 32 for identification and ask if you
20 recognize those items.

21 A Yes, sir, I do. These are the gunshot residue kits
22 that I obtained from Derell Jamal Green and Daqone Jerome
23 Lance.

24 Q Okay. And that was taken at North Charleston Police
25 Department headquarters; is that correct?

1 A Yes, sir, it was.

2 Q And how do you know?

3 A I -- this is, first of all, my handwriting on the
4 front of the packets and also the evidence labels have my
5 initials on them.

6 Q Okay. And Officer Hallman explained how the GSR kits
7 kind of work. Did you do them in the same way, with the
8 sticky tabs and swabs?

9 A That's correct, sir.

10 Q Okay. And once you did that, what did you do with
11 the sticky tabs and the swabs?

12 A They are pre-labeled, the sticky tabs and the swabs,
13 indicating where the swabs or where they were obtained.
14 They were placed in the evidence envelope, sealed and
15 subsequently placed into evidence.

16 Q Okay. And so everything's sealed and then placed
17 inside that white envelope and sealed and labeled and then
18 placed into evidence; is that correct?

19 A That's correct, sir.

20 Q Okay. And I believe -- also that same day did you
21 have the occasion to come into possession of State's
22 Exhibit No. 30, a GSR kit from the victim in this case,
23 Larry Taron Maybank?

24 A That's correct.

25 Q Okay. And from whom did you acquire that GSR kit?

1 A Sergeant Hallman.

2 Q And was it sealed, properly sealed and labeled when
3 it came into your possession?

4 A Yes, sir, it was.

5 Q And did you alter or tamper with it in any way while
6 it was in your possession?

7 A No, sir, I did not.

8 Q And what did you do with all three of those GSR kids?

9 A They were subsequently placed into the evidence room
10 at the North Charleston Police Department.

11 Q And where were they taken subsequent to that?

12 A They were subsequently taken to SLED for analysis.

13 Q SLED's in Columbia; is that correct?

14 A That's correct, sir.

15 Q The state laboratory?

16 A Yes, sir.

17 Q By which department? Which department at SLED does
18 GSR, if you know?

19 A That would be the firearms.

20 Q Trace evidence?

21 A Trace evidence.

22 Q Okay. Moving ahead to February 6th, the next day,
23 did you have an opportunity to attend the autopsy of the
24 victim?

25 A Yes, sir, I did.

1 Q Larry Taron Maybank?

2 A That's correct, sir.

3 Q Whereabouts?

4 A In the autopsy room at Medical University of South
5 Carolina.

6 Q And who performed the autopsy, if you recall?

7 A Dr. Erin Presnell.

8 Q Okay. And was any evidence collected by you at the
9 autopsy?

10 A There were a few things collected. I did collect the
11 projectile that was removed from the victim's body.

12 Q Okay. Any other things like victim's clothing and
13 personal affects, you also retrieved all those items; is
14 that correct?

15 A Yes, sir.

16 Q Okay. I hand you what's previously been marked as
17 State's Exhibit No. 34 and ask if you recognize that item.

18 A Yes, sir. This is the projectile. And it is labeled
19 by MUSC, but this is the projectile.

20 Q And that was turned over to you by the medical
21 examiner, Dr. Presnell?

22 A That's correct, sir.

23 Q And what did you do with the projectile after
24 recovering it from the autopsy?

25 A It was placed into evidence.

1 Q And do you know where it went for analysis?

2 A It went to SLED as well.

3 Q Okay. To be examined by the firearms department; is
4 that correct?

5 A That's correct.

6 MR. DURANT: Please answer any questions
7 Ms. Proctor may have for you.

8 CROSS-EXAMINATION

9 BY MS. PROCTOR:

10 Q Mr. Thomas, were you the first crime scene officer to
11 arrive on the scene?

12 A I believe I was. I know that myself and Sergeant
13 Hallman arrived at pretty close to the same time.

14 Q Now are you the case agent in this case?

15 A Yes, ma'am, I am.

16 Q Okay. So all the evidence that's collected, does it
17 all come to you?

18 A Not necessarily.

19 Q Okay. What are your duties as the case agent?

20 A I collect the evidence at the scene and properly
21 label it, bag it. In some cases I had to dry bloody
22 clothing.

23 Q So but -- but if somebody collects evidence at the
24 scene, do they let you know about it for a report?

25 A Yes, they would. As a matter of fact, Sergeant

1 Hallman collected some blood swabs at the scene.

2 Q Correct. And he let you know about that, though,
3 correct?

4 A Yes, ma'am.

5 Q Now, you said that when you got to the scene, had
6 already -- I call them placards, those little things with
7 the numbers on them. Did you set those up?

8 A I did not. MPO Coker actually set those up. We
9 had -- because of the weather conditions, we were each
10 doing different things.

11 Q And did you take a picture of each one of those?

12 A I did.

13 Q And do you know how many placards were set up in this
14 case?

15 A I believe seven was the total.

16 Q Do you have written in your report -- when you went
17 and you take a picture of something, say a placard --
18 unfortunately I don't have this on computer. If could
19 turn around.

20 You said there were seven. We have a number
21 eight here.

22 A Okay.

23 Q Just do you know what number eight was? Do you have
24 that written anywhere in your report?

25 A I don't have -- I don't.

1 Q So is there anywhere or did any officer ever tell you
2 what was beside each one of these placards?

3 A Without seeing a close-up of that, I'm looking at a
4 plastic drink bottle it looks like, and possibly they
5 thought at the time that may have been --

6 Q Do you know anybody since you were head of -- the
7 case agent of this, did anybody ever tell you what
8 coincided with each one of these placards?

9 A Most of it was self-evident. I'm not certain of what
10 the significance of number eight is unless --

11 Q And you don't know --

12 A -- and it could possibly be -- like I said, I'm not
13 seeing a closeup here -- it could possibly that that's
14 more of the blood trail.

15 Q Okay. And this, there's a white -- I think that's
16 right here. Is that a placard, do you know?

17 A No, ma'am, it's not.

18 Q Okay. And you don't know how many of these there
19 were? How many placards were set up?

20 A Apparently eight. I was aware of seven.

21 Q And is it your decision of what goes to SLED or is it
22 somebody else's?

23 A That's a decision that's made between crime scene and
24 the detectives.

25 Q And in this case you did fill out a request for items

1 to be tested at SLED, correct?

2 A That's correct.

3 Q And in this you sent, as you just testified, the four
4 GSR kits, correct?

5 A That's correct.

6 Q And you sent the projectile?

7 A That's correct.

8 Q And you sent a tube of the victim's blood?

9 A That's correct.

10 Q And pulled hair from the victim?

11 A Head hair.

12 Q Pulled head hair from the victim.

13 Fingernail clippings and some blood swabs and
14 blood off the Nokia phone, correct?

15 A That's correct.

16 Q Now you said that you -- and was this your decision
17 to send these to SLED, being that you were crime scene?

18 A I was the one that completed the SLED request, but
19 like I said, that's something that's coordinated normally
20 with the lead detective.

21 Q Okay. So that is the only -- those are the only
22 items that you were told were sent to SLED, correct?

23 A That is correct.

24 Q Now you mentioned that you collected the victim's
25 clothing from the autopsy. To your knowledge, were those

1 ever sent to SLED to be tested?

2 A Not to my knowledge.

3 Q Okay. In your experience as a crime scene officer,
4 have you ever sent a piece of a victim's clothing to be
5 sent to SLED for trace evidence for possible gun powder
6 residue?

7 A Probably.

8 Q And did you, while being the case agent, did anybody
9 have you send to SLED a camouflage jacket to be tested for
10 gun powder residue?

11 A I did not send a camouflage jacket, no.

12 Q Do you remember ever seeing a camouflage jacket
13 brought to you to be stored in the evidence locker?

14 A I do not.

15 MS. PROCTOR: Court's indulgence.

16 (Pause.)

17 BY MS. PROCTOR:

18 Q You stated that it was raining that day. When you
19 were taking pictures, did you notice any shoe prints or
20 muddy prints during that crime scene? Do you recall
21 taking any pictures with shoe prints in the mud?

22 A I do not. And if there were shoe prints in the mud,
23 they would have been marked with a placard.

24 Q But we don't know what's been -- you don't have
25 anything that shows us what's been marked with placards,

1 though, do you?

2 A I'm sorry?

3 Q A list? You don't have a list of what each placard
4 coincides with, though, correct?

5 A No. There's not a list. It's just a matter of
6 looking at the photos and seeing what coincides with the
7 placard.

8 Q So every single placard that was out there you'd
9 taken a picture of?

10 A I did.

11 Q But it's not documented in any of your reports,
12 correct?

13 A Not what each item or what each placard pertains to,
14 no. It's not itemized that way.

15 MS. PROCTOR: Thank you. I have no further
16 questions.

17 THE COURT: Cross-examination.

18 MR. DURANT: No, sir, Your Honor.

19 THE COURT: I'm sorry, redirect, excuse me.

20 MR. DURANT: No, sir, I don't want to do that
21 either.

22 THE COURT: I'm getting head of myself.

23 All right. Any reason Mr. Thomas can't be
24 excused? Any objection from the defendant?

25 MS. PROCTOR: No, Your Honor.

1 THE COURT: All right. Officer Thomas, please
2 step down. You may be excused. Thank you very much.

3 MR. DURANT: The State would call Alan Kramitz.

4 THE CLERK: Raise your right hand.

5 ALAN KRAMITZ, after being duly sworn, testified
6 as follows:

7 THE CLERK: Sir, if you'd take your seat.

8 If you would, please state your first and last
9 names, spelling your last for the record, please.

10 THE WITNESS: Alan Kramitz, K-R-A-M-I-T-Z.

11 DIRECT EXAMINATION

12 BY MR. DURANT:

13 Q Where are you employed?

14 A City of North Charleston Police Department.

15 Q And how long have you been with North Charleston PD?

16 A About 16 years.

17 Q And I believe that was with a two-year stint at --

18 A York County Sheriff's Office.

19 Q In between?

20 A Yes, sir.

21 Q What is your current position with North Charleston?

22 A I'm a Person Unit detective. We handle violent
23 crimes.

24 Q As such, did you have the occasion to participate in
25 the investigation of this case?

1 A Yes, sir, I did.

2 Q In what capacity?

3 A I was the assigned lead detective.

4 Q And what does the lead detective case agent do?

5 A What I do is kind of delegate authorities to other
6 detectives, do interviews, crime scene, collect evidence,
7 basically in charge of the entire investigation.

8 Q And as the case agent, did you have the opportunity
9 to respond to the actual scene of the shooting on February
10 5th of 2010?

11 A Yes, I did.

12 Q Do you recall what time it was when you got there?

13 A I got a phone call around 1 o'clock in the afternoon
14 from my sergeant who informed me of the shooting on Bonds
15 Avenue. At about 1:30 I got there, in the afternoon.

16 Q And was the victim still there when you arrived or he
17 had already been transported?

18 A He had already been transported.

19 Q And what did you do upon arriving on the scene?

20 A I located one of the supervisors, Sergeant Adams, who
21 was a detective with North Charleston also. I informed
22 him of -- he knows that I'm a Persons Unit crime
23 investigator. I told him I would take care of the
24 investigation, I would take the lead.

25 Q Okay. And where did you go after responding to the

1 crime scene?

2 A As I said, I was briefed, and then after that, I
3 responded to 2707 West Surrey Drive.

4 Q And why?

5 A Myself and Sergeant Reynolds responded there. I
6 received information that the suspect lived at that
7 residence.

8 Q The shooting suspect lived in that residence?

9 A Yes, the shooting suspect.

10 Q And who lived at that residence?

11 A Derell Green.

12 Q How far is that from the scene of the shooting?

13 A A couple of blocks maybe. It's less than a half
14 mile, to my knowledge.

15 MR. DURANT: Okay. Your Honor, we would offer
16 State's Exhibit No. 42, an aerial photograph, I believe
17 without objection.

18 THE COURT: Any objection?

19 MS. EHRLICH: No objection.

20 THE COURT: State's No. 42 admitted without
21 objection.

22 (WHEREUPON, STATE'S Exhibit No. 42 was admitted
23 into evidence.)

24 BY MR. DURANT:

25 Q And if you would, could you take a look at State's

1 Exhibit No. 42. And does that depict Daniel Jenkins
2 Academy?

3 A Yes, sir, it does.

4 Q A portion of it?

5 A Yes, sir.

6 Q Does it depict where the victim was found?

7 A Yes, sir.

8 Q And does it depict 2707 West Surrey?

9 A Yes, sir, it does.

10 Q Okay. And I know this is not very big, but if you
11 would, if you'd point out to the jury Daniel Jenkins
12 Academy?

13 A Right here.

14 Q And where's Dorchester Road?

15 A Right here.

16 Q Okay. And where was the victim's body located?

17 A Up in a driveway here.

18 Q And where is West Surrey?

19 A Right -- let's see, it should be Bonds, Henry,
20 Forseman, and West Surrey's down here.

21 Q Okay. And how far does he live off of Dorchester
22 Road?

23 A Right off the corner. That's his house right here.

24 Q Okay.

25 A It's the corner of West Surrey and Dorchester Road.

1 Q It's not on the corner, is it?

2 A No. It's just down from it.

3 Q Okay. What time did you get to 2707 West Surrey?

4 A It was a little after 2 o'clock in the afternoon.

5 Q Who was with you?

6 A Sergeant Reynolds, Detective Schmidt, and Miller.

7 Q Okay. Did Schmidt and Miller go with you or they
8 were already there?

9 A They actually got there about the same time we did.

10 Q Okay. And who else was there when you got over to
11 West Surrey?

12 A With the information we received, Isle P Team
13 responded before we did. They were already there.

14 Isle P Team is kind of a high-risk warrant
15 service, like a SWAT team.

16 Q And had the Isle P Team been able to get anybody to
17 open the door?

18 A They had been there prior to us. They knocked on the
19 door several times.

20 They are dressed in North Charleston police
21 officer uniforms. So they're very identifiable as police
22 officers.

23 I was informed by Sergeant Roberts that they had
24 been there for several minutes trying to locate somebody
25 who lives in that residence.

1 Q Now when you got there, did you attempt to raise
2 anybody at the door?

3 A Yes, I did. I was briefed by Sergeant Roberts.

4 I tried to knock on the door also myself. I had
5 a North Charleston Police jacket on and no response from
6 inside the residence.

7 Q And could you tell our jury what happened around
8 2:20?

9 A A male subject arrived at the residence. I made
10 contact with him. He informed me he was the father of
11 Derell Green. He wanted to know why we were there.

12 Q Okay. And what was his name?

13 A Dawan Nelson.

14 Q And do you know whether he is Derell's father or
15 stepfather?

16 A Stepfather.

17 Q And what did you do when Mr. Dawan Nelson arrived on
18 the scene?

19 A After we tried to get into the residence and knocked
20 on the door, we went back to our police cars because it
21 was kind of raining. We went ahead and I explained the
22 situation to Mr. Nelson. He was in my police car and I
23 explained it to him.

24 Q How did he arrive at the scene? Did he have a car?

25 A It was a car or a truck. I can't remember.

1 Q Okay. And what did you tell him?

2 A I explained to him that Derell's identified as a
3 suspect in a shooting that just occurred and that we
4 needed to speak to him.

5 Q Okay. Was the defendant's mother --

6 A She arrived shortly after Mr. Nelson did.

7 Q And how did she arrive at the residence?

8 A Her vehicle.

9 Q And what did you say to Mrs. Nelson when she arrived?

10 A I again explained that Derell was a suspect in a
11 shooting and we needed to get inside and talk to him if he
12 was inside.

13 Q Okay. And what did they tell you?

14 MS. EHRLICH: Objection. Hearsay.

15 BY MR. DURANT:

16 Q How did you get in the residence?

17 A After informing the parents of Derell, I was informed
18 by Mr. Nelson --

19 MS. EHRLICH: Objection. Hearsay.

20 MR. DURANT: Your Honor, this is not offered for
21 its truth.

22 THE COURT: Overruled on that one question,
23 okay? But don't go too far with it, okay?

24 MR. DURANT: Okay.

25 BY MR. DURANT:

1 Q How did you get in the building, or get in the house?

2 A I was allowed -- myself, Mrs. Nelson, Mr. Nelson went
3 to the back door of the residence. Mr. Nelson informed
4 Sergeant Reynolds to stay at the front of the residence
5 due to the fact that if Derell was in trouble, he'd
6 probably run.

7 MS. EHRLICH: Objection. Hearsay.

8 THE COURT: All right. I'll sustain the
9 objection.

10 Just tell what you did and what you heard, okay?
11 Leave out what anybody else told you at the scene, okay?

12 THE WITNESS: Yes, sir.

13 THE COURT: Go ahead. Please proceed.

14 THE WITNESS: Yes, sir.

15 Myself, Mrs. Nelson, and Mr. Nelson went to the
16 back door. The back door was locked. They knocked on the
17 door rather hard numerous times to gain entrance into the
18 residence.

19 BY MR. DURANT:

20 Q Who answered the door?

21 A Tamica Green.

22 Q And who is Tamica Green?

23 A The sister of Derell Green. I'm sorry, it's Tonya
24 Green. I apologize.

25 Q And who else was in the residence besides Tonya

1 Green?

2 A It was Daqone Lance and Derell Green.

3 Q And where were they located inside the residence?

4 A They were seated on a couch in front of the TV in the
5 living room.

6 Q And doing what?

7 A I believe they were playing video games or watching
8 TV.

9 Q During the investigation of this case, were you able
10 to determine what Derell Green's nickname was?

11 A Yes, I did.

12 Q And what is that?

13 A Noogie.

14 Q How about Daqone Lance's nickname?

15 A Mook.

16 Q Now what happened after you located Mr. Lance and
17 Mr. Green in the house?

18 A I informed the parents of Derell Green that both
19 Daqone and Derell had to come to the police department in
20 reference to the allegations that were being made, that
21 they were suspects in a shooting. Due to the seriousness
22 of the crime, they were both handcuffed. I informed -- I
23 was -- sorry.

24 Q Did Mr. and Mrs. -- or did Mr. Nelson and Mrs. Nelson
25 come with you?

1 A No. I informed them that they were able to come with
2 me. Mrs. Nelson said she did not want to go.

3 MS. EHRLICH: Objection. Hearsay.

4 THE COURT: I sustain the objection.

5 MR. DURANT: Your Honor, could we be heard on
6 that?

7 THE COURT: Yes, sir.

8 MR. DURANT: Briefly just at side bar.

9 THE COURT: Okay.

10 (A bench conference was held with the judge and
11 attorneys in the presence of the jury but out of the
12 hearing of the jury.)

13 BY MR. DURANT:

14 Q Did you offer for Mr. Nelson and Mrs. Nelson to go to
15 the police department with you?

16 A Yes, I did.

17 Q Did they go with you?

18 A No.

19 Q Okay. Thank you.

20 Now once you all got to the police department,
21 how was Mr. Green transported?

22 A Myself and Sergeant Reynolds transported him in our
23 vehicle.

24 Q And where did you all go when you got to
25 headquarters?

1 A Went to the North Charleston Police Department, the
2 interview room, detective division.

3 Q Okay. And where are the interview rooms?

4 A They're on the -- they're in our detective division.

5 Q And how many do you have?

6 A There's four designated interview rooms. We have two
7 other rooms that can also be used, too, if the other rooms
8 are full.

9 Q And with regard to the interview room that Mr. Green
10 was placed in, can you describe that room?

11 A Well, it's like beige-ish color painting. There's an
12 observation window. There's a table and two chairs. Two
13 or three chairs, it's depends on the investigator.

14 There's a bolt to the wall that we use to
15 handcuff suspects to, but we don't use that. There's a
16 Masha insert in there so we can't handcuff anybody.

17 There's also a camera system in the room with a
18 cover covering the camera.

19 Q Okay. And tell us about that.

20 MS. PROCTOR: Your Honor, just note for the
21 record our previous objection.

22 THE COURT: All right. Overruled on the
23 previous objection. Previously, you're talking about the
24 Jackson v Denno hearing?

25 MS. PROCTOR: Yes, Your Honor.

1 THE COURT: Overruled.

2 BY MR. DURANT:

3 Q Tell us about the video system there. You all are in
4 a relatively new building; is that correct?

5 A Yes, sir, it is.

6 Q And could you explain to the jury why you have the
7 video cameras covered?

8 A They don't work.

9 The system is wired inappropriately. To my
10 belief, it's wired so that people who are not police
11 officers can view the video, and that is not good for us
12 as investigators or for actually the suspects or victims
13 or witnesses of a crime that can be viewed by other people
14 besides police officers.

15 Q Let me ask you about that. You all don't have a
16 dedicated video system that just the police department can
17 use?

18 A No. It's actually wired to the security system and
19 that's why other people can view our system other than
20 police officers.

21 Q And when you say it's a security system, what are you
22 talking about?

23 A The outside cameras of the building. Also inside
24 cameras, hallways and stuff like that.

25 Q And that's like a video surveillance system like they

1 have at Daniel Jenkins Academy; is that correct?

2 A Correct. Or any other business that has a system
3 outside or inside.

4 Q Why?

5 A It's a budgeting issue, not -- there's not enough
6 money in our budget to have the camera system the way we
7 want it, but we are getting a system in the near future.

8 Q Are the rooms even wired for sound?

9 A No, they're not.

10 Q With regard to video cameras, they're tied into the
11 entire building surveillance system?

12 A That's correct.

13 THE COURT: Can I interrupt just a second?

14 MR. DURANT: Sure.

15 THE COURT: Ms. Proctor and Ms. Ehrlich, I
16 understand you have objections throughout this line of
17 testimony that were covered earlier, and I recognize those
18 objections and make them a part of this testimony, but I
19 overrule them all based on the prior in-camera hearing,
20 okay?

21 MS. PROCTOR: Yes, Your Honor. Thank you.

22 THE COURT: And any you feel like you need to
23 make, please do, okay? Because it won't bother me at all.

24 MS. PROCTOR: Thank you, Your Honor.

25 THE COURT: Go ahead. Proceed.

1 MR. DURANT: Thank you, Your Honor.

2 BY MR. DURANT:

3 Q Now there's no question that Mr. Green was in custody
4 at the time; is that correct?

5 A No question at all.

6 Q He was handcuffed when he left Surrey?

7 A Yes, he was.

8 Q And was he handcuffed when he was at headquarters?

9 A Yes. I do that with all suspects, especially violent
10 crimes.

11 What I'll do is I'll handcuff them to the chair,
12 leaving their free hand, their hand they use to write with
13 free.

14 Q Now did you start talking to him immediately or was
15 he in the room a little bit by himself for awhile?

16 A Very briefly by -- briefly by himself.

17 Q And when you went in to talk to him, what was his
18 demeanor?

19 A He was calm, just like he was at home watching the TV
20 set, no problems at all, no concerns.

21 Q Did he appear to be upset at the time?

22 A No, sir.

23 Q Did he appear to be under the influence at the time?

24 A No.

25 Q Did he appear to be under the influence of drugs at

1 the time?

2 A No.

3 Q Was he slurring his words?

4 A No, not at all.

5 Q Was he able to understand what you said to him?

6 A Yes, sir.

7 Q Were you able to understand what he said to you?

8 A Yes.

9 Q Did he exhibit any confusion?

10 A Not at all.

11 Q Did he exhibit any uncertainty?

12 A No.

13 Q Was there anything about his conduct or speech which
14 gave you concern that he didn't understand what was going
15 on?

16 A No, sir, not at all.

17 Q Was he advised of his Miranda rights?

18 A Yes, sir, he was.

19 Q And what did you use to advise him of his Miranda
20 rights?

21 A We have a form at North Charleston Police Department,
22 it's a North Charleston Police Department Advise of
23 Constitutional Rights form, and it lists the
24 constitutional rights on there, and there's a place where
25 he signs, I sign, his birthday, and his name.

1 Q Okay. I hand you what's previously been marked as
2 State's Exhibit No. 35 for identification and ask if you
3 recognize that document.

4 A Yes, sir, I do.

5 Q And what is that?

6 A It's the North Charleston Police Department Advise of
7 Constitutional Rights form that I provided to Derell
8 Green.

9 Q How do you know?

10 A His signature's on it and so is mine and so is his
11 initials. His name is at the top, his birthday also, his
12 age and where he went to school at -- I'm sorry, his grade
13 completed.

14 Q Okay. And if you would, if you'd tell the jury how
15 you used the State's exhibit to advise Mr. Green of his
16 rights.

17 A Yes, sir.

18 What I do is I'll read the first one to the
19 person and I'll ask --

20 Q Where does the information at the top come from, to
21 start with?

22 A Oh, it comes from the suspect.

23 Q And what information is that at the top?

24 A It has his name, our case number, his date of birth,
25 his age, grade of school, if he had a GED or diploma, and

1 then there's a place here where I advise him of his
2 rights.

3 Q Okay. And how -- what was his grade in school?

4 A Eighth grade.

5 Q And what was his age?

6 A Fourteen.

7 Q And now, if you would, tell the jury how you went
8 about advising him of his rights.

9 A I would read him this first one. Do you want me to
10 read all of them?

11 Q I want you to tell the jury exactly how you did it.

12 A All right, sir.

13 What I do is I read the first one to him and
14 explain it to him and I ask him, "Do you have any
15 questions at all?"

16 Q Why did you explain it to him?

17 A Just in case there are any questions at all. Also,
18 his age, 14 years old, to make sure he understands
19 everything I explain or read to him.

20 Q Okay. And what was the first thing you explained to
21 him?

22 A I explained to him that he had the absolute right to
23 remain silent and you don't have to answer questions or
24 give a statement and that that cannot be used against him.

25 Q Okay. And how did you explain that to him?

1 A I told him if he didn't want to talk to me, he didn't
2 have to and that was fine with me, there's nothing
3 personal, that all he had to do was tell me he didn't want
4 to talk to me. And I also told him that listen, that it
5 cannot be used against you -- that if you go to court, get
6 arrested, it cannot be used against you.

7 Q Okay. And with number two?

8 A Then I said if you do answer questions or give a
9 statement --

10 Q First of all, did he tell you that he understood?

11 A Yes, sir, he did.

12 Q Did he look like he understood?

13 A Yes, sir.

14 Q He wasn't looking at you with this vacuous expression
15 on his face?

16 A No. I was sitting right across the table from him,
17 not a very big distance.

18 Q Okay. And what did you advise him of second?

19 A "If you do answer questions or give a statement,
20 anything you say can and will be used against you in a
21 court of law."

22 Q Did you explain that one to him as well?

23 A Yes, I did. I explained to him that if you tell me
24 anything and it has to do with this case, it's pertinent
25 information, it can be used against you in a trial.

1 Q Okay. Did he indicate he understood that?

2 A Yes, sir.

3 Q Once again, was there anything about his demeanor
4 that indicated to you he didn't understand?

5 A No, sir.

6 Q Third what did you tell him?

7 A I told him he had the right to consult with a lawyer
8 of his choice before answering questions or give a
9 statement and also have him present while being
10 questioned.

11 Q And did you explain that one to him?

12 A Yes. I told him if at any time he wanted to ask for
13 an attorney, that I would get him one.

14 Q Okay.

15 A And if he wanted to speak to an attorney before
16 talking to me, that was fine, at any time.

17 Q Once again, did he indicate that he understood?

18 A Yes.

19 Q Fourthly?

20 A If he wished to talk to a lawyer or have him present
21 but was unable to afford an attorney or a lawyer, one
22 would be appointed to represent you free of charge.

23 I explained to him that that means that if he
24 wanted an attorney, we'd get him an attorney, it would not
25 cost him a penny, or his family.

1 Q And lastly?

2 A "If you decide to answer questions or give a
3 statement without having a lawyer representing you, you
4 have the absolute right during this interview to stop
5 answering questions and remain silent."

6 I explained to him, Listen, at any time you
7 think this is going not too good for you and you want to
8 stop talking to me, that's fine, at any time you can stop
9 talking.

10 Q Okay. Did he indicate he understood that?

11 A Yes.

12 Q Now whose initials are out beside each of those five
13 rights you had explained to him?

14 A It says "DG" for Derell Green.

15 Q And whose initials are those?

16 A Derell Green's.

17 Q And when did you have him put his initials beside
18 those rights?

19 A After I'm done reading these and explained to him and
20 asked if he understand them, I have him -- I hand it back
21 to him and I say, "Listen, you can read these if you want
22 to and initial each one of these that I read to you." And
23 I said, "This has nothing to do with arrest, this is just
24 your rights."

25 Q Okay. And did he sign the written acknowledgment

1 that he understood his rights?

2 A Yes, he did.

3 Q Now after you went through this process with him, did
4 he indicate to you that he was willing to continue talking
5 to you?

6 A Yes.

7 At the bottom of the form we have a statement
8 and it says, "Having these rights in mind, I wish to waive
9 these rights and answer questions. No threats, force,
10 promise of any kind has been made to you by anyone to
11 cause you to waive these rights and answer questions."

12 I explained to him, I said, "I've not touched
13 you, I've not yelled at you, I've not screamed at you,
14 I've not promised you anything at all. This is just your
15 rights."

16 Q Okay. Which is my next question, did you promise him
17 anything?

18 A No, I did not.

19 Q Did you threaten him?

20 A No.

21 Q Did you threaten his family?

22 A No.

23 Q Did you promise him leniency?

24 A No.

25 Q Did you tell him things would go easy on him if he'd

1 just talk to you?

2 A No, I did not.

3 Q Did you offer him any kind of a reward?

4 A No.

5 Q Or inducement?

6 A No.

7 Q Or coerce him in any way?

8 A No, sir.

9 MR. DURANT: Your Honor, at this time we
10 would -- what's the State's exhibit number on there?

11 THE WITNESS: It's 35.

12 MR. DURANT: We'd offer State's Exhibit 35 into
13 evidence.

14 THE COURT: State's Exhibit No. 35 is admitted
15 with objection.

16 MS. PROCTOR: Yes, Your Honor.

17 (WHEREUPON, STATE'S Exhibit No. 35 was admitted
18 into evidence.)

19 BY MR. DURANT:

20 Q Now -- and what time was it when you completed
21 advising him of rights with State's Exhibit 35?

22 A 3:47 in the afternoon.

23 Q And what happened after you advised him of his
24 rights?

25 A I got a written statement from him, made sure he's

1 okay, do you need to use the bathroom, need a break at
2 all.

3 Q And how did you proceed to take the written statement
4 from him?

5 A It would be a question-and-answer form that I use.

6 Q Is that your particular style?

7 A For the most part I use that style. I would ask
8 questions to a subject, things that I already knew about
9 the investigation or I wanted to find out more information
10 about.

11 Q And when they would answer, what would you do?

12 A I'd write their answers down verbatim.

13 Q Okay. And who wrote the questions and answers in
14 this case?

15 A I did.

16 Q Why?

17 A That's just my style for the most part. I asked if
18 he wanted to write it and he said no, it would be okay if
19 I wrote it.

20 Q And he indicated that will be all right?

21 A Yes, sir.

22 Q Now -- so you went through this question-and-answer
23 process with him?

24 A Yes, I did.

25 Q Is that correct? And this was all done in writing?

1 A Yes.

2 Q And about how long did this -- when did you start
3 taking the written statement?

4 A Maybe ten minutes later, if that, five minutes.

5 Q Will it show on the actual statement itself?

6 A Yes, sir.

7 Q Maybe I should give it to you.

8 A I believe it was --

9 Q I hand you what's previously or now been marked as
10 State's Exhibit No. 36 for identification and ask if you
11 recognize that.

12 A Yes, sir, I do.

13 Q And what is that?

14 A This is a written statement by Derell Green. It's in
15 my handwriting with my questions and his answers and I
16 write them down.

17 Q Okay. And once you finish this process with him, did
18 he read the statement or did you read it back to him?

19 A I read it back to him and then I also presented it to
20 him to read also.

21 Q Okay. And did he indicate that that was his
22 statement?

23 A Yes, he did.

24 Q At that time was his statement signed?

25 A Yes, it was.

1 Q By whom?

2 A Myself and Derell Green and Detective Sturkie signed
3 the first page.

4 Q Okay. Do you know how that happened since Detective
5 Sturkie wasn't in there?

6 A There are --

7 Q Never mind. We'll get to that question later, okay?

8 And he signed which page? Derell Green, that
9 is.

10 A Six pages.

11 Q And you witnessed all the pages; is that correct?

12 A Yes, I did.

13 MR. DURANT: Your Honor, we would offer State's
14 36 at this time.

15 THE COURT: Do you have an objection to State's
16 36?

17 MS. PROCTOR: Yes, Your Honor.

18 THE COURT: All right. State's 36 is admitted
19 with objection based upon the objection in the courtroom
20 as well as the prior hearing.

21 (WHEREUPON, STATE'S Exhibit No. 36 was admitted
22 into evidence.)

23 BY MR. DURANT:

24 Q Okay. And if you would, could you please just tell
25 our jury what he told you. Could you read the statement,

1 please?

2 A Yes. I asked Derell, "What time did you go to school
3 this morning?"

4 And he answered, "About seven something, eight
5 something."

6 "Is that the time you left your house?" That's
7 the next question I asked him.

8 "Yes, about 7:40 something, closer to eight."

9 Q Please while you're doing this, make sure you
10 designate what your question is and what his answer is,
11 okay?

12 A Yes, sir.

13 The question I asked was, "Did you go straight
14 to school?"

15 And the answer was, "No, I went to the Waylon
16 and met up with Daqone, I think over by Constitution. I
17 don't know the streets too well."

18 The next question I asked was, "What did you and
19 Daqone do?"

20 He answered, "We walked by the bus stop by the
21 A-1 store. Me and Daqone went into the store and Daqone
22 bought some chips. When we came out of the store, we met
23 up with Remeal, Damian, and Azarial. I knew them back
24 from Brentwood. We all walked back to my house. When we
25 got there, I put my phone in the house. Daqone slid off.

1 Me, Remeal, Damian and Azarial walked to school."

2 The next question: "What were you wearing?

3 Khaki pants, white-collared shirt, tennis shoes
4 and a Green Roccowear jacket."

5 Q What wear of jacket?

6 A It's Rocco, R-O-C-C-O.

7 Q Okay. Continue.

8 A Question: "What time did you get to school?"

9 Answer: "About 9:20." It says, "About 9:20s."

10 Question: "Do you have any classes with the
11 other boys you mentioned?"

12 The answer was "No. Remeal is in the eighth
13 grade, Damian is in the seventh grade, and Azarial is in
14 the tenth or ninth."

15 Question: "Did you go to all your classes
16 today?

17 Yes."

18 Question: "What time did you leave school?

19 It was about 12, 12:20, 12:30 something."

20 Question: "Did something happen when you got
21 out of school today?"

22 Answer: "There was a shooting today on Bonds
23 Avenue."

24 Question: "Where were you when school let out
25 and the shooting happened?"

1 Answer: "I was on Bonds Avenue, heard three or
2 four shots, and I ran through the cut to my house -- the
3 cuts to my house."

4 Question: "Were you with anyone when the shots
5 happened?"

6 No." That was his answer, "No."

7 Question: "When the shots happened, what did
8 you do?"

9 Answer: "Ran through somebody else's yard and
10 to my house."

11 Question: "When you got home, what did you do?"

12 "I went to the house "-- answer: I went to the
13 house by the back door. I had my key in the yard. I
14 unlocked the back door and went inside."

15 Question: "Who was inside the house?"

16 Answer: "My sister. Nobody else."

17 Question: "Did Mook call you?"

18 Answer was yes.

19 Question: "How long after the call from Mook
20 did he come over your house?"

21 Answer: "About 15 minutes."

22 Question: "Did Mook go to school today?"

23 Answer was no.

24 Question: "Where does Mook go to school at?"

25 Answer: "Garrett. He's in the tenth grade."

1 I believe he said eleventh and he changed it to
2 the tenth grade and I crossed it out for him.

3 Question: "How long have you known Mook?"

4 Answer: "Since I was in the sixth grade."

5 Question: "When the police came to your house,
6 what did you do?"

7 Answer: "I told my sister to open the door.
8 She called my momma, and she said she was on the way."

9 Question: "What is Mook's real name?"

10 Answer was Daqone.

11 Question: "Did you have a gun with you at all
12 at any time today?"

13 Answer was no, sir.

14 Question: "Did you fire a gun or shoot a gun
15 today?"

16 Answer was no, sir.

17 Question: "When was the last time you shot a
18 gun and where -- or where?"

19 Answer: "Last summer, West Ashley. I went to
20 live with my grandmother."

21 Question: "What kind of gun was it?"

22 Answer: "A .22 rifle."

23 Question: "Why were you shooting the rifle?"

24 Answer: "Shooting at squirrels."

25 Question: "Do you have any problems with anyone

1 at school?"

2 Answer: "No. A long time ago. His name is
3 Montavius Adams, but that's all over with." I'm sorry --
4 "that's over with."

5 Question: "I'm going to show you a picture.
6 Let me know if you know him. Name is Larry Taron
7 Maybank."

8 And unfortunately I put "question," but it
9 should be "answer."

10 "I don't know him."

11 Question: "Did you have any anything to do the
12 shooting and murder of Larry Taron Maybank?"

13 Answer: "No, sir."

14 Question: "What did you do when you got home?"

15 Answer: "Went to the bathroom, washed my
16 hands."

17 That's the end of the statement.

18 Q Okay. That's the end of the statement; is that
19 correct?

20 A Yes, sir.

21 Q And I believe you -- how long did you say it took to
22 take that statement from him?

23 A Hour, hour and a half.

24 Q Okay. And after you finished taking that statement
25 and going over it with him and having him sign it, where

1 was Derell placed then?

2 A He has left in that interview room still handcuffed.

3 Q Did you stay in the room?

4 A I left it, went to my desk. Information on the
5 shooting was still coming out. He was in there by himself
6 for the most part.

7 Q Okay. While he was in there by himself, was anyone
8 checking on him?

9 A Yes, myself. Other detectives checked on him, if he
10 needed a break, the bathroom, something to drink,
11 something to eat.

12 Q And at this time what other information was being
13 developed with regard to the investigation?

14 A I received information that there was a witness who
15 observed the shooting and also there was a videotape of
16 the shooting.

17 Q Okay. By this time had you all already interviewed
18 Jacquintus Washington?

19 A Yes, sir, we did.

20 Q You didn't necessarily interview him yourself, but he
21 had been interviewed; is that correct?

22 A Correct.

23 Q Okay. And by this time had you all already
24 interviewed Shalaine Jenkins?

25 A Yes, sir, we had.

1 Q And once again, you didn't conduct that interview,
2 but you were aware of it, correct?

3 A Yes, sir, I was.

4 Q And did you all have the initial video from Daniel
5 Jenkins Academy there?

6 A Yes, sir, we did.

7 Q Okay. And after reviewing all that information, what
8 did you all conclude?

9 A That Derell was not telling the truth.

10 Q And you said you all checked on him on occasion. Was
11 he allowed to go to the bathroom if he needed to go to the
12 bathroom?

13 A Yes, he was.

14 Q Or was he gotten something to drink if he needed
15 something to drink?

16 A Yes, sir.

17 Q Was he gotten something to eat if he wanted something
18 to eat?

19 A Yes, sir.

20 Q Okay. Did he in fact get something to eat later on
21 that night?

22 A Yes, sir, he did. I bought it for him myself.

23 Q Now around 7 p.m. --

24 A Yes, sir.

25 Q -- who went in to talk to him?

1 A Detective Sturkie and Detective Miller.

2 Q They're both -- who were they?

3 A The detectives also assigned to the Detective
4 Division, North Charleston Police Department

5 Q And why were they -- why did they go in to talk to
6 him?

7 A I was doing things around with the investigation also
8 and other detectives may have had a fresher approach to
9 him other than me.

10 Q Okay. And kind of a change of pace, so to speak?

11 A Yes.

12 Q And what happened after they went in to speak with
13 Mr. Green at about 7?

14 A I was informed that he was going to change his
15 statement and provide us the truth.

16 Q Do you know how long they were in there with him?

17 A Maybe an hour.

18 Q Okay. And what did you do when they advised you that
19 he was changing his story?

20 A I went back in and obtained a second statement from
21 him.

22 Q And how did you go about obtaining this statement
23 from him?

24 A The same way as this statement here, questions and
25 answers.

1 Q And do you recall what time it was when you went in
2 there to obtain this second statement from him?

3 A I believe it was 7:45.

4 Q Okay. So they couldn't have been in there an hour,
5 correct? Because they went in there around 7 and you were
6 already in there taking his statement at 7:45; is that
7 correct?

8 A Yes, that's correct.

9 Q I hand you what's been marked as State's Exhibit 37
10 and ask if you recognize that.

11 A Yes, sir, I do.

12 Q And what is that?

13 A This is the second statement from Derell Green.

14 Q Okay. You didn't re-advise him of his rights, that's
15 correct?

16 A No, I did not.

17 Q Okay. At any time during this second statement did
18 you offer him anything, promise him anything, threaten
19 him, coerce him, trick him, anything like that?

20 A No, that's not my style. I don't do stuff like that.

21 Q And he was willing to give you a second statement?

22 A Yes, sir.

23 Q And it was done in the same fashion?

24 A Yes, it was.

25 Q At any time during the first or second statement did

1 he ever invoke his right to remain silent?

2 A No, he did not.

3 Q Did he ever ask for a lawyer?

4 A No, he did not.

5 Q Did he ever ask for his mother?

6 A No, he did not.

7 Q Was he offered any kind of reward or leniency?

8 A No, sir, he was not.

9 Q So what happened when you went in there that second
10 time?

11 A I informed Derell that I was informed by Detective
12 Sturkie and Miller that he was ready to tell the truth,
13 that he had not been truthful with his first statement.

14 Q And what did he say?

15 A He said, "That's right."

16 Q And once again, once you went through the process
17 with him of writing out the questions and writing out the
18 answers, do you recall how long that took?

19 A An hour, if that.

20 Q Okay. That's not quite as long as the first
21 statement; is that correct?

22 A Correct. It's four pages, I believe. Yeah, four
23 pages.

24 Q And once you took the statement, did you have him
25 read it or have him read it himself?

1 A I read it back to him and I handed it to him also and
2 have him read it, too.

3 Q And did he sign that statement?

4 A Yes, he did, all four pages.

5 Q Okay. And did you sign all the pages as a witness?

6 A Yes, sir, I did.

7 Q And did anybody else witness the statement?

8 A Yes, Detective Sturkie did.

9 Q Okay. And that was after you had obtained the
10 statement; is that correct?

11 A Yes, sir.

12 Q And where did -- did you go into the interview room
13 at that time?

14 A He may have. I'm not really sure, but I think he did
15 come in.

16 Q Okay. So you don't know if he -- okay. Well, I will
17 ask him.

18 And in looking at the statements, and this was
19 brought out previously, correct me if I'm wrong, Detective
20 Sturkie was on the first page of the first statement and
21 on the last three pages of the second statement; is that
22 correct?

23 A That's correct.

24 Q Okay. Did Sturkie from anything to do with the first
25 statement that had been obtained from Derell Green?

1 A No, he did not.

2 Q Do you know how his name happened to get on page one
3 of the first statement?

4 A In having two statements, the paperwork got mixed up.
5 It's an error by me.

6 Q Okay. So he --

7 A -- inadvertently signed the first page of page one
8 and not --

9 Q -- of the first statement and then the final three
10 pages of the second statement; is that correct?

11 A Yes, sir.

12 MR. DURANT: Your Honor, at this time we'd offer
13 State's 37 into evidence.

14 THE COURT: Any objection?

15 MS. EHRLICH: We would renew our same objection.

16 THE COURT: All right. Based on your previous
17 objection, State's Exhibit No. 37 is admitted with your
18 objection.

19 (WHEREUPON, STATE'S Exhibit No. 37 was admitted
20 into evidence.)

21 MR. DURANT: Thank you, Your Honor.

22 BY MR. DURANT:

23 Q And, Detective Kramitz, could you please publish his
24 second statement to the jury.

25 A Yes, sir.

1 It's a question-and-answer form again and that's
2 my format I use most of the time.

3 The first question is: "Was the first statement
4 truthful?"

5 Answer was: Not at all -- I'm sorry, "Not all
6 of it, sir."

7 Question: "Explain to me what happened today."

8 Answer: "It all started about a month ago.
9 Little Tee, that's how I know him, it was a bunch of them.
10 I was down in the Macon. I don't know a lot of the
11 streets. I think it was Success Street. They wanted a
12 gold chain I had on. I told them they couldn't have it.
13 They all jumped me and Little Tee is the one that snatched
14 my chain. They was all swinging at me and stomping on me.
15 After they was finished, they all ran off. They all take
16 off running. I ran off, too. I just went home. I didn't
17 want to tell anyone about it. It was a couple of Fridays
18 ago I seen Little Tee at a school -- at the school campus.
19 He was looking at me, looking funny or something. I
20 didn't say anything to him. I saw him last Friday. I
21 didn't say anything to him. I didn't say anything to
22 him."

23 Question: "Why did you have a gun with you
24 today?"

25 Answer: "I don't know."

1 Question: Did you see Little today at school?

2 I'm sorry. "Did you see Little Tee today at school?"

3 Answer: "No. There's a program at our school
4 so I didn't see him."

5 Question: "When did you see Little Tee?"

6 "After school. He was looking at me funny,
7 mugging me."

8 Q Please specify what is question and what is answer.

9 A All right. I apologize.

10 Question: "When did you see Little Tee?"

11 Answer: "After school. He was looking at me
12 funny, mugging me."

13 Question: "What does 'mugging' mean?"

14 Answer: "Looking at me, up and down."

15 Question: "Did you have the gun before you went
16 to school?"

17 Answer: "Yes, sir. I had it hidden at the
18 abandoned house across the street from my house. Not the
19 one -- not the one -- not the one, but it's a couple
20 streets --"

21 Q It's "not that one?"

22 A I'm sorry. "Not that one, but it's a couple of
23 streets from my house, another abandoned house."

24 Question: "Did you have the gun in school?"

25 Answer was no. "No, sir."

1 Question: "Where did you get the gun from?"

2 Answer: "I had it hidden across the street from
3 the school at a house."

4 Question: "What kind of gun was it?"

5 Answer: "A revolver, .38. It had five bullets
6 in it."

7 Question: "How many times did you shoot?"

8 Answer: "I really don't know, maybe four or
9 five times."

10 Question: "When did you get the gun from where
11 you had it hidden?"

12 Answer: "After Little Tee mugged at me, he
13 walked off. I went and got it. He walked up Bonds
14 Avenue. I came up behind him and I started -- and started
15 shooting."

16 Question: "What did you do after you shot
17 Little Tee?"

18 Answer: "I ran through a yard and jumped some
19 fences, two fences. When I first ran across the street,
20 across the school street "-- and I put in parentheses
21 "Bonds Avenue "-- "a car stopped. I kept on running. I
22 ran home."

23 Question: "How long have you had the gun?"

24 Answer: "About a year."

25 Question: "Where did you get it from?"

1 Answer: "I got it from my cousin's house in the
2 country, West Ashley. I took it from them."

3 Question: "Is there anything you want to add to
4 this statement?"

5 Answer: "I want to tell the family I'm sorry,
6 and I'm sorry to my family that I let them down."

7 Question: "Describe the gun to me."

8 Answer: "It's a .38 revolver. It's black, all
9 black. The handles, too."

10 Question: "What is the correct spelling of your
11 name?"

12 Answer: "D-E-R-E-L-L J-A-M-A-R G-R-E-E-N."

13 End of statement.

14 Q After taking the statement from the defendant that
15 evening, was he taken anywhere or did he take you
16 anywhere?

17 A Yes, he did.

18 We asked him for safety concerns for the
19 community and other people involved in the area, we asked
20 him where the gun was at. He told us he threw it in a
21 vacant lot as he ran.

22 Q Okay. Between the school and where?

23 A I believe it's Forseman Street and -- Forseman and
24 Henry Street.

25 Q Okay. Did he actually show you what field he threw

1 it into or --

2 A Yes.

3 Q -- did he just tell you he threw it somewhere between
4 the school and his house?

5 A We actually took him in our police car to the
6 location he said he threw the gun at.

7 Q Okay. And where did he take you to?

8 A A vacant field off of Forseman.

9 Q Okay. Did you all make any efforts to locate -- this
10 was when by the time you all actually got out there to
11 look for the gun? This was --

12 A Later on that night.

13 Q Okay. It was that night. And this was several hours
14 after the shooting?

15 A Yes, it was.

16 Q And if you could locate it on State's Exhibit 42. Is
17 the area that he took you designated on State's
18 Exhibit 42?

19 A Yes, it is.

20 Q And where is it?

21 A This area right here.

22 Q You'll have to show them down there, too.

23 A (Witness indicating.)

24 Q Okay. And that's basically what type of area?

25 A It's an open field, grassy, there's trees on the

1 side.

2 Q Obviously a public area?

3 A Yes, it is.

4 Q Does it have a lot of public traffic?

5 A Yes. I worked that area for ten years and there's
6 numerous traffic in and out of the area. Foot traffic.

7 I'm sorry.

8 Q Okay. Because it's in the middle of a neighborhood?

9 A Right. It's an easy cut-through access to the other
10 street.

11 Q That's what they call a cut, right?

12 A Yes, sir.

13 Q Is that a cut?

14 A Yes, sir.

15 Q Were you ever able to locate it?

16 A No. Myself and a lot of the detectives were out
17 there. We had uniforms also out there with us trying to
18 search that whole lot area and couldn't find the gun.

19 Q What about the camo jacket? Were you able to locate
20 the camo jacket?

21 A No. Derell told us that he took it off behind some
22 houses. We had him in our car. He said he would take us
23 to their houses he thought he threw it behind. Then he
24 told us also he had burned it behind one of the houses.
25 We checked several houses that he said he ran through and

1 burned it at and we couldn't find any burn pile at all.

2 Q Okay. Or any jacket; is that correct?

3 A No jacket also.

4 Q And as part of the investigation, I know you didn't
5 do this, but was his home at 2707 West Surrey searched?

6 A Yes. We had a consent to search first. Due to the
7 seriousness of this crime a search warrant's always best,
8 and we got a search warrant for the house.

9 Q And was the gun located at 2707 West Surrey?

10 A No, it was not.

11 Q How about the camo jacket?

12 A No, it's not.

13 Q Was anything relevant to this case located at 2707
14 West Surrey, to your knowledge?

15 A No.

16 Q Now moving ahead to February 11th of 2010, could you
17 tell our jury how you were able to identify some of the
18 other people involved in this matter?

19 A Yes. I made contact with Mr. Terrell Pinckney.

20 Q The fellow that testified here previously; is that
21 correct?

22 A Yes.

23 Q And based upon information you obtained from
24 Mr. Pinckney, who was picked up on February 12th?

25 A It was Rashawn Bradley and Antonio Smalls-Heyward.

1 Q Okay. That was now a week afterwards, correct?

2 A Correct.

3 Q Now, is there any DNA evidence? What about DNA
4 evidence?

5 A There is none.

6 Q Why?

7 A There is -- through our investigation, it appears
8 there's no physical contact between Derell Green and Larry
9 Maybank.

10 Q And was the gun collected or recovered?

11 A No, it was not.

12 Q And can DNA sometimes be collected from the weapon?

13 A Yes.

14 Q Was the camo jacket collected?

15 A It was not.

16 Q So basically all you had was the victim's blood at
17 the scene; is that correct?

18 A That's correct.

19 MR. DURANT: Beg the Court's indulgence.

20 THE COURT: Yes, sir.

21 (Pause.)

22 MR. DURANT: I believe that's all I have,
23 Detective Kramitz.

24 THE COURT: May I see the attorneys up here just
25 a second?

1 THE COURT: Is there anything from the State
2 before we bring in the jury?

3 MR. DURANT: No, sir, Your Honor.

4 THE COURT: Anything from defense?

5 MS. PROCTOR: Your Honor, one second, please.

6 (Pause.)

7 MS. PROCTOR: Your Honor, we're ready.

8 THE COURT: Okay. Bring us the jury, please.

9 (The jury came into open court at approximately
10 9:40 a.m.)

11 THE BAILIFF: Jurors are all present, Your
12 Honor.

13 THE COURT: Thank you very much.

14 Detective, if you'll come around and have a
15 seat, please, sir.

16 THE WITNESS: Yes, sir.

17 ALAN KRAMITZ, having been previously sworn,
18 testifies as follows:

19 THE COURT: Cross-examination.

20 MS. EHRLICH: Thank you, Judge.

21 CROSS-EXAMINATION

22 BY MS. EHRLICH:

23 Q Good morning.

24 A Good morning, ma'am.

25 Q Okay. Now in your report you documented that Derell

1 Green became a suspect sometime around 2 o'clock?

2 A Yes, ma'am.

3 Q And so you go to 2707 West Surrey just a few minutes
4 later?

5 A That's correct.

6 Q And I believe you testified that the Intelligence LAP
7 Patrol was there?

8 A Intelligence Led Policing, they were there.

9 Q Okay. That's like a modified SWAT team?

10 A Sort of. They do our warrants, serve warrants and
11 stuff like that.

12 Q And they had already been at the house before you got
13 there?

14 A That's correct.

15 Q And were not able to get in the house?

16 A Yes, ma'am.

17 Q You arrived and then shortly after the parents get
18 there?

19 A Yes, ma'am.

20 Q And you told them that he was a suspect --

21 A I did.

22 Q -- in the shooting?

23 A Yes, ma'am.

24 Q You didn't say a murder, you said a shooting?

25 A I said a shooting.

1 Q When you got in the house, Derell was sitting on the
2 couch?

3 A That's correct.

4 Q And got a good look at him then?

5 A Yes, ma'am, I did.

6 Q He has short hair?

7 A Yes, ma'am.

8 Q Not dreadlocks?

9 A Correct.

10 Q He was not armed?

11 A No, ma'am, he wasn't.

12 Q And he didn't make an attempt to leave when you came
13 in?

14 A No, ma'am, he didn't.

15 Q He cooperated?

16 A Yes, he did.

17 Q And so then you told the family that you had to take
18 him down to the precinct?

19 A Yes, ma'am.

20 Q And they didn't come with you?

21 A They did not.

22 Q There were still some officers at the home?

23 A I don't remember.

24 Q Okay. Were officers waiting to get a search warrant
25 to search it?

1 A Yes, ma'am, they were.

2 Q And I assumed that they stayed at the house until the
3 warrant was issued?

4 A Yes.

5 Q To make sure no evidence was destroyed or anything
6 like that?

7 A That's correct.

8 Q Okay. So they would have waited there until the
9 search warrant?

10 A Somebody would have been there, yes, ma'am.

11 Q Okay. Now when you took Derell, you didn't ask him
12 if he wanted his mom to come with him?

13 A No, I didn't ask him.

14 Q Okay. And the next time he saw his mother would have
15 been after he was -- right before you were booking him in
16 for murder?

17 A Yes, ma'am, that's correct.

18 Q So you get in the house and after a few minutes put
19 handcuffs on him?

20 A Yes, ma'am.

21 Q In the front or the back?

22 A I believe it was the front.

23 Q Okay. So he's got cuffs on him in the front?

24 A Yes, ma'am.

25 Q And I think --

1 A And we put -- I'm sorry, we put the towel over his
2 hands so the neighbors wouldn't see what was going on.

3 Q All right. And that's taking him into custody?

4 A Yes, it is.

5 Q And at that point you don't give him any type of
6 Miranda rights warning or anything?

7 A No, ma'am. I wasn't going to ask him any questions
8 anyway until I get to the precinct.

9 Q So after you put the cuffs on him you put him in the
10 car?

11 A Yes, ma'am, we did.

12 Q This was either your car or another officer's car?

13 A It was an unmarked patrol car, detective car.

14 Q No question he was in a police car?

15 A Yes, he was.

16 Q For him?

17 A Yes, he was.

18 Q Okay. And there weren't any questions asked in the
19 car?

20 A No, ma'am, nothing at all.

21 Q And so you didn't do Miranda warnings in the car?

22 A No. No questions were asked.

23 Q And this was probably around 2:30, I think?

24 A Approximately.

25 Q And he was taken straight to the police station?

1 A Yes, ma'am.

2 Q And the station is just a few minutes away from where
3 he lives?

4 A That's correct.

5 Q Maybe five minutes?

6 A Maybe five minutes.

7 Q Okay. And North Charleston Police Department's now
8 in that new building on City Hall Boulevard, right?

9 A Yes, ma'am, it is.

10 Q So you get to the station and take him straight to a
11 room?

12 A Yes, we did.

13 Q And put him in there?

14 A Yes, ma'am.

15 Q And this is in the detective's division?

16 A Yes, it is. Detective bay, yes, ma'am.

17 Q Okay. So you kind of go through an entrance into the
18 detectives' area?

19 A It's downstairs and you get through and nobody can
20 see you. You go through the elevators and upstairs.

21 Q Okay. Then once you get upstairs you kind of walk
22 through into the detectives' area?

23 A That's correct.

24 Q Right? And walk down kind of a hallway?

25 A Yes, ma'am.

1 Q And then you've got, I think, two interrogation
2 rooms. If I was walking this way, the rooms are right
3 here?

4 A Yes, ma'am.

5 Q And they're pretty much identical?

6 A Yes.

7 Q Pretty small?

8 A They're small.

9 Q Maybe six feet wide, six feet this way?

10 A Maybe ten by ten.

11 Q Okay.

12 A It's not big, though.

13 Q You've got a table in the middle?

14 A Yes, ma'am.

15 Q And then maybe a couple of chairs on one side and
16 then on one on the other?

17 A That's correct.

18 Q And there's a place on the wall where you could cuff
19 somebody, but that's not how you all do it?

20 A No. There's an insert in there. It's permanently
21 fixed in there. We can't handcuff anybody to that.

22 Q So you don't put their handcuff on the wall?

23 A No, ma'am.

24 Q But you do handcuff them to a chair?

25 A Yes, we do.

1 Q All right. So once you're in the chair, you look up,
2 there's a double-sided window?

3 A There's an observation window in there.

4 Q Looks kind of like a mirror --

5 A Correct.

6 Q -- if you were in there and you didn't know better?

7 A Yes, ma'am.

8 Q Okay. And the suspect's always put facing the
9 double-sided mirror so you all can look in?

10 A That's the way I do it. I like to do it that way.

11 Q And then so if you're sitting in the chair and facing
12 the mirror, you look up, there's a spot where there is a
13 video camera?

14 A Yes, there is.

15 Q That's covered?

16 A Yes, it is.

17 Q And you all have them covered with like a styrofoam
18 bowl?

19 A Yes, ma'am, we do.

20 Q All right. And there is no clock in the room?

21 A No clock.

22 Q And there's one door?

23 A Yes.

24 Q And so there's only one way in and one way out?

25 A That's correct.

1 Q And on the other side of that door is where all the
2 detectives are sitting?

3 A They may be --

4 Q That's where they would be sitting?

5 A Yes.

6 Q Okay. So he gets to that room sometime around maybe
7 2:30?

8 A Yes, ma'am.

9 Q And you all cuff him to the chair?

10 A Yes, ma'am.

11 Q And then you walk out right away?

12 A Yeah, pretty much.

13 Q Okay. Now let's talk a little bit about being a
14 police officer.

15 A Yes, ma'am.

16 Q You've been an officer for awhile?

17 A Yes.

18 Q And to become an officer you go through training?

19 A Yes, we do.

20 Q And one of the things that you learn is like how to
21 interview a witness?

22 A Yes, ma'am.

23 Q How to gather facts?

24 A Correct.

25 Q How to document your investigation?

- 1 A Yes, ma'am.
- 2 Q You learn about writing police reports?
- 3 A Yes, ma'am.
- 4 Q And how to document your work in a report?
- 5 A Yes, ma'am.
- 6 Q And you want your report to be as accurate as
- 7 possible?
- 8 A Yes, ma'am.
- 9 Q And as complete as possible?
- 10 A Yes.
- 11 Q And a lot of times you may make an arrest and a lot
- 12 of time goes by between the arrest and when the case goes
- 13 to trial?
- 14 A Yes, ma'am.
- 15 Q And so copies of your report in the meantime go to
- 16 maybe the solicitor?
- 17 A Yes, ma'am.
- 18 Q They might come to a defense attorney?
- 19 A That's correct.
- 20 Q And that's so everybody knows what happened?
- 21 A That's correct.
- 22 Q And if you leave something out, it doesn't show the
- 23 complete picture?
- 24 A That's correct.
- 25 Q Okay. Now let's go back to Derell in the room with

1 his hands cuffed to the chair.

2 A Yes, ma'am.

3 Q You eventually go back in the room?

4 A Yes, ma'am.

5 Q And at that point you're alone with Derell?

6 A Yes.

7 Q By then you know he's 14?

8 A Yes, ma'am, I did.

9 Q And you know he's a student?

10 A Yes, ma'am.

11 Q And you know he's in the eighth grade?

12 A Yes.

13 Q And you didn't ask him any questions about whether or
14 not he was in special education?

15 A I did not.

16 Q Okay. But you did use that advise of rights form?

17 A Yes, ma'am, I did.

18 Q And you completed that top section?

19 A Yes, ma'am.

20 Q Or you wrote, you know, Derell Green?

21 A Yes, ma'am.

22 Q Eighth grade, right?

23 A Yes, ma'am.

24 Q Student?

25 A Yes, ma'am.

1 Q And in your report you wrote that you provided Derell
2 with his rights?

3 A Yes, ma'am, I did.

4 Q Right?

5 A Yes.

6 Q Now yesterday you said that you made an effort to
7 explain them because you knew he was only 14?

8 A That's correct.

9 Q There's nothing in your report about making special
10 efforts because he was only 14?

11 A Yes, ma'am.

12 Q There is?

13 A No. No, there's not. You're right.

14 Q And there's nothing in your report about you trying
15 to like simplify the language or anything?

16 A No, ma'am, there's not.

17 Q Or take any extra steps that you would take -- you
18 treated him, according to your report, like anybody else?

19 A Yes, ma'am. All my reports are like that.

20 Q Okay. You write all your reports the same?

21 A Well, I've never -- I've never put in there in any of
22 my reports where I made special efforts to make that
23 person understand exactly what I say.

24 Q Okay.

25 A I mean, I never clarify it that way. I always

1 state -- my reports are always I provided constitutional
2 rights.

3 Q So no matter what happens you write your report the
4 same way?

5 A Pretty much. I try to be consistent.

6 Q Okay. And -- but you're telling us now that you did
7 take extra steps?

8 A Yes, ma'am, I did.

9 Q All right. And that he told you that he understood
10 them?

11 A Yes, ma'am, he did.

12 Q And I guess that there's a section on the form at the
13 bottom for people to sign?

14 A Yes, there is.

15 Q Including the witness?

16 A Yes, ma'am.

17 Q And there's no witness signature other than yours?

18 A Yes, ma'am. I was the only one in there.

19 Q Okay. Because nobody else came in?

20 A That's correct.

21 Q And you were alone with him when this happened?

22 A Yes, ma'am.

23 Q There's no place on that form, is there, where it
24 says you're being investigated as a suspect in a murder?

25 A No, there's not.

1 Q There's no place that lists the charge that you're
2 being questioned about?

3 A That's correct, there's not.

4 Q Okay. So after you do the warnings with him, you
5 start taking the statement?

6 A About eight minutes later, yes, ma'am.

7 Q Okay. So -- and I'm talking about the first
8 statement?

9 A Yes, ma'am.

10 Q That statement's all in your handwriting?

11 A Yes, ma'am, it is.

12 Q And I think it's fair to say you've got distinct
13 handwriting?

14 A Yes, I do.

15 Q And for some people it may be difficult to read?

16 A Yes, ma'am.

17 Q Okay. But we know it's not Derell's?

18 A That's not Derell's.

19 Q All right. And I think you testified that you tend
20 to write them because that's how you do things?

21 A Yes, ma'am. I try to do it verbatim.

22 Q All right. But when you say that's how you try to do
23 it, you always write it?

24 A Well, I offer a person if they want to write their
25 own statement, and if they don't want to, we do it.

1 Q Okay. He didn't ask you to write the statement?

2 A No. I asked him.

3 Q You offered?

4 A Yes, I did. I asked if he wanted to write it, he
5 said no. I said, "Do you want me to write it for you?"
6 He said yes.

7 Q Okay. And I guess you started with some basic
8 questions, right?

9 A Yes, ma'am.

10 Q You asked him what he was wearing that day, things
11 like that?

12 A Yes, ma'am.

13 Q What he did that morning?

14 A That's correct.

15 Q And he didn't say anything about walking to school
16 with Shalaine Jenkins?

17 A No, he did not I don't believe. I need to look at
18 the statement if you want me to.

19 MS. EHRLICH: Permission to approach?

20 THE COURT: Yes, ma'am.

21 BY MS. EHRLICH:

22 Q Here's State's Exhibit 36.

23 A Thank you.

24 Q He told you he walked to school that day, right?

25 A Yes, ma'am.

- 1 Q And he didn't mention Shalaine Jenkins at all?
- 2 A No, ma'am.
- 3 Q He tells you he goes to school, though?
- 4 A Yes.
- 5 Q And that after school a shooting happened on Bonds
- 6 Avenue?
- 7 A That's correct.
- 8 Q And that he was on Bonds Avenue?
- 9 A Yes, ma'am.
- 10 Q That he heard three or four shots?
- 11 A Yes.
- 12 Q That he ran through some cuts?
- 13 A Yes, ma'am, he did.
- 14 Q And went home?
- 15 A Yes.
- 16 Q And he says then Mook came over?
- 17 A Yes, ma'am.
- 18 Q And he told you Mook didn't go to school that day?
- 19 A That's correct.
- 20 Q And he denied having a gun?
- 21 A Yes, he denied it.
- 22 Q And he denied shooting a gun?
- 23 A Yes, he did.
- 24 Q And he said that the only time he ever fired a gun
- 25 was a rifle in the country and he was shooting at a

1 squirrel?

2 A Yes, ma'am, correct.

3 Q And he denied knowing Larry Maybank?

4 A That's correct.

5 Q By that time one of the other detectives had already
6 spoken with Ms. Jenkins, right?

7 A Yes, ma'am.

8 Q And you all didn't send anybody to go talk to who
9 Derell said he walked to school with, right?

10 A I tried to find the other people later on and I
11 couldn't make contact with any of them.

12 Q So you weren't able to interview any of them?

13 A No. I think -- no, ma'am. I tried.

14 Q Okay. When you say you tried but couldn't find them
15 or they didn't --

16 A I couldn't find them. I didn't know an Azarial or
17 Remeal wouldn't talk to me and I couldn't find Damian.

18 Q Okay. So you went to the school and got their
19 contact information?

20 A Yes, ma'am. Well, they didn't know who Azarial was
21 or Damian and Remeal was somebody else.

22 Q Okay. So you weren't able to talk to any of them?

23 A No, ma'am.

24 Q Okay. Now when he told you Mook didn't go to school
25 that day, that was the truth?

1 A Yes, ma'am, it was the truth.

2 Q And when he told you that he was on Bonds Avenue when
3 the shooting happened and ran through cuts, that was the
4 truth?

5 A Yes, it was.

6 Q But once he gave that statement, you didn't let him
7 go?

8 A No, ma'am, we didn't.

9 Q And you didn't book him for murder at that point?

10 A We were doing our investigation.

11 Q Okay. So you just kept him there?

12 A Yes, ma'am, we did.

13 Q For hours?

14 A Well, it's a homicide investigation, ma'am. That's
15 what we do.

16 Q Okay. But it was for hours, right?

17 A Yes, it was.

18 Q And some other detectives went in to talk to him?

19 A That's correct.

20 Q I'm not asking you what they did. I'm just asking,
21 that would have included Detective Sturkie?

22 A Yes, ma'am.

23 Q Detective Miller?

24 A That's correct.

25 Q Detective Holt?

1 A Yes.

2 Q And you don't know what happened when they were in
3 there because you weren't in there?

4 A Correct. I was doing paperwork and other
5 investigation work.

6 Q And you weren't watching through the window?

7 A No, ma'am, I didn't.

8 Q And you weren't listening?

9 A No.

10 Q Now as far as this first statement, I think you
11 testified before it took about an hour and a half?

12 A Yes, ma'am.

13 Q And then at some point you start taking another
14 statement 7:45-ish?

15 A Yes, ma'am.

16 Q So we've got maybe three hours in between?

17 A Yes.

18 Q All right. And I know that you said you all were
19 offering him food and drinks and bathroom breaks, but he
20 didn't get food during that three hours?

21 A No, ma'am, he didn't. I asked him and he told me no.

22 Q But then somebody went to go get him food from Burger
23 King?

24 A Yeah. I instructed Sergeant Adams.

25 Q Okay.

1 A I wanted to stay close to the investigation so I
2 asked Sergeant Adams at 7:30 to get him some Burger King.
3 He asked -- I asked if he wanted Burger King or food and
4 he said yes, Burger King, and that's what I got him.

5 Q Okay. But he didn't get that until after y'all took
6 the second statement?

7 A Well, it's probably maybe during second statement.
8 He may have been eating during the statement, I don't
9 recall, but I think Sergeant Adams came back while his
10 statement was being taken.

11 Q Okay. You didn't document in your report what time
12 he was given the food?

13 A Sergeant Adams left at 7:30 and he was eating during
14 his statement.

15 Q Okay. I'm not asking what happened. I'm asking, you
16 didn't document it in your report?

17 A Not the exact time, no, ma'am.

18 Q Okay. So then you move onto the next statement?

19 A That's correct.

20 Q And before you took that statement, you didn't do any
21 Miranda rights?

22 A No, ma'am. They -- to my knowledge they still
23 attached.

24 Q Okay. And you didn't, you know, make any special
25 effort to redo it or explain it to him again?

1 A No. I've never done that. If the person doesn't
2 ask, I'm not going to give it to them.

3 Q Okay. And you go back in there after Sturkie's been
4 in there and Miller's been in there?

5 A That's correct.

6 Q And that's when you start to write this next
7 statement?

8 A Yes, I did.

9 Q Which is also in your handwriting?

10 A Yes, it is.

11 Q Because that's how you do it?

12 A If somebody doesn't want to do that statement, I'll
13 do it for them.

14 Q But, I mean, that's really how you do it?

15 A Yes, ma'am.

16 Q Okay. And you wrote in there this stuff about him
17 being ganged a month before?

18 A Yes, ma'am, that's what he told me.

19 Q Okay. That he'd been beaten up by a group of people?

20 A That's correct.

21 Q That would have included Larry Maybank?

22 A As his accounts, yes.

23 Q Right. That they had stomped on him?

24 A Yes, ma'am.

25 Q And "stomped on him" means what?

1 A I guess with some feet and beat him up.

2 Q I mean not like foot taps, though?

3 A No, probably not.

4 Q Okay. And he told you that there was a gold chain
5 ripped off his neck or something?

6 A Yes.

7 Q And that he never told anybody about it?

8 A No, he did not.

9 Q And that he started to see Mr. Maybank on the school
10 campus?

11 A Yes.

12 Q And that Mr. Maybank was giving him looks?

13 A Yes.

14 Q I think he called it mean mugging?

15 A Approximately a month before that, yes. Well, I
16 apologize. He said this assault happened a month before
17 this incident.

18 Q Okay. And the mean mugging happens the week before?

19 A Yes.

20 Q And the day of?

21 A I think it was -- yes.

22 Q According to the statement?

23 A Correct.

24 Q He also tells you that he got a gun from an abandoned
25 house?

1 A That's correct.

2 Q And that he fired four to five times?

3 A Yes, ma'am.

4 Q Now let's talk about the ganging stuff.

5 A Okay.

6 Q You all never searched Mr. Maybank's home for that
7 chain or anything, did you?

8 A No, we did not.

9 Q So you weren't able to confirm whether or not that
10 chain was in his possession?

11 A That's correct. It was -- I did look for police
12 reports, anything that was stating it may have been stolen
13 from Mr. Green.

14 Q You didn't find that?

15 A No, I did not. No police reports were done.

16 Q You weren't able to find any witnesses to that?

17 A I could not verify his story.

18 Q Okay. And he was saying he fired the gun four or
19 five times?

20 A Yes, ma'am.

21 Q By all other witness accounts three shots were fired?

22 A Yes.

23 Q And none of the witnesses were telling you that the
24 gun came from under the house?

25 A That's correct.

1 Q And he never told you that he brought a gun that day
2 to kill Mr. Maybank?

3 A That's correct, he didn't say that.

4 Q You asked him why he had a gun?

5 A Yes.

6 Q And he said, "I don't know?"

7 A That's correct, he said, "I don't know."

8 Q - Now going back to interviewing him --

9 A Yes, ma'am.

10 Q -- you guys have a bunch of policies and procedures
11 internally for North Charleston Police Department, right?

12 A Yes, ma'am.

13 Q And I believe that there's a special section on
14 juveniles?

15 A Yes, ma'am.

16 Q That cover -- and part of that would cover
17 interviews?

18 A Yes, ma'am.

19 Q And it says in there, you know, you've got to
20 carefully explain the Miranda rights to a juvenile?

21 A Yes, ma'am.

22 Q Right?

23 I think also in there it says if a juvenile asks
24 for a parent you should stop the interview?

25 A Yes, ma'am.

1 Q And that North Charleston Police Department treats a
2 request for a parent the same as a request for an
3 attorney?

4 A Yes, ma'am.

5 Q Now you never asked him if he wanted his mother
6 there?

7 A I did not.

8 Q I think you just said previously that you just
9 assumed he knew he could have his mom there?

10 A Well, I offered -- when I first got to the house I
11 offered to the parents to come.

12 Q Okay. You offered to the parents?

13 A Yes.

14 Q But not to Derell Green?

15 A No, I did not.

16 Q And it's your testimony that he never asked for his
17 mother?

18 A To my knowledge, no, he did not.

19 Q He never asked you for his mother?

20 A He never asked.

21 Q And you never told him "not until you're done?"

22 A No, I did not.

23 Q All right. And you never told him, you know, "you're
24 not going to see daylight again" or anything like that?

25 A I did not say that.

1 Q Okay. Because that's not your style?

2 A No, I would never do that.

3 Q All right. And you didn't make any attempt to try to
4 scare him into giving a statement?

5 A No, I did not. I was very nice to him.

6 Q Okay. Well, in the room you had him handcuffed to
7 the chair, right?

8 A Due to the severity of the crime, yes.

9 Q All right. And he was probably cuffed from the time
10 that he left his house?

11 A Yes, he was.

12 Q To the time that he was booked in?

13 A Yes, he was.

14 Q Which was sometime after 1 o'clock in the morning?

15 A Correct. With the exception of bathroom breaks,
16 water break, or to eat. He wasn't handcuffed at those
17 times.

18 Q He wasn't handcuffed --

19 A Not to my knowledge. I don't remember if he was or
20 not.

21 Q You don't remember?

22 A Correct. I know going to the bathroom he was not.

23 Q Okay. Now going back to the cameras --

24 A Yes, ma'am.

25 Q -- they're covered?

1 A Yes.

2 Q Because they don't work?

3 A The system is not correct for what we need at this
4 time.

5 Q Okay. So you all don't use them because of the
6 security issue that you testified about before?

7 A The security issue. Also for the privacy of victims.
8 We do all kind of interviews. It's not just homicides.
9 We do sexual assault cases in there, victims, suspects,
10 witnesses. We do all kinds of investigations in those
11 rooms.

12 Q Okay. But because you don't use them, they're
13 covered with the bowls?

14 A That's correct.

15 Q And so you all don't videotape interviews?

16 A No, we do not. There's no law says we have to.

17 Q I didn't ask if there was a law. I asked you, you
18 all don't do it?

19 A No, we don't.

20 Q And you all don't video Miranda warnings?

21 A No, we don't.

22 Q You all don't -- you didn't video when gave his
23 statement?

24 A No, we did not.

25 Q You didn't videotape the hours in between the

1 statement?

2 A No, we didn't.

3 Q You didn't videotape when he gave the second time?

4 A No.

5 Q And so none of what you said to him is on tape?

6 A That's correct.

7 Q And nothing that he said to you is on tape?

8 A That's correct.

9 Q And nothing that anybody said in that room is on
10 tape?

11 A Yes, ma'am, that's correct.

12 Q And you all don't even have audio recording of it?

13 A No, we don't.

14 Q And I think it's safe to say you all made no attempts
15 to do any type of recording of this incident or anything
16 of the -- anything that happened in the room?

17 A That's correct.

18 Q You all have access to cameras?

19 A Yes, we do.

20 Q You have them in the department?

21 A Yes, we do.

22 Q You all videotape the crime scene?

23 A Yes, we do.

24 Q But no attempts to go get that camera and videotape
25 what happened to him?

1 A No, we did not.

2 Q You interviewed Rashawn Bradley?

3 A Yes.

4 Q And that was a week after the shooting?

5 A Yes.

6 Q You also interview Antonio Smalls-Heyward?

7 A Yes, I did.

8 Q Or Antonio Smalls? I think he goes by both.

9 A Yes, ma'am.

10 Q That was also a week after the shooting?

11 A That's correct.

12 Q And to your knowledge, you don't know if they talked
13 about the case at all to anybody else?

14 A No, I don't.

15 Q You don't know if they discussed it with their
16 families?

17 A No, I don't.

18 Q You don't know if they discussed it with Daqone
19 Lance?

20 A No, I don't.

21 Q You don't know if they talked about it at the school?

22 A No.

23 Q Or if people were talking about it in the street?

24 A I'm sure they were, but no -- to my knowledge, no, I
25 don't know.

1 Q Okay. Let's talk about Ms. Simmons.

2 A Yes, ma'am.

3 Q You knew that she gave a description of the shooter?

4 A Yes.

5 Q And you knew that it was different than what Derell
6 looks like? And I'm talking about the hair.

7 A Just the hair, yes, ma'am.

8 Q You all didn't go back and talk to her about that
9 ever?

10 A I did not.

11 Q Well, you're the lead detective, so you would be
12 responsible.

13 A Yes, ma'am.

14 Q Because your job as the lead detective is to know the
15 case kind of backwards and forwards?

16 A Yes, ma'am.

17 Q You're kind of like the representative of the
18 department for the case?

19 A Yes, ma'am.

20 Q So you've got to know everything going on?

21 A Yes, ma'am. I was pretty confident we had the right
22 person.

23 Q Okay. You reviewed all the reports of the officers?

24 A Yes, ma'am.

25 Q You reviewed all the witness statements?