

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

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S.C. SUPREME COURT

Honorable Roger M. Young, Circuit Court Judge

RYAN P. DELESTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001475

APPENDIX

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STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,)
vs.) Case Nos.: 2011-GS-10-6361
RYAN DELESTON,) 2011-GS-10-6362
Defendant.) 2011-GS-10-6363
2011-GS-10-6364

TRANSCRIPT OF PROCEEDINGS
JURY TRIAL, VOLUME I OF V
HEARD BEFORE JUDGE KRISTI LEA HARRINGTON
ON OCTOBER 7, 2013

ROLAYNE M. VOLPE, CCR, RPR
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State of SC vs Ryan Deleston
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A P P E A R A N C E S

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1 The above-styled cause came on for hearing on
2 the 7th day of October, 2013, at 11:02 a.m., before
3 Judge Kristi Lea Harrington, Circuit Judge for the Ninth
4 Judicial Circuit, presiding over the General Sessions
5 Court for the County of Charleston, when the following
6 proceedings were had and entered of record, to wit:

7 PROCEEDINGS

8 JURY TRIAL, VOLUME I OF V

9 The COURT: Anything we can handle before the
10 jury comes up?

11 MS. WILSON: I don't think so.

12 MR. PENNINGTON: We had submitted a couple of
13 additional *voir dire* questions overnight, which I know
14 the Court saw. And we've got a number of *in limine*
15 matters, but I gather we're going to do the jury first
16 and then take up all those other matters.

17 THE COURT: Is there anything preventing -- any
18 of the motions that are pending that would prevent us
19 from picking a jury at this time? Mr. Pennington?

20 MR. PENNINGTON: No, ma'am.

21 THE COURT: Ms. Wilson, do you agree?

22 MS. WILSON: Yes, ma'am.

23 THE COURT: Just some housekeeping matters.
24 I'm going to give you your laptop back. And if we need
25 it -- so if you'll just come -- Ms. Driggers, if you

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1 will come get your laptop.

2 Court's 1 will be the three discs that I viewed
3 over the -- throughout the week and the weekend. So
4 that will be a Court's exhibit, the two discs and then
5 the -- of the interview, and then the edited disc.

6 Court's 2 is a copy of your stipulation that
7 was provided, just so it's -- and then Court's 3 will be
8 the State's proposed *voir dire*. And Court's 4 will be
9 the Defendant's proposed *voir dire*.

10 (Court's Exhibit Number 1 is marked for
11 identification.)

12 (Court's Exhibit Number 2 is marked for
13 identification.)

14 (Court's Exhibit Number 3 is marked for
15 identification.)

16 (Court's Exhibit Number 4 is marked for
17 identification.)

18 THE COURT: Mr. Pennington, is your client
19 waiving formal arraignment?

20 MR. PENNINGTON: He is.

21 THE COURT: Ms. Wilson, were there any
22 objections to the proposed *voir dire* from the Defendant?

23 MS. WILSON: Your Honor, none to the original
24 ten. I haven't had the chance to speak with Mr. DuRant
25 about the last two.

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1 Your Honor, as to Number 12, which is, have you
2 ever said or felt that Court's favored the accused on
3 trial? I think that you give general instructions about
4 that and ask questions throughout, about someone's
5 ability to be fair and impartial. And I would object to
6 Number 12.

7 THE COURT: I am not going to ask that question
8 as it is worded. I'm going to ask the question in the
9 spirit as I think the question was intended.

10 Any objection to any of the State's proposed
11 *voir dire*, Mr. Pennington?

12 MR. PENNINGTON: No, your Honor.

13 THE COURT: Ms. Wilson, we are going forward
14 on four Indictments: 2012-GS-10-6361, -6362, -6363, and
15 -6364?

16 MS. WILSON: Yes, ma'am.

17 THE COURT: Mr. Pennington, any objections to
18 the Indictments being read to the jury?

19 MR. PENNINGTON: No objection, your Honor.

20 THE COURT: Thank you.

21 (Respite.)

22 THE COURT: All right. Counsel, I have gone
23 through and determined which ones that I think we --

24 MR. PENNINGTON: Your Honor, should we bring my
25 client out for this conversation?

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1 THE COURT: These are just preliminary
2 housekeeping matters. That's why -- I didn't know --

3 MR. PENNINGTON: I wasn't sure.

4 THE COURT: Feel free to bring him on out, but
5 these were just housekeeping matters.

6 MR. PENNINGTON: Probably good to establish a
7 protocol and. . .

8 (The Defendant is escorted into the courtroom.)

9 THE COURT: Are you Ryan Deleston?

10 MR. PENNINGTON: It's Ryan, your Honor. Ryan.

11 THE COURT: I'm sorry. I thought that's what I
12 said. Are you Ryan Deleston?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: All right. Mr. Deleston, we are
15 beginning your trial. I understand that you waive
16 formal arraignment; is that correct?

17 (The Defendant speaks with Mr. Pennington off
18 the record.)

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: All right. Thank you. All right.
21 The procedure that we are going to use for *voir dire*
22 is, I'm going to just ask them the general questions,
23 read the Indictment, have you introduce yourself,
24 Mr. Pennington, your client, any person seated with
25 your table. Same to you, Ms. Wilson, any persons that

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1 even potentially might be coming in and out to assist
2 you, any investigators, anything of that nature. Then
3 I will read the witness list. Then I will go through
4 the proposed *voir dire* that you have sent. I have
5 determined which ones I think determine a more
6 individualized and personal response. So I'm going to
7 have the jury come up one by one, if they need to answer
8 that series of questions.

9 At that point, if there's anything that you
10 feel that I have missed or you then require me to ask
11 additional, if you'll let me know, we'll do it in front
12 of the court reporter. All right. So that's the
13 procedure that we will use.

14 (A discussion held off the record.)

15 MR. PENNINGTON: Your Honor, may I approach
16 just to get the court reporter's numbers on those
17 exhibits?

18 THE COURT: Yes. While waiting, I wanted to
19 address the motion to sequester witnesses. Any
20 objection to sequestering the witnesses, Ms. Wilson?

21 MS. WILSON: No objection, your Honor. We had
22 asked, and I believe Mr. Pennington consented, to the
23 two lead case agents for Charleston Police Department,
24 Rich Burckhardt and David Osborne.

25 MR. PENNINGTON: We have no objection to them

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1 being allowed to sit with counsel or up near the front,
2 your Honor.

3 MS. WILSON: In addition, our solicitor's
4 office, two investigators, Jeff Osburn and Matt Casey.
5 I don't believe Matt Casey's even on the witness list.
6 Jeff Osburn was on the witness list. I think it
7 unlikely that we call him, but he was present for a
8 number of interviews and that sort of thing. I don't
9 believe there will be any objection.

10 MR. PENNINGTON: I don't have any objection to
11 Investigator Osburn, the solicitor's officer.

12 THE COURT: All right. Your motion to
13 sequester the witnesses under Rule 615 is granted, with
14 the exception that Detective Burckhardt, and Detective
15 Osborne, Investigator Casey, and Investigator Osburn
16 will be allowed to remain in the courtroom.

17 MS. WILSON: Your Honor, in addition, Liz
18 Paige, who is the mother of Marley Lion, is going to be
19 testifying. She will testify first or second. And, of
20 course, as the victim's mother, she has a right to be
21 present in the courtroom. I don't know if there's any
22 objection.

23 MR. PENNINGTON: We have no objection at all.

24 THE COURT: And it is Paige?

25 MS. WILSON: Yes, ma'am.

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1 THE COURT: Ms. Paige will be allowed to remain
2 in the courtroom for the entirety.

3 Motion to maintain courtroom decorum.
4 Mr. Pennington, is there anything I need to hear from
5 you regarding that matter? Has there been any
6 indication so far that there's any concerns?

7 MR. PENNINGTON: Not so far, your Honor. Just
8 what's stated in the background -- the factual
9 background that I submitted in a motion. So far I've
10 seen nothing this morning that would cause any concern.

11 THE COURT: Ms. Wilson, any -- any concerns or
12 any --

13 MS. WILSON: No, ma'am.

14 THE COURT: And I'm assuming, with Ms. Porcel
15 from your office, that that's the victim's family?

16 MS. WILSON: Yes, ma'am.

17 THE COURT: And just for the record, at this
18 time, I do not notice any buttons or paraphernalia or
19 anything of that nature. At this point, it's not an
20 issue, Mr. Pennington. If at any time it becomes a
21 concern, I will revisit your motion.

22 MR. PENNINGTON: Thank you, your Honor.

23 THE COURT: Thank you. Are there any other
24 -- while we're waiting for the jury to come up, are
25 there any -- you're ready?

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1 All right. Let's bring in the jury. I have 60
2 jurors coming in. So the first rows need to be clear
3 for the jury.

4 Ms. Wilson, Mr. Pennington, you were present
5 during jury qualification downstairs?

6 MS. WILSON: Yes.

7 MR. PENNINGTON: Yes.

8 THE COURT: Do you agree that the oath was
9 given to the jury downstairs?

10 MS. WILSON: Yes, ma'am.

11 MR. PENNINGTON: Yes, ma'am.

12 (Respite.)

13 MR. PENNINGTON: Your Honor, just to let you
14 know, Mr. Kozelski is going to be arguing both the
15 suppression of the statement and also response to the
16 State's motion to exclude the shooting on June 1st, the
17 information about the shooting on June 1st.

18 THE COURT: Thank you.

19 (Respite.)

20 THE COURT: Counsel, am I correct for
21 scheduling, that we will select the jury and then let
22 the jury go home for the afternoon and return back in
23 the morning?

24 MS. WILSON: Works for me. I think that's a
25 good plan.

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1 MR. PENNINGTON: That's fine, your Honor.

2 THE COURT: Any preferences to what time we
3 start in the morning, Ms. Wilson?

4 MS. WILSON: No, ma'am.

5 MR. PENNINGTON: My preference would be that we
6 would start with the jury at 9:30. If we had
7 preliminary matters at nine, that would be great. But
8 if we -- that gives me a little bit of a window from
9 8:30 to 9:30 to, perhaps, talk to my client and be ready
10 to go at 9:30.

11 THE COURT: My plan is that there will be no
12 further preliminary matters by the time we break for the
13 evening hour and that we would just begin with openings
14 in the morning.

15 MR. PENNINGTON: Right. I didn't mean to imply
16 any motions or anything like that.

17 THE COURT: Okay. Thank you. I want
18 everything addressed this afternoon so that we can begin
19 the trial in the morning.

20 MR. PENNINGTON: Yes, ma'am.

21 THE COURT: Thank you.

22 So we will pick the jury and release them until
23 9:30.

24 THE BAILIFF: May we come in?

25 THE COURT: Yes.

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1 (The jury pool is escorted into the courtroom
2 at 11:28 a.m.)

3 THE COURT: Please have a seat in the jury box.
4 Ms. Wilson, Mr. Pennington, if you will
5 approach.

6 (All four attorneys approach the bench.)

7 THE COURT: Mr. Michel, Juror 273, needs to go
8 to a civil panel at this time. Thank you.

9 MR. MICHEL: Juror 237.

10 THE COURT: All right. Good morning, ladies
11 and gentleman. I am Judge Kristi Harrington. I am a
12 resident judge for the Ninth Circuit, which is Berkeley
13 and Charleston County. I have the pleasure this week of
14 presiding over a term of General Sessions, which is
15 commonly known as criminal court.

16 Ladies and gentlemen, I have a series of
17 questions, just as Judge Dennis asked you downstairs,
18 but these questions are more specific to the case that
19 we are going to try at this time. Ladies and gentlemen,
20 there are some questions that I will ask for you to come
21 and answer in private. And there may be some questions
22 that I didn't think that you would want to answer in
23 private, but that you may feel that you would prefer to
24 answer those questions with me in private instead of
25 with the entire jury panel.

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1 Ladies and gentlemen, you have been
2 administered an oath downstairs in which you agreed to
3 give your complete and truthful responses. Please
4 understand that the questions I am about to ask are not
5 intended to embarrass you or anything of that nature.
6 It's simply some questions that we need to know. We're
7 attempting to assemble a jury panel of fair and
8 impartial jurors.

9 Ladies and gentlemen, my court reporter is
10 taking down everything that I say, as well as everything
11 that you say and the parties that are involved. I have
12 the benefit -- we call it realtime. And as she is
13 typing what I'm saying, that is what is appearing on the
14 screen. So it is important -- the attorneys will be
15 taking down notes to your responses. So when you stand
16 to answer a question, I ask that you stand, state your
17 name and your jury number before you give your response
18 and then again before you are seated, so that we have
19 complete and accurate recordings of your name and juror
20 number.

21 Ladies and gentlemen, the case that we are
22 about to begin is the case of the State of South
23 Carolina versus Ryan Deleston. Ladies and gentlemen,
24 Mr. Deleston has been indicted through what is called an
25 Indictment. The Indictment is simply the piece of paper

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1 that brings us to court here today.

2 Mr. Deleston has been charged with the crime of
3 murder, the crime of attempted arm robbery, possession
4 of handgun with an obliterated serial number, and
5 possession of a firearm during the commission of a
6 violent crime.

7 Ladies and gentlemen, please understand the
8 first thing that I need for you to understand is, this
9 is not a death penalty case. First of all -- the next
10 thing I need you to understand is, we should be finished
11 by Friday. So please do not think that because there
12 are four Indictments or the nature of the charges
13 involved, that we will be going any further than this
14 week. We will not.

15 Ladies and gentlemen, is there any member of
16 the jury panel that knows anything about this case other
17 than what I have already read to you?

18 If you would please stand. And I need your
19 jury number and your name.

20 THE JUROR: Eleven, Kathleen Beebe.

21 THE COURT: All right. And how do you know
22 about this case?

23 THE JUROR: From the newspaper, as well as I am
24 friends with the parent of the victim.

25 THE COURT: All right. So you've -- with what

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1 you've shared with us -- your jury number one more time.

2 THE JUROR: Eleven.

3 THE COURT: With what you've shared with us,
4 would that affect your ability to be fair and impartial
5 in this case?

6 THE JUROR: I think so.

7 THE COURT: Juror Number 11, I'm going to
8 excuse you from the trial of this case. I need you to
9 remain with us, but please do not answer any further
10 questions. Thank you.

11 Yes, ma'am.

12 THE JUROR: Nicole Beaulieu, Juror Number 9. I
13 knew the victim.

14 THE COURT: And with what you have shared with
15 us, Juror Number 9, is there anything -- will that
16 affect your ability to be fair and impartial in this
17 case?

18 THE JUROR: Yes, ma'am, it will.

19 THE COURT: Same response to you. I need you
20 to remain with us, but please do not answer any further
21 questions. Thank you.

22 Juror 9 and 11 are excused from the trial of
23 this case.

24 Is there anyone else? Yes.

25 THE JUROR: I'm Jury Number 264. I, as well,

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1 have read and heard.

2 THE COURT: And is there anything about what
3 you have read or heard that will affect your ability to
4 be fair and impartial in this case?

5 What we need is a juror who is able to listen
6 to the facts from the witness stand and apply the law as
7 the Court gives it and render a verdict based only upon
8 those things. Can you be that juror?

9 THE JUROR: I don't think so.

10 THE COURT: I'm sorry?

11 THE JUROR: I'm not sure that I could at this
12 time.

13 THE COURT: All right. I'm going to have you
14 come forward at the appropriate time and inquire further
15 about that. So please, when I have you come forward --
16 when I open it up for everybody to come speak with me in
17 private, please remember that I request you to do so.
18 Your jury number one more time.

19 THE JUROR: 264.

20 THE COURT: Thank you. Yes, ma'am.

21 THE JUROR: I'm Juror 259. I saw it in the
22 paper.

23 THE COURT: All right. And same question to
24 you, is: Based upon your seeing this in the paper, will
25 that affect your ability to be a fair and impartial

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1 juror?

2 THE JUROR: Yes.

3 THE COURT: Again, we need a juror who is able
4 to listen to the facts f r o m THE w i t n e s s STAND,
5 apply the law as the Court gives it, and render a
6 verdict based upon those things. Can you do that?

7 THE JUROR: No.

8 THE COURT: All right. Your jury number?

9 THE JUROR: 259.

10 THE COURT: 259 will be excused from the trial
11 of this case.

12 Ladies and gentlemen, I am now going to read
13 the Indictments to you. Please understand Mr. Deleston
14 has pled not guilty to each Indictment. Please also
15 understand that what is contained in the Indictments is
16 not evidence in this case.

17 In Indictment 2012-GS-10-6361, State of South
18 Carolina versus Ryan Deleston, Indictment for murder,
19 the State alleges that in Charleston County, on or about
20 June 16th, 2012, while in concert with others and with
21 malice aforethought, Ryan Deleston did kill and murder
22 Marley Lion by means of shooting him with a handgun, and
23 that Marley Lion did die in Charleston County as a
24 proximate result thereof on June 16th, 2012, in
25 violation of 16-3-10 of the South Carolina Code of Laws

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1 1976 'as amended.

2 The State further alleges, in Indictment
3 2012-GS-10-6362, State versus Ryan Deleston, an
4 Indictment for armed robbery, that on or about June 16,
5 2012, in Charleston County, South Carolina, at 1662
6 Savannah Highway, while acting in concert with others,
7 the Defendant, Ryan Deleston, by use of force, threats,
8 or intimidation, in concert with others, and while armed
9 with a deadly weapon, to-wit, a handgun, did attempt to
10 take and carry away goods and/or monies from the person
11 or immediate presence of Marley Lion with the intent to
12 permanently deprive him of possession thereof, in
13 violation of 16-11-330(B) of the South Carolina Code of
14 Laws, 1976, as amended.

15 In Indictment 2012-GS-10-6363, the State of
16 South Carolina versus Ryan Deleston, Indictment for
17 possession of a handgun with an obliterated serial
18 number, the State alleges that in Charleston County,
19 South Carolina, on or about July 15th, 2012, the
20 Defendant, Ryan Deleston, did unlawfully have in his
21 possession a Sig Sauer handgun from which the original
22 serial number had been removed or obliterated, all in
23 violation of 16-23-30 of the South Carolina Code of
24 Laws, 1976, as amended.

25 Indictment 2012-GS-10-6364, the State of South

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1 Carolina versus Ryan Deleston, an Indictment for
2 possession of a firearm during the commission of a
3 violent crime. The State alleges that in Charleston
4 County, South Carolina, on or about June 16, 2012, the
5 Defendant, Ryan Deleston, did possess a handgun or
6 visibly displayed what appeared to be a handgun during
7 the commission or attempted commission of the violent
8 crimes of murder and attempted arm robbery. This is in
9 violation of 16-23-490 of the South Carolina Code of
10 Laws, 1976, as amended.

11 Is there any member of the jury panel that
12 knows anything about this case, other than what I have
13 read to you in the Indictments? If so, please stand.

14 Thank you. There are none.

15 Mr. Pennington, if you would please stand,
16 introduce your client, yourself, persons who will be
17 seated at your table or may be assisting you, coming in
18 and out throughout this trial.

19 MR. PENNINGTON: Yes, your Honor. Good
20 morning. My name is Ashley Pennington. This is
21 John Kozelski. He will be acting as my co-counsel. And
22 this is Ryan Deleston, who is my client. Also present
23 somewhere -- maybe they've stepped out now -- I have a
24 -- there they are -- my paralegal, Joan Driggers, and I
25 have Investigator Art DeGiovine --

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1 THE COURT: I'm sorry. Your investigator's
2 name, Mr. Pennington?

3 MR. PENNINGTON: Art DeGiovine.

4 THE COURT: Thank you.

5 Is there any member of the jury panel related
6 by blood, marriage, close personal friends, ever have
7 any business, personal, professional dealings with the
8 Defendant, Ryan Deleston? If so, please stand.

9 Thank you. There are none.

10 Is there any member of the jury panel related
11 by blood, marriage, close personal friends, ever had any
12 business, personal, professional dealings, or ever been
13 represented by, specifically, Mr. Pennington or
14 Mr. Kozelski or anyone in the public defender's office?
15 And that, again, is comprised of the Ninth Circuit,
16 which is Berkeley and Charleston. If so, please stand.

17 Thank you. There are none.

18 Ms. Wilson, if you would please stand,
19 introduce yourself, and, again, any persons who will be
20 seated with you or who will be coming in and out,
21 assisting you throughout this trial.

22 MS. WILSON: Thank you, your Honor. I'm
23 Scarlett Wilson. I'm the solicitor here in Charleston
24 County and Berkeley County, which makes up the Ninth
25 Circuit. This is Bruce DuRant. He is my Chief Deputy

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1 from the Circuit. We will be trying this case together.
2 Later you will see at the table Detective Rich
3 Burckhardt, who is with the Charleston Police
4 Department, and Detective David Osborne, who is also
5 with the Charleston Police Department.

6 In addition to that, you're likely to see two
7 investigators from our office, Matt Casey and Jeff
8 Osburn, who will be assisting us throughout the week in
9 this trial. Thank you, your Honor.

10 THE COURT: Thank you. Is there any member of
11 the jury panel related by blood, marriage, close
12 personal friend, ever have any business, personal,
13 professional dealings, specifically, with Ms. Wilson or
14 Mr. DuRant? If so, please stand.

15 Thank you. There are none.

16 THE COURT: Is there any member of the jury
17 panel that's ever had any matters handled by the Ninth
18 Circuit solicitor's office? And, again, that is
19 Berkeley and Charleston County. If so, please stand.

20 Thank you. There are none.

21 Ladies and gentlemen, I am now going to call a
22 list of potential witnesses. These witnesses may be
23 called to testify in this case. Ladies and gentlemen,
24 there -- I have a list of 69 witnesses. So please
25 listen carefully. If at any point you need any

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1 clarification as to who these individuals are, if you
2 think you know who they are, it is more important for us
3 to -- for you to share information with us than for you
4 to think about it and then it come to your mind later.
5 So if you think at any point you've had any contact or
6 you know these individuals at all, please stand when I
7 call their name.

8 Darryl Cascone, with Bubba Gump restaurant;
9 Linda Hames, with IHOP restaurant; Grant Mattingly,
10 Charleston Police Department; Ulysius A. Vance,
11 Charleston Police Department; William S. Olson,
12 Charleston Police Department; Jeffrey Miller, Charleston
13 Police Department; Bobby Warthaw, Charleston Police
14 Department; Robert Deal, Charleston Police Department;
15 Rich Burckhardt, Charleston Police Department; Lamart
16 Williams, Charleston Police Department; Lauren Mulkey,
17 formerly Lauren Glover, Charleston Police Department;
18 Rene Charles, Charleston Police Department; Jeff Osburn,
19 Charleston Police Department; David Osborne, Charleston
20 Police Department; Craig Kosarko, Charleston Police
21 Department; Mary Phillips, with Charleston Police
22 Department; Jennifer Wooley, Charleston Police
23 Department; Cheryl Fulton, Charleston Police Department;
24 Richard Wiersma, Charleston Police Department; Chris
25 Webb, with the Charleston Police Department; Brian

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1 Hinton, Charleston Police Department; Linda Wilson, with
2 the Charleston Police Department; Andre Jenkins,
3 Charleston Police Department; Jeff Robertson, Charleston
4 Police Department; George Bradley, with the Charleston
5 Police Department; Christopher Webb, with the Charleston
6 Police Department; Jonathan Shealy, Charleston Police
7 Department; Dylan Grant, Charleston Police Department;
8 Thomas Bailey, Charleston Police Department; Robert
9 Feeters, Charleston Police Department; Amanda Cone,
10 Charleston Police Department; Eric Tuttle, with the
11 Charleston Police Department; Ashley Dockery, Charleston
12 Police Department; Ronald Turner, with the Charleston
13 Police Department; Jeffery Harrison, with the Charleston
14 Police Department; Jennifer Habbestad, with the
15 Charleston Police Department; Cory Hill, Charleston
16 Police Department; Jordan Lester, with the Charleston
17 Police Department; Paul Krasowski, with the Charleston
18 Police Department; Richard Kennedy, with the Charleston
19 Police Department; Craig Hamilton, with the Charleston
20 Police Department; Casey Havers, Charleston Police
21 Department; Dustin Thompson, with the Charleston Police
22 Department; Anita Moore, Charleston Police Department;
23 Nada Kerstein, Charleston Police Department; Suzann
24 Cromer, State Law Enforcement Division Department,
25 otherwise known as SLED; Selena Kinard, with SLED; Amy

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1 Stephens, with SLED; Doris Yarbrough, with SLED; Amanda
2 Webb, with SLED; Alice Thomas, with the United States
3 Secret Service; Michael Caplan, MUSC; Douglas Norcross,
4 MUSC; David Mantek, with Mantek Properties; Katie
5 Ridgway; Liz Paige; Ed Oliger; Julius Brown; Bryan
6 Rivers; Christopher Dean McCandlish; Lorna Marie
7 Parkinson; Shon Turner; Theran Taylor; Phillip Teevan;
8 Christopher Singleton; George Brown; Rayshawn Milligan;
9 Stephanie Brown; Frank Middleton.

10 Is there any member of the jury panel related
11 by blood, or marriage, close personal friends, ever have
12 any business, personal, professional dealings with any
13 of those individuals that I just read, please stand.

14 Yes, sir. Your jury number and name?

15 THE JUROR: 172, George McCubbins. I work at
16 MUSC, and I know several of the police officers and both
17 the doctors.

18 THE COURT: All right. The -- Caplan and
19 Norcross, who both are employed with MUSC, you know both
20 of those witnesses?

21 THE JUROR: Yes.

22 THE COURT: And is there anything about your
23 relationship with those witnesses that would affect your
24 ability to be fair and impartial in this case?

25 THE JUROR: I'm actually very close friends

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1 with both of them.

2 THE COURT: I need a yes or a no. We are
3 looking for a juror who is able to listen to the facts
4 from the witness stand, apply the law as the Court gives
5 it, and render a verdict based only upon those things.
6 Can you do that, sir?

7 THE JUROR: Yes.

8 THE COURT: And your jury number and name?

9 THE JUROR: 172, George McCubbins.

10 THE COURT: Thank you. Is there anyone else?

11 Thank you. There are none.

12 I'm sorry. Sir, you are 173.

13 THE JUROR: I'm sorry.

14 THE COURT: That's all right. It was a test.

15 Thank you. All right. Ladies and gentlemen,
16 is there any member of the jury panel that has ever been
17 employed by or you frequently eat at Bubba Gump
18 restaurant or IHOP restaurant? If so, please stand. If
19 you've ever worked at Bubba Gump or you frequently eat
20 there, or you've ever been employed at IHOP or you
21 frequently eat at IHOP?

22 THE JUROR: 173, George McCubbins. I eat at
23 IHOP almost every morning.

24 THE COURT: All right. At which IHOP do you
25 eat at almost every morning?

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1 THE JUROR: Which one?
2 THE COURT: Which one?
3 THE JUROR: Oh, I eat at the West Ashley one.
4 THE COURT: All right. Thank you.
5 Do you happen to know Ms. Hames?
6 THE JUROR: No.
7 THE COURT: All right. Thank you. And if you
8 would please remain standing. It is -- once again, it's
9 violently important that my court reporter hear you.
10 And so if I'm having trouble hearing -- she's a little
11 bit further away. So I may ask you to speak up for me.
12 So if you remain standing, it's just easier for all of
13 us. Thank you, sir, 173. Thank you.
14 Is there anyone else?
15 Is there any member of the jury panel that has
16 ever been employed in any capacity or if you have a
17 close friend or family member employed in any capacity
18 with Charleston County Police Department, MUSC, or State
19 Law Enforcement Division, or the United States Secret
20 Service, or with Mantek Properties?
21 If you've been employed in any capacity
22 formerly, currently, please stand and let us know.
23 Yes, ma'am. We're going to start on the front
24 row, and we'll just go down.
25 Yes, ma'am. Your jury number and name?

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1 THE JUROR: 101, Erica Grate-Simmons. I
2 currently work at MUSC. I'm in with the faculty at the
3 College of Nursing.

4 THE COURT: And what do you teach there?

5 THE JUROR: I teach medical surgical nursing,
6 as well as pediatrics.

7 THE COURT: And do you know the two names of
8 the witnesses I read out to you?

9 THE JUROR: No.

10 THE COURT: Is there anything about your
11 employment at MUSC that would affect your ability to be
12 fair and impartial in this case?

13 THE JUROR: No.

14 THE COURT: And your jury number, before you
15 sit down?

16 THE JUROR: 101.

17 THE COURT: Thank you. Yes, ma'am.

18 THE JUROR: Lanita Davis, 61. Currently
19 employed at MUSC as administrative assistant.

20 THE COURT: And I've listed two names from
21 MUSC. Do you know either of those individuals?

22 THE JUROR: I do not.

23 THE COURT: Is there anything about your
24 employment at MUSC that would affect your ability to be
25 fair and impartial in this case? -

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1 THE JUROR: No.

2 THE COURT: And your jury number and name?

3 THE JUROR: 173 --

4 THE COURT: Hold on one second.

5 THE JUROR: I'm sorry. Lanita Davis, 61.

6 THE COURT: Thank you.

7 THE JUROR: 173, George McCubbins. I work at

8 MUSC in the emergency department.

9 THE COURT: And you have previously indicated

10 that you know Caplan and Norcross?

11 THE JUROR: Yes.

12 THE COURT: And indicated that that would not

13 affect your ability to be fair and impartial; is that

14 correct?

15 THE JUROR: That is correct.

16 THE COURT: And you are still Juror Number 173;

17 is that correct?

18 THE JUROR: Yes.

19 THE COURT: Thank you. Yes, ma'am.

20 THE JUROR: Jennifer Marshall. I think my

21 number is 167. I am -- work at MUSC as a physician

22 assistant in the department of neurosurgery.

23 THE COURT: Do you know either of these

24 individuals?

25 THE JUROR: I know who Dr. Norcross is, but I

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1 don't have any daily dealings with him.

2 THE COURT: Anything about your employment at
3 MUSC that would affect your ability to be fair and
4 impartial in this case?

5 THE JUROR: No.

6 THE COURT: And your jury number and name?

7 THE JUROR: 167, Jennifer Marshall.

8 THE COURT: Thank you. Yes, ma'am.

9 (The next juror approaches.)

10 THE JUROR: I work as a registered nurse for
11 MUSC.

12 THE COURT: Do you know those two individuals?

13 THE JUROR: I do not.

14 131. Sorry.

15 THE COURT: I'm sorry?

16 THE JUROR: They asked me my juror number.

17 THE COURT: What is your juror number?

18 THE JUROR: 131.

19 THE COURT: All right. And anything about your
20 employment at MUSC that would affect your ability to be
21 fair and impartial in this case?

22 THE JUROR: No, ma'am.

23 THE COURT: And Juror 131, Ms. ---

24 THE JUROR: Desiree Hubert.

25 THE COURT: Thank you. Yes, sir.

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1 THE JUROR: Number 121, Richard Heywood. My
2 brother is currently employed at MUSC in the radiology
3 department.

4 THE COURT: And through your relationship with
5 your brother, do you know the individuals that I've
6 called out that work at MUSC?

7 THE JUROR: No, ma'am.

8 THE COURT: Anything about your brother's
9 employment at MUSC that would affect your ability to be
10 fair and impartial in this case?

11 THE JUROR: No, ma'am.

12 THE COURT: Your juror number and name?

13 THE JUROR: 121, Richard Heywood.

14 THE COURT: Thank you. Yes, ma'am.

15 (The next juror approaches.)

16 THE JUROR: I'm Charlotte Williams, 286. And I
17 was formerly employed at MUSC in 2011.

18 THE COURT: All right. Do you know either of
19 those individuals?

20 THE JUROR: No, ma'am.

21 THE COURT: Anything about your former
22 employment at MUSC that would affect your ability to be
23 fair and impartial in this case?

24 THE JUROR: No.

25 THE COURT: And your jury number and name?

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1 THE JUROR: Charlotte Williams, 286.
2 THE COURT: Thank you, Ms. Williams.
3 THE JUROR: Ester Williams-Cummings, Juror
4 Number 288. I work at MUSC in the pulmonary critical
5 care department.
6 THE COURT: And do you know those two
7 individuals at MUSC?
8 THE JUROR: No.
9 THE COURT: Anything about your employment at
10 MUSC that would affect your ability to be fair and
11 impartial in this case?
12 THE JUROR: No.
13 THE COURT: And your juror number and name?
14 THE JUROR: 288, Ester Williams-Cummings.
15 THE COURT: Thank you.
16 THE JUROR: Adam Sperduto, 249. I'm a resident
17 physician at MUSC in the department of pharmacology.
18 THE COURT: Do you know those two individuals?
19 THE JUROR: I do not.
20 THE COURT: Anything about your employment at
21 MUSC that would affect your ability to be fair and
22 impartial in this case?
23 THE JUROR: No, ma'am.
24 THE COURT: And your jury number and name?
25 THE JUROR: 249, Adam Sperduto.

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1 THE COURT: Thank you, sir. Is there anyone
2 else?

3 Thank you. There are none.

4 Ladies and gentlemen, is there any member of
5 the jury panel that watches a television crime show,
6 such as CSI or Law & Order, and you believe that that is
7 a fair and accurate depiction of what is going to happen
8 here today? If you believe that that is truly what
9 happens in the courtroom, please stand at this time.

10 Thank you. There are none.

11 Ladies and gentlemen, is there any member of
12 the jury panel that has seen any publicity, either
13 television, newspaper, Internet, or any other social
14 media regarding this case that, again, involves the
15 death of Marley Lion in the parking lot at Famous Joe's
16 at 1662 Savannah Highway at approximately four a.m. on
17 June 16th of 2012? If you have heard any publicity or
18 seen anything regarding this case, please stand.

19 All right. My questions to you are going to be
20 the same for all of you. Just briefly tell me not what
21 you have heard, but where you have received your
22 information. And then the important question that I
23 have, that I'm going to ask all of you -- you seem to
24 -- the common theme is, will that affect your ability to
25 be fair and impartial in this case?

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1 So, ma'am, your jury number and name?
2 THE JUROR: Daysha Dixon, Jury Number 67.
3 THE COURT: And you have seen -- or read or
4 seen something about this case?
5 THE JUROR: Yes, ma'am. On live5news.com.
6 THE COURT: All right. And when is the last
7 time that you've seen anything regarding this?
8 THE JUROR: When it first happened.
9 THE COURT: Is there anything about what you
10 saw on the news site that will affect your ability to be
11 fair and impartial in this case?
12 THE JUROR: No, ma'am.
13 THE COURT: And your jury number and name?
14 THE JUROR: Daysha Dixon, Juror 67.
15 THE COURT: Thank you, Ms. Dixon.
16 (The next juror approaches.)
17 THE JUROR: Gayle Cervenka, Number 38. And I
18 don't watch the news, but my husband was telling me
19 about it when it first happened.
20 THE COURT: All right. And through that
21 dialogue with your husband, will that affect your
22 ability to be fair and impartial in this case?
23 THE JUROR: No.
24 THE COURT: All right. You will be able to
25 listen to the facts from the witness stand, apply the

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1 law as the Court gives it, and render a verdict based
2 only upon those things?

3 THE JUROR: Yes.

4 THE COURT: Your jury number and name?

5 THE JUROR: 38, Gayle Cervenka.

6 THE COURT: Thank you, Ms. Cervenka.

7 We'll start over -- yes.

8 (The next juror approaches.)

9 THE JUROR: 200, Michael O'Brien. I heard it
10 on the news this morning that the jurors were being
11 picked on this case.

12 THE COURT: Anything about that, sir, that
13 would affect your ability to be fair and impartial in
14 this case?

15 THE JUROR: I don't believe so.

16 THE COURT: I do that same thing, I guess so, I
17 hope so, I believe so. I need a yes or a no.

18 THE JUROR: No.

19 THE COURT: Will you be able to listen to the
20 facts from the witness stand, apply the law as the Court
21 gives it, and render a verdict based only upon those
22 things?

23 THE JUROR: Yes.

24 THE COURT: And your jury number and name?

25 THE JUROR: Michael O'Brien, 200.

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1 THE COURT: Thank you, Mr. O'Brien.
2 (The next juror approaches.)
3 THE COURT: Yes, ma'am.
4 THE JUROR: Kathryn Lemon, Juror 160. I've
5 kept up with the news and the newspaper since the
6 beginning.
7 THE COURT: And my question to you, will you be
8 able to listen to the facts from the witness stand,
9 apply the law as the Court gives it, and render a
10 verdict based only upon those things, free from any
11 outside influences?
12 THE JUROR: Yes, ma'am.
13 THE COURT: Your jury number and name?
14 THE JUROR: 160, Kathryn Lemon.
15 (The next juror approaches.)
16 THE COURT: Thank you. Yes, sir.
17 THE JUROR: Josh Irvin, 134. Newspaper.
18 THE COURT: Same question to you. Is there
19 anything that you have read, seen in the newspaper that
20 would affect your ability to be fair and impartial in
21 this case?
22 THE JUROR: (Shakes head.)
23 THE COURT: And your jury number and name?
24 THE JUROR: 134, Josh Irving.
25 THE COURT: Thank you.

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1 (The next juror approaches.)

2 THE JUROR: Jennifer Marshall, Juror 167. When
3 it occurred, I saw it on the news, but nothing since
4 then.

5 THE COURT: All right. And same questions to
6 you. Is there anything about what you saw on television
7 that would affect your ability to be fair and impartial?

8 THE JUROR: No, ma'am.

9 THE COURT: And your jury number and name?

10 THE JUROR: 167, Jennifer Marshall.

11 (The next juror approaches.)

12 THE COURT: Thank you, Ms. Marshall.

13 Yes, ma'am.

14 THE JUROR: Jill Lundgrin. I believe my number
15 is 162. I have seen it on -- seen some on the
16 television news when it first started. I heard some on
17 WGMA. It's been quite some time ago. And I have seen
18 some in the newspaper, limited, but it's been quite a
19 while ago.

20 THE COURT: All right. And, Ms. Lundgrin, is
21 there anything about what you've shared with us that
22 would affect your ability to be fair and impartial in
23 this case?

24 THE JUROR: No, ma'am.

25 THE COURT: And Juror 162?

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1 THE JUROR: I believe so.

2 THE COURT: That is correct. Thank you,
3 Ms. Lundgrin.

4 Yes, ma'am.

5 (The next juror approaches.)

6 THE JUROR: My name is Leeann Johnston, and my
7 jury number is taken by someone else. I'm not really
8 sure.

9 THE COURT: Your number is 143.

10 THE JUROR: 143. Okay. And I've heard it on
11 the television news a long time ago.

12 THE COURT: Anything about what you've heard on
13 the news that will affect your ability to be fair and
14 impartial in this case, Ms. Johnston?

15 THE JUROR: No, ma'am.

16 THE COURT: And Juror 143. Thank you.

17 (The next juror approaches.)

18 THE JUROR: I'm Marc Levy, Number 161.
19 Newspaper.

20 THE COURT: And was that a short time ago, long
21 time ago?

22 THE JUROR: Long time ago.

23 THE COURT: Anything about what you have read
24 in the newspaper that would affect your ability to be a
25 fair and impartial juror?

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1 THE JUROR: No.

2 THE COURT: All right. Mr. Levy, 161; is that
3 correct?

4 THE JUROR: Yes.

5 (The next juror approaches.)

6 THE JUROR: Juror Number 250, Neyama Staley. I
7 currently work for Live 5 News. The last time I heard
8 about this case was this morning.

9 THE COURT: Anything about your occupation that
10 will affect your ability to be fair and impartial in
11 this case?

12 THE JUROR: No, ma'am.

13 THE COURT: Will you be able to listen to the
14 facts from the witness stand, apply the law as the Court
15 gives it, and render a verdict based only upon those
16 things, free from anything you may have heard outside of
17 this courtroom?

18 THE JUROR: Yes, ma'am.

19 THE COURT: And your jury number and name?

20 THE JUROR: 250, Neyama Staley.

21 THE COURT: Thank you, Ms. Staley.

22 Yes, ma'am.

23 (The next juror approaches.)

24 THE JUROR: 264. And I watched it on the news
25 as early as this morning, and I have a co-worker who is

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1 also related.

2 THE COURT: Related to?

3 THE JUROR: The victim.

4 THE COURT: You shared with us two separate

5 things. Is there anything about what you have seen or

6 heard on the news that will affect your ability to be

7 fair and impartial in this case?

8 THE JUROR: Yes.

9 THE COURT: All right. Your jury number?

10 THE JUROR: 264.

11 THE COURT: All right. I'm going to excuse you

12 from the trial of this case.

13 All right. 264 is excused from the trial of

14 this case.

15 I need you to stay with us. You do not have to

16 answer any-further questions. All right. Thank you.

17 (The next juror approaches.)

18 THE COURT: Yes, ma'am.

19 THE JUROR: Pamela Sumter, 259. I heard about

20 it on the news.

21 THE COURT: And is there -- was that recently,

22 a long time ago?

23 THE JUROR: A long time ago.

24 THE COURT: Anything about that that would

25 affect your ability to be fair and impartial in this

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1 case?
2 THE JUROR: No.
3 THE COURT: All right. We have already excused
4 you due to a previous answer. So you just need to not
5 answer any more questions regarding this case. But stay
6 with us, okay?
7 THE JUROR: Okay. Thank you.
8 (The next juror approaches.)
9 THE COURT: Yes, sir.
10 THE JUROR: Sean Willis. I believe 289 is my
11 number.
12 THE COURT: Yes.
13 THE JUROR: I remember it from the news a long
14 time ago.
15 THE COURT: Same question to you, Mr. Willis.
16 Based upon what you saw in the news, will that affect
17 your ability to be fair and impartial in this case?
18 THE JUROR: No, it will not.
19 THE COURT: Thank you, Mr. Willis. You are
20 289.
21 (The next juror approaches.)
22 THE COURT: Yes, ma'am.
23 THE JUROR: Linda Vierra, Number 266.
24 THE COURT: All right. Have you seen or
25 heard --

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1 THE JUROR: I'm sorry.

2 THE COURT: That's okay. It's been a long time
3 since I asked a question. You've seen this on the news
4 or read it in a newspaper or something of that nature?

5 THE JUROR: I saw it when it first happened.
6 And the first thing I turned on TV this morning, it was
7 there.

8 THE COURT: Is there anything about seeing it
9 when it first happened and then again this morning that
10 would affect your ability to be a fair and impartial
11 juror?

12 THE JUROR: I'm going to have to say yes.

13 THE COURT: And I'm going to excuse you from
14 the trial of this case. What is your jury number?

15 THE JUROR: 266.

16 THE COURT: Ms. Vierra; is that correct?

17 THE JUROR: Yes.

18 THE COURT: All right. Thank you.

19 Finally.

20 (The next juror approaches.)

21 THE JUROR: My number is 211, Elisabeth Poore.
22 I just saw it on the television and various social media
23 outlets on the Internet.

24 THE COURT: Was that recently?

25 THE JUROR: No. When it happened.

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1 THE COURT: Anything about that that will
2 affect your ability to be fair and impartial in this
3 case?

4 THE JUROR: No.

5 THE COURT: And your juror number?

6 THE JUROR: 211.

7 THE COURT: And your name?

8 THE JUROR: Elizabeth Poore.

9 THE COURT: Thank you.
10 Is there anyone else?

11 Thank you. There are none.

12 Is there any member of the jury panel or your
13 child or a close family member or friend that has any
14 connection whatsoever to the Academic Magnet school
15 located here in Charleston? Either you taught there,
16 attend there, your friends' child went there, something
17 of that nature. If you have any connection whatsoever
18 to the Academic Magnet, please stand.

19 Yes, ma'am. Your jury number and name?

20 THE JUROR: 160, Kathryn Lemon. I currently
21 have a student there. My son goes there.

22 THE COURT: And what grade is your son?

23 THE JUROR: He is a freshman. So he did not
24 know Mr. Lion.

25 THE COURT: All right. Anything about that

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1 that would affect your ability to be fair and impartial
2 in this case?

3 THE JUROR: No, ma'am.

4 THE COURT: And your jury number and name?

5 THE JUROR: 160, Kathryn Lemon.

6 THE COURT: Thank you, Ms. Lemon.
7 Yes, in the front row.

8 THE JUROR: Gayle Cervenka, Number 38. We had
9 a student come and work as an intern for our -- for my
10 company, and he went to Academic Magnet.

11 THE COURT: And how long ago was that?

12 THE JUROR: It was last summer he worked for
13 us, and he graduated two years ago.

14 THE COURT: Anything about that -- that your
15 intern attending Academic Magnet that would affect your
16 ability to be fair and impartial in this case?

17 THE JUROR: No.

18 THE COURT: And your jury number and name?

19 THE JUROR: 38, Gayle Cervenka.

20 THE COURT: Thank you.
21 Yes, sir.

22 (The next juror approaches.)

23 THE JUROR: Allen Burnell. Allen Burnell.

24 THE COURT: Yes, sir.

25 THE JUROR: Number 29.

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1 THE COURT: All right.

2 THE JUROR: I got a son that graduated from
3 Academic Magnet.

4 THE COURT: When did he graduate? What year?

5 THE JUROR: Last year.

6 THE COURT: All right. And is there anything
7 about your son graduating from Academic Magnet that
8 would affect your ability to be fair and impartial in
9 this case?

10 THE JUROR: No.

11 THE COURT: Do you know anything about this
12 case other than what I have just read to you in the
13 Indictments?

14 THE JUROR: No.

15 THE COURT: All right. And your jury number,
16 before you sit down, sir?

17 THE JUROR: 29.

18 THE COURT: All right. Thank you.

19 THE JUROR: 173, George McCubbins. My daughter
20 graduated from Academic Magnet, but it's been eight
21 years ago.

22 THE COURT: Same question to you. Is there
23 anything about your daughter graduating from Academic
24 Magnet several years ago that would affect your ability
25 to be fair and impartial in this case?

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1 THE JUROR: Not at all.
2 THE COURT: Juror 173?
3 THE JUROR: 173.
4 THE COURT: Thank you.
5 Yes, ma'am.
6 (The next juror approaches.)
7 THE JUROR: Juror Number 131, Desiree Hubert.
8 I attended and graduated from Academic Magnet myself.
9 THE COURT: What year did you graduate?
10 THE JUROR: 2000.
11 THE COURT: Anything about that graduation and
12 attending Academic Magnet that would affect your ability
13 to be fair and impartial in this case?
14 THE JUROR: No, ma'am.
15 THE COURT: Your jury number?
16 THE JUROR: 131.
17 THE COURT: 131. Thank you.
18 (The next juror approaches.)
19 THE COURT: Yes, ma'am.
20 THE JUROR: I'm Adele Hendricks. I'm Jury
21 Number 117. Both of my daughters graduated from
22 Academic Magnet several years ago.
23 THE COURT: About how long ago?
24 THE JUROR: 2008, I believe, and 2007.
25 THE COURT: All right. Anything about -- do

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1 you know anything about this case other than what I have
2 just read to you?

3 THE JUROR: No.

4 THE COURT: And, Ms. Hendricks, you are juror
5 number?

6 THE JUROR: 117.

7 THE COURT: Thank you. Is there anyone else?
8 Thank you. There are none.

9 Is there any member of the jury panel that has
10 any connection whatsoever to the Heart of Lion
11 organization or their team during the Water Missions
12 International Walks for Life? Either you are a member
13 or you contributed or you volunteered? If so, please
14 stand.

15 Any connection whatsoever to the Heart of Lion
16 organization or the team of Heart of Lion organization
17 during the Water Missions International Walks for Life?

18 There are none.

19 Is there any member of the jury panel, or your
20 children, close personal friend or family member that
21 attended or contributed to any way to the Marley Lion
22 music festival held July 29th, 2012, at the James Island
23 County Park? If so, please stand.

24 Thank you. There are none.

25 Is there any member of the jury panel that has

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1 previously been a witness in either a civil or a
2 criminal case? If so, please stand.
3 Thank you. There are none.
4 Ladies and gentlemen, is there any member of
5 the jury panel that is a former member of law
6 enforcement or any Department of Corrections in any
7 capacity? If so, please stand. You used to work in any
8 law enforcement agency, in any capacity. If so, please
9 stand.
10 Yes, sir. Your jury number and name?
11 THE JUROR: 114, Leon Harris. I served in
12 military law enforcement.
13 THE COURT: All right. And about how long ago
14 was that?
15 THE JUROR: I retired in 1995.
16 THE COURT: In what branch?
17 THE JUROR: U.S. Navy.
18 THE COURT: All right. And your jury number
19 and name?
20 THE JUROR: 114, Leon Harris.
21 THE COURT: Mr. Harris, thank you for your
22 service to our country. Is there anything about that
23 that would affect your ability to be fair and impartial
24 in this case?
25 THE JUROR: No.

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1 THE COURT: All right. Thank you, Mr. Harris.
2 Is there anyone else?
3 Thank you. There are none.
4 Is there any member of the jury panel that has
5 any close personal friend that is employed by law
6 enforcement? If so, please stand. You have a close
7 friend that is a police officer, employed by SLED,
8 something of that nature. If so, please stand.
9 Yes. Your jury number and name?
10 THE JUROR: Number 68, if I'm not mistaken.
11 THE COURT: All right. What's your last name,
12 sir?
13 THE JUROR: Doyley. Shavish Doyley.
14 THE COURT: That is correct. You are Juror 68.
15 Thank you.
16 THE JUROR: My current employer is an officer
17 with SLED, and I have several co-workers with me that
18 are also employed with SLED, including myself.
19 THE COURT: Okay. And so are you employed with
20 SLED?
21 THE JUROR: Yes, ma'am. I'm employed through a
22 company that's certified through with SLED.
23 THE COURT: Okay. Tell me what you do.
24 THE JUROR: I work with South Carolina Security
25 Services. Basically, we do -- we do security through

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1 local companies, like Save-a-Lot Food Groups, and the
2 vast majority of the night clubs in Northern Charleston
3 and North Charleston area are mainly through -- and
4 mainly through our South Carolina region.

5 THE COURT: I have listed several members on
6 the witness list that are employed with SLED, State Law
7 Enforcement Division. Did you know any of those
8 individuals?

9 THE JUROR: No, ma'am.

10 THE COURT: Is there anything about your
11 employment that will affect your ability to be fair and
12 impartial in this case?

13 THE JUROR: Not to my knowledge.

14 THE COURT: And I do that -- I need a yes or
15 no. It just makes it simple.

16 THE JUROR: No, ma'am.

17 THE COURT: Will you be able to listen to the
18 facts from the witness stand, apply the law as the Court
19 gives it, and render a verdict based upon those things?

20 THE JUROR: Yes, ma'am.

21 THE COURT: All right. Mr. Doyley, 68?

22 THE JUROR: Yes, ma'am.

23 THE COURT: Thank you. Yes, sir.

24 (The next juror approaches.)

25 THE JUROR: 200. Michael O'Brien. I have a

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1 close personal friend that's in the FBI in Washington,
2 D.C.

3 THE COURT: Anything about that relationship
4 that would affect your ability to be fair and impartial
5 in this case?

6 THE JUROR: No, ma'am.

7 THE COURT: Mr. O'Brien. Juror?

8 THE JUROR: 200.

9 THE COURT: Thank you. Yes, ma'am.

10 (The next juror approaches.)

11 THE JUROR: Diane O'Brien, Number 199. I know
12 a North Charleston police officer.

13 THE COURT: I'm sorry?

14 THE JUROR: A North Charleston police officer.

15 THE COURT: All right. And close personal
16 friend?

17 THE JUROR: Yes.

18 THE COURT: Is that a yes?

19 THE JUROR: Yes.

20 THE COURT: Is there anything about that that
21 would affect your ability to be fair and impartial in
22 this case?

23 THE JUROR: No.

24 THE COURT: And I've read a list of officers
25 that are with the Charleston Police Department. Through

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1 your relationship with your friend, do you know any of
2 those individuals?

3 THE JUROR: No.

4 THE COURT: And your jury number, Ms. O'Brien?

5 THE JUROR: 199.

6 THE COURT: Thank you. Yes, ma'am.

7 (The next juror approaches.)

8 THE JUROR: Hilary Smith, 244. I know and am
9 close friends with several officers of the Folly Beach
10 police patrol.

11 THE COURT: Is there anything about your
12 friendship with those officers that would affect your
13 ability to be fair and impartial in this case?

14 THE JUROR: No, ma'am.

15 THE COURT: And same question to you. I've
16 read off a number of witnesses who are employed with the
17 Charleston Police Department. Through your friendship
18 with the Folly Beach Police Department, do you know any
19 of these individuals?

20 THE JUROR: No, ma'am.

21 THE COURT: And your jury number and name?

22 THE JUROR: 244, Hilary Smith.

23 THE COURT: Thank you. Is there anyone else?

24 Thank you. There are none.

25 Is there any member of the jury panel or a

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1 member of your immediate family that is affiliated with
2 a victims' rights organization or organizations which
3 promote law enforcement, Sheriff's Association, Mother's
4 Against Drunk Driving, something of that nature? If so,
5 please stand.

6 Thank you. There are none.

7 Ladies and gentlemen, I now have a series of
8 questions to ask. These are the questions that I have
9 determined that I would like for you to come forward if
10 you need to answer these responses and come forward and
11 speak with me in private. As you may have guessed, we
12 are a court of record, and that is why my court reporter
13 is here and writing down everything that I say and you
14 say. So what you share with us will be on the record,
15 but I'm going to have you come forward and speak with me
16 in private.

17 Ladies and gentlemen, is there any member of
18 the jury panel that's had a bad experience, what you
19 would term to be a bad experience, with a police officer
20 or some member of law enforcement that would affect your
21 ability to be fair and impartial in this case?

22 The next question: Do you have a family member
23 or a close personal friend who is currently or formerly
24 incarcerated in a state or federal jail? If so, please
25 come forward at the appropriate time.

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1 If there's a member of the jury panel that has
2 ever been accused of a violent crime, I'll need you to
3 come forward at the appropriate time.

4 Is there any member of the jury panel that has
5 ever been the victim of a violent -- of a violent crime?
6 If you or a close friend or close family member has ever
7 been the victim of a violent crime, I will need you to
8 come forward at this time.

9 Ladies and gentlemen, my final, typically what
10 I call the catch-all question -- you haven't heard any
11 of the facts in this case, but if for whatever reason,
12 based upon what you have heard at this time, or perhaps
13 there's something going on in your life during this week
14 that you feel whatever -- political, moral, religious,
15 whatever reason that you would be unable to listen to
16 the facts from the witness stand, apply the law as the
17 Court gives it to you, and render a verdict based only
18 upon those things, free from the outside influences that
19 I just listed, a political, moral, religious belief, I
20 would like for you to come forward and speak with me
21 concerning that.

22 If I also ask you to come forward at the
23 appropriate time, now would be the time to come forward.
24 If you would please move to either side, the bailiffs
25 will -- I'm sorry -- move to this side, the bailiffs

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1 will assist you in coming forward.

2 Ladies and gentlemen, I need you to just sit
3 and think for just a moment. Your service will be for
4 this case for the week. If some of you may have
5 doctors' appointments or other personal obligations, I
6 need to know now. Ladies and gentlemen, please come
7 forward. I would rather have too much information than
8 not enough, because it is important, once you are
9 selected, that you remain with us for the entire week.

10 Please come forward.

11 THE JUROR: 173. Victim of a violent crime.

12 THE COURT: Share that with me and tell me
13 what happened.

14 THE JUROR: I was in New York, and I got
15 stabbed and mugged.

16 THE COURT: Was that -- tell me about when that
17 was.

18 THE JUROR: Approximately -- it was actually
19 1996, and I was in the hospital for about two weeks.

20 THE COURT: All right. Was the perpetrator
21 prosecuted? Did it go to court?

22 THE JUROR: It went to court, and he was
23 convicted.

24 THE COURT: All right. Is there anything about
25 what you shared with us that would affect your ability

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1 to be fair and impartial in this case?

2 THE JUROR: No.

3 THE COURT: All right. You will be able to

4 listen to the facts from the witness stand and apply the

5 laws as I give it to you?

6 THE JUROR: Absolutely.

7 THE COURT: Juror 173 will remain. Thank you.

8 Do you have any additional questions? Did you

9 have any additional questions? I think I hit most of

10 yours but --

11 MS. WILSON: (Moves head from side to side.)

12 THE COURT: Yes, ma'am.

13 THE JUROR: I had a brother that was

14 incarcerated in federal prison, and I also have a close

15 personal friend that's incarcerated in state prison.

16 THE COURT: As to your brother, is he still

17 incarcerated?

18 THE JUROR: Currently at the county only. He's

19 Sheriff Al Cannon.

20 THE COURT: Okay. He's here in the Charleston

21 Detention Center?

22 THE JUROR: Yes.

23 THE COURT: Do you know what he's in the

24 detention center for?

25 THE JUROR: Not really.

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1 THE COURT: All right. Is there anything about
2 your brother's incarceration and detention that would
3 affect your ability to be fair and impartial in this
4 case?

5 THE JUROR: No, ma'am.

6 THE COURT: All right. Do you know any of the
7 individuals that are standing up here with you?

8 THE JUROR: No, ma'am.

9 THE COURT: Have you had any contact with
10 either the solicitor's office or the public defender's
11 office?

12 THE JUROR: No, ma'am.

13 THE COURT: And then you indicated that --

14 THE JUROR: I also have a friend in the state
15 prison.

16 THE COURT: All right. And why is he in state
17 prison?

18 THE JUROR: He's in for murder.

19 THE COURT: All right. And was that here from
20 Charleston County or somewhere else?

21 THE JUROR: Charleston County, I do believe.

22 THE COURT: And about how long ago did that
23 happen?

24 THE JUROR: I think it was like either 2008 or
25 2009.

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1 THE COURT: All right. What is your friend's
2 name?
3 THE JUROR: Tommy Montgomery.
4 THE COURT: All right. And, again, same
5 question to you. Do you know, involved in the case,
6 anyone from the public defender's office or the
7 solicitor's office?
8 THE JUROR: No, ma'am.
9 THE COURT: Anything about that that would
10 affect your ability to be fair and impartial in this
11 case?
12 THE JUROR: No, ma'am.
13 THE COURT: Did you participate in that trial
14 in any way?
15 THE JUROR: No, ma'am.
16 THE COURT: I'm going to have you stay with us.
17 What's your --
18 MR. PENNINGTON: Could we get her name and
19 number, your Honor?
20 THE JUROR: Daysha Dixon, 67.
21 THE COURT: Ms. Dixon, 67.
22 Thank you. You're going to stay with us.
23 Thank you.
24 Sixty-seven will remain.
25 THE BAILIFF: 199.

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1 THE COURT: Was there any question I left off
2 of your proposed voir dire?

3 MR. PENNINGTON: I --

4 THE COURT: Hi. Good morning.

5 THE JUROR: I have a friend who's incarcerated.

6 THE COURT: Here in Charleston County or
7 somewhere else?

8 THE JUROR: No. In Florida.

9 THE COURT: All right. And what are they
10 incarcerated for?

11 THE JUROR: Embezzlement.

12 THE COURT: Is there anything about that that
13 would affect your ability to be fair and impartial in
14 this case?

15 THE JUROR: No.

16 THE COURT: And your jury number and name?

17 THE JUROR: 199. Diane O'Brien.

18 THE COURT: Thank you, Ms. O'Brien.

19 199 will remain.

20 THE BAILIFF: 299.

21 THE COURT: Hi.

22 THE JUROR: 299, Deborah Yates. My brother was
23 incarcerated.

24 THE COURT: Here in Charleston County or
25 somewhere else?

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1 THE JUROR: In Charleston County, because it
2 was up by North Charleston.
3 THE COURT: How long has he been in custody?
4 THE JUROR: He's not now. He was.
5 THE COURT: He was?
6 THE JUROR: In 2008, 2009, for nine months.
7 THE COURT: And what was he in custody for?
8 THE JUROR: For drugs and then running from the
9 police.
10 THE COURT: Okay. Anything -- do you
11 recognize anyone from the solicitor's office or the
12 public defender's office?
13 THE JUROR: No.
14 THE COURT: Was he prosecuted?
15 THE JUROR: Yes.
16 THE COURT: And was there a trial?
17 THE JUROR: Yes.
18 THE COURT: Anything about that experience that
19 would affect your ability to be fair and impartial in
20 this case?
21 THE JUROR: No.
22 THE COURT: And you're Juror 299?
23 THE JUROR: Yes.
24 THE COURT: All right. 299 will remain.
25 MS. WILSON: Did you ask if he was convicted?

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1 THE COURT: He was.
2 MS. WILSON: He was convicted or just
3 prosecuted?
4 THE COURT: He was convicted.
5 THE JUROR: So he spent nine months in --
6 THE COURT: Thank you.
7 THE BAILIFF: Thirty-eight.
8 THE COURT: Juror 38. Hi.
9 THE JUROR: I just want to let you know,
10 because everything that I've heard about this, I -- I'm
11 nervous to be here.
12 THE COURT: Nervous in what way?
13 THE JUROR: I'm scared of him.
14 THE COURT: Okay. All right. Is it anything
15 in particular, or just the nature of the charge?
16 THE JUROR: Just the nature.
17 THE COURT: Based upon what you have shared
18 with us, would you be able to listen to the facts from
19 the witness stand, apply the law as the Court gives it,
20 and render a verdict based only on those things?
21 THE JUROR: (Moves head from side to side.)
22 THE COURT: All right. I'm going to excuse you
23 from the trial of this case. Do you need a tissue
24 before you go?
25 THE JUROR: I don't think so.

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1 THE COURT: Okay. I'm going to go ahead -- I
2 need you to report back -- I'm going to let you walk on
3 out. Okay? You need to report back downstairs at -- by
4 2:30. All right?

5 Juror 38. Juror 38 is excused. Good luck to
6 you.

7 THE BAILIFF: 108.

8 THE COURT: Good morning.

9 THE JUROR: If this interferes with my job
10 anymore, then I have no job. And also, any time I
11 needed the cops have never helped me out.

12 THE COURT: Okay. You brought two big things
13 to my attention. Tell me what kind of work you do.

14 THE JUROR: Construction.

15 THE COURT: And so you only get paid if you're
16 working?

17 THE JUROR: Uh-huh.

18 THE COURT: And tell me a little bit about
19 yourself.

20 THE JUROR: Like what?

21 THE COURT: You're the sole support of your
22 family?

23 THE JUROR: Yeah. It's just me. I own my own
24 place. I work. I do construction during the daytime,
25 carpet cleaning at night.

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1 THE COURT: Tell me about when you said,
2 whenever you've asked the police, they haven't helped
3 you.

4 THE JUROR: Anytime I've ever needed to rely on
5 them, I've been screwed over, put more in debt, just not
6 helped at all.

7 THE COURT: You've shared with us two
8 significant independent issues. Based upon what you
9 have shared with us, will you be able to listen to the
10 facts from the witness stand, apply the law as the Court
11 gives it, and render a verdict based only upon those
12 things, free from any outside influences?

13 THE JUROR: No.

14 THE COURT: All right. Your jury number?

15 THE JUROR: 108.

16 THE COURT: 108 is excused from the trial of
17 this case. I need you to stay with us to receive
18 further instructions, but you do not have to answer any
19 further questions. Okay? Thank you.

20 THE BAILIFF: 275.

21 THE COURT: Good morning.

22 THE JUROR: Good morning. My name is Mary B.
23 Washington.

24 THE COURT: Yes, Ms. Washington.

25 THE JUROR: I'm Juror 275. And I had two

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1 nephews that are in prison.

2 THE COURT: All right.

3 THE JUROR: And they have spent time. And a
4 former teacher that was in there as well, all about the
5 same situation, for the same problem.

6 THE COURT: And what was the problem?

7 THE JUROR: They were selling drugs and using
8 weapons.

9 THE COURT: All right. Did that arise out of
10 Charleston County?

11 THE JUROR: Yes.

12 THE COURT: All right. And are they still in
13 custody, or have they been released?

14 THE JUROR: They have been released. They are
15 gainfully employed, and thank God.

16 THE COURT: All right. Is there anything about
17 what you shared with us that would affect your ability
18 to be fair and impartial in this case?

19 THE JUROR: Absolutely not.

20 THE COURT: And you're going to stay with us.
21 Tell me your jury number.

22 THE JUROR: 275.

23 THE COURT: 275. Thank you so much.

24 275 will remain. Thank you.

25 THE BAILIFF: 114.

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1 THE COURT: 114.

2 THE JUROR: I was arrested and convicted of
3 malicious injury to animals in Berkeley County in
4 magistrate's court in 1996.

5 THE COURT: All right. And was that a
6 sheriff's department? Do you remember?

7 THE JUROR: Yes, it was a -- I lived in the
8 county. It was a stray dog. At least I thought it was
9 a stray dog menacing my two year old, and the animal
10 control people couldn't or wouldn't get the animal. And
11 they said do whatever you need to do. And I got a raw
12 deal out of this. Did not make me happy.

13 THE COURT: So you shared a couple of things
14 with us. Anything about what you've shared with us that
15 would affect your ability to be fair and impartial in
16 this case?

17 THE JUROR: No. I may be stringent, but I'm
18 fair.

19 THE COURT: Both the State and the Defendant
20 deserve a juror who is able to listen to the facts from
21 the witness stand, apply the law as the Court gives it
22 to you, and render a verdict based only upon those
23 things. Can you be that juror?

24 THE JUROR: Yes.

25 THE COURT: All right. Thank you. 114 will

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1 remain. Thank you.
2 THE BAILIFF: 244.
3 THE COURT: Good morning -- afternoon.
4 THE JUROR: My sister is a victim recently,
5 after last night. She was robbed at gunpoint.
6 THE COURT: This happened last evening?
7 THE JUROR: Yes.
8 THE COURT: Here in Charleston County or
9 somewhere else?
10 THE JUROR: Charleston.
11 THE COURT: Is everything okay?
12 THE JUROR: Yeah.
13 THE COURT: All right. You appear to be a bit
14 tearful. Are you okay?
15 THE JUROR: (Moves head up and down.)
16 THE COURT: All right. Is there anything about
17 what you have shared with us that would affect your
18 ability to be fair and impartial in this case?
19 THE JUROR: No.
20 THE COURT: All right. You'll be able to
21 listen to the facts from the witness stand, apply the
22 law as the Court gives it, and render a verdict based
23 upon those things?
24 THE JUROR: (Moves head up and down.)
25 THE COURT: Is that a yes?

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1 THE JUROR: Yes, ma'am.
2 THE COURT: Your jury number?
3 THE JUROR: 244.
4 THE COURT: 244. All right. 244 will remain.
5 Thank you. You may step outside and go to the restroom
6 and come back in. Thank you.
7 THE BAILIFF: 117.
8 THE COURT: Hold on one second.
9 MR. PENNINGTON: I would move to strike her for
10 cause. I get the feeling she's trying --
11 THE COURT: Hold on. We'll address that.
12 Good morning.
13 (The next juror approaches.)
14 THE COURT: Good morning -- or afternoon. I'm
15 sorry.
16 THE JUROR: I have a couple of friends that are
17 bank tellers. So they've been a victim of armed
18 robbery. Nobody got hurt. It's not a violent crime,
19 but I just thought I should let you know.
20 THE COURT: And, again, we appreciate more
21 information than not enough.
22 Is there anything about what you've shared with
23 us that would affect your ability to be fair and
24 impartial in this case?
25 THE JUROR: No.

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1 THE COURT: All right. And your juror number?
2 THE JUROR: 117.
3 THE COURT: 117 will remain. Thank you.
4 THE BAILIFF: 128.
5 THE COURT: Good morning -- afternoon.
6 THE JUROR: Tyler Horne, 128. I was arrested
7 on a CDV charge a year and a half ago.
8 THE COURT: All right. Here in Charleston
9 County or somewhere else, and were you prosecuted?
10 THE JUROR: No. It never went to court. It
11 was dismissed.
12 THE COURT: Anything about that that would
13 affect your ability to be fair and impartial in this
14 case?
15 THE JUROR: No.
16 THE COURT: Was it a Charleston police officer
17 or another jurisdiction?
18 THE JUROR: Yes, it was here.
19 THE COURT: All right. And I read a lot of
20 officers. Was there any of those officers involved?
21 THE JUROR: No, ma'am.
22 THE COURT: And nothing -- you've shared with
23 us some information. Is there anything about that that
24 will affect your ability to be fair and impartial?
25 THE JUROR: No, ma'am.

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1 THE COURT: All right. And your juror number?

2 THE JUROR: It's 128. But also, my son's
3 father was arrested in Georgia and had to serve time
4 down there.

5 THE COURT: What was he arrested for?

6 THE JUROR: For a number of things.

7 THE COURT: All right. Anything about that
8 that would affect your ability to be fair and impartial
9 in this case?

10 THE JUROR: No.

11 THE COURT: All right. I'm going to have you
12 stay with was.

13 128 will remain. Thank you.

14 (The next juror approaches.)

15 THE COURT: Good afternoon.

16 THE JUROR: I've got a little bit of a health
17 condition. Hearing. I have tinnitus. And if someone
18 is particularly soft-spoken, or in the big rooms --

19 THE COURT: Have you been able to hear me, all
20 my questions?

21 THE JUROR: (Moves head up and down.)

22 THE COURT: We have the ability -- and I'll put
23 you close, and then I will look to you, and if you -- if
24 you're selected, we'll make every accommodation for you.

25 THE JUROR: It's not an impartiality issue.

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1 It's just more of --
2 THE COURT: No. And we wish to accommodate,
3 and I know sometimes -- that's why I always tell people,
4 sometimes -- the older I get, the worse my hearing is
5 getting. So you just let me know, and we will
6 accommodate you. All right?
7 THE JUROR: Okay.
8 THE COURT: Your jury number?
9 THE JUROR: 161.
10 THE COURT: 161. Thank you. He will remain.
11 How are we doing on numbers?
12 THE LAW CLERK: We're still good.
13 THE COURT: Good morning -- afternoon.
14 THE JUROR: I was accused of assault and
15 battery.
16 THE COURT: All right. Here in Charleston
17 County?
18 THE JUROR: Greenwood County.
19 THE COURT: Greenwood County. About how long
20 ago?
21 THE JUROR: Ten -- nine years.
22 THE COURT: All right. And were you arrested?
23 THE JUROR: I was arrested.
24 THE COURT: And were you convicted?
25 THE JUROR: No. We had a jury trial, and I was

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1 not guilty.

2 THE COURT: Okay. Is there anything about that
3 that would affect your ability to be fair and impartial
4 in this case?

5 THE JUROR: No. I don't think so.

6 THE COURT: Okay. I need a yes or a no.

7 THE JUROR: No.

8 THE COURT: Will you able to listen to the
9 facts from the witness stand, apply the law as I give it
10 to you, and render a verdict based only upon those
11 things?

12 THE JUROR: Yes, ma'am.

13 THE COURT: Do you have something that you
14 -- is that all you need to share with us?

15 THE JUROR: Yes.

16 THE COURT: Your jury number, sir?

17 THE JUROR: 206.

18 THE COURT: 206 will remain.

19 THE BAILIFF: Robert Simmons.

20 THE DEPUTY CLERK OF COURT: 239.

21 THE COURT: 239. Good afternoon, Mr. Simmons.

22 How are you?

23 THE JUROR: I sent this message to the other
24 judge before, but tomorrow morning my wife is leaving to
25 go out of town on a business trip. I'm responsible for

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1 our two month old and our three year old. And I don't
2 know if I can be back because I have no baby-sitter.
3 That's why I took this week off for vacation, because I
4 knew that was coming up. So I don't know what I need to
5 do. Do I reschedule?

6 THE COURT: Is there any other way -- so your
7 wife normally stays home and takes care of the children?

8 THE JUROR: Yes, usually.

9 THE COURT: And she's going out of town this
10 week?

11 THE JUROR: Yes.

12 THE COURT: Do you have any other family
13 members that can help you with child care?

14 THE JUROR: That was the problem. That's why I
15 took my vacation this week to do that, because I knew
16 she was going to do that. I have no other way right
17 now. Two of them.

18 THE COURT: Okay. And no moms, uncles, aunts,
19 anything that can help you with --

20 THE JUROR: Not able to take care of a two
21 months old and three year old.

22 THE COURT: So you are taking -- you took
23 vacation this week to stay home. Who's got the
24 children? Oh, she's still at home. She's leaving in
25 the morning?

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1 THE JUROR: Yes.

2 THE COURT: Any way she can postpone her trip?

3 THE JUROR: I don't think so.

4 THE COURT: What's your jury number?

5 THE JUROR: 259.

6 MR. PENNINGTON: 239.

7 THE JUROR: 239. I'm sorry.

8 THE COURT: All right. 239. I'm going to --

9 he needs to be transferred to another week.

10 All right. Sir, I'm going to transfer you a

11 week. All right? But you're going to need to make sure

12 that when we do that, you have everything taken care of.

13 You understand?

14 THE JUROR: Yes, ma'am.

15 THE COURT: You are free to go. All right.

16 239 is excused. Good luck to you with the childcare.

17 THE JUROR: Thank you.

18 THE BAILIFF: 255.

19 THE COURT: Good afternoon.

20 THE JUROR: Good afternoon. I had a DUI.

21 THE COURT: About how long ago?

22 THE JUROR: Year ago.

23 THE COURT: A year ago?

24 THE JUROR: I got gout real bad in my foot.

25 THE COURT: Do you have pain in your foot?

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1 THE JUROR: Yeah, gout.
2 THE COURT: Do you need -- are you able to sit?
3 Do you need to stand? Do you need to prop your foot up?
4 THE JUROR: I got to move it. Sit so I can
5 move it.
6 THE COURT: Tell me about -- first about your
7 DUI. Tell me about your DUI. How long ago was it?
8 About a year ago?
9 THE JUROR: Year ago.
10 THE COURT: Was it here in Charleston County or
11 somewhere else?
12 THE JUROR: Yes.
13 THE COURT: It was Charleston County?
14 THE JUROR: Charleston County.
15 THE COURT: Was it a City of Charleston police
16 officer or another jurisdiction?
17 THE JUROR: Mount Pleasant.
18 THE COURT: Mount Pleasant. Were you convicted
19 of that DUI, or is it still pending?
20 THE JUROR: Yeah.
21 THE COURT: You were convicted?
22 THE JUROR: Right.
23 THE COURT: Is there anything about that
24 experience that would affect your ability to be fair and
25 impartial in this case?

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1 THE JUROR: Yes.

2 THE COURT: All right. All right. Your juror
3 number?

4 THE JUROR: 255.

5 THE COURT: All right. 255 is excused from the
6 trial of this case. Thank you, sir. Good luck to you.
7 You need to stay with us.

8 THE BAILIFF: 213.

9 THE JUROR: Thank you for the opportunity. I'm
10 a Realtor. In my profession, time is of the essence.

11 THE COURT: Correct.

12 THE JUROR: And you know the market has turned
13 around quite a bit.

14 THE COURT: Right.

15 THE JUROR: I have several contracts that right
16 now I'm under due diligence for, inspections, I have
17 counteroffers I need to present to people. I feel like
18 if I commit a whole week, I'm taking away from my
19 clients, not serving my clients properly.

20 THE COURT: All right. Is there anything about
21 what you have shared with us that would affect your
22 ability to be a fair and impartial in this case?

23 THE JUROR: Yes, because I'll be worried about
24 what I'm not getting done for them.

25 THE COURT: All right. Would you be able to

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1 listen to the facts from the witness stand, apply the
2 law as I give it to you, and render a verdict based upon
3 those things, free from any outside influence?

4 THE JUROR: No.

5 THE COURT: All right. Your juror number?

6 THE JUROR: 213.

7 THE COURT: 213 is excused from the trial of
8 this case. Thank you.

9 All right. How many do we have left?

10 MS. WILSON: We've got one more we need to call
11 up.

12 MR. DURANT: Yeah. We had a guy in
13 qualification, number 29, that almost got in a fight
14 with Judge Dennis about something that he said he needed
15 to take up with the trial judge, and he hadn't stood up
16 for anything.

17 THE COURT: I thought he stood up and said his
18 daughters went to Academic Magnet.

19 MS. WILSON: That wouldn't have been important
20 then.

21 THE COURT: Was he the one that said that his
22 daughters graduated from Academic Magnet?

23 MR. DURANT: No. It was the son, I think. The
24 guy with the black T-shirt.

25 THE COURT: But he indicated there was --

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1 MS. WILSON: He was talking with Judge Dennis,
2 and they got kind of loud with each other. And the
3 Judge -- I could mainly hear the Judge. The Judge kept
4 saying, You need to take that up with the other Judge.
5 That's not an exemption. You need to take that up with
6 the other Judge, and tell --

7 THE COURT: What I understand the nature of the
8 conversation was, he just doesn't agree with the justice
9 system. All right.

10 MR. PENNINGTON: I thought it was more of a
11 schedule issue.

12 MS. WILSON: I don't know, but I think we need
13 to know.

14 MR. DURANT: If he doesn't agree with the
15 justice system, we need to know about it.

16 THE COURT: But on that question, I hate to
17 just bring him up. He hasn't stood up. He hasn't given
18 me any indication that's -- I knew who that was --

19 MS. WILSON: But you can ask him about the
20 conversation with Judge Dennis so that he'll know. And
21 he will think it came from us.

22 THE COURT: Do you have any additional
23 questions?

24 MR. PENNINGTON: Well, your Honor, I was asked
25 -- I was hoping, through the *voir dire*, that we would

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1 ask the jurors if they formed any kind of opinion about
2 the evidence. I realize that you went beyond that and
3 said, can you put that aside and be fair and impartial?

4 But I think that -- as a matter of law, I
5 think that I'm entitled to ask, are there -- have you
6 formed any kind of opinions, because that becomes a
7 factual basis upon which I then could exercise a motion
8 for cause, or alternatively, a strike, if the Court does
9 not find cause. But I would specifically ask to be able
10 to ask the jurors if they've formed any opinions about
11 the facts of this case, particularly about the guilt of
12 the accused. That's my motion.

13 THE COURT: Okay. Any other questions? Any
14 other --

15 MR. PENNINGTON: The other question was, I had
16 a motion on behalf of what would be Juror 244, Hilary
17 Smith. My sense of it is, is that she was being heroic
18 when she answered the Court that she could put aside
19 what has happened this morning to her sister and being
20 robbed at gunpoint, and that she was -- just my reading
21 of her eyes, if nothing else, told me that she did not
22 want to be here, and that she was going to do her duty,
23 but it would have been a very big push. She appeared
24 traumatized to me. And I would ask the Court to perhaps
25 excuse her for cause, based on what she provided for us

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1 was that she was -- her sister was robbed this morning
2 -- or was actually last night at gunpoint. And this
3 case involves the robbery of someone at gunpoint at
4 night. So the facts are very similar.

5 MS. WILSON: I don't think we know that the
6 facts are very similar. But I think that she answered
7 the question easily, and it seems like she, in her mind,
8 could segregate what was obviously something emotional
9 with her sister versus feeling impartial in this case
10 about the facts.

11 THE COURT: What is your position as to Juror
12 29?

13 MR. PENNINGTON: This is -- I have no objection
14 to the Court inquiring -- if this is the juror that
15 we're -- yes, I have no objection to an inquiry. I can
16 tell there was some sort of issue. I couldn't tell
17 whether this was Judge Dennis being a little bit
18 temperamental or if the guy really was being bad. I
19 couldn't tell that. I'd ask the Court to -- I think
20 it's better to know than not know.

21 THE COURT: Do you wish for me to bring Juror
22 244 up and ask again or --

23 MR. PENNINGTON: Well, I believe that would be
24 appropriate. Yes, your Honor.

25 MS. WILSON: That's fine.

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1 THE COURT: All right.

2 All right. Any other questions that I did not
3 ask? Ms. Wilson?

4 MR. PENNINGTON: If I can have a moment.

5 MS. WILSON: Yes, me too.

6 (Respite.)

7 MS. WILSON: The only thing, when you ask --
8 you did include this with a host of other things -- was
9 the question about, do you have any religious or
10 personal beliefs that would interfere in your sitting in
11 judgment? I think sitting in judgment is a buzz word
12 for a certain sect, and we'd ask that you ask that more
13 specifically and directly.

14 THE COURT: All right.

15 MR. PENNINGTON: Well, I would have an
16 objection in that regard.

17 THE COURT: To that?

18 MR. PENNINGTON: Only to this extent, is that
19 in some ways, that sit in judgment implies that that's
20 what we do. And I would like the idea of explain, what
21 you're required to do is to render a finding on the
22 facts. You're not going to impose a sentence or to
23 judge somebody in some other way.

24 THE COURT: All right.

25 Any other question? This is my last -- just

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1 stand over here. I'm just going to do it from right
2 here.

3 Ladies and gentlemen, I'm going to give you one
4 more opportunity. You've been sitting there for just a
5 moment, probably thinking about the rest of your week,
6 where else you, perhaps, would like to be. So I have
7 just a few more questions for you. I'm going to give
8 you an opportunity to come speak with me again one more
9 time. Sometimes what happens is, we sit there and all
10 of a sudden you think, oh, I remember that I knew that
11 police officer, or I remember seeing this or hearing
12 this, and that is really going to affect my opinion in
13 this case. And so my questions to you, if there was
14 anything that while you were sitting there and we were
15 having our personal conversations one-on-one with each
16 of you, if there was something that you've thought about
17 that you needed to share with me for whatever reason, if
18 you feel that at this point, based upon what you have
19 seen and heard, you have already formed an opinion about
20 the facts in this case, I need to see you as well.

21 And if there's any -- again, my -- my catchall
22 question to you. If there's any reason, any personal,
23 religious, moral reason that you feel that you would be
24 unable to sit and listen to the facts, render a finding
25 on the facts based upon the law as I give it to you, as

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1 the Court gives it to you, if you feel, for whatever
2 reason, this is a case that you cannot sit and listen
3 and be a fair and impartial juror, I need to see you
4 now. This is your final opportunity to come speak with
5 me about any issue that you feel that you have
6 concerning this case.

7 I also need to see Juror 244 and Juror 29,
8 please. 244, 29, and anyone else that wishes to address
9 the Court at this time.

10 THE BAILIFF: 211.

11 (The juror approaches.)

12 THE COURT: Hi. You are 211?

13 THE JUROR: Uh-huh. Like I said in the
14 process, until we had gotten through which case this
15 was, my brother is the same age as the victim. And he
16 didn't know the victim, but it was something he was
17 upset about. And I just think I'm going to be biased
18 because I know the victim is the same age as my brother.

19 THE COURT: And have you done -- have you read
20 or heard about this through your brother?

21 THE JUROR: I did when it happened, yeah.

22 THE COURT: Is there anything about what you've
23 shared with us that you feel that you would be unable to
24 be a fair and impartial juror in this case?

25 THE JUROR: Yes.

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1 THE COURT: And your jury number?

2 THE JUROR: 211.

3 THE COURT: I'm going to excuse you from the
4 trial of this case, but I need you to stay with us. All
5 right? Thank you.

6 211 is excused.

7 I need to see 244 and 29, please. 244 and 29.

8 (The next juror approaches.)

9 THE COURT: I don't mean to keep bringing you
10 up. You shared with us an event that happened last
11 evening to your sister. I was going to ask you, based
12 upon the questions, what you feel that -- do you feel
13 that based upon the -- what you have shared with us that
14 you would be a fair and impartial juror in this case?

15 THE JUROR: Honestly, not at this time, no.

16 THE COURT: With what you have shared with us,
17 will you be able to listen to the facts as they come
18 from the witness stand, apply the law as I give it, and
19 render a verdict based only upon those things, free from
20 any outside influence?

21 THE JUROR: Yes.

22 THE COURT: All right. You have told me two
23 different things.

24 THE JUROR: I know.

25 THE COURT: And I don't -- both the State and

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1 the Defendant deserve a juror who is able to sit in that
2 jury box --

3 THE JUROR: I know.

4 THE COURT: -- listen to the facts as they come
5 from the witness stand, and the exhibits, take the law
6 as I give it to them, make a finding about those facts,
7 and render a verdict based upon those things. Can you
8 do that?

9 THE JUROR: No. No.

10 THE COURT: All right. I'm going to excuse you
11 from the trial of this case. All right?

12 THE JUROR: Okay.

13 THE COURT: I need you to stay with us. You
14 need to stay with us. You will receive further
15 instructions.

16 244 is excused from the trial of this case.

17 THE BAILIFF: 29.

18 MR. PENNINGTON: Before he comes up, my
19 recollection was, is that he said something about having
20 some memory problems to the Judge. That might be the
21 issue.

22 (The next juror approaches.)

23 THE COURT: Tell me what and one basketball is.

24 THE JUROR: It's basketball.

25 THE COURT: All right. All right. So tell --

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1 THE JUROR: I was just saying, I wouldn't think
2 I would be a good candidate.

3 THE COURT: You do or don't?

4 THE JUROR: I don't.

5 THE COURT: Tell me why not, sir.

6 THE JUROR: I don't believe in the justice
7 system.

8 THE COURT: All right.

9 THE JUROR: I've seen a lot of things gone
10 wrong. I've -- you know, and just like the Trayvon
11 case.

12 THE COURT: Okay.

13 THE JUROR: You know, justice wasn't served.

14 THE COURT: Well, sir, what I need to know is,
15 what you just shared with us, will that affect your
16 ability to be a fair and impartial juror in this justice
17 system?

18 THE JUROR: I don't think so. I just don't
19 want nothing to do with the courts, period.

20 THE COURT: All right. Based upon what you
21 have told us, do you think that you are a juror -- you
22 are the type of juror that should be sitting in that
23 box?

24 THE JUROR: I don't think so.

25 THE COURT: All right. I'm going to excuse you

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1 from the trial of this case. I need you to return back,
2 and I'm going to give you further instructions in just a
3 few moments. Okay?

4 THE JUROR: Return back where?

5 THE COURT: Back to your seat. Okay? All
6 right.

7 Juror 29 is excused.

8 Is there anyone else?

9 Any additional questions, Ms. Wilson?

10 MS. WILSON: No.

11 THE COURT: Any additional questions?

12 MR. PENNINGTON: No, your Honor.

13 THE COURT: All right. Please prepare the
14 strike sheet.

15 MS. WILSON: Your Honor, can we have a copy of
16 the sheets?

17 THE COURT: I don't give out copies of the
18 strike sheet.

19 All right. Ladies and gentlemen, those of you
20 who may have been wondering, I had foot surgery a couple
21 of weeks ago. That's why I'm limping around.

22 Ladies and gentlemen, the attorneys are now
23 going to begin what we call the strike process. The
24 clerk is going to give you further instructions
25 regarding that matter. But we are beginning the final

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1 process.

2 I understand that most of you typically go to
3 lunch around noon. And so we are very cognizant of that
4 fact, and we are making every effort to move forward.
5 And do not be concerned. We will be taking a lunch
6 break shortly.

7 Is the State ready to proceed?

8 MS. WILSON: We need just a minute, your Honor.

9 THE COURT: Let me know.

10 And let me know when you are ready,
11 Mr. Pennington.

12 MR. PENNINGTON: Yes, your Honor.

13 (Respite.)

14 MR. PENNINGTON: We're ready when the Court is.

15 THE COURT: All right.

16 (Respite.)

17 MS. WILSON: We're ready, your Honor.

18 THE COURTROOM DEPUTY CLERK: Ladies and
19 gentlemen, whenever I call your name, if you would,
20 please, gather all of your belongings and make your way
21 to these doors to the far end of the courtroom. We
22 would ask, once you make your way to the podium -- once
23 you make your way to the podium, you're going to turn
24 around and face back to the courtroom, and we'll
25 instruct you from that point on.

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1 Juror Number 65, George Dionne.
2 (White male approaches the podium.)
3 THE DEPUTY CLERK OF COURT: What say you for
4 the State?
5 MS. WILSON: Please present Mr. Dionne.
6 THE DEPUTY CLERK OF COURT: What say you for
7 the Defendant?
8 MR. PENNINGTON: -Court's indulgence.
9 (Respite.)
10 MR. PENNINGTON: Please swear Mr. Dionne to the
11 trial of this case.
12 THE DEPUTY CLERK OF COURT: Mr. Dionne, if you
13 would, please make your way to the jury box. You've
14 been selected as a juror in the cause of this case.
15 I also want to take this moment to remind
16 everyone, whenever you're walking in front of the
17 attorney tables to watch your step, please. There are
18 cord covers. I just wanted you to know that.
19 Juror Number 299, Deborah Yates.
20 (White female approaches the podium.)
21 THE DEPUTY CLERK OF COURT: What say you for
22 the State?
23 MS. WILSON: Beg the Court's indulgence.
24 THE COURT: Take your time.
25 (Respite.)

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1 MS. WILSON: Please present Ms. Yates.

2 THE DEPUTY CLERK OF COURT: What say you for
3 the Defendant?

4 MR. PENNINGTON: Please swear Ms. Yates.

5 THE DEPUTY CLERK OF COURT: Ms. Yates, if you
6 would, please make your way to the jury box. You have
7 been selected as a juror in the trial of this case.

8 Juror 165, Ed Marill.

9 (White male approaches the podium.)

10 THE DEPUTY CLERK OF COURT: What say you for
11 the State?

12 MS. WILSON: Please present Mr. Marill.

13 THE DEPUTY CLERK OF COURT: What say you for
14 the Defendant?

15 MR. PENNINGTON: Court's indulgence, your
16 Honor.

17 THE COURT: Take your time.

18 (Respite.)

19 MR. PENNINGTON: Please excuse Mr. Marill from
20 the trial of this case.

21 THE DEPUTY CLERK OF COURT: Mr. Marill, if you
22 would, please return to your seat. You have been
23 excused from the trial of this case.

24 Juror Number 200, Michael O'Brien.

25 (White male approaches the podium.)

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1 THE DEPUTY CLERK OF COURT: What say you for
2 the State?
3 MS. WILSON: Please present Mr. O'Brien.
4 THE DEPUTY CLERK OF COURT: What say you for
5 the Defendant?
6 MR. PENNINGTON: Court's indulgence.
7 (Respite.)
8 MR. PENNINGTON: Please excuse Mr. O'Brien from
9 the case.
10 THE DEPUTY CLERK OF COURT: Mr. O'Brien, if you
11 would, please, return to your seat. You have been
12 excused from the trial of this case.
13 Juror Number 160, Kathryn Lemon.
14 (White female approaches the podium.)
15 THE DEPUTY CLERK OF COURT: What say you for
16 the State?
17 MS. WILSON: Please present Ms. Lemon.
18 THE DEPUTY CLERK OF COURT: What say you for
19 the Defendant?
20 MR. PENNINGTON: Court's indulgence, please.
21 THE COURT: Take your time.
22 (Respite.)
23 MR. PENNINGTON: Please excuse Ms. Lemon from
24 the trial of this case.
25 THE DEPUTY CLERK OF COURT: Ms. Lemon, if you

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1 would, please return to your seat. You have been
2 excused from the trial of this case.

3 The defense has exhausted three of its strikes.

4 Juror Number 122, Gregory Hibbs.

5 (White male approaches the podium.)

6 THE DEPUTY CLERK OF COURT: What say you for
7 the State?

8 MS. WILSON: Please present Mr. Hibbs.

9 THE DEPUTY CLERK OF COURT: What say you for
10 the Defendant?

11 MR. PENNINGTON: Court's indulgence.

12 THE COURT: Take your time.

13 (Respite.)

14 MR. PENNINGTON: Please swear Mr. Hibbs.

15 THE DEPUTY CLERK OF COURT: If you would,
16 please make your way to the jury box. You have been
17 selected for the trial of this case.

18 Juror Number 131, Desiree Hubert.

19 (White female approaches the podium.)

20 THE DEPUTY CLERK OF COURT: What say you for
21 the State?

22 MS. WILSON: Please present Ms. Hubert.

23 THE DEPUTY CLERK OF COURT: What say you for
24 the Defendant?

25 MR. PENNINGTON: Court's indulgence, please.

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1 Please excuse Ms. Hubert from the trial of this
2 case.

3 THE DEPUTY CLERK OF COURT: Ms. Hubert, if you
4 would, please, return to your seat. You've been excused
5 from the trial of this case.

6 Juror Number 67, Daysha Dixon.

7 (Black female approaches the podium.)

8 THE DEPUTY CLERK OF COURT: What say you for
9 the State?

10 MS. WILSON: Please excuse Ms. Dixon.

11 THE DEPUTY CLERK OF COURT: Ms. Dixon, if you
12 would, please, return to your seat. You have been
13 excused from the trial of this case.

14 Juror Number 173, George McCubbins.

15 (White male approaches the podium.)

16 THE DEPUTY CLERK OF COURT: What say you for
17 the State?

18 MS. WILSON: Please present Mr. McCubbins.

19 THE DEPUTY CLERK OF COURT: What say you for
20 the Defendant?

21 MR. PENNINGTON: Please excuse Mr. McCubbins
22 from the trial of this case.

23 THE DEPUTY CLERK OF COURT: Sir, if you would,
24 please return to your seat. You've been excused from
25 the trial of this case.

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1 Juror Number 250, Neyama Staley.

2 (Black female approaches the podium.)

3 THE DEPUTY CLERK OF COURT: What say you for
4 the State?

5 MS. WILSON: Please present Ms. Staley.

6 THE DEPUTY CLERK OF COURT: What say you for
7 the Defendant?

8 MR. PENNINGTON: Please excuse Ms. Staley from
9 the trial of this case.

10 THE DEPUTY CLERK OF COURT: Ma'am, if you
11 would, please return to your seat. You have been
12 excused from the trial of this case.

13 Defense has exhausted six of its strikes.

14 Juror Number 204, Sheryl Pamplin.

15 (Black female approaches the podium.)

16 THE DEPUTY CLERK OF COURT: What say you for
17 the State?

18 MS. WILSON: Please present Ms. Pamplin.

19 THE DEPUTY CLERK OF COURT: What say you for
20 the Defendant?

21 MR. PENNINGTON: Court's indulgence, please.

22 (Respite.)

23 MR. PENNINGTON: Please swear Ms. Pamplin.

24 THE DEPUTY CLERK OF COURT: Ms. Pamplin, if you
25 would, please, make your way to the jury box. You have

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1 been selected as a juror in the trial of this case.
2 Juror Number 75, Cason Epps.
3 (White male approaches the podium.)
4 THE DEPUTY CLERK OF COURT: What say you for
5 the State?
6 MS. WILSON: Please present Mr. Epps.
7 THE DEPUTY CLERK OF COURT: What say you for
8 the Defendant?
9 MR. PENNINGTON: Court's indulgence, please.
10 THE COURT: Take your time.
11 (Respite.)
12 MR. PENNINGTON: Please excuse Mr. Epps from
13 the trial of this case.
14 THE DEPUTY CLERK OF COURT: Sir, if you would,
15 please, return to your seat. You've been excused from
16 the trial of this case.
17 Juror Number 249, Adam Sperduto.
18 (White male approaches the podium.)
19 THE DEPUTY CLERK OF COURT: What say you for
20 the State?
21 MS. WILSON: Please present Dr. Sperduto.
22 THE DEPUTY CLERK OF COURT: What say you for
23 the Defendant?
24 MR. PENNINGTON: Court's indulgence for just a
25 moment.

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1 THE COURT: Take your time.
2 (Respite.)
3 MR. PENNINGTON: Please swear Dr. Sperduto.
4 THE DEPUTY CLERK OF COURT: Sir, if you would,
5 please, make your way to the jury box. You have been
6 selected as a juror in the trial of this case.
7 Juror Number 121, Richard Heywood.
8 (White male approaches the podium.)
9 THE DEPUTY CLERK OF COURT: What say you for
10 the State?
11 MS. WILSON: Please present Mr. Heywood.
12 THE DEPUTY CLERK OF COURT: What say you for
13 the Defendant?
14 MR. PENNINGTON: Court's indulgence.
15 (Respite.)
16 MR. PENNINGTON: Please swear Mr. Heywood.
17 THE DEPUTY CLERK OF COURT: Mr. Heywood, please
18 make your way to the jury box. You've been selected as
19 a juror in the trial of this case.
20 Juror Number 188, Carol Molony.
21 (White female approaches the podium.)
22 THE DEPUTY CLERK OF COURT: What say you for
23 the State?
24 MS. WILSON: Please present Ms. Molony.
25 THE DEPUTY CLERK OF COURT: What say you for

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1 the Defendant?

2 MR. PENNINGTON: Court's indulgence.

3 (Respite.)

4 MR. PENNINGTON: Please swear Ms. Molony.

5 THE DEPUTY CLERK OF COURT: Ms. Molony, if you

6 would, please make your way to the jury box. You've

7 been selected as a juror in the trial of this case.

8 Juror Number 61, Lanita Davis.

9 (Black female approaches the podium.)

10 THE DEPUTY CLERK OF COURT: What say you for

11 the State?

12 MS. WILSON: Please present Ms. Davis.

13 THE DEPUTY CLERK OF COURT: What say you for

14 the Defendant?

15 MR. PENNINGTON: Court's indulgence, your

16 Honor.

17 (Respite.)

18 MR. PENNINGTON: Please swear Ms. Davis.

19 THE DEPUTY CLERK OF COURT: Ma'am, if you

20 would, please, make your way to the jury box. You've

21 been selected as a juror in the trial of this case.

22 Juror Number 288, Ester Williams-Cummings.

23 (Black female approaches the podium.)

24 THE DEPUTY CLERK OF COURT: What say you for

25 the State?

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1 MS. WILSON: Please present

2 Ms. Williams-Cummings.

3 THE DEPUTY CLERK OF COURT: What say you for
4 the Defendant?

5 MR. PENNINGTON: Please swear Ms. Williams-
6 Cummings.

7 THE DEPUTY CLERK OF COURT: Ma'am, if you
8 would, please, make your way to the jury box. You have
9 been selected as a juror in the trial of this case.

10 Juror Number 98, Rusty Gladden.

11 (Black male approaches the podium.)

12 THE DEPUTY CLERK OF COURT: What say you for
13 the State?

14 MS. WILSON: Please present Mr. Gladden.

15 THE DEPUTY CLERK OF COURT: What say you for
16 the Defendant?

17 MR. PENNINGTON: Court's indulgence, please.

18 THE COURT: Take your time.

19 (Respite.)

20 MR. PENNINGTON: Please swear Mr. Gladden.

21 THE DEPUTY CLERK OF COURT: Sir, if you would,
22 please, make your way to the jury box. You have been
23 selected as a juror in the trial of this case.

24 Juror Number 297, Elton Wright.

25 (White male approaches the podium.)

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1 THE DEPUTY CLERK OF COURT: What say you for
2 the State?

3 MS. WILSON: Please present Mr. Wright.

4 THE DEPUTY CLERK OF COURT: What say you for
5 the Defendant?

6 MR. PENNINGTON: Court's indulgence, please.

7 THE COURT: Take your time.
8 (Respite.)

9 MR. PENNINGTON: Please excuse Mr. Wright from
10 the trial of this case.

11 THE DEPUTY CLERK OF COURT: Sir, if you will,
12 please return to your seat. You've been excused from
13 the trial of this case.

14 Defense has two strikes remaining.
15 Juror Number 35, Janis Carson.
16 (White female approaches the podium.)

17 THE DEPUTY CLERK OF COURT: What say you for
18 the State?

19 MS. WILSON: Please present Ms. Carson.

20 THE DEPUTY CLERK OF COURT: What say you for
21 the Defendant?

22 MR. PENNINGTON: Court's indulgence.
23 (Respite.)

24 MR. PENNINGTON: Please swear Ms. Carson.

25 THE DEPUTY CLERK OF COURT: Ma'am, if you

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1 would, please, make your way to the jury box. You have
2 been selected as a juror in the trial of this case.

3 Juror Number 199, Diane O'Brien.

4 (White female approaches the podium.)

5 THE DEPUTY CLERK OF COURT: What say you for
6 the State?

7 MS. WILSON: Please present Ms. O'Brien.

8 THE DEPUTY CLERK OF COURT: What say you for
9 the Defendant?

10 MR. PENNINGTON: Court's indulgence, please.

11 THE COURT: Take your time.

12 (Respite.)

13 MR. PENNINGTON: Please excuse Ms. O'Brien from
14 the trial of this case.

15 THE DEPUTY CLERK OF COURT: Please return to
16 your seat. You have been excused from the trial of this
17 case.

18 Defense has one strike remaining.

19 Juror Number 68, Shavish Doyley.

20 (Black male approaches the podium.)

21 THE DEPUTY CLERK OF COURT: What say you for
22 the State?

23 MS. WILSON: Please excuse Mr. Doyley.

24 THE DEPUTY CLERK OF COURT: Sir, if you will,
25 please return to your seat. You have been excused from

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1 the trial of this case.

2 Juror Number 223, Scott Robinson.

3 (Black male approaches the podium.)

4 THE DEPUTY CLERK OF COURT: What say you for
5 the State?

6 MS. WILSON: What was the number?

7 THE DEPUTY CLERK OF COURT: It was Number 223.

8 MS. WILSON: Please present Mr. Robinson.

9 THE DEPUTY CLERK OF COURT: What say you for
10 the Defendant?

11 MR. PENNINGTON: Please swear Mr. Robinson.

12 THE DEPUTY CLERK OF COURT: Sir, if you would,
13 please, make your way to the jury box. You have been
14 selected as the 12th juror in this case.

15 Now striking for the first alternate. Strikes
16 are one and two.

17 Juror 128, Tyler Horne.

18 (White female approaches the podium.)

19 THE DEPUTY CLERK OF COURT: What say you for
20 the State?

21 MS. WILSON: Please present Ms. Horne.

22 THE DEPUTY CLERK OF COURT: What say you for
23 the Defendant?

24 MR. PENNINGTON: Court's indulgence.

25 THE COURT: Take your time.

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1 (Respite.)
2 MR. PENNINGTON: Please swear Ms. Horne.
3 THE DEPUTY CLERK OF COURT: Ma'am, if you
4 would, please make your way to the jury box. You've
5 been selected as the first alternate.
6 Now striking for the second alternate.
7 Juror 167, Jennifer Marshall.
8 (White female approaches the podium.)
9 THE DEPUTY CLERK OF COURT: What say you for
10 the State?
11 MS. WILSON: Please present Ms. Marshall.
12 THE DEPUTY CLERK OF COURT: What say you for
13 the Defendant?
14 MR. PENNINGTON: Court's indulgence.
15 (Respite.)
16 MR. PENNINGTON: Please excuse Ms. Marshall
17 from the trial of this case.
18 THE DEPUTY CLERK OF COURT: Ma'am, if you would
19 please return to your seat. You've been excused from
20 the trial of this case.
21 Juror 289, Sean Willis.
22 (White male approaches the podium.)
23 THE DEPUTY CLERK OF COURT: What say you for
24 the State?
25 MS. WILSON: Please present Mr. Willis.

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1 THE COURTROOM DEPUTY CLERK: What say you for
2 the Defendant?

3 MR. PENNINGTON: Please swear Mr. Willis.

4 THE DEPUTY CLERK OF COURT: Sir, if you would,
5 please make your way to the jury box. You have been
6 selected as the second alternate in the trial of this
7 case.

8 Now striking for the third alternate.
9 Juror Number 275, Mary Washington.
10 (Black female approaches the podium.)

11 THE COURTROOM DEPUTY CLERK: What say you for
12 the State?

13 MS. WILSON: Please excuse Ms. Washington.

14 THE DEPUTY CLERK OF COURT: Ma'am, if you
15 would, please return to your seat. You've been excused
16 from the trial of this case.

17 The State has exhausted all of its strikes.
18 Juror 101, Erica Grate-Simmons.
19 (Black female approaches the podium.)

20 THE DEPUTY CLERK OF COURT: Any challenges from
21 the State?

22 MS. WILSON: No, sir.

23 THE DEPUTY CLERK OF COURT: What say you for
24 the Defendant?

25 MR. PENNINGTON: Court's indulgence, please.

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1 THE COURT: Take your time.

2 (Respite.)

3 MR. PENNINGTON: Please swear

4 Ms. Grate-Simmons.

5 THE DEPUTY CLERK OF COURT: Ma'am, if you
6 would, please make your way to the jury box. You have
7 been selected as the third alternate in the trial of
8 this case.

9 Your Honor, the jury is seated.

10 THE COURT: Thank you. Any motion or matters
11 pertaining to the jury as selected? From the State?

12 MS. WILSON: No, ma'am.

13 MR. PENNINGTON: Yes, your Honor.

14 THE COURT: All right. Counsel approach.

15 MR. PENNINGTON: If we may have a moment, your
16 Honor, just to organize our thoughts. I just need to --

17 THE COURT: I just need you to approach for
18 just a moment.

19 (All four attorneys approach the bench.)

20 THE COURT: Ladies and gentlemen, of the jury
21 that is selected, the bailiffs are going to escort you
22 to your jury deliberation room. Feel free to go ahead
23 and take your comfort break, and we'll receive you back
24 in just a moment. Thank you.

25 (The jurors exit the courtroom at 1:21 p.m.)

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1 (The Judge is speaking to the attorneys off the
2 record.)

3 THE COURT: All right. Ladies and gentlemen,
4 it is an appropriate time for us to stop and take our
5 lunch break. Please remember your service is for the
6 week, and so we have additional matters that we need
7 your services for. So we are going to break for our
8 lunch break. I will need you to return down to the big
9 room, the jury qualification room that you were brought
10 in this morning, at 2:30. Please be back at 2:30.

11 Thank you again for your service to our justice
12 system. You are excused.

13 (The jury pool exits the courtroom at
14 1:23 p.m.)

15 THE COURT: Mr. Pennington, let me know when
16 you are ready to proceed. I understand that you may
17 have a Batson.

18 MR. PENNINGTON: That's correct, your Honor. I
19 move, under Batson -- I'm ready at this point.

20 THE COURT: Okay.

21 MR. PENNINGTON: I would move, under Batson, to
22 challenge the Juror 68 strike exercised by the solicitor
23 as to Mr. Doyley. He is the individual whom I think is
24 a security guard. He is an African-American male. My
25 client is an African-American male. And I would ask for

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1 a race neutral reason.

2 THE COURT: All right.

3 My notes reflected that he was Juror 22 that
4 was the State's second strike. Is that what your notes
5 reflect, Mr. Pennington?

6 MR. PENNINGTON: Yes, ma'am. I'm not making an
7 objection as to Juror Dixon, 67, who was struck earlier.
8 I have no -- I understand there's enough evidence there
9 that I don't have any quarrel with that.

10 I also -- just so that you know where we're
11 headed, I'm going to raise a similar objection as to
12 alternate -- we're doing the third alternate,
13 Ms. Washington, 275. She's an African-American female,
14 and my client is an African-American male.

15 THE COURT: All right.

16 Ms. Wilson, will this be your argument?

17 MS. WILSON: Yes, ma'am, your Honor. As to the
18 first one that he is challenging, Mr. Doyley, he made a
19 comment in the *voir dire* that he ran security or did
20 security for various night clubs in the area, and that
21 caused me some concern. And that's the reason that we
22 struck him.

23 And as for Ms. Washington --

24 THE COURT: Hold on. Let's do one at a time.
25 I just think it makes the record the most clean.

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1 Mr. Pennington, it now becomes your burden to
2 show that that's a pretextual reason for the strike.

3 MR. PENNINGTON: I can't show that they failed
4 to strike any one officer who was working security at
5 night clubs, your Honor.

6 THE COURT: All right. So your motion
7 regarding the Batson hearing, I find that the State has
8 offered an explanation for its strike, and you have
9 failed to show that it was a pretextual strike.

10 As to the next, which would be Juror Number
11 275, which was number 27 on our strike sheet, and
12 ultimately became the first strike, is for alternate
13 number three. I'll be happy to hear from you,
14 Ms. Wilson.

15 MS. WILSON: Your Honor, this juror indicated
16 that she had family members who had been to prison for
17 using weapons, and that obviously caused us some
18 concern.

19 THE COURT: Mr. Pennington?

20 MR. PENNINGTON: I cannot indicate to the Court
21 that there is an individual who was seated who was
22 similarly situated.

23 THE COURT: I find that you have failed to meet
24 your burden. The State has provided a race gender
25 neutral explanation for its strike. Note your

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1 exceptions to my ruling.

2 Any other motions regarding this jury as
3 impaneled?

4 MR. PENNINGTON: Not at this time, your Honor.

5 THE COURT: From the State?

6 MS. WILSON: No, ma'am.

7 THE COURT: What I would like to do at this
8 point is, I'm going to bring in the jury, give them my
9 admonition charge, which indicates to them that they
10 cannot read, watch, listen to any news accounts
11 regarding this case. We know that there will be some,
12 as there has been some this morning. That they cannot
13 do any independent investigations.

14 Any other admonitions requested from the State?

15 MS. WILSON: No, ma'am.

16 THE COURT: Mr. Pennington?

17 MR. PENNINGTON: I'm sorry, your Honor. I was
18 distracted by trying to make sure that I hadn't blown an
19 earlier objection. Could you restate your question for
20 me, please?

21 THE COURT: We are going to bring in the jury
22 now. I'm just going to give my general admonition about
23 watching news accounts, doing independent investigation,
24 things of that nature that they cannot do and have them
25 return back in the morning at 9:30.

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1 MR. PENNINGTON: That's fine, your Honor.

2 THE COURT: So as the jury was selected, there
3 is no further objections from either the State or the
4 Defendant; is that correct?

5 MR. PENNINGTON: That's correct.

6 MS. WILSON: No, ma'am.

7 THE COURT: Let's bring in the jury.

8 (The jury is escorted into the courtroom at
9 1:29 p.m.)

10 THE COURT: Thank you. Please be seated.
11 Ladies and gentlemen, you may have noticed this time
12 that when you came in, the attorneys involved in this
13 case, all the parties involved, and the members of the
14 audience were standing. This is out of respect for your
15 new position as judges of the facts. So I just ask when
16 you are escorted in and out, that you come in, take your
17 seats, because everyone will remain seated [sic] until
18 all of you are in your seats.

19 The seating chart for the future will be --
20 Mr. Hibbs, you have been selected as the foreperson in
21 this case. So you will have that assigned seat right
22 there. And my alternates, you will always need to be on
23 the back row as -- however you wish to be seated on the
24 back row. Mr. Hibbs, you will have that assigned seat
25 in the front. The rest of you may take the first two

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1 rows in whatever accommodates you as well.

2 If any of you needed -- need any assistance, or
3 if we need to take extra breaks throughout the progress
4 of the trial, if you will let your foreperson know, he
5 will alert the bailiff, and we'll address your matter as
6 soon as we can.

7 Ladies and gentlemen, we have gone through our
8 lunch hour. And so we are going to break for lunch.
9 And due to the lateness, we're going to go ahead --
10 there are some matters that I need to take up outside of
11 your presence. So your work here today is done.

12 Before we leave for the afternoon -- the
13 bailiffs have indicated -- you have all their phone
14 numbers, contact information?

15 THE BAILIFF: Yes.

16 THE COURT: I just need to go over some
17 admonitions, some warnings, some of my instructions.
18 Please remember that I -- it is my duty to instruct you
19 on the law applicable to this case and to preside over
20 the trial of this case. So please remember these are my
21 instructions, and they follow throughout the entire
22 progress of this trial.

23 Until you have been discharged from service,
24 until I tell you otherwise, you may not perform any
25 investigation, any research, or any experiment of any

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1 kind, either on your own or as a group, regarding any
2 issue in this case. You may not consult any
3 dictionaries for the meanings of words or any
4 encyclopedias for the general information on the
5 subjects of this trial. You may not look up anything
6 anywhere concerning anything involved in this trial.
7 That includes the Defendant, the witnesses, the
8 attorneys, as well as the Judge.
9 You may not go to the scene where any of the
10 events that are the subject of this trial are alleged to
11 have taken place. You may not use Internet maps or
12 Google Earth or anything of that nature to search for or
13 view the places described during this case. You must
14 not have any discussions regarding this case. Ladies
15 and gentlemen, I, by no means, am technologically savvy.
16 So please understand I try to make this as simple as I
17 can. You cannot discuss this case with anyone, in any
18 way, in any fashion.
19 That means you can't make an entry on Facebook.
20 You can't make an entry on any other social Internet
21 media site. You may not blog about this case. You may
22 not text about this case. And you may not have general
23 good old face-to-face discussions with anyone regarding
24 this case. Simply put, you may not discuss this case
25 with anyone in any way until I tell you to do so. Very

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1 importantly, that includes your fellow jurors. You must
2 not discuss any issue or decide any issue in this case
3 until I tell you that you may do so.

4 Please understand I'm giving these instructions
5 as part of my responsibility to ensure fairness to all
6 of the parties in this case. That fairness would be
7 compromised, and your actions could jeopardize the
8 results of this trial if you violate these instructions.

9 Ladies and gentlemen, whenever we break,
10 I'm going to ask you if you've complied with my
11 instructions. That will typically be the first question
12 I ask you in the morning and after we return from our
13 lunch break.

14 Ladies and gentlemen, please understand I am
15 aware that some of you have shared with us that this
16 case was discussed on the news. As such, please be very
17 careful about what you are viewing, listening to on the
18 radio, viewing on television, or researching on the
19 Internet. You must not listen to, read, watch any news
20 accounts regarding this case.

21 Once again, this is part of my responsibility,
22 and these instructions are given to you to ensure that
23 fairness is done between the parties in front of you
24 here today.

25 Ladies and gentlemen, please be back in your

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1 jury room at 9:30. I ask that you be respectful of each
2 other's time, because we can't start until all of you
3 are present. Ladies and gentlemen, 9:30. If you have
4 any questions or concerns -- I understand that you are
5 going to be shown where you may park and any other
6 discussions and instructions regarding reporting in the
7 morning, how to report, where to report, and those
8 things. If there are any questions that you have,
9 please ask the bailiffs. If they cannot answer the
10 questions, they will alert me, and I will let you know;
11 otherwise, you are free this afternoon. And please have
12 a wonderful and restful afternoon. Please keep in mind
13 all of my admonitions.

14 Please rise for the jury. You are excused.
15 Thank you.

16 (The jury exits the courtroom at 1:35 p.m.)

17 THE COURT: Thank you. Be seated. Any
18 objections to my admonitions that's given to the jury?

19 MS. WILSON: No, ma'am.

20 THE COURT: Was there anything additional that
21 you think needed to be given?

22 MS. WILSON: I think you covered it.

23 MR. PENNINGTON: Nothing, your Honor.

24 THE COURT: I understand we have some pretrial
25 motions. We have gone into our lunch hour. So we will

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1 break until three o'clock, and we'll begin those motions
2 at that time. All right?

3 MS. WILSON: Thank you, Judge.

4 MR. PENNINGTON: Thank you.

5 THE COURT: We will be stopping at 5:00. So
6 let me know if you think that we will not -- if you'll
7 need any additional time. All right. Thank you.

8 (A break is taken from 1:36 p.m. until
9 2:59 p.m.; at which time, the proceedings continue as
10 follows:)

11 THE COURT: We have pretrial motions. We've
12 already addressed the Motion to Sequester Witnesses,
13 Motion Concerning Courtroom Decorum. Let me hear from
14 you, Motion to Disclose Criminal Records,
15 Mr. Pennington.

16 MR. PENNINGTON: Your Honor, Solicitor and I
17 have worked hard to go witness by witness and evaluate
18 prior convictions. There's only one witness who I
19 believe is still somewhat in dispute, and that would be
20 Frank Middleton.

21 Where did I put that?

22 My sense of it is, is that Mr. Middleton has a
23 ancient conviction to a certain degree, but one that is
24 still highly relevant. And so I've provided additional
25 notice pursuant to 609(b), which requires that he thinks

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1 something has peculiar relevance. What you're going to
2 hear is that Mr. Middleton is an individual who is
3 presently -- he was 64 years of age at the time of his
4 arrest on an armed robbery charge last April. He,
5 therefore, is -- he's still in custody. He had
6 previously served, and we agreed that it's admissible,
7 that strong-arm robbery from 2002 can come in where he
8 had served a 15-year sentence. I tell you the sentence,
9 not because I'm going to ask him about the sentence, but
10 because it kind of ties in with my theory about what's
11 going on with Mr. Middleton.

12 Mr. Middleton has served a 40-year sentence,
13 starting in July of 1974, for armed robbery, kidnapping,
14 and rape. That conviction history puts him, combined
15 with his age, in a very vulnerable -- highly vulnerable
16 position, given the fact that he's charged with an armed
17 robbery with a weapon of a restaurant.

18 So that we can be perfectly clear, I've checked
19 with probation. They say that he actually finished his
20 parole on that 40-year sentence in '95. But my
21 contention is, is that under Rule 609, that there is a
22 unique relevance because of the fact that -- because of
23 that immense history, criminal history, long period of
24 incarceration for what would be the 40-year period. And
25 I won't go back to a 1966 conviction, where he got 18

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1 years for the assault with intent to ravish.

2 So he's a man who has spent essentially his
3 adult life in the penitentiary and who's surfaced about
4 three weeks after this incident claiming to have
5 information. There are other ways that he can be
6 cross-examined and impeached. But my belief is, is that
7 I'll be able to show, during the Cross-Examination, that
8 his having spent most of his adult life in prison puts
9 him in an extremely needy position, from the standpoint
10 of having a charge reduction or some sort of other
11 recommendation from the State, on what is of the current
12 pending charges that he has, which are armed robbery,
13 possession of a firearm by a convicted felon, and
14 possession of the firearm in the course of a violent
15 crime, that carries a minimum of five years extra,
16 consecutive.

17 So I will ask the Court at the appropriate time
18 to use its discretion, under Rule 609(b), even though
19 it's outside the ten-year time frame. But I believe it
20 has unique relevance to the facts in this case and his
21 credibility as a witness, because I go -- this goes
22 directly to his bias, his -- between a rock and hard
23 place kind of situation that he's in right now.

24 THE COURT: Ms. Wilson, Mr. DuRant?

25 MR. DuRant: I'll be heard on this one, if you

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1 don't mind, your Honor, as he's my witness. Your Honor,
2 I think the Rule is fairly clear on there. He finished
3 parole in this case in 1995. It's darn near year 20
4 years old, the conviction. And getting off of parole is
5 almost 20 years old.

6 In terms of what Mr. Pennington needs, is
7 Mr. Middleton to say that he is testifying because he
8 wants to curry favor from the State. Well, he's 65
9 years old. He's facing charges right now that he can
10 get 35 years on. So he's essentially facing a life -- a
11 sentence of life imprisonment if he gets convicted on
12 his current charges. I see no need to go open ancient
13 history and go into a conviction that's over 30 years
14 old to impeach him when he's going to be thoroughly
15 impeached on that particular point anyway.

16 THE COURT: When do you plan to call
17 Mr. Middleton?

18 MR. DURANT: That will not be probably until --
19 I would -- tomorrow afternoon would be the earliest, I
20 would think.

21 THE COURT: Okay. And indicate to me what
22 Mr. Middleton is going to testify to. What's his
23 involvement in this case?

24 MR. DURANT: Mr. Middleton -- and just in a
25 nutshell, your Honor, the police went to Mr. Middleton

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1 because he was in jail on the armed robbery charge and
2 had been at the time of this particular case. They went
3 to him because he's been a resident of Ardmore since
4 1960-something, and he knows everybody in Ardmore and
5 what's going on. Essentially, they showed him the
6 surveillance video of the shooting at -- of the shooting
7 at Famous Joe's parking lot. He watched it four or
8 five times and basically identified the shooter as
9 Mr. Deleston. So that's his involvement in the case.

10 THE COURT: Anything further, Mr. DuRant?

11 MR. DURANT: Pardon me?

12 THE COURT: Anything further?

13 MR. DURANT: No, ma'am.

14 THE COURT: Mr. Pennington?

15 MR. PENNINGTON: My view of the facts
16 are slightly different, in that I believe that
17 Mr. Middleton, through his counsel, that reached out to
18 law enforcement and the Solicitor's Office to be able to
19 try to get some sort of help with this case. I base
20 that largely on the circumstances that somehow or other
21 word was sent and they got him out and he was
22 interviewed at the city police station on July 4th, in
23 the evening.

24 My view of it is, is that when he -- the
25 earlier conviction that I made reference to, the one --

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1 the strong-arm robbery, standing alone does not
2 sufficiently show the dire circumstances that he faces
3 legally. Because in my view, had he been an older
4 gentleman facing a potential life sentence in an armed
5 robbery, you might expect some mercy, particularly if
6 there's only one prior. The fact that he has the two
7 priors and such serious priors that resulted in such
8 extended periods of incarceration, it strikes me that I
9 really ask only for the most modest relief, in that I'm
10 going for the one 40-year.

11 And I'm even willing, if the Court sees fit, to
12 not get into the sex part of that. I'm not trying to
13 dirty the man up, based on his prior criminal history,
14 just for purposes of the conviction data. But I'm
15 trying to paint what is, I think, a fair picture for
16 this jury that he spent, not most of his adult life in
17 Ardmore, but most of his adult life in the state
18 penitentiary.

19 THE COURT: So what relief are you asking for,
20 Mr. Pennington?

21 MR. PENNINGTON: I believe that -- well, going
22 back to what his history is, he has -- I'm asking
23 specifically to be able to ask him, Sir, had you -- were
24 you not convicted in 1974 of armed robbery, kidnapping,
25 and rape, resulting in a 40-year period of incarceration

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1 or a 40-year sentence? But if I don't get into the
2 sentence, I would at least get into that conviction,
3 because we know, as a matter of fact, under the Rule,
4 typically, you look at the length of period of time that
5 the case would extend to. A 40-year sentence
6 technically would be extended day for day until 2014.

7 I -- just because I was an Officer of the
8 Court, I don't want to mislead the Court. I'm also
9 aware that for -- when he got this other conviction in
10 2002, it's probable that they -- well, actually they
11 ended his parole in '95 when he was convicted for a burg
12 second. And so what happened is, through no good grace
13 of his own, but because he got a three-year sentence for
14 burg second nonviolent in '95 that is remote, he got his
15 parole terminated, which, in my view, deprecates that
16 earlier sentence.

17 So what I'm doing is, I'm bypassing the '95
18 conviction for burg second, because I don't think it
19 conveys the message that is appropriate for this Court,
20 which -- I'm arguing that under the unique circumstances
21 and the interest of justice, that the -- the probative
22 value outweighs this prejudice by simply having the man
23 admit that in '74 he was convicted of those offenses.

24 And I would proffer that I think it's
25 appropriate, given the fact that he had a 40-year

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1 sentence. And I believe the relevance is, is that he
2 was -- he is a profound risk at this time for -- it
3 would be hard for the Solicitor to justify a whole lot
4 of leniency when the man has done those two convictions,
5 not -- and -- plus, we know -- and I'm not getting into
6 the others -- that he did 18 years on another conviction
7 and three years on another. So, essentially, it's a
8 continuous course of incarceration for the most part.

9 So I'm asking the Court to -- I will be asking
10 the Court to find that the armed robbery, kidnapping,
11 and rape have a unique continuing relevance because of
12 the phenomenally long period of sentence, which was a
13 40-year sentence that technically would've extended to
14 2014, but for an early termination due to convictions
15 that followed. So it seems like in some ways we're
16 rewarding him for having his parole terminated by the
17 succeeding convictions.

18 THE COURT: Anything else from the State?

19 MR. DURANT: No, your Honor. I certainly don't
20 think Mr. Pennington thinks he's been rewarded by the
21 system. But as I said, his -- his parole has been
22 terminated on that for -- since 1995. I don't think
23 there's any provision for going back and just saying it
24 should have extended to 40, when, in fact, it was a
25 terminated -- and extended to this year, when, in fact,

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1 it was terminated in 1995. I think they can get
2 everything they need, in terms of Mr. Middleton wanting
3 to curry favor with us, with the current and -- current
4 charges he has pending, yes.

5 THE COURT: Everyone else -- Mr. Pennington,
6 all the other witnesses, if it's applicable, you have
7 come to some understanding with the State; is that
8 correct?

9 MR. PENNINGTON: I believe we have. We've
10 worked out a number of other questions.

11 THE COURT: Do we need to put anything of that
12 nature on the record?

13 MR. PENNINGTON: I don't believe so.

14 THE COURT: I'm going to review that and take
15 that matter under advisement with Mr. Middleton.

16 What's the next issue, the Motion *in Limine* to
17 determine the admissibility of prior convictions?

18 MR. PENNINGTON: I think we've completely
19 worked that out. That was in regard to my client's
20 record, and I think we've worked that out in the
21 pretrial conference. I'll let the Court know that we
22 agreed that he's impeachable on this. He has
23 essentially two drug convictions. And so should he
24 decide to testify, he has the two drug convictions, and
25 I think that approximately -- one of those perhaps --

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1 I'll have to look it up to refresh. But the convictions
2 were in, like, '03, and then we had -- and that's it.
3 Is that correct, Solicitor?
4 MS. WILSON: I think it is.
5 THE COURT: So that matter has been addressed.
6 And do we need to address the photographs of
7 the victim?
8 MR. PENNINGTON: I believe we do.
9 THE COURT: All right.
10 MR. PENNINGTON: I don't know exactly what is
11 going to be offered. I do think --
12 MS. WILSON: May I approach?
13 THE COURT: You may.
14 (Mr. Pennington, Ms. Wilson, and Mr. Kozelski
15 approach the bench.)
16 (A discussion is held off the record.)
17 THE COURT: All right, sir.
18 Ms. Wilson, if you will just provide to the
19 Court -- I understand the photographs have been marked.
20 They have not been entered into evidence at this time,
21 but if you'll make sure that Mr. Pennington sees those
22 photographs and the numbers. And then I'll maintain
23 control of the photographs in order to issue my ruling.
24 MS. WILSON: Thank you, your Honor.
25 THE COURT: Thank you.

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1 All right. You now have, Mr. Pennington, I
2 understand, a Motion to Reveal the 404(b) evidence, and
3 then the State has a companion motion; is that correct?
4 Is that how I understand we're -- it's working on the
5 404(b)?

6 MR. PENNINGTON: I think that there is an
7 attempt by them to have me precluded from going into
8 what would be some Cross-Examination material that was
9 relevant to our defense under the idea that some -- that
10 the State is being prejudiced under a 404(b) theory.
11 That would be the Chopper shooting, where Bryan Rivers
12 alleged to have -- I think he admits shooting
13 Mr. Hayward during the course of armed robbery at night
14 two weeks before this incident with the same gun. And I
15 believe we've submitted a memorandum to the Court last
16 night, which has been filed and passed up as well.

17 THE COURT: All right. Are you -- you are
18 arguing this motion?

19 MR. KOZELSKI: Yes, your Honor.

20 THE COURT: And the State is ready to go
21 forward as well?

22 MS. WILSON: Yes, ma'am.

23 Your Honor, what we filed was a Motion in
24 *Limine* regarding this 404(b) of a witness. I believe
25 you have our memorandum on that issue that we handed in

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1 on Friday. I don't have much to say outside of that
2 motion, except to just emphasize to the Court, we're
3 talking about two weeks before the murder of
4 Marley Lion, an incident that, in the State's view, is
5 in really very few ways similar to the murder of
6 Marley Lion.

7 The Defense, we anticipated when we filed the
8 memorandum, would attempt to argue that the Chopper
9 shooting two weeks prior should come in because the same
10 gun was used in the Chopper shooting as was used to kill
11 Marley Lion. I think that that argument is
12 significantly undercut, because just that very night, an
13 hour or so before Marley was shot, Bryan Rivers used
14 that gun, the murder weapon, to do another robbery
15 downtown. He was involved in that robbery with
16 Ryan Deleston and with Julius Brown and with
17 George Brown. But if there is a need to show that
18 someone else had possession, someone else had access,
19 someone else had, in fact, used that weapon, they're
20 going to have an armed robbery that occurred about one
21 hour before the shooting.

22 To stretch back two weeks prior, to boot strap
23 that in to try to show that because two weeks prior Ryan
24 Rivers shot someone in the leg, that he must have shot
25 and killed Marley Lion, I think, is a stretch.

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1 In more ways than not, the shooting of Chopper
2 is just not the same thing. First of all, Chopper was
3 someone that was known to Bryan Rivers and Ryan Deleston
4 and the other Codefendants. He was someone that Bryan
5 Rivers had a beef with. He was someone that these
6 Defendants set out to rob. That's totally different
7 than the situation that we have with Marley Lion, in
8 that Marley Lion just happened to be in the wrong place
9 at the wrong time. The intended target the night Marley
10 was killed was a Famous Joe's bar. They set out to do
11 that robbery when Marley interrupted it by driving up
12 and they missed the money bag leaving. It's hardly the
13 same thing.

14 In addition, you know, there are a number of
15 things as far as how they got there. In the Chopper
16 shooting, George Brown drove them to the apartment
17 complex where it took place. In this shooting, they
18 walked down the street because it was near where they
19 were hanging out. There are just a number of things
20 that are different.

21 But when you look at the evidence, what -- with
22 any piece of evidence, the Court is required to do is a
23 403 analysis. And in this situation, putting in
24 evidence that Bryan Rivers shot someone else is more
25 prejudicial than it is probative. It's not probative,

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1 because it's nothing like the shooting of Marley Lion.

2 And that's our position, your Honor. If you
3 have any questions, I'll be happy to answer them.

4 THE COURT: Mr. Pennington? Oh, I'm sorry.

5 MR. PENNINGTON: Mr. Kozelski's going to handle
6 this, your Honor.

7 THE COURT: Thank you.

8 MR. KOZELSKI: Thank you, your Honor. Our
9 contention is, first and foremost, that this is -- this
10 doesn't reach the Lyle analysis because it's evidence of
11 third-party guilt. We are submitting the Chopper
12 shooting as evidence that somebody else used this weapon
13 in the very same manner that it was used in the
14 Marley Lion shooting, and that this evidence shows that
15 somebody else was the shooter in the Marley Lion murder.

16 That's exactly what third-party guilt evidence
17 is -- is there for, is to allow Mr. Deleston to present
18 a defense that he, in fact, did not do this, and that
19 somebody else was the trigger man. And we think that
20 this other robbery is very relevant.

21 I am still unclear as to how this prejudices
22 the State. I don't think that this necessarily
23 prejudices the State in any way. It doesn't prejudice
24 Mr. Rivers in any way. He's already pled to charges
25 related to this.

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1 And in further, it's admittedly known to
2 happen. These aren't mere accusations that we're
3 spouting out. This is somebody who puts himself at the
4 scene of all of these crimes. So this is the first
5 robbery, the second robbery which took place downtown,
6 and then eventually the Marley Lion robbery that these
7 individuals were all involved, and they all put
8 themselves in there. And as we put, speaking to the
9 similarity of the common-planned schemes, we have a
10 chart, and it's submitted in the back of our motion --
11 or response to the State's motion, that shows that these
12 are essentially the same plan. Yes, there might
13 be minute details that are a little different from one
14 another. But they are planned in advance; they are
15 targeted individuals.

16 I know the Solicitor just told you Marley Lion
17 wasn't a targeted individual, but when you read and
18 understand the evidence that when he did come into the
19 parking lot, their plan changed. It changed from
20 robbing the employees that were coming out to robbing
21 Marley Lion. And you can see that in the video as
22 Julius Brown walks by and he stalks Marley Lion's car.
23 And so it's a targeted individual.

24 You have the same perpetrators. You have the
25 same gun. You have them approaching individuals on foot

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1 under the cover of darkness, that these perpetrators
2 fled on foot, and Bryan Rivers, while he was fleeing,
3 turns, fires the gun --

4 THE COURT: Tell me what a targeted individual
5 is to you.

6 MR. KOZELSKI: They set out to find an
7 individual that they saw isolated and alone. And they
8 planned to approach that person and point a gun at them
9 and say, Give me all your money. I mean, it's a very
10 simple plan. It's an armed robbery. And to justify --

11 THE COURT: In the Chopper shooting, the
12 individual known was known to the Defendants; correct?

13 MR. KOZELSKI: Yes, yes. That is --

14 THE COURT: And in the Lion shooting, he was
15 not known to the Defendant?

16 MR. KOZELSKI: He was not, no. And that's
17 really the only difference between the two.

18 As we lay out in our chart, as well as
19 throughout the -- throughout our memo, that the plan
20 remains the same. The locations are within -- I think
21 the locations apart are .69 miles. The motive was to
22 get money. The --

23 THE COURT: Tell me about the location
24 similarities. One was a parking lot. And where was the
25 Chopper shooting?

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1 MR. KOZELSKI: The Chopper shooting was at the
2 Saint Andrew's Gardens Apartments, which is located --

3 THE COURT: Where the victim resided?

4 MR. KOZELSKI: Not -- well, the victim's
5 parents, Leroy Townsend's parents lived at that
6 apartment complex, and that's why he says -- he tells
7 the police that he's there originally. And it's not
8 very far from -- it's basically right in the Ardmore
9 area, both of these shootings. They're less than a mile
10 apart. So they're in the same location, using the same
11 weapon, the same individuals, and same plan. It's a
12 common plan.

13 But before we even get to the similarities,
14 this is really evidence that should be allowed under
15 just a due process of allowing Mr. Deleston to present a
16 full defense and saying, I'm not the shooter; this is
17 the other shooter. This is -- this is a person who puts
18 himself there and, essentially, just says, Well, Ryan
19 did it. I didn't do it. So it's not that we're just
20 casting mere suspicion on him. He puts himself there.
21 And to not allow that evidence, they're essentially
22 saying that the Defense can't put up a defense, if we're
23 not allowed to bring in evidence that somebody else was
24 the shooter. That is our defense, is that Bryan Rivers
25 was the shooter, and they're trying to preclude us from

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1 saying that.

2 THE COURT: Tell me how excluding the evidence
3 of the Chopper shooting will preclude you from
4 mentioning those facts.

5 MR. KOZELSKI: I think it's relevant. It's
6 relevant to the fact it makes it more likely that he was
7 the individual with the gun. He was in the first armed
8 robbery. He was in the second armed robbery. And then
9 the third armed robbery, he says, Well, I didn't have
10 the gun. And that's just rather convenient in this
11 case. I -- Mr. Deleston -- Mr. Deleston should be
12 allowed to explore and point out the fact that he was
13 doing these armed robberies in the same amount -- same
14 approximate time -- they used two weeks as such a remote
15 period of time that it's just so far away from the --
16 the issue here -- or the crime here. But the cases have
17 found that seven to eight years, justifiable under
18 common plan scheme, that it's not the actual time, it's
19 the actual plan. And the plan here was the same. And
20 that's the robbing an individual at gunpoint under the
21 cover of darkness with the same murder weapon. All of
22 them are involved.

23 THE COURT: Okay. Ms. Wilson, how -- couple of
24 questions. The Defendant brings up a point that it
25 should be -- even if I don't allow it under 404(b), that

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1 he should be allowed to enter it under a third-party
2 guilt. What's your position as to that?

3 MS. WILSON: Your Honor, again, I think you
4 have to look at the pure relevance of it. We're talking
5 about two weeks remote in an area -- there's no telling
6 how many armed robberies took place in a one-mile radius
7 of Ardmore. Just because an armed robbery and a
8 shooting took place, it doesn't -- it's not probative.
9 What happened two weeks prior -- and remember this: Two
10 weeks prior, when Chopper was called on the telephone,
11 told to be at a certain place under the ruse of buying
12 drugs, and then he was ambushed, robbed, and shot. Now,
13 that's horrible. I get that. But it is nothing like
14 what happened to Marley Lion.

15 Under the Defense analysis, every armed robbery
16 would involve a plan to hold someone at gunpoint.
17 That's what an armed robbery is, holding someone up,
18 whether a knife, a gun, whatever. So to say that that
19 is the big similarity, I think it fails there. And,
20 again, the reason that I -- that we submit that the
21 Defendant is not prejudiced even further is that they
22 will have the gun in Bryan River's hand one hour before
23 Marley Lion was shot. The gun will be in his hand
24 committing an armed robbery.

25 MR. KOZELSKI: Your Honor, the facts remain

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1 that, first, all of these robberies were planned by
2 Julius Brown. They were planned by the same person.
3 And they are also executed by the same person, in that
4 they're executed by Bryan Rivers with the same gun.
5 They're saying that we are not prejudiced by not
6 allowing this other evidence of Bryan Rivers' crime in
7 shooting Chopper. But it still remains that he is a
8 serial armed robber.

9 And along with this, he puts himself at the
10 Marley Lion crime scene. So we're not casting mere
11 accusations. We're not just saying that somebody else
12 was robbing other people in the area of Ardmore around
13 this period of time. We are saying Bryan Rivers was
14 robbing people at gunpoint with the same gun.

15 Your Honor, if I may beg the Court's
16 indulgence?

17 THE COURT: Take your time.

18 (Mr. Kozelski and Mr. Pennington speak off the
19 record.)

20 MR. KOZELSKI: Your Honor, this testimony is
21 testimony from all the parties involved. It is
22 testimony that comes in under Julius Brown. It's
23 testimony that comes in under --

24 THE COURT: Tell me again, Counsel, what it's
25 probative to.

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1 MR. KOZELSKI: It's probative that somebody
2 else committed this murder. That is the most probative
3 thing that it could possibly stand for. It does not
4 prejudice anybody, and it is probative. It is probative
5 of Mr. Deleston's innocence and a third party is guilty.
6 And that's -- that's what our defense is. And the
7 Solicitor's trying to preclude that by saying that this
8 is too remote in time. But the remoteness really is not
9 a factor, and it is not a key factor certainly in
10 determining whether or not third-party guilt is
11 associated and then, beyond that, whether or not a
12 404(b) is --

13 THE COURT: In the Chopper shooting, was
14 the -- was he driven to the victim's location, to the
15 residence?

16 MR. KOZELSKI: There is testimony that says he
17 was driven there by George Brown. There's also
18 testimony and there's also video surveillance of
19 George Brown driving through the parking lot of
20 Marley Lion's unit earlier that day. So he's --
21 George Brown is the driver. He's driving everybody
22 around to all these crimes. And that's what's going on
23 as far as getting into the crime scene and having them
24 flee away. But they're --

25 THE COURT: Was the victim in the Chopper

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1 shooting drawn out of the apartment through some sort of
2 a ruse?

3 MR. KOZELSKI: It's unclear. I think
4 what he's -- he's told the police -- he tells the police
5 that he's going there with dinner for his family.

6 THE COURT: Was he shot in the apartment?

7 MR. KOZELSKI: He was shot outside of the
8 apartment, in the --

9 THE COURT: Was there money or something stolen
10 from that victim in the Chopper shooting?

11 MR. KOZELSKI: Yes. I think there was \$1,316.

12 MS. WILSON: Yes, ma'am. If I might, there are
13 sort of two different versions of the Chopper facts,
14 because Chopper would not cooperate with the police
15 initially. The way that we have all of this information
16 about the shooting is because the Codefendants, once
17 they decided to cooperate, told the whole story. So the
18 evidence of the ruse we wouldn't expect to come from
19 Chopper.

20 First of all, he wouldn't have really been in
21 on the fact that it was a ruse. But second of all, he
22 has not wanted to give up information surrounding it.
23 The information about the ruse comes from those who were
24 involved along with Ryan Deleston in that robbery. And,
25 again, as to the third-party guilt aspect, the

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1 remoteness matters, because it deals with whether or not
2 it's inconsistent. Is it inconsistent that two weeks
3 later, Ryan Deleston could have had the gun and done the
4 shooting? It's not inconsistent to think that.

5 THE COURT: All right. Anything further,
6 Counsel?

7 MR. KOZELSKI: Yes, your Honor. I think that
8 the -- the third-party guilt is a much lesser standard
9 than the Lyle analysis. And the Lyle analysis is there
10 to protect a defendant, and that is -- there's case law
11 that we -- we cite in our Brief that stands for the
12 proposition that Lyle is there to protect a defendant
13 from having the jury hear of these other crimes and
14 prejudice him for that. Here, we're not even dealing
15 with a defendant. We're dealing with a third party. It
16 was a Codefendant, but he has since pled. So he's not
17 prejudiced by this.

18 And we would ask -- we would rely on our Briefs
19 as far as the lesser standard is concerned, but that
20 this was briefly mentioned in the co-case that the
21 Solicitor had heavily relied upon in their Brief, but
22 that this was an issue that many other jurisdictions
23 have -- have addressed outside of South Carolina,
24 because South Carolina has not addressed this issue.
25 But when you're dealing with due process and -- of a

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1 -- of evidence tending to take any constitutional
2 dimension and that it -- it would drastically affect
3 Mr. Deleston's ability to put on a defense without this
4 evidence, then it's going to be that lesser standard.

5 THE COURT: All right. And then the final
6 motion that you have is the videotape, and I think we
7 have one witness for that?

8 MS. WILSON: Yes, ma'am.

9 THE COURT: I'm going to issue a ruling before
10 we leave as to all matters. So we'll go forward. And
11 that's the last motion you have, I understand, pending.

12 MR. PENNINGTON: Your Honor, there are -- I
13 will touch on where we stand on issues of the 404(b) as
14 opposed -- as against my client, Mr. Deleston. These
15 are situations where I understand the State is intending
16 to offer 404(b), and I want to object for the record.
17 One involves, I believe, Julius Brown, who is going to
18 testify.

19 What I gather from his statements to law
20 enforcement and to the Solicitor's Office, once he
21 decided to be a cooperating individual, thanks to a
22 summary from Mr. DuRant, that he describes that my
23 client says that he was not -- on the night of the 15th,
24 16th of June, 2012, that my client was riding with these
25 fellows. And when the robbery of the victims who were

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1 downtown Charleston Rutledge Avenue, which occurred one
2 hour before this murder, was unsuccessful because
3 they -- there was no money in the purse that
4 Bryan Rivers took from the victim, they allege that my
5 client said, Well, I want to perhaps rob a video poker
6 or some other vague descriptions.

7 From what I understand, on the standard of
8 reliability for admissibility purpose under 404(b) --
9 and I'm objecting precisely to this vague claim by
10 Julius Brown, that he said he wanted to rob the video
11 poker place or the casino or the check cashing place.
12 It's kind of amorphous. And that's exactly my problem
13 with it. It has no clarity and no specificity, nothing
14 to root it as solid.

15 And I believe that there'll be other testimony
16 that they'll offer of other kinds, saying that my
17 client was very motivated to get cash, was a willing
18 participant in the downtown robbery, was interested in
19 getting money on this particular night, and that's what
20 the Famous Joe's -- all that stuff, I think, is res
21 gestae, it's perfectly appropriate, and I understand it.
22 But as his advocate and lawyer, I'm concerned about
23 whether or not the claim about, "or I might get some
24 other place," that's unspecified, is clear and
25 convincing enough to meet the 404(b) requirements, which

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1 are, it has to be relevant and prejudiced, the probative
2 value has to be -- has to outweigh the prejudice, and
3 it's a -- kind of a vague, casual throw-away statement
4 that I find objectionable.

5 Perhaps it will be clearer, or maybe somehow it
6 could be articulated more clearly. All I have to go on
7 at this point -- because he's represented, I can't
8 interview the man -- is those descriptions as best as I
9 can render them. So I object to that prospectively and
10 would ask the Court to not allow that unless it can be
11 somehow clarified and made more clear and convincing.

12 MS. WILSON: Your Honor, it's ironic in that
13 the claim is a lack of specificity, when the reason that
14 it's not specific is because Mr. Deleston was unsure
15 about who or what or when he was going to rob in the 24
16 hours, 48 hours before this robbery. He was looking to
17 hit somebody, something somewhere. And it were -- it
18 was a crime of opportunity. That's why they came
19 downtown. They came downtown looking for a robbery.
20 Before that, they're talking about where else he might
21 hit. He's making suggestions. Included in those
22 suggestions is Famous Joe's. There's a debate about a
23 number of places right around there. Famous Joe's, Five
24 Guys, a check cashing place that are all right in that
25 little location. He's getting advice from his

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1 Codefendants about which one he should hit.

2 They come downtown, they do a robbery, it's
3 unsuccessful, in that while they get a purse, they don't
4 get any cash. Immediately after that, they're looking
5 for somewhere else to hit. That's why they ride through
6 the Famous Joe's parking lot to see what's going on
7 there, to figure out if that's going to be a great
8 place. All of this is not wild evidence. It is
9 obviously *res gestae*, because it goes to this Defendant
10 in the course of making a plan, in the course of
11 figuring out what his next step is going to be. There
12 is a discussion. There's no allegation that he actually
13 attempts to rob Five Guys or that he attempts to rob the
14 poker machine place, but that he is evaluating each of
15 those spots before Famous Joe's is decided upon.

16 So as far as the clear and convincing goes,
17 what would be clear and convincing is the conversations
18 that took place. And we have members of this
19 conspiracy, Codefendants, who were involved in those
20 conversations. So the evidence is going to be clear and
21 convincing that there were these conversations.
22 There will not be evidence that this Defendant actually
23 made those attempts. But this is part of the whole
24 story of what they were doing that night and in
25 the -- the days leading up to that. He is wanting cash.

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1 He is looking for a place to rob.

2 MR. PENNINGTON: My objection is that I -- I
3 want to be clear that I am not trying to stop the
4 Solicitor of the State from presenting all those other
5 collateral circumstances. What I'm specifically zeroing
6 in on is what seems to be this amorphous description
7 of -- as I understand, we don't have video poker places,
8 and we don't have casinos. And the words that get used
9 by Mr. Brown describe these mysterious, nonexistent
10 places that I think do prejudice to my client and are
11 -- are somewhat fantastic. And rather than me having to
12 cross-examine him and explore all that, it seems to me
13 that it's moving -- its prejudicial value far outweigh
14 his --

15 THE COURT: What do you want me to do? What
16 are you asking?

17 MR. PENNINGTON: I believe that the remedy
18 would be to direct Mr. Julius Brown -- and if any of the
19 other witnesses -- it could be George Brown. It could
20 be Bryan Rivers -- if they're going to testify on this
21 matter, that they would only confine themselves to the
22 plans for the concrete things that were planned and stay
23 away from what was a -- a throw-away line of some kind
24 having to do with what they claim is said about a casino
25 or video poker place.

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1 I understand the idea of *res gestae* being
2 appropriate co-conspirator statements, I get as being
3 appropriate. But it sounds like this is a separate plan
4 he's describing that he wants -- he, Ryan, wants to go
5 rob these places. It's not like the plan, as I
6 understood it, as it was articulated in the discovery,
7 was that they were going to go do this, but this was
8 going to be a separate plan for him to go hit these
9 other places in a robbery scheme.

10 And I believe at that point we cross a line
11 where there needs to be something clear and convincing,
12 because this witness is now -- it's not just talking
13 about the *res gestae*. He's now introducing a whole new
14 scheme to do a new robbery on his own, if I understand
15 the testimony correctly. And I object to that.

16 THE COURT: Ms. Wilson -- and again, I'm
17 limited because I don't know the facts and the
18 background and what the proposed testimony is.

19 MS. WILSON: Sure.

20 THE COURT: What -- I gather, from what
21 Mr. Pennington is asking, is there was in-depth
22 conversations between the Codefendants and other
23 individuals involved. There may have been mention of a
24 casino or video poker, but perhaps those were words that
25 someone else used, that they had used other words.

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1 MS. WILSON: Those are the words that
2 Ryan Deleston used, and there is a real video poker
3 parlor in West Ashley right near Famous Joe's that he
4 talked about going to. It's not a fantastical,
5 imaginary place. Julius Brown can tell you exactly
6 where it is and exactly the pros and cons and that
7 Mr. Deleston had checked it out and they had warned him
8 against that place.

9 THE COURT: Mr. Pennington, if the facts
10 establish, and the witness is going to testify, that
11 your client used the word "video poker" and there is
12 such a place, that is not fantastic and imaginary or
13 made up, do you agree that that is an appropriate
14 testimony and words to be used?

15 MR. PENNINGTON: It could be, your Honor. I
16 suppose this could best be done with *in limine* with the
17 witness. If we could perhaps have the witness
18 articulate, because I don't want to find out after the
19 cat's out of the bag that it doesn't measure up to that
20 standard that the Court just pointed out.

21 THE COURT: All right. We will -- so are you
22 asking, then, Mr. Pennington, that we have an *in camera*
23 discussion concerning the use of certain words with the
24 witnesses before --

25 MR. PENNINGTON: They testify.

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1 THE COURT: -- before they testify?

2 MR. PENNINGTON: Yes, ma'am. That's correct.

3 THE COURT: And how do you propose -- are you
4 wanting us to do the certain statements or certain
5 words, or are we going to have to kind of --

6 MR. PENNINGTON: I think it's really confined
7 to this -- as I understand it, it would have been on the
8 same night -- I may be wrong -- because, again, I
9 haven't participated in all these proffers. And I guess
10 I'm putting -- I'm kind of putting shot across the bow
11 and saying that to the extent that these witnesses are
12 going to start describing other unsubstantiated crimes,
13 I have a problem with it. The one that I know about is
14 the one I'm articulating. And that if they intend to
15 get into those things, then they need to proffer it in
16 some concrete way for the Court so the Court can make a
17 ruling.

18 MS. WILSON: That's fine, your Honor.

19 THE COURT: All right. Thank you.

20 MR. PENNINGTON: A related matter --

21 THE COURT: Hold on one second. Ms. Wilson, do
22 you have written proffers for these witnesses? Would
23 that --

24 MS. WILSON: No. We have some notes. I think
25 probably the Court's going to need to hear from them. I

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1 don't think it'll take that long, because it is sort of
2 a narrow focus of what the discussions or the plan were.

3 THE COURT: I was just wondering if you had a
4 written proffer that could kind of -- we could
5 short-circuit and expedite the matter, but --

6 MS. WILSON: I think it's best if it comes from
7 their mouth.

8 THE COURT: Then we will plan accordingly. And
9 just so -- just for scheduling purposes, when do you
10 plan to call those witnesses?

11 MS. WILSON: It will be tomorrow morning. We
12 may -- I think we could probably do that around a
13 midmorning break. I don't think we'll get to them
14 before the midmorning break, when you consider opening
15 and a couple of, you know, three or four other witnesses
16 we've got to do. So we'll be able to get some work
17 done, maybe do that.

18 THE COURT: Just let me know before you call
19 them so we can take an appropriate break.

20 Mr. Pennington.

21 MR. PENNINGTON: That's fine, your Honor.

22 The last thing I will mention is a housekeeping
23 matter -- I think we're moving rapidly toward the
24 suppression statement piece -- is that Solicitor Wilson
25 and I have been discussing in depth the scope of

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1 statements that would be admissible under a
2 co-conspirator statement provision of 801(d) or (b),
3 whichever it is. And I think that we're in accord with
4 this exception, and we may be able to agree on this. I
5 believe that anything that is -- appears on its face to
6 be a postmurder discussion about how to cover up and
7 destroy evidence, wash hands, all that stuff is
8 completely admissible under that provision. And I don't
9 have any objection to those things.

10 I am objecting and will object to what I
11 understand Bryan -- excuse me, Julius Brown will say,
12 which is, is that he says -- I have to lay it out. You
13 have Julius Brown, who says that he hears Bryan Rivers
14 say, quote, Bryan shot that guy for nothing. He
15 actually uses other words as a majority of words, but
16 Bryan shot that other guy for nothing. That statement
17 is sort of stark, and it's sort of a -- more of a
18 meditative comment. It's not a statement that is to
19 then cause some sort of further action in terms of
20 cover-up.

21 Clearly, Bryan Rivers is going to testify, and
22 Bryan Rivers can say that. And that's fine. But what I
23 object to is having either Julius Brown, George Brown,
24 or Rayshawn Brown Milligan, who are the other three
25 people standing around, reciting that meditative

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1 comment. Regardless of its truthfulness or
2 untruthfulness, it does not go in the furtherance of the
3 conspiracy.

4 And the standard, as I understand it, under
5 Rule 801(d), is that it has to be a part of the
6 conspiracy and the -- where this line seems to break is
7 when, in situations where we move beyond cover-up to
8 telling third parties, which this would kind of
9 constitute under the other cases that we have, where
10 individuals begin to opine or describe what happened to
11 third parties in an audible way. And so under
12 801(d)(2), I think that the statement has to be during
13 the course of conspiracy and in furtherance of it, and,
14 clearly, that is, I think -- I'll call it a reflective
15 or comment -- is not in furtherance of the conspiracy,
16 as I read the law. And so I don't think it's
17 admissible.

18 It could come strictly, though, from -- of
19 course, Bryan Rivers can say that he said it. He can
20 say, I uttered that, and that's fine. But I don't think
21 that they're entitled to have other people offer
22 parallel recitations, under Rule 801(d), because I don't
23 think it's a co-conspirator statement.

24 MS. WILSON: Do we have a motion on that or are.
25 you just --

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1 MR. PENNINGTON: No.

2 MS. WILSON: Okay.

3 MR. PENNINGTON: This is actually just the
4 fruit of our conversation.

5 MS. WILSON: I just wanted to make sure. I
6 believe -- and, again, the days and hours are running
7 together. I can't remember if I sent you some cases on
8 this issue or not.

9 MR. PENNINGTON: You did. She did. You did.

10 MS. WILSON: To the Judge? Okay.

11 THE COURT: Thanks.

12 MS. WILSON: And I'd like, maybe, to argue this
13 further in the morning. I didn't know we were going to
14 be talking about it now. But the comment or the term
15 that Mr. Pennington uses, "meditative comment," I think
16 is more appropriately addressed as a present-sense
17 impression or as an excited utterance. Those particular
18 statements about what had just happened, I don't -- we
19 would not offer as a co-conspirator statement. There
20 will be co-conspirator statements.

21 However, these statements regarding what Bryan
22 Rivers is saying to -- about what has just happened,
23 those statements were made literally while these guys
24 are out of breath, sweating, having run from the murder,
25 come back, and the first people they see, they're making

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1 these comments. I think it's going to -- you'll see, as
2 the testimony unfolds, and we can handle those
3 objections as we get to them, but they will be excited
4 utterances clearly under the stress of the event, under
5 the -- their impression as to what has just happened,
6 all of those things.

7 And if you wanted to get technical about it, it
8 certainly would not be offered for the truth, when you
9 look at some of the language that is used and you look
10 at the statements not in their context. But it's our
11 position, it's all part of this *res gestae* excited
12 utterance, present-sense impression type of evidence.
13 It's -- some of it will be co-conspirator statement and,
14 I think, will be obvious when Codefendants give
15 Ryan Deleston instructions as to washing his hands,
16 getting the gunpowder residue off. That sort of thing,
17 obviously, will be in furtherance. But the other
18 statements recounting what happened are under the stress
19 of the event.

20 THE COURT: All right. I think this is more
21 appropriately closer to that -- that time that
22 individual was called.

23 MR. PENNINGTON: That makes sense, your Honor.

24 THE COURT: All right. What else can I do?

25 MR. PENNINGTON: I believe that takes care of

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1 everything on my list except for with regard to the
2 statement.

3 THE COURT: Does that take care of everything
4 on your list with the exception of the statements?

5 MS. WILSON: Yes, ma'am.

6 THE COURT: All right. Whenever you're ready.

7 MR. DURANT: Your Honor, in the Jackson v.
8 Denno issue, the State would call Mark Williams.

9 (The oath is administered by the Deputy Clerk
10 of Court, and the witness answers as follows:)

11 THE WITNESS: I affirm.

12 THE DEPUTY CLERK OF COURT: Thank you, sir.
13 You may take your seat. If you will, please, sir, state
14 your first and last name, spelling your last name for
15 the record.

16 THE WITNESS: S. Lamart Williams,
17 W-i-l-l-i-a-m-s.

18 S. LAMART WILLIAMS,
19 having been first duly sworn by the Clerk of the Court
20 to tell the truth, the whole truth, and nothing but the
21 truth, was examined and testified upon his oath as
22 follows:

23 DIRECT EXAMINATION

24 BY MR. DURANT:

25 Q Good afternoon, Detective Williams.

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1 A Good afternoon.
2 Q Could you tell the Judge where you're employed,
3 sir?
4 A City of Charleston Police Department.
5 Q And how long have you been with the City of
6 Charleston Police Department?
7 A Eight and a half years.
8 Q What do you do for them at the present time?
9 A I'm assigned to the task force for alcohol,
10 tobacco, firearms, and explosives.
11 Q And is that the same thing you were doing back
12 on July the 30th of 2012?
13 A No, sir.
14 Q What were you doing then?
15 A I was assigned to the violent crime unit at the
16 police department.
17 Q Pardon me? I didn't hear the last --
18 A Violent crime unit at the police department.
19 Q Okay. And in that capacity, did you have an
20 occasion to meet with the Defendant in this case,
21 Ryan Deleston --
22 A Yes.
23 Q -- on July the 30th of 2012?
24 A Yes.
25 Q Do you recall about what time of the day it

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1 was?

2 A 9:15 a.m.

3 Q And where was that?

4 A It was at the Charleston Police Department on
5 Lockwood Boulevard.

6 Q And was there any -- what particular -- was
7 there any particular room in the police department?

8 A In the interview room upstairs in the central
9 investigation.

10 Q That room is wired for audio and video; is that
11 correct?

12 A Yes.

13 Q Now, he was in custody; is that true?

14 A Yes, he was.

15 Q I believe y'all had a warrant for him; is that
16 correct?

17 A Yes.

18 Q Do you recall what that was for?

19 A Yes. Possession of a firearm with obliterated
20 serial number.

21 Q And that resulted from the controlled buy of
22 the pistol from him on July the 15th of 2012; is that
23 correct?

24 A Yes.

25 Q Who was with you when you met Mr. Deleston that

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1 morning?

2 A Detective Rich Burckhardt.

3 Q And what did the two of you do -- what did you
4 do when the two of you went in to meet that morning?

5 A Detective Burckhardt introduced himself and I
6 to Mr. Deleston, and I proceeded to get some basic
7 information from Mr. Deleston, like the name, date of
8 birth, level of education, and so on.

9 Q Biographical information?

10 A Yes.

11 Q And then what did you do?

12 A Read him his Miranda Rights.

13 Q And going back to the biographical information,
14 how far had he gone in school?

15 A He said that he went to job corp -- I forget
16 the site -- but he went to job corp and obtained a GED.

17 Q And what did you use to advise him of his
18 Miranda Rights?

19 A A Miranda card.

20 Q Hand you what's previously been marked as
21 State's Exhibit No. 28 and ask if you recognize that
22 document.

23 (State's Exhibit Number 28 marked for
24 identification.)

25 A Yes, I do.

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1 Q (By Mr. DuRant) What is that, sir?
2 A It's the Miranda warning card that was read to
3 Mr. Deleston.
4 Q And how do you know that?
5 A My signature as the warning officer.
6 Q And did you read him his rights as they appear
7 on that Miranda card, State's Exhibit 28?
8 A Yes, sir.
9 Q Did he appear to understand his rights?
10 A He did.
11 Q Did he sign a statement on that card indicating
12 that he understood his rights?
13 A Yes, sir, he did.
14 Q That signature was witnessed by whom?
15 A Myself and Detective Burckhardt.
16 Q And what is the time on that Miranda card?
17 A 9:25 a.m.
18 Q And what is the date?
19 A July the 30th, 2012.
20 MR. DURANT: Your Honor, we would offer this
21 just for purposes of this hearing.
22 THE COURT: Any objection?
23 MR. PENNINGTON: May I take a look at it, your
24 Honor?
25 THE COURT: You may.

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1 (Document shown to Mr. Pennington by
2 Mr. DuRant.)

3 MR. PENNINGTON: I have no objection, your
4 Honor.

5 THE COURT: State's 1 [sic], for the purposes
6 of this hearing, into evidence without objection.

7 (State's Exhibit Number 28 admitted into
8 evidence.)

9 Q (By Mr. DuRant) You previously said that
10 the -- your interview was -- with him was video
11 recorded; is that correct?

12 A Yes, sir.

13 Q And does the advisement of rights you just
14 testified to appear on the video of the interview?

15 A It does.

16 MR. DURANT: Your Honor, at this time, we would
17 ask to publish a portion of Court's Exhibit Number 1 --

18 THE COURT: Counsel, I sat through all 13 hours
19 and 40 minutes plus. If there's some reason that I
20 need -- that you would like to point something out, but
21 I --

22 MR. DURANT: Not so much with the rights, but
23 there may be at some point --

24 THE COURT: If you'll just let me know. And
25 just for the record, I have made those Court's Exhibit

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1 1. I have -- again, I have watched every minute of the
2 13 hours and 40 minutes of the video. Thank you.

3 MR. DURANT: Okay.

4 Q (By Mr. DuRant) After you advised him of his
5 rights and he indicated he understood his rights, did he
6 continue talking to you?

7 A Yes.

8 Q Did you promise him anything?

9 A No.

10 Q Did you threaten him in any way?

11 A No, sir.

12 Q Did you offer him leniency?

13 A No, sir.

14 Q Did you threaten his family?

15 A No, sir.

16 Q You offer him any reward or inducement to get
17 him to talk to you?

18 A No.

19 MR. PENNINGTON: Objection to the leading, your
20 Honor.

21 THE COURT: Watch your leading questions,
22 Mr. DuRant.

23 MR. DURANT: Yes, your Honor.

24 Q (By Mr. DuRant) Who took the lead in that
25 interview?

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1 A Detective Burckhardt.
2 Q And how did that go?
3 A Detective Burckhardt and Mr. Deleston started
4 clashing, bumping heads a little bit.
5 THE COURT: Detective, I'm having a hard time
6 hearing you. I'm going to need you to speak loudly,
7 please.
8 THE WITNESS: Yes, ma'am.
9 THE COURT: Thank you.
10 Q (By Mr. DuRant) If you would, just --
11 A They started --
12 Q -- speak right into that microphone.
13 A Mr. Deleston and Detective Burckhardt started
14 clashing, bumping heads, talking to each other.
15 Q Okay. And at some point, what did Mr. Deleston
16 say?
17 A He said, I don't want to talk to you, sir.
18 Q About how far was that into the interview?
19 A About ten minutes.
20 Q And what did y'all do after he said he didn't
21 want to talk anymore?
22 A We left the room.
23 Q Was he allowed to leave at that time?
24 A No, sir.
25 Q Why was he not allowed to leave?

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1 A He was under arrest. We had an active warrant
2 for possession of firearm with obliterated serial
3 numbers.

4 Q Because he was in custody; right?

5 A Yes, sir.

6 Q And y'all hadn't served the warrant on him at
7 that point; is that correct?

8 A No, the warrant was not served.

9 Q Now, do you recall how long you remained
10 outside the room?

11 A About five minutes or so.

12 Q And when you returned to the room, why did you
13 return to the room?

14 A I returned to check on him and asked if he
15 needed anything, something to drink.

16 Q And what happened then?

17 A Mr. Deleston asked me to come sit down because
18 he wanted to talk with me for a little bit. I think his
19 words were, come here and talk to me for a little bit.

20 Q He asked you to sit down?

21 A Yes.

22 Q What did he tell you he wanted to do?

23 A He wanted to talk to me for a little bit, and
24 he started asking me about charges.

25 Q Okay. And did he continue to talk to you?

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1 A Yes.

2 Q And that was -- do you recall how long that was
3 after you read him his rights initially?

4 A About 15, 16 minutes.

5 Q Okay. Now, at some point about 30 minutes into
6 the interview, did he mention something to you about an
7 attorney?

8 A He did.

9 Q Could you tell us how that came up?

10 A We were talking about -- I was explaining to
11 him, Mr. Deleston, about the warrant, the possession of
12 the firearm, the obliterated serial number, and
13 Mr. Deleston was responding to me, stating that we
14 couldn't arrest him, or something like that, because we
15 didn't catch the -- or law enforcement didn't catch the
16 gun on him.

17 And I mentioned -- well, I told him that we had
18 him on video surveillance, in reference to a gun
19 transaction regarding the -- regarding the serial number
20 from the gun, obliterated serial number.

21 Q Uh-huh.

22 A And at that point, he says, I need a lawyer.
23 If I get a lawyer, I can see the videotape. He wanted
24 to see the videotape.

25 Q How did you understand that -- what did you

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1 understand him to be requesting?

2 A I interpreted that as, that he wanted to view
3 or review the videotape. He wasn't requesting
4 representation.

5 Q For purpose of the interview itself?

6 A For purposes of the interview, right.

7 Q Now, by way of contrast, was there another
8 occasion like an hour later where he mentioned a lawyer
9 again?

10 A Yes.

11 Q How did that come up?

12 A At the time I was showing him a still
13 photo -- photographs of -- of a person in the -- in the
14 pictures, and I was asking him if it was -- who he
15 recognized that as, I think. And he said -- he
16 identified himself and said, That's me, that's me.
17 And --

18 Q This was a still photo from the surveillance
19 video --

20 A Yes.

21 Q -- that he inquired about earlier; correct?

22 A Yes. Yes. And after he reviewed the photos,
23 he mentioned something to the fact that he needed to use
24 the phone to get a lawyer down here. And from that
25 point on, I asked him, I said, Are you asking for an

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1 attorney? And I asked him twice, several times.

2 And he says, No.

3 Q So you specifically asked him if he wanted an
4 attorney?

5 A Yes.

6 Q And his response was --

7 A No.

8 Q -- no?

9 Now, at that time, apparently you did think he
10 was requesting an attorney; is that why you asked?

11 A Well, I wasn't sure, so I asked him, because --
12 so I could make confirmation if he was asking for an
13 attorney.

14 Q And why didn't you ask him the first time he
15 said something about it?

16 A Because he merely made the statement about an
17 attorney viewing the video with him.

18 Q And as I said, what were you -- what did you
19 believe he was asking for the first time?

20 A The first time he merely made a statement. He
21 was -- he wasn't requesting an attorney for
22 representation. He merely wanted an attorney to review
23 the video footage.

24 Q You thought he wanted to see the video?

25 A Correct.

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1 Q So the second time you asked him twice, Do you
2 want an attorney, what was his response?

3 A No.

4 Q And did the interview progress at that point?

5 A It did.

6 Q Okay. At any time during the remainder of that
7 interview that morning or the evening -- later on that
8 evening, did he request an attorney?

9 A He did not.

10 Q Or say anything indicating he requested an
11 attorney?

12 A No, sir.

13 Q Now, I believe there was one point there where
14 he claimed to be tired; is that correct?

15 A Yes.

16 Q Do you recall when that was?

17 A About 11:50ish, almost noon.

18 Q Okay. And what did y'all do?

19 A I left the room.

20 Q And he was given a break?

21 A He was, about an hour break.

22 Q Actually, longer than that, wasn't it?

23 A Approximately, maybe two hours.

24 Q Okay. Do you recall what he did during that
25 break?

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1 A Had a bathroom break, he napped, he read the
2 newspaper. I want to say he got a cigarette break as
3 well.
4 Q Taken outside for a smoke break?
5 A Yes.
6 Q Let me ask you about that. During this entire
7 process, was he allowed to use the restroom if he needed
8 to?
9 A Yes.
10 Q Was he offered food and drink --
11 A He was.
12 Q -- during the time?
13 A Yes.
14 Q Now, after he had this couple-hour break, did
15 y'all continue to talk to him?
16 A We did.
17 Q For how long?
18 A Fifty minutes, less than an hour.
19 Q Okay. And during this first interview with
20 him, did he ever admit he had any involvement in the
21 Marley Lion case?
22 A No, he did not.
23 Q In the shooting part of it anyway?
24 Did he admit having sold a gun to the
25 informants?

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- 1 A Yes.
- 2 Q And was he placed under arrest at the end of
- 3 the interview?
- 4 A He was.
- 5 Q And what was he placed under arrest for?
- 6 A Murder, attempted armed robbery, possession of
- 7 a firearm with an obliterated serial number, and
- 8 possession of a firearm during the commission of a
- 9 violent crime.
- 10 Q And what time did that initial interview end?
- 11 A About three o'clock p.m.
- 12 Q Now, I'm moving ahead about five hours to about
- 13 eight o'clock that evening. Did you have an occasion to
- 14 meet with him again?
- 15 A What time is that, sir?
- 16 Q About 8:00 p.m. that same day.
- 17 A Yes, yes.
- 18 Q And where was he between 3:00 p.m. and 8:00
- 19 p.m.?
- 20 A He was in the holding cell downstairs --
- 21 Q Okay.
- 22 A -- at the police department.
- 23 Q And was there any effort to question him during
- 24 that period from 3:00 p.m. to 8:00 p.m.?
- 25 A No, sir, I don't think so.

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1 Q Now, what did you do when you met him
2 at -- when you met him at 8:00 p.m.?
3 A I reminded Mr. Deleston of his Miranda
4 warnings, he had the right to remain silent, and he
5 didn't have to talk to us, and that he still had a right
6 to an attorney.
7 Q Did he indicate he understood that?
8 A Yes.
9 Q Did he indicate that he still understood he was
10 under protection supported by Miranda?
11 A He did.
12 Q Knowing that, did he continue to talk to you?
13 A He did.
14 Q Now, during this interview, did he -- what did
15 he initially tell y'all about the Marley Lion shooting?
16 A He said, on the night of the incident, he and
17 the co -- he and his friends were in his yard on Cashew
18 Street, and a gentleman by the name of Tino came up to
19 him and said that -- admitted that he shot the victim in
20 the parking lot of Famous Joe's.
21 Q Okay. And did he stick with that story?
22 A He did not.
23 Q What did he eventually end up telling y'all
24 that night?
25 A He eventually ended up telling us that he and

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1 Bryan Rivers and Julius Brown planned on robbing Famous
2 Joe's or the employees of Famous Joe's, and they went
3 down to the location. The victim, Marley Lion, drove up
4 as the employees were exiting the building. And once
5 the employees left, they decided to rob Marley. And he
6 identifies Julius Brown as the gentleman walking across
7 the front of the car. And he says that Bryan Rivers had
8 the handgun and walked up to the vehicle and shot Marley
9 Lion.

10 Q Okay. Now, the Judge had referenced there's
11 like 13 hours of tape in this case, or it covers some 13
12 hours; is that correct?

13 A Yes.

14 Q Now, were y'all questioning him for 13 hours?

15 A No, sir.

16 Q And at my request, did you go back and actually
17 ascertain how much time of that 13 hours he was actually
18 being questioned by you or other detectives?

19 A Yes.

20 Q And how long was he actually being questioned
21 during that 13 hours?

22 A About four hours and 20 minutes.

23 MR. DURANT: Court's indulgence for a moment.

24 THE COURT: Take your time.

25 (Document is shown to Mr. Pennington by

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1 Mr. DuRant.)
2 (Document is handed to the witness.)
3 Q (By Mr. DuRant) In referring to State's
4 Exhibit Number 31, you recognize that document, sir?
5 A Yes, sir.
6 Q And what is that?
7 A This is a comparison of the time frame
8 between -- in which Mr. Deleston was not being
9 interviewed.
10 Q Just states the time frames where he wasn't
11 being interviewed --
12 A Right.
13 Q -- during that 13-hour period?
14 A Right. When he was alone.
15 Q And have you gone back and checked that against
16 the tape?
17 A I did.
18 Q And is it accurate, sir?
19 A Yes.
20 MR. DURANT: Your Honor, we would offer State's
21 31 just for purposes of this hearing.
22 THE COURT: Any objection?
23 MR. PENNINGTON: No objection, your Honor.
24 THE COURT: State's 31 into evidence for the
25 purposes of this hearing without objection. Thank you.

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1 (State's Exhibit No. 31 is admitted into
2 evidence.)

3 Q (By Mr. DuRant) And of that 13 -- I think you
4 said this, but of that 13 hours, how long was he
5 actually interviewed?

6 A About four hours and 20 minutes.

7 MR. DURANT: Okay. Thank you, sir. Could you
8 please answer any questions Defense counsel may have for
9 you?

10 MR. PENNINGTON: Please the Court, your Honor?

11 THE COURT: Yes.

12 MR. PENNINGTON: Your Honor, may I have the
13 exhibits that the card and the --

14 (Document is handed to Mr. Pennington from the
15 Judge.)

16 MR. PENNINGTON: Thank you.

17 May I approach the witness, your Honor?

18 THE COURT: You may.

19 **CROSS-EXAMINATION**

20 **BY MR. PENNINGTON:**

21 Q Detective Williams, this summarization does not
22 contain any of the language of the Defendant where he
23 was talking about wanting a lawyer, does it?

24 A No, sir.

25 (Document is handed back to the Judge.)

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1 Q (By Mr. Pennington) Okay. Now, you would
2 agree that the City police have recordings set up in
3 that interview space, don't they?

4 A Yes.

5 Q And that creates a reliable record of what
6 happens at least during the time frame that someone is
7 seated in that room?

8 A Yes, sir.

9 Q And I would like to talk to you at
10 some -- about this Monday, July 30th, the date that
11 Mr. Deleston was arrested. On that date, Mr. Deleston
12 was arrested, but also Julius Brown was arrested, wasn't
13 he?

14 A Yes, sir.

15 Q And Bryan Rivers was also arrested that day?

16 A Yes, sir.

17 Q And George Brown was invited to come in and met
18 with Detective Osborne and was interviewed on that date
19 too; correct?

20 A I think he was. I'm not sure.

21 Q From your knowledge of the investigation --

22 A Yeah, from my --

23 Q -- did Detective Osborne and Lauren Glover meet
24 with him at the ATF offices with his daddy?

25 A Yes.

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1 Q And that was the day before George was
2 arrested; he was arrested the next day, which would have
3 been, July 31st?

4 A That's correct.

5 Q Now, this was part of a -- this all didn't
6 happen by accident, but there was a conscious plan to
7 bring in all these Defendants and talk to all of them
8 simultaneously, correct?

9 A Yes.

10 Q And the plan was to be able to say to each of
11 them that, You need to talk to me, because there's a guy
12 in the next room who's connected to this case that's
13 also being interviewed; correct?

14 A I can't -- no, sir.

15 Q Well, that's the way it worked, isn't it?

16 A Not really.

17 Q Have you reviewed these videos?

18 A Yes, sir.

19 Q All right. So you know full well that
20 Detective Burckhardt, when he interviewed Ryan Deleston,
21 was talking about the fact that they were talking to
22 Julius Brown; correct?

23 A Yes.

24 Q And he also talked to him about, that he was
25 interviewing Bryan Rivers; correct?

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1 A Yes, he did.

2 Q And when you look at the interviews of all the
3 other Codefendants, all the other Codefendants are, in
4 fact, told that they're talking to Ryan Deleston; am I
5 right?

6 A Can't tell you exactly if -- from the other
7 interviews --

8 Q Well, was it part of the plan to have Detective
9 Osborne tell, for example, Bryan Rivers, that Ryan, my
10 client, is pointing at Bryan Rivers with the express
11 purpose of getting Bryan Rivers to open up and point at
12 Ryan Deleston?

13 A No. I can't say that was the plan, sir.

14 Q Well, wasn't that a strategy that was discussed
15 in advance, that we were going to talk to each of these
16 people and tell them that the other guy is going to
17 roll, so you better get in there first?

18 MR. DURANT: Objection; relevance, your Honor.
19 It has nothing to do whether or not he's read his rights
20 and whether he waived his rights or requested an
21 attorney.

22 MR. PENNINGTON: Your Honor --

23 MR. DURANT: This is great Cross-Examination
24 for the jury.

25 MR. PENNINGTON: The reason it's relevant is to

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1 paint the picture that -- for purposes of their
2 unwillingness to bring in counsel, that there was a plan
3 in place that would have been corrupted and violated if
4 they had exercised and followed the Miranda warnings
5 that are required under the U.S. Constitution. In
6 effect, what I'm arguing to the Court, or will be
7 arguing to the Court, is that they made a conscious
8 decision not to call a lawyer from my office or allow
9 him to contact family to get a lawyer down there because
10 that would have disrupted the game plan for that day,
11 which was to have concurrent interviews of multiple
12 suspects, hoping to force information out of them
13 without the interference of counsel. That's the -- the
14 relevance of my questions.

15 THE COURT: I'm going to let you ask that
16 question, and then you need to move on.

17 MR. PENNINGTON: All right, Judge.

18 THE COURT: Do you need him to rephrase that
19 question?

20 THE WITNESS: No, your Honor.

21 THE COURT: All right. You understood what he
22 was asking?

23 THE WITNESS: Yes. He was asking, was that the
24 plan, but that, basically, was not the plan. The plan
25 was to interview Mr. Deleston, and myself and

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1 Detective Burckhardt will be with Mr. Deleston while
2 other detectives would interview the other Codefendants.

3 Q (By Mr. Pennington) Are you telling me that
4 the detectives did not talk to each other about what was
5 being said in the other rooms?

6 A Well, I'm telling you --

7 Q Is that your testimony? Are you saying that
8 y'all didn't talk to each other in between when you step
9 out?

10 A We did.

11 Q And the purpose of that was to tell what was
12 being said in each room, wasn't it?

13 A No, sir, that was not the purpose.

14 Q On this particular day, have you -- let me back
15 up. Have you reviewed the Julius Brown interview?

16 A I did.

17 Q And you participated in the Julius Brown
18 interview?

19 A Yes, sir.

20 Q Wasn't Julius Brown told that Ryan Deleston was
21 making statements against him and that he'd better come
22 forward and start talking for himself?

23 A I don't think so, sir. I don't -- I don't
24 recall. I don't recall.

25 Q You agree that Miranda says that the defendant

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1 has the right to remain silent?

2 A Yes.

3 Q And it says that he has the right to an
4 attorney and have that attorney present during
5 questioning?

6 A Yes.

7 Q And what that means is, that he has the right
8 to have an attorney present during questioning right
9 then; correct?

10 A If he wants.

11 Q If he wants?

12 A Correct.

13 Q And so the essence of this is to tell a
14 layperson whose under arrest in your custody that you
15 have the right to talk with an attorney and have him
16 present during any questioning. Isn't that what was
17 read?

18 A If you wish it, right.

19 Q And it even goes further and describes that if
20 he couldn't afford a lawyer, one would be appointed;
21 correct?

22 A Yes.

23 Q And that if you decide to answer questions
24 without a lawyer, you have the right to stop answering
25 at any time you so choose; correct?

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1 A Yes.

2 Q At 9:27, Mr. Deleston stood up and said, I'm

3 ready to go. I don't want to talk no more. Correct?

4 A He did.

5 Q I'm ready to go. I don't want to talk, sir.

6 Correct?

7 A Yes.

8 Q I'm ready to go. Take me to jail. Correct?

9 A Yes.

10 Q And the idea at that point was clear to you

11 that he was ready to remove himself from this

12 questioning process, and you guys got up -- you and

13 Detective Burckhardt got up and left the room; right?

14 A Yes.

15 Q You'll agree that Mr. Deleston, in the course

16 of his interview that day, asked over and over again if

17 he could call Stephanie Brown; right?

18 A Checking with his girlfriend -- his girlfriend

19 got a paramedic condition. He did.

20 Q He indicated that -- he continued to raise this

21 all through the entire 9:00 a.m. to 3:00 p.m. time

22 frame?

23 A I think he may have said that maybe two, no

24 more than three times, I think.

25 Q And then it came up again that night. When he

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1 got back, he was still asking Detective Burckhardt for
2 that phone call, wasn't he?

3 A I don't know, sir.

4 Q Well, you do know that -- you remember
5 Detective Burckhardt -- you watched the video. You just
6 testified you watched these videos; right?

7 A I did.

8 Q You remember Detective Burckhardt playing him
9 off, saying, Well, we'll get that for you. We'll get
10 that for you. Do you recall that? The video speaks for
11 itself. If you don't recall --

12 A Yeah. I mean, I can't recall it right now.

13 Q But it never happened. There was never any
14 opportunity for Mr. Deleston to place any phone calls,
15 was there?

16 A Yes, it was. Just the time he asked to make a
17 phone call to get a lawyer down here. And I
18 specifically asked him twice -- two or three times. I
19 said, Do you want a lawyer? Do you want an attorney?

20 He says, No. So the interview continued.

21 Q Didn't he tell you that he didn't want you to
22 get him a lawyer, that he wanted to reach out to his
23 family, and that's why he was trying to reach his
24 family? He was trying to get some help that day?

25 A No, sir.

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1 Q Well, he clearly was trying to reach his
2 family, wasn't he?

3 A He was trying to call his girlfriend. He
4 wanted to call his girlfriend.

5 Q You agree that he had a right to have an
6 attorney present during questioning if he so chose?

7 A Yes.

8 Q No one called the Public Defender's Office that
9 day and said, We got a man down here that wants a
10 lawyer, did they?

11 A No.

12 Q And so in that initial moments where he has --
13 when he stood up and he said, I don't want to talk, sir.
14 I don't want to talk no more. I want to go to jail,
15 what happened, in fact, was Detective Burckhardt told
16 him to sit down; correct?

17 A That's correct.

18 Q And at no point was he taken to jail that day?

19 A He was taken to jail. He was taken to jail
20 later on.

21 Q Well, he was taken to jail after the conclusion
22 of the interview at some time like after 10 p.m.?

23 A It had to do with the fact that he wanted to
24 talk to me. When I checked on him, he reinitiated the
25 conversation -- the interview.

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1 Q That's your opinion; is that correct?
2 A Opinion?
3 Q That's your opinion?
4 A When he initiated contact with me for the
5 interview?
6 Q Let's talk about this reinitiation.
7 A Okay.
8 Q When you came in and asked him about water, he
9 asked you about, if those fellows who bought the guns
10 were police; right?
11 A He did, I believe.
12 Q He was -- he was curious about that part of the
13 case?
14 A Yes.
15 Q It was after that, at 9:51 a.m., that he said,
16 I need a lawyer; correct?
17 A He did say that.
18 Q And you didn't say anything at that time in
19 response to that. You just kept on talking --
20 A No --
21 Q -- correct, sir?
22 A No, sir. He kept on talking. He said, I need
23 a lawyer. If I get a lawyer, could I see the video?
24 Q When someone says -- with -- under the Miranda
25 warnings, that I -- I want a lawyer, it means I want a

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1 lawyer, doesn't it?

2 A He didn't say that.

3 Q He didn't make the statement, "I need a
4 lawyer"?

5 A That's the statement -- he made the statement,
6 I need a lawyer, because if I have a lawyer, I can see
7 the video. He was referring to reviewing the video.

8 Q Well, he clarified it within an hour of where
9 he said, I want to call my Daddy and see if I can get a
10 lawyer down here.

11 A He didn't say it in my presence, sir.

12 Q Well, when -- how about eleven o'clock, I want
13 to make a phone call to get a lawyer down here?

14 A And I asked him specifically was he referring
15 to -- does he need a lawyer? Was he talking about, does
16 he need a lawyer? He said, no.

17 Q So it's your contention that he would have to,
18 essentially -- to effectively ask for a lawyer, he'd
19 have to ask for a lawyer and then say nothing else after
20 that. Now, the precondition of being able to get a
21 lawyer is that he would not ever say another word; is
22 that your contention?

23 A That's not my contention, sir.

24 Q So let's talk about the afternoon session. You
25 go back a few minutes before eight p.m. and you

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1 reinitiate the Miranda warnings; is that correct?

2 A I reminded him, yes, sir.

3 Q But, in fact, you actually cut them short,
4 don't you?

5 A I basically summarized it, yes.

6 Q And so you tell him that he -- you say the
7 words, you know you're -- you are still under the
8 Miranda warnings that I read to you earlier. You have
9 the right to remain silent. Anything you say can be
10 used in a court of law. You have the right to an
11 attorney and all that good stuff. The part that you
12 left off was, "and have him present during any
13 questioning." Isn't that correct?

14 A I did say that. .

15 Q Are you saying you did say?

16 A The second time, yes.

17 Q You're saying that at 8:00 p.m., when you're
18 reinitiating and you're doing the Miranda warnings, that
19 you -- you say that you have a right to have a lawyer
20 present during questioning?

21 A I reminded him that he was still under Miranda
22 from earlier and -- which he acknowledged that he
23 understood. And I said that he still has the right to
24 an attorney.

25 Q But the words you used --

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1 A I -- I summarized what I stated to him earlier.

2 Q So the summarization that you said, though, the
3 words that came out of your mouth was: You have a right
4 to an attorney and all that good stuff. Correct?

5 A Correct. Because he was saying he understood,
6 yeah, yeah, yeah, or something to that effect.

7 Q You -- actually, the video goes, You have the
8 right to an attorney and all that good stuff. You
9 understand that?

10 And you stopped, and he replied, Yeah.
11 Correct?

12 A Correct.

13 Q All right. So the part that you omitted was
14 the very salient, specific issue that he was raising
15 earlier in that day was having a lawyer present that day
16 during questioning; correct? Isn't that what the right
17 is?

18 A I read the right to him earlier. He fairly
19 mentioned that he understood when I talked to him the
20 second time. And I reminded him of the same Miranda
21 warnings.

22 Q Well, let's talk about this discussion you had
23 with the Solicitor about that he wanted to have a lawyer
24 look at a tape. Isn't that exactly the kind of thing
25 that a person who's invoking the right to counsel would

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1 want to happen in an interview like this? Bring the
2 lawyer down here so we can really look at it. Isn't
3 that the exact subject that you were covering?

4 A No, not -- not what you're trying to say. He
5 was not requesting a counsel presence for the interview.
6 He was merely stating -- made a statement that he
7 wanted -- he needed a lawyer, because if he had a
8 lawyer, he could see the video. He was wanting to view
9 the video.

10 Q Detective Williams, who set up this entire
11 scheme and put him in the room that day?

12 A He was arrested -- he was arrested and brought
13 in, and it was orchestrated by the supervisors.

14 Q So your supervisors said, We're going to put
15 him in this room, and we're not going to let him make
16 any calls to anybody; right?

17 A He didn't say that.

18 Q Well, he didn't make any calls that day, in
19 spite of asking over and over again, I want to make a
20 call; correct?

21 A He did not.

22 Q And he was not given an opportunity to make a
23 call, was he?

24 A He was. He had an opportunity.

25 Q When did he have an opportunity, Detective?

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1 A He had an opportunity. Once he said he wanted
2 to make a phone call, he --

3 Q When was this?

4 A The second time, when I -- when he asked for an
5 attorney. When he asked for an attorney, I said, Are
6 you asking for attorney? Are you asking for an
7 attorney?

8 He says, No.

9 He had an opportunity right there to make a
10 phone call. He had an opportunity to make a phone call
11 right then and there.

12 Q In your mind?

13 A Yes, sir.

14 Q It's not on the tape, is it?

15 A It's on the tape, sir. When he said --

16 Q Well, in fact, what would he had to have done
17 to convey this to you, that -- would he had to lay down
18 and fold his hands and say, I want to make a call?

19 THE WITNESS: Your Honor, if I could finish the
20 first question --

21 THE COURT: If you'll answer his question, and
22 then he'll give you an opportunity to answer.

23 THE WITNESS: Thank you. Thank you.

24 Q (By Mr. Pennington) At no time do you say to
25 him, Ryan, let's go make a phone call?

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1 A No, I didn't say that.

2 Q At no time does Detective Burckhardt say, All
3 right, Ryan, let's go make that phone call?

4 A No, he did not.

5 Q He made no phone calls down in lockup?

6 A I couldn't say, sir. I wasn't down there.

7 Q Isn't it a fact that the City police were
8 concerned about holding him without communication,
9 because this was a big moment in the investigation and
10 they didn't want him to go mess up anything by
11 contacting family?

12 A No, sir. He was under arrest, sir. He had a
13 warrant when we picked him up.

14 Q So he was under arrest, which means he couldn't
15 make any phone calls until he got to jail; is that what
16 you're telling us?

17 A No, sir, I'm not telling you that.

18 Q If you'd wanted him to make a phone call, all
19 you had to do was to have him step out and make a phone
20 call. But that didn't happen; right?

21 A That's correct.

22 (Respite.)

23 (Mr. Pennington speaks with Mr. Kozelski off
24 the record.)

25 MR. PENNINGTON: No further questions, your

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1 Honor.
2 (The exhibit is handed back to the Judge.)
3 THE COURT: Mr. DuRant.
4 MR. DURANT: I have nothing on Redirect, your
5 Honor.
6 THE COURT: You may step down. Thank you.
7 THE WITNESS: Thank you.
8 THE COURT: Any additional witnesses?
9 MR. DURANT: No, your Honor. Other than,
10 obviously, you've reviewed the video.
11 MR. PENNINGTON: Do we need to put on the
12 record that the Court has -- I guess the Court has
13 already -- but I'd like to tie in the relevance that
14 the -- we have submitted pretrial to the Court, I guess
15 it's -- is it Court's Exhibit 1, 2, and 3?
16 THE COURT: It's Court's 1, which is the
17 compilation of the two videos and the edited video that
18 you provided.
19 MR. PENNINGTON: That's correct.
20 THE COURT: That'd be Court's 1.
21 MR. PENNINGTON: And so the Court has available
22 the entire 13-hour interview, and the Court has
23 indicated that --
24 THE COURT: 13 hours and 40 minutes, yes.
25 MR. PENNINGTON: Yes -- has gone through the

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1 entire thing.

2 THE COURT: Yes. Do you have any witnesses?

3 MR. PENNINGTON: We do not, your Honor.

4 However, we have arguments on behalf of Mr. Deleston by

5 Mr. Kozelski.

6 THE COURT: All right.

7 MR. KOZELSKI: Thank you, your Honor.

8 THE COURT: Counsel, if you will approach.

9 And, Ms. Wilson, if the two of you will just approach

10 for a minute.

11 (All attorneys approach the bench.)

12 THE COURT: All right. Counsel, I'm happy to

13 hear from you on arguments, since the Defendant has no

14 witnesses.

15 MR. KOZELSKI: Thank you, your Honor. Your

16 Honor, you told us that you've seen the video, so we'll

17 try to make this as simple as possible.

18 THE COURT: Take your time, Counsel.

19 MR. KOZELSKI: Our argument is that at 9:51,

20 when Mr. Deleston unambiguously states, I need a lawyer,

21 invoking his right to counsel, Detective Williams has

22 two options: He can either cease questioning and

23 scrupulously honor Mr. Deleston's request and not -- not

24 get back to questioning until an attorney is provided

25 for him; or he can continuing questioning, but knowing

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1 that the information he gathers is not going to be
2 admissible in court. Those are the two options he has,
3 and we're saying that he chose the second option.

4 Now, what Detective Williams just said up there
5 on the stand is that he didn't understand the meaning of
6 "I need a lawyer" to be a request for counsel. Now, the
7 Courts have been very clear, both the United States
8 Supreme Court and the South Carolina Supreme Court, that
9 this is a bright line rule. This is an objective test.
10 And even in our Supreme Court case of Kennedy, where
11 they said, Well, I think I need a lawyer, that was
12 obviously an invocation of the right to counsel.

13 Now, if you take out "well, I think," which is
14 probably the most ambiguous part of that statement, and
15 leave "I need a lawyer," suffice it to say that that
16 would be enough to invoke the right of counsel. What
17 they're trying to do is essentially transform the
18 landscape of Miranda in Edwards by saying that, when a
19 suspect says, "I need a lawyer," it might not mean that.
20 But if you're looking at it objectively, if a Court of
21 Appeals is looking at this based on the record of what
22 he actually says, then it's going to unequivocally mean,
23 I need an attorney present. And he made this clear
24 throughout. This was a theme throughout. It wasn't a
25 one-time deal.

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1 He said it at 9:51; he repeated it at 11:00;
2 and repeated it while he was alone, presumptively under
3 the microscope of the officers while he was in there.
4 He made it very clear that he wanted an attorney there,
5 that he needed an attorney there, and this request was
6 completely ignored by Detective Williams at 9:51.

7 The State is claiming that he waived his right
8 by continuing to speak with officers or reinitiating the
9 conversation with Detective Williams. But if you've
10 seen the video, you can tell that Mr. Deleston is not in
11 control here. And this is the purpose of Miranda in
12 Edwards, is to have the suspect in a position of control
13 so they can stop questioning, and so they don't have to
14 be under the coercive pressures of interrogation. But
15 he did not have that control. Instead, he was isolated
16 for over 13 hours, and the detectives found -- you know,
17 would come in every fifteen to ten minutes, stick their
18 head in, prompt him into speaking by asking him if he
19 wanted a drink or if he wanted some soda. They didn't
20 respect his request and scrupulously honor his right to
21 remain silent, but his right to an attorney, his right
22 to counsel. And instead, they kept him in there
23 isolated.

24 They would come in and they would ask him if he
25 wanted small things, trying to elicit more information

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1 from him each time they did. And it was a purposeful
2 investigative tactic that, in essence, worked, but it
3 worked against him. Despite -- it worked despite his
4 request for counsel and his right to remain silent. And
5 we think that because this is a bright line rule, which
6 is there not only to help a suspect while in custody,
7 but to also give instructions to police when they
8 interrogate. They wanted to know where they have to
9 stop and where they can keep on going. But when it's
10 unambiguous, such as this statement was, I think there
11 are -- there has to be -- there has to be a point at
12 which he either respects that and -- and follows the
13 Court's opinions, which say this is the paramount issue,
14 is whether he stops and ceased talking, or like I said,
15 he can keep going, get all the information that he
16 wanted to out of Mr. Deleston, but knowing all the while
17 that that was not going to be admissible in court and
18 he'd have to prove his case some other way. And we
19 submit that he just did -- he took the second option
20 when he completely ignored his request for counsel.

21 Beg the Court's indulgence, your Honor.

22 (Respite.)

23 (Mr. Pennington and Mr. Kozelski speak off the
24 record.)

25 MR. KOZELSKI: Now, the State claims here that

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1 Mr. Deleston waived his right to counsel by further
2 initiation. But the Courts have been clear that in
3 order to get a waiver, in order to reinitiate, you have
4 to reinitiate -- once the right of counsel has been
5 invoked, you have to have the suspect reinitiate
6 conversation and have an intelligent and voluntary
7 waiver. Now, this waiver process is very strict. There
8 is a presumption against waiver, as the Court has -- has
9 held in Johnson versus Zerbst. But also, I think our
10 courts, in the case in State v. Kennedy, really gets to
11 the point at the heart of the issue, when in Kennedy,
12 you have a suspect being interrogated by the police, he
13 invokes his right to counsel, and then he later
14 approaches the solicitor or one of the officers and
15 says, I want to talk to the solicitor. I want a deal.

16 So they said, Okay. But the solicitor's
17 unwilling to talk to you because you have invoked your
18 right to counsel. It's against Miranda. It's against
19 the rules.

20 And he said, Well, okay. Nevermind -- well,
21 let's go ahead and get this over with. So they made it
22 clear to him that you have invoked your right to
23 counsel, and in order for us to talk to you, you're
24 going to have to waive that again.

25 And at no point during this 13 hours do they

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1 make this clear to Mr. Deleston, that in order for them
2 to continue to talk to him, he's going to have to waive
3 his rights again. And Detective Williams stated that he
4 had him sign the waiver of Miranda Rights at the
5 beginning. It would have been just as easy for them,
6 once he said, I need a lawyer. I want a lawyer to come
7 in here and look over this stuff that you're talking to
8 me about, it would have been just as easy for them to
9 bring another sheet out and say, you've invoked your
10 right to counsel. We can't talk to you until you do
11 that, or you can sign this piece of paper. And they
12 didn't do that. They just kept going.

13 The last point I would make, your Honor, is
14 that despite what Mr. Deleston told the cops after he's
15 invoked his right to silence, without a waiver, those
16 words can't be used in order to establish waiver. And
17 until they get a voluntary and intelligent waiver, they
18 can't cast doubt on the fact that he invoked his right
19 to silence, which is essentially what they're trying to
20 do, is say, He continued to talk. And because he
21 continued to talk, it shows that he didn't invoke his
22 right to counsel. And that's --

23 THE COURT: How should we interpret that?

24 MR. KOZELSKI: What, your Honor?

25 THE COURT: Is it your position that if he

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1 invokes his right to silence, that he doesn't have to
2 remain silent or -- I'm not sure what you're meaning
3 by -- that he continues to talk.

4 MR. KOZELSKI: If he continues to talk after
5 invoking his right to counsel, in this sense, you can't
6 use the words that he says later to retroactively cast
7 doubt that he actually invoked his right to silence --
8 or right to counsel. So you can't say, Well, he kept
9 talking to us after he said, I need an attorney. So we
10 took that to mean that he never actually invoked his
11 right to counsel at all, which is essentially what
12 Detective Williams is doing.

13 He's saying that, Well, he kept talking, and I
14 took that to mean that he was talking about the
15 videotape, which Detective Williams at that point was
16 talking about him being on surveillance. He wanted him
17 to be in the room -- wanted a lawyer in the room so he
18 could go over exactly what surveillance they were
19 talking about. This is the evidence that was keeping
20 him in jail, or keeping him in custody, rather. And
21 that simply wasn't viable.

22 And over numerous, numerous times throughout
23 this interview process, he told them, I don't want to
24 talk. Take me to jail. Do what you have to do. I
25 don't want to talk. And it was simply ignored. It was

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1 not scrupulously honored. And we ask, for those
2 reasons, that you suppress these statements.

3 MR. PENNINGTON: Court's indulgence.

4 (Mr. Pennington and Mr. Kozelski speak off the
5 record.)

6 MR. KOZELSKI: Your Honor, the last point that
7 my co-counsel has asked me to bring up is the fact that
8 when he continually asked for this right to counsel, for
9 an attorney, when he continually says, I don't want to
10 talk anymore. I want to go to jail, or I want to go
11 back to work. I don't want to talk, and it's -- goes
12 ignored, I mean, there comes a point to where you just
13 stop asking. And that's -- that's essentially what we
14 see happening here. He's -- he's asked for his attorney
15 numerous times, and that contention is gone unheard.

16 The one time that Detective Williams did say,
17 You asking for an attorney? You want me to get an
18 attorney for you? He said, No, I don't want nothing
19 from you. I don't want nothing. And that's an
20 indication of the lack of trust that he had during this
21 interrogation process, that he obviously wasn't going to
22 give him anything he wanted. He wasn't going to give
23 him a phone call. He wasn't going to give him counsel,
24 and wasn't going to leave him alone when he asked for
25 his right to silence.

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1 THE COURT: Anything further?

2 MR. PENNINGTON: No, your Honor.

3 THE COURT: Mr. DuRant?

4 MR. DURANT: Your Honor, first of all, I'm a
5 bit confused, but we need to -- we need to differentiate
6 the request early on that, I don't want to talk anymore,
7 from what happened later. That happened early on in the
8 process. It is clear in the video that you saw that he
9 said, I don't want to talk anymore. At that point, they
10 left the room. They're not required to let him go
11 because he's got warrants pending. Yes, they're going
12 to charge him with other charges. So they leave the
13 room. They scrupulously honor his invocation of his
14 right to counsel and they leave.

15 He comes back in, as you know, in five or ten
16 minutes, says, Do you want a soda? At that point
17 Deleston reinitiates the interview. He wants to know
18 what he's being charged with. He wants to know if he
19 can go outside for a cigarette. He wants to know this.
20 He wants to know that. The whole time Detective
21 Williams is trying to get out of the room. He finally
22 says, Come in here, sit down. I want to talk to you.
23 And he kept talking after that without any prompting
24 from anybody and never invoked his right to silence
25 again.

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1 Now, there were some cases where he would say,
2 later, Oh, I want to go to work, or something like that.
3 That's the Ridley case we gave you in our Brief. That
4 is not an unambiguous request to invoke his right to
5 silence. If he wants to invoke his right to silence, do
6 it like he did the first time: I don't want to talk to
7 you anymore. He did not do that ever again after that
8 first one. He never did it again at all after he went
9 back and told Detective Williams to sit down and told
10 Detective Williams, I want to talk to you, and just kept
11 talking.

12 Now, getting to the right of counsel thing, the
13 first one. I need a lawyer. Only thing that they want
14 you to hear, your Honor, is "I need a lawyer" and
15 disregard completely what happened before that,
16 completely what happened after that. If you look at the
17 context in which that comment was made -- and I will
18 preface this by the fact that you have to listen to it
19 20 times even to get this -- I want to see this tape. I
20 need a lawyer. If I had a lawyer, goddamn, they would
21 pretty much tell you I get to see this tape. I'm trying
22 to see this tape y'all are talking about. That's pretty
23 much the quote. It's not like, I want a lawyer to
24 assist me in this interrogation. I want to see this
25 tape. And if I had a lawyer, I could see this tape, is

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1 what he's saying. And that's exactly what

2 Detective Williams took it as.

3 He did not take it, unlike Kennedy, where, you

4 know, the guy says, I need a lawyer, and they

5 immediately get up and leave. It's because they

6 didn't -- Detective Williams didn't believe he was

7 asking for an attorney for that purpose.

8 The very fact that later on when he did think

9 that Deleston was asking for an attorney, he said, Whoa,

10 whoa, stop. Are you asking for an attorney?

11 No.

12 Are you asking for an attorney?

13 No.

14 I just want to make this clear, are you asking

15 for an attorney?

16 No.

17 So it's not that Detective Williams is ignoring

18 what he has to say. Detective Williams' conduct

19 indicates that he was more than willing to get

20 Mr. Deleston an attorney if he understood Mr. Deleston's

21 request to get an attorney. And the fact of the matter

22 is, the first one -- the first one -- request, he was

23 not asking for an attorney for the interrogation. He

24 was asking -- he said, I need a lawyer, because if I had

25 a lawyer, I could see that tape.

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1 And in that regard, I would point you to the
2 State v. -- the Commonwealth v. Stevens case in our
3 Brief, which is pretty much the same thing. It is a
4 case of contextual ambiguity, your Honor. And I'm
5 trying to remember, in that case and in the -- in the
6 beginning of that case, they were actually reading him
7 his rights and read him his -- you have a right to an
8 attorney. And he said, That's what I want, a lawyer,
9 ma'am. That's a pretty clear statement of "I want an
10 attorney."

11 But when they looked at it in the context of
12 when it was made, it was unclear whether he was talking
13 about for purposes of -- of that particular
14 interrogation or to represent him in the case down the
15 road.

16 So that is a perfect example of contextual
17 ambiguity, which we have in this case here. The -- the
18 comment that he made did not clearly convey to
19 Detective Williams that he wanted an attorney for help
20 in the interview.

21 I have nothing else, your Honor.

22 THE COURT: Whose phone is that?

23 Whose phone was that? Please give it to the
24 bailiff. We'll address that at the close of this.
25 Please, everybody take this opportunity -- this is an

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1 ongoing -- thank you -- this is an ongoing admonition.
2 There are, I think, ten signs saying, please turn off
3 your cell phones if entering the court -- to this
4 courtroom. If there are -- this is your final warning,
5 your only warning. Please make sure that if you're
6 going to be here the remainder of the week, that your
7 cell phones be turned to an off position. I find
8 that's -- what typically happens, that certain things
9 like your alarms will go off, that if you're going to
10 bring your phone in, please make sure -- the best thing
11 is take the battery out. The absolute best thing is to
12 not even bring it in the courtroom, because sometimes I
13 am told these devices have a mind of their own.

14 All right. With that being said, we'll move
15 forward.

16 Counsel.

17 MR. KOZELSKI: Your Honor, just briefly, as I
18 stated before, this is a bright line rule. These are
19 magic words. When he said, I need a lawyer. I
20 don't -- I simply just don't understand how you can
21 interpret that in any other way than saying, I need a
22 lawyer. And our Supreme Court has already said, in
23 Kennedy, that this is unambiguous. What they're
24 attempting to do is swallow the rule and -- by saying,
25 Well, Detective Williams didn't understand it as that.

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1 But this is an objective test, and any Court looking at
2 these words is going to say that's an invocation of
3 counsel. And it -- it wasn't respected.

4 That's all, your Honor.

5 THE COURT: All right. Any further argument on
6 any of the matters before I issue my rulings?

7 MR. DURANT: I just want a brief response to
8 that. Context means everything, your Honor. I need a
9 lawyer: You could say, I need a lawyer because my
10 wife's lawyer is taking me to the cleaners in my
11 divorce. Okay? It means what he says, and what he says
12 is, I want to see the videotape.

13 THE COURT: All right. In no particular order,
14 I'm going to issue my rulings on -- to the -- address
15 the issues contained in the video first. Clearly, there
16 has been substantial -- first of all, I want to thank
17 counsel for providing the video and the laptop for which
18 the Court could view that. It made it very helpful to
19 be able to do that outside of our court hearings, and
20 thank you for being so accommodating. I also wish to
21 thank -- both the State and the Defendant have provided
22 substantial case law and memos on all of these issues.
23 So thank you for being so thorough and meticulous in
24 your representation.

25 The issues of whether Mr. Deleston effectively

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1 invoked the right to remain silent and his right to
2 counsel after he was arrested by the officers of the
3 Charleston Police Department, and then whether the
4 statements given to the detectives were freely,
5 voluntarily, knowingly, and intelligently made.
6 Statement made by the suspect that it was obtained as a
7 result of the custodial interrogation cannot be used
8 against him unless the police provided the procedural
9 safeguards which secured his privilege against
10 self-incrimination.

11 In evidence for the hearing today was the card
12 that was given. The interrogation is defined as
13 questioning initiated by law enforcement officers after
14 a person has been taken into custody or otherwise
15 deprived of his freedom of action in any significant
16 way. Prior to the interrogation, the suspect must be
17 warned that he has the right to remain silent, that his
18 statements may be used against him as evidence, and that
19 he has the right to an attorney to be present. Any
20 statement resulting from the custodial interrogation in
21 violation of Miranda may not be admitted in the
22 Prosecution's case in chief.

23 The Defendant was formally arrested by the
24 officers on July 30th of 2012, when he arrived at the
25 police department at approximately 8:55 a.m. Detectives

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1 Burckhardt and Williams informed the Defendant that he
2 was under arrest for the possession and sell of a pistol
3 to an CPD informant. He was in custody and was subject
4 to interrogation and, thus, was entitled to Miranda
5 warnings before any questioning began. The Defendant
6 was informed of his Miranda Rights at approximately 9:20
7 to 9:25 a.m., prior to the detectives questioning him
8 about the sale of the pistol.

9 In determining whether his rights were
10 respected, there must be an analysis as to his
11 indication of his right to silence and to his invocation
12 of his rights of counsel. Under Miranda, once warnings
13 are given, if the suspect indicates that he wishes to
14 remain silent, the interrogation must cease. This
15 indication must -- the indication of his right to remain
16 silent must be unambiguous and unequivocal. Police may
17 reinitiate the interrogation after the suspect has
18 revoked his -- has invoked his right only if the police
19 have scrupulously honored the suspect's request. The
20 suspect initiates communication. Subsequent to his
21 invocation of rights, law enforcement officers may
22 resume speaking with the suspect.

23 Our Court has set out five factors to determine
24 whether or not any right -- the right to silence was
25 scrupulously honored. As the Supreme Court indicated,

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1 these are not exclusive and controlling and do not
2 establish the wooden framework for the many factors for
3 us to consider.

4 Whether the suspect was given the Miranda
5 warnings at the first interrogation, in this case, he
6 was.

7 Whether the police immediately ceased
8 interrogation when the suspect indicated he did not want
9 to answer questions, whether they resumed questioning
10 the suspect only after the passage of a significant
11 time, whether they provided a fresh set of Miranda
12 warnings, whether the second interrogation was
13 restricted to a crime that had not been the subject of
14 an earlier interrogation. These factors, again, are not
15 exclusively controlling, but establish a framework for
16 which this Court used to determine whether or not his
17 right to silence was honored.

18 When the Defendant unambiguously revoked his
19 right to remain silent at 9:27, the detective ended the
20 interrogation. When he entered the room approximately
21 eight minutes later to ask the Defendant if he wanted a
22 drink, the Defendant told the detective to sit down and
23 talk to him. That action by the Defendant constituted a
24 reinitiation of conversation with the police and was a
25 waiver of his right to remain silent that he previously

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1 invoked. The police were not required, under this
2 analysis, to rewarn Deleston of his rights only 15
3 minutes after his initial Miranda warnings were issued.

4 Later during the interview, the Defendant
5 acknowledged at least one time that he understood the
6 rights that he had been read.

7 At any time prior to or during an
8 interrogation, a suspect may invoke his right to
9 counsel. If a suspect invokes this right, all
10 interrogation must stop until the suspect is provided
11 with an attorney or initiates further questioning
12 himself. Therefore, the police may reinterrogate a
13 suspect who has invoked his right to counsel only when
14 counsel is present or the suspect initiates further
15 discussion. A suspect must unambiguously invoke his
16 right to counsel. Specifically, the suspect must
17 articulate his desire to have counsel present
18 sufficiently clearly that a reasonable police officer in
19 the circumstances would understand the statement to be a
20 request for an attorney. If he does invoke his right to
21 counsel, his responses to further questioning may be
22 admitted only upon finding that he either initiated
23 further discussions and knowingly, intelligently waived
24 the right that he had invoked.

25 The determination of whether a valid waiver of

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1 that right to counsel occurred depends upon the
2 particular facts and circumstances surrounding the case,
3 including the background, experience, and conduct of the
4 suspect.

5 In this case, the Defendant twice made
6 reference to his right to counsel. At 9:51:05 a.m., the
7 suspect stated, I need a lawyer. If I get a lawyer, I
8 can see those tapes y'all are talking about. Six
9 seconds later, at 9:51:11, the Defendant asked Detective
10 Williams, What tapes y'all talking about?

11 The Detective responded, The surveillance tapes
12 of the gun.

13 He then asked, What gun?

14 While the Defendant initially stated, I need a
15 lawyer, at 9:51:05 a.m., he almost immediately waived
16 that right when he initiated contact with
17 Detective Williams about -- by asking him about the
18 tapes and the gun. These inquiries were specifically
19 directed toward the investigation; therefore, the
20 detective did not violate the Defendant's right to
21 counsel by continuing the interrogation.

22 The second time that the Defendant made
23 reference to his right to counsel was 11:01 a.m., when
24 Defendant told Detective Williams, I want to make a
25 phone call to get a lawyer down here. The

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1 Defendant -- excuse me. The detective then asked the
2 Defendant, Are you asking for a lawyer?

3 The Defendant replied, No, I ain't asking for
4 no lawyer.

5 Detective Williams was clarifying whether the
6 Defendant actually wanted an attorney, as the Defendant
7 was equivocal in his request to have an attorney be
8 present. A reasonable officer in Detective Williams'
9 position would not have believed that the Defendant was
10 revoking a right to a lawyer when he said, No, I ain't
11 asking for no lawyer. The Defendant's right to counsel
12 was not violated by continuing the interrogation.

13 In addressing whether the statements were
14 freely, knowingly, and voluntarily given, the Court
15 looks to the test of voluntariness as to whether the
16 Defendant's will was overborne by circumstances
17 surrounding the given statement. This test takes into
18 consideration the totality of all the surrounding
19 circumstances, including the characteristics of the
20 suspect and the details of the interrogation. Whether
21 coercive police activity existed is a necessary
22 predicate to finding whether a confession is voluntary
23 or involuntary. A statement may not be extracted by any
24 source of threats or violence or obtained by any direct
25 or implied promises, however slight, or obtained by the

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1 exertion of improper influence. A statement induced by
2 promise of leniency is involuntarily only if it's
3 connected with the inducement to be a consequence of the
4 promise.

5 I considered, when reviewing the video, the
6 age of the suspect, the background, experience, and
7 conduct, the length of the custody, and any police
8 misrepresentation, threats of violence, promises of
9 leniency. I find that, based upon the testimony as
10 presented here today, as well as on the video, that the
11 Defendant was 32 years old at the time of the video,
12 that he spoke English language, and had his GED. He
13 appeared to be in good mental health and physical
14 health, and he was informed of his Miranda Rights,
15 signing the document that is, again, State's Exhibit 28
16 for the purposes of this record.

17 There was no indication that the Defendant was
18 threatened with physical punishment or the deprivation
19 of food or sleep. The Defendant was provided three
20 bathroom breaks, provided a smoke break, provided food
21 and drink several times, and took a nap on the interview
22 floor. When the Defendant asked for something to read,
23 he was provided with a newspaper. While he was detained
24 for approximately 13 hours and 40 minutes at the
25 Charleston Police Department, the Defendant was only

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1 handcuffed for approximately one hour and 20 minutes,
2 and he was questioned intermittently for only four hours
3 and 30 minutes.

4 Based upon the totality of the circumstances,
5 there is no evidence that the investigating detectives
6 were using techniques that coerced or threatened him.
7 Based upon the totality of the circumstances, I find
8 that the Defendant reinitiated contact with the police
9 after being apprised of his rights to counsel and to
10 remain silent. The Defendant indicated that he
11 understood his rights, as he made the request for the
12 police to sit down and listen. When the Defendant was
13 asked by Detective Williams if he wanted a lawyer, he
14 responded he did not. And during the interview, he was
15 given numerous breaks, the opportunity to eat, drink,
16 and to rest. Again, there was no indication that there
17 were any coercive techniques used to overcome the
18 Defendant's will.

19 The State has proven by a preponderance of the
20 evidence that the Defendant's constitutional right to
21 counsel and the right to remain silent were not violated
22 and that the statements were freely, voluntarily given.
23 Your Motion to Suppress the statements of July 30th,
24 2012 is denied. Note your exception to my ruling.

25 Any questions about my ruling from the

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1 Defendant?

2 MR. PENNINGTON: No, your Honor.

3 THE COURT: From the State?

4 MS. WILSON: Beg the Court's indulgence.

5 MR. DURANT: Your Honor, I just have one
6 question regarding your ruling. I do understand it
7 except for one part. In terms of the -- the -- the
8 first mention of an attorney, was it your finding that
9 he had -- that unambiguously --, that was an unambiguous
10 request for an attorney to help him with the
11 interrogation, and then he immediately waived that by
12 reinitiating contact with the police --

13 THE COURT: Correct.

14 MR. DURANT: -- or whether there was some
15 ambiguity regarding the request too? Because you had
16 mentioned too, when you were talking about in terms of
17 the fact that he -- the request for an attorney came in
18 conjunction with the request to see the videotape.

19 THE COURT: When he invoked his right at 9:27
20 to remain silent, the detective ended the investigation
21 pursuant to his request.

22 MR. DURANT: Yes. I'm talking about when he
23 first mentioned the attorney, when the exchange went by,
24 "I want to see this video. If I had a lawyer, I could
25 see this video." My question --

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1 THE COURT: At 9:51 --

2 MR. DURANT: Yes.

3 THE COURT: -- when he stated, I need a lawyer.

4 If I get a lawyer, I can see the tapes. Is that what

5 you're --

6 MR. DURANT: Yes, ma'am. I was just wondering

7 if you had found that that was an unambiguous invocation

8 of his right to counsel.

9 THE COURT: He waived his right to counsel

10 because he, within six seconds, initiated contact by

11 asking about the tapes.

12 MR. DURANT: Yeah. And so I guess, you know --

13 did that answer your question?

14 And I guess what my question is, is the context

15 in which the right he asked about counsel, were you

16 finding that was unambiguous?

17 THE COURT: He invoked his right to counsel.

18 It was unambiguous. And he initiated further, but his

19 responses will be admitted, because he initiated further

20 discussions, and he has indicated that he knowingly and

21 intelligently waived the right that he invoked.

22 MR. DURANT: Thank you.

23 THE COURT: Did that answer your question?

24 MR. DURANT: Yes, ma'am.

25 THE COURT: Thank you.

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1 All right. In dealing with the 404(b)
2 evidence, the Rule 401 -- pursuant to Rule 401, I must
3 determine whether the evidence is relevant and
4 then -- to determining whether it's relevant, I must
5 find whether or not the evidence fits within an
6 exception of the 404(b). Pursuant to Rule 404(b), it is
7 not -- evidence of prior bad acts or misconduct or
8 crimes is inadmissible unless the evidence tends to
9 establish motive, intent, absence of mistake, common
10 scheme, where the identity of the person charged with
11 the present crime. To be admissible, a prior bad act
12 must first be established by clear and convincing
13 evidence if the prior bad act is not subject of the
14 conviction.

15 I find that there is clear and convincing
16 evidence the Defendant committed the uncharged act.

17 I must determine whether the prior acts fall
18 within the common scheme of plan exception under Mile.
19 A close degree of similarity or connection exists
20 between the prior bad act and the crime for which the
21 Defendant is on trial is required to support the
22 admissibility under this exception for common scheme or
23 plan. The connection must be more than just a general
24 similarity. Common scheme or plan involves more than
25 just the commission of two similar crimes. There must

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1 be a connection between the two in order to be
2 admissible. Although not a complete list in this type
3 of case, I should determine whether there is a close
4 degree of similarity between the bad act and the crime
5 charged, such as the relationship between the victim and
6 perpetrator, the location where the incident occurred,
7 the use of coercion or threats, as well as the manner of
8 the occurrence. Where the evidence of bad act is so
9 similar to the charged offense that it enhances the
10 probative value of the evidence so as to outweigh its
11 prejudicial effect, it is admissible. However, I must
12 make a determination and exclude it if its probative
13 value is substantially outweighed by the danger of
14 unfair prejudice to the Defendant.

15 Rivers' armed robbery and the shooting of Leroy
16 "Chopper" Townsend and the Marley Lion attempted armed
17 robbery and shooting are not sufficiently similar, based
18 upon the testimony that has been presented, to prove a
19 common scheme or plan. The Chopper shooting involved a
20 victim that was known and targeted by the assailants.
21 The assailants created a ruse to lure him out of his
22 apartment.

23 The Marley Lion shooting involved a victim of
24 circumstance who was unknown to the assailants. While
25 there was bad blood, according to testimony, of the

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1 chart that was given, between the victim and the
2 assailants, there was no bad blood between the victim
3 and the assailants in the Marley Lion murder.

4 The victim in the Chopper shooting was a
5 30-year-old African male, while Marley Lion was a
6 17-year-old white male. In the Chopper shooting, the
7 victim was shot once, was forced to strip and received a
8 minor injury. Marley Lion was shot five times fatally.
9 In the Chopper shooting, they were driven to the crime
10 scene. In the current case, the assailants walked to
11 the crime scene. And Rivers' partner in Rodney Chopper
12 was Valentino Hayward (phonetic). Other partners in the
13 attempted robbery of Marley Lion's were Rivers,
14 Deleston, and Brown.

15 Finally, the Chopper shooting occurred at 9:30
16 at an apartment complex. Marley Lion was killed at
17 approximately 4:00 a.m. in the parking lot of a
18 business. The similarities between the two shootings
19 and the fact that the gun used belonged to George Brown,
20 and that Rivers was present at that crime scene,
21 accordingly, Rivers' prior bad act of shooting Chopper
22 is not sufficiently similar to the shooting of
23 Marley Lion to qualify for the common scheme or plan
24 under Rule 404(b).

25 Any questions about my ruling as to 404(b)?

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1 MR. PENNINGTON: We framed this as having two
2 prongs of admissibility, in that 404(b), assuming that
3 it applied to the witness as opposed to the Defendant,
4 be argued, but we were concerned about our due process
5 right to put on a defense. And so --

6 THE COURT: Under third party?

7 MR. PENNINGTON: Correct.

8 THE COURT: I'm getting ready for that analysis
9 now.

10 MR. PENNINGTON: I'm sorry. I jumped ahead. I
11 would indicate that I -- make sure that the Court knows
12 that, in terms of overlap of the parties, that it is
13 clear that Julius and Bryan are involved in all three
14 incidents, and that George provided transportation in
15 all three incidents. So you -- because you have George
16 providing transportation for Julius and Bryan to the
17 Chopper shooting, and you have George providing
18 transportation for Julius and Bryan --

19 THE COURT: Is there indication -- I don't
20 know that it changed the analysis, but I appreciate you
21 bringing up the -- the overall analysis, I don't know
22 that it changes any -- the clarification --
23 clarification.

24 MR. PENNINGTON: On this part.

25 THE COURT: Thank you.

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1 MS. WILSON: Well, I need to further clarify
2 that, because that's not exactly right, just for the
3 record. I know it might not affect your analysis, but
4 while we're in this portion of the record, George Brown
5 drove Ryan Deleston, Julius Brown, and Bryan Rivers to
6 an apartment complex when the Chopper shooting took
7 place, along with a man, Valentino Hayward. Tino and
8 Bryan Rivers were actually the ones who did the robbery
9 of Chopper. Tino is actually the one who -- I mean,
10 Bryan Rivers is actually the man who shot Chopper.

11 In the Marley Lion case, an hour or so before
12 the robbery, at the attempted robbery, George Brown
13 drove these guys through the parking lot, then they went
14 home. George Brown stayed at that location. His truck
15 stayed at that location. And at some point after that,
16 as they discussed looking for people to rob, the
17 Defendant, Bryan Rivers, and Julius Brown walked the
18 third of a mile, I guess it is, down to Joe's, where
19 Marley Lion interrupted the employees leaving. So
20 George Brown didn't drive anyone to the robbery in the
21 Marley Lion case. He drove them to an apartment
22 building in the other case. They got out of the car,
23 went and did the robbery, then he drove them away, just
24 for the record.

25 MR. PENNINGTON: If we're going to be

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1 straightening out the record, then I'd like to add that
2 the problem with my analysis --

3 THE COURT: Well, here, I'm just going to
4 straighten it out for you. My analysis involved that
5 there was an individual that was driven to the Chopper
6 shooting that did not drive anyone at that point to the
7 Marley Lion shooting. Fair enough?

8 MR. PENNINGTON: Is the Court --

9 THE COURT: Is that an accurate statement?

10 MS. WILSON: Correct.

11 MR. PENNINGTON: It is.

12 THE COURT: That was my analysis. All right?

13 MR. PENNINGTON: Is it -- I just want to make
14 sure that the Court is aware that George drove them
15 through that, casing the place immediately --

16 THE COURT: At an earlier time.

17 MR. PENNINGTON: Well, immediately prior. It
18 would have been within an hour. They drove through the
19 parking lot. And the jury's going to see this, that
20 they drove through, the same vehicle, they go about four
21 blocks down and park. This Cashew Street is four blocks
22 away from Famous Joe's. And then the rest of it is on
23 foot. So there is -- when they're coming back from the
24 downtown robbery that involves Julius, Bryan, and
25 George, and, allegedly, Ryan, you have all those

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1 similarities align there. And then on their way back is
2 when the discussion is that the Famous Joe's robbery
3 that leads them to come through that parking lot. So
4 there's another -- the same group, same group of people.
5 As long as that's clear, you're correct, your Honor,
6 that they did not drive the vehicle back.

7 THE COURT: All right. As to the issue
8 involving third-party guilt, the rule governing the
9 admissibility of the evidence under third-party guilt
10 doctrine provides that evidence offered by the accused
11 as to the commission of the crime by another person must
12 be limited to such facts that are inconsistent with his
13 own guilt and to such facts as raise a reasonable
14 inference of presumption as to his own innocence.
15 Evidence that has no other fact other than to cast a
16 suspicion upon another or to raise a conjectural
17 inference as to the commission of the crime is not
18 admissible.

19 The evidence of third-party guilt may include
20 facts that are inconsistent with the Defendant's guilt
21 and evidence raising a reasonable inference as to the
22 accused innocent. The evidence, again, to be sought by
23 the Defendant's Motion to -- to Include Third-Party
24 Guilt Evidence does not pass the same for admissibility.
25 The evidence in question exceeds the scope of the facts

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1 that are inconsistent with his own guilt. It does not
2 pertain to the commission of the crime currently before
3 this Court or the Defendants involved in it whatsoever.

4 Despite his contention that -- despite
5 Deleston's contention that Bryan Rivers was the shooter
6 and that Bryan Rivers used the same weapon used in the
7 submission of the crime currently before this Court, I
8 do not find that the Defendant states a sufficient
9 factual basis to cast more than a mere suspicion upon a
10 third party. I find that the introduction of this
11 evidence would also amount to solely a conjectural
12 inference as to commission of a crime by third party.
13 And I find that the evidence sought to be admitted is
14 inadmissible as it pertains to the third-party guilt of
15 Bryan Rivers. Again, noting your exception to my
16 ruling.

17 Counsel, I told you I was going to end at 5:00,
18 so we are over. Is there anything else that I need to
19 address quickly before we stop?

20 MS. WILSON: Nothing from the State, your
21 Honor.

22 MR. PENNINGTON: Can I take it we'll resume at
23 9:30 in the morning here, or at nine o'clock?

24 THE COURT: I'm assuming that by saying 9:30
25 that there are no other issues that I need to address?

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1 MR. PENNINGTON: I believe that's correct.

2 MS. WILSON: I don't have any other issues.

3 THE COURT: Then we will begin at 9:30. If
4 y'all will be here at 9:15 to get set up.

5 And I understand that you have marked the
6 exhibits?

7 All right. And so 9:15, we'll begin promptly
8 once all the jurors are here.

9 Anything before we break?

10 MS. WILSON: I'm just going to hand up those
11 things we discussed earlier.

12 THE COURT: All right. Thank you. Anything
13 before we break?

14 MR. PENNINGTON: No, your Honor.

15 THE COURT: All right. Thank you. We're at
16 ease.

17 COURT IN ADJOURNMENT.

18 (The hearing of this cause adjourned for the
19 day.)

20 (End of Volume I of V. Jury trial is
21 scheduled to reconvene tomorrow, October 8th, 2013,
22 at 9:15 a.m.)

23

24

25

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REPORTER'S CERTIFICATE

STATE OF SOUTH CAROLINA)
) ss.
COUNTY OF BERKELEY)

I, **ROLAYNE M. VOLPE**, Certified Court Reporter, CCR, and Registered Professional Reporter, RPR, do hereby certify that the transcript of the foregoing proceedings, **Volume I of V**, accurately reflects the events that occurred before me to the best of my ability at the time and place set out on the caption hereto, the witnesses having been duly cautioned and sworn, or affirmed, to tell the truth, the whole truth, and nothing but the truth.

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken or to any attorney or counsel employed by the parties hereto, nor financially interested, directly or indirectly, in the outcome of this action.

CERTIFIED AND SIGNED on this 16th day of March,
2014.

ORIGINAL

ROLAYNE M. GOLPE, CCR, RPR
Certified Court Reporter and
Registered Professional Reporter
Commission Expires 8-30-2021

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 Official Court Reporter for the State of South Carolina

STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,)
vs.) Case Nos.: 2011-GS-10-6361
RYAN DELESTON,) 2011-GS-10-6362
Defendant.) 2011-GS-10-6363
2011-GS-10-6364

TRANSCRIPT OF PROCEEDINGS
JURY TRIAL, VOLUME II OF V
HEARD BEFORE JUDGE KRISTI LEA HARRINGTON
ON OCTOBER 8, 2013

ROLAYNE M. VOLPE, CCR, RPR
Court Reporter for the State of South Carolina at Large
Post Office Box 342
Summerville, South Carolina 29484

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1 The above-styled cause came on for hearing on
2 the 8th day of October, 2013, at 9:41 a.m., before Judge
3 Kristi Lea Harrington, Circuit Judge for the Ninth
4 Judicial Circuit, presiding over the General Sessions
5 Court for the County of Charleston, when the following
6 proceedings were had and entered of record, to wit:

7 PROCEEDINGS

8 JURY TRIAL, VOLUME II OF V

9 (The Defendant is present with his counsel.)

10 THE COURT: Anything before we bring in the
11 jury? From the State?

12 MS. WILSON: No, ma'am.

13 MR. PENNINGTON: I do have one housekeeping
14 matter I want to make sure that we cover. Over the
15 evening break, I was thinking through the Court's ruling
16 with regard to our proffer of evidence related to
17 showing that it was Bryan Rivers that fired this weapon
18 at Marley Lion through the incident that occurred on
19 June the 1st involving Mr. Haywood, "Chopper." I want
20 to make sure that I give the Court an opportunity -- if
21 the Court has had an opportunity to address our claim
22 that separate an apart from state evidentiary law, that
23 our claim that we have a due process right to offer a
24 defense, and that this is consistent, as is outlined on
25 a similarity chart, which was Exhibit A, and our written

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1 motion to the Court, that the Court has seen and waived
2 that.

3 Our contention is, is that under Holmes, and
4 even under State vs. Cope, the new South Carolina case
5 from August, where they talk about a lesser threshold
6 analysis for admissibility, where the defense has what
7 is reliable evidence of third-party guilt, that there's
8 a -- as we read the law, and we contend federal law
9 requires, that due process would permit Mr. Deleston to
10 offer this evidence in his defense under both Holmes and
11 Cope, and that the denial to do so would constitute an
12 unreasonable application of that federal law. I just
13 want to make sure that the Court has an opportunity to
14 rule on that particular claim.

15 THE COURT: Ms. Wilson.

16 MS. WILSON: Your Honor, I don't want to
17 belabor what was said yesterday. Simply put, the
18 evidence of the June 1st robbery does not make it
19 inconsistent -- the Marley Lion shooting inconsistent
20 with the Defendant's guilt.

21 THE COURT: All right.

22 MR. PENNINGTON: I don't believe that that is a
23 requirement under this lesser standard. In other words,
24 we contend that it's not -- the old law, pre Holmes
25 South Carolina law, requires that the burden is on the

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1 defendant to show that the evidence is inconsistent with
2 my client's guilt to be admissible is no longer the
3 standard under Holmes and Cope. And that, in fact,
4 probative -- in this case, we have a unique
5 circumstance, where the witness who will testify for the
6 State is going to admit that he is the shooter in the
7 June 1st, 2012 shooting, and it's the same gun that was
8 used by him later, on the night of this incident,
9 against the two victims on Rutledge Avenue, so that it's
10 -- there's not an iffiness about the reliability of it.
11 It's just purely a question of whether the Court rules
12 that it somehow does not meet the due process standard.

13 Our view is that it supports, from an identity
14 an intent point of view, as far as Mr. Rivers is
15 concerned, that it is consistent with his pattern of
16 planning in advance, of targeting individuals, it
17 involved the same triumvirate of George, Julius, and
18 Bryan, the same gun, and both instances they are on
19 foot, it's at nighttime, at gunpoint, a robbery. Rivers
20 flees on foot and then turns, in the "Chopper" case, and
21 runs back -- or turns and fires. It's and afterthought
22 similar to this case.

23 There are multiple gunshots in both cases. The
24 motive is to get money. And the proximity is within two
25 weeks or two weeks and a day and within a mile of the

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1 same area of operation. So that's the basis for our
2 claim under due process, which I'm trying to distinguish
3 from the state evidentiary law and the pre Holmes
4 third-party guilt law in South Carolina.

5 THE COURT: Mr. Pennington, I believe it was
6 late when I issued that particular part of my ruling,
7 but I believe that I addressed all your due process
8 issues in issuing my ruling and denying the request for
9 that evidence to be brought in. You have articulated it
10 again on the record. I'm again denying your request.

11 MR. PENNINGTON: Thank you, your Honor. And we
12 certainly respect that ruling. I believe -- and just as
13 a -- to further clarify, because I don't want to be
14 misunderstood, as we approached the three salient
15 witnesses in this case that I would have cross-examined
16 -- obviously, I'm redacting anything from my opening or
17 closing in respect to the Court's ruling. But as I
18 understand it, the issue is waived unless I renew it
19 close in time to the moment which I would have presented
20 evidence. And so I will ask for a moment *in limine* to
21 proffer the questions that I -- and answers that I
22 believe I would have gotten so that the Court can have
23 an opportunity to reconsider its ruling in a time more
24 right in the middle of the trial, which I think I'm
25 required to do to avoid procedural default.

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1 THE COURT: I think you are required, and I
2 find that appropriate to please bring that to my
3 attention, and we will handle the matter accordingly.
4 MR. PENNINGTON: Thank you, your Honor.
5 THE COURT: Mr. Pennington, anything further?
6 MR. PENNINGTON: No, ma'am.
7 THE COURT: Anything further, ma'am?
8 MS. WILSON: (Moves head from side to side.)
9 THE COURT: All right. Let's bring in the
10 jury.
11 (The jury is escorted into the courtroom at
12 9:47 a.m.)
13 THE BAILIFF: All jurors present.
14 THE COURT: Thank you. Please be seated. Good
15 morning, ladies and gentlemen of the jury. At this
16 time, we will administer the oath to you. If you will
17 please stand.
18 (The jurors comply.)
19 THE DEPUTY CLERK OF COURT: If you would all
20 please raise your right hands to be sworn.
21 (The oath is administered by the Deputy Clerk
22 of Court, and the jurors answer as follow:)
23 THE JURORS (in unison): I do.
24 THE DEPUTY CLERK OF COURT: Thank you. You may
25 take your seats.

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1 THE COURT: If there was any juror that was
2 unable to take that oath, please stand at this time.

3 Thank you. There are no jurors standing.

4 Ladies and gentlemen, I indicated to you,
5 before we broke yesterday, that one of the first
6 questions to you would be whether or not you complied
7 with the Court's instructions. If you complied with all
8 of my instructions over the evening hour, please raise
9 your right hand.

10 Please let the record reflect that all 15
11 jurors complied with the Court's instructions over the
12 evening hours.

13 Ladies and gentlemen, we are now going to begin
14 the trial of this case. You have been given notepads,
15 which is an indication to the Court that you are allowed
16 to take notes. Please remember some of us were much
17 better note takers in school than others. Those notes
18 are for your own use. One juror's notes are no more
19 correct or accurate than another juror's notes. You
20 will have those notes with you. We will collect them
21 over the breaks and over the evening hour and pass those
22 back to you. You will then have your notes with you
23 during your deliberation. I caution jurors, because
24 sometimes when -- I do it myself. When I'm taking
25 notes, I'm looking down. You may actually miss what is

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1 happening in front of you. So with all those cautions,
2 you will be allowed to take notes.

3 Ladies and gentlemen, I wanted to take this
4 opportunity to tell you that this trial probably will be
5 different from what you might expect. Most people do
6 not have the opportunity to come to court as you are
7 doing now, and most people think that from watching
8 television or movies or reading books, that trials are
9 full of intense drama and riveting circumstances. While
10 all of these things are true at some times, please
11 remember this trial is not for your entertainment. It
12 is a fundamental part of our democracy. It is a search
13 for the truth in an effort to make sure that justice is
14 done before the parties before you. Searching for the
15 truth and making sure that justice is done is often
16 slow, deliberate, and repetitive, the opposite of what
17 you may have seen on television or movies or read in
18 books.

19 This courtroom is a place of honor. It is
20 dedicated to the protection and preservation of
21 citizens' rights to what many have called the greatest
22 justice system ever created. The attorneys that are
23 appearing before you here today are advocates for the
24 parties that they represent, but first and foremost,
25 they are officers of this court. They are sworn to

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1 uphold the integrity and the fairness of our judicial
2 system.

3 You should expect them to be professional and
4 competent and ethical in the representation of their
5 client's interest. Please remember that you just took
6 an oath, and you are also expected to be professional,
7 reasonable, and ethical. Thank you again for accepting
8 this most important responsibility of jury service and
9 for your contribution to our justice system.

10 What I now say is intended to serve as an
11 introduction to the trial of this case. These remarks
12 are not a charge on the law. I will instruct you on the
13 law that is applicable to this case throughout the trial
14 and at the close of the trial before you retire to
15 consider the verdict.

16 I simply wanted to take this opportunity to
17 explain the procedure so that you will be better able to
18 understand what is happening before you. The Defendant
19 is charged with Indictments, and he is charged in each
20 Indictment separately with the crime of murder,
21 attempted armed robbery, possession of a handgun with an
22 obliterated serial number, and possession of a firearm
23 during the commission of a violent crime.

24 I will explain the elements of each of these
25 charges to you at a later time. The Indictment is

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1 simply the charge by which this case is brought into
2 this court. The Indictment is not in any sense evidence
3 of the allegations it contains. The Defendant has pled
4 not guilty to this Indictment. The State has the burden
5 of proving each of the elements of the Indictment beyond
6 a reasonable doubt. It is your duty, ladies and
7 gentlemen, to determine whether the State has met that
8 burden.

9 Your purpose as jurors is to find and determine
10 the facts. You are the sole judges of the facts in this
11 case. If at any time I make any comment regarding the
12 facts in this case, you must disregard it. You are to
13 determine the facts from the testimony you hear, as well
14 as the other evidence that is introduced in court. It
15 is up to you to determine the inferences which you feel
16 may be properly drawn from the evidence. It is
17 important that you perform your duty of determining the
18 facts diligently and consciously, because ordinarily
19 there is no way to correct an erroneous determination of
20 the facts by a jury.

21 On the other hand, and with equal emphasis, the
22 same law that makes you the judges of the facts makes me
23 the judge of the law. You must accept and follow the
24 law as I gave it to you, even though you may disagree
25 with it. I cannot tell you what I think the facts are,

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1 and you cannot disagree with me about what the law is or
2 what the law ought to be. Your job is to take the facts
3 as you find them, apply it to the law as I give it, and
4 render a verdict, a true and just verdict under your
5 solemn oath that you just took.

6 Until I advise you to begin your deliberations,
7 as I indicated to you yesterday, you must not discuss
8 this case with anyone. That includes your fellow
9 jurors, your friends, your family members, or anyone
10 else. The attorneys and the parties in this case have
11 been advised they are not to speak to you. So please do
12 not think that if you should see them and they do not
13 even say hello, they are being rude. They are following
14 the Court's instructions. During your deliberations,
15 you may discuss this case only in the jury room and only
16 with your fellow jurors.

17 You may not -- you must decide this case based
18 solely on the evidence as it is presented here in the
19 courtroom. That means that during this trial, again, as
20 I indicated to you yesterday, you may not conduct any
21 independent research in this case. You must not discuss
22 or -- with anyone this case, you may not look up any
23 words in dictionaries or other reference materials. You
24 may not search the Internet, websites, or blogs, or use
25 any other electronic tools to get information about this

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1 case.

2 Ladies and gentlemen, as I indicated to you,
3 there is no way that I can give you an exhaustive list
4 of what you can or cannot do, but I just -- very simply
5 put, you may not discuss this case with anyone in any
6 fashion. You may not do any independent research.

7 You may not read, watch, listen to any news
8 accounts regarding this case. That includes anything on
9 television, newspapers, or the Internet. If you become
10 aware of another juror's violation of my instructions,
11 you must inform the Court immediately. It is important
12 that you keep an open mind and not decide any issue in
13 this case until all of the evidence has been presented,
14 the parties have made their closing arguments, and I
15 have instructed you on the law applicable to this case.

16 It is your solemn responsibility to determine
17 the guilt or innocence of the Defendant, and your
18 verdict must be based solely on the evidence as it is
19 presented to you in this trial, and on the law as I
20 instruct you during and at the close of this trial. In
21 just a moment, the solicitor is going to make what is
22 called an opening statement, in which the solicitor will
23 explain to you the issues in this case, or at least what
24 the solicitor thinks the issues are in this case. The
25 attorney for the Defendant may also make an opening

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1 statement, although he is not required to do so.

2 Please remember, what the attorneys tell you in
3 their opening statements, as well as in their closing
4 arguments, is not evidence in this case. It is only
5 their contention as to what the evidence will show. The
6 evidence in this case will be presented to you by the
7 testimony of sworn witnesses from the witness stand, as
8 well as any exhibits that may be introduced into
9 evidence.

10 From time to time, you may hear one of the
11 attorneys ask to approach the bench, or I might find it
12 necessary to excuse you for a short while from the
13 courtroom. If I have the attorneys approach the bench,
14 please do not try to overhear us or read our lips. If I
15 excuse you from the courtroom, do not think we're trying
16 to hide anything from you. The reason for this is,
17 sometimes it is necessary for me to make a comment
18 regarding the facts in order to issue a ruling on the
19 law. And as I indicated to you, the law does not allow
20 me to have an opinion about the facts in this case. So
21 I may excuse you from the courtroom while I issue my
22 ruling.

23 In determining what the true facts are in this
24 case, you must decide whether the testimony you hear is
25 believable. It is my responsibility to determine, as a

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1 matter of law, whether certain testimony is admissible.
2 But once the testimony is admitted, whether or not you
3 believe it is solely for you to determine. In deciding
4 whether to believe a witness, you have a right to
5 consider the interest of the witness, the bias of the
6 witness, the prejudice of the witness, the opportunity
7 for that witness to have seen and heard the things about
8 which the witness testifies, as well as the way the
9 witness acts on the witness stand. You have a right to
10 consider anything that is in the record that will help
11 you evaluate the testimony of the witness.

12 Ladies and gentlemen, that means it is your
13 duty to pay close attention to the witnesses as the
14 witnesses testify. Please do not let your thoughts
15 wonder. Give strict attention to the witness, to the
16 attorneys, and to the Court.

17 Ladies and gentlemen, after the arguments of
18 counsel, and after you have heard the testimony in this
19 case, and I have charged you on the law applicable to
20 this case, you will be in a position to determine the
21 true facts in this case, apply the law as I gave it to
22 you to those facts, and render a true and just verdict.

23 Mr. Foreperson, as I indicated, you are the
24 jury spokesperson, and you are to preside over the jury
25 in the jury deliberation room. You are also responsible

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1 for writing the verdict, but I'll give you further
2 instructions regarding that matter when I instruct you
3 on the law applicable to this case.

4 Ladies and gentlemen, please give your strict
5 attention.

6 MR. PENNINGTON: If your Honor, please -- I
7 have -- may we approach?

8 THE COURT: You may.

9 (A discussion is held off the record.)

10 (Mr. Pennington and Ms. Wilson are at the
11 bench.)

12 THE COURT: Mr. Pennington, note your objection
13 to my opening and allow you to articulate the reasons
14 for that outside the presence of the jury at our first
15 available break.

16 MR. PENNINGTON: Thank you, your Honor.

17 THE COURT: Ms. Wilson.

18 **OPENING STATEMENTS**

19 MS. WILSON: May it please the Court. On June
20 16th of 2012, it really could have been anywhere. It
21 could have been anyone. But on that day, it wasn't just
22 an anyone. It was a 17-year-old kid named Marley Lion.
23 It could have been Julius Brown or "Little B,"
24 Bryan Rivers, that pulled the trigger that morning.
25 Mr. Pennington may tell you it was. But what the

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1 evidence in this case is going to show you is not what
2 it could have been or what it might have been. It's
3 going to show you who it was. It's going to show you
4 that it was Ryan Deleston that pulled that trigger.

5 Now, I mentioned to you Ryan Deleston's
6 friends, Julius and "Little B." You will hear more
7 about them. But what you will see is that night, while
8 Marley lay sleeping in the back of his car, that
9 Ryan Deleston blew him away for no reason at all.

10 An important principle to carry you through,
11 for you to be thinking about during this trial, is one
12 that the Judge will tell you about, is the hand of one
13 is the hand of all. That is a legal principle that you
14 have taken an oath to follow. You have taken an oath to
15 follow the law as the Judge gives it to you. And what
16 she will tell you is something close to this, if a crime
17 is committed by two or more people who are acting
18 together in commission of an offense, the act of one is
19 the act of all. When accomplices are working and acting
20 together assisting each other in the commission of an,
21 in this case attempted robbery, murder, the law says,
22 the law says, the hand of one is the hand of all.

23 Now, as you might imagine, this is a legal
24 principle, not a moral principle. When we prove to you
25 that Julius, "Little B," and Ryan Deleston were acting

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1 together, who pulled the trigger will not be of
2 importance to you. Now, I'm not saying that morals and
3 morality don't matter at all. That would be an issue
4 for the Judge at a sentencing or the ultimate Judge at
5 some other time. But for you, the issue is whether or
6 not these Defendants were acting together, with a
7 purpose. That's the issue for you.

8 And I mention to you that when we prove this to
9 you, who pulled the trigger won't matter. We do have a
10 burden of proof, and we'll meet that. That burden of
11 proof, as the Judge mentioned to you, is proof beyond a
12 reasonable doubt. Now, you've heard about that on TV
13 and in the movies, but what our definition of reasonable
14 doubt is, is that it's proof -- when we have to prove it
15 beyond a reasonable doubt, we must prove to you so that
16 you are firmly convinced, firmly convinced of the
17 Defendant's guilt.

18 The law recognizes that there are a few things
19 in life that are absolutely 100 percent certain, that
20 you can know absolutely. The standard of proof is not
21 beyond a shadow of a doubt. The standard is beyond a
22 reasonable doubt. And we -- when we prove to you so
23 that you are firmly convinced that this Defendant worked
24 with "Little B" and worked with Julius to do that
25 attempted armed robbery, and that one of them pulled the

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1 trigger in the commission of that armed robbery, we've
2 met that burden.

3 Let me take you to where all of this took
4 place, sort of familiarize you. And you will probably
5 learn during this trial that I'm terrible with
6 directions, but hopefully this will help you out. Let
7 me use this one. If you're going up Savannah Highway or
8 down Savannah Highway towards Savannah, not towards
9 Mount Pleasant, you will recall that there's a K-Mart on
10 your left, if you're traveling that direction. There's
11 a Bessinger's Barbecue that's on your right. The Ford
12 place, Palmetto Ford, is right across from Bessinger's
13 Barbecue. And then there's Chick-fil-A. That's the
14 area of West Ashley that we're talking about. Behind
15 those businesses is a community called Ardmore. And
16 much of what happened here centers around what was going
17 on in that community.

18 And what you will learn about is, at that
19 night, the late night of June 15th, which was Friday
20 night, into the early morning hours of June 16th, the
21 Defendant and his buddies were hanging out in his house,
22 and they were talking about looking for somewhere and
23 somebody to rob. The first thing they did was, they
24 packed up in one of his buddy's cars, George Brown, Big
25 George, who didn't mind packing everybody in his SUV,

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1 getting his gun and riding downtown, a stone's throw
2 from where we are now, looking for people to rob. They
3 rode down to The Battery, they rode right around this
4 area, and eventually they found a couple walking on
5 Rutledge Avenue. Ryan and "Little B" hopped out of the
6 car with George's gun, set out to rob that couple. When
7 they get back in the car and head back towards West
8 Ashley, you hear, they looked in the purse and they
9 didn't get anything. They got some credit cards, which
10 really might not have been of much use, but no cash. No
11 cash.

12 So when they leave downtown, they ride by
13 Famous Joe's, which is a bar in a parking lot behind the
14 Chick-fil-A area. They ride through that parking lot to
15 see what is going on at Little Joe's -- at Famous Joe's.
16 They go back to Ryan's house, where they had been
17 before, which is over on Cashew Street, and they talk
18 some more. The first robbery didn't help them out so
19 much. So the conversation turns between "Little B,"
20 Ryan Deleston, and Julius Brown to go do a lick at
21 Famous Joe's.

22 You know, in many ways, it would have been good
23 if that had worked out. But what happened was, they
24 went to Famous Joe's, and they sat out there, stalking,
25 looking to see when those employees left the building

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1 with the bag of money from the night, the day's receipts
2 from the bar and the restaurant. As they came out,
3 Marley Lion pulled into the parking lot in his car. He
4 was tired, at three, four o'clock in the morning, felt
5 like he was under the influence. He reaches into the
6 back of his -- gets out, pulls out a pillow from the
7 back of his SUV, he crawls into the back of his car, and
8 he goes to sleep. Unbeknownst to him, he's just
9 interrupted a robbery, or what was going to be a robbery
10 at Famous Joe's.

11 You can tell from the video, which you will
12 have, there's no activity in the car. He's laying down.
13 He's going to sleep. Minutes later, you will see on the
14 video that Julius Brown, Ryan's buddy, walks through
15 that parking lot, around behind Marley's car. And what
16 Julius will tell you is, he was checking out the parking
17 lot. He was checking to see -- they couldn't be sure if
18 Marley had somebody else with him. They wanted to know
19 what the situation was, because the plan has now
20 changed. They'd missed the money bags from Famous
21 Joe's. The plan is now to hit Marley. Julius walks
22 through some minutes later, and after much debate
23 between Ryan Deleston and "Little B" -- You do it. You
24 do it. I don't want to do it. You do it. Here's the
25 gun. You take the gun. Finally, Ryan Deleston takes

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1 the gun, he heads to the car, tries to get Marley to
2 open the door. The car alarm goes off. Deleston walks
3 away, ten or 15 seconds it could have been over, when
4 all of a sudden, the edge of that video, you'll see,
5 shot after shot after shot after shot. Five shots to
6 kill Marley Lion. And then they ran away. They ran
7 away. They blew him away for nothing.

8 The evidence in this case will be that shortly
9 after that, Ryan Deleston was spotted walking around
10 near the Famous Joe's area, the same area where he
11 lived. So police officers, obviously, were swarming the
12 area looking for people who were out that night. It was
13 noted he was there. And it shows you his opportunity.
14 That video that I told you about, it's grainy, but you
15 can see it.

16 And what the police did after that, after they
17 gathered this video, was they went to where you got to
18 go if you want to know. They went to the king of crime
19 for Ardmore, that old guy named Frank Middleton, who we
20 know wasn't involved because he was in jail when this
21 happened. They felt like Frank might be able to look at
22 that video and tell them who he believed it was. He
23 watched that video and he said, Ryan Deleston. The
24 build, the size, the look, the way he holds his gun fits
25 Ryan Deleston.

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1 The investigation ensued, and that led, again,
2 to George Brown, who looked like that back in June of
3 2012 -- he looks like this now. You will hear from him
4 -- Julius Brown and "Little B," Bryan Rivers. And what
5 you're going to see here in this courtroom, when you
6 hear from each of them, that every one of them is a
7 criminal. And the fact that they are criminals needs to
8 raise a red flag for you.

9 The Judge told you, you will be the judge of
10 the credibility of every witness. It is all yours.
11 Look at what fits. Look at what doesn't fit. Be very
12 skeptical. But listen and see how they are corroborated
13 by each other, by other witnesses. Look and see how
14 smart they are, how articulate they are when you're
15 judging their credibility. Look at what their
16 opportunity to know was. Were they there? Did they see
17 exactly what happened? Did they have an opportunity to
18 know? Were they high? Were they drunk? When you look
19 at how their story fits and how it doesn't fit, you will
20 be able to make the ultimate call as to their
21 credibility.

22 When you look and listen to what's motivating
23 them -- they have plea agreements. And make no mistake,
24 plea agreement is not a four letter word. They have
25 been given a deal to come here and to tell you the

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1 truth. The fact that they have a deal is another reason
2 you need to listen closely, and to make sure that what
3 they say fits, to make sure that it's corroborated. And
4 when you do that, think about the things that they told
5 that the police didn't know about.

6 That downtown robbery that I told you about,
7 the evidence will be, the police didn't connect those
8 things at all. They had no reason to connect them.
9 That drive-thru of Famous Joe's, remember I told you,
10 after they left downtown and there was no money, the
11 evidence will show you that they cut through the bar at
12 Famous Joe's, an hour or so before anything relevant, as
13 far as the police knew, was on that video. But you will
14 see that car pulling through that parking lot, and there
15 was no way for the police to know that without their
16 cooperation.

17 In the video, you will see the video, and you
18 will take comfort -- George Brown, Big George, he's too
19 heavy to be the shooter. Julius Brown, he's too short,
20 about my height, maybe, maybe a little taller. You will
21 hear from his brother, who nobody says was involved in
22 the robberies, shorter than I am, out there that night,
23 short guy. Can't be him. And "Little B," but you will
24 hear testimony that he's just too skinny to be that guy,
25 and he will tell you where he was and what he saw that

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1 night.

2 But Ryan Deleston, Ryan Deleston is just right,
3 just right. And not only that, in the days and weeks
4 after this murder, Ryan Deleston had a gun to save --
5 sell. He had a gun to sell, and he was going to sell it
6 cheap, real cheap. So cheap that even other criminals,
7 even other criminals thought something must be up with
8 this gun. But eventually he sold it. And unbeknownst
9 to him, at the time he sold it to two guys working
10 undercover for the police. And that gun, that gun that
11 he sold, the evidence will be, that is the gun that
12 killed Marley Lion.

13 Ladies and gentlemen, I want to thank you for
14 being here. It was a process to get you into this jury
15 box. And you saw, as we saw, that you could have gotten
16 out of this if you had wanted to. You could have gotten
17 out of it. You didn't do that. You took an oath to
18 follow the law. And we appreciate in advance you doing
19 that. Because at the end of this case, what we're going
20 to do is, we're going to come to you and ask for you to
21 give a verdict that speaks the truth. In this case, the
22 truth of the matter is that Ryan Deleston's hands are
23 just as dirty as his friends' hands. Ryan Deleston's
24 hands are just as dirty. Under the hand of one and the
25 hand of all, he is guilty of murder, whether or not he

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1 pulled the trigger. But the truth of the matter is, he
2 was the trigger man and that he has earned a guilty
3 verdict. In the end, that's what we'll ask you for.

4 THE COURT: Mr. Pennington.

5 MR. PENNINGTON: Thank you, your Honor.

6 OPENING STATEMENTS

7 MR. PENNINGTON: Good morning. This is an ugly
8 case. Nobody's disputing that. But what you are going
9 to see and hear from that witness stand is that
10 Julius Brown and Bryan Rivers are going to come here,
11 and they're going to admit to you that they attempted to
12 rob Marley Lion. And they're going to admit that they
13 were there, and that they're guilty. And they've
14 already gone ahead and admitted in a court of law that
15 they're responsible for his death. They've pled guilty
16 to voluntary manslaughter. But to get to that, they
17 needed a scapegoat, who they could say did the shooting,
18 to get the deal. And they're going to claim, from that
19 witness stand, that the shooting was a big surprise to
20 them. They didn't see it coming. And after saying
21 that, they've gotten their murder charge dropped,
22 because they were charged with murder, but it's been
23 dropped to voluntary manslaughter.

24 We talk about motive, motive to tell the truth,
25 or motive to change the truth. With a murder

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1 conviction, they would have been looking at a minimum of
2 30 years, and the Judge's discretion up to life in
3 prison without the possibility of parole. It's all
4 nonparolable day for day. With a voluntary manslaughter
5 conviction, you're looking at a maximum 30, and if you
6 behave yourself, you only have to do 85 percent.

7 Julius and Bryan will come here, and they're
8 going to claim that it was Ryan who shot Marley. Ladies
9 and gentlemen, Mr. Foreman, they're not worthy of your
10 belief. There are going to be solid reasons for that.
11 They're criminal defendants who have gotten themselves
12 off the hook by blaming someone else. That's a given.
13 No one can argue that. They needed someone to take the
14 fall, and they're using Ryan to avoid that conviction.
15 But the evidence is going to show -- let's walk through
16 what the evidence is going to show that perhaps was not
17 emphasized.

18 We know that Marley parked in front of Famous
19 Joe's. No dispute about that. The video tells you the
20 truth, which is, is that it's Julius Brown, who you see
21 11 minutes later cutting through that parking lot, not
22 Ryan Deleston, casing. He's going to admit that he's
23 casing, not Famous Joe's at that point. He's casing
24 Marley's SUV, his Nissan Pathfinder. The evidence is
25 going to show that 11 minutes after he walked through,

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1 Bryan Rivers came up with a pistol and tried to rob
2 Marley. And when the car alarm goes off, Bryan flees
3 and comes back, and is seen coming back shooting the
4 pistol.

5 Now Julius, to support his claim, has family
6 witnesses. He has his brother, Rayshawn, who's going to
7 be at Cashew Street that night describing things. He's
8 going to come here today and say things that he didn't
9 admit to when he was interviewed in the first set of
10 interviews by the police. When he was first interviewed
11 by the police, he didn't know nothing. Now that his
12 brother is in need, he's got a story to tell.

13 And Julius also has his younger cousin, George,
14 George Brown, Big George. You saw his photograph. But
15 when -- let's look at what will be the real hard
16 unchangeable facts in this case. You will see a
17 different picture begin to come into view. The police,
18 as they always are careful to do, go out and they look
19 at the crime scene carefully, and they begin to gather
20 evidence. And you're going to hear about spent shell
21 casings. You're going to hear about an autopsy, and
22 you're going to know that they looked at the car at the
23 scene, and then they carried it to a place where they
24 could go over it carefully, detail by detail. What were
25 they looking for? Of course, they're looking for

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1 fingerprints, but also they're looking for something
2 called DNA.

3 DNA is a very powerful kind of evidence. It's
4 a kind of evidence that you can derive just from a few
5 human cells that are left behind if you touch something
6 with your hands. And so they were thinking: Suspect
7 comes up to the car and they're shooting. Maybe he left
8 DNA on a door handle or on the exterior of the doors on
9 the side of this SUV. And so they went through the
10 painstaking process of gathering that evidence. They
11 gathered evidence from both door handles on the driver's
12 side of the vehicle, and they swabbed the exterior of
13 the front door. What may surprise you is that they
14 never examined the DNA from the exterior of the front
15 door. They never tested it. And they developed a DNA
16 profile on the front door handle, which you may be
17 surprised to know, that even though they took a cheek
18 swab and they had Bryan River's cells, they never made a
19 comparison to Bryan Rivers's cells to that front door
20 handle.

21 They look for fingerprints. And you're going
22 to see the evidence, that they took fingerprints from
23 both doors. The prints don't come back to
24 Ryan Deleston. They don't come back to Bryan Rivers
25 either. They don't come back to anyone relevant to this

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1 case. But the point is, is that -- and I want to talk
2 about what the trial is in a moment. The trial is
3 really not a board search for you to go out and do your
4 own independent investigation and solve this crime, but
5 to answer the simple question, has the State proven the
6 Indictments against Ryan Deleston, against Ryan Deleston
7 beyond a reasonable doubt?

8 The evidence is going to be clear, that
9 Ryan Deleston's fingerprints aren't on that SUV. The
10 hard, real unchangeable fact is, the weapon is Cousin
11 George Brown's, Big George. Why is that important?
12 Julius Brown will admit that it's his cousin's gun. And
13 after this murder, it may surprise you to learn that
14 it's not Ryan Deleston who holds onto that gun. It's
15 Big George, Julius' cousin, who has the gun. And when
16 they begin to talk about selling the gun, because Ryan
17 knows them, and Ryan says, I might have a buyer, over
18 and over again, Ryan has to be calling Big George,
19 saying, can you bring the gun up here to Ardmore? I
20 might have a seller. It's not Ryan that's holding onto
21 the gun, the murder weapon, it's Big George, for his
22 cousin.

23 Another big fact, big fact, unchangeable fact,
24 is that as best as we can discern, this shooting
25 occurred at about 4:07 a.m., 4:07 in the morning. And

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1 when you watch the Mantek video -- Mantek Properties
2 owns this shopping center, and they have security
3 cameras. And you're going to see that their camera's
4 actually about 11 minutes slow, in terms of the timing
5 of it. But we know what we're seeing, based upon a
6 comparison of the radio times of the police and the
7 d.d. Peckers', which is another restaurant, and it has a
8 security cam. And so I think that we will basically --
9 you will conclude that that Mantek video is roughly 11
10 minutes slow. It shows really what happened, but the
11 time on there is 11 minutes slow.

12 So when you finally do the math and you begin
13 to figure out when this actually occurred in realtime,
14 that we can compare to police response, the real facts
15 are that the shooting was approximately 4:07 a.m. And
16 the video shows Bryan Rivers dressed in dark clothes.
17 One of those kind of signature things for Bryan, he's
18 always sort of dressed in dark clothes. And that at 4
19 -- when you look at 4:19 -- about 4:19, which would be
20 12 minutes later, only 12 minutes later, as the police
21 are in the area, they go down White Oak, which is the
22 road that you -- if you go down 17 South and you make a
23 right at Bessinger's by Pep Boys, that's White Oak. And
24 you go in about a block, and that's where Julius Brown's
25 momma's house is.

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1 And the police observe that Ryan Deleston is
2 coming out of that house, and he's on a bicycle. He's
3 with Julius Brown. They both got bicycles. And what do
4 they see? They see Ryan Deleston not in all black. 12
5 minutes later, white T-shirt. And they note it.
6 Officer Vance remembered it. He knew Ryan, because Ryan
7 had been warned a week or so before not to be riding
8 that bicycle around without having a flashlight. It's a
9 city ordinance that's requiring you to be able to show
10 that you're not -- you don't want to get somebody -- you
11 don't want to get hit. And Ryan indicated, I've got my
12 flashlight.

13 Real fast, unchangeable facts. That gun we
14 talked about, Big George's gun, you're going to hear
15 that that gun was used by Bryan Rivers, Bryan Rivers.
16 According to Julius, according to George, according to
17 even Bryan, he used that weapon 2:45 a.m., one hour
18 before this murder, downtown on Rutledge Avenue, to rob
19 that couple that you've heard about downtown. And at
20 4:07, he used it again to murder Marley Lion.

21 Now, let's talk about this hand of one, hand of
22 all concept. The solicitor's brought it up. And it is
23 a principle of law that the Judge will actually instruct
24 you on. Because the Solicitor and I have a disagreement
25 or perhaps a different interpretation. The Judge is the

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1 final decider of what the law is in this state. But the
2 law says that if you and I go out to do something that's
3 reasonably foreseeable, and you do it, and I'm with you
4 and I'm your partner, then I'm legally responsible.
5 That's fine. But the law also says that just because we
6 go out and agree to commit crime A, it does not mean
7 that you're automatically responsible for a crazy,
8 irrational act of another person. The law says that to
9 be responsible for, in this case, murder, it has to be a
10 natural, reasonable, foreseeable consequence of the
11 scheme that we have hatched.

12 The law also says, clearly, that if you're
13 merely present when a crime is committed by another,
14 you're not guilty. You're not responsible. So when you
15 look at all the facts and put the proper doubt
16 -- reasonable doubt -- on the Brown family and
17 Bryan Rivers, you'll come back to certain things that
18 don't fit: Like the timing; like the white shirt; like
19 the fingerprints that don't match; the DNA of
20 Bryan Rivers that didn't even get compared to the front
21 door handle; like a gun that belongs to the people that
22 say, well, we didn't do it; the gun that Bryan Rivers
23 used to rob someone else an hour before; a gun that the
24 accusers held onto after the murder.

25 A trial is a test of what is trustworthy.

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1 That's what trials are. You bring in 12 people to bring
2 their common sense and decide if something is worthy of
3 belief. That's what this process really is. It is not
4 just a vague search for the truth. It is to whether or
5 not the State has truly removed all reasonable doubt and
6 shown that -- in this instance, that Ryan Deleston would
7 have seen the crazy, irrational act of Bryan Rivers
8 coming. That's really what this case is about.

9 You, as jurors, become judges, fact finders,
10 and you begin as individuals. So as you sit there and
11 you're thinking, you can't go back and talk during the
12 break about yourselves, well, did you think about that?
13 What did you think about that? But what you can do is
14 that you're beginning to process in your mind what it is
15 that's reliable and trustworthy. So that when that
16 moment comes when the Judge says, it's time now to
17 deliberate as a group, you will have some thoughts, and
18 then you will work collectively. But still
19 individually, you have to come to your own individual
20 moral determination about whether or not you find that
21 this has been proven beyond a reasonable doubt.

22 In this case, you will find that the evidence
23 does not measure up, and that the only true verdict
24 against Ryan Deleston is not guilty. Because the truest
25 fact in this case is that, as Marley Lion got out of his

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1 vehicle, was seeking help from CPD police officer,
2 Officer Deal, who arrived at the scene, he said he was
3 robbed by two men, not three. He said that there were
4 two black males. He saw two black males.

5 Thank you, your Honor.

6 THE COURT: Call your first witness.

7 MS. WILSON: State calls Elizabeth Paige.

8 (The oath is administered by the Deputy Clerk
9 of Court, and the witness answers as follows:)

10 THE WITNESS: I do.

11 THE DEPUTY COURT CLERK: Thank you, ma'am. You
12 may take your seat. And, then, if you would, please,
13 state your first and last name, spelling your last for
14 the record.

15 THE WITNESS: Okay. Elizabeth Paige,
16 P-a-i-g-e.

17 **ELIZABETH PAIGE**,

18 having been first duly sworn by the Deputy Clerk of
19 Court to tell the truth, the whole truth, and nothing
20 but the truth, was examined and testified upon her oath
21 as follows:

22 **DIRECT EXAMINATION**

23 **BY MS. WILSON:**

24 Q Good morning, Ms. Paige. You okay?

25 A Yeah.

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1 Q You need some water?
2 A No, I'm good.
3 Q Okay. You go by Liz?
4 A Yes.
5 Q How old are you, Liz?
6 A Forty-two.
7 Q And where did you grow up?
8 A Columbia.
9 Q And how long have you been in Charleston?
10 A Eight years, I think.
11 Q Okay. And where did you go to school?
12 A High school? College?
13 Q Both.
14 A Columbia.
15 Q Both schools in Columbia?
16 A Uh-huh.
17 Q And do you work here in Charleston?
18 A I do.
19 Q What do you do?
20 A I teach first grade for Charleston County.
21 Q For Charleston County?
22 A Uh-huh.
23 Q What area of the county do you live in?
24 A Johns Island.
25 Q And when was it that you moved out to Johns

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1 Island?

2 A Just a little over a year ago in May.

3 Q Okay. Now, Liz, what was your relation to

4 Marley Lion?

5 A He is my son.

6 Q And how old was Marley when he was murdered?

7 A Seventeen.

8 Q Had he finished high school?

9 A Yes.

10 Q Was he working?

11 A Yes.

12 Q Where did he work?

13 A He worked at La Tela.

14 Q What is that?

15 A It's a restaurant in Freshfields Village on

16 Kiawah.

17 Q What type of work was it?

18 A I think -- I think he was like an assistant

19 server. He was trying to get up to the waiter job. But

20 before that, he had worked at Chick-fil-A for a long

21 time before that. This was a new job for him.

22 Q And back in June of 2012, did Marley have a

23 car?

24 A Yes.

25 Q What kind of car did he have?

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1 A He had a Nissan Pathfinder.
2 Q Was that his first car?
3 A No. His -- his first car was a '94 Honda Civic
4 with no air conditioning that he scrounged and saved all
5 his money to buy.
6 Q A '94. What year was he born in?
7 A '94.
8 Q Okay. So his first car was as old as he was?
9 A Yes.
10 Q This Pathfinder that he had, how did he get
11 that?
12 A That -- that was an older Pathfinder, but it
13 was in good shape. And that was a graduation present
14 for him from his grandparents.
15 Q Okay. Now, you mentioned that he -- he had had
16 two cars. Had you ever had occasion to ride or drive
17 with him?
18 A Yes.
19 Q How was he with directions?
20 A Not -- not very good.
21 Q Tell me about that.
22 A Just have a lineage of bad directions in our
23 family. I'm not -- I am notoriously not good. My mom
24 is worse than I am. So each generation it improves, but
25 it didn't get all the way right with him. So he still

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1 had some problems. And at some point, I was lost, and
2 we were together and I was driving, and we kept going
3 back around to the same place where we were, and I was
4 trying to figure out where I had gone wrong. And I
5 said, you know, didn't we go through this street?
6 Didn't we go this way before? And he said, Mom, the
7 same thing that's wrong with you is the same thing
8 that's wrong with me. I don't know why you're asking
9 me.

10 Q Well, that incident that you are talking about
11 where you are confused, what town were you in?

12 A Charleston.

13 Q The town you live here in?

14 A Yes.

15 Q Did Marley know West Ashley? He had been to
16 West Ashley?

17 A Somewhat. Yeah, he knew some parts of it.
18 It's kind of like he knew to get -- how to get from
19 Point A to Point B, but if you went to C, then he kind
20 of get confused. You know, like, he only knew the one
21 way to go type thing.

22 Q I understand.

23 A Yeah.

24 Q More than you might know.

25 A Yeah.

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1 Q Let's go, Liz, to June 15th, June 16th of 2012;
2 okay?
3 A Okay.
4 Q At that point, you mentioned that Marley had
5 finished high school. Did he have plans to move out?
6 A He did. He -- well, he had plans to go to
7 Clemson. So he was going to move out when school
8 started in the fall, and he would be living there in the
9 dorm.
10 Q But at that point on the 15th, he was still
11 living with you and your husband?
12 A Correct.
13 Q Out on Johns Island?
14 A Yes.
15 Q Did he still have a curfew?
16 A He did.
17 Q And how did he like that curfew?
18 A He did not really like having a 12 o'clock
19 curfew, being a senior, graduated from high school, but
20 our -- our thing was, you know, you're still here. So
21 when you go, you go. When you're here, you're here.
22 And when you're here, it's 12 o'clock. So that's what
23 it was. And he -- he was bursting at the seams, ready
24 to go to college and all that.
25 Q Be on his own and do his own thing?

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1 A Yeah. Yeah. So it was -- I mean, he didn't --

2 Q Little struggle there?

3 A He didn't love it, but he was -- you know, we
4 kept it together pretty good.

5 Q Okay. On that Friday, June 15th, did you see
6 Marley that day?

7 A No. I talked to him on the phone. He -- he
8 called me -- he called me on the phone --

9 Q Were you working that day?

10 A Yeah. I was -- I was working at The Island
11 School in Johns Island for my summer job, teaching
12 preschool. And he called me on the phone, because I was
13 there late that day, just kind of cleaning up and
14 closing up the school and everything. And I don't -- I
15 can't remember what time it was. I think it was like
16 real close to six o'clock, because it was the end of the
17 day. And he had already told me that he was going to go
18 to his friend, John's, house.

19 And so he called me, and he said, hey, how is
20 it going? Is it okay if I go ahead and go on to John's
21 house?

22 And I was, like, sure. Have fun. You know, we
23 had already talked about that he was going to go over
24 there Friday night, and I was fine with that. So I
25 said, you know, go ahead and go. Have a good time.

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1 Q You knew John?

2 A I knew John, yeah. We knew John very well.

3 Q And what part of town did John live in?

4 A West Ashley. Sort of over there by the -- kind
5 of across from Costco, on the other side, back there.

6 Q Okay. And did you know Katie Ridgway?

7 A I did.

8 Q And did you know about any plans that Marley
9 had with Katie that night?

10 A No.

11 Q Now, as the night wore on, at any point, did
12 you have communications again with Marley?

13 A I had some one-way communications, where I was
14 trying -- I was trying to get in touch with him because
15 it was 12:30. It was 12:30 and he wasn't home. So I
16 sent him some curt text message about, it's 12:30.

17 You're not here. You did not ask me if you could spend
18 the night at John's house. Because sometimes there
19 would be an assumption of his that, you know, I'm going
20 to John's. In his mind, it means, I'm spending -- I'm
21 going to spend the night with John.

22 In my mind, you're going to John's. That means
23 you're coming back from John's, you know. So we had
24 been through that before. And I said, you know, I
25 didn't tell you that you could go -- you didn't ask me

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1 about going over there -- or I didn't tell you to spend
2 the night over there. You didn't ask me about that
3 part. Which would have been fine, but it just wasn't
4 communicated.

5 And so I continued to try to send him some text
6 messages, I think. And eventually I just said, well,
7 his phone must be off. He must have spent -- he must
8 have went ahead and spent the night at John's house, and
9 maybe his phone is off. And I went to bed.

10 Q Okay. So you didn't hear back from him when
11 you texted him about the curfew?

12 A No. I think I texted him more than one time.
13 I did not hear back from him.

14 Q Okay. Had you ever had any discussions with
15 Marley about driving under the influence?

16 A We did. We had some -- some, you know, I
17 guess, typical conversations with him. Call us,
18 repeated conversations of, you know, you can always call
19 us. There's not going to be a punishment. We want to
20 come pick you up. You cannot drink and drive. You
21 know, don't be stupid, blah, blah, blah, all that.
22 And --

23 Q Because that spring you had a lot going on, I
24 take it; graduation, prom, that sort of thing?

25 A Uh-huh.

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1 Q Was driving under the influence a big concern
2 for you and your husband?

3 A I guess, just like it would -- not any more, I
4 don't think, than any other parent necessarily. Not
5 anything so special about him or his situation, which is
6 just that basic thing of, just don't do this and that
7 kind of stuff. And he did -- he did call my husband
8 Robert, at some point and --

9 Q At some point other than this?

10 A Some point in the past that -- that same -- I
11 think it was his senior year -- I think it was that same
12 year that he called and said he needed a ride home, that
13 he had been drinking, and he -- and he went and picked
14 him up and got him home. And we took him back to his
15 car the next day. And he got his car, and, I mean, we
16 talked about it and tried not to go into a big
17 punishment, because we told him that we would not
18 -- that was kind of the deal, but it was -- it was hard.
19 I'm not sure that --

20 Q Yeah, I understand.

21 A -- I didn't find something else to punish him
22 for, but, yeah.

23 Q So you mentioned that you didn't hear back from
24 Marley on the night of the 15th into the morning of the
25 16th. When you got up that morning on the 16th, did you

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1 try to track him down?

2 A Yes. He was -- he was supposed to work for a
3 friend of ours, doing another -- like, one of his
4 friend's mom's, at her little restaurant, a different
5 place. It's just a side job to pick up some extra hours
6 to get some more money. He was supposed to go there in
7 the morning and work with her from like nine to 12 or
8 something like that. And I think after I called him,
9 couldn't get in touch with him, I called her. She -- or
10 sent her a text, and she sent me a text that said, I
11 didn't need him to come in at nine after all. I sent
12 him a text last night that he could come in at noon and
13 work in the afternoon.

14 Q Did that give you some relief then?

15 A Yeah. I thought, well, he's probably really
16 tired, then, because as soon as he found out that he
17 didn't have to be at work at nine, maybe he thought, we
18 can just -- I can stay out later or stay up later,
19 because now I can sleep in, because I don't have to be
20 at work as early. I'm going to go in at 12.

21 So I thought he probably just ended up staying
22 up really late, once he found out that he did not really
23 have to be somewhere until 12, and thought he had some
24 extra time to sleep in. So. . .

25 Q When was it that you found out that wasn't the

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1 case?

2 A I think I -- I think I tried to call him some
3 more and he didn't answer, and then I started trying to
4 call his friend, John, whose home he had gone to that
5 Friday night. Finally I got in touch with John. That
6 was at like 9:30 or something. And John said, no, you
7 know, Marley left the party last night. He left my
8 house and went on to some other place, and he -- I think
9 he didn't really know where he went. And I thought that
10 was strange, that he just kind of left all of his
11 friends and kind of went off to someplace else. And
12 they said, well, we didn't know who those other people
13 were or something.

14 Anyway, John was on his way to, like, a rugby
15 game with his family, and they had moved on with their
16 day. And the last time he had seen Marley was at his
17 house, when Marley was kind of going off to do his own
18 thing and left the other people that were his close
19 -- all his best friends at this -- at his friend,
20 John's, house.

21 So that seemed weird. And I thought, well, you
22 know, maybe -- maybe there's -- you know, maybe there's
23 a girl that he knows that they don't know or something,
24 and I just -- by then I was, like, this is just weird.
25 I don't know where he is. And we went -- we have our

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1 other children. We went to go eat breakfast. And, you
2 know, we pray before we eat. And we said a prayer, and
3 we said, you know, Lord, just let us hear from Marley
4 and find out, you know, where -- you know, find out
5 what's going on with Marley and let us hear from Marley.
6 And like five minutes later the knock on the door of,
7 you know, Detective Burckhardt and the coroner there to
8 tell us what happened. And that was like at eleven
9 o'clock, I think, on Saturday.

10 MS. WILSON: Beg the Court's indulgence.

11 THE COURT: Take your time.

12 MS. WILSON: That's all I have, your Honor.

13 MR. PENNINGTON: Your Honor, I have no
14 questions for Ms. Paige.

15 THE COURT: Ms. Paige, you may step down.
16 Thank you.

17 THE COURT: Ladies and gentlemen, it's an
18 appropriate time for us to take a midmorning break. You
19 may leave your notepads in your chair. Do not begin
20 your deliberations. Do not discuss this case amongst
21 yourselves. You may be excused. Please rise for the
22 jury.

23 (The jury is escorted from the courtroom at
24 10:50 a.m.)

25 THE COURT: Thank you. Be seated.

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1 Mr. Pennington, I'll allow you to place on the record
2 your objection to the Court's opening.

3 MR. PENNINGTON: Thank you, your Honor. The
4 Court, in its opening remarks, initially mentioned that
5 for the jury, this is a search for the truth. That's
6 language that I've heard in other trials, and I've
7 actually used it myself. But I was recently at a
8 seminar where they talked about, this can mislead the
9 jury into thinking that their job is to be investigators
10 instead of to be evaluators of the quality of the
11 evidence and whether or not it proves beyond a
12 reasonable doubt the Indictments that have been brought
13 by the State against the individual on trial.

14 And so I objected after the Court finished the
15 Court's remarks, and at that time asked the Court to
16 consider -- I believe I asked the Court to consider some
17 sort of modified instruction. My concern is, is that I
18 believe jurors play -- place enormous weight and
19 importance on what judges say, much more, of course,
20 than lawyers. And that if a juror was to believe that
21 this was not a question of purely, have they proven
22 their case, but a search for the truth, this could
23 result in, I think, a more -- an inappropriate burden
24 for those jurors. I think their burden is already hard
25 enough, which is to evaluate this evidence to see if it

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1 proves beyond a reasonable doubt the allegations. And I
2 would ask the Court to modify its instruction when the
3 jury comes back in.

4 THE COURT: All right. Your request is noted.
5 It is denied. Thank you. Anything before we take our
6 midmorning break?

7 MS. WILSON: How long did you say?

8 THE COURT: I didn't. But anything before we
9 take our break?

10 MR. PENNINGTON: And I understand that the
11 Court will probably take a lunch break at noon. Am I
12 correct?

13 THE COURT: We're going to try to get a couple
14 of witnesses on, so. . .

15 MR. PENNINGTON: Okay. I just didn't know --
16 I'm just trying to predict as far as my schedule. Thank
17 you.

18 THE COURT: Anything before we take our
19 midmorning break?

20 MR. PENNINGTON: No, ma'am.

21 MS. WILSON: No, ma'am.

22 THE COURT: Fifteen minutes. Thank you.

23 (A break is taken from 10:53 a.m. until
24 11:10 a.m.; at which time, the proceedings continue
25 as follows:)

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1 THE COURT: Anything before we bring in the
2 jury? From the State?
3 MS. WILSON: No, ma'am.
4 THE COURT: From the Defense?
5 MR. PENNINGTON: No, ma'am.
6 THE COURT: Let's bring in the jury.
7 (The jury is escorted into the courtroom at
8 11:12 a.m.)
9 THE BAILIFF: All jurors are present, your
10 Honor.
11 THE COURT: All right. Thank you. Be seated.
12 Ms. Wilson, please call your next witness.
13 MS. WILSON: Katie Ridgway.
14 (The oath is administered by the Deputy Clerk
15 of Court, and the witness answers as follows:)
16 THE WITNESS: I do.
17 THE COURTROOM DEPUTY CLERK: Thank you. You
18 may take your seat. And, ma'am, if you would, please
19 state your first and last name, spelling your last for
20 the record.
21 THE WITNESS: Katherine Ridgway, R-i-d-g-w-a-y.
22 KATHERINE RIDGWAY,
23 having been first duly sworn by the Deputy Clerk of
24 Court to tell the truth, the whole truth, and nothing
25 but the truth, was examined and testified upon her oath

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1 as follows:

2 DIRECT EXAMINATION

3 BY MS. WILSON:

4 Q And do you go by Katie?

5 A Yes, ma'am.

6 Q Katie, how old are you?

7 A I'm 19 years old.

8 Q And where are you from?

9 A Charleston.

10 Q Where -- did you go to school here?

11 A Yes, ma'am.

12 Q Where did you go?

13 A I went to Charleston County School of the Arts.

14 Q And when did you graduate from there?

15 A 2012.

16 Q After you graduated, did you stay home?

17 A No. After I graduated, I moved out.

18 Q Where did you move?

19 A I moved into Ashley Grove Apartments.

20 Q Tell the jury about where Ashley Grove

21 Apartments are.

22 A Ashley Grove Apartments is right off of

23 Cosgrove Avenue on Ashley Hall Road.

24 Q Okay. And are you still living there now?

25 A No, ma'am.

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1 Q Where are you living now?
2 A I moved back in with my parents.
3 Q Are you working?
4 A Yes, ma'am.
5 Q What kind of work are you doing now?
6 A I'm working at a day school at my church.
7 Q Katie, did you have a friend named Marley Lion?
8 A Yes, ma'am.
9 Q And how long did you know Marley before he
10 died?
11 A I knew him for about four years.
12 Q How long?
13 A Four years.
14 Q So were the two of you in high school together?
15 A We didn't go to the same high school together,
16 but we went to the same church, and we rode the same bus
17 for a while.
18 Q When was it -- what bus did y'all ride and when
19 was that?
20 A We rode bus number 519, and it was in ninth
21 grade.
22 Q Okay. And even though you didn't go to the
23 same school, the same bus would pick y'all up?
24 A Yeah.
25 Q Okay. Katie, did you and Marley -- were you

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1 boyfriend and girlfriend?

2 A For a while in ninth grade, yes.

3 Q And back after you graduated, did you and
4 Marley sort of begin to talk and maybe see each other
5 again?

6 A Yes, ma'am.

7 Q All right. Well, let's go to the night of June
8 15th, June 16th of 2012. Do you recall that night?

9 A Yes, ma'am.

10 Q And I believe you said that at that point, you
11 had already moved out from your parents' to the Ashley
12 Grove Apartments; right?

13 A Yes, ma'am.

14 Q And tell us about what your plans were that
15 night.

16 A My plans that night were to have Marley pick me
17 up and take me to a party.

18 Q Okay. And who knew the people at the party or
19 that were having the party?

20 A My friend. His name was Jahad. He was going
21 to be the host of the party.

22 Q So your -- the connection to the party was you,
23 not Marley, mainly; is that right?

24 A Yes.

25 Q And did Marley pick you up?

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1 A Yes, ma'am.

2 Q What was he driving?

3 A He was driving a light-colored SUV.

4 Q Light colored?

5 A Uh-huh.

6 Q And where did you and Marley go after he first

7 picked you up?

8 A We went towards Jahad's house, which is off

9 Savannah Highway and Carolina Bay. But then I called

10 Jahad, and he told me not to come yet because the party

11 wasn't ready.

12 Q Okay. What does that mean, the party's not

13 ready?

14 A There aren't enough people there. He's not --

15 Q Were parents still there?

16 A Possibly.

17 Q So this was going to be one of those parties

18 with high schoolers, graduates, no parents?

19 A Yes, ma'am.

20 Q And do you remember about what time it was when

21 you and Marley set out to go to the party and you got

22 sort of waived off?

23 A It was probably around 7:45, eight o'clock.

24 Q And after you got waived off, where did you and

25 Marley go?

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1 A Well, we -- we headed back towards the
2 apartment, but on the way there, he stopped in the
3 parking lot of a Jehovah's Witness church or something,
4 and he -- you know how Marley is, he's really playful
5 and stuff. So he made fun of the place, and he went --
6 he knocked on the door and said, Jehovah's Witness, and
7 then we went back to my apartment.

8 Q Okay. Did you go into the apartment?

9 A Yes, ma'am.

10 Q How long did y'all stay there?

11 A I can't really -- just not that long. Maybe
12 about 30 minutes.

13 Q All right. So now it's around nine o'clock?

14 A Uh-huh.

15 Q Or so?

16 A (Moves head up and down.)

17 Q Did you head back to the party?

18 A Yes, ma'am.

19 Q And you said that was in Carolina Bay?

20 A Yes, ma'am.

21 Q And when you got to the party at Carolina Bay,
22 how many people were there, would you guess?

23 A It was a pretty large house, and there were
24 people in all different rooms. But there was probably,
25 maybe, 30 people, tops --

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1 Q Okay.

2 A -- there.

3 Q Did you know most of the people there?

4 A No.

5 Q Did Marley know most of the people there?

6 A He knew a few people there.

7 Q How long did y'all stay at the party?

8 A We stayed until about three in the morning.

9 Q So 9:30 -- nine to three or so?

10 A Yes.

11 Q Must have been somewhat fun?

12 A (Moves head up and down.)

13 Q Drinking going on?

14 A Yes, ma'am.

15 Q Other stuff going on?

16 A Yes, ma'am.

17 Q So you and Marley left the house at Carolina

18 Bay around three?

19 A Yeah. Yes, ma'am.

20 Q And where did y'all head when you left the

21 party?

22 A He went to take me home to the apartment.

23 Q At Ashley Grove?

24 A Yes, ma'am.

25 Q And when he took you home that time, did he

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1 come up?

2 A No, ma'am.

3 Q And did you have an understanding of where he

4 was going from there?

5 A He said he was heading home.

6 Q And did you know where he lived at that point?

7 A On Johns Island.

8 MS. WILSON: Beg the Court's indulgence.

9 THE COURT: Take your time.

10 (Ms. Wilson speaks with Mr. DuRant off the

11 record.)

12 Q (By Ms. Wilson) Katie, after Marley left and

13 said he was headed home, did you hear from him again?

14 A No, ma'am.

15 Q And when was it that you learned that something

16 bad had happened?

17 A I learned it the next day, in the afternoon.

18 Q And as a result of what you heard, where did

19 you go, and who did you talk to?

20 A I immediately called Detective Burckhardt to

21 see what I could do. And after that, I just sat at the

22 house, in the apartment, just really upset.

23 MS. WILSON: That's all I have, your Honor.

24 THE COURT: Mr. Pennington.

25 MR. PENNINGTON: Your Honor, I have no

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1 questions for this witness.

2 THE COURT: Ms. Ridgway, you may step down.

3 Thank you. Call your next witness.

4 MR. DURANT: State would call Lauren Mulkey.

5 MS. WILSON: Your Honor, may Ms. Ridgway be

6 excused?

7 THE COURT: Any objection?

8 MR. PENNINGTON: No. No objection.

9 THE COURT: You may be excused. Feel free to

10 remain with us.

11 (The oath is administered by the Deputy Clerk

12 of Court, and the witness answers as follows:)

13 THE WITNESS: I do.

14 THE DEPUTY CLERK OF COURT: Please take a seat.

15 Ma'am, if you would, please, state your first and last

16 name, spelling your last for the record.

17 THE WITNESS: Lauren Mulkey, M-u-l-k-e-y.

18 LAUREN MULKEY,

19 having been first duly sworn by the Deputy Clerk of

20 Court to tell the truth, the whole truth, and nothing

21 but the truth, was examined and testified upon her oath

22 as follows:

23 DIRECT EXAMINATION

24 BY MR. DURANT:

25 Q Good morning, Ms. Mulkey.

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1 A Good morning.

2 Q Could you please tell our jury where you're

3 employed?

4 A The Charleston Police Department.

5 Q And how long have you been with the police

6 department?

7 A Approximately seven years.

8 Q What do you do for the police department now?

9 A Currently I'm assigned to the central

10 investigation division as a robbery detective.

11 Q And what were you doing on June the 16th of

12 2012?

13 A I had the same assignment as a detective in the

14 robbery unit.

15 Q In that capacity, did you have the occasion to

16 become involved in the investigation involving the

17 murder of Marley Lion?

18 A Yes, sir.

19 Q And what were you tasked to do on June the 16th

20 of 2012?

21 A To canvass area businesses in the surrounding

22 area of the incident location for surveillance video.

23 Q Okay. And could you tell us if amongst those

24 businesses your canvass was d.d. Peckers'?

25 A Yes, sir, it was.

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1 Q And what type of business is d.d. Peckers'?

2 A It's a restaurant and a bar.

3 Q And where is it located?

4 A At 1660 Savannah Highway.

5 Q And where is that in relation to the parking

6 lot where the murder took place in this case?

7 A If you're looking at d.d. Peckers', sir, the

8 parking lot where the incident took place was

9 immediately behind it.

10 Q Okay.

11 (Document is shown to defense counsel.)

12 MR. DURANT: Your Honor, we would offer State's

13 5, I believe, without objection.

14 THE COURT: Any objection?

15 MR. PENNINGTON: No objection.

16 THE COURT: State's 5 into evidence without

17 objection.

18 (State's Exhibit No. 5 is admitted into

19 evidence.)

20 Q (By Mr. DuRant) Ms. Mulkey, referring now to

21 State's Exhibit No. 5 -- and if you need to get up,

22 that's fine too -- could you tell our jury where d.d.

23 Peckers' is?

24 A Be located right here.

25 Q Okay. And what is this business right here?

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1 A This is Famous Joe's.

2 Q And what is this business right here in front
3 of Famous Joe's?

4 A This is the Mantek building, and it has a
5 couple of different businesses. I think they've changed
6 since then.

7 Q Okay. And this would be the Chick-fil-A here;
8 is that correct?

9 A Yes, sir.

10 Q Now, regarding the -- and did you have the
11 opportunity to see the surveillance video and shooting
12 in this case?

13 A Yes, sir, I did.

14 Q Okay. Do you know where the victim had
15 actually parked his car in the parking lot?

16 A It was right here.

17 Q Okay. And that would be right in front -- kind
18 of between Joe's and the Mantek Properties' building; is
19 that correct?

20 A Yes, sir.

21 Q When you went to -- to d.d. Peckers' to see if
22 they had surveillance video, did they have surveillance
23 video?

24 A Yes, sir.

25 Q And do you recall where the camera was located?

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1 A Yes, sir. It was in this left rear corner on
2 the outside patio.

3 Q This is a -- this little square area there is a
4 patio; is that correct?

5 A Yes, sir.

6 Q In which direction was the camera pointed?

7 A The camera points out in the parking lot
8 towards the tier.

9 Q Okay. So you kind of catch the d.d. Peckers'
10 building and -- excuse me, the Mantek building and that
11 area; is that correct?

12 A Yes, sir.

13 Q All right. Thank you very much.

14 Now, when you went to Mantek, who did you meet
15 with?

16 A I went to d.d. Peckers'.

17 Q Excuse me, d.d. Peckers'?

18 A Yes, sir. I met with the manager on duty that
19 day. I believe his name is Mr. Brandau.

20 Q Did he allow you to have access to his video
21 surveillance system?

22 A Yes, sir, he did.

23 Q And were you able to examine the footage of
24 what had occurred on their video surveillance system in
25 the early morning hours of June 16th of 2012?

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1 A Yes, sir, I was.

2 Q And while reviewing that video, what did you
3 observe roughly at 3:46 a.m., on the -- on the d.d.
4 Peckers' video time?

5 A At approximately 3:46 a.m., a light-in-color
6 sport utility vehicle pulled into the Famous Joe's
7 parking lot.

8 Q Okay. And what happened a couple of minutes
9 later, at 3:48?

10 A 3:48, two vehicles that were believed to be the
11 employees from Famous Joe's were seen exiting the
12 parking lot.

13 Q And at 3:55?

14 A 3:55, a black male in a white T-shirt comes
15 along the side of the Mantek building towards the d.d
16 Peckers' parking lot, swings out, and heads back towards
17 the direction of where the victim's vehicle, the
18 light-colored SUV, was.

19 Q Okay. And then what occurred at 4:08 p.m. --
20 at 4:08 a.m., excuse me?

21 A The light on the light-colored SUV, determined
22 to be the victim's vehicle, started to blink as if the
23 alarm was activated.

24 Q And once you observed that video, did you have
25 the occasion to download it?

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1 A Yes, sir, we did.
2 Q Onto what kind of media?
3 A On a CD.
4 Q I hand you what has been marked previously as
5 State's Exhibit Number 3.
6 (Document is handed to the witness.)
7 Q (By Mr. DuRant) And ask if you recognize that?
8 A Yes, sir, I do.
9 Q And what is that, ma'am?
10 A That is the CD containing the footage that I
11 obtained from d.d. Peckers' that morning.
12 Q And how do you know that?
13 A It's marked with my signature.
14 Q Okay. You actually observed it in my office;
15 is that correct?
16 A Yes, sir, I did.
17 Q And is it a true and exact copy of the video
18 that you downloaded from the d.d. Peckers' video
19 surveillance system on June the 16th?
20 A Yes, sir, it is.
21 MR. DURANT: Your Honor, we would offer State's
22 Exhibit No. 3 into evidence, if there's no objection.
23 MR. PENNINGTON: No objection, your Honor.
24 THE COURT: State's 3 into evidence without
25 objection. You may publish.

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1 MR. DURANT: We're going to publish it later,
2 your Honor, if that's okay.

3 THE COURT: Okay.
4 (State's Exhibit No. 3 is admitted into
5 evidence.)

6 MR. DURANT: Ms. Mulkey, can you please answer
7 any questions defense counsel may have?

8 MR. PENNINGTON: I have no questions, your
9 Honor.

10 THE COURT: All right. You may step down. Is
11 this witness excused, Ms. Wilson?

12 MS. WILSON: Yes, ma'am.

13 MR. PENNINGTON: No objection, your Honor.

14 THE COURT: You may step down. Feel free to
15 remain with us, but you're free to leave.

16 Next witness.

17 MR. DURANT: State would call Robert Deal.

18 (The oath is administered by the Deputy Clerk
19 of Court, and the witness answers as follows:)

20 THE WITNESS: Yes.

21 THE DEPUTY CLERK OF COURT: Thank you, sir.
22 You may take your seat. Sir, if you would, please,
23 state your first and last name, spelling your last for
24 the record.

25 THE WITNESS: First name is Robert. Last name

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1 is Deal, D-e-a-l.

2 ROBERT DEAL,

3 having been first duly sworn by the Deputy Clerk of
4 Court to tell the truth, the whole truth, and nothing
5 but the truth, was examined and testified upon his oath
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. DURANT:

9 Q Good morning.

10 A Good morning.

11 Q Where are you currently employed, Mr. Deal?

12 A I'm currently employed with the City of
13 Charleston Police Department.

14 Q Okay. But you're not really -- are you back
15 with them yet, or you still --

16 A No. I'm still -- I've been recalled by the
17 U.S. Air Force Reserve. So I'm temporarily assigned to
18 Charleston Air Force Base.

19 Q You're on active duty with Air Force now; is
20 that correct?

21 A That is correct.

22 Q Where are you stationed?

23 A Charleston Air Force Base.

24 Q Okay. And -- but when you weren't called up,
25 you were working where?

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1 A With the City of Charleston Police Department.

2 Q And what were you doing with the City of
3 Charleston Police Department?

4 A I was on team four, patrol.

5 Q And where is team four?

6 A Team four is considered a West Ashley area. So
7 if you think about, like, Bees Ferry Road Area,
8 Sam Rittenberg, all the way up to Ashley River, all the
9 way over to North Charleston (section of town.

10 Q Okay. And kind of out there all the way down
11 to the Ashley River going toward town; is that correct?

12 A Yes, sir, that's correct.

13 Q Does that include the area of Ardmore
14 Subdivision?

15 A Yes, it does.

16 Q Now, directing your attention to June 16th of
17 2012, did you have the occasion to be dispatched to the
18 Ardmore Subdivision around 4:06 in the morning?

19 A Yes, I was.

20 Q In reference to what?

21 A We had received a call in reference to possible
22 shots fired in that area. So I was dispatched to it.

23 Q Okay. And where were you when you received the
24 call?

25 A I was active patrolling in the area of the

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1 Citadel Mall area. That was my assigned beat area, and
2 so I diverted from that area to head toward Ardmore.

3 Q And what did you do upon receiving the call?

4 A I acknowledged receipt of the call and started
5 driving to the Ardmore Subdivision by means of
6 Highway 17, Savannah River -- Savannah Highway, going
7 northbound, and I came up White -- White Oak Street to
8 -- into the Ardmore Subdivision.

9 Q Okay. And so you took a left onto White Oak
10 going into Ardmore Subdivision; is that correct?

11 A Yes, it is.

12 Q Now, what route did you take when you actually
13 pulled into Ardmore?

14 A I took the route of turning -- once I was on
15 White Oak, I took a left onto Balsam. There was another
16 unit that turned right. So that way we could canvass
17 the area pretty well. So I turned left onto Balsam. As
18 I was going down Balsam, I then took another left up Yew
19 Street.

20 Q And Yew is spelled Y-e-w?

21 A That is correct, sir.

22 Q Some people may call it Yew Street?

23 A Yes, sir.

24 Q Okay. And what did you observe after you took
25 that left on Yew Street?

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1 A After I took the left up Yew Street, I was just
2 scanning. I was just checking. I had my windows down,
3 and then I noticed to the right, in the parking lot of
4 Famous Joe's, I saw a little white vehicle. And it
5 appeared to have a gentleman laying down on the ground
6 beside the vehicle. There was a gravel lot. So I had
7 already passed that gravel lot leading into the Famous
8 Joe's parking lot. So once I saw that, I decided to go
9 down -- back up Evergreen toward White Oak to get back
10 to 17 to come around.

11 Q Okay. And the parking lot of Famous Joe's and
12 Ardmore, what county are all of those areas located?

13 A They are located within Charleston County.

14 Q Okay.

15 (Document is shown to the witness.)

16 MR. PENNINGTON: No objection.

17 MR. DURANT: Your Honor, we would offer State's
18 4 without objection, I believe.

19 THE COURT: State's 4 into evidence without
20 objection.

21 (State's Exhibit No. 4 is admitted into
22 evidence.)

23 MR. DURANT: May the witness step down for a
24 moment, your Honor?

25 THE COURT: He may. Please maintain a loud

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1 voice for the court reporter. Thank you.

2 (The witness steps down from the witness
3 stand.)

4 Q (By Mr. DuRant) Okay. If you would, just kind
5 of orient the jury. Could you tell them where Savannah
6 Highway is?

7 A Savannah Highway is right here.

8 Q Okay. And which way is going out -- going
9 south towards Savannah?

10 A Let's see here. This will be going south.
11 This will be going north.

12 Q Okay. So town would be back to the right?

13 A Yes, sir.

14 Q And Savannah would be out toward the left; is
15 that correct?

16 A That is correct.

17 Q And if you would, would you tell the jury what
18 route you took when you -- when you drove into Ardmore
19 and got the shots fired call?

20 A Initially I was coming, like I said, northbound
21 on 17 -- on Savannah Highway. I turned left onto White
22 Oak and drove past Evergreen up to Balsam. Like I
23 initially said, there was another vehicle behind me.
24 That officer went to the right. I turned left down
25 Balsam and came up Yew Street. And that's when I saw

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1 the white vehicle over here. This is Famous Joe's
2 parking lot and the gravel lot.

3 Q Okay. And when you saw that person, what did
4 you do?

5 A Initially, when I saw the vehicle there, I was
6 already past the little cut-through here, the gravel
7 lot. So -- because while patrolling the area, I didn't
8 hear anything going on, I saw that gentleman over there,
9 I felt that it needed to be investigated. So since I
10 had already passed, I came up to Evergreen and turned
11 left onto Evergreen and came back down White Oak to get
12 over to that parking lot.

13 Q Were you intending to come through the
14 Chick-fil-A parking lot to begin with?

15 A Originally I was going to look at that, but the
16 Chick-fil-A parking lot has a iron gate -- or gate they
17 kind of close off at nighttime to stop people from
18 coming through, and it was closed.

19 Q Okay. So you went Evergreen, White Oak, back
20 to Savannah?

21 A That is correct.

22 Q And came around which way?

23 A Okay. As I came back up Evergreen to White Oak
24 and turned south on Savannah Highway, this is d.d.
25 Peckers'. And then I turned into d.d. Peckers', and

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1 there's a Five Guys hamburger shop. There's a driveway
2 there that leads to the Famous Joe's parking lot.

3 Q Okay. And referring briefly to State's Exhibit
4 Number 5 -- it's just a little bit more zoomed-in
5 version.

6 A Okay.

7 Q This is what you call Yew Street; is that
8 correct?

9 A That is correct. This is Balsam. This is Yew
10 Street that I turned down.

11 Q Okay.

12 A This is the Famous Joe's parking lot and the
13 gravel driveway.

14 Q And what is this building?

15 A That is the location of Famous Joe's. It's a
16 strip mall that's down from -- it's right there on the
17 end.

18 Q Okay. How about this building; do you know
19 what's in that?

20 A At the time of that day, it was another bar
21 establishment. I don't remember the name of it, but it
22 was also another bar.

23 Q This is d.d. Peckers' up here?

24 A That would be correct.

25 Q Okay. And where was the car you observed, how

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1 far?

2 A The car that I observed was, I believe, in this
3 first spot right there by the concrete sidewalk.

4 Q Okay. Thank you, sir. You can resume your
5 seat.

6 What did you first think when you saw the
7 person out there lying by the car?

8 A When I was coming up Yew Street, like I said, I
9 was just kind of actively patrolling, listening out, had
10 all my windows down, had my side lights on and scanning.
11 And when I first initially saw the vehicle and the
12 gentleman laying on the ground, especially in that area
13 of establishments, with two local bars, I first
14 initially assumed there had been an intoxicated party
15 that had fallen trying to get to their vehicle. So
16 that's the reason why I wanted to go over there and kind
17 of investigate and make sure, A, they were okay, and if
18 they needed any assistance.

19 Q Okay. And so when you -- you said you went
20 around and you actually got at the location where the
21 victim was. Did you radio that information in?

22 A Yeah. I had contacted our dispatch to let them
23 know that I was changing my location to over to the
24 Famous Joe's parking lot because I was actually
25 investigating something. So I wanted them to know where

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1 I was at. I also went ahead and notified them --
2 because once I was able to pull up, I saw the gentleman
3 on the ground, some broken glass -- to go ahead and have
4 EMS respond in case we needed them.

5 Q Okay. And what time was it -- do you have an
6 opportunity to review the radio logs; is that correct?
7 What time was it when you arrived in the Famous Joe's
8 parking lot where the victim was?

9 A I want to say, without -- after looking at --
10 having the document in front of me, I want to say it was
11 probably either 4:12 or 4:15-ish.

12 Q By looking at the radio log, refresh your
13 recollection?

14 A Yes, it would.

15 Okay. Like, location changed to Famous Joe's
16 parking lot was at 4:18 that day.

17 Q So 4:18 would be the time that you actually
18 arrived at --

19 A That would be the time the dispatch documented
20 that we were on scene at that location.

21 Q What did you do upon parking your cruiser in
22 the parking lot?

23 A Upon arriving at the parking lot, I -- I got
24 out of my vehicle, I approached, I'm radioing in to my
25 dispatch to let them know where I was at, kind of what I

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1 was observing. I approached the gentleman that was
2 laying on the ground. I was asking him if he was okay.
3 At that time, he advised me that he had been shot five
4 times. So I radioed that back in to kind of let
5 dispatch know the situation change.

6 Q Okay. So you realized pretty quickly this
7 wasn't just a drunk?

8 A That's correct.

9 Q And what did you do after you radioed for EMS?

10 A After I updated my dispatch to -- to kind of
11 step it up, I also requested a supervisor to arrive on
12 scene. During that time, while I was waiting on EMS, I
13 -- I was talking with the victim there and trying to get
14 some information to figure out what had happened, what
15 had transpired.

16 Q What was the victim wearing at the time, if you
17 recall?

18 A To recall, I think he had some khaki pants on
19 and a shirt. I don't remember exactly the color without
20 referring back to my report.

21 Q Okay. Do you know whether or not he had on a
22 black T-shirt?

23 A That -- that sounds familiar. Like I said, if
24 I could -- you know, I've documented in my report
25 exactly what he was wearing, but a black T-shirt does

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1 sound consistent.

2 Q Okay. Would looking at your report refresh
3 your recollection?

4 A Yes, it would.

5 (Document is handed to the witness.)

6 A In my report, I documented that he was wearing
7 a black in color shirt and khaki pants.

8 Q (By Mr. DuRant) Okay. Now, what was his
9 condition at the time?

10 A When I first approached, I noticed that he had
11 some minor lacerations to the face. There was some
12 broken glass around. And when I approached him, in
13 further discussion with him, and he advised that he had
14 been shot. He was somewhat coherent, but it was kind of
15 an in and out. You know, so as I was trying to get
16 questions and trying to get some details, he would talk
17 to me a little bit, and he would kind of fade out, and
18 then he'd come back.

19 Q What did he keep asking you about?

20 A He kept asking me where EMS was, why it was
21 taking so long, and I kept advising him they were
22 coming, to try to keep his mind off, I guess, the pain
23 or whatever he was experiencing. I wanted to get as
24 much information to help locate the people responsible.

25 Q And when he wasn't -- during his lucid stages,

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1 was he able to relate any information to you?

2 A He was able to relate quite a bit. When I
3 spoke with him, he -- like I said, he advised that he
4 had been shot five times. I also asked him which
5 direction the subjects took off, and he was able to
6 actually point toward the gravel lot area. He also
7 advised me that it was two people that were part of the
8 incident, two black males wearing all black. And like I
9 said, each time I was talking to him, he would ask about
10 EMS, where they were at, and I would try to switch the
11 subject and kind of refocus his mind away from that.

12 Q Did he indicate why he was sleeping in his car?

13 A He had informed me that he had pulled in there
14 to kind of get some sleep, that he had been out that
15 evening, and he felt that he was too intoxicated to
16 drive. So he stopped in there, because he was familiar
17 with the location, and that he was just going to sleep a
18 little bit to be safe.

19 Q Which direction did he indicate that the
20 -- that the -- his assailants had fled in?

21 A He indicated -- and while I was talking to him,
22 he was actually able to point in the direction of the
23 gravel lot that is from off the Famous Joe's parking lot
24 going toward Yew Street.

25 Q And that would be this kind of cut-through

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1 located in this area?

2 A That would be correct.

3 Q Okay. How long did it take EMS to arrive?

4 A I remember it took quite a bit. I probably
5 estimate probably about 15, 17 minutes or so. If I can
6 look at the call log, I can tell you exactly when they
7 -- or it showed on the scene, but it was probably at
8 least 15 minutes.

9 Q And while he was being worked on by EMS, were
10 you able to observe any wounds, gunshot wounds?

11 A Yes. While EMS was trying to get him patched
12 up for transport, they were cutting away his clothing,
13 and at that time, I think it was necessary to probably
14 -- to preserve the scene, to take some photographs. So
15 as they were removing his garments to try to assess his
16 injuries, I was able to see several wounds to his body.

17 Q And where, just from your initial inspection,
18 did you see gunshot wounds?

19 A I initially -- when they removed his shirt, I
20 initially saw one in the upper chest area. As they were
21 removing his clothing, his pants and stuff, I was able
22 to see several through the thigh and the lower region.

23 Q Thigh and groin area?

24 A Yes, sir.

25 Q You mentioned something about taking

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1 photographs. Did you take some photographs?

2 A Yeah, I took several photographs. And the
3 reason why is, over my time as a police officer, you
4 don't -- by the time the CSI folks and investigator show
5 up, a lot of things can potentially happen. Your victim
6 is going to be removed from the scene. So to best
7 preserve the scene, I do know it's necessary to go ahead
8 and photograph what I was seeing to better help the
9 investigators once they got there.

10 (Document is shown to defense counsel.)

11 (Document is handed to the witness.)

12 Q (By Mr. DuRant) Hand you what's previously
13 been marked as State's Exhibits 35 and 36 and ask you to
14 look at them and see if you recognize those photographs.

15 A Yes. These are two photographs that I took
16 while I was on scene, while EMS was taking care of the
17 victim.

18 Q And do they fairly and accurately depict the
19 condition of the victim at the time that you were
20 there --

21 A Yes, sir, they do.

22 Q -- and he was being treated by EMS?

23 A Yes, sir.

24 MR. DURANT: Your Honor, we would offer them, I
25 believe, with objection.

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1 MR. PENNINGTON: I have a matter of law to take
2 up with the Court.
3 THE COURT: All right. Please approach.
4 (A discussion is held off the record.)
5 (The attorneys are Ms. Wilson, Mr. Pennington,
6 Mr. DuRant at the bench with the Judge.)
7 THE COURT: 35 and 36 into evidence over the
8 Defendant's objection. And, Mr. Pennington, I indicated
9 that I would allow you to further articulate your
10 argument on the record outside the presence of the jury.
11 So your objection is preserved for the record.
12 MR. PENNINGTON: Thank you, your Honor.
13 THE COURT: Thank you.
14 (State's Exhibits No. 35 and 36 are admitted
15 into evidence.)
16 MR. DURANT: Could we have State's Exhibit
17 Number 35, please?
18 Can you see that, sir, or is this blocking
19 your --
20 THE WITNESS: I can see.
21 Q (By Mr. DuRant) This is referring to State's
22 Exhibit Number 35. Who is that depicted there?
23 A That is the victim that I -- known as
24 Marley Lion, of the time, at the scene, I arrived.
25 Q And you noted to the family that he had an

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1 injury on his arm. Does that depict where you saw the
2 injury on his arm?

3 A I believe so. If I may stand?

4 Q You'll have to stand up. The laser pointer
5 won't work.

6 A You've got some injury here. I believe that
7 will be his left.

8 Q Be his right, I think.

9 A Right. Yeah. Right here. And then some
10 blood.

11 Q Okay. And -- and if you need something --
12 here's an actual pointer.

13 (Pointer is handed to the witness.)

14 Q (By Mr. DuRant) Do you know what that thing is
15 on his back there?

16 A The back here in the lower region, I -- through
17 training and experience, would probably be the
18 projectile that probably entered into his abdominal
19 area.

20 Q Okay. And State's Exhibit Number 36. Is that
21 the victim that you encountered in the parking lot that
22 night?

23 A Yes.

24 Q And is that in the condition that you found
25 him?

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1 A Yes, it is.

2 Q Okay. And this is obviously while -- while

3 he's being treated by EMS?

4 A That's correct.

5 Q Is that correct?

6 A That's EMS personnel assisting him.

7 Q Okay. Now, in -- in this -- this photo and the

8 photo proceeding it, he doesn't have a shirt on. Did he

9 have a shirt on when you got there?

10 A Yes, he did. If you can notice here, they've

11 kind of tore it and cut it away to better assess his --

12 Q And that was the same thing in State's 35, the

13 previous, with regard to his pants?

14 A That is correct.

15 Q Okay. And you said that when they cut away his

16 pants, you observed some other gunshot wounds and -- or

17 when they removed his shirt and his pants, you observed

18 gunshot wounds in what area?

19 A To his thigh region. Because there wasn't a

20 whole lot of blood on the scene. So when they started

21 cutting away the clothing, I was able to see better his

22 injuries.

23 Q Okay. You can --

24 (Witness takes his seat.)

25 Q (BY Mr. DuRant) What did you think, given the

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1 fact that there was not a lot of blood and all?

2 A Through my experience and training, I deemed
3 that being that he had articulated he had been shot five
4 times, seeing where the wounds were, that he was more
5 than likely bleeding out internally.

6 Q Now, were you able to locate any shell casings
7 at the scene?

8 A Yes. Once EMS had left with Marley Lion, I did
9 an initial survey of the scene to help protect and
10 preserve any evidence that was out in the parking lot.
11 As you can imagine, with a lot of people walking around,
12 there is the potential for things to get kicked and
13 knocked away. So I was able to locate six spent
14 cartridge casings on the ground. Utilizing different
15 pieces of equipment that were on my belt, I laid them
16 near the object to let people know that there was
17 something there to be cautious of.

18 Q Okay. You didn't actually collect those shell
19 casings, though; correct?

20 A No, I did not collect them.

21 Q Was crime scene contacted?

22 A Yes, crime scene was contacted. Once my
23 supervisor arrived on scene, he made sure that Central,
24 which is our detective division, was notified, along
25 with our forensic team. And forensic technician,

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1 Charles Rene, was actually the one that responded to the
2 scene.

3 Q Okay. Now, how were you able to identify the
4 victim?

5 A I was able to identify the victim later that
6 morning. Once the crime scene was done with the initial
7 scene there at the parking lot at the Famous Joe's, we
8 secured the vehicle, and we transported it to their lab.
9 I followed the vehicle to maintain custody of it. Once
10 we arrived to the lab and put it inside the bay for
11 processing, Technician Rene Charles was photographing it
12 and found the victim's wallet, which had a South
13 Carolina driver's license in it, that stated this was
14 Marley Lion.

15 Q And do you recall how old Mr. Lion was?

16 A His date birth documented on the license was
17 [REDACTED], 1994, I believe, and that would have made him
18 17 at that time.

19 MR. DURANT: Okay. Court's indulgence for just
20 a moment.

21 THE COURT: Take your time.

22 (Mr. DuRant and Ms. Wilson speak to
23 Mr. Pennington speak off the record.)

24 MR. DURANT: Your Honor, at this time, offer
25 State's Exhibit Number 100. It is a stipulation between

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1 the parties Mantek Property videos. There are two
2 different videos. If you'd like, I can publish it to
3 the jury, or you could do whatever --

4 THE COURT: All right. This is the
5 stipulation. And you're in agreement with the
6 stipulation, Mr. Pennington?

7 MR. PENNINGTON: I am, your Honor.

8 THE COURT: All right. It does not need to be
9 marked -- I believe that has already been marked as
10 Court's 2.

11 MR. DURANT: This has actually been marked as
12 State's Exhibit 100. So if we could --

13 THE COURT: That will not go back to the jury.
14 I believe it's Court's 2. You may read the stipulation
15 into the record. Is that what you wish to do at this
16 time?

17 MR. DURANT: That's correct, your Honor.

18 THE COURT: Ladies and gentlemen, a stipulation
19 is simply an agreement between the parties. In this
20 particular case, Mr. DuRant, on behalf of the State, is
21 going to read the stipulation, which is an agreement.
22 And typically what that does is, it does -- it requires
23 that witnesses are not required to come in. And so the
24 parties have agreed to the information contained in the
25 stipulation. So you are to listen to the stipulation

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1 and give it the weight that you think it is appropriate.

2 Mr. DuRant.

3 MR. DURANT: Thank you, your Honor.

4 Attorneys for the State and defense counsel do
5 hereby agree and stipulate to the testimony described
6 below. It's if Dave -- David Mantek and Ed Oliger were
7 called to testify, their testimony would include the
8 following: David Mantek is the owner of Mantek
9 Properties, which owns and manages several properties in
10 the West Ashley area of Charleston County, South
11 Carolina. Ed Oliger is a maintenance supervisor for
12 Mantek Properties. The original recordings and
13 surveillance video, recorded and retained in the normal
14 course of Mantek Properties' business, during the night
15 of June 15, 2012, and in the early morning hours of June
16 16th, 2012, from the exterior camera of the Mantek
17 Properties office building located at 1662 Savannah
18 Highway, and showing the parking lot area in front of
19 Famous Joe's bar, was delivered to officers with the
20 Charleston County Police -- or Charleston City Police
21 Department.

22 State's Exhibit 1 is a true copy of video
23 recorded between approximately 3:30 a.m. to 4:30 a.m. on
24 June 16th, 2012, and retained in the normal course of
25 Mantek Properties' business.

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1 State's Exhibit 2 is a true copy of video
2 recorded between approximately eight o'clock p.m. on
3 June 15th, 2012 to 3:45 a.m. on June 16, 2012, and
4 retained in the normal course of Mantek Properties'
5 business. That the contents of State's Exhibits 1 and 2
6 and the scenes depicted thereon have not been altered in
7 any way.

8 THE COURT: Is that the stipulation as you
9 understood it to be, Mr. Pennington?

10 MR. PENNINGTON: Yes, your Honor.

11 (Respite.)

12 MR. DURANT: Your Honor, we would also offer,
13 at this time, State's Exhibit 103, I believe, without
14 objection, which is a timeline prepared from the Mantek
15 Property videos as to the times at various -- various
16 things occurred which are pertinent to the facts in this
17 case.

18 THE COURT: Any objection to State's 103?

19 MR. PENNINGTON: No, your Honor.

20 THE COURT: State's 103 into evidence without
21 objection.

22 (State's Exhibit No. 103 is admitted into
23 evidence.)

24 MR. DURANT: Your Honor, based on the
25 stipulation previously published to the Court and the

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1 jury, at this time, we would offer State's Exhibits 1
2 and 2 into evidence, which are two DVDs referred to in
3 the stipulation previously referred to, and published to
4 the jury.

5 THE COURT: All right. And since State's 1 and
6 2 are the basis of the stipulation that is Court's 2, is
7 there any objection from the Defendant?

8 MR. PENNINGTON: No, your Honor.

9 THE COURT: State's 1 and 2 into evidence
10 without objection.

11 (State's Exhibit Nos. 1 and 2 are admitted into
12 evidence.)

13 Q (By Mr. DuRant) Just a couple of more
14 questions, Officer Deal. According to -- I believe I
15 showed you the radio logs. I believe you said,
16 according to the radio logs, you arrived at the victim's
17 location at what time?

18 A I believe it was 4:18.

19 Q Almost 4:19, as I recall?

20 A That's correct.

21 Q And you have had an opportunity to view State's
22 Exhibit 1, which is the surveillance video of Mantek
23 Properties, from the Mantek Properties' camera; is that
24 correct?

25 A That is correct.

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1 Q And just so -- do you recall -- do you know
2 where that surveillance camera was located?

3 A I knew there was numerous cameras on the
4 different buildings. I don't remember exactly where
5 that camera was pointed, but I believe it was pointed in
6 the direction that would be overlooking the victim's
7 vehicle going toward the gravel lot, toward Yew Street.

8 Q Okay. And you've had an opportunity to review
9 the video; is that correct?

10 A That is correct.

11 Q And what time did you -- using the Mantek
12 Property video time stamp, what time did you arrive on
13 the Mantek Property video?

14 A I believe there's like a 11-minute difference.
15 So my dispatch log is right around 4:18, 4:19. So it
16 would have been 11 minutes, I believe, greater on that
17 time stamp. So --

18 Q So around 4:07?

19 A Yes.

20 Q Okay. So there's basically a difference of
21 about 12 minutes?

22 A (Moves head up and down.)

23 Q And when I say a difference, CPD is running 12
24 minutes ahead of what the Mantek video is; is that
25 correct?

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1 A That's correct. That's correct.

2 MR. DURANT: Okay. Could you please answers
3 any questions that defense counsel may have for you?

4 MR. PENNINGTON: Please the Court.

5 CROSS-EXAMINATION

6 BY MR. PENNINGTON:

7 Q Officer Deal, part of your training, is it not,
8 that you are trained to make reports from what happens
9 to you out in the field; is that correct?

10 A I am trained to document reports of incidences,
11 that's correct.

12 Q Have you been to the South Carolina Law
13 Enforcement Academy?

14 A Yes, I have, sir.

15 Q And is that where part -- that is part of the
16 training?

17 A That's where you get some of your initial
18 training, but once you return from the academy and in
19 your -- what they call field training, where you're --
20 you're fine-tuning the tools that the academy gave you,
21 that's where you get more, I guess, practice in writing
22 reports and fine-tuning those details.

23 Q All right. And so in addition to the South
24 Carolina Law Enforcement Academy, you get training on
25 the job?

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1 A That is correct.

2 Q And it's expected, at the Charleston City
3 Police, that you make written reports?

4 A That's correct.

5 Q The purpose of a written report is because we
6 all know that memory can fade or be distorted. So that
7 a written report is intended to make a fresh recording
8 of what happened so it will be as accurate as possible?

9 A That's correct.

10 Q And in this instance, in this case, you created
11 a report in this case?

12 A That is correct.

13 Q And it's -- it is a narrative of what occurred
14 as best you could record it at the time?

15 A Yeah. It's a documentation narrative, sort of
16 like a synopsis of what I saw, what information was
17 relayed to me. That way that we have it, as you said,
18 documented for future reference.

19 Q That way, in terms of trying to remember
20 clearly, you can always go back to the document to pull
21 out the fine points?

22 A That's correct.

23 Q Is it fair to say that probably the document is
24 going to be the most accurate way to recall what
25 happened?

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1 A Yes, sir.

2 Q Okay. Is it fair to say that on this early
3 Saturday morning at about four o'clock, that you were
4 dispatched by your dispatcher about 4:05 a.m. because of
5 the shots fired?

6 A That's correct.

7 Q And so at 4:05 you left the Citadel Mall area,
8 and you drove up, as was described, into the Ardmore
9 Subdivision?

10 A That is correct.

11 Q Okay. And you've already covered with the
12 Solicitor how you drove through the subdivision, and
13 then you came back around 17 and entered the d.d.
14 Peckers', Five Guys hamburger restaurant parking lot;
15 right?

16 A That's correct. They have a driveway between
17 the two.

18 Q And that's how you would proceed, past Five
19 Guys and then on toward the back right corner, which is
20 where the Famous Joe's bar is?

21 A That is correct.

22 Q Okay. And at that time, you described that, as
23 best you can guesstimate, from looking at the call log,
24 that you think that you got with the victim,
25 Marley Lion, about 4:18 a.m.?

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1 A Yes. It was 4:18. If you look at the seconds,
2 it was leaning more toward 4:19, but between 4:18, 4:19.

3 Q All right. And obviously, your purpose there
4 is public safety, is it not?

5 A That's correct.

6 Q But also, in addition, your purpose is to
7 record what would be any important --

8 MR. PENNINGTON: May I put this on the juror --

9 THE COURT: You may.

10 MR. PENNINGTON: Thank you, your Honor.

11 Q (By Mr. Pennington) Your purpose is also to,
12 obviously, record and observe critical facts that might
13 be useful later?

14 A That is correct.

15 Q So you were paying full attention, when you
16 were conversing or talking with Mr. Lion, about what
17 happened to him, weren't you?

18 A That's correct.

19 Q And what he told you was, is that he had been
20 sleeping in the back of his vehicle?

21 A He articulated to me that he had pulled into
22 the parking lot because he had been out that evening,
23 and he was -- he felt that he was too intoxicated to
24 drive. So he pulled in there to get some sleep to be
25 safe.

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1 Q So he had been sleeping in the back of the
2 vehicle?

3 A That's correct.

4 Q Because he felt he was too intoxicated to
5 drive?

6 A Yes, sir.

7 Q And he appeared lucid to you, in terms of being
8 able to accurately recite that history?

9 A Yes. He was very lucid at the time. As I
10 articulated earlier, when we were communicating with
11 each other and I was asking him questions, he would
12 -- he would give his responses. He would seem to drift
13 away sometimes. I was trying to keep him alert. There
14 was numerous times that he attempted to try to get up,
15 but I kept him on the ground for his safety and to make
16 sure that he was -- try to, you know, be more stable.
17 But he would drift in and out, but I would continue to
18 question him and try to get information, and then he
19 would try to comment back.

20 Q Is it fair to say that it appeared that he knew
21 who you were, that you were an officer?

22 A I actually told him who I was additionally
23 also. He knew he could -- he could visually see the
24 uniform, but I also -- it's a normal thing that I like
25 to do is, I introduce myself as a Charleston City police

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1 officer and who I am.

2 Q And it appeared that he was able to tell you in
3 realtime why he was there, that he was sleeping off --
4 having been drinking and was sleeping in the back of the
5 car?

6 A He articulated that he felt he was too
7 intoxicated to drive. That's the reason why he was
8 stopped there to sleep.

9 Q And he also told you that two black males
10 approached him?

11 A That's correct.

12 Q And that one was wearing all black, along with
13 blue jeans?

14 A That sounds correct, from my report.

15 Q Would it refresh your recollection to actually
16 see your report?

17 A I can read it from the report, if that would
18 better suit the Court.

19 MR. PENNINGTON: May I approach the witness,
20 your Honor?

21 THE COURT: You may.

22 (Document is handed to the witness.)

23 Q (By Mr. Pennington) Take a look at it. You
24 don't have to respond to a question. Just let me know
25 when you are ready.

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1 A The victim stated two black males approached
2 him, one wearing all black, along with blue jeans.
3 Q Okay.
4 A Would you like me to continue?
5 Q If I can borrow it back again.
6 A No problem.
7 (Document is handed back to Mr. Pennington.)
8 Q (By Mr. Pennington) And so Mr. Lion told you
9 that two black males approached him, and one was wearing
10 all black with blue jeans; correct?
11 A That's correct.
12 Q And he pulled a gun out that appeared to be all
13 black?
14 A That's what I wrote, yes, sir.
15 Q And that that individual began to fire at him?
16 A That's correct.
17 Q There's no description here of the second
18 individual, is there?
19 A No, sir. I tried to gather as much information
20 as I could from him, but in his state, like I said, he
21 was kind of drifting in and out. I tried to re-question
22 him about the descriptions, and that's the description
23 that he gave me.
24 Q All right. So the description was of two black
25 males?

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1 A That's correct.

2 Q One wearing all black; correct?

3 A With blue jeans, correct.

4 Q With blue jeans. And no clothing description
5 for the second one?

6 A That is correct.

7 Q Now, to be perfectly clear about the
8 photographs that you took, State's 35 and 36, those were
9 photographs where the -- this was after the EMS
10 personnel had arrived?

11 A That's correct.

12 Q And they were the ones who had cut away the
13 clothing in order to provide medical care?

14 A That's correct.

✓15 Q And as best I understood your testimony, you're
16 indicating that if you compare the City of Charleston's
17 time clock, dispatch log time clock, with the Mantek
18 video, that there would appear to be between an 11- and
19 12-minute difference?

20 A That's correct. Their video was off a little
21 bit compared to our call log.

22 Q Okay. And so the Mantek video, when it is
23 played, will actually be what we might call 11 to 12
24 minutes slow?

25 A That's correct.

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1 Q It still accurately depicts the events --

2 A It accurately depicts the scene. It's just
3 that the time -- sort of like when people forget to set
4 their clocks back an hour during daylight savings time,
5 it's just a little bit slow.

6 Q And it shows you arriving at about 4:07?

7 A It had -- it shows me arriving with the time
8 difference -- yeah, that's correct, be about 4:07.

9 Q And that's the real City time, not the --

10 A That would be the Mantek time. The City time,
11 if you look at the call run sheet from dispatch, I
12 arrived at the location change right around 4:18, almost
13 4:19.

14 Q I see. Even I'm getting mixed up here. The
15 Mantek time that you arrived is 4:07 a.m.?

16 A Would be correct, because it's a little bit
17 slower.

18 Q But the realtime, you estimate to be 4:18?

19 A That's correct. When I pulled up at the Famous
20 Joe's and started to speak with the victim, I updated my
21 location. That way dispatch knew where I was at. And
22 that's where, on the call log, you'll see a location
23 change, and it shows Famous Joe's.

24 MR. PENNINGTON: Thank you. May I have the
25 Court's indulgence, your Honor?

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1 THE COURT: Take your time.

2 (Mr. Pennington speaks with Mr. Kozelski off
3 the record.)

4 MR. PENNINGTON: Thank you, your Honor. I have
5 no further questions.

6 THE COURT: Redirect?

7 MR. DURANT: I have nothing on redirect, your
8 Honor. I would ask that Officer Deal be excused if
9 there is no objection.

10 THE COURT: Any objection?

11 MR. PENNINGTON: No, your Honor. No objection.

12 THE COURT: You may step down. Feel free to
13 remain with us, but you are also released from your
14 subpoena. Thank you.

15 THE WITNESS: Thank you.

16 THE COURT: Ladies and gentlemen, we've reached
17 an appropriate time for us to break for lunch. Please
18 remember all of my admonitions. We will be collecting
19 your notepads. So please take those out with you, and
20 the bailiffs will collect them as you're leaving.
21 Please be back in your jury room at 1:30. 1:30.

22 MS. WILSON: Judge, may we approach before
23 they --

24 THE COURT: For scheduling -- hold on one
25 second -- yes.

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1 (Mr. Pennington and Ms. Wilson approach the
2 bench.)

3 (A discussion is held off the record.)

4 THE COURT: All right. Ladies and gentlemen,
5 you've got a little bit longer for lunch. There's some
6 matters that I must take up outside of your presence.
7 So please be back at two o'clock. Two o'clock. We'll
8 begin at that time. Please rise for the jury. Thank
9 you.

10 (The jurors exit at 12:17 p.m.)

11 THE COURT: Thank you. Please be seated. As
12 to State's 35 and 36, I'll be happy to hear from you as
13 to your objection.

14 MR. PENNINGTON: Your Honor has ruled that 35
15 and 36 were coming in. I had filed an objection prior
16 to the admission of two photographs taken by Officer
17 Deal of Marley Lion. The issues in this case have to do
18 with who committed the crime and not the manner of
19 death. I recognize that the law in South Carolina
20 permits the State to have latitude when it needs to
21 prove that death occurred and that there was a causation
22 -- there's a causal connection.

23 I believe this Court has wide discretion,
24 however, under 403, to preclude evidence that is
25 excessive. Meaning it becomes prejudicial to the

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1 parties involved in a way that's not necessary to what
2 are the salient disputed issues of the case. In this
3 case, we have the unique circumstance of having the
4 officer take what are live photos of Mr. Lion, who
5 was -- had just been shot and was actively being
6 attended to by the EMS paramedics.

7 I consider these to be, first of all, not
8 probative of any disputed fact in the case. But in my
9 view, they are shocking and upsetting photographs, which
10 are unnecessary to the State's burden, but which have, I
11 think, profound impact of creating prejudice to my
12 client, in the way that I believe these photographs --
13 particularly the photographs -- the two that we have,
14 and the ones that are yet to be argued, are realtime and
15 which create, in my view, secondary trauma. It takes
16 the jury unnecessarily to a moment in which a beloved
17 17-year-old boy has been fatally shot. It's outrageous,
18 it's infuriating, it's upsetting, and it's utterly
19 gratuitous and unnecessary to the presentation of the
20 relevant issues before this jury.

21 Now, I would add that the two pictures involved
22 do have blood on his arm -- bloody arm. There is a
23 protruding bruise from a projectile through his abdomen.
24 Again, all of this is evidence that could have been
25 presented through testimony by the medical examiner

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1 -- actually, from the testimony of the officer, because
2 I offered, during the soliloquy, to allow -- or not
3 object to the officer referring to the photographs to
4 refresh his recollection about what he observed
5 verbally.

6 But in my view, the juries do not see what we
7 see as trial lawyers, unfortunately, day-in and day-out,
8 in criminal courts of people who have been fatally
9 wounded and injured. We may have to be -- get used to
10 it, but frankly, I still find trouble myself. But in
11 this instance, I think it's highly prejudicial to my
12 client, and, therefore, the prejudice outweighs the
13 probative value. And I would ask the Court to exercise
14 its discretion, and in the future not rule out -- to
15 rule out other similar photographs.

16 At this point, the Court has already ruled. I
17 can't ask the Court to change its ruling. It's been
18 published to the jury. But I would argue that that's
19 prejudicial and inflammatory to this jury.

20 THE COURT: Thank you. Do you have any
21 response, Mr. DuRant?

22 MR. DURANT: Just so my position will be on the
23 record, your Honor. I won't belabor the point. I think
24 the photographs served to corroborate the testimony of
25 both Officer Deal and the medical examiner that will be

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1 testifying later. Particularly the one involving the
2 projectile protruding from the back. We don't have a
3 picture from that -- of that by the medical examiner.
4 Per the medical examiner, that is the projectile that
5 killed him. And I believe it corroborates both of their
6 testimonies under State v. Todd, 249 S.E.2d 339.

7 Also --

8 THE COURT: One more time, just for the record.
9 I know you like to speed up when you're talking numbers,
10 but --

11 MR. DURANT: 249 S.E.2d 339, State v. Todd.
12 Also, I believe the State is entitled to prove the crime
13 scene in a murder case. I believe these go to show the
14 crime scene, and specifically the condition that
15 Ryan Deleston left the victim in after shooting him five
16 times in the parking lot. They were not inflammatory,
17 they were not bloody, they were not gory, but they do
18 depict the victim in the condition that he was left by
19 this Defendant. And I'm sorry, your Honor, but this is
20 what -- this is what a murder case is. And to
21 corroborate the testimony -- to corroborate the
22 testimony of Officer Deal as to the wounds that he
23 observed, I don't think that they're unduly
24 inflammatory, and I have nothing else to say. Thanks.

25 THE COURT: Any response to that,

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1 Mr. Pennington, just for the record? They've already
2 come in and been published, and I just wanted to allow
3 both sides to articulate anything further.

4 MR. PENNINGTON: And you have, your Honor.

5 THE COURT: Just for the record, as to State's
6 35 and 36, they were photographs of the victim at the
7 crime scene. In making a determination whether or not
8 to admit photographs of a graphic nature, the Court must
9 balance the prejudicial affect against the probative
10 value. Photographs calculated to arouse sympathy or
11 prejudice of the jury should be excluded if they are
12 irrelevant or not necessary. To constitute unfair
13 prejudice, the photographs must create a tendency to
14 suggest a decision on an improper basis commonly through
15 an emotional appeal to the jury.

16 The Court is not required to exclude relevant
17 evidence simply because it is unpleasant or offensive.
18 The photographs that were offered by the State were
19 taken of the crime scene. The cause of death in this
20 case is not at issue; however, the photographs did -- in
21 35 and 36, did depict evidence that cannot be
22 demonstrated by other means.

23 I have considered the evidentiary value of the
24 photographs that were offered, as well as the
25 prejudicial effect that they may have, and I found that

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1 the probative value was paramount. Considering the
2 nature of the photographs, what was contained in the
3 photographs, and the purpose for which they were
4 offered, I found that they were admissible to
5 corroborate the testimony of Officer Deal. I do note --
6 have noted your exception to my ruling.

7 All right. We are going to break for lunch at
8 this time. You have indicated that we have about 30
9 minutes' worth of testimony. So we'll be back at 1:30.
10 That will give us a full hour for lunch. And then that
11 will give us a break before. So we will be at ease.

12 Counsel, if I could just see you at the bench.
13 So we are at ease until 1:30.

14 (A lunch break is taken from 12:25 p.m.
15 until 2:00 p.m.; at which time, the proceedings continue
16 as follows:)

17 THE COURT: All right. Counsel, whenever we're
18 ready.

19 MS. WILSON: Your Honor, the -- they're telling
20 us it's going to take five minutes for them to get
21 Julius Brown.

22 Is that correct?

23 THE COURT: What are we doing with Mr. Brown?

24 MS. WILSON: Your Honor, while we're waiting, I
25 think it would probably be helpful at some point -- I

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1 don't have an extra copy -- but to make a copy of the
2 full incident report regarding the Chopper shooting as a
3 Court's exhibit. And I can do that at the end of the
4 day, give you a full copy of that. It has been provided
5 in discovery, Pages 1344 through 1375, I believe it is.

6 MR. PENNINGTON: That's correct.

7 THE COURT: It will be Court's 5.

8 MS. WILSON: I'll have to give you a copy at
9 the end of the day.

10 MR. DURANT: Your Honor, may I -- just a
11 housekeeping matter. With regard to State's 100, the
12 stipulation that we had signed, and you said there was
13 one that was already marked as Court's 2.

14 THE COURT: Correct.

15 MR. DURANT: Did you want to just go ahead and
16 mark that Court's 2 or have them sign those two? 100 is
17 the only one that's been signed so far. May I show you?

18 THE COURT: I'm trying to -- at this point, I
19 don't know that it really makes a difference. It's been
20 read. You agreed that that's Court's 2.

21 MR. DURANT: That's fine.

22 THE COURT: And now 100, it's just -- it cannot
23 go back to the jury. That's the only thing.

24 COURT SECURITY OFFICER: He's up here, Judge.

25 THE COURT: Mr. Brown is here?

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1 COURT SECURITY OFFICER: Yes.

2 THE DEPUTY CLERK OF COURT: Place your left
3 hand here. Raise your right hand.

4 (The oath is administered by the Deputy Clerk
5 of Court, and the witness answers as follows:)

6 THE WITNESS: Yes, sir.

7 THE DEPUTY CLERK OF COURT: Thank you, sir.
8 You may be seated. Sir, if you would, please, state
9 your first and last name, spelling your last name.

10 THE WITNESS: Julius Brown, B-r-o-w-n.

11 **JULIUS BROWN,**

12 having been first duly sworn by the Deputy Clerk of
13 Court to tell the truth, the whole truth, and nothing
14 but the truth, was examined and testified upon his oath
15 as follows:

16 **DIRECT EXAMINATION**

17 **BY MS. WILSON:**

18 Q Mr. Brown, you can see that the jury is not
19 here. We're having a hearing so that the Judge can
20 evaluate some of your testimony on some matters. Okay?

21 A Yes, ma'am.

22 Q I'm not going --

23 MS. WILSON: Judge, if it's okay with you, I'm
24 just going to go straight to the matters at hand rather
25 than go through all the background.

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1 THE COURT: I would prefer that.
2 MR. PENNINGTON: Yes, ma'am.
3 THE COURT: Mr. Pennington, if at any time you
4 have any objections to this, just let me know.
5 MR. PENNINGTON: Thank you, your Honor.
6 Q (By Ms. Wilson) Julius, the first thing I want
7 to ask you about is the shooting of Leroy Townsend, also
8 known as "Chopper." Do you know who I'm talking about?
9 A Yes, ma'am.
10 Q And do you remember that shooting?
11 A Yes, ma'am.
12 Q When was it that the shooting took place; do
13 you recall?
14 A I can't remember.
15 Q Was it before or after the Marley Lion murder?
16 A Before.
17 Q Okay. And who all was involved in going to the
18 area where Chopper was?
19 A Me, Deleston, Bryan, George, Rayshawn --
20 THE COURT: Mr. Brown, I'm going to need you to
21 speak up, please. Thank you.
22 A Me, Deleston, Rayshawn, and George Brown.
23 Q (By Ms. Wilson) Okay. And when you say
24 "Rayshawn," is that Rayshawn Milligan?
25 A Yes, ma'am.

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1 Q And he's your brother?
2 A Yes, ma'am.
3 Q And George Brown?
4 A George Brown.
5 Q Bryan Rivers?
6 A Yes.
7 Q Did you say Tino?
8 A No. Valentino, he was --
9 Q He was with you as well?
10 A Yes, ma'am.
11 Q Okay. And tell the Judge who Chopper is.
12 A A drug dealer.
13 Q You knew him?
14 A Yes, ma'am.
15 Q Did Bryan Rivers know him, or do you know?
16 A Yes, ma'am.
17 Q Had you bought or sold drugs to him before?
18 A Bought.
19 Q Bought from him before?
20 A Yes, ma'am.
21 Q Okay. And were you aware that he and
22 Bryan Rivers had a beef?
23 A No, ma'am.
24 Q Had a disagreement?
25 A No, ma'am.

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1 Q You were not aware of that?
2 A No, ma'am.
3 Q Okay. Do you remember what time of day it was
4 when all of you decided to go rob Chopper?
5 A Think it was night, like around
6 10:00-something, eleven o'clock.
7 Q And how was it that you got to where Chopper
8 lives?
9 A George.
10 Q And when you say "George," what do you mean?
11 A George Brown. He drove us.
12 Q Okay. And drove y'all from where?
13 A From Cashew Street.
14 Q Where were you on Cashew Street before?
15 A At my sister house.
16 Q Who lived with your sister?
17 A Ryan Deleston.
18 Q Okay. So y'all leave there in George's car?
19 A Yes, ma'am.
20 Q And where is this area that Chopper lived?
21 A It's in Andrews Garden Apartment.
22 Q Can you tell the Judge about where that is?
23 A Like, that's, like, in, like -- I don't know
24 the area, but I know it's in the Andrews Garden
25 Apartment.

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1 Q Is it further up 17 or off 61?
2 A Off 61.
3 Q Okay. It's off 61?
4 A (Moves head up and down.)
5 Q All right. Is it before you get to Sam
6 Rittenberg?
7 A No. You got to make a -- Sam Rittenberg to the
8 left, and you got to make a right when you going out
9 Ardmore.
10 Q So you come out of Ardmore and you take a
11 right?
12 A Yes, ma'am.
13 Q On what road?
14 A It's Highway 7, I think.
15 Q And you stay on 7. And then you go where?
16 A Go down some and make a right.
17 Q And about how long did it take y'all to get
18 there in George's car?
19 A Probably like five minutes.
20 Q Okay. And when -- did you know what gun was
21 going to be used to rob Chopper?
22 A The gun George Brown had.
23 Q And who -- who planned or who was going to get
24 out to do the robbery?
25 A Valentino. He went with Bryan Rivers.

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1 Q Did they do that?
2 A Yes, ma'am.
3 Q And did you see where they went?
4 A No, ma'am.
5 Q Okay. Where did George park the car while they
6 went to do the robbery?
7 A In The Shires.
8 Q In The Shires?
9 A Yes.
10 Q What is that?
11 A That's like the back of Ardmore. And you can
12 go through a cut to get to the Saint Andrews Garden
13 Apartment.
14 Q If you're on foot?
15 A Yeah.
16 Q Okay. And while at The Shires, who all was in
17 the truck with George?
18 A Me, George, Rayshawn, and Deleston.
19 Q And did -- you couldn't see the robbery take
20 place?
21 A No, ma'am.
22 Q After the robbery -- and you know now there was
23 a shooting; right?
24 A Yes, ma'am.
25 Q Did you see Tino, Valentino Hayward, and

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1 Bryan Rivers again?
2 A Yeah. Running.
3 Q Where'd they run to?
4 A From The Shires -- from Saint Andrews Garden
5 Apartment through The Shires.
6 Q And got in the car with y'all?
7 A They get in the car with us on -- when we get
8 back at Ardmore.
9 Q Okay. And then where did y'all go in the car?
10 A On Cashew Street.
11 Q So they got in the car and rode the rest of the
12 way to Cashew?
13 A Yes, ma'am.
14 Q And do you know how much money was taken from
15 this guy, Chopper?
16 A Like 12- or \$1,300.
17 Q And what happened with that money?
18 A We split it up.
19 Q And who all got a cut of the money?
20 A Me, George, Deleston, Valentino, and Rayshawn,
21 and Bryan.
22 Q You didn't see who shot Chopper, did you?
23 A No, ma'am.
24 Q And do you know how it was they went about
25 doing the robbery, as far as what they made Chopper do?

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1 Did you see it?

2 A No, ma'am.

3 Q All right. Let's -- let's move forward a
4 little bit to June 15th, June 16th, the night that
5 Marley Lion was killed. Do you remember that?

6 A Yes, ma'am.

7 Q During that time period, was Ryan Deleston
8 talking about finding a lick to do?

9 A Yes, ma'am.

10 Q And what places did he talk about that he was
11 considering robbing?

12 A Joe's, there's a gambler's bar across the
13 street.

14 Q When you say "Joe's," is that Famous Joe's?

15 A Yes, ma'am.

16 Q And you said there's a gambling spot. Tell the
17 Judge about that spot.

18 A It's, like, across the street by Five Guys on
19 the other side of the highway. It had tint on the
20 window.

21 Q Tint on the window?

22 A Yes, ma'am.

23 Q And did it say this is a gambling spot?

24 A No. It didn't have nothing on it.

25 Q Okay. And had you ever been in there?

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- 1 A No, ma'am.
- 2 Q Do you know if Deleston ever went in there?
- 3 A Yes, ma'am.
- 4 Q Why did he go in there?
- 5 A To check it out.
- 6 Q All right. And what did he discover there?
- 7 A That one person behind the -- I guess, the
- 8 register.
- 9 Q Okay. Did he rob it?
- 10 A No, ma'am.
- 11 Q Did he talk with you about whether or not he
- 12 should rob that place?
- 13 A He said it was a easy lick, like, he -- he
- 14 never got a chance to go out and get it because I think
- 15 they closed.
- 16 Q Did you say anything to him about whether or
- 17 not he should rob the gambling place?
- 18 A No, ma'am.
- 19 Q And then you mentioned Joe's. We know about
- 20 Joe's. Were there any other places that he mentioned
- 21 robbing?
- 22 A A loan place.
- 23 Q Do you know where that loan place was?
- 24 A I think down Savannah Highway.
- 25 Q Did he case that area out or take a look at

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1 that area?

2 A He go in one time with my sister. That's how
3 he found out about it.

4 Q So he had been there with your sister?

5 A Yes, ma'am.

6 Q Do you know if he went back in order to see
7 what it would be like to rob, or he just went that one
8 time?

9 A No, ma'am.

10 Q You don't know?

11 A I don't know.

12 Q Okay. Now, when he was having these -- well,
13 let me go back to Joe's. How many times did you hear
14 Deleston talking about thinking Joe's would be a good
15 place to rob?

16 A A good bit of time.

17 Q How many -- well, in what time period before
18 the night that y'all actually set out to --

19 A Way before that.

20 Q Excuse me?

21 A Way before that.

22 Q Okay. How many times before that, though?

23 A Like four or five times.

24 Q All right. And can you tell me -- I know you
25 say a way before that. Can you tell me what time

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1 period -- I mean, you talking about a year ago --

2 A No.

3 Q -- or a day ago or two days ago?

4 A Like a couple of months.

5 Q And during the week before the robbery, did he
6 talk about doing Joe's?

7 A Yes, ma'am.

8 Q All right. How about that day before y'all
9 went downtown to do the lick downtown, had he discussed
10 robbing Joe's?

11 A Yes, ma'am.

12 Q And during that day before y'all went to
13 eventually rob Joe's, did he discuss any of these other
14 places to rob?

15 A No, ma'am.

16 Q Okay. Do you know how long before the robbery
17 and the attempted robbery and murder of Marley Lion it
18 was that he discussed robbing those other places?

19 A Couple of months.

20 Q And do you know why it was that he was talking
21 to you about it?

22 A He was talking to all of us about it.

23 Q For what?

24 A Because he had wanted to get a lick.

25 Q Did he need help?

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1 A Yes, ma'am.
2 Q In what way?
3 A People to watch out.
4 Q Did you agree to help him with the check
5 cashing place --
6 A No, ma'am.
7 Q -- I mean with the gambling place?
8 A No, ma'am.
9 Q Why not?
10 A Because I didn't know anything about it.
11 Q What you mean?
12 A Like, I never been by it, or I never know it
13 was over there until he mentioned it.
14 Q Okay. And the loan place, did you agree to
15 help him with that at some point?
16 A No, ma'am.
17 MS. WILSON: Beg the Court's indulgence.
18 THE COURT: Take your time.
19 (Ms. Wilson speaks with Mr. DuRant off the
20 record.)
21 MS. WILSON: That's all, your Honor.
22 THE COURT: Mr. Pennington.
23 MR. PENNINGTON: Court's indulgence.
24 THE COURT: Take your time.
25 (Mr. Pennington speaks with Ms. Wilson off the

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1 record.)

2 CROSS-EXAMINATION

3 BY MR. PENNINGTON:

4 Q Mr. Brown, did I hear correctly that you're
5 saying that this talk of robbing a gambling place across
6 from Five Guys was a couple of months before the
7 Marley Lion murder?

8 A Yes, sir.

9 Q Okay. And this talk about maybe going to a
10 loan place where Stephanie, his girlfriend, had been,
11 that talk was a couple of months before this too?

12 A Yes, sir.

13 Q And let's talk about each of those just for a
14 second. In those discussions months before, it never
15 escalated to the point where you guys went around and
16 cased the specific location yourselves to prepare for a
17 robbery; right?

18 A No, sir.

19 Q And with regard to the loan place, you're not
20 even sure what loan place he's talking about, are you?

21 A No, sir.

22 Q Somewhere down Savannah Highway?

23 A Yes, sir.

24 Q Some place that presumably has business hours
25 maybe during the day or early evening but probably not

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1 at 3:00 in the morning?
2 A Yes, sir.
3 Q Okay. So what the conversation was on June the
4 15th -- the Friday, June the 15th and Saturday morning
5 early, June 16th, was the talk about Joe's, about going
6 to Joe's?
7 A Yes, sir.
8 Q And when you mentioned earlier this business
9 about the gambling spot, you said that he had talked
10 affirmatively about the fact he was talking to you
11 because he would need help or lookouts?
12 A About the gambling spot, he was merely talking
13 to George about it.
14 Q So you overheard that?
15 A Yes, sir.
16 Q And that was months before this?
17 A Yes. Yes, sir.
18 Q As far as you know, nothing ever came of that?
19 A No, sir.
20 Q As far as you know, George didn't go down there
21 and act on that or case it?
22 A No, sir.
23 Q No?
24 A No, sir.
25 Q Okay. With regard to the loan place, you

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1 didn't go down and try to case out or look for a loan
2 place together?

3 A No, sir.

4 Q With regard to the incident that occurred with
5 Chopper, is it fair to say that the date of that
6 incident was about two weeks before Marley Lion?

7 A I can't remember. I know it was before
8 Marley Lion.

9 Q Okay. And you have not been charged with being
10 a part of that robbery of Leroy Townsend, have you?

11 A No, sir.

12 Q However, this was something that was planned in
13 advance, wasn't it?

14 A Yes, sir.

15 Q Planned in advance, in the sense of -- that you
16 named -- that you and George Brown and your brother,
17 Rayshawn; Bryan Rivers; Tino; and you say, Ryan Deleston
18 actually knew that you were going over to Saint Andrews
19 Garden Apartments to do a robbery?

20 A Yes, sir.

21 Q And when you went over there, the people that
22 got out was Bryan Rivers and Valentino Hayward?

23 A Yes, sir.

24 Q But they were carrying George Brown's pistol;
25 correct?

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1 A Yes, sir.
2 Q And that is the same pistol that was used to
3 shoot Marley Lion?
4 A Yes, sir.
5 Q It's a black Sig Sauer .380 semiautomatic
6 pistol?
7 A Yes, sir.
8 Q And from what you understand, they approached
9 Chopper, or Mr. Townsend, on foot?
10 A Yes, sir.
11 Q This was at nighttime?
12 A Yes, sir.
13 Q And the plan was to rob him at gunpoint, wasn't
14 it?
15 A Yes, sir.
16 Q Did you hear multiple gunshots?
17 A No. I heard one.
18 Q Now, in terms of the location of -- of this
19 incident --
20 MR. PENNINGTON: If I may have the Court's
21 indulgence --
22 THE COURT: Take your time.
23 MR. PENNINGTON: -- I just need to look at the
24 exhibit, your Honor.
25 (Respite.)

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1 Q (By Mr. Pennington) Mr. Brown, did I
2 understand you to say that the back of Ardmore backs up
3 to the Saint Andrews Garden Apartments?

4 A Yes, sir.

5 Q There's a walk-through or a cut that you can
6 take from Saint Andrews Garden Apartments to Ardmore?

7 A Yeah. Through The Shires.

8 Q Okay. Through The Shires. Through The Shires
9 is an apartment complex?

10 A Yes, sir.

11 Q And I didn't quite understand what you said
12 about picking up Little B, Bryan Rivers, and Tino. They
13 took off on foot after the shooting; right?

14 A Yes, sir.

15 Q And then where did you and -- where did George
16 drive?

17 A We drive through The Shires, around and come
18 back -- like, that's Nottingham, like, down Nottingham
19 and turn through the back street, and they went on the
20 back street.

21 Q All right. So these neighborhoods are
22 contiguous so that you didn't have to get back out on
23 Highway 61 to get back to Ardmore?

24 A No.

25 Q You were able to cut right through the

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1 neighborhood to come back into Ardmore?

2 A Yes, sir.

3 Q And so by the time you linked up, are you
4 saying that Bryan and Tino got all the way back to
5 Balsam on foot?

6 A No. They get on -- they been on the back
7 street. We was parked in The Shires. And if you leave
8 out The Shires, you still in Ardmore.

9 Q Okay. And so they spotted you and jumped in
10 the car?

11 A Yeah. They run past the truck at first because
12 the police had come through.

13 Q Okay.

14 A And they run past and go and jumped the gate,
15 and they went on the other side of Ardmore. So all we
16 had to do is ride out The Shires and come through
17 Nottingham and come down the back street.

18 Q And the plan had been that y'all were there to
19 provide transportation if they needed it; right?

20 A Yes, sir.

21 Q And that's what you did?

22 A Yes, sir.

23 Q And you described that you got, I think you
24 said, 1,200 -- 12- or \$1,300 in cash?

25 A Yes, sir.

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1 Q And some drugs too, didn't you?

2 A Yes, sir.

3 Q What kind of drugs?

4 A Crack cocaine.

5 Q How much?

6 A Like -- like three grams.

7 Q And this is the same pistol that was used by
8 Bryan in the robbery downtown the night before shooting
9 Marley Lion; right?

10 A Yes, sir.

11 MR. PENNINGTON: May I have the Court's
12 indulgence for just a moment, your Honor?

13 THE COURT: Yes, sir.

14 (Mr. Pennington speaks with Mr. Kozelski off
15 the record.)

16 MR. PENNINGTON: Thank you, Mr. Brown. I have
17 no further questions.

18 **REDIRECT EXAMINATION**

19 **BY MS. WILSON:**

20 Q Just a couple. I may have heard wrong, but I
21 didn't -- when I asked you who was with you, Rayshawn,
22 was not with you at the Chopper shooting; correct?

23 A Yes, he was. He was in the truck.

24 Q He was in the truck with y'all?

25 A Yes, ma'am.

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1 MS. WILSON: Okay. That's all I have.
2 THE COURT: Mr. Pennington.
3 MR. PENNINGTON: No further follow-up, your
4 Honor.
5 THE COURT: Is this witness excused for the
6 purposes of this hearing?
7 MS. WILSON: Yes, ma'am.
8 MR. PENNINGTON: Yes, ma'am.
9 THE COURT: But we need him to remain here with
10 us; correct?
11 MS. WILSON: Yes.
12 THE COURT: You may step down. Thank you.
13 Ms. Wilson.
14 MS. WILSON: Your Honor, I don't have anything
15 further to add from yesterday. And I think -- if the
16 Court were to reconsider its position, this would not be
17 the witness to bring it in with anyway. I don't think
18 he has enough of the facts about the shooting itself.
19 He doesn't know independently who shot, those types of
20 things. As for the other 404(b), I would concede, based
21 on the testimony here today, that the evidence regarding
22 the robbery of other places is too remote for us to
23 inquire upon his direct.
24 THE COURT: Mr. Pennington.
25 MR. PENNINGTON: That makes sense to me, your

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1 Honor.

2 THE COURT: Do we need -- do you have any other
3 witnesses that we need to proffer or inquire?

4 MR. PENNINGTON: Well, I heard that we are
5 going to do Bryan Rivers this afternoon, and Mr. Rivers
6 would be -- if I can proffer the questions I would ask,
7 I don't know that we have to go through a formal
8 colloquy, because I really don't think these facts were
9 in dispute. He's been debriefed. And if the Solicitor
10 says she disagrees with this stipulation of facts, then
11 we can bring them out.

12 But from what I would cover with him in the
13 context of a overall Cross-Examination would be that,
14 early on in a discussion in June, before these
15 Defendants were arrested in July, so about six days
16 after the Marley Lion murder, there was an opportunity
17 for Detective Osborne to have a formal meeting, sit down
18 with Bryan Rivers where they talked on tape. And
19 Osborne asked him about being involved in a robbery at
20 the Saint Andrews Garden Apartments with Tino, which he
21 denied, and which was not truthful. So he -- I would
22 use that to show that was -- when he needed to lie, he
23 knew how to lie.

24 With regard to the follow-up conversation that
25 he had after his arrest on these charges on July 30th

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1 and 31st, I would cover the fact that he now admits that
2 he, on June 1st, rode along on the preplanned robbery of
3 Leroy Townsend, a.k.a "Chopper," in the Saint Andrews
4 Garden Apartments; that he got \$1,300 in cash and drugs;
5 he used the Marley Lion murder weapon to rob Townsend;
6 he shot Townsend in the leg; it was George Brown's gun;
7 that he's not been charged with this armed robbery
8 pursuant to his proffer agreement; and he has not also
9 been charged with attempted armed robbery pursuant to
10 his agreement. And that's the sum and substance of what
11 I would cover with Bryan Rivers.

12 THE COURT: Based upon that, Ms. Wilson, is
13 there any reason to bring Mr. Rivers out?

14 MS. WILSON: I don't think so. The only thing
15 that I would take real issue with is, while he has not
16 been charged with the Chopper shooting, that's not
17 pursuant to any agreement with us. What our agreement
18 is, that we can't use Bryan Rivers' words against him.
19 We could make a case from other folks against him. He
20 doesn't have immunity from prosecution.

21 MR. PENNINGTON: Oh, okay. My mistake, your
22 Honor.

23 MS. WILSON: But as far as the facts to Chopper
24 goes, I think that pretty much covers it. And I think
25 that even the limited testimony that Julius Brown or the

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1 limited insight that he's able to give shows the stark
2 difference between the Chopper shooting and the
3 Marley Lion shooting.

4 MR. PENNINGTON: May I ask -- I'm still
5 thinking about the verification that we got about the
6 plea agreement and whether or not it is part of a
7 understanding between the State and Mr. Rivers at this
8 time that he would not be prosecuted for this.

9 MS. WILSON: No. We don't have an agreement
10 not to prosecute anybody for anything, period.

11 MR. PENNINGTON: So that still could be -- that
12 legitimately could happen regardless of his cooperation?

13 MS. WILSON: That could happen. And it largely
14 depends on Chopper.

15 MR. PENNINGTON: Okay. Got it. Okay. That
16 clarifies that. Thank you, your Honor.

17 THE COURT: Okay.

18 MR. PENNINGTON: With regard to this,
19 obviously, we'll stand on the arguments that we've made.
20 I've elucidated prior what we feel are the similarities
21 implied that should be still relevant. Your Honor has
22 already ruled. I appreciate the chance to renew the
23 objections and that you can hear the testimony and,
24 obviously, we would like the objection to continue.
25 Once he gets to the witness stand, I don't know if you

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1 would want me to make another objection at that time.

2 THE COURT: I think that out of an abundance of
3 precaution to protect the records, you should make the
4 appropriate objection at the appropriate time.

5 MR. PENNINGTON: Very good.

6 THE COURT: With that being said, all of our
7 jurors are here. Is there anything before we bring in
8 the jury? We will take a short break before we bring
9 them in. But do we need -- is there anything else we
10 need to address before we bring them in?

11 MS. WILSON: I'm going to hand this up. This
12 is Chopper shooting incident report. I believe you said
13 it would be marked as Court's 5.

14 (Court's Exhibit No. 5 is marked for
15 identification.)

16 THE COURT: Court's 5. Thank you.

17 MR. PENNINGTON: I don't believe we have
18 anything else, your Honor.

19 THE COURT: State have anything else?

20 MS. WILSON: No, ma'am.

21 THE COURT: All right.

22 MS. WILSON: We're going to take a short
23 break --

24 THE COURT: Five minutes.

25 MS. WILSON: Right now? Okay.

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1 THE COURT: Five minutes, and then you'll have
2 -- who's your next witness?

3 MS. WILSON: Ulysius Vance, who was an officer
4 that came out during that night. He should be
5 relatively short. And then we'll move into
6 Julius Brown.

7 THE COURT: All right. Thank you.

8 MR. DURANT: Actually, I think we were going
9 to publish the Mantek video too. So that will take
10 probably 20 minutes.

11 THE COURT: All right. Five minutes. Whatever
12 y'all want to do.

13 (A break is taken from 2:05 p.m. until
14 2:09 p.m.; at which time, the proceedings continue as
15 follows:)

16 THE COURT: Anything before we bring in the
17 jury?

18 MS. WILSON: No, ma'am.

19 MR. PENNINGTON: No, ma'am.

20 THE COURT: All right. We're ready whenever
21 they are.

22 (The jury is escorted into the courtroom at
23 2:13 p.m.)

24 THE COURT: Please be seated. Good afternoon.
25 I hope you had a wonderful lunch break. As I indicated

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1 to you, my first question to you is going to be whether
2 or not you complied with my instructions. If you were
3 unable to comply with all of my instructions, please
4 raise your right hand.

5 Thank you. Please let the record reflect all
6 15 jurors have complied with the Court's instructions.

7 Please call your next witness, Ms. Wilson.

8 MS. WILSON: Your Honor, at this time, we would
9 seek to play the Mantek video, which is State's
10 Exhibit 1. And if we could have the lights dimmed.

11 THE DEPUTY CLERK OF COURT: Yes, ma'am.

12 MR. DURANT: We're beginning -- this is
13 timestamp 3:33 on the Mantek video.

14 THE COURT: Thank you.

15 (The video is played.)

16 MR. DURANT: Your Honor, I'm going to jump
17 ahead about six minutes.

18 THE COURT: Any objection?

19 MR. PENNINGTON: No.

20 THE COURT: Mr. DuRant, is there any way to
21 make that the whole screen?

22 MR. DURANT: You can, your Honor, but it kind
23 of distorts the image and makes things look thicker than
24 they are.

25 THE COURT: All right.

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1 (The video is played.)
2 MR. DURANT: This is at about 3:44 now.
3 (The video is played.)
4 MR. DURANT: At this point, your Honor, I'm
5 going to jump ahead about 12 minutes.
6 THE COURT: Any objection, Mr. Pennington?
7 MR. PENNINGTON: No, your Honor.
8 (The video is played.)
9 MR. DURANT: This is at 3:56 on the Mantek
10 time.
11 (The video is played.)
12 MR. DURANT: At this point, I'm going to move
13 to the point where Officer Deal arrives, if there's no
14 objection. It's about ten minutes.
15 THE COURT: Any objection, Mr. Pennington?
16 MR. PENNINGTON: Could I have just a moment?
17 THE COURT: You may.
18 (Mr. Pennington speaks with Mr. DuRant off the
19 record.)
20 MR. PENNINGTON: I have no objection, your
21 Honor.
22 (The video is played.)
23 MS. WILSON: Your Honor, just so you know,
24 there's no pause button. That's why it is so difficult
25 to control.

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1 THE COURT: Thank you.
2 MR. DURANT: Sorry, your Honor. And this
3 occurs at 4:06:50.
4 (The video is played.)
5 MR. DURANT: I will forward it about eight or
6 nine minutes -- I think this is when the ambulance
7 arrives -- if there's no objection.
8 THE COURT: Any objection?
9 MR. PENNINGTON: No, your Honor.
10 THE COURT: Okay.
11 (The video is played.)
12 MR. DURANT: This is 4:16:25 on the Mantek
13 timestamp.
14 (The video is played.)
15 MR. DURANT: Your Honor, that's all we would
16 show at this time, if that's all right with the Court.
17 THE COURT: All right. Any objection?
18 MR. PENNINGTON: No objection.
19 THE COURT: Any request to play any more of the
20 video?
21 MR. PENNINGTON: No objection.
22 THE COURT: Okay. Thank you.
23 MS. WILSON: Your Honor, the State calls
24 Ulysius Vance.
25 (The oath is administered by the Deputy Clerk

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1 of Court, and the witness answers as follows:)

2 THE WITNESS: I do.

3 THE DEPUTY COURT CLERK: Thank you, ma'am. You
4 may take your seat. And, then, if you would, please,
5 state your first and last name, spelling your last for
6 the record.

7 THE WITNESS: V-a-n-c-e.

8 (Exhibit shown to Defense counsel.)

9 MS. WILSON: Beg the Court's indulgence.

10 THE COURT: Take your time.

11 ULYSIUS VANCE,

12 having been first duly sworn by the Deputy Clerk of
13 Court to tell the truth, the whole truth, and nothing
14 but the truth, was examined and testified upon his oath
15 as follows:

16 DIRECT EXAMINATION

17 BY MS. WILSON:

18 Q Officer Vance, where are you employed?

19 A I'm employed with the City of Charleston Police
20 Department.

21 Q And how long have you been working for the
22 City?

23 A Since September 2011.

24 Q And what -- in what capacity do you work for
25 the City Police?

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1 A As a patrol officer.

2 Q And back in June of 2012, specifically June

3 15th, 16th, were you working in that same capacity?

4 A Yes, ma'am.

5 Q And what team are you on?

6 A Team 4.

7 Q And that covers what area?

8 A West Ashley.

9 Q Okay. Does that Team 4 area include the

10 Ardmore subdivision area?

11 A Yes, it does.

12 Q I want to take you back to about two weeks

13 before the Marley Lion murder, on June 5th, 2012, do you

14 remember working that night?

15 A I do.

16 Q And what area were you working?

17 A Savannah Highway, from 526 to Ashley River.

18 Q And do you remember what shift you were on that

19 night?

20 A I believe it was night shift, third shift.

21 Q And did you have an occasion to stop someone

22 that night?

23 A I did.

24 Q For what?

25 A Some individual for not having a light on his

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1 bicycle.

2 Q Okay. And when you stopped him, did you
3 identify him?

4 A Yes. He identified himself as Ryan Deleston.

5 Q And did you confirm his identity?

6 A I did through our computer system. There was a
7 picture attached to his name.

8 Q And do you recognize that person here today?

9 A I do. He's sitting right there.

10 Q In the white shirt?

11 A Yes, ma'am.

12 MS. WILSON: Your Honor, please let the record
13 reflect he's identified Ryan Deleston.

14 Q (By Ms. Wilson) Okay. So that was on June the
15 5th. You made the stop of Mr. Deleston for not having a
16 light on his bike. Move forward to the early morning
17 hours of June 16th, 2012, after 4:00 a.m. Were you
18 called to do something that morning?

19 A I was. Officer Mattingly was attempting to
20 conduct a person stopped on White Oak Drive on two
21 individuals. One of the individuals kept walking away
22 on White Oak towards Savannah Highway.

23 Q Okay. Now, what had happened that caused
24 Officer Mattingly to be there and for you to be on
25 standby and also in that area?

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1 A - There was a homicide that had just occurred
2 minutes prior to him attempting to make that person
3 stop.

4 Q All right. So shortly before Mattingly makes
5 the stop of two people, there had been a murder?

6 A Correct.

7 Q He attempts to stop two people, and one of them
8 walks away?

9 A Correct.

10 Q And as a result of that, you go to the area to
11 do what?

12 A I responded to assist him; attempted to stop
13 the other individual.

14 Q Okay. And do you recall about what time it was
15 when you got to the area of Ardmore to try to find that
16 second individual?

17 A It was approximately 4:20 in the a.m.

18 Q 4:20?

19 A Yes, ma'am.

20 Q Okay. Now, upon arriving to that area, were
21 you able to stop someone?

22 A I did. I stopped a Mr. Maurice Simmons.

23 Q And was Mr. Simmons eventually interviewed by
24 the police department?

25 A Yes, he was.

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1 Q Okay. Now, where was it that you stopped

2 Mr. Simmons?

3 A It was in front of [REDACTED] White Oak Drive.

4 Q All right. And while you were stopping him,
5 did you see anyone else?

6 A Yes. Two individuals came out at [REDACTED] White Oak
7 Drive, one being Mr. Ryan Deleston, and the other person
8 I did not know at the time.

9 Q Now, this person, again, you knew him from the
10 stop a couple of weeks before; right?

11 A Yes, ma'am.

12 Q All right. And the other person, do you recall
13 what he was wearing?

14 A The only thing I recall, he was wearing a white
15 T-shirt. I do not recall what color pants or shorts he
16 might have had on.

17 Q And, actually, both of them had on white
18 T-shirts; is that right?

19 A Correct. Yes, ma'am.

20 Q And this was about 4:20?

21 A Yes, ma'am.

22 Q And when you saw Mr. Deleston and the other guy
23 that was with him, did you have any conversation?

24 A Mr. Deleston made the comment that he had the
25 flashlight tonight.

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1 Q In reference to the other stop?
2 A Yes, ma'am.
3 Q I'm going to ask you, Officer, if you would
4 step down.
5 MS. WILSON: If that's okay, your Honor?
6 THE COURT: Yes.
7 (The witness steps down from the witness
8 stand.)
9 Q (By Ms. Wilson) Tell me which one would work
10 better to show the jury, State's 27 or State's 4.
11 A It would be this one.
12 Q State's 4. Okay. I'm going to give you a
13 laser pointer. And, actually, why don't you stand on
14 this side, if you can, so that the court reporter can
15 get you. And there's the pointer right there.
16 If you'll show the jury, first of all, where is
17 Savannah Highway again?
18 A It's -- Savannah Highway is this road right
19 here.
20 Q And can you see the Famous Joe's over in the
21 corner there?
22 A Yes.
23 Q Okay. Now, when you got the call from
24 Mattingly, where had you been located?
25 A I was in this parking lot right here.

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1 Q Okay. And it didn't take you long to get over
2 into Ardmore?
3 A No, ma'am.
4 Q Where'd you go?
5 A I went left right out of that parking and north
6 on Savannah Highway and made a left on White Oak Drive
7 and stopped Mr. Simmons right here.
8 Q Okay. There's a little red car on there. Is
9 that about where you were?
10 A Yes, ma'am.
11 Q And you engaged Mr. Simmons?
12 A Correct.
13 Q Who was later detained and interviewed by the
14 police?
15 A Yes, ma'am.
16 Q And where was it that you saw Ryan Deleston?
17 A They came out of this -- this house right here
18 onto the roadway.
19 Q Were they on foot?
20 A No, ma'am. They both were on bicycles.
21 Q Both of them had on white shirts?
22 A Yes, ma'am.
23 Q Which way did they go after they left you?
24 A They went on White Oak Drive towards Balsam
25 Street.

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1 Q Balsam runs this way?

2 A Yes, ma'am.

3 MS. WILSON: That's all I have, your Honor.

4 THE COURT: Officer, if you'll have a seat back
5 in the witness stand.

6 (The witness resumes the witness stand.)

7 THE COURT: Mr. Pennington.

8 MR. PENNINGTON: With the Court's permission,
9 I'll just stay here, if that's all right.

10 THE COURT: That's fine.

11 **CROSS-EXAMINATION**

12 **BY MR. PENNINGTON:**

13 Q Officer Vance, just a couple questions. I
14 believe that you wrote a report on the day in question
15 or shortly thereafter to help you remember the specific
16 facts of what went on?

17 A Correct.

18 Q Is that standard procedure for the City
19 officers to do, to write reports?

20 A Yes, sir.

21 Q And the purpose of reports is to help you
22 remember the specific details clearly?

23 A Correct.

24 Q And you reported -- actually, we don't even ask
25 you. You were dispatched at roughly 4:10 up in the

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1 early morning hours, 4:10 a.m.?

2 A After reviewing the -- the CAD entry, the log
3 system, radio log, the actual time was approximately
4 4:20.

5 Q So your report was incorrect?

6 A That time is incorrect, yes.

7 Q So when you responded, you were actually at
8 the -- the little red car on the map, you were there at
9 4:20?

10 A Approximately 4:20. I'm not sure the exact
11 time, but approximately 4:20.

12 Q And that's when you saw Ryan Deleston coming
13 out of [REDACTED] White Oak on the bike?

14 A That's when I stopped Mr. Simmons, when I got
15 to the area to stop Mr. Simmons.

16 Q And about that same time is when you saw
17 Deleston?

18 A Yes.

19 Q And you described already for the Solicitor
20 that he was wearing a white T-shirt. Would it refresh
21 your recollection if you looked at your report to
22 remember the other clothing he had on?

23 A Yes.

24 MR. PENNINGTON: May I approach, your Honor?

25 THE COURT: You may.

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1 (Document is handed to the witness.)
2 A White T-shirt and gray shorts.
3 Q (By Mr. Pennington) Okay. Thank you.
4 (Document is handed back to Mr. Pennington.)
5 Q (By Mr. Pennington) And that's accurate, to
6 the best of your recollection, that Mr. Deleston, at
7 about 4:20 in the morning, was wearing a white T-shirt
8 and gray shorts?
9 A Yes.
10 Q And he was on a bicycle?
11 A Correct.
12 Q With another individual?
13 A Correct.
14 Q And the other individual had a bicycle?
15 A Yes.
16 Q And the reason you knew it was Ryan Deleston
17 was because you had had an encounter just about 11 days
18 before in the Chick-fil-A parking lot?
19 A Correct.
20 Q Where you had been able to identify him
21 and advised him he needed to have a light on his
22 bicycle?
23 A Yes, sir.
24 MR. PENNINGTON: Court's indulgence, your
25 Honor.

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1 (Mr. Pennington speaks with Mr. Kozelski and
2 the Defendant off the record.)

3 Q (By Mr. Pennington) When you met with
4 Mr. Deleston, you had a chance to talk to him at [REDACTED]
5 White Oak for a moment?

6 A He spoke to me, yes, sir.

7 Q About the -- about the --

8 A Yeah, he stated that he had a flashlight
9 tonight.

10 Q He had a flashlight?

11 A Correct.

12 Q You did not report that you smelled bleach when
13 you spoke to him, did you?

14 A No, sir.

15 Q Because you didn't smell any bleach at that
16 time, did you?

17 A We weren't that close where I could smell
18 anything.

19 Q Were -- you were close enough to be able to
20 have a conversation?

21 A He spoke to me. He said that he had a
22 flashlight. We were maybe, I would say, five, ten feet
23 from each other.

24 Q Okay. And you didn't smell anything that you
25 remember?

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1 A No, sir.
2 MR. PENNINGTON: Okay. Thank you. That's all
3 I have.
4 MS. WILSON: No, ma'am.
5 THE COURT: Is this witness excused?
6 MS. WILSON: As far as we're concerned.
7 MR. PENNINGTON: Yes, ma'am. No objection.
8 THE COURT: You are free to leave, but you're
9 also free to remain with us. Thank you. You may step
10 down.
11 Call your next witness.
12 MS. WILSON: Julius Brown.
13 (The oath is administered by the Deputy Clerk
14 of Court, and the witness answers as follows:)
15 THE WITNESS: Yes, sir.
16 THE DEPUTY CLERK OF COURT: You may take your
17 seat. Sir, if you would, state your first and last
18 name, spelling your last for the Court.
19 THE WITNESS: Julius Brown, B-r-o-w-n.
20 THE COURT: Ms. Wilson.
21 **JULIUS BROWN,**
22 having been first duly sworn by the Deputy Clerk of
23 Court to tell the truth, the whole truth, and nothing
24 but the truth, was examined and testified upon his oath
25 as follows:

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DIRECT EXAMINATION

1

2 **BY MS. WILSON:**

3 Q Julius, how old are you?

4 A Thirty-three.

5 Q How far did you go in school?

6 A The eighth grade.

7 Q And you've been in some trouble; hadn't you?

8 A Yes, ma'am.

9 Q You have several convictions?

10 A Yes, ma'am.

11 Q Been to prison?

12 A Yes, ma'am.

13 Q Let's go back through some of those. Back in

14 '99, you were convicted of three charges: carrying a

15 gun, criminal sexual conduct in the third degree, and

16 assault on a police officer; is that right?

17 A Yes, ma'am.

18 Q You got a youthful offender sentence?

19 A Yes, ma'am.

20 Q And then later you had your parole revoked?

21 A Yes, ma'am.

22 Q Went to prison, and then when you got out, you

23 had a conviction for some drug offense; is that right?

24 A Yes, ma'am.

25 Q Have you been a drug dealer for a while?

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1 A Yes, ma'am.

2 Q How many times have you been convicted of

3 dealing drugs?

4 A Just one.

5 Q Okay. And that was for ecstasy or cocaine?

6 A Ecstasy.

7 Q You don't recall a 2009 conviction for

8 possession of cocaine?

9 A No, ma'am.

10 Q How about lying to the police?

11 A Yes, ma'am.

12 Q You gave the police a false name?

13 A Yes, ma'am.

14 Q When was that?

15 A I can't -- I can't remember. But I know I gave

16 them a false name because I had a warrant for family

17 court.

18 Q Okay. Do you have some children?

19 A Yes, ma'am.

20 Q Child support warrant?

21 A Yes, ma'am.

22 Q All right. So when they went to get you for

23 trespassing, you told them a lie about who you were?

24 A When they had stopped me, I had tell them a lie

25 who I be.

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1 Q That didn't really work out for you, did it?
2 A No, ma'am.
3 Q Where are you from, Mr. Brown?
4 A Charleston, South Carolina.
5 Q You lived here your whole life?
6 A Yes, ma'am.
7 Q What neighborhood did you grow up in?
8 A Orleans Garden.
9 Q And at some point, did you ever move to
10 Ardmore?
11 A Yes, ma'am.
12 Q About how old were you when you moved to
13 Ardmore? Do you remember?
14 A I don't remember, but I was young.
15 Q Okay. Do you have a sister?
16 A Yes, ma'am.
17 Q And what is her name?
18 A Stephanie Brown.
19 Q Has she been in a relationship with the
20 Defendant, Ryan Deleston?
21 A Yes, ma'am.
22 Q How long have they been together?
23 A About two years.
24 Q And how about a brother? You have a brother?
25 A Yes, ma'am.

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1 Q What's his name?

2 A Rayshawn Brown.

3 Q All right. Does he also goes -- go by

4 Rayshawn Milligan?

5 A Yes, ma'am.

6 Q And was he raised up by the same parents as

7 you?

8 A My granddaddy raised him.

9 Q He's younger than y'all?

10 A Yes, ma'am.

11 Q Younger and shorter?

12 A Yes, ma'am.

13 Q How tall are you, Julius?

14 A About 5-5, 5-6.

15 Q And Rayshawn's littler than you are?

16 A Yes, ma'am.

17 Q Now, you mentioned that you have a sister,

18 Stephanie, who has been involved with the Defendant.

19 Tell the jury about what difficulties Stephanie has.

20 A She's diabetic.

21 Q She had that for a long, long time?

22 A Yes, ma'am.

23 Q What complications has she had from diabetes?

24 A She's blind, and she got one of her legs cut

25 off.

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1 Q Okay. But is she able to walk?
2 A She have a fake leg.
3 Q Okay. And so she can get around?
4 A Yes, ma'am.
5 Q All right. And she can see some, can she not?
6 A Yes, ma'am.
7 Q Can she drive?
8 A No, ma'am.
9 Q Can she cook for herself and do things like
10 that?
11 A No, ma'am.
12 Q All right. You have been arrested regarding
13 the murder of Marley Lion; is that right?
14 A Yes, ma'am.
15 Q And when was that?
16 A July 31st.
17 Q Of 2012?
18 A Yes, ma'am.
19 Q And when you were arrested, did you tell the
20 police everything you knew about it?
21 A No, ma'am.
22 Q Did you tell them the truth about it?
23 A Some.
24 Q Some of the truth?
25 A Yes, ma'am.

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1 Q Did you tell them about your involvement in it?
2 A No, ma'am.
3 Q Kind of left that part out?
4 A Yes, ma'am.
5 Q After you were arrested, at some point, were
6 you appointed an attorney?
7 A Yes, ma'am.
8 Q And who was that attorney? Is he here?
9 A Rodney Peeples. Yes, ma'am.
10 Q Is that him sitting on the front row right
11 there?
12 A Yes, ma'am.
13 Q And I'm going to show you what has been marked
14 State's Exhibit --
15 (Document is shown to Defense Counsel.)
16 MS. WILSON: Your Honor, may I approach the
17 witness?
18 THE COURT: You may.
19 (Document is handed to the witness.)
20 Q (By Ms. Wilson) Do you recognize State's
21 Exhibit 6?
22 A Yes, ma'am.
23 Q What is that?
24 A That's a plea agreement.
25 Q All right. And you entered into that plea

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1 agreement through your lawyer in my office; is that
2 right?

3 A Yes, ma'am.

4 MS. WILSON: Your Honor, at this time, we offer
5 State's Exhibit 6.

6 MR. PENNINGTON: No objection, your Honor.

7 THE COURT: State's 6 into evidence without
8 objection.

9 (State's Exhibit No. 6 is admitted into
10 evidence.)

11 Q (By Ms. Wilson) And, Julius, tell this jury
12 what you believe the benefit to you is in having that
13 plea agreement.

14 A To tell the truth.

15 Q Well, what's it going to help you?

16 A Get my charge reduced from murder to
17 manslaughter.

18 Q All right. So instead of looking at 30 to
19 life, you're looking at a 30-year maximum; is that
20 right?

21 A Yes, ma'am.

22 Q And since that time of that plea agreement,
23 have you agreed to cooperate and talk with the
24 investigators with my office?

25 A Yes, ma'am.

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1 Q And have you told them about your involvement
2 in this?
3 A Yes, ma'am.
4 Q And have you told them what you knew about what
5 happened that night?
6 A Yes, ma'am.
7 Q Well, let's go to that night. First of all,
8 you said that Ryan and Stephanie were in a relationship.
9 Where were they living?
10 A On Cashew Street.
11 Q And how about a guy named George Brown? Who is
12 that?
13 A A friend of the family.
14 Q What size guy is he?
15 A Big.
16 Q And did he live in Ardmore?
17 A No, ma'am.
18 Q Okay. And back on June 15th of 2012, did you
19 and George and your brother, Rayshawn, have occasion,
20 along with Bryan Rivers, to be at Cashew Street at Ryan
21 and Stephanie's house?
22 A Yes, ma'am.
23 Q And I mentioned Little B. Who is that?
24 A A friend.
25 Q What's his real name?

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1 A Bryan Rivers.
2 Q He goes by "Little B"?
3 A Yes, ma'am.
4 Q And that night on Cashew Street, what were
5 y'all doing out at Stephanie's and Ryan's?
6 A Drinking and smoking marijuana.
7 Q Okay. And was that an unusual thing for y'all
8 to do out there?
9 A No, ma'am.
10 Q And how was it that George and your brother,
11 Rayshawn, got to Stephanie's?
12 A Drive.
13 Q In what?
14 A In his truck.
15 Q What kind of truck does he have?
16 A A GMC.
17 Q What style? Is it a Suburban?
18 A Yeah. A black Suburban.
19 Q Been in that truck before?
20 A Yes, ma'am.
21 Q All right. So Rayshawn and George came to
22 Stephanie's by truck. How'd you get there?
23 A George picked me up.
24 Q So he brought you there too?
25 A He came to get me like 7:00, 7:30 that night.

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1 Q Okay. And so y'all are out there drinking,
2 smoking pot?
3 A Yes, ma'am.
4 Q And at some point was there a discussion about
5 leaving to go downtown?
6 A Yes, ma'am.
7 Q Why was it that you were going to go downtown?
8 A To go pick up a friend.
9 Q What else were you going to do?
10 A That's -- George told us -- when we was going
11 to pick up my friend, I got a call. He was like, he got
12 a ride over there so we didn't have to come get him. So
13 George was, like, he -- he get licks down there because
14 he already had pulled a lick off down there, so we go on
15 downtown.
16 Q So you were going to -- originally going to go
17 pick up friend, but you found out that he no longer
18 needed a ride?
19 A Yes, ma'am.
20 Q And George is saying y'all can do what
21 downtown?
22 A Hit a lick.
23 Q Tell the jury what that means, to hit a lick.
24 A A robbery.
25 Q All right. And so you're in George's car.

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1 George is driving?
2 A Yes, ma'am.
3 Q Where are you sitting?
4 A In the passenger seat.
5 Q All right. Where are Little B and
6 Ryan Deleston?
7 A The seat behind the driver and passenger.
8 Q And where's Rayshawn?
9 A All the way in the back.
10 Q So y'all come downtown. Where do you go?
11 A On down -- down the street from the courthouse.
12 Q All right. Did y'all have anything to use to
13 do this robbery with?
14 A Yeah. The gun.
15 Q What gun?
16 A The gun that was used to kill Marley Lion.
17 Q Whose gun was that?
18 A George Brown.
19 Q George had brought the gun that night?
20 A Yes, ma'am.
21 Q Was that something he carried around often?
22 A Yes, ma'am.
23 Q Okay. So y'all come around somewhere near the
24 courthouse?
25 A Yes, ma'am.

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1 Q Do you remember what street you were on?
2 A No, ma'am.
3 Q Where did you go?
4 A Riding -- we ride around. We was down at this
5 building down the street from the courthouse. Then we
6 leave from around there and then, like, ride around.
7 Q Did you ever go by the Battery?
8 A No.
9 Q You didn't go by the Battery?
10 A No, ma'am.
11 Q You never went and got out at the Battery and
12 walked around?
13 A No, ma'am. I don't think that -- I don't know
14 if that's the Battery or not, but I know we was a little
15 bit down from the courthouse.
16 Q Did y'all ever go buy any water?
17 A No, ma'am.
18 Q Okay. So y'all went down from the courthouse.
19 Who or what were y'all looking for, as far as a person
20 to rob?
21 A Whoever.
22 Q How many hours were y'all downtown?
23 A Like -- probably, like, two hours.
24 Q It took you that long?
25 A Yes, ma'am.

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1 Q Okay. Did y'all ever spot somebody that you
2 thought would be a good person to rob?
3 A Yes, ma'am.
4 Q Who'd you spot?
5 A A girl and a boy.
6 Q What were they doing?
7 A Walking.
8 Q And do you remember around what street they
9 were walking?
10 A No, ma'am.
11 Q What happened?
12 A Bryan and Ryan got out.
13 Q Who had the gun?
14 A Bryan.
15 Q All right. They went to do the robbery?
16 A Yes, ma'am.
17 Q Did you get out to help them do the robbery?
18 A No, ma'am.
19 Q Did George get out?
20 A No, ma'am.
21 Q Rayshawn get out?
22 A No, ma'am.
23 Q Do you know if they were able to do a robbery?
24 A Yes, ma'am.
25 Q How do you know?

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1 A Because I saw when Bryan point the gun and got
2 the pocketbook and ran back to the car.
3 Q Okay. He got the -- the pocketbook, ran back
4 to the car. Where did Ryan go?
5 A He going the other way.
6 Q Running? walking? what?
7 A He was walking.
8 Q Okay. What happened when Bryan got back to the
9 car?
10 A George crank up the truck, and we backed off
11 and left.
12 Q Where'd you go?
13 A We met Ryan by McDonald's.
14 Q Was it a plan to meet Ryan at McDonald's?
15 A No, ma'am.
16 Q How did y'all end up meeting him there?
17 A He called George for him.
18 Q And that was at McDonald's over on Crosstown?
19 A Yes, ma'am.
20 Q And when you got to McDonald's, did he get in
21 the car with you?
22 A Yes, ma'am.
23 Q At some point when everybody's in the car, did
24 y'all go through this pocketbook that Bryan was able to
25 steal from the lady?

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1 A Bryan went through the pocketbook.
2 Q Ryan went through it?
3 A Bryan.
4 Q Bryan? Little B?
5 A Yes, ma'am.
6 Q Was there any cash inside the pocketbook?
7 A No, ma'am.
8 Q Nothing for y'all to split up?
9 A No, ma'am.
10 Q After that, did y'all talk about maybe another
11 option, since that robbery didn't work out?
12 A Yes, ma'am.
13 Q And what was that?
14 A Famous Joe's.
15 Q Tell me about the Famous Joe's. Where is that?
16 A West Ashley.
17 Q Had Ryan discussed robbing the Famous Joe's
18 before?
19 A Yes, ma'am.
20 Q And when y'all were in the car headed back to
21 West Ashley, what did y'all try to do -- what did y'all
22 decide to do to figure out whether or not robbing Famous
23 Joe's would be a good idea or not?
24 A Ride through the parking lot.
25 Q And, again, who was driving?

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1 A George Brown.
2 Q And you were still sitting in the front seat?
3 A Yes, ma'am.
4 Q Rayshawn was still in the way, way back?
5 A Yes, ma'am.
6 Q And then Ryan and Little B?
7 A Behind the passenger in the driver's side.
8 Q Did y'all, in fact, ride through the parking
9 lot of the Famous Joe's?
10 A Yes, ma'am.
11 Q And when you went through, what'd you see?
12 A Two cars and a truck.
13 Q And did you talk about whether or not the
14 Famous Joe's would be a good target to rob?
15 A Yes, ma'am. I told him there ain't nobody in
16 there, so ain't no need to go there to try to lick
17 Joe's.
18 Q Okay. What do you mean? There's nobody there,
19 why -- why did that affect your thought on how good it
20 would be to rob it?
21 A Because it usually be packed.
22 Q Okay. So if it wasn't packed, that meant what?
23 A We was going to rob it.
24 Q But if -- if they didn't have a lot of
25 customers, how would that affect the money?

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1 A We wouldn't probably get no money.
2 Q Okay. So what did you tell Ryan about whether
3 or not y'all should rob Famous Joe's?
4 A I told him I don't think it's a good idea. But
5 then when we got to Cashew Street --
6 Q All right. So y'all ride through the parking
7 lot and go on to Cashew?
8 A Yes, ma'am.
9 Q Back to his house?
10 A Yes, ma'am.
11 Q Everybody get out of the car?
12 A Yes, ma'am.
13 Q Where is the gun?
14 A Under the driver's side, under the mat.
15 Q Okay. How did it get from Bryan doing the
16 robbery to under George's mat?
17 A Ryan. You mean --
18 Q Bryan. I'm sorry. Little B. Let's say Little
19 B instead of Bryan.
20 A He gave it to him on our way leaving from
21 downtown.
22 Q Little B gave the gun back to George?
23 A Yes, ma'am.
24 Q Because it was whose gun?
25 A George.

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1 Q All right. And George put it where?
2 A Under the mat, under the driver's side.
3 Q Okay. And when y'all got back to Cashew, the
4 gun was where?
5 A Under the mat.
6 Q Okay. Was there any more discussion about
7 going ahead and robbing Famous Joe's?
8 A Yes, ma'am.
9 Q Tell the jury what that discussion was like.
10 A He -- Deleston is, like, let's go down here
11 anyway and check it out. And we end up leaving from
12 Cashew Street to go check it out.
13 Q Did the people at Famous Joe's know you?
14 A Yes, ma'am.
15 Q How did they know you?
16 A From being in there.
17 Q How many times you been in there?
18 A We always used to go in there to shoot pool and
19 drink.
20 Q Did you ever get kicked out of there?
21 A Yes, ma'am.
22 Q You passed out?
23 A Yes, ma'am.
24 Q You weren't worried about them seeing you?
25 A I wasn't going to go in there. I was lookout.

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1 Q You were going to be looking out?
2 A Yes, ma'am.
3 Q Well, who was going to be the one to rob them?
4 A Deleston.
5 Q Do you know whether or not he had the gun when
6 y'all set out to go down there?
7 A Yes, ma'am.
8 Q Well, how did he get it from George?
9 A George gave it to him before we left.
10 Q Okay. Did you see that?
11 A Yes, ma'am.
12 Q What'd Deleston do with the gun?
13 A Put it in his side.
14 Q In his side what?
15 A Inside his pant on his hip.
16 Q What'd he have on?
17 A A striped shirt, some white shoes, and some
18 jeans.
19 Q Okay. So you and who else walked down to
20 Famous Joe's?
21 A Me, Deleston, and Rivers.
22 Q Was the plan to go inside to do the robbery?
23 A No. To wait for them to come out.
24 Q For who to come out?
25 A The people inside Joe's.

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1 Q What'd you think they have?
2 A Money.
3 Q In what?
4 A In the bag.
5 Q All right. What was Little B going to do?
6 What was his part going to be?
7 A To watch out.
8 Q How long do you -- would it take y'all, or did
9 it take y'all to walk from Cashew Street down to little
10 Joe's -- Famous Joe's?
11 A Probably like three minutes.
12 Q Okay. Where'd you go when you got down to that
13 area?
14 A We stopped behind the white fence and were
15 looking.
16 Q What did you see?
17 A The people leaving out of Joe's.
18 Q All right. Did y'all hit them?
19 A No, ma'am.
20 Q Why not?
21 A Because Marley Lion ended up rolling up.
22 Q All right. And you're saying Marley Lion. Did
23 you know Marley Lion?
24 A No, ma'am.
25 Q Did you know his name at that time?

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1 A No, ma'am.

2 Q You've learned that since then?

3 A Yes, ma'am.

4 Q So you're watching, standing behind a fence; is
5 that right?

6 A Yes, ma'am.

7 Q Okay. And the people come out. Could you tell
8 if they had money or bags or anything?

9 A Yeah. They had stuff in their hands, but I
10 couldn't tell if it was no money or nothing.

11 Q Did the three of y'all talk about going to hit
12 them?

13 A Yes, ma'am.

14 Q Okay. What was said?

15 A Give him like --

16 MR. PENNINGTON: Objection, your Honor. At
17 this point, if we're going to use hearsay to support,
18 that we be specific as to who is the speaker. So I
19 would ask him to be clear as to who's speaking.

20 THE COURT: Okay. Thank you.

21 Q (By Ms. Wilson) When you are having the
22 discussion -- make sure you say who said what.

23 A Yes, ma'am.

24 Q Did Ryan say anything about going to do the
25 robbery of the people leaving?

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1 A Yes, ma'am.

2 Q What did he say?

3 A He was, like, he was going to get them, but

4 that Marley roll up. He intervened -- intervened in the

5 robbery. So we waited behind the gate.

6 Q When you say "intervene," do you mean

7 "interrupt"?

8 A Yeah. Interrupt.

9 Q Okay. All right. So when he pulled up, what

10 happened with the other people with the money?

11 A Marley -- they said something to Marley and

12 then he got out -- he was moving stuff around in his

13 truck. And then -- they ended up leaving. So he was,

14 like, well, since they --

15 Q Wait. Who's "he"?

16 A Deleston said, Well, he going to try to see

17 what Marley Lion had.

18 Q All right. What'd you think about that plan,

19 to see about what Marley Lion had?

20 A I went along with it.

21 Q Okay. What'd you do to help to begin that part

22 of the plan?

23 A I just was sitting there telling him how to

24 watch out.

25 Q Okay. Well, did you stay there behind that

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1 gate -- behind that white fence?

2 A No. I walked in -- walked through the parking
3 lot to make sure ain't nobody else was in the parking
4 lot.

5 Q All right. Tell the jury what path you took to
6 do that.

7 A I walk around the side and came around the
8 front of the building and walked through the parking lot
9 beside the truck and walked on through the rock.

10 Q What'd you have on?

11 A A white T-shirt, some black short pants, some
12 black slippers, and white socks.

13 Q Slippers like --

14 A Maggie slippers.

15 Q All right. When you walked around, who -- who
16 did you leave behind that fence?

17 A Ryan -- Bryan and Ryan Deleston.

18 Q Okay. Little B and Ryan Deleston?

19 A Yes, ma'am.

20 Q Okay. When you walked around by the
21 Chick-fil-A and through the parking lot, did you see
22 anybody?

23 A No, ma'am.

24 Q Did you check out Marley's car?

25 A I couldn't see inside.

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1 Q Why not?
2 A The window was dark.
3 Q Okay. Was there any reflection from the
4 lights?
5 A Yes, ma'am.
6 Q Okay. So did you tell him that you would try
7 to see what was in Marley's car?
8 A I tell him I couldn't see.
9 Q No. I mean, before you left. Were you going
10 to try to see what was in Marley's car?
11 A Yes, ma'am.
12 Q Tell the jury why.
13 A Because the window -- to see how much people
14 was in the car.
15 Q How was that going to affect something?
16 A To see -- in case he was more than one person
17 in there.
18 Q So if there were a car full of big old guys,
19 y'all might have decided not to --
20 MR. PENNINGTON: Objection. Leading, your
21 Honor.
22 THE COURT: Rephrase your question.
23 MS. WILSON: Thank you, your Honor.
24 Q (By Ms. Wilson) How was who was in the car
25 with Marley going to affect whether or not y'all did a

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1 robbery?

2 A I guess they was going to get robbed too.

3 Q Oh, okay. You just wanted to know the number?

4 A Yes, ma'am.

5 Q Okay. Well, when you got back to that fence,

6 that white fence, who was still back there?

7 A Deleston and Bryan.

8 Q Okay. And did you tell them what you had seen?

9 A No, ma'am.

10 Q You didn't say anything to them?

11 A I couldn't see in the truck.

12 Q Okay. Well, did you tell them that?

13 A Yes, ma'am.

14 Q All right. Was there any discussion about

15 whether or not to go through with the robbery of Marley?

16 A Bryan and Ryan them are discussing who was

17 going to go, passing the gun back and forth, and then

18 Ryan just decided to go.

19 Q Okay. Tell me about that. Passing the gun

20 back and forth. All right. You said when you -- when

21 y'all got down there, when you left Cashew, Ryan had the

22 gun?

23 A Yes, ma'am.

24 Q All right. Tell the jury about passing it back

25 and forth. Who was passing it?

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1 A Ryan was passing it back and forth to
2 Little B, saying go, and Little B was telling him, No,
3 he go. And then Ryan just decided to go on -- go on out
4 to the truck hisself [sic].
5 Q Okay. Could you see what happened when
6 Deleston approached Marley's truck?
7 A Yes, ma'am.
8 Q How could you see?
9 A I was right there behind the fence.
10 Q Okay. What happened?
11 A He walked up to the truck and tell him to open
12 the door, and Marley set off the alarm. And that made
13 Deleston run back. And when he ran back, I told him,
14 I'm like, bust the window, and he turned back around and
15 that's when he started shooting.
16 Q Okay. When you say he ran back, Deleston ran
17 how far back?
18 A Not that far. From the truck to the fence.
19 Q Okay. And you said to him what?
20 A To bust the window. But he thought I said
21 shoot.
22 Q Well, shoot doesn't sound like bust.
23 A No, ma'am.
24 Q Why were you telling him to bust the window?
25 A So he could have get in the truck.

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1 Q And do what?
2 A And rob Marley Lion.
3 Q All right. After you said bust it, what did he
4 do?
5 A He started shooting.
6 Q Do you know how many times he shot?
7 A About five times.
8 Q What'd you do after that?
9 A Took off running.
10 Q What did Little B do?
11 A He ran too.
12 Q What did Little B have on?
13 A All black.
14 Q What color shoes did he have on?
15 A Black.
16 Q What kind of black shoes?
17 A Some Nikes.
18 Q Black Nikes?
19 A Yes, ma'am.
20 Q And you said you had on slippers?
21 A Yes, ma'am.
22 Q And Ryan Deleston had on what color shoes?
23 A White Nikes.
24 Q What kind of Nikes?
25 A Willie Dee's.

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1 Q What's a Willie Dee?
2 A Like, some high-top shoe with a strap, Air
3 Force 1 on it.
4 Q So y'all started running. How are you running
5 in your flip-flop sandals?
6 A I can run in my slippers.
7 Q All right. Who was running with you?
8 A Deleston.
9 Q What path did y'all take?
10 A Like, across the street, like, running down
11 Balsam Street behind the houses.
12 Q Okay. And where did you go?
13 A We went up behind this white boy named Jason
14 house, and Deleston hide the gun under the pool.
15 Q Okay. Did y'all hang out at Jason's house for
16 a while?
17 A No, ma'am.
18 Q Where'd you head?
19 A On Cashew Street.
20 Q Straight to Cashew?
21 A Yes, ma'am.
22 Q Did it take y'all as long to run back as it
23 took you to walk down there?
24 A No, ma'am.
25 Q Faster?

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1 A Faster. We got back faster.
2 Q What happened when y'all got back to Cashew?
3 A Deleston, I tell him to go in the house and
4 wash his hands.
5 Q Why'd you tell him to wash his hands?
6 A Because he had -- because of the gunpowder.
7 Q All right. Did you tell him what to wash his
8 hands with?
9 A Yes, ma'am.
10 Q What was the mood there between you and
11 Little B and Ryan at that point?
12 A We was telling him -- we was telling -- Ryan
13 was in the house, and George and Duke went outside. We
14 were telling him he was stupid for shooting him. He
15 had --
16 Q When you say "Duke," that's Rayshawn?
17 A Yes, ma'am.
18 Q So Duke and George were still outside?
19 A Yes, ma'am.
20 Q Why didn't they go down to Little [sic] Joe's
21 with you?
22 A George said he was too big and too -- he just
23 saying, I won't go.
24 Q He didn't want to go?
25 A No, ma'am.

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1 Q All right. So did you ever confront Ryan about
2 shooting the kid?

3 A We just been telling him he go down for
4 shooting him and cursing him out.

5 Q Okay. Well, what'd you tell him?

6 A I'm, like, You's a stupid MF for shooting him
7 for nothing. You don't have to shoot him.

8 And he was, like, I thought you said shoot.

9 And I was, like, No, I tell you to bust the
10 window.

11 Q What about Bryan?

12 A He was telling him the same thing.

13 Q Little B was?

14 A Yes, ma'am.

15 Q Well, what exactly did Little B say to Ryan?

16 A He's a stupid mother fucker; he shouldn't shoot
17 that cracker.

18 Q Did y'all fight?

19 A No, ma'am.

20 Q When you told Ryan that he should go wash his
21 hands, do you know whether or not he did that?

22 A He went in the house, but I don't think he
23 washed his hands with bleach. He come back out; his
24 hands were wet.

25 Q Okay. You mentioned bleach. Why do you even

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1 bring bleach up?

2 A Because I had tell him to wash his hands with
3 bleach to get the gunpowder off.

4 Q But you don't know if he did?

5 A No, ma'am.

6 Q How about his clothes? What'd he do with his
7 clothes?

8 A He burn it.

9 Q Well, did he do that right then?

10 A No, ma'am.

11 Q Did he change his clothes?

12 A He took off his shirt.

13 Q Okay. The shirt that he had on when?

14 A When we going down to do the lick.

15 Q The shirt that he had on when he shot
16 Marley Lion?

17 A Yes, ma'am.

18 Q He took that shirt off?

19 A Yes, ma'am.

20 Q At some point, did you and Ryan Deleston decide
21 you needed to leave Cashew?

22 A Yes, ma'am.

23 Q Why was it that y'all needed to leave?

24 A Because he had leave his hat and a card.

25 Q All right. Tell me about that. He left a hat?

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1 A Yes, ma'am.

2 Q What kind of hat?

3 A A red hat.

4 Q He had taken that down to Famous Joe's?

5 A Yes, ma'am.

6 Q Where'd he leave it?

7 A Like -- like behind the house we was -- the

8 house we was standing behind, he left it on that little

9 concrete with the card.

10 Q You keep saying "the card." What card had Ryan

11 taken down there that he left?

12 A The card from the lick from downtown.

13 Q From the robbery downtown?

14 A Yes, ma'am.

15 Q A business card?

16 A No. I think it's a card you can use to go

17 inside the gas station to get stuff with.

18 Q Like a debit card or credit card?

19 A A debit card.

20 Q How did you know that he left it down at the

21 robbery?

22 A Because he said he had left his hat.

23 Q Why didn't you just leave it?

24 A Because that would have been evidence.

25 Q Okay. So you and he set out to go get the hat?

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1 A Yes, ma'am.

2 Q Did you know then you were going to get the
3 card?

4 A No, ma'am.

5 Q So where did you and he go?

6 A We went back to the spot where we went out
7 behind the gate.

8 Q Did you stop off anywhere?

9 A We stop by my mom house to get two bicycles.

10 Q And did you see anybody when you stopped off?

11 A No, ma'am.

12 Q Did you ever see any police?

13 A Yeah. After we get the hat and the card.

14 Q Okay. After that?

15 A Yes, ma'am.

16 Q So you stopped by your momma's house? She
17 lives where?

18 A On White Oak.

19 Q And is that between Cashew and Famous Joe's?

20 A Yes, ma'am.

21 Q You get the bicycles. Why are y'all getting
22 bicycles?

23 A To hurry up and go get the hat.

24 Q All right. Tell the jury what you saw when you
25 rode down towards Famous Joe's on bikes.

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1 A We saw the police and a fire truck.
2 Q Down where?
3 A In Famous Joe's parking lot.
4 Q So you're saying that after there's this
5 robbery -- let me ask you this: Did you know whether or
6 not Marley Lion had been hit?
7 A Yes, ma'am. Because when we ran off, I hear
8 him yelling.
9 Q You heard Marley yelling?
10 A Yes, ma'am.
11 Q So you and Ryan Deleston, after you know
12 somebody has been shot, get on bikes and ride back down
13 there?
14 A Yes, ma'am.
15 Q Did the police see you down there?
16 A No, ma'am.
17 Q Where did you go when you went back the second
18 time?
19 A We had gone down there to get the hat and the
20 card.
21 Q Right. Did both of you go up to do that?
22 A No. He stayed in front of the apartment
23 building what's right there by Joe's, and I ran around
24 the left side and go on and got the hat. And that's
25 when I saw the card.

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1 Q The stolen card?
2 A Yes, ma'am.
3 Q Did you pick that up?
4 A Yes, ma'am.
5 Q What happened next? Did y'all stay there?
6 A We stand in front of the apartment building for
7 a little while. Then we left.
8 Q Where'd you go when you left?
9 A We went back to my momma house to drop the
10 bikes off.
11 Q At that point, did y'all see anybody?
12 A Yeah. Two police.
13 Q Did anybody have any conversation with the
14 police at that point?
15 A No. Deleston just said that been the police
16 who had stopped me for not having a flashlight on the
17 bike.
18 Q Okay. And after y'all took the bikes back and
19 saw the police, where'd y'all go?
20 A Back on Cashew Street.
21 Q Now, you mentioned something about burning
22 clothes?
23 A Yes, ma'am.
24 Q Who burned the clothes?
25 A Deleston.

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1 Q What clothes did he burn; do you know?
2 A The clothes he had weared. Clothes he had on.
3 Q All his clothes?
4 A He burned the -- like, the shirt and some pants
5 and the pocketbook.
6 Q What pocketbook?
7 A From the robbery downtown.
8 Q Got burned in that fire?
9 A Yes, ma'am.
10 Q And where was the fire?
11 A In the backyard.
12 Q Did you go back there and watch him burn it?
13 A No, ma'am.
14 MS. WILSON: Beg the Court's indulgence.
15 THE COURT: Take your time.
16 (Ms. Wilson speaks with Mr. DuRant off the
17 record.)
18 (Documents shown to Defense counsel.)
19 MS. WILSON: Your Honor, at this time, I offer,
20 I believe without objection, State's 84, which is a
21 photograph; State's 38; State's 43; State's 55; State's
22 67; and State's 68 in, I believe without objection.
23 THE COURT: Is that correct?
24 MR. PENNINGTON: That is correct, your Honor.
25 THE COURT: Those will be admitted into

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1 evidence without objection.

2 (State's Exhibit Nos. 38, 43, 55, 67, 68, and
3 84 are admitted into evidence.)

4 MS. WILSON: Your Honor, if we could, I'd ask
5 that the witness step down. Is it okay if the witness
6 steps down?

7 THE COURT: He's very soft-spoken. I'm
8 inclined -- if you can make it work any other way --

9 MS. WILSON: I will try to improvise. This
10 might work as well.

11 Can you see that?

12 THE WITNESS: No.

13 MS. WILSON: You can't?

14 Can you see that?

15 THE WITNESS: Yes, ma'am.

16 Q (By Ms. Wilson) All right. I'm going to hand
17 you this clicker. Just make sure you --

18 A Turn it.

19 Q You need it turned a little bit?

20 Can you see it now?

21 A Yes, ma'am.

22 Q Okay. I'm going to hand you this clicker.

23 This red button makes the laser go.

24 This area that we've been talking about on

25 State's Exhibit 27, do you see Cashew Street?

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1 A Yes, ma'am.

2 Q All right. Show the jury where Cashew Street
3 is.

4 A (Witness complies.)

5 Q Right there?

6 And which house on that street does Stephanie
7 and Ryan live in?

8 A (Witness indicates.)

9 Q Right there?

10 A Yes, ma'am.

11 Q Okay. And when you and Little B and
12 Ryan Deleston left Cashew to go down to Famous Joe's,
13 which path did y'all take?

14 A We went down Evergreen Street.

15 Q Okay. And when you got down to Famous Joe's --
16 I'm going to show you what's been marked as State's
17 Exhibit 5. You've seen that diagram before, haven't
18 you?

19 A Yes, ma'am.

20 Q Okay. Show the jury on that where Famous Joe's
21 is.

22 A Right there.

23 Q Right in that corner?

24 A Yes, ma'am.

25 Q Okay. And when y'all walked down, y'all came

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1 down Evergreen?
2 A Yes, ma'am.
3 Q All right. Show the jury where y'all went when
4 y'all first got there that night.
5 A (Witness complies.)
6 Q Back there.
7 Okay. What is this building right here?
8 A That's the little day care, like a day care.
9 Q That's a day care?
10 A Yeah.
11 Q And you mentioned at some point you walked
12 through a parking lot to check things out.
13 A Yes, ma'am.
14 Q Show the jury what path you took.
15 A I came around through this way right here.
16 Q And what is this right there?
17 A D.d. Peckers'.
18 Q And is that the Chick-fil-A?
19 A Yes, ma'am.
20 Q Okay. So y'all were staked out right there?
21 A Yes, ma'am.
22 Q Okay. And where did you see the employees come
23 out of Famous Joe's?
24 A Right there.
25 Q Okay. And Marley Lion pulled in where?

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1 A (Witness indicates.)
2 Q Right in there?
3 A Yes, ma'am.
4 Q Okay. And you left to go walk and check
5 everything out?
6 A Yes, ma'am.
7 Q Show the jury where you walked.
8 A From right here --
9 Q Yeah.
10 A -- through here. And I walked around and then
11 came through the parking lot and went through these
12 rocks right here.
13 Q All right. After you walked through there, did
14 you go back straight behind that fence?
15 A No, ma'am.
16 Q Why not?
17 A Because he probably would have seen me.
18 Q "He" who?
19 A Marley Lion.
20 Q So you didn't walk straight back to meet back
21 up with -- with Ryan and Little B?
22 A No, ma'am.
23 Q Show the jury on this map where you went after
24 you had walked through the parking lot and seen Marley.
25 You can stand up. Just make sure you talk

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1 loudly.

2 A I walked through the rocks --

3 Q Speak up.

4 A I walked through the rocks right here.

5 Q Yeah.

6 A And went around Balsam and came back through

7 here and end up back right here. And then I walked back

8 behind the fence.

9 Q To where they were?

10 A Yes, ma'am.

11 Q Okay. And if I could -- if we could have

12 State's Exhibit 38 -- and you can look on that screen

13 behind you or on that screen.

14 Do you recognize that?

15 A Yes, ma'am.

16 Q And the white fence there, is that the fence

17 y'all were hiding behind?

18 A Yes, ma'am.

19 Q State's Exhibit 55, what is that?

20 A That's Famous Joe's parking lot.

21 Q Okay. And that fence, to the right of that

22 fence, that little open area -- the laser is not going

23 to work on there -- did anybody walk through that area?

24 A That's the area Deleston came from when he

25 shot -- when the police -- when he ran up to the truck

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1 and set off the alarm, he came back to that area right
2 there. And then that's when I tell him to bust the
3 window, and he turned back around.

4 Q You were watching from that area?

5 A Yes, ma'am.

6 Q Okay. And when y'all ran after the shooting,
7 can you show the jury, on State's Exhibit 4, what path
8 you took going back to Cashew? You didn't go back the
9 same way; right?

10 A No, ma'am.

11 Q Where'd you go?

12 A I walked -- ran down Balsam. And then I don't
13 know where -- I don't know where Little B went at, but I
14 know me and Deleston -- and Deleston split up on White
15 Oak and he went down Evergreen and I keep going up
16 Balsam.

17 Q Okay. Let's look at -- all my maps are getting
18 confused.

19 All right. So you're running down Balsam.
20 Balsam Street's up here?

21 A Yes, ma'am.

22 Q Okay. Do you know where it was that you saw
23 Little B again?

24 A When we got -- when I got on -- this is a
25 little side street before you get, like, the end

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1 -- like, at Monroe Balsam, a little side street you can
2 turn off, and he was coming down Evergreen.

3 Q At some point did the three of y'all hook back
4 up?

5 A Yes, ma'am.

6 Q Okay. And went back to Stephanie and Ryan's?

7 A Yes, ma'am.

8 Q Now, you mentioned that Ryan Deleston burned
9 some of his things when he got back?

10 A Yes, ma'am.

11 Q And that Little B had on black tennis shoes or
12 black Nikes; is that right?

13 A Yes, ma'am.

14 Q Where'd he get those black Nikes?

15 A I give them to him.

16 Q You gave them to him when?

17 A I think I gave them to him since he came home.

18 Q Since he came home from prison?

19 A Yes, ma'am.

20 Q He had no clothes?

21 A No, ma'am.

22 Q And you gave him those shoes?

23 A Yes, ma'am.

24 Q All right. I'm going to show you some videos
25 now. First of all, State's Exhibit 3 -- first of all,

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1 Julius, I want you to look at State's Exhibit 3.

2 MS. WILSON: Your Honor, while we're pulling
3 that up, we'd offer State's Exhibit 27, which is one of
4 the maps up there.

5 MR. PENNINGTON: No objection, your Honor.

6 THE COURT: State's 27 into evidence without
7 objection.

8 (State's Exhibit No. 27 admitted into
9 evidence.)

10 Q (By Ms. Wilson) We're now going to play
11 State's Exhibit 3, which was the d.d. Peckers' video
12 that was introduced through Lauren Mulkey.

13 Julius, while he's getting that set up, do you
14 have any idea what time it was when y'all came back from
15 downtown and rode through the Famous Joe's parking lot?

16 A Had to have been like going on two o'clock,
17 because I --

18 Q Why do you say that?

19 A Because when we got back down there, Joe's was
20 closing.

21 Q So it was sometime after 2:00?

22 A Yes, ma'am.

23 (The video is played.)

24 Q (By Ms. Wilson) If you'll look in that right
25 corner, Julius, and tell us what you see.

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1 A That's me walking through -- that's me walking
2 through the parking lot.
3 Q In that top corner?
4 A Yes, ma'am.
5 Q White T-shirt?
6 A Yes, ma'am.
7 Q What were you doing back there?
8 A Walking through to make sure nobody in the
9 parking lot.
10 Q And when you talked to the police when you were
11 first arrested, you didn't tell them that's what you
12 were doing back there, did you?
13 A No, ma'am.
14 Q What'd you tell them you were doing?
15 A I was making a drug sale.
16 Q There was no drug sale back there, was there?
17 A No, ma'am.
18 Q You walked through to see who all was back
19 there?
20 A Yes, ma'am.
21 Q So that y'all could rob Marley Lion?
22 A Yes, ma'am.
23 MS. WILSON: Your Honor, we're going to play
24 State's Exhibit 2.
25 (The video is played.)

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1 Q (By Ms. Wilson) While we're pulling that up,
2 already admitted as State's 84, what is this?
3 A George's truck.
4 Q Is that the truck y'all went downtown in?
5 A Yes, ma'am.
6 Q The truck y'all rode through Famous Joe's in?
7 A Yes, ma'am.
8 MS. WILSON: Your Honor, if I could just hold
9 this up for the jury?
10 THE COURT: You may.
11 (The exhibit is published to the jury.)
12 Q (By Ms. Wilson) Now, Julius, after you signed
13 the plea agreement and agreed to cooperate, before that,
14 had anybody ever talked to you about that ride-through
15 that y'all did in the parking lot?
16 A No, ma'am.
17 Q When was the first anybody heard about that?
18 A When I had talked to y'all.
19 Q And you told us?
20 A Yes, ma'am.
21 Q Did you know whether or not it had been on
22 video?
23 A No, ma'am.
24 MS. WILSON: Your Honor, we're at 3 --
25 MR. DURANT: This is 3:08:56.

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1 MS. WILSON: On State's Exhibit 2.
2 MR. DURANT: On State's Exhibit 2.
3 (The video is played.)
4 Q (By Ms. Wilson) What is this coming through,
5 Julius?
6 A That's George's truck.
7 Q And who all was in that truck?
8 A Me, Deleston, Rivers, Rayshawn Milligan.
9 Q And George was driving?
10 A And George driving.
11 Q And that was after y'all came back from doing
12 what?
13 A The lick from downtown.
14 Q The lick from downtown?
15 A Yes, ma'am.
16 MS. WILSON: Your Honor, if we could go to
17 3:33.
18 (The video is played.)
19 Q (By Ms. Wilson) Do you remember that, Julius?
20 A Yes, ma'am.
21 Q Where were you when that car was pulling in?
22 A Behind the white gate.
23 Q Behind that white fence?
24 A Yes, ma'am.
25 Q Okay. And -- keep watching.

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1 (The video is played.)
2 Q (By Ms. Wilson) What's going on in the
3 background back there?
4 A They leaving out of Joe's.
5 Q And where those bright lights are, do you
6 recognize those people?
7 A I can't recognize them, but I know them.
8 Q Okay. You can't recognize them from the video?
9 A No, ma'am.
10 Q Did you recognize them that night?
11 A No, ma'am.
12 Q Do you know what they were doing?
13 A They were leaving.
14 Q Okay.
15 (The video is played.)
16 Q (By Ms. Wilson) What was being discussed
17 between you and Ryan Deleston and Little B while this
18 all was happening?
19 A He was, like, he's going to see --
20 Q "He" who?
21 A Deleston was, like, he going to see where
22 Marley Lion at since they were leaving Joe's.
23 (The video is played.)
24 Q (By Ms. Wilson) So there was all this time
25 right now while Marley Lion is getting his stuff out of

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1 the back, what was happening then?

2 A We was -- Deleston was, like, he didn't know if
3 all those people been in the truck. And that's when I,
4 like, got out to walk around to see if I could see how
5 much people was in the truck.

6 Q Okay.

7 (The video is played.)

8 MS. WILSON: Your Honor, I believe we have to
9 switch videos for the next segment.

10 Trying to get at 3:44:19. There we go.

11 Q (By Ms. Wilson) Who's that?

12 A That's me walking through the parking lot.

13 Q Just leaving the d.d. Peckers'/Chick-fil-A
14 area?

15 A Yes, ma'am.

16 (State's Exhibit 23 is shown to Defense
17 Counsel.)

18 (Ms. Wilson and Mr. Pennington approach the
19 bench.)

20 Q (By Ms. Wilson) I'm going to show you, Julius,
21 State's Exhibit 23. What is that? Do you recognize it?

22 A Yes, ma'am.

23 Q What is it?

24 A That's the gun used to kill Marley Lion.

25 Q Whose gun was it?

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1 A George Brown.

2 Q And who had it when y'all went down to rob the
3 Famous Joe's?

4 A Ryan Deleston.

5 MS. WILSON: Your Honor, at this time we'd
6 offer State's Exhibit 23.

7 THE COURT: Any objection?

8 MR. PENNINGTON: No objection.

9 THE COURT: State's 23 into evidence without
10 objection.

11 (State's Exhibit No. 23 is admitted into
12 evidence.)

13 Q (By Ms. Wilson) So this is the gun -- was this
14 the gun used downtown to rob the lady of her purse?

15 A Yes, ma'am.

16 Q By who?

17 A Bryan Rivers.

18 Q Okay. And this was the gun taken down to
19 Famous Joe's?

20 A Yes, ma'am.

21 Q By who?

22 A Ryan Deleston.

23 Q And when you talked about there being some back
24 and forth with the gun, who was that between?

25 A Bryan Rivers and Ryan Deleston.

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1 Q Over this gun?
2 A Yes, ma'am.
3 Q All right. Look at the video in State's
4 Exhibit 1. We're at 3:54.
5 (The video is played.)
6 Q (By Ms. Wilson) We're going to go to 3:56.
7 (The video is played.)
8 MR. DURANT: This is 3:56.
9 (The video is played.)
10 Q (By Ms. Wilson) Could you see what color shoes
11 that person had on?
12 A Yes, ma'am.
13 Q What color?
14 A White.
15 Q Can you tell anything about his shirt?
16 A Yes. It's striped.
17 Q Who is that person?
18 A Ryan Deleston.
19 Q How do you know?
20 A Because Little B had on all black, and Deleston
21 had on a striped shirt. And I had on a white T-shirt
22 with some short pants and some slippers on.
23 Q Did you see that happen in real life?
24 A Yes, ma'am.
25 Q From where?

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1 A Behind the fence.
2 Q Where did Deleston go just then?
3 A He ran back by the fence.
4 Q What are you telling him right now?
5 A To bust the window.
6 Q Who was that?
7 A Deleston.
8 Q Any question about that?
9 A No, ma'am.
10 Q And when you and Ryan left Cashew to come back
11 behind that fence to get his hat -- what color was the
12 hat you got?
13 A Red.
14 Q Show you State's Exhibit 68. Do you recognize
15 that?
16 A Yes, ma'am.
17 Q What is it?
18 A A red hat.
19 Q Where?
20 A In the kitchen.
21 Q Whose kitchen?
22 A Stephanie Brown's.
23 Q And who else?
24 A Ryan Deleston.
25 MS. WILSON: Your Honor, we'd offer 68, I

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1 believe without objection.

2 MR. PENNINGTON: That's correct.

3 MS. WILSON: And I would ask to publish it.

4 THE COURT: You may publish. It's been
5 previously admitted.

6 Q (By Ms. Wilson) And that's the hat y'all
7 picked up from behind that fence -- or you picked up?

8 A Yes, ma'am.

9 Q Why didn't you send Ryan to go get his own hat?

10 A He acted like he didn't want to go get it.

11 Q Well, why did you care about going to get it?
12 Was it your hat?

13 A No, ma'am.

14 Q Well, why'd you give a rip whether or not the
15 hat was left back there?

16 A Because the police would have get evidence.

17 Q And done what?

18 A And come back and charged us.

19 Q Well, it wasn't your hat.

20 A It was Deleston's hat.

21 Q And if they get Deleston, what happens next?

22 A They get me too.

23 Q You were worried about that?

24 A Yes, ma'am.

25 Q You've been worried about that?

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1 A Yes, ma'am.

2 MS. WILSON: Beg the Court's indulgence.

3 THE COURT: Take your time.

4 (Ms. Wilson speaks with Mr. DuRant off the

5 record.)

6 Q (By Ms. Wilson) Julius, one other question --

7 sorry. You need a minute?

8 A No, ma'am.

9 Q From where you and Julius and Ryan were behind

10 that fence, would anybody in the parking lot have been

11 able to seen y'all on the other side of the fence?

12 A No, ma'am.

13 Q That fence is solid?

14 A Yes, ma'am.

15 Q Marley Lion wouldn't have been able to see

16 behind that fence?

17 A No, ma'am.

18 Q Did Bryan Rivers ever leave and go on the

19 parking lot side of that fence?

20 A No, ma'am.

21 Q So Marley Lion saw you?

22 A Walking through the parking lot.

23 Q And who else?

24 A He had to see Ryan Deleston because that's who

25 ran up to the truck.

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1 MS. WILSON: That's all, your Honor.

2 THE COURT: Ladies and gentlemen, it's an
3 appropriate time for us to take our mid-afternoon break.
4 Do not begin your deliberations; do not discuss this
5 case amongst yourselves. Leave your notepads and pens
6 right in your chair.

7 Please rise for the jury.

8 Mr. Brown, stay seated.

9 THE WITNESS: (Moves head up and down.)

10 (The jury is escorted from the courtroom
11 at 3: 43 p.m.)

12 THE COURT: Thank you. Be seated.

13 We'll go ahead and take our afternoon break.
14 Anything before we take our break?

15 Y'all be seated.

16 MS. WILSON: No, ma'am.

17 MR. PENNINGTON: Just a minute. I think my
18 client wants to go to the bathroom. I think there's a
19 swap-off they have to do.

20 THE COURT: All right. Ten minutes? Or let me
21 know when you -- all the comfort breaks have been taken
22 so at least five minutes. All right. We're at ease.

23 (A break is taken from 3:43 p.m. until
24 3: 59p.m., at which time the proceedings continue as
25 follows:)

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1 MS. WILSON: Your Honor, just for scheduling, I
2 understand that Mr. Rivers has been sent --

3 THE COURT: Right. We're going to finish with
4 this witness. And depending on what time, we'll just
5 end early or if you have a short witness.

6 MS. WILSON: Okay. We don't have a short one
7 anytime soon.

8 THE COURT: So whatever happens, we're going to
9 end either at the conclusion of this witness or at 5:00.
10 All right?

11 MS. WILSON: Whichever comes first?

12 THE COURT: Yes.

13 All right. Is there any objection to bringing
14 in the jury, from the State?

15 MS. WILSON: No, ma'am.

16 THE COURT: Mr. Pennington?

17 MR. PENNINGTON: No, ma'am.

18 THE COURT: All right. Let's bring in the
19 jury.

20 Mr. Brown, if you'll just stay seated when the
21 jury comes in and that way -- I can't see through you.
22 That's why I'd like for you to stay seated.

23 Do you need any water or anything? You good
24 over there?

25 THE WITNESS: No, ma'am.

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1 (The jury is escorted into the courtroom at
2 4:01 p.m.)

3 THE BAILIFF: All jurors present, your Honor.

4 THE COURT: Thank you. Be seated.

5 Mr. Pennington, your witness.

6 MR. PENNINGTON: Thank you, your Honor.

7 **CROSS-EXAMINATION**

8 **BY MR. PENNINGTON:**

9 Q Mr. Brown, do you recall that in the days that
10 followed the Marley Lion murder that the police began to
11 come around and concentrate and talk to a lot of people
12 in Ardmore?

13 A Yes, sir.

14 Q And do you remember at one point voluntarily
15 going in and sitting down with Detective Burckhardt,
16 who's wearing kind of the bluish striped -- red striped
17 tie?

18 A I didn't volunteer. They called me on my cell
19 phone to come down and talk with them.

20 Q This would have still been in June; not when
21 you were arrested, but in June?

22 A Yeah, in June.

23 Q Let's do this so you don't have to be leaning
24 way over. Let me see if I can point this more from
25 where you're sitting. How'd that be? Is that better?

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1 A (Moves head up and down.)
2 Q Okay. See if this works a little bit better so
3 you don't have to lean forward. See how it does.
4 A (Moves head up and down.)
5 Q All right. So we were talking about that time
6 frame where before you were arrested, a month before you
7 were arrested, while the police were just getting
8 started in the investigation, do you remember going down
9 to Lockwood and meeting with Detective Burckhardt?
10 A Yes, sir.
11 Q And do you recall that you told him that you
12 and Ryan -- you and Ryan Deleston got bicycles from your
13 mother's house; right?
14 A Yes, sir.
15 Q And that was at [REDACTED] White Oak?
16 A Yes, sir.
17 Q And the plan at that point, from what you told
18 Detective Burckhardt was, is that y'all were going to go
19 get some beer?
20 A Yes, sir.
21 Q But when you stepped out there, you saw police
22 officers talking to some other men?
23 A Yes, sir.
24 Q And at that point, in that moment, Ryan was
25 wearing a white tank top?

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1 A Yes, sir.

2 Q And the officer talked to him about having a
3 flashlight on his bicycle; correct?

4 A The officer didn't talk to him.

5 Q He talked to the officer?

6 A He -- he said that's the officer who stopped me
7 one day for not having a flashlight on the bike.

8 Q All right. And do you recall, in that
9 interview that occurred about six to seven o'clock at
10 night, on tape, that you said to the detective that the
11 police should look at Bryan Rivers?

12 A I don't recall that.

13 Q Do you recall telling them that Rivers was
14 trouble?

15 A I don't recall that either.

16 Q That he dresses in black?

17 A Yeah.

18 Q And that his associates -- he and his
19 associates were doing robberies?

20 A Yes, sir.

21 Q And so you were calling Detective Burckhardt's
22 attention to Bryan Rivers?

23 A Yes, sir.

24 Q That was in June?

25 A Yes, sir.

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1 Q And that would have been probably roughly at
2 least six weeks before you were arrested?
3 A Yes, sir.
4 Q Okay. So you are describing this incident --
5 I'm going to ask you to refer again to State's Exhibit
6 4. I'm going to put here on the easel for you. Can you
7 still see that?
8 A Yeah.
9 Q You can?
10 A (Moves head up and down.)
11 Q I'm going to call your attention to the night
12 that you were involved in the murder of Marley Lion.
13 Okay?
14 A Yes, sir.
15 Q And so we orient the jury again, we're talking
16 about the -- this is the parking lot of Famous Joe's?
17 A Yes, sir.
18 Q And just so we get an idea of distance, this is
19 where your mother's house is?
20 A Yes, sir.
21 Q Okay. That's 635 White Oak?
22 A Yes, sir.
23 Q Okay. Now, so that people make sure they know
24 the geography, because not everybody drives up and down
25 17 every day, this would be a Pep Boys restaurant [sic]

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1 right here?

2 A Yes, sir.

3 Q This is obviously a hotel, some kind, with a
4 swimming pool?

5 A That's the Best Western.

6 Q Best Western hotel. Okay. And behind here,
7 over behind the hotel is Cashew Street?

8 A Yes, sir.

9 Q Okay. And so if you were traveling in a
10 straight line down 17, you'd pass the hotel and then
11 pass Pep Boys. And this is what restaurant?

12 A Bessinger's.

13 Q Bessinger's Barbecue; right?

14 And then next to that is sort of an abandoned
15 building and then a McAlister's funeral home?

16 A Yes.

17 Q And then next to that is -- is this part of the
18 Ford dealership? It's a bunch of cars and boats?

19 A Yes. A Ford place, and it's a little
20 restaurant right there next to it.

21 Q There's a little restaurant here?

22 A Yes.

23 Q That's the Early Bird cafe?

24 A Yes, sir.

25 Q And then there's the Meineke store?

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1 A Yes, sir.

2 Q And then next to that is the brand new

3 Chick-fil-A?

4 A Yes, sir.

5 Q This is their parking lot; right? Correct?

6 A Yes, sir.

7 Q And then you don't see the entrance --

8 this -- this little cutoff building right here is

9 d.d. Peckers'; are we correct?

10 A Yes, sir.

11 Q And so the area that you're walking around is

12 from this white fence area around through here. Somehow

13 there's a little cut-through, and you came around

14 thisaway?

15 A Yes, sir.

16 Q And then up around by Marley?

17 A Yes, sir.

18 Q Okay. And the -- if we were to -- if this was

19 to continue on, what we would see is there's actually an

20 entrance somewhere over here into the parking area, and

21 then there's the Five Guys restaurant. So that's the

22 distance we're talking about?

23 A Yes, sir.

24 Q Okay. So your story today is, is that after

25 the murder, that you ran, and you ran thisaway and up

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- 1 Balsam Street; correct?
- 2 A Negative.
- 3 Q All right. So you ran -- didn't you say that
- 4 y'all ran through here and hid a gun?
- 5 A We ran -- we ran through the back -- down the
- 6 back through those apartments.
- 7 Q So you were running in through here?
- 8 A Yes, sir.
- 9 Q Parallel to Balsam Street?
- 10 A Yes, sir.
- 11 Q Okay. And this is at night, 4:00 in the
- 12 morning?
- 13 A Yes, sir.
- 14 Q Pitch black outside?
- 15 A Yes, sir.
- 16 Q And would it help you to move this over so
- 17 you're not having to flip back and forth? There you go.
- 18 And so your testimony is, is that you guys ran
- 19 through here, and at some point there was a pause where
- 20 the gun got hidden; right?
- 21 A Yes, sir.
- 22 Q And I'll let you point and show me, if you can,
- 23 where that gun got hidden.
- 24 A Right here.
- 25 Q Right in there?

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1 A Jason backyard.
2 Q And you -- just to speak a little bit louder,
3 you're saying that that's Jason's backyard? That's
4 someone that you know?
5 A Yes, sir.
6 Q He's a crack head?
7 A Yes, sir.
8 Q And y'all hid the pistol under his aboveground
9 swimming pool?
10 A Yes, sir.
11 Q And then you indicate that you continued on,
12 and you said you crossed White Oak; right?
13 A Yes, sir.
14 Q And then you indicate that you took a little
15 cut street? Was this Locust Street?
16 A Yeah, that's Locust right there.
17 Q Okay. So you -- did you continue to cut
18 through all these yards, or did you --
19 A No. I came back on Balsam Street.
20 Q Okay. So when you emerged here, you went away
21 from 17 and got on to Balsam. But this -- you headed
22 down to Locust?
23 A Jason's street is Balsam Street.
24 Q I'm sorry?
25 A Jason live on Balsam Street.

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1 Q Correct. And the crackhead that we're talking
2 about with the pool over here, he's on -- he fronts
3 Balsam Street; right?

4 A Yes, sir.

5 Q But you actually came out onto the roadway to
6 continue your path back toward Cashew?

7 A I continued down Balsam Street to Cashew.

8 Q Okay.

9 A And I made the right on Locust.

10 Q On Locust. And came down here, and this is
11 where you say that you then kind of jogged over and came
12 to Cashew. And this is where your sister lives?

13 A Yes, sir.

14 Q And you described that, after that process,
15 that there's a -- it's your story that Ryan washed his
16 hands inside the house; right?

17 A Yes, sir.

18 Q And then at some point the decision was that we
19 want to head back and what we're going to do is get the
20 hat. We need to get the red hat. That was the plan
21 when y'all were on Cashew, was to go back for the red
22 hat; right?

23 A Yes, sir.

24 Q Yes?

25 A Yes, sir.

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1 Q So at that point, did you proceed down
2 Evergreen to this apartment complex where you could see
3 what was going on?

4 A No. We going down Evergreen, stopped by my mom
5 house to get the bikes.

6 Q All right. I thought you said on Direct
7 testimony that you ran into the police officers after
8 you'd gotten the hat?

9 A No. I said after we get the bike -- when we
10 got the bikes, we went and got the hat. And then on our
11 way back to my mother house to drop the bike off, the
12 police had some boy stopped in front of her house.

13 Q Are you sure you didn't just say a moment ago
14 -- that you told the Solicitor that you got -- went and
15 got the hat and then you came back and saw the police?

16 A Yeah. We -- after -- after that, we came back
17 and saw the police in the parking lot.

18 Q Right. No. What I'm talking about -- and you
19 talked to the police at your momma's house?

20 A We didn't talk to the police.

21 Q Okay. All right. But we know at the very
22 least that we're talking about -- from your story, that
23 you had to leave here and go through -- and these are
24 backyards of people's houses; right?

25 A No. Apartments.

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1 Q They're apartments?

2 A Yes, sir.

3 Q Okay. And then eventually emerge and go up
4 here and then down here and over here and go through the
5 process of washing hands, and then make your way back to
6 your mother's house?

7 A We didn't go right back. We didn't -- after he
8 washed his hand, he came out and that -- he was, like,
9 he left his hat down there. So that's when we going to
10 get the hat, but stopped by mother house before we went
11 to get the hat to get the bikes.

12 Q Okay. That's what I'm asking. So this took
13 some time, didn't it?

14 A Yeah, it take time. Not that long.

15 Q Okay. And so you get the bikes, you talk with
16 the officers, and then your story is, is that you go
17 back and you grab this hat?

18 A No. We didn't talk to the officers. After we
19 got the hat, the stuff, we came back, and that's when
20 the officers -- it was two people -- two people was
21 walking. One got stopped, like, by Balsam, and one kept
22 walking. And he got stopped in front of my mom house,
23 and that's when we put the bikes back.

24 Q Is that when you talked to the officer about
25 the flashlight?

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1 A I didn't talk to the officer.

2 Q I'm sorry. Is that when Ryan talked with the
3 officer about the flashlight?

4 A He didn't talk to the officer. He just said,
5 that's the police who had stopped me for not having a
6 light on the bike.

7 Q So it's your testimony that he didn't speak to
8 the officer?

9 A He just said, That's the officer who stopped me
10 without a flashlight on the bike. The officer didn't
11 talk to him.

12 Q Okay. So y'all had been down and fetched the
13 hat before the encounter with the police officers?

14 A Yes, sir.

15 Q And you're sure about that?

16 A Yes, sir.

17 Q No doubt in your mind?

18 A Yes, sir.

19 Q You're absolutely certain?

20 A Yes, sir.

21 Q Okay. All right.

22 All right. Mr. Rivers, you're now 33?

23 A I'm not Rivers.

24 Q I'm sorry. You're right. I apologize. Excuse
25 me.

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1 Mr. Brown?
2 A Yes, sir.
3 Q You're 33?
4 A Yes, sir.
5 Q Before you entered into this plea agreement,
6 the minimum kind of sentence, if you had been convicted
7 of a murder, would have been 30 years; right?
8 A Yes, sir.
9 Q And that would have been a day-for-day
10 sentence?
11 A Yes, sir.
12 Q Meaning that you could basically take your age
13 at the date of your arrest, which was 32, and add 30,
14 and that would be the earliest possible out date; right?
15 A Yes, sir.
16 Q But the Judge could give you more than that on
17 a murder conviction; right?
18 A Yes, sir.
19 Q But you bypassed that by virtue of this plea
20 agreement; am I correct?
21 A Yes, sir.
22 Q Now, you could have gotten up to life without
23 parole, but that's not an issue. That's not a -- you're
24 not exposed to that now, are you?
25 A No, sir.

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1 Q Thanks to this agreement?
2 A Yes, sir.
3 Q Okay. And you were charged with attempted
4 armed robbery before you made the agreement that could
5 carry up to 20 years; correct?
6 A Yes, sir.
7 Q And obstruction of justice that could carry up
8 to ten years more?
9 A Yes, sir.
10 Q So really, before the deal, you were looking at
11 life plus 30 years on this?
12 A Yes, sir.
13 Q And part of the deal, is it not, is that you
14 are no longer exposed to consecutive sentencing for
15 these various counts? The understanding is, is that if
16 you do your part and testify, that the max you can get
17 is 30 years?
18 A Yes, sir.
19 Q At 85 percent?
20 A Yes, sir.
21 Q That means that instead of having to do day for
22 day, if you go in and earn your good time, you could get
23 out as early as 85 percent of that sentence, whatever it
24 is?
25 A Yes, sir.

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1 Q The Judge doesn't have to give you 30 years?
2 A No, sir.
3 Q She can give you anywhere from two to 30 years?
4 A Yes, sir.
5 Q That's your understanding?
6 A Yes, sir.
7 Q It's also your understanding that you're not
8 going to get charged for that robbery down on Rutledge
9 Avenue?
10 A Yes, sir.
11 Q Okay. And if you were to be charged with that
12 robbery down on Rutledge Avenue, in South Carolina,
13 armed robbery -- or a conviction of armed robbery
14 carries a mandatory ten years; right?
15 A Yes, sir.
16 Q And it can carry up to a range of -- a minimum
17 of ten up to 30 years; correct?
18 A Yes, sir.
19 Q So had they charged that, then you would be
20 looking at no less than ten at 85 percent?
21 A Yes, sir.
22 Q Eight and a half more years in the
23 penitentiary?
24 A Yes, sir.
25 Q Let's talk about that Rutledge Avenue. You've

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1 described that you got down there. George was driving;
2 correct?
3 A Yes, sir.
4 Q And he has a secret compartment in his SUV?
5 A Yes, sir.
6 Q I think it's a Chevy suburban, a big kind of
7 truck thing that we saw in the video?
8 A Yes, sir.
9 Q And the secret compartment is something that --
10 well, he works on cars, doesn't he?
11 A Yes, sir.
12 Q And so he has a way that he can lift up the
13 carpet underneath where he puts his feet as the driver?
14 A Yes, sir.
15 Q So if you were to get into his -- well, we'd
16 have to get out of his vehicle and get up underneath
17 where the pedals, the brake is and peel it back, and
18 you'd be able to find the secret compartment?
19 A Yes, sir.
20 Q On this particular night, George had the murder
21 weapon in his truck?
22 A Yes, sir.
23 Q And y'all rode down there to the downtown area
24 and ultimately spied this couple on -- somewhere near
25 Medical University, the Crosstown area?

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1 A Yes, sir.

2 Q Okay. And you described that it was Bryan who
3 got out with the gun?

4 A Yes.

5 Q George's gun?

6 A Yes, sir.

7 Q And you actually saw Bryan Rivers, Little B,
8 point that gun at that couple?

9 A Yes, sir.

10 Q And he's the one that got the purse?

11 A Yes, sir.

12 Q Ryan had gone the other way?

13 A Yes, sir.

14 Q He'd gone away from the robbery; correct?

15 A Yes, sir.

16 Q All right. So you go back to the Crosstown
17 area, and Ryan Deleston is calling you on the phone or
18 calling George and saying, Could you pick me up at the
19 McDonald's on the Crosstown?

20 A Yes, sir.

21 Q That's over there at the foot of the Ashley
22 River bridges?

23 A Yes, sir.

24 Q The Solicitor mentioned that you had some
25 convictions. But just so that they're clear, I want to

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1 make sure that we are accurate about this. I'm not
2 going to go back over with you what would be the earlier
3 convictions from '98, '99. But I'm going to zero in on
4 the drug convictions just so we're clear about that.
5 All right?

6 A Yes, sir.

7 Q Is it accurate to say that around 2006 you were
8 charged with possession of crack cocaine and got
9 convicted of that?

10 A I was charged with ecstasy. That wasn't crack
11 cocaine.

12 Q All right. Well, you went to court -- I'm
13 confusing you, but let's stick on the '06. I'm going to
14 have to go back to '04. Then we're going -- we're going
15 to stick with '06 for the moment.

16 On the '06, would it refresh your recollection
17 to look at the court documents that relate to that when
18 you went to court in front of the judge?

19 A May I read it?

20 (Document is handed to the witness.)

21 Q (By Mr. Pennington) Just take a moment. You
22 don't have to answer a question at this point. It's
23 just a chance for you to refresh your memory and look
24 this over at the various things and the dates and the
25 signatures on here and see if that refreshes your

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1 recollection. And when you tell me it has or it hasn't,
2 just say yes or no, and then I'll frame a question.

3 A This supposed to be ecstasy, not crack cocaine.

4 Q All right. Well, so what you're telling us is,
5 is that when you went in front of the judge in June of
6 2006, that the sentencing sheet was filled out
7 incorrectly, and it was not a possession of crack
8 cocaine; it was supposed to have been a possession of
9 ecstasy?

10 A I remember that night. I got locked up because
11 it was a domestic violence, and they found ecstasy in my
12 front pocket. I didn't have no crack.

13 Q But somehow or other, you ended up entering a
14 guilty plea and signing this sentencing sheet that says
15 possession of crack?

16 A Yes, sir.

17 Q And so that would be your signature right
18 underneath where it says possession of crack?

19 A Yes, sir.

20 Q Zero to three?

21 A Yes, sir.

22 Q Okay. All right. Let's go back to '04.
23 There, again, you were convicted of possession of crack
24 cocaine, weren't you?

25 A I don't remember that.

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1 Q Would it refresh your recollection again to do
2 like we did?

3 A Yes.

4 (Document is handed to the witness.)

5 Q (By Mr. Pennington) Take a moment. You
6 don't -- I'm not asking you a question. Just see if it
7 refreshes you to look at the signatures and the charges
8 and the dates. And let me know when you're ready for me
9 to ask you a question.

10 (Respite.)

11 Q (By Mr. Pennington) You ready? Okay. Is it
12 accurate to say that in January of 2004, you entered a
13 guilty plea of -- for possession of crack cocaine?

14 A Yes, sir.

15 Q Okay. And then turning to 2009, May of 2009,
16 at that time, were you convicted of possession of
17 ecstasy or other controlled substance?

18 A I don't remember.

19 Q Okay. Would it help to refresh?

20 (Document is handed to the witness.)

21 Q (By Mr. Pennington) Just take a moment. Take
22 your time. Dates.

23 A (Moves head up and down.)

24 Q Ready? Okay. So would it be accurate now to
25 say that you appeared in a courtroom like this in

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1 Charleston County and pled guilty to possession of
2 ecstasy in May of '09?

3 A Yes, sir.

4 Q Okay. In addition to the exposure that you
5 might have for a conviction and sentence in this case,
6 I'm going to take you back before this case to the
7 summer of 2012, last summer. And you told the police
8 that you had been going back and forth to jail for the
9 last few years for child support?

10 A Yes, sir.

11 Q And so you were having some money problems,
12 weren't you?

13 A Yes, sir.

14 Q In fact, you owed over \$10,000 in child
15 support?

16 A Yes, sir.

17 Q Okay. And so what had been happening was, is
18 that DSS had been taking you to court on a civil
19 contempt for failing to pay child support?

20 A Yes, 'sir.

21 Q And when you couldn't pay the child support,
22 you were actually being locked up?

23 A Yes, sir.

24 Q And so you had been summoned -- you had had
25 that problem in the past. You'd had it in '09 and in

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1 '10 too?

2 A Yes, sir.

3 Q And you were facing that risk and threat of
4 jail starting about April of 2012, weren't you?

5 A No, sir.

6 Q Weren't you given some Rule to Show Cause
7 papers in April of 2012? This would have been a couple
8 of months before this incident ---

9 A I got took off child support.

10 Q Well, didn't you get, in fact, taken off child
11 support after the Marley Lion murder?

12 A No. Before that.

13 Q You owed \$10,000; right?

14 A Yes, sir.

15 MR. PENNINGTON: Court's indulgence, your
16 Honor.

17 THE COURT: Take your time.

18 Q (By Mr. Pennington) Do you recall appearing on
19 or about June 20th in this court, family court, where
20 Judge Garfinkel agreed to close the case? Somehow you
21 had settled your arrearage, and they closed the case?

22 A Yes, sir.

23 Q All right. And so ---

24 (Document is shown to the witness and to
25 Ms. Wilson.)

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1 Q (By Mr. Pennington) Will it refresh your
2 recollection to look at the date here?

3 (Document is handed to the witness.)

4 Q (By Mr. Pennington) So that we know that
5 Marley Lions was killed on June the 16th of 2012; right?

6 A Yes, sir.

7 Q And you were interviewed by Detective
8 Burckhardt, and you told him just the day before, six
9 days after this, but you told Detective Burckhardt just
10 the day before on the 20th of June, that you'd gotten
11 that burden off of you, hadn't you?

12 A Oh, yeah. Yes, sir.

13 Q And you described to the Solicitor that, in
14 earlier occasions, when you had had a warrant pending
15 for you out of the family court, that you actually lied
16 to police, been charged with lying to police, about who
17 you were to avoid him serving a bench warrant for you?

18 A Yes, sir.

19 MR. PENNINGTON: May I have the Court's
20 indulgence, your Honor?

21 THE COURT: Take your time.

22 (Mr. Pennington speaks with Mr. Kozelski off
23 the record.)

24 Q (By Mr. Pennington) Mr. Brown, in your
25 testimony before the Solicitor, I think that you said

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1 that your plan changed from a plan to rob the people
2 coming out of Famous Joe's; right? The first plan was
3 to rob people coming out of Famous Joe's; correct?

4 A Yes, sir.

5 Q And that when the SUV showed up in the parking
6 lot, then the question was to rob either the young guy
7 that got out, or if there were more people in the car,
8 you were prepared to rob whoever was in the car. Did I
9 understand that right?

10 A Yes, sir.

11 Q Okay.

12 MR. PENNINGTON: Your Honor, at this time, I
13 would renew my request to go further. Based on the
14 Court's ruling, I would offer at this time to go further
15 with regard to the other matters.

16 THE COURT: All right. Based upon the Court's
17 prior ruling, your motion is denied.

18 MR. PENNINGTON: Thank you, your Honor.

19 I have no further questions.

20 THE COURT: All right. Ms. Wilson?

21 **REDIRECT EXAMINATION**

22 **BY MS. WILSON:**

23 Q Julius, you are a drug dealer?

24 A Yes, ma'am.

25 Q Not a real good one, are you?

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1 A No, ma'am.

2 Q You been in and out of prison for it?

3 A Yes, ma'am.

4 Q You have to rob people because it doesn't
5 support you, does it?

6 A Yes, ma'am.

7 Q You haven't hidden that fact, have you?

8 A No, ma'am.

9 Q And you're looking at up to 30 years even with
10 this plea agreement; isn't that right?

11 A Yes, ma'am. Yes, ma'am.

12 Q Do you think for a minute that you're not going
13 to prison?

14 A No, ma'am.

15 Q You know you're going to prison, aren't you?

16 A Yes, ma'am.

17 Q And when you talked to the police initially
18 before you were arrested, that week after, when you
19 talked to police, you didn't want them to know you were
20 involved --

21 MR. PENNINGTON: Objection, your Honor.

22 Leading.

23 A Yes, ma'am.

24 THE COURT: Hold on one second and let him --
25 make his ruling.

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1 Overruled as to leading.

2 Q (By Ms. Wilson) What did you want the police
3 to know about your involvement in Marley Lion's murder
4 the week after it happened?

5 A That I wasn't in it.

6 Q And when you were first talked to, what did you
7 want them to know about Little B and Ryan's involvement?

8 A Nothing.

9 Q You didn't want them to know about any of it,
10 did you?

11 A No, ma'am.

12 Q It got tighter and tighter?

13 A Yes, ma'am.

14 MS. WILSON: That's all, your Honor.

15 THE COURT: Mr. Pennington.

16 MR. PENNINGTON: Nothing further, your Honor.

17 THE COURT: All right.

18 Resume back at 9:30, Ms. Wilson?

19 MS. WILSON: Yes, ma'am, that'd be great.

20 THE COURT: 9:30, Mr. Pennington?

21 MR. PENNINGTON: Yes, ma'am.

22 THE COURT: Ladies and gentlemen, this is an
23 appropriate time for us to stop for the evening. Please
24 leave -- please take your notebooks with you. The
25 bailiffs will collect your notepads for the evening.

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1 Ladies and gentlemen, the same admonitions that
2 I gave you before we broke yesterday still apply, and
3 they continue to apply until I tell you differently.
4 You may not read, watch, listen to any news accounts
5 regarding this case. You may not discuss this case with
6 anyone in any fashion, in any way, in any form of
7 technology, and that does include on face-to-face
8 communications as well. Ladies and gentlemen, simply
9 put, you may not discuss this case, think about any
10 issue in this case until I tell you you may do so.

11 Please go home. As you can tell, it's -- I
12 noticed it was a long afternoon for some of you. And so
13 please make sure that you go home and you rest this
14 afternoon because we're going to have about the same
15 length of time for tomorrow.

16 I have been informed that there will be
17 doughnuts for you when you arrive in the morning. So
18 you may plan your morning breakfast accordingly.

19 And now, Clerk, you are committed to providing
20 doughnuts in the morning.

21 THE DEPUTY CLERK OF COURT: Absolutely, your
22 Honor. Your Honor, the lawyers get some too.

23 THE COURT: We'll see about that. Ladies and
24 gentlemen, again, please have a wonderful night. Please
25 remember all of my admonitions. Have a wonderful

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1 afternoon. Please be in your jury room so that we can
2 all begin promptly at 9:30. As you realize, we can't
3 begin until all of you are in the jury room, and then we
4 can begin. So please be respectful of each other's
5 time. Have a wonderful afternoon.

6 Please rise for the jury.

7 (The jury is escorted from the courtroom at
8 4:35 p.m.)

9 THE COURT: Thank you. Be seated.
10 You may step down. Thank you.
11 (Witness steps down from the witness stand.)

12 THE COURT: Ms. Wilson, is there anything
13 before we break for the evening?

14 MS. WILSON: No, ma'am. I do -- well, we
15 resolved the 404(b) issue with Mr. Rivers, so we don't
16 need to proffer that; correct?

17 MR. PENNINGTON: I'm having a brain freeze.

18 THE COURT: I think you probably -- I think
19 you --

20 MS. WILSON: I thought you said that the facts
21 were I agreed to them.

22 MR. PENNINGTON: I believe that issue has been
23 preserved and that I -- we proffered it and I made my
24 timely objections. So in terms -- are we talking about
25 the Chopper?

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1 MS. WILSON: Yes, the Rivers.

2 MR. PENNINGTON: So I believe the issue has
3 been preserved.

4 THE COURT: So nothing else is needed?

5 MR. PENNINGTON: Not at this time on this
6 witness. I'll have to go through some of the same
7 exercise -- you're talking about Rivers now. I'm sorry.
8 My brain is turned off.

9 MS. WILSON: I think what happened, your Honor,
10 is before we broke -- and I know it's been a long day --
11 Mr. Pennington said, I'll proffer what I would elicit
12 from Mr. Rivers, if Ms. Wilson takes issue with any of
13 it. I only took issue with some administrative-type
14 thing and you made your ruling. So I don't believe we
15 have to proffer with Bryan Rivers, is the bottom line.

16 THE COURT: That was my understanding. So --

17 MR. PENNINGTON: I concur that I think I've
18 articulated for the Court as clearly as I can what I
19 believe the evidence would show under our proffer. The
20 Court has ruled. I will be -- offer that again at the
21 close of my cross-examination. And that's all that I
22 have to say about that.

23 THE COURT: All right. All right. With that,
24 we will end. Please, again, we'll start as soon as all
25 jurors are present at 9:30. So the courtroom will be

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1 open if y'all will be here and set up. And I'll see
2 y'all in the morning at 9:30. Have a wonderful evening.
3 Thank you.

4 (The jury trial of this cause adjourned for the
5 day at 4:37 p.m. on October 8, 2013.)

6 (End of Volume II of V. Jury trial is
7 scheduled to reconvene tomorrow, October 9th, 2013,
8 at 9:30 a.m.)
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 Volume II of V Redirect Ex of Julius Brown

REPORTER'S CERTIFICATE

STATE OF SOUTH CAROLINA)
) ss.
 COUNTY OF BERKELEY)

I, ROLAYNE M. VOLPE, Certified Court Reporter, CCR,
 and Registered Professional Reporter, RPR, do hereby
 certify that the transcript of the foregoing
 proceedings, Volume II of V, accurately reflects the
 events that occurred before me to the best of my ability
 at the time and place set out on the caption hereto, the
 witnesses having been duly cautioned and sworn, or
 affirmed, to tell the truth, the whole truth, and
 nothing but the truth.

I FURTHER CERTIFY that I am neither counsel for,
 related to, nor employed by any of the parties to the
 action in which these proceedings were taken or to any
 attorney or counsel employed by the parties hereto, nor
 financially interested, directly or indirectly, in the
 outcome of this action.

CERTIFIED AND SIGNED on this 16th day of March,
 2014.

ORIGINAL

ROLAYNE M. VOLPE, RPR, RPR
 Certified Court Reporter and
 Registered Professional Reporter
 Commission Expires: 8-30-2021

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 Official Court Reporter for the State of South Carolina

STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
()
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,)
()
vs.) Case Nos.: 2011-GS-10-6361
() 2011-GS-10-6362
RYAN DELESTON,) 2011-GS-10-6363
() 2011-GS-10-6364
Defendant.)

TRANSCRIPT OF PROCEEDINGS
JURY TRIAL, VOLUME III OF V
HEARD BEFORE JUDGE KRISTI LEA HARRINGTON
ON OCTOBER 9, 2013

ROLAYNE M. VOLPE, CCR, RPR
Court Reporter for the State of South Carolina at Large
Post Office Box 342
Summerville, South Carolina 29484

State of SC vs Ryan Deleston
Jury Trial, October 9, 2013
Volume III of V

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1	<u>DESCRIPTION</u>	<u>EXHIBITS</u> <u>I.D.</u>	<u>ADMITTED</u>
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3	State's Exhibit No. 4 Aerial Photo -- Famous Joe's to Cashew St.		464
4	State's Exhibit No. 104 Letter from Bryan Rivers to Scarlett Wilson		472
5			
6	State's Exhibit No. 105 Letter from Bryan Rivers to Scarlett Wilson		474
7	State's Exhibit No. 7 Bryan Rivers' Plea Agreement		476
8			
9	State's Exhibit No. 109 Willie Dee's		497
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11	State's Exhibit Nos. 9 through 14 Shell Casings		618
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	<u>DESCRIPTION</u>	<u>E X H I B I T S</u>	<u>I.D.</u>	<u>ADMITTED</u>
1				
2				
3	State's Exhibit Nos. 85-87			681
4	Photos			
5	State's Exhibit No. 34			707
6	Booking Photo			
7	State's Exhibit No. 22			709
8	George Brown's Proffer Agreement			
9	State's Exhibit Nos. 24-25			744
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12	Recorded phone call, Warthaw to Deleston			
13	on 7/18/12			
14	State's Exhibit No. 33			752
15	Transcript of CD Recorded call to R. Deleston			
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1 The above-styled cause came on for hearing on
2 the 9th day of October, 2013, at 9:31 a.m., before Judge
3 Kristi Lea Harrington, Circuit Judge for the Ninth
4 Judicial Circuit, presiding over the General Sessions
5 Court for the County of Charleston, when the following
6 proceedings were had and entered of record, to wit:

7 PROCEEDINGS

8 JURY TRIAL, VOLUME III OF V

9 (The Defendant is present with his counsel.)

10 THE COURT: We have all the jurors.

11 Anything before we bring in the jurors, from
12 the State?

13 MS. WILSON: No, ma'am.

14 THE COURT: From the Defendant?

15 MR. PENNINGTON: Just one matter, your Honor.
16 Overnight I've been thinking about this witness,
17 Frank Middleton, who I think was alluded to earlier as
18 the king of crime in Ardmore, and his reported opinion
19 that the man on the video is Ryan Deleston. And as I
20 analyze it more and more, I'm beginning to think of it
21 as a claim by the State that they can offer 404(b) prior
22 bad acts against my client, in that Mr. Middleton's
23 basis is not that he recognizes my client's face, but
24 that he recognizes the manner in which a weapon is being
25 held. And he's basing that on, I believe, a claim that

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1 he saw a prior attempted robbery by my client on another
2 date, unspecified date and time, at his residence in
3 Ardmore.

4 And to go further, he then extrapolates and
5 says that that is like a signature move, like a --
6 something that is unique, like a certain kind of exact
7 way of doing things, such that he's confident that he
8 could exclude other people and give his opinion that
9 this is my client.

10 And I think that this causes me to have to say
11 to the Court that I think -- I object, and I will object
12 to that under 404(b), because I don't believe that it is
13 going to be so clear and convincing as to meet the
14 standards of 404(b) to overcome the prejudice as opposed
15 to his probative value.

16 And second of all, I don't know that
17 Mr. Middleton's -- the uniqueness is going to be such
18 that it would qualify him to render an opinion that he
19 can say, I don't so much recognize the face; I just
20 recognize the move.

21 And so on those two bases, at the appropriate
22 time, I'm going to be objecting under 404(b) and that
23 he's not qualified to give the opinion that he's giving.

24 MR. DURANT: In response, your Honor, we don't
25 plan to elicit any testimony of him having seen

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1 Mr. Deleston rob a crackhead before, although he has
2 seen that. He's been instructed not to go into that. I
3 would suggest that Mr. Pennington be careful in his
4 Cross-Examination of Mr. Middleton, that he will say
5 that he watched the video five times. His testimony is
6 essentially this: He's known Mr. Deleston since 2011,
7 saw him every day, hung out with him two to three times
8 a week, watched the video five times, knew it was
9 Ryan Deleston, told the officer it was Ryan Deleston.
10 And he told the officer it was Ryan -- he knew it was
11 Ryan Deleston by his body-build and the way he held the
12 weapon. And that's all I'm going into. Now, if he
13 wants to go into it further, he does so at his own risk.

14 THE COURT: Mr. Pennington?

15 MR. PENNINGTON: I agree that that eliminates
16 the concern about 404(b). It still renders the question
17 as to whether or not a witness can make an
18 identification based on body-build and gesture and
19 whether or not that is a substantial enough basis to
20 render an opinion and make a reliable I.D. for
21 admissibility purposes.

22 THE COURT: Okay.

23 MR. PENNINGTON: I'm not familiar with a case
24 where a witness is -- and there may be cases. I guess I
25 should have researched this more thoroughly. But we're

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1 not having -- I claim I don't believe that he recognizes
2 a face, his body-build, and gesture that are the
3 foundation of his opinion.

4 MR. DURANT: His opinion, from knowing him for
5 about a year, seeing him every day, being with him two
6 to three times a week, actually hanging out with him.
7 It's his opinion that that is Ryan Deleston. And
8 identification is nothing ever -- nothing ever but an
9 opinion. And certainly that's not a basis for excluding
10 him.

11 THE COURT: Based upon what I have heard, I
12 agree with the State as to what they intend to elicit
13 from Mr. Middleton based upon his contact. We make
14 determinations every day, and witnesses make individuals
15 tall, taller than I am, heavier than I am, thinner than
16 I am, lighter than I am. So I think that that's an
17 appropriate description for that witness to have given,
18 based upon the fact that he's known him for a
19 substantial length of time.

20 MR. PENNINGTON: Thank you, your Honor.

21 THE COURT: But again, Mr. Pennington, please
22 make the appropriate objections at the appropriate time.
23 Thank you.

24 MR. PENNINGTON: Thank you very much, your
25 Honor. We're ready to proceed.

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1 THE COURT: Who's our first witness?

2 MR. DURANT: Just one housekeeping matter, your
3 Honor. I would -- checked with the court reporter
4 yesterday, and she told me we had not introduced State's
5 Exhibit 4 into evidence. If we have not, maybe that --
6 that's one of the aerial photographs, enlargements of
7 the aerial photographs. If that is not into evidence,
8 we would move that into evidence.

9 THE COURT: Is there any objection to State's
10 4, Mr. Pennington?

11 MR. PENNINGTON: No objection, your Honor.

12 THE COURT: State's 4 into evidence without
13 objection.

14 (State's Exhibit No. 4 is admitted into
15 evidence.)

16 THE COURT: Let's bring in the jury.

17 I'm sorry, Ms. Wilson. Who's the next witness?

18 MS. WILSON: Bryan Rivers.

19 THE COURT: Thank you.

20 (The jury is escorted into the courtroom at
21 9:38 a.m.)

22 THE BAILIFF: All jurors present, your Honor.

23 THE COURT: Thank you. Please be seated.

24 Good morning. I hope everyone had a wonderful
25 evening. As I indicated to you, my first question to

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1 you would be whether or not you have complied with the
2 Court's instructions. If you have complied with the
3 Court's instructions over the evening hour, please raise
4 your right hand.

5 Please let the record reflect that all 15
6 jurors have complied with the Court's instructions.

7 Ms. Wilson, call your next witness.

8 MS. WILSON: Bryan Rivers.

9 (The oath is administered by the Deputy Clerk
10 of Court, and the witness answers as follows:)

11 THE WITNESS: Yes, sir.

12 THE DEPUTY CLERK OF COURT: Thank you, sir.
13 You may take your seat. Sir, if you would, please state
14 your first and last name, spelling your last for the
15 record.

16 THE WITNESS: Bryan Rivers, R-i-v-e-r-s.

17 THE COURT: And, sir, if you could spell your
18 first name.

19 THE WITNESS: B-r-y-a-n.

20 THE COURT: Thank you.

21 Your witness.

22 **BRYAN RIVERS,**

23 having been first duly sworn by the Deputy Clerk of
24 Court to tell the truth, the whole truth, and nothing
25 but the truth, was examined and testified upon his oath

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1 as follows:

2 DIRECT EXAMINATION

3 BY MS. WILSON:

4 Q Mr. Rivers, did you shoot Marley Lion?

5 A No, ma'am.

6 Q Who did?

7 A Ryan Deleston.

8 Q And where is Ryan Deleston?

9 A Right there.

10 Q Which one?

11 A In the white shirt.

12 MS. WILSON: Your Honor, please let the
13 record reflect that he's identified the Defendant,
14 Ryan Deleston.

15 THE COURT: Ms. Wilson, just for a record, I
16 know it's a minor point, but there are two individuals
17 with a white shirt at the table.

18 Q (By Ms. Wilson) Which guy in the white shirt?
19 Does he have on a tie?

20 A No.

21 MS. WILSON: Okay. Let the record reflect he's
22 identified the Defendant.

23 THE COURT: It will. Thank you.

24 Q (By Ms. Wilson) You didn't shoot him. Were
25 you involved in his shooting?

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1 A Yes.

2 Q Was Julius Brown?

3 A Yes.

4 Q George Brown?

5 A Yes.

6 Q How was George Brown involved?

7 A He knew about it.

8 Q Okay. Whose gun was used?

9 A George's.

10 Q All right. How about Rayshawn Milligan? Do

11 you know him?

12 A Yes, I know him.

13 Q Did he help kill Marley Lion?

14 A No.

15 Q Have anything to do with it?

16 A No.

17 Q Now, you said Ryan Deleston is the one who did.

18 You know Ryan Deleston; don't you?

19 A Yes.

20 Q And when you got out of prison, where did you

21 go to live?

22 A With Stephanie Brown.

23 Q And who else lived there?

24 A Ryan Deleston.

25 Q Because they were what?

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1 A Girlfriend and boyfriend.
2 Q And you got out of prison when?
3 A June 1st, 2012.
4 Q Just two weeks before this happened; is that
5 right?
6 A Yes, ma'am.
7 Q It wasn't your first time in prison, was it?
8 A No, ma'am.
9 Q You've been convicted in 2003 of assault with
10 intent to kill?
11 A Yes, ma'am.
12 Q And assault and battery of a high and
13 aggravated nature; isn't that right?
14 A Yes, ma'am.
15 Q Had a probation violation?
16 A Yes, ma'am.
17 Q And then got convicted of dealing drugs in 2011
18 and 2012; is that right?
19 A Yes, ma'am.
20 Q And when you got out of prison on June 1st of
21 2012 -- that was for dealing drugs; right?
22 A Yes, ma'am.
23 Q And when you got out, you went to live with
24 him?
25 A Yes.

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1 Q Now, when was it, do you recall, that you were
2 first interviewed about this case? Do you remember?
3 A Not exact. Sometime in June.
4 Q Before your arrest?
5 A Yes.
6 Q You weren't arrested until when?
7 A July 30th, 2012.
8 Q But back closer to the shooting, you had been
9 interviewed by police?
10 A Yes.
11 Q And did you tell them everything you knew?
12 A No.
13 Q Did you tell them about your involvement?
14 A No.
15 Q Did you tell them about Mr. Deleston's
16 involvement?
17 A No.
18 Q Did you want to be involved in the
19 investigation?
20 A No.
21 Q And at some point -- you said you got arrested
22 on July 30th -- you got a lawyer; didn't you?
23 A On July 30th?
24 Q Excuse me?
25 A On July 30th?

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1 Q At some point after that, you got a lawyer?
2 A Yes.
3 Q And who's that lawyer?
4 A Mr. Buchanan.
5 Q And is that him seated on the first row there?
6 A Yes, ma'am.
7 Q Okay. And during that time, the State
8 approached you about cooperation; is that right?
9 A Yes, ma'am.
10 Q Did you want to cooperate?
11 A No, ma'am.
12 Q Did you want to plead guilty to voluntary
13 manslaughter?
14 A No, ma'am.
15 Q Did you want to plead guilty to attempted
16 robbery?
17 A No, ma'am.
18 Q You didn't want to be involved, did you?
19 A No, ma'am.
20 Q I'm going to show you State's Exhibit 104.
21 (Document is shown to Defense counsel.)
22 Q (By Ms. Wilson) Do you recognize State's 104?
23 A Yes, ma'am.
24 Q What is that?
25 A A letter I wrote to you.

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1 Q A letter you wrote?
2 A Yes, ma'am.
3 Q Whose handwriting is that in?
4 A In my handwriting.
5 Q And you sent that to who?
6 A Scarlett Wilson.
7 Q Me?
8 A Yeah.
9 Q Is that right?
10 A Yes.
11 Q And at that point, when you sent this letter,
12 we made you a plea offer; is that right?
13 A Yes.
14 Q And you wrote this to me about that plea offer?
15 A Yes.
16 MS. WILSON: Your Honor, at this time we'd
17 offer State's 104.
18 THE COURT: Any objection?
19 MR. PENNINGTON: May I have a moment, your
20 Honor?
21 THE COURT: You may.
22 (Respite.)
23 MR. PENNINGTON: I have no objection, your
24 Honor. Thank you.
25 THE COURT: State's 104 into evidence without

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1 objection.

2 (State's Exhibit No. 104 is admitted into
3 evidence.)

4 Q (By Ms. Wilson) Can you read this letter to
5 the jury that you wrote to me?

6 (Document is handed to the witness.)

7 Q (By Ms. Wilson) What's the date you wrote it?

8 A Date is August 17th, 2013.

9 Q Okay. That was just two --

10 A Couple months.

11 Q Okay. Two months -- six weeks ago; is that --

12 All right. Read that to the jury.

13 A Ms. Scarlett, I writing you to let you know
14 that I'm going to trial. To my knowledge, y'all try to
15 goodness to come at me with some bullshit-ass deal for
16 voluntary manslaughter and attempted armed robbery.
17 If I get on the stand, it's not going to work,
18 Ms. Scarlett. Y'all have nothing on me whatsoever.
19 What do I look like, taking some dude for manslaughter?
20 That's just saying I killed somebody, when I know that I
21 didn't kill nobody. Well, I prove that at trial and let
22 the jury decide.

23 I wrote Mr. Buchanan, telling him the same
24 thing. I don't know what y'all -- I don't know what
25 y'all got going on, Ms. Scarlett, but let's go to trial.

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1 See y'all starting October 7th, on course. I told
2 Mr. Buchanan I need the rest of my motion. There's no
3 reason my codefendant got all their motions, and all I
4 got is 150 pages. I need my motions, please, the rest
5 of it. Bryan Rivers.

6 Q You said: See you in court?
7 A Yes, ma'am.
8 Q On August 17th?
9 A Yes, ma'am.
10 Q Is that right?
11 A Yes, ma'am.
12 Q No deal for you; right?
13 A Yes, ma'am.
14 Q You wrote another letter; did you not?
15 A Yes.
16 (Document is handed to the witness.)
17 Q (By Ms. Wilson) Do you recognize that one?
18 A Yes, ma'am.
19 Q State's 105, you recognize it?
20 A Yes, ma'am.
21 Q What is it?
22 A It's a letter stating that I --
23 Q Don't tell me what's in it yet. But you wrote
24 that letter to who?
25 A Scarlett Wilson, you.

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1 Q And when did you write it?

2 A September 11th, 2013.

3 MS. WILSON: Okay. Your Honor, we'd offer
4 State's 105.

5 MR. PENNINGTON: No objection, your Honor.

6 THE COURT: State's 105 into evidence without
7 objection.

8 (State's Exhibit No. 105 is admitted into
9 evidence.)

10 Q (By Ms. Wilson) Read that letter to the jury.

11 A Ms. Scarlett, I writing to ask you can I still
12 take that deal that was offered? I do want the deal.
13 I'm been thinking about my daughter in my life. That's
14 why I'm writing to let you know that I want the deal
15 plea. When y'all say y'all was going to get back with
16 me, y'all never did. But, yeah, I would like the deal,
17 Ms. Scarlett. Thank you. Bryan Rivers.

18 Q So between August 17th and September 11th, you
19 had a change of heart?

20 A Yes, ma'am.

21 Q What did you learn about between those two
22 dates?

23 A I started thinking about the hand of one is the
24 hand of all.

25 Q What do you mean by that? What did that mean

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1 to you?

2 A Like, one man -- all us go down for it for one
3 man's mistake, all what one man did.

4 Q And State's Exhibit 7, you recognize that?
5 (Document is handed to the witness.)

6 A Yes, ma'am.

7 Q (By Ms. Wilson) Is that your plea agreement?
8 A Yes, ma'am.

9 Q Did you plead guilty to voluntary manslaughter?
10 A Yes, ma'am.

11 Q Killing Marley Lion, you pled guilty to that?
12 A Yes, ma'am.

13 Q Did you pull the trigger?
14 A No, ma'am.

15 Q Well, then why did you plead guilty?
16 A Because South Carolina have that law that hands
17 of one is the hands of all.

18 Q Were you involved with killing him?
19 A Yes, I was involved.

20 Q Were you involved in the attempted robbery of
21 him?

22 A Yes, ma'am.

23 Q You pled guilty to that too, didn't you?
24 A Yes, ma'am.

25 Q And you got out from underneath a murder

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1 charge?
2 A Yes, ma'am.
3 Q And what kind of time are you looking at?
4 A From three to 30.
5 MS. WILSON: Your Honor, at this time, we'd
6 offer State's 7.
7 MR. PENNINGTON: No objection.
8 THE COURT: State's 7 into evidence without
9 objection.
10 (State's Exhibit No. 7 is admitted into
11 evidence.)
12 Q (By Ms. Wilson) Up to 30 years; is that right?
13 A Yes, ma'am.
14 Q And what do you have to do in order to keep
15 that plea agreement?
16 A Tell the truth.
17 Q About whose involvement?
18 A My involvement.
19 Q Before that plea agreement, had you ever told
20 the truth about your involvement?
21 A No, ma'am.
22 Q And under that agreement, if you tell the
23 truth, what will happen with your words that you speak?
24 Will they be used against you?
25 A Can you say that again, please?

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1 Q Under that plea agreement, can we use your own
2 words against you?
3 A Yes, ma'am.
4 Q We can? Okay. Let me ask you this: You
5 mentioned Ryan Deleston, living with him after you got
6 out of prison. Do you know what Ryan Deleston's money
7 situation was?
8 A Low.
9 Q You don't know?
10 A I said low.
11 Q Low? Okay. What was your money situation?
12 A Low.
13 Q Real low?
14 A Real low.
15 Q And do you remember hanging out with
16 Ryan Deleston on the night of June 15th, 2012?
17 A Yes, ma'am.
18 Q Where were y'all hanging out?
19 A At first we was at Stephanie Brown house.
20 Q Who else was there?
21 A It was me, Deleston, Julius, George, and
22 Rayshawn.
23 Q Who's Rayshawn?
24 A Duke.
25 Q Duke. He goes by "Duke"?

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1 A Yes.

2 Q When y'all were hanging out that night of the
3 15th into the morning of the 16th, tell the jury what
4 y'all were doing.

5 A Drinking, smoking.

6 Q Smoking cigarettes?

7 A Reefer, cigarettes. Just cooling.

8 Q At some point, did y'all decide to go downtown?

9 A Yes, ma'am.

10 Q And why was that? What were you going downtown
11 for?

12 A Looking for licks.

13 Q What is a "lick"?

14 A Robberies.

15 Q And did y'all have anybody in mind when you
16 went downtown?

17 A No, not exactly.

18 Q Okay. What were y'all going to use to do this
19 lick?

20 A A gun.

21 Q Whose gun?

22 A George. George Brown.

23 Q Where did George Brown have his gun that night?

24 A Like, tucked, like, in between the -- under the
25 seat.

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1 Q Had you seen the gun before y'all went downtown
2 that night?

3 A I'm not sure.

4 Q Okay. When y'all came downtown, tell the jury
5 where all y'all went.

6 A Went by the Battery. We went by the Battery,
7 you know, just to cool off for a sec, chill out. And
8 then after that, we got in the truck and drove around
9 going toward, like, right around the College of
10 Charleston. After that, we went to Rutledge Avenue
11 area, and George Brown, he parked the truck and
12 retrieved a gun.

13 Q How did you get the gun?

14 A George gave me the gun. I retrieved the gun.

15 Q Did you see anybody that looked like a good
16 target?

17 A I seen this couple, this white couple.

18 Q What made them look like a good target? They
19 look like they'd been drinking?

20 A They look like they were drinking.

21 Q Who spotted them first?

22 A If I'm not mistaken, I think George spotted
23 them.

24 Q So he pulled over and he parks. How do y'all
25 decide who's going to get out and do the robbery?

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1 A They decided.

2 Q You were going to get out. Who got out with

3 you?

4 A Deleston.

5 Q Was he going to help you with the robbery?

6 MR. PENNINGTON: Objection. Leading, your

7 Honor.

8 THE COURT: Overruled. You may answer.

9 Q (By Ms. Wilson) Was he supposed to help you

10 with the robbery?

11 A Yeah, he was supposed to.

12 Q Did he?

13 A No.

14 Q What do you mean? How did he not help you?

15 A He went the other way. He walked -- wherever

16 he went, I didn't see him after that.

17 Q So what did you do?

18 A I approached the couple.

19 Q And?

20 A I held them at gunpoint, told them to give me

21 everything.

22 Q Did she give you anything?

23 A She gave me her purse.

24 Q Okay.

25 A A big purse.

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1 Q Do you remember what color it was?
2 A Like beige-looking color.
3 Q Did you get anything from the boy, from the
4 guy?
5 A No.
6 Q Do you remember about what age these people
7 were?
8 A Late 20s, early 30s, something like that.
9 Q Now, when you got out and you robbed these
10 people, what'd you have on? What were you wearing?
11 A All black. Black T-shirt, black shorts, black
12 sneakers.
13 Q You didn't have on khakis?
14 A No.
15 Q Do you wear khakis?
16 A No.
17 Q Do you know whether or not -- well, after you
18 stuck them up and got the purse, where did you go?
19 A Back to the truck.
20 Q And did you see Ryan Deleston there?
21 A No, not at the truck.
22 Q Well, let me ask you this: Around that area,
23 and in your involvement since you've been arrested, have
24 you seen any videos of that robbery?
25 A Repeat the question, please.

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1 Q Have you seen any videos of you robbing those
2 people downtown?
3 A No.
4 Q No video of that, is there?
5 A No.
6 Q And do you know if the police had any
7 connection with that case to this case before you and
8 Julius talked?
9 A No.
10 Q You told them about that?
11 A Yes.
12 Q And you told them who had the gun?
13 A Yes.
14 Q And who was that?
15 A The night of the robbery?
16 Q The night that those people got robbed
17 downtown.
18 A I had the gun.
19 Q When you got back to the car and Deleston
20 wasn't there, where'd y'all go?
21 A We -- we drove off. We hit Spring Street and
22 headed back towards West Ashley.
23 Q Did y'all leave Deleston downtown?
24 A No. We bumped into him at McDonald's.
25 Q You just bumped into him out of the blue?

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1 A Yeah. We seen him at the McDonald's.
2 Q Was the McDonald's -- is that the one on
3 Crosstown?
4 A Yeah, close to the Battery.
5 Q Was that very far from where the robbery of the
6 people was?
7 A I wouldn't say it was that far.
8 Q Do you know if the people you robbed called the
9 police?
10 A Yeah.
11 Q What makes you think they called the police?
12 A I seen a lot of police going towards that area.
13 Q When y'all were driving away?
14 A Yeah.
15 Q So y'all picked up Deleston at McDonald's; is
16 that right?
17 A Yes.
18 Q Did you go through the purse that you'd stolen?
19 A Yes.
20 Q What did you have in there?
21 A Nothing much.
22 Q Get any cash?
23 A About a dollar or two.
24 Q Couldn't split that four ways, could you?
25 A No.

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1 Q What did y'all decide to do after that?
2 A We went back to West Ashley.
3 Q Where did you go when you came back to West
4 Ashley?
5 A We drove through Joe's parking lot.
6 Q Why did you drive through Joe's parking lot?
7 A Scope the scene. We were planning on robbing
8 the person coming out of Joe's.
9 Q Who was planning on robbing the people coming
10 out of Joe's?
11 A I say everybody.
12 Q Rayshawn was going to be in on that?
13 A No.
14 Q Why do you say no? What do you mean?
15 A No, ma'am. It was --
16 Q Was Rayshawn into these robberies?
17 A No.
18 Q Where was he when you went to go rob the people
19 downtown? Was he still in the truck?
20 A Yeah, he was still in the truck.
21 Q And when you rode through Joe's, scoping it
22 out, who was involved in planning to rob Joe's?
23 A Me, Deleston, Julius, and George.
24 Q And what did you see when you went through
25 Joe's?

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1 A Nothing, really. Nobody was out there.
2 Q Did that affect your plan to rob it?
3 A Can you repeat that?
4 Q Did that have any impact or affect on your plan
5 to rob Joe's, the fact that you didn't see many people
6 out there?
7 A Yeah. That gave us the idea to continue on
8 with the robbery.
9 Q Okay. Do you know what time of night it was
10 when y'all rode through that parking lot?
11 A It could have been -- at that time, probably
12 was a little bit after 2:00 or something.
13 Q And where did y'all go after you rode through?
14 A Back to Cashew Street, Stephanie Brown house.
15 Q The place where you were staying?
16 A Yes, ma'am.
17 Q And where y'all had been hanging out earlier
18 that night; is that right?
19 A Yeah. Yeah.
20 Q How long did y'all hang out there?
21 A Couple of hours.
22 Q And at some point, did y'all leave again?
23 A Yes, ma'am.
24 Q Who left this time?
25 A Me, Deleston, and Brown.

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1 Q Which Brown?
2 A Julius Brown.
3 Q And where were y'all headed?
4 A Down the street by Joe's.
5 Q Did you take anything with you?
6 A A gun.
7 Q Who had the gun this time?
8 A Deleston.
9 Q Where'd he get it from?
10 A George Brown.
11 Q Now, the last we heard, you had the gun and did
12 a robbery downtown. How did George Brown have the gun
13 now when you got to Cashew?
14 A I gave it back to him before we left downtown.
15 Q Do you know what he did with it when you gave
16 it back to him?
17 A Put it under his seat.
18 Q Did you see George Brown give Deleston the gun?
19 A At that time, no.
20 Q You didn't see that transaction?
21 A No.
22 Q How do you know Deleston had the gun when y'all
23 left Cashew?
24 A Because he was -- he's fixing to tuck it under
25 his waistline.

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1 Q What'd he have on?
2 A Like, stripy looking pullover shirt, collared
3 shirt.
4 Q And you said he tucked it in his pants, waist?
5 A Yeah. Like -- I can't remember if he had on
6 pants or shorts. I think it was --
7 Q Okay. But he had on a striped shirt?
8 A Yes. With white Willie Dee's, high top.
9 Q What's a Willie Dee?
10 A Air Force 1.
11 Q Show you State's Exhibit 20, for identification
12 only. What is this?
13 A Willie Dee's.
14 Q That's what a Willie Dee is?
15 A (Moves head up and down.)
16 THE COURT: Is that a yes?
17 THE WITNESS: Yes, ma'am.
18 THE COURT: Thank you.
19 Q (By Ms. Wilson) All right. So he had on white
20 Willie Dee's; striped, collared shirt; but you're not
21 sure about his pants. He's got the gun. You said y'all
22 walked down to Joe's. How far of a walk is that?
23 A I'd say about a quarter of a mile.
24 Q And what happened when y'all got down to Joe's?
25 A There's this day care right there. We, like,

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1 kind of fell back behind the day care, behind the white
2 fence.

3 Q Okay. Why did y'all hang out back there?

4 A Scope the scene to see who come out.

5 Q Did y'all see anything?

6 A At that point, we seen, like, a couple of
7 people walking out of there.

8 Q Out of where?

9 A Out of Joe's.

10 Q Did y'all hit them?

11 A No. Not at that time.

12 Q Why not?

13 A My man froze up, I guess.

14 Q Okay. Well, what happened next?

15 A That's around the time that Marley Lion pulled
16 up.

17 Q And you're using the term "Marley Lion" or the
18 name "Marley Lion." Did you know him?

19 A No, not at that time.

20 Q Okay. You've never met him, have you?

21 A No, ma'am.

22 Q You didn't know his name at that point, did
23 you?

24 A No, ma'am.

25 Q All right. But now you do?

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1 A Yes, ma'am.

2 Q And he pulled up. And while he was pulling up,

3 what were the Joe's employees doing?

4 A Getting in their car, bumming a ride.

5 Q All right. Did y'all ever rob the employees of

6 Joe's?

7 A No, ma'am.

8 Q So that money's gone?

9 A Yeah. That money -- he let that go.

10 Q Who let that go?

11 A Deleston.

12 Q All right. So what happened next?

13 A Just when the Marley Lion dude was pulling up,

14 got out of his car. I guess he went in the back to get

15 a pillow or something. So Mr. Deleston attentions went

16 off the Joe's robbery, so now he -- he decided to --

17 going to rob the white dude.

18 Q Well, where'd your attentions go?

19 A My attentions -- I didn't really have no

20 attentions then.

21 Q How about Julius; where did his go?

22 A His is gone too. Our plan was on getting the

23 money from the Joe's, with the big fish.

24 Q Big fish, big cash?

25 A Yeah.

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1 Q You already struck out once that night; right?
2 A (Moves head up and down.)
3 Q All right. So y'all were sitting out there
4 watching Marley Lion. What happened? Did Julius hang
5 around?
6 A No. At that time, Julius, he got up and went
7 around through Chick-fil-A parking lot to --
8 Q For what?
9 A Say he was going to scope the scene out, see if
10 everything clear.
11 Q Did he do that?
12 A Yes, ma'am.
13 Q What happened when he got back?
14 A He said everything was good. Said he didn't
15 see anybody else.
16 Q Okay. Who had the gun at this point?
17 A Ryan Deleston.
18 Q Did you ever have the gun at that point?
19 A No, ma'am. He tried to pass me the gun, but I
20 gave it back. I pushed it off.
21 Q Why did he pass you the gun?
22 A I guess he wanted me to try to do that robbery,
23 but I don't want nothing to do with that, because my
24 attentions wasn't on robbing -- robbing that old white
25 boy. My attention was on getting that man with that big

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1 bag coming out of Joe's.

2 Q So he's trying to push you the gun, and what do
3 you tell him?

4 A I don't want nothing to do with that. I keep
5 pushing him back, telling him, You go ahead.

6 Q What happened next?

7 A After that, all three of us got up. I guess he
8 was going to continue with the robbery. All three of us
9 got out. Me and Mr. Brown stayed back by the gravel,
10 where the gravel was. Mr. Deleston went up to the car
11 and knocked on the window.

12 Q And?

13 A When he got up on the window, the alarm went
14 off, I guess. So. . .

15 Q Do you know if Deleston set off the alarm or
16 Marley Lion set off the alarm; do you know?

17 A If you ask me, I think Marley Lion set the
18 alarm off.

19 Q Well, I am asking you. Do you know?

20 A Huh?

21 Q Do you know which one it was, whether or not
22 Deleston knocking on the window set it off or Marley set
23 it off?

24 A Marley set it off.

25 Q What did Deleston do after he set off the

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1 alarm -- after Marley set off the alarm?
2 A He ran off.
3 Q Where did he run?
4 A I guess he was trying to run towards us, where
5 we was at.
6 Q Okay. Anybody say anything to Deleston?
7 A Nothing. Julius stated, Get him, get him, get
8 him. Not as "get him" as in to shoot the man, but --
9 Q What else did "get him" mean?
10 A Continue with the robbery.
11 Q What did you say to him?
12 A I didn't say nothing. I'm just looking at him.
13 Q After Julius said, Get him, get him, get him,
14 did you -- what did you think Julius meant at that
15 point?
16 A To continue with the robbery; to rob the man.
17 Q Okay. Well, what happened?
18 A Well, instead of running back and robbing the
19 man, he started shooting -- he started shooting the man.
20 Q How many times did he shoot?
21 A About five, six.
22 Q Do you know if he hit him? Did you know -- I
23 know you know now, but at the time, did you know if he
24 hit Marley Lion when he shot?
25 A Yeah, I knew he hit him.

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1 Q How did you know he hit him?
2 A Because of the way he was yelling and
3 screaming.
4 Q When you heard that yelling and screaming, what
5 did you do?
6 A I turned around and started running.
7 Q Who else ran?
8 A Me and Julius ran.
9 Q What did Deleston do?
10 A At that time, he was -- he turned around and
11 started running, but we already had a little stretch on
12 him. So at a certain point, he, like, caught up with
13 me. I was looking back to see if he was behind me,
14 but it seemed like he was catching up. I started
15 hitting the gates, you know.
16 Q When you say "hitting the gates," what are you
17 talking about?
18 A Like jumping gates, basically trying to get
19 away.
20 Q Like fences?
21 A Yeah, fences.
22 Q So y'all were running through yards?
23 A Backyards.
24 Q And do you know what happened with the gun?
25 A Well, at this certain point, we got -- we got

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1 in the back of this yard -- this white dude, Jason, his
2 backyard. And he got, like, a pool. He got a big pool
3 back there at that time. Deleston, he, like, brushed
4 the gun off inside the pool and tucked it under the
5 pool.

6 Q Where did you go after that?

7 A Headed to the front, the front of the yard and
8 hit Balsam Street and went back to Cashew.

9 Q And who was at Cashew when you got back?

10 A It was me, Deleston, Julius, George, and Duke.

11 Q So Duke and George are still there?

12 A Yeah.

13 Q Why didn't George go down to the robbery with
14 y'all?

15 A I can't -- I'm not sure. I can't tell you. I
16 can't answer that.

17 Q Why didn't Duke go?

18 A Duke don't do that type of stuff. He ain't got
19 nothing to do with no robberies or nothing.

20 Q So they're hanging back at the house?

21 A Uh-huh.

22 Q What did you say to Deleston once y'all got
23 back to Cashew Street?

24 A I asked him why he did that.

25 Q Okay. Did you say, Mr. Deleston, why did you

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1 do that?

2 A No. I didn't say it like that. I said it

3 like --

4 Q How did you say it, and what did you say?

5 A I looked at him and I said: Why the fuck you

6 did that?

7 Q What else did you say to him?

8 A I can't remember nothing at that time. I don't

9 think I said anything, but asked him why the fuck he did

10 that.

11 Q What was his response?

12 A I don't know. I think I did something wrong.

13 Q What happened after that? Did Deleston stay

14 out there with y'all?

15 A No.

16 Q What did he do?

17 A I remember him going in the house. When he

18 went in the house -- at one point, he come back out and

19 he smelling like bleach.

20 Q Do you know what he did with his clothes?

21 A At that time, no. At that time, he didn't do

22 anything with the clothes.

23 Q Did he have on the same clothes when he came

24 out?

25 A He didn't have any shirt on.

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1 Q So he took his shirt off, but you don't know
2 what he did with it at that point; is that right?
3 A No.
4 Q Whatever happened with that purse, the purse
5 that y'all stole downtown?
6 A That got burned.
7 Q Do you know what got burned with it?
8 A I guess clothes, because you could see a little
9 part of clothes in there.
10 Q And who burned that stuff, the clothes and the
11 purse?
12 A I say Deleston.
13 Q Why do you say Deleston?
14 A At that time.
15 Q Did you burn it?
16 A No, I didn't burn it.
17 Q Did you see Julius burn it?
18 A No.
19 Q Do you know where it was burned?
20 A Like, toward the back of the house, on the
21 side.
22 Q The back of Cashew?
23 A No. The back of the house where
24 Stephanie Brown staying at, like on the side.
25 Q Okay. Now, I want to show you some video.

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1 MS. WILSON: Beg the Court's indulgence.
2 THE COURT: Take your time.
3 (Ms. Wilson speaks with Mr. DuRant off the
4 record.)
5 Q (By Ms. Wilson) While they're getting the
6 video set up, Mr. Rivers, let me show you State's 109.
7 Whose shoes are those?
8 A Those are my shoes.
9 Q Taken off of you when you were arrested?
10 A Yes, ma'am.
11 Q What size shoe do you wear?
12 A A nine.
13 Q A nine?
14 MS. WILSON: Your Honor, we'd offer State's
15 109.
16 THE COURT: Any objection?
17 MR. PENNINGTON: No objection, your Honor.
18 THE COURT: State's 109 into evidence without
19 objection.
20 (State's Exhibit No. 109 is admitted into
21 evidence.)
22 Q (By Ms. Wilson) And before we get into the
23 video, show you -- well, let me ask you this: What
24 happened to your hair?
25 A I cut it.

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1 Q Just recently?
2 A Couple of months back.
3 Q Couple of months back?
4 A (Moves head up and down.)
5 Q Back in June 2012, your hair didn't look like
6 you got it today, did it?
7 A No.
8 Q You have a little bit of an afro?
9 A Yes.
10 Q Show you State's Exhibit 108. Do you recognize
11 that guy?
12 A That's me.
13 Q That's you?
14 A (Moves head up and down.)
15 Q Back in 2012?
16 A Yes, ma'am.
17 Q That's how you kept your hair?
18 A (Moves head up and down.)
19 MS. WILSON: Your Honor, we'd offer State's
20 108.
21 THE COURT: Any objection?
22 MR. PENNINGTON: If I may just have a quick
23 look?
24 THE COURT: You may.
25 (Document is shown to Defense Counsel.)

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1 MR. PENNINGTON: No objection.
2 THE COURT: State's Exhibit 108 into evidence
3 without objection.
4 (State's Exhibit No. 108 is admitted into
5 evidence.)
6 MS. WILSON: Your Honor, if I can just publish
7 this to the jury. We don't have it on the --
8 THE COURT: You may.
9 (State's Exhibit 108 is published to the jury.)
10 THE COURT: Ladies and gentlemen of the jury,
11 if a piece of evidence has been admitted, that evidence
12 does go back with you during your deliberations, back
13 into your jury room.
14 Thank you. You may proceed.
15 MS. WILSON: Your Honor, at this time, we'd
16 like to play a portion of State's Exhibit 2. If you
17 turn around -- well, whichever one you want to look at.
18 It's playing on both screens. We're at 3:09:11, just
19 for the record.
20 (Video is played.)
21 Q (By Ms. Wilson) Do you recognize that?
22 A Yes, ma'am.
23 Q What is that?
24 A That's George Brown's truck.
25 Q Where?

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1 A Riding through the parking lot.
2 Q Do you remember that?
3 A Yes, ma'am.
4 Q And what were y'all doing when you were riding
5 through?
6 A Checking out the scene.
7 Q No Marley Lion there at that point; right?
8 A No, ma'am.
9 (Ms. Wilson speaks with Mr. DuRant off the
10 record.)
11 MS. WILSON: Your Honor, we're going to go to
12 3:33.
13 (Video is played.)
14 Q (By Ms. Wilson) Where were you at this point
15 in the night when that car pulled in?
16 A Behind the white fence, behind the day care.
17 Q Did you ever come out from behind that white
18 fence?
19 A Yeah, eventually.
20 Q Okay. Into the Joe's parking lot?
21 A No.
22 Q So when you say you -- you did come out from
23 behind the white fence, where did you come out to?
24 A The gravel part close to Yew Street.
25 Q And why did you go to the gravel part?

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